Keith Sparks: All right. My name is Keith Fogus Sparks—Sparks is spelled S-P-A-R-K-S—and I was an Associate Justice on the Court of Appeal for the Third District in Sacramento.

George Nicholson: My name is George Nicholson. I serve on the Third Appellate District of the Court of Appeal. I'm privileged to be here today in the Placer County home of Keith and Mary Sparks. Keith is a former Third Appellate District Associate Justice. He was the 28th justice named to our court. He served 16 years as an appellate judge, and by doing so he served better than two-thirds of the 43 judges who have served on our court before and since he left. Before his 1997 retirement, I was privileged to serve with Keith for almost seven years.

The Judicial Council's Appellate Legacy Committee has been assigned the task of memorializing the lives and times of all of our state's former appellate justices. We are here today to do just that with Keith. I learned a great deal from Keith when I served with him. I expect to learn more today and hopefully all of you will too. Keith, would you like to get started?

Keith Sparks: Yes, I'll start by telling you—since this camera, the bright lights are in my face—a wonderful vignette. I was attending an appellate court conference meeting in the Napa Valley and then–Supreme Court Justice Otto Kaus was there. We were all sitting in this horseshoe-figured table and the spotlight was right on Kaus's face; and pretty soon, after it had been spotlighted for about four minutes, he said, "Please," he says, "Turn off the light or I'll confess." *[laughing]*

George Nicholson: *[Laughing]* He didn't sing it?

Keith Sparks: He didn't sing it.

George Nicholson: Oh, no, that was Panelli.

Keith Sparks: Yeah.

George Nicholson: Panelli was our singer. Well, let's begin at the beginning. Who were your parents, and what were they doing, and how were they doing it?

Keith Sparks: My father was Lowell Llewellyn Sparks and he was born and raised in the small town of Lincoln in Placer County. His father worked at Gladding, McBean, a famous pottery factory in Lincoln, and he was their office manager. My father went to Lincoln High School and then went to the University of California at Berkeley, and then later he went to Boalt Hall at Cal as well. And my mother's father was a railroad engineer and his name was Charles Fogus—hence my middle name of Fogus. She grew up in Roseville and she was a schoolteacher and met my father when he was a lawyer. At one point in his

life he was a city attorney for the City of Roseville and then later he became the district attorney of Placer County.

There's a wonderful story I have to tell you about his race. He was running for the district attorney of Placer County and he had an opponent, also from Roseville, who astonishingly had the name of L. DeWitt Spark, without the "s." So it was Sparks versus Spark, and there was a huge concern that there'd be confusion about who was who. So he ordered a number of matches to be passed out everywhere. And of course the district attorney's office is a nonpartisan office. So boxes and boxes and boxes of these matches came printed from the printer in San Francisco and it had Sparks and the last "s" was hugely elevated and prominent—but the only problem was that they had mistakenly put a banner that said "Democratic."

First of all, my father was a Republican, and secondly, this was a nonpartisan election, so he immediately called the printer and they confessed their error and said, "Well, you just keep them and we won't charge you." So they were in the basement of my house growing up, boxes and boxes of these matches; and when we got to be the smoking age, we would take these and pass them out to everybody we could think of and people would say, "I didn't realize your father was a Democrat." But anyway, I still have copies of these little matches that we had all those years.

George Nicholson: That's really interesting. You are born in March of 1933. Where does that fit into the career you've just begun to outline of your father?

(00:04:45)

Keith Sparks: Well, my father was a district attorney of Placer County when I was born. I was born in Sacramento and we lived in Lincoln for about two years of my life, and then we moved to Auburn, the Placer County seat, of course, where he worked. So he was district attorney during the war. And you probably recall that Placer County had a huge population of Japanese-American citizens. Some were born in Japan; and some, of course, their children were born here. There was great concern early in the war that there'd be some possible sabotage, and so occasionally the police, the sheriff's deputies, raided some homes. And they never found one evidence of, any evidence at all of, any espionage.

Some older Japanese had radios, but they were simply monitoring it to listen to it. They were not broadcasting anything and they were, as the record shows, completely loyal citizens. But unfortunately they all got up rounded up, if you recall, and were taken away to camps outside of California, and they quickly had to dispose of their farms and their ranches and leave. And it's really kind of a stain on our history, but it

happened. Japanese children who were in my class in grammar school were suddenly gone, and didn't come back for several years.

George Nicholson: Did any significant proportion of those people, were they unable to return here or—

Keith Sparks: Yes.

George Nicholson: Or was that the end of them?

Keith Sparks: No, no. Many returned. I would guess probably most returned and—

George Nicholson: Were they more or less welcomed back by the community when it was all over?

Keith Sparks: For the most part they were, but I think by enlightened people. You recall, though, that all of the moving pictures turned out at war portrayed the Japanese soldiers as being atrocious, ambitious, and stabbing children with bayonets and the like. So there is some residual effect of that kind of thing. Some of the barbershops in Auburn, for example, years after the war, almost into the 1950s, had signs, "We don't solicit Japanese trade." It took a little while for that to wear off. But they're now prized citizens of this county. They have Japanese festivals here worth going to, and one of the boys that I went to school with, Ray Yamasaki's father, is still alive. He is 102 or 103 and he ran a nursery and became a landscape architect. And they have just gone on to be wonderful citizens of the county.

George Nicholson: When you progressed through school, you eventually went to Placer High?

Keith Sparks: Went to Placer High, went to Auburn Grammar School, which was about three blocks from where I lived, and then the high school was also about three blocks. So I walked to school, until I got out of—

George Nicholson: Out of high school.

Keith Sparks: High school.

George Nicholson: What did you like about school or dislike about school?

Keith Sparks: Well, I loved school. I played sports all the time, so that was a big part of it. I can recall in grammar school that . . . this was just after the war, and when I first went to grammar school, there were mostly women because the men were serving in the armed forces. But one of the men came back. He had been a captain in the Marines or some such position, and he still had this military so ingrained in him that he would have all the children assemble down on the stadium of the school in military

fashion and then we would march and drill, and it was just like we were a little boot camp. *[laughing]* So it took a little while for him to get over the war. But I can recall that to this day.

George Nicholson: Which sports did you like best?

Keith Sparks: Well, I played three of them. I played basketball and football and baseball, but I excelled most in basketball. In those days, kids were not so gigantically tall. We had a kid who was, say, 6'6''—very unusual, but he could hardly catch the ball. They were very uncoordinated. They're not like these gazelles that play basketball now that are 6'7" and can fly through the air. It was completely different.

George Nicholson: It was a different time. When you graduated from high school . . . Well, before I leave that, was there anything else about your high school days? Were there extracurricular activities beyond sports that you were involved in, that you recall particularly?

Keith Sparks: No, because those sports took all your time. We could play at three sports; that means you were doing it all the time.

(00:10:07)

George Nicholson: Year-round, probably.

Keith Sparks: Year-round, yeah, right.

George Nicholson: You thereafter went to Berkeley?

Keith Sparks: I went to Berkeley, and my brother, my older brother Lowell, was there already. He had been there two years and so I went down and went to the university also. While I was in high school we had this wonderful Latin teacher, a woman, her name was Ms. Estes. And she never married, and she had gone to Stanford as an undergraduate and had specialized in language, and particularly in Latin, and spoke . . . they had a group who sat around and spoke this dead language of Latin.

So she was a marvelous, marvelous teacher. And at the beginning of my freshman year she wrote up on the board what it took in terms of courses and grades to get into both Stanford or Cal. And she wrote them down so you could just look at the board and say, okay, I have to take so many courses in language, in science, et cetera. And it was a wonderful help, because when I went to Placer, I would say that 5 percent of the graduates went on to college. You know, it was a rural county in those days. It was not a wealthy county, and most of the children finished high school, went to work. There wasn't a culture of going on to college like there is today.

George Nicholson: What did you study at Cal?

Keith Sparks: I majored in political science and minored in history—and that's the first time I really started reading books you might call social commentary kinds of books, in political science. It was before the free speech movement, thank god. It was a beautiful campus at that time, but nevertheless there were still . . . McCarthy was a prominent figure in American politics at the time.

George Nicholson: You got through UC Berkeley in four years, I think.

Keith Sparks: Yes, right.

George Nicholson: And in the time that you were there that was a fairly common experience for most students, wasn't it?

Keith Sparks: Yes. I don't know whether the problem of choosing a major is more difficult now that people decide later what major they want to take and then they have to backtrack and get the prerequisites for that major—why it is that it takes some six or sometimes seven years. When my son went to Cal, I remember going down to a conference and they're telling their parents that they could expect at the least that their children will be there for five years, and you could just hear this collective sigh and moan from all the parents when they first heard this bad news. But I think it's probably fairly common now.

George Nicholson: When you were at Cal studying political science and history, did you have any particular teacher that was helpful to you or inspiring to you?

Keith Sparks: Yes. Gene Burdick was there, taught political science. Read wonderful contemporary books that, unless you go to a college, you're not familiar with, and especially in a rural community like this.

George Nicholson: We're going to come back to reading, but you have . . . besides obvious burdens of reading associated with practicing law and serving on the bench, you've been a reader all your life, as far as I can gather.

Keith Sparks: I have, I have, and I've always read eclectically. I've never taken a subject matter and just devoted my attention to that or just read one line of authors. I read all kinds of things and differently and I read many books all at one time and it depends on what mood I am to pick it up. Mary, my wife, is completely different. She starts with a book and keeps going until she finishes it, but I don't do that.

George Nicholson: Well, I'm getting ahead of ourselves here, but when you served on our court you commuted from up here to the Third Appellate District downtown.

Keith Sparks: I did.

George Nicholson: You even read while you drove, didn't you?

Keith Sparks: No, I listened to books on tape, and it was a wonderful way of doing it. I thought that . . . you can listen, for example, to Tolstoy's *War and Peace,* and I thought well, I would never be able to keep all the characters in my head because it took several months to finish listening to all the tapes. But you could, actually; it's amazing that you could remember the characters in the reading.

(00:15:12)

I remember listening to *The Iliad* read by a man of Greek background, and he could rattle off all the names of the sons and daughters in this booming, deep voice. And it was just marvelous just to listen to his voice; they are all wonderful readers.

George Nicholson: Well, you did that for a lot of the time, if not all the time you were driving down for 16 years, didn't you?

Keith Sparks: Yes. When I first started—we're about, what, 36 miles from the courthouse downtown to here—and I used to be able to drive from my house to the state garage in 30 minutes. And then as time went on, the commuting traffic began to become ever and ever more dense; and then pretty soon, if you went at a bad time it took you often an hour and a half to get down there. If you went at a different hour, it was much better, earlier or later; but if you got in the middle of, the crux of, the traffic . . . And now it's probably even worse; I don't drive it regularly.

George Nicholson: Whether it's 30 minutes or an hour and a half, you got your quote, unquote, "reading" in.

Keith Sparks: Yeah, right. *[laughing]*

George Nicholson: Well, after you graduated from UC Berkeley, you stayed in Berkeley, went to Boalt.

Keith Sparks: No.

George Nicholson: No?

Keith Sparks: In those days you were subject to the draft, and all my friends at the university and the fraternity I was in all got drafted, were sent down to Fort Ord, and went into the finance department because they were college graduates and had a wonderful two-year tour in the Monterey Bay Area. And I thought that's terrific. If you wanted to become an officer, you had to go four years and you had to go to training school, and I thought, I don't want to do that. So that was my plan, but I forgot that I

was registered not in Berkeley, but I was registered in Auburn. So I was drafted out of the Auburn draft board and they treated you differently. So I was taken down to San Francisco and we all stood in the line. And then a guy starts going down the line and says, "You're in the Army, you're in the Marines, you're in the Navy." And he points to me and said, "You're in the Navy." I was married then; I'd been married a very short time. And I called Mary up and said, "Mary, guess what, I'm in the Navy and I'm in San Diego." So off I went to San Diego.

So after boot camp . . . and I was, of course, one of the oldest guys. Most of the people who enlisted in the Navy were just out of high school; they were younger. So anyway, I was placed on an airplane carrier called the USS *Bennington* and I was put in the education department—actually a very nice place to be. We administered the test for advancement. The ship then left immediately and we went overseas. We went to Hawaii. We went to the Philippines. We went to Japan. We went to . . . all this time we had airplane squadrons on the ship, and it happens that is such dangerous work because they fly at night, the ship is moving, and then invariably there are some accidents; I think three pilots were killed during the time that I was on board.

Then finally after our tour was over all the planes left the ship and the ship went—for reasons that I don't know why—but went down to Australia and we went to Sydney. These airplane carriers are such gigantic ships that most ports can't accommodate them because they're too big and too deep and they don't . . . they simply can't. So you have to go to big cities. When we are in Japan, in little cities, they would anchor and you would take little, small boats into the shore.

So when you crossed the International Date Line in those days, they had this huge, harassing ceremony that they put everybody through, including officers. There were some officers of substantial rank which for some reason or another had never crossed the International Date Line, and so they were put through the same thing.

(00:20:04)

You had to crawl through tunnels of garbage. You had to go to the royal barber, who gave you a reverse Mohawk—just took apart the shears and went this way, just left a complete swath through your hair. Guys were beating you on the back with big sticks. And I mean it was really quite something, and it ended up by dumping you in a big tub, and then that was over. So then we all arrived in Sydney looking kind of peculiar, actually. *[laughing]*

George Nicholson: You indicated you had just been married when you were called to the service, eventually the Navy, and you were in Mary's

home. And I think it's probably true in all courts—but I think particularly for the Third Appellate District—wives are as much a part of our court as our judges are; we all know and see each other regularly. And I was wondering if you could just fill us in a little bit on Mary and your children.

Keith Sparks: Sure. Mary was born in New Mexico. Her family owned and ran a sawmill, and they were a big Irish family. There were, I think, eight of them, and they were in the Jemez Mountains not too far from where Los Alamos now is. Her father, who was the oldest of the children, developed a heart condition, which he later died of unfortunately.

So they moved—all of them, the whole family—to Foresthill and bought a lumber mill there, and it's called Hughes Brothers Lumber Company. And so Mary came with her family. She has an older brother and a sister. Then when it came time for them to go to high school her father bought a home in Auburn and then he commuted to work to Foresthill. And she was one year behind me—so that's when I met her, when she was a freshman in high school and I was a sophomore.

So then she went on, finished high school, she went on to two years to Stephens College in Missouri with her sister. Then she came back and finished at Cal at Berkeley. And then we got married in 1956, in January 1956, and I think I went into the service in March 1956. When I was going to law school I had three children under two actually. Our firstborn, Katie, was born in Berkeley. And Mary then began teaching at a school in Oakland, with which she got medical coverage. And then we had twin boys, and they were born at Kaiser and they were both premature and they were there for a long period of time. Long—I mean one was there I think a week and the other was there three weeks before . . . They had to reach a certain weight before they would let them come home. So that was kind of a traumatic experience for us all, and then later when we lived in Roseville we had our fourth child, Chris, so I have four children.

George Nicholson: You, during the mix of your children and the Navy and being married, you made your way to Boalt at some point.

Keith Sparks: I did. After I got out of the service, it was I think in the late fall, too late to go to law school at the time. So I worked for Shell Oil in Sacramento in their finance department for about nine months and then I left and we moved to Berkeley and I started law school.

In those days, I suppose it's still true, you had to have courses in accounting, which I had never taken in college. So in that summer, all I had to do is take one course, which is in accounting, so it's a wonderful way to start. I take this one class, and that's all we had to do. *[laughing]*

(00:24:57)

George Nicholson: You made your way over there, but I'm curious about whether—two things—whether the Shell job was your quote, unquote, "first real job," and secondly, what caused you to decide to go to law school?

Keith Sparks: Well, a couple of answers that . . . Talking about jobs, when I was a boy growing up here, Placer County was a big fruit county; it had major packing sheds that shipped fruit all over the United States. And I worked in a fruit shed all throughout high school, at the fruit shed in Newcastle. Farmers would bring their fruit that would be packed in boxes, and those boxes would then be brought to a fruit shed, and we would then unload them from the trucks and then put them in railroad cars, and then load all the railroad cars up with fruit and ship them out. That's what I did every summer.

Then when I was older, in college, I worked at Gladding, McBean, in Lincoln in their fitting shed, where they would cut pieces of terra cotta for specialty purposes, and it had to be wrapped and also loaded. So those were my jobs while I was growing up.

George Nicholson: What persuaded you . . . I realize your father was in the law, but what specifically persuaded you to decide to go to Boalt where he too had gone?

Keith Sparks: Well, I applied for both Stanford and Boalt and I could have gone to either one, but Boalt was less expensive and so I think that's why I chose it. And I knew Berkeley and I liked it. I had some . . . I went to law school after I gave it a lot of thought, because I didn't want to go to law school just because my father was a lawyer. I wanted to make sure this is what I wanted to do, and not just follow in his footsteps. But once you're trained in political science, law is a natural adjunct to that; I mean it's just a field that has great affinity.

George Nicholson: When I asked you earlier about whether you had other extracurricular activities in high school, you didn't mention the employment. If you stop for a second and reflect on the blackboard your teacher wrote what you needed to go to Berkeley; and the Latin classes you were taking, which by anybody's standards is a tough class; playing three sports; and working in the packing plants, it sounds like your life was a very disciplined and organized and—if not putting too firm a twist on the point—a very complicated one. You had to really keep your nose to the grindstone, it sounds like.

Keith Sparks: Didn't appear to me at the time, if that were the case.

George Nicholson: It didn't? It sounds amazing, really.

Keith Sparks: I know, for example, that some of the things . . . For example, our coach in basketball, who was violently opposed to any of his members skiing because the skiers were always ruining their ankles and knees and couldn't play. As a result of that, here I lived, so I lived an hour from skiing and never learned how to ski. And that didn't happen until years later, when I was a prosecutor. And Placer County, as you know, goes up to Lake Tahoe and includes North Lake Tahoe. So we opened up a branch office of a prosecutor's office in Tahoe City with the sheriff's department and we would have court, and they had established a court there too. One of the deputies up there was this wonderful . . . his name was John Ward and he was a fabulous skier. So he taught me to ski such as I can do it now, which isn't very good—but anyway, I'd grown to love it.

George Nicholson: So you were skiing for many years?

Keith Sparks: Since then—then maybe I was probably in my 30s, 35 or something, when I started doing that.

George Nicholson: Rick Sims, as you know, serves in our court; you served with him for many years. Have you and Rick skied together?

Keith Sparks: Yes, we have. I first met Rick when he was being considered for this job, and he was a partner in the San Francisco law firm and he did have some connection with Placer County; his family had a summer house at Dutch Flat. But he was trying to make acquaintance.

(00:29:55)

So he arranged a meeting with myself and Judge Ronald Cameron and that's the first time I had met Rick. I thought, well this is a San Francisco lawyer for a large law firm, he'll come in wearing a nice suit and tie of cambric; but typically dressed as he is, he had hiking shoes on and some Levi's and maybe a coat of some kind. And he was completely different than I expected, and of course it turned out he is a unique kind of a guy.

George Nicholson: Yes, he's a great fellow, but he will often dress like that except during oral argument. Well, when you were in law school, you apparently were equally successful there; you were Order of the Coif and law review. What were—

Keith Sparks: Well, I must tell you that when I was there they didn't have any quarterly test or anything; the only tests you had were at the end of the semester. I took all the tests, and I went home and told Mary, "I don't know whether I got them all right or I got them all wrong. I don't know whether I got an 'A' or I flunked." I mean, it was very difficult for me to gauge how it was. And I

was lucky, I did fine, but you'd heard all these stories about how difficult law school was.

I can recall the first day I was at law school. And Prosser was the dean at the law school at the time and so his introduction to the new class went something like this. He says, "Look to the right." You looked to the right, at the person sitting to your right. "Look to the left," and you looked to the left. And he said, "One of the persons that you have just looked at won't be here next semester." I thought, Jesus, what kind of place is this? And then some years later, one of Mary's cousins went back to MIT and the first day of school a similar introduction. The dean told them to look at the fellow sitting to the right, look to the fellow sitting to his left, and he said, "Well, in 20 years the person you've looked at will be in *Who's Who in America*." So it's quite a different introduction, I think.

George Nicholson: Different introduction. Was there a particular teacher . . . did you have, Prosser, for example?

Keith Sparks: I had Prosser for torts; he was wonderful. Frank Newman taught administrative law, and he gave—I think that's the only one I ever had like that—he gave multiple choice answers on the exam and he did it in a diabolical way such that you got so many points for a right answer, you got zero points if you left it blank, and you got negative points if you got it wrong.

So it was conceivable that you got a negative score—I mean, if you did poorly on it. So his idea was he didn't want you to guess. I think there's some probability that your first impression on a guess is more likely to be right than wrong, and so he was trying to avert that. So there were lots of good teachers at Boalt at the time.

George Nicholson: I'm not sure the viewers of this will recall, but Newman was appointed to the Supreme Court. He found he didn't like it, as I recall, and came back to Boalt, and I guess that's where he eventually—

Keith Sparks: Yes. For someone who had just spent his life as a professor of law, he was strangely not a talented jurist. I don't know what it was. He often made references to the United Nations Charter and various things that had just tangential relevance to the case he was considering, and he wrote in a cryptic kind of style. And so that was probably an unhappy experience both for the court and for him.

On the other hand, some great jurists of the California Supreme Court have come from academia. Roger Traynor, for example, did. I sometimes think that our appellate courts would be better served if they had more jurists that came from academia; not a majority of them, but some. I think that gives it strength, it

gives them academic strength, rather than just having everyone being from the trial court.

George Nicholson: Do you as a young . . . I think the answer to this is going to be no, but I'll ask it anyway. Did you have any hobbies as a young man other than reading, and have you developed any since then?

(00:35:10)

Keith Sparks: Well, one of the things we used to do is that . . . and that was we had this pool table at my house. And that came about because there was a pool hall in Auburn, and it had a fire, so they were going to replace all the old pool tables. So my father found out about it; he went up and asked, "How much would it cost to get this pool table?" The guy said, "It'll cost you $10, but you have to move it." And these were slate pool tables, enormously heavy; but anyway, he got some men and they brought it down to my house, our house. So we had the pool table, the pool balls, and the cues, and the only thing that was wrong is that the cushions, of course, over time were just dead. So we all became great shots but terrible bankers. *[laughing]*

And then my father put on a ping-pong table on top of that and we used to play ping-pong with it. And when we were growing up I noticed that all the time you hit the ball back, it'd go into the net. And I couldn't understand why that was happening, until finally I found out he had a book on table tennis, and he was putting back spin on it like this; so it would come and you'd hit it, and it'd go right to the net. So as soon as we learned what he was doing, we learned how to overcome that and could play him better. *[laughing]*

George Nicholson: Well, you got out of Boalt, as I said, very successfully, and you passed the bar; but it seems that you started somewhere other than California.

Keith Sparks: Yes, let me back up a little bit. I forgot to tell you that while I was going to law school we came up in the summer, and I went through a summer intern program with the Attorney General's office and worked at the Attorney General's office in Sacramento for that summer. And that was a really wonderful experience I had.

George Nicholson: Was the Attorney General at that time in the Court of Appeal building, the DCA?

Keith Sparks: Yes, yes.

George Nicholson: So you had actually served as an intern . . .

Keith Sparks: Right.

George Nicholson: . . . in the court that eventually you would serve as a justice.

Keith Sparks: Right, yes, yes.

George Nicholson: That's an interesting experience, one I understand some of our other colleagues, one or more, have had too.

Keith Sparks: Yeah, yeah.

George Nicholson: Do you have anything you want to add to that, or shall we move to out of state?

Keith Sparks: Okay. Well, after I got out of law school I interviewed firms in Los Angeles and San Francisco and they were both too-large cities for me; I thought, well, I don't want to do that. So I interviewed with a firm in Portland, Oregon, and I went to work for the largest firm in Portland, Oregon, and we moved up there. And they were wonderful people and they had great clients, but you were . . . As an associate for a large firm like that, you were just put in small rooms and you never saw any clients and you just did . . . And I thought, I don't think I want to spend my life doing this. So I hadn't taken the California bar because the Oregon bar was given at the same time. So I came back to California and took the California bar and then moved back here.

George Nicholson: When you were in Portland and you had already thought about San Francisco and Los Angeles too large, was Portland at the time you went up there still deceptively small, or was it just the lesser of the three?

Keith Sparks: Well, it was much smaller in those days, yes. It still is a wonderful city.

George Nicholson: You lived up there something less than a year?

Keith Sparks: Yeah, something less than a year, I think, yeah.

George Nicholson: When you came down here you passed the bar; what was your initial foray into practicing?

Keith Sparks: Well, before I get there I must tell you the story about when I took the Oregon bar. And there was a couple of Boalt graduates who were going to practice in Oregon too and they were up taking it and one of the questions related . . . it's a criminal question and it related to extradition; I knew nothing about extradition, of course, never having studied it in law school—and of course my other friend knew nothing either. I thought, well you know, I can't reveal my ignorance on this test.

(00:40:01)

So I just said, "Well, the law is well settled," and I just made up what I thought what might be the law. My other friend, he took

the approach and he said, he wrote down, "I don't know anything about extradition, but it seems to me that the State would argue this and that the defendant would argue that." And we both passed, so I don't know which approach was best. *[laughing]*

George Nicholson: *[Laughing]* That's good. Well, did you come down then and begin practice after you took the bar here?

Keith Sparks: Yes. I went to work with a lawyer in Roseville, and he was a city attorney of Roseville; that was not then a full-time job. So I got to do some municipal work, which I found fascinating and still do to this day, but you didn't get any trial work. And so a good friend of mine in the district attorney's office—I had done some criminal cases—was the chief deputy district attorney, and he retired and so I was appointed in his place. And so I went and became a prosecutor up in Auburn as a chief deputy in Placer County.

George Nicholson: So you went into the office as chief deputy?

Keith Sparks: Yeah, I did, and I was there for nearly 10 years, almost 10 years as a prosecutor.

George Nicholson: Well, go back just for a moment. When you were in private practice the fellow that was your partner was also the city attorney?

Keith Sparks: Yes.

George Nicholson: His or her name was what?

Keith Sparks: Robert Boone.

George Nicholson: And how many years did you do both civil, or private, practice and city attorney work?

Keith Sparks: I think that was two or three years; I think something like that.

George Nicholson: And besides the city attorney work, what was the nature of the things you did in the private . . . the other half of the practice?

Keith Sparks: Well, he had a big practice of probate, lots of wills and probate practice. We did domestic relations, we did criminal actions; a little bit of everything—contracts, business contracts. Just a small-town legal practice.

George Nicholson: A general practice.

Keith Sparks: General practice.

George Nicholson: You really were a generalist.

Keith Sparks: A generalist, right, yeah.

George Nicholson: Well, when you became the chief deputy in the Placer County DA's office, who was the district attorney?

Keith Sparks: A wonderful guy by the name of Daniel Jeremiah Higgins, who was an Irish guy who was a natural politician. I've never met anybody who loved to fraternize with people as much as he did. He loved to go to meetings; he loved to be around people. I found that kind of stuff kind of difficult to constantly be going to meetings, but he loved it. So he was a . . . he did the kind of social part of the office; also the office was the public guardian as well, and so there was lots of probate work that the office did. And I didn't have anything to do with that; I just ran the criminal part of it.

George Nicholson: Was the district attorney in Placer also effectively the county counsel at that time, or had they already separated?

Keith Sparks: No, they'd already separated.

George Nicholson: Were you a manager or a prosecutor–trial lawyer or both?

Keith Sparks: Both in those days. I had the great luck to go down to the National District Attorney's College in Houston, Texas, and that's when I discovered that the Los Angeles County District Attorney . . . You probably know him, Evelle Younger. Do you remember Evelle? I guess the size of their office, in effect he became like the Attorney General of the state. They published—they produced—movies about search and seizure issues. They would have a policeman actually pull a car over and they would stop and ask what's he do next and does he have the right to do that and how can he look in the trunk and can he look in the glove compartment, can he ask me to get out of the car? All these kind of things were dramatized and then overview, over voice would come on and explain the rules and what was going on. It was helpful both to prosecutors and to the police, generally, as a wonderful function. But what he did also do, which I discovered, was there that they had a whole manual of every crime in California, and how to plead it. And it was a wonderful tool.

George Nicholson: It sounds like you quote, unquote, "borrowed" them.

(00:45:01)

Keith Sparks: Yes, we did. We had them reproduced and we could have them; and then we'd follow that format. Every time the Legislature enacted a new crime, you could follow it so that you had uniformity of pleading. And people didn't have, deputies didn't have, to spend their time trying to reinvent the wheel every time they came across a new crime.

George Nicholson: Dan was the president of the California District Attorneys Association at one point and he, although from a small county, was very well received by the prosecutors in the large counties. And he was considered very astute and a very good teacher. And I don't recall, when you were talking about the political things he did, was he pretty much the interface of the California DAs in Sacramento, or did you do some of that as well?

Keith Sparks: No, he did most of that.

George Nicholson: He did most of that? The time you were there in the Placer County DA's Office—you said about 10 years, mid '60s to the mid '70s—the crime victims were in a position of not having what have come to be called since legal rights or constitutional rights. Was there any particular perspective that you and Dan Higgins had about how you dealt with crime victims or how you felt they ought to be dealt with that was clear at the time?

Keith Sparks: Well, for lots of crime victims the whole process of trial and being cross-examined and exposed to public scrutiny is very traumatic in itself, and they were often traumatized not just by the crime but also by this experience. So we made a real effort to try and soften that impact by talking to them and giving them some idea of what's going to happen when they go to trial and try and prepare them for trial as best you can. I recall once that a well-to-do family from Brazil were up skiing at Squaw Valley, which is in Placer County, and a guy broke into a room of one of these girls and tried to rape her and he was unsuccessful, but it was a very traumatic experience for these girls. He was captured and apprehended and we prosecuted him; and when it came time, the girls of course had then returned home. We wanted them to come and testify and their father said no. This was apparently too violent a country and he wasn't going to let his daughters come.

So we then made arrangements with the counsel from Brazil that he would meet them personally in the San Francisco airport with Placer County deputy sheriffs, then personally transport them to Auburn; and they would have police protection while they stayed in Auburn. And when they were through testifying the counsel and the police would take them back to the airport. And that's what we did, and of course the guy was convicted because they had eyewitnesses.

George Nicholson: You served in the office at that point. It won't be the last time for this experience for you; but you served in the office that your father actually headed at one point, and by then he is elsewhere?

Keith Sparks: My father?

George Nicholson: Yes.

Keith Sparks: Well, he was still the judge when I first came back from Oregon and started practicing in Placer County. And then in 1963 he retired; and so during most of my career he was not an active judge.

George Nicholson: Okay. So he left the DA's office and became a superior court judge up here?

Keith Sparks: Yes. He ran . . . this was just after the war began. I think maybe in 1942 he ran for office, he was elected, but then the incumbent died and so Earl Warren—who was then the Governor and who had been, of course, as you know, an Attorney General himself, and my father knew him through this attorney association—appointed my father as judge for that interim period. So he was both appointed and elected.

George Nicholson: How long did he serve on the bench?

Keith Sparks: Well, he served from then till 1963. So it's '42 to '63, I think; and for a long period of his time, particularly when I was growing up, we were a one-judge county. He was the only superior court judge in the county.

(00:50:03)

So my father decided that the only way to have a sensible vacation was to leave the county; otherwise there'd always be these demands upon you. So he announced a policy that the court would be closed every August, and so all the lawyers could arrange airfare, such that they too could go on vacation because there was no court anyway. And they would bring in assigned judges for mandatory things like arraigning criminals that couldn't be postponed and then all of the family left, and we always went down to Santa Cruz and spent a month in Santa Cruz every summer. So I've always loved Santa Cruz and the ocean.

George Nicholson: Which is much like everywhere else in California now; it's becoming very urbanized and different, I suspect . . .

Keith Sparks: Oh yes, completely --

George Nicholson: . . . than your time as a young person with your father. Stopping just for a second, you and Rick Sims are good friends. You skied together; you both are associated with Placer County. But the extraordinary thing that also binds the two of you together is your father was a man of the law and a judge for better than 20 years, and Rick's father—also, I believe, Richard Sims—was both a superior court and a Court of Appeal judge or—

Keith Sparks: Yes, and not only that, he was a DA too.

George Nicholson: He was a DA too?

Keith Sparks: Yes, the district attorney of Marin County, then he went on to become a superior court judge in Marin County. And then he was appointed to the First District Court of Appeal, and he was still on the court when I was first appointed to the Court of Appeal in Sacramento. And Rick arranged a meeting with me and his father at Rick's house. And Rick was trying to get out of his father, what do you do to advance collegiality upon the members of the court? And he just thought it was so self-evident that men of goodwill will get along and there is no special advice you needed. *[laughing]* But he came from a very collegial court; they were lifelong friends. And lots of people are on the Third District court, which is for the most part a very collegial court too. But there were some courts around where people actually had intense dislike for each other and they were often at different political spectrums. But I myself never thought that it made any difference at all because most—99 percent—of the cases have nothing to do with political views; they have to do with the law. But anyway, he came from a collegial court. So he thought that would be very easy to do.

George Nicholson: Well, the interesting thing, you take your friends the way you find them—you love them, you respect them. But there are very few, if any, people in the position of you and Rick, coming from the lineage and the law that you have and sharing not only that history and friendship, but literally serving on the same court together for a very long time.

Keith Sparks: Right, indeed.

George Nicholson: And making the trek back up the hill to Placerville. I don't know this, but I assume you commuted together at least occasionally.

Keith Sparks: Yeah, but it's not to Placerville, it's to Auburn.

George Nicholson: Oh, I meant to Auburn. I made that mistake thinking coming up here.

Keith Sparks: That reminds me of a great story where often it would. During the court session you'd be there and you'd call a case and the lawyer wasn't there, and then a clerk would get this frantic call from some San Francisco lawyer saying, "My god, he's in Placerville. He said he'll be there as soon as . . ." So when Rick Sims got nominated and appointed to the superior court there was a big investiture procedure at Placer County Superior Court and all the people there . . . and of course Rick didn't know a lot of these people, as he's been in San Francisco all his professional life. So he starts out by saying, "I want to thank all you people for coming; I can't tell you how honored I am to be here in Placerville." *[laughing]* And he got a great response from the crowd.

George Nicholson: Well, the truth is I've lived here myself in the Sacramento area since 1976, but this very morning I had a conversation with both my secretary and the highway patrol officer who brought us up about Placerville being in El Dorado County, Auburn being in Placer County, and the other confusion that even people that live here 30, 50, or more years have in sorting them out.

Keith Sparks: It's the same problem in Yuba City, which of course is not in Yuba County but in Sutter County. *[laughing]*

(00:54:57)

George Nicholson: *[Laughing]* Well, before we move on to the next pivotal point in your career, did you have any lawyer heroes besides your father? Did you have any lawyer heroes or mentors of particular note that you would describe in heroic terms?

Keith Sparks: Well, I didn't when I went to law school. When I went to law school one of my favorite jurists was and still is Robert Jackson of the United States Supreme Court whom I greatly admire. I thought he was a wonderful stylist and a very powerful writer. So he was kind of my model.

George Nicholson: That's a very good choice, a very eloquent and able judge.

Keith Sparks: Indeed, and during his career while he was a member of the United States Supreme Court, he went over and became the chief prosecutor in the Nuremberg Trials—a very unusual role for a jurist to play, but those were different times.

George Nicholson: Different times. Have you ever thought about what are the qualities that make for an excellent lawyer? And you've gone through private practice, municipal practice, county practice; you've witnessed everything conceivable as a trial judge and appellate judge. What is it that sticks in your mind most notably as the qualities needed to be a good lawyer?

Keith Sparks: Well, I think that different types of law require different kinds of lawyers. I think trial lawyers are a different breed than, say, a corporate attorney would be. One is, some phases of law, like appellate work, are completely related to legal issues and the legal thought process; and trial work is related to people and the ability to convey ideas to all kinds of people—not just lawyers, but average people. So they take different kind of skill sets, I think. And then when you get to, like, the appellate level, then you add another complexity, and that is the ability to write. Because it's surprising that although some people can think fairly enough, they can't write clearly. So they came to the right decision but they have a hard time expressing themselves; which is why some governors or presidents make mistakes when they appoint people simply because they like their judicial philosophy—their bottom-line, as it were, take on

various legal issues. And they appoint them; but if they have no skill in writing they have no way of getting anybody to join them, and they just become a lone jurist.

George Nicholson: Do you think there is anything . . . Up until recently most legislatures were full of lawyers. That's substantially changed throughout the country, particularly in California. Very few lawyers are left in the Senate and the Assembly; but throughout our history—our state and our country's history—lawyers have often been leaders. What do you think the peculiar qualities are that create within the body of lawyers either the incentive or the opportunity to exert leadership and assume policy decisionmaking authority?

Keith Sparks: Well, the American system is a rule-driven, law-driven system. It's often said that we live under a rule of law and therefore it means that those who are skilled in dealing with the law are likely in positions of forming policy or advising people who do actually form the policy. So they play a much more prominent role than the state lawyers would in other societies.

George Nicholson: Do you, besides the obvious, using the word "milestone" . . . Besides using the word "milestone" for assistant city attorney, chief deputy, prosecutor, judge, appellate jurist, are there any milestones in your life other than the things we've named, your family, in those positions you've occupied? Any legal milestones that you recall—in particular, the example you gave of that prosecution from out of the country?

(00:59:54)

Keith Sparks: Well, I can recall that when I was a prosecutor we had a very vicious multiple homicide by a guy who was schizophrenic. And he suspected his wife of adultery and so he kidnapped her and took her up into the mountains and killed her and killed another person, wounded a third. And so we prosecuted him for murder.

I think at that time the death penalty was outlawed in California and so it was just for life imprisonment; and because of his bizarre condition the lawyers entered a plea of not guilty by reason of insanity and we had an insanity trial. He of course didn't want to be found insane he didn't think he was insane, and he wanted to try this thing on the merits, and of course I wanted him to be found sane as well. So we were in a sense on the same side. And so during the course of this insanity trial he would pass me notes, the prosecutor, about questions I should ask, points I should make. *[laughing]*

George Nicholson: That *is* something unusual. I'd like to ask you a disappointing question. Were there disappointments during this period of your life? And I'll just confine it professionally either in one of the offices you were occupied in or in the law generally,

something that went awry professionally that you may have . . . not personally. I don't mean a personal failure type thing. But was there any disappointment of consequence that you recall during that era in your professional life?

Keith Sparks: I recall very vividly that when I was a prosecutor and we were just at the age of what they call a criminal law revolution on which the Warren court began to issue completely new and different restricted rules against prosecutions. And they were always made retroactive—that is, retroactive in the sense that they applied to all then-pending cases that were not final and which meant that they changed the rule on a confession and your case applied to it because you hadn't gone to trial yet, but of course the confession had been taken maybe two years earlier.

So you're constantly having the rules changed on search and seizure, on confession. The exclusionary rule became more and more broadly used. And I got so frustrated with these kind of decisions that I didn't have any idea that they were being contemplated that I subscribed in my office to a service called the United States Supreme Court Briefs in Criminal Cases. And I would receive the briefs that were filed in all major criminal cases and so we'd get some idea of what was being argued so you could take some precautions.

I can recall that using that, we had a gruesome murder and the suspect was a husband and he had killed his wife and children, but the bodies were buried somewhere and we didn't know where. And the officers of the sheriff's office took a statement from him and unfortunately when I got to the point about giving him his *Miranda* rights . . . because the *Miranda* is another one of these decisions that impacts on you and you now have to ask him whether he understands these rights. But having that in mind as he agreed to talk to you without counsel, his response about whether he wanted a lawyer was completely equivocal and it wasn't a clear waiver. It appeared to me that he said something like, "What do you think I ought to do?"—asking the officers. And so of course they said, "Well, you ought to talk to us" *[laughing],* which I didn't think was a great response. But as a result he then drew a map of where the bodies were and then at that point the sheriff's deputy came and talked to me.

(01:04:59)

He told me all about this, and I said, "Oh my god." I said, "Don't use that map." I told them to take the map, put it in an envelope, date it, seal it, and put it in a safe. And then I said, "You're going to have to go out and search for those bodies as if you don't know where they are, so that we can argue inevitable discovery—that is, we would have discovered without this map in any event because we'd have to search for the

bodies." So they did; they went out and they take big spikes and poke it in the ground. And if you get close to a deteriorating body and its foul odor, of course . . . And by poking around the field near his house they found the bodies and excavated it, and keep that guilty.

We actually didn't have the legal question about whether the body was properly discovered or not, but that was an effort we made to make sure that the evidence would be admissible. I always thought—I thought then, I think now—that the exclusionary rule ought to have some balancing aspect to it like it does in Canada, that you have to weigh the intensity of the intrusion against the gravity of what it is you're searching for. So if you kick a door down for a marijuana cigarette, obviously you keep it out; on the other hand, if you make a minor error in advising someone of their rights, for example, and it involves kidnapped and killed, tortured people, you've got to lean on admitting the evidence. So it shouldn't be just counsel that makes an error and the case gets kicked out; that's too harsh of a rule, I think.

George Nicholson: Keith, listening to you, you know . . . And I am saying this only in response to what you have just said, which I did not know was going to come up. I was a prosecutor for 10 years, I ran the DA's association, I was a senior assistant attorney general, and I pretty much know about every DA's office in the state, including during that period. I don't recall any prosecutor of large or small cities subscribing to that brief bank to which you subscribed or anticipating the way you did. And the only reason I interject is because I'm not sure that future scholars that look at this DVD of your interview would have the perspective to realize the extraordinary nature of that anticipation and that attempt to be professional not only of preparing yourself but then taking the extraordinary step of securing and sequestering the evidence. That's an amazing thing for a prosecutor to do, because your tendency is the same as the peace officers': you want to get the killer off the streets.

Keith Sparks: Well, you asked me about embarrassing moments. I did have one when I was still in the prosecutor's office and we were . . . I think I had an arraignment, and a defense lawyer who practiced criminal law raised a new issue and referred to it by case name and I had never heard of the case. And he said, "Well, how could that be, since you're a prosecutor? That's your full-time job. How could you not know this? It's in the advance sheets."

So I went back to look at the advance sheets and that advance sheet wasn't in the library. Now where was it? It was in Dan Higgins's office. But the district attorney liked to take the advance sheets and read them and then he'd take them home and so oftentimes they weren't available for people; and that's at that point I ordered a second series of these so we'd have

one in the library all the time. Because I didn't want that to . . . I felt like an idiot, you know. Here I am, a major case had been decided and I hadn't even heard of it.

George Nicholson: Each time I've progressed to a new stage you've drawn me back; how would you like to end this one before we move on to the trial court? *[laughing]*

Keith Sparks: *[Laughing]* Oh no, that's fine.

George Nicholson: Well, we're coming to a major step in your legal career, and that is when you moved onto the superior court. And if I have it right, Governor Jerry Brown appointed you to succeed a judge here in your county in February of 1977.

Keith Sparks: Yes.

George Nicholson: I did not discover who that was; maybe you could fill us in. And I'm sure you tried cases before that judge—who was that judge?

(01:10:03)

Keith Sparks: I think it was Leland J. Propp. He had been a judge with my father when they had made a Placer County two-judge court, and he was a judge who most trial lawyers liked to try in front of. He was a judge like Judge Munt of Sacramento County of whom you've no doubt heard. Justice Puglia used to practice in front of him and told these wonderful stories; and occasionally I've had cases transferred down there and tried in front of him. But why they liked Judge Munt and why I liked Judge Propp is that they're utterly consistent. Some judges have tendencies, one to be overly strict or slightly lenient. And it doesn't matter to a trial so much which way they are, as long as they're consistent so you can anticipate what they're going to do. And if they're inconsistent you never know whether they're going to rule this way or that way or admit something or not admit it. And so if a judge is consistent in his judicial philosophy and the way he tries cases, that's a best possible world for a trial and trial lawyer. And Judge Propp was a very consistent kind of judge. Even though these judges were relatively harsh sentencers, if they got convicted nevertheless the defendant got a fair trial. So, I mean, if there was a question of innocence they would like to be tried in front of a strict judge like that rather than some judge who lets some things in and then doesn't let some things in and you never know which way he's going to go.

George Nicholson: You were appointed, as I said, in February 1977. Was there any particular process you had to go through or did Governor Brown just call? How did that event occur?

Keith Sparks: I can recall that you submitted applications and one of those kind of lengthy questionnaires that you had to fill out for a Governor's application. And I had filled one of those out, and then I can recall that I was trying a major civil case up at Lake Tahoe involving some boundary disputes between two wealthy landowners up there who were going at it tooth and nail with a San Francisco lawyer; it was a big, huge production. We were up in Lake Tahoe as part of that trial looking at the scene and the Governor called Placer County Superior Court. They wanted to set up an interview, talk to me. And the clerk said, "Well, I'm sorry, he's up at Lake Tahoe." *[laughing]* That's the wrong thing to say, but anyway I then subsequently had an interview with Governor Brown at the capital, and it was a very pleasant interview.

George Nicholson: And he appointed you?

Keith Sparks: Then he appointed me.

George Nicholson: Did he call you later, or did you get something in the mail? How did you find out?

Keith Sparks: He didn't personally call, but the legal affairs secretary called.

George Nicholson: Was it Tony Kline?

Keith Sparks: It was Tony Kline.

George Nicholson: Was it really?

Keith Sparks: Yeah.

George Nicholson: That's another interesting period, because Tony's still sitting on the First District.

Keith Sparks: Yeah, that's right, right.

George Nicholson: That's remarkable. I worked with Tony too when Dan Higgins was the DA and I believe president of the CDA, and we had to deal with Tony when he was the legal affairs secretary; we had to work bills with Tony.

Keith Sparks: Okay.

George Nicholson: And when you couldn't get something done you had to go to the Governor, but Tony was very effective. Legal affairs occurring . . . he often acted, I guess, as practically a legislative affairs secretary. Now they're balkanized; there's the two positions. Did you ever have any contact with Tony after that until you overlapped on the Court of Appeal?

Keith Sparks: No, I had some contact with him before—I was invited to his house a couple of times before I was appointed—but afterwards

he lived a busy life and I was up here in Placer County, so our paths didn't cross, actually.

George Nicholson: Your father was retired by then.

Keith Sparks: Yes, he was.

George Nicholson: But he was still alive and he attended the ceremony, I assume?

Keith Sparks: He swore me in.

George Nicholson: He swore you in?

(01:14:59)

Keith Sparks: Yeah he did, and I made many references to him during that investituture speech. And there's a psychiatrist who testified in a lot of criminal cases, and he came up to me later and he said, "You know, it's a very healthy sign for men to publicly recognize their father," and said, "That's a very healthy thing." I was kind of proud of that.

George Nicholson: Was your father alive when you were appointed to the Court of Appeal?

Keith Sparks: Yes, he was, and he went down with us to San Francisco, where we had the procedure before the commission. Justice Puglia was there, George Deukmejian was on it, and I'm trying to think who the third was.

George Nicholson: It probably was Wright, because Bird wasn't appointed till later in the year. She went on in 1977. Could it have been—?

Keith Sparks: No, no, no, it was Bird.

George Nicholson: Was it Bird? She must have been appointed very early in . . . oh no, I've got the two confused. This is several years, this is five years later.

Keith Sparks: Yeah, right.

George Nicholson: When you were appointed at the Court of Appeal, it would have been Bird.

Keith Sparks: Yeah, and she said to me, "Well, Justice Keith," she said, "I hope you're not going to be too conservative." *[laughing]*

George Nicholson: Having been across from you and you see a public defender . . . When you were confirmed by the Commission of Judicial Appointments—including the three people you named—and later sworn in, did the Chief, did Bird, swear you in, or did your father swear you in again?

Keith Sparks: No, I was sworn in later by Puglia.

George Nicholson: By Bob Puglia?

Keith Sparks: Yeah.

George Nicholson: You say your father was down there. Usually at those events the nominee who is just confirmed has something to say. Did you say something at that event?

Keith Sparks: No, I don't think so. I've testified, I testified, for Coleman Blease, and I testified for Rick Sims as I recall.

George Nicholson: What I'm getting at—

Keith Sparks: I don't recall if people said anything.

George Nicholson: When you were sworn in by Bob Puglia, was there a ceremony and did you say anything there?

Keith Sparks: Not anything memorable—oh, just to thank him and welcome.

George Nicholson: Well, let me short-circuit. What I'm trying to get at is given the extraordinary circumstances, I'm wondering did you speak at your superior court investiture extemporaneously, or did you write something? If you wrote something I wonder if you know where it is and maybe we can get a copy for the archives that go with this film.

Keith Sparks: I'm sure I made notes, but I don't have a copy.

George Nicholson: But you don't have them now? That would be a very nice footnote.

Keith Sparks: Right. Well, it was down in the historical courtroom on the Placer County Superior Court, which was then a beautiful, big room with high ceilings and windows, and it was a lovely courtroom area.

George Nicholson: Yeah. Was there a leading case or cases that you recall presiding over as a trial judge?

Keith Sparks: I'm trying to think of leading.

George Nicholson: Interesting?

Keith Sparks: Lots of interesting cases. The superior court judge I thought was just an odd mixture, because some of the times you're doing the most mundane of things, dull, routine, and other times you're dealing with people's lives and fortunes, and the stakes are extraordinarily high. And you're dealing with a doctor being accused of malpractice, and fortunes of companies that are at stake, and then you're reviewing small claims

appeals. And I mean it's just a huge range. Or you're sitting through voir dire of jurors, which is a kind of a hell on earth because it's so repetitious and you've heard it thousands of times but it's got to be done.

So it's a very unusual thing, and sometimes I used to . . . we used to sentence criminals on Friday, and some of those are very difficult decisions about whether you send people to state prison or not. And to me it was always sobering and disquieting and you didn't feel like coming home, going out and dancing, for example. It was a sobering kind of thing, whereas in the appellate court all of these things are abstract. There's fact rules you're applying, trying to make sense out of them, but you're not emotionally involved with the witnesses or the victims or the people; it's one step removed, which makes it much easier and much less stressful.

The Court of Appeal, in my view, is not a stressful job. That was an interesting job, but it's not emotionally stressful, even in cases in which the justices have strong feelings about them. It's not the same as you have to deal with victims and witnesses and juries and the like.

George Nicholson: You are a sliver; you're in a very small fraction of our profession. A person who has practiced law—private, municipal, county—you've been a trial judge, you've been an appellate judge; and the contrast between the solitariness of the trial judge and the decisionmaking that that judge has to do and the collaborative, collegial triad that you deal with as an appellate judge obviously are significant. And anyone looking at that can say that, but in a very personal way. How do you view the differences between the solitary jurist and the collaborative jurist, the trial judge and the appellate judge?

Keith Sparks: I think the more abrupt change is from a trial lawyer to a judge because a trial lawyer mixes with people all the time. You're dealing with . . . as I was a prosecutor with police agencies and witnesses, and you just dealt with people all the time; it's a very social kind of thing. But when you become judge you almost have to retract yourself, exclude yourself from lots of social things, because in a small county you can't be disqualifying yourself all the time; on the other hand, you don't want to have to decide the fate of close friends either. So most judges in small counties really have to withdraw in a sense; and I think that judging, which makes you apart, is the biggest change. And then from the trial court to the appellate court is another step, another rarefied step, where in the Court of Appeal you're just dealing with lawyers. I mean, you don't even see witnesses or . . . so that's even more removed, as it were.

George Nicholson: When you work at the appellate level and you've . . . again I'm getting us ahead of the game. And there are three of you as contrasted to being the solitary judge at the trial court; and in

particular handling things much more under the gun because you're deciding several things a day. And you might not decide an appellate case in a day; it might take weeks. But is there a comfort level working collaboratively that's different from trial court that you recall or that you perceive, or was judging judging to you?

Keith Sparks: I thought they were different kinds of animals because in the trial court you have to make decisions rapidly. I mean, you don't have the luxury of spending three weeks on some question and resolving it. You have to decide it and move on, and so it's a different kind of judging. You just use different skills and it's a different way of approaching it. I always like to talk the law; even when I was a solitary judge I would talk to other judges, always enjoyed having legal conversations, enjoyed that all my life. So even when I was a superior court judge I talked to the other judges; we often went to lunch together, and we would have legal conversations.

George Nicholson: Did CJER have a judges' college when you were first appointed to the trial court?

(01:24:53)

Keith Sparks: Yes, it did, and it was very helpful to me for . . . I had been out of the criminal, I mean the civil, field for 10 years about, so I hadn't done a domestic relations case in 10 years. So all that was very helpful to me, to bring me up to speed about facets of the law that I had not been actively engaged in. And CJER was very helpful there.

George Nicholson: I don't remember exactly when it was so named, but I think the judges' college is now called the Bernie Witkin Judges' College; did you ever run into Bernie either at the college was elsewhere?

Keith Sparks: Yes, I did.

George Nicholson: What was your perception of Bernie Witkin?

Keith Sparks: Well, he had a marvelous sense of humor. You wouldn't normally think that would be the case with a legal scholar; I mean, humor and scholarship don't necessarily spring to your mind as being common features. But he loved to tell jokes, loved to tell stories; and he was masterful in his ability to catalog the law, to put it in pigeonholes, and I think literally he did that. He'd have a desk into which he'd put various opinions that would come out, and put them in little pigeonholes. It was his ability to put law in groups so you can understand it and see how the law is structured that made him so wonderful a scholar.

George Nicholson: There is nobody comparable to Bernie, but he did do that, he compartmentalized and organized and structured the law, and so do you and so have you always. But there is a distinct difference between you and Bernie. Bernie used a manual typewriter until his dying day. And you are—and we'll come back to this—but you are a technically skilled computer and Internet jurist and have been for some time. In fact, as I understand it, you were—I don't know if you still are—you were an Apple judge. Have you gone to PCs or are you still into Apple?

Keith Sparks: No I changed from Apple when the court decided to go with the PCs and it then became too difficult to run two systems at the same time.

George Nicholson: When you say the courts, the Court of Appeal?

Keith Sparks: Court of Appeal, yeah.

George Nicholson: Well, again at the risk of having you bring me back, we're going to transfer now to the Court of Appeal. Unless there is something you want to wrap up the trial court with or your judicial college experience, Bernie Witkin—is there anything you want to reflect on, or shall we move on?

Keith Sparks: We can move on; if something occurs to me, I'll take you back. *[laughing]*

George Nicholson: That will be great. Jerry Brown again, the man you had met and apparently hit it off well with, and surely he stayed abreast of your work or he wouldn't have contacted you again, either directly or indirectly. But a gentleman appointed at about the same time is Bob Puglia, the chief prosecutor in Sacramento, like you were who went to the superior court and then became presiding judge of our court and remained there for 24 years.

Paras after eight years decided to retire—that created a vacancy—and somehow on or about August 21, 1981, you either got a call or a letter from Jerry Brown again. Do you recall how you got the word?

Keith Sparks: Yes. It was from his office—not from him personally, but I had another interview with him again, and—

George Nicholson: You don't remember when he appointed Tony; well, you think it might have been Tony again, Tony Kline?

Keith Sparks: No, I think it was the Governor's Office itself.

George Nicholson: Oh the Governor's Office, not the appointments office.

Keith Sparks: Yeah, right.

George Nicholson: Okay. Well you went before the Commission on Judicial Appointments in that year, October 19 apparently, and you were confirmed. And we have gone through that—Chief Justice Bird, Attorney General Deukmejian, and of course Presiding Justice Puglia. Had you known Puglia before that?

Keith Sparks: Oh, yes, I knew him. He was chief deputy district attorney in Sacramento County when I was chief deputy district attorney in Placer County.

George Nicholson: Because of your being contiguous counties, you probably had to occasionally work cases together?

Keith Sparks: We did. I met him frequently.

George Nicholson: What did you think of Bob Puglia?

Keith Sparks: Oh, I was a great admirer of his. Because Sacramento was such a bigger county, he tried death penalty cases before I did and so I always kind of looked to him for guidance and some advice on techniques for the limited time that I did death penalty cases.

George Nicholson: Did you try death penalty cases?

Keith Sparks: Not many, because they outlawed it, and then I tried it as a judge, tried death penalty cases as a judge, but not as—

(01:30:01)

George Nicholson: Well, it was removed and reinstated in fits and starts throughout part of the ’70s, but by the time you were in the superior court as a trial judge you did . . .

Keith Sparks: Right.

George Nicholson: . . . try one or more of them.

Keith Sparks: Right.

George Nicholson: Was there any particularly difficult as compared to the other kinds of criminal cases that you either felt, or you think the lawyer’s felt, trying capital cases?

Keith Sparks: It’s a horse of a different color. I think you can make a strong argument that the death penalty has done enormous damage to the whole body of the law. It caused all kinds of special rules to be fashioned out of fear that somebody might be wrongfully convicted, and these kinds of rules apply to all criminal cases, not just death penalty cases. It’s an enormous drain of money; to just get a death penalty jury is an enormous undertaking, especially in small counties where at some points they’ve

recommended that you interview each prospective juror separately. So it's the same repetitious questions over and over again about their views about the death penalty that just make these trials inordinately long and expensive for a county.

George Nicholson: People for many decades have had very strong views about the propriety or impropriety of capital punishment. We both listened to those and heard them, often emotional, often irrational. But listening to you just now—we never talked about this before—I never had an idea at all of what you felt. But listening to you and knowing you the way I do, it seems to me this has to be as a former chief prosecutor a dispassionate conclusion and an experienced view that you have developed; I don't remember you ever taking any emotional position on this publicly at all. Is what you just outlined a function of the capital cases you tried and the scholarship you've devoted to the law generally?

Keith Sparks: Yes, I think so. I think that it's been a huge drag on the system, and it continues to be; just think now how many pending cases there are, death penalty cases. And they literally cannot get lawyers to defend them because it's such a long process that takes so much commitment, and they get paid so little, that it's very difficult for the courts—and we're talking now about the Supreme Court of California—to get lawyers to represent them. That's why you have this enormous backlog of criminal cases where people have been convicted years ago.

George Nicholson: You were confirmed by the commission in October of '81; you were sworn in the next day; and you served until August 1, 1997, which means you retired—if I can digress just a moment again to Bob Puglia—you retired a little over a year before Bob retired. You knew Bob, sounds rather closely, as prosecutor to prosecutor; you now, I suspect, knew him even more closely, more collegially as two judges on the same appellate court, same building. You were on the same floor as Bob, just a relatively few feet apart, on the first floor; you had to see each other very commonly. What was your relationship and view of Bob Puglia during those 16 years you were together?

Keith Sparks: Well, on the whole we had a wonderful relationship. It started off a little different when I first went down there. And this was at a time when Rose Bird was the Chief Justice and there was huge turmoil in the court, I think it's fair to say, and strong feelings about the course of direction that the Supreme Court was taking. Death penalty cases were being reversed almost in total. I don't think the Rose Bird Court affirmed any; maybe they did, but I don't remember any.

So when I first went down there and I wrote, it was a nonpublished case and it involved a criminal conviction, and I was the author and I reversed it. And I get this memo from Puglia—he was not on the panel—asked me what about this and

what about that, what about the other thing? I wrote back in a memo, I said, "1) you're not in this panel, so why are you writing me?" So he stops that and didn't send any more memos on cases he was not on with me, and we never had another problem.

(01:35:13)

I'm sure he meant it not that he wanted to intimidate me, but that he just wondered about these questions. And it would have been perfectly all right had he come up to me in chambers and said, "Listen, I saw this, what about this, what about that." But to put it in writing, I thought, when all these turmoils on the court were occurring, was not a good idea.

George Nicholson: Yeah, and it never happened again.

Keith Sparks: Never happened again. But other than that, I mean, he was an ideal presiding justice in my view because he took all of the administrative responsibilities on his shoulder, dealt with all the problems about the budget and staffing and assignments and routine orders that took an enormous amount of his time; and you the associate justice didn't have to worry about any of those. He never interfered with the assignments or suggested how you ought to decide a case if he was not in the panel. He just let you do your work, so he was, I think, just a magnificent PJ.

George Nicholson: Our court really . . . you mentioned earlier about the collegiality, the comradeship that exists in our court; the court has really been blessed. You and I . . . you knew one presiding judge. I had only known two; Bob Puglia, you, and I overlapped. I got to work with him another year or a year and a half and then Justice Scotland took over and they're different personalities, but they're very similar. They both bear all the burdens of management and administration and they just let you be an associate judge dealing with the law and the normal give and take. Our court's very unusual in that regard.

Keith Sparks: Yes, that's true. I think there are examples of where that's not true, where the presiding justice has a heavier hand.

George Nicholson: It's a very warm and collaborative court, and that's one of the reasons it's been so exciting and why people are always asking about you and Hugh Evans and every other judge that left our courts, retired. You went to the California Judges' College when you were a trial judge making your transition back from prosecutor to both civil and criminal law, probate, and the like. Did you go to a CJER Appellate Court Institute at the outset, or did it come later, or did you go to any of those at all?

Keith Sparks: For appellate court judges?

George Nicholson: Yes.

Keith Sparks: Yes. But those are not as helpful principally because as an appellate court judge this is the kind of work you do every day, and whereas as a trial judge you come in with different experience, background. Lots of them came from the civil field became judges and they never had a criminal case in their whole life and didn't know anything about crimes and they're going to be put on the criminal calendar. So those kinds of things were lifesavers for them, but not the same as, I think, with the appellate court judges.

George Nicholson: Well.

Keith Sparks: They can help you. I'm not saying they don't help you, but they're not as vital to you as a transition from a lawyer to a judge.

George Nicholson: Whatever utility the Appellate Court Institute is, I believe, you were on the planning committee for one or more of them. I suspect you also taught at one or more of them?

Keith Sparks: No, I never taught.

George Nicholson: You never did, but you were on the planning committee?

Keith Sparks: Yeah. I have been on panels, yeah.

George Nicholson: Yeah. Did you have any further connection with Bernie after you went on the Court of Appeal, meet him or socialize with him?

Keith Sparks: Yes. When we'd have those panels . . . he was always actively involved in the appellate court conferences that we had, and he was kind of an ex officio member and would be invited and his views were solicited and he expressed them about who would be a good speaker, what subject would be good to cover. He had to take into account what was done for the last one, the problem of repetition, and what's new and what's relevant. I always admired not only Bernie, but any sitting judge who can . . . like Norm Epstein did with this kind of compilation of criminal cases. I don't know where they get the time to do that. I'm just—

George Nicholson: Or the memory?

Keith Sparks: Or the memory. But I mean it's—

George Nicholson: They both use notes, but they both express themselves—

Keith Sparks: Special talent.

George Nicholson: Yeah. They are both remarkable.

Keith Sparks: The one I'm completely astounded by is Richard Posner of the Seventh Circuit of the United States Court of Appeals, who is a prolific writer.

(01:40:12)

George Nicholson: Yes.

Keith Sparks: And is a sitting active judge. I guess he has help from the University of Chicago staff and the like, but nevertheless he'd write, and just not on legal questions either; and he is an enormous, enormous talent, I think.

George Nicholson: You were a member of the California Judges Association. Keith, I suspect you're not going to know the numbers I'm about to give you, but during your time on our court you wrote the majority opinion, published opinion, in 237 cases; remarkably, you had 8 published concurrences and you had 7 dissenting opinions, either dissenting in whole or in part. It's a remarkable difference. There are many courts today—particularly at, without being specific, Supreme Court levels—where the courts seem extremely split and balkanized. Your split of opinions is fairly typical of our court, at least during the time I've been here, seemed to be during your time. How do you account for such a remarkable difference between the number of published majority opinions and so few concurrences and dissents?

Keith Sparks: I think concurrences and dissents are different problems, but I think the tendency to concur and write a separate opinion is a tendency that ought to be avoided at all cost. If there's some critical point that you think ought to be made as not the principal author of the case, you should try to influence the author to add it or to amplify it or to decide it, because a concurrent opinion weakens an opinion, it seems to me; it makes it more complex. The Supreme Court of the United States tendency to have concurrent part 1d and 3c is just . . . I mean, you have to get out a pencil and paper to figure out what the holding is. And I read with interest that Chief Justice Roberts hopes to curtail that; whether he'll be successful or not I don't know. Justice Scalia said well, good luck to him, but . . . *[laughing]* I think that courts establish kind of a historical character, a way of doing it, and our court has never had one of these "everybody adds their two cents in a separate published opinion"; that doesn't add much to the holding in it. You ought to dissent if you disagree, but our court has always had a system in which people exchange memos, express their views, ask questions; efforts are made to resolve a thing before you finally get to that impasse in which somebody obviously disagrees. And they should dissent—but efforts are made to accommodate differing views, and often it's done that way.

George Nicholson: The point you made about accepting or absorbing language . . . There are times both you proposed and you acquired, I assume, language for an opinion; or you proposed and it was acquired by your majority colleague. That probably is not so well known outside of the Courts of Appeal, but it's a mechanism which allows for more clarity and understanding. I remember very well working with you and seeing that happen. One of the extraordinary things . . . and I wonder and that's why I'm working towards this. One of the extraordinary things I was . . . Often the young judges sit on a panel with you and Cole Blease; Cole is older than you and older than I. He has been there going on 30 years and apparently is going to be carried out with his boots on, as he describes it; but from my perspective, it seemed you and he were either or both very close friends or very sympathetic to one another as judges. I often saw in your exchanges of memos proposed language exchanges that either of you would then utilize. Sometimes you would rewrite it; sometimes you would just take it verbatim. What was your relationship with Cole and what was he really to you and is he to you?

(01:44:58)

Keith Sparks: Well, he was a great mentor to me because he had spent virtually his whole career dealing with legal ideas and legal doctrines in a way that many lawyers never do. And together with that he had this towering intellect and a great ability to write. So he was a great help to me and I admired his skill and ability. One of the great dangers of writing appellate opinions is the problem of unintended consequences—that is, you're trying to address problem A, but you're using such sweeping language that it affects B and C, which if you consider it on the merits you would not decide it the same way as the B and C.

So you have to be careful that your language is not overly broad or too slippery; obviously you don't want to make decisions that only apply to this fact situation, because the facts are never going to be identical. But you don't want it so broad that it encompasses doctrines that have not been independently considered and have different kind of problems embedded in them that you haven't addressed.

George Nicholson: One thing I noticed in your opinions, particularly your opinions with Cole, was . . . and this wasn't done commonly but occasionally you would have a footnote in explaining what the opinion didn't deal with. And I always thought that was useful but it's not as common. It wasn't common when you were there, but it's far less common now than when you were there. And it's a very useful mechanism to do what you just tried to describe. Was this something you were aware you were doing, or am I reminding you of something you don't recall?

Keith Sparks: No, often you'll have cases in which for one reason or another lawyers did not argue what you think would be an obvious area of litigation, and so you really want to signal to the reader who would be thinking the same thing, well, what about this, that; this does not address this issue for one reason or another.

George Nicholson: This is a very vague question, but I just want to try to get your reaction to it. You've discussed majority opinions, the need for clarity and simplicity. In terms of the skills of writing your research and whatnot, what do you think are the fundamentals necessary to craft a good appellate opinion? Obviously majority most often, but whether majority, concurring, or dissenting, what are the tools you found and the experiences you found that allowed you to write your best?

Keith Sparks: The only way to become a good writer is to write a lot. It's a skill. And I think writing is extremely difficult and you hear often authors who rewrite things hundreds of times, edit them and edit them and edit them; and that's I think the only process by which you become a good writer. You have to edit; your first draft obviously needs polishing and revision—so that to become a good writer you have to practice all the time.

George Nicholson: You indicated earlier that you were a reader beginning very young, and you've been a reader all your life, both vicariously and directly. In terms of your writing, can you recall and just briefly describe the evolution of your writing from high school to UC Berkeley to Boalt to the various legal positions to your 16 years at the Court of Appeal? What was required to take you over that distance in that time, and how do you see the differences at each of those stages?

Keith Sparks: I think that writing was really first required in college when you first had the blue books in which you answered. Before that, in high school, most of the answers were small, simple; there was a one-sentence answer to them or multiple choice or the like. And it was only when you got—for me, at least—in college where you have to . . . and I'm not talking about term papers, but I'm talking about tests where you actually responded to the question in writing by longhand. And that's where you first start your writing, I think.

(01:50:09)

George Nicholson: Did you enjoy writing the way you did reading? Even though difficult and complex and requiring practice, did you enjoy writing?

Keith Sparks: Yes, but I never wrote just to write; I mean, it was always directed to some end.

George Nicholson: Functional.

Keith Sparks: Functional, goal-oriented kind of writing.

George Nicholson: Purposeful.

Keith Sparks: Right.

George Nicholson: Related to work or—

Keith Sparks: I never wrote fiction, for example, or poetry.

George Nicholson: Do you recall . . . Well, before I get to the notable cases, it's become a fairly common practice for the Chief Justice and the Judicial Council when there is a conflict or a death, a vacancy on the Supreme Court, to appoint alphabetically down the list and then at the beginning again, an appellate judge to sit on the Supreme Court. Did you ever sit pro tem on the California Supreme Court?

Keith Sparks: Yes, I did.

George Nicholson: Do you recall any one or more of the cases specifically? Just talk of it briefly.

Keith Sparks: One was a death penalty case in which I joined Justice Arguello in a dissent, and the other occasion was a civil case in which I joined the majority; nothing extraordinary.

George Nicholson: So you've done it at least twice. Do you see a difference working among a group of seven justices dealing with finality, the court of last resort?

Keith Sparks: Yes, a complete difference. You never talk to the judges personally. It's all done by memo; all files were circulated. I'm saying this from the view of an outsider, and I don't know what the other . . . if you were actually a permanent justice of the Supreme Court whether it would be different, but I tend to think it wouldn't. I think the culture is just different. They have, of course, a much heavier load; they have to deal with death penalty appeals and they have to spend an enormous amount of time trying to decide what they're going to hear, which is lots of wasted effort, I think. And the Supreme Court of the United States seems to do it much better.

George Nicholson: I don't know if you want to comment on this, but I've heard others of our colleagues and former colleagues that have sat both on the Supreme Court and the Court of Appeal and obviously have had long careers such as you had, but our job is often described as the best in the profession. What's your attitude on that question, if you're willing to frame a response? How to do you fit in your time on the Court of Appeal over the whole spectrum of your extraordinary career?

Keith Sparks: I loved it, and I think it's one of the premier jobs of the world, actually. I mean, we're very fortunate to have served in that capacity, because you get to help frame the law and direct it and resolve extraordinarily interesting and complex decisions. I've never been a full-time jurist on the highest court, so it's hard to know exactly how that would be, but—

George Nicholson: You got your toe wet.

Keith Sparks: Yeah, right.

George Nicholson: The extraordinary thing also—I don't know if you've ever thought about this, I assume you have—but the Los Angeles *Daily Journal* did a spread on the Courts of Appeal, I think in '97 before you retired, and our courts were called the workhorses of the profession. And the recognition was made that each appellate judge writes something in excess . . . each of our roughly 100 colleagues statewide in the six districts write something on the order personal, or I should say majority, opinions where they authored over 100 opinions a year, and they join in many more than that.

For example, over your 16 years—again, whether you recall or ever knew—you wrote something in excess of 2,000 opinions. Somewhere between 5 and 10 percent were published, but nevertheless under our constitutional system you devoted roughly the same effort to all of your opinions. And we also were described as being the court of last resort in over 99 percent of the cases, because the Supreme Court only takes three and a half to four and a half dozen a year in a good year. Did it ever enter into your thinking that you were the court of last resort in the overwhelming majority of your cases?

Keith Sparks: No, actually I felt that more strongly when I was a trial judge because it became apparent to me that within certain limits that whatever you decide it was going to be affirmed. When the trial court is given discretion you're going to fix alimony. Whether I put it at 500 or 1,000, the Court of Appeal was going to affirm me, just by the nature of the rules in the appellate process. They're not there; how can they second-guess? It's only when you're completely out of bounds that they could say you've abused your discretion. So in that sense I thought I'm really the final arbiter. It makes you much more cautious. And then in the Court of Appeal it's true that the Supreme Court is not going to take the case, but if you publish it and they don't take it but it's not viewed correctly by the majority of other judges, other courts will not follow it. So there is some limiting force at work. On those that are unpublished, those probably are true, are the last voice of last resort; but for the most part those are pretty clear-cut cases. I mean, I think any three judges would decide the same way if they are schooled at it. So that didn't bother me so much.

George Nicholson: You mentioned something that I hadn't thought of in preparing to visit with you today, and that is the fact you think you've done a beautiful piece of work and you publish it and nobody cites it. And that's an experience we've all shared at some point once or twice or more. But there's another anomaly in California law—and that is the Supreme Court can do even worse, they can depublish the thing. Did you have any attitude or perspective on the depublication rule in California that we live with?

Keith Sparks: You know, actually I'm in favor of it. The highest court simply doesn't have enough time that they can take every case that they may think that the Court of Appeal in some way or some fashion got it wrong or slightly wrong. And part of their task, it seems to me, is to guide the course of the California law in a common law fashion. And one of the ways to do that is to simply depublish those which they think are going against the stream and the general movement of the law as they see it ought to be traveling.

You can quibble about whether they got the direction of the law correctly, but that's a different question about whether they should have the power to depublish. So you have to separate. Whether a depublication of a particular case made sense is a different question than whether they should have the power to do that. And I think they should have the power to do that.

George Nicholson: You know, Keith, we've both been around a long time, we've talked to a lot of colleagues. I've talked to so many who were very jealous of their published opinions. I'm talking about appellate court judges; they get very exercised. Listening to you describe the way you look at this is really, as I said when I began here, about learning from you before when we were together and now in this interview.

I learned two things today I didn't know about you before, and the first is your attitude about this. But really most notably that experience that you developed relative to getting the briefs from the U.S. Supreme Court and trying to read them and anticipate where the law was headed so that you could try to steer your county and your law enforcement, your office, toward the direction that the authorities ahead of you were going to force you to go anyway; and how could you protect your public, your constituency. And it's just really inspiring to hear you've always had that attitude.

Keith Sparks: Well, I've talked to some jurists who don't necessarily oppose the depublication rule but would like the Supreme Court to exercise it in a partial form. That is, often published opinions deal with . . . let's take a hypothetical in three major issues and it's clear that the Supreme Court doesn't like one.

(01:59:57)

So they depublish the whole thing and these jurists think it'd be much better if the Supreme Court would just depublish that section that they disagree with and leave their other work alone. They obviously take great pride in it and think they've said significant things about the other issues too, and I wouldn't be opposed to having that go either.

George Nicholson: That's a sound and discriminating rule, or proposal rule, I should say. You and I during our time together served every Thursday—not every Thursday, but every Thursday our court has writ conferences we often served together. I noticed you doing something I've never seen any other judge doing, and that is taking notes of identification for the case, every case, and the number. And I wonder if you could explain why you did that.

Keith Sparks: Well, I did it because if you didn't take any notes of it then the only person who knew what had happened there were the writ attorneys and you had no record of what you sat on or what was done. And not that I used it very often, but I always just thought that I should have some record of what I participated in and what I did.

George Nicholson: Well, it may even be a little worse than you just suggested, because the writ attorneys pretty much compare lists—

Keith Sparks: And they may not know either. They come in separately and it may be that it'd be hard to extract what actually happened four years later.

George Nicholson: But the attentiveness you showed doing that was really therapeutic for me, because when you think about the other things you've talked about today, that's a level of discipline that is pretty much reflected in your whole life as you've described it so far. One of the problems I had was, I learned about you doing that not immediately after getting there. I'd been in a few writ conferences before I did that. Frankly I never did catch on to your habit, but it made sense to me at the time and I was always impressed by that. Did you keep those records or have you shredded them? What have you done with those?

Keith Sparks: I think they got tossed when I left the court.

George Nicholson: When you left the court?

Keith Sparks: Yeah.

George Nicholson: Yeah, Bob Puglia told me when he left it took him several weeks to get out of the courthouse . . . sorting and discarding.

Keith Sparks: Well, I used to have all the notes I took in law school and I carried those around and I finally ended up when we lived in

Roseville and were moving . . . we were going to move out to this house after we built it, and I thought, why do I keep these things? I've now had them for 15 years. I've never looked at them once and they're all outdated; the cases are old and overruled. So I threw them all away.

George Nicholson: When you were on the court every judge in our court signed off on a letter, which was really a comment, that was published in the McGeorge or *Pacific Law Journal.* And the title of this was "Letter from the Justices of the California Court of Appeal, Third Appellate District, to the California Senate and Assembly Judiciary Committees Regarding Trial Court Unification." I assume you remember that, and I'm wondering how you think the issues we raised in there . . . The challenges we proposed were pretty much resolved in total. But I'm wondering how you think consolidation has worked out, particularly in a county like Placer.

Keith Sparks: Oh, it's worked out very well. It's a much better use of judicial resources, and historically the pattern of appointing judges has changed. It used to be the lower courts were often . . . there weren't even lawyers for a long period of time in justice courts as opposed to municipal courts; and then they became all municipal courts, they all had to be lawyers—that is, trained lawyers. And then at that stage, they started appointing people to the municipal court with the expectation that they would someday be elevated to the superior court, so they picked people who they thought would grow and were skilled. So the level of confidence rose in the lower courts. At that point, it's better to have them all unified because then they can use the judges as the system needs, and they don't have to worry about these artificial jurisdictional restrictions. So it's a very healthy thing.

(02:05:05)

George Nicholson: Particularly good in a smaller county?

Keith Sparks: I don't know about larger counties, but it's particularly good in small counties, yes.

George Nicholson: When you retired back in 1997, we had a retirement luncheon for you at the Sutter Club, you probably remember.

Keith Sparks: That's true.

George Nicholson: And you got an unusual gift from the court, am I right about that?

Keith Sparks: I did. I got a bird feeder that was crafted by my secretary's brother, who is a wonderful craftsman. And I took it and brought it down and put it by the swimming pool, where it

stayed for many years until finally it just fell apart because of age and wear and rain and sun.

George Nicholson: Why don't you describe this birdhouse or bird feeder?

Keith Sparks: Well, it was on a big pole, and it was maybe about 10 feet high, and then the actual shape of it was done like a house and elaborately done and painted; and it was something to see. Although I must say that birds never actually nested in it, for reasons I could never figure out; and maybe it was too hot there. The summers up here get hot. And it was too hot or there were holes on both ends, and I thought maybe that was a problem. I don't know what it was, but they never did, actually.

George Nicholson: Why don't you just take a moment and describe the setting here. What is the view?

Keith Sparks: Well, we're looking out at where the American River, where the North Fork and the Middle Fork join in Auburn. And then this comes down and we're looking at where the river comes into the start of Folsom Lake. So as you travel down from here on, you'll eventually come to the body of the Folsom Lake. On the other side of the hill is El Dorado County, and that's the South Fork of the American River, and they join at Folsom Lake. So to our left, as you look down there, you're looking at Rattlesnake Bar.

George Nicholson: How long have you lived up here?

Keith Sparks: Well, I've lived here since 1971, but I lived in Auburn all my life. And when I was growing up we used to come down swimming down here, and in those days it was before the lake was put in. A beautiful river, a nice beach, a wonderful swimming place . . . they had a bridge across connecting us to El Dorado County.

George Nicholson: It's kind of off the subject, but I never had anyone with your experience or perspective up here. In Sacramento there's a hot debate—never known what people up here think—but a hot debate over whether to create another dam up here and block off the river, supposedly to provide flood protection or water or whatever to Sacramento. I've never heard anyone talking about the impact it would have on you and your people up here in this county. What's the view up here on that?

Keith Sparks: Well, there are conflicting views on it. I would hope that the majority of people think that a dam would be a bad thing because it would ruin a fabulous river, which is a great natural treasure of the county. Lakes are fine, but they're not rivers. And if they dammed it personally I would probably have a better lake view—but I would rather they didn't do it, because the American River, if you know anything about it, is a premier river and it would destroy it.

George Nicholson: So it wouldn't be a good thing for your county in the least.

Keith Sparks: It depends on what you mean by good, and for some people it would be advantageous. Some property owners would profit by it, I suppose; and it wouldn't help the county in flood control because obviously the county is not going to be flooded by it.

George Nicholson: Well, let's take just a few minutes and talk a little more specifically about your father. You've described him and his positions but he, given his . . . If I remember, we came up here to swear in a judge, our court did. I think you swore the judge in, as a matter of fact. I don't remember the judge. I remember the judge, but I cannot remember the day, and it was at a time I think when you had restored your courthouse up here—a very beautiful, restored court—and your father was here. And if you remember the occasion or if you can ballpark it, how old was your father at that point?

(02:10:09)

Keith Sparks: Well, my father was born in 1901. So he must have been in his late 70s, early 80s, I would guess.

George Nicholson: He lived how long?

Keith Sparks: He lived till he was almost 99 and died a few days before his 99th birthday.

George Nicholson: Was he able to see the beginning, middle, and retirement of your career?

Keith Sparks: Oh, yes.

George Nicholson: And he understood and enjoyed that with you?

Keith Sparks: Yes, he did.

George Nicholson: He was the only judge in this county for better than 20 years, and despite the need to be somewhat withdrawn so that you maintain your independence, he still had to be a towering figure in the county.

Keith Sparks: Yes. Of course the county was much smaller in those days, and when he was district attorney he belonged to every organization that there was, and so he had all kinds of affiliations.

George Nicholson: Given his extraordinary career and obvious talent, what do you remember most notably insofar as him providing knowledge and perspective and understanding about being a lawyer and a judge?

Keith Sparks: I can recall that when I was going to law school I used to try to talk to him about the law, and that was very difficult because when you're trained as a judge, you're trained to try a narrow issue so you can decide it, and to set aside extraneous things. And law students are always thinking about some conceivable application of some new rule that ought to be . . . and of course they want to reject that, because that doesn't apply in this factual situation. So different kind of mindsets, I think, between a young law student and a seasoned judge.

What he did that I thought was extraordinary was that throughout his professional life when he was on the bench he would come home, and after dinner he had a study. And he went down to his study, and he was making a systematic reading starting with the Greeks and he worked his way to the Romans; and he would take extensive notes and he read volume after volumes of these histories and the great writers of both Greek and Romans. And that was always amazing to me that someone who spent all day doing detail work, legal work, would want to come home and start a systematic approach—unlike me; I'm not systematic in my reading at all.

George Nicholson: Both read; one's very organized and systematic and the other's very eclectic. Let's go back to the Court of Appeal briefly. What do you think makes a good elbow clerk?

Keith Sparks: Well, they have to be a superb lawyer. I don't think their personality makes that much difference. It's their skill as an analyst and their skill as a writer, and almost the same kind of qualities of scholarship you want in an appellate justice themselves. I mean, you want them to be just very able lawyers. It's not enough that their heart's in the right place or that their views are similar to yours; they don't really have to be, but they have to be good lawyers. And if they're not, they aren't of much use to you.

George Nicholson: Were you fortunate to have such lawyers when you were at the Court of Appeal?

Keith Sparks: I did. I was very fortunate, principally with Dan Phillips, who had worked for Justice Reynoso and who was a very skilled lawyer in his own right and had an enormous overview of the law, and he was a good writer. So he was very helpful.

Some justices do it differently. I never reviewed the cases and then sat down with a law clerk and said, "Here's the way I think you ought to write it." I always gave them the cases and then I wanted them to write just how . . . if they were an appellate court judge, how would they write this? And then if I liked it, I would adopt it. If I didn't like it, I would change it. But I think it's best that you get a fresh view from different eyes about the same question that you've studied and see how they come out.

(02:15:00)

George Nicholson: You know, everyone has the same attitude about Dan; and you'll recall vividly, I'm sure when you left, our presiding justice . . .

Keith Sparks: Right.

George Nicholson: . . . immediately inquired of and got Dan's agreement to work for him. And Dan recently retired.

Keith Sparks: Yes, he did.

George Nicholson: And the presiding justice had a going-away party at his home, and obviously he had some nice things to say about Dan. But you and Cruz came over and joined the party, and all of you joined in rewarding Dan for all the service he'd given to the court.

Keith Sparks: The appellate courts have, obviously, lots of extremely talented law clerks who are very skillful lawyers in their own right. I suppose it takes a certain personality to accommodate the fact that lots of their work is disguised and unacknowledged by the main public, but aside from that problem I think it would be a great job—also because you do get to play, just like the justices themselves get to do, a major part in fashioning the law.

George Nicholson: Well, Dan, like you, when it got to be time in his view to go, he just up and left. And it's always . . . it's one of the things I talked about earlier, is how difficult it is for some of us to disengage after having done this. But you and your good friend Dan, when the time came for you, you both have made the decision. I've forgotten what he's doing. He was going to Australia, was it?

Keith Sparks: No, Hawaii.

George Nicholson: Hawaii.

Keith Sparks: Yes, he has a brother. I don't know if you met his brother there.

George Nicholson: I didn't meet his brother.

Keith Sparks: His brother is actually chief of police in Oahu. Oahu is a county too, and that in Maui. So I mean Maui, not Oahu, excuse me. And he's a very talented guy.

George Nicholson: Yeah. How would you, or could you, describe your political and social philosophy? You just said your father was a Republican; you probably are registered in one party or the other.

Keith Sparks: Yes, I've been a Democrat all my registered life. I can recall as a boy growing up, my father's family used to meet for family gatherings. And this was during the war, and he has to sit and complained bitterly about Franklin D. Roosevelt and the New Deal. I enjoyed listening to their conversations, but as time went on I didn't join them, and I became a Democrat and have been one since.

George Nicholson: Well, the interesting thing about—

Keith Sparks: When I joined the Democratic Party, just as an aside, I liked it because they took in such a variety. There were Democrats that were social democrats, there were Democrats that were fiscal conservatives; they came from all stripes and they were all over the whole nation in those days. The South was Democratic. It was different than it is now; it was many different kind of voices.

George Nicholson: The difference for you in terms of what you did, it sounds like you came to it after reflection and getting a degree in political science.

Keith Sparks: Right, I did.

George Nicholson: I assume when you were at UC Berkeley you did, like all of us, graduated in political science. You argued politics in your classes, and necessarily so, and wrote papers and whatnot; but once you came to your conclusion you pretty much stayed the way you concluded you should, and that's remained true for you.

Keith Sparks: It has, yeah.

George Nicholson: That's an interesting contrast. Bob Puglia, you recall, when he was appointed in 1974, was appointed by Governor Reagan, a Republican; but he and Paras at the time, I believe, were Democrats. But their views migrated and they changed over time. You seemed to have more soundly, profoundly, and early come to your conclusion, and that's your story and you're sticking to it.

Keith Sparks: *[Laughing]* Yeah.

George Nicholson: How would you describe your judicial philosophy?

(02:19:45)

Keith Sparks: Well, I think that appellate court judges have two principal functions, and one is when the statutes are involved is to fairly construe them with a view of effecting what the Legislature had in mind as honestly and unbiasedly as you can, whether you agree with the policy embedded in those laws are not. And then your second function is where the Legislature has not acted,

and the way you act as a common law judge is to try and fashion laws that make sense and that are forward looking and that are something that's going to make the country better and to enact usable kinds of rules. So you have this conflicted role. Sometimes you're following somebody else's dictates, and in others you're fashioning the court's dictates. Some are judge-made rules and some are legislative rules.

George Nicholson: You've demonstrated in the conversation an independent thoughtfulness in terms of coming to your politics. You've indicated independent thoughtfulness in a number of things—publication or depublication of opinions. In terms of the statutory interpretive process for the development of the common law, sometimes there's a dispute that goes on. It's commonly interpreted very simplistically as having a judicial activist story, judicial restraint point of view. Do you view either of those terms or both of them as useful or accurate or inappropriate, inaccurate? And on the other hand, are there people that don't interpret in the faithful, thoughtful way you've described?

Keith Sparks: I think for the most part those are misleading kind of charges against judges. You can take a simple example of, suppose the Legislature imposes a tax on, quote, "vehicles." And the question is, is an airplane a vehicle and should they tax airplanes? And it doesn't make any difference which way you say. I'm assuming the Legislature was unclear about what they meant by "vehicle."

You're writing that statute to either say airplane is a vehicle within the meaning of the statute or it's not. But you're deciding it; either way you have to decide, either way you're making law. So that the claim that judges are activist judges and they're not following the Legislature in this sense is just completely misguided. They don't understand the process of judging. When there is ambiguity you have to decide, and when you resolve ambiguity, you're in effect writing law. So they all have to do it. But there is, of course, there can be judges who simply have an agenda and want the law to come out a certain way and are willing to overrule precedent and the huge body of policy law that's encompassed in it and to fashion their own. And that's the kind of activist judges that you really don't want.

George Nicholson: To be honest with you I'm not altogether comfortable with the next question, but you've answered all these questions so thoughtfully and from your mind and heart. I'm just really curious on . . . I hope you don't think it's an unfair question, and regardless, if you can try to answer it. If you saw a significant conflict between your conscience and a case you had to decide, would that present a difficulty for you, or could you come to grips with that and resolve the question faithful to the law, faithful to your conscience?

Keith Sparks: Oh, we do that every day. We decide cases by applying laws that we fundamentally disagree with and had we been a legislator would have never adopted and would have voted against it. But so what? I mean, our job is not to pass on the wisdom of statutes but to apply them. I mean, we're not elected as legislators and we wouldn't . . . You usurp the role of elected legislators if every time we're troubled by some law we won't apply it; because it doesn't need our personal idiosyncratic standard.

On the other hand, if there's some kind of law that you're so fundamentally opposed to you can't fairly follow it, then you're obliged to disqualify yourself.

(02:24:48)

George Nicholson: You made the point earlier about your perspectives on the death penalty. Stan Mosk, as I always understood his jurisprudence, his social-political philosophy, and so on, was opposed to the death penalty pretty much on moral grounds, but he still decided them objectively and faithfully to the law.

Keith Sparks: Yes. I think you have to draw a distinction between your views of the death penalty, your personal views, and your duty as a judge to faithfully apply them. If the death penalty is a law of your jurisdiction, then it's your duty to apply it just like any other law that you might disagree with. And I think that judges who develop ways in order to get around the death penalty is part of the huge problem that the legacy of the death penalty has left us. They try to fashion these new laws to mitigate the effects of the death penalty rather than faithfully applying it, and particularly it's led to difficult problems of intent and moral culpability into the law about who is responsible for crimes. And the death penalty has had a negative effect on that.

George Nicholson: Do you see . . . I don't know that you've followed this closely in the last several years as you did before, but to the extent you have, do you see any particular challenges or frailties or developments that lie ahead for the Court of Appeal that trouble you?

Keith Sparks: Only one that I see is troubling—where there had been some effort to take the death penalty and put it on, at least in the initial phases, on the Court of Appeal. And I think that would be a huge undertaking, and they're just so time-consuming, it'd be an extra layer to the whole process that I think ought to be carefully considered before that was done.

George Nicholson: One of the things people that have floated that idea have said, if the Court of Appeal would reverse the death penalty there would be no recourse for the Attorney General, and if they affirmed it then of course the defendant would get his final trip to the Supreme Court. That always troubled me as kind of

indicating a difference for the people through the Attorney General and otherwise. How do you feel about that potential element if it were to be pushed into the Court of Appeal at the threshold? Does that trouble you at all?

Keith Sparks: Courts that are final are final because of that, not because they're infallible—I mean, they're infallible because they're final. And you can see that Courts of Appeal get reversed from time to time, so I mean, I don't know why you'd want to have a one-way system where an appellate court could make bad decisions with respect to the death penalty too.

George Nicholson: Either way?

Keith Sparks: Yes, either way. And remember, it's not necessarily about the individual defendant you're talking about; because these are published opinion, they become law of the state. Everybody is bound to follow them, all the trial courts; and if they make some error then there ought to be some way for the people to rectify it. So I would not favor that kind of procedure.

George Nicholson: Are there differences in civility and ethics among the bench and bar today compared to your early days in the '60s that you can—?

Keith Sparks: Well, in small counties like Placer County when I first came there, the bar you could sit around one table. And civility is a function of smallness, really; of being able to personally know people. And the bigger bars become the more impersonal they become. It's just the nature of the beast; you can't know everyone. So in that sense size is a big force against wonderful civility.

From appellate courts, we're a stylized kind of court and we don't see any kind of disruptions or incivility. So we're probably not the right people to ask about that.

George Nicholson: From the time you went on the bench first in 1977 till you left in 1997, did you notice any difference in the relationships among judges themselves or between judges themselves as those 20 years passed?

Keith Sparks: Only in individuals, because each jurist is different and has a different skill level, different interest, a different life's experience. So they're individual and they're different, but that's just the nature of—

(02:30:08)

George Nicholson: There is no class change or sea change that you do—

Keith Sparks: I don't think so. There was, at the time Rose Bird was Chief Justice, there was some conflict, some tension in the Court of

Appeal, but that quickly was resolved and I didn't notice it anytime thereafter.

George Nicholson: You're an expert, as I mentioned earlier. I will call you an expert—you'll decline that distinction—with computers and the Internet. What roles do you see for computers and the Internet in the courts, particularly the appellate courts, different from when you left, different from . . . really the same? We haven't evolved much since you left, so assuming that to be the benchmark.

Keith Sparks: Well, they're always considering about how you ought to prepare the record and whether that should be presented to you electronically or whether it be presented to you in writing. My personal view is I think an electronic record would be very difficult to deal with. But there may be a way; I don't know. I suppose you could print out portions, but writing is much easier to handle.

I don't think any court could exist without computers today. Just . . . they're so wonderful. The way to use and capture data that I don't think is practical . . . but to get away from them—

George Nicholson: Well, you're someone who has a comfort level using computers, and you've described the apparent lack of practicality of dealing with a paperless appellate or a trial court process entirely. There would be a need on occasion, you've suggested, to print out at least parts of it. There is talk about the expense of the physical records, the cost of transporting them, deterioration from time to time, losses that occur through fire or water. On the other hand, you could lose all of your data through catastrophe as well. The complaint I hear is among appellate judges; they don't want to sit and read at a terminal all day. Is that a concern—being as fluent as you are—is that a concern for you?

Keith Sparks: Yes, it's very difficult to read large volumes of information on a computer screen.

George Nicholson: The paperless issue—whether we go paperless or not—obviously is in part decided by outsiders. For lack of a better word, court reporters own the data in California. The federal courts have pretty much gone paperless, as I understand it, the federal courts in Sacramento; but the court reporters quote, unquote "own" the data. How do you view that particular legal anomaly of our state? Do you have a view on that?

Keith Sparks: Well, obviously if you're going to go paperless then the State should own it. I don't know whether that's a good solution or not. Personally it'd be kind of hard to deal with, but I think that all the judges now coming up will be computer literate; it's just that everyone starts early on computers and becomes more acquainted with them as time goes on, and so maybe they'll be

able to use transcripts just from the record. I mean, I can see the reporter's transcript would be easy to put on just the computer, because you're only looking at certain documents and certain parts of them; but to try and get all the testimony of witnesses down page after page, it could be very hard, I think. I suppose it could be done.

George Nicholson: I have two further questions on that. Some appellate judges I know still are looking at books when they do their research; others will use Lexis or Westlaw to find what they're looking for to check their work afterwards, but they print out or go get the bound books to do the actual reading. And in some, a smaller number actually do the research on the Internet, on the computer itself. Was there a particular approach you followed when you were on the Court of Appeal for those three or even the fourth?

(02:34:55)

Keith Sparks: Well, I'll do the first. You use it to find cases; if you're just looking for a small quote you don't have to go get the book, but if it's any length you would go get the book—

George Nicholson: Get the cite and go get the book, and in a more relaxed way actually thumb through and find the section or the case; read whatever you thought was necessary to go ahead. When briefing takes place, sometimes lawyers cite cases, don't give us the specific page; or they cite transcripts, reporter's transcripts, and either they don't give us the page or don't make the specific, proper page cite. In an average case we don't do their homework for them, and we say so in the opinion; it could be dispositive for them by not doing that. How do you see the potential for being able to keyword where a lawyer is negligent or worse and says something in a brief that seems extremely consequential and meaningful to their client, and the potential utility of quote, unquote "doing their work for them" and keywording to find the missing word, phrase, or page?

Keith Sparks: I think the better approach is to simply send their briefs back and have them cite it correctly. Court rules require that they refer to the exact page where you'd find this quote or this statement or this holding or whatever it is that they're referring to.

George Nicholson: Did you do that on occasion?

Keith Sparks: Well, that's a function of the clerk's office mainly, to make sure that the brief's right. I feel like the Court of Appeal's task is to answer the contentions that the parties have made; it's not their litigation, and if they don't want to litigate a particular question, that's their right and that's their business.

George Nicholson: Either effectively or ineffectively.

Keith Sparks: That's right. Well, if they're so ineffective, the counsel, they ought to be relieved. So I don't think there's any great benefit for the court to go searching around for things that they don't argue or are not advancing.

George Nicholson: I think at about the time you were leaving a rather unusual appellate opinion was filed in the California Courts of Appeal that relates to the virtual oral argument, the virtual court proceeding—that is, trial court proceedings that are recorded or appellate oral arguments. How do you feel about if you were back on the Court of Appeal and you found not leaving your home or wherever you might be, even if it was at the courthouse, you could appear at an oral argument just by turning on a computer? And it'd be a split screen and you could see the other two judges, you could see both sides. And so everybody involved might be in five different places: the three judges, the two sides, you'd all see each other; you'd have a split screen. But do you feel about that like you do the paperless reporter's transcript?

Keith Sparks: It would be another chink out of the structure of collegiality. I mean, I think judges really should be close to each other, should talk to each other and interact with each other. And the farther away they are the less that happens. And it's not just what formally happens during argument, but what happens before and what happens immediately afterwards that are important. And they ought to be there together and trigger each other's ideas. If you're running some federal appellate system where you have multiple states and you're all over and some are in Hawaii and some are in Wyoming, then maybe that makes sense. It's not the ideal situation, but it may be the only practical solution. I don't think our court's in that position at all.

George Nicholson: Did you enjoy working in the building itself?

Keith Sparks: The building, it's a lovely old building; I loved it.

George Nicholson: Did you love going to oral argument?

Keith Sparks: Yes—great, ornate courtroom; and oral argument was always fun, I thought.

George Nicholson: We argue—I'm not sure, I think the other districts do it differently—we always argued one week, six days a month, third week of the month. And on occasion there would be a large volume of cases that you would go in . . . I would sometimes sit on several cases in a given week with you. You always had read everything, you always knew everything. Did you do that by reacquainting yourself with the case, or did you just do it from memory? How did you do that?

Keith Sparks: Well, you review them before you have the oral argument. You look at the proposed opinion. We always have a proposed opinion about which you're going to measure these arguments.

(02:40:00)

George Nicholson: You asked questions. You weren't always the most aggressive; you asked questions when you thought they were appropriate. Did you do that by anticipating them and writing them down? Did you do it as you spontaneously responded to the lawyers' verbal argument as opposed to their briefs?

Keith Sparks: The latter, right. Unless there was something that was confusing or we couldn't quite understand precisely what they were arguing or what their position was or what their point was, then in advance you would have . . . you'd want to ask and inquire about this.

George Nicholson: I mentioned to you a moment ago—I got off the subject before I presented it to you—there was an appellate case where on appeal the effort was made to have the appellate court look at the videotape of the trial court proceeding to establish that the trial judge had not read the brief or devoted sufficient attention to it. The appellate court said, "This is for a higher court than this one to decide if we're going to start looking at videotapes to see if judges focus enough attention on either the briefs or arguments or whatever. We're not going to do that; the Legislature or the Supreme Court can deal with that." Does that sound right to you?

Keith Sparks: Yes, right. Remember, these are legal questions when they come to the Court of Appeal, and it doesn't make any difference if the trial court judge spent five hours pondering this; if he got it wrong, he's going to get reversed. And if he spent two seconds on it and guessed and got it right, he's going to get affirmed. So it's not how he does it, although obviously we want him to . . . the guy who studies it is more likely to be right. But when you get to the final analysis, what's worrying you is not how the trial judge did it, but what he did and how he came out.

George Nicholson: Well, we've got two phases to go and I'll take the next to last, which is retirement. What are you doing in your retirement?

Keith Sparks: Well, when I first retired we went on a long, three-month trip and we drove across Canada and then we flew to Italy to stay there for something like a month and a half. And then we flew home and met friends and drove back to California in the southern route. So that was a big vacation.

So since then we've traveled a lot. One of the advantages of being retired is you can go wherever you want to go and when it's a good time and the weather is right. And I've always felt

you should travel while you're still feeling good, in good health. And so I did a lot of traveling.

George Nicholson: Do you and Mary both like to travel?

Keith Sparks: Yes, and after you travel a while you get kind of sick of it and then you go through a period in which you don't travel too much.

George Nicholson: Yeah. Do you both like to travel the same way? Air or train, what do you like?

Keith Sparks: I like it all, actually. I've traveled all the ways; we've flown and gone by train and gone by boat.

George Nicholson: There is a Placer County Community Foundation here, and you're apparently involved with that. What is it and what does it do and what do you do with it?

Keith Sparks: Well, the Placer County Foundation is a public charity; there are community foundations throughout the United States. There's a big one in Sacramento. The function of these is to receive donations and then to distribute them to qualified charitable recipients of all kinds and doing all kinds of things. In Placer County it's to make Placer County a better place to live and raise your children. So it historically came from a private foundation called the Auburn Community Foundation. And then it's migrated into a community foundation, a public charity. Now we have an executive director full time, paid, and we're now just in the beginning phases of our . . . it has assets of currently about $5 million, and we hope to substantially increase that. We've got a wonderful grant from the James Irvine Foundation, who funded a number of—nine, actually—small community foundations, relatively small throughout California, and we were one of them. So that's been enormously helpful in these efforts. So I'm on the board of directors for that.

(02:45:00)

George Nicholson: Are there other organizations, or this is pretty much your main civic enterprise?

Keith Sparks: This is the current one, yeah.

George Nicholson: One thing our first presiding justice, if you know him . . . I mean, you didn't know him, but you knew about him: Norton Parker Chipman. He was one of the founders of a business organization that later became the California Chamber of Commerce. And I noted that at one point when you were practicing law you were director of the Roseville Area Chamber of Commerce. Were you in that organization long, or was it relatively short?

Keith Sparks: No, that's when I was practicing law down there.

George Nicholson: Was that an interesting experience for you? Did you—

Keith Sparks: Oh, sure, as a young lawyer you're interested in belonging to all kinds of organizations and meeting people.

George Nicholson: Were you particularly interested, though, in economic activity as opposed to legal—building business, attracting businesses to your community, and that type of thing?

Keith Sparks: Well, at the time that I was involved with Roseville it had a very progressive-looking executive, and many of the cities in California were being ringed by subdivisions that stopped the cities. So he was very aggressive in annexing huge amounts, and now Roseville goes all the way out to Lincoln. And Roseville had a lot of reasons why you might want to join it; it had its own electrical system, its power system. So it was a very progressive way of handling planning, I thought.

George Nicholson: How would you hope that Placer County and the people of Placer County remember you and your work in the law? You've served these folks directly and indirectly for 35 years. Most of the civic leaders; political, cultural leaders; obviously the law, the legal leaders know you. How, do you think . . . how would you like them to remember you?

Keith Sparks: I hope they would think that he was a good judge, which is about all you can hope for.

George Nicholson: Often when we talk to one another, newspapers talk to us, they ask us about all the things in our life, but they rarely ask us about our family. Do you have grandchildren now?

Keith Sparks: I surely do.

George Nicholson: What have you got? How many and—

Keith Sparks: My son Thomas lives in Alaska and he has three children and we see them about once a year. My daughter is married and lives in Santa Monica and she has a daughter. And my youngest son Chris lives here in Penryn and he has a granddaughter, which we see all the time, which has just been wonderful.

George Nicholson: How old is she?

Keith Sparks: She has just turned four. Her name is Sarah. She is the delight of our life.

George Nicholson: Get to see her pretty often?

Keith Sparks: Oh yes, weekly.

George Nicholson: It sounds to me it's a question that's kind of already answered, but yours was and remains a close family and you stay in touch fairly closely; for you, Alaska is a long way away.

Keith Sparks: A long way away; yeah, a long way away. And now that he lives in Nome—I don't know if you know where Nome is, but Nome is on the Bering Sea, and there is actually no road to Nome. Nome is the end of the Iditarod race that you've heard of, the dog sledding race that starts in Anchorage and goes 1,000 miles and ends in Nome. So to get to Nome you either have to fly or take a boat.

George Nicholson: Have you ever boated to Nome?

Keith Sparks: No, but I do . . . One time in the height of . . . when the stock market was going so high and I felt rich, which it turned out you're not rich until you sell the stock . . . Anyway, we bought a truck for my son and we drove it to Alaska, Mary and I. I always wanted do this, to drive the Alcan Highway, the old highway through Canada that goes up to Alaska. And it's just a fabulous wonderful trip.

And then we ended up in Anchorage, and since there are no roads to Nome we took the truck out to an airplane carrier operation and they took the truck and they said, well, they'll send it up as soon as they get enough other stuff to go to Nome. So that took a couple of weeks and they finally flew it to Nome. And then we went to Nome and then we flew home and got . . . flew to Juneau. And then from Juneau we took the boat, a wonderful boat—it's kind of a passageway boat—and it ended up in Bellingham, Washington. And then from there we took the train to Sacramento.

(02:50:12)

George Nicholson: Seems like a great trip.

Keith Sparks: Oh, it was a great trip.

George Nicholson: You fixed my wagon a couple of times when I outstripped it from section to section. Is there anything that . . . I don't know if we're going to come back and interview you for Chapter 2. Is there anything that you would like to say or note for posterity about your role as a judge or lawyer? A teaching that you think fundamental that we may not have broached by the questions and answers we've gone through? I don't mean to be so vague.

Keith Sparks: Well, I always thought that the cases that you were presented with were like puzzles, and that your task was to try and solve it in the best legal fashion. So it was endlessly fascinating, and the questions were all different. And judges are different than lawyers in the sense that if a lawyer has a client comes in and

he's got some problem, the lawyer has to know that whole field and tell him what various options there might be. But a judge has to decide a single issue and he can decide things about which he may not know in depth, in the whole breadth of the area, but can become expert in the issue that's presented. And so it's this puzzle-solving thing that's so fascinating to me.

George Nicholson: Well, the puzzle-solving thing is also endlessly varied because we handle everything. Have you—

Keith Sparks: That's right; that's another thing. It's not like a workers' compensation judge, in which you get the same issues repeatedly again and again and again. This is all varied, all different. So it's a fascinating job.

George Nicholson: There is one thing about our district that I think is distinctive much like the DC circuit and the federal system. We're not structured in quite the same way or as formally . . . that we tend to get far more government cases than the other districts. And I wondered if you had any perspective on that. Did you enjoy the additional puzzles of dealing with taxation and regulatory law?

Keith Sparks: Yes. Those are fruitful litigation, and they're always interesting and often complex, and Sacramento got more than its fair share of them.

George Nicholson: If you remember, the PUC at one time was like the death penalty, this whole jurisdiction in the Supreme Court. It's now a situation where cases can begin here. Had that changed by the time you left or—

Keith Sparks: Yes, I think it did.

George Nicholson: That left only the death penalty. I'm pretty sure that there isn't a lot we don't deal with, the Supreme Court deals with, except the death penalty. And we deal with them and petitions for writs periodically, and the death penalty that becomes an LWOP, life without the possibility of parole.

Keith Sparks: Correct.

George Nicholson: We dealt with those too. So in your time as trial judge and appellate judge you can safely say, "I sat on the trial court, I sat on the appellate court, I sat on the Supreme Court." I wonder how you feel rather than how people are going to look at you 10 years, 20 years, 30 years from now, when you're still traveling around Europe? How do you feel as you reflect back on your career in a personal and professional way? Did you enjoy your work? Did you think you were doing good work or were you doing important work? How do you feel about it in your own words?

Keith Sparks: I think all those things are true. Very few people in life are given important jobs that have important consequences that are fascinating and interesting and get to work with lots of other talented people. I suppose some scientists have that collaborative work too that's fascinating to them, but for lawyers it's just one of the great jobs, and I loved all of it.

George Nicholson: Well, it was an odd experience to me to come and be your inquisitor, but I would like to tell you, I don't know when we're going to meet again. It was a privilege getting ready and thinking about you and your career and to be here with you and see Mary again. And when I began our discussion today I indicated I learned from you at the time; I hoped I would learn some more today.

You are a great person, Keith, and you are a great teacher; and it was an honor to serve with you, and it's been an honor to be with you today.

Keith Sparks: Thank you very much!

George Nicholson: I am really grateful for your time.

Keith Sparks: Thanks!

Duration: 175 minutes
March 16, 2007