Steve Stone: I am Steve Stone. I was the Presiding Justice of Division Six from its inception in late 1982 until I retired, which was in January 1999. And I had both the opportunity, the privilege, and the honor of serving with Justice Richard Abbe for the entire time he was on the Court of Appeal.

Arthur Gilbert: My name is Arthur Gilbert. I am the current Presiding Justice of Division Six of the Second District, and this interview is part of the Appellate Legacy Project. And we're—Steve and I—are going to talk about one of our colleagues, Richard Abbe, who died in 2000. And Richard was one of the founding members of this division, along with Steve and myself. This division was created in 1982, and we were all sworn in on December 28, I think.

Steve Stone: December 27.

Arthur Gilbert: Twenty-seventh; okay, thank you.

Steve Stone: I dissent.

Arthur Gilbert: December 27, 1982. And we started this new division, Division Six, which is located here in beautiful Ventura. Steve and I are just going to share some reminiscences about this very unique individual. I think sui generis is probably the only way to describe him. He was a district attorney of—

Steve Stone: I think it was Shasta County.

Arthur Gilbert: Shasta County. He was a DA opposed to the death penalty. He was a conservative who was extremely liberal.

Steve Stone: Not only was Richard Abbe the district attorney against the death penalty, but he was also against the marijuana laws and refused to prosecute people for mere possession of marijuana.

Arthur Gilbert: And had strong views about the environment, and just about everything, and politics. And the three of us all met up. Steve and I knew each other briefly, a little bit. We would meet at conferences and so on, but I had never met—I don't think either of us had met—Richard Abbe. And incidentally, you can never refer to his first name by the nickname for Richard, which I won't even say.

Steve Stone: Because he is looking at us. Richard is looking at us.

Arthur Gilbert: Because he is looking at us. And so you can't call him by the traditional nickname that people use for Richard, and I am not talking about "Rich." But anyway, he was born in 1926 in Paris, and his father was a very famous international photographer, James Abbe; and Abbe is spelled A-b-b-e. And he was always concerned that you'd know that it rhymes with "tabby,"

because he was not "Ah-bay," which might be a Japanese name. And he had no problem with that, but I remember he was introduced as a new judge at the Asian Lawyers. One of my friends, Elwood Lui—who was also a retired justice on the Court of Appeal—was there, and everybody thought this was a new Japanese.

Steve Stone: It's true. Even the voters at the elections that we have to put up with occasionally . . . it was known that Richard would get slightly less votes than either Arthur or I. And the reason attributed to that by the experts was that his name was . . . too many people thought he was Asian and voted against him for that reason. There are people out there like that, and they thought it was "Ah-bay," the Japanese name.

Arthur Gilbert: Well, he went around and actually then wanted to be known as "Ah-bay," because he was always in favor of the underdog and had a very unique view of life. Now, his father had photographed famous people all over the world: Joseph Stalin, Hitler, movie stars. And his childhood—

Steve Stone: He lived in Berlin for a while, his father did.

Arthur Gilbert: Yeah, right, and he lived there.

Steve Stone: And he lived—Richard lived—in Berlin.

Arthur Gilbert: While the Nazis were coming to power.

Steve Stone: Coming to power in the middle '30's.

Arthur Gilbert: Yes, and we would always kid him and say that he was really a Nazi at heart. No, we were just joking around. He said, "Come on, you have got to let me off the hook. My son-in-law is Jewish." I remember that. So Richard knew all these famous people. They stayed at Hearst Castle; they actually stayed there and they knew Hearst. As a child he knew Laurel and Hardy and Shirley Temple and all these famous people.

(00:04:59)

Steve Stone: It was interesting. He had a unique childhood and was able to share, in a way, in the fame of the subjects of his father. Yet in many other respects, he had a lonely and difficult childhood. There were estrangements in his family, and he was moved around a lot in ways that he really didn't want to. So he had a lot of the good and the bad, and I think much of that made Richard what he was: a very, very independent-thinking person.

Arthur Gilbert: Right, and didn't care much for fame or movie stars.

Steve Stone: No.

Arthur Gilbert: In fact, never sought fame himself.

Steve Stone: He refused to surround himself with any trappings of convention, of conventional success. He would never wear anything with a label, for god sakes. And I remember that although he had one of the finest . . . he was a bicyclist and an avid one and a good one . . . and he would disdain a label on his bicycle and make sure his bicycle looked aptly trashed.

Arthur Gilbert: That's right.

Steve Stone: I used to ride with him and we would go on these long, 100-mile rides up in Solvang; and as I used to say, I felt like I was riding with a homeless person. But that was Richard.

Arthur Gilbert: And he drove an old car, a rattletrap, and would deliberately not wash it. And during the time that he was a private judge, he would go to these big mediations and drive up in a car that had a bungee cord to hold the gearshift.

Steve Stone: Hold it in gear. His bungee cord held it in gear; that was how the car worked.

Arthur Gilbert: So we all met at our confirmation hearing in 1982.

Steve Stone: I had never, never seen, met, or hardly heard of Richard Abbe until that day.

Arthur Gilbert: And I am sitting next to him waiting to be called up or something, and I noticed that his jacket doesn't match his pants. We were all wearing suits, and it was really a remarkable mismatch. And so I looked at him, I said, "I notice that your clothes are not your strong point," or something like that. He says, "Oh yeah." He says, "I grabbed the wrong coat from the wrong suit when I came here." We sort of laughed at that. And then we were listening to Steve Stone's confirmation process, and he was standing up in front of the panel—which consisted of the Chief Justice, the Attorney General, and the senior-most justice of the Second District—and they were asking questions. And we knew that Steve smoked. And then they mentioned—when you are talking about Steve's many accomplishments, it was mentioned—that Steve was chair of the National Heart Association. And so Richard and I looked at each other, and we both said right then, under our breath, "We are going to deal with this."

Steve Stone: And they did.

Arthur Gilbert: And we take credit for—

Steve Stone: And successfully.

Arthur Gilbert: For persuading you finally to give up smoking and saving your life. You owe your life to us.

Steve Stone: I think that's right; I wouldn't be here but for that. You were saying—we were talking about—the first time we met Richard. I actually had an inadvertent conversation with Richard, and I don't know whether you were on the call or not; but Governor Jerry Brown, when he appointed me, called me up, and this was the final time that he did that. It was early in December and it was very late at night, and he called me up and he said, "I am appointing you and Art Gilbert and Richard Abbe to the Court of Appeal in the newly created Division Six." I knew who Arthur was, and I said, "That's fine," and I said, "Well, who is going to be the PJ, the presiding justice?" And he said, "Well, you are." And I said, "How come?"—because I knew that he was much closer to Arthur than I. And he said, "Because I have to politically; you are the only local guy." And then I asked Governor Brown, I said, "Who is Richard Abbe? I never heard of Richard Abbe." And he said, "Well, he is from Shasta County; he was the DA up here and then he is a judge now." And I said, "Why are you appointing somebody from Shasta County in Northern California to a position here in Southern California?" I was saying that hopefully with respect in my voice, because he said, "Well, maybe Judge Abbe can tell you himself." What I didn't know was that Richard was on the call, and Governor Brown didn't tell me that.

(00:10:07)

Arthur Gilbert: Oh my goodness!

Steve Stone: And I was embarrassed, but Richard handled it with wry humor, as he always did.

Arthur Gilbert: And so the three of us were in this division together. Richard had this long beard. He would ride his bicycle everywhere. Well, when we were first created, we really didn't have any quarters. And so I became kind of the point person, if you will, in empty chambers down in Los Angeles, where the main Court of Appeal was housed; 5280 Wilshire, I think that was the—

Steve Stone: 3580.

Arthur Gilbert: 3580 Wilshire Boulevard; okay, pretty close. And Richard—sometimes we would have hearings or we would have to go down there—and Richard was looking for a place to live with his wife, Pauline, and so he'd come down to Los Angeles. And Rose Bird, who was the Chief Justice, said, "Richard, feel free to use my chambers anytime you want." She knew Richard, she really liked him, they had a close relationship; he knew her before she was Chief Justice. So she had this huge, spacious chambers down there, and Richard said, "Hey, these aren't bad chambers.

You know what? I think I will sleep here." He had a sleeping bag.

Steve Stone: He had a sleeping bag and he slept in Rose Bird's—

Arthur Gilbert: He slept in Rose Bird's chambers, and he'd get up early in the morning and go running. He had run several marathons; he was in great shape. So he would go for a run, and come back. And I said, "Well, how do you take a shower?" He says, "Oh, I make do, I can use the bathroom."

Steve Stone: Kind of a sponge bath out of—

Arthur Gilbert: So this was going on for quite a while and I kept my mouth shut about it. When the court would come down, of course, he would leave there, and he wasn't staying there every day. And then Rose Bird approached me once, and she said, "You know, Arthur, I have this sneaking suspicion that Richard is sleeping in my chambers." And I refused to say anything; I thought I would stick by him. So he ultimately moved down here.

Steve Stone: He hated Los Angeles, though; he never wanted to go to Los Angeles. He hated cosmopolitan, metropolitan areas. And there actually was a controversy—it didn't last very long—when our division was first invented. We had a couple of meetings in Los Angeles with our colleagues and the rest of the district, and at least one of them piped up—when we are talking about where we were going to sit—one of them piped up and said, "Well, I think although it's called the Santa Barbara division, we are all one Court of Appeal and you should be down here."

Arthur Gilbert: Oh, that's right.

Steve Stone: And Richard turned to me and he said, "I quit, I am out of here." But it didn't happen.

Arthur Gilbert: One thing I do recall: We didn't have a state building then.

Steve Stone: No, they were rented quarters.

Arthur Gilbert: They were rented quarters in this big office building, and the office building was—and the Court of Appeal had—quite a few floors there, obviously, and including a pretty good courtroom there; actually, they made a nice courtroom. But anyway, if you'd get in the stairwell of the building you could never get out.

Steve Stone: You can't get out.

Arthur Gilbert: Because there were security reasons and so on; you'd have to go all the way down. So Richard, coming back from one of his runs, got lost in the stairwell, and he can't get out. And he is going from floor to floor and he hears voices—"At last, I hear

voices." So he goes to the door where he hears voices, and he tries the door and it's locked, of course; you can't get in. So he keeps—starts—knocking, and he is knocking and knocking. They open the door; he walks in. Now, he has got his biking gear on—I mean his biking clothes—and he walks in with his headband and he is sweating. And there is Division Three holding oral argument.

Steve Stone: Walks right into the courtroom.

Arthur Gilbert: He walks into the middle of the courtroom.

Steve Stone: And I think he was wheeling his bike.

Arthur Gilbert: I don't know if he . . . I don't think he had his bike in the stairwell, but I mean, I wouldn't be surprised. He was really a character, and I do remember this. This was the first day of oral argument for our division, and we had the first day of our oral argument in Santa Barbara at the mural courtroom. Now, the mural courtroom is this very ornate courtroom. It's a place where tourists go; they seldom have any hearings in it.

Steve Stone: Right; it's a ceremonial courtroom, really.

Arthur Gilbert: Yeah, and the press is there, television is there, and this is our first time—

Steve Stone: Ever sitting together.

Arthur Gilbert: Ever sitting together, and the first time in history there has been a Court of Appeal up for the northern counties and that we're holding an oral argument in Santa Barbara.

Steve Stone: And there were no side rooms to that courtroom; you had to come in from the corridor.

Arthur Gilbert: Yeah.

Steve Stone: There was no enrobing . . . not enrobing room . . . but no cloakroom, no coatroom, no closet; you came in from the corridor where all the tourists were gathering.

(00:15:00)

Arthur Gilbert: Right. So anyway, we walk in, and they announce it, and the cameras are going, and everybody is watching us.

Steve Stone: And there's an absolutely jammed courtroom—people lining the back, lining the walls.

Arthur Gilbert: It's a big deal, and there are these very large chairs with huge backs like King Arthur chairs, like chairs from out of the Middle Ages.

Steve Stone: Thrones.

Arthur Gilbert: And they are sort of in the way. And Richard goes out first, and then Steve sits in the middle, and I come next. Incidentally, in those days Steve had a Prince Valiant, a Beatles haircut; and so Steve comes out looking like Prince Valiant—

Steve Stone: Wearing my helmet.

Arthur Gilbert: And Richard goes first, and the chairs are too close, and he bangs into the chairs with his knee. And you hear this loud knock; and he says audibly, everybody could hear it: "Jesus Christ."

Steve Stone: We were just fumbling around.

Arthur Gilbert: Oh, god, we were howling. So he finally moves the chair back, gets in his chair. You get in the chair, and then we get in the chair, and now we are starting the hearing. And the lawyer comes forward and he drops his books on this long table. It's really from Arthurian legend. And he drops this book down and this cloud of smoke goes up, because the table hasn't been used in years. And the acoustics were terrible—

Steve Stone: Just terrible. Nobody could hear anybody, and the tourists in back kept flashing camera flashes.

Arthur Gilbert: Yes, and they were coming in with their Bermuda shorts.

Steve Stone: Yes, talking.

Arthur Gilbert: So we quickly ended that. And then Richard lived in . . . and so we had our hearings—I am sorry—in Santa Barbara, at the board of supervisors room. And Richard had a house there—they had finally bought a house—and there was a room that they called the Arthur Gilbert room because I would stay overnight every time we had it. And you stayed overnight often.

Steve Stone: I stayed overnight sometimes.

Arthur Gilbert: And we would ride our bikes down from—

Steve Stone: Santa Barbara back to Ventura.

Arthur Gilbert: Back to Ventura after the oral argument in the morning; and then our research attorneys would meet us on bikes halfway, and we would all have breakfast together. It was a wonderful experience.

Steve Stone: The newspapers liked it for a while. They put a picture of us and they put it "The Wheels of Justice."

Arthur Gilbert: No, no, it was called "Appeals on Wheels." I called the press and said, "This is a great story," so they got the three of us coming in and took a shot on the front page of the paper. We also had a lot of fun doing our cases and—

Steve Stone: We did that too, but when . . . before we would leave staying with Richard . . . whenever we were up there with Richard and whenever we had oral argument up there, either the day before or the day after, we would usually make a point to go to the beach. And we would all go to the beach and we would run and swim on those days, and it was really unusual for a staid and starchy Court of Appeal image. But that's what we did, and we would bring our wives—and at the time I wasn't married so I brought a girlfriend—and we would just have the most wonderful time together, sort of preparing for argument or post-argument. It was just a way of life.

Arthur Gilbert: You just reminded me of an incident at the beach. What happened was we were all here for a big reception for Rose Bird, and we stayed overnight, and all of us with our significant others were down on the beach. We had our shoes off, and we were all walking around, and we just had such a wonderful time. And I see a guy taking photos and he looks like he is a professional photographer, and suddenly something hit me. We need a photo for the court, and I said, wouldn't it be great—this is who we really are instead of a state photo with the robe. So I went up to the man. I said, "This is really awkward; I hope you don't mind, but would you mind taking a picture of us and I'll pay you?"

Steve Stone: There were six of us.

Arthur Gilbert: And he says, "Oh, sure, I would be happy." And then I tell him who we are—I figured I ought to do that—and he says, "Oh, I would really be happy to do it." It turns out he is involved in the law doing—shooting—pictures for lawyers who have PI cases and things, so he is a professional. And he takes all these photos, dozens of them, sends them to us; they are fantastic. We pay him; he refused to take any money. So we sent him a gift, a basket of something. He said, "You didn't have to do that." And we blow it up and we have it hanging in the clerk's office. That was our official—

Steve Stone: We used it as our official court picture.

Arthur Gilbert: Until you got married.

(00:19:52)

Steve Stone: Right, until I got married, because there was another woman in the picture. But there was a picture of the six of us and we all had our pants rolled up and our sleeves rolled up and we were

marching through this—not marching, but ambling—across the beach in the sand, and it was a close-up. It was a marvelous picture. We all still have it. That was who we were. And that's in great degree . . . it was Richard who helped us be that way. Arthur and I were more conventional and more traditional, and I think—

Arthur Gilbert: I didn't know about that, okay.

Steve Stone: But Richard brought out the best part of our independent side, I think, and did a great job of it. Arthur and I, I know, really admired Richard. We admired his independence; we admired his admission of his flaws.

Arthur Gilbert: His intellect.

Steve Stone: He was remarkably, remarkably bright. He had had a lot of experiences in life, which I think nourished his intellect and also played a part in his common sense, because he had had experiences that Arthur and I never had or even came close to. But which informed, I think, not just his intellect, but his sense of the human condition. I think that he had an excellent sense of the human condition. Now, we have talked about Richard as if he were a flaming liberal. Wrong. He was not. It's true about everything we have said about him and his attitudes; but in his opinions and in his judicial philosophy, I think he was the most conservative of the three of us. He tended to be pro-prosecution.

Arthur Gilbert: He would roll over in his grave if he heard us saying this.

Steve Stone: He was less likely to agree with plaintiffs who got a lot of money, in terms of verdicts. In a sense, he was, I believe, more conservative in ways than you and I, Arthur—certainly than me.

Arthur Gilbert: If we would call him a conservative, which we did—

Steve Stone: Oh, he would have a fit.

Arthur Gilbert: He would have a fit.

Steve Stone: He would have a fit. Make no mistake: He was not a conservative, absolutely not a conservative. He was a staunch supporter of Planned Parenthood, of the ACLU, of the Sierra Club. He was a wonderful outdoorsman; not only skilled and talented at being an outdoorsman, but also the love, his love, of nature knew no bounds. He would sleep in a dry stream bed in a second, and I would be looking for the first motel I could find. But that was Richard.

Arthur Gilbert: Yeah, but you know we were talking about liberal and conservative; some of his opinions were really quite interesting.

One case that Steve wrote, that I concurred in, was called the Boulas case, and that involved the district attorney actually convincing someone to—well, he had fired his lawyer.

Steve Stone: He convinced him to fire his lawyer.

Arthur Gilbert: No, actually they didn't do that. He fired his lawyer and he was depressed about getting another lawyer, and so somebody said, why don't you talk to the DA and work out a deal. He called the DA, told them, "Oh, I am sorry, you are right, I apologize."

Steve Stone: The DA said, "We can't talk to you till you fire your lawyer."

Arthur Gilbert: "We won't talk to you till you fire your lawyer." You are absolutely right. And he fired the lawyer, and then they led him toward who he should hire as another lawyer, and then he didn't do it. They didn't give him the deal. He rehired his old lawyer. He rehired his old lawyer and then they brought a motion to dismiss; and you in your opinion in Boulas held that that was such an invasion of the right to counsel that so contaminated the whole proceedings that the case should be dismissed. And we dismissed the case over a strong dissent from Richard.

Steve Stone: Richard did dissent.

Arthur Gilbert: He did dissent, but he wrote a number of other cases. For example, he wrote *Raytheon v. Fair Employment and Housing,* which held that an employer may not discriminate against an employee who has AIDS. And that was a very significant case at the time; it was in 1989. And he said, that is a physical handicap, and you have to treat that as any other person who would have a handicap. He also held in *People v. Garziano* that demonstrators in an abortion clinic cannot use the defense of necessity to escape criminal liability for their actions. So they were harassing people, they were doing all kinds of things, because they said this was a necessity—

Steve Stone: To save the life of the fetus.

(00:24:58)

Arthur Gilbert: Yeah, and so he certainly rejected that. And I remember there was a case in Santa Paula where some dissident person had a problem with the city council and had a sign that he put up near his house or along the street, a cardboard sign. And there was an ordinance that said the city could decide what signs you could put up. And he says, not when it involves the content; and he held that ordinance unconstitutional. He also wrote some significant environmental cases requiring an EIR for the county to evaluate the significant environmental effects of expanding an oil refinery at the mouth of the Ojai Valley. And

also, there was another case I recall—I am just looking through my notes here—and that was the *Lackner* case. And he held that Medi-Cal benefits could cover radical sex conversion surgery for a transsexual. So those were pretty cutting-edge cases.

Steve Stone: They were. He was in a very real way ahead of his time in terms of the independence of the individual, and it was reflected in his license plate. Richard always felt that you should speak up if you think something is wrong. He respected authority, make no mistake. But one visible sign of Richard's attitude was his license plate, which said "Dissent." And Richard believed that so strongly: If you don't like something, you speak up.

Arthur Gilbert: You speak up, yup. What he did—

Steve Stone: You don't riot, but you speak up.

Arthur Gilbert: Richard had traveled to Nicaragua—and that was during the time that the Sandinistas were there—on a kind of fact-finding mission; and you had gone as well, at a separate time.

Steve Stone: Yes.

Arthur Gilbert: And the three of us . . . and I remember when he went to Nicaragua, if you are speaking about how outspoken he is. He said, "I am going to come back and hold a press conference; I want everyone to know I was there. I am going to tell them what I think about how we're responding and—"

Steve Stone: Richard was very angry with President Reagan and the government at that time for funding and supporting the *contras*.

Arthur Gilbert: That's right.

Steve Stone: Well, and Richard felt that the Sandinistas were legitimately there; leave them alone.

Arthur Gilbert: So we were going to have oral argument in Santa Barbara, and he schedules a press conference with a professor who had gone as well. And they are going to have this on the courthouse lawn, and he says, "I don't care if I am up for election or whatever; I am going to do this." So we are there, so I am saying, "Are you sure you want to do this, Richard? I think it's a bad idea." So he goes to the press conference. Nobody showed up; there was one reporter.

Steve Stone: One reporter with a pad.

Arthur Gilbert: With a pad, who yawned and didn't write; and I think there was one little, small article about it and no one really cared. But the three of us went to Cuba.

Steve Stone: The three of us went to Cuba together in 1990 or '91. I can't remember.

Arthur Gilbert: I think it was . . . yeah, I can't remember. One of those two dates; yeah, one of those two years.

Steve Stone: We traveled through a loophole in the State Department's rules.

Arthur Gilbert: Well, we could go.

Steve Stone: We could go, yes. We did.

Arthur Gilbert: We were the only Court of Appeal—I think in the world—where all three members went together, went to Cuba.

Steve Stone: Especially went to a country which was embargoed by the United States, and we had a great time.

Arthur Gilbert: What a wonderful time. We met with a number of judges; we saw trials.

Steve Stone: Yes, we watched trials; we watched an appellate proceeding; and we took a good look at their education system as well as their medical system and their legal system. And we just kind of fell in love with the Cuban people.

Arthur Gilbert: We did. And we also met with some of the ministers in the government.

Steve Stone: That's right.

Arthur Gilbert: We had a very interesting, candid discussion with them. And I did get the feeling from many of the people I talked to then that they knew that ultimately Castro would leave or die, and that they would ultimately become a capitalistic country and join the nations of the world.

Steve Stone: Many people were biding their time. They respected the fact that they had pretty good medical treatment. They had an excellent education; there was almost zero illiteracy, almost 100 percent literacy. But they had no food; there were long lines for food. A number of people approached us to help, asking us to help them get out of Cuba. But it was a very interesting exercise, because Cuba is a mixture of the good and the bad, and very interesting for those of us in America. And as Richard told us there—and Richard certainly, like me, sometimes would get angry at Americans taking their freedoms for granted—and he would point to Cuba as a place where

Americans should go to show that they shouldn't take their freedoms for granted.

(00:30:17)

Arthur Gilbert: Right. Now, who knows who is going to be watching this—our presentation now—how many years hence; and the situation could be so radically different. And right now it's 17 years since we have taken that trip, and things have changed so radically in Cuba.

Steve Stone: But not for the better.

Arthur Gilbert: Well, not for the better, but Castro's brother is now in charge. And a number of Europeans . . . they have opened the country up to a number of Europeans and the tourist trade in order to get some more funds and so on.

One thing I just happened to remember, and it's a story when our division was first created. We had a distribution of cases, and you had a case with an issue and I . . . which was assigned to you as the author. We did a blind rotation, and we still do that for cases; we don't pick our cases, they just come to us by a number system. And you had a case and I had a case; and that means that we would be the authors of those cases that had the same issue, and we didn't know it at the time. And you wrote your case one way and I wrote my case the other way. We hadn't met for conference yet, and then we had distributed the cases and I hadn't gotten around to reading your case yet. But Richard had read it ahead of time and he came over to me and he says, "Well, it looks like I am going to be the swing vote." I said, "What do you mean?" He said, "Well, on the so-and-so case, you wrote it one way and Steve wrote it the other, and I have to decide." So I said, "Oh my god." So I went right to my chambers to read Steve's case. And I read Steve's case, and I look at my case, and I think Steve has the better argument. So I go to Richard and I say, "You know, I think Steve has the better case. I think his argument is better. So I am going to go with Steve." So he says, "Okay." We have a conference and I express my views and he says, "Fine." And then we go to the oral argument; we hear that. And then we decide that Steve should publish his case and write and file his case before I file my case; and then I will just agree with what you said, and I will change my whole result. So Steve goes ahead and files his case and Richard agrees, and we all sign off on the case. Now it's time to file my case. So I am now going to file my case, which won't be published, and I will just agree with what Steve said; it will be easy. So I do something and I give it to Richard, and he is not giving me the case back. And I am waiting and waiting, and I say, "Hey, well, come on, let's file this case." He says, "Oh, I am thinking about it." So I said, "What do you mean, you are thinking about it? You signed off on Steve's case; it's all done, isn't it?" He says, "Well, I may

have something to say about it." And he gives me the case back a month or two later with a dissent, and I read the dissent—

Steve Stone: It's your original.

Arthur Gilbert: Thanks for giving it away. So I read the dissent and I say, "This is one terrific dissent. It's so well written and everything. You know, I think I may go the other way." And Richard says, "Well, of course it's well written, you wrote it." He took my initial—this—case and wrote as my case his dissent.

Steve Stone: What ever happened?

Arthur Gilbert: Oh, it was a joke.

Steve Stone: Oh.

Arthur Gilbert: I think . . . I don't know what happened. Did I change and go the other way? I don't think so. I think I stayed with your result. And I don't know if he filed a dissent or not; I don't recall. But that was the kind of humor that you got from Richard. Now, when he retired; when did he retire—

Steve Stone: '91, I think it was.

Arthur Gilbert: No, no, it was later. '94, I think.

Steve Stone: '94, okay.

Arthur Gilbert: Was it? We better make sure about that. Richard, when he retired . . . and I know when he retired; it was in November. I remember we had a long discussion about it, and when he retired . . . I am just trying to think. My goodness, I think you are right. You said 1991; it was 1990.

Steve Stone: It was 1990.

Arthur Gilbert: So, November 30 of 1990. My goodness, that's right. Yeah, go ahead.

(00:35:03)

Steve Stone: I was trying to remember if he was in this new courthouse.

Arthur Gilbert: No.

Steve Stone: He was not, but I do remember Richard was disgusted by ostentatiousness.

Arthur Gilbert: Yeah, he didn't want the new courthouse.

Steve Stone: He didn't want the new courthouse. He thought this courthouse was too fancy, too plush, too posh. What are we doing with paneling, that sort of thing. And that was who Richard was. He was a—I was going to say professional curmudgeon, but that's not what I mean. But he loved to—I can't remember who said it—but to make the comfortable uncomfortable. And you probably know that quote, Arthur.

Arthur Gilbert: Well, he would always challenge convention and challenge why you believed the way you did, particularly if you thought you weren't giving it the full thought. And I thought that was so helpful for us in our evaluation of our cases. So he retired and sat by assignment on the superior court for a while. Did some private judging, and had some grandkids, and just enjoyed his grandkids, and was an avid skier and biker and—

Steve Stone: His retirement years, I think, were a joy to him. They really were a blended family of children and grandchildren; it was large. He hadn't spoken of it, but Richard a long time ago in the '70's bought what was then a small place at Lake Tahoe right on the water. And he invited us all to use it whenever we wanted; and we would go up there periodically and enjoy the place at Lake Tahoe. And it was interesting because he had probably 200 feet of shoreline at Lake Tahoe that he paid $20,000 for but has to be worth $10 million now. I can't imagine. But I know that I and my wife have gone up there about every two to three years and used his place, and occasionally met him up there. And he loved Lake Tahoe, he loved the mountains, he loved hiking; and as Arthur so eloquently put it, he was truly a friend of nature and respected it and wanted all of us to respect it.

Arthur Gilbert: He died; he had a stroke and died suddenly in September 3 of 2000. And he was in Berkeley visiting his daughters and grandchildren. And we had a memorial service for him, and that memorial service is . . . you can read in 99 Cal.App.4th. And on that edition of the California Reports, we actually held a court hearing in Santa Barbara, where a number of people spoke about this very interesting and unusual personality. And I would command anyone who sees this interview to take a look at 99 Cal.App.4th and to get some insight into this really, truly remarkable individual, who we'll never forget.

Steve Stone: That's so true. One other attribute that he had: No one on this planet could mutter or mumble better than he when he disagreed with something. We would be on the bench, and I would hear this voice next to me, and he would . . . I will not wax profane on camera, but he would be grumbling about a lawyer or the lawyer's conduct or the case under his breath. But he had an ability to project it into my ear, so that I knew everything that he was thinking at the time, when he wanted to be a curmudgeon. He was just marvelous at that.

Arthur Gilbert: Yeah, he was very good, and he was good at that at our conferences as well.

Steve Stone: And he was; he was.

Arthur Gilbert: You never had any doubts about where Richard stood on an issue, and tact was not his strong point.

Steve Stone: And one lesson I learned early: Never even think about being pompous in his presence.

Arthur Gilbert: That's right.

Steve Stone: Because he would let the air out of you in a nanosecond, and with good humor. That was Richard.

Arthur Gilbert: It was nice talking about him.

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