Bill Rylaarsdam: Okay, we are interviewing Retired Justice Ed Wallin of the Fourth District, Division Three, and I am Bill Rylaarsdam. I still sit in that same court. And this is part of the Legacy Project of the Judicial Council, where oral histories are obtained from retired justices of the Court of Appeal.

Edward Wallin: And we are doing this on April 11, 2007.

Bill Rylaarsdam: All right, at 10:15.

Edward Wallin: And at the offices of JAMS in Orange.

Bill Rylaarsdam: All right, Ed, let's start at the beginning. I know you grew up in Minnesota; what kind of a family did you grow up in?

Edward Wallin: That's true. I was born and raised and went to college and law school in Minneapolis. It was a wonderful family. My father was a bakery truck driver and then later a union leader in Minneapolis, and my mother was pretty much a stay-at-home mom. Sometimes she worked a little bit part time. I had three younger sisters—a year younger, 11 years, and 15 years younger, all of whom still live in that area. And my mother came from a family of 10. She was the fifth in 10 children—7 boys and 3 girls. And all of that family was around there. And my dad had two younger sisters and one had moved away with her husband but the others were all close. So large family gatherings were common when I grew up.

Bill Rylaarsdam: Were your parents both born in Minnesota?

Edward Wallin: Both in Minnesota—my mother in northern Minnesota, near the Red Lake Indian Reservation. She always said she played with a lot of Indian children as a kid. She was Danish and primarily Danish and I think her mother was Norwegian, and her father was Danish and his name was Jens, as we said it, or probably "Yens" in the old country: J-E-N-S Knudsen, K-N-U-D-S-E-N.

Edward Wallin: That kind of gave the ancestry away, didn't it? *[laughing]*

Bill Rylaarsdam: Yeah *[laughing]*. And when I was named, my father's parents . . . my father was a . . . my grandfather on my father's side was a salesman. My grandmother was a stay at home. His name was Edward Wallin, hers was Gladys. Her claim to fame is she lived to 102 and was sharp as a tack right to the end.

Bill Rylaarsdam: You have good genes then. *[laughing]*

Edward Wallin: My grandfather's name was Edward Wallin, which is my full name, but the middle name was different. I was actually named Edward after one grandfather and Jens, which is my middle name, after the other. But I had a wonderful upbringing in a very tiny house. We had a tiny house; I had a little area in the corner of the paneled basement that was my room. And I

suppose my claim to fame within my own family is that no one in my family had ever gone to college—that whole extended family—until me.

Bill Rylaarsdam: Before you got to college, I assume you went to the public schools in Minneapolis.

Edward Wallin: I went to the public schools in South Minneapolis.

Bill Rylaarsdam: Any particular experiences there that you look back on now as having a shaping influence on your career or personal—

Edward Wallin: Well, I remember my sixth-grade teacher Florence Constantine was an outstanding teacher and very inspiring to all of us. My parents, especially my mother, were very focused on academics. Both had skipped two grades in school but had graduated from high school in 1930 and 1931 respectively and with no financial means to do anything other than work. But my mother used to teach me; if I was home ill she would get out a tablet and teach me, typically mathematics. And I remember when I was a little boy being taught addition, subtraction, multiplication, and long division by my mother when I was home for two weeks with chickenpox or something—some disease that kids don't get anymore. And every day Mom and I would work on this while she was ironing or doing whatever chores. And so I got a better education sometimes from mom than I even could get in the schools, even though they were very, very good.

Bill Rylaarsdam: So then from high school did you go straight to the University of Minnesota?

Edward Wallin: Yes.

Bill Rylaarsdam: Is that in Minneapolis also?

(00:04:47)

Edward Wallin: In Minneapolis. I was a commuter student for actually seven years—four years at the university as an undergraduate, where I was a political science major and minored in economics and history. And those latter two subjects are still great interests of mine. I read constantly books on economics and business and history.

Bill Rylaarsdam: You went straight from your undergraduate university to the law school there?

Edward Wallin: Right to law school.

Bill Rylaarsdam: At what point in your life did you decide that that's the career you wanted?

Edward Wallin: Well, that's interesting. I didn't know what I wanted while I was in college. I started out as a math major because near the end of my high school years was the time of the missile gap. There was great fear in the country about our scientific gap between us and the Russians over military rocketry particularly, and I was a very top student and also especially in math and so—

Bill Rylaarsdam: Your mother did good work. *[laughing]*

Edward Wallin: Yeah, and so my counselors thought . . . I think it was their patriotic mission to make me an engineer. And I didn't really feel comfortable with that, but I started out college as a math major. But as soon as I had calculus during winter quarter, which was at the far end of the campus during a bitterly cold winter, I kind of lost interest and gravitated toward more of the social sciences.

Bill Rylaarsdam: I think that fits your personality better than being a . . . what do mathematicians do if they don't teach?

Edward Wallin: Well, I've often wondered.

Bill Rylaarsdam: They're actuaries for insurance company.

Edward Wallin: Or they could be accountants. But we in the law profession have excitement, whereas accountants come home at night and their spouse asks them what happened during the day and what was exciting; and what do you say—the eights, the fours? I never could figure that out. *[laughing]*

Bill Rylaarsdam: *[Laughing]* But any particular experiences in—aside from your decision not to pursue mathematics—any particular other experiences or decisions in college that led to your decision to go to law school?

Edward Wallin: Well, I think that public service interested me at that point. In my era, in Minnesota Hubert Humphrey was a dominant political figure. He became mayor of Minneapolis when I was about three and then senator when I was about six, and eventually vice-president until I lived out here. And my father knew him slightly way back before he was in office. And I never met him actually, but he was the person that everyone in Minnesota looked to, and he was a great example of public service, which he totally believed in. And he would encourage people of all political stripes to get involved in public service. He was very ecumenical in his political expressions, and so I think that sort of made me interested in it. My parents avidly followed current events at the dinner table every night. We would be discussing, in addition to family events, whatever current events were of interest. And I think that was a great help to me.

Bill Rylaarsdam: Was your family quite interested in politics also?

Edward Wallin: Interested, and my dad was active in some sense. He was asked to run for office but never did that, but . . .

Bill Rylaarsdam: And you said he became a union leader.

Edward Wallin: . . . became a union leader in Minneapolis. In Minneapolis the Democratic Party consisted of working men and women, largely union members, a lot of union members—not many minorities—and the university academic community. And they worked together hand in glove to form the DFL, which is what the Democratic Party is called in Minnesota.

Bill Rylaarsdam: What is DFL? What does that mean?

Edward Wallin: Democratic Farmer Labor Party. It stems from a progressive party that existed in the depths of the Depression for a number of years called the Farmer Labor Party. And eventually they merged under the auspices of Hubert Humphrey in the 1940s, but the name remained the Democratic Farmer Labor Party.

Bill Rylaarsdam: While you were in college or law school were you involved in any political endeavors?

Edward Wallin: Not very much. In 1962, while I was, I think, a sophomore in college, or maybe a junior, there was a very close election for governor in Minnesota; and I was trained among others to be a re-counter of the paper ballots. But in the end they decided not to use college students and so my father actually was one of the re-counters.

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What I remember about that is that there was great suspicion on both sides that the other side would try to tamper with the ballots; and you were trained to watch for people who might have a piece of pencil under their fingernail to spoil a ballot. When the actual recount was conducted—and my father was assigned to do it in a number of areas where there was real doubt about the accuracy of the reported count—they used pastors or priests as the neutrals. And they would sit at the table and only the pastors or priests would handle the ballot. In those days they weren't involved in politics like now and they would . . . both sides would agree. There was very little disagreement.

The votes were counted with great care, and ultimately the election night result, which had been a very narrow victory for the Republican, led to the Democrat winning in May, not taking office until May—and by 91 votes in a state with about 1.8 million cast.

But the one political thing I remember, when Hubert Humphrey was nominated for vice-president in 1964, I remember the office had been vacant since Kennedy's assassination because we didn't have the system now for replacing a vice-president when a vice-president ascends to the presidency. And so Humphrey's nomination was a big deal in Minnesota—the first time any Minnesotan had been on the national ticket. And he was so popular on both sides, really, and Minnesota wanted to have some sort of a rally for him.

And my father was a world-class organizer of events. If you had him doing it, he would somehow be able to inspire the troops to really put on a great event. So he was in a group of people that were trying to decide what to do, and they wanted to have something where they could get like three or four thousand people. And my dad was . . . he thought that was nonsense, and he thought we should get many more. So he wound up being the primary organizer of the event, which was held on the state fairgrounds in St. Paul in a place called the Hippodrome. It had about 25,000 people, and it was called the DFL Bean Feed for Humphrey. My dad managed to get the baker's union to bake beans in these huge vats that they ordinarily used for commercial bakeries; the hotel and restaurant employees to organize the lines; the milk companies and milk drivers to bring the cartons of milk; the coffee companies to bring the coffee and the big urns. Hot dog buns were all donated. I think potato salad . . . and they served 25,000 people for $1 each; they charged $1. The idea was to get a big crowd, and as I remember, it was featured on Walter Cronkite's news; it was this amazing-sized rally.

And I was put in charge by my father of the bean convoy and I got a Secret Service clearance. *[laughing]* And we had three UPS trucks with five-gallon milk cans of beans on the floor and blankets over them; and our mission was to safely transport the beans from the commercial bakery to the floor of this building, and they were piping hot. So we succeeded, and no one got poisoned. So I guess I . . . and my security clearance was honored. *[laughing]*

Bill Rylaarsdam: Now, in law school were there particular professors that inspired you or any particular person that stands out?

Edward Wallin: A couple of them: Professor James Hetland, who was a civil procedure professor and a very active Republican in Minnesota, a very good friend, and a very good professor; and Professor David Graven, who passed away not long after law school, who was a terrific trial lawyer and just a very charismatic professor. Those two stick out in my mind.

Bill Rylaarsdam: Interesting, because I know that you have always had a big interest in civil procedure and you've become an expert in that field.

Edward Wallin: I received the Am Jur book in Civil Procedure, which I was very proud of. I don't know—maybe that's indicative of my bent toward that area.

Bill Rylaarsdam: Okay, so when did you graduate from law school?

Edward Wallin: Spring of 1967.

Bill Rylaarsdam: Okay, and what did you do next?

(00:14:55)

Edward Wallin: I had to come out to California pretty much right away, because during law school I had summer clerked at the Dorsey firm in Minneapolis and loved it there. And they treated me great and it was *the* law firm in that part of the country. And I thought for a Minneapolis boy it was a dream come true to be able to be in that firm. They had offered me a job and I was 99 percent sure I would take it. But when I got back to school in the fall, John Swenson—who is now a senior partner at Gibson Dunn, had been a dear friend in college and law school—had summer clerked at Gibson Dunn in Los Angeles and he was extolling the virtues of Southern California and urging me to consider coming out here. I wasn't too interested, but one of the deans who was in charge of the recruiting program and John were both pushing me.

So one day I signed up to be interviewed by two California firms, the only two I ever interviewed—O'Melveny & Myers and Kindel & Anderson. And they both offered me trips to California, where I had never been. We couldn't afford to travel much when I was a kid; I had never been out here. So I came out the Saturday after Thanksgiving and it was zero when I left Minneapolis; and when I returned the following Saturday, it was zero and snowing. And it was in the 70s every day out here. And Jim Kindel of Kindel & Anderson offered me a job on the spot—they didn't send me the usual letter. A couple of days after I got back, I was probably shivering—I remember that last winter was very cold *[laughing]*—and so I accepted his invitation and came out to California.

Bill Rylaarsdam: And was this in Los Angeles, their office?

Edward Wallin: They offered me a chance to be in either place; and I actually chose to be in Orange County.

Bill Rylaarsdam: Oh, at that time they already had an Orange County office—

Edward Wallin: The other firm actually began as an amalgam of Jim Kindel, who was in Orange County, and Jack Anderson, who was in LA. And so it always had offices in both places.

Bill Rylaarsdam: Jack Anderson was an adjunct faculty at Loyola law school and he was one of my professors when I went to law school.

Edward Wallin: Is that right? He is a—talk about charismatic—a very charismatic guy, and a billionaire by the way now; very, very successful.

Bill Rylaarsdam: So you became a member of the California bar when?

Edward Wallin: I took the bar exam that summer. In those days it was given in late August. The bar results came out just before Christmas and I was sworn in on January 5 in the Dorothy Chandler Pavilion in Los Angeles.

Bill Rylaarsdam: Had you started to work as a clerk with the law firm?

Edward Wallin: I started to work as a clerk and then I was on leave with pay to study for the bar for a few weeks, and then I came right back there.

Bill Rylaarsdam: You didn't take the bar review course in the Embassy Hotel in Los Angeles, did you, where I took mine?

Edward Wallin: I think it was the . . . I think it might have been called the Olympia or something like that. But it was a dingy, old hotel in the basement where I would go up there every night with two fellows—one who moved back to Minnesota not too long after, but the other was Ron Bauer, Judge Ron Bauer, whom both of us know a long time, a well-respected judge here. And he and I started in Kindel & Anderson at the same time.

Bill Rylaarsdam: So then after you started out as a lawyer with Kindel & Anderson, I think they lent you to the U.S. Attorney's Office, didn't they?

Edward Wallin: Yes.

Bill Rylaarsdam: How soon after you had started there?

Edward Wallin: It was really right away. I got the bar results just before Christmas, and between Christmas and New Year I went up to Los Angeles and was interviewed by Matt Byrne—the late federal judge William Matthew Byrne, Jr., who was then the U.S. attorney. And we had a cordial discussion and he invited me to go to work there. And my law firm had a kind of agreement with him that one or two lawyers at a time would go from Kindel & Anderson to work there and then come back.

Bill Rylaarsdam: Was this to get trial experience?

Edward Wallin: Exactly. And it was supposed to be for two years. It turned out to be close to three in my case because I was enjoying it so much; and I had a lot of big cases and a wonderful experience.

Bill Rylaarsdam: What kind of cases were you handling?

Edward Wallin: It started out with drug cases, but mostly the trials were a lot of bank robberies, a lot of mail fraud cases. I became the office expert in mail fraud and obscenity cases, as a matter of fact, which were kind of grouped within the office.

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I did a number of tax fraud cases, but those rarely went to trial. I did a number of selective service cases, but those were like an hour or two court trial, mostly on the administrative record, and they didn't really matter in terms of experience.

Bill Rylaarsdam: What was your experience with the federal judges?

Edward Wallin: I had never . . . except for one 10-minute appearance while I was awaiting my security clearance I stayed at Kindel & Anderson. So it was early March before I actually started in the U.S. Attorney's Office. I had never been in state court and that one appearance was in a church in Santa Ana in front of Judge Murphy, where I represented the wife of a partner who had some dispute over with her ex-husband; I don't remember what it was. And the case was called and she and I walked down the aisle, and there was Judge Murphy up at the altar. *[laughing]*

Bill Rylaarsdam: I think you better explain a little why the court was sitting in a church.

Edward Wallin: In Orange County—

Bill Rylaarsdam: I shared that experience with you.

Edward Wallin: I'm sure you did. In Orange County in the '60s, until they built that courthouse that's now on Flower and Civic Center, there was way more business and judges than courtrooms. And so the county had condemned old churches in Santa Ana and made them into courtrooms—so there were a number of people who had the experience of having been married and divorced in the same church. But except for that one appearance, the first time I appeared in court, I was a federal prosecutor. And I learned what it's probably like, as far as any of us can know, to talk to God—because way off in the distance way, up high in these huge courtrooms were these federal judges. And I remember feeling strange when I came back to state court, because the judge was right there and I could speak to him or her in an ordinary tone of voice, whereas in the federal court, it was more like giving a speech to an auditorium when you were addressing the court.

Bill Rylaarsdam: Do you remember Judge Charles Carr?

Edward Wallin: In my very first jury trial—I'd been there a few weeks and I started out with a very short trial, I think in front of Peirson Hall, a federal judge there. That was unremarkable, and then I had a two-day court trial in front of Judge Bill Gray, who was delightful, a wonderful fellow, and whose son Jim Gray, as you and I know, Bill, was a longtime superior court judge here in Orange County. And then—

Bill Rylaarsdam: Then there was Charlie Carr. *[laughing]*

Edward Wallin: Then Charlie Carr. And I had been warned about Judge Carr, and so I went down and watched for a couple of hours the previous week, and he was yelling and shouting at the lawyers. And a lawyer in the office named Roger Browning gave me some very good advice, which I think probably applies to any trial lawyer who is dealing with a difficult judge. He said, "Ed, what you should do is you should think of yourself as wearing a very hard shell, and no matter what he says, you just keep presenting your case, stay calm, and press on."

And so the trial began. It was a bank robbery, the trial of a getaway car driver. And naturally I was a little bit nervous; my first jury trial at federal court. I had been there about a month. And what happened is first the marshals forgot to bring over a witness who was a prisoner. And Carr was ready to tear me apart, but he carefully checked and I had filed all the right paperwork. And it was indeed the marshals who had messed up and not me, and I think he was disappointed to learn that.

Bill Rylaarsdam: Yeah, I'm sure he was. *[laughing]*

Edward Wallin: And then I was examining a witness—a bank teller—and she was testifying about what she observed and how the robber ran out of the bank. And we were trying the getaway car driver, so what happened outside was crucial. And she said that he went . . . ran across the parking lot, around the building, out of her sight. And I asked some question like "What happened then?" And Carr exploded and he said, "Counsel, who cares? He's out of sight." Well, what actually happened was that the teller had cut through another building and saw him get into a car. And then that car drove past her and she got the license number and she saw that the robber was Caucasian. The getaway car driver was African American, and that was important because he was the defendant.

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So he yelled and screamed about that, and I persisted and insisted that I would like to ask some more questions of the witness and that the testimony was very important. So he turned to the jury and he said, "Ladies and gentlemen, United States Attorney Matt Byrne is an outstanding lawyer, but the

Department of Justice gives him a very limited budget. So he has to hire inexperienced, untrained lawyers to prosecute the cases here and we judges have to run a school for young lawyers—and you, jurors, are the victims." *[laughing]* And so he said, "Young man, we'll give you just three questions—three questions of this witness."

So I asked three of the most compound questions imaginable, got this crucial testimony; and basically he kept quiet because he realized that I was right. And ultimately the case went well; we had things like fingerprints and other things that really helped out. And he had banned many of the lawyers in the office—from the office—from his courtroom. So if you had a case that you worked on and it was assigned to his courtroom, you couldn't handle it; he would ban you. And so the day after the verdict, he called Matt Byrne and he . . . His way of talking to Matt was "Byrne, you know that . . . who was that trying that bank robbery in my court this week?" He didn't even know my name; in fact during the trial he always called me "the young man from the government." He never gave me a name. *[laughing]* I was 25. And he said, "Byrne . . ."

And Matt looked at the list and he saw it was me and he was bracing himself or wondering, well, how I could have fouled up; he knew I was new. And Carr shocked him by saying, "Well, you know, he did all right. He's a little wet behind the ears, but he did all right." And Byrne was amazed. He had never, ever called to . . .

Bill Rylaarsdam: To do anything other than—

Edward Wallin: . . . do anything other than castigate one of us. And so I always said that Charlie Carr, for all his flaws, promoted me from the lowest second lieutenant to major in that office right away, if you were to apply military ranks. Matt Byrne came down to see me, and immediately big cases started to flow in my direction because Carr even liked me. I also had a lot of trials in front of Andy Hauk, who was quite a famous jurist.

Bill Rylaarsdam: And how did you get along with him?

Edward Wallin: Well, we had our run-ins, but he actually came to my farewell party when I left. So I guess he thought I was all right. You know, he threatened to put me in jail one time, but I don't think he really meant it.

Bill Rylaarsdam: Any another experiences or cases while you were working with the U.S. attorney?

Edward Wallin: I think the judges who taught me the most about being a good trial lawyer were judges like Pregerson, Gray, Ferguson, Irving Hill, who was very demanding but very fair, Avery Crary. I had good experiences there, and I had sometimes two jury trials in

a week. So when I came back at the age of 28, I was a very experienced trial lawyer.

Bill Rylaarsdam: You had many more trials under your belt than your contemporaries at Kindel & Anderson, I'm sure.

Edward Wallin: There were three people in that whole firm that had significant trial experience: Angelo Palmieri, who was one of the founders of the Orange County Office when I was there, of the Palmieri Tyler firm that still exists—and he had had a lot of trials because he had been a state prosecutor years and years earlier; and then Craig Jorgensen, who had a similar experience ahead of me in the U.S. Attorney's Office; and I. And any one of the three of us had more trials than every other lawyer in the firm combined. *[laughing]*

Bill Rylaarsdam: So at that time, when you came back to the law firm in Orange County, about how many lawyers were there in that office?

Edward Wallin: I want to say 17, 18, 19, in that range. It wasn't huge.

Bill Rylaarsdam: And, was it departmentalized or—

Edward Wallin: In those days litigation wasn't as big a part of business firms as it is now. We had . . . real estate was always big in Orange County. There was always development going on. When I moved here in '67, there were probably 750,000 people in Orange County, and today there is 3 million, or more than 3 million, I believe.

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So constant building of schools as well as houses; and the schools and the public facilities meant there was a constant flow of eminent domain cases which Angelo Palmieri was probably the all-time master of. We had a number of restaurant clients besides a number of big builders.

Bill Rylaarsdam: Did you basically handle litigation matters, or were you—

Edward Wallin: Just litigation.

Bill Rylaarsdam: Just litigation.

Edward Wallin: I worked with Angelo; and then eventually Ron Bauer left after just a couple of years, three or four years, and it was Angelo and myself. And then after a short time Frank Rothrock joined us, a young associate. Frank is still a lawyer here in Orange County.

Bill Rylaarsdam: So the three of you did most of the trial work for the firm?

Edward Wallin: All of it, yeah. In fact we even handled the contested hearings. If there was a contested probate hearing, one of our probate or estate-planning lawyers would take one of us over there as the designated pit bull, I guess, to handle that matter.

Bill Rylaarsdam: So let's see. By the time you got back to Orange County, the new courthouse had been built.

Edward Wallin: That's right. I think back in fall of 1970, September, October, in that period of time.

Bill Rylaarsdam: So you never got to go to church with judges anymore? *[laughing]*

Edward Wallin: No. we had a real courthouse and quite a nice one. It's a bit rundown now after . . . and now it's more than 35 years older, close to 40.

Bill Rylaarsdam: Do you recall about how many judges there were in Orange County at that time?

Edward Wallin: I don't. I think there were 12 or 14 when I came in 1967, but I'm not sure. I do know that when I was appointed I was the 37th position.

Bill Rylaarsdam: You know they have, like, 140 bench officers. *[laughing]*

Edward Wallin: Yes. I've lost count now.

Bill Rylaarsdam: So, have any particular experiences in the Orange County Superior Court that are notable?

Edward Wallin: Well, I do remember when I first went there, the first couple of times being just amazed that I was so close to the judge, because the courtroom space between counsel table and the bench is so much shorter than it is in federal court; and almost feeling odd to be that close and intimate with the court itself, but enjoying it because I think that when you're closer, you get a better sense of each other as you're communicating with the judge and the lawyer. I thought that our judges here treated me very well.

I remember one judge, Herbert Herlands, who was a very bright, very demanding judge. And I was once asked to handle a default divorce for the young daughter of a very wealthy client, and she testified that certain stock in the family business which her father had given her was her separate property.

So Herlands starts asking where that stock is. Turns out it was kept in some safe deposit box, and I said, "Well, did your father ever give it to you?" "Well, no, but he said he put it in."

So he said, "Did your father ever give it to you?" And she said, "No, but he told me it's in my name." Then he proceeded to pick up a pencil and explained to me that if I say to you, counsel, that "I give you this pencil" but then I don't give it to you, it's not really a gift. So how do we know this is her stock? And it was an uncontested default divorce, and I had warned the clients—fortunately her father was there too—that this judge was a bit eccentric. So rather than argue further over the stock and attempt to prove it, I said, "Well, Your Honor, perhaps we're not ready to proceed yet by default. So we should go off calendar." So we did, and then I said it before another judge a week or so later and it went right through.

Bill Rylaarsdam: Known as judge shopping? *[laughing]*

Edward Wallin: Yes, yes.

Bill Rylaarsdam: Any other judges that you appeared before that particularly come to mind?

Edward Wallin: Well, I remember the first time I appeared before Judge Byrne in federal court, after I had been, frankly, I think one of his favorites as a federal prosecutor. And he was very tough on me but in a nice way, and I respected him so much. My oldest son is named Matt, as a matter of fact.

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But in state court here, Judge Bill Lee, I'd really admired. There were a lot of judges I liked. There were so many different ones, and I appeared in a lot of different counties too.

Bill Rylaarsdam: Oh! You were not confined to Orange County?

Edward Wallin: No, no.

Bill Rylaarsdam: You had cases in Los Angeles?

Edward Wallin: Right. I appeared before Richard Schauer in Los Angeles. I had cases in Indio and Riverside and San Bernardino.

Bill Rylaarsdam: Richard Schauer was another one of my law professors.

Edward Wallin: Is that right?

Bill Rylaarsdam: Yeah. *[laughing]*

Edward Wallin: Excellent judge. And tried a case in San Diego, one case there, but I didn't have as many trials in practice.

Bill Rylaarsdam: As you did in the U.S. Attorney's Office.

Edward Wallin: Not even close—because it was easy to have two jury trials in a week when I was a federal prosecutor, and it could be two in a year in a business firm.

Bill Rylaarsdam: You were involved, while you were practicing, in some political litigation?

Edward Wallin: A little bit, yes. I had forgotten that. That's good of you, Bill, to remember. I was sitting in my office on Halloween in 1974, a few days before the election—I think it was a Thursday before the Tuesday election—when a candidate for Assembly here named Richard Robinson called me. I'd never heard of him; I had no involvement in politics in California whatsoever up to that point. And he had been served with an injunction, or a TRO, rather, barring the delivery of all of his campaign mail because of some technical failure to name the person who was the candidate that it was supporting. I mean, it was obvious from reading the mail, but technically it was not there. And the judge, who had issued it in Orange County, had purported to even bar the U.S. Post Office from delivering the mail for which, of course he would have—

Bill Rylaarsdam: Jurisdictional issues there? *[laughing]*

Edward Wallin: Obviously we would have no jurisdiction, as is obvious to you and I, but maybe it wasn't to that judge. But the post office was taking the position that it would honor it until it got overturned. So he had been served with this at, like, six in the morning, and it had been signed during the early a.m. hours and delivered to the post office. And it was totally destroying his campaign because his whole campaign—all the last five days of mailings—it was all held up. So he wanted to come and see me, and he had been recommended to me by several different people, he said, because I had done First Amendment cases in the U.S. Attorney's Office. So he came over there. I was leaving for lunch; he caught me, and I instead ran to the corner and got a sandwich. And he came over and I sat and ate my sandwich while I listened to his tale of woe, and found out there was going to be a hearing in federal court at 2:00. I told him I doubt it if I'd ever get paid, because politicians would have a poor reputation for paying their bills.

But it looked interesting, so I went up to Judge Jesse Curtis, a fine federal judge in LA, who had a hearing; and he rescinded the order as it applied to the post office. And then I had set up a hearing the next morning in which I went out to Judge Bill Lee, and he dismissed the lawsuit, as it had no basis in the law. That saved that Assembly seat. And then–Assembly Speaker Leo McCarthy had heard about all this and was very impressed. So it sort of put me in a political position I had never even thought about getting in, as I was just being a lawyer.

Bill Rylaarsdam: Weren't you later then involved in Robinson's campaign also?

Edward Wallin: Robinson. The 1974 primary was when the . . . no, 1974, I think it was; 1974 the Political Reform Act had been passed, and Robinson and also some other politicians like Bruce Nestande were anxious to obey it. They didn't want to run afoul of it and take a news story criticizing them for not complying with the Political Reform Act. And it was like 25,000 words of utter nonsense, especially to a nonlawyer, maybe even a lawyer; and I had read it for some reason, I don't know why. And so I began to answer just phone calls from people in both parties.

Bill Rylaarsdam: This is basically reporting requirements.

(00:39:47)

Edward Wallin: Yeah. How do we word this, and no one knew because it was so new, and I'd just say, "Well, I think what you should do is this." And so people from both parties would call me, and I never charged anyone, because they were trying to comply. And I thought that is a matter of public spirit; when they're trying to comply I should help them. So I did, and I got known for that knowledge; and then Robinson asked me to be his treasurer. The reason was he didn't want to get in trouble over that law. So I did that for a few years—like four, I think, before I went on the trial court. But I never really got active in politics outside of being involved as a lawyer. I was sort of an advisor for Robinson.

Bill Rylaarsdam: Okay. At some point you considered going on the bench or somebody suggested it? How did that come about?

Edward Wallin: Well, what actually happened is . . . I mean, my most active political involvement probably was as Judge Bruce Sumner's treasurer in 1978; actually, late in 1977 I think he took a leave of absence from the bench to become a candidate for Attorney General of California. Judge Sumner was quite famous as a judge. He had headed for 10 years the California Constitution Revision Commission, been a Republican member of the Assembly from Orange County for a while before that. And he was interested in challenging Howard Jarvis's Prop 13, which I still believe today is because it's been an economic calamity and a fiscal calamity for our state. But he started out as a candidate. Ultimately we were unsuccessful in raising enough money. He wasn't as well known as Yvonne Burke and Burt Pines, who were from LA, and so he withdrew in about February and within a week or two he decided—

Bill Rylaarsdam: He was a judge of the Orange County Superior Court at that time?

Edward Wallin: Right. And he went back on the bench and then ultimately filed for reelection to the court and was reelected and served there

until he retired. And about a week or two later he felt that something should be done to challenge Prop 13, which was so destructive of the whole plan of our state Constitution, and he convinced me that we should participate in that. He had a lot of files on the bases for the various provisions of the state Constitution, and I wrote the pleadings and the briefs for a petition to challenge it.

Bill Rylaarsdam: This is state court.

Edward Wallin: In state court. And about, I want to say maybe late April, we challenged this and were successful in a minor way in that the court ruled that the description on the ballot was wrong and misleading and changed that somewhat; but we were trying to remove it from the ballot.

Bill Rylaarsdam: This was before—

Edward Wallin: Before the June primary. The primary was in the first week of June, and we were trying to get it removed from the ballot as multiple subject, and we had a myriad of other grounds. That was unsuccessful. I do remember that experience, that the legislators of both parties wanted us to hold a press conference at the Capitol; there was so much interest in our challenge, as Prop 13 was dominating the political news as the primary drew nigh. So they wanted the press to come and to be able to ask us questions, but no one wanted to take the blame for it, because there was such a steamroller for Prop 13.

So for the first time in the memory of any reporter who came, there was an announcement of an event for the press in the Capitol pressroom in Sacramento. That didn't say what legislator's office it came from, because nobody wanted to be tied to it, but they were all rooting for us. *[laughing]* And then we'd walk through the hall in the Capitol and they were all cheering for us. But anyway, we had that matter together, and then Bill Norris—who is retired now from the Ninth Circuit—was then with Tuttle & Taylor in LA, and he had been retained to prepare a post-election challenge for Prop 13 by virtually all of the state school districts, community college districts and basically educational institutions. And Bill and I were friends, and he asked me to join him, and I had all this research material because I'd already done a lot of it.

(00:44:50)

So he and I and two young lawyers from his office physically lived in his office, getting a few hours sleep at the Biltmore Hotel a couple of blocks away, starting about two or three weeks before the election and going till maybe 10 days after, working as hard as we could—sometimes sleeping right in our chairs—and prepared a challenge. And while that was going on, Bill was aware that I was a candidate for superior court, and he

told me I should probably not put my name on the brief, because he didn't think I could ever get appointed. And I said I didn't want to be on the superior court if one could not honestly express his role as an advocate in any kind of legal case. So I decided that I would put my name on there, and I signed whatever I signed on the brief like John Hancock so everyone could see I was there.

How I first became a judge, though, was Bruce Sumner called me one day, and he had been having coffee in his chambers. He was a probate judge that year. This would have been early in 1978, about May of 1978, early May. And Tony Kline, who was Jerry Brown's legal affairs secretary and the scout that found candidates for judgeships, was in town to give us a talk at some bar lunch on probably how to be a judge or something. And he had gone over to the courthouse and saw Bruce's name and so went in and they had coffee. And Tony was lamenting that he couldn't find lawyers with a business background to be judges and they were all making too much money. He said, "Probably like you, Bill." And so Sumner said, as he replayed it to me, he told Tony Kline, asked him if he knew Ed Wallin. He said he'd heard of me but that I was in some big firm. And he said, "Well, Ed's pretty young. I don't think he's making a lot of money yet and he likes public service, so maybe he'd be interested."

So they decided that Sumner would bring me to the lunch and ask me on the way if I was interested. And I was 35 years old and had barely my 10 years in. And I said to Bruce Sumner that I would be interested someday, but that I thought being a candidate at my age would look ridiculous because I was only 35 years old. And Bruce in his calm way said, "Ed, if you decide you're a candidate, you will be appointed." Well, that made me really think about it. I had two children at home at that time, a daughter 10, a son 8, and I hated being away around the country for depositions and so on. And I liked the idea of being home every night that I could be as a judge so I could coach Little League and coach my daughter's softball teams and stuff.

So within a few days I was a candidate; and then in August, actually while I was on vacation in early August, 2nd, I think—

Bill Rylaarsdam: In 1978?

Edward Wallin: In 1978. So my candidacy was a very quick one and all of a sudden I was on the superior court, no doubt to the shock and amazement of my colleagues.

Bill Rylaarsdam: And you were there for over four years, as I recall?

Edward Wallin: Early August of 1978 until December 27th of 1982, so it would be four years and five months.

Bill Rylaarsdam: Okay. A little later we'll talk about what happened in December of 1982. As I recall, you spent most of your time in law and motion department.

Edward Wallin: Yes. I started out in a trial department; and in those days nobody wanted the law and motion assignment.

Bill Rylaarsdam: Quite a lot of work. *[laughing]*

Edward Wallin: Yeah.

Bill Rylaarsdam: I did it for two years myself.

Edward Wallin: Yeah, and nobody wanted that job. And so it was a challenge for the presiding judge, who I think was Byron McMillan, if I remember correctly—might have been Walt Charamza, I've forgotten which one was first—to recruit three candidates for three law and motion departments. And so I had always groused whenever I was unhappy with whoever was the incumbent in law and motion; as a lawyer among my office I groused about some rulings or whatever. So I thought it was my duty to be willing to take the heat myself. So I volunteered, to the amazement of all and sundry, to take law and motion. In those days you could serve for six months, and at the end of six months, if you hated it, they would give you another assignment; and a number of people did just that, but I wound up staying for three years. I started in the middle of December because someone was on vacation in 1978, and I stayed through 1981. And then in 1982 I did it again for four or five more months because someone was ill or something—I can't remember.

(00:50:04)

Bill Rylaarsdam: Do you recall who the other judges were that were handling law and motion?

Edward Wallin: When I started it was Bob Green and Alicemarie Stotler, now federal judge Alicemarie Stotler. Alicemarie's whole background had been in the criminal law, but she was a real scholar and hardworking, and she once told me that she had read through Witkin's procedural summary in preparation for that assignment. How anyone could slog through that is amazing to me, but she might be able to.

Bill Rylaarsdam: Don't you keep a copy on your bench? *[laughing]*

Edward Wallin: *[Laughing]* And she was actually assigned to the courtroom next to me by the presiding judge, who told me that way she could come and ask me about procedural things. She never needed to do that. She was a very good student on her own.

Bill Rylaarsdam: So did you enjoy that assignment?

Edward Wallin: I loved it. I still today—39 years after I've been, over 39 years, a member of the bar—I love lawyers and dealing with lawyers; that's what I do today at JAMS. And every morning I would be seeing 30, 40, 45 lawyers doing and looking at their craft, which was their pleadings, and then listening to their arguments. I thought it was beyond my wildest dreams to have such a fine assignment and be able to work with such wonderful people every day. And in the afternoons I did the ex partes, the TROs, and such.

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Bill Rylaarsdam: During your stint at the superior court, are there any particular cases that stand out or other experiences that you think you'd like to comment on?

Edward Wallin: So many went through. I do remember one that got a lot of notoriety at the time. There was a company called Newport Equity Funding, which was putting together syndicates to make loans in the late 1970s, early 1980s, when interest rates were way up in the double digits, 16, 17, 18, with a lot of points. And they had gotten the retirement money of many people, particularly from Newport Beach, Laguna, and that area, and these people had pieces of these loans. All of a sudden, one day the owners and managers of that company didn't show up, and there were many millions of dollars in loans that were outstanding; and the employees who were not at the ownership level came but they didn't know what to do because there was no one there. So the state Attorney General rushed in, and later that day I issued an order permitting a gentleman, a former California Real Estate Commissioner named Milt Gordon, to become the . . . I've forgotten if we called him a trustee or a receiver. And on condition that he'd be there at 7 a.m. the next day. He took over the business with his team of people. And in my order, I had said that he needed to report.

These people were panicked, panicked; had their life savings tied up in this. This was a Friday. They needed a report, I think, on Wednesday in court, which is not much time for a receiver to gather up the facts. So on Wednesday he shows up, and there's like 200 people there, mostly couples, older couples desperately concerned about their savings. And he only had a five-page report, but it was quite positive. It appeared these loans were paying and that it wasn't nearly the disaster that everyone had feared.

When I heard this huge throng had showed up, first they moved us to the biggest courtroom that could be found. And while that was going on, I took his five-page report and I had a clerk make copies for everyone. And so my clerk announced there would be a delay while the report was being copied, and to the consternation of Milt Gordon, I just gave it to everybody. I figured it was a public document, it was their money, they ought to be able to see it. So they all read it.

Then I took the bench, and there were a number of lawyers there, maybe 10 or 12, 15 lawyers, and I said that they now knew everything I knew because they had the report and that we were going to start by inviting the lawyers who are here to ask questions of the receiver or of me or anyone they want.

(00:54:58)

So we were going to try to find out what was going on here. So the lawyers would come forward, "I am so and so, representing so and so" and ask the question. Then one of the folks said, "Excuse me judge, does that mean if we don't have a lawyer here, we can't ask a question?" and I said, "No, no, as soon as the lawyers are finished, I think they will have asked most things you care about, but I'll be happy to entertain questions from the rest of you"—thinking, well, I might have bought myself trouble here. So I went ahead and we got all the lawyers' questions. Then I said to the rest of them, "All right now, the rest of you, if you want to ask a question, I want you to raise your hand. When I call on you, I want you to stand and I want you to state your name clearly and spell it for the reporter, and then you can go ahead and ask your question."

And there's a memory trick that I could do then; I don't know if I still can, but I could remember every name. So about 20 different people ask questions, and once in a while people would come back and ask another one, and so I would call on them by name, and people started to notice that. They were kind of in awe of that, I think. So everyone got their questions answered and then we announced, "We have another hearing," I think in 10 days or two weeks, something like that, and I asked them to bring 100 copies of the report, told everyone to please come early because we would be handing them out. And I did that for like three more times, to the point where the news was positive, the receiver got a financial institution to handle the collection and disbursement of the proceeds of these notes which were paying huge interest, and they were almost all being honored. So there was not a risk.

Finally, in the third or fourth hearing, near the end, one fellow stood up and he said, "Judge, I don't really have a question. I just want to say that we're all just thrilled that you're handling this case, because you let us see the information and you let us ask questions and we felt so much better about our investments." And then they all got up and gave me a thunderous standing ovation, shocking my colleagues, who wondered what the heck was going on in that courtroom. And so they all asked me, naturally, and I said it was just another day in law and motion. *[laughing]* And ultimately that whole matter was over in like six or eight weeks; and if it had gone into bankruptcy, which was the other option, it'd probably still be going on. *[laughing]*

But anyway, I had fun with that. There were so many cases I did that were of significance business-wise, maybe, to development in Orange County, but I didn't really keep score. It was, as you know from having done it for a long time yourself, they're just kind of racing through there and you just make the best call you can and there's 35 more the next day.

Bill Rylaarsdam: Then in late 1982, I believe, a decision was made to create a new division for District Four; and then, of course, you were one of the people who were appointed as soon as the division was created. What's the history surrounding the creation of that division? How did the creation of the Division Three come about? What was the background of that?

Edward Wallin: Well, in about 1980 or 1981 there began to be a lot of talk about the backlogs in the Court of Appeal throughout the state, and the worst backlog was here in the Fourth District. We then had divisions in San Diego; Division One in San Bernardino, which was Division Two, now in Riverside; and almost all the Orange County cases went to San Bernardino. And by this time there were hundreds of briefed, fully briefed appeals that had been sitting and there just weren't enough jurists to even come close to catching up with them.

So Assemblyman Robinson from here in Orange County—who although not a lawyer, was the biggest supporter of the AOC, the Administrative Office of the Courts, in the Legislature—he was their man, their go-to guy when they needed legislation. And he was . . . I don't know why, but he always loved the courts and loved the law, even though his background was actually in accounting. So he carried a bill which created 18 positions. And it was intended to be, I think, 15; but it was 18, somehow, in Northern California—created the district in San Jose and new divisions in Los Angeles and San Francisco and then created a new division here in Orange County, which you and I served.

(01:00:15)

Bill Rylaarsdam: I've always wondered why did they create a separate district in San Jose and why didn't they create a district here in Orange County?

Edward Wallin: There is no good reason.

Bill Rylaarsdam: I've asked that question of many people and nobody knows the answer to it.

Edward Wallin: I think maybe the reason is . . . well, I really don't know, because I actually believe as a matter of judicial administration that all three divisions of the Fourth District should be separate districts.

Bill Rylaarsdam: I agree with you. This makes no sense.

Edward Wallin: Yeah. The current arrangement is . . . you're right, makes no sense at all. For one thing it makes no sense voting-wise, because the voters in the other two division areas vote on me, and sometimes I was there; and you. And they don't even . . . we don't even hear their cases.

Bill Rylaarsdam: Imperial County and Inyo County.

Edward Wallin: Yeah.

Bill Rylaarsdam: Maybe there's a little safety in that though. *[laughing]*

Edward Wallin: Maybe; I don't know. But yeah, maybe the less they know about us, the more likely they are to support us, Bill. But that was held up by some litigation for a while and then in the fall that litigation ended.

Bill Rylaarsdam: The litigation was basically motivated by a desire to keep Governor Brown from making the appointments.

Edward Wallin: Right. It was a politically sponsored lawsuit, which oddly enough was filed in El Dorado—either Placer County or El Dorado County, I can't remember—because the judge happened to be a former Republican political leader. And he instantly issued a TRO against the creation of the court, but that was all resolved in the fall around October or so. And I had been told for many months that Jack Trotter and me were going to be appointed. The other two were up in the air and one of them was likely to be Alicemarie Stotler. And actually there was a problem there that . . . a gentleman named Mike Capeci, who was the district attorney here in Orange County at that time, still a lawyer here, was on the Jenny Commission. And he had led the effort, supposedly—at least the Governor believed this; I don't know if it's true or not—that had resulted in a torpedoing of all women candidates and minority race candidates which could have been based on qualifications, except one: Alicemarie Stotler.

Bill Rylaarsdam: That would not be based on qualifications—

Edward Wallin: She was the only one found qualified that met those criteria, and that included Justice Sonenshine, who was rejected by the Jenny Commission. Well, this I understood, anyway—no one ever . . . he never told me this, but made Governor Brown very angry. So he resubmitted Sonenshine's name, and when she got through the commission the next time, she was ultimately named instead of Alicemarie Stotler; and so that's how Justice Sonenshine was named to the court rather than Stotler. And there was also some opposition to Justice Tom Crosby or Judge Tom Crosby.

Bill Rylaarsdam: Who was then also a judge in the superior court.

Edward Wallin: Who was also a superior court judge, and who has served a long time on the court, I think longer than anyone ever has on Division Four. So when the Jenny Commission met the first time, Justice Trotter and I passed right through. There was some discussion of Tom, I think, that was held over, then he passed the next time; and I believe Justice Sonenshine was actually rejected by the commission and that was so in order to pay back Capeci, who Governor Brown perceived was trying to get him into a box where he had to name Alicemarie Stotler, which he had no objection to; he submitted her name.

Bill Rylaarsdam: He just wanted to show who's boss.

Edward Wallin: So that's how he pushed Justice Sonenshine forward, and she was ultimately selected. And Alicemarie Stotler soon retired from the superior court and then was in practice for a year or two and is now the chief judge of the federal court here in the Central District.

(01:05:00)

Bill Rylaarsdam: So then in December you were, all four of you were, sworn in, in 1982?

Edward Wallin: Right. I was nominated right after Thanksgiving and confirmed the Monday after Christmas, which I think was the 27th of December of 1982. And at the same time, a number of new justices all over the state were confirmed in a period of a few days, some in a hearing in Northern California and some in Los Angeles. And they included Ed Butler in San Diego; probably someone else—I can't remember.

Bill Rylaarsdam: Tony Kline, I think, was there.

Edward Wallin: Tony Kline. And if he wasn't already there, he was one of the ones I think in San Francisco; but in Orange County it included Justice Trotter, who was named the presiding justice. He had been a justice for about eight months out in Division Two, replacing the late Stephen Tamura; and myself, Sheila Sonenshine, Tom Crosby. So it was Trotter, Sonenshine, Crosby, and Wallin for that starting period.

Bill Rylaarsdam: Four of you are justices in a jurisdiction in most of, a good part of, Southern California; and where do you go? Do you have a courthouse? Do you have a library?

Edward Wallin: That was an interesting time, because on the day we were confirmed, we didn't have so much as a pencil, tablet, or a book or a place. So we were to begin serving. Now, it was the

holiday weekend, and I think all three of my colleagues went on holiday skiing trips, or in Justice Sonenshine's case I think probably to Hawaii. But I stayed home; I mean, what could I do? Because the clerk's office, if you can call it that, was a basement in the superior court building, where there was a little area that the Orange County clerk had kindly allowed the Court of Appeal to temporarily use, and Dave Johnson was there.

Bill Rylaarsdam: He had been appointed clerk of Division Three.

Edward Wallin: Yeah. He had been a senior deputy clerk or something like that in San Bernardino, and he had been named to become the clerk in Orange County. And we had met and had a couple of conversations right around that time. But it was Dave all by himself, and he was taking in filings. And they were getting ready to ship over hundreds of appeals from San Bernardino but he had no place for them because he had . . . the clerk's office that he had in the courthouse was no bigger than maybe—I don't think it was 10 by 10. So Dave was there and we were supposed to find a place to go. So the Sunwest Bank Building on Parton and Santa Ana Boulevard was one of the places we looked at, and we ultimately rented space there but it wasn't ready. I think we had . . . between November, being nominated in November, and being confirmed in December, we had looked around and found that place. It was ready for us to move in on a temporary basis late in January.

So the first court session was actually held . . . I think Justice Sonenshine had not yet returned from her vacation. But early in January there were a number of writs coming in, and we needed to do something; and so Justice Trotter hosted us in his kitchen in North Tustin, where he still lives. And there was a reporter named Tim Alger for the *Register* who had been saying to all of us that he would like to cover and do a story on the first session. And Tim later became a lawyer and the last I heard was at Gibson Dunn. I don't know what he's doing now, but Tim was a very fine reporter and he covered the courts; so he wanted to come. So Jack notified him and he came over to Jack's house too. So we were sitting around Jack's kitchen table and Tim and a photographer showed up and he sat down and interviewed us a little bit and did a picture, a color picture, which ran in the *Register*—and which I still have a copy of somewhere—and did a story about us.

(01:09:44)

I remember that Jack's wife Katherine had to leave; and so she had put some croissants in the oven for us and Jack was supposed to take out the croissants. And he forgot and so pretty soon we're smelling the burning croissants. So the next story, Tim's story, talked about . . . in fact, the little thing on the front page was that Presiding Justice Trotter had burned the

croissants in the first court session. *[laughing]* We all got a kick out of that. But we sat around and handed out some cases for consideration, just informally a few cases that Dave Johnson had brought over. And I remember the very first decision we made was a writ involving the American Contract Bridge League, and I believe it was a First Amendment issue but I'm not sure. We discussed it and studied the petition and the three of us determined that it should be denied. Then Jack and Tom were going away for the weekend again to go skiing or something. So I went down to the courthouse and Dave typed something up and I signed it.

Bill Rylaarsdam: You're talking about the superior court courthouse?

Edward Wallin: Yeah, the superior court courthouse. And I signed it as the acting presiding justice denying the writ. It was taken to the Supreme Court, which ordered us to hear it. So I always said I signed the first order of the court.

Bill Rylaarsdam: That got reversed.

Edward Wallin: And it got reversed. *[laughing]* And we ultimately heard it, and I think we actually agreed with the petitioners.

Bill Rylaarsdam: When did you first hear oral argument? How long after the court started?

Edward Wallin: We didn't have a place in the Sunwest Bank Building where we could hear it. In fact, I should tell you the first place we were in there. It was a little office for each of us, quite small, that was in a big, open area; and then across the hall was a huge open area. And the books had arrived in boxes, and we were so busy getting started and so many cases were coming in that we determined that we would only use the books as we needed them to cite cases. Well, pretty soon we had boxes, and they all came in Cellowrap and it was a mess. So one day a bunch of the lawyers and I got together and put them all on the shelves finally. But it was just a chaos situation. The clerk's office had a little space on the same floor—I think it was the eighth floor—and a more permanent space was being built on the third floor. But it was many months before we moved there; maybe a year.

Bill Rylaarsdam: You just stored the records and the files, and there probably were no adequate shelves even?

Edward Wallin: On the eighth floor where we were there was a lot of unused space, undeveloped space, in the building. And I remember Judge Dave Thompson, who was my law clerk, a brand-new lawyer just finished law school, very handy. He was looking for a place where he could work because there was almost no place. So he brought a long cord from home and a fluorescent fixture and he ran that cord like 120 feet or so and then hung

the fixture in the rafters because the ceiling wasn't finished, and also near a window. So he was on the floor there with us in an area we really weren't paying rent on, and it wasn't being heated or air-conditioned; and that's where he worked. But then we got into our facility. Before that, in March, we finally had an oral argument, and what we did is we made a deal with the City of Santa Ana that we could use the city's city council chambers.

Bill Rylaarsdam: Had you considered going back to church?

Edward Wallin: *[Laughing]* We should have, yes, prayed for guidance.

Bill Rylaarsdam: I mean, because of the experience in the Orange County Superior Court.

Edward Wallin: I know. So for our first several months of oral argument, I don't remember how many, what we would do is when it came time for oral argument, we put our robes over our arms and walked from the Sunwest Bank Building over to the Santa Ana City Council Chambers, which was a few hundred yards, and go in there and use that council room for oral argument. And the first oral argument, I remember Justice Bill Bedsworth—who was then the head of writs and appeals in the DA's office and a super lawyer, as we all know—had one of the cases, and we were ready for him. And it appeared that the DA was challenging an order which under the case law was neither appealable nor writable, as I recall; I don't remember what it was. So we sprung that on him in oral argument, and poor Bill had not anticipated that; and so he had to go back to the books and he concluded within a day or two that we were correct and dropped this case. But we had some civil and some criminal cases that first day; and I know Bill had the first criminal case, and now he's been on the court for 8 or 10 years.

(01:15:05)

Bill Rylaarsdam: Five or six. I'm not sure; probably more.

Edward Wallin: And he was there when I left, and it's more than eight that I've been gone.

Bill Rylaarsdam: Time flies when you're having fun.

Edward Wallin: Yes. So, but I do remember that.

Bill Rylaarsdam: So when did you, or when or how long after the division was created, did you move into the more permanent facilities in the Sunwest Bank Building?

Edward Wallin: I want to say it was about a year before that floor was built out. And we did have a courtroom there, and it was not large but it was adequate. We had the whole floor and there were

still just the four justices; for a long time there were just the four of us.

Bill Rylaarsdam: But even before that, of course, you had to hire clerks, you had to hire staff attorneys; that all took time.

Edward Wallin: I hired the first staff attorney, whose name was Stella Ruiz. She worked with me for about eight years, then moved to Davis near Sacramento, and has now for many, many years been a staff attorney for Vance Raye. But both Tom Crosby and I knew her. She had been a contract attorney for many lawyers and did brilliant paperwork; she was a great arguer. And I called and hired her about an hour before he called, so I got her first. And he hired Kim Dunning, now the presiding judge of the superior court, as his first staff attorney.

Bill Rylaarsdam: When the four of you were appointed, did you know each other, other than very casually, or did you have any kind of relationships?

Edward Wallin: I don't think any of us knew Sheila Sonenshine particularly, but Jack and Tom and I all knew each other. In fact, I should talk more about Tom, since unfortunately he's passed away and I loved him. But Tom and I jointly represented people in a couple of criminal cases. One was a federal case, and Tom was uncomfortable with federal court, so he got me into it. Only I got it dismissed the first time I showed up, and so that— *[laughing]*

Bill Rylaarsdam: Scared him. *[laughing]*

Edward Wallin: Yeah, and pleased the client no end. But and then another one . . . it was a fraud case. Another one was a kind of political case where unfortunately some overenthusiastic campaign workers had registered to vote in an election in 1974, I think, in houses where they really didn't live. It was like 8 or 10 of them; one was a lawyer even. They just wanted to vote for the candidates they worked for and loved; it was not a smart thing to do. It was probably not worth prosecuting, but they were Democrats and it was Orange County, so they got prosecuted. I say that because subsequently this came up a number of times with people in both parties, and it was never subsequently prosecuted. But Tom and I jointly represented them. And we got acquainted in about early 1975 and became very close friends, spent a lot of time together; and when he went on the court, the superior court, in about 1980—I'm going to say 1980 without knowing for sure—he became a law and motion judge two courtrooms down. And I remember he used to work late just like me reading through those motions, and about 7:30, 8:00, we'd think it was time to take the rest home. So one or the other would step out in the hall and holler down the hall and we'd go down to the garage together with this basket of the remaining motions with us, and what he would do is he

would say, "Hey, baldy," which was what he would call me. *[laughing]*

Bill Rylaarsdam: Well, he didn't have a lot of hair himself. *[laughing]*

Edward Wallin: No, he didn't either. *[laughing]* But he was the only person who ever called me that, and I knew every time I heard that, it was Tom—but a great judge and a great man.

Bill Rylaarsdam: What was Tom like?

Edward Wallin: He was brilliant, first of all, absolutely brilliant. Had as high an IQ as anyone I think I've ever known. He'd been a Peace Corps man in Peru. He had been a deputy district attorney—did very well in that office—went out and he practiced criminal defense law.

(01:19:48)

So we didn't encounter each other as lawyers because I really didn't do that, but we met in this case where these people had been charged with voting improperly and hit it off and so just spent a lot of time together. And then we were both close to Assemblyman Robinson, kind of as advisors to him, because we didn't have much money, we weren't contributors, but he was anxious to have our counsel on all kinds of different issues. And I went on superior court and Tom really didn't want to do that, he just wanted to go on the Court of Appeal; but he was told in about 1980 that if he ever hoped to do that, he had to serve on the trial court first. Maybe it was '81. And so he did, and he served in law and motion. His writing is excellent, and he was very famous for his writing.

Bill Rylaarsdam: So very succinct and to the point.

Edward Wallin: Yeah, sometimes had a very tart pen. And he and I wouldn't really argue, but we would have disagreements, where he would get really angry at something that occurred in a case and he would write all kinds of stuff in an opinion and then it would go down the hall to me; and I think if he knew I was on the case, he knew what would happen.

Bill Rylaarsdam: Toned it down. *[laughing]*

Edward Wallin: *[Laughing]* I'd tone it all down. I'd just do it with a red pen, and then I would bring it back and like, "Come on, Tom, you know you can't say that," and he would say, "Pretty chicken, Ed, pretty chicken." *[laughing]* But I never wanted to deliberately be insulting toward especially a trial judge or even a lawyer, because there's no appeal from what we would say about a lawyer, and we may not know everything. And so he and I would . . . that would be our major disagreement. Tom was very liberal, so sometimes we didn't agree; I don't think I'm as

liberal as he was. But I was very close to him and his wife Patty, and he was just a very good friend. I was really crushed when he passed away.

Bill Rylaarsdam: Did you and Jack Trotter have a relationship before the appointment?

Edward Wallin: Tom and Jack knew each other because their offices were actually on the same floor. That was in the Crocker Bank Building at the corner of Washington and Main in Santa Ana, which is only two or three blocks, if that, from the Court of Appeal where it is now. I was at 1020 North Broadway. And I knew Jack because he was a highly, highly respected member of the Orange County bar. He served as bar president in 1977, I believe.

Bill Rylaarsdam: He was on the superior court also.

Edward Wallin: And then he went on the superior court, I think after me and before Tom is what I remember.

Bill Rylaarsdam: I remember appearing before him in superior court.

Edward Wallin: I think a few months, maybe six months, after me and maybe a year or so before Tom; and he was also in law and motion. But I knew Jack because I stumbled on an excellent med mal wrongful death case and I didn't do those; but they had a lot of doctor clients, I just wasn't going to do those. But Jack was a first-rate, maybe as good a trial lawyer as there was in Southern California at this time, not only just in Orange County. So I went over to see Jack with my client, and we told him about the case, and I had done some investigation, had some medical records. Jack took the case and did a great job with it. And so we were pretty well acquainted and I was thrilled to have two friends like Tom and Jack join me on the Court of Appeal. I couldn't believe my good fortune. And I didn't know anything one way or the other about Justice Sonenshine, whose entire practice had been family law and an area that I didn't go into really, and obviously didn't encounter in law and motion. I think she appeared before me a handful of times in law and motion, maybe two or three, and so did Jack and so did Tom. So all of them—and maybe I think you—appeared in front of me as a judge before they were colleagues on the Court of Appeal.

Bill Rylaarsdam: I may have appeared before you on the Court of Appeal also, because I remember being in the Sunwest Bank Building courtroom. I don't remember what the panel was.

Edward Wallin: Well, that's good. I'd rather be known as an unremarkable member of the panel. *[laughing]* But Jack was just, you know, a wonderful person. And when we started the court a few

months into it, everybody had just worked like crazy, because nobody knew what we were doing; we were all new.

(01:25:06)

Bill Rylaarsdam: Well, you started out with a huge backlog, didn't you?

Edward Wallin: Yeah, and a huge backlog. And one day Jack just took everyone—it might have included their spouses, I don't remember—to a very nice lunch or dinner at the Villa Montana. And he just picked up the check, and that's the kind of guy he was—not the State of California, but Presiding Justice Trotter. And so we all loved him. He hated dealing with personnel matters.

Bill Rylaarsdam: He wasn't really happy in that job.

Edward Wallin: No, I don't think so; he doesn't like dealing with personnel matters. And I do remember . . . I guess it's all right to share this. There was a particularly bad, nonperforming secretary, sort of a floating secretary.

Bill Rylaarsdam: We now call them judicial assistants.

Edward Wallin: Okay, judicial assistant.

Bill Rylaarsdam: Instead of a pay raise we gave them—

Edward Wallin: Gave them a better title. And the librarian were both nonperforming, and I was grousing about that to Jack and Tom, and Sheila kind of stayed away from anything related to administration. She traveled more than the rest of us, really, and so she wasn't really involved in that kind of work at the court. And so Jack—

Bill Rylaarsdam: You started to talk about some personnel matters that Jack was uncomfortable with.

Edward Wallin: Yeah, Sheila wasn't involved in the administration of the court that much; she didn't really care for that either. But it was Jack's job to handle obviously the employment and HR issues. But he hated that, and so these people were . . . their nonperformance got more and more obvious, and finally it got to the point where even Tom, who was very gentle about personnel issues and tried to stay away from them as well, and was complaining to Jack. So one day I remember Jack came in to see me, and he said, "You know, when I was in practice, if somebody wasn't performing, I just didn't like to deal with that; so I would go home early on a Friday and Marty"— referring to Marty Handweiler; his partners were Marty Handweiler and Neil Bahan, great guys, great lawyers—"would handle it."

I said, "Well, that's fine, Jack, but you're the presiding justice and so I think it's up to you to handle it here." And he looked very uncomfortable and he finally said, well, if he left early on Friday, would I take care of it. *[laughing]* And I said, "Jack . . ." I had the same problem with Angelo Palmieri in practice; he always wanted me to do it. I said, "Jack, as far as I'm concerned, I am a soldier on your team and you're in charge; and if that's the mission I'm assigned, I will carry it out." He said, "Oh, great." And so he left early on Friday, and I lightened the payroll by, gently as I could, telling those people not to . . . that we would not be needing them. Gosh, I remember some of our early . . . of course Kim Dunning and Dave Thompson both were judges, and there is Carla Singer, who was much later a staff attorney for Henry Moore, and then—

Bill Rylaarsdam: Franz Miller.

Edward Wallin: Oh, Franz Miller, who served for a dozen years on the court, 10 with me—a brilliant, brilliant fellow. And he is an outstanding judge now in superior court. All staff attorneys of the court, and there's two more whose names have just escaped me, who became judges—one I know in LA.

Bill Rylaarsdam: Davila?

Edward Wallin: No.

Bill Rylaarsdam: No.

Edward Wallin: But just great people. I am very proud of them, and I am very proud of a lot of our summer and school year externs, too, who have done so well in practice.

Bill Rylaarsdam: You know, ever since I've been on the court, we've had law student externs. When did the court start using law student externs?

Edward Wallin: Almost right from the beginning students would come and ask to be hired. The first semester I remember I had picked out six, which was foolish, because it was way too many. But I didn't know what I was doing, and they were all wonderful. I remember five of them were women, and one of them was a man who I think is now a judge, as I think about it—like Glen, last name not recalled, but he might be a judge now, I'm not sure, or a commissioner. And I remember once all these gals were getting together at the restaurant, Claim Jumper Restaurant, on 17th in Tustin, and they wanted me to come there.

(01:29:58)

But it was the same day that Bob Rickles's formal enrobing ceremony was being held out in San Bernardino and I wanted

to go there. He was appointed in San Bernardino the same time the four of us were appointed in Orange County. And so I said well, if I got back in time. And I had been single for a year or so by then, and so they said they wanted me to come. So I got back and I looked at my watch and I thought, well, maybe they're still there; so I walked in, and they were all still waiting for a table. So it was perfect.

But I still remember the comment that's reminiscent of the television show *Charlie's Angels*; because when we got called and we all walked to a table there were some lawyers in the bar there, which was a popular place. I heard one of them mutter to his colleague, "Oh, my gosh, look at that—Wallin's angels." *[laughing]* But all of them have done well. I've lost track of a couple of that initial group. And after that, I had almost always had two in the fall, two in the spring, two in the summer. And they did great work for me.

And something else I am very proud of—I haven't mentioned—in my career. I had one secretary in private practice, the whole time, Marlene Thierbach and now she is remarried and using a different name—I can't remember; Marlene Adams was her maiden name. She had not gone to college when she went to work for me, but she was brilliant and I thought she should go to college.

She was 18 when she became my secretary, and in six months she was the best secretary in my law firm, not even 19 yet, maybe 19. And so I wanted her to go to college, so I made a deal with her that she could go to college, and she had to make up the time, and I wanted her to go to her classes. So she started going to classes and I said that I wanted to see her report card every semester, and that I expected because she was so smart that she would get all A's. Ultimately she became a lawyer; she worked for me for eight years.

Bill Rylaarsdam: She worked for you as a staff attorney?

Edward Wallin: No, she never worked for me as a staff attorney. She wanted to come back and be my secretary at the Court of Appeal after she finished college, and I said, "No, I think you should go to law school." And she went to law school at Loyola and did very well. She practices out in Riverside now. And then the other one is Sandy Williams, who I think you know.

Bill Rylaarsdam: I know Sandy.

Edward Wallin: Who was my secretary for nine years, or nine-and-a-half, maybe, at the Court of Appeal; and she also went ahead and did her college work and then went to law school and has now been practicing for years. She is on the staff of the superior court. And so I have told many people that I was very honored

to have such outstanding persons to work with; but it's also true that after they watched me for a number of years they figured "If he can do it . . ." *[laughing]* And so they became lawyers as well. But that's a special source of pride for me, really.

Bill Rylaarsdam: You were on the Court of Appeal for about 18 years.

Edward Wallin: 16 years and 2 months.

Bill Rylaarsdam: Okay, and then you retired, and you got busy doing ADR work.

Edward Wallin: Right, yeah.

Bill Rylaarsdam: But during your period on the court, of course, you have handled many, many, many cases—thousands of cases. There's one that I worked on with you when I was sitting on assignment on the superior court, I think, because of the death of Henry Moore. We haven't really talked about Henry yet. And that was the baseball case.

Edward Wallin: Yes, the Angels; *Golden West Baseball Club v. City of Anaheim*.

Bill Rylaarsdam: At least I thought that was one of the most interesting cases I have ever—

Edward Wallin: It was a fascinating case. And at the time it was the most expensive civil litigation in the history of Orange County. I think the three parties, which were essentially the Angels, the Rams, and the City of Anaheim, the Rams football team, had spent in combination, I was told, about $25 million in fees. So it was a huge case. It was tried for nearly a year.

Bill Rylaarsdam: The dispute involved who owned certain parts of the Angels parking lot.

Edward Wallin: Right, Gene Autry's version is that he was enticed to bring the Angels down here by a stadium where he was promised 12,000-and-some-odd ground-level parking spaces for his fans.

(01:34:57)

And now, years later, Anaheim and Orange County, particularly the City of Anaheim, were anxious to lure the Rams to Orange County; and they succeeded in part because they promised the Rams that they could develop, literally develop, parts of the parking lot with high-rises and offices, commercial, whatever they wanted. And that would entail the construction of parking ramps for baseball and football fans. Autry did not want that; he believed that would slow down the ingress and egress to the stadium and make his stadium and his baseball team less attractive. So he sued. So that's what *Golden West Baseball*

Club was: the Angels. And so he sued both the city and the Rams.

The city was sort of caught in a dilemma because they had promised one thing to Autry and another thing to the Rams. In fact, Autry testified in the case that the city had sold him the rights and then it sold the rights to Anaheim. He said, "That's like selling the same horse twice, and you can't do that." *[laughing]* And Judge Frank Domenichini had heard this trial and it took forever; it was very complicated. He'd ultimately ruled; and the case was randomly assigned at the court to Justice Henry Moore, whom we haven't talked about, but he joined the court as its fifth justice in the year I don't now recall.

Bill Rylaarsdam: It was sometime in the later '80s.

Edward Wallin: I think so.

Bill Rylaarsdam: Late '80s.

Edward Wallin: Yeah, and Henry was actually ill at the day of his confirmation hearing, but he was there, and then he went on to, he was going on to Santa Barbara or someplace, and on the way he got so ill he wound up going instead to Scripps. He was out for many months, and when he came back, he looked like he was 90 years old; I've never seen anything like that. He looked barely alive, white as a sheet. And the rest of his time at the court he was mostly ill, even though he was there for years.

Bill Rylaarsdam: Then he died in '94.

Edward Wallin: Right, he died in the spring of '94, and Dave Sills told me the news when I got to work one morning, that he had died the previous night; and he told me that I was taking over that case right away and directed that I pick up the entire file, which was 69 doghouses, as I recall. That's an internal term, but it means the binders in which the record is held, which are each about six inches wide.

Bill Rylaarsdam: Something like that; actually, I think the technical term is Princeton files.

Edward Wallin: Oh, Princeton files, okay. We called them doghouses. *[laughing]* Those 69 files were all moved on carts down to my area, and my then staff attorney, now Judge Franz Miller, and I went to work on that case, and we were embarrassed because due to Henry's long, long illness nothing had occurred on the case for well over a year. And Bill, you were named to take Henry's place, and we had to reargue it.

Bill Rylaarsdam: Actually, I was named to take Henry's place, but that was later; during the period that you're talking about, I was sitting on assignment.

Edward Wallin: So you just took his place on the panel.

Bill Rylaarsdam: Right.

Edward Wallin: For that case?

Bill Rylaarsdam: Yes.

Edward Wallin: So we had another argument. And then my goal, certainly shared by Sills, was to get that out as soon as possible, because it was so important and we were so embarrassed as a court. And no one's fault really, but that we hadn't gotten it out sooner, and I remember that as we got into it we realized there was kind of a hole in the decision. Despite Judge Domenichini's fine work, there was one major issue that hadn't quite been completely resolved; but it was a court trial, and there is a section in the code that permits the Court of Appeal to fill in factual findings from the record where there is a gap like this. So we pondered that, and citing that code section, we filled in these key factual items and decided the case. And as soon as that went out, I waited for the bricks to fly, because it had been so hotly litigated. And there was a very mild reaction from counsel, and I have since learned from all counsel in the case that they all thought that we had it about right. So I felt good about that, because it was such a complex case, as you know very well. So I was proud of that, although the ultimate result was that Gene Autry and the baseball team won, and now I'm a season ticket holder. That was many years ago. I've probably been a season ticket holder for a couple, but anyway—

(01:40:00)

Bill Rylaarsdam: I trust they didn't give you a discount either.

Edward Wallin: No, they didn't; they didn't even give me a good seat. *[laughing]* So I went ahead and decided that, and people would jokingly say that I drove the Rams to St. Louis, because they didn't get to do their development. Autry and the Angels got to keep their parking, and a year or two later I think the Rams left town.

And another case I remember was a very controversial local case. Orange County filed bankruptcy in about 1994, I think, and two members of the board of supervisors, Roger Stanton and William Steiner, were charged by the district attorney under a sort of civil or quasi-criminal section with sort of a dereliction of office or gross negligence as supervisors or something. And this is troubling to me, because I think the voters have a perfect right to remove politicians. They're automatically removed if they're convicted of a felony. They're removed if they lose the next election, and they can be removed by being recalled. But this proceeding was the district

attorney, whose budget they passed on, deciding that they did a poor job in stewardship of the county while the issues that led to the bankruptcy were—

Bill Rylaarsdam: And basically second-guessing their decisions.

Edward Wallin: Yeah, their political decisions. And that was very troubling to me. I didn't know either supervisor, but as a matter of political science that was very troubling to me. We studied that and ultimately came out with a decision, which I know Presiding Justice Sills has told me he thought was the finest decision and the most important decision I ever made; and it was the subject of huge write-ups for days in the *Register* and the *Times* and a lot of commentary all over the country, because it sort of gave public officials the ability to be courageous without having their offices threatened by their district attorney, especially in California, that had this procedure.

So I was proud of that. I do remember a case involving a man named David Perez in my very first year, one of my first cases. Mr. Perez was convicted of gang rape, and one of the few times I actually read the whole record rather than the portions that the attorneys called attention to in their briefs. And I didn't feel good about the case. The identification looked very shaky: it was during the night in the dark, on the beach in Huntington Beach. A bunch of fellows knocked . . . a young man and his girlfriend were at the beach, enjoying the evening in August, about two in the morning, and a group of men beat the young man unconscious and horribly raped the young woman.

There were some serious errors in the case, so it was reversed, and I later learned that the district attorney became doubtful about the conviction and put a wire microphone on Mr. Perez and put him out on bail. And he thought he knew who had done it, and it turned out he had just been asleep on the beach a half a mile away; and since he was Hispanic and about the age of the fellows who did it, he was the only person they found, and so the victim unfortunately was positive he was one of them. We didn't have DNA in those days, but so they sent him out and he managed to arrange some sort of encounter with the people that he thought might have done it, whom he knew slightly. And when they saw him they proceeded to regale him with the stories of the whole thing and apologized for his years in jail. "But what did we do, David; if we had come forward we would have gone to prison." And so several of them went to prison, deservedly so, and he was released.

Well, as a judge and as a lover of our legal system, I feel gratified that I had a small part in freeing an innocent man. Probably the worst thing that can happen in our legal system is an innocent man going to jail.

(01:45:00)

Bill Rylaarsdam: Would you say that you have or did develop an overriding principle of jurisprudence? What guided you in making legal decisions?

Edward Wallin: Oh, gosh. I think I always believed in making the most limited decision you needed to make. My opinions, as Art Gilbert, a great, great justice that we both know and brilliant legal scholar and writer . . . He introduced me once when he and I were teaching the rookie class for new appellate justices as the master of the short opinion, because I tended to edit my opinions. So if you collect all of my opinions, even though there are many, they won't form the huge bulk of gibberish that I think is in so many opinions because they're not edited. I always felt that if you say a lot in an opinion when really you don't need to say as much, you wind up saying things that you'll regret down the road when you have another case that presents those issues; and so I believe that opinions should be short. I don't think I had an agenda, and I'd cite for that Bob Gardener, who I sat next to at a dinner or luncheon or something some years after I had been on the Court of Appeal and he said . . . Bob Gardner, the former presiding justice of Division Two.

Bill Rylaarsdam: And a famous opinion writer.

Edward Wallin: A famous opinion writer. *Santa Clara Law Review* has a wonderful article about his opinions. But Bob said, you know, he said, "The lawyers tell me they've figured out Trotter and they figured out Crosby and they figured out Sonenshine, but they can't figure you out, so you must be doing a great job." *[laughing]*

Bill Rylaarsdam: *[Laughing]* Well, a compliment from Bob, who's now deceased.

Edward Wallin: I think the reason is that I am probably . . . I think of myself as very much a liberal or a libertarian on personal and individual rights and somewhat of a pro-business on economic issues.

Bill Rylaarsdam: What do you think those attitudes that you attribute to yourself, to what extent does that affect your decisionmaking or did that affect your decisionmaking?

Edward Wallin: You know, I can't say that it would come into my mind that gee, I'd like a case to come out a certain way. I didn't really approach them that way. But I always believed that everything in our background has some effect on what we do as judges. We try not to make that the case, but the law is not a lifeless, dead instrument. It's a very living, breathing thing. So I think everything that's in our background has some effect. As for myself, I can't really say what that is; I would have to leave that to others, and I think it would be hard to tell in my case precisely because I didn't leave a trail of long, long opinions

where I was pontificating about all kinds of issues that didn't need to be discussed. I think I always believed that procedure was very important, that procedure had to be fair and followed so everyone got a fair opportunity to be heard. I clearly have a strong belief in deciding cases on the merits as opposed to on the pleadings, and the reason why I believe in that is, if a litigant has a dispute and he or she is told that they've lost their case and they never felt they got a chance to be heard, I think a little bit of the respect for the rule of law which is so important to our society is lost. So I would rather that people have a chance to be heard and then lose, because at least they then feel they got a chance to be heard.

So I wasn't that easy to convince. And in my day in the law and motion, especially even at the Court of Appeal, summary judgment was not as frequently granted as it is now. It was easier to have a triable issue than I think it is today. I was okay with that; I still am. And I am old-fashioned, I believe in trials. I believe not in paper warrioring, if that's a word. We have so many paper warriors now who have never tried cases and were terrified if they had to put 12 people in the box and they actually present the case. And I think that's a real loss and over time, probably long after you and I are gone, Bill, could lead to some disrespect for our legal system that I wouldn't want to happen.

(01:49:55)

In Abe Lincoln's time, in southern Illinois, he was a circuit-riding lawyer; and he had, in one book I read, a couple of thousand trials, because they were all short and he would arrive in town with two or three other, four other, lawyers and the judge, horse, and buggy. The word would go out that the judge and the lawyers are in town, including Abe, and anybody that had a dispute would come rushing into town and pick one of the lawyers. And a lawsuit would be written out, served that day, and a day or two later they would have the trial and they would be there for a week or maybe even a month or six weeks, depending on how big the county was; and then they would move on.

Well, in those days then, everybody got their case heard. They tried them all and win or lose, at least you got a chance to be heard. Here at JAMS where I am now, what I have discovered is, especially in mediation, if people feel like I as a now former judicial officer are listening to what they're presenting and hearing their concerns and expressing to them why I think they should settle and so forth, I think they have more respect for the process than if they got a call from their lawyer saying "I just lost the case." And so I guess that my philosophy leans toward hearing on the merits. And I love trials. I'm thrilled to hear that cases are going to trial.

Bill Rylaarsdam: You know, as I did a little research before today, I was struck by the fact that you have relatively few dissents.

Edward Wallin: That's true.

Bill Rylaarsdam: Is that because there was always immediate agreement among you and your colleagues? Or did you work at reaching a consensus? Because compared to some of your colleagues, you have far fewer dissents.

Edward Wallin: That's very true; I know that's a fact. And I think the reason is that the people I worked with—Jack and Tom and myself and you and Harmon Scoville and Dave Sills, at least all of those, and Bill Bedsworth too—we all got along. And I was always anxious to hear what you thought about something, because you might be right; I mean, it's horrible to think I might be wrong. *[laughing]* But I always felt that I wanted to hear what my colleagues had to say; and sometimes I would think, well, you know, they've studied this in great detail, I have respect for them; and I didn't see the point in dissenting just to start trouble. So if I dissented, it was because I really felt strongly and thought that it was worthwhile to do so.

I would spend a lot more time working on the opinion regardless of what jurist was presenting it to make the opinion read well, because one of the things I did believe in very, very strongly and from the outset—and Tom Crosby shared this too, and we pushed this frankly against some initial opposition. . . . It's the practice in many courts for you to either sign or not sign an opinion of a colleague regardless of whether you think it's well written or right in all its particulars or not. And I didn't believe in that; I believed that even though there's an author, that the opinion itself is a collegial opinion from a court of three. And so Tom and I believed that there should be a certain level of writing quality about every opinion that left the court. And so we would rigorously edit everything. Everything.

Sometimes people would have too much work or maybe they didn't have skillful staff assistance on some case, and so . . . And particularly with Justice Moore that led to a lot of red-pen work. They used to make bets on how many red comments I would make on their drafts. But Henry Moore's staff told me several times that initially for months he just hated that. He wanted me to just sign anything he put out.

Bill Rylaarsdam: I tell you, Ed, as a victim of many of your red-pencil marks I was always expecting a D-minus in the upper right hand corner of the—

(01:54:36)

Edward Wallin: *[Laughing]* Oh, no! But do you know what? Several times his attorneys told me that, you know, he finally said, you know, "He drives me nuts, but the opinion does read better"—which is all I was trying to achieve. And he got the credit because his name was on it. But I always believed that there's a . . . coming from a large firm and seeing so many wonderfully well-qualified law firms bringing cases, I always thought that any opinion, any opinion from the court, should be at least as well written as any brief that the court gets, and I don't care which firm it comes from or how outstanding the lawyer is. The court had one product. It's a business that produces only one product, its opinions; nothing else mattered.

So one of the things that I did is I involved myself in every case and used whatever realties I might have as an editor. And it's always a lot easier to edit than it is to create the initial product, and I realized that; and it's also painful to get the comments, and I realized that too. But I only did it because I wanted a good product. And in the end, with a good product I didn't need to agree with every line if I thought the result was correct; I had enough respect for my colleagues to believe that, well, they thought this was right and why shouldn't I go along? So I had to find a really good reason for thinking that I ought to dissent.

I also think that the role of dissents is not as significant at the intermediate appellate court. I think in the Supreme Court it's different, because you might be talking to the Legislature or the Congress or the U.S. Supreme Court and maybe they will see what you've done and want to make a change. But I don't think anyone at that level is paying attention to what we do at the Court of Appeal, even though the lawyers are; and so I just didn't dissent just for the sake of twisting the tail of my colleagues. So you're right, there aren't very many.

Bill Rylaarsdam: Let's change the subject a minute before we wind up. I would like to have you talk a little bit about your family. I know you have four children.

Edward Wallin: I have four children: a daughter who is now 39, a son who is 37, and two boys who are 18 and 16. And their names are Amy, Matt, Andy, and Alex.

Bill Rylaarsdam: Any grandchildren yet?

Edward Wallin: I have four grandsons, no granddaughters. My grandsons range in age from 3 to 12. And my two youngest sons still live with me and go to high school here in El Modena High School; one will be graduating. And my older children . . . One lives in Redlands—my daughter, and she and her husband have a wonderful business that's very, very successful, a manufacturing business out in Banning, actually. And my son, who is 37 and has a 3-year-old son, lives outside of

Charlottesville, Virginia. But he has been in the movie industry, worked for George Lucas, for years and has been a visual effects producer and now is an assistant professor of—

Bill Rylaarsdam: At the University of Virginia?

Edward Wallin: No, at Virginia Commonwealth University, actually; he lives closer to the University of Virginia. And he still does his movie projects on the side, but he's enjoying teaching these very high-end skills that he has. He's worked on many movies; he spent months in New Zealand on *King Kong* and he's worked on all of the *Star Wars* remakes. He's worked on *Twister* and *Jurassic Park* and most recently *Man of the Year*, which was a Robin Williams movie, and dozens of others. And he has a creative ability that's totally beyond anything his father possesses; I have none of that. *[laughing]*

Bill Rylaarsdam: Well, so far you haven't persuaded any of them to go into law school, I gather?

Edward Wallin: No.

Bill Rylaarsdam: How about your younger ones? Are you still working on them?

Edward Wallin: My daughter has mentioned a couple of times—but I don't know that she'll ever do it now—that she thought that maybe someday she'd go back to school and go to law school. She would be excellent. And I don't know what the younger ones are going to do and I don't think they do either. I think they'll do well, but I think they might—

Bill Rylaarsdam: The things they thought they did know they probably would end up doing something different anyway. *[laughing]*

Edward Wallin: I'm absolutely positive that the thought of being a lawyer never crossed my mind when I was their age. It didn't really . . . the thought of going to law school didn't really cross my mind until I was at least a junior in college.

Bill Rylaarsdam: And you didn't have any family members who were lawyers or—

(01:59:44)

Edward Wallin: Not only that, I didn't even know a lawyer. When I made the decision to go to law school in my last year of college, my recollection is that my father took me to lunch with a lawyer he knew who represented a union that he was secretary treasurer of and a number of other unions, and who was a very fine and well-respected lawyer. But unfortunately that lawyer—it later came out when I was a federal prosecutor, my dad sent me the clippings—had probably never filed a tax return and the IRS

caught up with him and he sold out all of his apartment buildings. *[tape interruption]*

David Knight: Let's ask again when you were thinking of going to college.

Edward Wallin: My father took me to lunch with this lawyer in Minneapolis that he knew who was a very nice fellow, and that lawyer was later indicted and fled the nation because Canada didn't extradite for income tax offenses. So he moved to Thunder Bay, Ontario, and retired and he never returned. I'm sure he's dead by now. *[laughing]* But that was the only lawyer I had even met when I started law school.

Bill Rylaarsdam: Okay, let's wind this up. But do you have any words of wisdom to offer to other judges, be they trial court judges or appellate judges, or to lawyers?

Edward Wallin: Well, Leonard Goldstein told me right when I became a judge—Leonard was a longtime superior court judge here—that to remember from the first day you become a judge you are in fact equal to every other member of the court, and you should be perfectly willing to enter into the discussion and debate and make the decisions. It's not as if you're a junior member and you look to your colleagues for guidance on how to decide cases; you may get some help from them on how to organize a staff and how to manage your cases. But I thought that was good advice, that every judge is the same, the pay is the same.

And as far as lawyers, I think a lot of it is successful lawyers seem to me to be people with a lot of personal confidence—and I don't mean arrogance, I mean confidence. Confidence means that you can recognize the merit and the other side's position or the other side's arguments and can find a way to compromise and achieve a good and a fair result for your client, and that the people who don't do as well in our business are often people who just adamantly refuse to recognize the abilities or the arguments that others have. I never wanted to be that sort of person.

I might mention too, that something I was really proud of I just never thought of mentioning. Both Jennifer Keller, who worked for me a staff lawyer for a number of years, and Franz Miller, who worked for me for more than a decade, became presidents of the bar association in consecutive years of the Orange County bar. I was very proud of that. And my proudest personal achievement is unquestionably getting the Franklin G. West Award from the Orange County bar, a lifetime achievement award. Every time I think about that—I still keep it in a prominent place at home—it just humbles me so much to be recognized in this outstanding place, one of the premier places for lawyers, I think, in America because of our tremendous economy here in Orange County. So I have always been proud of that and proud to be here. I have missed being

in Minnesota, where most of my relatives were. I visited often, but it's too cold there for me.

Bill Rylaarsdam: You have not regretted your move to Southern California.

Edward Wallin: No. I am now married for the third and I trust and hope the final time, and I've been here at JAMS as a panelist; and soon after I started a bunch of us bought the company. So there is now about 70 some people. We're organized kind of like a law firm. And I enjoy this; I enjoyed settlement conferences as a judge.

Bill Rylaarsdam: I know you did; you were very good at it. In fact, you were the best settlement conference judge on our court.

Edward Wallin: Oh, thank you. I trained Bob Wolfe, who now does that at the court and I understand does very well. I remember when we decided to have that program where we would have a senior lawyer like Bob involved, and so I was supposed to train Bob. So I said, "Well, Bob, I can't teach you how to do what I do; you can watch a little bit." But the first day, we were to operate separately.

(02:04:57)

I said, "Here is what I want you to do. If you settle your case, great; if you don't, before you let them go home I want you to come and see me and we will decide whether there is anything to do." So on the very first day, he came to see me; he said there was no hope, the parties were not moving, making no progress. "Tell me what the case was about." And I think my reaction was "Oh, for heaven sake," because it seemed like something they'd want to settle. And so I said, "Well, keep them for a few minutes." And I sent the folks I had to lunch and I went down there; and in about 15 minutes I got the two sides to cross in their offers and settle the case.

Bob and Tom Crosby had a student extern, who was also watching and working with Bob, who happened to be from the University of Minnesota—I remember that; I don't remember her name—they were just stunned. And for weeks, anybody that would listen, Bob would tell that story. *[laughing]* And you know Bob; he's a delightful guy.

Bill Rylaarsdam: Well, I'm sure as a result of your skills in that area that you are in rather high demand here at JAMS.

Edward Wallin: I do keep very busy here and every kind of case imaginable.

Bill Rylaarsdam: Do you do mostly mediations or mostly arbitrations?

Edward Wallin: Mostly mediations, but arbitrations tend to take longer. So even if you do 80 percent mediations, it's probably 60 percent of

your time, as arbitrations can take weeks and almost always take at least several days.

Bill Rylaarsdam: Okay. Anything else that you think would be good for the world to know that I have not asked you about?

Edward Wallin: I don't think so. Why don't we stop for a minute and just talk about that—see if we can think of anything else?

Bill Rylaarsdam: Okay. We're coming to the end of this proceeding here and would just like to hear if you have any thoughts about the future of the courts, the future of our legal system—where are we heading?

Edward Wallin: Well, I think I feel positive about it in most respects. I think that the courts have learned a great deal on how to be more efficient. And Bill, the best example I can think of is the switch from master calendar to individual calendaring in our trial courts, which I personally thought was a mistake when it occurred, but of course I was wrong. It was something that has actually resulted in many more cases being moved through the system with a relatively similar number of personnel.

I think I'm a little concerned that what I do now at JAMS—in mediating and arbitrating so many major cases—may have moved so many legally significant cases that will not now be in the system and therefore will not contribute to the development of the law in a way that perhaps they should. So if I were creating a perfect legal system, we would just be spending more money on it; spending more money on our judges and having more courts so that people who had major disputes would not feel that they needed to come to an organization like the one I'm part of, and they would instead keep their disputes in the courts where they ought to be. I'm also a bit concerned about the small number of lawyers who are still getting significant trial experience.

Bill Rylaarsdam: Smaller.

Edward Wallin: Smaller all the time.

Bill Rylaarsdam: Yeah, yeah.

Edward Wallin: I saw a number, how few federal trials, federal civil jury trials, there were nationwide in a recent year where someone had counted them up. The number was shockingly low, because federal judges are becoming more case managers than trial judges as well, and I do think that a lot is lost. I fear that in the next generation, there won't be any trial lawyers. The only exception is probably going to be the training you can get in the criminal law, which I know you did some criminal cases as a young lawyer as well.

Bill Rylaarsdam: Not very many.

Edward Wallin: But that gave you a chance to experience Charlie Carr.

Bill Rylaarsdam: That's right.

Edward Wallin: To get to do one of these, and you . . . I know that story. *[laughing]*

Bill Rylaarsdam: *[Laughing]* You remember my experience with Charlie Carr.

Edward Wallin: I certainly do. *[laughing]* So my concerns are more that we need to do something to create more opportunities for people to become better at trials.

(02:09:58)

Eventually we are going to have a bench where the bench officers won't have had much trial experience. That isn't healthy; that part concerns me. But in terms of their quality, the quality of their education, I think today's lawyers and judges are better than ever, and I would wish as a society we committed more to our legal system.

I am a little bit unhappy with the kind of extreme partisanship that too often gets involved in especially our federal appointment process. And as a former federal prosecutor, I am frankly almost horrified by the current controversy that's in the news lately over the Attorney General and the replacement of U.S. attorneys, which is alleged to have been for political purposes.

When I was in the U.S. Attorney's Office I served half the time under a Democrat and a Democratic president and half the time under a Republican. And under both, the office was not political at all. In fact, I once had a case pending that I was in handling a grand jury investigation. That involved a company where the late Republican Senator George Murphy had been a vice-president. And he was being excoriated in the media in that particular campaign, because ever since he had left them and while he was in the Senate, he had kept his company credit card, and they were honoring it for a sizable amount of money every year.

Today that would be probably be illegal. In those days it was just bad politics. And I don't think he did anything bad, necessarily, but it just looked bad. But we were investigating that same company for a totally unrelated mail fraud argument, which ultimately we didn't prosecute. But I remember going to Matt Byrne and saying, "You know, it would be unfair to the senator if anything about this leaked out or we kept nosing around with this right now, because this totally doesn't involve him or even his tenure at the company." And Matt agreed. So

we laid the investigation aside for six weeks or so and then ultimately finished it up and concluded it shouldn't be prosecuted.

Today they would probably want to leak it out, and that offends me. I remember that Matt Byrne was retained for a number of months as the U.S. attorney by the next administration, even though it's always been the practice of Presidents to replace every U.S. attorney when a new President takes office. And I think that's perfectly fine.

But Matt was kept on because the first candidate that the Republicans were planning to appoint, the FBI investigation uncovered that everyone agreed he was just a terrible lawyer, just terrible; and so they didn't want to name a terrible lawyer, so they didn't name him.

The second one that they were thinking of appointing, it turned out, was a very active member of swingers clubs in the San Fernando Valley, and they didn't want to appoint him either.

And so when they finally got around to appointing someone, he was a tax lawyer with no criminal or civil trial experience of any kind, but he was a very straight and honest guy. We formed a good relationship; I was the only non-chief or assistant chief of an office section. I was always invited to the management group meetings, which would be held at a big table, like a jury table, in his office. I'd sit down at the end as quietly as I could and was very honored to be there as a 26- or 27-year-old kid at that point.

I know that when Byrne was still the U.S. attorney, there was a . . . he had hired one of the fellows to . . . hired a young lawyer to become an assistant U.S. attorney, and he got a call from the Department of Justice saying, "Well, we can't process his paperwork and start a security clearance because he didn't tell us what party he is."

Byrne never asked, so he didn't know; he honestly didn't know. So he called the guy up, who was offended to be asked, but he said, "Well, I'm a Republican." So Byrne could call back and say he is a Republican. But I have to tell you that that only happened once. That was very early in the Nixon administration and that soon they realized that wasn't something they would ask, and so it never happened again. And I'm positive that both Republicans and Democrats were hired by Republicans or Democrats, and that's the way we were. We did everything we could to be nonpolitical, and so I have always been very proud of my service as a federal prosecutor in part because of that.

(02:15:05)

And so I was almost sick to read about some of this, if it turns out to be true. I'm willing to let the facts be developed, but I'm a little concerned about that. I don't think it's right to base decisions on politics. Regardless of what party people are, what their political beliefs are, some people do bad things and they should be removed from office or go to jail for them. Right now, I can think of people in both parties who either have gone to jail or maybe ought to for things that I've heard about.

I'm also proud of the fact that in our legal system, here in California, it's totally honest. If somebody asked me during all my years as a judge to fix a parking ticket, I wouldn't know how I could go about doing that, nor would I.

Bill Rylaarsdam: But when people ask me to do that, I always say, "I only fix felonies." *[laughing]*

Edward Wallin: *[Laughing]* Well, I remember at the Court of Appeal, a fellow who was doing some painting, just chatting with me one day, and he said, say, he wondered if I could help him out. He had a ticket; I forget whether it was a parking ticket or a speeding ticket or something. He showed it to me and I looked to see what the fine was, and I said, "Yeah, I can fix that for you."

Bill Rylaarsdam: Just give me the money.

Edward Wallin: "Give me the money." He said, "Well, that's what it says already." And I said, "I know." But I said, "You're busy, but I could use the walk at lunch some day this week; I can walk from the Court of Appeal on Spurgeon over to the municipal court in those days and pay the ticket for you and you won't have to take time off from work." I said, "But that's the best I can do." *[laughing]*

And you know, Bill, you and I have certainly read about things that happen in places like Chicago or Texas or Alabama that never happen here, and I hope that the succeeding generation of lawyers and judges, generations, can maintain that about our state. That is very important to me and certainly to you, I know.

And I'm saying, since you're here, I have always enjoyed you as a colleague, and I'm very honored that you took the time today to do this with me; thank you.

Bill Rylaarsdam: Well, that's mutual. Okay, thank you, Ed, I think we've come to the end of the proceedings. I'm hungry. *[laughing]*

Edward Wallin: *[Laughing]* Yeah, let's go eat.

Duration: 138 minutes
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