

INTERVIEW OF MICHAEL JEFFERY

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TAPE 2 - ORAL HISTORY

KAREN BREWSTER: Okay, we are back. We were talking about FASD, which does lead me into the question about substance abuse and alcohol issues and the role they played in the cases you see and courts in general.

JUDGE JEFFERY: Sure.

KAREN BREWSTER: Talk about that.

JUDGE JEFFERY: Well I think it's an issue really all over the country. This isn't anything particular to Barrow and certainly all over Alaska, but most of the criminal activity and I am talking ninety percent plus is alcohol-related. I mean very often it's -- I mean most often the defendant is high on alcohol. I mean sometimes it is other things, but usually it is alcohol and very often the victim is too and we have had trials where everybody was drunk and really all that the defense and the state can do is present well this is the information we have and then the jury just has to sort it out. And nobody is satisfied with the level of recollection that people have but that's what is and so they have to present what they have. But it's -- it's and then, you know, when you think about the child welfare issues most of the problems in the families because again the fam -- the parents are using substances. Juvenile delinquency very often again substances are involved, not always but so it is just -- it's something that, you know, is kind of like you're dealing with on a daily basis and actually if -- if a person is sober it is noteworthy. It's the -- it's the unusual thing and it can make a difference, for example even having a hearing and telling someone about their rights, you know, we may have to postpone the hearing for another day because they're too drunk to -- to understand anything. And -- and so and there are times -- usually either they can't or don't want to come to court when they're high. I have had times when somebody wants to come to court, but the blood alcohol level is at a level where we just say no, because it would just be a waste of time because I couldn't trust your -- not getting a big dialog but the reason is I couldn't trust that they are understanding anything or making responses.

So it is a giant issue and when we, you know, Barrow, of course, went through a period of time while I was a judge where, you know, we were damped and when I first I got to Barrow I mean on this whole issue -- when I first got to Barrow in 1977 there was a community owned liquor store and it was in the building location where the teen center is now near the airport.

KAREN BREWSTER: Was there an open bar?

JUDGE JEFFERY: No bar. No bar, no, it was -- but there was a community owned liquor store. And that fall there was a bad incident up at the point where kind of a mentally unstable person was high and shot into tents of some tourists and so on and I don't know, that seemed to be the kind of last straw and there was an initiative and -- and we went damp. And then we were damp for -- which, of course, means you can buy it. You cannot buy it in Barrow, but you can import it in and possess it and use it.

KAREN BREWSTER: For personal use?

JUDGE JEFFERY: Yeah. So then we went -- it is hard to remember. It flip-flopped back and forth. There was -- I think we went dry, which meant that they would not be allowed at all. And then there was litigation about it and whether people really understood and I take that back. We went -- at least we went wet again, but there was litigation and people didn't really understand what they were voting for. And so there was a settlement where they -- everybody just said, well, we will have a new election, you know, try it again. And at the time the community was very evenly split, fifty-one, forty-nine, you know, very evenly split on these things and so but there is a pure time when we were actually wet, but it didn't really go into effect because there was another election. And so we have been damp for quite some time now and then there is also limits on how much a person can order. But it used to be that those limits were not meaningful because you could order your limit from this place and then from this place and nobody was the wiser.

KAREN BREWSTER: So have you noticed an affect in the courts on these different damp, wet, dry?

JUDGE JEFFERY: Absolutely. Absolutely. During the time -- well let me just carry through that thought. So what happens -- what has happened now is that the City of Barrow has a distribution site and all alcohol orders beyond maybe if somebody brings in one bottle in their luggage that's okay. Anything more than that whether it is brought in as luggage or, you know, shipped or whatever has to all go to the delivery site. And you have to have a license from the City of Barrow and they will pull the license if you have a driving under the influence or domestic violence or bootlegging for a certain conviction, for a certain amount of time. And then -- and then there's a limit but this is enforced, because it is all coming into one place and so they can. And so it keeps kind of the lid on it. But the most noteworthy and again this is just what I saw, you know. When we -- when we were -- when we went dry for it was about a year and then the community voted to go damp again. It was literally true that the criminal caseload doubled when we went back being damp. And when we were dry, the -- there was still alcohol-related crimes because of bootlegging, but still it was way down and, you know, we talked earlier about Fetal Alcohol Spectrum Disorder. The research shows that somebody who is affected pretty severely by FASD over their lifetime is costing society on the order of two million dollars and that is all the -- oh, the medical treatment, corrections, probation, I mean all of that, but when you total it all up and so, you know, if you had -- if you were dry and prevented one or two kids, you know, from having that FASD condition, it is just tremendous savings. But, of course, on the other hand, there are a lot of people in town who feel that they should be able to have alcohol in moderation. And so we -- that's the kind of the uneasy current situation in Barrow.

KAREN BREWSTER: So how do you think the Alaska judicial system is meeting the needs in rural Alaska? Is it meeting the needs?

JUDGE JEFFERY: Well if you'd say just the judicial system, I would say it is doing a pretty good job, especially when you compare it to say Canada. I mean it's unheard of to have the level of -- in the Canadian Arctic -- they have the regional centers just like we do, but in their smaller towns -- I mean the idea a superior court judge and a magistrate and a law library and all the computer access to legal research and all of this stuff like we have in Barrow and in Kotzebue and in Nome, in Bethel and Dillingham and all of that. I mean

that is just not happening. But if you phrase the question a little bit differently and say is the justice system.

KAREN BREWSTER: Okay

JUDGE JEFFERY: Now that's another issue. I mean one of -- one of the things about being a state court judge on the North Slope is that the North Slope Borough right from the start had an emphasis or a concern about public safety and right from the start they were putting sworn professional officers out in all the villages. I mean the equivalent of Alaska state troopers in all the villages and Barrow and then over the years they put together police stations with a holding cell right there in the town in all the villages. And that includes Point Lay. I mean it includes even the most remote ones, Anaktuvuk Pass and so on.

Now the way it works is two weeks on, two weeks off and they found out that that helps the most with keeping officers, you know, involved and stuff like that. And -- and that means that if there is an incident, there is a response right away and by contrast in other areas of rural Alaska where you have either nobody or you have a village public safety officer who has some training. It is certainly better than nothing, but still is not nearly at the level of a sworn trained officer and then you have the troopers in the major town, two or three troopers, who are then flying out to take care of these cases, but too bad if the weather is not or something like that. So there could be a rape or a murder or something like that and you may not have professional investigation for who knows a few days or more. And then the same thing as far as, you know, someone on probation. I mean making sure that they are following the rules.

Well one of the things up in -- like on the North Slope is that bail orders, probation officer -- orders are enforced. And there is a lot of like in the big cities I've gotten -- when I have talked to people, I'm seeing that well, you know, there will be an enforcement of a bail order if the person comes to the attention of the police for some other reason then they will add that on, but as far as actually enforcing the order from the start it is just -- they can't -- it is not happening. And so in most of the state you don't have nearly the level of service that we do. I mean I'd say the state justice system on the North Slope is pretty effective because of the investment that the -- that the local people have made in having the police and the holding facilities and all this stuff, but in most of rural Alaska is not and -- but I don't have personal experience with it. I mean do cover -- I mean any judge in the first five days if -- after being appointed to a particular case the people on the case have the right to take a judge off the case and they don't have to give a reason and it is called a preemptory challenge and sometimes judges have to take themselves off cases. The rural judges have to have a very kind of a broad look at that because obviously we know most of the people in front of us to some degree and so that's not enough to take ourselves off the case, but if it is the next door neighbor or whatever if you're really involved with family in some way or they are really close friends or something like that then you are, you know, you take yourself off, but that is pretty rare for me and most judges, but it does happen. But as far as getting preempted or challenged, there are some judges in some courts are -- that is happening fairly often and that means that other judges have to come in and cover. So because of that I have been like over to Kotzebue for many years off and on covering these various cases. So I have been able to see how it doesn't work -- that kind of a village public safety officer level of service. I mean it is just -- I mean I've been shocked at the severity of the cases. And it

plays out, for example like in Barrow our grand jury generally meets twice a month and they have a few cases and sometimes they don't even meet at all because of schedules or things like that. And there are other parts of rural Alaska where every week the grand jury meets and considers multiple assaultive, you know, really bad felonies and that is saying something, you know. It is saying something about how well things are working out there and how safe it is to live there and how healthy the community is.

I mean the other thing about the North Slope, you know, is the great blessing is that there is a level income coming in through like the regional corporations dividends, village corporation dividends, Permanent Fund dividends. And so it's families are -- even if they are having trouble getting work, they're getting this kind of support and I think that also is having an affect on our caseload being less than many other places, so.

KAREN BREWSTER: You mentioned the problems of being a judge in a small community where you might know people.

JUDGE JEFFERY: Uh-huh.

KAREN BREWSTER: Can you talk a little bit about the pros and cons actually of being a judge in a small town where you do know people and being involved, you know, you are in the dance group, you are very active in the Presbyterian Church versus being a, you know, sort of --

JUDGE JEFFERY: Right.

KAREN BREWSTER: Removed judge?

JUDGE JEFFERY: Right. Yeah, involved, but there are a bunch of things I do, you know, volunteering in the schools and I mean there are just a lot of things.

KAREN BREWSTER: The pros and cons of being --

JUDGE JEFFERY: Right. Right.

KAREN BREWSTER: Involved versus not involved?

JUDGE JEFFERY: Right. Well, of course, for me personally I totally am on board with the idea that you want to have local knowledge and get out I the community and but, you know, of course, I had already been in Barrow, you know, over five years before I got appointed and then, of course, we -- you know, I married my wife Esther and then we had our three children. They were going through the schools and so because of that, you know, I have been there a long time and, you know, it would be much harder if in the - somebody new came into the town. I mean it would be harder to get out though it can be done, but it is harder. You know the down side is that you do know more people and sometimes it is hard to do it. I mean I've had cases even like this year where I really had to think about it. You know can I really be fair in this case and I finally -- you don't necessarily have to take yourself off a case. The other thing you can do is just close and that is something I have learned is I just put it all out there, you know. I go to that business or whatever. You know I know someone from the school or I know whatever, but I put it all out there and then I say, but I still can be fair. But that gives the attorneys involved in the case a chance to think about that and talk to their clients and then exercise that challenge within the five days if they are going to do that but it rarely gets done, you know, up in Barrow, but you never know it could change, but it rarely gets done.

But I -- I would -- I very much favor having local people -- people who know the community because -- in the rural areas because like, for example you know I read about southeast Alaska, you know, and my wife was born in Bethel and we go down commercial salmon fishing in Dillingham, but -- or near Dillingham, but I don't -- I don't

know those cultures. You know I know some things about them. I know like Yupik dancing and all that and the way the different dance groups are, but -- to some degree because I've seen it. But I, you know, and even on the North Slope, you know, I've been up there all this time, but I don't -- there's a lot of things I don't know about even where I am much less trying to say something about some other part of rural Alaska. So for somebody to just come in and drop in out of the blue and try to do a job like this, it would be really hard.

KAREN BREWSTER: Do you have any examples personally of where you felt that it was a benefit to you or to the case because you did know the cultural context?

JUDGE JEFFERY: Oh for sure. I mean daily -- I mean I can talk -- I mean part of this is -- I mean part of this is people know I've been there so long and they see me at the store. They see me at the post office and they see me, you know, again it happens I am part of the Barrow dancers and they see me there and they see me singing in the choir. I mean they, you know, so they know that I'm part of the community and we're dealing with the blizzards just like everybody else is, you know, and so on.

And so, but then like for example I'm thinking say in a criminal sentencing or juvenile delinquency case, you know, I've actually visited most of the prisons in Alaska, not all, but most of them. I've also visited most of the -- what are called juvenile institutions, which are the locked facilities. And I've also visited many of the treatment facilities and part of that is because of this Alaska Juvenile Justice Advisory Committee that I'm on for many years.

But also I just think it is a good idea. I mean I really value being able to say to someone, you know, I have been there and I know exactly where you are going, you know. And I think there is a level of trust of oh yeah, you know, he's, you know, we've seen him all these years and he's from here and he has seen that so I can trust what he is saying. If they had never seen me before, I mean the impact would be much less and it can get -- it can get -- it can have an affect on just what is reasonable anyway, you know, up in Barrow. And there are times when even in a civil litigation where, you know, if there is a issue about it, it may be a jury issue and there would be a jury trial about it, but still, you know, I've sometimes the -- you can see in some of the attorneys who have never been to Barrow in their life or whatever and they are making these assumptions. And I'm just saying to myself, oh, give me a break, you know, that's not the way it is at all, you know. But, of course, I -- I -- legal -- legal -- I still have to follow the legal rules and that is if somebody doesn't bring that out, it is hard for me to just make a decision based on my gut, you know, because I've been there, you know. Somebody has to put that on making a record of it and there are some situations where I might make a record of it. I would say well, you know, I've done thus and so or something and then allow people a chance to respond to that. You really have to be careful. You can't just make a decision based on your gut reaction if you haven't given people a chance to have their input and stuff like that. So it sometimes can get a little tricky, but I'm a big believer in -- in having people experienced with the community be the judge there.

KAREN BREWSTER: Uh-huh.

JUDGE JEFFERY: And, you know, most of the appointments out in rural Alaska have actually been people who, you know, have had experience in that community and that's a good thing.

KAREN BREWSTER: So -- sort of the counter side to that is sometimes as a judge I'm sure you have had to make tough decisions of difficult cases and your ruling and sentencing may not be so popular?

JUDGE JEFFERY: Uh-huh.

KAREN BREWSTER: In the community and you still have to live there.

JUDGE JEFFERY: That's right.

KAREN BREWSTER: How do you deal with that?

JUDGE JEFFERY: Well it has happened. Sometimes a reaction -- sometimes people may not know -- I mean the, you know, any judge in the, you know, the world -- well, you know, in the country, certainly in Alaska you are sworn to uphold the constitution of the state and to follow the state laws and stuff like that whether or not personally you agree with them that's your oath of office. You have to follow those. And so sometimes the reaction to say a sentence might be based on misinformation. I mean the people think and ought to be something different, but the reality is that's not what the legislature said and I have to follow what the legislature said and -- or what the, you know, what the constitution requires and stuff like that.

I mean it's hard, for example, I mean speaking of the constitution it was very difficult for me in a case involving some teachers involved and this is many years ago, but some teachers that were doing -- had drugs to -- to throw out the search warrant. But it simply was unconstitutional. I mean they had gotten the goods, but it was unconstitutional. Of course, obviously, the teachers were -- lost their jobs and have left the community and never will be back, but that was a very hard decision, but I had to do it. And what -- the only thing you can do is to do your best to explain carefully why and so, you know, I wrote an opinion and laid it all out and it wasn't appealed or anything like that, so.

There is, you know, another safeguard. I sometimes talk in the hearings about how, you know, people have the right to appeal if they don't agree with something. I say this is different than the basketball court, you know. The refs make a call and that is pretty much it, but in the courts we go to a lot of trouble of making sure what, you know, there is a record of everything that is going on and then -- then you can make a -- have an appeal and so on. And I think really I would be a lot more stressed out than I am if somehow there were no appeals. I mean what if everything I did was a final word that would be hard, you know. That would be -- that would be a great weight, you know, to have, so.

KAREN BREWSTER: I think -- yeah, I think it could be difficult to see somebody at the store or see them at the post office if there is a lot of criticism about what you're doing on the bench?

JUDGE JEFFERY: Right. I'm glad to say that -- that has only happened -- I mean you can -- I mean I totally understand, you know, like I remember this one woman. This is maybe twenty years ago that she was very irritated with me. Her son had gotten sentenced for some things. I -- yeah, I understand, you know, but -- but there is -- there is other kinds of things that can happen. What about the defendant who -- who went away to treatment and came back and sees me at the store and says I'm doing great. I'm so glad you got me into that program. It has turned my life around and stuff like that. So you get both, but people by and large, you know, you don't get -- you don't get a lot of feedback like at the store. I mean people kind of respect your space one might say. But the other thing is I just have to realize that it comes with the territory. I mean we're always making decisions where there are winners and losers and all I can do is be as clear as I possibly can be about why

I'm deciding the way I do and then after that put it out there. And sometimes people are going to not agree, but that's -- and I realize that and that is just part of the job so.

KAREN BREWSTER: One of the differences between being a judge some place like Barrow versus Anchorage or Fairbanks in the cities you have other colleagues, other judges where you can talk about these things --

JUDGE JEFFERY: Uh-huh.

KAREN BREWSTER: With them.

JUDGE JEFFERY: Uh-huh.

KAREN BREWSTER: What's it like being in rural Alaska? Do you feel isolated or do you have that collegiality in a different way?

JUDGE JEFFERY: I -- in the latter. We -- we -- but it has taken some time, but basically we rural judges realize that, you know, we're special. We have issues that other people don't have and we're scattered through all of the judicial districts and -- but the issue isn't the judicial district it's between a small town and the big towns, you know. And so a long time ago I -- ten, fifteen years I don't know, we -- we formed the coastal judges and then now it is really someone said it should be coastal and riparian judges because it includes Bethel. But the idea is small courts, small single judge courts and then some grandfathered -- grandpersoned in like Bethel which has more than one judge.

But the idea is what we do and the court system over the years has -- has actually kind of supported and recognized us and they have accepted the idea that when we're having judicial meetings where they're spending all this money to bring in people from all over the state twice -- usually twice a year, at least once a year that the evening before the conference we meet and we have our own continuing education event and then we have a dinner. And both of those are very important.

The continuing education events are issues that we need to know about. In fact, you know, getting back to the FASD issue, we had continuing education event on that years before the court system as a whole and the Alaska Bar Association did. Now they -- both of them have, but we -- we had people waiting for that and then but it could be getting together with the Department of Corrections. Well what are all these treatment programs or what are you doing, you know, or it could be -- I mean we have all different kinds of -- of these events. And then the dinner is important because we are so isolated and you -- you catch up with people and then you -- you feel more comfortable in relating, but that's not all.

The other thing that we have developed is having a (inaudible) and so -- and this can be very important because we again we have issues. I mean there are some issues where I will call up my colleagues in Fairbanks or Anchorage because it is kind of an urban issue -- it's the kind of weird some -- maybe some weird scenario that really an urban judge is going to have seen or something like that. So I feel, you know, I will call up somebody in the big city. But there is oftentimes where, you know, you need someone who -- who is in a court like yours. How to deal with juries or what about the guy who is not showing up for his sentencing and how do you deal with all that. And so we -- and we've had times -- I mean sometimes it is kind of a general question that can be answered at leisure and sometimes is I've got a hearing starting in an hour, you know. Here's the scenario, what do you think, you know, and people, you know, sent responses back. But that -- that whole combination is really important to us and gives us a pretty high level of collegiality.

The other thing that we do back in the Second District -- the Second District, which is Barrow, Kotzebue and Nome, we are the only district that is only a rural district. And so we meet together once a month and have a teleconference, the three judges and our area court administrator. So the four of us have a teleconference once a month and again obviously you have to do it by phone, but you do that. And so that's the way we do it and it is -- it is very important.

KAREN BREWSTER: And how has that changed since you first started in '82?

JUDGE JEFFERY: Well before while I was on the phone when I first got appointed because, of course, remember -- remember you had the Legal Services attorney getting appointed. Had I ever done a criminal case? No, you know and suddenly I'm in the middle of it, you know, I mean right at the start. I mean there was all these cases that had built up and I am issuing search warrants and doing felony trials and all this stuff. There was one year that Barrow had more felony trials than Juneau did. I mean it has not been like that for quite a long time, but -- but there is times that happens. But, you know, at the beginning I just -- I was on the phone a lot to, you know, a judge that you feel comfortable with. I didn't really know at the beginning the other rural judges. We didn't have this structure set up and so I -- I might -- Judge Carlson, Vic Carlson, was someone who was willing to take time to talk to me about all these different things because it could be very frustrating. I mean things, you know, like people assume -- it could be as simple as people assuming that you have a certain kind of forms to do things with, but nobody told you where they were or I don't know.

I mean it is so different now. Everything is on line and all these things that at the beginning there can be very difficult things for someone just starting out that you really need to get on the phone and get some help with. But all of us, I mean I think it is true of all of the judges. If we get a call or a message or an email from another judge, that -- that gets very high priority because we've been there too and that person may need help right then. You don't -- that is not one that you put off because they're busy and they didn't contact you unless there was a very good reason. I mean that's almost always the case and so even, you know, whether it is -- I've -- I've had urban judges call me with something about a rural question that they've got a rural case or something like that, so.

KAREN BREWSTER: Yeah, not only did you start as a judge without having done some of those kinds of cases as a lawyer, you started the whole superior court --

JUDGE JEFFERY: From nothing, yeah.

KAREN BREWSTER: There wasn't. So how did you do that? How did you get it all up and running?

JUDGE JEFFERY: Well, when I was appointment at that point we weren't in the -- I'd been in let's see three, four different courthouses in Barrow. I mean the first one was the one we have already talked about, which was the one room courthouse with the heater, you know, that was too noisy.

And then the court system was able to rent the former Schantz (phonetic) Store, which is across the street from ASRC's new office and in back of where the bank used to be. And at first there -- we only had the first floor. When I was appointed, that was where we were. We had a clerk's office, a courtroom, the old -- again this used to be a grocery store. The old freezer, walk-in freezer, was the evidence locker and then you walked down this hallway and there was a jury room, magistrate's room, judicial secretary and my room -- my chambers, you know, back there. And we did some hearings back in my

chambers and stuff like that and then, but it was hard. It was better, but it wasn't adequate.

Then we rented the second floor and so we got a second courtroom and that worked out better. And then -- but then the court system realized we -- we still didn't have a good enough situation and so the building in Barrow where Wells Fargo bank is now and has offices -- that was built with the court system being the main tenant and then they rented out some of the others, but we used to have like a four and a half in that building. But then there was a ten year lease and when the ten years was up and a very costly lease. When the ten years was up, you know, the court system put it out for bid and basically the landlord that we had basically offered the same rent, the same everything and then the current landlord, which is UIC, the village corporation, basically they said there was -- there was the old AC Company Store that was pretty much being vacant because they built the wonderful new one over across town and the idea was we'll remodel, you know, half of this for you and we'll give -- make sure that the courtroom and the offices are the same size, but you -- but less in the common areas and they knocked like twenty-five percent off the rent. And so, of course, the court system said we pick that one and so that's where we are now. It is a completely professional building and we have an ideal situation because basically the entire state justice system is all there. We have the court and then there is a hallway and there is adult probation, juvenile probation, district attorney. Then you've got the public defender. We have an innovative program called the Barrow Misdemeanor Resources Project which works with cognitively impaired offenders. We have an office where a part-time private firm is, a one attorney office and then the social worker. So we are all right there and it is so convenient compared to other towns.

But it was very interesting just as a, you know, the way things worked. Once the judgeship and now I'm getting back to 1982. Once the judgeship existed that's when other agencies started moving into Barrow instead of sending people up from Fairbanks. So now that there was a judge in Barrow then adult probation, juvenile probation, you know, public defenders, district attorney. They all opened offices in Barrow and so that's -- that was -- was kind of interesting to watch how the public defenders in their effort to serve their clients and so on had their office and no housing. No problem. The first attorney was sleeping on the floor in the office. DA's no way. There is no DA's office until there is housing and so then they came in a little later.

That it's and I think another thing that we do up there in terms of -- of making the system work and this has gone on for a long time, decades, but we try to get together about once a month and we get the whole justice system, including corrections and the police and the -- again the social worker, juvenile probation and a Tribal Court can come, you know, and we talk about not staffing cases, but just what's going on. And again it is keeping communication lines open and sometimes there are decisions that are made to help something work better, but most of it's just building respect and I think there is a level of mutual respect amongst all these agencies in Barrow that sometimes when people move to other areas of rural Alaska they really miss and moreover come back because they miss it so much.

So, but, you know, it's something like, but that's the way it happened because starting a superior court it is not like you're inventing something new. It is new to the community, but well not really because they'd had a lower level of service before, but it is just -- I

mean I think it has been very helpful to have somebody that everybody knew and, you know, was comfortable with to start it off. I mean the day will come when I retire and there will be someone else taking over, but -- but now it is just a higher level of service. Unfortunately, the Legal Services office, you know, the federal funding that made all that possible, state funding and so on, of course, dried up and so the office at one point was funded by the North Slope Borough because they felt that there was such a need to have this kind of service and then we -- but now there is no office and is handled out of Fairbanks. I am going to need to get some water.

KAREN BREWSTER: Okay. Okay. Since we were talking about the beginning of the court, take us back. Do you remember what the first case was that you --

JUDGE JEFFERY: Oh, no.

KAREN BREWSTER: Heard?

JUDGE JEFFERY: No, I have no idea. Oh, well I could, yes, I mean I -- I can certainly remember the first time I did anything as a judge. It wasn't in Barrow though. The court system thought that it would be good for me to go down to the Kenai Court and -- and just see the way they ran the court and talk to the judges there. So I did that and so it was a domestic violence petition and it was such a -- I mean I was nervous. I mean suddenly I'm the decision maker, you know. And, of course, when you're an attorney, you're always offering up, you know. Here's your client's position. You're doing the best you can, but to have that -- I mean what judges need to do they are the decision makers and to go in, of course, they were both self-represented and then making these decisions. It was nerve-wracking. You get used to it, but I mean, you know, it is kind of like you just have to realize that yes, that's the role you're playing in this community and you just have to make those decisions. Even though it is -- it can be hard, but it just has to be done and but yeah that was the first one.

I don't remember the first case in Barrow. I do remember I mean early one though I had one of the biggest drug cases that we've ever had -- ever had. And -- and again, I, but I -- you know, you can study up and we got through it fine, but it still stayed with me and is still one of the biggest so.

KAREN BREWSTER: That does lead to a question I have about the effect of all of these types of cases on you personally. There are some that affect you and stick with you and how do you deal with that?

JUDGE JEFFERY: Yes, that is an issue that judicial officers and jurors and attorneys all over the country have to deal with and, you know, thankfully, I mean, you know, some of the kinds of cases that my urban colleagues have to deal with that, you know, that you read about in the newspapers. I mean it is very rare. I mean I don't -- you know, I'm not seeing those very often. I mean they have happened and there can be very difficult pictures to look at. There can be very difficult situations and you just have to keep being active in the community and doing other things and, you know, it's, you know, church activities, prayer life. I mean various things where you just try to keep on an even keel and -- and not dwell on those, but these are things -- some of the things are really hard and I have had -- I have had times when -- I mean basically you have a responsibility to not show your emotions during the court hearing. And I mean on the -- we're kind of thinking about difficult things, but there was one time I'm remembering a testimony and I forget what kind of a case it was, but it was a criminal case. But this -- this young adult who -- who was (inaudible) -- he still -- he's a great guy and he is kind of the stable one

of a very dysfunctional family and he's -- he's on the stand and he was a witness for something. But he made -- he drops this comment about how well we're all one big happy family, you know, and I was -- and, you know, he admitted as, you know, it was a funny comment if you knew what the situation was and I almost ready to crack up, you know, with great difficulties kept stoic, you know. And, but if, you know, if you are going to lose it, you may take a recess and compose yourself.

I mean getting back to the FASD issue. I had an incident, in fact, it was the first case where I was -- this whole issue was presented to me. You had a - you had a defendant who was raised by a sober couple, but the defense attorney for the first time, you know, he had been involved in child welfare and somehow nobody had gotten -- had realized that he was adopted and his birth mother was actually a very major alcoholic. And so she -- the defense attorney got a diagnosis and this is way back in 1990, which is amazing, and so unfortunately this person was being sentenced for a second felony so he was looking at more severe presumptive time and it did involve a sexual touching incident, not a -- not a real bad one, but still - still really difficult, you know, there is some strong laws. Now they're very strong, but even back then and without going into a whole technical discussion when you have presumptive sentences, you must follow those and if you feel you can't then you can refer to three other superior court judges and if they agree with you that it is not appropriate then they can sentence with more freedom. Now there are things called statutory mitigating factors and aggravating factors to make something more tough and then and if those are present and they are shown very clearly, then you -- you can take that into account.

But sometimes there is an issue that is not already in the statute books and -- and the standard is it would have to be manifestly unjust to sentence the person without paying attention to it. So she brought up the issue saying judge it would be manifestly unjust to sentence him without taking into effect this fetal alcohol condition. And even though I didn't know all that much about it at the time I agreed where there is enough of a record I agreed with that and I referred it to my -- to my colleagues. And the three judge panel basically refused to take the case and they had a good reason. They said look the legislature has defined what a mental disease or defect is and this doesn't fit in the definition, which it doesn't -- it didn't at that time -- still there is question marks whether it even does now, in fact, it doesn't. At the moment there is efforts underway to maybe change that, but the way the law is right now with the old definition and the statute doesn't really fit too well. So they sent it -- and then they said we as judges can't if the legislature has spoken, you know, has given its conclusion, we can't start adding this and this and this to it when they have already spoken. Now if they haven't spoken, that's another matter, but they had spoken on this and so they sent it back to me.

So we had the resentencing in Fairbank because I was going to be there for a judicial conference. The defendant was there. The attorney, at least the DA involved, was from Fairbanks. Public Defendant was going to come down and we was just saving the state a lot of money just to do it while we were in Fairbanks, so I did that. Well there was more background. There was a foundation board I used to be on, nothing to do with the court system or anything, and they had a meeting on the East Coast. So I had flown from Alaska to the East Coast and back, so I was a little jet lagged and tired and then on top of that I had been reading the book called *The Broken Cord*, which is a very powerful book about a professional person who had adopted -- I mean a Native professional person who

had adopted a boy who -- and this is way back in the early 70's when people didn't know about it. And I mean the adoption happened a little bit later, but anyway people didn't know -- really didn't know and he was having all these issues and finally he realized what it was and -- and began deal with it. It was a very powerful book.

So I had been reading that too and one of the things we haven't discussed yet with the Fetal Alcohol Spectrum Disorder is that and I have to be clear. FASD is simply an umbrella term. There is actually four medical diagnoses that fit under that. So you don't diagnose someone with FASD. You diagnose someone with a condition that is within FASD with one of the Fetal Alcohol Spectrum Disorders. But one of the classic symptoms is not learning from consequences and being very impulsive and you can give all the consequences you want and they really aren't going to really get any benefit from it. So and again this is -- this is absolutely clear peer review research and so the issue was this. The defense attorney was not arguing for no jail time. She was simply saying less jail time, more time maybe in a halfway house or something like that and that I should structure the sentence that way. Well I couldn't because of the way the law is structured. And so I had at the time it would be much -- much more time, but at the time it was four years in jail. I had to sentence him to the four year again because of the oath I had taken. I mean this is what the law is and but toward the end of the hearing and partly the reading I had been doing, partly jet lag and being tired, but it suddenly came over me of all these people in Alaska and all over the country, all over the world that are enmeshed in -- in the justice system for having done something wrong, but it does have to be response so I'm very clear about that, but still not really fitting their situation and not really understanding or getting the benefit from and I got a motion. I mean the hearing was basically done, but my voice started cracking and stuff like that. So I basically got up and left the courtroom. I mean the hearing was over, but and I'm sure this court clerk in Fairbanks was kind of, well what was that about, you know. But anyway --

KAREN BREWSTER: That does get into the question about mandatory sentencing laws. I didn't realize before beginning this project that that exists.

JUDGE JEFFERY: Uh-huh.

KAREN BREWSTER: Certain types of cases and as a judge you have to sentence them a certain way.

JUDGE JEFFERY: Uh-huh.

KAREN BREWSTER: Can you talk about your thoughts on that and the pros and cons?

JUDGE JEFFERY: Well, yeah, I mean I've seen -- I won't say I've seen it all, but, you know, when I first was appointed, it was pretty flexible. I mean there were maximum sentences and there were minimum sentences. I think like the minimum sentence for murder stayed at 20 years for a long time, you know, but and then slowly -- slowly there has been more and more of an emphasis on these presumptive sentences that you -- for a long time the presumptive sentences only kicked in with the second felony unless it was a really serious one. And then there was this supreme court case Blakely case where it caused changes in the way this was done all over the country and now the legislature basically has presumptive sentences for all felonies, however, for a not serious felony the presumptive term can go to zero years, so actually there is a presumptive if there is flexibility. Especially in the sexual felony area it has gotten very, very tough sentences. Most of the crimes now are -- have a maximum 99 years just like murder, even if it is a sexual touching sort of thing, but then there are these -- these rather tough presumptive

sentences also. I mean the goal of those is to make a point and also to keep the community safe and I suppose there is a level of dissatisfaction with the way the sentences were being done. I don't know.

I mean I've had like I'm thinking of a Kotzebue case where I have, you know, I sentenced this person to way more than his lifetime in jail, but this is -- he was a good example why these laws exist. He had two rapes in Texas and maybe even another one from somewhere else. He comes in to Kotzebue, doesn't register as a sex offender, which he was supposed to be doing and then he starts having a party house and there is alcohol there and then he is taking advantage of -- of, you know, local girls and having sex with them. Well, you know, so he has three or fourth sexual felony and the presumptive term was sky high, but I had no problems putting that kind of sentence with him.

KAREN BREWSTER: Yeah, as you say I don't understand all this, but, you know, I think a judge has the ability -- you hear a case and then you get to determine the consequences, but with this mandatory sentencing laws, it seems like you guys don't have as much say as you --

JUDGE JEFFERY: That's right. We don't --

KAREN BREWSTER: That's the role of a judge now.

JUDGE JEFFERY: We don't have as much say. Well, again there are some safety valves. I mean one is there is a list of mitigating factors and a list of aggravating factors and if they exist then you can talk about like with the mitigating factor can go down to half of whatever -- as little as that not automatically. With an aggravating fact could go more. So that's -- that's one thing and then there is the three judge sentencing panel system, which still exists. And so if it is just over the top, you know, it just makes no sense at all to have this presumptive sentence. There are things that could be done, but me personally I would -- I would favor more flexibility than we have right now in many of these areas. But I can understand where people are coming from and as I say then you got a case like this guy that I dealt with in Kotzebue you can see why the legislature is making those kinds of sentences. I mean this is -- you really want this guy off the street. He's just a dangerous person, you know, so.

KAREN BREWSTER: So what's been most satisfying for you serving on the bench?

JUDGE JEFFERY: Yeah, I mean people ask, you know, it's -- a good word is satisfying. It is not -- you don't like to go in and do a sentencing, you know. It's not fun, but there is a quiet satisfaction that one hopes that you can have. I mean there are times and the satisfaction I mean I can talk about the stressors too. We'll talk that next question maybe yeah. But as far as the satisfaction it really comes from, you know, having this role of -- which I take very, you know, it's a privilege to have this role and that was something I remember Judge VanHoomissen mentioned I think at my swearing in back in 1982 and, but I totally agree with this. I mean to think that you were the one that in this whole -- all this, you know, all the justice system the judges are the ones who are doing the right thing. We're not advocating for somebody or another. We're the ones that are making the call and having that role and doing it with heart and compassion and yet firmness when it is needed because even in the FASD issue where I have pretty strong feelings about it, I'm not advocating that people don't have consequences. It is just that they, you know, the state is spending a lot of extra money that they don't need to be spending by having people in hard jail beds when there could be other options, but there needs to be -- I mean and I'll tell people, you know, it's one thing to say you understand why you did this, but

you did something and somebody got hurt and, you know, you're going out of town, you know. So but, you know, like in the juvenile delinquency area working with youth trying to make sure that they feel that they were understood and that we do the best job that we can and provide resources for them within the limits of what we have available. And then hopefully not seeing them back as an adult criminal, but and then sometimes, you know, in a difficult -- I mean I have had some -- some child custody cases where again I've been there so long, you know, I've seen how it turned out, you know. I mean I made a tough call. Well, how'd it go? Well that one went pretty well. I mean I've seen them grow up, you know.

KAREN BREWSTER: So that is satisfying?

JUDGE JEFFERY: Yeah, that's satisfying.

KAREN BREWSTER: To see the good results?

JUDGE JEFFERY: Right and then again like I mentioned earlier sometimes people will have the grace to come and talk to me and say, you know, I'm really glad you sentenced me or I'm really glad you sent me to this treatment program and it has really helped me out and that's wonderful to hear. Oh at least say, yeah, I'm back in town and I'll try to stay out of trouble. I say oh great, you know, and stuff like that, so, yeah.