

TRANSCRIPT OF
INTERVIEW OF
WILLIAM E. BREWER, JR.
(Janvier Law Firm PLLC)

Place: U.S. Bankruptcy Court
Raleigh, NC
(Heard via Zoom)

Date: February 12, 2021

TRANSCRIPT ORDERED BY:

DAWN R. WRIGHT, CASE ADMINISTRATOR (U.S. Bankruptcy Court)

ATTENDEES:

TRAVIS SASSER, ESQ. (Sasser Law Firm)
CINDY OLIVER, ESQ. (Longleaf Law Partners)
CHRISTINE CASTELLOE, CHIEF DEPUTY CLERK (U.S. Bankruptcy
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1 MS. CASTELLOE: Okay. I'm Christine
2 Castelloe, the Chief Deputy of the Eastern District of
3 North Carolina Bankruptcy Court and today we are
4 interviewing William Brewer. We also have interviewing
5 Mr. Brewer Cindy Oliver and Travis Sasser. And we'll
6 go ahead and get started. Thank you.

7 MS. OLIVER: Billy, where are you right now?

8 MR. BREWER: Well, I'm at 470 Redd Banks
9 Lane, Hampstead, North Carolina which is on Virginia
10 Creek down in Pender County. I'm looking out at
11 Virginia Creek which is very pretty. My wife just told
12 me she's been counting birds this morning. So, it's
13 lovely down here. It's a good place to social distance
14 from other people.

15 MS. OLIVER: Have you been spending most of
16 your time down there during the pandemic?

17 MR. BREWER: Yeah, probably 75 percent of the
18 time. You know, as we're meeting on this Zoom call,
19 you know, it's apparent you can do a lot of things we
20 do in our offices from -- away from the office
21 actually. You know, this pandemic proved to me I could
22 do that. So, it's been -- it's -- if there's a silver
23 lining on this pandemic cloud, that's it.

24 MR. SASSER: Thank you for doing this, Billy.
25 Tell us all about your upbringing.

1 MR. BREWER: Well, I was born in Lenoir
2 County, a little town of Pink Hill, population 600.
3 You know, I guess I look back on it, it was a fairly
4 idyllic childhood. My mother was a pharmacist in the
5 one little drug store in Pink Hill, North Carolina. My
6 dad was an accountant. And I grew up with my three
7 sisters and brother, working in the summers for farmers
8 in tobacco fields, and other times of the year working
9 as a soda jerk in my parents' drug store.

10 You know, I was raised a diehard Tar Heel in
11 the sense of not the State of North Carolina, that too,
12 but the University of North Carolina where both of my
13 parents went. So, you know, Christine knows a little
14 bit about that. So -- and, you know, well it was kind
15 of preordained that that's where I would go to college
16 and I went to undergrad and law school in Chapel Hill.

17 MS. OLIVER: Was it always your plan to go to
18 law school?

19 MR. BREWER: You know, I went off to
20 undergraduate. I guess I had in the back of my mind
21 that maybe I would come back to Lenoir County as a
22 coach of athletics, but quickly dropped that. Started
23 off majoring in accounting looking to follow in my
24 father's footsteps, but at some point that was the, you
25 know, the late sixties, early seventies with a lot of

1 activism and, you know, that kind of -- if people don't
2 laugh, if I'm going to change the world, I need to be a
3 lawyer. So, by my sophomore year in college, I decided
4 I wanted to go to law school, switched from taking
5 accounting classes to more general classes and ended up
6 applying and going to law school.

7 Obviously, I have, like most of us who went
8 to law school, we turn our attention more from changing
9 the world to making a living and, you know, that's what
10 I've done since getting out of law school. I did help
11 feel like in the area I finally chosen that I've
12 certainly helped change the world for the better for my
13 clients.

14 MS. OLIVER: What year did you graduate from
15 law school?

16 MR. BREWER: '76. Undergrad '73, law school
17 '76.

18 MR. SASSER: Did you take a bankruptcy course
19 in law school?

20 MR. BREWER: I did. I was lucky in that I
21 went to summer school. I don't know if it's been my 1L
22 and 2L or 2L and 3L, but David Epstein who wrote the,
23 you know, the Hornbook, probably the most preeminent
24 bankruptcy professor around unless you want to put
25 Elizabeth Warren in front of him, he had been visiting

1 professor at Texas during the regular school year, but
2 came back to teach bankruptcy law during the summer.
3 So I had him in the summer school class. Again, I
4 can't remember exactly when it was, but one of the
5 summer school sessions.

6 And as luck would have it, I later got to
7 argue in the Fourth Circuit with him on the other side
8 of the argument. This didn't have a happy ending.
9 He -- I did not take my mentor to school. He beat me
10 in that case. That's the Wells Fargo v. Price case.

11 MR. SASSER: Are there any other bankruptcy
12 attorneys that you went to law school with at Chapel
13 Hill?

14 MR. BREWER: I'm trying to see. In my class,
15 you know, I don't know of any -- I'm sure there are
16 some, but right off the top of my head I'm not
17 recalling any that were in my class or ahead or behind
18 me one or two years. Someone give me a list of them, I
19 could probably say, yeah, you know, but right now I
20 don't think of any.

21 MR. SASSER: What did you do after law
22 school?

23 MR. BREWER: My first job was clerking for
24 Judge Fred Hedrick on the North Carolina Court of
25 Appeals. That brought me to Raleigh and after clerking

1 for him for a year, which was a very interesting
2 experience, Judge Hedrick is blind, was a very, very
3 good judge and I hung up my shingle after that.
4 Decided to stay in Raleigh for various reasons and the
5 job market was not very good in 1977 when I was looking
6 for work. That was in kind of the height of the Arab
7 oil embargo and interest rates of 21 percent. Economy
8 was not very good.

9 After attempting to send out resume after
10 resume, I just tried to -- I decided to hang out my
11 shingle. Through an acquaintance, I was introduced to
12 a fellow named Harold Buzzy Russell who agreed to allow
13 me to work out of his office and share space for a very
14 gracious amount of rent or lack thereof. So I just
15 kind of hung out my shingle and started practicing law.
16 And I look on -- back on now and I wonder how in the
17 world I had the nerve to do that, but I just did.

18 And as luck would have it, in my opinion,
19 doing that provided me with kind of general knowledge
20 of the law that helps you be a consumer bankruptcy
21 lawyer. Anybody practicing consumer bankruptcy law,
22 you know this, Travis, you too, Cindy, that you touch
23 on so many areas of the law, criminal, domestic,
24 personal injury, probably real estate law more than
25 anything else. I certified lots of titles, did a lot

1 of loan closings, you have to learn to see is there a
2 judgment lien out there, is there a tax lien and you're
3 going to certify a piece of title to property for
4 someone borrowing money or selling, you know, you
5 better learn about secured debts and that kind of
6 thing. So it was good preparation for later becoming
7 specializing in bankruptcy law.

8 MR. SASSER: Did you and Buzzy Russell
9 eventually have an actual partnership or was it just
10 purely an office share arrangement?

11 MR. BREWER: We did -- we formed a partner.
12 When did that start? Started in '77 when we started
13 practicing law when I hung out my shingle. Eventually,
14 we formed a partnership, Russell and Brewer, in about
15 '83, I believe, and we parted ways at the end of '86.
16 So we were in partnership for a while. Buzzy taught me
17 a -- he did some bankruptcy law.

18 Interesting enough, he had been general
19 counsel for Cameron-Brown Mortgage Company which later
20 got bought up by First Union and one of his
21 subordinates at that part of the time that he was at
22 Cameron-Brown was a young lawyer named A. Thomas Small.
23 So Buzzy taught me, I was more into the law, you know,
24 what does the law provide. He taught me a very
25 valuable lesson that many legal problems have a

1 financial solution, you know, just find the bottom line
2 where people can -- can everybody get on the same page
3 and he solved many a legal problem in that fashion.
4 And that's valuable, I think, for every lawyer even
5 though you don't, you know, everything doesn't have to
6 be determined by the letter of the law. It can be
7 resolved by finding the common ground.

8 MR. SASSER: What was your first exposure to
9 the bankruptcy system?

10 MR. BREWER: You know, when I hung out my
11 shingle, I asserted that I could do about any area of
12 the law, you know, domestic case, criminal case. I
13 remember early on I had to borrow some files from some
14 of the other lawyers put on my desk so it didn't look
15 so clean. That hadn't been a problem in the recent
16 years.

17 And I remember this lady. She had, I think
18 it was a child support custody fight. That was one
19 area you get lots of referrals as a young lawyer
20 because a lot of lawyers don't want to do the domestic
21 cases. And the lady looked me and said, Mr. Brewer,
22 have you handled many cases like this. And I says,
23 ma'am, I've been handling as many cases like this as I
24 have any other which was the truth. I hadn't tried
25 much of anything. She says, okay.

1 So, you know, bankruptcy was another area
2 where you could get referrals and that was back in the
3 day. I don't -- you're too young, both -- everybody
4 else on there is too young to remember back when the
5 bankruptcy forms before we had this software was this
6 six-plied type forms that you had to physically type in
7 like this electric typewriter with carbon paper that
8 cut all the way through so you could have the copies
9 you needed. And if the secretary made a mistake, she
10 had to then try to go through each one of the copies to
11 make, correct the typographical error.

12 I'm a firm believer that any increase in
13 filings of bankruptcy have to do with the technological
14 advances because if you would have handed one of your
15 employees a bankruptcy petition to type, you always
16 gave it to them right before you were going to leave
17 the office for lunch because you didn't want to deal
18 with the ire of that clerical person having to type up
19 a bankruptcy petition.

20 So, yeah, I, you know, I think I did -- I'm
21 one of those folks who can claim I did a bankruptcy
22 petition under the Act of 1898 before the 1978 Act went
23 into effect sometime in 1979. And they were pretty --
24 I don't think I had any cases that were very -- of any
25 consequence. That was back when the exemptions were

1 almost nothing in North Carolina. I remember when I
2 first filed and we had \$500 worth of household
3 furnishings and a \$1,000 homestead, so it wasn't long
4 after that for the law I think changed in 1981 to
5 finally increase the exemptions in North Carolina.

6 MR. SASSER: The first reported case that you
7 were involved in is the Smith case. That was a Judge
8 Small case on October 10th, 1984. Do you recall that
9 case?

10 MR. BREWER: I recall it well. That's when
11 maybe a lightbulb went off, maybe, hey, Billy, you
12 might be able to do this. Mr. Smith, his name was
13 Ulysses S. Smith. He had been a Vietnam War veteran
14 and I think had filed two previous bankruptcies in an
15 effort to save his home from foreclosure. Both had
16 been unsuccessful, so when he came to me and I took his
17 case, probably wasn't as aware as I should have been at
18 that time how controversial it was going to be.

19 The mortgage company was represented by this
20 wonderful lawyer from Charlotte named Jim Morton, quite
21 a gentleman. And I was able to put on evidence that
22 Mr. Smith had suffered from post-traumatic stress
23 syndrome, but had -- was -- had gotten therapy, had his
24 act together and convinced Judge Small that the Chapter
25 13 filing was not in bad faith because he had the

1 problems he'd had in the previous cases were -- had
2 been fixed. You know, it would be similar to us now,
3 you know, filing a motion to extend the stay or to
4 impose a stay and presenting those kind of facts.

5 I also remember it well because of the timing
6 of it. You said I think it was October 10th the
7 opinion came out. The case was probably argued October
8 2nd, 3rd, 4th, along in that time frame and my daughter
9 was born October 5th of that time period and when they
10 were trying to set the hearing, I knew that was about
11 the time she was born. So, when we were scheduling the
12 hearing around -- I warned the Court that, you know, I
13 might have to leave at any point in time if my wife
14 went into labor. And but, as it turned out, she
15 delayed her appearance into the world until we had
16 tried the case.

17 And I normally remember Judge Small's
18 birthday. I think it's October 4th because he had
19 said, well, you know, if your -- she can deliver on
20 October 4th, we'll have the same birthday. She -- my
21 wife went into labor on the 4th, but my daughter has
22 always never been quick to do anything, so this thing
23 is being recorded. I might have to deny I said this,
24 but she delayed coming in this world until early the
25 next morning. So, hers is the 5th, not the 4th. So,

1 that's kind of, you know, is why partly I remember that
2 case as well as I do.

3 MS. OLIVER: Did you appear much before Judge
4 Moore?

5 MR. BREWER: I did appear a couple times
6 before Judge Moore. That was back when everything, the
7 bankruptcy world revolved around Wilson, North Carolina
8 which was -- and, again, that was in the days before
9 electronic filing, of course, so there was a courier
10 that came through Raleigh most every day and you -- it
11 come through about two to three o'clock. Anything you
12 need to file with the Bankruptcy Court he would pick up
13 and take down to Wilson to court.

14 I actually had a hearing or two I think with
15 Judge Moore back when the Bankruptcy Court was not in
16 that new building they built out on Parkwood Avenue,
17 but there was actually a post office built in downtown
18 Wilson where they held the court and the stories about
19 Judge Moore and his chain smoking I can attest to.
20 Going back in his chambers, you know, secondhand smoke
21 was pretty bad, but --

22 MS. OLIVER: I can attest to that, too.

23 MR. BREWER: Yeah, he was, I mean, we have
24 been lucky in Eastern District of North Carolina where
25 we've had good judges.

1 MR. SASSER: When did you -- oh, I'm sorry.

2 MR. BREWER: Go ahead.

3 MR. SASSER: When did you start to
4 concentrate your practice more on bankruptcy law?

5 MR. BREWER: To concentrate it more, as I
6 said, Buzzy Russell and I, we practiced together
7 through '86. He had primarily a real estate closing
8 practice, a lot of residential closings, and I had
9 observed how he leveraged, if you will, building kind
10 of a volume practice and using paralegals to do the --
11 a lot of the work preparing closing statements, helping
12 do title searches.

13 And I did not like doing real estate for a
14 number of reasons. One is it can get pretty boring.
15 Number two, if it's not boring, that means you are
16 resolving a very complicated title issue on a piece of
17 property, but you quoted a flat fee and nobody wants to
18 pay you for all that extra time you spent. You have to
19 deal with realtors who in my opinion's main focus is
20 with a closing is to find out when the closing is and
21 when they can show up to pick up their real estate
22 commission check.

23 So, I had enjoyed what bankruptcy practice I
24 had done. Like I say, that Smith case I think was a
25 '84, obviously it was an '84 case. So, I decided that

1 when we split ways at the end of 1986 that I would try
2 to build a bankruptcy practice. Also needed to have an
3 area in which you could generate, you know, you got
4 to -- you can't do a bankruptcy practice unless you got
5 bankruptcy clients and a Yellow Page ad and ads in the
6 Southside Shopper were a way to generate a practice.

7 I came to the conclusion that in the
8 bankruptcy world people if they get a speeding ticket,
9 they don't mind asking their neighbor, I got a speeding
10 ticket, do you know someone to help me with a traffic
11 ticket. But people don't tend to go to their neighbor
12 and say, look, I got more debt than I can pay, do you
13 know a bankruptcy lawyer. They'd look for more
14 anonymous sources to find out where to get legal help
15 and that generally comes from either, you know -- and
16 they would turn to Yellow Pages and that kind of thing
17 or call a lawyer they know.

18 Other thing I did was send out Rolodex cards.
19 A lot of folks who probably will listen to this won't
20 know what the hell is a Rolodex card, but that was
21 before people went to Google to find out, find a
22 lawyer. And I sent it to every law firm in town with a
23 Rolodex card, bankruptcy up at the top, requested that
24 the receptionist should stick that in the Rolodex so if
25 somebody called a law firm that didn't do bankruptcy

1 and they say can you refer me to a bankruptcy lawyer, I
2 want her to have that bankruptcy tab right there and
3 she'd flip to it and she'd give them my name.

4 So, that's how I kind of got enough of a
5 practice to do enough of it to make a living. Probably
6 the fees back then for bankruptcy Chapter 7 were \$500,
7 750 at the most. And Chapter 13's were, oh, I can't
8 remember, probably 750 flat fee type thing. We finally
9 got it up to about 950. Thought we were doing well.
10 You know, we've obviously -- still not sure we're
11 getting paid enough for Chapter 13's, but we finally
12 got it up where it's worthwhile.

13 MS. OLIVER: How do you differentiate the
14 flat fee of a real estate closing and the flat fee of a
15 bankruptcy case?

16 MR. BREWER: Well, I think it has to do with
17 what the market allows. When I say that, I mean with
18 real estate closings in my opinion they are -- if it's
19 a sale, you know, realtors want to be able to tell
20 their clients what it's going to cost them to, you
21 know, buy a house and, therefore, they go to lawyers
22 and say what will you do closings for and I do -- if
23 you do enough of a volume, you know, you can make a
24 living doing the real estate closings for flat fees
25 and, yeah, the market kind of beats it down.

1 I will say this. If I kept up with it, I
2 think the flat fee for real estate closings have not
3 increased a great deal over the years. I don't know
4 how lawyers make a living doing real estate closings
5 myself. And then the refinancings, again, a lot of
6 that comes referrals from the banks doing the
7 refinancing and they can quote what that fee is.

8 And then for the bankruptcies, people kind of
9 want to know, you know, what is this going to cost me
10 and I think you quote the flat fees, I mean, I think a
11 good lawyer is going to set that flat fee based on
12 having done a good job of interviewing the client in
13 the first place knowing well, gee, this is going to be
14 a case in which I'm filing for one spouse. The other
15 one makes good money, so I'm going to be in a food
16 fight with Rick Hinson, Tanya Aycock and the BA's
17 office about my marital adjustments, so I better quote
18 a fee that covers that.

19 You know, if you see it's a very, very simple
20 case, then you quote a fairly low flat fee. So you
21 make a prediction on what it's going to cost to do the
22 basics of the case. I think most every lawyer will --
23 should have in their contract a provision that
24 identifies the routine services versus non-routine. I
25 think you could always have a provision that allows to

1 charge extra for the actual motion defending a motion
2 to dismiss or discharge complaint and that kind of
3 thing. I don't know if that answered your question or
4 not, but --

5 MS. OLIVER: No, that was a good answer.

6 MR. SASSER: What's the first EBI that you
7 attended?

8 MR. BREWER: You know, I don't know. I think
9 the very first one at one point I think they did some
10 of them at the Blockade Runner in Wilmington. That may
11 be the first one. I'm not sure. I know it turned out
12 the Blockade Runner wasn't -- kind of didn't have
13 enough facilities for us and then it started going to
14 Myrtle Beach. But probably early nineties.

15 MR. SASSER: It seems like there was a -- you
16 were active by the time 1993 came around, you were
17 involved in the Sears case that came out or at least an
18 opinion. I realize that went on quite awhile. That
19 was like June of '93. And then In re Kidd was October
20 15th of '93. Tell us a little bit about maybe those
21 cases.

22 MR. BREWER: Okay. The -- yeah, I looked.
23 You sent me that list of cases. I thought I was one
24 litigious lawyer.

25 MS. OLIVER: It took that list for you to

1 realize that?

2 MR. BREWER: Well --

3 MS. OLIVER: We all know that.

4 MR. BREWER: Well, you know, an imagination
5 is a terrible thing to waste. So, the Sears case, you
6 know, this is going to be a longer answer than you may
7 anticipate, but if we're doing a history project here,
8 there was a time in which at every 341 Sears sent this
9 very nice lady. I cannot remember her name.

10 MR. SASSER: Bisley (phonetic).

11 MR. BREWER: Bisley, there you go, who would
12 show up and say, you know, and you had your clients
13 prepared to answer her questions. But, you know, if
14 you bought things from Sears, they claimed to have a
15 security interest in whatever you bought based on a
16 little -- where you sign your name underneath it, Sears
17 retains the security interest of items you purchased.
18 That was kind of the contract. Did you want to
19 reaffirm that debt or surrender?

20 I had a client on one occasion actually
21 bring, Sears had a pet department, bring her German
22 Schnauzer to court and says it's out there in the hall,
23 you can take it home with you. He didn't know quite
24 what to do. But so that was kind of a juggling act.

25 Well, there was a case written by Judge

1 Moore. I've got the -- I do not remember all this
2 stuff in my head. I went back and when you -- I knew
3 you were going to ask about this, so I did some
4 studying. It was Dossenbach's of Clinton v. Bartlet
5 which is an opinion written in 1982 by Judge Moore, 23
6 B.R. 404. In that case, Bill Bacon from Clinton
7 represented the debtors. Ted Nodell, who had carved
8 out a niche practice in representing furniture stores
9 throughout the state, represented the Dossenbach's of
10 Clinton. And these people had bought kind of on a
11 revolving charge account various items from this
12 department store.

13 The issue came down to whether they had -- I
14 think there was a motion for relief from stay which
15 both Bill and the Trustee, which was the -- that was
16 the department person, opposed saying you really don't
17 have a good security interest because you violated the
18 North Carolina Retail Installment Sales Act. I won't
19 get into the legal gymnastics of Judge Moore's opinion,
20 but in general the North Carolina Statute required
21 certain application of payments.

22 If I've got different items I've purchased at
23 different times, how do you apply the payments that
24 you're making on the account, how do you apply it to
25 the washing machine you may have bought two years ago

1 and the air conditioner you bought six months ago?
2 When do you determine what has been paid for? And the
3 law said you have to apply it in a certain way.

4 Well, this creditor had not done that and he
5 says since you haven't complied with the statute that
6 allows you to have a security interest in the revolving
7 charge account, you lose the benefit of having a
8 security interest. Therefore, there's none. And I got
9 to look at the way Sears did it and that statute
10 requires that you apply the payments on a pro rata
11 base. Sears' contracts provide that you apply the
12 payments first bought, first pay for which is probably
13 a fair way to do it, frankly. But I thought, gee, I
14 can -- I might be able to use that statute to knock out
15 Sears' security programs.

16 So, I had a client, his name was Stephen Edge
17 (phonetic). Forget what they bought from Sears, some
18 of kind of -- several things, one thing including, I
19 think, a treadmill, but I objected when Sears filed a
20 motion for relief from stay. I think that's the way it
21 came about. I objected, argued this Dossenbach's case
22 and Judge Small ruled that that, in fact, was correct.
23 That -- it was Van Dusen -- no, I'm sorry. Edge is 91-
24 05055-5-ATS.

25 So, March 27th of '92, Judge Small said, you

1 don't have a security interest. But on that being the
2 case, I was of opinion Sears should not be claiming to
3 have security interest anymore with that ruling. But
4 they kept sending this lady to court to ask the
5 questions and observe that.

6 Interestingly enough, they didn't claim to
7 have security interest in any of my clients' cases
8 during that period of time, but at some point they
9 messed up and they claimed to have a security interest
10 in titles that my clients, Mr. and Mrs. Coggin. I
11 think Mr. Coggin's first name was Oscar as I remember.
12 I remember they lived in Rocky Mount. So I says, all
13 right, so here's my attempt to go after Sears to make
14 them stop doing this and that's when I brought a class
15 action which was Coggin v. Sears and Roebuck (92-00256-
16 8-ATS) and Judge Small did allow this class action.

17 In the meantime, there was another client who
18 was named Van Dusen who Sears decided they wanted to
19 kind of re-litigate the issue I think and I remember
20 when we argued that case, it must have been in the
21 period of time I'm thinking because -- the judge that
22 handled the case was Judge Wolfe who was sitting by
23 designation in the Eastern District. I don't remember.
24 It was during that period of time -- I don't know why
25 Judge Wolfe was sitting. May have been --

1 MR. SASSER: After Judge Moore died.

2 MR. BREWER: After Judge Moore died, I
3 believe. And Judge Wolfe agreed with Judge Small's
4 opinion. I remember that somewhat because I've had a
5 conversation with I think Alice Stubbs who is Buzzy's
6 daughter was clerking for Judge Wolfe at the time. I
7 appealed that case to the District Court. Judge Boyle
8 upheld Judge Wolfe's decision and so when I asked for
9 my class action, I asked for the class action to cover
10 the entire State of North Carolina. In the Western
11 District, a judge, I don't remember which judge, maybe
12 Judge Whitley, I think had rendered an opinion that
13 disagreed with the decisions made by Judges Moore,
14 Small, Wolfe and Boyle and said the creditor still had
15 good security interest.

16 So, when I argued for the class action, I
17 asked for the whole state. Sears said well this is
18 just Eastern District. I said, well, Your Honor, we
19 know what's going to happen in the Middle District. A
20 judge there in the Middle District has said that, so
21 Judge Small kind of says I'm going to make class cover
22 all debtors in the Eastern and the Middle Districts,
23 but not the Western District, so that's how that class
24 wound up. And then there were years trying to unravel
25 the remedies for those folks that Sears had claimed to

1 have security interest trying to recover from those
2 monies that they had paid in and pursuant to claims of
3 security interest that didn't exactly exist.

4 This Sears class action should not be
5 confused with what I call the big one that I think rose
6 out of Massachusetts that was really a pro se debtor in
7 which Sears was not filing the -- they can get
8 reaffirmation of things, but they weren't filing them.
9 This was the days before electronic filing, so the only
10 way to know they weren't filing them was to go down to
11 the clerk's office and ask for the file to see if they
12 were being filed. But, in that case, a judge pulled
13 the file and saw that they weren't filing them, so
14 Sears got hit throughout the entire country for
15 enforcing security agreements that had not been filed
16 with the court.

17 Had I figured that out, my class action, I
18 may have made some money doing it. But my class action
19 was kind for the honor of doing it than making much of
20 any money representing these folks. I think in the
21 end, most of them got the settlement, final settlement
22 with Sears is they got gift cards or, you know, that
23 they could go to Sears and buy stuff with. So, it was
24 a victory, but not one that was hugely beneficial to
25 the debtors.

1 MR. SASSER: Thank you for that.

2 MR. BREWER: And then you asked me about the
3 Kidd case. Kidd was a fellow named Clark Kidd. He
4 lived down in Harnett County, I believe. He had four
5 daughters between the ages of 13 and 18, as I recall.
6 So, poor fellow needed all the help he could get. And
7 he had a second mortgage. I believe it was Commercial
8 Credit.

9 And prior to the, I think it was the Nobleman
10 case, it was standard in most parts of (indiscernible)
11 in the Eastern District that you could if you had a
12 second mortgage for \$20,000 but there was only \$10,000
13 or \$5,000 worth of equity over and above the first, you
14 could strip it down under the Bankruptcy Section 506(a)
15 to that \$5,000 and that's all you had to pay. But the
16 Nobleman opinion said, no, you can't do that. If it's
17 partially unsecured, you got then the proper way to
18 construe the statute is it's fully secured.

19 I, to this day, think that's bad law, but the
20 Supreme Court says it's the law, it's the law. But its
21 interesting the way the Supreme Court came to that
22 conclusion says it is a secured. So, if it's secured
23 by any amount that might give the creditors a holder of
24 a secured claim, that's how they -- was the toehold on
25 which they based its opinion.

1 Well, in Clark Kidd case, the property I
2 think we could prove was worth less than the amount of
3 the first. So, my argument became they're not the
4 holder of a secured claim. Their claim was totally
5 unsecured. So, I came up with the idea to claim that
6 they could, you know, I guess we call it strip it now.
7 I don't know what word I used then, but they were
8 wholly unsecured. And Judge Small bought that opinion.

9 I remember the lawyer on the other side. She
10 worked with Hunter Wyche's firm. She was very, very
11 nice lady. First name's Colleen. For the life of me,
12 I can't remember her last name. I guess if I pulled
13 the Kidd opinion, her name will be there on the
14 attorneys. But when we argued the case, Judge Small
15 says I'm going to take it under advisement.

16 And I had a habit back then of as I would
17 normally walk to court from my office there on Person
18 Street and on my way was the Supreme Court Library and
19 I stopped. I would stop sometimes back and forth to
20 court to read the advance sheets there in the Supreme
21 Court Library and I stopped and pulled advance sheets
22 and low and behold came across a case, I think it's --
23 I don't know how you -- it was Plouffe or Plouffe,
24 P-l-o-u-f-f-e, out of Connecticut and when some other
25 lawyer had made that same argument and the Court had

1 agreed with the argument that I made to Judge Small.

2 So, I immediately got back to the office,
3 called Colleen and says I'd like permission to make
4 some -- to send some authority to the Court. Of
5 course, she said, sure, you may if you've got some case
6 law. And so I sent that to Judge Small. And I think
7 he cites that in the Kidd opinion. So, I think Kidd
8 was the second Court in the country to rule that wholly
9 unsecured seconds can be stripped.

10 And, as we know, that's kind of the law
11 pretty much throughout the country now and it was 100
12 percent there. But it is certainly the law and I don't
13 think any Circuit Court that has considered the issue
14 ruled otherwise. So, that's where the In re Kidd
15 motions come from.

16 MR. SASSER: Just for sake of posterity, your
17 name is actually not on that opinion, the 161 B.R. 769,
18 so they don't have the counsel listed on there. It
19 doesn't show up under a search for your name. We're
20 pretty much going through this chronologically, but if
21 we could talk about it topically because then later on
22 you successfully were able to argue and I think this
23 all went all the way to the Court of Appeals relative
24 to stripping off unsecured homeowners association, can
25 you tell us about that?

1 MR. BREWER: Yeah. The opponent in that case
2 is Nelson Harris. Nelson is a dogged opponent and
3 zealous advocate for his homeowners association
4 clients. That tends to run through the attorneys who
5 represent those homeowners folks, right, Cindy? So, in
6 any event, you know, the -- it seemed to me the same
7 strategy that will work if you had a homeowners
8 association with a lien, statutory lien that was not --
9 had no value there, you could strip it.

10 The interesting thing was that was I think
11 Haywood v. Widewaters Community Homeowners Association
12 that when I -- when Judge Small ruled that you could
13 strip it and then the District Court affirmed when it
14 went up to the Fourth Circuit, it became clear to me
15 the Fourth Circuit had never considered that issue.
16 But -- and in the meantime, I think there was a case
17 involving a pro se debtor who had that issue before the
18 Fourth Circuit and I was very careful that the Fourth
19 Circuit might end up deciding that issue unfavorably to
20 the debtor before I got there with Widewaters, but it
21 did not. And so, again, that's the case law here in
22 the whole Fourth Circuit that you can strip fully
23 unsecured security interests or deeds of trust.

24 MR. SASSER: Still focusing on 1993, I
25 believe, and you can correct me if I'm wrong, but the

1 first time that you were involved in an appeal in the
2 Fourth Circuit was the United Carolina Bank v. Hall
3 case, is that right?

4 MR. BREWER: Yes, yes. That one doesn't have
5 a very happy ending from my standpoint. I remember
6 well going up there to argue that case. I was nervous
7 as a long-tailed cat on a porch full of rocking chairs.
8 Who was my opponent is from Wallace, Richard Burrows, I
9 think, who represented United Carolina Bank. The issue
10 was, as we all know in the Rash decision that you -- if
11 you strip down a secured debt like a car loan to the
12 value of the collateral, I think this case involved a
13 mobile home, as I recall, you then have to pay the
14 present value of that claim which means you have to
15 come up with the appropriate discount rate to pay the
16 claim.

17 Well, case law was all over the ballpark
18 throughout the country on that issue and when we went
19 up there, I forget the panel, but one of them was a
20 judge out of Maryland named Niemeyer, I think,
21 N-i-e-m-e-y-e-r. He had come up with a theory that
22 nobody else had ever come up with which is the way they
23 ruled which was not favorable to the debtor. And but
24 he did rule that under his theory that the rate was
25 capped by the contract rate that the loan was.

1 And that remained the law in the Fourth
2 Circuit until the Till decision by the Supreme Court
3 which now we know is basically prime rate plus a
4 reasonable list factor which I will say to those
5 listening is the fact when you use two percent for car
6 loans does not mean Till is prime plus two for all
7 types of debts. So, if you got a property like real
8 estate that's not depreciating, you probably should not
9 use two percent, but something less like a no percent,
10 one percent, half percent.

11 MR. SASSER: When did you get involved with
12 the National Association of Consumer Bankruptcy
13 Attorneys?

14 MR. BREWER: I got involved with that at the
15 invitation and urging of Elizabeth Peterson who was
16 both a debtor's attorney and Chapter 7 Trustee over in
17 the Middle District. She was -- Elizabeth was a very,
18 very good attorney and I guess Elizabeth having -- I
19 think this was, all this was happening around about the
20 time of the Sears cases. So, again, Liz has figured
21 out, you know, I was somewhat zealous in representing
22 debtors, so she urged me to go to its second convention
23 which was in San Francisco.

24 Ironically, the first one was in Asheville,
25 North Carolina. I didn't know anything about that at

1 the time, so the one in North Carolina I did not
2 attend. But I've been to -- I went out to San
3 Francisco I think it was in '94. I'm not sure, '93,
4 '94, I think '94 and been active ever since.

5 And then when Elizabeth, she was on the
6 original board of directors, was original secretary of
7 the board, when she decided not to run for reelection
8 her board seat, she encouraged me to run for hers and I
9 was lucky enough to get elected to the board in '97 and
10 was on the board all the way through 2015, was
11 president 2011 and '12, they're two-year presidency
12 shifts.

13 So -- NACBA -- well, how do I put this? I've
14 been going to the North Carolina Annual Institute since
15 I really started getting involved in bankruptcy in the
16 late eighties and to EBI. At that point in time, the
17 power structure primarily of Annual Institute was
18 revolved around creditor practice and Chapter 11
19 practice. And this may be my own bias, but I felt like
20 debtors' attorneys were treated like the red-headed
21 stepchildren of the bankruptcy bar.

22 And so I was very pleased when I went out to
23 San Francisco and saw that there were attorneys like me
24 throughout the country that took great pride in
25 representing debtors and meeting people like Henry

1 Sommer and John Rao and other folks. There was a
2 lawyer with NCLC named Gary Klein. It was inspiring.
3 And so I've been involved since then. I'm still on the
4 board as an ex-president, though I don't have any
5 voting power on anything they do.

6 MR. SASSER: Has your role in that, but did
7 that give you a -- was that a context in which you
8 then were testifying in front of the Congress about
9 bankruptcy matters?

10 MR. BREWER: Yes. It was through I guess
11 each time I appeared, I kind of appeared as
12 representing the debtors and the debtors' bar,
13 primarily debtors. But, yeah, it was under the
14 auspices of being a member of or on the board of
15 directors. That first time I appeared was before
16 Judge -- not Judge -- Lauch Faircloth who was senator
17 from North Carolina from Clinton. So, yeah, that
18 was -- it was always appearing kind of -- and I think
19 NACBA sent me to that first one with Judge Faircloth
20 because he was from North Carolina and I was from North
21 Carolina.

22 MR. SASSER: NACBA waged a kind of a long
23 battle against the law that eventually became the 2005
24 BAPCPA law, is that right?

25 MR. BREWER: Yes. That law arose out of

1 Congress passed some bankruptcy legislation in 1994.
2 Most of that legislation was more debtor friendly, but
3 they created a bankruptcy, national bankruptcy review
4 commission to propose changes in the bankruptcy law.
5 And that commission held hearings throughout the
6 country. I've testified at a couple of those hearings.
7 I think the official term as a reporter for that
8 commission was a bankruptcy professor from Harvard Law
9 School named Elizabeth Warren. We all know Elizabeth
10 Warren has gone onto bigger and I don't know if
11 greater, but bigger things since then and when I first
12 got to meet her, she wouldn't know me from Adam.

13 So, yeah, so that's my opportunities to
14 testify before Congress. Each time I've done it would
15 be as a representative of National Association of
16 Consumer Bankruptcy Attorneys.

17 MR. SASSER: Billy, as you evaluate the
18 changes in the laws of '84, '94, '98, 2005, since
19 you've been practicing, if you were to look at those as
20 sort of a vintage of wine, which of those laws did you
21 like and which of them did you not care for?

22 MR. BREWER: Well, again, I think '94 would
23 be the Rothschild. It was by far the best amendments
24 in the law that were debtor friendly, you know. You
25 know, I'll leave it to other policy folks to decide

1 whether, you know, looking at bankruptcy law as a
2 composite, you know, whether it's better or not than
3 others. I think it was also well drafted. You know,
4 if I can be a little biased here, it was clear to me
5 that the '78 Act, the '84 and the '94 amendments were
6 written by people who understood the Bankruptcy Code,
7 understood how this section related to that other
8 section. And so they made sense from a just a
9 logistical standpoint.

10 The 2005 Act was written mostly by lobbyists
11 and in many respects they didn't know what the hell
12 they were doing. And I think the bench, the bankruptcy
13 benches in the early cases construing that the law, the
14 judges have reflected their frustration in that. I
15 know Judge Small, who normally wasn't given to much
16 flamboyancy in his opinion, you know, in phrasing one
17 of the cases said this law is like a Rubik's Cube with
18 a manufacturer's defect, however we twisted and turned
19 it and some patterns of color have emerged. You know,
20 that's the kind of law it was.

21 In another place, he talked about proceeding
22 into the thicket of the law with shears in hand. So,
23 you know, they -- so I believe that, you know, the 2005
24 Act, well, we know how much litigation has come about
25 because of it. We're still trying to sort out some of

1 the provisions. But I will say this, you asked me
2 about NACBA. I think it was clear that when the 2005
3 Act passed in April to go in effect in October, I'm
4 very proud of what the National Association of Consumer
5 Bankruptcy Attorneys did.

6 We had a -- our convention was in May. We on
7 the fly kind of changed all of our presentations and
8 revamped them to work in issues related to what had
9 happened with BAPCPA. We then had a workshop, if you
10 will, in Chicago in July, then a second one in Orlando
11 in September or October in Florida in the middle of
12 hurricane season to show you how bold we were. And I
13 think in total the number of attendees, again, some of
14 these attendees may have gone to one or two or all
15 three of the, we had more than 5,000 attendees to go to
16 these workshops.

17 And I think probably in the history of the
18 world, no organization has provided more continuing
19 legal education to a number of lawyers in one year than
20 what we did in 2005. And I think it was pretty clear
21 that through the leadership of people like Henry Sommer
22 and John Rao and other folks, Tara Twomey, that the
23 debtors' lawyers came out of the chute in applying this
24 law kind of way ahead of the creditor bar. The early
25 decisions, we did very well and I think what creditor's

1 (indiscernible) didn't understand the law. They just
2 -- you know, their mantra was, well, this law is
3 supposed to screw the debtor, and it did not screw the
4 debtor. And we prevailed early on.

5 We lost some of that advantage because
6 Appellate Courts tend to follow that mantra that the
7 law was designed to, what did the Supreme Court say in
8 Rapson to -- for creditors to collect as much as they
9 can and, therefore, take every ambiguity in the law.
10 When there's not an ambiguity, we got to construe the
11 law that's most favorable to the creditors because they
12 paid for this law. They need to get what they paid
13 for. So I'm somewhat hopeful that there is -- the tide
14 may turn somewhat in legislation, especially with
15 respect to student loan provisions in the law.

16 MS. OLIVER: So, Billy, I was going to ask
17 you if you could change one provision in the current
18 Code, what would it be?

19 MR. BREWER: One provision.

20 MS. OLIVER: Or (indiscernible).

21 MR. BREWER: Yeah, wow. If I guess the one
22 provision would be to -- I mean, if I can get whatever
23 I want, I would eliminate 523(a)(8) from the Bankruptcy
24 Code, exception to discharge of student loans. You
25 know, if you said, well, you might imagine one isn't

1 that powerful. I would take it back to, you know, to
2 the waiting periods that were put into the law, you
3 know, if a loan, student loan was so old it could be
4 discharged. You know, and then -- so that's -- I think
5 the situation with student loans in this country is
6 pretty horrible.

7 And if you look at the reason for bankruptcy
8 laws, the idea is to take people who are overburdened
9 in debt and to help them get out of debt for purposes
10 of stimulating the economy. That's part of the idea.
11 I think the student loan I think is well over a
12 trillion dollars now. You got young folks who are
13 putting off getting married, they're putting off
14 starting families, they're putting off trying to get
15 into, you know, buy homes because they can't get
16 approved for loans because of their student loan debt.
17 If there's any one thing that could help boost the
18 economy, relief from student loans is -- would help.

19 Now, you know, there's some talk about just a
20 blanket reduction of student loans in total or by a
21 certain amount. There's a term out there called moral
22 imperative. You know, I guess I'm not so liberal that
23 I think that's the right thing to do. Maybe as a
24 bankruptcy lawyer I like the idea of how much more
25 business I might get if it changed, but I think only

1 those people who really can't pay their student loans
2 ought to get relief from it, and I think letting people
3 turn the gauntlet of the bankruptcy law to get relief
4 from student loans is probably as good a mechanism as
5 any to relieve only those folks who need to be relieved
6 from student loans.

7 You know, if somebody went to East Carolina
8 Medical School and got \$100,000 worth of student loan
9 debt, but just got a job, you know, with a medical
10 facility making \$250,000 a year, that person can pay
11 his or her student loans and is not going to file
12 bankruptcy. Or somebody, you know, has been out of
13 medical school for a number of years and as a result
14 has accumulated monies in the stock market worth
15 \$100,000 while still paying student loans, that person
16 is not going to file bankruptcy because they're not
17 going to give up that stock account. Or if they do,
18 you know, a big chunk of it is going to go to pay
19 student loans.

20 So, probably that would be my one area. If
21 you could ask if I could change any one judicial
22 theory, it would be to take the Brunner decision and
23 throw it in the trash can. I think that use of the
24 Brunner decision in undue hardship is one of the most
25 ill applied judicial theories ever devised by the

1 courts. It was advised in a period in which if you
2 wait I think at the time Brunner came out, it was a
3 five-year period of time you could discharge student
4 loans, you know, that were five years old and so to say
5 that if you hadn't had that five-year period yet, you
6 had to -- you need to have the, what did they say, the
7 certainty of hopelessness, you know, made a certain
8 amount of sense.

9 But now with the time periods completely
10 eradicated, we can thank Massachusetts Senator Ed
11 Kennedy for those -- for the erosion of those
12 provisions. Then, you know, to still apply the
13 certainly of hopelessness for somebody who is 15 years
14 out of school and still just eking by, can't get rid of
15 student loans, is just nonsensical.

16 MR. SASSER: Billy, a couple of important
17 things happened at the end of the aughts. One is that
18 there was a mortgage crisis, a housing crisis, the
19 economy went into recession, and also sort of in the
20 middle of that, Judge Small retired. I wonder if you
21 might reflect on those items?

22 MR. BREWER: Well, gee -- well, I'll probably
23 use that as a jumping off place to -- by these folks on
24 TV, or ask the question and they don't exactly ask the
25 question to riff on Judge Small -- I think was one

1 very, very great judge. He's probably one of the main
2 reasons you kind of asked how I got into bankruptcy.
3 Part of that was my admiration not only Judge Small,
4 but Judge Moore and the way they conducted their
5 courts.

6 Since I was in Raleigh, I was -- appeared
7 before Judge Small much more often than Judge Moore,
8 but, you know, you could always -- knew that you were
9 going to get to argue your case. He wouldn't always
10 necessarily agree with you, but you wouldn't be --
11 you'd be -- you'd have the opportunity to make your
12 case and he was always very cordial to the attorneys,
13 especially if you were prepared. And even when if you
14 weren't exactly prepared, he never went out of his way
15 to embarrass you.

16 So, you know, his retirement was, you know,
17 it's kind of like one of the greats stepping off the
18 bench. You know, the mortgage crisis, gee, I don't --
19 you know, to me, that -- I'm getting away from
20 bankruptcy law, but now that kind of to me reflected
21 the flaws in the financial services industry on how
22 they operate. And that was the opportunity, you know,
23 which I thought they might finally get the right to
24 modify mortgages in bankruptcy. But we didn't get
25 there.

1 I'm thinking I don't know if when I said, you
2 know, you asked me about legislation, I don't know that
3 this pandemic and what's going to go on will provide
4 another opportunity. I have to believe the makeup of
5 the House and the Senate and in the presidency,
6 probably provides greater opportunity than we have had
7 in some time.

8 MR. SASSER: Billy, you as you reflect on
9 your, at this point, over I guess you're in your fifth
10 decade of practicing bankruptcy law and during this
11 interview you talked about some of your opposing
12 counsel. Who are some of the contemporaries that you
13 have or people that you think were very influential in
14 the way that bankruptcy law was practiced in the
15 Eastern District?

16 MR. BREWER: Well, Travis, you're up there on
17 that list, I don't know, you're not nearly as old as I
18 am, but you've been doing this a while. You're trying
19 to make me feel old, but -- and I am. But, you know,
20 you've certainly been influential. You, obviously,
21 can't talk about the practice of bankruptcy law in the
22 Eastern District or maybe anywhere in the state,
23 Eastern or Middle, without making reference to John
24 Orcutt and his marketing programs and the way he has
25 impacted not just the law, but the way we all practice.

1 I mean, John's been very influential. You know, those
2 probably, you know, Ed Boltz is I think is a very fine
3 lawyer and I admire him the way he practices quite a
4 bit, his intellect, his stamina.

5 And, gee, and then, you know, jumping off of
6 that to kind of, you know, the lawyers I've practiced
7 with, I think Bill Janvier is one hell of a lawyer.
8 I've been certainly enjoying practicing with him the
9 last four, five years or so. And, you know, obviously,
10 Buzzy Stubbs with what, you know, he's probably still
11 considered, he and his firm, preeminent Chapter 11
12 attorneys in the Eastern District and what he's done
13 with respect to shepherding the Eastern Bankruptcy
14 Institute and whatnot from a -- you know, dealing with
15 other lawyers, you know, though we haven't had to butt
16 heads much recently, I've always enjoyed dealing with
17 Frank Drake even though we're probably on the polar
18 opposites of our view of people getting relief, debt
19 relief in bankruptcy. Frank and I are very good
20 friends. Enjoy spending time with him.

21 I like Ted Nodell a lot. Can I tell one
22 quick funny story about Ted Nodell? It comes back to
23 the Sears cases. By the time that was going on, Ted
24 had been the attorney I said in the original Judge
25 Moore opinion that kind of was the seed case that led

1 to Stephen Edge case, Van Dusen, Coggin. Well, I had a
2 client who had bought some series of items from a
3 furniture store on South Saunders Street called
4 Caraleigh, C-a-r-a-l-e-i-g-h, Caraleigh Furniture. And
5 she'd bought a rug, I think some lamps. Last item she
6 purchased was a mattress and box springs.

7 I had filed I think I'm not sure how it came
8 about, I think maybe Ted filed a motion for relief from
9 stay and I opposed it saying going to argue like in
10 that Dossenbach's case and my Sears cases that
11 Caraleigh had not applied the payments appropriately
12 and they didn't have a security interest, though there
13 was some issues about that. We're sitting in court
14 ready to argue the case.

15 And the way they did it Caraleigh, you'd come
16 in and you'd sign a contract for one item like a rug
17 and a lamp. You came back a month later, you do a new
18 contract, but they check up in the box, they would add
19 that to your account and check in the box that they
20 retained a security interest in all previous items.

21 Well, when she bought the mattress and box
22 springs, someone failed to check the box and it just
23 happened to be sitting there in court that I, for the
24 first time, realized that they hadn't checked the box.
25 So, as I stood up to argue the case, I told the Court I

1 change my argument to -- from the very fairly
2 complicated analysis of Retail Installment Sales Act to
3 they didn't check the box check argument which was
4 pretty solid.

5 Judge Small looked down at Ted and says, Mr.
6 Nodell, it looks like Mr. Brewer's, pardon me, is
7 right. Looks like your client didn't retain it,
8 security interest on those other items, they didn't
9 check the box. What do you got to say about that?
10 Ted, being always kind of quick on his feet, says,
11 well, Your Honor, but we do have a secured interest in
12 the mattress and box springs and we would like a
13 turnover order on the mattress and box springs and to
14 order the client to turn over the mattress and box
15 springs. Ted like a fisherman had set the hook, was
16 ready to reel in.

17 So, I jump up all aflame and say, Your Honor,
18 this is ridiculous. You can't even resell a mattress
19 and box springs under North Carolina health regulations
20 without fumigating. It would cost more to fumigate
21 that mattress and box springs than what it, you know,
22 than what they can get on a resale. Mr. Nodell is just
23 trying to harass my poor client.

24 I sat down and Ted stood up and says, oh,
25 Your Honor, Mr. Brewer misunderstands. If we can get a

1 turnover on that mattress and box springs, we're not
2 going to resell them. We're going to dump them in
3 Brewer's front yard to which I damn near fell out of my
4 chair. Rick McElroy, who can attest to this, was
5 sitting in -- sitting ready to make some kind of
6 argument on the next case, you know, right behind us as
7 we sit there at the tables. I know Rick almost fell
8 out.

9 Judge Small did not even crack a smile. I
10 couldn't -- I decided I will never play poker with
11 Thomas Small if he could keep a straight face with
12 that. But we did turn over the mattress and box
13 springs and they never did show up in my front yard. I
14 wrote Ted a letter later saying I was a little
15 disappointed that I had told my daughter she was going
16 to get her trampoline for Christmas and I was planning
17 to use the mattress and box springs, claim it's a
18 trampoline, and I was certainly disappointed that it
19 never showed up.

20 He never (indiscernible). Ted Nodell has to
21 be -- has a dry sense of humor than anybody in the
22 Bankruptcy Bar.

23 MR. SASSER: Billy, it seems like to me from
24 my perspective one of your legacy is your giving back
25 and even as you were describing, you know, handling the

1 Sears class action without a tremendous amount of
2 financial reward, your involvement in that, just
3 representing, just doing the hard cases, but also
4 your -- the way that you've been so helpful to younger
5 attorneys like myself, but many others, as well. This
6 is not necessarily a -- it's a question, but a
7 statement. You don't disagree that actually you do
8 still have some of that idealism that led you to law
9 school in the first place, do you?

10 MR. BREWER: No, I do not. You know, I --
11 and I feel like part of what I've done, you know,
12 what's the phrase, pay it forward. You know, I got
13 help from folks when I was a young lawyer. During that
14 period of time in which I was doing mostly State Court
15 stuff, I would the sixth floor of the Wake County
16 Courthouse where the snack bar was I would go there
17 most every morning and sit around tables with people
18 like Robert McMillan, Wade Smith, Roger Smith, Russell
19 DeMent, Philip Redwine and, you know, very often I
20 didn't know what the heck I was doing, was very nervous
21 about what I was doing and could ask them questions and
22 they friendly, you know, gave advice to help me decide
23 what to do, how to do it.

24 And so, you know, today that help tends to
25 take place more kind of through Listservs and that kind

1 of thing, but I'm always happy to, you know, to help
2 other folks as I got help early in my career. And I
3 think that's one -- I think the -- there's certain
4 areas of the law in which attorneys do not tend to
5 cooperate as much with each other as they do in the
6 bankruptcy bar, but we tend to do so. And I think it's
7 not just debtors' attorneys, debtor's attorney, but,
8 you know, even though we all represent our client
9 zealously, I think debtors' and creditors' attorneys
10 tend to work pretty well together.

11 So, I encourage anybody who happened to be
12 looking at this who's trying to decide whether to be a
13 lawyer or what kind of law to practice to think
14 seriously about bankruptcy as a way of, you know,
15 whether it's debtor practice or creditor practice that
16 if you want to go to heaven, promise you'll concentrate
17 more on debtor practice, consider bankruptcy law. And
18 I realize good works don't get you there alone, but it
19 can't hurt.

20 MR. SASSER: For the sake of posterity, this
21 interview is occurring during a global pandemic and
22 bankruptcy filings are at a very low level right now.
23 Where do you see the future of bankruptcy? Is this
24 just a blip or are we going to -- is this sort of a
25 permanent decline that we'll never come out of really?

1 MR. BREWER: You know, I don't know. You
2 sent me those statistics. I was somewhat surprised at
3 how much they have dipped. I mean, like they peaked in
4 about 2010 or '11 and been going down every since. You
5 know, this may be, you know, what is -- what's the
6 lawyer's prayer, "Lord, bring strife upon us, sir" --
7 I mean, "Upon thy people unless they servant perish."

8 You know, I mean, us Bankruptcy lawyers kind
9 of live in a backwards world from the standpoint of,
10 you know, financial crisis and people having debts they
11 can't pay is good for us. But I can't see how this
12 pandemic is not going to result in a substantial
13 increase in filings in 2021. Maybe more toward the
14 latter half of the year and in years to come, you know,
15 few years.

16 I've often found that bankruptcy is kind of
17 a trailing economic indicator and what I mean by that
18 is I majored in economics at Carolina. But it is --
19 the bankruptcy filings do not go up at the bottom of
20 the economic or financial cycle. They tend to increase
21 as things start to get better. And why is that? I
22 think, you know, and I don't have any studies or any
23 evidence to support this, just my own theory that the
24 people file bankruptcy to protect income, to protect
25 assets, whether it's assets they have now, they hope to

1 acquire in the future. And, therefore, at the very
2 bottom I think what the hell do I need to file
3 bankruptcy. I don't have anything to protect right
4 now. But you, you know, you get back to work, you get
5 a job, you got debts you owe and you think, gee, are
6 creditors going to come garnish my wages.

7 I realize North Carolina doesn't have wage
8 garnishment, but people don't necessarily know that.
9 And -- or if I can save up to buy a car, I don't want
10 to lose my car. So. it's when they -- I guess when
11 they become optimistic about the future, bankruptcy
12 they want to do to protect that future. So. I think as
13 the economy starts to turn around, I think you'll see
14 bankruptcy filings go up.

15 And the same can be with businesses, you
16 know, we have a term feasibility with filing
17 bankruptcies for, you know, Chapter 11's. You got to
18 have a clear path forward to try to file a Chapter 11
19 and make it work. You know, that would be -- there
20 will be sevens where people just shut the doors and
21 move on, but I do see filings increasing.

22 The -- it may have been my wishful thinking.
23 You asked me which law that I will change, but -- and I
24 said student loans, a change in the student loan
25 discharge provisions would create a huge increase in

1 filings. I think you got folks who so much of their
2 debt is student loans. If they saw a path forward to
3 discharging student loans even if it weren't through a
4 Chapter 13 in which they had to pay some portion of
5 their student loans over a three-to-five-year period of
6 time would -- but they knew at the end of that period
7 they're out of debt, you know, it would increase
8 filings.

9 MS. CASTELLOE: We've been going for over an
10 hour and a half now. Were there any questions that
11 were on this list that we didn't get to that you wanted
12 to make sure we covered?

13 MR. BREWER: You didn't ask me about the red
14 tie.

15 MR. CASTELLOE: We can certainly talk about
16 the red tie. I will say that I am in full compliance
17 today with our original bet.

18 MR. BREWER: Well, that's good. I will have
19 to say the bad news was earlier this year, you know, to
20 put myself in ability to comply with this ongoing bet,
21 I bought -- actually bought an NC State tie. The bad
22 news was I had to, you know, I needed to wear it. The
23 good news was it'd been so long since I'd had to wear
24 it for this bet that it took me a while to find it. So
25 do you want to tell the story or you want me to tell

1 it? You want --

2 MS. CASTELLOE: I'll let you tell it. This
3 is your interview. We'll let you tell it.

4 MR. BREWER: All right. So it was not
5 unknown in chatting before court and that kind of thing
6 when Christine was the courtroom clerk for Judge Small
7 that she had -- I had an allegiance to the University
8 of North Carolina having gone to school there seven
9 years and both my parents having gone there. And
10 Christine had a quite puzzled allegiance to NC State
11 University.

12 So. we made a bet on the NC State Carolina
13 basketball game. I think it was basketball. And the
14 bet was that if Carolina won, Christine had to wear an
15 outfit that included Carolina blue and if State won I
16 had to wear a red tie. This had to be many years ago
17 because I remember my daughter who is now 34 years old,
18 no, 36 years old, excuse me, was still in high school
19 taking United States History. And I know it was a long
20 time ago because it was a basketball game and State
21 won. Must have been before Roy Williams became the
22 coach.

23 So. I get up that morning says, shoot, I got
24 to wear a red tie. But I've got this black and gold,
25 it's my Abraham Lincoln tie. And it's got Lincoln's

1 face on it with the Gettysburg Address kind of in
2 script written all along the tie. So I hand it to my
3 daughter that morning and say, honey, look at this tie.
4 She says, yeah, daddy. I says, read that to me. So
5 she read, you know, four score and seven years ago. So
6 I show up at court that morning with my Abraham Lincoln
7 black and gold tie.

8 And Christine says that's not a red tie. I
9 says, yes, it is. My daughter read it this morning.
10 So, she asked Judge Small to rule on whether I had
11 complied with the bet. I think there was an ex parte
12 communication between Christine and Judge because I
13 wasn't present when it was so asked.

14 (Off the record telephone discussion)

15 MR. BREWER: So, he wanted to know if the bet
16 was in writing or verbal to which it was verbal. So,
17 it was just a red, you know, was it r-e-d, or r-e-a-d.
18 So, Judge Small being the seasoned jurist that he was
19 ruled that I had complied, perhaps complied with the
20 literal ambiguous terms of the bet, but I'd clearly
21 violated the spirit of the bet and I was ordered to
22 wear a tie with some red in it for an entire year which
23 can have some sort of, you know, chilling effect on
24 exactly what your attire is. Every time you put on
25 something if you got to court it's got to have red in

1 it.

2 So, at some point along, there was a date in
3 which there was a hearing that had not got put on the
4 calendar and I had to jump and run to court. And I
5 grabbed, I kept a tie in the office, but this tie
6 didn't have any red on the front it. So, I put it on
7 and I run to court. I'm there arguing in court and I
8 said, shit, this tie ain't got any red on it all day.
9 This tie ain't got any red on it. Sorry for the bad
10 word there. But I looked on the back and it had a red
11 label.

12 So, I'm sitting there arguing and Christine's
13 looking at me like that tie ain't got any red on it. I
14 don't see it. And so I just without even saying
15 anything, I flipped the tie around and show her that
16 red tag and flip it back. But that's the unvarnished
17 truth as to the red ties. Christine, do you have any
18 rebuttal?

19 MS. CASTELLOE: No. I would say, that, you
20 know, I had to purchase a lot blue clothing just, so I
21 had a Carolina blue blouse. I even had a Carolina blue
22 suit. At one time, I think I was trying to get away
23 with earrings and you didn't feel like that was really
24 in the spirit, but even the year that I was in
25 Washington D.C. on a temporary duty assignment when

1 Carolina beat State, one of our former law clerks,
2 Meredith Mathis, was also up there. She was a Carolina
3 fan and she was able to verify for Mr. Brewer that I --
4 in the spirit of the bet, was wearing blue to work in
5 D.C. the day after the game. So --

6 MR. BREWER: Yup, yup. And I think like on
7 these random things, I got a picture of Christine
8 wearing the blue with a Washington Post newspaper
9 showing it was that date, the date after showing me
10 that it wasn't, you know, that it was timely.

11 MS. CASTELLOE: Yup.

12 MR. BREWER: Judge Small would have ruled
13 that your earrings are okay because he's the one that
14 held that on a challenge to exempting a jury that it
15 includes it's wearing apparel.

16 MS. CASTELLOE: There we go.

17 MR. BREWER: There's an opinion out there
18 that North Carolina does not have a specific exemption
19 for jewelry, but under the Eastern District of North
20 Carolina jury if it was purchased, you know, not for
21 investment, but to wear, that it's wearing apparel.
22 Kind of stretches the word apparel, but, you know.

23 MS. CASTELLOE: (Indiscernible).

24 MR. BREWER: You know, for someone who went
25 to NC State, you know, apparel to me would be more

1 textile, but in any event, I liked his ruling.

2 All right. So, this has been enjoyable,
3 folks.

4 MS. OLIVER: Thank you, so much.

5 MR. SASSER: Yeah, thanks, Billy. We really
6 appreciate it.

7 MR. BREWER: Yeah, Travis, thank you and
8 Cindy for doing what you're doing. You know, this is
9 important. This kind of thing, people often say we
10 ought to do, but never -- but don't do and you all are
11 being highly commended for doing it. Thank you, too,
12 Christine.

13 MS. CASTELLOE: You're welcome.

14 MR. BREWER: All right.

15 MR. SASSER: Thank you. Have a good weekend.

16 MR. BREWER: You all, too.

17 UNIDENTIFIED ATTORNEY: (Indiscernible).

18 MR. BREWER: Bye-bye.

19 * * * * *

C E R T I F I C A T I O N

I, KELLI R. PHILBURN, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Kelli Philburn

KELLI R. PHILBURN

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