David Knight: Well, if you give me your name and spell your last name and give me your former title when you were on the bench.

James F. Thaxter: James F. Thaxter; last name is spelled T-H-A-X-T-E-R. And I'm a retired associate justice of the Fifth District Court of Appeal.

David Knight: Great, and your interviewer today is—

Steven Vartabedian: Steven Vartabedian.

David Knight: And we're ready to go.

Steven Vartabedian: It is my pleasure today to be talking with retired Associate Justice James F. Thaxter of the Court of Appeal, Fifth Appellate District. My name is Steve Vartabedian, and I am an associate justice of that same court in Fresno. As a part of the Centennial of the California Courts of Appeal, the Appellate Court Legacy Project Committee is creating an oral history of our appellate courts and their justices. Good afternoon, Jim, and thank you so much for participating.

James F. Thaxter: You're welcome.

Steven Vartabedian: Your 16 years of judicial service included more than 11 years on the Court of Appeal. And to echo the words of an attorney quoted in a *Daily Journal* profile on you, I've never heard anyone say a bad word about you. And that certainly is very rare in the profession that we are in.

But before we get into your legal and judicial career, let's talk about your younger years. You are truly a native son of Fresno, born here in 1933 and a student of local schools, including Fresno High and Fresno State, as well as matriculating in the Bay Area at UC Berkeley and Hastings College of Law. Let's start with you telling us just a little bit about your upbringing, including your parents and siblings.

James F. Thaxter: My parents, my father was from Los Angeles, my mother was from Fresno. When they were married, they lived the first few years of their marriage in Los Angeles. I have three siblings; my sister and my older brother were both born in Los Angeles. My father had a business in Los Angeles. This was in the early days of automobiles, and he had parking lots that he owned, and operated anyway, in downtown Los Angeles. And then the Depression came and unfortunately he lost his business and had to find another line of work. And he came to Fresno and that's where I and my younger brother were both born. My sister, who is still living—she's a widow—besides raising a family, was a schoolteacher for very many years.

My older brother Clint was a prominent stockbroker here in town in Fresno for many years. He had a television slot where he gave the financial news. He did that for about 15 years, so

he became very prominent. He's retired and also living here in Fresno.

My younger brother, Tom, who was quite an athlete, played football at UCLA on the team that won the national championship. He became an orthopedic surgeon and was very prominent here in Fresno. Unfortunately he passed away about 11 years ago now. So three of the four are still surviving.

Steven Vartabedian: In fact, I've mentioned this to you before, I knew your mother long before I met you. About the time you were attending law school, I was a student at Fresno's Winchell Elementary School, where going to the principal's office wasn't so bad because this principal's secretary was this kind, sweet woman by the name of Mrs. Genevieve Thaxter. And I know I chatted with her, I believe, at one of your swearings-in; and what a wonderful lady she was.

James F. Thaxter: Yeah. She was a secretary for a school principal, elementary school principals for many, many years, and Winchell was one school; I do remember she was there for several years. I think the principal then was Ray Swords. So she had . . . many people have told me the same story that you've told me, that they knew my mother through that relationship.

Steven Vartabedian: Let's go back to your early education. Was there any one person who had a particularly significant influence on you over the years?

James F. Thaxter: Well, there was a coach at Fresno High School by the name of Erwin Ginsburg who was sort of a legendary figure in local athletics, and he had some character traits that stayed with me that I would try to emulate. I obviously never could, but I remember him particularly well.

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Later, when I got into college, there was a professor when I was going to Cal Berkeley who taught a business law class, which sparked my interest in law and ultimately led me into this profession. His name was Franklin Stark. He was a practicing attorney in Oakland and he also taught at the university; and I've often thought of him, because I know that he's the one that got me interested in law.

Steven Vartabedian: What school activities did you most enjoy?

James F. Thaxter: When I was in high school I wasn't much of an athlete. My brothers were both athletes, but I didn't have that talent. But I was a great sports fan—still am to this day.

Steven Vartabedian: You and I are alike in that regard.

James F. Thaxter: Right. And I became active on the school newspaper, called the *Outlet,* in Fresno High School and I was the sports editor there for two or three years; and I've retained that interest all my life.

Steven Vartabedian: Once you got to college, what was your major, and what degrees did you obtain prior to law school?

James F. Thaxter: I started out at Fresno State. I graduated from Fresno High School in 1951. I started out at Fresno State, but after one semester I decided to transfer, go out, go away from home on my own. And I had a lot of friends who were going to UC Berkeley, and that's where I wound up. My major was business administration. I had sort of a . . . some thought of becoming an accountant. That was, I had some talents along that line and my father had always wanted to be an accountant, or did a lot of business with accountants anyway, and it encouraged me. And that was what my goal was, I guess—if I had a goal at that point.

Then because I was in the business department I took this business law class, and that sort of turned me around, or at least changed directions for me.

Steven Vartabedian: So you think that was the class that maybe started you thinking about the law school?

James F. Thaxter: Well, no question about it, no question about it. I suddenly found something that I really was interested in.

Steven Vartabedian: Now, before you started law school, you married the former Carol Nixon; in fact, the two of you have just celebrated this past summer, I believe, your 50th wedding anniversary?

James F. Thaxter: That's correct.

Steven Vartabedian: Congratulations on that.

James F. Thaxter: Thank you.

Steven Vartabedian: How is it that the two of you met?

James F. Thaxter: Carol was a couple of years behind me at Fresno High; I knew her brother. She had two brothers, one of whom was the same age I was and one who was I think in between us; and I knew them somewhat and through them I knew her a little bit. But we didn't really see each other or start to date or anything until I was in college. I had returned from Berkeley to Fresno State. I finished up at Fresno State, got my bachelor's degree at Fresno State, and we started seeing each other. I don't remember any particular event that brought us together, but I asked her out; one thing led to another. We got married a couple of months before I started law school. So she was with me through all of law school.

Steven Vartabedian: So as newlyweds for just a couple of months, you and Carol, I take it, relocated to the Bay Area. So you go to Hastings. And that would be in about 1956?

James F. Thaxter: 1956.

Steven Vartabedian: And certainly your activities and achievements during law school were noteworthy, including law review, the Thurston Honor Society, and Order of the Coif. Did Carol ever complain that, so early in your marriage, she'd become a law school widow?

James F. Thaxter: Yes; I think that goes with the territory. Although law school . . . of course she was working to support me, get me through, but we didn't have much money. And so I was there when I wasn't at school. And then we had a child fairly early on right at the end of my first year in law school, so we had our hands full with . . . She was a big part of my getting through.

Steven Vartabedian: It certainly sounds like she was. I think for many of us we've had that same experience. You've mentioned that your daughter Linda was born in about May of 1957. Did that have any effect on your perspective, as you were hitting the books hard and now you're a father?

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James F. Thaxter: Oh, I'm sure it did; I'm sure it kept me with a real goal in mind—that I had to get through. And fortunately I was fairly successful in school and everything worked out.

Steven Vartabedian: Do you think there were any experiences during law school that particularly influenced your career path in law that you took?

James F. Thaxter: I can't really think of any single incidence. I learned early on that my interests were on the civil side, not on the criminal side. Although I did well in the criminal law class, it didn't hold for me the interest and the attraction that the civil side did. And so that probably had something to do with the fact that all my career as an attorney was on the civil side.

Steven Vartabedian: So you graduated in 1959 and you were admitted to the bar that same year. Was there ever any doubt that you would return back to Fresno?

James F. Thaxter: Yes. As a matter of fact we had pretty much made up our mind that we were going to stay in the Bay Area. I took a job in that interim period after the bar exam and waiting for the results to come out.

David Knight: I'm sorry; let's ask that question again. I apologize; I bumped the camera.

Steven Vartabedian: Upon your graduation and admission to the State Bar in 1959, was there ever any doubt that you would return to practice in Fresno?

James F. Thaxter: Yes, there was considerable doubt; as a matter of fact, we had pretty much made up our mind that we were going to stay in the Bay Area. We love San Francisco. I took a job with a firm in Oakland after taking the bar exam and waiting for the results. I hadn't really tried to look for jobs on my own. I wasn't very good at marketing myself. I had been a good student, but I had been without any income for so long that I jumped at the first opportunity, and it turned out I didn't really enjoy the type of practice that that firm had. It was all on the plaintiff's side of personal injury and particularly railroad accident cases. I began to feel that maybe that wasn't really where I wanted to stay.

We came home for Thanksgiving, to spend with our families, in November of 1959. While I was home I got a call from Richard "Dick" Andrews, who I had known at Fresno High. And he was in practice then with his father, Chad Andrews, and he had heard of me, I guess, or knew that I was just out of law school, had taken the bar. And they asked me to come down and interview with them, which I did.

And they made an offer to employ me; and Carol and I talked about the pros and cons for a while and we decided we still wanted to stay in the Bay Area. So I turned the offer down and we went back after Thanksgiving up to San Francisco and went back to the firm where I was working. After a couple of weeks, doubts began to creep into my mind, and we talked about it some more; and we finally decided that maybe we really should be returning to where our families were and our homes were and where I had this offer. And I called Dick back and found that the offer was still available and I took it. And we moved back around New Year's 1960, and I joined that firm and was with them for 25 years, until I went on the bench.

Steven Vartabedian: At that time that you joined them, was it just the two of them?

James F. Thaxter: It was just the two of them. The firm name was Andrews & Andrews.

Steven Vartabedian: And as you started the practice, did you have a particular mentor?

James F. Thaxter: Well, I would think both of them were mentors, but Chad Andrews, who had been in practice probably at that time over 30 years, sort of taught me everything I knew about the practical side of the practice of law. And I still think of things to this day that he taught me.

(00:15:04)

So I would think that he was probably a very important mentor to me.

Steven Vartabedian: Yes, I imagine a very good one too. What was the nature of your practice?

James F. Thaxter: It was a general civil practice, a small firm—individual clients, small businesses, farmers. One major client that they had—and which they still had when I left—was the Roman Catholic diocese. At that time it was the Roman Catholic Diocese of Monterey-Fresno; and I don't remember how many counties, but several counties, including Monterey and San Benito and counties over in that part of the state. After a few years the diocese split and it became . . . our client then was the Diocese of Fresno. So we had a lot of probate-related cases and just general civil, a lot of estate planning and things of that nature.

Steven Vartabedian: Needless to say the Andrews partners were impressed by your work and you became a partner, I believe, within a couple of years, two years?

James F. Thaxter: I think in 1963.

Steven Vartabedian: Okay. That firm grew from the three of you. And in fact over the years some of the people that became members of that firm include Franklin Jones, who later served on the Fresno County Superior Court; and a fellow by the name of Marvin Baxter, presently on the California State Supreme Court. Could you tell us how you and Justice Baxter first met?

James F. Thaxter: My recollection is that . . . well, let's see, I'm not positive; it was in connection with our law firm. I didn't know him before, and we interviewed him. He at that time, I believe, was a deputy district attorney, Fresno County deputy district attorney. And I may have met him at some bar function or something like that; it doesn't stand out in my mind now. But we had . . . we interviewed him for a position with our firm and I remember, while we were going through that process, we had a dinner at some lawyer's house. It was a bar function and it was outdoors on a patio. And he used to embarrass and I don't want to embarrass him; but I remember that he had an accident and dropped the plate that he was holding and he was afraid that that had killed his chances of being with our firm. Of course it didn't; then he became a very valued member of the firm.

Steven Vartabedian: I can imagine how a nervous potential associate must feel at a moment like that.

James F. Thaxter: Yes.

Steven Vartabedian: So he did join your firm. What were your impressions of him as a new attorney in your firm?

James F. Thaxter: Marvin is just as solid as they come—salt of the earth and very good work habits. He became a very valuable member of the firm. He seemed to specialize in family law, divorce cases, which I had been handling whatever divorce cases there were in the firm. I didn't really like that and I was sort of glad when he came along. And then in 1970 they changed the law and made . . . the no-fault law came into effect and I used that as an excuse to decline divorce cases. But Marvin built up quite a reputation, quite a large number of cases in that field.

Steven Vartabedian: I recall that his family law practice was very substantial. By the 1970s, later 1970s, your firm continued to grow. Did very much change in your practice, or was it pretty much the same?

James F. Thaxter: It was pretty much the same, I would say. It just seemed to expand. I became—personally, anyway—became more involved in litigation. In the early years I didn't think I would like litigation. I didn't think I was cut out for it; I thought to be a trial lawyer you had to be dramatic and theatrical and all that, which I wasn't. But I simply cut my teeth on a couple of cases—one that I'll brag a little bit about, because the first trial I ever had, there were two defendants in a civil case. And two defendants; one of them was represented by Donald Franson and the other was represented by Hollis Best, who of course were two of the best known and most respected attorneys in Fresno. And we tried that case before Judge Edward Kellas. This is back in the early '60s, I guess.

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And one of the older ones. We won, and so that was sort of, in my eyes anyway, a feather in my cap. And it turned out, as you know, later I had the pleasure of serving on this court, the Court of Appeal, Fifth Appellate District, under both Don Franson and Holly Best, who acted as presiding justices. And anyway, after that case and a few others, I got to the point where I saw that I liked litigation and I took on more trials; so as my practice continued and towards the end I was doing more trial work than anything else.

Steven Vartabedian: Viewing the way law is practiced today, particularly in the courts, as you talked about litigation here, how have things changed since the 1960s and 1970s, in your view?

James F. Thaxter: Well, it's all pretty much the same, except there's just a lot more—there are so many more areas of law that weren't around in 1960, and some of the procedures have become a little more complicated. In those days you didn't have a lot of discovery; in some cases you didn't have any, you just went in and tried the case. There wasn't nearly the specialization, at least in this area, in Fresno; there wasn't nearly the

specialization that you see in firms, larger firms, now. But those are the things that immediately come to mind.

Steven Vartabedian: During your years of private practice, prior to becoming a judge in 1985, you were very active in bar and civic organizations. Could you tell us about a few of those?

James F. Thaxter: Well, let's see, the bar association I served as a secretary early on, I think, 1964, '65, in there . . . I became president of the bar association in 1976. And I'm jumping ahead a little bit, but that was an important year, because that was the one and only time in the history of the State Bar that they had their annual convention and the California Judges Association meeting here in Fresno. So as president of the local bar, I became responsible for all the local arrangements. So that was quite an undertaking and a lot of work, and I had a lot of help and it turned out to be, I think, a successful event.

I was active in other associations. I was active in the YMCA; I became president of that for a year or two. I was also in the bar association in the mid-1960s; I guess this would be about 1965, during the Johnson administration. The war on poverty . . . why the move for legal services for the poor came to the forefront. And there were pressures to have such a program here locally. And there was a good deal of resistance from the bar—that is, from some members of the bar.

And I and Don Thuesen, who you may remember, somehow took on the responsibility of looking into this to see whether there was a need. Because that's what you would hear from attorneys, as some attorneys said, "Oh, there's no need for this. This is just a boondoggle." So Don and I went around and spent quite a bit of time interviewing different people in various parts of the community and became convinced anyway that there was a need for a legal-services-for-the-poor organization here. And we put together the framework, and ultimately got it approved by the bar association; and that became the Fresno County Legal Services, which is, I guess, sort of morphed now into Central California Legal Services. And so I think Don Thuesen and I could take credit for having kicked that movement off. Let's see; what was your question? *[laughing]*

Steven Vartabedian: Your civic and bar activities; you've done a good job of describing those.

(00:25:03)

James F. Thaxter: I was active in other ways in those days; those are the main things that come to mind right now.

Steven Vartabedian: And certainly that was very significant, legal services. That really has become a very important part of the law practice in central California—certainly helping, as people otherwise

wouldn't have counsel. Let me ask you this: was there any particular aspect of your practice or any other service that you provided that you think particularly prepared you well to become a judge?

James F. Thaxter: Well, trying cases certainly, I think, had a big part of that, all right; because when you have to try a case, you have to develop the facts and get the law to support the position you're taking and be familiar with the rules of evidence. And having all of that and having experience at all of that is certainly something that you need to do, need to have, to become a lawyer, to become a judge. Perhaps I was president of the various boards and the bar association and having that position of having to deal with opposing viewpoints and personalities—probably had some benefit to me also.

Steven Vartabedian: As your career developed, was there a particular point in time when you said to yourself that you would like to become a judge?

James F. Thaxter: Well, I think probably in the back of my mind I'd always wanted to be a judge. Judges—that was sort of the pinnacle of the legal profession in my view, at least in those days, and it still is.

At one point it became serious enough that I seriously thought of . . . I was going to run in a contested election. This would be, I think, in 1980. And I gave it some serious thought, but I didn't really do any groundwork, I'm not a politician, and the thought of having to put myself before the public and go out and do the things that you would need to do in a campaign didn't appeal to me particularly. But I was definitely toying with the idea and I got a call from Steve Henry, who was a good friend of mine. He had heard that I had been talking to a few people about the possibility, and he was interested and the way he put it to me is that "if you're going to run, I won't." And so that sort of concentrated my mind on the thing, and in a couple of days I decided that really I didn't have the stomach for putting on a campaign. So I called Steve and told him that I wasn't going to. He ran, worked very hard and ran successfully; and of course he's enjoyed a very illustrious career as a trial judge, now retired.

Steven Vartabedian: So after about 25 years of practice, how did the opportunity come about for you to become a judge?

James F. Thaxter: Well, I guess the short answer to that is that Marvin Baxter became the appointment secretary for Governor Deukmejian. Marvin had been the chairman of the Governor's election campaign, in the 1982 election. He was chairman of either Fresno or Central Valley, anyway, and became very close to the Governor. And when the Governor was elected in 1982, he selected Marvin as his appointments secretary, of all appointments, not just judicial—a very important and influential

position. So Marvin left the firm in early 1983 and went to Sacramento. And because I had thoughts or hopes of becoming a judge one day the thought occurred to me that I could talk to Marvin. But I didn't want to embarrass him by asking him to have some say on my application. So I held back and didn't file an application; and one day out of the blue, I think this would have been in 1984 at some point, he called me up and asked me why I hadn't submitted an application.

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Steven Vartabedian: He's thinking you've always wanted to become a judge, you're perfectly qualified, and you would merit it.

James F. Thaxter: I told him, "I didn't want to embarrass you; I didn't want you to feel that you had to pass judgment on my application." Well, he insisted that I submit an application, and I did. Ultimately the appointment came about.

Steven Vartabedian: It turned out it wasn't an April Fool's Day joke, April 1, 1987?

James F. Thaxter: No, that was the telephone call I got from the Governor, telling me of his decision to appoint me—and it came either on or right at April 1, So I asked him to make sure that that's not a joke.

Steven Vartabedian: Did you have any particular regrets about leaving private practice?

James F. Thaxter: Well, yes, in the sense that I enjoyed the practice. I enjoyed the people I was working with. I particularly enjoyed the relationships I developed with clients, because some of these clients, who had represented people, families for 25 years . . . and I became a part of their lives and they became a part of mine. And suddenly severing that and going off and doing something else, in which I couldn't really represent them in any way anymore, was difficult. But on the whole I'm glad I made the change and I appreciated the opportunity.

Steven Vartabedian: Tell us about some of your early assignments in superior court.

James F. Thaxter: Well, my first real assignment, I was sworn in I believe on May 1 and I went to the judicial college in, I believe in June or early July of that year. And when I returned—yes, it was early July, because when I returned, why, my assignment was to be the juvenile judge of Fresno County. I'd never—to my knowledge—never handled a juvenile case. I had been in the court once or twice. I knew literally nothing about it or its procedures, but suddenly I was the juvenile court judge, and that was certainly a quick learning experience. I'm glad I did it. First of all, it taught me a lot about criminal law and procedures, which I needed, because I had no experience in that field at all. It also gave me some insight into some problems that I had really not been exposed to before and the difficulties that young people

can get involved with, not only on the criminal side, but then also on the delinquency side, children who are mistreated or abandoned. I was out there for a year, and although it was a somewhat terrifying experience at first, I think I learned a lot from them and I'm glad that I did it.

Steven Vartabedian: Well, it sounds like . . . you've explained how you came from a civil law background being thrust into that situation. It can be a little intimidating; I imagine adjustments included learning on the job and some of the education one would get from judges' college in the early seminars that we get as new judges. Anything else that helped you adjust, that you would add to that?

James F. Thaxter: Well, although I was the only judge out there, there were three referees at that time: Phil Silva, Montgomery Carter, and Bill Sanderson. And they all had considerable experience and I leaned on them a great deal. And the staff was good, and then the district attorney and the public defender had attorneys on site there and I learned a lot from them also.

Steven Vartabedian: I know that in terms of once you were handling criminal matters, that you received very high marks for your smooth adjustment into hearing criminal cases. In fact, I read where former Fresno County Public Defender Jose Villarreal once referred to your courtroom as the sea of tranquility. I think that's quite a compliment, knowing the way things can get in criminal proceedings. I know this goes back a few years. Do you have any memorable trial court experiences that you wish to share or anything of that nature?

(00:35:04)

James F. Thaxter: Well, even before I became a juvenile court judge, the first trial that I was assigned, I believe—at least the first criminal trial—was a 15-year-old juvenile who was charged with two counts of first-degree murder. And suddenly it hit me that this was a lot different than trying a civil case. I learned a lot in that experience; and again, it's just on-the-job training, getting some pointers from wherever you can get them. I also remember my first jury trial was a case in which the . . . it was an injury case out of one of the projects; I can't remember the name of the project now, but it was up in the mountains, the electricity-generating project. One of the attorneys was Richard Alexander from San Jose, who became quite prominent as a personal injury lawyer in that area and I think later became president of California—I've forgotten the name of it, but the plaintiff lawyers association. And the defendant was Michael Woods of McCormick Barstow, here in Fresno, very good attorneys. That was my first jury trial, and it was very helpful to have good attorneys to steer me through that.

One other case that stands out because it was so unusual was a case that involved an elderly lady who had somehow—some relative, I think her cousin or her niece or something, had gotten hold of her affairs and hence a lot of money in the lady's account suddenly wound up in the relative's account. So there was a lengthy trial over that, and a jury trial, and I remember that one. There were several others that I can probably talk about, but I guess every judge has those.

Steven Vartabedian: Yeah. And certainly during your five years or so on the superior court you particularly excelled in the civil trials and civil law and motion; I know you handled some very heavy calendars in superior court on that. Now, was there any point in time then that you started hearing you were being considered for the appellate court? Any point in time where that started to occur with you?

James F. Thaxter: Well, yes. I was appointed at the end of 1989 and I . . . sometime a few months before then there was a vacancy or two vacancies or a new position actually coming up on the Court of Appeal. I had received some encouragement from some of the judges; Don Franson and Holly Best I recall particularly asking me to consider it. I don't remember the exact process now, but at some point, why, I did submit an application. Chuck Poochigian was the appointment secretary then, I believe. One thing led to another, and near the end of 1989 I was appointed by Governor Wilson to the Court of Appeal.

Steven Vartabedian: Once you reached the Court of Appeal, what were your initial impressions of the difference in the kind of work that judges do in the Court of Appeal versus the trial court?

James F. Thaxter: It was night and day. Although you're dealing with law, you're dealing with a much deeper and somewhat more leisurely—that's not the right word, but at least you have time. On the trial bench you have so many pressures that you have to decide quickly. You simply don't have the luxury of doing a lot of research and thinking about the problem. Here you have to make a decision and move on, as you have other cases, you have a jury, you have attorneys—you just have to move.

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On the Court of Appeal, if you came upon an issue that required a good deal of time, you would spend it. And it was just night and day, that's all I can say, as far as the pressures are concerned.

Steven Vartabedian: Certainly in the superior court, where many judges might share one research attorney. In the Court of Appeal on the Fifth District we have for the most part had two research attorneys assigned to each, and I know there was even a brief time

period where we had third attorneys in our chambers. Whereas we had permanent staff—the two regular attorneys, these served on either a one-year or a two-year basis.

That brings to mind the question: most of the Courts of Appeal, and I think all of them, handle their work with career attorneys. Of course, in the federal courts and some other courts around the country, there are annual clerks. What are your thoughts on the differences—the benefits and detriments—to having career staff attorneys as opposed to annual clerks?

James F. Thaxter: Well, since I've only been exposed to here in the Fifth with the career attorneys, I would favor that, because I don't see how a research attorney coming on new really is up to speed for at least half a year or maybe a full year. And to turn over every year like that, there may be some benefits. But at least for the judge, I would think, it's much better to have somebody who has learned how to do the job, knows the judge, knows what his or her predilections are, what he or she is looking for in a memorandum. So I would stick with the career people that I had. And I'm sure you've also had very good luck with people who worked for me as research attorneys. They're a tremendous resource; courts couldn't operate without them.

Steven Vartabedian: I agree with that entirely. Unfortunately, since we started this project—and we hoped to interview retired judges such as yourself—there are some that have died in recent years. And some of us . . . we have served with some very dear colleagues of ours, and you have already talked about some of your experiences with Don Franson; and Hollis or Holly Best; another of our colleagues, Bill Stone, that passed away recently. Would you like to share any recollections you have about these individuals, because we won't have the ability to interview them for this Legacy Project?

James F. Thaxter: Well, they were all giants, you might say. They all had earned tremendous respect from everybody that they had dealt with: attorneys, other judges, clients, parties. Don Franson and Holly Best as I say, I go back to my very early years with both of them; and Don became the bankruptcy judge. I don't remember exactly when now, but this would have been in 1960s, and then from there he became a superior court judge and then ultimately to the Court of Appeal. And he was a very, very fine fellow, and his son Don Jr. is now serving as a Fresno County Superior Court judge.

Hollis Best was one of the most renowned trial lawyers in this whole area, until he went on the bench in—this would have been 1973, probably, that he went on the bench. And he became sort of the standard for judges around. And it was such a pleasure for me to know them and then ultimately to have the opportunity to serve with both of them on this court. I can't say enough about them.

Bill Stone I did not know until he was appointed to this court, the Court of Appeal; I did not know him before. But then when I . . . and I knew him just slightly until I was appointed in 1990. He and I became quite close friends. I have a great deal of respect for him, and it was certainly a shock that he passed away suddenly a year or so ago. He was a very unassuming fellow who, if you met him out on the street, why, you wouldn't have any idea that he had the position that he had. Extremely fair, conscientious—as were all of those that I've dealt with or worked with.

Steven Vartabedian: How would you describe your judicial philosophy? That's a loaded question.

James F. Thaxter: Yeah, I've been asked that before, and I don't know how to answer, because I never tried to be a philosopher. I tried to be a judge, and a judge's responsibility is to deal with the case before him or her and to look at the facts and look at the law, try to find out what the law is that applies to these facts, and then make that decision and go on to the next case. So I just really don't know that I have a philosophy as such.

Steven Vartabedian: Are there any particular cases that you have authored, any opinions you've written, that you consider to be your favorites?

James F. Thaxter: Well, yes, there were a few cases that stand out in my mind. One was a case called *Putnam v. Clague*, and I don't have a citation, but this would have been probably in the early 1990s.

Steven Vartabedian: I think it was in 1992.

James F. Thaxter: Okay. I don't know that the issue that came up is any great earthshaking issue, but it was—it had to do with—the discretionary dismissal of a suit for failure to serve the summons within two years. The statute in my mind is rather peculiar and starts out by saying that you have to serve—the plaintiff has to serve—the summons within three years of filing the suit, but then goes on in a later section and in effect gives a judge discretion to dismiss the suit if summons is served within three years but not within the first two years. I frankly don't understand the policy behind that, but anyway, that's the law.

Steven Vartabedian: Unfortunately the Legislature does tend to have some convoluted language for statutes.

James F. Thaxter: Right. Anyway, we got a case where . . . there were actually two cases that had been consolidated, two different plaintiffs against the same defendant, and the facts underlying them were basically the same—the allegations, anyway. In both cases the summons had been served within three years, but not within two years. And the judges—there were two separate judges—had dismissed those cases for failure to serve the

summons. And there were a number of factors that, when I got the case—the case was assigned to me—a number of factors that sort of bothered me. And so I got the other two judges on the panel together, and we talked about it, and we all felt uncomfortable with the fact that these cases had been basically thrown out of court.

So the question then of course was whether or not there was an abuse of discretion. I decided that I would read all the cases, and I found out that this was an issue that had been the subject of a great deal of litigation. There were, I don't know how many, but I'm going to say 30 or 40 or more cases, reported cases, going one way or the other on this question of a judge's discretion to dismiss the case. And I read them all and tried to analyze them and differentiate them and to see if I could draw some guiding principle that would tell us, tell anybody, what constituted an abuse of discretion—and concluded that there wasn't any from all these cases.

So we then concentrated on the cases that had been decided by this district, and there were four or five.

(00:50:01)

And we thought we saw a common thread there that would be a basis for developing a standard that we could give to trial judges to tell them what to consider in exercising their discretion. And anyway, I spent a great deal of time on the case and wrote a very lengthy opinion; it has stood up. It got some comment early on; there was at least one case that sort of questioned why we set a standard. In that case they said that they agreed with our result, which was that there had been an abuse of discretion; but they didn't say what standard should apply. And our job was to say what standard should apply. So as far as I know, that case is still followed. I did notice that there haven't been a great deal of other reported cases on that issue in the last few years, whereas before there had been a great number of cases. So I like to think that maybe that case has given, provided, some clarity to trial judges in dealing with that issue.

Steven Vartabedian: Yeah, it did seem in the '90s that it got cited a lot. I remember seeing it cited in the cases that followed; but like you say, it seems to have helped settle that area, where there was such ambiguity about the standard in those kinds of situations. Any other cases you'd like to talk about?

James F. Thaxter: Let's see. There was a case . . . I'm terrible on case names. Responsible Citizens v. Somebody, or vice versa, that raised a question of when an attorney represents a partnership, is he also considered the attorney of the individual partners. And this came up in the context of somebody had—some attorney had—represented a partnership in some kind of a matter and then

later for a different client had sued one of the partners of that partnership on an entirely unrelated matter. And there had been a motion then to disqualify him from pursuing that case. And we analyzed whatever authorities we could on the matter, including the Rules of Professional Conduct, and concluded that at least under the circumstances of that case, that representing a partnership did not constitute representing the individual partners and so was not a grounds for disqualification. And that case, I think, has also drawn some attention and has been cited quite a bit.

Those were the two that come immediately to mind; let me review a couple of others. Oh, another case that I do remember was called *Silva v. Lucky Stores*. And it came up rather late in my tenure on the Court of Appeal. There had been a case by the California Supreme Court, the *Cotran* decision, which in the employment law set the area that held that when an employer receives a complaint about an employee's misconduct or alleged misconduct, the employer has a duty to conduct an adequate investigation to determine whether or not the complaint is true and before taking any kind of action against the employee. But we had a case then in which an employer had terminated an employee for alleged misconduct and the question was, what constitutes an adequate investigation? And we laid down a number of earmarks that we thought should apply that had been followed in that particular case and concluded that this is what constitutes an adequate investigation under the *Cotran* decision. And I think that case has also held up.

Steven Vartabedian: Any other thoughts you'd like to share about the time you spent in the Court of Appeal?

(00:54:59)

James F. Thaxter: Oh, I thought it was a great experience, I mean, I'm so grateful to have had the opportunity. It's a wonderful place to work, as you know; the staff and the other judges all are just great people to work with. Everybody is very bright, and there's always a good exchange of ideas and thoughts on the cases that we're handling. And I really, I really, did enjoy the whole 11 years that I was here.

Steven Vartabedian: And you sort of retired in May 2001. I say "sort of" because it sure seems you've been very busy. And we'll talk about some of your current activities in a moment. When you did retire from the bench, though, was there anything in particular that you missed?

James F. Thaxter: Well, yes, it's the contact with people that you're used to seeing every day. And so I still enjoy when I get a chance to come back here or go to Christmas dinners or whatever, and it's always good.

Steven Vartabedian: People like myself enjoy visiting with you too, I might add. Please bring us up to date on your current activities; what are you doing now?

James F. Thaxter: When I retired I decided that I would take a try at the alternative dispute resolution game . . . that's not a game. *[laughing]* But I set up out of my own home. I just sent out some announcements to local lawyers, letting them know that I was available if they wanted a mediator or an arbitrator. I took some mediation training; I've been down to the Pepperdine Institute, the Straus Institute at Pepperdine University, several times. I took some mediation training here locally. And so I became a mediator.

I also, the first year and a half or so that I was retired, took assignments in trial courts, and I sat on several cases in various counties in the Central Valley here. And then there was a rule made that if you were going to sit by assignment, you couldn't also do private mediation-arbitration work. And so I had to make a decision; and I was on the fence there for a while, but I finally decided to stay with the private. And by that time I had built up quite a little bit of practice, and I was doing everything out of my home myself—doing all the typing and all the administrative work that goes along with that. And it's not so difficult for mediations, but for arbitrations it's quite . . . there's a good deal of record keeping you have to do, because you have to make disclosures of anything you have done with anybody that's involved in the present case. And you have to have a database to rely on, and that became quite a problem. So I decided that I couldn't continue to do it myself.

And I had previously been approached by the law firm of Dowling, Aaron & Keeler, and I have known many of them for many years; as a matter of fact, my niece is a lawyer with that firm. And so I gave them a call, met with them, and one thing led to another, and I joined that firm or became employed by that firm in I think it was March of 2003—or it's 2001. All right, no, 2003; I retired in 2001. March of 2003. I've been there now for four years and I share an office with Stephen Blumberg, who is a retired attorney who also does mediation-arbitration work. And then just down the hall is Nick Dibiaso, who just recently retired from this court. So we all share facilities and some of the staff, the support staff, for our arbitration-mediation work. And it's worked out very fine and I am pretty happy with it.

Steven Vartabedian: In your alternative dispute resolution practice do you have a preference—mediation over arbitration or vice versa? Any feelings on that?

(01:00:09)

James F. Thaxter: When I first started—the first two or three years, two-and-a-half years or so—it was mostly mediation. My practice has somewhat morphed now into mostly arbitration. I like both of them. Mediation, particularly, is very rewarding and satisfying if it's successful, if the parties are able to resolve the dispute; it is somewhat frustrating if they're not. Arbitration, of course, as you might guess, is much more like being a judge, which is what my experience was and what my training was. And I like them both, I like the mix. I'd like to keep doing both and I plan to.

Steven Vartabedian: In a *Daily Journal* profile published in December 2005, an attorney interviewed, who was the party to a mediation that you had handled, remarked that you are a great mediator whose style is not to bludgeon parties into submission—that you have the people skills to craft a resolution that is acceptable to both sides. What has been the process for you in developing this style and skill?

James F. Thaxter: Well, those are very kind words. First of all, as a private mediator you don't have the power really to bludgeon anybody, even if that were your inclination. And then I don't think . . . that's simply not my makeup. So I emphasize at the start of every mediation that I'm not there to decide anything; I'm not going to decide anything; I don't have any power to tell anybody to do anything; if there is a resolution it's because the parties have come to that resolution; they are the ones that have the power; and that I am just there to try to help them. And it seems to sort of do the trick. In most cases it lets people realize that I'm not there acting as a judge—bludgeoning, no.

Steven Vartabedian: When not handling alternative dispute resolutions, how do you spend your time?

James F. Thaxter: Well, I'm not nearly as active physically as I used be. I used to do a lot of running; I haven't done that for some time. I used to do a lot of backpacking and mountain hiking and I'm not able to physically to do as much of that as I'd like to. I used to do such things; I used to play softball and—

Steven Vartabedian: I remember that.

James F. Thaxter: Yeah, and I was in a so-called senior league, but it was open to anybody who was 50 and above. Well, when you're in your 70s, 50 doesn't seem very senior. *[laughing]* So I found that I couldn't do that anymore, so most of my activities now are more passive. I spend a lot of time reading. I'm an avid reader of practically everything. And I like to go to sports events. I go to almost all the Fresno State football, baseball, or basketball, women's and men's, and softball. And we do some traveling; not as much as we used to. We just recently took a trip to Italy and cruised around parts of the Mediterranean—little, short trips. We have a short trip planned to Death Valley next week.

And somehow you find that the time is filled and you wonder, how in the world did I ever used to do a job or do other things?

Steven Vartabedian: Previously we talked a little about your wife Carol and your daughter Linda. You also have a son Paul and some grandchildren; so could you please tell us a little bit about each of your family members?

James F. Thaxter: All right. Linda, our daughter who is married as I said—back when we were in . . . she was born back when we were in law school—became an accountant. I said I was going to become an accountant; I never did, but she did. And she is in the . . . I've forgotten her exact title now, but I think it's finance director or director of finance, at the United Way of Fresno County. She has been very successful in her career; she just recently has been going through a divorce, which is not a happy thing.

My son Paul is a banker and he is with a local bank, has a responsible position with them.

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He is married to . . . his wife's maiden name was Kristen Enns, a local girl, and she is a speech pathologist, so she's developing a little practice of her own. And they have two daughters, Morgan and Paige, who are 10 and 7; and so we try to spend as much time we can with them, obviously, and it's been a joy watching them grow up.

Steven Vartabedian: I haven't experienced that yet, that something (Voice Overlap) as a parent.

James F. Thaxter: Well, you will, I'm sure.

Steven Vartabedian: Now I noticed Carol at one time was a gemologist. Does she do any of that anymore?

James F. Thaxter: Yes, Carol has done several very interesting things. One of the things she got interested in is antiques. She collected antiques and furnished our house with a lot of antiques, and through that she became interested in antique jewelry—and through that, why, she became interested in gemology. And in about 1983, yes, 1983, she learned about the Gemological Institute of America, which is one of the—maybe the only—gemological and educational institutions. That's in Santa Monica. She entered a residence program and actually lived down there in an apartment for about six months while she went to this gemology course. And I would commute back and forth on weekends. So she is a graduate gemologist. She did not use it in a commercial way; she didn't want to go into the business or anything like that. What she did find that helped her with was

in designing jewelry, and she for many years designed various bracelets, necklaces, and things of that sort, which she did sell. But for the last few years she is . . . her arthritis has become and gotten to the point where she can't do that anymore. So she's not active with it now, but it was a good activity for her for many years.

Steven Vartabedian: Do you have any words of advice for any new lawyers?

James F. Thaxter: New lawyers, huh? *[laughing]*

Steven Vartabedian: As they enter practice.

James F. Thaxter: I don't have anything that anybody else wouldn't think of to say. Work hard; I mean, that's the key to success. Just work hard, keep at it, don't just get discouraged, find what you like and stick with it. Law is such a broad area; these days it cuts across every single aspect of society and the economy and culture. If you find what you want, you find the niche that appeals to you, why, you can really have a successful and rewarding life at it. But it's been very good to me, and I have certainly never regretted the decision I made to go into it.

Steven Vartabedian: Any particular advice you would give to new judges?

James F. Thaxter: *[Laughing]* Pretty much the same thing: work hard and take the cases seriously. Never lose sight of the fact that the decision you're making is going to affect real human beings and real lives, and take it seriously. I think that's the best advice I can give.

Steven Vartabedian: How you would like to be remembered by the legal community, or the community at large?

James F. Thaxter: Well, simply as somebody who was responsible and tried to be fair and tried to do what a judge is supposed to do: find out what the law is and apply it to the facts of the particular case. And I never thought that I had a monopoly on knowledge or wisdom, and I would hope that I didn't give anybody the impression that I thought I did.

Steven Vartabedian: Jim, thank you so much for sharing your thoughts and this time with us, and thank you again for your very distinguished legal career. We've all benefited greatly from it.

James F. Thaxter: Thank you, Steve, it's a pleasure.

Duration: 70 minutes
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