David Knight: Justice Swager.

Douglas Swager: I'm Douglas Swager, retired from Division One of the First District. My last name is S-w-a-g-e-r.

David Knight: All right. And Justice Reardon?

Timothy Reardon: Yeah, Tim Reardon, California Court of Appeal. Spelling on the last name is R-e-a-r-d-o-n.

David Knight: All right. And we are ready to run. So Justice Reardon, if you have any introduction you want to start with, now is the time.

Timothy Reardon: I will. And today's date is . . .

David Knight: 18th, I believe.

Douglas Swager: June 18th. My daughter's birthday.

Timothy Reardon: All right. Hey, very good!

Douglas Swager: Oldest daughter.

Timothy Reardon: Happy birthday to her. Today's date, then, is June 8th.

Douglas Swager: 18th.

Timothy Reardon: 18th, 2009. And the interview is being conducted as part of the Appellate Court Legacy Project, the purpose of which is to create an oral history of the appellate court in California through a series of interviews of our retired justices who have served on our court. As I've indicated, I'm Tim Reardon, I'm an associate justice of the First District Court of Appeal, and we are honored to have with us today the Honorable Douglas Swager, who served on the First District from October of 1995 to December of 2008. So we want to welcome Doug at this time, and thank you for participating in this project. I should mention the participation is more than just being interviewed, because Justice Swager actually served as an interviewer of one of our retired justices, Justice Gary Strankman. And I have seen the videotape, and Doug, you did a very nice job.

Douglas Swager: That's good. I haven't seen it.

Timothy Reardon: I think you're supposed to get a copy, but if you don't have one, we'll make sure you get one.

Doug, you're a native Californian, born and raised in Richmond, California. Can you tell us a little bit about the Swager family and being raised and growing up in Richmond?

Douglas Swager: Okay. Well, I actually was born in Richmond. I grew up in El Cerrito, which is adjacent to Richmond. But I grew up 2:15 . . .

. I have a sister who's nine years older than I am. And I . . . . My father was . . . worked in the vending machine business, for a company called . . . it turned into Servomation Corporation. He was originally from Ohio. Or "Ohia," as they say back in Ohio. And my mother was born in Italy, came over here after World War I, and by a fortuitous set of circumstances the two of them met out here in California after my dad went up through Canada and whatnot trying to find work during the Depression. And all of my family out here was on my mother's side of the family. And we had aunts and uncles and cousins. They were around us all the time. But it was kind of a traditional Italian upbringing when I was growing up. Every Sunday when my grandparents were alive, the whole family got together at their house for a huge Sunday eating binge down there. And I was kind of . . . . I grew up in that type of situation.

And . . . . But it was very different time back in the 1950s when I was growing up. I know Richmond has a very bad reputation currently, but when I grew up it was a very nice town. That's where everybody went and did all their shopping. The AC Transit trains – I'm dating myself now – still ran. They had all the trolleys up and down Macdonald Avenue, all along Key Route. And we would take that to get to various places.

But when I was growing up, it was . . . most of the mothers did not work out of the home. And not only did you have to behave in your own family, but if you misbehaved somewhere else, Mrs. Bradfield or Mrs. Smith was going to tell your mom! So you always had to be on pretty good behavior.

I went to school locally there, and then . . . .

Timothy Reardon: El Cerrito High School, or . . . ?

Douglas Swager: No, I actually . . . . That's when Richmond kind of came back into it again, because I went to Portola Junior High School in El Cerrito. And when we were in . . . . And it was a 7 through 9 grade high school. But then in . . . . They made the decision in, I guess, the end of our 7th grade year there. They were realigning some of the high schools. And so they decided that all the students who lived in El Cerrito north of Cutting Boulevard – we were kind of called "the hill people" – we were going to be a freshman class of about 92 at Harry Ells down in downtown Richmond, which somewhat came as a shock to all of us. So the 90-plus of us started our freshman year – our 9th grade year – down at Harry Ells High School down in Richmond. And that's . . . . I went there for four years.

Douglas Swager: And looking back on it, it was a great experience.

Timothy Reardon: Did you *[inaudible]* graduated and went on to the University of California at Berkeley. 5:46

Douglas Swager: Yes, yeah.

Timothy Reardon: And you majored, according to my notes, in Business Administration, graduated from UC Berkeley, and then went on to Hastings College of the Law.

Douglas Swager: Right.

Timothy Reardon: Was there are any factor or influence in why you chose a career in the law . . . pursued a career in the law?

Douglas Swager: Well, I think there are a number of things. But when I started Berkeley my freshman year, I wasn't sure what I wanted to do. And they had career counseling, where they give you aptitude tests and whatnot, so I availed myself of that service. And the number one thing they said I had an aptitude for was farming. Well, I did not particularly want to be a farmer, 'cause my grandfather on my father's side was a farmer, and it was a pretty tough way to earn a living doing that. And then I think about third or fourth was law. And my brother-in-law was a lawyer. And . . . . But he did – and he still practices – but he does probate and estate work. And that kind of had a little appeal to me. But then I decided that I really wanted to . . . I think business was a good thing to do, so I applied to the School of Business Administration there in my . . . end of my freshman year at Berkeley, 'cause you have to take all these classes in order to get admitted in upper division into the Haas School of Business. It wasn't called the Haas School of Business then. And . . . . 'Cause I kind of liked business, and my dad was . . . kind of moved up through the ranks and was the vice-president of this company and I kind of liked that. And I thought, hey, business was sort of the way to go. But then I started thinking it would be good to tie a law degree in with business.

Timothy Reardon: Makes sense.

Douglas Swager: And so I thought about getting . . . my plan was to get my MBA and then go to law school, 'cause it was only going to take me a year to get my MBA because I was a Bus. Ed. major. And then a lot of things were going on in the world at that time. And in one of the classes I took at Berkeley, there was some philosopher – and I cannot remember his name, it was an ancient Greek philosopher – who said, "Let he, who can be his own, not belong to another" and something like that. And law, I think, to me at least, provided me that opportunity – that I could be in practice by myself. I would not be part of the big corporation. And I would have some more control over my life. So I decided law school was the place to go. And so I went to Hastings for three years.

Timothy Reardon: Right. What year did you start Hastings? 8:44

Douglas Swager: I started the Fall of ’66 and got out in ’69. We were the last class that came strictly out of the old building. I know you went to Hastings . . .

Timothy Reardon: . . . Correct.

Douglas Swager: . . . so you remember it. We had to start our third year – and it was the first week of August. And then we had to . . . . And it ended early, the beginning of May, because they were tearing out the Golden Gate side of the building, as you recall.

Timothy Reardon: That’s right. I do recall that, yes.

Douglas Swager: So it was three years there.

Timothy Reardon: Three years at Hastings.

Douglas Swager: It was a lot of work.

Timothy Reardon: Yeah, it was; I agree with that. So we can concur on that. Do you remember who the dean was at that time? Was it Sammis?

Douglas Swager: Yeah, we had Dean Sammis. He was there. He also taught community property.

Timothy Reardon: Did he . . . . Did you get the same speech that we did about look to your left and your right and one of you won’t be here?

Douglas Swager: When I . . . . Yeah, it was the second time I heard that. When I was at freshman orientation at Berkeley, Chancellor Strong, Dwinelle Plaza, did the same thing, except he stuck his hand down and said, “Half of you won’t be here in four years.” And then I heard it again at Hastings from Dean Sammis. And then he also had his saying when he taught community property that – you probably remember this – that he ran his class like a baseball game.

Timothy Reardon: Yes.

Douglas Swager: Three strikes, which meant three unpreparedes, and you were out.

Timothy Reardon: Yeah, he was a tough old guy.

Douglas Swager: He was very, very tough. Yeah.

Timothy Reardon: And somewhat prophetic, as I think the actual graduation rate was about 50 percent. I may be exaggerating a little bit.

Douglas Swager: Well, it was. I think our . . . the class of ’69, I think we were a little unusual because we came back for our third year 10:51

there were a lot of people we'd been to school with for the first two years who were now in the military because of the Vietnam situation. And the . . . . All of us then were in the draft lottery, and the draft lottery did not work out the way the officials had thought it was going to work out. So a lot of the guys, their draft boards couldn't fulfill their quotas, so we were a relatively small class in '69 to start out with.

Timothy Reardon: Now, at some point after graduation you made a decision to get a job, a legal position. And did you go right from law school to the D.A.'s office in Contra Costa County?

Douglas Swager: Yeah, I did. I was very fortunate. I had interviewed, as we all did after law school, with private firms. I also interviewed with the Attorney General's Office – your old office. And I had been told that a great place to start practicing was in the District Attorney's Office or in the Public Defender's Office. So at that time in Contra Costa County, they interviewed basically for both at the same time. They had people from the Public Defender's Office and people from the District Attorney's Office.

Timothy Reardon: I remember that well, because a good friend of yours, Mike Phelan, went on to the Contra Costa D.A.'s Office – strike that, to the A.G.'s Office, and then on to the bench – recruited me to act as an interviewer of people applying for the D.A.'s Office and the Public Defender's Office. And it was kind of a joint deal.

Douglas Swager: Yeah, well, it was, and it was rather an interesting interview. But after that interview, which – it was before the bar results came out, so it was before . . . The Bar used to be in November, and then you got . . . in the old days, you used to get sworn in – admitted, actually – in January.

Timothy Reardon: Right.

Douglas Swager: And so I had my interview out there, I believe it was the beginning of November, 'cause the Bar results came out at the end of the month.

Timothy Reardon: Yeah.

Douglas Swager: And after the Bar results came out, I really don't hear anything from that interview process 'cause they said they would not . . . you would not hear anything until after the first of the year. But after the first of the year I did get a call from the District Attorney's Office and went up for a second interview because they had a hiring procedure that they picked the top three on the list – they don't tell you where you are on the list – and then they pick one of those three. So I was asked to come up, and I interviewed again, and by that time I was pretty convinced that this was a good way to start my legal career. 13:57

Timothy Reardon: Who was the D.A. then, Doug?

Douglas Swager: It was Bill O'Malley. Bill had just been appointed by the Contra Costa Board of Supervisors, and he was running for election in June. And he did have opposition. So he was the appointed District Attorney at the time. But I was fortunate enough . . . about a week after the interview they called me and said that they did have an opening that was going to be created the beginning of March. And if I could hold off, that I could start work – and I remember this date – March 4th of 1970. That was a momentous day in my life. And I said, "Hey, that's great."

So I started in the District Attorney's Office, and as advertised, I had my first jury trial the following Wednesday.

Timothy Reardon: Not a much . . . not a great orientation.

Douglas Swager: No, and they really . . . In those days, the office was small then. I think there were a total of maybe 34 or 35 deputies for the entire county. There was . . . . They had very little administration. There was . . . . Bill O'Malley was the District Attorney. And then there was the Chief District Attorney – a fellow by the name of Don Walker; Mike Phelan hadn't come there yet.

And I was very fortunate because the D.A.'s Office at that time was filled with incredibly talented people. One of them was Gary Yancey, who was my supervisor for about a year. Gary Yancey, who went on to become District Attorney's Office. And I can just go down a whole list of people who I was privileged to work with in the District Attorney's Office.

Timothy Reardon: Now, are you married at this time, with a family?

Douglas Swager: I was married. Judy and I got married a month after I graduated from Hastings and before the Bar exam, against a lot of people's advice. They said, "Don't get married now, because you're going to be spending all your time studying for the Bar exam." But other people had said, "Hey, don't do it *after* the Bar exam, 'cause there's too much pressure with the wedding and the Bar exam. So, you know, do it ahead of time." So she and I were married June 21st of 1969. In fact, our fortieth anniversary is Sunday.

Timothy Reardon: Congratulations!

Douglas Swager: But we did not have any children when I started in the District Attorney's Office. She was teaching.

Timothy Reardon: But there was an incentive to get your employment going as an attorney, and 16:50

Douglas Swager: Well, I wanted to do that 'cause we didn't have any income – we don't have any family wealth that we could rely on or anything. So I had to bring money in. Judy had obtained a teaching job, as fate would have it, at Portola Junior High School as an English teacher, but it was on a temporary kind of assignment because she was not sure she wanted to stick with teaching English. So when I started with the D.A.'s Office it was just the two of us, and she was teaching. But we had . . . my parents had helped us buy a house at the time 'cause we really couldn't qualify on our own. But we had this humongous house payment. We thought it was humongous at the time – it was a couple hundred dollars a month, with taxes and insurance and everything. But I think my starting salary in the D.A.'s Office was $695 a month. Does that sound familiar?

Timothy Reardon: It sounds familiar. It sounds a little better than the A.G.'s Office, actually.

Douglas Swager: Well, $695 a month *plus benefits*. So it was a good job.

Timothy Reardon: Yeah, and I know you enjoyed your experience there at the Contra Costa D.A.'s Office very much. And I also note you served in a variety of capacities. Were there some sections that you worked in that you enjoyed more than others?

Douglas Swager: Well, the D.A.'s Office then was a lot different than it was now. Now they have trial teams and everything else over there. But they're a much larger office; the county has grown a lot. But when I went there, they . . . everybody . . . you were a trial attorney. And the only attorney in the office who did not try cases was Don Walker. But that would change when Mike Phelan came on board.

So what they did in the office in those days, your first assignment was in the Martinez office, 'cause then they had two physical locations of offices – they had Martinez and they had an office in the county building in Richmond. But when you started in those days, you started in the Martinez office – I think so they could watch you a little more closely. But your first assignment was always the misdemeanor trial calendar – all the misdemeanors down in the Walnut Creek court. And the story was they sent you down there to build up your confidence because of the jury pools you got in Walnut Creek. There were a lot of people from Rossmoor and there weren't very many "not guilty" verdicts in Walnut Creek. And they also had a judge down there who was . . . could be a little difficult to appear in front of, so you kind of got a little used to preparing in front of a judge who could be very difficult and get down on you – which I had that experience early on.

Timothy Reardon: Well, you got a lot of trial experience then, obviously. 20:01

Douglas Swager: Well, you did. I mean, I started . . . . And they told me this when I interviewed with them. I had my first jury trial within a week that I was in the office. And I remember that case 'cause you never forget it – it was *People v. Victor Berardo*, the drunk driving case – because they sent me down, they gave me a bunch of files on Tuesday afternoon (there were actually seven files) and said, "One of these is going to go to trial tomorrow; we don't know which one." And they gave you a sheet of paper that told you on which side of the courtroom to sit. And Ken suggested voir dire questions were applicable to any case: murders down to . . . . And then that started it. And generally you would try one jury case a week, sometimes two.

And then after that . . . . I was down there for about six months, and then I got moved out to the Delta Municipal Court, which was a very busy felony court because of the violence out in some sections of the Pittsburg area out there – in West Pittsburg and the projects and things out there. And so I got sent out there, and I was out there for quite a period of time. And then when you're there, you're not only doing misdemeanors, you're also doing the felony preliminary hearings. But you also started doing felony trials. I had my first felony trial . . . . I'd been in the office I think about seven months and had my first felony trial. So then everybody in the office did everything. You could be doing a preliminary hearing, you know, one day, and you'd be trying a felony jury case in Martinez two days later, and the next week . . . you just did everything. Or you could be presenting a case to the grand jury.

Timothy Reardon: Doug, how many years did you have then, roughly, in the D.A.'s Office?

Douglas Swager: I was there not quite four years. And I was getting ready to come up on the next grade increase, which was Deputy D.A. IV. And there was a rather significant salary increase from III to IV. And in those days in the District Attorney's Office – and to a lesser extent in the Public Defender's Office – both of those offices were stepping stones into private practice. The law firms kind of kept an eye on people and whatnot, and so most people then would move on to private practice out of that. And by that time in my D.A.'s career, some people had talked to me, and I'd actually interviewed with a couple people. But I did not want to work in San Francisco. By then we had two kids – two children – and locally I had a good commute over there.

But then in . . . . Coley Fannin, who was going to play a huge part as . . . in my judicial career, had been appointed to the superior court bench in Contra Costa County. And he was with Watson Hoffe and Fannin in Richmond – which at that time was one of the premier law firms in the county and *was* the law firm in West County. And Fran Watson, the senior partner in the firm, called me one day at the office – and I was in the 23:45

Richmond office at that time – and asked me to come over in the afternoon if I was interested in private practice. So I went over and spent time talking to him because I'd never seen a civil case at that point – never handled one, at least. And they were a civil law firm; they did very little criminal work. So there were ongoing conversations with them, and then towards the end of the year they offered me a position. And I decided now was the time to do it. And so I made the leap. And it was a hard decision because – as you know, I'm sure the same way in the Attorney General's Office – there's a lot of camaraderie, a lot of friendships, and it was a great job. So I decided to leave.

Timothy Reardon: But you have no regrets, I know. And what type of practice did they . . . did you have in the law firm?

Douglas Swager: Well, they hired me basically to do . . . back then it was trial, I'm not sure there were litigators at that time.

Timothy Reardon: I don't think there were.

Douglas Swager: But the firm did almost all civil work, and they did . . . . Fran Watson and Bill Whiting were, even at that time, were premier family law attorneys. But they also represented lots of corporations. We were local counsel to the Chevron refinery, we did work . . . we were the attorneys for Mechanics Bank, and just a whole host of businesses, all the way down into Alameda County and out into Central County in Contra Costa County. They wanted me to keep my hand in trial work, and because so few juries were tried in the civil area, they wanted me to do criminal appointments out of the superior court, just so I could have a couple juries just to keep my skills honed. So I did that. And then we did criminal work for some of our business clients who were unfortunate enough to get caught up in a DUI, and they did not want anyone outside the firm to handle it, so I did those. But primarily I did . . . . I started working a lot with Fran Watson. I did some family law. And then things kind of changed and I started doing some work with some of the real estate clients that Bruce Hoffe primarily handled. And I gravitated over sort of into that. My first case – civil case – was the second chair on a CEQA case that went for several weeks up in Martinez. And I sort of got into that, and we had a lot of clients who were developers, and then as a result of that trial, it actually went all the way up to this court on appeal – the first time I appeared in this court over here.

Timothy Reardon: So you handled the appeal as well.

Douglas Swager: We handled the appeal, and there was a Petition for Review in the Supreme Court, which denied 'cause we won . . . we lost in the trial court on one issue out of 30-some, but it stopped the development from going forward. But we appealed and we won on that issue. And as a result of that, I started doing a 27:22

fair amount of environmental work and real estate stuff, and that's where my practice eventually moved to.

Timothy Reardon: All right. Now we're moving on to roughly 1985, 'cause at some point you decided you'd like to pursue a career on the bench and you applied for a judgeship and were successful at being appointed to the Contra Costa Municipal Court, which is . . . . . We had that court in those days, I know . . . .

Douglas Swager: They were good courts.

Timothy Reardon: They were good courts. I was appointed here in San Francisco, as you know. But what caused you to seek a judicial appointment? Was there anything in particular?

Douglas Swager: Well, I think there were a number of factors. I had left Watson and Hoffe in 1981. Two of the younger partners, who were more senior than I was – I was a partner in the firm at that time – we had a . . . came to sort of a parting of the ways philosophically as to the way the firm was going to grow with the senior partners, and so we had decided to go out and open up our own firm, which we did in 1981. And much to our relief, and somewhat to our surprise, we were successful right off the bat and started making actually a lot more money than we had been making at the other firm. But there was a price to pay for that. It was billable hours, and the three of us had to bring in a hefty sum of money even before we got our draws. And so I found myself working . . . . We had three children by this time, and I found myself . . . . Every Saturday was a workday. There was no five-day week. And it's not unusual for people in private practice. And they were very long hours. I found myself . . . . I was not getting in 'til after my wife and the kids had eaten dinner. And because of the nature of the work I did, there were Planning Commission meetings to go to, City Council meetings to go to, Design Review Boards which generally met in the evening. And so financially we were doing far better than I could have ever imagined in my life, but it was taking a toll, and I realized that.

And in 19 . . . . it was sometime prior to 1985, I had been approached by some individuals to run for a municipal court position down in the Bay Municipal Court. There was a judge who they said was coming up for election. This judge was not very popular in the Bar – was a last-minute appointment by the outgoing Governor, and a judge who I happened to know and I happened to like, but had very limited experience to be a judge. But unfortunately she rankled a lot of people when she got on the bench; I wasn't one of them who was upset by her. But they approached me about running, and I had never thought about this before. And I . . . my initial reaction was, "No, forget it." And they said, "At least hear us out. We'd like for you to meet with some people" and whatnot. And I said, "I will do that," but I said, "I'm telling you, I . . . you may 31:24

be wasting some lunches here. I'm not . . . . I don't see myself doing this." So I went through that and I met with some people, and I decided that this was not for me. And this was probably 1983. Or maybe actually '84. And so I declined to do that.

And then in 1985, Judge Carroll – who was a long-term judge down in the . . . much-beloved judge down in the Bay Municipal Court, there were five judges there – had announced that he was going to retire at some unknown date, but he was going to retire sometime. And it turned out it finally was going to be the spring of 1985. Someone wanted that position very badly who was very politically connected. This . . . . Governor Deukmejian was governor at this time. And everybody knew that this appointment was going to go to this individual, or at least thought it was.

And one morning I was waiting for the trial call up in Martinez, and I . . . normally . . . . I'd become very good friends with Coley Fannin; I got to know him after I was appointed to . . . or I was hired by his old firm. And I would stop by there occasionally in the morning, and he and I'd have coffee, and we'd just talk. And this morning – I think it was in February or March – and he said, "Hey, some of us up here have been talking; we think you should apply for Judge Carroll's position." And my response to him – and I remember this – I said, "Coley, why do I want to do that? I'm making more money than you are. Why do I want to do that?" And he pointed to his wall, and on his wall he had – he has a large family – he had pictures, photos, 8 by 10 photos of all of his kids and his wife. And he said, "Hey, I know how you work." And he said, "You'll have a better quality of life with your family, because you're not going to have to work Saturdays. You're not going to have these late hours and everything. And so I want you to think about it." And he said, "Some of us up here have been talking about it." He said, "I want you to go talk to some of the judges." And one of the judges he wanted me to go talk to was Judge Wilcox.

And so I did. I thought about it for about a week – talked it over with my wife. Thought about it for about a week. And then met with some of these judges – probably about half a dozen of them – and told me that they thought I'd be a good fit there, and thought that I had a chance of getting appointed. And I thought I had no chance, because everybody knew politically that this one person was going to get it.

So I gave it some more thought because it was . . . it would mean leaving my partners. And at the time, we made one of our associates a partner, so there were four of us at the time. And that was like having two brothers and a sister there, because we lived and breathed together down there. We spent all this time together. And our livelihoods depended . . . 34:49

were all kind of interconnected with how people's practices were doing. So I made the decision to go talk to them to see what they were going to do before I actually committed to doing it, and said, "I know this is going to hurt the firm by me leaving." And we had a long talk about it, and to their credit they said, "Hey, if this is what you want to do, we will support you one hundred percent. Go for it. Go do it." And so I said, "I will do it," but I said, "I don't think I have any chance at this; everybody knows that this other person – the word on the street is – is going to get it because of his involvement with politics and whatnot. But I will give you my promise that if I don't get this, forget it." 'Cause I had talked to them about this group asking me about running against this sitting judge.

So I decided to put my name in, and so that started, as you recall, the process. I called Sacramento and I got the PDQ, as it was called at that time. And the process started. And it was much more involved and time-consuming than I had ever thought that it would ever be. You remember that.

Timothy Reardon: I agree with you. Yeah, I remember the forms sitting on my desk at home it seemed like for months – maybe six, eight months – before pulling the trigger to fill the thing out. And I think the forms have gotten even more elaborate and long.

Douglas Swager: Yeah. And then, as you know, you send it in, and then nothing, you know, nothing happens. And I did have some people advising me about the process. And two of the people who were advising me were Gary Strankman and Mike Phelan at the time.

Timothy Reardon: Good people.

Douglas Swager: And some other people. And again, sometimes the stars get aligned. There are some people I were told that I *should* meet because there was no one who could get you an appointment but there were people who could stop an appointment. I'm sure you were probably told the same thing. And two of the people I was told that I need to talk to, one of them was a very well-connected together business person in Contra Costa County – very big in Republican Party politics. Although I was a Republican, I had never been active.

Timothy Reardon: In the party.

Douglas Swager: In the party or in any political thing. In fact, I ended up getting a meeting with this one person strictly by chance – one of my . . . . actually, the fellow that owned the company my dad worked for. And I don't know . . . . I forget how he found out, but he had heard that I had put my name in for a judicial appointment. He called me at home one night, and he said, "Hey, listen, can I be of any help to you?" And I said, "Well, geez, I don't know, Dwight." I said, "This is what's 38:03

happening. No one tells you anything." And he said, "Well, I have a friend who's very big in the Republican party." He said, "I play golf with him several times a week at the Orinda Country Club." And I said, "Well, who's that?" And it happened to be this person whose name I . . . . And I said, "You're kidding me!" And he said, "No." And he said, "I'm going to call him at home tonight." And so the next morning I come back . . . I came back from court, and there's a message to call this person. And he got on the phone; he said, "I'd like to talk to you." And so I went out to his office. So that was one person to meet.

And then the other person I did not know. And I was talking to . . . it happened that my brother-in-law was asking me how things were going along, and I said, "I don't know; you know, it's kind of a mysterious process." And he says, "Is there any . . . . Can I help you with anything?" And I said, "I don't know. I don't think there's anything anybody can do. It just kind of . . . . This mass kind of moves along, I guess." And I said, "You know, I've met this one person who's very politically involved, but there's this other person I've told has a lot of clout, but I have no idea how to . . . ." And he said, "Wait a minute." He said, "He was my fraternity brother at Cal!" And I said, "You're kidding!"

Timothy Reardon: Those connections, yeah.

Douglas Swager: And he says, "No, we've been to their house." And so, anyway, he called and I got to meet this other person. But it did not give me any confidence I was going to get it, because they were all aware that this other person had paid his dues in the party, and that's kind of the way it was going to be. But as things worked out, I ended up getting called up to Sacramento for an interview.

Timothy Reardon: This is . . . . George Deukmejian was the Governor at the time?

Douglas Swager: George Deukmejian was the Governor, and Marvin Baxter was the Appointments Secretary.

Timothy Reardon: That's right. Okay.

Douglas Swager: And so I drove up there one hot August afternoon – it was like 106 degrees – and walked into the Governor's Office there in The Shoe, as you recall, 'cause the Appointments Secretary used to be there. And his . . . . I think her name was Evelyn.

Timothy Reardon: That's correct. Good memory, Doug.

Douglas Swager: Who'd been there a long time. Came out and apologized and said that I was the last interview of the day and he was running way behind. And . . . . Like about an hour. So I sat there in the reception area of the Governor's Office for an hour 40:29

with my nerves going, and went back and I met Justice Baxter. And I don't know if you were interviewed by him, but he had those big binders *[inaudible]*; I was amazed.

Timothy Reardon: Yes.

Douglas Swager: Sitting on his desk. And by this time I'd sort of been . . . I had been told about the interview. And one of the people who was supporting me was Justice Channell, 'cause I'd tried a lot of cases in front of Justice Channell when he was on the Contra Costa Superior Court bench. And so he said, "This is what they're going to ask. This is what they asked me for the Court of Appeal." And so he's kind of going over all this stuff. So I get up there and I finally get in. And Justice Baxter was very nice – I mean, he's such a nice guy.

Timothy Reardon: Yeah, he is.

Douglas Swager: And he told me about the process, and then he started out . . . . He said, "Do you have any questions?" And I said, "Well, no." And so I'm primed with all this Prop 8 stuff and everything, and he said, "Tell me about your youth." And my response was, "Pardon me?" And anyway, we had a very nice talk for about an hour, and nothing that people told me would come up came up. So I left the interview thinking that it was a courtesy interview.

Timothy Reardon: That was your take at that time, huh?

Douglas Swager: That was my take, because there was really very little of substance. And I later found out why. But . . . . And then nothing happened until I was out getting ready for a . . . actually a City Council meeting, and I was at a client's . . . actually this client's house. She wanted to meet there; she had this real estate thing going. And it was about 5:30 in the afternoon and the phone rang and she said, "It's for you; it's your secretary." And it was my secretary, and she was in tears because she had just picked up a message and there was a call from the Governor's Office. It had come in at about 4:00 after I'd left the office, and she was just getting ready to leave, and she saw it. And so I . . . . It was the Governor's Office, so I called back.

Timothy Reardon: That was a good move.

Douglas Swager: Well, I was told to call back no matter what time it was. So I called back and it was Justice Baxter, and he said, "Hey, can you . . . . do you have any privacy?" And he told me I was appointed, and I was actually quite surprised at the time. And quite elated and a bit nervous.

Timothy Reardon: This was 19 . . . about probably 1985 that you're actually appointed? 43:18

Douglas Swager: It was October of 1985. 'Cause when I left his office after the interview, he said, "It's . . . the Governor is not going to make any appointments for a while." They were having financial budget problems . . .

Timothy Reardon: Familiar.

Douglas Swager: . . . and the Governor had his plate full, and he wasn't going to have time to get around to making appointments until, you know, much later. So, anyway, they called and I went and told my partners who were very . . . a lot of tears shed at that point. But then I actually didn't start until almost the end of the year because you just can't leave private practice. You have to transition your clients out and everything, so it took me a while to . . . . And there was one trial I had to finish. I wanted to try it. I really could not hand it off to anybody. And then it ended up settling before trial.

Timothy Reardon: Okay. Now you did . . . . As a muni court judge, you did, I know, a variety of cases.

Douglas Swager: As when you started, we did everything. We had no commissioners. There were the five of us. We did everything from small claims to special circumstances preliminary hearings. And we changed assignments generally about every six months. And so I started out just in what was called the trial department. And the way the calendar was run at that time is you tried two misdemeanor juries every week.

Timothy Reardon: Yeah, this is very similar to San Francisco.

Douglas Swager: Yeah. And so you had two juries every week. It was just back-to-back jury trials. If there was any down time in the middle, you did preliminary hearings. And so I started out doing that, and then I was put on the civil calendar. And the civil calendars in muni courts were not very extensive. It was very rare that a case would go to a jury trial. But it also meant that you did the small claims calendar, which one of the judges down there told me before I actually got on the bench after my appointment, he said, "You're going to learn more doing small claims, and you're going to become a better judge by doing the small claims calendar, than by doing everything else." And I said, "Alan," I said, "What do you mean?" I said, "Small claims?" And he said, "Because there's a volume of cases, and it's justice right down at the grass roots level. And you're going to be making decision after decision after decision. And the litigants are going to be right in front of you. And although their cases are small, you're going to have to make a call. And generally the call is going to be based on who do you believe and you don't believe." And he said, "It'll make you a better judge, 'cause you're going to have to look straight at the losing side's face and look into his or her eyes and say 46:12

basically, "I don't believe you; I'm awarding judgment." And he said, "You will become a better judge by having done that." And I'll tell you, I found out that that was true.

Timothy Reardon: That's very accurate, yes. Yes.

Douglas Swager: You did that, and there was also the arraignment calendar, which I did, which was one of those . . . . I'm sure in San Francisco it's probably worse, but you'd walk in,, you'd have 140, 160 cases on your calendar every day, just . . . . You know, you'd start at 8:30 in the morning and, you know, some nights you weren't finished 'til after 7:00 at night. But everybody did everything in the court. We even did traffic, because we had no . . . . When I was there, we hired our first traffic commissioner, but when I first came there we actually did traffic trials.

Timothy Reardon: Yeah. I actually did that myself here in the City.

Douglas Swager: And it was a good . . . it was a great experience.

Timothy Reardon: Yeah, I think what that judge told you was very accurate and correct. So you're on muni court for a couple of years, and then elevated in '87 to the superior court. Again, that was Governor Deukmejian, I believe.

Douglas Swager: Yeah, I . . . . Yeah, that kind of . . . . Again, you know, sometimes stars get lined up correctly. There were going to be two retirements in Contra Costa County, and one of them was Judge Wilcox. And some people had encouraged me to apply for that, and I went and I talked to my mentors at the time, which were Gary Strankman and Coley Fannin. I said, "What do you think?" and they said, "Hey, don't apply now, you know, we're getting . . . ." The court was in line to get two new judgeships: Departments 16 and 17. And they said, "But you're not going to get one of these things; they're pretty much kind of set in stone from what I hear that this is kind of what's going to happen. So don't apply; don't do anything. Just . . . . But pretty good shot you're going to get one of the new positions in another year."

So I did not do anything. And one of the people in the local bar association came in my office – he was thinking of applying for the muni court, 'cause there was . . . unfortunately one of the judges down there had lost her battle with cancer, so there was a vacancy. And he wanted me to guarantee him that I would stay there for a while, and I said, "I'm not going to give you that guarantee." But I said, "I'm not applying for one of these two positions." And he came in one afternoon and he said, "Hey, I've known you all . . . since you were a deputy D.A. Why didn't you tell me you put your application in?" I said, "I haven't applied, Mark." And he said, "Yes, you did." He was on the . . . kind of the local bar vetting thing. And he said, 49:10

"We have your material that's come through." I said, "I didn't do this!"

So I called Sacramento the next morning, and in the afternoon Marvin Baxter called me back. And he said, "Hey, I meant to call you." And I said, "I don't understand this." And he said, "Well, I've sent your PDQ out from muni court." And I said, "What's going on here?" And he said, "Well," he said, "We have a plan. I have a plan." I said, "What should I do?" And he said, "Well, really, don't do anything." So I didn't do anything. And as I found out, you know, they . . . back in those days – as you probably are aware – they had all their ducks lined up. They knew exactly . . . . It was like a big chess board, and they knew who they were moving where. So I started in Martinez in superior court in December of 1985 – er, 1987.

Timothy Reardon: Right. And I know, as a member of the superior court you, again, had a variety of assignments. Did any one particular assignment . . . Was that one that you enjoyed more than the rest?

Douglas Swager: Well, I enjoyed getting my courtroom for the first time, 'cause for the first six months I didn't have a courtroom. And my court consisted of a clerk's metal basket that I pushed around with my staff. And my chambers were down in the . . . it was down in the middle of the Clerk's Office down in the basement. And so my courtroom . . . . If someone was ill or out on vacation, I would use that courtroom or I would use the presiding judge's courtroom after he called the master calendar.

Timothy Reardon: So this was not an ideal setup at the time.

Douglas Swager: Well, others had gone through it. They were in the process of building the new Bray Court Building, and they'd run out of space. So I wasn't the first one. I think I may have been the last to do it. But when I started, we really did not have specialty assignments per se. They had just made the decision, before I was on the bench, that they were going to go to a direct calendaring system in civil.

And so when I first started, I spent my first two weeks doing family law, which I hadn't done in years. But the . . . one of the family law judges was out on an extended illness, and so they had me do family law. And then I was the last judge who did law and motion. The law and motion judge at the end of the year was on vacation, so I did law and motion. After that, I was a general trial judge, predominantly trying criminal cases, but you got everything. We got everything. And I think I enjoyed that most. I never really did a specialty assignment in family law. I was Presiding Judge for two years. 52:25

Timothy Reardon: I was going to ask you about that, yeah. That was a two-year . . . .

Douglas Swager: But up until then I had never done a specialty calendar. And I enjoyed doing the general criminal calendars, because you literally did everything. I mean, everything from capital cases to employment law cases to long-cause family law cases that we'd send out to the general trial departments. Occasionally serious juvenile criminal cases would go out. And so you did everything. Plus you spent . . . . In those days, most of us spent our afternoons, from 5:00 on, doing civil settlement conferences. And I enjoyed that, because it was just a wide variety of cases.

Timothy Reardon: Sure. Did you enjoy your terms, your two-year term, as a Presiding Judge at Contra Costa?

Douglas Swager: I . . . . In hindsight I did. I was Presiding Judge there in '93 and '94. As you may recall, we were in the midst of a severe budget crisis . . .

Timothy Reardon: *[laughing]* Is this a familiar theme, or . . . . ?

Douglas Swager: . . . with the state. And . . . . But it was a very interesting job. Those were the days we did not have trial court funding, so we obtained our . . . we had our funding from the county primarily. And so there was a lot of work with the Board of Supervisors, the County Administrator, working on the budget. Also dealing with issues among and between the judges that would come up, and just HR issues with the staff. It was very busy at times, it was frustrating at times, it was annoying, but overall it was . . . . I would not advise anybody not to do it if the opportunity comes along. I would say it's a . . . . although it's a little different now with court consolidation, it was a good experience. I met a lot of people I would have never met before. I saw how budgets get put together in the county, or not put together, and all of the problems that the county administrators have and the Board of Supervisors have of trying to balance all of the competing claims to the resources that the county has. And so I enjoyed it. But when I was Presiding Judge, I did try some cases. I always made sure that periodically I would take a short jury trial.

Timothy Reardon: To keep your hand in?

Douglas Swager: Well, it was not only to keep my hand in, it was also to keep some credibility with the system, because a lot of the attorneys – and I'm sure it happens in all courts – they would look at the calendars, and they would go down, they would see there were no departments available, so they would lay a strategic 170.6 on a judge, knowing that they're not going out to trial. And so when they did that, when I'm calling the master calendar, I'd tell 'em to come back at 10:30 or 11:00, and say, "You 55:39

know, we have a free jury panel downstairs; I'm going to have 'em up here in 15 minutes," and it was kind of like . . . . So I did it for a lot of reasons. And part of it was the calendar management. And it worked well.

Timothy Reardon: Well, Doug, after a number of years on the superior court, you made a decision to apply for the Court of Appeal. And how did that all happen? Was there a particular thing that caused you to move from the trial court to the Court of Appeal?

Douglas Swager: Yeah, somebody came and talked to me about it. After . . . . The plan was, when I became Presiding Judge . . . . 'Cause I had sort of been drafted to do that because of Mike Phelan was supposed to be the incoming presiding judge and he got appointed to this court over here, the Court of Appeal.

Timothy Reardon: That's right. Yeah.

Douglas Swager: So there was kind of a void there, and I got drafted into doing that – but the . . . . I said, "I will do it, but one of the things I want to do, I want to do two years in civil fast-track." And so the deal was that once I got done with my two-year term as Presiding Judge, I was going to do one of the civil fast-track calendars. It did not work out that way, because at the end of my term as PJ, due to some retirements and some other things, my successor, the new . . . the incoming Presiding Judge, had a real problem filling one of the criminal calendar departments for a variety of reasons. And he came to me, and I wasn't totally happy about it, but I understood, because having been in that job, I knew if I had his position to make, I'd be doing the same thing.

So I ended up in the criminal calendar department, which is not . . . . It's a very busy assignment. You're in a courtroom over in the jail where there are no windows You're hooked right in to the jail. The holding cell is right behind your chambers. You can hear everybody talking and everything. And it's a very . . . . It was a very strenuous calendar, because you'd have so many matters on calendar, it's . . . and you're making calls, bail calls, you're worried about people doing things out on bail.

But I found myself doing that calendar. And while doing it, I was approached by someone who asked me if I was interested in applying . . . going over to the Court of Appeal. And my initial reaction was, "Well, no, I haven't thought about it." And I was still . . . . This person told me to think about it, and I said, "Why are you asking *me*? What's going on?" 'Cause there were people I know who'd applied. And that there were some vacancies. Because, you know, there's all that talk in the trial courts about it. And one of my colleagues, he had applied for that position and I was well aware of that. And there were a couple others who were thinking about it. 58:46

So I thought about it. So I did what I've done so often. Coley Fannin had retired and was now with JAMS. So, number one call, I called Coley and went . . . actually went over to his house and talked to him about it. And then Mike Phelan and Gary Strankman were over here, who I knew. And this person had told me that . . . suggested that I call them. And so I called them and they encouraged me to do it. But I had a lot of reluctance about doing it, because I was not sure whether I would like the quiet over here. And I had a feeling that I wasn't done on superior court. I wanted to do the civil fast-track assignment. Plus coming over to this court meant commuting to San Francisco. From my driveway to the parking lot to my parking space in Martinez took me about 14 or 15 minutes, no traffic, going out Highway 4 amongst the open fields and the cows. And I did not know . . . . I just had problems with the commute and whether or not I would like it. And I gave it a lot of thought, and I decided I would put my name in for it. And so I sent for the PDQ.

Timothy Reardon: Went through the same process.

Douglas Swager: Went through the same process, although this time I told the people who had urged me to do this, I said, "I will do it, but I am not going to go out and beat the bushes and politic for it." I said, "I will put my name in. If it happens, it happens; if it doesn't, I'm just . . . I'm just as happy." So I put my name in, and then nothing happened for quite a while. And then . . . . I say quite a while; I guess it was probably three or . . . probably four months I didn't really hear anything. And then I received a call from the Governor's Office that they wanted to talk to me, which I found quite surprising. And so I went up to Sacramento, and it was Chuck Poochigian who was the Appointments Secretary at the time. And we had a very nice conversation, and he . . . it ended with him telling me, "So I guess you know there are two vacancies now in the Court of Appeal. You're not going to get either one of them." And he told me why. He did not tell me the people who *were* going to get them, but he was very upfront about telling me why and explaining why they were going to be doing what they were going to be doing.

David Knight: If I can excuse you, I'm just going to change my tape.

Douglas Swager: Sure.

Timothy Reardon: All right.

Douglas Swager: So anyway, I was . . . I didn't hear anything on the Court of Appeal.

Timothy Reardon: Okay. Until . . . ? 1:01:55

Douglas Swager: I kept waiting to hear something, and . . . 'cause I was interviewed in July of 1994 in the Governor's Office, and I heard nothing. And the two vacancies that were here were filled. And so I just figured, "You know, it's not going to be." And I was happy as a clam. I had been told that once I got done with the criminal calendar at the end of '95, I was going into civil fast-track. It was fine with me. And then in the Fall of '95, my research attorney – the criminal research attorney in Contra Costa – came in with a copy of *The Recorder*. And in Contra Costa County, we did not get *The Recorder,* we got the . . .

Timothy Reardon: *Journal?*

Douglas Swager: . . . *Journal.* We used to get both, but during the budget things, we had to eliminate one of them. But he opted to get *The Recorder* rather than the *Journal*. And there was an article on the front page of *The Recorder* saying that the Governor had narrowed the list down for the two new vacancies on the Court of Appeal to four people, and I was one of them. Mike Hanlon was the other one. Which came as a surprise to me, because I had heard nothing since I talked to Mr. Poochigian in July of '94. But you know the rumor mill, where it came . . . comes from. So quite frankly that bothered me a little bit because it was getting close to the end of the year, I was going to be getting out of criminal, and thought about the commute some more, went home that night, told my wife that I want to stay where I am; I want to be here a few more years. And I . . . what I usually did, I . . . the next day, after I slept on it, I called Coley Fannin up. And I told him . . . . I said, "Hey, Coley, this is what I'm thinking." He says, "Wait, wait, wait, wait, wait a minute. You can't do this." I said, "Do you know something?" He says, "No," but he said, "You can't . . . . Don't do this." And so he wanted to meet with me, and I . . . we got together and we met, and he said, "Hey, have you talked to Gary Strankman or Mike Phelan?" I said, "No," and he said, "Well, you ought to talk to one of 'em." So I called Mike Phelan up, and Mike said, "Whoa, wait a minute, don't take your name out of consideration." And he said, "Let's meet and talk." And so we met, and he said, "Hey, you basically kind of get one shot at this ring going around on the merry-go-round. Don't do this now." He said, "You will really love this job." And I said, "Mike, the commute and everything." And he said, "Hey, your time's going to be your own time over there. As long as you get the work done, you know, that's all that matters. You don't have to go in every day. You can work from home." And he said, "You know, I work from my deck at *[inaudible]*. I actually work more when I'm up there than when I'm in San Francisco 'cause nobody bothers you. And so let it go." And so I thought about it for a few days, and I let it go. And then it was about a week and a half later I was out doing the criminal calendar and my clerk turns around and says, "The Governor's Office is on the phone." 1:05:27

Timothy Reardon: So you were that close to pulling out.

Douglas Swager: Yeah. Within literally probably eight or nine days.

Timothy Reardon: Wow.

Douglas Swager: And it was Mr. Davies, whom I'd never met at that time, who called up and said that I'd been appointed to Division One. And then he asked me if I knew Mike Hanlon. I said, "I do know Mike; I've met him at several things." And he said, "Do you know where he is?" and I said, "No." And he said, "Well, you can't tell anybody this," but he said, "We've been trying to get ahold of him because," he said, "this has something to do, I guess, with seniority, perhaps, on the court, but we can't find him; no one knows where he is." So he said, "We decided . . . . It's getting late in the morning and we decided we're just going to call you. But," he said, "don't tell anybody." He said, "Hopefully we'll get ahold of him." And so I knew that Mike got the appointment before he did. And as a result, I had seniority on him because of that, 'cause it turned out he . . . my photo is above his or whatever down in the . . . .

Timothy Reardon: Oh, yeah, in the hall of fame there, huh?

Douglas Swager: . . . room. And then it, you know, it all happened very quickly.

Timothy Reardon: You joined . . . . You were appointed, actually, to Division One. And who was the . . . you replaced . . . .

Douglas Swager: Justice Newsom.

Timothy Reardon: Newsom. And when you . . . actually, this is . . . I have it 1995, but when you joined Division One, who were your colleagues at that time when you first joined?

Douglas Swager: Gary Strankman was presiding in Division One, and Bob Dossee and Bill Stein.

Timothy Reardon: That's a good group.

Douglas Swager: Obviously I knew Gary from going way back, but I did not know Bill or Bob.

Timothy Reardon: Okay. Now did you . . . . You probably didn't need a mentor of any sort, but was there anyone in that division that played the role of giving you advice as the new Court of Appeal justice?

Douglas Swager: Yeah, I think, in fact, at Bob Dossee's retirement function, when we all said a few words, I gave him credit at that time for being my kind of secret mentor, because Bob really sort of epitomized to me what being a justice was about. And I'd been over here . . . . We were at Marathon Plaza at the 1:08:03

time, and he came in – I'd been there maybe a week, maybe two weeks – and he wanted to go to lunch down to Red's Java Hut, which I had never heard of.

Timothy Reardon: I've been with him to Red's, yes.

Douglas Swager: Okay. So we went down, and it happened to be a very nice day, although it was in the . . . late in the year. It was a nice day in San Francisco, and we went down to Red's. I found out Bob knew everybody at Red's. I think he knew Red, the guy that owned it.

Timothy Reardon: Yeah, he did.

Douglas Swager: So we had a burger and a Coke rather than a burger and a beer, and we went out – as was his custom, I would come to learn – he would then walk down and get a cup of coffee. And we had a nice chat, and he said something to me I'll never forget. He said, "You know," he said, "you now have a new title." He said, "Your title is now 'Justice,' not 'Judge.' " And he says, "It does mean something." He said, "You can do justice." And we started talking about what this job was about – about following the law, not letting your personal feelings get in the way. And that, you know, although cases may seem small to you, they're very important to the litigants, and there really isn't any small case. And he talked to me about how . . . about going . . . about doing the job, about the need never to get behind, 'cause if you get behind, you'll never get caught up. And he talked to me about the importance of staff, 'cause I was so fortunate in getting the staff. I inherited both of Justice Newsom's research attorneys. I had to get a new judicial assistant, but Warren and Mike were there.

And as a result of that conversation, Bob kind of became an unknowing mentor to me that when sometimes things would come up, I would go and talk to him. I talked to Gary a lot, too. But then I found out in the division – and it did not take me long to figure this out – that it was such a great group of people that the first case conference that I went to, I learned the rules that Strankman had formulated for the case conference that . . . 'cause it was just the four of us there. And what was said there never went out of that room. And so we had some very frank, honest discussions about the cases, and also about life in general at times, and they were . . . . You got to the point where you looked forward to the case conference and the writ conferences, 'cause we had those every week. And just the four of us being around, and I was so fortunate to have those three with me to start out with because they had a vast wealth of experience and knowledge. And they were always . . . their doors were always open.

Timothy Reardon: Yeah, that's a great group of colleagues there. 1:11:17

Douglas Swager: And we became, very quickly, just great friends. It was fun to come in here. And my misgivings about it being very quiet – and I will say, it did take me a little while to . . .

Timothy Reardon: Adjust.

Douglas Swager: . . . adjust, you know, because I did enjoy – I think most trial judges do – you kind of enjoy the opera that unfolds in front of you every day when you're, you know, in the trial court. And so I did miss that for a while, and I went back my first year to . . . for two weeks and sat on a trial bench and tried cases. And . . . .

Timothy Reardon: I remember that.

Douglas Swager: But then sitting through a lengthy voir dire once, I was thinking to myself, "You know, I may have moved beyond this now." And I just came to love the job; it reminds me what Joanne Parrilli told me when she called me to congratulate me on my appointment over here. She said she pinches herself every day when she comes into this job; it's such a wonderful, wonderful job. And it is. Marvin Baxter told me – after he was on the Supreme Court – at one function, he said he's convinced it's the best job in the entire legal system. And I concur in that; I think it is.

Timothy Reardon: I know Dossee has said that, as well as a number of other justices on this court. Well, Doug, just looking again at my notes here, I see that during your 13 years on the Court of Appeal – maybe it's closer to probably 14 – you had close to 100 published opinions. Do a few of those stand out at this time? It's sometimes difficult to single out one or two cases.

Douglas Swager: I think it's kind of hard to say. But I think there are a couple that I think stand out. One of . . . . It's actually more than one case. I think the *Bell v. Farmer Insurance Companies* cases, which had to do with overtime compensation for insurance adjusters that there wasn't any law on that point when this thing came up. It was a very significant case in monetary . . . from a monetary standpoint from all parties. And it was a very interesting area of the law: the interplay between the federal standards, the differing California standards, and then on the one case where we wrote the opinion, when we found that they were *not* exempt employees. There was a lot of press about the case, and some criticism of it on obviously . . . from a business standpoint. But they . . . the employer . . . employee side thought it was a good decision. And . . . . But it was a very tough decision. But it was kind of a funny case. It got all this press, and yet the record on that particular part of the case was very small because they basically had stipulated to just about everything. We came up on a very narrow record, and yet – in the press, at least – the case was being 1:14:44

portrayed as this fraud thing. But it was a very narrowly decided case, based upon the set . . .

Timothy Reardon: Small record.

Douglas Swager: . . . of facts. But then it kept coming back. It came back on a whole series of issues. I think there were a total of four Bell cases, and they were all fascinating, and they were all extremely well briefed.

Timothy Reardon: That's always important, as you know.

Douglas Swager: The issues were complicated, they were novel. But the attorneys, they got right to the heart of the issue. There wasn't any wasted verbiage in the briefs. And their arguments were the same. They came in, they knew what the points were, and that one just kind of stuck in my mind as being a case that . . . . And then there was *Nike v.,* er, *Kasky v. Nike, . . .*

Timothy Reardon: That's right; I remember.

Douglas Swager: . . . which was a First Amendment, commercial speech . . . .

Timothy Reardon: Yes, that was a big case as well.

Douglas Swager: It was a big case. And it went up . . . . Our opinion that I authored was reversed by the . . . our Supreme Court. And there were two – I think two dissenting justices. A lot of people said it was a sea change in First Amendment jurisprudence – that the California Supreme Court was marching off to a different thing. And then the U.S. Supreme Court granted a cert on it. And so I was . . . had so much invested in that case. You know how it is – you follow those cases. And so it was all fully briefed. Laurence Tribe was one of the attorneys – I believe for Nike – in the Supreme Court and it was actually argued in the Supreme Court. And you can download off the Internet . . . . Several weeks after the arguments, they're available, and so I listened to them and they were very . . . . It was pretty clear which way the U.S. Supreme Court was going. They agreed with our opinion out of the Court of Appeal. And there'd actually been a *Wall Street Journal* article – editorial – on the case that was quite nice. They mentioned me by name and said that I got it right. And . . . .

Timothy Reardon: That's nice to hear once in a while.

Douglas Swager: But then after all the oral arguments and everything, Supreme Court did not decide the appeal. They remanded it back and just dodged it. And so it came back, and then the case – as with a lot of those cases, as you know, instead of proceeding back in the trial court to flesh out these other things they were concerned about, Nike settled the case. I don't know 1:17:17

what the settlement was for, but I . . . you can imagine what the attorney's fees in that case . . .

Timothy Reardon: Oh, my gosh.

Douglas Swager: . . . must have been. But that was a case that always stuck out in my mind. But, you know, even the small cases, they're important to the litigants. I mean, having been in private practice, even having a case that you know is not going to make the front page of the *L.A. Journal* or anything, it's important to the litigants . . .

Timothy Reardon: Absolutely!

Douglas Swager: . . . and the attorneys. And that was one of the great things I saw when I came over here. And I will tell you, as a trial court judge I did not always think this, I was just taken back by the amount of care that goes into the opinions over here – the amount of time going through, checking the record, making sure that everything is right. And it's . . . . The people of the state don't really know that. I don't think most attorneys know that. But it's so good.

Timothy Reardon: No, I think you're right. I don't think a lot of attorneys understand or realize how much work and effort goes into these appeals. Well, let me just ask you kind of a final couple of questions here. You retired, I know, reluctantly, or . . .

Douglas Swager: Not reluctantly.

Timothy Reardon: *[laughs]* . . . in December of 2008. I think I always say "reluctantly" in that you had so many good friends here on the court. I know you missed . . . although you do come back once in a while; we get a chance to have lunch. But you had made so many friends on this court that it's always tough breaking up a family, in a sense. But I know what you've been doing in retirement, but our viewing audience may not know that you're . . . you've become involved in the private judging. But you've also got a lot of hobbies as well. So maybe we can cover some of that.

Douglas Swager: Yes. My . . . . As you now, I could have retired three years before I actually retired and decided I wasn't going to retire. But when I made the decision to retire, that decision was really based on the time that it was . . . . I had my health, still young enough to do a lot of things – hike – do a lot of things that probably in seven or eight years I'm not going to be able to do, and my wife to do. And I also came to the decision that whether or not I did any work in the private sector, I had more than enough to keep me busy . . .

Timothy Reardon: That's for sure. 1:20:02

Douglas Swager: . . . between photography, spending more time flyfishing . . . .

Timothy Reardon: Grandfather.

Douglas Swager: Grandkids. We've just . . . . I got three grandsons, just two new ones in March. My place up at . . . . Our place up at Tahoe, spending more time up there. And doing the things that my wife and I have wanted to do. That the time was right for me to do that. And the hardest thing was, though, when . . . You're right, it's leaving the people for almost 14 years. People around here – as you know, more than I do – they become your family. And you obviously worry about, you know, your chambers staff. We can't operate without them. And you never know who your replacement is going to be. So you worry about them.

So since I retired, I've been doing the things I wanted to do. I bought a motorcycle – ride my motorcycle around, enjoy that. Not a Harley, but a little bike – appropriate for my age. We've been spending a lot more time at Tahoe, and we've been doing a lot of babysitting, and we've been doing a lot of things that we've kind of put off. We've got some travel plans scheduled that we're going to do. You don't have to worry about oral argument calendars and, you know, all of those other things. And so far, I will tell you, it's been as good if not better than what I thought it would be. And I think my wife summed it up the first time we came back from Tahoe. We were up in . . . . After I was retired in January, we were coming back . . . . We went up, we had no plans to come back. And . . . . 'Cause we didn't have, you know, anything on our plate at that time. And she noted, she said, "You know, it's the first time you haven't brought any briefs to read, you haven't been sitting there on the laptop computer working on draft opinions or doing anything, no one has called you on the phone about some issue." 'Cause when you're in private practice, you go away, go on vacation, the phone would ring all the time. And she said, "This has just been very relaxing. This has been, you know, a great six days." And it just sunk in. And it was.

And it's . . . . I encourage it. I had lunch a couple weeks ago – about a week and half ago –with Justice Strankman. He and I get together occasionally. And he told me, he said, "I told you." He said, "You should have retired as soon as you can." But you do . . . I will say, I miss the people, and I do miss the work somewhat. 'Cause the ADR stuff, it takes a while to build that up. And having done a mediation and there's something coming up next month, it's a lot different than when you're . . . it's even different than when you're back . . . it's not even like being in private practice. But it keeps your mind going. I mean, I stay up on all the cases and whatnot, 'cause everything is available over the Internet. So you stay busy doing that. But it . . . . You know, the time was right for me to move on. And the judiciary's changed a lot in our time. As you 1:23:38

know, it's a very different type of organization now than when we started.

Timothy Reardon: Yeah, that's for sure. And a whole 'nother story. But, well, I just want to say, having kind of had such a distinguished career as an attorney – a trial attorney, a trial court judge, having served years on the appellate court, I want to thank you personally, and being a friend of mine as well, thank you personally for participating in this appellate court project, not only as an interviewee, but as an interviewer, having interviewed Gary Strankman, Retired. And I can tell just speaking with you here today that you're certainly enjoying your retirement. You've earned that. And we certainly wish you the best of luck, Doug, with however anything pans out here. I just know you're enjoying yourself, and that's something that's good to see.

Douglas Swager: Well, I appreciate the time. And you're not going to stop seeing me coming back here from time to time.

Timothy Reardon: Okay. That's good. I want to make sure of that.

Douglas Swager: Yeah. No, that's going to be the case. Like I said, I miss the people.

Timothy Reardon: Yep. Okay, Doug, thank you very much again.

Douglas Swager: Okay, thanks. Thank you.

Duration: 85 minutes
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