David Knight: We'll start with Justice Johnson.

Earl Johnson: I'm Earl Johnson, Jr., former Associate Justice of the California Court of Appeal, Division Seven, for some 25 years.

David Knight: Okay. And Justice Zelon.

Laurie Zelon: I'm Laurie Zelon, Associate Justice of the Court of Appeal, Division Seven, Second District, and happy to be here today.

David Knight: All right, and I am ready to go any time, Justice Zelon.

Laurie Zelon: Good morning, Justice Johnson. We're here today because the Appellate Court Legacy Project is creating an oral history of the appellate courts in California, and you're such an important part of that history that I'm delighted to be here today and have a chance to talk to you.

Earl Johnson: It's good to chat with you, too.

Laurie Zelon: Justice Johnson, lots of people think that they know lots of things about you. But I think what I'd like to do is start with what people may not know about you and talk a little bit about your family history and the things that may have influenced you from your family history.

Earl Johnson: Yes. I was actually the descendant of several pioneer families that settled in the Dakota Territory in the 1880s. My father's side were all Norwegian. My mother's side was . . . . Her mother's family was the descendants, actually, of a Dutch man who immigrated to the United States in 1630 to New York. And there's some, like, 5,000 descendants of him in this country. And my mother's father was German-American. So I'm a mongrel. That's what it amount to. But they were all pioneers; they all came about the same time to different parts of South . . . of what is now South Dakota but at the time was the Dakota Territory. It had not become a state yet.

And I've learned the most about the Norwegian family, motivated primarily by the fact that we had chosen, for the name for our youngest son, Agaarn – not a very familiar name – which had been a middle name for a number of people in our family, and we wondered where . . . what it meant and where it came from after we named him that, as a matter of fact. It took us many years, but we finally found out. And it turns out that in . . . . My great-grandparents immigrated from the fjord country of Norway in 1854 and my grandfather had been born before they left; he was a baby. And both my great-grandfather and grandfather's middle names was Agaarn. And we found out at that time in Norway there were not permanent family names. Johnson meant you were "son of John"; Larson meant you were "son of Lars." And the only way they were able to distinguish between all the sons of John 2:59 and all the

sons of Lars that were running around was to add as a middle name the name of the farm on which you were born. So it turns out that Agaarn means . . . it means that farm. It actually means "island farm." And this little tenant farm, which is probably five acres, which was where my great-grandparents lived before they moved to the United States, was right . . . . There was a river going right by there, and there was a little island in the middle of the river. So it got that name, and that's how . . . . So we actually went there and we stood on that piece of land and took some pictures and all that.

So anyway, that's . . . . So they all arrived in . . . . Then my grandfather and grandmother, he having been a baby when they came over, then homesteaded in 1881 in the Dakota Territory, and that's how they got there. And the others came in the middle 1880s to a hundred miles west of there, near the Missouri River. They had much worse luck. My grandfather and grandmother did very well. By the time he died, he had a thousand acres – not the 160 he got from the homesteading. And he was on the board of directors of a bank and all this sort of thing. The other ones that . . . . Both of the women died within the first few years. They had huge blizzards out there, and they didn't . . . weren't ready for that, and passed away.

My grandfather from that . . . from my mother's mother's side – the one that was descended from the . . . . No, pardon me, my mother's father – the German-American – he became the first police chief and the first fire chief of a new town in South Dakota called Selby, which later became the county seat of that area. And then he was elected sheriff. And when . . . at the time I was born, he was the Deputy Director of Internal Revenue for the State of South Dakota. So that was the first element of public service and government service. But I was . . . . He was a very . . . . He was one of the . . . . He was still alive, and I had a chance to meet him and talk with him and all that. He was a great guy, and . . . .

Laurie Zelon: Did he have any formal training?

Earl Johnson: I don't believe so. No, he was never in college or anything like that. My mother was the first one in the family to go to college.

Laurie Zelon: What did she study?

Earl Johnson: She was the youngest of six or seven children. And she went to Northern Normal, which was in Aberdeen, South Dakota. It was a teachers' training school. And she went for two years, which is all you had to do, and became a teacher. And she taught on the Pine Ridge Indian Reservation.

Laurie Zelon: Another public service! 6:12

Earl Johnson: And then my father met her. And so . . . . He was living in Watertown; he was a traveling salesman for Armour and Company. And he was making this hundred-mile trip every weekend to visit her on the Pine Ridge Indian Reservation. After a couple of years of that, they got married, and a year later I came along.

Laurie Zelon: And do you have brothers and sisters?

Earl Johnson: I have half-brothers and -sisters. My father . . . . This was the second marriage for my father. And he'd had three kids. And after the divorce, the mother moved to Los Angeles. And many, many, many, many years later, I reunited with them. But I had . . . . I was raised as an only child. I didn't even know they existed until I was about 12 years old, and I didn't actually meet them until I was in my 60s. So . . . .

Laurie Zelon: And you have children of your own?

Earl Johnson: I have children of my own.

Laurie Zelon: Let's talk about them for a minute.

Earl Johnson: Okay. I have . . . . My oldest is my daughter, who is a Ph.D. in clinical psychology at the University of Washington in Seattle. And she has our only two grandchildren: Emma and Camille, who are at this point now, believe it or not, nine and seven. Do you remember when they were coming around here, these little . . . .

Laurie Zelon: I do!

Earl Johnson: They're doing well. And our eldest son, Eric, who is . . . he has his own little TV production company – does a lot of commercials and things like that. And he's also in Seattle, and he's a . . . big into bike racing, and he's married to a woman who is an executive in a biotech company – specializes in oncology and that sort of thing. And then our youngest is Agaarn, and he . . . that's the one that was named after the farm!

Laurie Zelon: Right.

Earl Johnson: He had hopes it'd be something more prestigious, you know, like King Agaarn or something like that. But, anyway, it turned out to be a farm. So anyway, he is in Washington D.C. and he is now . . . he was after . . . . He was about seven years with the FBI in counterterrorism; he is now with the staff of the Director of National Intelligence in the same field.

Laurie Zelon: So it's, in just a few generations, a long way from a five-acre farm . . . 8:59

Earl Johnson: That's right.

Laurie Zelon: . . . to all over the country now.

Earl Johnson: Yeah. Yes. That great-grandfather ended up in Illinois with 157 acres – about twice the size of the main farm that he used to be a tenant farmer on. And he also, at the age of 37 in 1864, got drafted into the Union Army, despite the fact he was 37 years old, had six children – the oldest of which was 12 – and had a huge farm. But . . .

Laurie Zelon: Off he went.

Earl Johnson: So he fought in some major battles in Tennessee: the Battle of Nashville, the Battle of Franklin, and all that, which was sort of the Battle of the Bulge–type thing. It was the last attempt by the Confederacy to move north, and they got frustrated.

Laurie Zelon: How do you think . . . . You've obviously done a lot of work on your family history but haven't met a number of the people . . .

Earl Johnson: Yes, right.

Laurie Zelon: . . . who you're talking about. How do you think the people that you *have* met influenced you in your choices in your life?

Earl Johnson: I think my mother influenced me the most. She had been a teacher, but when she married my father and had me, she became the housewife, essentially. And she had only one student.

Laurie Zelon: And he had to be good!

Earl Johnson: Yes. I think I had completed the second-grade curriculum before I went into the kindergarten! It seemed like it to me. She really was intense. But it paid off. But she always encouraged me to study more and more, and encouraged me all the way along the line.

Laurie Zelon: Well, you've done a number of things in your life. And before we get to the 26 years that you spent here, hopefully happily . . .

Earl Johnson: I did.

Laurie Zelon: . . . you know, before that you were in the navy, you were a federal prosecutor prosecuting organized crime and racketeering cases, you were a legal services lawyer, you were director of what was essentially the first federal legal services office, you were a professor of law, you have been an author. How did all of that come about in the way that it created a path for you? I mean, there's so many different things, all of them leading you to where you are now. 11:27

Earl Johnson: Well, where does it start? When I was in high school, I was . . . I became involved in debate. In fact, I was the captain of the debate team. And debate was a big thing in South Dakota. I don't know if you know, but it was . . . for one reason or another it just became a big thing. In fact, a few years before I was there, the debate team from my little high school – Watertown High School in Watertown, South Dakota – won the national debate championship. And so I learned more – and more of my orientation came – from being a debater than I learned from my classes in high school. We had terrific topics. We had "world government," we had "direct election of the president," which . . . you think of *Bush/Gore*, right? And we had . . . and then, "the welfare state." So in each one of those, you do so much research, you become . . . you know, you read books after book after book. And I got a political education, I got an economic education, and so forth, by doing that. And also learned to become an advocate and interested in being an advocate.

And so that . . . . Then I was also involved in student government. I was president of the junior class, I was on the student whatever this . . . governing, whatever they called it there. And between my sophomore and junior . . . no, between my junior and senior year, I was so heavily involved in debate that I went to a national institute on debate that Northwestern ran for high school students. And went . . . . That was a six-week thing, and exposed me to Northwestern as well as exposing me more to debate. So when . . . . I got an NROTC scholarship to go to college – paid all tuition, all room and board, full ride. But you had a choice. There was like 50 schools to go to. Having gone to Northwestern for this summer thing, I decided I liked it and that's where I had to go. So I . . . . And immediately became involved both on the Northwestern debate team and in student government. I got on the Student Governing Board. And I went there as a psychology major. When the president of the Psychology Club got committed . . .

Laurie Zelon: Oh, dear.

Earl Johnson: . . . I decided maybe . . . . Then I became an economics major. And I was really heavy into economics. I thought I was going to become an economist. In fact, by the time I graduated I had taken so many graduate-level economics courses I would have fulfilled all of the course requirements for an M.A. But . . . . And I had some offers from economics departments for graduate school and all this sort of thing. But I had a three-year commitment . . .

Laurie Zelon: Right.

Earl Johnson: . . . to the navy coming up. I . . . . My involvement in student politics got to the point I was elected student body 14:56

president. So . . . . And that was during a time where there were some real issues in the outside world that we became involved with.

Laurie Zelon: What year was that?

Earl Johnson: I was elected in '54, right after *Brown v. Board of Education*. And we put on . . . . I was on the same ballot as a student referendum that would say that fraternities and sororities had to get rid of all their exclusionary clauses or they couldn't stay at Northwestern.

Laurie Zelon: Did that pass?

Earl Johnson: It passed. Unfortunately, sort of the anti-forces were smart enough: they put another resolution that wasn't quite as strong as that – that just said we would "work" toward that goal – that got more votes. And so what we ended up with was sort of a lukewarm message. But it wasn't that many years . . . . You have to understand, Northwestern had the highest percentage of Greeks, of fraternity and sorority members, of any university in the Big Ten by far. It was way over half. So there were a lot of them that were voting for both of those resolutions. And I won by 80 votes out of 4,000 cast or something or like; it was very close. But anyway.

But the other thing that . . . the outside . . . . This was the McCarthy era. In fact, in my freshman year we had a mock political convention, and the keynote speaker was McCarthy. And at that speech he called out some more supposed Communists and so forth.

Laurie Zelon: This was still when he was in favor, though?

Earl Johnson: That was in, yeah, '51. It was the fall of '51 or the spring of '52, one of the two. But, you know, he was at his peak at that point.

Come '54 I'd been elected student body president, and that fall there was pending in the Illinois legislature a piece of legislation that would impose a loyalty oath on all professors at private as well as public colleges in the state of Illinois. And so our student body . . . our student government passed a resolution against that, and the chair of the faculty senate and myself drove down to Champaigne to testify against this thing. As it ended up, we submitted our testimony; we didn't actually testify because the one they used as a . . . . The chief spokesman against it was a Korean War veteran and . . . who spoke against it and said, "That's not what I fought for."

Laurie Zelon: Well, this is a precursor . . .

Earl Johnson: And it got defeated! 17:50

Laurie Zelon: . . . of things to come, right?

Earl Johnson: And it got defeated! Yeah.

Laurie Zelon: It did get defeated.

Earl Johnson: Yeah. So it wasn't the usual, just, you know, stuff you usually get involved in in student government. There were some other more substantive issues involved at the time.

Laurie Zelon: Did you think that . . . .

Earl Johnson: But that got me . . . . Okay. So by the time I graduated, I had decided I wanted to be a lawyer.

Laurie Zelon: That was my question. But the navy was in the way.

Earl Johnson: But then . . . So for the three years that I was in the navy, I was markin' time. I mean, I was just anxious to get out. And since by that time the Korean War had . . . was all gone, and the draft was gone and all this sort of thing, all of my people that graduated from college with me that were going to law school went immediately to law school. So when I got out of the navy, all of my contemporaries were already lawyers, or about to be lawyers. So I was very anxious to get moving and make this law school career as short as possible.

And that figured into my choice of law schools. I got accepted at Harvard, Yale, Stanford, all these *[inaudible]*. I also got accepted at the University of Chicago. And the University of Chicago had what they called a summer entering class, or program. So you could start in June. They were on a quarter system, and you would go nine straight quarters. So essentially you graduated in two years and two months; you cut a whole year off of . . . . You graduated in August of what would be ordinarily the September you would start your third year of law school. So it was really two years of law school. So I did that. And they gave . . . . I had a full scholarship and all that, so . . . . My parents could never have afforded the cost of all this stuff. Now, the cost of all that stuff, you have to understand . . . . You know what tuition was at the University of Chicago in 1960, or 1958 when I started?

Laurie Zelon: I'm guessing something around a thousand dollars?

Earl Johnson: A thousand dollars a semester. Period. A thousand . . . . Two thousand dollars a year – pardon me – I guess is a better way of saying it.

Laurie Zelon: But that was still a lot of money then. 19:53

Earl Johnson: That was a lot of money then. And they allowed you to . . . . You could borrow from the university for your living expenses, as much as your tuition was. So two thousand dollars . . . . That was a good start. But I still . . . . I worked the whole time I was there. For four quarters I worked in the library, and then . . . . At that time, the American Bar Association headquarters was right across the street from the University of Chicago, and it housed the American Bar Foundation and the NLADA as well. And I got a job as a research assistant for the American Bar Foundation, and got interested . . . . Well, I was on law review, too, so I was doing a lot of research and writing.

Laurie Zelon: When did you breathe?

Earl Johnson: I know. It was . . . . I missed a lot of classes. I would show up and the professor would be like, "Who are you?" I missed a lot of classes. But anyway, that . . . . So I . . . . That . . . . The last quarter I was there, which was the summer quarter, I was on . . . I was book review editor of the law review, and planning all the book reviews for the rest of the year *[inaudible]*. And I was a half-time research assistant at American Bar Foundation and I was taking all these classes and, at night, I was doing the bar review course, 'cause I took the bar review . . . I took the bar exam in September. And that's where I met Terry Hatter. Or I had actually met him, but Terry and I became great friends. We were in . . . both studying for the bar.

Laurie Zelon: Terry Hatter, now a retired . . . senior federal district judge.

Earl Johnson: And former Chief Judge of the district here. And so we became very good friends because what they did there, you'd have a session that lasted, say, five to seven, then they'd have a meal break, and then resume at a quarter of eight or something for the rest of the . . . until 11:00 or something. So we went . . . started going out to dinner together, and got to be very good friends in that six weeks or so that we were studying for the bar, you know. It's sort of like being in the trenches together, or something like that?

Laurie Zelon: Only when *[inaudible]* attacks you. So, talk . . . .

Earl Johnson: So then, wait!

Laurie Zelon: Okay.

Earl Johnson: Having done this . . . .

Laurie Zelon: Yes.

Earl Johnson: Having done . . . chosen the law school and gone nine straight quarters, you would think I would go out into the practice immediately. No. I wanted to be a criminal lawyer. 22:27

First I want to be a prosecutor and then a criminal defense lawyer. That's what I . . . . I imagined myself as a trial lawyer.

Laurie Zelon: That was your plan.

Earl Johnson: That was my plan. And the entire amount of criminal law taught at the University of Chicago at that time was one quarter of criminal law.

Laurie Zelon: In your first year.

Earl Johnson: In my first year. There was not even criminal procedure. There was nothing. So I saw a brochure that the Ford Foundation had set up a program at Northwestern Law School across town that was . . . . They were recruiting for a graduate program to get an LL.M. in criminal law. So I decided . . . . And it was full tuition and they paid all expenses – I mean, you know, a very nice living wage. I wouldn't have to work anymore while I did that. It became a very . . . probably the most influential year in terms of the course of my career. For one thing, Gary Bellow was also in that class, so we would . . . .

Laurie Zelon: Tell us who Gary Bellow was, just for a minute.

Earl Johnson: Gary . . . . Well, Gary Bellow . . . . Probably the most charismatic guy I've ever met. He was later a professor for many years at Harvard Law School. But he and I were joined at the hip for about 10 years, and I'll get into that as we . . . . But we met there. It was only about five or six people in this program. And it was the only time that I know of in Gary Bellow's life when he had free time – when he wasn't overbooked, overextended. And we'd head off to Rush Street for the . . . to see Lenny Bruce or Odetta or whatever . . . all kinds of things. We'd go to movies about five times a week, usually at 10:00 or midnight or something like that. It just . . . . We became *very* good friends. And we had deep philosophical discussions and political discussions, so we got to know each other very, very well.

Laurie Zelon: What year was this?

Earl Johnson: This would be '60–'61. Academic year '60–'61.

Laurie Zelon: It was quiet politically, then, more or less.

Earl Johnson: Well, it was . . . . The . . . . Well, I was there for the election campaign of 1960 between Nixon and Kennedy. In fact, I was downtown for one of the, you know, times when Kennedy came through in a . . . and campaigned. Didn't hear him speak, but I saw him go by and all that. But it was, by comparison, fairly quiet. 25:21

I did my dissertation on organized crime, and got recruited – or accepted – into the Honor Graduate Program at the Department of Justice. And when I first went there, I was assigned to the General Crimes Division, and I shared an office with Bob Talcott and Bob Timlin. None of us had ever been to California. Bob Timlin later became an appellate justice on the Fourth District and then the first federal judge in Riverside, I think. And Bob Talcott became a prominent criminal defense lawyer here and then became, I think, a bar court judge. And I came out here, you know, later on to . . . . So it's . . . it was pure happenstance because none of us had ever been to California before. All of us ended up here.

Laurie Zelon: And had no plans!

Earl Johnson: I had no plans at that time. The word about my dissertation got out, and I got a call from the head of the Organized Crime section, inviting me to transfer over there. So I was fairly shortly over in the Organized Crime Section – left Bob and Bob behind.

And in the meantime, Gary had moved to Washington, D.C., also to be . . . to join the Public Defender's Office. And we continued socializing all the time when we were there. We didn't really feel that much in conflict because he was busy defending the poor and powerless and I was busy prosecuting the rich and powerful – i.e., the Mafia et al.

In September of '62, I was sent to the Miami field office of the Organized Crime Section, where I partnered with Sheldon Krantz, whom you may know is Laurie Robinson's husband, who later became the dean of the University of San Diego Law School, etcetera. Anyway, we had some good grand juries and prosecutions there, and I tried my first two little cases – a couple of bookmakers and *[inaudible]*. I got my feet wet in the trial court for the first time. And then I got a call from headquarters, saying they had an opportunity, they thought, to finagle getting an Organized Crime section office set up in Las Vegas. They'd had political problems doing so. But what had happened, they had . . . they . . . that office needed someone to prosecute their criminal cases. They had a lawyer and assistant do the civil; it's a very small office. There was a . . . one court – one federal court – there at that time. And the U.S. Attorney was an old guy – only knew state law, never had done anything in federal court, had lost two successive major criminal cases (a bank robbery because he failed to prove that it was insured by the federal government and therefore there was federal jurisdiction; a murder on an Indian reservation because he forgot to prove it was an Indian reservation and therefore was federal).

Laurie Zelon: So they needed a little help out there! 29:00

Earl Johnson: So they needed a little help. So he had sent out a plea for some . . . . So the idea was I would go out there to prosecute all kinds of cases and then begin supervising the FBI and IRS agents and maybe do a little grand jury work on the side and those kinds of cases. So that's what I did. I was sent out there in October of 1963. And in the first month I was there, I tried six criminal jury cases, and they worked out okay. And so I started getting pleas. So we started to be more like one trial a month instead of, you know, two trials a week. And after a while they sent out another lawyer to take over those regular cases, and I moved to an office off . . . in an office building and went full time, running grand jury investigations and supervising agents and all that sort of thing.

Laurie Zelon: Those were . . . .

Earl Johnson: I prosecuted . . . actually tried a couple of cases.

Laurie Zelon: Those were wild, wild days in Las Vegas, too.

Earl Johnson: They were wild, wild days in Las Vegas. That was when every casino was owned . . . in *truth* was owned by one family or the other. The Chicago mob owned the Stardust, the Detroit mob owned the Desert Inn. You could go up and down the Strip, and almost all of them were owned surreptitiously; none of them had their names on it, of course. And so they . . . the whole thing was to develop skimming cases. We . . . . Well, that's a long story I won't have to get into.

Laurie Zelon: So what . . .

Earl Johnson: So anyway, wait!

Laurie Zelon: . . . got you out of there?

Earl Johnson: Now . . . .

Laurie Zelon: Wait! There's more!

Earl Johnson: Well, there's . . . . Then I, in the summer of . . . the late summer of 1964, I'm in Vegas, I'm doing this stuff, I get a call from Gary Bellow out of the blue. And he says, "The Ford Foundation is starting this experimental neighborhood law office program in Washington, D.C. How would you like to interview for being the director of it?" And this was like, "What?" All they, you know . . . . I said, "Okay, I don't think I will be interested, but I'm interested enough . . . ." Bobby Kennedy was then the Attorney General, and he used to have quarterly meetings in his office of all the heads of the different regional offices, and all of a sudden I'm head of a regional office in Vegas. So I was going there for one of those meetings, and I said, "I'll be there anyway, so why don't I interview, at least?" So I go for the meeting, go to the meeting, I come out of 32:01

the meeting and Gary picks me up and also in the car is Edgar Cahn. And we . . . . I interviewed with him, I interviewed with Ken Pye, who was going to be the chair of the board (he was, at that time, a vice-dean at Georgetown), and then he . . . and I was still . . . . And then I interviewed with . . . . He took me and I interviewed with Howard Westwood from Covington and Burling. I don't know if you've ever met Howard Westwood, but Howard Westwood, who was in his middle 60s and had been involved in legal aid on the side, but . . . .

Laurie Zelon: But was a partner.

Earl Johnson: He was a very prominent partner at Covington and Burling. He was . . . . Anyway, and a character. He called everybody a . . . . You know, if he called you a son of a bitch, that meant he *really* liked you. So we have this interview, and he . . . at the end of the interview, he says, "You know what you should do, you son of a bitch? You should take this job. This is an opportunity to really make a difference." Oh, I mean, he just laid it on. And he convinced me.

Laurie Zelon: What was his formal role in all of this?

Earl Johnson: He was going to . . . He was on . . . a member of the board. Going to be a member of the board. He was going to be chair of the policy committee.

Laurie Zelon: Okay.

Earl Johnson: So when I got . . . . When I actually came there in, I guess it was, late November of 1964, he was the board member I worked with a lot, because . . . . I didn't end up being the director, because they decided they had to have an African American as director. They created a new position – deputy director – for me.

Laurie Zelon: And that was you.

Earl Johnson: And that was me. And Julian Dugas was the director.

Laurie Zelon: And this was formerly Neighborhood Legal Services, right? That was the formal name of it?

Earl Johnson: It was called Neighborhood Legal Services Project, NLSP. Right. So when I arrived, we had no offices, no office space, no staff. It was Julian Dugas and me, and we used as temporary headquarters the African-American Masonic Lodge building there, which we were actually in the . . . whoever the . . . whatever they called the majordomo's offices of that . . . which was right in the middle of the . . . . We were four blocks from what was 14th and U, which at that time was the drug center; that's where all the drug transactions took place. We were at 10th and U, which wasn't much better. 34:47

Laurie Zelon: The heart . . . . So it's the heart of Southeast.

Earl Johnson: Oh, it was . . . .

Laurie Zelon: Yes?

Earl Johnson: No.

Laurie Zelon: Southwest.

Earl Johnson: Yeah.

Laurie Zelon: Yeah.

Earl Johnson: It was . . . . No, it was Northwest, actually. But it was the tough part, the tough part. At that time. It's been much gentrified since then. But that at that time it was . . . . And so the division of labor got to be: he did . . . Julian did . . . he knew the area, so he was setting up all the physical offices. He knew where . . . . He negotiated all the leases. He did all that sort of thing. I recruited staff and worked on policy and that sort of thing.

Laurie Zelon: Well, let me stop you for a minute. What was the charge? Because this was something that hadn't been done before.

Earl Johnson: Right.

Laurie Zelon: So what were you charged with doing?

Earl Johnson: Okay. There was a little history before that in other communities. They . . . . The first neighborhood law office program Ford set up, which was part of their Gray Areas community action–type thing, was in New Haven, and Jean Cahn had been one of the first two lawyers in that office. And they ended up closing that office when . . . because of . . . it got in some trouble with the . . . got controversial within the community when they represented a black rape defendant charged with the rape of a white girl – that kind of thing. Yeah, they . . . . So anyway, and then they had a very successful one on the Lower East Side of New York called Mobilization for Youth. Ed Sparer headed that office; Nancy LeBlanc was involved. But ours was the first multi-office program. We were to have . . . . Ford was funding three neighborhood offices, each with four lawyers – you know, 12 lawyers plus the two of us in headquarters. And the notion, though, was both decentralization and trying to do something about poverty.

Laurie Zelon: So it wasn't just . . .

Earl Johnson: Not just legal aid. 36:50

Laurie Zelon: . . . criminal.

Earl Johnson: No, it wasn't criminal at all.

Laurie Zelon: Okay.

Earl Johnson: By the time we got to us, they realized that had been a misstep that didn't contribute to do anything about the problems they wanted to deal with. So it was civil.

Laurie Zelon: But not just individual representation.

Earl Johnson: No, right.

Laurie Zelon: It was change.

Earl Johnson: It was change, right. Yes. So we recruited some very good people. Marna Tucker was one of them – later to be the president of the D.C. bar and all kinds of other things. And Johnny Weiss. I don't know if you . . . . There's a lot of . . . . You wouldn't . . . .These won't be familiar to you, but we recruited . . . . What we generally had in each office was at least one African-American lawyer that Julian would have found, and it was usually somebody pretty experienced – somebody who had been a lawyer – in, you know, their 40s or 50s or something.

Laurie Zelon: And had ties in the community?

Earl Johnson: And had ties in the community. The rest of the staff was made up of eager young . . . usually . . . sometimes *very* young white-folk lawyers. And some, you know, really topnotch people. Almost all of them had done law review and all that sort of thing. And very eager, ready to go to war. And so I got a lot of calls from judges. I remember one from landlord-tenant court who called up to say, "You know, this job used to be easy. Now my desk is stacked full of responsive papers from the tenants and so forth." He says, "They're trying to take every $15 case to the Supreme Court!"

Laurie Zelon: In other words, the tenants were asserting their rights.

Earl Johnson: They were asserting their rights. And they were winning more often than not. If they didn't win in the trial court, they were winning in the appellate court, so . . . which tended to be more friendly to them. So I had been doing that. Simultaneously while this was happening, the War on Poverty was starting. And in fact, very early in the game, we got – in addition to the Ford funding that we had – we got a grant from OEO. It was before they actually had a legal services program; they just gave a grant to our program to open seven more offices. So we ended up with 30 lawyers and 10 offices besides our headquarters staff. 39:22

Laurie Zelon: All within D.C.

Earl Johnson: All within D.C.

Laurie Zelon: When did you meet Sargent Shriver?

Earl Johnson: Okay. That took a while. They were starting this, right, and Edgar and Jean Cahn's article got to Shriver, and Shriver read it in his car – no, at home – until 2:00 in the morning, called them at 2:00 in the morning, told them to be in his office the next morning. They were both working other places, you know – and by the end of that meeting said, "We're going to have a legal services program." And he had hired Edgar to be his speechwriter and hired Jean to be a consultant to put together a program. So a lot of things happened, you know: the ADA endorsed it in February and all that. And finally in August at the ABA . . . . They couldn't find a director. They had a program; they had an endorsement from the ABA; they didn't have a director. And at the August meeting of the ABA, Howard Westwood, again, asked, or told, Clint Bamberger, "You know what you should do, you son of a bitch? You should be the director of that program!"

Laurie Zelon: Now, which year was this?

Earl Johnson: This was 1965.

Laurie Zelon: Okay.

Earl Johnson: August of . . . at the ABA meeting in '65. What had happened was that Howard Westwood had been on a panel talking about legal services and had talked about the NLSP program. And Bamberger was there – he was a Baltimore lawyer. He was interested; he'd been involved in legal aid a bit. And he wanted to get a grant for Baltimore. So after the panel, he and Westwood went off for lunch, 'cause he was gonna . . . . So anyway, they got into this conversation, and they talked about the . . . they hadn't gotten . . . didn't have a director and all that sort of thing. And as I say, it ended up with him saying to Bamberger that he should take the job. And Bamberger said, "Well," same thing as . . . kind of thing I said; he said, "I don't know if I want to do this, but I'll at least go down and talk to Shriver about it." Well, anybody who talks to Shriver does what Shriver wants, and Shriver wanted him to be director, so he became the director. Then he took Gary Bellow to lunch, and he wanted Gary Bellow to be his deputy director. And Gary – who was at that time the deputy director of the Community Action Program for all of Washington, D.C. – decided he wasn't ready to leave that job, so he said, "No, but I know who should get it; Earl Johnson should be your deputy director!" A week later I have lunch with Bamberger and he asked me to 42:09

be his deputy director. So I became deputy director in October of '65, having been in the field for 10 months.

Laurie Zelon: Which made you more experienced . . .

Earl Johnson: That's right!

Laurie Zelon: . . . than a lot of other people!

Earl Johnson: Almost anybody. So I . . . . And then eight months later, Clint resigned to run for Attorney General of Maryland, and I became the director.

Laurie Zelon: Just for some context, this was a new experience, but Legal Aid was not new in the United States. Legal Aid had begun in the 1800s, correct?

Earl Johnson: Right. 1876 in New York.

Laurie Zelon: But it was very different from what you were doing.

Earl Johnson: Right.

Laurie Zelon: Tell me how it was different.

Earl Johnson: Well, we were part of a war on poverty. And we had to be gauged by what we did that would contribute to overcoming poverty or reducing poverty or ameliorating poverty, not by how many cases we . . . divorces we managed to get or how many . . . that kind of thing. So we had a focus on using major litigation and legislative advocacy and that sort of thing. Now, in order to get a lot of programs funded, however, I would say that at least two-thirds – maybe three-quarters – of our grantees were the old-line Legal Aid Societies. So we had a conversion job on our hands. And I became . . . . When I became director, we had the first whole . . . we had increased the funding of Legal Aid for the poor in that very first year by fourfold. The combined budgets of all of the charitably funded – they all had been charitably funded before – Legal Aid Societies in the country was a little over five million. We made $20,000,000 worth of grants in that first year. And we . . . . by the time I left in '68 we had doubled . . . we were at an annualized level of about 45 million, which in current dollars is over $250,000,000.

Laurie Zelon: Which is about where we are . . .

Earl Johnson: Yeah.

Laurie Zelon: . . . with federal funding right now.

Earl Johnson: That's right. We're not much more than what we were when I left in 1968. 44:47

Laurie Zelon: Now, this ultimately became the Legal Services Corporation . . .

Earl Johnson: Ultimately.

Laurie Zelon: . . . through a series of events.

Earl Johnson: A series of events. We'll get to that in a minute.

Laurie Zelon: Right. But you weren't there then. You left in 1968.

Earl Johnson: I left in '68.

Laurie Zelon: And where did you go?

Earl Johnson: I went to the Center for the Study of Law and Society at the University of California, Berkeley. I had a grant from a couple of foundations – the Russell Sage Foundation and the Walter Meyer Foundation – to write a history of the Legal . . . what were the Legal Services Program and its antecedents, but primarily focused on its creation and its early years. And so I spent a year doing that. During that year, I was looking for a job in academia, 'cause I . . . that's what I was interested in doing. And I actually . . . . We were living in San Francisco, obviously. Barbara had come with me to . . . from the . . . to the . . . . She had been . . . . Yeah. We're getting ahead of ourselves!

Laurie Zelon: That's all right. Tell the story in your order.

Earl Johnson: I met my future wife when I was director of OEO Legal Services. She joined our staff actually when I was still deputy director. And it was a very small headquarters staff; I think there were eight of us altogether. And she was the experienced political person. So when in 1967 we got . . . . George . . . Senator George Murphy – Ronald Reagan's friend, the tapdancer – introduced an amendment that would have prohibited us, our lawyers, from representing anybody, any clients, against either state, local, or federal government. Would put us out of business, practically, for a great deal of our work. She was very helpful in putting together the campaign we mounted to defeat that in the House. We . . . . By the time it was over, they didn't . . . the other side . . . . I was up in the gallery, and Congressman Lloyd Meeds, who . . . from Washington, who was sort of our floor manager for defense of this, went over . . . I saw him walk over to the proponent of the . . . the one who was going to introduce it in the House. They had a conversation, then he turned around and he went like this, and that meant they weren't even going to introduce it. We had made it such a cause célèbre and had gotten so much political muscle pointed at them that they decided it wasn't worth the candle to bring it up. So 47:36

Laurie Zelon: But it did come back some years later in a different form.

Earl Johnson: It came back in a more . . . . In fact, it kept coming back until essentially they won.

Laurie Zelon: So you're in Berkeley now, and Barbara is with you.

Earl Johnson: And Barbara is with me. Right.

Laurie Zelon: Good thing there was no anti-nepotism rule in the office.

Earl Johnson: I know! Yes, there has . . . . More than one person has said we'd probably had sex harassment charges or something! Anyway . . . .

Laurie Zelon: And looking for an academic job, and you ended up at USC.

Earl Johnson: I ended up at USC, but I actually had two offers: I had an offer from USC to be an associate professor, and I had an offer to be the Dean of Golden Gate Law School. And at that time we were living in San Francisco, and the attitude of San Franciscans towards L.A. was epitomized by this . . . they had this huge sign. That was when Pacific Southwest Airlines still existed – PSA. And they had this huge sign over the . . . billboard, a huge billboard, in downtown San Francisco that you could see from any of the freeways, that said, "If you *must* fly to Los Angeles, fly . . . ." But at Thanksgiving time, Barbara and I went down . . . . Gary Bellow, by that time, was a professor at USC, and we went down to visit him in his house in Manhattan Beach. It was Thanksgiving, it was sunny, it was warm. We went to the . . . . We spent the afternoon at the beach itself, and we decided that maybe southern California wasn't so bad after all, and eventually accepted the offer at USC. And Gary and I started the . . . what was called the USC Clinical Semester, which was actually a . . . full-time for a semester, the students would do nothing but clinical aid: criminal . . . two days of criminal placement, two days of civil placement, and one day of classes that were connected.

Laurie Zelon: Now, this was before clinical education was anything *near* what it was . . . what it is today.

Earl Johnson: Yes. This was one of the pioneer . . . . We had a grant from the Ford Foundation that set up something called CLEPR – the Council for Legal Education Something-or-Other. But it was essentially to fund clinical education. And we were one of the early grantees. And we wrote an article that got a lot of play about the clinical semester and about the issues and that sort of thing. And, yeah, it . . . we had a big conference there – it included people from Canada as well as the United States – that helped bring the momentum for clinical education.

Laurie Zelon: So we're now almost to 1970, right? 50:26

Earl Johnson: Yeah. I started in '69, '70. I taught Evidence at the same time I was doing the proposal to the faculty for the clinical semester that would start the next year. And then Gary and I did that. I did the criminal side, he did the civil side essentially when we did the semester.

Laurie Zelon: And so how long did you stay there doing that?

Earl Johnson: Okay, I did that from . . . 'til 73. I had unusual kind of . . . even within academia, an unusual path. In 1973 I was . . . . The Ford Foundation, again, they were really into legal services, legal education, the legal world in general. And they put together a program on legal services in the developing world, trying to promote Legal Aid in, you know, the developing countries. And I was on the board of that. And also on that board . . . . At our very first meeting, also on that board was Professor Mauro Cappelletti. Mauro Cappelletti is an Italian law professor but who had a joint appointment at Stanford Law School. He taught Comparative Law. He was fluent in about seven languages; he could both read, write, and speak in all these languages. He was a genius. And we went . . . he and I went out to dinner together, and we started talking, and he and another professor – James Gordley – had just written a pair of articles that were published in the *Stanford Law Review,* a comparative . . . comparing different kinds of legal aid programs in different countries. I didn't even know they *had* legal aid in other countries, essentially, practically, except England. And they were . . . Cappelletti was interested in turning that into a book – publishing those two articles plus a bunch of materials, translating from different languages the statutes related to Legal Aid and articles about it and descriptions and this and that. And asked me if I would be interested in coming to Florence that summer to participate in that project. And I said, "Well, only if I can write an article for it, too." And he said, "Sure."

So that started . . . . In 1973 I spent the summer there, and then I spent the summer of . . . I made a lot of progress on the book then in the summer of 1974, and then in 1975 I had a sabbatical, and Barbara and I spent essentially the whole year in Florence. And we finished the book, and Cappelletti and I had the idea that we wanted to broaden it beyond Legal Aid – broaden the study that was happening at his Comparative Law Center in Florence beyond Legal Aid to access to justice in general, all the ways of improving access to justice, and all the different mechanisms in different countries. And we got a grant from the Ford Foundation to do so. So in '75, I was there working on that project.

And then while we were there, the State Department asked us if . . . asked me if Barbara and I would do . . . go on a speaking tour in Africa. It turns out that because of where the 54:11 . . .

they could use money that could only . . . . Foreign money, essentially, was cheaper, or easier, or they had a bunch that they didn't . . . wasn't part of their budget that they could use for somebody who was actually *in* a foreign country to start with. So we were in Italy, so they could . . . . So we went to six different countries in five weeks – probably the most interesting and educational five weeks of my life. The last two weeks were in South Africa, in the middle of apartheid, and because we were under State Departmental auspices, we got into places that an ordinary tourist would never be. We got into black townships at night, went to a reverend's house when the . . . some of the black activists were meeting. We had dinner in a . . . with a liberal lawyer who was in house arrest because of his anti-apartheid activities. We went to . . . sat in on a pass court, where they . . . all the Africans who had come into the city when they weren't supposed to be in the city or stayed beyond their work time or whatever it was were being prosecuted. We saw some trials, of course. And all over the country we lectured at all the different, you know . . . . We went to . . . . We lectured at the Zulu university to African law students, we . . . at an English university, at an Afrikaners university, at a colored university, at an Indian university – you know, all these different schools. And, you know, the students would come and tell us about all kinds of stories, and it was . . . . I would . . . . At that time, I would have said there was, at most, one chance in a thousand there would be a peaceful resolution of that. We had an Afrikaners woman who went around with us, sort of taking care of us. And the main reason she was working for the American government was so she could get herself and her family out of the country when the revolution happened.

Laurie Zelon: Because everyone was expecting it at that point.

Earl Johnson: Yeah. And of course all the English people had dual passports. The Afrikaners were the ones that were on the . . .

Laurie Zelon: They were on the hook.

Earl Johnson: . . . on the hook if there was a real bloodbath. So anyway, it was . . . what's happened is, to me, the greatest miracle of my lifetime in that country.

The other thing that was interesting . . . . Before we went there, we had been in Ghana. Now Ghana . . . . They're . . . . See, West Africa was considered . . . the climate was so bad it was considered inhospitable to whites. So they . . . the government . . . . Except for a few people, they trained the Africans to be their government *[inaudible]* the judges and the lawyers. They . . . . Most of the lawyers and judges we met there – we met . . . spent a lot of time with the Chief Justice and a lot of justices and a lot of lawyers – were all English-trained barristers. They'd all been to England, they'd all 57:27

gone through the Inns of Court, Oxford graduates, Cambridge graduates, and all this stuff.

Laurie Zelon: But they were all black Africans.

Earl Johnson: They were all black Africans.

Laurie Zelon: And was that the only place in Africa, at that point, where that was true?

Earl Johnson: No, that was true . . .

Laurie Zelon: All of West Africa.

Earl Johnson: . . . in the English parts of West Africa. East Africa – which is the climate similar to California, Kenya and that area, 'cause it's high country, even though it's near the Equator – it's high enough up that's it's very . . . . Well, the English *loved* living there. So all the legal profession there, even when we were there, long after Kenya was . . . almost all the judges were whites, and there were just the beginning – a trickle – of African lawyers. So, anyway, but having that experience in Ghana – these highly educated, highly capable Africans – you get to South Africa and you talk to, particularly, the Afrikaners, of course, well, "These . . . This is an inferior race there, you know. The couldn't possibly run a government. They couldn't possibly run a court. They couldn't possibly do this, they couldn't possibly do that."

Laurie Zelon: Except that they were!

Earl Johnson: Yeah! We had seen proof positive. So anyway, that was a . . . .

Laurie Zelon: So that was all '75.

Earl Johnson: That was in the middle . . . . That was . . . . What's that?

Laurie Zelon: That's '75. 1975.

Earl Johnson: That's '75.

David Knight: If I can just interrupt.

Earl Johnson: Surely.

David Knight: I'd like to change . . . . Justice Zelon, do you want to prompt?

Laurie Zelon: All right. We were talking about 1975 and your trip to Africa in the middle of your year in Florence.

Earl Johnson: Right. 59:00

Laurie Zelon: And after you came back from Florence . . .

Earl Johnson: Right.

Laurie Zelon: . . . what did you do next?

Earl Johnson: When I came back from Florence, I was still a professor, of course, at USC. This was just a sabbatical I was on. I was able to take a full year because I . . . half of my support came from USC and half my support came from the grant we'd gotten from the Ford Foundation. So I was able to do . . . what would be a six-month sabbatical, I was able to take a whole year.

We have left out something very important . . .

Laurie Zelon: Let's talk about it.

Earl Johnson: . . . and a very important person in my life and also in me becoming a judge. Okay. Let's go . . . . To do this, we have to go back to when I was director of the OEO Legal Services Program, and on Saturdays I was teaching a seminar in law and poverty at Georgetown Law School. Two of my students in 1968 – this would be the spring semester of 1968 – were Mickey Kantor and his wife, Valerie Kantor. And Mickey actually got the book in the course! He did very well. And you won't be surprised, but I . . . the way I had set up the seminar was after, you know, talking about various subjects we . . . I had them . . . assigned them to hypothetical cases to be argued in the U.S. Supreme Court. And the one assigned to . . . I assigned to Mickey was the right to counsel in civil cases. It's amazing, by the way, how many of these issues that I had them argue about were later argued in the U.S. Supreme Court, like the welfare residency requirement – *Shapiro v. Thompson*. The right to a hearing before . . . . You know, a whole lot of 'em. But anyway, that was the way it was set up. So I met Mickey and helped him get a job in legal services. He wanted to go into legal services. Got him a job in Florida: migrant legal services. Helped him get one, I should say: I sent a letter of recommendation, which, *[inaudible]* the one that's providing the funding, was probably pretty . . . .

Laurie Zelon: Was probably pretty influential.

Earl Johnson: Pretty helpful, right. Right. And then a couple of years later, after Nixon's become President, Don Rumsfeld's become director of OEO, and Terry Lenzner becomes Director of the Legal Services Program at OEO, he . . . . When the second Murphy amendment came up in 1969, Terry – on several people's recommendations – hired (or brought in, I should say) Mickey to coordinate the effort to defeat the second Murphy amendment. And I was . . . . After I left as director of OEO Legal Services Program, I had become a member of the National Advisory Committee to the OEO Legal 1:02:25

Services Program, which included the ABA President. You know, it's a bunch of people. And I had been made chair of the legislative subcommittee of the National Advisory Committee. And while . . . . In early January of '69, before Nixon's even sworn in, we came up with a proposal for an independent entity. Now, we called it the National Justice Foundation; it was modeled on the National Science Foundation. But the notion was the same kind of thing – of a . . . completely independent of the executive branch kind of thing. And we actually surfaced that with the Nixon administration. When I say "we," the ABA surfaced it with the Nixon administration. They thought it would be interesting, but Rumsfeld was very interested in keeping the OEO Legal Services Program. He liked the OEO Legal Services Program, at least initially. He saw it as the best thing in OEO, that he was heading. So that went on the back burner. But I . . . . Because I was chairing the legislative committee, which was also worried about the Murphy amendment and Mickey was running the operation against it, we had reasons to communicate quite a bit.

Then in late 1970, the Nixon administration had a change of heart. Rumsfeld resigned as OEO director – went over to become counsel to the President, taking along his special assistant, Dick Cheney. The rest is history, so to speak. Anyway, I got a call from Bill Steiger – a friendly Republican congressman who had always been a big supporter of legal services and who was a personal friend by this time – that the Nixon administration had just called him and said that they were ready to move. They wanted to have an independent body – independent entity. And the ABA, in the meantime, had put together a commission, of which I was a member, and decided . . . we decided instead of having a National Justice Foundation modeled on the Science Foundation, to have a legal services corporation modeled on the *[inaudible]* new Corporation for Public Broadcasting. So at the February 1971 meeting of the . . . mid-year meeting of the ABA, I started drafting the legislation to implement that, along with Ted Tedslaff, who was then the Acting Director, OEO Legal Services. We were meeting up in the . . . .

Laurie Zelon: We all meet in the middle.

Earl Johnson: And at breakfast meeting – I had a breakfast meeting with Mickey Kantor – told him we had just formed, or were forming, an organization, a 501(c)(4) lobbying-type corporation called Action for Legal Rights, and would he be interested in being the executive director of same? And he fairly soon said yes, and so for the next two years he was the chief lobbyist for the effort to get the Legal Services Corporation passed, the 1971 and 1972. We passed it in '71; Nixon vetoed it. It passed both houses in '72, went to conference, the conference committee came out with a version that was – from our perspective – much worse than what either house had passed, and we asked for 1:06:40

it to be withdrawn. Big mistake in looking back, 'cause it was much better than what we actually got through the third time around. Then . . . . But Mickey was not involved in the third and successful attempt in '73–'74 because he had been recruited by Alan Cranston to run Alan Cranston's reelection campaign – Senator Alan Cranston of California. So he moved back here. And he of course knew Barbara, knew me. He hired Barbara to be head of scheduling in advance for that campaign, thus beginning a lot of continuing social and professional relations with Mickey.

Laurie Zelon: Now, before you go on, there is lore – but you can correct this record or not – that actually the signature on the Legal Services Corporation Act came very, very late in the Nixon presidency.

Earl Johnson: Very, very late.

Laurie Zelon: Almost with the helicopter blades!

Earl Johnson: Not quite that, but it was actually on July 25th of 1974 he signed it. Yeah, there's . . . . It appears he was, shall we say, almost forced to sign it by Alexander Haig, who was then his chief of staff and who had told . . . . Well, what had happened was a bunch of conservative congressmen . . . senators had told Nixon that they were going to withdraw their support when this indictment finally reached the Senate unless he restored a bad amendment – bad from the perspective of legal services lawyers – to the (it was called the Edith Green amendment, but it was . . .) to the legislation, which had passed both houses at this stage. It was just sitting on the President's desk for signature. And he said he would veto it unless they did this. Well, they did it. They took it back to conference and they put in the amendment and then it came back to the President's desk. And from Haig's . . . . Since Haig is the one who had communicated the message, he felt honor-bound. And he . . . . And I think even Nixon *[inaudible]* would have realized that it would have caused a firestorm had he vetoed it, 'cause he had proposed the legislation initially, and by this time it was getting pretty close to what he had proposed. But Haig essentially threatened to resign. To have his chief of staff resign at that moment in time would have been the same thing as resigning – which he did 10 days later. But that was after they lost . . . he lost in the Supreme Court. The tapes were going to have to be turned over, all this . . . the rest of the stuff came down the pike and so he resigned. But it was very close to . . . it was the last piece of legislation he signed into law.

Laurie Zelon: Well, I diverted you because I know you knew that story. But back to California.

Earl Johnson: Back to California.

Laurie Zelon: Mickey Kantor is working for Senator Cranston. 1:10:02

Earl Johnson: That's correct.

Laurie Zelon: And Barbara is working for Senator Cranston.

Earl Johnson: For Senator Cranston. Yes.

Laurie Zelon: And you're at USC.

Earl Johnson: And I'm at USC. We're back in '75. This is again where my pattern . . . . For the next five . . . four years, at least – five years, actually – I didn't teach a course. I was entirely involved in grant-supported research.

Laurie Zelon: In clinical education?

Earl Johnson: No. I . . . . We started a program at USC's Social Science Research Institute. I got a joint appointment as a senior – what'd they call it? I can't remember, but anyway – at . . . which was in a whole separate building across the campus from the law school. And got a succession of grants from the Ford Foundation, from the National Science Foundation, and so forth, to study alternative dispute resolution and all things related to access to justice, essentially – doing domestically more or less what Florence was doing internationally. And so, although I still had an office over at the law school, I went to faculty meetings at the law school, I was full time in research and writing, essentially. And . . .

Laurie Zelon: So that was the next four years.

Earl Johnson: . . . a couple of books later, and a bunch of articles and so forth. I had a small staff of social scientists; I had four or five social scientists working with me on all these various projects. So it . . . not the typical law school kind of thing. But it exposed me to a lot of issues in judicial administration. I was heavily involved in the alternative dispute resolution thing. I was appointed in '76 to a committee that the ABA president Justin Stanley set up with Sandy D'Alemberte as the chair (later to become president of the ABA also). It was called the Special Committee on the Resolution of Minor Disputes. And what got Justin Stanley interested in setting this up was his wife got in some consumer dispute with some company about something, and it wasn't worthy . . . worthwhile taking it to court; it cost too much to litigate it. So she sort of had to lump it. And he didn't think that was right, and so he set this up. I was on it for seven years. In any event, it evolved. First it became the Special . . . about three years later it became the Special Committee on Dispute Resolution, and about a decade later – after I'd left – it became the Dispute Resolution Section.

Laurie Zelon: And this was involved with the Neighborhood . . . 1:13:02

Earl Johnson: Our focus . . . .

Laurie Zelon: . . . Dispute Resolution Centers, right?

Earl Johnson: See, our focus was really on the little guy, and trying to provide mechanisms to allow them to resolve disputes among themselves and disputes with local merchants and landlords and so forth without the expense and trouble of court. So we actually set up one here in Los Angeles: Neighborhood Law Dispute Resolution Center. And I was on the board of that, too, at the same time I was on all these other things. And so it's kind of ironic to see what has happened to that movement as it has been taken over by the corporations and the banks, where they force everybody into things we were trying to set up to help those individuals.

Laurie Zelon: Could you have imagined when you were involved in that, at those early stages, that you would write opinions . . .

Earl Johnson: Right.

Laurie Zelon: . . . that talked about people losing their rights because of . . .

Earl Johnson: Right.

Laurie Zelon: . . . arbitration clauses.

Earl Johnson: Right. Because that was not in the ballpark at that time. I actually wrote a book that Valerie Kantor was a research assistant; the same time that Barbara was working for Mickey, Valerie was working for me and doing research on a book funded by the National Center for State Courts called *Outside the Courts,* which was all the different alternative mechanisms and all that. So . . . .

Laurie Zelon: So you were working on this . . .

Earl Johnson: Right.

Laurie Zelon: . . . and you weren't teaching.

Earl Johnson: That's right.

Laurie Zelon: And then what happened next?

Earl Johnson: Well, in 1977 I . . . . This was when Carter was President, and for the first time a President set up a system for selecting judges – a merit system. He set up public commissions that you could . . . anybody could submit their name to to be appointed to the federal bench for whatever vacancies were open. And then the committee would go through and interview some and then submit usually two or three names . . . usually three names for each vacancy. I had . . . I decided 1:15:31

that the variety of background I had, the things . . . the many things I had done, would make me a pretty good candidate for an appellate court. I had seen the judiciary from both sides; I had been a trial . . . I had seen from the advocate side. I'd seen it from many different sides. And also sort of the basic policy questions about how you should resolve disputes and all that. And plus I had become fairly familiar with . . . I saw some other foreign countries and their judicial systems worked. And so I put my name in for the Ninth Circuit to the commission that was . . . . They had . . . . Because of the creation of some new seats plus some vacancies that developed, they had – between the north and the south – they had six vacancies, the same time, that they were interviewing for. Four of them here and two up there. And they had hundreds of people apply, and they interviewed about 50. I was one of the 50 they interviewed. And they ended up with 16 they submitted to the President. I was one of the 16 and came fairly close, but not quite. But that whetted my appetite. So from then on I was trying to figure out if I could get on the state Court of Appeal.

And Mickey Kantor, in the meantime, was no longer dealing with Alan Cranston – he was dealing with Jerry Brown. He was running Jerry Brown's campaigns, which were many.

Laurie Zelon: Still are!

Earl Johnson: When he ran for President . . . . Well, that's right. He's back again! So I had one hitch for the state court: you have to be a member of the California bar for 10 years. I hadn't become a member of the California bar since . . . until May of 1972. So I wasn't going to be eligible for appointment until May of 1982. That's the earliest I could. So there was no . . . . I couldn't even dream if I was interested in the appellate court, which is what I was aiming at. I couldn't even dream of spending a year or two on a trial court on my way. I was . . . .

Laurie Zelon: You were stuck.

Earl Johnson: I had one chance. And I had one great campaign manager: Barbara Yanow Johnson. And I also had a friend in high places. And so anyway, I knew that I probably was going to get the . . . . I knew . . . . I didn't know whether Jerry would have said yes. I knew that I had been recommended for an appointment to Division Seven as early as April or May. But then this . . . . There was . . . . A lawsuit was filed challenging all the new seats that had been created that dragged on and on and on and didn't actually get thrown out until I think November or so of that year, by which time . . . .

Laurie Zelon: And this was when Division Seven was being created. 1:18:54

Earl Johnson: Yes, being created. And Division Six was being created. Division Five, up in San Francisco. And there's some other individual seats in some of the other districts. So altogether there was about 20-some seats that were brand-new seats around the state that were being created.

So we were on pins and needles. And then nobody could really count on Jerry . . . . I knew I had . . . all the people around him were saying I was going to get the appointment, but I didn't . . . I wasn't going to believe it 'til I heard it.

So by this time, Deukmejian's been elected to be Governor for the coming term, Jerry has lost the Senate race that he was in, and I'm told that I'd better be by the phone – this is starting early December – I'd better be by the phone because if he calls and I'm not there, he'll just move on to the next person on the list.

So I was grading blue-backs on the night of December 4th from the . . . . By this time I'm actually back teaching. So I was grading blue-backs and sitting at home, and the phone rang, and I talked to Jerry Brown for the very first time in my life. And he said I'm appointing you to the Court of the . . . Division Seven, Court of Appeal. And I let out a big whoop, and my . . . when I hung up, my son, who was living with . . . our older son was living with . . . at that time he was going to college here, and he said, "Let's get some pizza." Now, if I'd not gotten it, he would also have said, "Let's get some pizza."

Laurie Zelon: "Let's get some pizza."

Earl Johnson: Yes. But anyway, it was a very happy time.

Laurie Zelon: But this was really good pizza, right?

Earl Johnson: That was really good. It's really good pizza.

So then we had to go through confirmation, which was not a sure thing because Deukmejian was the Attorney General. So he had one of the votes. And Lester Roth, who was then 96 years old, had one of the votes. And then the Chief. That was no problem; that was Rose Bird at the time. But Deukmejian had actually managed to defeat a couple up north because there were . . . .

Laurie Zelon: Because he wanted the appointments.

Earl Johnson: Yeah. He wanted the appointments. And he sent out this mammoth 10-page questionnaire to all of us that made us . . . that asked us how we stood on the death penalty, how we stood on the exclusionary rule, this and that and the other thing. And so we had to . . . . The wisdom was to actually respond in writing to it. And . . . . But as to those 1:21:39

questions that you thought were improper, to just say that you would follow the U.S. Supreme Court and the California Supreme Court. Which is what I did on things like the exclusionary rule and the death penalty and all that. And I called in all my chips from the days I was in Organized Crime. I had the deputy chief of the Organized Crime Section, who had actually succeeded me in Vegas when I left there, and I had the professor who ran a big . . . who had been with . . . on the staff with me at the same time there, who ran a big organized crime thing, who had drafted the RICO legislation as a staff member for McClellan and all this sort of thing – he was the guy in Organized Crime, he's written several books about it – and he wrote a letter saying that he got the idea for RICO from my article, my dissertation, etcetera. So, I mean, played all the chips. And he ended up voting for me. He voted for most of 'em. He . . . . There were a couple down here he didn't vote for.

We had this mass hearing: Joe Grodin for the California Supreme Court and all of Division Seven, three of Division Six, some new ones in the Fifth District and the Fourth District – they were all done down here. A new division in the Fourth District, plus some new additions in San Diego, etcetera. So there were over 20 in one day of hearings.

Laurie Zelon: So for Division Seven it was you . . . .

Earl Johnson: And our chief . . . our presiding justice, who was Dick Schauer, who was a former presiding justice of the superior court here, and a Republican. And Leon Thompson.

Laurie Zelon: And that was the original Division Seven.

Earl Johnson: And Leon Thompson was an African American. That was the original Division Seven, yeah. They had . . . . They were not ready for us physically. At that time, the court was in leased space at 3580 Wilshire Boulevard; you may have argued there at some point in your career.

Laurie Zelon: I did.

Earl Johnson: Yes. And they occupied the . . . I think it was the third, fourth, and fifth floors. There was no room for us. They started . . . . After we were there about three months, they finally started constructing space for us on the tenth floor. But when we first arrived, Justice Schauer they put in the pro tem chambers of some division – I think Division Four, or whatever it was. And Leon and I were in the research attorneys' offices.

It gets worse. My original equipment to write on was a manual typewriter. Typewriter: manual.

Laurie Zelon: 1982! 1983 at this point, right? 1:24:33

Earl Johnson: Right.

Laurie Zelon: They could have done better.

Earl Johnson: No, we actually started in '82. We got confirmed on the 27th and we were working on the 28th.

But anyway, the . . . . So I . . . . It was about three months later I finally got an electric typewriter. I thought I was in heaven. And our research attorneys had to occupy a space in the Supreme Court's offices when they come to L.A., which were not nearly as nice as what they are in . . . here. And so . . . .

Laurie Zelon: But let's talk about . . . .

Earl Johnson: But Schauer, because he had been presiding justice of the superior court and had been on the court for almost 20 years at that time, brought immediate credibility to us. But he was smart. He had us go over to the lunchroom – the superior court lunchroom – and all that sort of thing. Try to . . . .

Laurie Zelon: But what was it like for you to make that transition? Because you had not practiced law for many, many years.

Earl Johnson: Right.

Laurie Zelon: And had never been a trial judges as most of your colleagues – your new colleagues – had been. All of them, probably?

Earl Johnson: No.

Laurie Zelon: No.

Earl Johnson: I mean, if you're talking about my immediate . . . the other two in Division Seven, yes.

Laurie Zelon: Okay. But not true then, as it is now, that . . . .

Earl Johnson: Not true. That's right. Not true at all. There was . . . . Buck Compton had been . . . went directly from being the deputy chief prosecutor, deputy chief in the D.A.'s office, to being on the court. George Danielson had come directly from the U.S. Congress, where he had been on the Judiciary Committee. There was another name whose . . . one who escapes me who had actually lateralled over from a big firm. What was his name? I can't remember. But there were at least that, plus myself. Oh, and then Dean Kingsley from USC had come directly from . . . . So there were five of us. 1:26:39

Laurie Zelon: But at this point you still had to make a transition to judging from really starting from ground zero on judging, other than what you knew . . .

Earl Johnson: Right.

Laurie Zelon: . . . in a theoretical way.

Earl Johnson: But actually it was . . . I think it was probably a more difficult transition for Dick and Leon than it was for me.

Laurie Zelon: How so?

Earl Johnson: Because the difference between being a trial judge and being an appellate judge. I was a researcher and writer for 20 years, and this is a research and writing job. So I was used to that, and I was used to working with research assistants that would help, and so forth. So it was really not much of a transition. There was a little difference in the formatting and so forth. I had done . . . . To the extent you can say appellate work is practice, I had done, on a pro bono basis, a couple of appeals for the Western Center. So I'd done some briefs and I'd argued in the court a couple of times. So, over the . . . . While I was at USC. But you're right. And at USC, in the clinical thing, we did a lot of moot trial stuff, where I would actually . . . I would be the judge and the students would be the advocates. So I got used to making those kinds of rulings or performing that kind of role, even though it was in an artificial situation. So bottom line, it was not a big transition.

Laurie Zelon: In . . . . Okay. But you had been in positions where you had spoken your mind . . .

Earl Johnson: Yes.

Laurie Zelon: . . . and you had taken positions . . .

Earl Johnson: Yes.

Laurie Zelon: . . . often controversial positions.

Earl Johnson: Yes.

Laurie Zelon: And now you were in a position . . .

Earl Johnson: Yes.

Laurie Zelon: . . . where you couldn't do that.

Earl Johnson: That's correct.

Laurie Zelon: And how was that for you? 1:28:25

Earl Johnson: I deliberately . . . . In part because I did want to really master this job, I sort of bowed out of . . . . I got off the ABA committee and lots of other things. I had . . . . For the first few years I was on the bench, I had almost no extracurricular activities like I had had; my involvements in those kinds of things diminished substantially. Almost to zero. And then later on, once I felt I was more comfortable in the job – really felt that I had it pretty well under control – then I moved back and started becoming involved again in the late '80s.

Laurie Zelon: Okay. Did you have anyone that you were looking at as a model, or a model that you held in your own mind as to how you wanted to do the job?

Earl Johnson: It was more of a little bit this and a little bit of that. Leon Thompson and I became very good friends. We went out to lunch all the time together and socialized. Our families . . . . Our spouses socialized occasionally. And we shared a lot philosophically *[inaudible]*. But I picked up a lot of notions from him, even though he was a contemporary. But I don't think I . . . . I'm not one of these that came with the vision of being like Oliver Wendell Holmes or this or that. I didn't have a specific person, or former judge, as a model.

Laurie Zelon: You were – while you were here, and it was 26 years – but you were a very prolific writer as a justice. I counted 600 published opinions, which means there are many, many, *many* more . . .

Earl Johnson: Right.

Laurie Zelon: . . . unpublished.

Earl Johnson: Right.

Laurie Zelon: And 120 published dissents. And your writings had the reputation of being scholarly. Do you think that was, you know, the product of your years in academia? Or was it because you thought you could advance things by writing so prolifically and so . . . in such an academic way?

Earl Johnson: Well, I liked to justify my results as thoroughly as possible. And having been in academia and been exposed to a lot of, you know, things like law and economics and comparative law and all that, I had a lot of areas I could look to for support when . . . . And I also liked . . . wanted to . . . . We publish cases as much as possible to connect them to the larger body of law, to cite *ALR* and the restatements and things like that. So you . . . It's not just California but it gets into other parts of the country also.

Laurie Zelon: To show the continuity, . . .

Earl Johnson: Yeah. 1:32:15

Laurie Zelon: . . . the development of the law?

Earl Johnson: I have . . . . There's a couple of dissents that . . . of my dissents that became the majority rule in some other states.

Laurie Zelon: Talk to me about dissenting . . .

Earl Johnson: Yes.

Laurie Zelon: . . . if you will.

Earl Johnson: Right.

Laurie Zelon: Division Seven changed a lot during the time you were here. People came and went.

Earl Johnson: Yes.

Laurie Zelon: And you were a large writer of dissents, pretty consistently over that time. Do you think that . . . . Tell me about your theory in writing dissents, because your dissents were not generally "I dissent" and a paragraph.

Earl Johnson: Right.

Laurie Zelon: You were as thorough in your dissents as you were in your majority opinions.

Earl Johnson: Right.

Laurie Zelon: Tell me about that.

Earl Johnson: Well, that's because the reason for writing a full dissent is because you're trying to persuade somebody up the line to – or, in some cases, future courts – to go the way you think is the proper way. And you can't do that in a paragraph. You've got to really lay it out, the full case.

The bulk of my dissents were actually written in about a decade or so in which we were a three-justice court consisting of Justice Lillie, Justice Woods, and myself. Before that, I only . . . I think I had one dissent in the entire time, the year and a half, that it was Schauer and Thompson and me. And very little when it was Lillie, Thompson, and me – maybe three or four in that whole four years or something that we were together. So it was only when the . . . our court moved in a more conservative direction that I started dissenting a fair amount.

And there's actually, in my view, more reason for someone to dissent if they're on an intermediate Court of Appeal like we are than if you are on a Supreme Court because a Supreme Court, your audience really is future . . . only future Supreme 1:34:41

Courts. But with us you've got the California Supreme Court that might be persuaded by your dissent. I had one year in which I wrote a bunch of dissents, but six of them were taken by the Supreme Court and they reversed the majority in all six of those cases. So sometimes it has effect that way. But there's also, in criminal cases, the Ninth Circuit. Even if the California Supreme Court doesn't buy it, the Ninth Circuit may buy it.

Laurie Zelon: Were you ever writing for . . . .

Earl Johnson: Then there's the U.S. Supreme Court!

Laurie Zelon: Right. But were you ever writing for sister Courts of Appeal, because of course we're not bound by each other . . .

Earl Johnson: That's right.

Laurie Zelon: . . . and you might persuade another panel in another district or even in this district to see your point of view?

Earl Johnson: Yes. Yeah. Particularly when there's a kind of issue that's being written about all over the place, like whether trial courts had discretion to strike a strike. That was . . . . There were opinions being written all over the place on that. And I was writing dissents in those cases, saying that they should have discretion or did have discretion. And there was one other court up north that was . . . a majority was writing that way. All the rest were saying, "No discretion." And the California Supreme Court finally took the case and they said there *was* discretion. Yeah. But I was aiming those at other Courts of Appeal, trying to see if there were, besides the one up north that on its own had decided that way, . . . persuade. So they were lengthy opinions. Finally, by the end I was not bothering publishing them, nor making them lengthy. All I was doing was taking . . . . Our division, for one reason or another, got all of the bad situations. We got the third strike being the theft of a piece of pizza. And hair . . . another one a hair curler. And this and that and the other thing. So I started compounding those and just saying, "No wonder trial courts are tempted to dismiss third strikes when they are like . . ." and then I'd go, "this one, this one, this one, this one, and this one from our experience." Anyway, so yes, you do try to persuade whoever is persuadable.

Laurie Zelon: You mentioned a little bit about, you know, after your early years on the court, going back to your public activity. And I know now, of course, that the arc of your public activity has always been on access to justice. What kinds of things did you begin to do as a judge, and did you feel that, sitting as a judge, you had different roles to play? 1:37:46

Earl Johnson: Yes, I did. Yeah. But there were some limitations, but because you are, according to the Canons, able to do things that contribute to the administration of justice, I felt there was a fair amount of leeway in terms of things I could do.

I guess when I first really got back into it was in 1988. I got a call from Bob Raven, who was . . . just been made president-elect of the ABA. And he had been the ABA designee on the board of the National Legal Aid and Defender Association, and he said he didn't feel he could continue that role; would I take that position? So I did. I had to recuse myself every once in a while from a vote, but not very often.

And it was while I was there that I . . . was about the second meeting I went to, Ted Voorhees, who had been president of the NLADA back in the OEO Legal Services days and had been very active in legal services and all, passed away. And I realized that we didn't have any of his papers; we didn't have an oral history from him. He had been . . . played a very key role in the early days. And so I suggested at the board meeting, "You know, we should try to set up some kind of repository of historical materials." I made the terrible mistake of not suggesting who else from the board would be the perfect person to implement this idea, and got stuck with chairing the committee, which eventually became – through a long series of things – the National Equal Justice Library, which first was at American University and is now at Georgetown. And I'm still on the board.

Laurie Zelon: You can *never* get off of that.

Earl Johnson: I know. It's just amazing.

Laurie Zelon: But that's been an amazing repository for the history . . .

Earl Johnson: It has been.

Laurie Zelon: . . . of the legal services movement . . .

Earl Johnson: It has been.

Laurie Zelon: . . . in the United States.

Earl Johnson: And we've done well over 70 oral histories of people who were involved, many of whom are no longer with us, and therefore we would have lost their recollections and their important roles in history but for that.

Laurie Zelon: You came back in the ABA to the notion of access to justice.

Earl Johnson: Yeah, I know. I'm just trying to . . .

Laurie Zelon: Who appointed you to that? 1:40:25

Earl Johnson: . . . figure out . . . . I actually had begun to do some . . . . Even before getting involved with the ABA or any actual action activities, you might say, I had begun to do some writing, primarily comparative legal aid . . . comparative legal right to counsel stuff. And I published an article in the *Loyola Law Review* that grew out of a conference that was sponsored on right to counsel at . . . I think at Loyola. And that was published in the *Loyola Law Review* and so forth. So I was involved a little bit to that level while I was still on the bench and before I really sort of reengaged at all.

In 1991, my friend Sandy D'Alemberte, who'd been chair of that first committee on alternative dispute resolution, became president-elect of the ABA. And I saw that as an opportunity to get the ABA to do something in the access to justice field – more than they had been doing. So I wrote him a long letter, sort of spelling out a bit, and he said, "Well, why don't you get some people together and give me a plan," so to speak. So I contacted a number . . . Esther Lardent, Vic Geminiani, a few others. These are familiar names to you; they won't be familiar to the audience. But suffice it to say leaders in Legal Aid around the country.

Laurie Zelon: Esther Lardent, in the . . . on the private side in terms of pro bono . . .

Earl Johnson: Right.

Laurie Zelon: . . . and Victor in terms of legal services.

Earl Johnson: Right. And some . . . three or four others. And we put together about a 50-page memo spelling out a plan to put together a national coalition – that was the fundamental notion. It was to broaden the scope of the access to justice beyond Legal Aid and beyond the legal profession as the support for Legal Aid. To get other interest groups involved in support, and also to have it . . . other means besides Legal Aid lawyers to improve access to justice. So it expanded it . . . the mission, or viewpoint, in a couple of directions. And he loved the idea. Knowing the ABA – and you won't be surprised to hear it – it got bogged down a bit in the bureaucracy and ended up as being a subcommittee of the then-existing Consortium on Legal Services and the General . . . and the Public. And I was appointed to that, as a public member of that coalition, and I was chair of this little committee. And we actually had a fair amount of financial support the year . . . first couple of years, and we were able to hire Marc Galanter to do a bunch of research for us. And . . . . But it took us forever and a day to get the coalition put together – to recruit these interest groups. By the time we actually had our first meeting of this . . . of the actual coalition, it was on the eve of the Gingrich Congress taking control, and where everything had to go on the 1:44:18

defense, and it was . . . . So it . . . what it amounted to, that was the first and last meeting of the coalition, and that whole effort, by that time, had lost too much support in the . . . within the ABA to really keep it going.

But I had become intrigued, and I had another friend: Harvey Saferstein, who was president . . . new president of the California bar. We were long-time social friends for 20 years. We had sons that are about the same age and all that sort of thing. We kept meeting together all the time. So I took him aside. He had a party for the board members of the Bar at his house one day here in Los Angeles, and I was . . . he invited us and a fair number of other people, social friends, there, too. And I took him aside and I pitched the idea of having a California coalition . . . access . . . we didn't call it the Access Commission at the time, but some kind of coalition here in California, which seemed more doable. And to his credit, he signed . . . he said, "Let's do it. We'll have breakfast." And we had breakfast, planned it out . . . . And so he got the Board of Governors to set up a . . . . We decided this time we were going to produce a report that really laid out the plan first and then recruit the coalition, rather than trying to recruit the coalition and then have them develop a plan. So we set up this working group, which I chaired, and which you were a member and Jack Londen was a member, and Ralph Abascal – well, all kinds of people from the . . . prominent people in the private bar who were interested in this field, and a lot of . . . and some academics, and a fair number of leaders in the legal services community. We had this working group, and we labored for about two and a half years and produced an 88-page report that laid out the case and laid out a whole series of recommendations of what should be done. One recommendation . . . . The first recommendation was that it should be a right, and the second recommendation, we should create a commission. And we created the commission . . . . The Board of Governors created a commission that had its first meeting in June of 1997, and you were the chair.

Laurie Zelon: Indeed. And you have been a member ever since!

Earl Johnson: Yes.

Laurie Zelon: In one form or another!

Earl Johnson: One form or another. I chaired it in 2002, and we've both been involved again. It's one of those you never get off.

Laurie Zelon: But, you know, that's a model that has been adopted increasingly . . .

Earl Johnson: Yeah.

Laurie Zelon: . . . in other states. 1:47:03

Earl Johnson: There are 25 states now. Twenty-six states.

Laurie Zelon: And I think the California Commission – and this was part of what you wanted, I think – but the California Commission is almost unique in that it is not driven by the Supreme Court and the Bar exclusively, but really insists on public membership.

Earl Johnson: Right. A majority of its members are *no*t selected by the Bar.

Laurie Zelon: Why do you think that's important?

Earl Johnson: Because to enlist in support of access activities, interest groups that . . . can be very, very helpful and should also see that they have a vested stake that this country offers equal justice to all its citizens. And, I mean, a good example is the legislation we recently got through on a pilot project. We had support from the Chamber of Commerce: the California Chamber of Commerce, the Los Angeles Chamber of Commerce, the Valley Chamber of Commerce, etcetera.

Laurie Zelon: You're talking about the Shriver Act to . . .

Earl Johnson: Yes, I'm talking about the . . . .

Laurie Zelon: . . . provide counsel . . .

Earl Johnson: Yes, right.

Laurie Zelon: . . . in civil cases.

Earl Johnson: That's right. And we had some very powerful support, largely from commission members that are *not* the bar or the bench.

Laurie Zelon: Now, speaking of right to counsel in civil cases, I mean, that has been a primary focus of your work other than your writing since you've left the bench.

Earl Johnson: That's right.

Laurie Zelon: And . . . .

Earl Johnson: In fact, it has been a primary focus of mine off the bench ever since I made that trip to Florence in 1975 and found out how many countries already had it. And many had for decades a right to counsel in civil cases.

Laurie Zelon: Looking ahead where you sit now, I'm going to ask you to pull out your crystal ball because we're now 30 years on from the time you were in Florence. What do you think that the shape of that is going to be, either in California or in the United States, in terms of where we will get in terms of a right to counsel? 1:49:37

Earl Johnson: In the long run, or in the medium run, or the short run?

Laurie Zelon: Well, let's get the most optimistic first and then we can talk . . . then we can negotiate timing!

Earl Johnson: Personally, I can't believe there won't come along, at some point, a U.S. Supreme Court that will realize that due process and equal protection of the laws are impossible for people who don't have lawyers in cases that are being decided in the regular courts, where most people that can afford them *have* lawyers. So in the long run I think it will become a matter of Constitutional right. I think it will be not a right to counsel as such. I think it will be a right to equal justice, and counsel when necessary to have equal justice.

Laurie Zelon: On the concept that not everybody needs the same level of assistance?

Earl Johnson: No, on the concept that different forums can be structured in a way that counsel isn't necessary.

Laurie Zelon: Okay, and . . . .

Earl Johnson: But when you talk about the regular courts, the courts in which we decide torts and contracts and most of our stuff, I think the right to equal justice will mean the right to counsel.

Laurie Zelon: Short run?

Earl Johnson: Short run, we'll see what happens in New York, with a Chief Justice who has announced that he's bound and determined to have a civil right to counsel in certain high . . . cases of . . . where basic human needs are involved. And he's going to hold hearings and get started. And our pilot projects may yield information that will allow us to make some moves in that direction. I think it . . . . I think until a court declares it . . . at least a right to equal justice, I think it will move incrementally. I mean, we already have a right . . . a statutory right to counsel here in California in dependency cases, which we didn't have when I first came on the bench.

Laurie Zelon: And it's possible that out of the pilot project, some legislation could be involved for other areas. Is that what you're thinking?

Earl Johnson: Right. Right.

Laurie Zelon: In part.

Earl Johnson: Yes. Oh, yes. Yeah.

Laurie Zelon: Okay. Let me go back a minute and talk about not why you left the bench but what you think the most significant 1:52:24

contribution you made – either to the law, or to policy, or to justice – when you sat here. If you can single out one thing or one area.

Earl Johnson: Well, there have been some cases that I decided that I think have had substantial impact in the real world, shall we say, beyond what I thought they would have, as well as some . . . . The one I knew was going to have a big impact if the Supreme Court went the same way – and they did – was *Del Monte v. Deukmejian [ed.'s note: Del Monte v. Wilson]*, which was a case which struck down as unconstitutional the limitation in the CalVet program which limited all the CalVet benefits to vets who had been residents of California at the time they joined the military. So all the hundreds of thousands of vets that moved here after World War II or after the Korean War, after the Vietnam War, whatever, were ineligible until that decision. So that was, in terms of . . . was hundreds of thousands of beneficiaries in that particular case.

Most of the . . . By the way – which is probably true of a lot of judges who sit on the intermediate Courts of Appeal – your most important cases, your most interesting cases, your most influential cases are ones that don't appear in the *Official Reports* anymore because the Supreme Court took them.

Laurie Zelon: Right.

Earl Johnson: And if they decided in the same way as you did, it doesn't make any difference because your opinion is not there. That's true of *Del Monte v. Deukmejian,* which was only a paraphrase, essentially, of our opinion but that's okay. Much better that they . . . that that be a California Supreme Court case than ours.

There are some cases you remember for different reasons, as well as what the impact might have been. One was *Shawn B.,* which was, it turned out, a quite influential case. It was the case in which we decided that children in dependency cases are entitled to independent counsel and not representation by the county counsel, which has led to creation of the Children's Law Center and other forms of representation of children. Not here . . . just here in Los Angeles, but throughout the state. But what made it so memorable to me, it's one of those cases I wrote . . . researched and wrote myself, and I had the flu, and I was sitting in my sick room at home for about four days writing this opinion, and then dictating it over the phone to my secretary so she could type it up and get it in . . . 'cause it was . . . we were coming up on the due date for it to be circulated.

Another case that had sort of personal . . . was uniquely of interest to me was because of a sidelight of it, which I embodied in a footnote. But that was *Green v. Ralee*. *Green v. Ralee* was a case in the . . . sort of in the employment 1:56:17

area, the wrongful discharge area, where someone is discharged because they report some violation of . . . that their employer is engaged in, that kind of thing. And the Supreme Court . . .

Laurie Zelon: Whistleblowing.

Earl Johnson: . . . yes, the Supreme Court had decided earlier that no longer could that public purpose that was furthered that . . . by the . . . by what you're reporting could be something that was judge-created; it had to be in the Constitution or a statute. This was a case where an inspector at a plant that made parts for Boeing airliners reported that they were . . . went to the company chief and said, "You know, we're shipping defective parts to Boeing," and so forth, and he got fired. So, the . . . . But the only thing that was . . . that public policy that you shouldn't be shipping defective parts was in a regulation of the FAA, not statute. So the legal issue was just whether a regulation also counted, not just a statute or the Constitution. But what made it of special interest to me was that my first wife's father had been a co-pilot on a TWA plane that crashed in . . . about six months before she was born in Kansas City in 1935. On board was a very popular senator, and that crash and that death led to the CAA – the Civil Aeronautics Administration – and the Federal . . . the FAA, and all the regulations of airlines by the federal government. And my friend Howard Westwood . . .

Laurie Zelon: Back to him!

Earl Johnson: . . . he was at Covington, and he was the one who drafted that legislation and got it through. He represented the Airport Transport Association or some such thing. Anyway, so this had some special interest to me that . . . and a special reason I thought the FAA regulations should be proper sources of law. And the California Supreme Court agreed with me.

David Knight: I'm going to . . .

Earl Johnson: Okay.

David Knight: . . . ask you to pause right there.

Laurie Zelon: Okay.

[brief pause]

Laurie Zelon: We were talking about some of the cases that you thought were significant in one way or another.

Earl Johnson: Right.

Laurie Zelon: Were there other cases that you felt that way about? 1:59:08

Earl Johnson: Well, sometimes you don't know that a case has had a substantial impact for many years, and you didn't even . . . and you find out about it in unusual ways. I filed a case in the '80s called *Friends of Westwood,* which was a land use case. I forgot to mention that my pre-bench career also included a year and a half serving on the Regional Planning Commission here, of L.A. County, in the early '80s before I went on the bench. So I was . . . I took on personally research and writing of most land use–type cases 'cause I actually knew a fair amount about that field, which not too many people do. So, anyway, this was . . . they were planning on building this huge skyscraper office building in downtown Westwood, and the Friends of Westwood had challenged it for failure to have an EIR. And that was . . . since it was within the city limits of Los Angeles, they could pretty much do what they wanted to, at least they . . . up to that time. This was a 26-story thing. It would have had more floor space than a subdivision of 400 homes – probably more traffic *[inaudible]* than . . . . And for a . . . even a two-home subdivision you'd have to have an EIR and all of these approvals. So anyway, I wrote an opinion in which I said under CEQA, they had to . . . . But they were . . . the practice in Los Angeles County was illegal under CEQA. And the Supreme Court didn't take the case, so they had to do a lot of things and provide much more parking – a lot of things they had to do. They finally built the building, but they had to do a lot of things they weren't going to be having to do. So, you know, that was one case. And about 15 years later, at least, I was reading *Los Angeles* magazine, and they had a big profile in there on the Latham and Watkins partner who was in charge of their land use and real estate practice. And he was talking about his career and so forth. And he said, "Up until *Friends of Westwood*, they didn't have to do . . . ." you know. And he said his practice is largely composed of doing the things that Friends of Westwood required. So as I say, you don't . . . I had no idea that it had anything beyond that one building. But those kinds of things happen. Anyway . . . .

Laurie Zelon: Other cases?

Earl Johnson: There's other cases. Well, there's a case that I wrote a dissent in that didn't get picked up by the Supreme Court: *Quail v. Superior Court [ed.'s note: Quail v. Municipal Court]*, which was the one and only right-to-counsel-in-civil-cases opinion I wrote, way back when – it was in the early days. That was my one and only dissent. It was actually a dissent . . . it was actually a concurring and dissenting opinion, because they had reversed the thing that happened, but in that case the indigent defendant had requested counsel and been denied counsel. So I wrote a dissent on that and got three votes to take it in the Supreme Court, but it takes four, so that's . . . didn't happen.

Then probably the one that has led to most of the comment about scholarliness if at least . . . particularly if seen in 2:03:01

a negative way was a case called Javier A., which is also . . . I think that was '84 or '85 – pretty early in the game. And that was a case where I did a great deal of research – had an extern that I sent down to the UCLA Law Library or Main Library, I should say, for about a month. It was a case having to do with the right to jury trial in juvenile cases. And the . . . California's denial of that right goes back to an opinion in the 19-teens. And our research revealed that it was premised on an erroneous interpretation of English law. The right to jury trial in all cases in California depends on what English law . . . whether there was a right to counsel in English law in 1850. And what they based theirs on was what were the rough equivalent of dependency cases, and not cases where it was misbehavior by the child. And there was still a right to counsel in England in 1850 for children accused of any criminal activity. So the whole idea of the state taking custody of the child and all that only applied when there was . . . a parent had done something bad, like our dependency cases. So, anyway, so we wrote . . . I wrote that opinion but then deferred to the Supreme Court and said, "We're bound by this." So it was not a . . . . We . . . . After laying out that they . . . that previous Supreme Court had been dead wrong, we didn't try to overrule it, hoping that the Supreme Court would take the invitation to do it itself. But that didn't happen.

Laurie Zelon: They declined the invitation.

Earl Johnson: They declined the invitation. But that was a . . . that opinion was close to 100 pages long.

Laurie Zelon: I have to say that, you know, the materials I've read don't treat your scholarly opinions as a negative. I think most people view them as a positive – unless you're the lawyer who has to read a hundred-page . . . .

Earl Johnson: It had to be 100 pages, because we actually had to put in verbatim all the debates in the . . . . 'Cause they were considering removing a right to counsel for children, but Parliament defeated it in 1850, or '49 I think it was, and it was . . . . So anyway, so we had to put all this extensive debate and all that in there. So . . . .

Laurie Zelon: Well, and speaking as someone who has cribbed from your scholarly research, I'm very grateful for it – not in that area but in some others.

Earl Johnson: Yes.

Laurie Zelon: But any other opinions that you really want to talk about this point?

Earl Johnson: Let's see. *Wollersheim v. Church of Scientology.* This was a former Scientologist who had sued – for mental 2:06:31

distress and a bunch of other things, but primarily psychological-type things – the Church of Scientology. And it had been . . . in the trial court had been a very trying thing for the trial judge. The Scientologists had stacked the courtroom, and they'd had demonstrations outside the courthouse, and they'd done all these sorts of things. So we were prepared for . . . . So this was the first – and because of it the last – time I took a case with a huge record to personally research and write. It was about 35 doghouses. If . . . . The record filled . . . what . . . I kept it under lock and key in my . . . pushed them in carts into my bathroom and locked the bathroom, because they were afraid that some Scientologists would sneak in and whatever. We did have some incidents. And anyway, I ended up filing an opinion which held that fair game was not a constitutionally protected religious activity and a few other things. Upheld the judgment but reduced the punitive damages by about two-thirds. The jury had really gone wild. They gave about four times the punitive damages that the plaintiff's attorney had asked for in his oral . . . in his closing argument!

Laurie Zelon: But he was happy to take it, right?

Earl Johnson: Oh, he was happy to take it, yes. The interesting thing: the Church of Scientology fought that judgment for another 15 years or so. By the time they actually finally had to pay it, it was about the size of the unreduced judgment that had come down originally from the trial court. So . . . . But it was . . . . As I say, after . . . it took me about six months with all my other duties to complete that effort.

Laurie Zelon: You've mentioned several times cases that you took for yourself. And how did you run your chambers in terms of allocation of responsibility?

Earl Johnson: Yeah. I guess because I had done so much research and writing and was so . . . I found that so interesting, I liked to take some cases which I thought were going to be important cases – and particularly if they were in some field I was interested in – to personally research and write. What I tried to do to have the time to do that and still produce all the volume that we have to produce was I would skim the briefs of all the cases and write a little one-paragraph summary of what I saw as the issues and, where I thought I could make a tentative call based on the briefs, make a tentative call, which I could do maybe two-thirds to three-quarters of the time, and the other times I said, "Too close to call." Then I'd go to my research attorneys, and they would . . . if they were . . . if their further research suggested that the call was wrong or needed some modification or anything, they would come back to me and we would discuss it. And very often – I would say in a good third of the cases where I made the call, a tentative call – we came up with a different result. But it did give them a clue as to when to come back to me, which cases . . . If 2:10:34

everything looked copacetic, the way I'd made the tentative call, I didn't have to see it until they came with the first draft of the opinion. So it was a way of controlling the outcomes and having a minimum hand in, all the way along, without having to get too deeply into all the other cases until it came time to review the drafts.

Laurie Zelon: Now you had your research attorneys with great longevity.

Earl Johnson: Yes. My first research attorney, who was still with me almost 'til the end, Phil Goar . . . . Phil Goar and I had . . . . He had been at the Western Center. He had been Director of Litigation at the Western Center at least one of the times I did a brief for them. And we worked together on the case, essentially; I mean, he came to the oral argument with me and so forth. So I knew him pretty well. So when I got appointed, first thing I got appointed, I called him for a suggestion of somebody who would be good . . . a good research attorney. And he said, "I'd like to be your research attorney." So that was . . . that made that search very short. And then Carla Debban-Wafer came to me in 19 – I can't remember, '85, middle 80s – as an extern from Loyola Law School. And then she asked to stay for a second semester as a research . . . as an extern. And then she had an offer from a big firm, and then I asked her if she'd . . . wanted to be interested in . . . . At the time I was using, for my second research position, a rotating position, you know, where you take somebody fresh out of law school, you keep them for a year, then they go on. I said, "For this coming year, how would you like to be that?" And she got a deferral from the law firm, and she finished that first year and I liked her work enough, and she liked working here enough, she . . . we decided she'd stay on, and she was with me for, I don't know, 18 years or something like that.

Laurie Zelon: Did that make it easier, having such consistency in your chambers?

Earl Johnson: Yeah, once you sort of got them trained into your writing style, it made it a lot easier. I mean, they knew what you wanted in terms of style, and what issues you were going to have difficulty with, and which ones were going to be easy for you. And yeah, it made a lot of difference. You get very accustomed to each other's way of working. I'm sure you're finding that with some of your people.

Laurie Zelon: Absolutely. But did you find the give-and-take that you had with them help you or keep you enthusiastic about some of the cases?

Earl Johnson: Oh, yeah. Those cases in which . . . were still a substantial number of cases in which either they had, through their research, developed a different result than my tentative result, or in cases in which they across an issue that we 2:13:52

hadn't seen at all in the briefs, and so forth. No, we had very lively discussions. Sometimes they'd go on for quite a bit of time.

Now I also used . . . a large use of externs. I had as . . . . In some summers I would have as many as five, six, seven externs. And so that kept me alive, too, because that's a whole different thing. Then you're working with them the way you would work with the very first case that a research attorney had.

Laurie Zelon: Now, you in large part were responsible for the fact that we *have* an extern program here.

Earl Johnson: Well, I was just . . . . I was recruited because I had been a professor. I arrive on the scene and they found a victim! 'Cause they *had* an extern program but it . . . but I took over. But I did . . . I must say, I did *nothing* compared to what Paul did. Paul was really . . . turned it into a first-rate extern program. I did not. I did a decent one for many years, but he did a really high-quality extern program. He made it a model.

Laurie Zelon: Well, you had worked with Paul – and we're talking about Paul Boland – before you had ever come to the court . . .

Earl Johnson: Oh, yes.

Laurie Zelon: . . . and certainly before he came to the court.

Earl Johnson: Oh, yes. Yeah. At the . . . he was at the Western Center when I was, I think, chair of the board of the Western Center and a professor at USC. So we went back. And then he had . . . he'd been involved in clinical education at UCLA at the same time I was involved in clinical education at USC. So . . . . And we . . . . Dave Binder, who ran the UCLA program, and myself were both social friends and got together to compare notes quite a bit, and sometimes Paul was in those discussions, too. So I knew him well before.

Laurie Zelon: Right. Well, I want to give you the last word here.

Earl Johnson: Okay.

Laurie Zelon: Not that you haven't had words before. But if you were to be able to choose how history wrote you, if you will, either as . . . in your work as a judge or your work of your lifetime outside of that, what is it that you would want people most to say about you, that your strength, your greatest contribution, was?

Earl Johnson: Well, that I tried to make it a more just world in both capacities. One thing I tried to do when I was a judge was to – and I encouraged it with my research attorneys as well as myself – was to, shall we say, as much as possible 2:17:01

neutralize the difference in the capacities and abilities of the contending counsel. In other words, when it was a very good lawyer from a very good firm, wrote a very good brief, and the other side, not so good a lawyer, not so good a brief, we should try to compensate for that – make sure that they aren't winning because they're a better lawyer, they're winning because they have a better case. So doing a lot of independent research on the cases, fairly frequently finding an issue that neither side had found that the case should really turn on. And trying to make sure that the less powerful and often the less wealthy party has as good a shot at winning the case as the one that had the resources and the high-quality lawyer and so forth. And that sort of carried over into my nonjudicial career in trying to equalize the situation in the courtroom when it's lower-income people versus wealthier people or institutions, by providing the resources and the quality lawyers, etcetera, to those low-income people.

Laurie Zelon: And if we have the Earl Johnson Right to Justice Act, that would be okay?

Earl Johnson: That would be okay. But you don't have to put the name on it!

Laurie Zelon: Well, thank you. This, I hope, has been instructive and informative, and it certainly was a lot of fun.

Earl Johnson: Yeah. And thank *you* for asking all the right questions.

Laurie Zelon: Is there anything I left out that you wanted to cover?

Earl Johnson: Not that I can think of offhand.

Laurie Zelon: Okay, good.

Duration: 140 minutes
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