Barton Gaut: My name is Barton Gaut. I am a retired justice of the Court of Appeal, Fourth District.

David Knight: And how is your last name spelled, Sir?

Barton Gaut: G-a-u-t. Fourth District, Division Three. Two – sorry. Division Two.

David Knight: Justice Ward.

James Ward: And my name is James Ward. I am also a retired justice of the same court as Justice Gaut here in Riverside.

David Knight: All right. And Justice Ward, whenever you're ready, you can begin the interview.

James Ward: Well, good morning. This is going to be an interview of Justice Barton Gaut. The interview is undertaken as a part of a project of the California Courts of Appeal, the Judicial Council, and the Administrative Office of the Courts. This is an attempt to preserve the legacy of the court and is called the Appellate Court Legacy Project, wherein retired justices of the court are being interviewed in this fashion. My name is James Ward, as I said, and it's my pleasure to interview Justice Gaut. He and I were colleagues for a number of years. And Bart, tell us your full name, and when were you born?

Barton Gaut: Full name is Barton Gaut, and I was born on . . . in 1935, October 2nd.

James Ward: So you're coming up on the Big 75.

Barton Gaut: Unfortunately.

James Ward: I know you grew up in Hawthorne, California.

Barton Gaut: I did.

James Ward: And maybe you can briefly tell us about your background there.

Barton Gaut: My family lived . . . moved to Hawthorne when I was about six or seven. Went to grammar school and high school there. And my dad worked for Northrup Aircraft. And then I went . . . I left from high school and went to UCLA Law . . . . UCLA college.

James Ward: How was it you picked UCLA?

Barton Gaut: It was the closest one around.

James Ward: And eventually you went on – and I'll ask you now at this point, though – why was it you picked Boalt Hall for your law school? 2:45

Barton Gaut: That's a good question. I was in the army at the time and I was applying to a number of schools, and law . . . Boalt Hall had a good reputation and furthermore I could . . . it was cheaper. So we went right there.

James Ward: You have a reputation for scholarship in that you were Phi Beta Kappa at UCLA and you were Order of the Coif at Boalt Hall. Why don't you tell us about that?

Barton Gaut: I don't know if there is a heck of a lot to say. I worked my fanny off both places because it doesn't come easy to me. So I just worked on it.

James Ward: You worked hard and long and as I recall you were number two in your law school class. Is that correct?

Barton Gaut: I think that's wrong. I think I was third.

James Ward: Well, right. But there was a significant personage who was number one in your class. Wasn't Justice Werdegar – Kay Werdegar – number one, or do I have . . .

Barton Gaut: No.

James Ward: . . . that wrong?

Barton Gaut: Well, she left . . . . She was in the . . . . She was number one, and she left before she graduated and got married and I think she went to school in the midwest. So she didn't come out with us.

James Ward: Oh, but in any event, you were way up there at the top of your law school class.

Barton Gaut: I did my best, yes.

James Ward: Right. Okay. You mentioned being in the military. Tell us about your military career.

Barton Gaut: I was in ROTC at UCLA. I . . . . When I graduated from UCLA, I was immediately sent to the army, and I went to a program that requires you . . . to teach you about being a snoop, basically. And I . . . . We . . . . Where were we? We were in Baltimore, Maryland, and I was there for three months or so and then I was transferred to Washington, D.C. and spent the rest of the time there, where we tried to find out who was . . . to make certain that people were basically honest.

James Ward: Okay. And you mentioned your family. Tell us about your marriage and family.

Barton Gaut: We were . . . . My wife and I were married when we were in our third year at law school . . . in the third year in 5:49

undergraduate school. We had a child when I was in . . . just started in the army, and then we had another child when we were still in the army. Then that was a . . . . The first one was a son, the second one was a daughter, third one is a son that we had when we were . . . when I was in . . . just as I left law school, and the fourth one we had five years after that.

James Ward: Did some of your kids follow you into the legal profession?

Barton Gaut: My older son went to Harvard undergraduate and law school, and he is now a lawyer in Los Angeles with a pretty good firm.

James Ward: You, of course, then graduated from law school, took the Bar exam, and got a job. Tell us about that.

Barton Gaut: Well, somebody came up from Riverside looking at people at Boalt to see if they wanted to come down here. I talked to them; I also talked to some people in Los Angeles and Santa Barbara, Hawaii, and stupid me decided to stay in Riverside.

James Ward: Well, now, that wasn't so stupid in the end, was it?

Barton Gaut: I guess not. So anyway, I came down to Riverside immediately thereafter, and we weren't here more than six months when we had our third child.

James Ward: I noted your starting salary at your firm. Tell us about that.

Barton Gaut: $500 a month, and that was . . . .

James Ward: And you were worth every penny of it.

Barton Gaut: Every bit of it. And it was more money than I was making in the army, so we were feeling pretty good.

James Ward: And the firm was?

Barton Gaut: Best Best & Krieger.

James Ward: And that was your single employment as an attorney for the rest of your career, was it not?

Barton Gaut: That's right.

James Ward: And of course at some point thereafter you became a partner and were a partner with the firm until you were nearly a senior . . . or *the* senior partner, weren't you?

Barton Gaut: Well, there was a couple of others that were ahead of me, but not many.

James Ward: You had a reputation as an absolute workaholic. Tell us about that. 8:26

Barton Gaut: I spent a lot of time. I usually got to work about 7:30, worked all day, came back at night, and worked every weekend. I think I was a little slow, and so I had to spend a lot of time. And I did spend a lot of time and hours.

James Ward: How did that impact your family?

Barton Gaut: Well, it's a good question. I'm not certain. The kids went on and did a nice job despite me.

James Ward: Tell me a little bit about your likes and dislikes in the practice of law.

Barton Gaut: Well, I enjoyed the law a lot. I did a lot of trial work, I did a lot of work for, like, the telephone company, for a number of entities here in Riverside, some . . . a lot of 'em in the water area. And for a lot of companies up in the local mountains that had water involvements. And I worked for the people who do work for . . . . I'll have to hang that off; I can't think of it right now.

James Ward: Well, you did some condemnation work, too.

Barton Gaut: Yeah. A lot of condemnation work.

James Ward: Yeah. And in fact for a while you did libel work for the newspaper, didn't you?

Barton Gaut: I did. The *Press-Enterprise*.

James Ward: So you had quite a varied practice, didn't you?

Barton Gaut: Yeah, I did.

James Ward: And you wouldn't say it, but I'll say it: you achieved a stellar reputation in the community as one of the best attorneys in town. The . . . .

Barton Gaut: Glad to hear you say that. It may not be true, but . . . .

James Ward: The work that you did . . . . You eventually got involved with Bar Association activities. Tell me about that.

Barton Gaut: Yeah, I was in the Bar Association once I came to Riverside. I was . . . . I became president for a year. I was involved in a lot of the activities for the Bar and . . . before and after being on the Bar . . . in the Bar Association. And I don't know there's a lot of activity that . . . other than that that was terribly relevant.

James Ward: You were involved with Barristers even before the Bar Association. 11:31

Barton Gaut: Right, right. It's a good thing you recalled that . . .

James Ward: Yeah, right.

Barton Gaut: . . . because I forgot it.

James Ward: And you also were involved with your church, were you not?

Barton Gaut: Yeah, the Congregational Church here in Riverside. I was on the board for quite a time. We also created a group that . . . . We created a structure that lot . . . people brought . . . that older people could stay there, and so I was on . . . .

James Ward: That was Plymouth Towers?

Barton Gaut: Plymouth Towers, thank you. So I was on that for quite a while.

James Ward: Of course, having started in the practice in . . . I believe it was 1962, is that correct?

Barton Gaut: '62, I think that's right.

James Ward: And then practice for as many years as you did, do you care to comment on the changes in the practice of law over that period of time? Did you see any?

Barton Gaut: What bothered me more than anything else about the practice of the law was that I thought a lot of the lawyers that I had . . . in contact with were more concerned about how they can perhaps cheat. Or maybe that's not a wrong . . . good word. How they can get by with things. I'll never forget a case where a lawyer saw some documents on the . . . paper where we were taking some evidence, and he stole it. And used it. And I saw a lot of stuff that happened like that that I felt was really unfortunate and improper and affects the . . . everybody.

James Ward: Did that have any influence in your decision to become a judge?

Barton Gaut: To some extent. I got to the point where I thought that lawyers were fighting with each other despite any effort to be honest about stuff. And some of the things they said and did I thought were inappropriate. And I just felt it was time to try and get into something else like . . . . And I thought I could do some good stuff for the court – trial court.

James Ward: And as it happened, Pete Wilson was the governor at that time. You knew Governor Wilson, didn't you? 14:15

Barton Gaut: Yes, I did. He was in my class at Boalt. And I really didn't know him very well; he was in another group than I. But yeah, he appointed me.

James Ward: So you applied for the position with the superior court and got appointed. What sort of matters did you handle?

Barton Gaut: I heard only civil cases. Well, that's why, to some extent . . . . Now and then we would have some cases where you'd have to determine whether a criminal should go to trial. But other than that, I did all civil cases, and similar kinds of . . . .

James Ward: Because, of course, that was your expertise.

Barton Gaut: Oh, yeah.

James Ward: That's . . . . You had never practiced criminal law.

Barton Gaut: I had no idea what was . . . criminal law had to do. So I did that . . . quite a bit of it.

James Ward: Well, you told us about the fact that you worked nights and weekends while you were an attorney. Tell us about your typical day as a trial judge.

Barton Gaut: I'd get there . . . . We'd get there before eight, working on the issues before the trial court . . . before the trial occurred. And we . . . I would hear their . . . the cases before trials commenced.

James Ward: That's the law-and-motion calendar?

Barton Gaut: Law-and-motion calendar, thank you. And then we had . . . at noon I frequently reviewed all the cases for the next day's trial and motion calendar. And then in the afternoons I frequently worked with other people . . . other cases that might come to trial and that we tried to settle or to do some help before the next trial.

James Ward: So you were sometimes there later into the afternoon and evening, is that correct?

Barton Gaut: Yes, I was.

James Ward: When you did your law-and-motion, did you prepare and post tentative opinions as to those law-and-motion matters?

Barton Gaut: Always.

James Ward: And so that was a burden that you had. You had to post 'em the night before so that when the attorneys came in in the morning, they could find them on the bulletin board. 16:55

Barton Gaut: Correct. Yes.

James Ward: So how did you like that daily schedule?

Barton Gaut: I enjoyed it. It was a nice change from the law . . . from the practice of law. There was a . . . . You were in . . . not very far from me in the lousy little place we were set in.

James Ward: One of the world's crummiest courthouses.

Barton Gaut: That's right. It was a terrible place. Except you were upstairs, weren't you?

James Ward: You were down in the dungeon.

Barton Gaut: That's right, I was in the dungeon. And there was another lawyer, or judge, right next door to me.

James Ward: Dick Van Frank.

Barton Gaut: Yeah, that's right. And he helped me a lot on . . . whenever a criminal issue came up because he'd had some experience in that – quite substantial.

James Ward: Well, we should add here – for clarification – this was a temporary facility while Riverside's historic courthouse was being rehabbed. And we got stuck in an old municipal court that they sort of fashioned as a place for the superior court for . . . . Well, that's where I was . . . .

Barton Gaut: The whole time, weren't you?

James Ward: No, I had a brief spell over at the historic courthouse.

Barton Gaut: Well, and that was a great building because thereafter the state . . . the county tear it . . . tore it apart . . . down and they put a new building there.

James Ward: That building is long gone.

Barton Gaut: Yeah.

James Ward: Tell me about handling jury trials. Do you like that?

Barton Gaut: I really did enjoy it. I felt that I should be involved very heavily in voir dire. And I started almost every case doing all the voir dire and would give the lawyers some time but not a lot of time. So I liked the opportunity to talk to them, get their views without having a lawyer's . . . giving them any kind of idea what they ought to be saying. So I did enjoy that.

James Ward: And you enjoyed that whole jury process. 19:10

Barton Gaut: I did. I liked the jury.

James Ward: I picked up somewhere, in something written about you, that special appearances were a special situation for you. Do you want to share that?

Barton Gaut: Special appearances?

James Ward: By attorneys from . . . on a case where they're not the regular attorney on the case.

Barton Gaut: I'm not sure I remember.

James Ward: Well, the quote that I got was that you really detested special appearances, and it made you angry because the attorneys were not prepared.

Barton Gaut: Oh, well, if that's what you're talking about, yeah. I didn't like people coming in that weren't ready to go and wanted to come rush in and . . . at the last minute and get some kind of . . . make an appearance and . . . . So I did not appreciate that.

James Ward: Probably a holdover from the days when you were always – as it was your reputation – extremely well prepared, and everything that you did in the practice of law, you just expected that from attorneys as well. Is that right?

Barton Gaut: Yeah, that's right. And a lot of 'em that came in were not too well prepared, which was unfortunate.

James Ward: Generally, how do you feel the quality of advocacy was among the attorneys that you encountered?

Barton Gaut: It was spotty. Some people I thought were superb; some of 'em came in were only halfway working at it. And a lot of 'em, I guess they were . . . had so much work that they didn't prepare as well as they should have. And some of the documents that they were submitting – particularly on the early mornings – weren't very well done.

James Ward: When I . . . . You were on the trial court for less than two years.

Barton Gaut: That's right.

James Ward: And you were appointed, I believe, in 1995. Is that correct?

Barton Gaut: I'll rely on you. It's probably right, Jim.

James Ward: I think I have that right. But you were on the trial court for less than two years.

Barton Gaut: Yes, I was. 21:28

James Ward: And do you have any other general observations about the trial court judge's job? Some people say it's a lonely job, where you do everything all by yourself.

Barton Gaut: Well, I think that's true. That's why I . . . . it was nice to have, for example, you around to ask questions 'cause you'd been around longer. And my next-door neighbor, whose name you've already told me. It was nice to have people around and give you suggestions on issues. But a lot of it's . . . you've got to do on yourself.

James Ward: Because minute by minute, as a case progresses, and even before the jury, the trial judge has to make each decision.

Barton Gaut: That's right, that's right.

James Ward: Well, did you like that challenge?

Barton Gaut: I did, yes. I'm not sure I always did it right, but I thought it was enjoyable.

James Ward: But overall you enjoyed your time on the superior court, didn't you?

Barton Gaut: I did. Very much so.

James Ward: I have to say, you always told me that you'd have no hesitancy going back there and being a superior court judge. You liked it.

Barton Gaut: I did, I did. I'm not sure that I'd like to go back to doing criminal cases, but civil cases would be fine.

James Ward: But in any event, you moved on to the appellate court. Tell us how that came to pass.

Barton Gaut: You know, I don't know why I applied, but I did. And Pete Wilson appointed me again. And, I don't know, I just . . . it seemed like an area where I could maybe do some good. And I saw you were over here, and I thought, well, shoot, I'll come over there and tell him what to do. *[laughter]*

James Ward: That's right. Well, I got to the superior court one year ahead of you and to the appellate court one year ahead of you.

Barton Gaut: Yeah, but . . . .

James Ward: So you followed me over to . . . . It was San Bernardino at that time.

Barton Gaut: Oh, you know, that's right; I keep forgetting that. You know, and that was such a cruddy building and it was a lousy place. 23:46

James Ward: Well, it wasn't bad for all of us, but it was particularly bad for you.

Barton Gaut: That's right.

James Ward: And tell us why.

Barton Gaut: Well, because when I got in, there was no room! And I had an office that was about four feet on one side and four feet on the other side. My folks that were working for me were sitting in another . . . one chambers. It wasn't even a chambers; it was just a . . . . I don't know what it was for.

James Ward: It was in the library conference room.

Barton Gaut: I guess it was a library conference room. So it was kind of a . . . it was miserable. And the building itself, in general, was not very good.

James Ward: Remember the bugs?

Barton Gaut: That's right, yeah. It wasn't a neat place at all.

James Ward: But you persevered, and then eventually you got a chambers, and eventually you came over here to Riverside.

Barton Gaut: Yeah. I . . . . Did I . . . . I think you moved your chambers, didn't you, and then I moved in your old one?

James Ward: I believe so.

Barton Gaut: Yeah.

James Ward: Yeah.

Barton Gaut: And I wondered why you didn't do that quicker!

James Ward: Well, it was because we had to wait for a justice to retire.

Barton Gaut: Yes, we did. Yeah, we did.

James Ward: And then you finally did get a chambers. Well, tell me your observations of the differences between being a trial court judge and an appellate court justice.

Barton Gaut: Well, as a trial court judge, you know, the . . . everything was on you. I had to make the decisions. I'd decide what . . . where the case should go, who should be coming in, all these questions are something that the trial judge has to think about. When you come to the . . . a Court of Appeal, I'm just one of three people in each case. In addition to that, I have substantial numbers of people who are working on the 25:45

cases that I am working on. And these folks that have worked for me have done a wonderful job, and they're very helpful. And so it's not all on me as it used to be in the trial judge . . . court.

James Ward: Do you care to comment on what you consider to be the important qualities of a person to take on the job of a justice of a Court of Appeal?

Barton Gaut: Well, I think you have to be willing to, first of all, review – in great detail – cases as they come up, and have to be prepared to review the cases they're relying upon in addition to the briefs that you receive. And that takes a lot of time. Even if you have somebody – and I had them, as did you – who are helping with you in reviewing all of that, you have to personally do it all. So that's part of it. And another thing is that you have to work with the other people that are with you on the case. So . . . .

James Ward: So the word "collegiality" comes to mind.

Barton Gaut: Absolutely. That was a nice . . . nicely done.

James Ward: That's a quality you think is important.

Barton Gaut: I do indeed.

James Ward: If you had to rank collegiality and scholarship, where would you put the two? One ahead of the other, or both the same?

Barton Gaut: Well, very close. I think collegiality is very important, but so is also scholarship. You've got to be able to analyze the cases in the . . . on the documents. It's pretty close.

James Ward: Well, speaking of the people who assisted, you're referring – first and foremost, I assume – to research attorneys . . .

Barton Gaut: Right.

James Ward: . . . in the Court of Appeal. During your tenure at the court, how many research attorneys did you have?

Barton Gaut: I started off with two. They have continued to this day. In addition to that, I had . . . .

James Ward: You mean the same two people?

Barton Gaut: Same two, sorry. I also had another woman who worked for me for quite a while, then left and went on to a different . . . to college. And I've had others interspersed. But I always had the same primary two that I started out with. 28:30

James Ward: But in addition to those two research attorneys, there were periods of time when you would have another one – or half a person, as it were – assigned to you as well, to assist you with your work.

Barton Gaut: Correct, correct.

James Ward: Of course, when you came to the appellate court, which I believe was in . . . . Well, now I'm losing it here.

Barton Gaut: I am, too.

James Ward: 1997, wasn't it?

Barton Gaut: I think that's right, Jim.

James Ward: Yeah. In 1997, the caseload of this division was horrendous, was it not?

Barton Gaut: It was. I can remember when I first went in San Bernardino, there was an area where there was rafts of cases that were behind. There was a number . . . we just . . . we had an *enormous* number of cases that were behind.

James Ward: Backlog.

Barton Gaut: Backlog, yes.

James Ward: In fact, there was like a huge room that was . . . not a huge room, but it was a large room where the shelves were just completely covered with those cases.

Barton Gaut: That's right, that's right.

James Ward: But Justice Ramirez, who was the presiding justice, undertook some efforts on that. Tell us about that.

Barton Gaut: Well, I don't know that I can tell you what he did. He was very involved in trying to get this backlog worked out. And he made sure that we pushed as much as we could to get into the cases and get into those areas that . . . the cases that were backlogged and . . . .

James Ward: Remember he set quotas for all of us.

Barton Gaut: Yes, I guess he did. I sort of frankly had forgotten that, Jim.

James Ward: Yeah.

Barton Gaut: There was a lot he wanted us to do, and I thought he did a superb job getting it . . . . And I've forgotten when we were in a better position, but it took a while. 30:38

James Ward: But do you remember, at its peak, what the numbers were that we were handling?

Barton Gaut: Jim, I can't remember the numbers at all.

James Ward: Well, there was at one time, just to refresh your recollection . . . . When we were in the neighborhood of signed opinions, each justice – that is, the author of the opinion – had around 200 opinions a year. Do you recall that?

Barton Gaut: I hadn't remembered that it was that many.

James Ward: And then, of course, that also meant that you signed off on another 400 . . .

Barton Gaut: That's right.

James Ward: . . . opinions. And that's during a year's period.

Barton Gaut: Right.

James Ward: That was at its peak.

Barton Gaut: That's right, because we had to be . . . we had to sign off on the justices who had another 200 themselves.

James Ward: Right, yeah. What is your feeling about the process that California has for appellate court justices and their law clerks? There are other systems in other states where they don't rely so heavily on the law clerks. How do you feel about that?

Barton Gaut: Well, I think the system we have here is superb. I think these people did an . . . do a wonderful job. The people I've had and I think the people you had, Jim, were competent and worked hard and continue to work hard. And I think that's . . . . I don't know – you probably know better than I – how they do it in other states.

James Ward: Well, do you have any thoughts on the impact that research attorneys have on the process, because they do so much of the writing?

Barton Gaut: Well, they do a lot of the writing. I think it's been important for us to try reviewing it and confirm what they're doing and tell 'em where we think they ought to be going or how they ought to be doing it. But I think the process here is superb. I don't know, Jim, how they do it in other states. I assume they are somewhat similar to ours.

James Ward: No, not always. But what about the number of cases that are, or are not, published? What's your feelings on that? 33:13

Barton Gaut: Well, I think we have to publish those cases that we think are significant enough that they will have an effect upon the people in the state of California. And that I think that the Supreme Court doesn't always agree with us on that, but I think the publication is something that's important. We don't want to publish stuff that's just junk or that's a duplication of what's already been done. But I think we've been pretty careful to try and publish where it seems necessary to give help to the lawyers in the state.

James Ward: Well, you personally. Do feel that you published – because you made those decisions – you published more or less than the other justices on the court, or more or less than other justices in the state?

Barton Gaut: My reaction is I have probably published less from others in the state, and I think our judges here probably are . . . publish less than other . . . .

James Ward: I think the statistics bear that out.

Barton Gaut: Yeah, I think so.

James Ward: Right. But you're comfortable, though, with the arrangement that just a percentage of the cases – as determined by the court – are published, and not all of 'em.

Barton Gaut: Oh, yes. Yeah, it doesn't make any sense to publish them all; it's a duplication of effort.

James Ward: How do you fell generally about the decision-making process – that is, the panels of three and otherwise the decision-making process in the court?

Barton Gaut: Well, I think the panels of three are very important because sometimes some ideas I have may be contrary to the people who are on the same case I'm on, and they frequently will have information that I either don't have or hadn't thought of. So having three people available to look at each case is important.

James Ward: How do you feel about dissenting and concurring opinions?

Barton Gaut: Well, I think it's . . . . I didn't do a lot of dissenting or . . . opinions . . . concurrent opinions. But I think it's important because . . . .

James Ward: And why is that?

Barton Gaut: Well, because, you know, if I had a case that I thought the other two were wrong or shouldn't have been handled that way, I think it's my obligation to dissent. Or to at least concur on . . . to show what's relevant. 36:13

James Ward: I assume that you encountered – well, I know you encountered, in fact – a situation where the Supreme Court would disagree with some position that you took. Did that bother you?

Barton Gaut: Well, I just can't believe that they'd be correct! No, I . . . . Yeah, you know, they've done some things that I still don't agree with. But that's their decision. It doesn't excite me at all.

James Ward: Now, this court is unique in the state – and maybe the nation – in having a tentative opinion program. Do you care to comment on that?

Barton Gaut: I think that's the best thing that's . . . that should have been . . . that is done and it should be done everywhere.

James Ward: Well, first tell us what *is* done . . .

Barton Gaut: Okay.

James Ward: . . . and tell us why you think it's good.

Barton Gaut: Okay. So when we send . . . . What we do is we send out the tentative opinions to the lawyers, showing what we decide is . . . we think is the right decision. And when those lawyers come in to argue, they have the right to refer to our opinion, to tell us where they think we're wrong. It gives them an opportunity to analyze their view more quickly and hopefully more accurately, and furthermore it . . . I think it shortens the time for oral argument. They know exactly where we're going and why, and if we think . . . if they think we're wrong, they can tell us that. But I think it's a *superb* concept and I am *shocked* that nobody else – either in the state of California or elsewhere – are not . . . are using it.

James Ward: As you know, I agree with you wholeheartedly.

Barton Gaut: I said maybe you would!

James Ward: Well, jumping back in time, when you were an attorney, you did some appellate work, right?

Barton Gaut: I did. That's right.

James Ward: And were . . . did you ever appear before this court when a tentative opinion was rendered?

Barton Gaut: As my recollection, no. I don't think they had 'em at the time. If so, my . . . . No, I'm sure it wasn't . . . occurred.

James Ward: Well, you may be wrong on that, because I know when I was in practice, they had the tentative opinions. 38:45

Barton Gaut: I didn't . . . . Well, you're . . . maybe you're right, Jim. I sure don't recall it.

James Ward: Well, in any event, we like the tentative opinion program, right?

Barton Gaut: That's right. And the fact that you think I'm wrong is probably your fault. *[laughter]*

James Ward: There you go.

Barton Gaut: Yeah. No, it's a great program.

James Ward: The question of oral argument comes up. Give us your opinions on oral argument.

Barton Gaut: Well, first of all, I think it's . . . our tentative opinions are very significant because it lets these lawyers know where we are and to zero in on the questions that we are concerned about. On the whole, I think oral argument is poorly done. I think a lot of these lawyers come in without having really carefully . . . . I shouldn't say all of them, but too many come in who have not carefully analyzed it. They talk too long. They aren't able to articulate their disagreement with the other side. So I'm, frankly, a little disappointed in it.

James Ward: But still and all, then, you don't see much value, then, in the oral . . . .

Barton Gaut: Oh, no, it's got . . . . Oh, no, I think it's *very* important. It's very important.

James Ward: But you're just disappointed in some of the advocacy.

Barton Gaut: That's right. Yeah.

James Ward: Okay.

Barton Gaut: So did I answer that correctly, Jim?

James Ward: Yeah, right. But speaking of the advocacy – and you mentioned the advocacy of oral argument . . . . Well, before we go beyond that, did you ever encounter – well, I know you did – where trial attorneys would come in and try to argue the case to you as if you were the jury?

Barton Gaut: Well, I think a lot of it's that, yeah. It's a wholly different idea. It's mostly . . . usually the legal aspects of it, and there are specific points they should be picking up, and they frequently don't do it.

James Ward: Right. Well, what's your felling about the quality of the briefs that you received during, oh, your 10-plus years on the court? 41:08

Barton Gaut: I think, on the whole, I was disappointed. I think a lot of them – and that doesn't apply to all of 'em – but I think a lot of 'em are too verbose, too little thought given to the purpose of the brief, and it really gives you an idea that they are kicking it out because they are too busy to really sit down and analyze it.

James Ward: This court has a unique history of settlement efforts by the court. Can you tell us a little bit about that?

Barton Gaut: Yeah, Justice Ramirez makes an effort to analyze cases that he thinks . . . that have been filed here and thinks that . . . finds those that he thinks are worthwhile to try to settle 'em. And we've all spent time working on a settlement program here at the court, as well as some of the lawyers in the area have come over and worked hard on settlement.

James Ward: As volunteers.

Barton Gaut: As volunteers, yes. And I think the system is . . . works very well. Until I had some problems, I spent a lot of time doing that. And you don't win 'em all, you don't . . . but they're . . . they spend a . . . it results in a substantial decline in cases.

James Ward: Yeah, a lot of 'em are eliminated from the system.

Barton Gaut: Right, right.

James Ward: Well, in fact – jumping back once again – when you were an attorney, did you participate as a volunteer pro bono settlement mediator, as it were, when you were an attorney?

Barton Gaut: No. I never did it. I don't know that I . . . . You're saying that because people were doing that? I guess you were doing that?

James Ward: Well, I did. I thought you did, too.

Barton Gaut: I don't think so. For what? The Court of Appeal?

James Ward: Yeah.

Barton Gaut: No . . . .

James Ward: They used a lot of attorneys as pro bono mediators or settlement . . . .

Barton Gaut: Yeah, I don't think I ever did that, Jim.

James Ward: Well, let me ask you this. Once you came on the court, however, Justice Ramirez did assign you to try to settle civil cases.

Barton Gaut: Oh, yes. Oh, absolutely. 43:55

James Ward: Another feature of this court that I think both you and I appreciated was the community outreach program that it has had for a few years. Tell us about that.

Barton Gaut: Again, Justice Ramirez has been the guy who's really spearheaded that. And he has taken us to various high schools, as far as Bar . . . or not Barstow, but up above . . . . Where did we go?

James Ward: Well, we went up into the . . . Inyo.

Barton Gaut: Yeah, Inyo.

James Ward: We went up to . . . . Right.

Barton Gaut: I was thinking Inyo, Riverside, San Bernardino, the desert. And we would go in and argue a case or two before the high school students, and then we would go to their room and discuss with them the cases that they've heard, talk to them about the law, talk to 'em about what they've . . . what they're interested in. I thought it was a great program, and I think it's still going on. In fact, I think the guys are going up to Inyo . . . or either have gone out or going out this month.

James Ward: And you think that's a valuable program why?

Barton Gaut: Well, first of all, it gives the students an opportunity to see how the system works. They see how lawyers argue to a Court of Appeal. They have an opportunity to then discuss about it, 'cause we will go . . . we went into each . . . we would break up and go to various rooms. They would have an opportunity to discuss with us what they saw, and it . . . . we gave them an opportunity to ask questions about the law, what they want to do, perhaps in the law – anything they want to do. And I thought it worked very well. I brought my wife a time or two, and she went in with us, and she stood there and even asked some . . . answered some questions.

James Ward: A great program.

Barton Gaut: Yeah, it's a great program.

James Ward: Yeah. During your tenure, you were appointed for . . . to sit on cases at the Supreme Court of California. Tell us about that.

Barton Gaut: I only had done two of 'em. As I mentioned, one of 'em was a miserable case in which a number of people were killed. I found the whole thing a waste of my time and effort. They sent me because apparently one of the justices either was gone or couldn't come, so basically they threw me in wherever they could find me. They didn't really care, I don't think, about what I was doing or why. When we had our meetings after 47:22

the termination of the argument, each person was . . . had an opportunity to discuss what they thought about the argument. They gave me a short shrift. And basically it was a waste of my time and theirs.

James Ward: Don't hold back your opinions. *[laughter]*

The issues, as perceived by the public and the press, about appellate courts involve judicial philosophy of the court and the justices and judicial activism and political persuasion and all of that sort of thing. Do you care to comment at all on how you saw that play out while you were an appellate justice?

Barton Gaut: I'm not sure. The question as . . . . Well, really, what's the question, Jim?

James Ward: Well, just basically, did you think that political philosophy played a major part in the decision-making process and that there were, for instance, significant differences of judicial philosophy among your colleagues?

Barton Gaut: Well, I think, yeah, I think there were some differences. A lot of my colleagues were people who had a lot of experience in the criminal arena. You and I were primarily civil experience. And I think their views on some of these things were different than mine. And maybe because they knew more about what they were doing than I. But I thought there was a difference in the outlook on what we . . . .

James Ward: Well, how would you work it out when there were those differences?

Barton Gaut: Well, if we had . . . to the point where it looked like I thought that they were doing something incorrectly, I'd go over and sit down and talk to 'em. We have a great group, and we . . . nobody has any objection to sit down and talk about it, and try to decide what to do. And some of 'em would tell me, because of their background in criminal law, they would give me a lot of help, 'cause they'd know what was going on.

James Ward: Eventually you made the decision to give up your time on the Court of Appeal. Do you want to share your feelings on that?

Barton Gaut: Yeah. I guess part of it was because I've had a lot of sickness, and I've had some problems that has . . . have been recurring. But I feel bad.

James Ward: In other words, you wish you hadn't retired?

Barton Gaut: Right.

James Ward: You'd like to still be doing the work, huh? 50:43

Barton Gaut: Yeah. I enjoyed it.

James Ward: How would you like to be remembered as an appellate court justice?

Barton Gaut: As somebody that was just . . . worked and did what he could do. I don't know that I have done anything significant enough to require anybody to be . . . to even care, to be honest.

James Ward: Well, that's simply not true. Everybody cares a lot for you, and you have a wonderful reputation. But you wouldn't say that; I will.

Barton Gaut: I appreciate that.

James Ward: When you look back on your time – brief time, a couple years on the superior court, and then over a decade on the Court of Appeal – do you see any challenges facing the judiciary today that are different than back when you were in the practice of law?

Barton Gaut: That's a terrible question. *[laughs]*

James Ward: I thought it was a *good* question.

Barton Gaut: Well, I frequently thought, as a lawyer, that a lot of lawyers were primarily concerned not about the propriety of what was being . . . was occurring, but how are they going to make their . . . win and get their money. And I'm not sure that's still the case, but that's an area that bothers me. In fact, some of the lawyers that come up here and argue, sometimes I feel that they're just kind of going through the motion. They want to get their money and get out. And that may not be a fair observation. I wish you hadn't asked me the question.

James Ward: Okay. I'll drop it. *[laughter]* Let me ask you another tough one. The administration of the courts has changed enormously since we were young attorneys and even young judges, for that matter. There's a lot more centralization in San Francisco and a lot more bureaucracy. Do you have any thoughts on that?

Barton Gaut: The bureaucracy is a shock to me. Jim, you and I were together – but primarily you were the key – in reviewing and modifying the civil . . .

James Ward: Jury instructions.

Barton Gaut: . . . jury instructions. And I can remember when we'd go in to San Francisco and we would walk into some of the areas and there were one or two people there working for the . . primarily in the area we were in. And then after three or four years the place was *packed* with people! I got the feeling that there were more people there in San Francisco that are 54:09 .

. . than necessary, and it was . . . . I'm not sure it was helpful for the legal system. That bothered me.

James Ward: Well, speaking of the jury task force, tell us about that.

Barton Gaut: Well, there was a guy named . . . . What was that guy's name that was in charge of that place? I think it was you, Jim.

James Ward: Yeah, that's right.

Barton Gaut: And we have . . . . I . . . . What was there, about 14? Twelve or 14 people that . . . .

James Ward: It got bigger than that, actually, yeah.

Barton Gaut: Yeah. We had about a total of 14 people that met every other month – and part of the group would meet in between that time – to review and analyze and modify the civil jury instructions. And we had some people who were bright, able people and . . . who worked very hard on it, and I think we did a great job.

James Ward: That was a plain-English initiative in part, was it not?

Barton Gaut: Yeah, sure.

James Ward: And did you appreciate that?

Barton Gaut: Oh, of course. Some of that – I was going to use the wrong word – some of that stuff that people had used for years was inappropriate! And it was time to bring it up to current. And I thought, primarily because of your leadership, we did a terrific job. And I hope you'll pay me when I get done with this.

James Ward: I see. Yeah, I'll give you your tip later. But even before you got involved in the jury task force that you mentioned here, you had been involved with writing jury instructions, had you not?

Barton Gaut: A little bit.

James Ward: But didn't you do some . . . help Matthew Bender with . . . .

Barton Gaut: Yeah, that's right. You know, I'd forgotten that, Jim. How did you remember that? Yeah, I had done some of that. I don't know that it was an awful lot, but yeah, I did do some of that.

James Ward: Well, you were an author of one of the chapters of one of the Matthew Bender books.

Barton Gaut: Gosh, how'd you remember that, Jim? I did. I was. That's . . . . It's a good thing you're here. I need help wherever possible. 56:32

James Ward: Well, you know, it's often thought that . . . . Some people say, "Well, it's been a good run." Is that the way you look back on your judicial career?

Barton Gaut: I think so. I enjoyed both the trial court and I enjoyed it here. I don't know that I always did a wonderful job, but I enjoyed it and I tried.

James Ward: As you look back, were there any things you would have done differently?

Barton Gaut: I don't think so. I think I did what I . . . as much as I could.

James Ward: You've had delivered to you – as a part of the retirement process – an accumulation of all the opinions that you authored.

Barton Gaut: Yeah.

James Ward: Did you have occasion to look it over . . .

Barton Gaut: I did.

James Ward: . . . and did that prompt any thoughts?

Barton Gaut: I did. I looked at . . . . There was a bunch of 'em that I marked. We had some . . . . I don't know that I can pick it without my note. But there were some cases . . . . I guess I can grab 'em, can't I?

James Ward: Certainly!

Barton Gaut: There were some cases that we had here that I thought were really very interesting. And, you know, I can remember one that we most recently had is a case where a guy had to register under PC 290.011 as to whether . . . . This is the guy who's had some questions about his . . . whether he's a . . . what do I want to say . . . whether he had to register . . .

James Ward: As an offender?

Barton Gaut: . . . as an offender. And we had . . . on that case we decided that in addition to registering for where he was living, he was spending an awful lot of time to his girlfriend and we decided that we had to . . . they had to . . . he had to do it there, too – show it as his registration.

We had a Joint Powers Authority case we had out here in March.

James Ward: March Field. 59:07

Barton Gaut: March Field. And it was a . . . . We approved a grocery distribution facility there, claiming . . . . People had claimed there wasn't insufficient . . . there was insufficient environmental review, and we found that there was sufficient review there, so . . . .

There was some other stuff that was . . . . One in particular that I remember that I sort of liked, if I can even find it.

James Ward: Well, you obviously enjoyed, I guess, going back and looking those cases over.

Barton Gaut: I did. Some of 'em are . . . I didn't even remember but some of 'em I did, and I enjoyed going back into 'em.

I remember one – *Granowitz v. Redlands School District.* I think you were still here, Jim.

James Ward: I believe I was.

Barton Gaut: Where . . . . That was a case where the kids' parents came in and had an informal meeting with the principal. And they . . . folks said that was insufficient; that wasn't due process. And we rejected that review.

So there are other things like that. There was one – *People v. Green* – that I remember, and I can't even find it in here. Where we led a – where the heck is it?

David Knight: Let me give you time to find that while I change tapes. Let me start the tape back up then. We have about a minute.

Barton Gaut: Okay.

James Ward: Okay, well, then, we'll wrap it up here.

Barton Gaut: Yeah.

James Ward: Well, it's fascinating that you had occasion to go back and remember those individual cases. Overall I assume you're satisfied with the work you did, and you're happy to have done it?

Barton Gaut: Yeah, I am. It was a good time, and I hope I was worthwhile.

James Ward: Well, the prevailing opinion is that you were *very* worthwhile and did a wonderful job.

Barton Gaut: Somebody forced you to say that, didn't they?

James Ward: Right. Your wife bribed me, yeah. No, Bart, everybody thinks very highly of you, and I was delighted to have the opportunity to do this interview. Do you have any final words? 1:01:31

Barton Gaut: No, I appreciate your effort, and, as always, thank you.

James Ward: Well, thank *you*.

Barton Gaut: Yeah.

James Ward: Well, we did it in an hour!

Barton Gaut: Yeah, I knew there . . . . You know, you probably put in two hours 'cause you had so much recollection.

Duration: 62 minutes
September 14, 2010