Laurence Rubin: We are here in the Court of Appeal Chambers for the Second District as part of the court's Legacy Project. Today, June 19, 2007, we have the pleasure of having two Justice Hastings, both of whom now have retired. On the right is Justice James Hastings, and on the left is Justice Gary Hastings, his son. And Gary will be doing the interview today.

I am ready with my tape right now, so anytime you're ready we can begin.

Gary Hastings: I don't mean to embarrass you with this, but please give us your date of birth and place of birth.

James Hastings: November 17, 1917.

Gary Hasting: And where were you born?

James Hasting: Here in Los Angeles, California, a rare native.

Gary Hastings: And your father and mother were?

James Hastings Okay, my dad was an attorney at the time. He had his own practice in Los Angeles, a very small firm, just the two of them. And my mother was a coloratura soprano, a very fine singer, and she was singing at the First Church of Christ Scientist as the soloist—that's what they have at the Christian Science religion, at their services. And my father was the reader, and that's where they met. And luckily I'm the offspring of their meeting.

Gary Hastings: The first one, correct.

James Hasting: I was the first one.

Gary Hastings: Brothers and sisters?

James Hastings: I have a sister seven years younger, Jean, and a brother 10 years, younger, Alan, but unfortunately Alan passed away about 20 years ago.

Gary Hastings: And your father, my grandfather, was a lawyer at the time you were born. Where did he attend law school?

James Hastings: Dad attended USC Law back in the days when there was a downtown. He was number two in his class, and because of that he was asked to be the clerk of the Legislature in Sacramento. The Legislature was just opening up at that particular year. So although he was a senior he took that job rather than graduate, and he went up to Sacramento and had a year or two with them.

Gary Hastings: He took the bar exam without ever graduating from law school, if I remember.

James Hastings: That's correct. He took an oral exam in those days; 1912 was his class.

Gary Hastings: Your grandfather was also a lawyer, wasn't he?

James Hastings: My grandfather was quite interesting. He was primarily a dentist but he loved the law, so he took the courses in law and became a lawyer. But he was also from the Deep South, where my father was, in Jonesboro, Arkansas; he was the first Republican mayor after the Civil War in the Deep South.

Gary Hastings: Now how was growing up in Los Angeles in the first 10, 15 years of your life? What was that like?

James Hastings: I went to all of the basic L.A. schools; Los Angeles High, which was, I thought, just a great school. Because my dad had gone to SC and was a loyal Trojan, he of course wanted me to go to USC, and that's where I went. L.A. in those days was quite different than it is now.

Gary Hastings: What were the things you enjoyed doing as a youngster up until, say, before you went to college?

James Hastings: Well, I was a swimmer and at L.A. High I played water polo and I was on the swimming team. Dad had been quite successful as a lawyer and the Depression hit, and everybody took a beating then. As a matter of fact, quickly—he had, along with others before the Depression, had purchased 40 acres on Wilshire Boulevard. And if he had been able to hang onto that I would not have had to have gone to work during the Depression. But he couldn't hang onto it; it was foreclosed. And along with others, I started off doing a lot of work.

Dad had clients who owned some restaurants; I became busboys every summer, and until I went to college I worked every year getting my college money to go to college.

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Gary Hastings: At one point in time, if I recall correctly, you were a lifeguard over at Catalina.

James Hastings: I was a lifeguard at Catalina during one of my college years, that's correct. But I also was head of the waterfront at the private school over there.

Gary Hastings: Is that where you learned to enjoy scuba diving?

James Hastings: As far as I know I was the first diver in California who had a mask that would cover your eyes. I read in a magazine that Japan had developed a mask and I sent away for it by mail. I got the mask, and I put it on, and I started diving over at Catalina with that mask. And the people were quite surprised to see what I could do with it.

Gary Hastings: At one point in time you had an encounter with a moray eel, if I recall correctly.

James Hastings: Oh, yeah. *[laughing]* I had a moray eel wrap around my leg once, and I think I could have broken all school records in the 100-yard dash getting away from that.

Gary Hastings: *[Laughing]* And how did the Great Depression affect you overall?

James Hastings: Let me say this. I'm very appreciative of being able to have my son interview me here, and of course I'm very proud of the fact that he became a judge and a justice on the Court of Appeal. One of my theories was that because I had to work my way through SC, which I did, that it would be good for them to do the same thing. I would help them with the tuition, but I felt that as far as their spending money and their fraternity money, their gasoline, that they should work enough in order to appreciate what work did for them. So I guess, as you would say, Gary, you know how I sort of rubbed that in. *[laughing]*

Gary Hastings: *[Laughing]* And you started USC at what year?

James Hastings: I started at USC in 1936 and graduated in 1940.

Gary Hastings: You met some people at USC that have gone on to become lifelong friends; two of them I'm thinking about in particular, Joe Wapner and Gordy Wright, why don't you give us a little background.

James Hastings: Well, I'm going to tell you a story about Judge Joe Wapner a little later in this. But I first met Joe Wapner when we were both undergraduates at USC. He was the president of Interfraternity Council; I was a Trojan Knight. We both thought that we were BMOCs; I'm not sure we were, but that's how we got to be good friends. So my knowledge and friendship with Joe Wapner goes back to 1938. The story about the other person you're asking about, Gordy Wright, I'll tell you about a little later.

Gary Hastings: Okay. And when did you start thinking about a career in law?

James Hastings: I had always wanted it, but when I went to college, the war was right over the horizon. And I knew that I would be called in the war before I could really do much about it, so I never seriously considered going to law school until I got through the war. And then when I got through the war, I realized I could go to law school with the help of the GI Bill, which was great. And I was married then, and that's really when I gave serious attention to going to law school.

Laurence Rubin: Gary, before we leave undergraduate, what was campus life like at USC in the late '30s early '40s? Howard Jones was the football coach then.

James Hastings: It was wonderful, of course. I don't think that you could be a SC graduate and not say that it's probably the four best years of your life. I was in a fraternity; it was a good fraternity. I would say that . . . we had the captain of the football team; we had the top quarterback on the team, Amby Schindler, who was a roommate of mine, who is still a very close friend of mine. Amby is still alive. Amby, as you know, was voted

the outstanding most valuable player in the 1939 Rose Bowl game against Tennessee.

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Tennessee had never been scored upon, but Amby in that game scored the two touchdowns to beat them 14 to nothing.

But anyway, going back to your question, did I have a good time at SC, most people thought it was pretty much a country club back in those days. Well, maybe that's true, but we also got a good education out of it. They taught us well, and I'll have to say, I agree that it's probably the four best years of my life.

Gary Hastings: You also played water polo at USC.

James Hastings: I was on the water polo team, made three letters.

Gary Hastings: Were you an All-American?

James Hastings: Well, they didn't have that in those days, but I did lead the conference in goals scored in my junior year.

Gary Hastings: And you were thinking about possibly trying out for the Olympic team, weren't you?

James Hastings: Okay, in 1940, the Olympics were going to be in Japan, and the United States Olympic team for the previous three Olympics—remember, they came along every four years, so I'm talking about that period of time—had come from the Los Angeles Athletic Club. They had the water polo team that represented the United States.

I was asked if I would like to come out and practice with them with the hope of making the team and going to the Olympics in 1940. I said yes, I practiced with them, and then the Olympics were canceled because of the war. So that nipped that particular desire in the bud.

Gary Hastings: You graduated in 1940 from USC?

James Hastings: Correct.

Gary Hastings: And you had fought then.

James Hastings: I had been president of my fraternity, and the traveling secretary for the fraternity had visited our house. We had a very good fraternity and he asked if I would like to come back and be traveling secretary for SAE. And this gave me a chance in the war when I couldn't make the go with the team in the Olympics because of the cancellation. I said yes, I would take the job, because it meant that I would travel all over the United States. And I think I visited over 40 universities as a traveling secretary for one year.

Gary Hastings: And you were married what year?

James Hastings: I was married in 1941, June 9, 1941.

Gary Hastings: To whom?

James Hastings: Margaret Hastings was also a USC student. She was one year behind me. She was going with a friend of mine from L.A. High also, by the name of Chuck Johnson, and we put him up for student body president for the year of 1941. Because of my activities on campus, I more or less was his manager to get him elected. During that campaign, I of course saw Margie, who at that time was going with Chuck, and we fell in love and I married her. After I did my one year as traveling secretary, I came home, she graduated, and we were married one week later.

By the way, I think it should be noted Margie was an exceptional gal, because in the year of 1940, her father had been murdered. This was one of the biggest tragic stories that had ever occurred in Los Angeles.

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Her father was principal of South Pasadena High School, which was the top high school in the state. It sent more students to college than any other high school and a lot of it was because of him. He was apparently a very fine person. What happened is that because he was the principal, he was also on the Board of Education for the San Marino-South Pasadena School Board.

They had had to fire the teacher of the local junior high school because he was not doing his job well. This guy was a gun expert. He called a meeting of the board—nobody knew why at the time—but he called a meeting and they met on the campus of the Pasadena-San Marino High School. After they were all seated, he came in and he had a gun, he had a couple of guns, and he killed all of them that were seated there at the table, which I think was four; then he went out and shot the secretary, and then he got in his car and went down to his high school, junior high, where he tried to kill two more.

He permanently injured one, who did not die, but killed another one. I think, as I recall, all told, he killed five different people, including Margie's father. This was really devastating because she was so close to her father. They were not only a father-daughter combination, they were just terrific friends. He was a great USC booster. He went to Northwestern, but he liked private universities. So when he came out here, he sort of was adopted or adopted USC as his school. He always had season tickets. He took Margie and she became a real devoted fan, which is good for me, because I was the same way with our football team.

See, we had the national championship in 1939 with five of my fraternity brothers: Joe Shell, who was the captain of that team, was a fraternity brother of mine; Amby Schindler, who was the quarterback, was the most outstanding player of the game; and we had several

others who were on the first string. So it was pretty close for me to be connected with them—pretty nice, I should say.

Gary Hastings: Okay, well, when did you enlist and go to the OCS?

James Hastings: I think it would have been a year after we were married, which would have been about six months after Pearl Harbor, I was able to get my enlistment in. I received a commission because I had a degree, and they immediately sent me back to Harvard University where the Navy had its communications school. And I was there for six months living in the Yard, Harvard yard, where I learned all about Navy communications, how to handle flashing lights, how to do everything that a communications officer had to do. And I graduated from that naval school and was sent to an old destroyer.

Gary Hastings: That was one of the old four-stackers?

James Hastings: *[Laughing]* It was an old four-stacker.

Gary Hastings: Where were you sent then?

James Hastings: Okay, we had some very interesting duty. There were three of us, three old destroyers, but we had been recommissioned and we had been given all of the latest equipment so that we were in good shape. My first, most interesting duty after we got convoyed ships down in South America was . . . by the way, seeing you're here, Gary, I had finished up a convoy in Recife, Brazil.

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Being a communications officer, I was able to get the first dispatches for our ship. I went ashore and found out that we were going to be sent to New York. I had not yet met you. You were born on the day that my ship sailed out of New Orleans for Brazil, so I had not yet met you. I received a telegram just after we got out of the Mississippi River that you had been born.

So when I found out that we were going to New York on that day in Brazil, I was able to get a telegram off to your mother, that it would be great seeing her at the Commodore Hotel in New York on such and such a date. I couldn't say anything more than that because of restrictions on everything that I knew, but she would understand. And sure enough, when we got into the harbor she was there, and I saw you for the first time.

Gary Hastings: Now, you served in the North Atlantic, if I recall correctly, also?

James Hastings: We had some interesting duty. The U-boats at that time were just tearing apart our convoys. They hit upon the idea of taking the small Kaiser ships and turning them into small aircraft carriers that could handle about maybe 15 planes and that was all. The three of us, the three old destroyers, were assigned to be the plane guard for one of these carriers.

We were the first to get out into the North—well, not quite the North Atlantic—off of the coast of France. The German U-boats would surface at night or in the evening to charge their batteries, and they had no problems about being attacked because nobody could get to them at that time. They were quite surprised because we were able to get there with our airplanes, and we did. On that particular, very first, trip we got 12 submarines, which was unheard of in those days.

Our sister ship . . . let me go, back up, a moment. One of the bombs from the plane had injured a submarine and it could not submerge. So our sister ship, which was closest to the submarine, was sent over to finish it off. They got over there. They tried to hit it with cannon fire but the seas were too heavy, and the captain decided, what the heck. A German submarine was far more important than an old four-stacker destroyer, so he rammed it.

Trouble is, is that when he rammed it, they stuck together, and the bow of the destroyer stuck with the bow of the submarine. Okay, now all of the Germans were pouring out of the conning tower, and our fellow officers and the crewmen were firing at them from above, which was good. So they were able to capture the submarine. Then they backed off, and in backing off, the submarine sank, the destroyer started to sink. And then we got into the action and got over there to get them all saved, and that was pretty rough because we had rough seas; we lost quite a few.

Gary Hastings: Wasn't that a part of a *Life* magazine story?

James Hastings: Yes, that was a big story in *Life* magazine. As a matter of fact, the United States was so hungry for any kind of a victory back in those days over the Germans that this was the first big encounter where we came out ahead.

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Gary Hastings: How long were you stationed in the North Atlantic?

James Hastings: Well, from there, they took our ship, turned it into what they called a fast landing craft, and we landed the Marines in the war in southern France. We came up in that particular invasion and helped to land then.

Gary Hastings: And you ended up your career in the Navy, at least your active career.

James Hastings: After law school I was determined to get out of the Navy, which I did; but after law school, a friend of mine was in Navy intelligence, and he told me about the program they had to recruit officers into Navy intelligence at that time. And it was paying $90 a month to come back in, and I needed that money—being just a young attorney, it looked pretty good. So I went into the Navy Intelligence Reserve, which turned out to be a very good thing because it opened the door for me to some very, very good business and some interesting stories.

Gary Hastings: You ultimately retired at what rank?

James Hastings: Captain force driver.

Gary Hastings: Didn't you also go back and teach at that other little school across town at the end of the war?

James Hastings: Yeah, I taught a couple of years, business law at USC, and then I taught real property law at Southwestern University.

Gary Hastings: You taught navigation at UCLA, didn't you?

James Hastings: You're right. I did teach navigation at UCLA for about seven months.

Gary Hastings: Okay. After the war, you went to work where?

James Hastings: After the war, I went in with my father in his firm.

Gary Hastings: What about Firestone?

James Hastings: Oh, thank you. Yes, I was with Firestone Tire & Rubber Company in their personnel office, assistant personnel director.

Gary Hastings: Did that teach you anything?

James Hastings: Yes. *[laughing]* I think it taught me that I wanted to be my own boss. Because as personnel director, I saw how our president and other senior officers could fire almost at whim anybody that they didn't like. I thought this was no way for me. And so I think, Gary, one of the things that I kept emphasizing to you is be your own boss.

Gary Hastings: So you decided to go to law school. And you showed up, if I recall correctly, on the steps of USC Law School in your uniform to try and sign up. Is that correct?

James Hastings: Yes.

Gary Hastings: And why don't you tell us about that?

James Hastings: Well, I got out of the service in November of 1945, I guess it would be, and I went down to enroll in the SC Law School, and standing there next to me in the line was my friend from undergraduate days, Joseph Wapner, who as you know went on to become very famous as the *People's* judge.

So we studied together along with another person who's a graduate from SC, Gordon Wright, and we had a plan: after each Friday night, we would type up a summary of all of our classes the week before. And we stuck together all though law school.

Gordon went on to become a very fine trial attorney. You know Joe Wapner's story: he became a judge and then became the judge for *People's Court*.

Gary Hastings: You met some people during your law school days that helped mentor you in the future. Who do you recall in that regard?

James Hastings: You're going to have to refresh my memory on that.

Gary Hastings: What about Bob Kingsley?

James Hastings: Oh, well, Bob Kingsley was known as the "hatchet man." Did you go to USC?

Laurence Rubin: I did not, I went to UCLA.

James Hastings: Okay. Bob Kingsley was the "hatchet man" on the law school faculty. He probably flunked more and had more students afraid of him than any other teacher. And he was tough, because Bob Kingsley was a very brilliant man, a very brilliant teacher. Luckily I got through his courses all right. And finally, when I was appointed to the Court of Appeal, Bob had been appointed to the Court of Appeal by Governor Pat Brown because of his knowledge of the law, and he became sort of a mentor to me. I was able to talk to Bob and get a lot of good views on how I should write my opinions. So I had a very fine relationship with Bob after I graduated.

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Gary Hastings: There were also a number of people that I think you met at law school that you knew throughout the years that helped your career. And I'm thinking of William French Smith, and the Lucas brothers, and Justice Eagleson. Could you talk a little bit about them?

James Hastings: Well, first of all, I think we should probably go back and talk about how it was that I was appointed as both a superior court judge and a Court of Appeal justice.

When Reagan ran for Governor, I did not vote for him. We had somebody running against him by the name of Christopher, who was mayor of San Francisco, and I thought that he would be a good Governor. I couldn't see Reagan at that point, who was well known as a movie actor, but not that well known as a politician and a leader. So I did not vote for Reagan at that point. When Reagan won his election, he had run on a ticket in which he promised, not being an attorney himself, that he would appoint judges by using the Missouri system.

The Missouri system was where there would be a committee of, I think, three laymen, three judges, and three attorneys. This committee would review applicants who wanted to become judges and they would then give to the Governor the names of three that they had picked to be qualified to be judges. The Governor then was required, under the Missouri law, to appoint one of them.

After Reagan was elected, he appointed a committee, headed by Seth Hufstedler, to draft the wording for that law; and I was on that

committee. Why he appointed me to that committee, I never knew. But we drafted up the law, sent it up to Reagan, and he sent it over to the legislators. For some reason or other, they never approved it. I think we know why. I think the legislators felt that maybe if they ever wanted to run for a judgeship, that they might have a hard time getting on that committee's recommendation. And so anyway, it never got out of committee.

So Reagan appointed his own committee, and on that committee were friends of mine, including a good friend, William French Smith, who was a tennis partner of mine. And I think that maybe . . . well, anyway, let me put it this way. While Reagan was Governor, 13 judgeships were opened up by the Legislature.

So I was asked by a friend of mine on that committee if I would accept a judgeship if it was offered to me, and I talked it over with my wife and said yes. So that's how I was appointed to the superior court.

Now on the Court of Appeal, I still to this day don't know how that happened; I had been a judge for just seven months. And I want to tell a quick story.

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I found out that if you're just a new appointee, you might be expected to take the worst cases that were coming out of Division One, which was the division that assigned the cases. My first case was a very, very tough case in which two senior judges had declared mistrials because the attorney for the plaintiff was an old-time attorney who liked to practice as though he were back in the old days; he would object to almost every question, and he would argue. Anyway, he drove them crazy, so they all declared mistrials.

Well, being the junior judge, they sent it to me, and I want to tell you, after I had started trying that case, I had serious doubts as to whether I had been smart in trying to become a judge. It was really tough.

Gary Hastings: Was this a jury trial or a court trial?

James Hastings: This was a jury trial. But his name was Steffes, and he was an old-timer that would object to everything; and then he would even say, "Judge, you can't really rule like that," right in front of the jury. And I think that that was a two-week trial. No less than six times did I have to take him into my chambers and say, "Keep this up and I'm going to have to find you in contempt of court, but I'm not going to let you get a mistrial out of this. We are going to finish this case," which we did.

After it was over—and I hadn't known this—he came into my chambers and he said, "I just want to tell you that I appreciate the way you handled this case." And he says, "I have told my son about you"— and he happened to be in Sacramento and I think on Governor Reagan's staff, which I had no idea about. This might have been some way that my name got in to Reagan to get the elevation. I don't know.

So out of tragedy—or I won't say tragedy—out of a hardship case, it might have been that that was the opening for my appointment. Because I hadn't sought it; it was just out of the blue.

Gary Hastings: Let's go back briefly. You graduated in 1948 from law school. And why don't you tell us what you did after law school—who you went to work with and what you specialized in, that type of thing?

James Hastings: Well, most of my law was in business. My father had a very fine probate practice, and I got into that, and then because of my teachings at Southwestern, where I taught real estate law, I got into real estate practice.

At that time, in my early years, condominiums were just coming into being. And I was in the forefront of drawing a condominium, you might call, rules and regulations, and organizing corporations that would become condominiums.

So I was in the beginning of that, in real property law. And then, in addition to my business law and my estate practice, I became chairman of the board of the Bank of Pasadena, and got into banking law. So that was primarily my practice: real estate law, probate law, corporations and partnerships, and banking law. That was primarily what I was doing.

Gary Hastings: Was this at your father's firm, the firm that had your father's—

James Hastings: Yes.

Gary Hastings: And what was it called when you joined it?

James Hastings: Hastings, Blanchard & Hastings was the name of the firm.

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Gary Hastings: And you were the first or the third Hastings?

James Hastings: Third; my father was the first. My father, by the way, lived to be 104.

Gary Hastings: He practiced until he was almost 100, didn't he?

James Hastings: Yes, he did.

Gary Hastings: And you were also active in the local bar association and the State Bar. Why don't you tell us about what did you did them?

James Hastings: I have to tell you, first of all, about my father there and why I was so active in the State Bar. My father was probably the most ethical person you would ever want to meet, and he had this reputation with the bar in Los Angeles. He was the chairman of the local bar ethics committee for many, many years. He would write the opinions that he would get

from other attorneys as to whether a certain type of action was ethical on their behalf. So he was known as being very, very ethical.

We had a governor back in those days who was crooked as could be. His name was Mayor Shaw. This predates by many, many years your coming into this world. Shaw was finally ousted and a judge who had a very fine reputation for honesty, Judge Bowron, was elected mayor of the city of Los Angeles. He knew about my father's reputation, and he asked my father to head up the zoning board.

Now, the zoning board was where most of their craft was occurring, because these big developers would come in and through the . . . well, you know, just your plain old graft, giving money to the board would get approval for certain areas that could be zoned for commercial work, zoned for different types of residential work, and so forth. This was one of the big areas of graft that was discovered.

So Mayor Bowron asked my father to head up that committee, which he did for several years while he turned the city around. I wanted to tell you that story because that shows how ethical my father was. Because of that, he got me immediately into the ethics committees of the local bar association, and I was on all of the ethics committees. It was one thing. I also was very active in the Junior Barristers, and I put on, as chairman, the Christmas Hijinks. I was on a committee to try and reduce smog in Los Angeles.

Briefly, I did have a lot of extra work on committees for the bar association. Then later on, I think because of my dad's reputation, I was placed, I became chairman of, the committee on the unauthorized practice of law. This was for the state of California—not just local but for the state; and on that committee, we would have to bring in people who are practicing law, corporations that were practicing law, and we would have to give them cease-and-desist orders. And then after that, I was on the State Bar Ethics Committee for two years. And I was told I would be chairman of that committee, except then I was appointed to the superior court.

Gary Hastings: How did you find the change from the practice of law to being a judge? What did you recognize that was different, that was a significant difference for you?

James Hastings: It was completely different. I hadn't given much thought to this, but I think by the time I was appointed a judge, I was ready. Being a small practitioner with lots of irons in the fire could keep you pretty busy, and it was nice to get on a bench and just do your judicial work, which I found most enjoyable.

I would say this: after 22 years of private practice, becoming a judge was a wonderful change. I enjoyed it very much, and I can say that I am very thankful that Governor Reagan appointed me because it did change my life much. I think I'm probably alive today because I became a judge and could enjoy what I was doing so much.

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Gary Hastings: How about the change of income? Was there much of a change in income or an impact?

James Hastings: There was a little drop-off when you became a judge, yes, but not a great deal—because one of the interesting things is that after I was appointed, the Legislature tied their income into the judiciary's income, and all of a sudden we found the judiciary income leaping forward. So I have to admit that after a few years on the bench, I was probably making more money than I would have made if I had stayed in the practice.

Gary Hastings: Your father must have been very proud of you at that time, going on the bench. Do you remember conversations you had with him around that time about this transition?

James Hastings: Yes, he was. He had been offered a judgeship when he was a very young attorney by Governor—I can't think of his name right now. But, as mentioned just earlier, the income wasn't very big at that time and he felt he couldn't take the judgeship, so he turned it down. But he was quite proud when I became a judge and very proud when also Gary became a judge after me.

Gary Hastings: You served in the superior court less than a year. How did you find the transition to the Court of Appeal?

James Hastings: Well, it's quite different, you know, being a trial judge and then a justice on the Court of Appeal, that there is, I think, a big degree of change. As a trial judge, I think you're more concerned because you're an arbitrator. You're making sure that the case is fair, that the parties get to present their case properly. I think you're more of a referee. You are really not that in the Court of Appeal; you're back to the basic law that was taught in law school where you have to do a lot of research, a lot of reasoning.

I think that of the two jobs, if you want to call them jobs, I found the Court of Appeal position much more to my liking because I enjoyed research, I enjoyed writing opinions. You don't really have time to do that type of work at the trial level. I did like the trial level where you're meeting the attorneys, you're meeting the juries, and you're meeting the people. I did miss that when I went up to the Court of Appeal; I missed that a great deal. But in the long run, if you really enjoy law as I did, I think that the place to get your greatest satisfaction is writing legal opinions and knowing that you can be some influence on, hopefully, new law, because we're writing on cases of first impression—at least . . .

See, when I went on the Court of Appeal, we were getting into new areas of law. The no-fault divorce law had just gone into effect and I was receiving all kinds of cases on divorce cases. So I did have a chance to write quite a few cases on the new law. As a matter of fact, let me quickly state that I had not had much criminal law in my

practice. And here I am appointed to the Court of Appeal, and immediately I'm put on the panel for the Manson cases and the Onion Field case.

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So I had to get in and bone up on my law that I had learned in criminal law. By the way, my professor at USC in criminal law had been Kingsley. He was a good professor, so I could go over and talk to him about the Manson cases. I was not the author in them. Chuck Vogel, we had Chuck appointed to come up and handle the Manson cases, rather, because they were so voluminous; we couldn't take one of us to be writing all of the opinions on it. And Chuck came in and did a great job. So I was on those cases, and as I say, I was on the Onion Field case, and I was also on the *Deep Throat* case; all of these three cases I got as soon as I was appointed.

Gary Hastings: Over the course of your career, did you come to enjoy your criminal cases more than you thought or not so much?

James Hastings: I liked criminal cases. I thought that I was able to educate myself enough into criminal law, which you had to do. You have to do it on the Court of Appeal; there's no backing out. You have to learn it, and I did, and I enjoyed it. But it is true that I had done more in the way of civil practice than I had criminal practice.

Gary Hastings: Was there ever a time in your early years on the Court of Appeal that you wished perhaps you'd spent more time as a trial judge—that it would have been to your benefit?

James Hastings: Yes. That's a good question. When I was asked if I would take an appointment to the Court of Appeal by the Governor—this was through his appointment secretary—I said, "Wait a year." I said, "I have worked out with a good classmate, a friend of mine, Judge Caldecott, that I will take his criminal court for a year and he will come over and take my civil court for a year." And we had that all worked out. I said, "If possible, appoint somebody else to the Court of Appeal and let me go over there for a year and have a criminal law background before you appoint me. I wish that had happened. For some reason, they didn't want to wait.

Gary Hastings: When you were appointed to Division Five, which is where the opening was, there was a fairly strong personality who was a presiding justice at that time, Otto Kaus. Can you talk a little about Otto and how you got along with him?

James Hastings: Otto was not only a strong personality, but he was a wonderful person who was very intelligent, very well schooled in the law, and could write beautiful opinions. He took that from his mother. His mother was a famous writer, and she had been the first one to take the memoirs of Catherine of Russia. Catherine, the Great, was it? She had taken her memoirs in Russian and translated it into English, and she also on her own wrote.

(00:55:00)

So Otto was well schooled when it came to writing opinions. Otto Kaus was probably a form of sort of like a Prussian background and could scare a lot of people because until you got to know him, he could be very opinionated about a point of law. Personally, no problem, but when it came to a point of law, if he thought he was right he could spell out the reason he thought he was right. And unless you were sure of your position, he could pretty much convince you that you went along with him. And this scared some of the judges, I was told before I was appointed to the division.

But I had a wonderful relationship with Otto and I never had a problem. He went on up to the Supreme Court, where he was probably one of our better justices. And I loved the eight or nine years I had with him on my particular Court of Appeal.

Gary Hastings: Did you socialize with him?

James Hastings: No. He did not socialize much off the court. No. As a matter of fact, there wasn't really much socializing between any of the justices.

Well, I take that back, I did socialize quite a bit with Justice Stephens.

Gary Hastings: Clarke Stephens?

James Hastings: Clarke Stephens, wonderful person, yes. But I think that most of the justices, even in other divisions, worked hard, probably went home at night, lots of times took their work home with them. I don't think socializing was that big or that important

Gary Hastings: Clarke Stephens came from a well-respected family of judges. What was he like? What was his judicial philosophy?

James Hastings: Clarke was the brother of a federal judge who was well respected. Clarke came from a family that was well known in the judicial circuits. And Clarke was appointed a municipal court judge early in his career, so he had been on the court for a long time when I got there. While he was a Democratic appointee—if you would call it that in those days—appointed by a Democratic judge, and I was appointed by a Republican judge, we saw eye to eye on most cases; a very fine person.

Gary Hastings: The public sometimes looks at it the way you just characterized it: you're appointed by a Democratic Governor or a Republican Governor. When you came onto Division Five, I think there would have been two of you appointed by Republicans and two by Democrats.

James Hastings: Right.

Gary Hastings: Did that seem to make any, have any, impact at all on your relationship?

James Hastings: None whatsoever. I think that's a good thing that could be said about a good division, is that each judge knows that they are there to do only one thing, and that is to analyze the case that they have before them at the time, or the cases—see if the law was correctly applied and look at it from that standpoint and not look at it from any type of a political standpoint.

Gary Hastings: Why don't you tell us about some of your memorable cases? I'm thinking right now about the Alphabet Bomber, Mr. Kurbegovic.

James Hastings: Well, that case I had early in my career, and that's where the jury had found after the trial on the issue that Kurbegovic was competent. Then the trial went on and the jury found him guilty of being the Alphabet Bomber and placing these explosives in the locker.

The judge at the time reversed the jury, saying that I find him to be incompetent and therefore set aside the verdict. Well, I got the opinion, along with my other two counsel—a lot of counsels were on it, by the way. And I found that under the law, he did not have the right to step in as a 13th juror and set aside what had been clearly litigated.

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So I said so in the opinion, that this was an improper decision and that Kurbegovic was guilty as found. Well, the Supreme Court was confused. They didn't quite know how to rule on the case. So they just ordered the case to be retried, and he was found to be competent and was guilty just as he had been in the first case.

Gary Hastings: Didn't you receive some death threats from him?

James Hastings: Not from Kurbegovic. The Onion Field case is where we received some death threats, from the guy who is still in jail, by the way—one of the two who were the defendants in the Onion Field case. One was clearly just sort of a dummy to the other one. The other one was the smart guy; I can't think of his name right now.

Gary Hastings: One of them was Powell.

James Hastings: Powell. Thank you. Powell was the real bad guy. He's still in jail, but he's the one that said that if he ever got out, he would look up all of the judges.

Gary Hastings: One of them just died. I don't know if it was Powell.

James Hastings: That was the other one. That was the other one. Yes.

Gary Hastings: Do you have any other memorable cases you can recall off the top of your head?

James Hastings: Well, do you want me to name some of the cases that I felt were perhaps important?

Gary Hastings: Sure, absolutely.

James Hastings: Well, the case that I was the proudest of, it's called the *Bartling* case. Bartling was competent mentally. He was not comatose, but he was being kept alive by feeding tubes because it was known that he would die if he was not kept alive by feeding tubes. He had three or four very serious illnesses, all of which alone could have killed him. But he had still not reached the final stage, so he kept reaching up and tearing the tubes out himself, trying to stop his life. And the hospital and the doctors would come along and put the tubes back in because at the time, there had been no case where an individual who had the capacity to tell the doctors that he or she wanted no further treatment had been decided up until that time. The only cases that had permitted removal of the tubes that were keeping him alive was when the person was in a comatose stage.

So I ruled in this particular case, along with my two associates, that he had the right as an individual to determine his own treatment, and that they should let the tubes be removed. That case was approved by the Supreme Court. I probably got more requests from all over the world for that opinion than any other case I ever wrote, because it was really one of the first cases on being able to stop all of this tubal keeping-a-person-alive at that point. So, as you know, since then there have been many changes.

Now in the paper the other day, I saw that they were trying to determine whether a person who had AIDS had some kind of an obligation to tell another person that they were having sex with or being in contact with or there was a duty to tell that person.

(01:05:05)

And I was surprised, because over 20 years ago I had a case where a doctor had a serious venereal disease and he didn't tell . . . it wasn't his wife; it was his girlfriend. He didn't tell her that he had this disease. Well, the trial court threw it out, based upon the law at that time—the law being that we're not going to get involved in these social issues between parties who are having sexual intercourse or whatever. And so they dismissed the case.

Well, I wrote an opinion that this is not right, that this is clearly a tort—that if a person knew that he or she had a disease that it could affect the partner, that that was an actionable tort. And I wrote that case with that conclusion. And that was upheld.

Gary Hastings: Getting back to the right to refuse treatment, if I could for a while?

James Hastings: Right.

Gary Hastings: You had mentioned earlier about the fact that your parents had met in church. What impact, if you don't mind sharing, did your religious upbringing have in how you looked at the right-to-refuse-treatment case?

James Hastings: That's a good question. My parents, as you could guess, were Christian Science. They were very fair. They didn't try to force me or spoon-feed me the religion. They realized that I would have to make up my own mind. I did go to Sunday school up until I went to college, then I stopped. Actually, I didn't go to Sunday school from high school on. And I just very frankly did not believe in many of the things that that particular religion believed in.

So I didn't have or carry any religious beliefs into my practice as an attorney or as a judge. So that was no problem. I have always felt that every person has a constitutional right to determine their own decisions in medicine or whatever. So it was easy for me to write that opinion.

Gary Hastings: How about . . . you served with Justice Ashby as well. What do you recall about Herb?

James Hastings: Yes, right. I wanted to tell you, though, one or two other cases. There was also a feeling—not a feeling, but I guess there had been cases where you could not hold our governmental agencies guilty for negligence or gross negligence. And I had a case where the Department of Motor Vehicles had found, and it was on the record, that an 84-year-old man was a danger if he drove his car. They still gave him a driver's license. He went out and jumped a divider and killed four people.

So a lawsuit evolved out of that, and the lower court said, "No, you can't sue a state entity." And I didn't feel that was right. I felt that where you had gross negligence, as I thought this was, to let this guy go out and drive a car after finding out he was a danger to others, superseded any type of what I call "shield" that was given to our state agencies. And I wrote that no, they could sue the State of California and the department, and that was upheld by our Supreme Court. That was another case that I felt was pretty important.

And we had a lot of cases of first importance back in those days, especially in family law, because as I mentioned it had just come into existence, the new law came into existence. But those are some of the cases.

(01:10:10)

Gary Hastings: What about your relationship with Herb Ashby?

James Hastings: Herb was fine. I don't quite know how to . . . let me put it this way, we had a very fine division. We didn't get many dissents in our division, because whenever we would have what would appear to be a difference of opinion, we would have a meeting on it and we would see if we could resolve it. Normally we could resolve our differences so that the opinions will go out with three major majority signatures.

When I first went onto the court, there was a little bit of a problem as to how to assign cases. Let me mention this—that it appeared that sometimes the clerks for the various justices would get a little bit overanxious. That's one way of putting it. They would go down to the clerk's office, let me put it this way, and they would go through the cases and assign to our division; and if they would find a case that they thought they would like, it ended up with their justice. Let's put it that way.

So that when I got there, they realized that this was not the way to do business. And we set forth in writing, so to speak, a rule that from that point on—after I got there, because it had not been done before I got there—that when the clerk would put out the cases for our division, they would go 1, 2, 3, 4, 1, 2, 3, 4, and they would all go that way regardless of how they fell, so that no one justice was getting a case that might be a little more sensational than another case or more down the experience or expertise area that that judge felt he or she had.

So we did change the rule at that time, and it worked out very well. We had a great division. I really think that our division back in those days was considered one of the top divisions in the state.

Gary Hastings: Dave Eagleson joined the division. Now you knew him from before?

James Hastings: I knew Dave Eagleson; he was a superior court judge.

Gary Hastings: What was it like with him as a colleague?

James Hastings: Great. Dave was a wonderful guy, very smart, very easy to get along with. Otto went up to the Supreme Court from our division, Dave Eagleson went up to the Supreme Court—both from our division, and I can say that I enjoyed working with both of them and we always remained good friends.

Gary Hastings: Your presiding justice the latter part of your career was Bob Feinerman.

James Hastings: Bob Feinerman was, and we were good friends. We got along well together. No problem about dissents there; we would talk it out if we had a problem. And I have been very fortunate in having a good division to work with.

Gary Hastings: What do you think the most important trait would be for having a smooth-running division?

James Hastings: The first thing is to swallow your ego. If you've got a lot of ego, don't try to bring your ego in with three other guys who are probably just as smart as you are and maybe even smarter. Recognize that you're all there to do the same job. Be considerate in your relationship with your other justices.

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If you're not, it's not going to be too happy working in just a four-judge division, because I have known divisions where personalities would take over and I think would infringe on the harmony, not only of the court itself, but on their opinions. If you get along with your other judges you're going to have good opinions. As far as intellect is concerned, sure, there is going to be a difference in intellect in various areas. Some are going to be more comfortable with criminal cases than with civil cases, and vice versa. Recognize that; sometimes rely on the expertise of another judge who is very skilled in a certain area. But you can do that without having to set aside your own experience and knowledge.

See, the great thing about being on the Court of Appeal is that you have time to really study and acquaint yourself with the issues and the law that's involved. And it's not going to be very easy for one of your other judges to fool you on what should be the correct opinion if you do your law, if you do your homework; and that's what you should do on the Court of Appeal.

Gary Hastings: What about working with staff? You have a secretary, or judicial assistant, we call them today, and one or more research attorneys. What was your theory and your philosophy about working with staff?

James Hastings: I had great relationships with my staff, because when I would give them a case, if I felt that they knew the law or could handle it, I would let them run with it. And then I would let them do the opinion and then I would review it with them; and if I felt that they had made a mistake, I felt that I could be very circumspect in how I discussed it with them. I never tried to be, "Hey, I'm your boss and you're going to do it this way and that way." It was a working relationship that I had with my staff, and it was a very friendly staff; that's the way it should be.

Gary Hastings: You just mentioned a number of the judges in your division, but you also worked with a large number of judges in other divisions—two sort of legends on the court, you might say: Mildred Lillie, Lester Roth. What recollections do you have about the two of them?

James Hastings: When I was a trial attorney, Mildred Lillie was one of the first women judges on the court. She started as a municipal court judge. She tried a couple of divorce cases for me, so I have known Mildred for years. I got along quite well. She was a very smart lady, very personable, very kind, but she could also let you know . . . let's put it this way, she was a trial judge, you were very careful that you knew what you were talking about or she could bring you up short but in a nice way. She was the kind of a judge that could keep control of her court without your getting upset about it. She was a very nice lady.

As a justice of the Court of Appeal, I didn't have a chance to ever really sit with her. I respected her opinions, but all I really knew her was as an associate and that was about it. Some of the others . . . we had Bernie Jefferson back in those days—a brilliant justice, brilliant scholar, had written many books. And he was a great guy, you could love him socially. But if you were on the court with him, as I was told by his

friends and he told me himself, he said, "Sure, you can disagree with me, but you should never expect me to change my opinion. When I write an opinion," he says, "that's it." And his associates would always tell me the same: "If Bernie dissented, just take his dissent and go on, don't go in and try and change his mind." Now that was rare. That generally didn't happen in our case; some of the others.

(01:20:33)

Gary Hastings: How was Campbell Lucas?

James Hastings: Well, Campbell Lucas was just a wonderful judge and a wonderful person. He is just so nice, so easy to get along with. Yes, for a while there he was my presiding judge; after I had retired, I stayed on for two more years to help the court with its backlog, because Dave Eagleson had been appointed to the Supreme Court and we were shorthanded. And so I stayed on when he was presiding judge of Division Five. He was just a very easy to work with, fine judge.

Gary Hastings: On occasion, you had some of your opinions decertified by the Supreme Court. Were you ever overruled by the Supreme Court?

James Hastings: Oh, sure.

Gary Hastings: How did you take that?

James Hastings: *[Laughing]* I disagreed with them. I don't think I had too many overrulings. I can only remember maybe two or three; now, decertifying was something else again. I can understand that, because I was going through my cases before I came here for this interview, and I noticed that on most of the cases where they wanted to take over one of my opinions, it was either Rose Bird or Justice Mosk who voted to take it over. None of the others did, but those two always wanted to take my opinions over. And I think that again was a philosophical disagreement which you shouldn't have. You shouldn't have that philosophical disagreement so much in the courts, but we all know that there can be. Now, your question again was what?

Gary Hastings: When the Supreme Court would disagree with you and reverse you, did you always agree that they were right or not?

James Hastings: Oh, no! I disagreed with them every time. I never did, but luckily they didn't take over that many cases.

Laurence Rubin: Let me ask some questions about Gary for a while, if I may. At some point . . .

Gary Hastings: Can I dissent?

Laurence Rubin: You can dissent and you can answer the questions too. At some point he expresses an interest in law. How does that come about?

James Hastings: I think that I figured that Gary wanted to go to law school after he had one year out in private business like I had had. See, I had had a year with Firestone Tire & Rubber Company; he had had one year with Alcoa. And it kept coming back to him, and he saw that he would be much happier being his own boss. Okay, where could he be his own boss?

Well, he had, like I did, because of an affinity towards the law—and so he decided that if he could come back and go to law school that was what he would do.

Laurence Rubin: I think, if I have my years right, by the time he actually graduated you were on the bench.

James Hastings: No. I was appointed to the bench I think the day that he graduated, wasn't it? Yes.

Gary Hastings: Had there been some talk about him joining your firm prior to the time you were appointed?

James Hastings: I don't know if we had talked about it. Gary, I can't remember, had we?

Gary Hastings: I think we were just assuming that it was going to happen.

James Hastings: I think that's right; I think we assumed that he would do that. But let me say this, that see, on the same floor of my office was the firm of Belcher, the Belcher firm. And Belcher was probably the number one trial attorney in the state of California, and I knew him well. We would meet often, and I knew other partners of his firm.

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I can remember this very well. We were both in the men's room and he said, "I have heard good things about your son at the university." And I said, "Yes, I'm proud of him. He's number one in his class," and all this and that. And he says, "Well, I know you're going to be appointed a judge." I am not sure I knew it at that time. But see, he was very knowledgeable in what was going on, and he might have said that. And he said, "I'd like to talk to him." And I said, "I think that would be great," because . . . They hired Gary, and I know that was a wonderful experience.

Laurence Rubin: And you stayed there until you were appointed?

Gary Hastings: Correct.

Laurence Rubin: During the time Gary was on the trial court, you were on the Court of Appeal for a while, and did you ever . . . I know you wouldn't have ever ruled on one of his cases, but did it ever turn out that a case coming from his court was assigned initially to you?

James Hastings: I can't remember that. I do remember that he came up on assignment to our division to sit with us, and of course everybody was saying, "Are

you going to be on the same cases together?" And I said no, that wouldn't be right, because I knew what the attorneys would say; they would say, "They ganged up on us." The losing attorneys would at least say that. So although he was there at the same time, we didn't sit together.

Laurence Rubin: So for those two months, really, was the only time you ever worked directly with him in the same operation?

James Hastings: Yes. I think that's right.

Gary Hastings: What was that like?

James Hastings: Well, it was wonderful. But he would write his opinions, but I wouldn't be on them. So I don't know, Gary, was I reviewing your opinions when you were there?

Gary Hastings: Not that I know of.

James Hastings: I don't think that I . . . I think I more or less left Gary to be on his own.

Gary Hastings: I do have to say there was one time when I was still practicing law that one of my cases was assigned to Division Five, and I had to go up and argue. And Dad was not assigned to sit on it, of course. I don't think I ever prepared any oral argument better than that one. And unfortunately when we got there the attorney on the other side, Fred Hiestand, stood up, and he was the appellant and said, "Your Honors, I have no argument; I'm just here to answer questions." They had none, so I didn't to have to make my well-prepared argument.

Laurence Rubin: When you were in court that day, was your father on the bench or had he walked off?

Gary Hastings: He was on the bench.

Laurence Rubin: Well, that was your one chance.

Gary Hastings: That was. Thank heavens I didn't have to make that argument. I don't know how I would have done it.

Laurence Rubin: Your father lived to 104 and you're approaching 90. To what do you attribute the success of your longevity?

James Hastings: I guess genes; I can't think of any other reason. My father lived a much more, what would I say, Gary? Not a cleaner life, but he didn't drink—he didn't drink coffee, he didn't drink tea. And of course I would take a drink now and then and I enjoyed coffee. So I don't know why I'm living; of course, I don't think I'll live to 104.

Laurence Rubin: You're close.

What about your golf game? I know from having heard from Gary that you've been active pretty much all of these years.

James Hastings: The golf game has pretty much gone down the tubes because of my back. My back is not that good. But I've kept my swimming up and I do swim every other day. I do my . . . I do over 30 laps in the pool every other day; that has helped.

Laurence Rubin: You also have taken up art.

James Hastings: Painting. I do acrylic painting. That primarily keeps me happy because I can paint for four or five hours a day—get off the computer in the morning, on the computer maybe an hour or an hour and a half, then go and paint.

Laurence Rubin: Well, I think this has just been a wonderful afternoon and we really appreciate your time. This will be a treat for generations.

James Hastings: I don't know.

Laurence Rubin: Gary, anything?

Gary Hastings: I have nothing further.

Laurence Rubin: Well, good.

Gary Hastings: Court's adjourned?

Laurence Rubin: We're adjourned.

Gary Hastings: All right.

Duration: 90 minutes
June 19, 2007