David Knight: . . . level on your microphone. Give me your name, spell your last name, and your title, or your former title when you were an active judge. Any time you're ready.

Gerald Brown: My name is Gerald Brown, and the title that I finished with at the court for over 20 years was the Presiding Justice of the Court of Appeal. First I was for the entire district, and then when the divisions were created, I became the Presiding Justice for Division One.

David Knight: Of District Four.

Gerald Brown: Of District Four, indeed. Yes.

David Knight: All right. Judge, my first question to you: From your personal experience, what is one of the significant cases or opinions that had an impact on the citizens of this state?

Gerald Brown: Well, as I read it, it was on the judicial system. And I changed my case that I had in mind that was very helpful for all of the people of California, which I will mention later on.

David Knight: Certainly.

Gerald Brown: But now I want to mention something that I figure was of significance to the judicial system. As time went on in my over 20 years on the Court of Appeal, I became more and more interested in writs. And we had had – in the first two years of my being on the court – a particular writ that came to the court one day when I was here alone. I was the low man on the totem pole, and the normal thing when a writ came, it went to the presiding justice first and then the next person in line, and I was last. But this one came to me because I was the only one here, and I had made a recommendation that it be . . . that we take it under advisement and do something about it. And I wrote down four reasons why we ought to, and then it waited for the other two judges to return, and the presiding justice came to me and said that, "We two – Judge Kaufman and I – think that the writ should be denied, and would you like to change your thought?" And I said very gently to him that, well, leave it as it is and we'll see what happens. And the Supreme Court took it over, and in due time granted the writ. It involved a hospital, and it wanted to sell bonds, and they had been set. And then I saw the lawyer – long after jurisdiction was over and so I could speak to him about it – who had brought the writ, and I said how pleased he must be, and he said it was a hollow victory because time had elapsed on all the things that were required. And it just made me feel bad for some years to think that here we were . . . the judicial system wasn't able to respond.

And later on, then – and it was in the latter seventies, I having come to the court in 1963 – in the latter seventies I 3:53

developed a system where instead of granting an alternative writ, we would ask the attorneys to just forget the word "alternative" and concentrate on "peremptory." Ask for a peremptory writ, and give all of the necessary notices so people could appear, and no one would be deprived of making an appearance in the case and letting us know what their views were. And then we could handle the case and get it done with dispatch, rather than having to send out notice and hold a hearing in court, and then the court take it under advisement and have 90 days – or 60 days, whatever – to file an opinion on it. Get it out with dispatch.

And the case of *United Nuclear Corporation v. Superior Court* – and it happens to be on the other side, the Respondent was the General Atomic Company – in that case the petition was presented to the court on December the 8th requesting a peremptory writ, and then on the . . . December 16th, just 8 days later, we wrote the opinion. So there it *was* handled with dispatch. And although it doesn't say so in the opinion – it's a very short opinion – there was a third of a billion dollars at stake in the case. And I am told by the Clerk of the Court now that people were coming by the court in droves to get copies of this opinion and continued to do so for some time. And it is in 113 Cal.App.3d at page 359. So it was with great satisfaction to me that we finally were able to devise a system where writs could be handled with dispatch, and you would not have the situation of justice delayed is justice denied.

David Knight: Thanks a lot. Thank you. In your view, what is the benefit of the Courts of Appeal to the people of California?

Gerald Brown: Without the Courts of Appeal in the State of California, the judicial system would be a disaster. In 1965, when I had become the presiding justice, I had lunch with Louis Burke, who had been a presiding justice on the Court of Appeal in one of the divisions in Los Angeles, and he was now on the Supreme Court. And we were in Sacramento, having lunch together with Gordon Files. And he said the Supreme Court takes over about 4 percent of the cases on appeal. The balance of them – 96 percent - are handled by the Courts of Appeal. And the Supreme Court has seven people on it; they have been able to expand their work. And at that time, each of the justices on the court had four research attorneys. The presiding justice had more because he or she – at that time it was he, in 1965 that would have been Traynor – had central staff and more people to assist in getting the work out. And no additional court members had been made to the Supreme Court, nor had they on the United States Supreme Court been more than the nine. But there have been additional people put on the Courts of Appeal. I think maybe today there's something – 120 to 130 judges on the Courts of Appeal. And I remember in the latter seventies there were 79, and I remember it for one particular reason: One time meeting with the Chief Justice, Rose 9:18

Elizabeth Bird, the presiding justices of the courts and possibly others, associate justices as well – I remember it was a fairly large meeting – and she said the Legislature, which has had to be very stingy in contributions to all the parts of government, had allowed for eight more research attorneys for the Courts of Appeal. And back in about 1959, the Courts of Appeal got their first research attorneys for each judge. Up until that time, the judges had to do all of the work themselves. And here was the chance to get eight more, to be distributed among 79 judges on the Courts of Appeal. And she said, "All of those who are interested in having some of these judges, write me a letter and say so." I knew at that particular time her mind had been made up and she had decided to give four of them to a division in the First District in San Francisco and four to the Second Division. And that continued for two years. They had four. We had five judges in this division who were sitting on our court. And one time in . . . I think it was in July, it was either '79 or '80, the Chief Justice called and she said, "I am sending you five of the eight research attorneys, starting in . . . and you can start in September." And so as soon as I hung up from that particular call, I went in right away to see Judge Cologne and then see the other judges on the court to tell 'em about this big news, this good news. And so we worked it out there and figured we could maybe do 15 more cases a month there, with having the assistance of these five people. And they might even do better than that.

And then the following March we got a call from Burt Oliver, who was the financial man under Ralph Gampell, the Administrative Director of the Courts in San Francisco. And he said, "Would you and Judge Cologne come to the Legislature and make a presentation here? We want to get some more judges. And see if you can get 15 more." And so went up there, and it was before a Senate committee, and the very distinguished senator of long standing from Torrance was in charge, and we made our presentation. And we had done the 15 a month. We didn't need the note before us to follow. Both of us – both Judge Cologne and I – were fully familiar with all of the facts, and we told them, and it was very good to have one of our judges there, a former senator there in the Legislature. Everyone were delighted to see him. And when we got through with that meeting, we got the 15. And we felt very happy about that. And I don't . . . This is something you can delete, but I will say it. The senator's very fine, long-established staff of one person named Florence said to me as we walked out together after leaving – all of us walked out, and we all went out the same door – and she said to me, and she was speaking for both Judge Cologne and me, she said, "That was the finest presentation I have ever heard made to a committee here in the Legislature." And so we were happy with the result.

And we continued on. We were given the five judges for the following year, and then suddenly comes March and we 14:31

hear from Burt Oliver, "Will you and Judge Cologne come up to the Legislature and make a presentation here again?" And this time it is the Assembly's judicial committee with Maxine Waters, who was the chairperson. And we . . . our plane is late. When we get there to the Legislature, as we walk in the door of the room, our matter was called. We didn't get to either sit down or to hardly have a word with Ralph Gampell or Burt Oliver. And they said, "See if you can get it up to . . . from the 22 (the 8 plus 15), see if you can get up to about 40." And I said, "We're going for the whole ball of wax." And we went on up, and the two of us made our presentation, and there were 79 judges on the Courts of Appeal. And they increased the number, when we . . . as we stood there, to 79. Probably the greatest satisfaction that I ever felt while a judge on the Court of Appeal, to think that we had been able to get the whole thing. And we had the statistics there, because all of our judges were hard workers and getting the work out. And supervision over the second research attorney. And it all fitted in well. So there's the history of that.

David Knight: Why did you personally choose a career in public service and the law? What was *[inaudible]*?

Gerald Brown: I probably had a very unique situation. I never applied to be a judge, and when I became a judge I never applied to be the presiding justice. But I was a friend of the Governor. And I remember Judge Griffin used to say – he was, when I first came, the Presiding Justice of the Court of Appeal – he said, "The judge is a person who knows the Governor." And Governor Pat Brown, I had had a conversation with him in November 1962, and he said "I . . . ," at the end he says, "I invite you to come to my inauguration." And I thanked him for that but I never really thought I would go, and when I mentioned it to the firm I was with in Riverside – Best, Best & Krieger – they said, "You are going! You go. Not everyone gets an invitation from the Governor."

But later on in the month of December, I got a call from someone who was close to the Governor. And he said, "Judge Shepard has been forced to retire. He has made the decision to retire because of health, and he is retiring." And he said, "I mentioned to the Governor your name." And he said, "His face looked electrified. And he said, 'Remind me to call Gerald Brown in about 10 days.' "

And then on the 5th of January, I was down working at the office on a Saturday morning, two days before the inaugural, and I took a call from the Governor. And he said, "What are you doing at work? What's the idea, on Saturday morning?" And just a very pleasant way to start. And he asked if I was interested, and I told him that I was. And I didn't want to say to him, "Well, I'd like to consider it" or anything like that, but I had not had much time to think about it. But I thought 19:12 .

. . I was then 47 years of age, I had been a trial lawyer for a long time in my practice, I had gone through the tensions and the nervous energy that it takes to be a trial lawyer, and I had – with older lawyers who were, say, in their latter 30s – I had heard them say, "Well, when I get to be 45, I think I will have had enough of trial work." And not everyone can be a Joe Ball, who was a trial lawyer to the end of his life. But . . . So it seemed to me then, at 47, this would be a good time to leave. And the Governor considered the fact that I had . . . was a trial lawyer, I knew what the superior courts were like, and this was an opportunity when he could put someone just directly from the practice who knew the background of lawyers more recently than having, say, been on the superior court and would consider, amongst other things, the lawyer's view more. Why, at least that was one of the things that he mentioned. But he said at the end of the conversation that, "Well, don't sell your law books yet. Don't close the office yet" because there were other things that needed to be done. But he said, "You're coming to my inaugural on Monday, aren't you?" And I said yes, and he said, "Well, come in and see me."

So I did that the morning of his inauguration, and we had a visit for half an hour, and then he had to do something. He says, "Come back in 45 minutes or so, and we'll talk more." But even then, he did a lot . . . he did all of his own research. People were called that I talked to, or who called me, and said there on that very Saturday, in the afternoon, he had called several people to inquire about me. And so he worked hard on that.

But imagine – that was on the 5th of January, and when you think of the long time that it takes now before the ball is started to roll and the appointment is made, he called and made the appointment on January the 21st. So that was just 16 days, I think, something like that – two days more than two weeks. And that was enough for me, by the way. And so I didn't really have to go through it too much, except I was kind of glad to switch.

And I want this to be taken in the proper way: the work here was an awful lot easier than it was to practice law, because it seems to me like I was all the time working on 14-hour days. And here it would be . . . wouldn't have to do that.

David Knight: Okay. Just briefly, because I've got another appointment next . . . .

Gerald Brown: Yes.

David Knight: My question is a personal anecdote. And again I'm looking for a fairly brief summation of just a recollection you have from your years on the bench of something that stood out as either 23:10

significant, or maybe it was humorous, or a personality thing, what have you.

Gerald Brown: Yes. Thanks to the suggestion of some friends that Olive and I had before we came here from living in Riverside . . . . We knew a couple here – George and Mary Jessup – in our church, and the Jessups were well known in the jewelry shop field here. They suggested one time when I had been coming down to work from Riverside each week, till school . . . starting in March – I first came to work I think about March the 4th of 1963 – the Jessups suggested in May that we live in their home in the Presidio area for the weekend when they went to their cabin in Julian. And when they came home Sunday night, and Olive was about to drive home to Riverside with the children, Mary spoke about how wonderful it was to live in the hub of the city rather than out in the suburbs and have to drive in. And this was the hub. And that impressed us tremendously, and we liked the Presidio area, and we settled in Mission Hills and rented for two years.

And I no sooner started driving to work on Fort Stockton [?] Avenue, and I noticed very soon a man come out the front door of his home – George Kobelin, the Clerk of the Court! So I stopped, and he always went by bus down to the court. And it was three miles, and I picked him up there in March 1963 – no, starting in July, when the family had moved in. And George retired in 1968, so five years later it was almost every day I took him back and forth. We had a lot of time to tell stories and so forth.

And he told me how it was in the days when the court was a circuit court and the Court of Appeal, which had started in 1929, they met for the summer months (May, June, July, and August) in San Diego. In San Bernardino, they started in September, October, November, December. And then in Fresno, January, February, March, and April. And it was their policy of getting all of the opinions written before they left. Say you were in your fourth month, and you had . . . you were just about to finish your time in either Fresno or San Bernardino or San Diego, they would be sure to get their work finished. He said, "We were in Fresno one time and had gotten all of the cases filed, and then that afternoon we went out to play golf. And Judge Marks was there with us, and Judge Barnard, who was the presiding justice," and he said, "Someone came rushing out on the golf course and said that Judge Marks had an urgent call. And he grumbled a little bit and left, and they waited for him, and finally he came back and he said, 'Well, it was a lawyer, and he said he wanted to know what the result was in such-and-such a case that had been filed.' And Judge Marks told him, 'Well, read the opinion. Read the opinion.' And the lawyer's reply to him was, 'I *did* read the opinion. And I'm still searching to find the result.' " And of course that 28:16

displeased Judge Marks even more. But that was one of the stories that George Kobelin told me about.

Many said our court was founded there at the time of the Depression – 1929, the Fourth District started to do business. And he said when Judge Barnard became the presiding justice, he was just always so careful on the telephone calls that he would make long distance. And in those days they, as I can so easily remember, when you called long distance you got three minutes. You paid for three minutes, no matter whether you needed it all. And I can recall once when I was going to law school in New Haven, at Christmas time I called home to my family and I told the operator, "Now, interrupt me at the end of the three minutes," 'cause I didn't want to . . . I could tell . . . I couldn't afford not to spend more than three minutes to get my message of what I had in mind to do in coming home to see everyone. And so George Kobelin said, "If Judge Barnard couldn't get his business concluded in the three minutes and still didn't have the answer, nevertheless he hung up." That was that he was so careful in seeing to it that nothing more was spent than that.

Now I think probably I've used up enough time. I have other things to say, but I would mention when you asked about a personal . . . about a case which may have helped very much on the people of California. At the end of my first year, I filed the case of *Tischauser v. City of Newport Beach* and . . .

David Knight: Judge . . .

Gerald Brown: Yes, I'm just going to give you the citation . . . .

David Knight: Great.

Gerald Brown: And that is 225 Cal.App.2d at page 138, where we saved the lands at the sea for the people of California when a landowner – nine landowners – wanted to take that land all for themselves on the island of Balboa in Newport Beach. And I believe that case was of great assistance, so that all along the state at the sea there are places that remained open so that the public can have access. All right.

David Knight: Great. I always wondered where the coastal access law came from.

Gerald Brown: Yes.

Duration: 32 minutes
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