Steven Vartabedian: Steven Vartabedian, last name V-A-R-T-A-B-E-D-I-A-N, and I am an Associate Justice of the Court of Appeal, Fifth District.

Jay Ballantyne: I am Jay R. Ballantyne, J-A-Y, middle initial R, B-A-L-L-A-N-T-Y-N-E, and I am a former Associate Justice on the Fifth District Court of Appeal.

David Knight: And we're ready to start; Justice Vartabedian, you may give the introduction.

Steven Vartabedian: Yes, and it is my pleasure today to be talking with Retired Associate Justice Jay R. Ballantyne of the Court of Appeal, Fifth Appellate District. My name is Steven 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 morning, Jay, and thank you so much for participating and driving to be with us here in Fresno today.

Jay Ballantyne: Good morning, Steve. It's very nice to be here.

Steven Vartabedian: You capped off your more than 22 years of judicial service when you retired from the Court of Appeal in August 1988. But before we get to your legal and judicial career, let's talk a little bit about your younger years and some of those experiences you had before you became a lawyer. As I understand it, you were born in Cumberland, Wyoming, on May the 4th, 1926, but I understand there's quite a bit of family legacy behind your settling there and even some of your great-grandfathers. Could you tell us a little bit about that background?

Jay Ballantine: Well, my family actually came to Utah in 1846, and my great-grandfather on my mother's side, whose name was Rainey – William Raney – was a member of the famous Mormon Battalion. And they were enlisted in the Army during the Mexican War and they wanted to put some troops on the ground in California. So they came out to Council Bluffs, where the Mormons were encamped at that time, and they recruited 500 men to go to California in the infantry. And my great-grandfather Rainey was a corporal in that battalion. They marched—the longest forced march in history—over 2,000 miles to San Diego, hauling a cannon behind them. And it was a very, very torturous journey, of course. And he served in California in the infantry for a year, in San Diego; and they finally ended up in Fort Moore up in Los Angeles, where they were mustered out and then they made their way back to Council Bluffs, where he picked up his wife and continued to Provo, Utah.

My other great-grandfather, Richard Ballantyne, was with the Brigham Young wagon train that went to Salt Lake City from

Missouri. He founded the Mormon Sunday School. He established a Sunday school there in December of 1849, and in fact they still have a little shrine there to that accomplishment. And he was called on a mission by Brigham Young and made his way down the Old Spanish Trail to Los Angeles in 1850; and then from there he went up to San Francisco. And he was the first . . . there was a group of three missionaries who then sailed to India, to Calcutta, where he did his mission in India in 1850. And they've actually written a book about Richard Ballantyne called *The Knight of the Kingdom*, which was published by the church.

Steven Vartabedian: That's quite a family history, Jay. Now, getting into the 1920s or so, how was it that your father and mother settled in Cumberland, Wyoming?

(00:04:44)

Jay Ballantyne: Well, the family, they were raised in a valley called Star Valley in western Wyoming; it's kind of in the middle of western Wyoming, and it's right below Jackson Hole, which is very famous. And they were dairy farmers, their families, and about 1926, 1925 period, farming became the forerunner of the Depression; it went down very fast. So they weren't making any money, and the family . . . My dad took my mother, and they had a daughter at that time, but they went out to the mines, the big mines that the Union Pacific owned in southwestern Wyoming, and they took the family. He took the family out there, and he became a miner in the Union Pacific Mines in Cumberland, Wyoming. And my older brother and myself were both born here; I was born here in 1926 in May. My dad got injured in a mining accident, seriously. He got a fractured skull and a broken pelvis. And as a result of that, he couldn't mine anymore, and he picked the family up and brought them to Los Angeles, where I arrived when I was five months old, in Los Angeles.

Steven Vartabedian: So most of your life was spent in Southern California.

Jay Ballantyne: Oh, yeah, I was raised in the southwest part of Los Angeles.

Steven Vartabedian: Can you tell us about some of your siblings? You mentioned one older brother.

Jay Ballantyne: Yeah, I had one older brother, an older sister, a younger brother, and then they had twins, so I have a twin sister and brother who are the youngest in the family. There were six; five siblings and myself.

Steven Vartabedian: So you attended your grammar school up through high school in the Los Angeles area.

Jay Ballantyne: Correct.

Steven Vartabedian: Was there any one person who had a particularly significant influence on you while you were young, or group of people?

Jay Ballantyne: Well, I think probably the one who had the most impression on me was . . . I was a gymnast in high school. I was a pretty good gymnast. I was an all-city three years, a gymnast in Los Angeles. But he had been an Olympic gymnast in the '32 Olympics in L.A., and he was a wonderful man named Ed Carmichael. And I told him I thought about becoming a physical education instructor like him. And he told me, he said, "Jay, this is as far, probably, as I'm going to go." He was in charge of the P.E. Department at Washington High School, and he said, "All of my friends who went into the professions, the doctors, the lawyers," he said, "were all 40," but, he said, "they're just hitting their stride, but I've probably hit a wall, and you should think about that." And it made a great impression on me.

Steven Vartabedian: You received some good advice from him.

Jay Ballantyne: I got some very good advice.

Steven Vartabedian: Yes. What other activities did you enjoy in high school?

Jay Ballantyne: Well, I enjoyed athletics, and so I was in wrestling and gymnastics and football. I played football; I was the quarterback in high school.

Steven Vartabedian: Now, you went on to attend Occidental College, where you received an AA degree, is that correct?

Jay Ballantyne: That's correct. I enlisted in the Navy, and it was the Navy flight program, and that was in January of 1944. And so when I was activated—I was in the inactive part of the service at that time—but in any event, they activated us and I started to attend Occidental College in about June 1st of 1944, and I remained there for a year in that Navy flight program.

Steven Vartabedian: And during that Navy flight program, that was St. Mary's Pre-Flight?

Jay Ballantyne: Well, I ended up, they had what they called additional training, on-the-ground operations—that type of thing. And I was stationed in San Pedro; also Yakima, Washington; and finally at St. Mary's Pre-Flight in Moraga, California, where I eventually was mustered out.

Steven Vartabedian: I understand during that pre-flight program you met someone that you would meet again later in life in your profession.

Jay Ballantyne: Yeah, Don Franson, who became a very, very good friend of mine and became presiding justice on this court. We were in

the same battalion at St. Mary's Pre-Flight for about five months.

(00:10:03)

Steven Vartabedian: That tells us what a small world this is, where you meet someone—

Jay Ballantyne: Oh, it truly is. You keep bumping into people.

Steven Vartabedian: Right. From there, from Occidental, you went on to USC, University of Southern California?

Jay Ballantyne: Yes, I enrolled at USC in January of 1945, and I graduated from USC in 1948.

Steven Vartabedian: Your major, your degree was in—

Jay Ballantyne: It was a B.S. in Business Administration.

Steven Vartabedian: Now, sometime around this point in time, I understand you met your future wife Elaine. Can you tell us about how you met her?

(00:10:38)

Jay Ballantyne: Yeah, I was very lucky to meet Elaine. I went to a church dance, a Mormon LDS church, and at the dance, I saw this scintillating blond girl out there dancing. As it turns out, I found out she was a professional dancer; she was a ballet dancer. But anyway, she was out there dancing and doing all of these wonderful steps. I loved to dance, so I went out and cut in on her. And it was kind of a risqué thing to do as I look back, but she was doing a lot of pirouettes, and she had a full skirt and I could see her legs, which were beautiful. The first thing I said to my future wife was, "You have beautiful legs." *[laughing]*

Steven Vartabedian: Quite a match-up there, a ballerina and a gymnast.

Jay Ballantyne: Oh, yeah. We still love to dance. We've danced all around the world. One of the ladies here on the court asked me why I was retiring so young, and I was, at that time I think I was 62, and I told her, I said, "What I plan on doing is instead of being pushed around the world in a wheelchair, I want to dance with my wife around the world."

Steven Vartabedian: It seems like you're doing that.

Jay Ballantyne: We did. We've done that.

Steven Vartabedian: Going back to that point in time, though, out of USC, what caused you to decide to go to law school?

Jay Ballantyne: Well, the advice which I had received . . . some of my friends were in law school, and so I just thought it was a wonderful step to take for additional training. So I enrolled at Southwestern Law School.

Steven Vartabedian: Were there any particular experiences at Southwestern that you think influenced the path that your legal career would take?

Jay Ballantyne: No, I enjoyed . . . I liked torts very much, the contracts. I thought probably I would end up—I hoped to end up—as a trial attorney. I had the good fortune also to meet another very delightful man; I met George Zenovich. We were in the same class in law school. George didn't have a car, and I had a car. So one of the delightful things we did in law school, he was a very good musician, George. He played the bass and he also played in the junior orchestra here in Fresno.

But anyway, he also was a bass player, and he played jazz and all that stuff. In fact, he kind of worked his way through school. During the summers he would go and work as a musician. But anyway, I would pick up George with his bass, and then we would pick up my wife, who was dancing in the Light Opera, and we would go over to La Cienega to a real nice little restaurant out there called the Captain's Table. He would sit in with the band—they had a little combo—and they would treat us to drinks during the evening. That was a delightful experience. I maintained that contact with George after law school. I sat with him up here on this court for a couple of months pro tem.

Steven Vartabedian: Of course you finished law school, passed the bar, and I understand you practiced in the L.A. area for a brief time but then you made the decision to move up to Visalia. Can you tell us a little bit about that?

Jay Ballantyne: What happened was when they discharged us from St. Mary's Pre-Flight it was premature, because we didn't have the points. At that time discharge was . . . At the end of the World War, there were 12 million men in the service, and they were bringing us out on points on service. They let us out early, but anyway, they gave us an option: we'd continue and get into flight training and get our commissions, or we could get out early and go in the reserve, the inactive reserve. About 80 percent of us probably opted for getting out early and continuing our educations. So that's what happened to me.

(00:15:17)

But I stayed in that reserve, and during the conflict with Korea, they were calling up the reserves. They were getting ready to call me up. A friend of mine told me about a position in the Tulare County District Attorney's Office. So I was working for a private attorney in the San Fernando Valley for about four

months doing deposition work and also appearances in court. So I opted to come up to Visalia and interview for that job. That's how I happened to end up in Visalia, which I didn't know where it was when I . . . I thought it was over on the coast. *[laughing]* Anyway, we ended up here, and then I was hired and became a deputy district attorney.

Steven Vartabedian: I believe it was in 1953 you did go into private practice for a while under the firm name of McKinney & Ballantyne. What was the nature of that practice?

Jay Ballantyne: Oh, that was general practice. We did everything. So I did that for about five years. I did have some unique experiences in that as a deputy DA. It was a wonderful . . . I loved the trial work, and I got a lot of trial work. And I was in that office for maybe about 20 months. But during that time we were trying a lot of cases, and I got to try preliminary hearings; and I also got in the superior court.

Steven Vartabedian: During your early practice, were there any particular experiences—many of us remember our first prelim, our first trial—anything like that that you had?

Jay Ballantyne: Well, a couple of them really stand out. My first felony proceeding was a preliminary hearing in a very small town of Ducor, down in the southern part of Tulare County. It was a car theft case. I drove down to Ducor, and there were just only a few houses. They had a store and a few houses, maybe a gas station. But anyway, there was a California Highway Patrol vehicle parked next to the single car garage. I went over and spoke to the officers and I said, "Where's the courthouse?" and they pointed to the garage. I said, "Where's the judge?" It was about 20 minutes to 10. It was supposed to take place at about 10:00. And they said, "He's still over in the house; we tried to get him, but he's still there in the house." So I went over and knocked on the door. And it was Judge Stewart, was the name of the judge.

He was a justice of the peace. At that time we had 15 justice courts in Tulare County and no muni courts, and we had three superior courts. But in any event, I knocked on the door; she answered, and I asked where the judge was. She said, "I'll get him." I don't know what he had been doing the night before, but I'm kind of suspicious. He had a reputation of drinking a little. But anyway, he did show up and we went into the garage. And my first experience on a felony case, I can remember, it was very quaint because it had a dirt floor, had a few chairs, very few, and a couple of fly rods adorning the wall.

So I asked these two young men . . . At that time we didn't appoint public defenders on preliminary hearings; they could ask for it, but we didn't appoint. So I asked them if they would like to waive their preliminary and get up to superior court, and

they both said they would waive. I then asked the judge if he would sign a binding-over order, so we could take them up to superior court. And he asked, "What's that?" *[laughing]* I said, "Well, it's a little small paper that you have to just bind them over and sign them so we have jurisdiction in superior court." And he said, "Well, it might be in my desk."

So we went over to this little roll-top desk and we rolled it up, and sure enough there was a pad in there with these preliminary hearing slips. I said, "Judge, you have to make that out and sign that." He said, "Well, would you do that for me?" And I said, "Sure." So I sat down in the seat and put it in the typewriter and I made it out, and we bound them over and we went up to superior court.

(00:20:14)

Steven Vartabedian: I imagine as a new deputy DA, you never imagined that you would actually be filling out the judge's paperwork for him. *[laughing]*

Jay Ballantyne: Absolutely. That's the only time I ever did, until I actually sat on the bench. But another very interesting experience was my first felony trial in superior court. It was in July of 1952, and we'd had an earthquake which they called the Tehachapi quake, and it was very big down in Bakersfield. They lost a few lives down there. Anyway, we had some damage to our courthouse.

Now, the DAs sat on the second floor of the old courthouse, and we had two chambers down below. I was trying this burglary case, which started that Friday, in one of those chambers. And it's kind of interesting about that chamber, because that was the last really sensational train robbery case that was tried in the United States, and it was the Dalton Gang, which was a famous, nefarious train-robbing outfit that robbed trains up and down California.

In any event, I was trying the case in that chamber, and I came back on Monday and they'd cordoned off the courthouse. So I asked them and they said, "Well, it's been condemned because of the earthquake." Well, Judge Frederick E. Stone had a chamber, the third chamber; it was on an annex on the back of that old courthouse. So we had to transfer the case to his court. That's where I finished that felony case. Those were the two very unique experiences.

Steven Vartabedian: For those of our listeners who might not know, Judge Frederick Stone became Justice Stone, and Justice Frederick Stone served as a presiding justice of this court.

Jay Ballantyne: Yes, he did. He really was almost like a mentor to me. The way he conducted a courtroom, there was great decorum in the courtroom; he was very decisive, the way he would handle his

decisions. Also we were in the Lions Club together, as Robert K. Meyer also was a member of the Lions Club. He was the DA I served under as a deputy.

Steven Vartabedian: In 1958, in fact, you decided to throw your hat into the ring and run for district attorney yourself, district attorney of Tulare County. Tell us about that experience.

Jay Ballantyne: Well, Robert K. Meyer, as I say, was also like a mentor for me as a district attorney, and the same age as my dad, by the way. But anyway, he was just a wonderful father figure to me that inspired me really as a young attorney. He told me he was about to retire, and he suggested that I should consider running for that open seat in 1958. I was coming up on my second term. I had been the youngest district attorney in the state. I was 32 when I became the DA, and I had been through the chairs in the DA's office. I had become the president of the District Attorney and County Counsel Association, I think it was 1962, and so I felt like it was maybe time to take a step and maybe aspire to the superior court.

Steven Vartabedian: That's really something. That speaks well of you, at your young age, being elected DA, and you'd only been in the community five or six years at that point.

Jay Ballantyne: Well I ran against the incumbent, and I was very surprised; no, I wasn't surprised, but I had . . . A lot of my friends in the DA's office who had gone into private practice encouraged me and supported me in that effort. I did prevail in the election, and I was elected. I had many wonderful experiences in the DA's office.

Steven Vartabedian: You told us a little bit of how the practice of law was like then. How was the practice different, let's say in the '50s and '60s, from what we have now other than some of the things you've already told us?

Jay Ballantyne: Well, the wonderful thing about the practice, particularly in Tulare County, you knew every attorney in the county. The judges were very available. Their chambers were open to you. You'd go over and maybe you can go and if you had time, you'd have a cup of coffee with them, sit and chat in their chambers; and you would place a call to another attorney, he would immediately respond. You didn't get put off a secretary. *[laughing]*

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The calls would come back immediately; you would settle your cases by meeting someplace for a cup of coffee and settle cases. It was a very casual, wonderful way to practice law, completely different than the practice today.

Steven Vartabedian: You mentioned to us a little bit that as your career is developing, these thoughts of a judgeship came into mind. How did that all play up for you, your initial judge situation?

Jay Ballantyne: Well, I became a judge, superior court; I went on the court. Actually Pat Brown, who was the Governor at the time, was a friend of mine. When I was DA, he'd been an Attorney General; and he always attended our DAs meetings. He loved to play golf, so I played some golf with him, and we became friends. And in any event, when I became a candidate for superior court—

Steven Vartabedian: You decided to run for election for superior court, as I understand.

Jay Ballantyne: Yeah, and this was early on in 1958, before the preliminary; he called me and told me that the vacancy had occurred because Judge Myers had retired. So he asked me if I would like to be appointed pro tem and I told him no, because I thought politically that would be a mistake; it'd be better if I ran on my merits and attained a judgeship that way. And so anyway, immediately after the preliminary when I was elected, he then appointed me. So I got on pro tem back in the late part of 1958 and then I was . . . and I took my permanent place on that court in January of 1958.

Steven Vartabedian: Nineteen fifty-eight was when you became DA, wasn't it?

Jay Ballantyne: No, 1959. I became DA in 1958.

Steven Vartabedian: So 1966.

Jay Ballantyne: We're talking 1966, correct.

Steven Vartabedian: Nineteen sixty-six, you had been taking the superior court and you had actually won in the primary election, and that's when Governor Pat Brown went ahead and appointed you six months early to take that seat.

Jay Ballantyne: Pro tem.

Steven Vartabedian: Now, how did that experience compare to being the DA, going from the DA side to the judicial side? How was that for you?

Jay Ballantyne: Well, I really enjoyed my experience on the superior court, and you're like the captain of your own ship, you run your own operation. And at that time we rotated the presiding judge's duties on the superior court. It's amazing; we had very little staff. Each had a secretary and we had a jury commissioner who had one assistant. So our judicial operation in Tulare County consisted of five. We also did our own calendaring. Now they have 87, doing the same function in Tulare County; I just got that number from the court administrator. *[laughing]*

Steven Vartabedian: You really impressed me. I guessed you wouldn't have gotten it from the administrator.

Jay Ballantyne: No, it's just amazing. But I enjoyed greatly my experience on the superior court. I served on the Law and Legislative Committee, the executive board of that group. And I became the vice-president of the California Judges Association. I also served on the faculty of the Judges College up at Boalt Hall, and that was a wonderful experience. Did I mention that I became the president of the California County Counsels' Association?

Steven Vartabedian: I don't believe so.

Jay Ballantyne: I did, and one of the great experiences in that group was we had a Law and Legislative Committee, and it was a joint committee of the DAs, county counsels, and all of law enforcement in the state of California. It was a very important group, and we had three DAs and county counsels, and three from law enforcement. That was our Law and Legislative Committee. And we would meet once every month during the legislative session, and it was a biennial thing at that time. They met every other year in California at that time, and they also had special sessions. But we would meet and we would go over all legislation that impacted the courts and law enforcement.

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And we would meet at Sutter's Club in San Francisco. Ed Meese, the future Attorney General, would meet with us. He would stay during the legislative session in Sacramento. He was a deputy DA at that time in Alameda County, and Frank Copley was the chairman of that committee. So we would meet, we'd go over that. And one of our functions would be to go up and appear before committees, subcommittees, in the Legislature and do critiques, maybe, on that legislation. That was very interesting.

Steven Vartabedian: It is very interesting. You and I share the fact that we both have the experience—well, in the trial court at different time, obviously—that we served on assignment to the Court of Appeal. And you did so in 1980. That experience, how did it set in your mind, the comparison between the trial court and the appellate court?

Jay Ballantyne: Well, I was very excited when I was asked to do that, and I came up on the court, it would have been in 1986.

Steven Vartabedian: But that experience on assignment was while you were in the trial court in 1980 earlier; otherwise when you did the pro tem assignment—

Jay Ballantyne: Yeah, that was in 1986.

Steven Vartabedian: That's when you were appointed to the court.

Jay Ballantyne: No, wait a minute. Yeah, all right, that would have been in 1985.

Steven Vartabedian: Dates can be tricky.

Jay Ballantyne: Nineteen eighty-five, yeah, that was before my appointment. But anyway, I came up in 1985 and I had already put my name in to be appointed to the Court of Appeal. So I came up early in 1985 and it appeared that I was going to be appointed. I had a lot of support, and the legislators had put my name in; and I had a lot of local support and I had served quite often up here in Fresno County. I came up here on several occasions. I had already sat in Kings County, on an assignment in Kern County, and I had that type of support, local.

And anyway, the *Fresno Bee* came out and said I was going to be appointed. And then suddenly the rumors came up that there was another possible appointee, and it came out it was Ken Andreen, a very good friend of mine; we're still very good friends. And Denny Peckinpah, one of the judges here on the superior court in Fresno, and myself, we had set up a group of judges who like to fish. And we would take trips in the high Sierras on mules, and there were about 10 of us, up and down from Merced all the way down to Kern County. And we never took more than the seven or eight; we may take eight. We'd play cards, play poker, and we would fish, play horseshoes, and also we'd chill our white wine in the creeks. Wonderful.

But Ken Andreen was a good friend of mine, and we both vied for the position. And Jerry Brown was then the Governor, and the way he resolved it . . . He finally had trouble resolving it, and he flew down to Fresno airport. We met at the hotel out there, each one of us individually, one on one with the Governor for about an hour. And in any event, Ken was appointed two years before I was appointed. So this was early on, as it was two years before; but he sat on the court for two years before I came up on the court.

Steven Vartabedian: And your time did come with Governor Deukmejian, that you were appointed to the Court of Appeal. How did that happen for you? Do you remember getting the call or how that occurred?

(00:34:54)

Jay Ballantyne: Well, I remember the call, and I was down in Palm Springs. My mother-in-law had a home down there, and I was playing golf with some friends; and I got the call and someone actually came out on the golf course and told me they'd received a call

from the Governor's Office and I was to call back as soon as I could. So I went in and was told that I had been appointed. Oh, no, no—my appointment was possibly pending and I had to set up a meeting with the Governor, which of course I accomplished.

Steven Vartabedian: That was successful.

Jay Ballantyne: I went up and met the Governor, yes, and that was successful, and so I was appointed to the court.

Steven Vartabedian: So starting in 1986 you started your service on the Court of Appeal; and certainly to show you how things don't change a lot over time, that was more than 20 years ago and two of your attorneys that worked under you, research attorneys, are still on our court: Clint Horwitz and Linda Rousse, who is one of my chambers attorneys.

Jay Ballantyne: Delightful people and brilliant people, and of course good clerks, make it very, very nice for justices on the court.

Steven Vartabedian: I can second that motion. I've had that same experience. And one of the differences we have with some other appellate courts, here on the Court of Appeal we have career research attorneys whereas you find, especially in the federal courts, you have annual, or semi- or biannual clerks serving. What are your feelings about that? Do you think it's good to have career attorneys, or do you think it would be better to have clerks coming in on an annual or biannual basis?

Jay Ballantyne: Well, I think if you get a clerk who you have a good relationship with and they're very good writers and they're brilliant, I think it would be a mistake to replace that person. Now Don Franson, who became presiding justice . . . Did I say that we met? That we met at St. Mary's Pre-Flight?

Steven Vartabedian: Yes, you sure did.

Jay Ballantyne: And he was a member of the judges' mountain expedition I was talking about and loved to fish, and we had many wonderful times together and also we socialized together. In any event, he would rotate; every two or three years he would replace his clerks. But I didn't agree; when I had two very good clerks, I stayed with those clerks, and they're still here and doing wonderful work.

Steven Vartabedian: And I agree with you wholeheartedly. And I misspoke—actually it's semiannually a lot of judges rotate clerks, just as you had mentioned one of the justices you served with. Now, Linda Rousse told me some of the things that happened while she was serving under you, and she remembers one day when you came back to court, that you had suffered an injury on a

different court—the racquetball court. Do you remember that, by any chance? A racquetball caught you, I think.

Jay Ballantyne: Oh, yeah, all right. One of the clerks, I've forgotten his name, unfortunately, but he was a very good racquetball player; and we had a shower in the old Fifth District Court of Appeal building. And so I played tennis and I also played some racquetball. And on one occasion we went over—one of our members, he was a member of the staff and I think it was writ, he did the writs—and in any event he was a very bright guy, and his wife also was one of the attachés of the court. But he took me over to play some racquetball.

Steven Vartabedian: Would that have been Jim Christiansen, by any chance?

Jay Ballantyne: It was Jim, a charming man, a brilliant man. But in any event, we went over to play racquetball, and in racquetball you've got, some of the thing is blocking out on a shot; and he was blocking me out, and I tried to get around him, and I hit the ball and then he took a swing at it and it caught me on the eye. And I had to have some stitches taken above my eye.

Steven Vartabedian: But you hardly missed a beat, as Linda told me.

Jay Ballantyne: No, I was there the next day, maybe that afternoon; I just had the stitches. And the other thing is, Leonard Meyers, who was another member of the mountain expedition, a very prominent judge here, a wonderful judge; but anyway, he played tennis. We both played tennis; I would go and play tennis with him and some of the other . . . and also the manager for the court—

Steven Vartabedian: Kevin Swanson?

(00:40:17)

Jay Ballantyne: Yeah, Swanson. He was a very good tennis player, and in any event he would play tennis with us.

Steven Vartabedian: So you were very active, obviously; and in talking with your former research attorneys, they certainly remember you as a congenial boss. They also remember that you had a very strong competition with Justice Hollis Best in treating staff to donuts regularly in the blue room of the Court of Appeal in the State Building.

Jay Ballantyne: Well, we were very proud of the blue room, because it was an extremely congenial group, and about eight of us in there with our secretaries and staff. And so it became a tradition that either Holly or myself would pick up a dozen donuts every morning, and we would bring those donuts and everybody enjoyed those donuts for a few minutes. One of the great traditions on this court, and it was started way back . . . I know Fred Stone became the presiding justice. But anyway, the

tradition was everybody showed up at 8:00; I mean, the court started at 8:00.

Steven Vartabedian: I have to admit that has changed a little bit. *[laughing]*

Jay Ballantyne: It may have, but in any event that was one of our traditions. And anyway, we would start the morning off, we'd show up with those donuts, and we would have coffee and donuts—and a very tranquil, wonderful way to start the morning.

Steven Vartabedian: There was another tradition that I understand you were responsible for, and that is to this day, the justices of this court set aside Wednesday as the day that all the justices would eat lunch together and walk over to a local restaurant or eatery. I understand you started that tradition.

Jay Ballantyne: Well, that's probably my greatest contribution to the court, because at that time some of the justices would sit in their chamber and have a sandwich and a couple of us would go out to lunch, maybe; and we also had a cafeteria, and we would eat in the cafeteria. But I thought it would be a good idea—we had some really very nice restaurants around the court—and it would become very nice for the court, for the justices, to walk and get some exercise and go enjoy a lunch together. And so that became a tradition, and we would walk and talk and visit at lunch—talk about the law, talk about just sports, athletic events, whatever. And it was very congenial, and I think it made a contribution to the collegiality of this court. And by the way, the Fifth District court had a reputation in the state as being a very collegial—not only a very good court—but also a very friendly, collegial type court.

Steven Vartabedian: Several of the colleagues that you served with and other people that you've encountered during your career who were justices of this court unfortunately passed away before this Legacy Project got started, and you've talked a little bit about your experiences with Justices Franson and Best, two of our presiding justices. Also, Justice George Brown was another presiding, and you served with him. Any thoughts you want to share on your experiences with any of these people, the ones I mentioned, or any other folks during this time?

Jay Ballantyne: They were all so good. And we rotated our panels, which some courts don't do that; they have their panel and they live with that panel through their entire career. But one of the nice things on this court was we would rotate the panels and gain experience by associating with the entire number of justices on the court. And of course, each one of them would bring something unique to that panel, and so it was a very broadening, enlightening experience to go through that. I socialized particularly with Don Franson—also, of course, with George Zenovich and George Brown. So anyway, that's something I remember very vividly.

Steven Vartabedian: Now, in terms of the opinions, I think you published something like 42 opinions during the time you served on this court. Now, I can hardly remember the cases I wrote last week, so I apologize for asking this question since it's been 20 years or so; but do you have any favorite opinions that you wrote that come to mind?

Jay Ballantyne: Well, in that respect I remember a comment by Presiding Justice George Brown; we were at some judicial function and the members of the bar were attending. And we used to go around, and they probably still do—we would go down to the local bars that we served.

Steven Vartabedian: Local bar associations.

Jay Ballantyne: Yes, and that's an annual thing. And we were at one of those and some judge came up and wanted to talk about a case that he had on appeal—that had been on appeal—and Justice Brown had written the opinion. And they talked for a little while, and a little later on we were talking about it. He said, "You know, that case was decided six months ago, I can't remember anything about it."

(00:46:00)

Now, here's a brilliant justice. People may not know this, and I don't want to cite this, but he was top of his class at Berkeley; he went undergraduate to Berkeley, University of California, and then he was top of his class at Stanford Law School. I think it was Pat Brown wanted to put him . . . it may have been before that, Goody Knight maybe; but early on, during when he came up on the superior court, early on they wanted to put . . . No, it was Ronald Reagan wanted to make him the Chief Justice of the California Supreme Court, and then they found out . . . he had a physical and he had a heart condition. And so he backed off, and they brought him up to the Court of Appeal, made him presiding here.

Steven Vartabedian: Of the cases that you wrote, are there any that come to mind for you?

Jay Ballantyne: Well, it's really hard to remember them, but I remember a couple. One had to do with child abuse down in Kern County; it was the *Van Hoek* case, or something like that. And it was about the same time that they were having a big problem in Los Angeles with the *McMartin* case, which was a sensational case. I think it preceded our *Van Hoek* case. But in any event, what happened down there, it was a private school; I think it was like in Manhattan Beach. But in any event, they started this case and it became a monster, with the children, quite a few of them were charging sexual abuse in that place. And they were talking about . . . some of them came up with stories about

bodies being buried down in the cellar, and it just went on and on, and it actually ruined the career of the DA down there, because he persisted in that prosecution and it was obviously the children being manipulated by the interrogators.

Steven Vartabedian: And this *Van Hoek* case that came out of our district that you wrote had some very startling similarities.

Jay Ballantyne: Very similar; now they had kids hanging up on the walls and being flagellated—flagellation, sexual abuse. And they charged the parents of those kids; and I forget how many there were, but they were convicted and they were sentenced to like 40, 50 years in prison, consecutive sentences. And it was obvious the children had been manipulated by their interrogators. But in any event we reversed that case, and it wasn't retried; they dismissed it.

One other case that a couple of my friends, attorneys, like to cite—it was a case and it was the *People of the State XL Water Resources*, something like that *(Voice Overlap)*. Yeah, it involved a condemnation case over at the San Luis Reservoir. They had had a big rockslide on the face of that dam over there, and there was a property owned by I think it was a church group—although the name is an individual name, but I think it was a church group who owned that property; I think it was a Catholic church. But in any event they owned that property, and they had basalt, which is the large boulders that they use on dams. And at that time we were still constructing dams in the valley, and also at the bays, the breakwaters in our bays like over at Morro Bay. But anyway, they would transport those very heavy rocks for that purpose.

And what was involved in the case, as I recall, is they had made some improvements in their mining operation. And after the rockslide, it was in that interval . . . and as I recall, they didn't want to pay for those improvements. And that had been the law up to that point; once they started, that they couldn't make any improvements in that interval, where they had indicated they were going to condemn the property and the improvements. But in any event, we held that so long as it was not reasonably foreseeable that the improvements would be used for the condemned property's purpose, they had to compensate. And my friends, who had the leading firm down in Los Angeles at that time, love to cite that case, and they commended me for writing that opinion.

Steven Vartabedian: Now, 1988 rolls around and you retired; I should say sort of retired, because I know you kept very busy as a private judge after that time and did sit in some courts perhaps, I think, after your retirement. Tell us about your experiences after retiring from the court.

Jay Ballantyne: Well, I retired in 1988; I was 62. And I remember one of the attachés, one of the ladies, asked me why I was retiring so young, and I told her that I wanted to dance with my wife around the world on our visitations and journeys rather than having her push me in a wheelchair. And we accomplished that purpose; we traveled a great deal, and wherever we went, if we had an opportunity we would dance.

Steven Vartabedian: And you've been very successful in that. Now, you did have some experiences, I believe, with JAMS; is that correct?

(00:52:23)

Jay Ballantyne: Well, I went with JAMS shortly after I retired. And Warren Knight, who started JAMS, which is a very famous arbitration-mediation service . . . and at that time, it stood for Judicial Arbitration Mediation Service; they were all judges and justices. And it was a fairly small organization at that time. But anyway, they had an office, they established an office in Fresno and all over California; and I worked with that group for about 16 years after my retirement. And I had many pleasant experiences in doing that type of work. And also I enjoyed sitting pro tem on trial courts, and I sat pro tem—particularly in San Luis Obispo court, I really enjoyed; and in Visalia, on our own court in Tulare County. And I did that up until about three years ago; I think I had my last jury trial at Visalia. But I greatly enjoyed that trial work.

Steven Vartabedian: Please bring us up to date on your current activities—and I understand a big part of that is your travel.

Jay Ballantyne: Well, we do enjoy travel. We just got back two days ago from Kauai, and we went over there and had a very enjoyable week in Kauai. And we traveled in Europe a great deal; I went on a golfing tour of Europe with some very enjoyable people and played golf around Europe. And we've been to the Orient, and we've taken trips.

I love the riverboat trips. And the great thing about riverboats, when you get on a big cruise line, sometimes you have to disembark on small boats and that type of thing. But on a river cruise it's a very small group of people, first of all, and it's quite intimate; you get to know everybody on board. And they have wonderful cuisine; and they do, they moor every night, and they pull up to a city. And you can get off and walk and you can tour the city, and it's a great way to tour the world. They have great cuisine. But we've done that in China, we've done it in Portugal, we've done it on the Danube; and oh boy, it's a great way to travel.

Steven Vartabedian: That sounds terrific. I understand you and Elaine have four daughters; and is it 18 grandchildren?

Jay Ballantyne: Yeah, we have 18; I cheated a little bit on that because 5 of them are great-grandchildren.

Steven Vartabedian: Oh, great-grand children, five.

Jay Ballantyne: Yeah, so we have 13. And, well, I have 4 daughters; now I have 10 grandsons, and they are all just beautiful kids. And some of them are into athletics, so I enjoy very much viewing those activities and also visiting with my daughters and my grandchildren.

Steven Vartabedian: Now, do you have any words of advice for any new lawyers, someone just starting out as a lawyer? What would you tell them today? In fact, you have a grandson that's a fairly new lawyer.

Jay Ballantyne: Yeah, Austin Ewell is one of my grandsons; he just turned 30. He went to USC, and he's a very avid Trojan, as myself; even though we lost last week to Stanford, I'm undaunted. We'll come back. But in any event he's very much interested in athletics, and he practices here in Fresno. And he just got married to a beautiful girl who's a teacher, and the day before we left for Kauai they had a wonderful wedding down in Los Angeles, where most of his friends were—a lot of fraternity brothers and that type of thing. But they had a beautiful wedding at the Wilshire Ebell Club in Los Angeles.

Steven Vartabedian: As he was approaching his legal career, whether it be he or someone else, did you give him any advice? Or what advice would you give to a new attorney, if they asked?

Jay Ballantyne: Well, the practice of law has changed so very much. I still would prefer going into a firm and have trial work, where you can actually go to court. And there's nothing like being a trial attorney going to court, getting that experience. Particularly I think it's very helpful if you go up on a Court of Appeal to have that type of background and experience and know what trials are like and what truly goes on in a courtroom, instead of coming from a scholastic, perhaps, background or just with a practice, perhaps corporate law. And on the trial court and as a trial attorney, particularly if you have more of a general practice, you have exposure to all those many, many facets of the law.

Steven Vartabedian: I take it you'd then give that same advice for someone aspiring to become a judge. Trial experience would be very important.

Jay Ballantyne: That's what I would do; that's been my experience, and I enjoyed it.

Steven Vartabedian: How would you like the legal community, or the community at large, for that matter, to remember you?

Jay Ballantyne: Well, the greatest accolade I think a judge can have is to have the reputation as being a fair judge and being courteous and maintaining some decorum in your courtroom. I think that's the highest aspiration for a judge.

Steven Vartabedian: That's hard to beat. Jay, I want to thank you very much for sharing this family history of yours, your own history, your many recollections. And I also thank you for your many years of outstanding service on the bench. I appreciate your helping us with this project.

Jay Ballantyne: I appreciate you doing the interview.

Steven Vartabedian: Oh, that's a very small part of it; I thank you.

Jay Ballantyne: It's been very enjoyable.

Steven Vartabedian: Great, thank you.

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