George Nicholson: Welcome to the temporary courtroom of the Court of Appeal, Third Appellate District. We are here with retired Presiding Justice Arthur G. Scotland, who served on the Court of Appeal, Third Appellate District, for more than 20 years, from 1989 to 2011, and that . . . the last dozen of which he was Administrative Presiding Justice. I'm George Nicholson, Justice of the Court of Appeal, Third Appellate District, and I had the pleasure of serving with Presiding Justice Scotland for 20 years on this court. Before that, we served together as trial judges on the Sacramento Superior Court, and even before that we served together in the Governor's Office during the Deukmejian administration and in the California Department of Justice. This has been a long time coming, Scotty, hasn't it?

Arthur Scotland: Nick, it has, and it's a delight for me to have you interview me for this project.

George Nicholson: Well, we both shared a deep affection for our past Presiding Justice, Bob Puglia, . . .

Arthur Scotland: Yeah, we did and a deep affection for Governor Deukmejian.

George Nicholson: . . . and for Deukmejian, all of us. But the remarkable thing is the affinity we all had for Bob Puglia, and now for one another, and now with your successor, Vance Raye. It's been a remarkable run in this court for 40 years.

Arthur Scotland: Well, I'm just happy to have been part of it.

George Nicholson: As part of the Judicial Council's Appellate Legacy Project, we are videotaping and compiling a historical account of the lives and experiences of retired justices, which now includes you, Scotty. We are seeking the impression of your recollections and insights into your life and times, on and off the bench, how you perceived and pursued your roles in the various important public offices you held for so long, and finally how the courts – especially the Third Appellate District – operated and changed during your days on the judiciary. You have been very active and very able throughout your life, Scotty. I think anyone viewing this tape in the future will be thrilled and inspired by what they see.

Arthur Scotland: The jury's out on that, Nick.

George Nicholson: However, before actually getting started, please allow me to set the stage on which your life's immense balance sheet may properly unfold.

You have an incredible amount of energy, according to Assistant U.S. Attorney Robin Taylor, who promptly adds, "I don't think you can go to any activity in town and not find Justice Scotland there." Third Appellate District Justice Ronald Robie, our old friend, says, "You just keep going and going, like the Energizer Bunny." And finally, our old colleague, Ninth Circuit Judge Connie Callahan, says, "You're like Moby Dick. You are ubiquitous." She says you're everywhere. 2:59

And to add my own summary before we launch into this, I've talked to a lot of our friends over the last few weeks, and the common descriptions are "a good and warm heart," "the hardest-working judge in the state capital," "honest as the day is long," "fair," and "a fierce competitor." These are all fair descriptions, and I've known you long enough to know that.

But one of the questions we'd like to begin with is have you always been energetic, enthusiastic, and everywhere all at once? In short, have you always been the Energizer Bunny?

Arthur Scotland: Oh, I think that would probably be a fair assessment according to a few of my instructors in school. When I left junior high to go to high school, my wife reminds me that she saw my yearbook and a teacher had written in, "To a more restrained future." So, yes, I think I've probably pretty . . . been pretty energetic over the years.

George Nicholson: Well, let's start at the beginning, and we can tease those blanket perceptions through for ourselves as we go. When and where were you born, Scotty?

Arthur Scotland: I was born right here in Sacramento on October 19th, 1946.

George Nicholson: And your father – what did he do?

Arthur Scotland: My dad was a life insurance salesman. He was a very hard worker, great provider, was not home a lot because at nights he would have to go out and do business with clients. But he was a great supporter when I was involved in Little League. He never threw the ball around with me but he became president of the Little League, and he was active in many things that I did. And he was incredibly generous and supportive of my various interests.

George Nicholson: Your mom . . . .

Arthur Scotland: He was a great dad.

George Nicholson: Your mom – did she have an occupation?

Arthur Scotland: My mom, Tillie – I'm going to get emotional when I talk about my mom. I'll try not to, but . . . . She . . . . When they first got married, she did work. She worked for the Board of Equalization. She was a secretary, and . . . but when she had my sister in 1944, she decided that she was going to stay home and care for the kids, which was a big job in and of itself because my sister and I were a handful, I can tell you, from the early days. And she was an incredibly loving, overprotective but very supportive mom that would do . . . you know, just had a heart as big as gold. She was a major influence in my life.

George Nicholson: I think one of the interesting things of appellate judges – particularly appellate colleagues interviewing one another – sometimes the interviewee will think of something or say something that prods a memory. You said you didn't . . . you hoped you wouldn't choke up 6:00

talking about your mom. I don't know if you can talk about what I'm going to ask you or not without choking up. I think I'll give you a hint where I'm headed. With some of your colleagues, and in general, you're a traveler, and . . . . For example, with some of your colleagues you went to the Galapagos Islands . . .

Arthur Scotland: That's right.

George Nicholson: . . . at one point?

Arthur Scotland: Yeah.

George Nicholson: And at another point with some of our colleagues, you went to South America.

Arthur Scotland: True.

George Nicholson: And when your mom was in particularly critical condition, and you were about to run the rapids of a river down there . . . .

Arthur Scotland: In the Amazon.

George Nicholson: The Amazon. You came home.

Arthur Scotland: Got a call from my wife that my mom had . . . .

George Nicholson: And where were you?

Arthur Scotland: I was actually in Machu Picchu, and we had . . . actually were getting ready to head to the Amazon, and got a call. Fortunately my wife, Sue, was able to get ahold of me, and fortunately I was able to get back. And my mom had hung on. She literally willed herself to hang in there until I got there. And I did, and she died about four hours later.

George Nicholson: I had no intention of bringing that up, but it's such a thoughtful and sensitive and frankly descriptive anecdote of your life: the fact that your mom held on and, as I understand the story, you were able to hug her . . .

Arthur Scotland: Oh, yeah.

George Nicholson: . . . while she was still here. But it wouldn't have happened if you hadn't dropped everything and run home.

Arthur Scotland: Well, I mean, you would have done the same, Nick. It was . . . .

George Nicholson: That event encapsulates a lot of your life because you've done . . . you did that for your mom and dad and you loved them and they loved you. But you've loved so many people in your life here, and acted in a similar way. I'm glad you got through that one, but I'm glad you brought it . . . you indirectly brought it up. 8:01

Arthur Scotland: Well, you know, my mom and my dad, they came from totally different backgrounds. My dad's family is the Norwegian side, and my great-great-great-grandfather Thore Skotland had moved to Prairie du Chien, Wisconsin, and down in Iowa he was the first settler in a little village later called Calmar, Iowa. And actually in 1950 they celebrated the centennial of his founding that . . . being the first individual ***[inaudible]*** He was a trustee in Luther College in Decorah, Iowa. And my dad's side of the family was very formal, more serious. I remember my grandfather was . . . . I was named after my grandfather. He was George Arthur Scotland. And so my parents named me Arthur George Scotland. And I remember going over to . . . as a young kid and going over to their home. And it was more of a formal setting – a wonderful, loving setting, but more on the formal side.

And my mom's side of the family was just totally different. My mom was Croatian. Her parents were first . . . well, they were both born in a little village called Ložišća on the Island of Brač, and came here . . . he first came here in the early 1900s after he married my grandmother Anna. And he was . . . his name was Dinko. I get emotional. Yeah. And he was, you know, real blue-collar. He was a cook. He came, settled initially with some friends in the Denver area, and then brought his wife over, and then my mom was born in Denver in 1914. And then he had . . . . As it was in those days, you came over with nothing and you made a life. And he had some friends that lived in Sacramento, so he came here and was a cook and had a part-ownership in a restaurant. And they spoke broken English. They were very old-world. I knew I was going to get emotional. But so it was just so different having the more formal side and then the more, you know, old world, broken-English, lovely . . . . My granddad on my mom's side – sorry – did things like . . . . He loved to see the kids have fun. And one day he called us over, and he had taped pennies and nickels on a tree out in the backyard, and he said, "I've been having a money tree, and it finally blossomed." I'm an emotional guy.

George Nicholson: Yeah.

Arthur Scotland: So he had lots of fun watching us believe there was a money tree! And it was fun.

George Nicholson: You know, Scotty, hearing the last few minutes, anybody that knows you is going to be getting to see what has motivated and inspired you because you're a grandfather and you're the best friend a person could have. And I can see from the way you're reacting and the way you're describing that there's a good reason why you have the heart you do.

Arthur Scotland: Well, thanks.

George Nicholson: And it's because you have the grandparents and the parents to help you begin your life and to prepare your life. It's very touching, Scotty. And before we leave the family – your sister? What can you tell us about your sis? 11:41

Arthur Scotland: My sister Suzanna. We were close and not so close at times. We, as you can imagine a young brother and sister a couple of years apart, oh, we fought and we had . . . did things but we are very, very close now. She lives in the Marin County area and we are very, very close and see each other frequently.

George Nicholson: Did you like school when you started?

Arthur Scotland: I did. I liked school. I wasn't always a serious student, but I did like school. I started out here in Sacramento at Riverside Elementary School, and I was an active handful of a kid. And I did pretty well. But come the fifth grade, my mom decided I needed to be restrained a little bit and be straightened out a little bit, so she took me out of Riverside Elementary School and sent me to Holy Spirit Catholic School, where I had Sister Mary Patrick as a teacher for the fifth grade. And she never instilled the fear of God in me, but she filled . . . instilled the fear of Sister Mary Patrick in me. She was a tough nun – very, very tough. Very demanding. But a remarkable teacher. I don't think I really appreciated at the time the difference in my life she was making just by the method of her instruction. And of course in those days we had to diagram sentences, and she would just beat it into us on how to communicate well and how to write well. And math, and all of the things. But she was no nonsense. I can remember, you know, you'd get paddled in those days, you'd . . . there were . . . there was physical punishment. And so by the end of the fifth grade I was so thrilled that I could move on because the sixth grade teacher was this very sweet, kind other nun. When we came back for the next year, they had transferred Sister Mary Patrick to the 6th grade! So I got two years straight of Sister Mary Patrick. And at the time, it just seemed like terrible punishment. We had a class back then that was 55 kids. And no wonder she was so cranky all the time. But at any rate, we . . . I learned a lot, and so finally I really wanted to go back to public school for fear that I'd have Sister Mary Patrick for the seventh grade. And so my parents sent me to Cal Junior High, and I found that already I was advanced in English and math, so I was able to take some . . . ultimately some advanced courses. And thanks, really to her; she was really . . . made a difference in my life.

George Nicholson: When you left junior high, what prompted the teacher's note in your yearbook?

Arthur Scotland: Oh, I was full of energy. I was into pranks and practical jokes, and I was just wired up, you know? ***[laughs]***I guess that's the way to say it.

George Nicholson: How were your grades during school up to that point?

Arthur Scotland: Oh, they were well, and I . . . when I went to high school, I had higher advanced placement in math. I got into an advanced math program. And actually, by the time I got to college, I . . . you have to take English IA when you go to the University of California, and I did so well in my essay that I got to go into . . . past . . . even past English 1 and went into English II or something like that.

George Nicholson: The whole thing. 15:16

Arthur Scotland: Yeah.

George Nicholson: Well, that's ***really*** impressive.

Arthur Scotland: So, I did pretty well. I was a serious student in high school, but I sure wasn't a very serious student in college, I must confess.

George Nicholson: Did you have work during school?

Arthur Scotland: I did. I had work ever since I was a little kid. I started out probably when I was 9 or 10. I was mowing lawns. I was trying to make money. I had two interests in life back then: baseball and baseball cards, and old cars, 'cause I had a friend that had old cars, so I wanted to save my money up to buy an old car and to buy those baseball cards. So I did lawns – you know, just going around the neighborhood – and then I got a paper route. I had a paper route when I think I was 12. And it was the ***Sacramento Union***, so it was a morning paper route. And I only was able to survive doing that because my mom, she'd wake up 5:00 every morning with me, she helped me fold the papers, she'd helped me lift the sack of papers up on my bike 'cause I was a scrawny little kid and sometimes I . . . on a Sunday it was hard to lift those papers up and put 'em . . . the bag around your bicycle handles. And I would go out every morning. And the toughest part for me, really, was the collecting, because in those days you had to actually go at night, and I wanted to be playing and that sort of stuff. But I'd get out there and collect and that sort of thing. So I did that.

My dad was very helpful with me for a number of jobs. I worked in a car wash for a while, which really was kind of an interesting learning experience because I was just trying to make a few bucks and this was in the old days when they had the old mechanical . . . not the fancy ones like they have today. And this particular car wash, there were a lot of state prisoners – guys that'd been out on parole that were working there. And so I'd always try to line myself up when I saw a Cadillac or some fancy car 'cause I knew I'd get a big tip! And one day this big fella comes over, and he was ***gentle*** as could be, but he says, "You know, young man, you're just doing this for, you know, fun during the summer and I'm doing this for a living. You know, why don't you let us take the good cars?" And that really made an impression upon me, that I was . . . in a way, I was not being as generous and I was being a little bit selfish back then. And so that made an impression upon me.

I did other things. I worked at the Hotel El Rancho as a busboy. I actually worked my way up. I was very proud. I was a busboy, then they let me do room service, and then I got to do the front desk and I could wear a coat and tie, and I got to go sit in the restaurant to have lunch in my coat and tie with the other people in the front office. And the people that I was working with – the busboys and the servers – would come and serve me, and I thought, "Wow. This is really cool." Had an interesting experience there, Nick; actually, it was my first experience with the Legislature. This one day – I'm this young kid in high school – and this entourage comes in with this ***huge*** fellow. And he's got all 18:11

these people running around him and "yes, sir," and da da da da da. Turned out it was Jesse Unruh. And I asked, actually, one of the waitresses, "Who's that?" And she says, "Oh, that's Jesse Unruh. He's a bigwig at the Capitol." And it was just interesting to see how he treated people and . . . .

George Nicholson: Well, he's unforgettable for three reasons, really, I think. You can correct me if I'm wrong. He's the reason we went from a part-time to a full-time Legislature.

Arthur Scotland: Mm hmm.

George Nicholson: He was . . . may have been big to you, but he was happily named "Big Daddy" Unruh. And he is the one that coined the phrase that is pervasive throughout the nation now, "Money is the mother's milk of politics."

Arthur Scotland: You know, and it's funny you should bring that up, because another job I had, I was a busboy at the El Mirador Hotel. And I was a banquet busboy. And they had every week – I think it was every week – they had the Moose Milk Lunch. And this was a lunch that was put on by lobbyists, and all the legislators would come over and I would do the busing for that Moose Milk Luncheon. And it was ***amazing*** to me. It was really an eye-opening experience, because they would have . . . . For example, they had boxes and boxes of cigars laid out. And these legislators would come in and literally take handfuls and stuff them in every pocket. And I was thinking, "You know, those are . . . . You should take one, not, you know, not take the whole box." And they . . . there was a bar there, and most of them didn't really eat lunch, they just drank. And so many of them walked back across the street three sheets to the wind going back. And I was this impressionable, naïve kid. And I'm . . . . I thought, "Oh, my golly," you know. And that was an eye-opening experience. Not to mention the fact that one time I was serving a steak and it slipped and I poured steak gravy all over one of the legislators and he wasn't too happy. But . . . .

So I had some interesting experiences there. I . . . . You know, going back to my days – I'm sorry, I'm rambling here – but going back to my days as a newspaper carrier, I had an interesting experience relating to the law. I was helping a friend. He had a ***Bee*** route, and it was in the evening, and he came up and he said, "I just saw something really strange." And I said, "What's that?" And he said, "I saw some people running from a house. And they jumped in this car and they jumped down and got down in the car and they took off." And so I said, "Let's go over there and find out what happened." He said, "No, no, no, I've got to finish my route." And I says, "No, let's go find out." So we go over to the house and we look into this car outside that was right in front of the house and there's a pool of blood on the front seat of the car. Turns out it was the blood from the deputy chief of the police department. And there was a burglary going on, and he had walked across the street to confront it, and the guy whacked him over the head, and he was able to get to his car – which was an undercover car – and call in. And my friend had gotten the license plate number of this car that had taken off. 21:14

So when we told him . . . . By the time we got there, actually, the police chief was there. He was this big guy. And he says ***[growling]*** "What are you doing here?" And we said, "Well, we saw something. I didn't see it, but my friend did." And we gave him the license number. He just beamed. And they ended up catching these guys, and as a consequence, they were . . . they gave me . . . I got to see the mayor. He came over – Bartley Cavanaugh – in his Rolls Royce and gave me a check. And then they wanted to give us a ride – the other kid and me – on a hook and ladder. But my mother was too scared. She didn't want to . . . . She was so protective, she didn't want that to get out. She didn't want my name to get out 'cause she was fearful that these people would come and get me. So that was a unique experience when I was a kid.

George Nicholson: I must say. I think you had another unique experience when you got your first car. You didn't go down to the bank and take your savings out and buy it, I don't think. How ***did*** you buy it?

Arthur Scotland: Well, my first car was a 1930 Cadillac limousine. And I told you I liked old cars, and I had a friend that . . . . I helped him work on cars, and he had Cadillac V-16s and all. And so I saved up. And I actually wanted to buy a 1929 Hupmobile that he had, but he . . . it was $400, and I didn't quite have that amount of money yet. And so he sold it to somebody else. And when I finally had the 425 bucks, he helped me buy this Cadillac limousine. I was 14-1/2. I only drove it once. I wasn't even 16 then.

But I did other things, too, to make money. I was . . . . When I was in college, I was an autopsy porter for Sutter General Hospital, so I assisted pathologists in setting up the bodies to . . . before the pathologists came in. And I would have to take the bodies out of the refrigerator, put 'em up on the autopsy table, get out all the formaldehyde and all of the scalpels and that sort of stuff. And then, because I was interested in what they were doing, they let me help. They'd quiz me. "Okay, what's that?" you know. "I don't know." "That's the heart." "Yeah." "What's that?" "I don't know." "That's the spleen." And then I would have to . . . one of my jobs I would have to . . . they'd cut open the intestine and I had to clean it out so they could look for tumors and that sort of stuff. And then, when it was all done, the pathologist'd leave, I'd put all the stuff back in the body, sew it up, put it back in the refrigerator, and wait for the next call. And that was a very interesting job.

George Nicholson: When I said you didn't really go to your savings, I thought there was a role in buying that first old Cadillac that your baseball cards played.

Arthur Scotland: Oh, well, I . . . .

George Nicholson: Did I get that confused?

Arthur Scotland: No, I saved money to buy baseball cards. So I had lots of baseball cards. I had got baseball cards . . . . I still have them back to the early '50s. And I later sold some. I gave 'em to my son and he sold some. But I didn't use my baseball cards to trade, or anything like that, for the car. 24:17

George Nicholson: You said you loved baseball. You've loved baseball all your life, and you still do.

Arthur Scotland: Yeah, not as much as I did as a kid. I've kind of . . .

George Nicholson: Well . . . .

Arthur Scotland: . . . lost a little bit of interest.

George Nicholson: We'll get to it later, but I've been involved in baseball all my life, and I've never known anyone that played on two different teams in the same league the way you did.

Arthur Scotland: ***[laughing]*** Softball.

George Nicholson: In court softball. ***[inaudible]*** DOJ, probably, too. But that is a unique . . . . You talk about being energetic. I've always wondered how you played yourself when your two teams played one another, but . . . .

Arthur Scotland: Well, see, I was the commissioner of that softball league. It was called the Justice League, and it had the D.A.'s Office, Public Defender's Office, State P.D. And so I was able to do the schedule so I could always schedule the . . . my former team, the A.G.'s team, and then the Court of Appeal team on the same night, back-to-back games. So then I would . . . . And then when I played my A.G.'s team, I would play on the Court of Appeal team. So . . . .

George Nicholson: What'd you want to do when you got out of . . . . I believe you went to McClatchy High.

Arthur Scotland: I did.

George Nicholson: And did you enjoy your time there?

Arthur Scotland: I did. I . . . . Yeah. I was involved in student government and things of that nature. And I enjoyed it a lot. Those were the days when McClatchy High and Sac High were rivals, and on the Turkey Day they had a Turkey Day game, and 17,000 people would come to watch the Turkey Day game.

George Nicholson: For a high school game.

Arthur Scotland: For a high school game! Because in those days the other high schools were not built in Sacramento – the ones we have now. So I enjoyed it.

George Nicholson: What did you want to do when you got out of McClatchy?

Arthur Scotland: Well, when I wanted to . . . . When I went to college, what I wanted to be was a radiologist. And the only reason I wanted to do that is 'cause my dad knew a lot of doctors and had taken me to this radiologist's office. And he showed me all of the radiologist stuff, including stand behind . . . you know, standing behind the old thing where you 26:10

could see the bones. And I thought, oh, that was really neat. "Yeah, I'd love to do that." I knew nothing about it. So I went to college with the idea that I was going to become a doctor and be . . . specifically, be a radiologist. The reason for that simply was that one experience with that doctor. And I was so naïve and immature at the time, I . . . that was good enough for me.

George Nicholson: During the time you were at UC Davis . . . .

Arthur Scotland: Yeah, I picked UC Davis because . . . . I got accepted to a number of schools, but I picked UC Davis because my high school sweetheart was a year behind me, so I didn't want to go too far away. Of course, that was a silly reason to pick a college, because we broke up the next year. But that's why I went to UC Davis.

George Nicholson: What did you enjoy in particular while you were at the school academically, if anything?

Arthur Scotland: You want the truth, the whole truth, and nothing but the truth, Nick?

George Nicholson: Please.

Arthur Scotland: I . . . . College . . . . There were parts of college that were – other than academics – that I really got involved in. I got involved in a fraternity, I got involved in social aspects, clubs, other things, and after I . . . . my first year, I was so involved doing other things that I got a C in Chemistry 1A and I realized then that my future as a radiologist was out the window. I don't think I'd ever get in med school with the grades I was getting. And so I learned a lot about life other than from books when I was in college. And when I tried, I did well; I got good grades when I tried. But to be honest with you, I didn't try a lot. And so I graduated from UC Davis with about a C+ average. And I changed my major. I changed it to psychology. And the reason I did that, it was the easiest major. I mean, that was kind of my mindset. My . . . . It was . . . . Listen. It was the '60s. It was 1964 to 1968. And there were things going on in the world and going on in life, and I didn't do my parents justice with the money they spent to put me through Davis.

George Nicholson: Or the sisters.

Arthur Scotland: Or the sisters! That's true.

George Nicholson: What were you contemplating, as graduation approached, as the next act?

Arthur Scotland: Nick, again, I was so naïve. I was so immature. I was so unfocused. I didn't have a ***clue*** as to what I wanted to do in life, other than I knew what I ***didn't*** want to do. And I didn't want to be an insurance salesman like my dad. So . . . . In fact, one of the jobs I had when I was working, I was a banquet salesman. And I . . . it just ***pained*** me to have to go around and try to sell things to people. So that's what I knew I didn't want to do. 29:00

And this is at a point where another person made a difference in my life. I heard that the CIA was coming to campus. And again, I was so immature, I thought, "Wow! Wouldn't it be fun to be a spy?" So I . . . . The only way you could get an interview with the CIA was to go talk to a placement advisor. So I went and talked to this placement advisor, and she was this, I'll say, older woman – she was probably in her 50s at the time, but to me she seemed quite old. And . . . . But she was the kindest, patient, and listening person. And she asked me a lot of questions. First she told me . . . let me down easily. She said, "The CIA would not be interested in an undergraduate psychology major. If you had Russian Literature, or if you were a physics major or something like that, they might be interested. So, I'm sorry, you're not going to be able to get an interview with the CIA. But what else are you interested in?" And so I just started talking. I was totally unprepared. And I remember . . . . I used to ride motorcycles. I love motorcycles. So I . . . at one point in this interview, I said, "Wouldn't it be fun to be a CHP motorcycle cop? That would be great." And, well, she listened to that. And she listened to all the other things.

And then she started sending me job announcements. A lot of 'em had with . . . to do with psychology: social work, probation officer. She remembered that law enforcement thing. But she remembered the other aspect of law enforcement; she sent me applications for law enforcement officers. And I got one that said Investigator Trainee for the State of California. And it had a list of all these various departments: Alcohol and Beverage Control, Department of Motor Vehicles, da da da da. And one of 'em was Bureau of Narcotic Enforcement. And I thought, "Wow! ***That*** would be exciting! I'll be a narc!" And I was really down on drugs. I was really straight. I had ***never*** used drugs. I had some fraternity brothers that got messed up on drugs. And I thought, "I'm gonna go out, and I'm gonna win the war on drugs." So . . . . I had never even shot a gun, Nick. And I bluffed my way through the interview, and I got hired as a narcotics agent in 1969.

And that woman made a difference in my life because by becoming a narcotics agent . . . . I was an undercover narcotics agent. I've bought a lot of dope in my life, Nick – all lawfully, but I've bought a lot of dope. And I testified in court. And that's what got me fascinated in the legal process. My family didn't know attorneys, I didn't know attorneys. My only association with the courts was when I had a traffic ticket and had to go to juvenile court one time. But, you know, that's about it. So that experience as a narcotics agent exposed me to a whole different aspect of life – one that a middle-class, you know, naïve kid, you know . . . . It was a real eye-opener about what drugs can do to people and that whole culture. And it got me involved in the law.

George Nicholson: But you didn't look like you look now when you were a narc.

Arthur Scotland: No, actually I had some hair, Nick. I don't have much now, but I had a lot of hair back then.

George Nicholson: Well, you also were kind of scruffy-looking and 32:04

Arthur Scotland: Yeah. I was real thin. I . . . . We actually made an arrest of a Hell's Angel guy, and I found some Hell's Angel cards. So I have a membership card in the Hell's Angels, and my nickname was "Bones" 'cause I was this real skinny kid. And I did try to . . . . In those days – again, this was the late '60s, early '70s – you had to have long hair. And . . . . But my supervisor felt that was . . . you had to be real professional, and he kept sending me notes, saying, "Time to cut your hair, Scotland." And I was thinking, "Man, I'm the guy that's out there trying to buy drugs from these hippies or others," and so it was an interesting time in L.A.

George Nicholson: At some point during that time, as you indicated, you got interested in the law. When did you decide, and having decided, when did you begin applying and making your way to law school?

Arthur Scotland: Well, I really decided in 1971. And there were a number of factors that made me decide this. First, I'm really glad I did that job; I learned a lot about life. I could tell you a lot of very interesting stories about things that happened when I was a law enforcement officer. And you have to be an actor; you have to play the game. And I could go on and tell you . . . . I was involved in a shootout. I got shot; I was shot. A friend of mine in the Ventura Sheriff's Department was killed during serving a search warrant – you know, family man, a couple of kids. One of our agents was stabbed. Another agent here in Sacramento got killed serving a search warrant. You know, the old "knock and notice"?

George Nicholson: Yeah.

Arthur Scotland: Knock, knock, knock, "Police officer!" Boom, dead. And so I really thought that, while I'm glad I did it, this life, this lifestyle, the late hours, the . . . just the dealing with danger and the people and all, I didn't want to do that for the rest of my life. And it really clicked with me, testifying in court and working with the deputy D.A. So I thought, "I want to be a prosecutor. I'm going to go to law school; I want to be a prosecutor." So I applied in 1971. I applied to only one school: University of the Pacific, McGeorge School of Law. I applied there for two reasons: One, it was back home. (I was in L.A.) I could live with my parents. I was . . . . I had decided they had put me through college, I was going to put myself through law school. I didn't want their help, although they offered it. And two, my grades weren't all that great. I did ***very*** well in the LSAT test: I did excellent on that. But I didn't figure I could get accepted anywhere else, 'cause I really hadn't been a serious student. So I went to University of Pacific, McGeorge School of Law.

George Nicholson: But everybody has, almost from the beginning, considered it a unique school and a good school, a great school. And its roots and its current status largely . . . .

Arthur Scotland: It was the perfect school for me, Nick. You know, 98 percent of my law school class passed the bar the first time.

George Nicholson: Well, . . .

Arthur Scotland: It was a practical education. 35:06

George Nicholson: . . . one of the prime reasons it was a great school right in your backyard was Dean Schaber.

Arthur Scotland: Correct.

George Nicholson: Did you know him while you were in school at all?

Arthur Scotland: I didn't know him, but my dad did. And my dad had done some life insurance, estate planning work for McGeorge. And again, my dad was an influence on me . . . on my life because he knew people and he set me up with jobs. And I'm sure that one of the reasons I got selected for McGeorge School of Law is my dad's relationship with the dean.

George Nicholson: I don't view the term "operator," "organizer" – the terms – as derogatory. Dean Schaber was an operator. He was an organizer.

Arthur Scotland: He was amazing.

George Nicholson: He never believed there was anything that couldn't be done, and he was someone who didn't . . . . He was, I suspect, a liberal Democrat, but he worked with everyone . . .

Arthur Scotland: He did.

George Nicholson: of whatever party – liberal or conservative – of whatever their jurisprudence, frankly for the good of the school and, more generally, for the good of the law. And you've always been that way yourself, to the extent that this wasn't just innate in you. Did you learn any of those things, or were you inspired by any of the things you saw in Dean Schaber – not only during school, but later?

Arthur Scotland: Well, I learned things as a law enforcement officer. How you need . . . . How you can best conduct yourself to achieve your objective, and how you can interact well with other people of all sorts to achieve a result. I watched . . . . I was very fortunate. I did ***exceptionally*** well in law school, so I got to go to events with the Dean and you could . . . . He was a master at working the room, Nick. He was just amazing. He knew everybody, and he was generous with his time with everyone. He made people feel like they were the only person in the room, you know, at the time when he was speaking with them. And you observe these things and you learn from these things. He had amazing qualities. I was fortunate because I did real well. I was in trial advocacy, and he decided he would be the trial judge for the team that I was on and this other . . . these other two that were at the top of the class. And he was just a great . . . . And to have the dean of the law school be your trial advocacy judge at the time, it was a special time.

George Nicholson: I'll say this: There will be people, years and decades from now, that see this tape and won't know who Dean Schaber is. But I've had considerable experience with him. And the reason I asked you those things was I suspected you had a relationship and knew him and learned from him, because one of the qualities that I've picked up in 37:53

talking to our friends and colleagues – one of the notable qualities you're described as having – is the ability to coalesce a team from various and discrete organizations, entities, groups, philosophies, jurisprudences. Create an ad hoc team for a particular project. Which so often you have to do in the judiciary, whether it's through the Center for Judicial Education and Research or the Administrative Office of the Courts or even on the court itself. You've been a wizard at that, Scotty. And it sounds like that everything we've described in detail so far leading up through now, Dean Schaber and McGeorge, whether you've consciously thought about it or not, it sounds like all of these things, fortuitously or otherwise, merged to capitalize on your energy, your enthusiasm.

Arthur Scotland: "Fortuitously" is the word. I'm just fortunate . . . .

George Nicholson: Well, that's what I'm trying to figure out. It's just one of those . . . .

Arthur Scotland: And actually . . . .

George Nicholson: You've been blessed at each step.

Arthur Scotland: I know you're going to get to it, but my experience with Governor Deukmejian was a life-changing experience, in that I learned so much. And we'll get to that later.

George Nicholson: Okay.

Arthur Scotland: But I learned so much about decision making, about team building, and all of that from him and from Steve Merksamer.

George Nicholson: I've known and worked with George for 40 years, too, and you're humble and self-effacing about it, but I'm sure – as he did with everybody that he worked with – I'm sure he learned from you, too, although you'll disclaim it, I'm pretty sure of that.

Arthur Scotland: I don't know about that. I sure learned a lot from him.

George Nicholson: Well, one thing – digressing again just for a moment on the Governor – one of the things most notable about him, and some of his friends and colleagues, it was their diplomacy and discretion, humility and gentlemanliness. Their manners.

Arthur Scotland: Absolutely.

George Nicholson: And you have always been the most cordial and kind and mannerly person in any room you were in. Was it always this way, or did you have to learn it from one of the sisters, through the spanking route? Or did one of . . . did Dean Schaber or George Deukmejian . . . . How did this all come about? The diplomatic Scotty?

Arthur Scotland: Maturing. It was not always this way, Nick. I was a handful when I was a kid. And I was cocky at . . . from time to time. And I was selfish from time to time. And I was, again, I was really immature back there. And I think it's just part of the maturing process. I mean, even . . . . I 40:24

matured a lot, I think, after I became a deputy D.A. And how I initially started practicing to later in life, it's an evolution. We all go through an evolution. And I think I learned along the way, and I learned what works and what doesn't work. And I've always cared about people; I always . . . I like people, I care about people. And I enjoy friendships. And I . . . . You say I'm ubiquitous. I go to all the county bar events. I do that for two reasons: One, I think it's a responsibility of a judge to be active in the community, and the attorneys appreciate it. But I really like the people. I really like going to these events. I enjoy friendships and that sort of thing. And those are all things, I think, that just evolve in life as you go through life and become a bit more mature and hopefully a little bit wiser along the way.

George Nicholson: You know, regardless of what happened when you were in the Governor's Office and the 25 years you've been on the bench, there are two things, given what you just said, that no one, friendly or unfriendly . . . . There are two words that would not be used to describe you by anybody. And that is "selfish" or "political." It is obviously from the heart. It is obviously for the good of the court, the family, the bar. And I hadn't heard all these details before, but it's all beginning to gel. But it isn't just learning. It hasn't just been your teachers and your mother and father. There's been something extraordinary about the three presiding justices that you and I know: Bob Puglia, you, and Vance Raye. And it's one of the reasons this court has been so extraordinary for 40 years and before. And it's the goodness, the devotion, and frankly the skill and the knowledge that you three men have demonstrated and are demonstrating. But I really didn't know all of the intricacies of your childhood and young adulthood that led to it. I could have suspected or manufactured something, I'm sure, but it's been amazing, Scotty.

While you were in law school, just like when you were in college and searching about for what you were going to do, was there a particular moment or had you known it all along – what you wanted to do next?

Arthur Scotland: There . . . . I knew, when I went to law school, I wanted to be a prosecutor. That was my whole reason to go. I then decided it was time to grow up, to become more mature, to take school seriously. And I did, and I did exceptionally well. I think I was . . . . After my first year I was third in the class. And I got onto ***Law Review*** And I did other things. And so my focus really was to be the best I could be, and learn as best as I could, and to become a deputy D.A. I had a good fortune to . . . . One summer I worked on the law journal and I became a deputy . . . assistant managing editor of the law journal. And then the next year I worked in the Sacramento County D.A.'s Office as an intern. And I got to try a jury trial as a certified law student after my second year in law school. It was an amazing experience to actually not only just help out with preliminary hearings, but I got to do a jury trial. And I just knew then, that's what I wanted to do.

But then in my last year I kind of got caught up 'cause I was very high in my class – I think I graduated seventh in my class – and others were starting to interview with big firms, and so I thought, "Gee, maybe I should make some money and interview some . . . with some civil 44:29

firms." So I interviewed with firms in San Francisco, and actually Portland, Oregon, and some other places. And I just came to the realization that that's not why I went to law school. I really wanted to be a deputy D.A., and I had had that wonderful experience. So they were kind enough to offer me a job. And so I went to work in the D.A.'s Office, and I stayed for a couple years – about 2-1/2 years – and started out in . . . . Actually, before I even got sworn in in the bar, I was assigned out to juvenile hall, and we prosecuted . . . . In those days it was a small office; I think probably there were no more than 50 people in the office. And Bob Puglia had just left to become . . . go to . . . become a superior court judge and then on to the Court of Appeal. And so I prosecuted cases without any supervision – you know, against . . . really against the rules – because we didn't have enough. We had one supervisor, and then there were two . . . . Norm Main, who was a law student who had graduated but hadn't yet passed the bar, and me. And so we were trying cases and . . . without supervision. And then we . . . . In those days you represented minors in dependency actions. And finally an attorney complained to the presiding judge of juvenile that we were doing that without supervision. Well, they didn't have the staff to do it, so they swore us in as probation officers, so we could do it as a probation officer rather than as an attorney. And we continued to represent the minors. And so I did that. Then I went downtown and I did misdemeanors, obviously, and then I worked up to felonies and did felony prelims and felony trials, and I think I did about 35 jury trials.

And then someone else made a difference in my life. And it turned out to be a woman that I went to law school with, Nancy Sweet, who . . . . She had clerked for the Fifth Appellate District after graduating, and then went to work for the Attorney General's Office. And she was always trying to convince me – we were just friends, nothing more than just friends – but always trying to convince me to come to the Attorney General's Office. And I liked what I was doing in the D.A.'s Office, but I thought . . . . The one thing – as you know, Nick, having been a deputy D.A. – you're so busy working up cases and trying cases, you don't get a chance to really get to know the law as well as you'd like to. And I liked the law. And so I saw that as an opportunity that perhaps I could go to the Attorney General's Office and get to know the law a little bit better and still do some trials. So at her urging, I applied for the A.G.'s Office. And all my friends in the D.A.'s Office said, "You're crazy. You're going to be bored to death. You're going to be in a library. Why are you doing this? This is where the excitement is." And I thought, well, if I don't like it, I could . . . hopefully I'll be able to come back.

So I applied and got accepted, and that was in the Evelle Younger administration before a state senator by the name of George Deukmejian was elected Attorney General. So I did appeals. I ***loved***doing appeals; I ***loved***the research; I ***loved***the writing. And I think it was helpful to have been a deputy D.A. if you're doing criminal cases, and how you craft a brief to be a strong advocate and how you marshal all of the facts from the case – particularly, you know, the criminal cases. And I thought it was . . . I was well suited for it, and it was a good fit for me. And I got to argue in the Supreme Court. I got to argue before Bob Puglia, my hero in the law. That was an exciting time to get over to argue in the 47:53

old Library and Courts Building before ***Bob Puglia*** That was just the best. And I argued in the Fifth Appellate District. And it was just terrific.

And then Senator Deukmejian got elected Attorney General. And one day I'm just in the library working away, and one of the senior staff members, Rod Blonien, came up to me, and I didn't know him from Adam. And he introduced himself to me and asked if I'd come and chat with him, and he asked if I'd be interested in working in the Legislative Unit. And I didn't know anything about the Legislature, really. When I was . . . .

George Nicholson: Except they drank and smoked cigars.

Arthur Scotland: ***[chuckles]*** Yeah, yeah. And actually my dad was real interested in the legislative process. He would take . . . . When I was a little kid, he'd take my sister and me over to the Legislature. We'd sit up in the upstairs overlooking the Senate or the Assembly, particularly on the last night of the session when they'd go forever. And so I knew a very little bit about it, but I . . . . So I asked around, and I said, "Gee, should I take this?" and everyone said, "Oh, yeah, this would be a great opportunity – a great ultimate promotional opportunity if you're interested in . . . ." And I was kind of interested in learning different things. So I said yes, and I became a Legislative Advocate for the Attorney General. So I appeared before committees. You know the old days, Nick – you know them well. The Assembly Criminal Justice Committee, which was the deathbed of any pro–law enforcement legislation. And I found it to be a very eye-opening experience and one, if the truth be known, I was not comfortable with, only because in my experience in that day – and I know that there was a lot of good government in that day – but my sense was that good government didn't control in the criminal justice arena. Politics did. And it was a frustrating experience.

George Nicholson: Well, I think one of the things you found – and I'm saying this from my own experience, so I'm not trying to speak for you, but I want to tease it through – my first experience was coming up as a prosecutor to testify before a committee about the same time, 1975. This was before George . . . before the Governor became Attorney General. And I was astounded at the fact you didn't practice law in the Legislature when you came up there. You . . . . Frankly, in the Assembly Criminal Justice Committee, the vote on the bills was arranged the night before at dinner.

Arthur Scotland: Oh, and it was so obvious when you testified before committee hearings.

George Nicholson: And when you contrast what goes on in that body with what goes on in the courts, it's so different. You don't drink and go on the bench. You don't go to dinner the night before and decide a case. It's just astounding. And it's easy to understand your discomfort.

Arthur Scotland: You know, that said, I have respect for the legislative process. I have respect, in general, for legislators. But it was the political aspect of it.

George Nicholson: Yeah. 50:54

Arthur Scotland: And it was the leadership that was in control then. And my focus was really just on criminal law. And there were . . . . And having been a law enforcement officer, they would repeatedly kill pro–law enforcement legislation that I knew, in my view, the right position for safety of officers and that sort of thing. And it would be killed, really more for partisan political reasons. And that was frustrating. So actually, I . . . . after six months, I went to Rod Blonien, and I said, "Rod, I'm not the right person for you." And my friends said, "Oh, my gosh, you're giving up this tremendous opportunity. You're going to just go back and be nothing," you know. And . . . . But I wasn't . . . . I just didn't feel that I could do the best job, because it was frustrating. I'd go home to Sue, and I'd say, "Sue, you can't believe what happened today." And she said, "I'm sorry. I didn't have anything to do with it." I'm . . . . You know, I'm exaggerating, but I felt that I wasn't going to be an effective advocate.

One experience is I was in a committee hearing – Senate Judiciary – and the chair of the committee made a statement – a misstatement of law. And so . . . . You were talking about law. And so I corrected him. And he blew up. And I later learned that you never correct a legislator. Right or wrong, you just don't correct a legislator if you're a lobbyist, and certainly not in public. And I had to go around and talk to all the other members of the committee to apologize. And I'll never forget: Alan Sieroty just said, "Oh, kid, don't worry about it. You know, that's just So-and-So." But it was just an experience that I probably wasn't as well prepared for as I should have been, and I wasn't as well suited for. So I went and I said, "I'm sorry. I'm just not right for this job." And I thought, "Well, that's the rest for my upward mobility in the Attorney General's Office."

But, I don't know, I must have been doing ***something***okay, because Steve Merksamer, who was a special assistant, came to me and asked me to do special projects for him, which I did. And as a consequence I got to know the Attorney General, and I worked directly with the Attorney General on several projects. Became a huge fan of George Deukmejian – Attorney General Deukmejian. I liked the way he ran the office, liked the way he utilized the staff, I liked his philosophical positions on legislation. I was really impressed by the organization and the individuals in that organization. It was a really well-run office. And he cared about people, and he was one of the nicest people to work for. One of the smartest people to work for.

And so I became a big fan, and when he ran for Governor, I volunteered on the campaign and did correspondence and things of that nature. And then I had the good fortune to be asked by Steve Merksamer to work on the campaign as a paid person in the Policy Office. So I left in the summer of '82, and I was in the Policy Office, meeting with constituent groups, dealing with them on policy issues, helping to draft policy papers, and things of that nature. And then lo and behold our candidate won. And I . . . it was one . . . probably one of the most exciting nights of my life was that night in 1982 when he was running against Mayor Bradley. And I was talking to Steve the day before, and . . . 'cause it was . . . Bradley was ahead, but Duke kept getting closer. And the day before, Steve guaranteed me that we were going to eke out a win by less 54:32

than a percentage point based on all the latest internal polling. And I went down there and I was just so upbeat. We all went down to the Century Hotel down there, where the Governor . . . the Attorney General had a suite, and got down there and saw Mike Franchetti. You remember Mike – he later became Director of Finance. And I said, "How are things going?" and he said, "Well, the early polls don't look good." And so I'm . . . Sue was still getting dressed, and I went down to . . . . They had a room there for all the staff. And 8:00, Mervin Field comes on and predicts Bradley winning big by 8 points or something like that. And I was just devastated. I went back up like a hurt little puppy and said, "Sue, looks like we're going to lose." And she said, "Well," you know, "make the best out of the evening." So went back, and then things just started changing, and suddenly ABC comes on and projects Deukmejian as the winner. And then . . . . And you remember that night. It was like he was up 6,000 votes, and then he was up 2,000 votes, then he was up 10,000 votes. And finally I was exhausted at about three in the morning. And I think he was ahead by, you know, a very slim margin. And when we woke up the next morning at about 6:00 after about three hours of sleep, he had won by 60,000 votes.

George Nicholson: Let me wrap up this part of our discussion by going over something that just happened before the end of the election. The Attorney General had had a campaign consultant who misspoke.

Arthur Scotland: He . . .

George Nicholson: There's no point in going into the details.

Arthur Scotland: . . . did.

George Nicholson: But it was a hugely important and inappropriate statement. The Attorney General heard about it and immediately changed his staff. Disposed . . . fired that person, put together a new staff. And when I say this was a notable event, it was just days, really . . .

Arthur Scotland: It was.

George Nicholson: . . . before the election.

Arthur Scotland: It was an extraordinary political decision. It showed his integrity. It showed the Attorney General's integrity.

George Nicholson: That's the point.

Arthur Scotland: That it was the wrong thing to do, the wrong thing to say, and he would do the right thing.

George Nicholson: Even if it cost him the election.

Arthur Scotland: Exactly. 'Cause it was the right thing to do. And so he let this person go. And again, that just showed his integrity. And it turned out okay. 57:01

George Nicholson: I want to personalize this again; I can't help it. This is what I've both enjoyed and been inspired most by, in dealing with George (the Governor) and with Bob Puglia and with you and with Vance Raye, to name those – but Rod Blonien as well. Mike Franchetti, who had been Chief Deputy before he became Director of Finance. Mike . . . . Steve Merksamer – he was Special Assistant before he became Chief of Staff, I think it was. And others that had been deputy attorneys general and went to work for the Governor after his election. But there was one lesson – one exemplary stand – that he demanded. And he demanded it quietly and thoughtfully when he was a legislator, Attorney General, and Governor. And that is "do the right thing." And it was both spoken and unspoken. And you have laid it out clearly: how in the transformational life that you led from a child through all of the various stages to the point you went to work for the Governor, how important doing the right thing was . . .

Arthur Scotland: You know, and . . .

George Nicholson: . . . for him and for you.

Arthur Scotland: . . . it really came together in the Governor's Office. Not only the Governor but Steve Merksamer. Just how you approach decision making, The Governor was the most thorough individual and the most objective, and a person of integrity. So my position was Cabinet Secretary to the Governor, which is the liaison between the Chief of Staff and the Governor and the heads of all the state agencies and departments on administrative policy. If it had to do with legislative policy, that was Rod Blonien. And so we developed a process to get information. If an agency wanted to go forward with a new policy initiative, it had to seek approval to ensure that it was consistent with the Governor's policies and priorities. If the Governor wanted to go forward with an initiative, it would go through the Chief of Staff and me to the departments to ensure that it was implemented consistent with the policies and priorities. But before the Governor made these decisions, he had just a wonderful process of gathering information. And he used to call them "Scotty-Grams." That . . . . My nickname was Scotty. But the agencies would have to send over – and we'd developed a format – about what the proposal was, the details of the proposal, the fiscal consequences, the pros, the cons, who . . . you know, the views of proponents, the views of opponents. It was a very . . . . I'm giving it short shrift only because of time, but it was a very thorough document that would then go and be . . . with vetting, and then go through the Chief of Staff and to the Governor. And so, you know the Governor had the reputation of being the Iron Duke because if he made a decision he would stand by it. But if people only knew the thoroughness and the conscientiousness and the integrity that went into that decision making.

You know, one, maybe I'm speaking out of school that . . . but there was AB1. There was a bill, AB1, which was a very important bill about giving equal rights to gays, lesbians, and there was . . . it was a bill that came in, and the Governor decided would . . . you know, what . . . he wanted to know what . . . he was having to make a decision what position he would take as Governor – whether to sign it or veto it. And he 1:00:45

created a team, and I was given the task to argue the case in support of signing that bill, and another staff member was given the task of arguing the case to veto that bill. And we had a debate in the Governor's cabinet room after we gleaned all this information. And I did the debate for the "Yes," the other person did the debate for the "No." There was lots of discussion. And I mean, that's how . . . it was not just, you know, a political whim, I'm going to do this or that. It was a very thorough decision making. And that was really an eye-opening experience to me because my early experience with the legislative process was it was just a lot of political, you know, vote . . . . You know, I guess you can't switch votes legally, but you know how that goes. And it was . . . .

[tape ends]

David Knight: We are ready.

Arthur Scotland: So we had to cut to a new tape, so I just wanted to make sure that it really was a transformative time in my life, really, to see such a decision-making process with such integrity, such thoroughness. And I think it really . . . it was part of the growing. It was part of the maturing. It was part of . . . . I think it really transformed my views on how to go about bringing together individuals and making good, informed, wise decisions. Okay.

George Nicholson: The problem with what you've described so far is it's taken you decades of learning and accreting knowledge and humility, unselfishness. You had many great teachers, and the unfortunate thing is today – this is a personal view – there are not a lot of George Deukmejians around . . .

Arthur Scotland: Yeah.

George Nicholson: . . . as moral exemplars anywhere, in politics or out.

Arthur Scotland: He was special. Still is.

George Nicholson: Having said that, let me ask you just a couple of things. These Scotty-Grams, that truly was a euphemism. These were not telegrams . . .

Arthur Scotland: No.

George Nicholson: . . . or cryptic. These were . . .

Arthur Scotland: No, they were not. They were thorough.

George Nicholson: . . . in-depth reports.

Arthur Scotland: Yeah.

George Nicholson: And this word "Scotty-Gram" was both a word of good and bad. There are those that didn't like them so much, I'm sure. And those that did. But the one that considered 'em indispensible was the one that counted. ***[chuckles]***1:03:13

Arthur Scotland: That's right. Yeah.

George Nicholson: You are a fun-loving person; you've always played and had fun. You're known to this day for some practical joking and good humor. And you'll wear any costume, you'll dance any tune. And you'll even impersonate Elvis at a Christmas party. But just go back to your Cabinet Secretary days. What was a fun moment? What was a fun event that was just silly and colorful and fun that you shared with the Governor, if you can repeat it?

Arthur Scotland: Well, there are . . . . I don't know if you're talking about any particular one, but there were a number of fun events, actually, because we had a group of individuals . . . . We were all pretty young, and when I think back on that, you know, all in our early thirties. And honestly, Nick, when I'd walk over into the Governor's Office every day, just when I was walking up to the Capitol, it was just, "My gosh, I'm part of the Governor's Office process." I would almost pinch myself. But we had people that worked ***very*** hard. But we developed these wonderful friendships, and we had fun with each other, and there were a lot of practical jokes that went on in there.

For . . . . There are a couple of them that are just . . . that are legendary for those that are on the inside. But the deputy . . . one of the deputy chiefs of staff, Mitch Welk, was going to play a joke on an appointments secretary and went into his office and hid in his closet and was going to scare him or something like that. And, well, lo and behold the appointments secretary was bringing in a candidate for a judgeship to have an interview. And so he starts interviewing him, and the interview's going on and on and on. So Mitch is in the closet going, "I gotta get back to work." So Mitch suddenly just opens the door, says, "Hello, nice to see you," closes the door to the closet, and leaves. And I don't think that that judicial candidate ever got over that. He was wondering ***what***in the world was going on.

We also did a number of other things. I . . . . There were practical jokes about . . . on some correspondence, one of which backfired because . . . . The Governor was so thorough. I had done a draft of the letter for the Governor, and it was to a senator whose first name started with Jim. And so I took this letter in to . . . actually it was Mitch again, to ask for his views on if . . . you know, what he thought about the substance of the letter. And so he started reading it and he said, "Dear Bob"! And I said, "No, no, it should say Jim," you know. And he was just joking, you know. So I re-did the letter and sent it in to the Governor. But then I re-did a draft and put "Dear Bob" and gave it to Mitch, just as a joke. Well, the Governor was so thorough, he would take care on everything. So he wanted a few little changes made on this letter. So he sent it back to me, and so I made the changes on the letter, but forgetting that I had put "Dear Bob" instead of "Dear Jim." And the letter went out, and it was signed by the Governor, who looked at the changes but didn't see the "Bob." And it went to this senator, who got very offended. And so we had to go and talk to him and say it was a practical joke gone sour. And we finally, years later, told the Governor that. And you know what? He was not upset. He just laughed. And so there was a lot of funny 1:06:37

things that happened. I could go on – a lot of stories there. But we don't have time.

George Nicholson: While you were there, how . . . . As with most of your career changes, they come on you. When did it come on you that you thought you might like to be a judge? Was it then, or had it been at DOJ, or when along the line?

Arthur Scotland: You know, I don't know when it actually came upon me. Obviously, when you go to the Governor's Office, then the realization is that if you really wanted to do it, you'd have a pretty good chance. After all, you're an attorney that knows the Governor and you work with the Governor. And if he liked your work, then in all likelihood you'd get the nod. I didn't volunteer on the campaign for that purpose, and I didn't go to the Governor's Office for that purpose. But at the end . . . . As is often the case at the end of the first term, or whatever term you're in, it . . . there . . . it's good to have fresh perspectives. And so you move on. And so the logical thing for me, having been an appellate lawyer and having loved being a trial lawyer, that the logical thing for me would be to be appointed a judge. So I made it known to the Chief of Staff, and the Governor was kind enough to appoint me to the Sacramento County Superior Court.

George Nicholson: Let's stop at that point. I'd like to digress for a footnote and the heart of your life. Two different points. A footnote, if we could go back briefly. At some point, while you were in the D.A.'s Office, you get a wild hair. In some cases, it's kind of a practical joke; in others, it's a little more profound. I think you took a trip while you were at the D.A.'s Office that most people have never thought of taking. Why don't you describe that briefly?

Arthur Scotland: Well, I did the Bicentennial trip in 1976. My best friend from high school and I, we both liked motorcycles, and I had . . . . In 1975 I bought . . . . I've had a lot of motorcycles, but I bought a Honda 1000 Goldwing, and I got a sidecar, put the sidecar on it, and he had a Kawasaki 900, and we set out on a five-week journey around the United States. Twelve thousand miles, and . . . .

George Nicholson: How many?

Arthur Scotland: Twelve thousand miles, round trip.

George Nicholson: On a bike.

Arthur Scotland: All . . . . Yeah. All the way around, and . . . .

George Nicholson: Through all kinds of weather?

Arthur Scotland: Through all kinds of weather. Through the South, camping out. In a couple towns we stayed in fraternity houses that were my college fraternity. And just had great experiences. Survived the South. Actually, I found that people in the South – even though I'm a, you know, kind of a longer-haired . . . . I had a beard at the time, 1:09:27

you know, a guy with a leather jacket riding a motorcycle. We were treated wonderfully. In Oklahoma, lovely people, lovely experiences. And we were in Philadelphia for the Fourth of July, and been through Washington, D.C., and it was a . . . just a . . . . It was one of those experiences, you know, before I was married to Sue I was able to do that and get away from the office 'cause I'd built up a lot of vacation time. And it's one of those things that you'd hope everybody would have a chance to do if they could.

George Nicholson: Just wrap that part up – that footnote – with: What if anything during that trip did you learn or experience that you think contributed to your value or your contribution as a judge later?

Arthur Scotland: Well, there were several things. One, it was the kindness of others ***to*** us, really, that . . . . Here you're going along . . . . We were in Oklahoma, and we stopped at this little gas station, and this guy saw our license plates from California, asked where we were from, and we said "Sacramento" and he was . . . had been in the military and he used to be at a military base nearby, and he was asking which way we came through Oklahoma, and we told him, and he said, "Oh, you missed the prettiest part." He says, "I've got a cabin up on a lake, on these beautiful lakes. Okay, let me give you the keys; you just go up there and enjoy . . . ." And I'm thinking, "You don't know us from Adam." It was just the . . . . There was a genuine spirit of good will everywhere we went. And then to go through all of the Civil War sites, and to go to Washington, D.C. and, you know, having an interest in government – and this was before my days as . . . in the Attorney General's Office, but . . . . And just making it with a good friend. And we went, actually, through Calmar, Iowa, where my great-great-grandfather settled. And we went to the . . . Luther College, and they gave me a picture of him, because he was a trustee there, in a big fur coat – you know, this bearskin coat. And a rugged-looking guy. It was just the experiences. And to experience the different cultures, to . . . . It was just another form of education, really.

George Nicholson: When and how did you meet Sue?

Arthur Scotland: Sue was the quote "girl next door." I . . . . When I graduated from law school, I was living in a flat in Alkali Flat area of Sacramento. And a friend of mine had rented a flat in McKinley Park, and he was going to go practice law down south, and he said, "Hey, I've got this flat; do you want to sublet it for the rest of my term?" And I said, "Sure," you know, 'cause it was a nicer area. And so I went there. And Sue lived next door. And she had been married and divorced and had a kid, Josh – three years old. And so we got to know each other, and I met her, and we chatted, and so we started dating.

George Nicholson: Got married.

Arthur Scotland: Got married.

George Nicholson: And Josh has been your son. 1:12:43

Arthur Scotland: Yeah, he has. We had . . . . It was very nice, because his dad, Ken, has always been very open. We're good friends – both sides of the family. And never had a problem with Josh calling me "Dad." And so I've basically been Dad to him since he was four years old.

George Nicholson: You and Sue are still together.

Arthur Scotland: We are. She's . . .

George Nicholson: And you . . . .

Arthur Scotland: . . . put up with me for all these years.

George Nicholson: You and she make a trip to England most summers to visit her family?

Arthur Scotland: We do. She was an . . . . Her mom was an English war bride; her dad was a serviceman in World War II. And met her at a dance – met Iris at a dance and courted her and married her there. Sue was born there. And then was Sue was one year old, she and her mom came to the States. Her dad had already been shipped back. And she sailed on a service ship with 5,000 English war brides and babies to New York. And fortunately for them, Bill showed up and picked them up. Some guys didn't pick up . . . . The woman had left family . . . . I mean, could you imagine? You're 23 years old. She's 23 years old, one-year-old baby, leaves family, friends, everything behind, to go to the New World. And she was embraced by the family. It was a . . . . They were struggling; they didn't have a lot of money. They moved into a house. Her grandmother had a two-bedroom, one-bath house, and her grandmother lived in this house with her . . . with two daughters, neither of whom had married. And then in moves Bill and Iris and Sue. And then even Phil gets born. And so they . . . all these people are living in a two-bedroom, one-bath house, 'cause you just couldn't afford anything else. And they lived there for a number of years and then finally bought a house and moved out to another area.

George Nicholson: When you go to England . . . . When you went the first time, were you accepted into her family?

Arthur Scotland: Oh, absolutely! Yeah, it's a wonderful family and it's . . . .

George Nicholson: Do you enjoy your trips to England?

Arthur Scotland: Absolutely. Look forward to it. We just got back from . . . in October . . .

George Nicholson: You took your usual trip.

Arthur Scotland: . . . from a wedding. Yeah. We went to a wedding of a daughter of one of the cousins.

George Nicholson: Are you becoming more familiar with England?

Arthur Scotland: I love England. I . . . . Actually, Sue and I at one point said – more me – "Wouldn't it be interesting to live in England, and then you can 1:14:50

do traveling . . .” We like to travel, so you’d be close to Europe and that sort of thing. And it was a combination of the weather and here . . . . All our friends, our family, you know, most of our family on this side of the Pond, so to speak, are here. And we just decided we didn’t want to leave Sacramento. We like Sacramento.

George Nicholson: Have you been to the Inns in London yet?

Arthur Scotland: I’ve never been to . . . . I’ve been in the buildings, but I’ve never actually attended an Inn of Court function there.

George Nicholson: It’s surprising, to some extent, you haven’t been more involved in that on one of your trips because of your sustained and important participation in the American Inns of Court. I suspect before you’re through, in your trips to England, you’ll see more of that. We’ll get to our American Inn – the Anthony M. Kennedy American Inn of Court – shortly.

Arthur Scotland: Yeah, it’s really . . . . It’s just a time allocation, ’cause we’re there, really, to see family . . .

George Nicholson: Yeah.

Arthur Scotland: . . . and not really do sightseeing, so . . . .

George Nicholson: But you may retire one of these days.

Arthur Scotland: I think I did, but it hasn’t been working out that way yet.

George Nicholson: What about Josh? Where is Josh living these days?

Arthur Scotland: Josh lives in Denver with his wife, Kerri, and our three grandkids. Leina is going to be 10 – Madeleina will be 10 this month, actually. And Grant, who’ll be 7. And a brand-new baby about five months old now, Brodie. So Josh is doing fine. They’re doing fine.

George Nicholson: You and I talk about family, and particularly grandchildren. And when you talk about getting emotional, I think – as you have, talking about your family there – it’s pretty easy to push you to the edge talking about your grandkids.

Arthur Scotland: Oh, yeah, I choke up easily. We just had a wonderful visit for Thanksgiving, and our granddaughter is an early riser, so one of the great fun things is she would come into our bedroom and want to get in bed with us, and then she’d just chat away and we’d just talk about all sorts of things, and it was just . . . . You’re a grandparent; you know how much fun it is.

We also, actually, have another grandchild in a sense. Maria Munoz was her name; it’s now Maria Horner. She . . . . Josh befriended her in high school, and Maria is just an amazing success story. Maria was . . . lived in a tough area and . . . with a tough family. And she was kind of cusp-gang when we first met her. She had the fan – you know, the 1:17:23

Hispanic fan. And Josh . . . . She's just . . . had a delightful personality and so they became friends. They met in a gym class. And so actually she was instrumental . . . . It was a . . . . McClatchy High had become an inner-city school, and there was some . . . not actual gang activity, but cusp-gang activity. And she told all the kids – the tough guys – that they'd better leave Josh alone or she'd kick their you-know-what. And so he did get a pass from any of that type of activity. And we maintained a friendship with her and actually became Mom and Dad to her, because of her difficult family situation. And so we are Mom and Dad to this day and we've taken her under our wing as our daughter. And she has a daughter, Isabella, so we consider her a granddaughter as well. And fortunately they live here in Sacramento, so we get to see them a lot.

George Nicholson: Back to the bench. You get appointed to the superior court when . . . what year?

Arthur Scotland: 1987.

George Nicholson: And you . . your assignment was what?

Arthur Scotland: Family law. I never practiced family law. Didn't know anything about family law.

George Nicholson: That's kind of the way it works in Sacramento . . .

Arthur Scotland: Yeah.

George Nicholson: . . . Superior Court.

Arthur Scotland: Yeah, exactly.

George Nicholson: But you met someone there – or renewed an acquaintance with someone in family law court.

Arthur Scotland: I did.

George Nicholson: And have renewed it once again here. Who was that?

Arthur Scotland: Absolutely. Well, actually, there were two. Bill Ridgeway was one. Bill was a deputy D.A. that I highly respected, and everybody respected him. Just a great, great guy. And he was in family law. And then there . . . Ron Robie was in family law. And I had not known Ron well. I knew ***of*** him, but we became fast friends. And to this day . . . . Unfortunately, Bill passed away far too early from cancer, from a brain tumor. But Ron and I have been like this ***[crossed fingers]*** since 1987. And I had the good fortune of working with him on the superior court, and then I left in '89 because there were three new positions created at this court. I wanted to stay a trial judge for a while, but I thought, "Life is timing," and Governor Deukmejian was still Governor, and I really ultimately wanted to be an appellate judge. And I thought if those three positions get filled, and it's a relatively young court, there might not be another one coming up for a while. So I applied, and I got appointed. But otherwise I would have enjoyed spending more time on the superior court. But we 1:20:00

became ***very*** close friends and remain close friends to this day. And the family law ***[inaudible]*** And I just worked real hard to learn it, and I enjoyed it. I really . . . . You have so much discretion as a judge in family law. And particularly working with the . . . those other two folks. And I have great respect for the family law bar. It's a tough practice, and you have to know a lot about taxes and other things. And so, you know, routinely you're dealing with dividing up community assets that could be in the millions of dollars. And so I enjoyed that assignment. But then the PJ wanted me to go to criminal, which was my background, after about a year. And so I did the criminal assignment, and I had a lot of really great cases. A lot of big murder cases.

George Nicholson: When you say "assignment," do you mean trials?

Arthur Scotland: Trials. Criminal trials.

George Nicholson: There is a relatively new practice in the municipal . . . former municipal . . . superior courts. It's mentor judges. Family law may have been different, but did you have a mentor judge when you first were assigned to superior court?

Arthur Scotland: I did. I had a mentor judge.

George Nicholson: And who was it?

Arthur Scotland: Allen Fields. Interesting fellow.

George Nicholson: The judge who left and went somewhere exotic, I think.

Arthur Scotland: Yeah, he went to the Marshall Islands to be Chief Justice of the Marshall Islands. In those days, it was really . . . pretty much you were on your own. I . . . . The mentor judge, in those days, I don't think is like the mentor judge now. I mean, I would . . . he would not contact me very often. That's not to say that was the ***wrong***thing, but . . . . And I didn't contact him because I got assigned to family law and my two mentor judges really were Bill Ridgeway and Ron Robie.

George Nicholson: Yeah.

Arthur Scotland: Yeah.

George Nicholson: You got appointed – or nominated, I should say – to the Court of Appeal. And you went through the so-called "Jenny" Commission and then ultimately the Commission on Judicial Appointments. And ultimately, obviously, once you became PJ you served on the Commission on . . .

Arthur Scotland: I did.

George Nicholson: . . . Judicial Appointments.

Arthur Scotland: Yeah. 1:22:06

George Nicholson: But in that first instance when you went before it, did you . . . were there any parts of that hearing or experience that you particularly recall – favorably or unfavorably?

Arthur Scotland: Oh, I can recall it all. I . . . . First is the fact that Malcolm Lucas was the Chief Justice. Bob Puglia, my hero – the person I was looking forward to working with – was on that, and then John Van De Kamp was on the committee. And I had the good fortune of having some wonderful people testify on my behalf, one of whom was lamenting the fact that I was such a great trial judge that they would miss me at the Court of Appeal. And the Chief Justice joked. He says, "Well, maybe we ought to not confirm him so he can continue to serve you well in the trial court," or something like that. And . . . . But it was . . . . I had been found well qualified, and so – by the Jenny Commission – so there really wasn't any type of a problem and it was pretty smooth sailing. But it was just . . . . It's . . . . I'm not one who's into pomp and circumstance, and I . . . it makes me feel a little awkward. In fact, it makes me feel awkward with all of the superlatives that you're saying here. And so to sit there and to hear such nice things being said about you by the people that are testifying, and to later read the Attorney General's report, I . . . it was a pretty nice feeling.

George Nicholson: Was your family able to attend?

Arthur Scotland: Well, and it was, and that was the exciting thing. My . . . . I gave my parents some fits when I was a young kid because I was pretty rambunctious. And to have my mom and dad there, and to have my godmother who was like a second mom to me. And they were all there. And they were bustin' their buttons, and . . . .

George Nicholson: When you say you're uncomfortable with pomp and circumstance . . . . The reason I ask that, it's obvious those hearings serve a public function but they also serve a personal or a family function.

Arthur Scotland: Right.

George Nicholson: It's kind of like when we talk to new law school bar passers, and we always introduce or tell them what they owe their parents and . . .

Arthur Scotland: Right.

George Nicholson: . . . grandparents, aunts and uncles. And those commission hearings are a chance for your families to enjoy what has happened to their child.

Arthur Scotland: Yeah.

George Nicholson: Or whatever . . .

Arthur Scotland: It's true.

George Nicholson: . . . relationship they have. I've always thought they were important for that reason, and I can't imagine anything that your mom and 1:24:38

dad would have enjoyed more than sitting through that and hearing what those people had to say, Scotty.

Arthur Scotland: And they were there at my swearing-in ceremony as a superior court judge. But I'm the type of person . . . . I asked to have a roast when I was sworn in as a superior court judge rather than . . . I didn't want all this fancy pomp and circumstance. So I think probably my parents . . .

George Nicholson: Or a little discomfort.

Arthur Scotland: . . . enjoyed the more formal one . . .

George Nicholson: Yeah. I'm sure they did, too.

Arthur Scotland: . . . than the roast when I was a trial judge. ***[laughing]***

George Nicholson: When you first arrived at the Third District – and we'll get into this more later – you arrived not in ***this*** courtroom but in the real courtroom.

Arthur Scotland: Yes.

George Nicholson: The Stanley Mosk Library and Courts Building, where that court had been since 1927 and will be again. And we'll get into that.

Arthur Scotland: Right.

George Nicholson: But what was it that first struck you, now that you were going to be on the other side of the bench?

Arthur Scotland: Well, I think it's the same thing that struck me when I became a trial judge: the awesome responsibility that you have as a judge. You are dealing with issues that affect people's lives. And the importance of getting it right and working hard. So when I got into family law, I worked really hard to try to get it right. And coming here, what strikes you is now you're not only just one judge in control of ***your*** courtroom, you are dealing with other judges to try to reach a collective result. And the thing that was so helpful to me and so meaningful to me is to have Bob Puglia as the presiding judge. When I got appointed to the superior court, that's the person I asked to . . . . I came over to have him swear me in. And he graciously agreed to do that. In fact, Dave Hall was his staff attorney back then, and he's the one that took the picture that you've seen of Bob – young Bob – swearing me in. And . . . . 'Cause in those days you didn't bring your parents when you . . . for that. It wasn't the same . . . .

George Nicholson: Yeah.

Arthur Scotland: You know, I just hustled over, got sworn in, and went over to work. And . . . . But to come in and work with a distinguished group . . . . And also there were characters back then, I have to tell you. There were . . . . It was different. We had some people like Hugh Evans and others that were characters – Frances Newell Carr – 1:26:58

George Nicholson: Yeah.

Arthur Scotland: . . . that brought life experiences. But Bob Puglia was the glue. Bob Puglia was the one that had created an incredible work environment, not only on how cases were processed and assigned and how the court worked together and worked on . . . . But also he created the most collegial working environment, other than the Governor's Office, that I've ever worked in. And he set the tone. And he had a wonderful sense of humor, and a gleam in his eye, to . . . . One of the high points was when we would circulate memoranda – you know, case memoranda. His margin notes, he would write some of the funniest things. And it was just a wonderful experience.

George Nicholson: Well, it . . . . From time to time, he would see some of us deviate from what he considered the norm, and he would pen a "Rule to Live By."

Arthur Scotland: Oh, the "Rules to Live By." Definitely.

George Nicholson: And – I think it was you – when he retired, you compiled all of his rules and had 'em bound, and he autographed it.

Arthur Scotland: Right.

George Nicholson: And you've left it for the court.

Arthur Scotland: Right.

George Nicholson: Those rules – "pleaded" instead of "pled" –

Arthur Scotland: Right ***[laughing.]***

George Nicholson: He was a stickler. But the interesting thing as a spectator of both you and Bob – your experience with the sisters and the English language and the care with which they literally forced you to devote to English – Puglia had that same background.

Arthur Scotland: Far better than I. There were some times I would read his opinions and I'd have to honestly say I didn't know the word and so I'd have to go to the dictionary. But he could use the English language in the most impressive way. And his writing – you knew it was Bob Puglia. It was Bob that was writing this. And it was extraordinary. And it . . . there's lasting . . . . In the "Rules to Live By," they were done . . . . If you read the "Rules to Live By" – and they're in our library – they are making a point about the correct use of grammar but they are done in the funniest way. They're humorous, but they're making a point. And so Bob could always make a point but do it in the most humorous way.

For example, you know, I talked about characters. We had a situation where the Supreme Court recused itself because ***Carma Developers v. Marathon*** . . . . And the Supreme Court was renting space in the Marathon Plaza. And so it designated the Third Appellate District as the Supreme Court to hear this case. And they drew names out of a box, and I was one, although I was a real young justice then. And 1:29:38

my name was pulled out of the box, and Bob's name was pulled, so he was the Acting Chief of Staff . . . Chief Justice, excuse me. And Keith Sparks was on it, I was on it, Francis Newell Carr was on it. Well, at any rate, we're conferencing and talking about the case. And Frances was an extraordinary individual that had overcome . . . . Her life story is a fascinating story. I hope she was recorded; maybe she died too soon for that, unfortunately. But we're in this conference, and she . . . Bob says something, and she just goes off. And she says, "Bob, you are so conservative! All you care about are corporations!" And she's just . . . . And I'm a brand-new justice. I'm sitting there going, "Oh, my gosh." And she was just lit up. And Bob got this smile, and he said, "Frances, flattery will get you everywhere." And she laughed, we all laughed, and then we just went on. We ended up having a unanimous opinion. But that's the way he could defuse things. There were . . . . You know, I talked about characters. There were some . . . . There's some courthouse lore about the Law Day Journal and Bob defusing an interesting situation that occurred there.

And Frances defused situations. We had a situation where two of the justices . . . during oral argument there was a dustup, and that's another story perhaps . . .

George Nicholson: Yeah.

Arthur Scotland: . . . but Frances settled everybody down.

George Nicholson: Yeah. All the court . . . . All the members of the court came from somewhere . . . . At that point, when you came on the court, Bob Puglia was appointed by Reagan.

Arthur Scotland: Correct.

George Nicholson: Cole Blease was appointed by Jerry Brown, as was Keith Sparks, as I recall, and . . .

Arthur Scotland: Rick Sims.

George Nicholson: . . . perhaps Rick Sims. There were Deukmejian appointees and ultimately Pete Wilson appointees. But the point is, they were all serving together.

Arthur Scotland: Yeah.

George Nicholson: There was a . . . .

Arthur Scotland: Five different governors. At times there were . . .

George Nicholson: Yeah.

Arthur Scotland: . . . five different governors at once.

George Nicholson: All at the same time. And I think it's fair to say – I'd like your impression – but members of this court have always gotten along. 1:31:44

Arthur Scotland: Absolutely. And not only were they appointed by five different governors, but you had justices of different philosophical, political views.

George Nicholson: Yeah.

Arthur Scotland: But political partisanship – political ***[inaudible]***– never got into the decision-making process. We all cared about the law and applied the law and got along exceptionally well. But again, Bob was the glue. And Bob was the brilliant intellect. Bob was the guy you could go to. And I'll never forget, we had a case where it . . . . In a letter after we had issued an opinion, this pro per litigant really was contemptuous, and . . . . I think it was in a Petition for Rehearing. And I went to Bob to see, you know, what's his advice on how we should deal with this. Should we just let it go and let him have said these very contemptuous things like we're dishonest and da da da da da? And he said, "I think you ought to address it. And actually there's a case right on point." He says, "You know, it's a case, I remember it. About 20 years ago I had this case in the superior court." And he had not thought about it for 20 years. And he said, "And it's ***People v. So and So***." He says, "And I think it's 158 Cal. or something like that." And he walks over and he pulls this volume off the shelf, blows off the dust, and looks in the index. He couldn't remember the page number; usually he could remember the page number. Lo and behold, there was the case, and it was right on point. I mean, that was the type of mind he had: everything that went in, stayed in. And so he was a great resource as well as being the glue that held the court together.

George Nicholson: Was that an extraordinary experience, or did he from time to time do that out of the blue?

Arthur Scotland: Oh, he did that all the time. And writs. You were there; you know that. He'd be saying, "Oh, that's ***People v. [inaudible]***, 15 Cal.3rd da da da da da." And, yeah. And then he'd grin, you know. We'd say, "Oh, Bob, you're just showing off," and he'd get a big grin. But he knew it all.

George Nicholson: I regret one thing for our interview, Scotty. It's impossible to capture the full flavor and scope of the 20 years-plus we've all shared here, and in particular that overlap with Puglia, who was our court's PJ for a quarter century. But I think you're capturing a lot of it.

There are six appellate districts in the state. There were three originally; we were one of the three originals. There are now six. Some of them are divided into divisions. And we, and other districts, are not. What does it mean to be divided into divisions structurally, and what does it mean in terms of the way the judges work together?

Arthur Scotland: Well, I'm so glad that we are the largest single-division Court of Appeal in the state. For a time there were divisions that had only three justices in those divisions. So you're just dealing . . . . Every decision is made with just the same two other justices. And there might be some value to that; you certainly get to know each other and . . . . But to me, to have 11 justices – it started out, when I was here, 10 initially but then 1:35:00

11 – we are constantly sitting on different panels, and so you're constantly getting insights and the views of a greater variety of individuals. I think it's healthier to be a single division Court of Appeal than to have multiple divisions. I'm just so happy that in my life . . . some of my life has just been very fortuitous, and it's . . . part of that fortuity is coming to the Third Appellate District – to be with Bob, my hero, but also to be on a single-division Court of Appeal.

George Nicholson: Well, when you're on a court that has no divisions – demarcations – and you work with all of the 11 on a rotating basis every single year, it breeds a professionalism and a trust and a friendship that cuts across the entire court.

Arthur Scotland: Exactly.

George Nicholson: And I'm just wondering, once you got here . . . . You didn't know everybody on this court well when you first got here.

Arthur Scotland: Right. I knew Fred Marler pretty well; I tried a case before him when he was a trial judge. And I knew Bob. I knew the others, having ***appeared*** before them, but I really didn't know them personally.

George Nicholson: But did you get to know them once you got here?

Arthur Scotland: Absolutely. It's a family. This . . . . The Third Appellate District is a family.

George Nicholson: And once you got to know them, it really becomes one of those things where we know about the families. And one of the sad things that have occurred for us is that we have, from time to time, had to bury one of our colleagues.

Arthur Scotland: Yeah.

George Nicholson: And it's just a duty that we have, and others will have for us. But it's amazing that once you serve on this court, how close you become and how loyal and close you stay, even when you retire. One of our justices, Rod Davis, retired and is now an Episcopalian priest. And he played a role in one of our tribute dinners recently – the one for Vance Raye when he became presiding judge. What was his role?

Arthur Scotland: Well, he gave the invocation at the event.

George Nicholson: And do you recall that he is an assistant pastor at his church for a reason? Do you remember . . . . Did you have that conversation with him?

Arthur Scotland: As . . . . He explained it that he had long ago felt that that was – before he actually went into the law – that that was a calling of his. And . . . . But after he went to the law, I guess – into the law – he chose that. But at some point, he was chatting with a priest or something and the priest said, "Well, you know, do it," or something. I don't know the details of it. But he decided while he was serving here to begin training. And 1:37:53

that was a very difficult task, for him to do the full workload here and then be training and going through all of that that he had to . . . .

George Nicholson: To the school. And at one point he got into a bicycle wreck.

Arthur Scotland: Oh, yes!

George Nicholson: He was hit on his bike and severely injured. And the thing that was amazing about him – and reflects you and the other members of the court – when he was injured he was home and surgery couldn't fix his back. They said, "You're just going to have to let it grow together." So two days later he's back at work. And he said to all of us, "I can hurt at home or I can hurt here."

Arthur Scotland: Yeah, exactly.

George Nicholson: And so when he was a . . . only an appellate judge, or an appellate judge at divinity school, or an appellate judge wrapping up his learning as a priest, and injured, he was here with us and working with us. And that's the way everybody around here has been. And a lot of that devotion is the leadership we've had from the three presiding judges I indicated. Because you've never missed any work that I know of because of injuries and illnesses. I don't think you have, have you?

Arthur Scotland: No, I had some surgery that they said I should be out about three months and I was back in a week and a half.

George Nicholson: That's what I thought. Well, it's a trait here, but it also is something that we learn from one another, particularly our presiding judges. Recalling your days as a Deputy A.G. and your arguments in this courtroom, what were the feelings that very first time you went out there and the Department of Justice first appeared in the first criminal case? Was it just another case, or did you have a particularly nostalgic moment?

Arthur Scotland: You know, I must confess I don't even remember the case.

George Nicholson: Really.

Arthur Scotland: But I do remember walking into the courtroom, and I do – that magnificent courtroom – and I do remember Bob Puglia was on the panel, and it was a thrill to instead of, you know, say, "Ready for the people," you'd say, "Ready for the respondent." Actually, I made a mistake one time. We were the appellant and I got up and I said, "Ready for the res . . res . . . repellant," is what I said. I started to say "respondent"; I said, "Ready for the repellant." ***[laughs]*** And the guy got up and I said, "Your Honors, I'm sorry; I hope my argument does not repel you." But it was . . . . What was fun about it was having Bob on that panel and asking tough questions and standing, you know, toe-to-toe with three justices. I loved it.

George Nicholson: What is the difference . . . . What do the two terms mean and what is the difference between a "hot bench" and a "cold bench"? 1:40:26

Arthur Scotland: Well, the Third Appellate District is known as a hot bench. And a hot bench is one that has done a lot of work on the case, knows the case well, probably even has a tentative opinion about the case, so that they really know the issues well and ask a lot of questions. A cold bench might be a bench . . . . It's simply a bench that doesn't ask very many questions. It might very . . . be very well versed in the issues. But in the old days, when I first appeared, usually there would be questioning only by one justice because they hadn't worked the cases up in advance. But then the 90-day rule came in, so a lot of the work was done before oral argument. That's not to mean that the court had made up its mind and would never change its mind; we, on a number of occasions, changed our mind after oral argument. But the good thing about it is that you really are familiar with the case, so you know the questions to ask. If you have a question . . . . If you want to disabuse yourself of a notion that you might have, you can ask a focused question. And all I can tell you is, every appellate lawyer would rather have a hot bench. You don't want to put all that time in to prepare for oral argument and then just have three justices just sitting there and looking at you or not looking at you and not saying a thing. So I've heard from any number of attorneys that they appreciate the fact that our court is a hot bench and that we ask questions of both sides.

George Nicholson: In terms of preparing for oral argument as a court and preparing an opinion and all of that, there is the collaboration you spoke of . . .

Arthur Scotland: Right.

George Nicholson: . . . between three judges. But when it comes time for oral argument, and despite the fact that we're all conversant – substantially conversant, but to varying degrees on the facts and the law for that case – and we may not have touched it for three or four months or more before we go to oral argument, . . .

Arthur Scotland: Right.

George Nicholson: . . . I think it's interesting that our court is not only conversant generally but is conversant that day – the day of argument. What . . . .

Arthur Scotland: And detail-oriented, too. Yeah.

George Nicholson: I don't think – I'll say for myself – I've never seen anyone more prepared than you for oral argument on the bench. But I'm curious – not to compliment you for it, but to ask you – how it is that you prepare yourself for a case at oral argument, civil or criminal, not having seen it for months until it gets to be oral argument week.

Arthur Scotland: Well, I . . . obviously I would read the proposed opinion again, and sometimes I would read the briefs again before oral . . . . Not all the time; I must say not all the time. But then I would make notes. And so I would have . . . . I never formed questions. I wouldn't come in with specific questions to ask. But I would make notes. And my questions, I know, were where I felt there was a need for additional inquiry. But I didn't have this precise question. It would kind of just come, as 1:43:18

the argument is made. And then one of the things about . . . . If you have questions written up, a list of questions, that's a failing of some young trial attorneys; they're thinking more about their next question than they are about the answer and where that leads them. And so, you know, we had fun. And Bob Puglia was a master at asking questions, taking someone down a path of no return. ***[laughs]*** And the person not realizing that that was being done at the time. And you don't do that for sport, but you do it for . . . to help really understand the issue.

George Nicholson: Well, Puglia was different than you in one respect. You are more apt to confuse counsel, in this sense: you ask probing questions of both sides, and for some of us the lawyers will leave the courtroom pretty well convinced even if they don't know where we're coming from in many instances. I say "confuse." It's a loaded word, but it isn't meant to be. You simply are so even-handed in your approach in some cases, there's nobody in the courtroom who could possibly tell where you were coming from other than you were extremely interested and fully informed.

Arthur Scotland: And that was . . . .

George Nicholson: Is that a fair observation?

Arthur Scotland: Yeah, and . . . . That's a fair observation, and I think it's an intentional . . . it was an intentional . . . . I felt it was always important to ask a question of both sides, and ask a focused question – perhaps a difficult question – of both sides. So one, you make sure you've got it right, but two, you give the appearance that you haven't made up your mind ahead of time. And it's true – we haven't made up our minds. We have a tentative opinion, but we haven't perfectly made up our minds. So it's nice to hear that, actually. I take that as a nice compliment.

George Nicholson: Well, it . . .

Arthur Scotland: Thank you.

George Nicholson: . . . is meant as a compliment. You and I shared another case. I'm sure you won't remember it, but I want to try to refresh your memory. It was a case in which I was the author, and we had tentatively concluded on a certain result. And we go out to oral argument, and the appellant stands up and says, "I didn't ask for argument. I have no idea why my opponent did; he prevailed below. So I think I'll sit down, with your permission." And you were the PJ, and we sat down . . . he sat down. And this other lawyer gets up – it was a huge case, involving a lot of money – gets up, and he had some pet peeves that the trial juror . . . judge had quote unquote "mistaken" that he wanted to be heard on. And before this man had gotten through, he had raised questions that his opponent hadn't thought of, and provoked the panel that we went back to the drawing board and came to another conclusion.

Arthur Scotland: Nick, I remember that case well. That's a case where the respondent asked for . . . . The respondent would have won on the tentative opinion.

George Nicholson: If he'd have waived argument. 1:46:17

Arthur Scotland: If he had waived argument. He came and he started and suddenly light bulbs started going on and questions started being raised, and we walked out of that courtroom and said, "I think we got it wrong." And we went the other way. And he ***lost***. Which goes to show you the open-mindedness of the judges and the willing to revisit things. And it also shows you a terrible tactical error on his part.

George Nicholson: It does.

Arthur Scotland: Yeah.

George Nicholson: But it's amazing what we learn on both sides. We, more than lawyers – because we're there every week, every month, learning from each of these mistakes. But that was an amazing shared experience.

Arthur Scotland: Yeah. And I've been on cases . . . . I'm probably the only justice that's published an opinion going one way, and then granted rehearing and published an opinion going the other way, when in a Petition for Rehearing suddenly a point was made in a better way than it was before and it was a significant factual . . . how you interpreted a particular factual context. And do . . . . It's ***In re Nichols***, and so we published an opinion going one way, published an opinion going the other after we would . . . .

George Nicholson: Reconsider and reflect.

Arthur Scotland: Reconsider. Yeah.

George Nicholson: Yeah. Well, to wrap up this part and then get into some specific categories of topics, you presided at the retirement of Bob Puglia in 1998 and became PJ. You went through the Jenny Commission again, you went through the Commission on Judicial Appointments, and you were confirmed. Who was your panel on the commission at that time, if you recall?

Arthur Scotland: It was Chief Justice George, Cole Blease was the acting presiding judge, and Dan Lungren was the Attorney General.

George Nicholson: Yeah. And was it similarly stuffy as the first one had been?

Arthur Scotland: No, it was a lot of fun, in part because Bob Puglia testified on my behalf. And . . . .

George Nicholson: No higher honor, really.

Arthur Scotland: True. And the Attorney General was not stuffy in that hearing, and he was joking and making comments about Bob Puglia. There was . . . . During the middle of the hearing, there was some noise – some banging. And so he joked with Bob about their carving the Mr. Rushmore of Bob Puglia on the outside of the Library and Courts Building. And then the Chief Justice, who I had known well because I served with him 1:48:54

on the Judicial Council, was very kind in his remarks. So it was . . . . And the people who testified.

George Nicholson: It was a love-fest.

Arthur Scotland: It was very nice.

George Nicholson: Yeah.

Arthur Scotland: Yeah.

George Nicholson: Was your family, again, able to be there?

Arthur Scotland: Oh, yes. Yeah, yeah.

George Nicholson: These are really wonderful things, Scotty, having your family be able to share them . . .

Arthur Scotland: That's for sure.

George Nicholson: . . . as uncomfortable as they may make you personally.

Arthur Scotland: That was . . . .

George Nicholson: And . . . .

Arthur Scotland: Those are special moments.

George Nicholson: It's something . . . . It's special moments. There's a unique thing – this'll be the final train on this flow – there's a unique aspect of a district-less . . . a division-less district, appellate district. And that is, there's a more complicated role that the presiding justice plays. What is that, what's it called, and how is it different than a "divisioned" district?

Arthur Scotland: Right. Well, in divisions you have a presiding justice; in a one-divisioned court you have the administrative presiding justice. And the administrative presiding justice, if you're in a single-division court, that's the presiding justice. If you're in a multi-division court, it's a . . . one of those presiding justices that's selected by the Chief Justice to be the administrative presiding justice of that particular district. And the administrative presiding justice has a lot of functions other than just doing the cases: budget, personnel, court policy (although court policy is made by the justices as a whole, but you try to be the leader and recommend things and bring people together on those sorts of things). A lot of the routine orders are done. The presiding justice tends to sit a little bit more frequently on writs and that sort of thing, just by tradition; that's the way Bob did it. There are a number of differences; they're just added responsibilities.

George Nicholson: And until very recently, no difference in pay. You were truly more equal among equals.

Arthur Scotland: Right. 1:50:58

George Nicholson: When you became PJ, as I recall – and I'm prepared to argue it if we have to –

Arthur Scotland: Okay.

George Nicholson: Bob Puglia didn't take a lighter workload despite these additional administrative duties, and as far as I know you didn't, either. You say occasionally you sit on writ conferences more. Writ conferences are where we consider, with our lawyers, emergency writs every Thursday.

Arthur Scotland: Right.

George Nicholson: And Puglia sat more often . . .

Arthur Scotland: Yep.

George Nicholson: . . . and you sat more often. And it wasn't a prerogative that you took just because of your position. You did this for a reason, and so did he: that is, overseeing the district and knowing more of what's going on.

Arthur Scotland: What's going on, yeah.

George Nicholson: At least that's what I understand.

Arthur Scotland: That's true. Mm hmm.

George Nicholson: And it clearly served that function for both of you because it's been remarkable seeing how well you know the district. Our district is the largest, isn't it, in terms of . . . ?

Arthur Scotland: It's the largest in terms of geography. It's the 23 . . . 40 percent of California counties are in ours, so the largest in number of counties, the largest in geographic area, going from the Oregon border, down the Nevada border, down to Mono County where the ski district . . . . Every major ski area is in our . . . . So we're the "assumption of the risk district" of California.

George Nicholson: Well, with so ***many*** districts – L.A., Los Angeles, is obviously a bigger district, but we have so many presiding judges and other courts to deal with, . . .

Arthur Scotland: Right.

George Nicholson: . . . developing an appellate record and making sure things get done on time has been a continuing problem for you and for Bob and now for Vance. And so that is a complication that other districts may not have to deal with. This, I think, has led you to know more people in more counties here than probably, at times, you wanted to. But . . .

Arthur Scotland: That and our outreach program.

George Nicholson: . . . it let your circle of friends build, didn't it? 1:52:48

Arthur Scotland: Yeah, it's true. It's true. And I would have, periodically, meetings with clerks – trial court clerks and PJs – if there were issues about creation of records and that sort of thing, and how we can deal with them and get things more promptly.

George Nicholson: Yeah. The administrative presiding judge is, regardless of more equal among equals, in charge. Bears the burdens of administration, budget, personnel, and all that.

Arthur Scotland: Right.

George Nicholson: And there would be the opportunity for a certain amount of ego to come into play and cause divisions or discomfort with your colleagues. With Bob Puglia, with you, and so far with Vance – because although you've been retired for almost a year you've never left the building – have you ever seen anything like that either way, either the PJ exerting ego or anyone being disconcerted about it on our court?

Arthur Scotland: Oh, you know, not on our court. No. ***[laughs]***

George Nicholson: I'm not . . . . Just speaking for our court.

Arthur Scotland: I take the Fifth Amendment on other courts.

George Nicholson: I know.

Arthur Scotland: But no, not on our court.

George Nicholson: I won't bring it up. But in terms of our court, I think one of the things – I'd like to wrap up this section with you explaining your view on this – I think one of the things that people are amazed about our court, particularly the bar, and the bench, elsewhere throughout our district and throughout the state, is how well we all get along together.

Arthur Scotland: We do.

George Nicholson: What do you really attribute that to – your personal perceptions of why that's true.

Arthur Scotland: I think it is a culture. First of all, it's a mutual respect. And it's the types of people that are here. And frankly, our court's different in a certain way because there are a lot of justices who worked in other government entities and did other government-type work. And we always have people from the Governor's Office and legal affairs generally; that's a logical place for a number of them to come after that. But we came, you know, from the Attorney General's Office. Maybe of us worked together and developed friendships and relationships there. But really, I think it's just the culture. And I really think it stems back to Bob Puglia and how you have . . . . I was so welcomed by Cole Blease when I came here, just . . . and he gave me some good advice, you know, from the very beginning about writing opinions and summarizing your holding up front, so that the attorneys and harried trial judges can see where 1:55:20

you're going right at the beginning. And it helps if you can summarize your ruling; it helps to ensure that you've got it right. And I took that to the bank from the very beginning on all published opinions. And Cole and I have disagreed on a number of occasions, but all . . . for the most part disagreed very amicably. And all of us have disagreed, from time to time, very amicably. And it's just part of . . . we're all a family. We're all part of a team. We ***like*** each other. We have a group of judges that live nearby each other. We have the Broadway Bistro Binge, where we go . . . . In fact, we were . . just last night, we went to ***[inaudible]*** restaurant, five justices and spouses and . . . the ones that live in the downtown area. You live way, way out in Wilton, so you don't join us. But we're just . . . we're family. And that makes the difference. We . . .

George Nicholson: This is . . . .

Arthur Scotland: . . . respect each other.

George Nicholson: This is a very interesting fact that I didn't know – that you went on the binge last night, in that you spent the last two days working in San Francisco on court business. You called me last night and we talked. You said you were exhausted, you didn't know if you were going to be able to put in a good morning on this interview. I thought you were going to go home and go to bed; you sounded exhausted. Instead, you were out carousing on Broadway with friends.

Arthur Scotland: I was exhausted, Nick, but you gotta rise to the occasion for your buddies, you know? ***[laughter]***

George Nicholson: Well, the Court of Appeal began in 1905. And probably the single most influential person in its birth was Norton Parker Chipman. He was our first presiding justice. There have only been 12 on this court in over a hundred years. What was notable about Chipman?

Arthur Scotland: Oh, I could go on for hours about Chipman.

George Nicholson: In a nutshell.

Arthur Scotland: Well, in a nutshell was his history, and the fact that he was . . . went to law school, joined the army during the Civil War, worked his way up the ranks to be the personal emissary from President Lincoln and the generals in the field, was named to be the prosecutor of the Andersonville Trials, which was the camp the Confederates held Union soldiers in. Forty thousand died. The fact that he went on, was with Lincoln at Gettysburg. He . . . . Lincoln had him draft the proclamation for Memorial Day. He served in the House of Representatives for the District of Columbia. This was a remarkable fellow who then came to California in 1875 and set up a practice of law in Tehama County. He was a businessman as well – helped form the . . . what's now the California Chamber of Commerce. And then was a commissioner on the California Supreme Court when there were no Courts of Appeal. And he came to this court late in life. He . . . . In 1905 he started, and yet he was here for 16 years until 1921. And the court was his family. He had no kids, no family, so he left some amazing memorabilia, 1:58:11

including the wonderful Chipman desk and chair that are in your chamber . . .

George Nicholson: Yeah.

Arthur Scotland: . . . that were in the House of Representatives. He was just a remarkable historical figure. Amazing. And there were some other remarkable historical figures on our court.

George Nicholson: Well, he also left some things that you and Bob Puglia always had in your chambers.

Arthur Scotland: Yes.

George Nicholson: What were those?

Arthur Scotland: Well, you have the autographed engraving of Ulysses S. Grant. You have a very rare engraving of President Lincoln that was given to him by President Lincoln. Outside my chambers, you have the painting by Emanuel Leutze of Fort Sumter under siege. He's the painter that did Washington Crossing the Delaware in the boat. There are just some remarkable things. Our library has some ***wonderful*** things from the early 1900s of bar passing, and you had to . . . . You didn't have a written bar exam back then; you had to be examined by a panel of justices. And there's just . . . there's a lot of history in this court. That's what makes this court special is the history.

George Nicholson: The fifth presiding judge of this court – Chipman was a remarkable man, she was a remarkable woman – her name was Annette Abbott Adams. In a nutshell, what was . . . what did you find interesting or inspiring about her?

Arthur Scotland: She was a trailblazer! My golly! She was one of the first women to graduate from Boalt Hall. She had actually, at one point, been a supervisor in San Francisco. And right after women's suffrage, she . . . there was the national convention to elect a President and have a vice-presidential candidate. She received a vote for Vice-President of the United States right after women's suffrage. She . . . . When she got ***out*** of law school, which was before that, she had trouble finding a job in the private practice of law because it was a male-dominated profession. She went so far – she was a larger woman – she went so far as to actually take voice lessons to lower her voice to sound more masculine. She always dressed all in black, and she was this very imposing figure. But she still could not get a job in the private practice of law. They were willing to hire her as a legal secretary, so she went to work for the United States Attorney's Office. She was the first woman Assistant United States Attorney. When her mentor left to go to the California Supreme Court, she was the first woman ever to be the United States Attorney for our district. She was the first woman ever to be appointed to the Court of Appeal. Not only was she the first woman ever to be appointed to the court, she was the first presiding justice; she was appointed directly to be the presiding justice. She was the first woman to ever sit on the California Supreme Court, pro tem in 1950 for an argument. 2:00:49

She was one that overcame just amazing barriers to have a remarkable career.

George Nicholson: When you got here, the tenth presiding justice was Bob Puglia, and we've talked about Bob. You're the eleventh, and now Vance Raye is the twelfth. When you think back to your predecessors . . . . A lot of people don't pay attention to history. Do you pay attention to history? Do you look at the people that have served in your office before? Do you find anything of help to you, of aid, or of inspiration to you in their having been here and what they've done in their life?

Arthur Scotland: Well, I think they're a source of inspiration in the sense that you're following in the tradition that this court has had. Really, the more recent ones – the ones that I've worked with – are the most inspiration. And Vance, of course, having worked with him for so many years and having such great respect for him, is . . . .

George Nicholson: You and Vance were worked in the legislative unit, I'm sure, didn't you?

Arthur Scotland: Actually . . . .

George Nicholson: Or he came after.

Arthur Scotland: He was. He did the civil side, and I did the criminal side. But we knew each other in the Attorney General's Office and, of course, worked together in the Governor's Office.

George Nicholson: In the Governor's Office.

Arthur Scotland: Yeah. I was thrilled that he was the PJ.

George Nicholson: Everybody here works together, but most intimately you work with your lawyers, your chambers lawyers, and your secretary – or as we call them, judicial assistants.

Arthur Scotland: Right.

George Nicholson: You were particularly close and had a collaborative relationship with all of them. In fact, you had at least one of your lawyers the whole time you were here?

Arthur Scotland: Yes. Almost the whole time.

George Nicholson: And what was her name?

Arthur Scotland: Alyson Rietgraf. And Dan Phillips I had for a long, long time.

George Nicholson: You sure did, and he retired.

Arthur Scotland: Yeah.

George Nicholson: That was an unfortunate loss to the court; he was still so young. 2:02:45

Arthur Scotland: Yes.

George Nicholson: And . . . but where did he go?

Arthur Scotland: Well, Dan is . . . went over to Hawaii, actually. Although he spent some time here.

George Nicholson: Oh, I know.

Arthur Scotland: Yeah.

George Nicholson: But he . . . at least part of the time he lives in Hawaii.

Arthur Scotland: Yeah.

George Nicholson: The top assistants you've had – Dave Hall, the principal attorney . . .

Arthur Scotland: Incredible lawyer. Fast.

George Nicholson: . . . and Deana Fawcett, the clerk/administrator . . . .

Arthur Scotland: Yeah, and Bob Liston before that. Bob Liston before that.

George Nicholson: Yes. What is your relationship and . . . dealing with the principal attorney? How does the principal attorney play into . . . .

Arthur Scotland: I think we might utilize . . . . In the Third Appellate District, and this goes back to the structure that had been established by Bob Puglia, we have a management team that consists of the administrative presiding justice, the managing attorney, and the clerk/administrator. And so Dave is . . . not only is he managing attorney, he's really the lawyer for the court. And he would assist me in matters ranging from the budget to personnel and everything in between. And it works really, really well in our ***[inaudible]***

George Nicholson: How many lawyers have we got on the court?

Arthur Scotland: Well, you have two chambers attorneys for each justice, so that's 22. And then we have a central staff of 17 – at one point. We don't have as many now because of budget cuts, so at the most there were 39.

George Nicholson: In terms of assigning cases to the judges, we don't pick our own cases.

Arthur Scotland: Correct.

George Nicholson: We take what we're assigned. What's the process for assigning cases?

Arthur Scotland: It's a random assignment. They . . . . And Bob instituted this, so that there's no favoritism shown or there's not trying to put persons . . . certain people on certain cases. It literally is . . . . It's delegated to the managing attorney, and he has a matrix of . . . over time each justice will sit on panels with all the other justices. And as the cases come 2:04:32

up for . . . they're ready for assignment – namely all the briefing has been done and the records have been completed – he has reviewed the briefs and assigned a numerical value to the cases. Meaning 5 is a . . . will be a case that's a ***huge*** appellate record, lots of issues, will take a lot of time. A 1 is one that is less complex, might not take as long a time. And we use a weighted methodology so that one justice on a monthly draw doesn't get slammed with all ***huge*** cases that are . . . be very time consuming. So everybody gets a fair draw, and there's never any favoritism shown towards anyone about what type of cases are done. It's all done on pretty much a random basis off the wheel. I've seen how it works, and it does work in a random way.

George Nicholson: And the principal attorney does that.

Arthur Scotland: Correct.

George Nicholson: And it is true that he literally touches every case . . .

Arthur Scotland: Yes.

George Nicholson: . . . to some extent before he assigns them.

Arthur Scotland: Yes.

George Nicholson: You couldn't make the assignment . . .

Arthur Scotland: Correct.

George Nicholson: . . . of weight.

Arthur Scotland: Right.

George Nicholson: It's an astounding . . . . Like when you leave, it's been tough. I don't know what the court's going to do with Dave Hall, don't you agree, . . .

Arthur Scotland: Oh, yeah. He'd be a . . . . He's a major resource . . . .

George Nicholson: . . . when he retires?

Arthur Scotland: Yeah.

George Nicholson: Deana Fawcett – and before her, Bob Liston – but the clerks' office works very closely with you, don't they?

Arthur Scotland: Absolutely.

George Nicholson: And with the principal attorney acting over the central staff, managerially, and the clerk/administrator in the clerk's office, the attitude that we were describing before about . . . of collegiality and not injecting ego into the relationships and decision making, has that been true with Dave in the central staff and with Deana . . .

Arthur Scotland: Absolutely. 2:06:23

George Nicholson: . . . and Bob before them?

Arthur Scotland: Absolutely. And the thing . . . . When I was APJ, I could walk down to the clerk's office and I knew every member of our clerk's office by name. And I knew about them and their families and all that. I mean, I made an effort to do that. When I became PJ, I went around and met personally with every single court employee to ask how are we doing, what can we do better, and get their ideas on implementing changes. And I did make some changes.

George Nicholson: The California Highway Patrol provides security for us. What has been the relationship to the Highway Patrol with our court through the years, and was that true during your tenure?

Arthur Scotland: Well, it . . . that's a . . . . It's been a while now, but when I first came to the court we didn't have any security at all. There wasn't even a magnetometer. And people could just walk in, including somebody that might have an AK-47 that you couldn't see and could sit in our courtroom in the middle of oral argument. We . . . . In those days there was the State Police, and we would have . . . for oral argument we'd have a State Police officer. I don't mean any disrespect to the State Police, but often those were people that weren't too engaged, and we had some that would sleep through oral argument and weren't quite as professional. And actually it was Rod Davis and I that came over from the trial court, having dealt with things going on there, including shootings and other things where we were a little bit more security-conscious and raised the issue that we should at least get magnetometers. And about that time, the Chief Justice created a security committee to look at providing some form of security to the Courts of Appeal and the Supreme Court that just didn't exist. 'Cause there had been threats; there had been other things. So I was on that committee, and actually was . . . played a pretty major role in the formation of that committee, including going over and meeting with then-Senator Kopp, who was the chair of the Senate Budget Committee, to plead for funding for this new entity. And I actually . . . . Since the judges were real concerned about what type of people would be assigned to our courts, I actually sat in on the interviews with the lieutenant to select officers that would serve in the northern region of the state. We soon learned that we didn't have to sit in on those – that CHP was very competent in selecting good people. And as a consequence, I think that the CHP does threat assessment, does . . . obviously oversees oral argument and that sort of thing. But we are obviously a far more secure entity than we ever were before. And frankly it's good we are, because we've had justices who were stalked; we've had letters. It doesn't happen often, but it does happen from time to time.

George Nicholson: The role of the CHP . . . . They actually have a division for providing security to the bench now.

Arthur Scotland: Division of Judicial Protection. Correct.

George Nicholson: Statewide duties: All PJs are busy – administrative PJs in particular. And . . . . But how . . . . But being in the state capital, even if the 2:09:21

Governor has panels or committees that help him identify candidates from that area, probably the most critical is the Governor's – I'm saying this generically – Governor's judicial candidates panel in Sacramento, which our PJ is typically the chair, as I understand it. Is that . . . .

Arthur Scotland: It depends on the Governor. One thing – before you go to that . . . .

George Nicholson: Yeah.

Arthur Scotland: One thing I was asked to do on occasion was to testify before the Legislature on matters relating . . .

George Nicholson: As PJ.

Arthur Scotland: . . . to the judiciary as a PJ. But you're talking about something different. You're talking about the executive branch, and . . .

George Nicholson: Yeah.

Arthur Scotland: . . . Bob Puglia was asked to be the chair of the local Governor's judicial selection advisory committee, and I was asked to do that after Bob retired, and so we would be an independent vetting committee to make contacts about people that applied for judgeships and provide the Governor with our views on the person's qualifications to serve as a judge.

George Nicholson: Okay. You obviously have been a member of the Commission on Judicial Appointments from time to time.

Arthur Scotland: Right.

George Nicholson: And you've sat on several of them.

Arthur Scotland: I have.

George Nicholson: Is there any one particular one that you were . . . that you recall most . . . as most notable or most memorable for you in that position?

Arthur Scotland: Well, actually, the one that was most memorable for me was not when I was actually sitting on the Commission on Judicial Appointments but I was asked by Chief Justice Tani Cantil-Sakauye to testify on her behalf when she went before the commission for her confirmation as Chief Justice. And it was my pleasure, because – I will refer to her as Tani, only because we're longtime friends – is just an extraordinary person and she is just the right person at the right time to become Chief Justice. And so I felt a great honor that she asked me to speak and to be the very first speaker on her behalf.

George Nicholson: Given the history of former Governor Brown and his appointment of a Chief Justice, Rose Bird, and the ultimate history of that, can you describe the panel that actually sat – the commission that heard your testimony and voted to confirm? 2:11:46

Arthur Scotland: Yes, it was Attorney General . . . . Well, it was the Chief Justice, Ronald George; it was Attorney General Jerry Brown; and it was one of Jerry Brown's appointees to the Court of Appeal, the senior presiding justice – not an administrative presiding justice but the most senior presiding justice – Joan Dempsey Klein from Los Angeles, Second Appellate District.

George Nicholson: Was . . . . Had the election been held, and was he Governor-Elect Brown yet, or do you remember?

Arthur Scotland: No. Oh, wait a minute, he ***was*** Yes, he ***was*** Governor-Elect.

George Nicholson: I think he was.

Arthur Scotland: Yeah, he was. You're right.

George Nicholson: And you actually served on at . . . on some appointment . . . Commission on Judicial Appointments with Attorney General . . . .

Arthur Scotland: You know what? I take that back. I don't think he was. No, he was not. He was a candidate.

George Nicholson: But eventually you served . . . .

Arthur Scotland: He was a candidate that was way ahead in the polls and everybody ***assumed*** that he would be the Governor.

George Nicholson: Yeah.

Arthur Scotland: That's right.

George Nicholson: But you did ultimately serve with him after.

Arthur Scotland: Yes.

George Nicholson: And on some replacements for ***our*** court.

Arthur Scotland: Well, no, I served . . . he was the Attorney General on panels where I was on the panel, and we chatted before . . .

George Nicholson: Yeah.

Arthur Scotland: . . . before the hearings, and yeah.

George Nicholson: Well, this is another . . . .

Arthur Scotland: About that same time, actually, because I sat on the panels for our newest justices, Andrea Hoch and Elena Duarte and Bill Murray. Those were all where I was sitting on the panel.

George Nicholson: Well, it plays into a comment you made earlier abut the things you learn by being here in the capital and having a variety of experience – legislatively and executively – before you go on the bench. One 2:13:08

of the other extraordinary things is how what goes around comes around, and the ***people***that go around come around, it seems, time and again. None more so than Governor Brown.

You served on the Judicial Council. Who appointed you?

Arthur Scotland: Initially I was appointed by Malcolm Lucas.

George Nicholson: And what did . . . what was your role at the outset?

Arthur Scotland: I was a member of the Rules and Projects Committee, and then after my first year I was named to be the chair of the Rules and Projects Commission – Committee – and then after that year, I was named to be the chair of the Executive and Planning Committee, and I would actually run the Judicial Council meetings when the Chief Justice was not there.

George Nicholson: What does the Judicial Council do?

Arthur Scotland: It's the governing body of the . . . for the court system statewide. It consists of a membership of judges: appellate judges, trial judges. There are attorney members, and there are advisory members with executive . . . court executive officers. And there are actually two legislative members, which is interesting; even though it's a judicial branch entity, there are two representatives from the legislative branch.

George Nicholson: We had an uproar in the structure of the courts. We went from municipal and superior courts to a consolidated court and to statewide financial support for the courts, removing it from the purview of the 58 counties. Was there any aspect of that that occurred during your tenure on the Judicial Council?

Arthur Scotland: Unification. Trial court unification was a big issue.

George Nicholson: Yes. Did that occur during your time?

Arthur Scotland: It did.

George Nicholson: Do you remember the difficulties of dealing with that, and . . . .

Arthur Scotland: Oh, I do.

George Nicholson: And what can you recall that you're willing to talk about, and that you can just mention in passing that you most remember about the difficulties of making that change?

Arthur Scotland: Well, there was a . . . just a different approach by various trial courts. I know from the Sacramento Superior Court there were a number of superior court judges that didn't want to have unification. By gosh, they were appointed to the superior court and they didn't want these municipal court judges that . . . some of them only had five years' experience. It was just interesting. And that tended to be the old-timers. And different courts operated in different ways. There was actually some municipal courts in certain counties that didn't 2:15:37

want to unify, for a variety of reasons which would take longer than we have today to talk about. But it was a . . . . It ultimately, I think, was the right things to do; it made the courts more efficient. But it was a gentle persuasion, and sometimes not-so-gentle persuasion, to make it come about.

George Nicholson: Was one of the difficulties that when you were a superior court judge and on trials or whatever the subject, you didn't want to go back to hearing preliminary hearings . . .

Arthur Scotland: Correct.

George Nicholson: . . . or trying drunk driving . . .

Arthur Scotland: Right, exactly.

George Nicholson: and . . . so-called ***duces?***

Arthur Scotland: Exactly.

George Nicholson: If this provided . . . this unification provided a more generalist superior court, at least procedurally, that reminds me of something I should have asked before. And that is, when you come to the Court of Appeal, you may have been a criminal lawyer exclusively or almost exclusively, or a civil lawyer exclusively or almost exclusively, but when you get here you really must become a generalist.

Arthur Scotland: In one year, you will have a greater diversity of issues than you would have in a lifetime on a large superior court, where you just tend to get assigned to a particular assignment for a period of time: family law, criminal law.

George Nicholson: You know from your own experience and knowledge, people came to this court either civil or criminal, largely. They've made the transition in the first year or two or three. Is there anything about either generalized subject matter – civil or criminal – that you think a civil lawyer learns criminal easier, or a criminal, civil? Or is it too hard to generalize?

Arthur Scotland: I think civil is more difficult than criminal.

George Nicholson: Do you?

Arthur Scotland: Can we cut for a second?

David Knight: We're rolling

George Nicholson: National duties. You were involved with the Council of Chief Judges of the State Courts of Appeal.

Arthur Scotland: I was.

George Nicholson: What is that organization? 2:17:35

Arthur Scotland: It's an organization of all of the . . . in most states they call them chief judges, we call them presiding justices, but for around the nation of the 38 states that have intermediate appellate courts. And Bob Puglia encouraged me to get involved and I did, and I was fortunate to be asked to be on the Education Committee, then chair the Education Committee, be on the Executive Committee, and I ultimately was president of the organization. And it was . . . it's just an ***exceptional*** organization, where you learn how other states are doing things and learn from others. And also you make friendships around the states that are lasting – lasting friendships. And so I encouraged Vance to be involved, and he is. And he's actually the chair of the Education Committee this year.

David Knight: In about three, two one.

George Nicholson: What are some of the things you're proud of, having served as an associate justice and a presiding justice here?

Arthur Scotland: Well, I think the things . . . . I'm obviously proud of being able to work as a team as an associate justice. Becoming presiding justice, I had the big shoes to fill – Bob Puglia's shoes. And I . . . . He just had created such a wonderful organization. But there were a few things that I thought we could do that were a little bit different.

Perhaps the one that I'm ***most*** proud of is the Outreach Program. We have an award-winning outreach program where we take our court on the road to high schools. There have been other outreach programs; ours was the first to go ***in*** the high schools. And we send copies of the briefs and a summary of the issues and facts of the case so that the teachers can utilize them as a teaching tool to prepare the kids for oral argument. We go . . . . And it's usually a two-day program. We show up the first day and we talk for about five minutes about what we do. But then we open it up for questions, and we don't screen the questions; the students can ask us anything except about the cases. It's been a great experience for us and, I think, for them. We then actually hold oral argument in real cases, followed by another question-and-answer session. We have received rave reviews from schools throughout the . . . our district. I think we've now visited, of our 23 counties, I think we've done 20 of them. It's a major undertaking to go out there. It's been well received. We started in 2000. And I threw the idea out to all of our justices and everybody embraced it, and we all enjoy it. You've been there; you know what a great program that is.

Another thing that I feel has been beneficial for the court is a hiring process. When I first came on the court, the way we hired attorneys is just basically looking at their written submissions and then interviewing them. And I felt that so often you really don't know enough about an attorney, particularly if you just look at what they've written. You don't know how much someone else has had involvement in writing those submissions. So I felt that that we'd have a practical component. We have a pretty tough boot camp for attorney applicants. We narrow the field to about 10, bring them in on a Saturday, give them a real case, and from 8:30 to 5:30 they work on a real case and draft a proposed opinion! And then each one of them is guaranteed, then, to 2:20:51

come back. And we have a panel of five judges who pretend like this is an oral presentation of the case and they know nothing about the case, and the attorney candidate orally presents the case. And the judges will start asking questions about it, just . . . in a nice way, but just to see how the attorney reacts to questions and interacts with the justices. And I think it really enhanced the quality of the individuals that we have hired. Some people do real well in an interview but don't do so well in a writing exercise like that. So I'm really proud of that.

I am very proud of the fact that because we grew so large with the expansion of the number of justices, that we outgrew the Library and Courts Building, and there was an annex that was built so our clerks obviously had to go across the street, which really divided our family and was not efficient, getting the, you know, the volumes of paperwork that we get . . . have going back and forth every day. So when the Legislature appropriated monies to re-do the Library and Courts Building, I was able to negotiate, with the State Librarian, a swapping of space. And it worked well for them, and it's ***really***going to work well for us. We have now acquired space where our clerk's office is going to come ***back*** into the old Library and Courts Building. So we're going to be all under one roof. We're going to be a family under one roof again. I think it's going to ***really***be more efficient and more effective and make our court operate more effectively.

I am proud of the greater involvement in the retention election process. Our judges . . . . As you know, every . . . at the end of every term – their terms – they have to stand for retention election. And for a long time there was just no way that people knew who we were, and the numbers of "yes" votes were declining. And I got the idea that we ought to get out and . . . . You did, actually, Nick. You were . . . . You started it. You and Connie Callahan going out and visiting with certain editorial boards on newspapers. And I followed it up with gusto and would meet with editorial boards throughout the state, not only encouraging endorsements for our justices but also endorsements for the Supreme Court justices on the statewide ballot. And we've been incredibly successful because we've opened up how we operate in the Outreach Program. The local newspapers have ***really***been very supportive of that. And I think it's helped immensely to educate the voters on what we do.

You know, there are a number of other things that we've done. One of the things I'm real happy about is how involved the justices of ***our*** court are in county bar activities. When there are events, often there are more justices from the Court of Appeal than there are judges from the superior court – and they're a much bigger court – at these events, just showing our support for county bar events.

And, you know, there are a number of other things as well, but those would be the highlights.

George Nicholson: Given all the discussion you've had about your childhood and family and the sisters, in 2002 the Sacramento County Bar awarded you the Humanitarian of the Year, and it was for your work with the Sacramento Children's Home. 2:23:57

Arthur Scotland: Right.

George Nicholson: We are pushing this through now, but can you say something about the Sacramento Children's Home and the role you've played in it as a foundation for the bar recognizing you?

Arthur Scotland: Well, I really have to give . . . . My wife has been a very understanding and patient person who's put up with me working a lot of long hours and weekends. And she's devoted a large part of her life to volunteering at the Sacramento Children's Home, which is a treatment facility for abused and neglected kids that have been removed from their parents. They also have some foster care programs. But these are kids that have had a tough lot in life, and this home is really a savior for them. And it has a fundraising component in that it has a restaurant that serves meals, and the profits go to the Children's Home. And so she's spent thousands and thousands of hours, and she got me involved. And so I've done bartending over there, and serving, and other special events there. And did a lot of it, and enjoyed it very much. You know, I have my badge for many hours worked. And it was that role. And also involved in the Citizens for Youth . . . the Center for Youth Citizenship and youth education. Those were the two things that were . . . that I was honored for.

George Nicholson: Two years later you were Judge of the Year. And in some respects, in some cases, that is more of a "nice job well done, Judge." In your case, it was more substantive. And then later, when you retired, coincidentally you won the – you were named to receive – the Ronald M. George Award for Judicial Excellence by the Judicial Council. So while you've been honored as Humanitarian of the Year and Judge of the Year in Sacramento County, you now were effectively the judge of the year for the entire bench of California. Marvin Baxter, your old friend, presented it first at the retirement dinner that you . . .

Arthur Scotland: Yeah, he did.

George Nicholson: . . . had put on for you. And then later it was more formally presented by the Chief Justice. These are things that can't go to every judge, can't go to every presiding judge. Your parents were gone . . .

Arthur Scotland: Yeah.

George Nicholson: . . . by the time you won that last award. But I think they reflect the attitude of the bench and bar generally. And you won't say much about them, but it was a privilege to witness those recognitions and honors.

Arthur Scotland: Well, it was certainly an honor. There are ***so*** many people around the state that are worthy of that type of recognition, and I'm obviously grateful that . . .

George Nicholson: I would like to . . .

Arthur Scotland: . . . ***my*** contributions were. 2:26:45

George Nicholson: . . . cover . . . get into the substantive opinions just briefly, and close with one of your published opinions. I don't think anyone ever calculates how many cases they have as an appellate judge, and the public would never know. But since you've been on this court, you've participated in more than 6,000 cases that resulted in filed opinions. Again, I don't think you know it, but only 5 . . . 55 have been granted review by the Supreme Court. And of the published . . . of the opinions, those thousands of opinions that were filed, you personally authored – either as a majority opinion or concurrence or dissent – 336 published opinions. That's several bound volumes of the law. Our district publishes far fewer than most districts.

Arthur Scotland: We do, yeah.

George Nicholson: We're far more conservative in that regard. But you've published a lot of law. And like Bob Puglia, occasionally but rarely your law wound up in the ***California Reporter*** because of whatever action by the Supreme Court.

Arthur Scotland: Right.

George Nicholson: But it's been a rare experience.

Arthur Scotland: True. What you mean by that is either review is granted and the Supreme Court ends up deciding the case, or on a rarer occasion, they depublish a case.

George Nicholson: That's right.

Arthur Scotland: Yeah.

George Nicholson: Well, that was a practice that was more common when we first got to the court.

Arthur Scotland: Right.

George Nicholson: And under Ron George it's become virtually nonexistent.

Arthur Scotland: Right.

George Nicholson: Which is a good thing.

Arthur Scotland: True.

George Nicholson: Among your cases – you've tried everything, you've heard everything in the last 20 years – one of the most notable that probably portrays about everything that can happen on a case was a case called ***People v. Branner***. You were the author. It resulted in a published opinion. It was in one of those tricky situations that we often face, where the U.S. Supreme Court decided a case and then 20 years later – many years later – decided to do it the other way. 2:28:50

Arthur Scotland: Changed the rules.

George Nicholson: And so the case that we had was a peace officer's stop of a car, and a search conducted of that car pursuant to a case and a rule . . . .

Arthur Scotland: ***New York v. Belton.***

George Nicholson: ***New York v. Belton.*** Which was legitimate when they did it, but years later the Supreme Court decided ***Arizona v. Gant*** before our case could gel appellately. And that's your case . . .

Arthur Scotland: Right.

George Nicholson: . . . that came before you. What do you recall about that particular case and the way it was handled here at the court procedurally?

Arthur Scotland: Well, it was assigned to – again, assignments are random – it was assigned to me. You happened to be on the panel; Ron Robie, my dear friend from family law days, was on the panel. And we had a split of opinion on that particular case because there was a split of views around the nation on how you deal with this issue. The issue, as you've succinctly stated, is officers are relying on precedent of the United States Supreme Court that said what they were doing – a search incident to arrest at a vehicle stop – could be done regardless of whether the person is locked up in the patrol car. But there was a bright-line rule – at least that's the way everybody was interpreting it – that you could search incident to arrest without a search warrant. And then after these officers had relied upon this precedent, the Supreme Court, in a 5-to-4 decision, the ***Gant*** case, concluded otherwise. And they didn't overrule ***New York v. Belton,*** but they essentially said that it was wrongly construed, as I recall.

At any rate, the issue then came up that: do you suppress the evidence that was gained in a lawful manner at the time because the Supreme Court has changed the rules of the game? And it implicates two things: it implicates the constitutional protection – the Fourth Amendment protection against unreasonable police conduct – and it also implicates the exclusionary rule and what is the purpose of the exclusionary rule. And the issue then was, do you apply the good-faith exception to the exclusionary rule, saying you shouldn't exclude evidence of guilt when the constable didn't blunder? And that's the whole thing. You're supposed to . . . . It's supposed to be a deterrent against misconduct, and here, at the time, there was no misconduct. The officer did exactly what the Supreme Court said he could do. And the Ninth Circuit came out with an opinion that says, well, that's too bad because you have to have some . . . the person who does establish a constitutional violation, there should be some remedy for that purpose. Well, we disagreed; you and I disagreed and said that when you have these competing . . . when you have these various things you have to look at, the good-faith exception should apply in this case because the officer did no wrong. Ron followed the Ninth Circuit to the contrary. 2:31:57

And so the California Supreme Court granted review, and then lo and behold the United States Supreme Curt decided that case and went our way, didn't it, Nick? And actually, I have one bone to pick with ***our*** California Supreme Court. They . . . . Because now that was decided by the United States Supreme Court, they just simply dismissed the . . . they vacated the review because it no longer . . . they didn't have to decide the case 'cause the U.S. Supreme Court had spoken. I wish that they had ordered our opinion to be republished, because when you grant review it takes our opinion off the books. And the reason why I thought they should have allowed our opinion to stay on the books is because we got it right. We beat the Supreme Court to the right result. And I think that that should have gone out there, to show the reasoning that we applied, which was consistent with the Supreme Court. I'm not angry about it, but I just wish the Supreme Court would rethink their . . . how they deal with grants of review that they ultimately decide not to ***[inaudible]***

George Nicholson: And it was your opinion, not mine, so I can say this: I think you did it more simply and clearly than the U.S. Supreme Court did in ***Davis v. United States*** this year in any event. And I agree with you.

I want to do two other cases and then we'll wrap this up. One is called ***Levinson***. . . .

Arthur Scotland: You were going to ask me about my views on the exclusionary rule as a . . . .

George Nicholson: What ***are*** your views on the exclusionary rule?

Arthur Scotland: You were going to ask me if it should be extended or curtailed. See, the viewer is going to know that you actually gave me a ***couple*** questions. Most of the questions you've asked I didn't know ahead of time, but . . . .

George Nicholson: Well, we're trying to hustle through, and I thought I was going to . . .

Arthur Scotland: Yeah.

George Nicholson: . . . cut to the chase here. I'll just ask you. The exclusionary rule, although well established, and dating back to, largely, ***Mapp v. Ohio*** in '61 and ***Cahan*** a few years earlier in California. We don't have ***Cahan*** anymore because independent state ***[inaudible]*** and this exclusionary rule is gone. So we have the federal exclusionary rule – whatever its shape – here in California. But whatever its origin and whatever its nature and scope, do you ***believe*** it should be curtailed or constrained, or should it be extended?

Arthur Scotland: Well, it definitely should not be extended. And, frankly, my views on the exclusionary rule are based upon my assessment of the purpose of the exclusionary rule and the practical implications of the exclusionary rule. The exclusionary rule is viewed as a remedy for a constitutional violation and really as a deterrent to ensure that police do not violate individuals' Fourth Amendment rights. You have the good-faith exclusion because if the policeman acted upon reasonable reliance on a warrant or 2:34:40

something, that still was wrong. Nonetheless you don't penalize the officer for properly relying on guidance from a judge and that sort of thing. The problem I have with the exclusionary rule is this: that it's not an effective deterrent. And you have a great societal cost. And the societal cost is that you exclude evidence of guilt of people, some of whom have committed terrible, terrible crimes. And you might ultimately prohibit the prosecution of those individuals by excluding that evidence. So what price is paid to ensure that Fourth Amendment rights are not violated by applying this . . . the exclusionary rule, versus what price to society is paid by excluding evidence of guilt?

And if the exclusionary rule worked as a deterrent, then I would say we have to have a meaningful way to discourage officers from violating people's constitutional rights. But it really doesn't work because there's no personal harm to the officer that violates the rights, unless in the rare case there might be some administrative action. It seems to me the better course is to have some civil liability on the part of the officer, or some administrative responsibility that means that the officer's going to lose pay or be demoted or be fired. That's what's ***really*** going to stop officers from violating the Fourth Amendment. If it's just simply the evidence doesn't come in, the officer might say, "Well, I'll just take a chance. Maybe it'll come and maybe it won't come in." So I don't think that . . . . It's the problem when you have academics that haven't worked in the field and don't know what it's like to be standing before a door and having to knock and announce why you're there, allowing someone to blow you away, you know, with a shotgun through the door, which is what happened to an officer. It's not . . . . This whole idea of ***New York v. Belton,*** there was a bright-line rule. It's better to have bright-line rules so officers can know what they can do and what they can't do. This idea that you could . . . well, you can always call for a telephonic search warrant while you're out in the middle of the street, you know, with people all around and it delays . . . . You need resolution of these things. To me, sometimes it's just not realistic. The law, and the makers of the exclusionary rule, are not being realistic in their decision of the application of the exclusionary rule. And I would favor other types of sanctions that would ***really*** discourage officers from doing that. So that's a long-winded answer to say it sure not . . . should not be extended, and in my view it should be curtailed in favor of other remedies.

George Nicholson: Given the extraordinary experience you've had getting to this court, and getting to ***Branner,*** if you had been sitting on the U.S. Supreme Court, would you have decided ***Gant*** differently?

Arthur Scotland: I would ***not*** have decided ***Gant*** differently. I think ***Gant*** is not a realistic interpretation . . . . You know, it's an interpretation of the right, you know, the right against unlawful search and seizure. But it doesn't take into account adequately the fact that it's just not realistic to expect the officers to, what, impound that car . . . . Sure you could go through that, but often people want a quick resolution, even the people . . . if there's nothing ***in*** that car, they want to drive off with their car at no cost, you know, to get on with their lives. And I would have said that ***stare decisis*** would apply in that case and ***New York v. Belton*** should apply 2:38:14

because I think a bright-line rule in that particular rule was a wise one under the circumstances.

George Nicholson: Okay. So the bottom line of your assessment – I think you may have misspoke a line – but you would have upheld ***Belton***

Arthur Scotland: I would have upheld ***Belton.***

George Nicholson: Right.

Arthur Scotland: Correct.

George Nicholson: We've got to get through . . .

Arthur Scotland: Sure.

George Nicholson: . . . and I would like to, with your permission, take the opportunity to hand you the published – in ***California Reporter*** copy of ***People v. Branner***

Arthur Scotland: Okay.

George Nicholson: And let you close with some of your own writing. At the beginning of the opinion it's Scotland, P.J., and you began. And I've emphasized the part that I think that would be useful to the audience. And then cutting to the very end. If you would read those two portions, we'll conclude the interview with your own ***[inaudible]***case, which we've just finished discussing.

Arthur Scotland: Well, I'm now reading what you're highlighting. I just have to . . . . If I can digress for a moment before.

George Nicholson: Sure.

Arthur Scotland: I think if you look through some of my opinions, you will find that sometimes I like to have a little bit of fun. I don't know if that's the right way to put it, but, you know, for example, there's an opinion out there – the ***Levinson*** case – about the horseback-riding case, where you start out . . . . Oh, you have that one, too?

George Nicholson: I do.

Arthur Scotland: It starts out something about the thrill of victory and the agony of defeat are often associated with sporting events, but also they . . . it . . . they arise after a conclusion of a legal action. And in this case it involved both. Something to that effect – I can't remember my exact words. But opinions don't have to be pedestrian, and so I must say that I have enjoyed crafting certain opinions. You can see a lot of me in those opinions, and . . . with the way that they are stated. And I think you can see a little of me in this one as well.

George Nicholson: Before you leave ***Levinson, . .*** 2:40:31

Arthur Scotland: Yeah.

George Nicholson: . . . ***Levinson***was a ripe target for Art Scotland because it involved a victory party for a ranch owner at his ranch, and one of the parties present was his lawyer, who asked to ride one of his horses and did and was injured.

Arthur Scotland: Right.

George Nicholson: So the lawyer for the client whose victory party was being celebrated wound up suing her client.

Arthur Scotland: Suing his . . . her client. It's kind of ironic.

George Nicholson: So when you describe the thrill of victory and the agony of defeat, it was a very complex and circuitous route, but a fact pattern that was just rife with opportunity for a little bit of humor. And . . . .

Arthur Scotland: And it wasn't intended as humor . . .

George Nicholson: No.

Arthur Scotland: . . . because the people that are involved don't find these . . .

George Nicholson: May even be seriously injured.

Arthur Scotland: . . . things to be funny. But it is . . . . I must say, I did use a little author's license to talk in terms of her biting off more than she could chew and things of that nature.

George Nicholson: Yeah.

Arthur Scotland: So I had a little bit . . . . And maybe "fun" is not the right way to use it, but I . . . .

George Nicholson: Irony.

Arthur Scotland: It was . . . . There was a lot of irony in that situation. And I think when you word opinions in certain ways, it makes for more pleasant reading – more interesting reading – and it really makes the point a lot better than a very pedestrian opinion. And so I think part of this case, where I start out saying, "Almost a century ago, when it created the exclusionary rule to deter improper conduct by law enforcement officers, the United States Supreme Court held the guilty must go free when evidence essential for their convictions was obtained by an officer in violation of the right against the unreasonable search and seizure enshrined in the Fourth Amendment. A question posed in this case is whether the ***guilty***must go free when (1) at the time such evidence was obtained by a law enforcement officer, a decision of the Supreme Court instructed the officer that the manner in which he searched for and seized the evidence was lawful, and (2) . . . ***but*** (2) thereafter, the Supreme Court changed its mind. As we will explain, the answer is 'No.' Although it may be that a criminal is to go free before the . . . . Although it may be that 2:42:42

quote 'a criminal is to go free because the constitutional . . . constable has blundered,' the ***guilty*** should not go free when the constable did precisely what the United States Supreme Court told him he could do, but the court later decides ***it*** is the one that blundered. Evidence seized during a search that was lawful pursuant to Supreme Court precedent existing at that time, but later overruled by the court, should not be excluded for two reasons." Then I explained the two reasons: (1) the good-faith exception to the exclusionary rule, and the societal cost and everything.

So I ended the opinion by hearkening back to words of wisdom that our former presiding justice wrote many, many years ago in a case and have influenced me and influenced others like me. It was the ***People v. Remiro*** case dating back to 1979. And I say, "We end by reflecting upon a prescient observation by beloved former Presiding Justice Robert K. Puglia, penned in 1979 before the United States Supreme Court's decision in ***Leon*** articulated the good faith exception to the exclusionary rule. Quote. 'For many years, our system of criminal justice has been noted less for predictability than for instability. Judicial decisions often abruptly discard long-established procedures and replace them with new rules. Typically, these new rules are then applied to cases on appeal which were earlier tried in reliance upon the then existing but now discarded rule. In other words, the rules are changed to the benefit of the defendant and the detriment of the People after the game has been played. The inevitable consequence is the ex post facto creation of error where none otherwise would exist, and the unfortunate reversal of many convictions that would otherwise have been affirmed. These occurrences assuredly exact a considerable cost in loss of public confidence in the judicial system, not to mention the very tangible economic drain on the public funds resulting from the retrial of these cases. And public confidence is eroded further when intervening events render retrial impossible or futile. Surely it must be possible to effect orderly change in judicial procedures without the attendant carnage that retroactivity has wreaked over the past two decades [however you pronounce that word, Bob Puglia], a period in which the judicial landscape, resembling nothing so much as a giant junkyard, has been cluttered with the wreckage of convictions fairly won but sacrificed to the fetish of our highest courts for after-acquired wisdom. The tarnished image of the judiciary today is in significant part attributable to the social destabilizing effect of wholesale reversals of criminal convictions for failure to comply with rules that did not even ***exist*** at the time of trial. Certainly the maintenance of public acceptance of a system largely responsible for the protection of individual rights is no less important than the rights themselves.' Presiding Justice Puglia would be gratified to know that the good faith exception to the exclusionary rule exists to uphold both the search in this case and the conviction based upon evidence seized during that search."

George Nicholson: I think this opinion reflects two things: the affinity you had for Bob Puglia, your own eloquence, and the fact there's continuity on this court as there ought to be in the law generally. And I commend you for that, Scotty. 2:46:23

It wouldn't be right to close without making a point. You've been retired virtually a year as presiding justice of this court.

Arthur Scotland: Technically, yes.

George Nicholson: Technically. But you've been in the office here, a chambers that the court has set aside for you, virtually daily, outside of the trip you took to England with your wife, Sue. And you've been working diligently, and in your typical long hours. What is it you're doing?

Arthur Scotland: The Chief Justice asked me to chair the Strategic Evaluation Committee, which is a committee of 14 judges and 4 advisory members who are looking at the Administrative Office of the Courts, doing a top-to-bottom in-depth review and assessment of the purpose, functions, organizational structure, methods of operation, budget, and staffing of the Administrative Office of the Courts. And we are collecting information about the functions and we'll be ultimately making findings and recommendations about the Administrative Office of the Courts in the future. And I commend the Chief Justice for her vision and her leadership in saying it's good to step back and take a fresh look. We are receiving lots of information about the Administrative Office of the Courts, which is very . . . going to be very helpful to us in formulating our findings and recommendations.

George Nicholson: Through no fault of her own, when she became Chief Justice about the same time you retired, she walked into a situation where there is considerable division between the courts, and contention. And your committee is one of the tools she's using to try to deal with that criticism positively – that division. And you're really at the heart of an ongoing dispute, your committee is. Is the membership of the committee made up of judges, or judges and lawyers? What is it?

Arthur Scotland: Fourteen judges and then four advisory members with extensive experience in . . .

George Nicholson: And . . .

Arthur Scotland: . . . governance.

George Nicholson: . . . there's a diversity of opinion among these judges?

Arthur Scotland: There's . . . . Well, let's put it this way. There is a diversity of experiences: small court, large court. And it's a very conscientious committee, and a very objective committee.

George Nicholson: Have you . . . . How have you gone about your work, briefly, in terms of getting disparate views?

Arthur Scotland: Well, at first we had to develop a methodology to obtain the information. We're not going to make any findings and recommendations if we don't know the facts. We have to know the facts, not the fiction. We have to know the facts, not just perception. And so we developed a survey that went out to 3,500 individuals: judicial officers, court executive 2:49:15

officers, members of the public, organizations, firms that use the court system. And then we followed up with interviews of . . . . And also from the Administrative Office of the Courts. And we are right now in the process . . . . We've talked personally with the individuals at the . . . directors at the Administrative Office of the Courts. We're now meeting with presiding justices, presiding judges, court executive officers to finish our fact-finding part of it. And then we start the heavy lifting on making the findings and recommendations.

George Nicholson: You and the Chief Justice are going about this very objectively, and with the highest integrity. But you've known her for a long time, and she served on this court . . .

Arthur Scotland: Yes.

George Nicholson: . . . as an associate during your last five years as presiding justice. Am I right?

Arthur Scotland: Right.

George Nicholson: She came from the Deukmejian administration as well, didn't she?

Arthur Scotland: She did.

George Nicholson: The methodology, the care, the caution, the prudence, the thoughtfulness . . . do you see that same set of attributes in the new Chief Justice that you said were so important to the Deukmejian administration?

Arthur Scotland: Oh, absolutely. And in fact, this committee is not a reaction to any of the disputes that are going on today. It was really something that she began thinking about right after the Governor told her that he was going to nominate her. That's the true leader that she is, is you immediately say, well . . . . Not before everything blows up, you say, "I'm the new Chief Justice. I ought to . . . we ought to take a fresh look at everything." And so it's really a credit to her that she was talking about this, you know, a year and a . . . almost a year and a half ago.

George Nicholson: You've served on and been a leader of, the California equivalent, structurally, to the United States Court of Appeals, District of Columbia Circuit in terms of the caseload and the nature and circumstances of the work: the government law, the insurance law, the big civil cases, the bureaucratic agency cases, and so on. You've been at the heart of everything going on in the law for 20 years. You've now retired, and you're still at the heart of what the judiciary is facing in the future. Can you wrap up what it is in general terms that you hope to achieve by your contribution through this committee to aiding the Chief Justice in the assignment she's given you?

Arthur Scotland: Well, I truly love the law. I think, frankly, the judicial system in California is, you know, one of the finest in not only the nation but the world. I very much care about the future of our system. And to the extent that our committee can make any recommendations and 2:51:59

findings that would be helpful to charting the course for the future under difficult economic times and other times, it's just an honor to be asked to do it and I'm happy to do it. With my very understanding wife, because, you know, Nick, I retired to spend more time with my wife and the grandkids! And so far I haven't done it, but . . .

George Nicholson: Soon.

Arthur Scotland: . . . come, yeah, next spring after this is done, I am committed to my wife, who's been lovely and understanding.

All right, buddy, thank you . . .

George Nicholson: Thank you very much.

Arthur Scotland: . . . so much. Appreciate it. Good chatting with you.

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