Justice Steve Perren: Good afternoon! I'm Justice Steve Perren, and I'm interviewing Justice Arthur Gilbert as part of the continuing California Appellate Legacy Project. Now that sounds all nice and formal but the reality is I'm sitting here in a room with one of my dearest and closest friends and a man in whom I've reposed a highest esteem, a truly great jurist in California. So, with that introduction, it's your obligation to vindicate everything I've just said.

Justice Arthur Gilbert: Oh, boy. I am now taken aback by that. Are you sure -- there are no retractions allowed.

Justice Steve Perren: You wrote the script.

Justice Arthur Gilbert: Okay, it's true.

Justice Steve Perren: These take a theme of sort of a biographical sketch, and I think that anybody who is reviewing our history is going to want to know a lot about you personally and there is a lot to know. So, I'd like to pursue it from a point of view of, let's talk about you historically, your background, your growing up in Los Angeles. And then the real meat of it is the philosophy of Arthur Gilbert which has driven certainly our division. And I think, the California Courts of Appeal for the better part of a score of years.

So, why don't you start with you're a native to?

Justice Arthur Gilbert: Well, I was born in Los Angeles a long time ago - in 1937 and as a -- I lived in Hollywood for a couple of years and then we moved to Santa Monica, the beach in Venice and that was during World War II. And we lived in a hotel that was -- I mean people lived in hotels then, I guess it was -- we had the top floor of the Cadillac Hotel which is right on the front on the ocean between the Santa Monica Pier then, where there is still a Santa Monica Pier, and the Venice Pier. And I grew up there, and it was during the war, so you had to -- you couldn't show any lights at all for the ocean. Some Japanese submarines had actually bombarded some oil refineries in Goleta and no one could -- which was just up the coast into Santa Barbara, so you couldn't go on the sand. And if there's just a sliver of light showing from one of your windows, an air raid warden would knock on your door. Can you believe that? I mean, that seems like a thousand years ago. And there was gas rationing; they didn't -- they'd stopped manufacturing cars from

about 1941 until after the war. And so it was a time -- a very unusual time. And I lived at the beach and went to school there in Venice.

Justice Steve Perren: Now, your family didn't lead you toward what became ultimately your career. There's no law background in any of your --

Justice Arthur Gilbert: No, not at all. What I'm doing now is about the last thing in the world I ever expected to be doing.

Justice Steve Perren: But there was something that you do do that is part of your family history and that's your music.

Justice Arthur Gilbert: Yeah. Everyone was a musician. My father played the piano and he was a jazz pianist, and he played the new Bix Beiderbecke and Hoagy Carmichael and even played in a band with Benny Goodman, when Benny Goodman was 17, or 16 -- 14 years old. He told me the story. And I had an uncle, I think through marriage, Morrie Sherman, who had a band in Chicago, and all the greats played in it. And my dad would sub for Jess Stacy who is the pianist with the Benny Goodman band, ultimately.

In my mother's family, they were all musicians. My grandfather who I never met, he died when -- before I was born. He was the principal flautist with the New York Symphony that became the New York Philharmonic. And everybody played the piano. My mother played not well but enough. And I had an aunt who was a concert pianist, who taught me music a little. My mother started to give me lessons and I picked up jazz and boogie-woogie from my father. So, music was part of our -- it was a staple in our house.

Justice Steve Perren: Was there any formal training going on at that time or were you just a normal kid growing up in a big city.

Justice Arthur Gilbert: Yeah. I was a normal kid growing up not wanting to practice but -- and no one forced me to practice. My parents weren't -- they wouldn't push you, they sort of felt that I should, you know, develop in my own way but they encouraged me to do things, but there wasn't this feeling like, "You've got to practice every single day. You've got to do this; you've got to do that." So, it was a pleasant childhood. I had really good parents who I really felt I was cherished and loved.

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Justice Steve Perren: Okay so from -- viewing things from today, we see a highly sophisticated accomplished jurist. But what was the Art Gilbert like back in the '40s. What was a day in the life so to speak of the education, the things that in retrospect may lead you to where we now are?

Justice Arthur Gilbert: Well, nothing actually. It's true. It's the last thing in the world I ever expected to do. Education was an important of my background. Though my parents, my father had gone to college at Northwestern for a couple of years and then dropped out because he was playing the piano and then he came to California and met my mother and so on. And so I think they wanted me to go to college and have some kind of profession. And I wanted to have a profession. Even at a young age, I knew I would. My friends in high school, we all thought about going to college; what college are you going to go to. But there wasn't the kind of pressure there is to go to colleges there -- that seems to be today at least. It was a different laidback culture.

Justice Steve Perren: Was there any doubt that you were going to pursue college and a professional career of some sort?

Justice Arthur Gilbert: Well, the idea was it will be really good if you had a profession that is law or medicine. I wasn't good in science or physics, so medicine was out. And I went to Le Conte Junior High School which was a really tough -- well we moved to Hollywood from Santa Monica, and I went to Le Conte Junior High School. And it was kind of a tough school, but I had a lot of fun there. I was -- there were a lot of tough kids but I guess I was the shortest kid in the class and I didn't want to be picked on, so I was friendly with all of the tough the kids. So they all looked out for me.

And I used to make a joke. We had tear gas drills with -- once a week. The guys were so tough, but they were really nice to me. You know, so it really worked out and I played the piano and I played at -- I remember playing at an assembly once. I played Deep Purple and no one knew I played the piano and suddenly I became kind of a star because I was playing the piano. So I said, "Hey, this isn't bad. Maybe I should practice more and get good at it."

And so from there, I went to Hollywood High School. And in Hollywood High School, I have some friends who

are still friends of mine. We still know each other, and even from Grammar School, I have some friends. But anyway, at Hollywood High School, I played the piano a little bit and I met -- there was a singing group that was very -- became very popular, the Four Preps and they wrote a song. In fact you reminded me of the title, I thought it was called Santa Catalina but you said it's --

Justice Steve Perren: "26 Miles".

Justice Arthur Gilbert: "26 Miles across the sea, Santa Catalina is the island for me." And they sang at the Hollywood Bowl believe it or not and I was their rehearsal pianist. I worked with them a little bit. And Lincoln Mayorja, who's a very fine concert pianist, was their pianist, and we were good friends in high school. And so then I went to UCLA.

Justice Steve Perren: Well before you went to UCLA --

Justice Arthur Gilbert: Yeah, yeah.

Justice Steve Perren: Hollywood High School on those days was kind of a fertile environment for actors and performers.

Justice Arthur Gilbert: Yah, it was. Yeah.

Justice Steve Perren: How, if at all, did that affect you?

Justice Arthur Gilbert: Well, Ozzie and Harriet was a very big show about -- it was in the '50s, it was a typical '50s family. The two sons, Ricky and David were both at Hollywood High, and I knew David well. And I didn't even realize he was a David on television. And then the Four Preps were on the television show and I rehearsed with them at the studios when they were going to do the show. And so I was in that milieu and I thought, "Gee, wouldn't it be fun to be in show business." But nothing really was happening. I wasn't really aggressively pushing a career in that area. And I wasn't studying music. I mean I studied at home a little bit and I did take some lessons actually, now that I think of it, with Sam Sachs.

And Sam Sachs was one of the great jazz gurus. And he had a lot of great pianists who studied with him. So my parents said, "Okay, we'll give you some lessons with Sam, but remember you're not going to be a musician." So I took some lessons with Sam, and he was impressed. And he said, "You're going to be famous. You're going to be one of the great jazz players." So I

thought, "Wow!" And I have these dreams in my mind. And then when I went to UCLA, I was -- I was a nervous kid. I was always unsure of myself even though I put on a good front like I was, you know, I perform and I was funny in class and that kind of stuff. But I was unsure of myself and I wanted to do well in school. So I was afraid about taking lessons and going to school, so I stopped taking lessons, and Sam was very, very disappointed.

(00:09:59)

Justice Steve Perren: Well, there's another aspect.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Well there is another aspect -- we're going to get to that as we move on into high school or out of high school into college. But your studies took you in the literary field, in writing and in literature. What's the progression there? You got music and then writing and literature.

Justice Arthur Gilbert: Yeah. As a matter of fact, now you're bringing up things I forgot about. You've done your research well. That's why you're such a good justice.

So, there was a magazine called the Junior Journal. I forgot all about this. And Andrea Orton who became a US -- she became the US attorney, was sort of a girlfriend of mine in high school, and she was involved with this newspaper, and I wrote articles for it, and I wrote jazz articles, and I was interviewing jazz musicians and I remember interviewing Shorty Rogers.

Shorty Rogers and His Giants were a very big jazz group in the 1950s. He was one of the exponents of what was called West Coast Jazz and so -- and I remember interviewing him and sounding very, you know, formal as a kid and I said, "Tell me Shorty," I remember the question like this, I said, "Hey, tell me Shorty, do you find the dichotomy between classical modern music and jazz bridgeable or can you find a common ground?" Something like that. And I remember he's just looking at me like this, just straight, and then he says, "Hey man, you've got a match?" It was hysterical. And he had to this -- and he was playing the flugelhorn. And I remember, I described the flugelhorn as a trumpet with a thyroid condition. And he thought that was hysterical, and he loved the article.

And so I liked coining phrases. So I did, I was writing short stories and I got published now and then. So I was -- I was good in English and so -- and I wrote a lot of articles for the paper. And Andrea Orton found an article that I had written in high school that she had saved all these years. Now, we're back -- we're in the 2000. This is like about 2012. She actually gave it to an editor of the Ventura legal journal. They did call and ask for permission to print it, and they did. It was called -- it was about telephones and how telephones take up our lives. And I wrote it as a freshman in high school and it was a kind of funny --

Justice Steve Perren: It appears things are staying the same. It's just a different telephone.

Justice Arthur Gilbert: Right, yeah.

Justice Steve Perren: So, you leave Hollywood High School.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: And as you look back, you say, "The benchmarks at Hollywood High School for me were publication, art, music."

Justice Arthur Gilbert: Yeah. I'd say all that. I mean, we played at Sports Nights. And I did run -- you're supposed to try everything, right? So I ran track, and I remember I was in a meet and I ran the 660 and came in last, so I knew that sports probably wasn't the ticket for me.

Justice Steve Perren: So, UCLA is just around the corner from you.

Justice Arthur Gilbert: Yeah. So I went to UCLA and I was in English major. And I had a philosophy then that I was forming, and I still have it today. And my philosophy was that if you're going to go into the professions, you don't immediately go to a professional school, you go and get a strong liberal arts education. And that's what I wanted to do, and my parents were very supportive of that. And so I took English Literature, Shakespeare. The romantic poets, really got into American Lit and I studied with some pretty good people. And philosophy, I had Hans Mayerhofer, existential philosophy and he was a genius and just to be exposed to him was just an experience that I still live with. And history courses, and I said, "That's what you need and then you go to professional school."

And one of the things that bothers me today, and now we're talking, we're in 2014, is how uneducated some very, very smart kids are young people, but they don't know anything about history, they don't know about the -- about the world, about Western civilization, about art. What they -- they're very smart, they take accounting courses, they take business courses but -- Cornell University, for example, they teach hotel management. I mean, that's the curriculum. Now, I realize it's very complicated that you have to know about economics and all kinds of -- it's more than "your room will be ready at 3:00." But I think, whatever you do, you're going to be much better at it if you have familiarity with the Russian authors, English literature, American literature. And I'm not trying to sound stoody or highfalutin but I think you're a more complete person that way. And I think you become better as a judge, as a lawyer, as a doctor no matter what you do.

(00:15:07)

Justice Steve Perren: Well, I am reminded on however many occasions I cannot count that you will find something of use in the court or in your opinions in Huckleberry Finn that I know sits with you very strongly.

Justice Arthur Gilbert: Yeah. It's one of the greatest novels. I think, it's one the great novels ever written. And I recall that one of the publications asked me, they said, "What's your favorite novel and why?" And I wrote a little essay about Huckleberry Finn and it's really quite a profound -- it's quite a profound book and it occurred to me -- and I mean, a number of people had written about it. I think Ernest Hemingway said it was the greatest American novel ever written. But the thing that's so interesting about it is Huck is helping Jim escape. Jim is a slave, and Jim has been in prisoned, if you will. And the journey on the raft, which is a journey through life is really a journey about Huck freeing Jim -- about Jim freeing Huck from the prison of his own prejudices and his own narrow view of the world. It's just the opposite. It's a fascinating book and it really is a good metaphor for life and how you can learn things. It's really a profound -- I think Mark Twain was -- I didn't realize what a profound thinker he was and what a great writer he was.

Justice Steve Perren: Now, you've come out of high school.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: And you've just told us as we're talking that you have to have a broad-based education in the liberal arts in order to get into a profession and yet the profession you end up in isn't even on the horizon. Is that correct?

Justice Arthur Gilbert: Yeah, it's not.

Justice Steve Perren: So what profession do you have in mind that you're preparing yourself for?

Justice Arthur Gilbert: Well, I'll tell you one thing. So I'm thinking about what to do and I figured, "Well, I'll go to law school." Law school, I've got to be really frank here, law school is only three years, right? It's not like medical school where you go forever. It would give me some tools to operate in society. I could -- it could open doors to other things. I thought of that. And another reason I went in – in all candor - is it got me out of the Vietnam war. I was absolutely opposed to the war, a number of people were. I said, "I can't -- I would defend my country. I would do whatever I could." But that war was just absolutely an outrage. And I said, "Well, instead of leaving the country or protest," I went to law school. Now I probably would have gone to law school anyway. And so I applied to the University of California, Berkeley, it was called Boalt Hall then, now, it's got a new name. What's the new name?

Justice Steve Perren: It's the Law School of the University of California Berkeley.

Justice Arthur Gilbert: Yeah, and it would -- it had a great reputation. And I was thinking of going to Harvard, maybe I could get into Harvard and I applied to Harvard and to Berkeley and I was accepted to Berkeley quite away, almost immediately. And I said, "Hey, I've been accepted." Just go to Berkeley. You'll be in California. You have friends here. It's freezing back East and I didn't even process the rest of the application for Harvard and I figured I'd go up to Berkeley.

Justice Steve Perren: I am going through the background information that I've ferreted out and that you've told me about. I'd like to take it back to the undergraduate days at UCLA.

Justice Arthur Gilbert: Yeah, sure.

Justice Steve Perren: You and I were in competing fraternities at different times.

Justice Arthur Gilbert: Yes.

Justice Steve Perren: But you were at UCLA from '57 to '60, if I recall correctly or they're about --?

Justice Arthur Gilbert: It's '56 to '60.

Justice Steve Perren: Okay.

Justice Arthur Gilbert: Winter of '56.

Justice Steve Perren: And you were a fraternity guy.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: You appeared at Royce Hall, you work for UNICAP. Talk about those experiences.

Justice Arthur Gilbert: Yeah. Well, we did -- I did do -- something just happened this past weekend that's connected to all of this, now that you mentioned it. This is on the spot stuff, this is fun. So, this was during the '50s and Mel Blanc was the famous voice for Bugs Bunny/Porky Pig, and all these characters. And his son was a fraternity brother of mine and we're still friends, Noel Blanc. I just talked to him the other day on the phone. And Noel does the voices now.

So, Mel Blanc and I did a show on Royce Hall where I was his pianist and he'd come out and sing April Showers and it was absolutely hysterical. He would start out just singing it straight, "When April Showers may come your way" and I'd play the piano and it was this big stage with a big grand piano. Then he'd sing the second chorus and when he'd sing, "When April showers…" and somebody would run up on the ladder and squirt seltzer water all over; they'd bring the flowers and they throw weeds and stuff at him, that kind of thing. And it was just a slapstick thing; it was just so much fun. I just loved doing it.

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And then, I did a number -- there were some jazz concerts and I got to play in a few of them. And a big

thing in those days was jazz and poetry. This was the Beat Generation. This was way before the hippies, before LSD, any of that stuff. And there were some great poets, there was Ginsburg who wrote ”Howl” and there was Kenneth Patchen who is a poet who would read poetry and he’s published -- he’s pretty well-known and he was in those days. And I remember this, the Chamber Jazz Sextet, and I used to do parodies of poetry with the jazz group and it was funny stuff. I did it for the fraternity and I used to entertain doing this kind of stuff as the jazz musician, you know. And I’d have a cigarette hanging. I don’t smoke but I have a cigarette hanging out of my mouth and I do this kind of this pump -- pumps.

So, just this last weekend, I was telling you about this at lunch. I get a call from a trumpet player. Now, we’re at 60 years later right, 50 years later and I get -- yeah, 48 to be exact, I get a call from a trumpet player who played with Sonny Rollins, and he and I jam together at times. He’s an older, we’re old guys now. We’re in our ‘70s.” And he calls and he says, “Hey, I’ve got a gig, the piano player can’t make it. Can you make it to the last minute?” It was last Friday night. So I go to this gig and it’s jazz and poetry, and these guys are from the ‘50s and one of the poets is doing his thing and we’re playing jazz in the background. And I go up to him I said, “Man, you sound like Kenneth Patchen.” He says, “Kenneth Patchen was my teacher. What are you talking about?” And he’s a published poet, and he’s an older guy with -- you know, and it was like a time warp. It was so much fun. I mean, there’s just a continuum in your life going back to the ‘50s and here I am doing the same thing that I did so many years ago.

Justice Steve Perren: And it’s true is it not that those who were deeply interested in the accomplishments that you had at that period could have re-course to a motion picture film.

Justice Arthur Gilbert: Oh, God! Okay.

Justice Steve Perren: Tell us about that.

Justice Arthur Gilbert: Okay. So, the first year, I’m in UCLA. I’m at UCLA and I get a call to be in a movie. Now, I get a call from another -- see, it was good being in a fraternity, you get connections. Paul Howard was his name. His father was Moe Howard of the Three Stooges. And Moe Howard is the guy with the funny haircut, who would slap

everybody around. And the Three Stooges had not become -- they hadn't been discovered again. That happened about maybe 10 years later. And Moe Howard was the associate producer of the film that in the film books, you know, they give checks on movies, this got to have a check.

The movie was called Senior Prom and they said they need a young musician because there was a musician strike going on. And they were recording all the music in Europe and they wanted us to at least play like we were playing, but it would be recorded elsewhere as a singing group -- as a group backing this guy who is a new upcoming star, so to speak. So, and the associate producer was Moe Howard, who incidentally was one of the most gentle, sweet, kind persons you could ever meet, just the opposite of his screen persona.

So, I got a couple of weeks of work doing this movie and it was so damn much fun. Boy! I had a great time. And I made some money; it was great for a kid to making a few bucks. And my head was turned, I sort of thought, "Hey, it would really be great to be in this business and to be part of this." But anyway, we did the movie and then reality set in. I went back to school and completed my studies.

Justice Steve Perren: So the dynamic taking us up to graduation at UCLA, you go to law school for a negative reason essentially.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: And so take it up from there.

Justice Arthur Gilbert: I didn't know any lawyers. There were no lawyers in the family. I don't even – I had never been in a courtroom. I think once as kids, they took us to the courts to see what they were like. I never had any -- the Perry Mason was the only show on television, dealing with law and big deal?

So I was -- I graduated at the midterms, so I had some -- I had six months off, and it was a 1960 census, and I became the head of the Hollywood census takers. I was one of the leaders of that and I got paid for that and I very -- and I met a lot of show business people because a lot of -- there were strikes going on and there were people in show business who were working on the

census. So I met lots of people and just had a ball doing that. It was just a wonderful time.

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And so -- and then I went and took a trip to Europe, a couple of months with a buddy. We brought a car and travelled around Europe. And that for me, as a young kid, that was a big deal in 1960, you know. So, then I came back and started law school and --

Justice Steve Perren: Now, we're up in Berkeley.

Justice Arthur Gilbert: We're in Berkeley and so we're at Berkeley and I'm waking up every morning saying, "What am I doing here?" Now, the dean of the law school was Prosser, and Prosser was the famous Prosser on torts and I'll never forget -- this is a joke I tell over and over, but anybody who's watching this tape, if anybody is watching it hasn't heard it or maybe they have, but this is what happened. The first day of school, this is the truth; it's one of those tiered seats in the courtroom like an amphitheater and I was up on the top, and Prosser comes in and he's walking back and forth. And he gives you this very warm, encouraging opening speech. He says, "All right…" he says, "Look to the left and look to the right." And he looked to the left and he says, "One of those persons will not be here at the end the semester." It really makes you feel good, right? So I looked to the left and I looked to the right and I almost had a nervous breakdown. I was sitting on the aisle, that's my joke. I always get a laugh. I tell that all the time. When I talk to law students, I tell them that story.

So anyway, so I had Prosser on Torts. So I'm there in a couple of weeks into the semester, there's a concert, and who's at the concert? The Four Preps. So I go to the concert and I go down the -- it's down in the commons or whatever, there's an auditorium there, and they all meet me. "Hey, how are you doing? Hey, Art, come on the road with us. We're on the road and we'd love you to come with us." And I'm sitting there going through this agony about, "Do I go in the road with the Four Preps?" And I said, you know -- I said this is -- I just -- I knew I couldn't do it. I was scared. I wouldn't do it. So, I'm not going to drop out of law school and do that.

So, and that shows why I shouldn't have become a musician because if you've got a real passion, the

passion is so great, so overwhelming, you -- I would have gone on the road or I would have dropped out of law school or I would have kept playing. And so I was practical and said, "I don't want -- I don't want that life."

Justice Steve Perren: What fascinates me about what you've just said is I know you to be extremely passionate. I know from 14 years of conferences with you that every fiber of your being goes into the opinions that you write. Let me quote if I may. This is from McDonald versus Scripps newspaper written in 1989 and I'll let you elaborate but I want to give the quote. This is the man that came out of -- that apparently, Barron Field talks about a child and a spelling bee, and it talks about his bringing a lawsuit because he doesn't feel he was fairly treated in a spelling bee. And you say, and I quote, "Gavin has much to be proud of. He participated in a spelling bee that challenged the powers of memory and concentration. He met the challenge well but lost out to another contestant. Gavin took first in his high school and can be justifiably proud of his performance." You go on. "It is this lawsuit that is trivial, not his achievement. Our courts try to give redress for real harms; they cannot offer palliatives for imagined injuries." Where in heaven's name did that Arthur Gilbert come from, from a guy who wandered into law school to avoid the draft?"

Justice Arthur Gilbert: I don't know. Well, I don't know. I mean, it was -- I just -- I like words, I like language and I like to write. And this was a -- this case made the front page of the LA Times. It was -- I used this case and it was unfortunate for the young man but his lawyers should have never brought this case. And even I had a little joke at the end of the case, I -- the trial court who happens to be one of our colleagues now, Ken Yeagan. I remember, he said, "You have a giant causation problem here," trying to find damages. And at the end of the case, I said, "If someone doesn't understand, we'll spell it out" and I misspelled the firm deliberately. I had some fun with that case but --

(00:30:10)

Justice Steve Perren: So where does -- where does this passion born? Where -- you're in law school and you're looking to your left to see if you're going to fall out.

Justice Arthur Gilbert: Well all right, what happened. Okay, yeah. So I'm in law school asking you know, "What am I doing here?" Berkeley had one of the finest English departments in the country, English literature, and they had some wonderful scholars there and I used to cut class, law school class to go to literature classes sometimes. And Alfred Kazin who was one of the great literary critics of the '50s wrote "On Native Grounds." He was teaching a course in American Lit; at the same time as my property class. I said, "I've got to get -- I've got to get down. I've got to see some of these lectures." So, I cut class and he gave a lecture on J.D. Salinger, "Catcher in the Rye." Can you imagine that the book that everybody was reading? And it was a fascinating lecture. Boy! That still stays with me. And so I did that on occasion. I would cut a few classes to do that.

And in fact, I do recall once cutting class to hear a panel discussion with Philip Roth, James Baldwin and Jonathan Cheever, three of the great American novelists. They were just hitting their stride in the '50s -- in the '60s. This was 1960. I just had to go hear them, you know, so I did that and I was an average law student. I wasn't -- didn't set the world on fire. If I liked the course, I got an A in it. I got A's in courses I liked and I got C's and B's in other courses. And I took the bar and I passed the bar. Thank goodness! And then now what do I do with my life? I had no idea what to do. I really did not know what I was going to do.

I was going to take a trip around Europe for six months and then settle down. And it just turned out that a friend of mine was with the City Attorney's Office in Los Angeles and he said, "Why don't you come down and check out the City Attorney's Office? It's really a lot of fun you'll get to try cases right away." And so I said, "Well, okay." So I set up an interview and I was going to stay in Berkeley. I had a girlfriend in Berkeley. It was a great place to be. While I was waiting for the results of the bar, I was the teaching assistant for a course on law and journalism and I was the TA for the course and I got to give some lectures and I helped write -- worked on a book on juvenile law with a professor and I was ecstatically happy. I had this apartment. Berkeley was, you know, roiling in those days. The Free Speech Movement was starting. I was part of this whole thing there and I just loved it.

And so I went down the south for an interview. So I go to the City Attorney's Office and I meet one person and I meet another and they go through the whole thing and it's about an hour-and-a-half interview with different people in the office. All the way up to the City Attorney himself which is Roger Ehrenberg in those days. And they say, "Okay fine, you're hired." I said, "What?" I thought I'd hear from them and they said, "Well, we'd like you to join us." And I said, "Really?" And they said, "When can you start?" And I'm sitting there and I said, "Well, how about two weeks?" I don't know where these words came from, and so I took the job and suddenly, I am leaving Berkeley. And I had a cat who I was really attached to and I made -- I gave my cat to some friends. I said, "Be sure to take good care of him." And I came down. I was going to take the cat home with me, but I figured driving the cat down from Berkeley. These are the things that bothered me so I'm still thinking about it how many years later.

So I come down and I'm in the City Attorney's Office and Johnnie Cochran who became very, very famous lawyer and I became very close friends and we tried -- I watched him try. He was a master then and so I tried cases right away and I got a few good cases, some -- even though that they were mostly misdemeanors I had a few cases. I tried one of the first consumer fraud cases in California. They had established a consumer fraud unit, brand new unit, with the attorney general's office and they worked with the city attorney on this television repair scam and I had the case.

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And we won the case. It got lots of press coverage and I felt I had a certain talent in trying cases. I enjoy the courtroom and I said, "You know, maybe I'll become a lawyer." And so then, I start interviewing with some firms. I was only there short time because I --

Justice Steve Perren: Well I'm not going to let you out of there just yet.

Justice Arthur Gilbert: Yeah okay, go ahead.

Justice Steve Perren: Because you had -- I remember listening to some comments and listening to your description of Johnnie Cochran, Charlie Lloyd, Ed Davenport, this fertile ground for the growth of young lawyers into which you were planted. Any more you could talk about today?

Justice Arthur Gilbert: Well, you know it was interesting. This was prior to -- well, Brown versus Board of Education had been just decided. The civil rights legislation hadn't been passed. Johnson was just about ready to sign that and the two best lawyers in the office were black lawyers -- and Johnnie Cochran and Charlie Lloyd. They were phenomenal, they were masters, and I watched them. I learned how to try a case and Johnnie and I ran the master calendar court together for a while and we became really close friends. Julian Dixon was the bailiff. He became a very prominent member of congress, and we were all buddies. And I watched Johnnie try a case and the confidence and the ease, he just owned the courtroom. And Charlie Lloyd, my God, I was just mesmerized by these guys, and they just had it in them. They didn't get the -- I mean they went to a law school, they worked hard. Charlie Lloyd was a police officer. There wasn't affirmative action. There wasn't any of that kind of stuff. And I just was struck by the two best lawyers who were Black lawyers who didn't get the advantages that the rest of us had. It made a profound and had a profound impression on me.

Justice Steve Perren: How long did you stay in the city attorney's office?

Justice Arthur Gilbert: Really, it seemed like a long time because I got to try a lot of cases but only about a -- about a year-and-a-half.

Justice Steve Perren: And what moved you out?

Justice Arthur Gilbert: Well, everybody said, "Hey! It's time to move. Johnnie was moving. Come on!" People were pushing me. So I interviewed with some firms and one big firm offered me a job right away and I just go -- I'd look at the cubicles and I saw -- I said, "God, I just can't do this. I'm not going to do this. I can't and I just can't do it." And then a small boutique firm -- one of the court reporters said, "I know this firm. You are the perfect guy for them." And I interviewed with them. They were just a couple of lawyers, two or three lawyers. One had left and they had an opening and they were young, my age. We were -- I was just a kid. I was in my 20's, but they were successful and they know how to hustle business and get clients and be -- and do deals. They were good business people and my instincts just said, "Take the job" and I did and so I was with them for 11 years before I went on the court.

Justice Steve Perren: Well, I know that some major law was made by you. I think there was the kosher chicken case which was --

Justice Arthur Gilbert: Well, oh God, that case was assigned to me when I was in the city attorney's office and these guys, a couple of rabbis were advertising chickens as kosher and the kosher -- and they had little signs, it's little tags on the chickens that said, "Authorized by the Orthodox rabbinate." Well, they actually -- there was a big dispute within the rabbinate about these -- about these chickens because the chickens were -- once the chickens were killed, they were dipped in hot water and the hot water is not kosher. It's got to be cold water. Why? Because the blood is assimilated into the chicken and that's not healthy and it's against dietary restrictions and health reasons and religious reasons and so what difference would that make?

Well, if it's in cold water, it takes forever to plug the chicken. In hot water, it's easier. You can sell more. It's all economics. And so I was assigned that case and there was a kosher food law inspector in California, can you believe that? And he's the guy that I worked with. And he took me to the police academy and we had to watch these films in color of these chickens. And then he said, "Let's go to lunch" afterwards. I'll never forget that.

So anyway, that case passed. Actually, I left the office the day it went to trial. It continued so many times. So a friend of mine got stuck with it and halfway through the trial, they settled it. And so that was one of my great experiences.

(00:40:01)

But then when I went into the firm, I did the -- franchising was becoming very big, so we were involved in franchising and I set up an escrow company and I did a lot of business. And I was learning it but I was sort of taking to it. And we had -- we also invested -- we also represented a motor home company, a very big company and we had stuck in the company. We were part of the company. So, I was doing things like that that was pretty exciting and the firm was successful. We got our own building and I was a worrywart. I was a guy that would be up all night did I ask the right question? Did I do this right? And we were doing well. The more

successful we became, the more it seemed the quality of my life was eroding.

And so -- and then during that time, Ed Edelman was a supervisor -- no, he was a city councilman, and he was running for the supervisor. And I have no idea. You know, I have these voices in the middle of the night or something, a voice said to me, "Call Ed Edelman" who I knew was looking for someone to help him with his campaign. I knew that because I was dating his sister-in-law at the time. So, I just call him up out of the blue and I said "Ed, do you need some help on your campaign?" And he said, "Yeah, I do. Can you be here tomorrow morning and take over the campaign?" I said, "What?" I've got a law practice, so I went to my partners and the next day. I said, "Let me check it out." I went to my law partners the next day and I said, "You know, Ed wants me to help him on his campaign. Do you think I can?" They said, "Let's work something out. Let's see if you can do it."

So I went to him and I wound up doing his campaign. It turned out Jerry Brown is running for governor. This is the first time he ran for governor, the same time. Now, how did I know Jerry Brown? I met Jerry Brown at International House where I was living when I went to law school and he was this kid who had just come out of the novitiate and decided he is not going to be a priest after all. He is going to be in the world and he's going to go to law school. I even helped him with his application to law school. I bet he doesn't even remember that, but it's true. And so he and I became friends when we were in practice and he was working for Tuttle & Taylor. And we'd talk to each other about cases. He'd call me. "What do you think about this?" And I'd call him and we were just friends and we'd see each other once in a while.

And then he said, "Hey! I'm running for the Board of College Trustees." And I said, "Really? That's not much of an office." He says, "I think it'd be interesting. I'm having a debate on television with one of these conservative members. Watch it and tell me what you think." So I watched it and I wrote him a letter. I told him what I thought and then we talked about politics once in a while. Then he ran for the Secretary of State and I said, "Why are you doing?" He even told me about it ahead of time and he said, "What do you think?" And I said, "Why would you want to run for the Secretary of

State? Have your name on every corporation?" It's an office. It doesn't go anywhere.

So, he ran, he won, invited me to the swearing in, Earl Warren, the Chief Justice of the United States Supreme Court swore him in and he signed his first document as Secretary of State and then the Watergate thing, all that happened and he was involved because they had -- there were false notaries and so on, it became very famous through that. And then he was running for governor at the same time Ed Edelman was running for supervisor. And he said, "Hey! Why don't you help me with my campaign?" And I said, "Well, I'm helping Ed Edelman." He says, "Come join the big boys." So Ed said, "Hey! There's no reason you can't do both." So I didn't. I was really managing Ed Edelman's campaign but I travelled with Jerry. He liked to have someone with him at certain times to bounce ideas off his back and forth, so I travelled with him on several occasions and so they both won.

And then Jerry Brown wasn't appointing anybody to anything. He's saving money. You know, he's Jerry Brown. And all of us -- and I sent him a little note, a little one line letter that said, "Dear Jerry, I would consider…" It's something like, "I would consider -- I would hope --" What did I say? "I hope you'll perhaps consider me for an appointment to the court," something very -- that's it and signed it, Arthur. And then in August 18, 1975 while I'm in my office dealing with -- who knows what, the phone rings and the secretary is almost falling out of her chair.

(00:45:04)

It's the governor. And so Jerry Brown is on the phone, "Hey Jerry, how are you doing?" "I'm doing great! How are you?" "Great!" "So listen, I'm appointing you to the court." I said, "Great! Wow! Really?" "Yeah, the municipal court." I said, "Okay. You know, I was young. I was in my 30's. He said, "The Burbank Municipal Court." I said, "Burbank! I don't live in Burbank. I don't know from Burbank. No one knows me there. That's not -- I can't accept that appointment." So he says, "Oh, well okay. How about Los Angeles?" I said, "That would be great."

So he appointed me to the Los Angeles Municipal Court. I was his second appointment to that court. Fran

Rothchild was his first who was a colleague of mine now. We were just -- I was 37 I think, 36 or 37 and so I went to my partners and said, "Hey, I got appointed to the court." "Great!" They were terrific about it. And I've been the judge for almost 40 years now.

Justice Steve Perren: Well, let -- I'm not going to get away from the municipal court.

Justice Arthur Gilbert: Okay. Yeah.

Justice Steve Perren: Let's take a plateau here.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: We've got you through -- you finally figured out you're going to be a lawyer if by default or whatever but you also have these other interests, not the least of which is and continues to be your music, what's going on there if anything?

Justice Arthur Gilbert: Not much. I really -- when I was in practice, I let my music go. I actually let it go. I said, "I can't do both." As I've mentioned, I'm a worrywart type even though I try to hide it and I just felt I couldn't practice law and really take care of my clients and be really serious about music. So I had a piano and I played a little and in fact, you know, actually I did -- I've just thought of something. I did -- I've got to tell you about this.

When I was a lawyer, these questions are bringing up all kinds of memories. I didn't even take notes on this. When I was practicing law, a friend of mine was the head of the LA County Law Library, not law library, the library, the whole library system for Los Angeles County and they were doing a program to get people to involved in the library. And they had a Charlie Chaplin kind of slideshow and they wanted music for it and she wondered if I could play ragtime music and she knew my dad and so she said, "Could you and your dad do this?" And I thought it would be great for my dad to play to do this. And I said, "Dad, we're going to do this thing together." And he said, "I'm out of shape, my God…" I said, "I don't care. I'm out of shape too. We'll practice and we're going to do it." So, we did it and he played his swinging tent style which was just fabulous. He really could swing and I played ragtime and we'd change back and forth. He'd do one, I'd do one and that accompanied the show all over the state, all over the county. It was

just a thrilling thing to do. I forgot all about that. It was a thrilling thing to do. I'm so glad that you mentioned.

Justice Steve Perren: You're doing with your dad on top of it?

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Yeah. So, you get the call.

Justice Arthur Gilbert: So I get a call and all these young Jerry Brown, judges come in. The other Judges were Ronald Reagan appointees and they said, "Oh my God, what's going to happen?" You know, and so we had the ground running. It was really an awful lot of fun. On a short time, I became the supervising judge of traffic court and we really shook things up.

The clerk of the court had been a clerk in one of the other courts when -- he was the head clerk when I was a city attorney so we knew each other and he used to be this very uptight guy and now he's this much different guy. And he and I just got along beautifully. And so I noticed that there are so many Spanish-speaking people who are coming to court who don't know why they're there. They don't understand what the ticket says. Their tickets have gone to warrant and everything and so I was talking to one of the bailiffs about it who was Hispanic and he said, "Yeah, this is terrible." We should have them translate into Spanish." I said, "Absolutely, let's do it."

And I called up different people, called up -- I think it was Senator Alatorre. He was a senator then. He said, very prominent in the Spanish community and then he said, "Let's do it" and I called up the sheriffs and the police department. They did it. They said, "The sheriff's department was so enthusiastic." They start doing it immediately, translate it, you know putting the tickets into Spanish. And if an officer gives a ticket to someone and they can tell that they're Hispanic or they speak Spanish, you give him a copy of the ticket in Spanish as well.

(00:50:09)

So you know -- so we got that program going and Ed Edelman of course supported it because he was really in favor of that. And so it just happened overnight, and then La Opinión --

Justice Steve Perren: You know, let's pause there.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: You're almost -- I think you're being unnecessarily modest about this. That's a revolutionary concept at that time of opening the courts in that way, something we take for granted today. Any more background in how that developed?

Justice Arthur Gilbert: I mean it just occurred to me. I mean, I could just see people not understanding what's going on, not understanding the system. So, a lot of us felt that we had to make the system more open. Another thing, you could only come in to contest a ticket apparently to set the matter for trial at 08:30 in the morning or one o'clock in the afternoon. And people are working. Sometimes they could get off work, so I went to look and I said, "Why can't we just -- why can't they come in whenever they damn please? What difference does it make? Well, all right, we'll change it and I did it overnight. And I send out press releases, "Hey, you want to pay for ticket or you want to come in and contest it, pay it, come in at anytime you want. It's your convenience." The courts are here for the people, not the other way around.

Justice Steve Perren: Well that was a revolutionary thought.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Let's think back to that time. We haven't discussed this. There was an old guard there. It's pretty much a bunch of white guys.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Things are changing; they change dramatically.

Justice Arthur Gilbert: Yeah. Jerry Brown had a profound impact on that appointed lots of women minorities and he appointed people. And lo and behold, the people he appointed were all very, very competent. You know people would -- I mean it wasn't said but it was well women are not going to be as good or if somebody is not from the club, they're not going to be as good. It didn't happen. So there was all whole group of us.

One of my best friends, Elwood Lui, became a prominent. He is one of the most prominent lawyers in the state. He was on the Court of Appeal and we went up together. We started the same time together. There were Asian Judges, Black women, Hispanics, Filipino, from all walks of life and we have one of the finest benches in United States.

Justice Steve Perren: And not only as an institution as you've described it but you actually became directly involved. Albeit, perhaps unforeseen, in some civil rights issues is something having to do with public solicitation.

Justice Arthur Gilbert: Oh yeah, yeah. One other thing I just thought of. We also started community service. Community service, we take for granted now. It wasn't done. No one was doing it. It's not a brand new concept and Eric Younger whose father was Evelle Younger and had been the Attorney General and had run against Jerry Brown for governor was a judge. He was even younger than I. Younger was younger than I. He was in his 30's and he was a Ronald Reagan appointee but very progressive thinking and tried to get community service and he couldn't get the judges to go along with it. Well, I knew about that and I called him. I said, "Eric, tell me all about community service." And he said, "It's a great idea. I've got to see if you can get it through."

Well I had all these new Brown Judges I got a lot of support, so I started community service programs and they took off. Boy! The press went for it, everybody went for it as alternative sentencing way -- ways to deal with misdemeanor offenses and it's used all the time now so --

Justice Steve Perren: And nothing is so different, it stays the same. We have revolutions going on now in criminal sentencing today to try and find a better and more effective way.

Justice Arthur Gilbert: Exactly. We're wrestling with these statutes right now.

Justice Steve Perren: Yeah.

Justice Arthur Gilbert: So, it's great and I really credit Eric Younger for turning me on to that idea. So then, another case that I had that I'm really proud -- I have to admit -- they said, "Tell us about cases you're proud of." This is one I'm really proud of.

As a city attorney, we prosecuted lewd conduct cases. You know one, two people of the same sex would meet somewhere and do something in the bathroom and the whole thing was so distasteful. It's just -- it was wasting our time on these kinds of cases. And there was one statute called 647(a); it was the lewd conduct statute and there was a subsection of 647(a) which said it was a misdemeanor to solicit a lewd act in a public place. You couldn't solicit if you're in a public place, like in a bar. Two guys -- if a guy and a woman are in a bar and I was a young guy not married, dating, and you'd meet somebody and you'd be talking, I didn't meet people in a bar actually.

(00:55:08)

The supermarket was the best place to meet women. But anyway, you're talking and you're at the frozen foods section. You meet somebody and they'd start talking. That's how you meet women. People said, "How do you meet girls?" When we were in our 20's and 30's, I said, "Not in a bar, it's the supermarket."

So if people are in a bar and they made -- and a guy says to a woman, "Hey," I'm not talking about prostitution cases. "Hey, let's go up to my place." That happens a lot of time, right? But if a guy says it to a guy, they're a criminal. Anyway, I just couldn't believe this is going on. Now in Los Angeles, they were arresting people for that. In San Bernardino, they were arresting -- if two men held hands, they were arrested. I mean it was just outrageous and 647(a) was abused everywhere. And some very good lawyers, Jay Cohorn who works now on the Appellate Project, and who's this -- oh, I can't figure his name. I'll think of it in a minute.

Justice Steve Perren: Zach, Zik?

Justice Arthur Gilbert: No, no, no. Thomas, his name is Thomas. He wrote a book about it. Really fine, fine lawyers. They challenged this section. And I was sitting in the master calendar and he came in front of me and for some reason everybody decided, I should decide all the cases, so I had like there were 7,000 cases. All the cases came to me and they argued it in. There was a case pending before the California Supreme Court but it was taking forever and so I had to make that call. And I wrote one of my first opinions and I declared it unconstitutional and the Brown Act at that time probably still is the law

obviously said that consenting adults could do whatever they wanted in private. So I had this -- this was my first written opinion. I said, "If you can do it, you ought to be able to talk about it." That was my rationale.

If you can have sex in a room together -- and it's nobody's business, you ought to be able to talk about. You ought to be able to say, "Hey! Let's go up to my room and have sex." That would be a crime but not -- so when I said, "I thought it was just patently unconstitutional," it was as -- it was easy for me actually and I made that ruling and dismissed all those damn cases. And I mean obviously, it affected thousands of people in Los Angeles and the other communities. I said the whole state, you know, it affected the whole state. This is the penal code.

And so the Supreme Court ultimately ruled the same way I did in a different case and I almost had the name of the -- you know, I'm going to quote something from one of my great -- one of the great jurists who is no longer with us, Jerry Peck and he said, "For every case name I remember, I forget a line of poetry." That was such a great line so I'm going to use that line now. I forgot the name of the case. It's on the tip of my tongue. But anyway, I felt really good about that and I felt this is where I belong on the court. I get to make decisions like this that I think are right that conform with the law and that protect people. So it was -- I just -- to this day, I'm just so proud of that case.

Justice Steve Perren: So in the municipal court and since this interview is in amber, it's finished when it's finished and as people go on the word, we're using in common parlance, you and I understand is municipal court. Won't you tell the listener just in a nutshell how bizarre that arrangement was as compared to what we have today?

Justice Arthur Gilbert: Well, there is no such thing as a municipal court anymore. You see young lawyers and you say municipal court and they go, "What?" The municipal court had limited jurisdiction. It was -- the criminal cases were only misdemeanors not felonies. And the civil cases, it changed -- when I first started, I think the maximum amount was like $10,000 then it went up to $15,000 and then $20,000 or $25,000 at the top and small claims. And that way -- and then municipal court Judges would hear preliminary hearings and that was it and it was really called the people's court. And it -- and it was

a -- every municipal court was a little different. Los Angeles had its own municipal court which was Los Angeles is larger than some states but there was an Alhambra. Well, I guess, Alhambra is part of Los Angeles, isn't it?

(01:00:07)

Justice Steve Perren: Yeah.

Justice Arthur Gilbert: And they had different branches, Santa Monica and so on.

Justice Steve Perren: But you had different districts.

Justice Arthur Gilbert: You had different municipal court districts. San Bernardino had their district. There were different -- and different cultures. It was -- you go from one to another. It'd be totally different. I remember when I was practicing, I was in the Ventura Municipal District and my good -- everything was different, the way they treated you, the way they acted, the way they kind of deal, you could get on a criminal case as opposed to you couldn't get a deal in some places. So it was -- you really had to know your judge. I still think that perhaps applies in some cases.

But -- so you know then there was a court consolidation, we have one -- it's all under the -- it's a state court system now whereas in those days, we had municipal courts were part of the community. There were community courts and they had their own particular characteristics and their own style and if you -- you could feel hometown, I think if you --

Justice Steve Perren: Well let me -- let me ask you a point on that. This is just for historical perspective.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Today, if you're in Los Angeles, you're in the Los Angeles Superior Court, that's the trial court and that is as big as this county of Los Angeles. But in those days, there were multiple small district courts in Compton, in Van Nuys.

Justice Arthur Gilbert: Yes.

Justice Steve Perren: All throughout.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: And you were -- you were ruling before a constituency with that -- literally was hovering over your neck.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Any comment you would make about the immediacy of consequence and public perception where you were the -- in the bright lights as opposed to being sort of lost in the anonimity of a large country?

Justice Arthur Gilbert: That's a good point. If you would make a controversial ruling, boy, the local papers would have you all over the map. And that's one of the reasons I told Jerry Brown, "Don't put me in Burbank." Because Burbank had a -- it was its own judicial district.

Justice Steve Perren: Right.

Justice Arthur Gilbert: It was an entirely different judicial and it was a small community. And if you didn't live there and weren't part of that community, you were an outsider.

Justice Steve Perren: And the electorate was within the confine.

Justice Arthur Gilbert: Yes, within the -- so if I'd be up for election or somebody could run -- you know you could run against somebody, you still can, so on the superior court. So if you're not from the area, somebody could take you on easily. "Don't, you know, vote for so and so. He lives down the street." You know, I could just see that, so I didn't want that to happen.

Justice Steve Perren: Now, while you were municipal lower judge, factual innocence, what's that about?

Justice Arthur Gilbert: Well, I had this one case, I didn't even realize this. You know, we learn something every day. The job that we have now, you and I are colleagues on the same court. And we find -- we find new things, what? This hasn't been decided, we -- I can't get over that. And I think we both remark that it makes a job pretty challenging and fun. It's still fun to do.

So, there is a statute and I haven't researched that lately but I bet it still exists. In the penal code, that states that if someone is fact found to be factually

innocent of a crime. That means the person didn't do it. It's one thing the people say, "You can't prove a case beyond the reasonable doubt." That's one thing. And you can defend and can be released, win the case. But factual innocence means you're not the person, there's no doubt about it. In that case, you can have your entire record of the arrest everything sealed, so nobody knows about it because, you know, you could be arrested for something and that follows you the rest of your life.

So, there was this concession on the pier, the Santa Monica Pier where they have concessions and roller coaster and all that kind of stuff, where I was raised. And they had the -- the police had arrested and -- one of the concessionaires who had rented space, they were from out of town, from Oklahoma and it was -- I still remember that. And they had these barrels, and you would throw baseballs into the barrel. And if you got three out of three, you'd win a price.

They said this was whole fixed, this was a fraud. This was what we're spending our time doing. It was a fraud and they confiscated the barrels, the baseballs, and they arrested the people and they made bail. I think they probably didn't have any bail. And the police found that they couldn't prove the case. They had some experts who couldn't --

Anyway, so a local attorney, Roger Diamond who is quite active today, he's a very fine lawyer, takes on causes all the time, great guy, comes into my court with emotion to seal the record and for me to make a finding that his clients are factually innocent and subpoenas, all the confiscated paraphernalia, the barrels, the balls, everything.

(01:05:21)

And the police are there with it and the attorney generals, deputy attorney generals shows up and says, "Your honor, this is very unusual. There's no precedent for this. There's been no trial. You can't have a finding." And so Roger Diamond argued, he says, "Why not? Why can't we have a little trial here now? A mini trial to determine whether they're factually innocent or not?"

So, I looked at the attorney general. I said, "Why? Is there anything in the law that says we can't do this?" He says, "Well…" I said, "I'm going to have a hearing. We're

having a hearing." "Well, I object." "You can object all you want. You're welcome to join us, to watch the trial." So, they set up the barrels and he has his kids there and his kids are six or seven, one is nine or something. And they're throwing the balls in. And one misses one, one gets two out of three. And then my bailiff tries it and he misses, he gets a couple, my clerk -- and so I'm on the bench watching this and they're playing this game. And I said, "What? I don't get to play?" And so he says, "Your Honor, please?"

So I take my robe off, I come down, I go in front of the barrels. And there are three barrels and I get three out of three. And when the third one goes in, he, Roger Diamond says, "I rest." And without losing a beat, I said, "Motion granted." And I dismissed the case and sealed and ordered it all sealed. And years later, I swore in his daughter as a member of the California bar.

Justice Steve Perren: That's one of the beauties of the cycle.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Of our profession.

Justice Arthur Gilbert: Yes. Isn't that, you know?

Justice Steve Perren: It is. So, we've got you poised now to make the step up to superior court. And what happens? What's that about?

Justice Arthur Gilbert: Well, I got appointed to the superior court -- I was on the municipal court for about four years and really having a great time. Elwood Lui and I were -- I had -- I made a lot of friends and I knew some of these guys from before Loren Miller whose father was the famous Loren Miller, civil rights lawyer. And Elwood and I were very close friends. Jack Newman, Dave Rothman who was the expert on ethics, his book on ethics is the Bible. He and I went to high school together. So, I had all these friends. It was just a -- just a wonderful time. Young people changing world. I mean, we really loved it.

And so I got on to the superior court and I wound up in juvenile code -- court and I became the supervising judge of Inglewood which is really a tough, tough place. There were some really horrible murders and gang killings and I had one very famous case. It made the news all over the world and I had -- it was a fitness

hearing to determine whether these kids should be treated as juveniles or adults. And it was called the Pico-Robertson murders. And they were these kids who just randomly, in the middle of the day, were killing people, out in broad daylight on Robertson-Pico busy intersection. So I had that case and I had a few other high publicity cases and then I was able to get transferred to Santa Monica and it was three miles from my home, it was fantastic. And I became what -- one of my colleague's again Jerry Peck, I refer to him again, called the utility outfielder.

I was -- I had a civil assignment and I was hearing civil cases and criminal overflow. And it was three miles from my house. I went swimming at -- during the lunch hour and go incognito and used the sheriffs -- they had a shower downstairs and I could use the shower and then go to court during the afternoon. And I was in Nirvana, it was just the best assignment. I said, "I want to stay here the rest of my life." And wouldn't you know it, six months later, I get appointed to the Court of Appeal.

Justice Steve Perren: Now, and that's how you got punished because it was only three miles to go to court?

Justice Arthur Gilbert: Yes.

Justice Steve Perren: And then what happened when you got appointed to the Court of Appeals?

Justice Arthur Gilbert: So, this is funny. So I have a touch -- I have a sore throat, a touch of the flu and I'm home. And I'm getting better, I feel okay. I just took a day off. And I get a phone call at home at about three -- 02:30 in the afternoon.

(01:10:02)

I picked up the phone, and it's Jerry Brown, can you believe this? He says, "What the hell are you doing at home?" And I say, "Hey! Listen, I've got a touch of the flu." "Okay. Well, listen, I'm appointing you to the Court of Appeal." "Really? Wow! So, yeah, where?" He says, "Santa Barbara." It's déjà vu all over again. We're back to Burbank. What is this? So, I say to Jerry, I said, "Santa Barbara? It's a 150 miles away." He says, "No. That's going to be great. We're creating -- we have a new division, we're going to put you there, it's going to be terrific." I said, "Jerry, I live here." I said, "You know,

can't you appoint me, you know, in Los Angeles." "No, they're all taken, I can't do it. That's where it's got to be."

And so now -- and this is, you know, late. Now, he was going to appoint me so I was told much earlier than that. But the new divisions that had been created for the Court of Appeal had been some Judge ruled that they were unconstitutionally created, so it had to work its way through the system and so now it's towards the end of his term. And so I figured, I had no one to talk to. I don't know what to do. So I said, "You know, I appreciate everything you've done for me. I don't think I can really accept it." Because I wasn't going to move up there. We have all our friends, we have a nice home that we have in the Pacific Palisades. I love where I live. I just -- you know, we can't do it.

So then his appointment secretary getting on the phone, "Are you crazy? Are you out of your mind?" So he says, "Look it, I'm going to give you two hours to think about it. Call me back at this number. I've got to have an answer within two hours and go talk to somebody, think about it. " And that's it. So I had no one talk to. I had a friend and I called him and he was around and so we took a walk in front of a -- on a bluff to the ocean. And then I said, "Hey! You'd be an idiot not to accept this job. And you'll know, work it out. You'll see what will happen."

Justice Steve Perren: Now let's pause at that point.

Justice Arthur Gilbert: So I just have to tell you one thing.

Justice Steve Perren: Go ahead.

Justice Arthur Gilbert: Let me just finish this one point.

Justice Steve Perren: Yeah.

Justice Arthur Gilbert: So, I call him back.

Justice Steve Perren: The friend or the governor?

Justice Arthur Gilbert: The governor? I called him back and you can tell there is this pandemonium going on the governor's office. He picked up, "Oh yeah. So?" So I said, "Hi Jerry" I said, "I'm going to accept the job." And he says, "Well, I certainly hope you accept -- you decide your cases with

greater dispatch." I thought that was hysterical. It was really funny. So I said, "Can I ask you who else is going to be on that division?" He says, "Yeah. A guy from Redding, California who accepted in five -- in a heartbeat and it took you two hours and he lives three -- 600 miles away and then Steve Stone. And I said, "Oh! I know Steve Stone." And he said, "Look, I can't make you the presiding justice because you're not from the area." So, fine. So, I accepted the position and it became the Ventura. I can explain that if any anybody's interested.

Justice Steve Perren: The -- let's pause and look a little bit at you because your life has dramatically changed over this period of time as well.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: Before we get to the big change, has music started to enter your life?

Justice Arthur Gilbert: Not really.

Justice Steve Perren: Okay but some --

Justice Arthur Gilbert: Not as much as -- I actually, on the Court of Appeal is when music -- when I first got on in 1983, I mean I was still playing.

Justice Steve Perren: Right.

Justice Arthur Gilbert: But I wasn't playing with the depth of understanding and practice and --

Justice Steve Perren: Performance.

Justice Arthur Gilbert: Performance. Yeah.

Justice Steve Perren: Now the listener will get that later on in our conversation, but there was something very musical that entered your life in another way, however? You better get this one right.

Justice Arthur Gilbert: Let's see. What was that?

Justice Steve Perren: Oh! Maybe somebody who had a name Barbara, would that work?

Justice Arthur Gilbert: Oh! That would work. I'll tell you something else. I'm going to tell you about before we get to Barbara, my wife. When I got on to -- oh no, I guess I was -- no, no, this was in practice. I'm going back in practice. I just thought of something, you don't mind if we'd skip around a little bit.

Justice Steve Perren: Your interview.

Justice Arthur Gilbert: Okay. It's my interview, right? This is another thing I did that was pretty wild. When I was in practice -- I mean, this showed how crazy I can be. I went to a concert at the music center. This was way before Disney Hall, anything -- in the '60s and Ravi Shankar was playing with Alla Rakha.

(01:15:01)

And it knocked my socks off. And I read that Ravi Shankar was starting a music program in -- not Beverly Hills, just on the eastern end of Beverly Hills, on Beverly Drive, not Beverly -- Beverly Boulevard. And I show up, can you believe that? I show up and I get involved with Indian music and meet Ravi Shankar and Alla Rakha. And I'm playing tabla drums. I'm studying tabla drums and I meet Yehudi Menuhin, I met George Harrison of The Beatles and he and I are spending a couple of hours together, chatting, talking about music and stuff, this is what I'm doing. Nobody knows it. My partners don't know it. No one knows this is what I do at night.

And so, we have this school and Art Seidenbaum. I remember the -- you know, when you get old, you don't remember what you did yesterday. I remember these names from the past. He had a program on PBS about local -- what's going on in the community, you know, cultural things. He shows up at this school and I'm on television playing the tabla drums and I went to a criminal court's bar meeting, I'm a lawyer now. And the guys said, "Hey! We saw you on television" and I'm wearing my -- I'm wearing the whole outfit, the whole thing, I'm sitting cross-legged and I realized that -- you know a friend of mine said to me, I remember this, he said, "You know, it's great that you're doing this Indian music and you're still interested in so many things."

And I was complaining about it because I am very stiff and can't sit cross-legged. I would get so tired. I have to keep switching around. So, he said, "You're such a

talented pianist, you know, piano player. Why are you wasting your time doing that? Shouldn't you be playing more piano?" And that was sort of resonating in the back of my mind. I was being a kind of dilletante trying this, doing that, trying different things and then always got to see me on television at the bar and they're giving me a – not static, they actually like it but I mean it was kind of fun.

So anyway, yeah, so I got married, finally. Everybody said, "Is this guy ever going to get married?" And I married Barbara, we had known each other earlier and it was a first marriage for both of us. We were late bloomers. And she was a singer and a dancer and she sang classical actually -- I mean she sang jazz but she had a really classical voice. And I said to her, I said, "You've got a wonderful voice and I'm sorry you've got to study and really develop this."

Justice Steve Perren: And she'd also been a court reporter, is that correct?

Justice Arthur Gilbert: She'd been a court reporter years ago, yeah. So, and she did that just to finance her dancing and her music and her other thing. So, she starts studying seriously again and singing leader, doing that kind of thing. And then she's getting jobs, she's getting shows, she's doing Gilbert and Sullivan, she did some community theater then she did some real good stuff. She was in La Brea Light Opera Company and she did tintypes and she was "No, No Nanette." And she'd you know some shows some stuff and really into it and I'm really enjoying this immensely.

Now, I'm trying to think of when I really start getting involved in music again. I was on the Court of Appeal and I was signed up. I had just gotten onto the Court of Appeal and I had signed up to do a trip to Nepal to climb to the base camp of Mt. Everest. Can you believe? I was going to do that. And I had hiked and I really enjoyed it. And I wasn't a great hiker but pretty good, I mean, I was up in the -- I had done long hikes and gone to sierras and stuff. And they said it's not impossible to do and you could do it and I had signed up for it. And the last day to make up your mind was the next day and I was doing exercises on the floor of my living room, listening to a jazz show, it was a jazz station. And they had an interview with Charlie Shoemake who was one of the great vibe players and a great teacher known for his teaching. And he was talking about students having

students and taking some students on. And I'm doing these exercises on the floor listening to Charlie Shoemake and suddenly, it just hit me that the Mt. Everest, I should be climbing or the base is not that Everest but music, to study music again.

(01:20:03)

I cancel the trip called Charlie Shoemake out of the blue and start studying with a real devotion.

Justice Steve Perren: The listener may be wondering -- I persist in the music part because aside from our common interest, you have evolved into a real performing artist on the piano particularly with jazz. You've performed at the Jazz Bakery, you've performed at the Vine Street Bar and Grill and I just wanted to get that out there, we'll revisit it later but it starts early in your life and it lays there dormant until Charlie Shoemake comes along apparently and now that coal bursts into flame.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: So, you are on the Court of Appeal. Talk about your colleagues and how you're forming a brand new court.

Justice Arthur Gilbert: Yeah. We're a brand new court. We've never done this before. We have Richard Abbey, the most unusual guy you could ever meet. He was a district attorney who was opposed to the death penalty. We have Steve Stone who is on the board, the National Board of the Heart Association and a chain smoker and Arthur Gilbert. And we're very different people and we all jell like you cannot believe. It is just -- a friendship develops I mean to this day. I mean Richard Abbey is deceased now. But Stone and I see each other. I mean, you know him. He was a colleague of yours on the Ventura Superior Court. And very unusual, unconventional people; I mean, all three of us. Just -- I mean, a different breed of people, it's not typical. The three of us went to Cuba, you couldn't get to Cuba. Can you imagine the entire Court of Appeal going to Cuba? I mean it's just -- and now, it's not a big deal going to Cuba, it was in those days.

Justice Steve Perren: Yeah, that was Alice McGrath independent --

Justice Arthur Gilbert: Yeah, Alice McGrath.

Justice Steve Perren: Let's take a diversion here for a moment. Alice McGraff, you had a wonderful relationship with this most unique lady.

Justice Arthur Gilbert: Yeah. Alice McGraff who you know, Steve Stone knew her quite well. She, if you saw the movie and the play and the musical Zoot Suit, this was a very famous case in the 1940s I think. When -- the zoot suiters, they were called, these were very stylishly dressed Mexican Americans who had a wonderful great Latin music which I love.

Justice Steve Perren: And in those days, they were known as Pachucos.

Justice Arthur Gilbert: Pachucos. And there was a big party going on and by a lagoon, was it called the sleepy lagoon?

Justice Steve Perren: Correct.

Justice Arthur Gilbert: And as I recall, and they had -- someone got killed, someone was and they had -- I forget all the facts but they had charged all these people with murder.

Justice Steve Perren: And tried them on mass.

Justice Arthur Gilbert: And tried them on mass in front of a very famous judge who had written a book on criminal law called Fricky, Fricky On Criminal Law, right?

Justice Steve Perren: Fricky and Alarcon?

Justice Arthur Gilbert: Yeah. And the evidence in this case, to say thin, would be an understatement. And Alice McGraff was a young woman who has been -- was married to a poet named McGraff -- and she has -- just had -- got involved in this case, met the lawyers and knew the lawyers and knew some journalists who are covering it and she became the "Girl Friday," if I can use that expression. That's what they used in those days and became more than that. She became an intricate part of the defense team and garnered up evidence, that all kinds of things, and became famous through that case. And they were all convicted, it went to the Court of Appeal and they -- I mean, it was -- some of the things that happened in that trial were outrageous. And the case was ultimately reversed.

Justice Steve Perren: Correct.

Justice Arthur Gilbert: And they were freed and she lectured all around the country. And she was this lovely wonderful woman and we got to know each other and we had lunch all the time and we talked about literature and books and politics and she lived in Ventura and I met her through Steve Stone and I was so fortunate to have that friendship. It was really a real --

Justice Steve Perren: I remember you included me in your visits to her as she was reaching the end of her years.

Justice Arthur Gilbert: Yeah. She was in her 90's, yeah. And they did PBS, public television did a special on her and we invited her -- in those days on occasion the courts would have luncheons for the whole Court of Appeal. And the entire group came up to Ventura, most of the Judges were a part of a second district down in Los Angeles, came up to division six and she was the -- and she gave a lecture, a talk about the case. It was a really fascinating time. We had a wonderful time.

(01:25:11)

Justice Steve Perren: And your court remains -- remained together. I should conclude Alice passed about five years ago, I think.

Justice Arthur Gilbert: I believe, yeah.

Justice Steve Perren: And she is one of those notable figures in one's life, you just don't get around or over her.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: But your life has been touched by a number of people. We're going to get down on a couple of other rather unusual things you did. But the court is ongoing and you remain a unified court of the same jurists with Stone, Gilbert and Abbey. And in 1991, now seven years down the road or so, you picked up a fourth member if I recall correctly.

Justice Arthur Gilbert: Yeah, because the legislation had created -- new legislation had created another division, division eight and added a jurist to our court. And so now, we had four instead of three and we'd hear cases in rotating panels of three. And so the new jurist was Ken Yeagan and who we really wanted. Boy, we were lucky. The governor was Governor Deukmejian and we were lucky -- we were really rooting for Ken and we got -- and he's still with

us, and you and I and Ken are the three Judges now. Judge Coffey is retired.

Justice Steve Perren: Now, the court in 1991, it adds Ken. Coffey comes on in '97 I believe or thereabouts, maybe a little earlier out of San Luis Obispo. So the court ultimately, and Richard has now stepped down and Ken took – Ken took Richard's place, is that what happened?

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: And then Coffey became the fourth member.

Justice Arthur Gilbert: Yes. That's right.

Justice Steve Perren: And now see we have the reconstituted era now, the post-Abbey era is Stone, Gilbert, Yeagan and Coffey and now that takes us up to roughly 1999. Let's take that period, that's a significant period for reasons-- so, from 1983 when the court is formed, you were actually formed -- as you mentioned -- as the "Santa Barbara" and you originally began in Santa Barbara.

Justice Arthur Gilbert: Right.

Justice Steve Perren: Tell us about that.

Justice Arthur Gilbert: Okay. So we're the Santa Barbara division. So where are our chambers going to be? So we're looking for chambers because we don't we are a new court. So, I'm essentially the Court of Appeal for the first year. And I'm down in Los Angeles. There was no room for me so Elwood Louie who was in division three at that time, I shared chambers with him, I did all the writs, I did everything.

Richard Abbey was looking for a place to live and Steve Stone stayed on the superior court for a year. He was on the court for a year actually, on the superior and we would -- you know, we would, we were getting cases trickling in and we'd assign them out and we don't have a staff, we don't have a place to work. It was really -- it was chaos. And I was essentially the Court of Appeal because I was sitting in our chambers and then somebody retired and I was actually given a chamber, so I couldn't believe it down south.

So, we are looking for buildings and places to be and they're very expensive in Santa Barbara. And so Steve

Stone comes up with this brilliant idea. "I know a building that's being built. We can get really cheap rent. Why don't we have our chambers in Ventura?" Well, that would be great for me because that's an easier commute. I'd have to stay overnight if I were going up to Santa Barbara. The rents were cheaper and we'd save the state a ton of money. They use this expression now a ton of money, I would never say that but I did.

Justice Steve Perren: You just did.

Justice Arthur Gilbert: And we can't believe this -- all right, leave it in. So it would cost a fortune to rent chambers up in Santa Barbara. So everybody was in favor of it. So, we set up our chambers in a building in Ventura but we held our hearings in Santa Barbara. And we first had our first hearings at the Board of -- well we had them at the Board of Supervisors. We tried to have them in the grand mural courtroom of the old courthouse in Santa Barbara. But boy, that was a -- the acoustics were terrible in there -- you couldn't hear anything and it just didn't work.

Justice Steve Perren: You decided a case early on that caused a bit of a stir having to do with the appointment of attorneys in certain kinds of cases. Cunningham I believe the name. Won't you tell us about that?

Justice Arthur Gilbert: Cunningham was a really big case. Cunningham involved -- it was a test case.

(01:30:01)

And there had been talk, about indigents were represented in criminal cases. Should they be represented in civil cases? Well, there are civil cases and civil cases and there were some concerns about paternity actions where people would lose their children. Shouldn't they have the right to counsel in a civil proceeding if they can't afford it? And in those days, there was no provision for that. And so, the trial court appointed a lawyer as a test case so that the lawyer agreed to this. Apparently, I found that out, to represent an indigent, defended in a paternity action. And the lawyer said, "I won't do it." And the judge held them in contempt and then stayed the contempt while it went up to appeal. So, that was a pretty big time case.

And I wrote the -- I worked on the case. I worked on it with a research attorney with a writs attorney. And I came to the conclusion that it was a denial of equal protection to require this kind of -- and I gave all kinds of examples I mean. What about the people who didn't do trial work? Those lawyers would be -- wouldn't have to do it. What about someone who is the senior partner in a law firm? William French Smith at that time was a senior partner in Gibson-Dunn I believe. And he became the attorney general. He Ronald Reagan's lawyer. So what if they called him up and said, "Hey Willy, we'd like you to come down. We have this indigent defendant." It's not going to happen, is it? So I gave all kinds of examples, it was a fascinating case. And the case -- and so I ruled and purged the contempt and reversed the trial court and we all agreed.

Case goes up to the Supreme Court. The California Supreme Court and they're on the case, they're holding it up for about a year, we're waiting to see what's -- and other cases are going up and it's percolating. And then I get the news that the Supreme Court has reissued my case as written with a directive that all other cases are to follow that case. So, that felt really good. I was a new - fairly new justice. This was in 1983, I think and it felt really good to have made that kind of an impact. It's just -- it's very unusual for something like that to happen.

Justice Steve Perren: Well, unusual seems to be a good word because at or about the same time, the three of you, wild men, were confronted by a voting rights issue out of Santa Barbara.

Justice Arthur Gilbert: Oh, yeah. That's right. That's the tree?

Justice Steve Perren: The tree.

Justice Arthur Gilbert: Oh, yeah. Well, I'm going to tell -- Steve Stone won't mind if I tell -- the story. There were people who were -- gave as their residence, some transients and homeless people, a tree. There is a giant. It's probably one of the oldest trees in the United States. It's supposed to be not hundreds, maybe thousands of years old. I don't know if that's old, but it's a huge tree with -- you can see the tentacles of its roots covering an entire square and there's a whole homeless encampment there. And they wanted to vote in a municipal election that involves, I think, I forgot what the issue was, but I think it involved the homeless too. And they were giving that location.

And the registrar was saying, "No, that's not a valid location."

And Steve Stone had written the case and the trial court had affirmed the decision, had ruled that the registrar was correct. And I said, "Wait until you see my dissent to Stone." And I started to have -- when I was reading the case, I was writing the dissent already. Now it's true, people can't just be bused in and say that, there has to be some indication they've been living there and there was, there was some evidence to that fact. These weren't just people -- there was a concern and I -- a legitimate one. You don't want to bus people in and say, "Oh, we're going to vote for this" and they don't live there. But there were people actually living there. So I said, "I'm sorry. We're not going to disenfranchise the poor." That's what that -- and boy, Stone thought about and did 180 degrees. We all signed the case and that's what happened. That's why our job is so exciting, so wonderful.

Justice Steve Perren: When I came on the court in 1999, and was privileged to take Stone's seat, I walked in to your chambers -- this is a test for you.

(01:35:06)

Justice Arthur Gilbert: Okay.

Justice Steve Perren: And I said, "You know, what's going on? I had only been a judge for 17 years but this is a whole different world. Come on guru, educate me." I really did.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: And you took me aside and you described for me the hardest paragraph and the most important paragraph that a Justice must write well in any opinion. Why don't you talk about that?

Justice Arthur Gilbert: Well, it's sort of my philosophy about judging. A lot of these cases seem so difficult and they are. Sometimes I look at a case and I'll say, "Oh my god! What are they talking about?" And it looks -- sometimes it will look like gibberish. And what you have to find out when you look at the case is you have to say, just ask the simple question, "What is this case about? What is the case about?

For example, I had a case involving airplane, I told this before, you've heard it, airplane financing. And I was working on it with a research attorney and it was really complicated. A guy had a corporation. He was a sole corporate shareholder signed an installment contract for a plane and then there were some insurance policies involved and there were disputes over the payments and all kinds of things happening. And was he -- did he sign it as a corporation? Was it as an individual? There were all kinds of -- and we're going through this whole thing with all these briefs and everything and I sat back and I said, "What is this case about?" The research attorney, we looked at each other, and we said, "It's about a guy who bought an airplane and doesn't want to pay for it." That's what the case is about. What is the case about? That's what these cases -- these cases sometimes seem to be so complicated. And what you have to do I think is figure out really what the case is about and write an opening paragraph summarizing that case. If you can do that, then you understand the case.

There was a quote from Einstein actually. He said, "If you can't explain it simply, you probably don't understand it." And I think we get caught in all this legalese and we get caught up in arguments and distortions and what we have to do is stand back and look factually at what happened and see if we can actually write a paragraph explaining what the case is about. And I do that in most of my opinions. And I think all of them, I hope, because for a number of reasons. First of all, helps me understand what the case is about and it's good for the lawyers. People who are researching don't want to have to go through cases that may have no relevance to their particular issue and they'll know by that opening paragraph. And I realize there could be other sub issues and so on and -- but I think it's a test of your ability to write, to understand, to think, and to write.

Justice Steve Perren: There was a case of about two or three years ago where you bloodied my nose with that.

Justice Arthur Gilbert: I did? Never.

Justice Steve Perren: Yeah. I was assigned the case called Berlage.

Justice Arthur Gilbert: Yup.

Justice Steve Perren: And I thought I'd written a pretty good opinion, you didn't. Think I'd written -- you thought I wrote a good opinion and disagreed with it.

Justice Arthur Gilbert: I thought you wrote a very good opinion and I thought you wrote an excellent dissent and I think it was a very -- no, I seriously do, I think it was -- you should give us -- there's a site, do you have the site?

Justice Steve Perren: I'll dig it out while you're talking--

Justice Arthur Gilbert: Because if anybody's happening --

Justice Steve Perren: Yes. It's 178 Cal.App.4th 524, 178 Cal.App.4th 524.

Justice Arthur Gilbert: Okay.

Justice Steve Perren: But the case was written and you looked at it and there were truths that emerged to you and your analysis of that which emerges so clearly in the case, I think is illustrative of what you're talking about. Why don't you just kind of highlight that?

Justice Arthur Gilbert: Well if I can recall all of it, but it was essentially an arbitration and not essentially, it was an arbitration. The dispute was about a property line. And the sellers of the property had misrepresented, fraudulently misrepresented where the property line was. And in fact, property line, cut right through the swimming pool, I think, part of the swimming pool and a gate and some other things.

Justice Steve Perren: On a golf course.

Justice Arthur Gilbert: On a golf course. And this went to arbitration.

(01:40:00)

So the damages would be, I mean, horrendous in a case like this. The depreciation of the property, moving the swimming pool, having them rip it up and doing all these -- we're talking about millions of dollars. And what happened during the arbitration as I recall, you probably remember this case better than I do, is the Title Insurance Company worked out something with the golf course and changed the boundary. They paid 10 grand and the boundary was the way the people thought it should be. Now, this is arbitration, and the rules on appeal on arbitration are far different.

There's recent arbitration statutes who knows what the law is at the time, anybody might have nothing better to do than to watch this particular interview. But the judge made a decision, now he allowed some evidence in or about what happened with the changing of the boundary.

Justice Steve Perren: Right.

Justice Arthur Gilbert: And the judge ruled that damages are going to be decided and determined as of the day of the breech and which would mean, it was millions -- I mean it was just a fortune, it was the depreciation of the property. Now, the rules about arbitration was, "Hey, an arbitrator can be wrong, can be absolutely wrong in the law and that's the end of it."

In this case, I was initially going to say, "Hey, we're stuck." But there was something just absolutely impossible. How could it possible that someone would get damages, no matter how bad the other side was for an injury they didn't suffer?

Justice Steve Perren: And if I recall correctly, the judge refused to hear that evidence, he excluded that.

Justice Arthur Gilbert: He excluded it. He wouldn't let them but he allowed them to make an offer of proof about the evidence. So, Justice Yeagan and I ruled that in this case, the arbitration award had to be set aside.

Justice Steve Perren: Right.

Justice Arthur Gilbert: And you dissented it. And you had a very good dissent. It really -- it went to a very deep philosophical point about -- they call it judicial activism or strength, whatever you want to call it. These are wastebasket terms that are used in the press often. But how far can a court go in making its decision about what's the right result and we're constrained. And we felt the constraints were too much if we went your way. But you made a very compelling dissent.

Justice Steve Perren: You are a teacher, you've taught me and I respect and have profited from that. But you've been a teacher of Judges for better than 20 years, probably closer to 30 years at the California Judges College, at special institutes, principally on writing and research and presentation of judicial ideas. Why don't you talk a little

bit about your experience and your motivation about that? Because I know you're -- I mean, you're a mentor and a beacon to all judges to this day.

Justice Arthur Gilbert: Well, I taught a course for many years to new superior court Judges and to new appellate justices and one of the things that -- I mean I think these kinds of values cohere in our division and that is -- first of all, in writing opinions, shorter is better. And in fact, to use the old phrase, "I would have written you a shorter letter but I didn't have the time." And everyone says, "Who said that?" And I did some research and I found that it was Pascal who said it. It wasn't Mark Twain but maybe others have repeated it, and I may be wrong but at least I think that's who said it. And it's much harder to write a shorter opinion. And I think a lot of opinions have unnecessary verbiage and they have too much extraneous material in it.

I remember just reading a case about an arbitration agreement and I wrote a similar case in which we hail the arbitration agreement doesn't apply for various reasons. There was a statutory violation it's on. So someone wrote a similar case and in the case, they agree, they came to the right resolve that arbitration doesn't apply. And they quote the entire arbitration agreement, three pages of the opinion. Why on earth would you waste everybody's time doing that? There might be a clause that might have some relevance.

(00:45:02)

You could summarize the clause or just put that one clause in and say why does it apply? It's that kind of things that have some of the stuff as obvious. One of the problems I think is that people, we all write to understand. You look at the case and you try to wrap your mind around it, then you start writing it and you write to understand the problem. And then many judges think, "Hey, we understand the problem. Next." And they move on. And that's the point when you have to stop. And you stop and now, that you understand it, you have to now write to be understood. And when you write to be understood, you may find out that you really didn't understand it as well as you thought you did. And when you write to be understood, you can pair it down to its essentials. If a sentence has more than 25 words, something's wrong with it, generally. Split it up because it's going to be hard to read. You don't want to write

little short staccato statements because that's going to look like a telegram. It's got to have a flow. It's got to have a feeling. And it takes time and effort to do that, you've got to work at it.

Justice Steve Perren: You teach Judges. You go into the community and talk. I think you've spoken at many law schools. You also teach the law to the community that is served by the law. A good example of that is Omaha Indemnity. Why don't you give a background on that and what message you were sending out?

Justice Arthur Gilbert: Well, attorneys often file writ petitions. And we deny most of them even though they may indicate real errors that occurred in the trial court. But what lawyers don't always understand is that it's got to be an error that makes a difference. It's got to be an error -- there's a difference between an irreparable harm and an irreparable inconvenience.

Justice Steve Perren: Omaha Indemnity.

Justice Arthur Gilbert: Oh, yeah.

Justice Steve Perren: What are we teaching?

Justice Arthur Gilbert: So in Omaha Indemnity, we were explaining that there's a difference between, as I said, an irreparable harm and an irreparable inconvenience. And it was I think fairly enlightening; Bernie Witkin liked it a lot. And Bernie Witkin was the great scholar who wrote the history of the law, wrote the law of California in hornbook fashion. And I got to be very good friends with him and he was praised, he really praised that decision and that made me feel good because to get a pat on the back from Bernie was a good feeling.

Justice Steve Perren: Now as I say, you teach judges, you teach lawyers, and you teach the law as an institution. You have an avocation however that you want to comment ex cathedra as it were to the community at large about philosophy, the philosophy of Art Gilbert. And you have an article that you've been publishing monthly for however many years but today --

Justice Arthur Gilbert: Twenty-six years.

Justice Steve Perren: So tell us about the article and how it ultimately gets resolved.

Justice Arthur Gilbert: Well, what happened was when I got on to the Supreme --

Justice Steve Perren: Thank you Dr. Freud.

Justice Arthur Gilbert: Yes. Thank you. Actually, I'm really pleased not to be there, believe it or not. I was on the Court of Appeal, and in those days, there was a practice that isn't used very often today called "de-publication." And you'd write an opinion and for whatever reason, well, there was a reason, the reason, the extensible reason was the Supreme Court felt that the result was right but the reasoning was wrong. And so they would de-publish the case, it never happened. And I became friendly with Justice Grodin who was one of Jerry Brown's early appointments to the Supreme Court. And he wrote an article about it, we had talked about it. And I always made jokes about it and people knew that I wasn't happy with the idea. I thought they were using it as an illegitimate way of controlling their case flow. You know, if you don't like the case, take it on but don't de-publish it.

So, the Daily Journal, this was in 1988, called me and said, "We understand you have feelings about de-publication. Would you write an article for us?" So I said, "Okay." So I wrote an article that really was pretty funny. It was creative. I didn't -- I wasn't going to write a scholarly article. I just -- you know, I write the opinions. It was really funny.

(01:50:00)

And it just sort of took off. Everybody was talking about it. And the Daily Journal then said, "Wow! This column was really something." And I had a lot -- I'd have to admit, I enjoyed the feedback I was getting. And they said, "What do you think about writing a column?" So I said, "That might be interesting." So I started writing a column and I've been doing it for 26 years.

Now I was writing this column and it's -- I tend to take a variety of topics. Sometimes very seemingly dissimilar topics and tie them together, that's what I try to do and tie them to the law. And the column sort of caught on and people were reading it. And so it occurred on a regular basis on the paper. And Brian Garner who is the Editor of Black's Law Dictionary and the guru on writing,

he and I met and he had published some thoughts of mind about writing along with other people and we were talking once and he said, "You know, you ought to publish these." And the Daily Journal had talked to me about publishing. And ultimately, the Thompson Publishing which owns the Reuters Group which is a popular publisher of legal treatises said, "Hey! We'll publish your book. Why don't we do it? Why don't we make a book out of this?" So, we did.

So I took some of the better columns I thought and this -- and I wrote Brian Garner and I said, "No good deed goes unpunished. You have to write the introduction." And he did and Herbert Morris also who I deeply respect, he was -- my goodness -- he was the Dean of Humanities of UCLA, a law professor, a philosopher and a psychoanalyst, one of the most brilliant people I've ever met, wrote a lovely foreword at the book. And I've got a lot of -- I got a lot support for it. And so I have this book out and all the proceeds go to legal charities and I don't make a cent on it. And the publisher, they're a huge publisher, they agreed to the same thing.

So I feel good about that. So I can brag about or I can tout the book and not be embarrassed because I'm not making any money from it.

Justice Steve Perren: And if you're touting the book, it might be helpful if you gave us its name.

Justice Arthur Gilbert: Oh, its name is "Under Submission: The Columns of Art -- The First 20 Years. The Columns of Arthur Gilbert I think 2000 -- 1988 to 2008." And since then, I've written you know many more columns and we've been talking about possibly doing a sequel and I have a blog site with all my columns on it.

Justice Steve Perren: And since you don't have --

Justice Arthur Gilbert: Called "Gilbert Submits."

Justice Steve Perren: And to add to that, you've now gone full board into your music.

Justice Arthur Gilbert: Yeah.

Justice Steve Perren: You've got your articles, you're a full time jurist, I'll vouch for that, mentor, and now, the music that we

started with when we began this conversation down on Venice. Now it's reached full flower.

Justice Arthur Gilbert: Well, what happened was you know very well since you're a very talented singer and we've done some shows together. We've had a lot of fun together even before you came on the Court of Appeal.

A very enterprising lawyer who was also a musician formed what was called -- what is called, "The Los Angeles Lawyers Philharmonic." And his name is Gary Greene. And so he started getting people together and getting -- and playing classical music, and there are some really talented musicians. And there are a lot of lawyers who are really quite talented at many other fields as well. So, he formed this orchestra and he said -- he approached me once, I went to hear a couple of the concerts and we met and he said, "I hear you play the piano, you got to play with the orchestra." And I said, "Well, no, I don't." I said, "Classical isn't my -- I practice some classical. I try to play some Bach just, you know, for my fingers and I love classical music but I mean I'm --" I said, "I really play jazz."

So anyway, we came up with an idea, and it was a concert where you sang at this concert, at Disney Hall. And they were going to do a segment of Porgy and Bess. And so we opened the -- a group together with my wife singing

"I Got Rhythm" and we sang a Charlie Parker bebop riff to "I Got Rhythm" and with a quartet, a jazz quartet, and then the entire orchestra came in with Porgy and Bess, which was really a lot of fun. And you sang, I'm going to have to praise you, I'm sorry even though this is all about me, I understand. But you're the interviewer, you sang, "I Got Plenty of Nothing," right?

Justice Steve Perren: Right.

Justice Arthur Gilbert: And you sang alone on the stage with a full symphony orchestra. When we do your interview, it's going to be something. That was absolutely spectacular. It really was spectacular. I wouldn't be saying this if it weren't true. You had the high -- you couldn't hear a pin drop. It was really quite a performance so I'll never forget it.

So anyway, so we played there. So then he came up with -- and it was a lot of fun. And to play Disney Hall, it was a packed house and you know I liked it. And then Gary said I'm going to form a swing band, a jazz band. "And why don't you play piano?" And I said, "Well, I don't play piano in a band. I don't know... I didn't want to do it." And anyway, of course I'm doing it, we have an album out now. I've got some solos on it. We're playing at Shrine Auditorium. We played once before. We're playing in a couple of weeks. We don't have a social life anymore which is fine. We spend it all on music. We're performing at all kinds of places. And I'm having a lot fun with the band and there are some really good musicians in the band. A lot of these guys were on the road. And then they said, "You know what, we don't want to starve." They went to law school and they're still really good musicians. We have a very good arranger and it's just an awful lot of fun.

Justice Steve Perren: And about a year or so later, speaking of Disney Hall, I was privileged along with Barbara to perform a work that you were very involved in and are continuing to be involved in as a librettist for an opera.

Justice Arthur Gilbert: Yeah. There -- I study now piano with this sort of a coach and his name is Terry Trotter. He's one of the really great jazz pianists. He's kind of shy and doesn't perform that much, but he was Natalie Cole's arranger and Lena Horne's and he's a really fine pianist and he's sort of a coach. And he wanted to write this musical and he said I've -- he says, "You're the guy to write it." And the lyricist is Arthur Hamilton who wrote "Cry Me A River", very famous lyricist. And so I wrote the book, and we just finished it. Who knows what's going to happen if anything -- I can tell you the music and lyrics are fabulous, I can't speak for the libretto. But I wrote it and we've completed it. So that's another sideline.

Justice Steve Perren: And the level of people with whom you've been privileged to work and who have been privileged to work with you, there's a kind of a bittersweet story that happened over a period of years, involving Artie Shaw.

Justice Arthur Gilbert: Well, Artie Shaw was one of the great jazz clarinetist and a certifiable genius. The guy knew just about everything. He knew the history of philosophy of -- he was a guy that's just self-educated and really brilliant. And I met him through some friends, actually the Schoenberg's, Ronald Schoenberg whose father was -- I

mean Ron Schoenberg whose father was Arnold Schoenberg, the great composer. And so I got to be friendly with Artie Shaw and it was good to meet him and to be exposed to a guy of his caliber.

So we had a very interesting time and he told me lots of stories about his life and all his wives and all his things. He desperately wanted to be a writer. Here's a guy who's a great musician and he liked my columns, he read my columns, so I felt good about that. And he told me all about some of his legal problems, not that I gave him any advice. And when he died, his estate winds up in our court, can you believe that? So of course, I recuse myself, I wouldn't even participate in the conferences involving his estate and with Evelyn Keyes, the actress who was in -- the actor who was in Gone with the Wind. She was a very famous actor and they had -- he had promised to leave a certain amount of money to her because she had loaned him money and so on. And he had told me about -- I knew about it and all of a sudden, this written petition lands on my -- I closed it, I ran out of the room. So, it was just kind of interesting that thing, how life turns around and --

Justice Steve Perren: But the charm of it for me and I remember it was afternoons -- on a fairly recurring basis, you'd leave the office and you drive to West Lake where he lived and spend time with them as his life waned.

Justice Arthur Gilbert: Yeah. He was -- I mean, he was sharp as a tack in his 80's and even his 90's.

(02:00:05)

And I would go visit him because he's on the way home. And we go to dinner and boy, he could talk. He was a great raconteur. So it was great exposure to a person of his caliber. And he taught me something that I really try to use in my life. I don't -- I fall short all the time. I think we all do in our division when we write. When I play, I'm never satisfied with anything and I think we're all that way. And I remember he said, "Good enough isn't good enough." And that's a great lesson.

Justice Steve Perren: There's a -- I guess there's a -- if metaphor is the right word, I don't know but I also know that one of the things you undertook for reasons that require exploration of your sanity, but you did it, was you just decided by God, you were going to run the marathon?

Justice Arthur Gilbert: Yeah. Oh god.

Justice Steve Perren: I want a little bit of background and we'll kind of come to a wrap on it using that I think as the continuing race you find yourself in embroiled in but tell us about that little experience.

Justice Arthur Gilbert: Well, no, I just -- I was just a jogger and I'm in my 60's now, you know. I'm not a kid anymore. I'm just, I mean -- during this interview, I'm 76. So when I was about 10 years ago, I guess I was 66, something like that. I said, "You know, I'd never ran a marathon. I just have to run and try to do it." And so, I trained with some people and we had -- I thought training was the most fun in the world. We'd all have breakfast later. It was just a lot of fun. I'd get up at five in the morning to do this and my wife thought I was crazy and I thought I was crazy but I just -- for some reason, I did it. And I didn't run very fast, I mean it wasn't good but I finished it. And it turns out it was the hottest day of the year ever, of that -- it's in March and it was like 90 degrees or 87 degrees downtown. And it was just terrible. But I got a lot of good stories and I wrote some good columns out of it, so it was worth it.

Justice Steve Perren: We haven't gone into as much detail perhaps as I would have liked you've liked, any cases that come to mind that you find you're kind of proud of and just would like to reflect upon here before we wrap up?

Justice Arthur Gilbert: Well, I don't know. I think that you know – there is this question about what a judge's role is and how far a judge can go in deciding cases, you know, people say, "Do they follow -- does the judge follow the law?" And we've had cases where literal interpretations of statutes -- literalism can lead to real injustice. And one has to be very careful in making those kinds of choices.

So for example, one of the early cases I had was one of the first cases I wrote and I had a lot of fun with it. It was called Cliniqui versus the Montecito Water District or something. And a lawyer had sued the water district, the Montecito Water District but he -- but they had changed their name to the Montecito Sewer District. So we had the wrong name. And by some amazing coincidence, the lawyer who represented the sewer district also represented the water district. So instead of telling the lawyer, "Hey, you've got the wrong party," he answers

the complaint. Now he's answering the complaint on behalf of the wrong party served because he happens to know both parties and he has a general denial and he puts off -- oh wait, yeah, I think he answers some interrogatories, no, no, no, and puts everything off as the statute of limitations ticking away. So then, he never answers phone calls when the lawyer calls him about things. But when the statute of limitations ran then he answers. And then they assert the statute of limitations. And then say, "Hey, you served the wrong person."

Well you know what? There's something about that distance, you're right, does it? This lawyer actually went out of his way to deceive the other lawyer. That's not what the practice of law is about. That's not what justice is about. So in that court, in that case, it was an early -- and one of my first cases. We held that -- he was stopped. This was an inequitable concept. He was stopped from asserting the statute of limitations because of his affirmative action to mislead the other lawyer. Now, because it was a water district, you can imagine the water imagery I had in this -- I couldn't help myself -- I was a lot younger then.

(02:05:03)

And so I think I ended with human voices wake us and we drowned. And if I recall, I think that's from T.S. Eliot, The Love Song of J. Alfred Prufrock. But anyway, I had a lot of -- I said it was treading water, well you know, I play -- I had a lot of water imagery in there. But those kind of cases, and we've had recent ones too.

Justice Steve Perren: I was just going to bring up, that was nearly 30 years ago. And within the last six months, you decided Sakura.

Justice Arthur Gilbert: Yeah, Sakura. So you know there's a government claim statute. You have to file your claim within six months or within a certain period of time after you learn about the injury if it's a government entity. And this was the county and so he was -- well, the lawyer filed his claim well within the time period. And he mailed it in and he forgot to include the $25 check. What happened was the county processed the claim. They stamped it. He got a receipt or something. And then when he finally gets to trial after a year-and-a-half or two. The county asserts the defense of this is an invalid claim because he didn't submit $25. Come on, give me a break. That's just not

what it is about. I'm sorry. If he had been at the window and gone to the clerk at the window and filled out the form and started to walk away, the clerk would say, "Hey buddy, you forgot the $25." "Oh, I'm sorry." And he would have filled -- and he would have paid the -- he would have paid the money. So, this was -- I don't even think the county realized he hadn't paid the $25, they processed it, they stamped it, filed it. Under those circumstances, we're not going to deny a person his/her day in court.

Justice Steve Perren: The one of the more -- a fun comment if you will, going back from where we began in Gavin McDonald versus John Scripps. Your opening line, you say, "Brevity." You say, "What's this case about?" And you say, "Get to it" and "be clear." And in one sentence, it's summed up when you open, "Gilbert, associate justice, question, 'When should an attorney say no to a client?'" Answer? "When asked to file a lawsuit like this one."

On that, I hope your marathons are going to continue for a little longer, a lot longer. And on a personal note, I don't know how many people are privileged to interview someone who is as close and dear a friend as you are to me and I to you and to listen to them recount a remarkable life. But this has been such an event and it's been my privilege to talk to you and to have been your associate and a colleague for these many years.

Justice Arthur Gilbert: Thank you. I'm deeply touched, too.

Justice Steve Perren: Thank you.

Justice Arthur Gilbert: Thank you.

Total Duration: 128 minutes