David Knight: Let me have your name, and spell your last name for me, please.

Robert Thompson: Pardon me?

David Knight: Give me your name, spelling your last name, and your title when you were on the bench.

Robert Thompson: Robert Thompson, T-H-O-M-P-S-O-N; and what was the last thing you said?

David Knight: When you served on the bench, your title.

Robert Thompson: Well, first judge and then justice of the Court of Appeal.

David Knight: Great. And whenever you're ready.

Margaret Grignon: My name is Margaret Grignon, and I'm also a retired justice at the Court of Appeal, and I'm here with Justice Robert Thompson, a retired justice of the Court of Appeal. And we're here today for the Court of Appeal Legacy Project. It's May 15th, and I'm going to be discussing with Justice Thompson his life and career over the last few decades.

Good morning, Justice Thompson.

Robert Thompson: Good morning.

Margaret Grignon: I noticed in reviewing your biographical materials that you were born in 1918, and you told me that in a week it will be your 89th birthday; is that correct?

Robert Thompson: Pardon me?

Margaret Grignon: It'll be your 89th birthday in a week?

Robert Thompson: Yeah, right.

Margaret Grignon: And when you were born, were you born in Los Angeles?

Robert Thompson: In Los Angeles.

Margaret Grignon: And you grew up in Los Angeles?

Robert Thompson: Right.

Margaret Grignon: Can you tell me something about your parents and your family?

Robert Thompson: My parents were both immigrants from England. My paternal grandparents emigrated from the Jewish statal in Poland to England. A British immigration officer could

not recognize the pronunciation of the name and assigned the name Thompson to them.

My maternal grandparents were from England. They and their children, who were my parents, emigrated from England to the United States.

Margaret Grignon: And they ended up in Los Angeles somehow.

Robert Thompson: Eventually ended up in Los Angeles.

Margaret Grignon: And what kind of work did your father do?

Robert Thompson: My father was an accountant. When he first moved here he had an accounting job at Title Insurance and Trust Company, attended Southwestern University night school, and eventually acquired his CPA and opened his own accounting firm. My mother was a housewife.

Margaret Grignon: And did you have brothers and sisters?

Robert Thompson: Pardon?

Margaret Grignon: Did you have brothers and sisters?

Robert Thompson: No, I was an only child.

Margaret Grignon: When you were growing up, how did you decide you wanted to be a lawyer?

Robert Thompson: Pardon?

Margaret Grignon: How did you decide you wanted to be a lawyer?

Robert Thompson: Hard to say. I think partly my father was a frustrated lawyer, and I think that rubbed off on me. When I graduated from high school, I enrolled at USC in a combined program that treated the fourth year of undergraduate school as the first year in law school. So I was three years in undergraduate school, first year in law school, then got my bachelor of science in business administration.

Margaret Grignon: I noticed that you had only gone to law school for two years, and I was wondering how you had accomplished that. *[laughing]*

Robert Thompson: *[Laughing]* Right.

Margaret Grignon: So you went to USC, is that correct?

Robert Thompson: Right.

Margaret Grignon: And how did you pick USC out of all the other schools?

Robert Thompson: Hard to say. I think probably because of the football team. *[laughing]*

Margaret Grignon: It was good even then, huh?

Robert Thompson: Right.

Margaret Grignon: When you graduated from law school in 1942, you didn't take the bar then?

Robert Thompson: No. I left law school in the spring of 1942. I had tried to enlist immediately after Pearl Harbor. I was rejected for poor eyesight, because I'm effectively blind in one eye.

Eventually, those restrictions were lifted so that I think about in April or May I enlisted and then was graduated that year.

Margaret Grignon: And you were a captain in the Army?

Robert Thompson: Eventually.

Margaret Grignon: You didn't start out as a captain. *[laughing]*

Robert Thompson: I started out as a private.

Margaret Grignon: And where were you assigned in the Army?
(00:05:00)

Robert Thompson: Almost exclusively in the United States. I started as an enlisted man; ended up of all things, correctly, as a law clerk in a regional legal office of the Air Force; went off to candidate school, graduated from Officer Candidate School as a lieutenant and ended up again as a legal officer. At this time, almost all this is at San Antonio at Kelly Field.

Margaret Grignon: And when you left the Army, you came back to Los Angeles?

Robert Thompson: I left the Army, came back to Los Angeles. Never took the bar exam.

Margaret Grignon: You didn't?

Robert Thompson: Because the Legislature, populated by a lot of ex-military, passed a statute that if one's law-school career was interrupted by the war and then service, then they were admitted to the bar without the exam.

Margaret Grignon: That's very interesting, I'd never heard that before.

Robert Thompson: Yes.

Margaret Grignon: How long did that go? How many years did that happen?

Robert Thompson: Well, until those people that had been in law school and had their career interrupted by service had eventually graduated and become lawyers.

Margaret Grignon: Now, before you went in the Army, you married Betty, married your wife. Was that before you went in the Army?

Robert Thompson: Yes. I met my wife when was I was a first-year law student and she was a freshman, and we courted for the three years I was in law school. We were married after I successfully enlisted in the two-week period before I reported for duty.

Margaret Grignon: And what did she do while you were in the Army?

Robert Thompson: Well, she went back to school for part of the time and then eventually was able to join me when I was at Kelly Field.

Margaret Grignon: When you came back and were admitted to the bar, was your first job with the Nossaman law firm?

Robert Thompson: No, my first job was starting out joining Clifford Royston, a law-school classmate. We opened a small office, got space from my father's accounting firm and paid our rent by doing research for them, and that firm gradually grew. Eventually Conrad Moss, another USC graduate, joined and it was Thompson, Royston & Moss. Royston had to leave the practice for the kind of disability that kept him out of the Army in the first place, and eventually the firm grew, took in a young associate, an ex-first-year associate from O'Melveny & Myers named Dick Reardon.

Margaret Grignon: *[Laughing]* Boy, is that history. Dick Reardon.

Robert Thompson: And the firm grew until we finally occupied the top floor of a medium-sized office building at Wilshire and Grand, a savings and loan.

I took one year off to join another classmate, Laughlin Waters, who was the new U.S. Attorney in the Eisenhower administration; became his chief assistant when he reorganized the office; went back to the firm when there was a Democratic administration. When Waters was out, he joined the firm. And he also was a USC graduate. What we lacked—we were all young about in the same period—we needed an eminence

grise. well, Walter Nossaman had lost his partner to a heart attack. So we knew Walter quite well, all of us; he was a nationally recognized authority in trusts and estates. So he came over, bringing three associates with him, and then the firm name then became Nossaman, Thompson, Waters & Moss.

Margaret Grignon: So it was really your firm; he joined your firm then.

Robert Thompson: Well, we joined each other; but we were much the larger firm at the time.

Margaret Grignon: Huh. And were you always a tax lawyer, or did you have a broader practice in the beginning?

(00:09:58)

Robert Thompson: Oh, I was primarily a tax lawyer. I did some business planning incident to it. After the time in the U.S. Attorney's Office I did some federal eminent-domain work, in addition to the tax.

Margaret Grignon: What was the nature of your tax practice? What kind of work did you do?

Robert Thompson: We represented people in court who had an organization with lots of money. *[laughing]*

Margaret Grignon: *[Laughing]* And you represented them in front of the Internal Revenue Service and then also in court?

Robert Thompson: We did a lot of work with what would now be called start-ups, and Reardon particularly worked in that area. We'd get the business originally because of the start-up, but then we did tax planning, and then we would expand to doing their corporate work.

Margaret Grignon: And you were with the Nossaman firm, then, from approximately . . . or your own firm and the Nossaman firm from approximately 1942 until about 1963, or 1946 till about 1963?

Robert Thompson: I'm trying to think. When was I first appointed to the bench?

Margaret Grignon: Muni court, 1965.

Robert Thompson: I would have been, with the exception of the year off with the U.S. Attorney's Office, I would have been with that firm until I was appointed to the bench.

Margaret Grignon: Okay, so around '65, then?

Robert Thompson: Right.

Margaret Grignon: So tell me about deciding to go on the bench and what that process was like.

Robert Thompson: Well, by that time, the firm was large. I was doing a lot of firm administration rather than practicing law; felt the need for a change, decided that I would become a judge.

Margaret Grignon: And had you been active in Republican politics?

Robert Thompson: Yes. Laughlin Waters, who I'd mentioned, was the Republican state chairman, and through him I became active in Republican politics, was chairman of the Republican Speakers' Bureau and the first Eisenhower campaign.

Margaret Grignon: Well, you were appointed by Pat Brown; so how did that work?

Robert Thompson: Well, before we moved to our larger quarters, we were in the Title Insurance and Trust Company Building in Los Angeles. Over there, O'Melveny & Myers occupied the top three floors, and there was a lawyer, a young lawyer by the name of Warren Christopher; by reason of proximity, we became friends. When I decided I might want to be a judge, I talked to Chris, who was very active in Democratic politics with Pat Brown. Chris recommended me, and I had a call from the Governor's Office; interesting call, and it goes something like this. Bob . . . well, I never met the Governor Bob. This is Pat Brown: "Warren Christopher tells me you'd like to be a judge. I hope you'll take it, because I've been criticized for not following Earl Warren's practice of appointing judges of the opposite party and for appointing too many Jews." So I said, "Pat, you're half-right: I'm Republican, but I'm Jewish." His response was, "Well, hell, with your name, who'll know?" *[laughing]*

Margaret Grignon: *[Laughing]*

Robert Thompson: And I was appointed, appointed with the promise of being elevated in a year. I knew from rumors that I heard from Chris that Brown suffered frequent amnesia with respect to his promises. So I immediately called a friend and a client whose name was Al Hart—an ex-bootlegger, ex-liquor magnate, but now a banker who was very active in Pat Brown's campaigns and provided no end of financing—and reminded him of the promise.

A year went by with no elevation. So I called my friend, Al Hart, and two days after I called Hart I got a call from Pat Brown, saying, "I elevated you to superior court; now get Al Hart off my back."

(00:15:08)

Margaret Grignon: *[Laughing]* So you were just on the municipal court for a little more than a year?

Robert Thompson: A little more than a year.

Margaret Grignon: And what kind of cases did you have while you were on the muni court?

Robert Thompson: Well, I was relegated to traffic court most of the time.

Margaret Grignon: You were glad to get away from there.

Robert Thompson: Well, I actually enjoyed traffic court. It was in originally what was called the traffic arraignment court, which handled traffic tickets; nothing serious that could result in a jail term. I was able to read the literature the ABA published on traffic ordinances, do some reorganization. And it was a fun court to be in, but not intellectually challenging.

Margaret Grignon: I found that when I was on the municipal court it gave me a chance to learn how to be a judge, in any event.

Robert Thompson: Right, it does.

Margaret Grignon: People are in front of you. You learn how to talk to them and—

Robert Thompson: Right.

Margaret Grignon: And then you went to the superior court.

Robert Thompson: Right.

Margaret Grignon: And did you sit downtown?

Robert Thompson: Downtown for a very short period of time. It was all new judges that had been in criminal, which moved into law and motion in what was then a relatively new court. And I went into something called civil discovery that had never been heard of before. It was a fun court, in a new area of the law. I was there for a year, and then I went into writs and receivers.

Margaret Grignon: And those are two interesting kind of courtrooms, not trials.

Robert Thompson: Right.

Margaret Grignon: It must have been intellectually challenging.

Robert Thompson: Yeah, I enjoyed it.

Margaret Grignon: And so you were on the superior court for about two years before you were elevated?

Robert Thompson: Right, yeah, the first year in civil discovery, the second year in writs and receivers.

Margaret Grignon: And by this time, there's a change in the Governor.

Robert Thompson: Yeah. *[laughing]*

Margaret Grignon: Reagan is Governor now, right?

Robert Thompson: Right.

Margaret Grignon: And so can you explain that process, how you got appointed?

Robert Thompson: I don't know how that happened. I had no special influence with the Governor; I had been active in Republican politics for . . . but Reagan wasn't particularly attuned to the previous Republican politics. But somehow or other when the five judges were added to the Second District, I turned up as one of them.

Margaret Grignon: Can you explain that? I noticed in reading your biographical materials that you were appointed to a new position. Can you explain what the court was like before and after your appointment?

Robert Thompson: Well, the Second District had five divisions, originally of three judges each. They were perceived to be overworked—I emphasize "perceived"—and one judge was added to each division. And I had one of those appointments.

Margaret Grignon: And you were appointed to Division One.

Robert Thompson: Division One.

Margaret Grignon: And who were the other three justices when you were appointed?

Robert Thompson: Parker Wood was presiding judge, Walter Fourt, Mildred Lillie.

Margaret Grignon: And during the time that you were on the Court of Appeal, Mildred Lillie was still on Division One the whole time, right?

Robert Thompson: Right.

Margaret Grignon: That was before she was transferred as PJ to Division Seven.

Robert Thompson: Right.

Margaret Grignon: And what about Walter Fourt? How long was he on?

Robert Thompson: He was there most of the time. But he retired and—pardon me—he was replaced by Roy Gustafson a couple of years before I left the court.

Margaret Grignon: And Roy Gustafson, was he replaced by someone else also?

Robert Thompson: I'm trying to think. Yeah, Justice Wood was replaced, but I can't recall by whom. We had . . . I think by Roy Gustafson. But I know Roy was there for a while.

Margaret Grignon: And wasn't Justice Hanson on your division?

Robert Thompson: Eventually Gustafson had severe medical problems, retired, and then he was replaced by L. Thaxton Hanson.

Margaret Grignon: What was it like when you first went to the Court of Appeal?

Robert Thompson: Well, it was interesting; the first thing I found out was that the Second District really was five different courts—with five courts sharing a common clerk's office and a courtroom—each with its own little internal traditions.

(00:20:09)

So I didn't know much about what was going on in the rest of the court. I knew that Division One was not experienced. Parker Wood was the nominal presiding judge. But Walter Fourt had really taken over, and Walter had a rule: never reverse a criminal conviction.

Margaret Grignon: *[Laughing]* Huh.

Robert Thompson: But I soon found out that my natural teammate was Mildred Lillie. We could usually get a majority.

Margaret Grignon: And how were the cases assigned? Were they assigned randomly, or they were assigned to a justice direct?

Robert Thompson: Randomly. Walter Fourt retained, I think, a cowboy hat from his Ventura days. He would place on Parker Wood's desk . . . slips of paper would be put in, each with the name of a case in two separate drawings, one for criminal and one for civil, and the names were pulled out of a hat by individuals, so they'd get a random assignment.

Margaret Grignon: And then the judge whose name was pulled out would be the presumed author of the opinion.

Robert Thompson: Right.

Margaret Grignon: And would there be any discussion amongst the justices prior to a draft by the author?

Robert Thompson: There hadn't been . . . there was almost . . . I was told when I was first assigned by Walter Fourt, "We have a tradition, no dissents." But I'm not a believer in tradition. And there were dissents later—although, as I say, it would depend on how they lined up. If it was Fourt, Wood, and me, I'd be the dissenter. If it was Lillie and me and one of the others, they would be the dissenter. I don't think . . . I only dissented from one or two of Mildred's opinions; she wanted to rewrite it. Mostly we saw eye to eye.

Margaret Grignon: And how many cases did you have every year? What was the workload?

Robert Thompson: Well, I was doing over 100 opinions a year, majority and then some dissents—not that many dissents, but some.

Margaret Grignon: You're famous for your writings on law clerks or research attorneys. Do you want to talk a little bit about your experience with law clerks while you were on the Court of Appeal?

Robert Thompson: Experience with who?

Margaret Grignon: Law clerks, research attorneys?

Robert Thompson: Oh. Well, I enjoyed being with law clerks. There was of course a brilliant law clerk named Margaret Grignon, who I enjoyed no end *[laughing]*, and another female law clerk. Her first name, I've forgotten.

Margaret Grignon: Miriam?

Robert Thompson: Pardon?

Margaret Grignon: Miriam?

Robert Thompson: Miriam, then Tigerman, who not only was a law clerk for a year, but also developed a husband named Chuck Vogel, who was pro teming over the court in the course of the year. But I enjoyed working with law clerks. I liked the temporary clerks much better than the permanent clerks the other justices used, because I got a new slant every year or two. And most of the law clerks went on to be quite successful.

Margaret Grignon: At the time you had one law clerk?

Robert Thompson: Right.

Margaret Grignon: And most of the other justices by that time were hiring permanent research attorneys.

Robert Thompson: Right.

Margaret Grignon: But you throughout the rest of your whole career on the appellate court used the rotating.

Robert Thompson: Used the rotating, and that's why: I got a new slant every year. Some occasional law clerk would serve for two years; but I was getting a new slant every one year from most of them.

Margaret Grignon: And subsequently you wrote many articles with Professor Oakley about research attorneys and the use of research attorneys. And maybe you could just tell me something about your thoughts on how a justice should use a law clerk or research attorney.

Robert Thompson: Well, the permanent clerks pretty much wrote opinions. They called them drafts, and the judge would make the necessary changes. And the permanent clerks learned or developed an attitude, "This is what the judge would want."

(00:25:10)

I tried with the temporary clerks to avoid that and to assign them specific research jobs. Sometimes it seemed more efficient: "These are the briefs, write it up." But I hope they didn't preconceive this is what I wanted, but they would write what they thought it should be.

In the work with Oakley on the book that eventually came out, called *Law Clerks and the Judicial Process*, we used an interviewing technique developed by my sociologist wife: a whole series of questions to get some idea of how the judges utilized the clerks, what value the clerks added to the process. And then using anonymous interviewing techniques, just giving the judges assigned a random number, we were able to correlate that to get some idea of how judges used law clerks and what work is added to the whole appellate process.

We ended up saying that there were values of both, but that the gradual disappearance of the short-term law clerk was a dangerous phenomenon.

Margaret Grignon: And over time, justices now have a bigger workload, more permanent research attorneys, and probably less time to spend on each individual case than they even had during your time. So the flaws in the system are—what's the word?—exacerbated, I think, by the workload.

Robert Thompson: Well, I think it's become more bureaucratic. My answer to that developing trend, which I don't think anybody else accepted, was to acknowledge that the bureaucratic method was there and employ what the bureaucracies do—which is to take their equivalent of the law school product, deliver that to counsel, and get counsel's comment on it back to the court before the court, the bureaucracy, writes its opinion and makes its ruling. As I say, I may be the only person in the world who ever thought of doing that.

Margaret Grignon: Well, the Fourth District, Division Three, with their tentative opinions, does something like that.

Robert Thompson: Right; they're the only ones that accepted it.

Margaret Grignon: Yes, they are, and they are very proud of it and they think it works very well for them.

Robert Thompson: Right.

Margaret Grignon: The other thing that you also talked about and didn't like very much was the central-staff concept. Was there a central staff when you were on the Court of Appeal?

Robert Thompson: Well, originally there was a small central staff; but it grew the time I was there—never to the extent that it exists now, but it was a growing institution.

Margaret Grignon: When I came to the Court of Appeal in 1991, there was a relatively large central staff, very bureaucratic. They did all of the routine criminal cases.

Robert Thompson: Right.

Margaret Grignon: In addition, there were a couple that did workers' comp. But some of the new justices, me included, had read some of your work, and we were not very happy with the central-staff system; so we disbanded it in Los Angeles and ended up assigning each one of those attorneys to a particular justice. So actually, the justices ended up with three research attorneys in their chambers—although one was technically a central-staff lawyer—and we found that it increased accountability and was really very helpful to us.

Robert Thompson: Well, I'm glad I had some influence.

Margaret Grignon: You did. You had a lot of influence. And I really don't know in the other districts whether they use central staff as much anymore. The Supreme Court, of course, still uses central staff a lot.

Robert Thompson: Oh, yeah.

Margaret Grignon: But at least in the Second District, there's no central staff anymore.

(00:30:05)

You mentioned some very famous people that were involved in your career: Laughlin Waters, Warren Christopher, Dick Reardon. I know that the Hufstedlers were also important in your career, and maybe you could tell me something about your relationship with them.

Robert Thompson: Well, very close to both Seth and Shirley. We did two treks in Nepal, two safaris in Africa; we did a lot of weekend hiking, and we socialized a lot. And I have enormous respect for both of them; they're brilliant people. When I retired from the court to join the faculty of USC Law School, I was of counsel to Seth's firm.

Margaret Grignon: Was Shirley on Division Five when you were on the Court of Appeal?

Robert Thompson: What?

Margaret Grignon: Was Shirley on the Court of Appeal when you were on the—

Robert Thompson: No, she was already on the Ninth Circuit.

Margaret Grignon: Already on the Ninth Circuit.

And what about Gideon Kanner? How do you know him?

Robert Thompson: Well, I didn't even know there was a Gideon Kanner till I filed an opinion against Gideon, and he wrote up a petition for review that made me to be, out to be, an absolute idiot. Actually, it convinced me totally. So I got Gideon on the phone and congratulated him on his petition, and we became close friends. Yes, he is a brilliant writer.

Margaret Grignon: Yes. He was one of my professors in law school.

Robert Thompson: Well, that's how you came to be my law clerk.

Margaret Grignon: Oh, really?

Robert Thompson: Yeah, because Gideon had recommended.

Margaret Grignon: Good to know that.

I was looking at your opinions that you've written, the published opinions, while you were on the Court of Appeal, and I noticed a really interesting phenomenon. You were on the Court of Appeal from 1968 to 1979, and if you look at the cases where the Supreme Court granted review, they were all in 1977, 1978, and 1979.

Robert Thompson: Yeah.

Margaret Grignon: Nothing before that. And I wondered if you could maybe explain, if you ever noticed that, why your cases got review grants later on?

Robert Thompson: Well, the nature of the Supreme Court changed in that era. This is at the inception of the Bird court.

Margaret Grignon: Okay, okay. So it just was a different Supreme Court.

Robert Thompson: In my personal judgment, I hope that I wrote basically objectively, and I wasn't outcome-determinative in writing. In my opinion, the Bird court was very much outcome-determinative.

Margaret Grignon: Well, it must have had something to do with that, because for 10 years you have no review grants . . .

Robert Thompson: Right.

Margaret Grignon: . . . and then all of a sudden you have some.

Robert Thompson: Right.

Margaret Grignon: Of the cases that you worked on, I know that *American Motorcycle* was one of your favorite cases. Is that—

Robert Thompson: Right.

Margaret Grignon: Would you say that was your favorite case?

Robert Thompson: It was one of the cases. Well, that, some . . . I was writing some opinions hoping to force review, and *American Motorcycle* was one, because the Supreme Court had gone from contributory negligence to comparative negligence, deliberately avoiding what effect did that have on joint and several liability expressly in the opinion. *American Motorcycle* raised the question in the trial court and brought a motion to

intervene. And so I decided I'd force the Supreme Court's hand.

Margaret Grignon: You took the case on a writ, yes?

Robert Thompson: Yeah, right.

Margaret Grignon: And then the Supreme Court did take the case.

Robert Thompson: Yeah. And there were a couple of others where I knew I was going to get a Supreme Court review; but I thought clarification was necessary.

Margaret Grignon: And what about dissents? Were you successful in getting the Supreme Court to grant review in cases where you dissented?

(00:35:01)

Robert Thompson: I don't think so. I looked at the outline book, and I think I saw one or two; but I can't recall many.

Margaret Grignon: Yeah, I think there were two of your dissents . . . actually, in terms of published dissents and concurring opinions, there weren't that many.

Robert Thompson: Right. Right.

Margaret Grignon: But I think two of your dissents ended up in a review grant, but I can't remember if it ultimately went your way or the other way.

Robert Thompson: Yes, right.

Margaret Grignon: I know you worked for many years with Mildred Lillie, and she's no longer here with us. So I'd appreciate having your memories of her, if you could share them with us.

Robert Thompson: Well, I enjoyed working with her. She changed in the period of time I was on the court somewhat. She had been subdued by Fourt and Wood, and Walter Fourt particularly. But if someone would join with her she became much more active, much more assertive, and an absolute delight to work with.

Margaret Grignon: Her name was being bandied about for the U.S. Supreme Court at some point. Was that while she was your colleague?

Robert Thompson: Yeah.

Margaret Grignon: And can you tell us whatever you know about that process?

Robert Thompson: I don't know. When Mildred was proposed, I think she had a reasonably good chance. I actually had a telephone interview with a Washington reporter at that point, so it was serious to that extent.

But some of the local bar—I'm trying to recall the names; Joe Ball was one of them, and lawyers of that caliber—who simply didn't think she was qualified to be on the Supreme Court were vocal about it. And that resulted in what looked to be a promising possibility disappearing.

Margaret Grignon: Hmm. You've been very active since you've left the bench in judicial . . . writing about and thinking about judicial administration. Could you talk about the difference between the time that you were on the Court of Appeal and now and in trends and changes that you've seen?

Robert Thompson: Well, I'm not all that familiar with what's going on now; now I'm an outsider. *[laughing]* I think on the whole, the caliber of the trial court, I think, is better now overall than it was when I was on the bench. The caliber of the appellate courts is good. I think the appellate courts have become more bureaucratic. The current Supreme Court I think is very good. Ron George is doing a superb job as Chief Justice, and the court as a whole I think is stronger than when I was a judge. I suspect that the workload of the Court of Appeal is now greater than it was when I was there.

Margaret Grignon: It ebbs and flows. I've had years when I wrote 185 majority opinions per year.

Robert Thompson: Yeah.

Margaret Grignon: But I think it's now gone down because more justices were appointed. It's probably now in the 130 range, which is close to yours.

Robert Thompson: Yeah, that's about what it was when I was there.

Margaret Grignon: They have a lot more help, though. *[laughing]*

Robert Thompson: Right.

Margaret Grignon: Three research attorneys and still some . . . at least in the Second District, a couple of lawyers who write. Oh, and plus most divisions have two writs attorneys, each justice has three research attorneys, and there's a couple of workers' compensation attorneys.

Robert Thompson: Oh, my gosh.

Margaret Grignon: So, a lot of attorneys.

Robert Thompson: Well, the work is accomplished. It's another matter as far as the writs attorney when I was there.

Margaret Grignon: Oh, those were handled by the writs attorney?

Robert Thompson: Right. I don't know if you've heard the story about the writs attorney.

Margaret Grignon: No.

Robert Thompson: When I was there, writs attorneys were God; I mean, unless some justice was particularly diligent, they really handled the intake.

(00:40:08)

We had one, very bright, and we relied on him until one day in the middle of a writs conference he began to hallucinate, literally. It suddenly occurred to me, for the past year we've been relying on him, and he's out of his mind. *[laughing]*

Margaret Grignon: Oh, no. *[laughing]* Yes, well, now everyone has two writs attorneys; so that's more.

Could you talk a little bit about getting consensus and the communication between the justices while you were on the court? In other words, a matter's assigned to a particular justice to write. Did you talk to other justices before you wrote the opinion, or what did you do?

Robert Thompson: It was rare to talk before an opinion was written. There might be a particular case that would attract attention, but usually it was left to one judge to prepare the opening shot.

Incidentally, after I retired, I pro temed in San Diego court, and they used the same system. One judge would be assigned the case by the random assignment we used. That judge would prepare what was called a draft written opinion and circulate it, and if a judge didn't like it, then there might be some commentary. Rarely would there be commentary of all three judges; it would usually be the author and one other judge who thought there was something that ought to be changed.

Margaret Grignon: Well, if somebody didn't agree with that, would they just write a dissent, then?

Robert Thompson: Then they would write a dissent or a concurring opinion.

Margaret Grignon: And was there a conference before oral argument where everyone talked about the cases?

Robert Thompson: No.

Margaret Grignon: No.

Robert Thompson: It's frightening, isn't it? *[laughing]*

Margaret Grignon: *[Laughing]* How about after oral argument? Was there a conference after oral argument?

Robert Thompson: No. *[laughing]*

Margaret Grignon: Okay. So basically the author wrote the opinion, and unless somebody disagreed with it, there was really no conversation.

Robert Thompson: Right.

Margaret Grignon: And tell me about oral argument. How important was that?

Robert Thompson: I don't know how important it was, but I sure enjoyed it. I think that varied with the particular judge. I've had my line changed in oral arguments several times. I don't know about the other judges.

Margaret Grignon: When the cases were circulated, the draft opinions, were they circulated with the whole case, with the briefs? How did the other justices get the cases?

Robert Thompson: I don't recall any particular system of going from Judge 1, who was the author, to the next judge. I think we did it on seniority, but I'm not sure.

Margaret Grignon: And did you give them the doghouse with it, or was it just the briefs? What did the second and the third justice do?

Robert Thompson: Oh, the package would go with the draft.

Margaret Grignon: Okay. So they had the whole case?

Robert Thompson: Right.

Margaret Grignon: And when you got a draft opinion from one of your colleagues, did you—besides reading the briefs, did you read the record?

Robert Thompson: No.

Margaret Grignon: Only if there was a question, you might go to the record.

Robert Thompson: If there was a question I'd go to the record, but I relied on the brief.

Margaret Grignon: Yes.

Robert Thompson: Well, that was one of the reasons that I was so hep on tentative opinions. My approach relied very, very heavily on the briefs of counsel. And I figured they knew much more about the case, having lived with it, than I could get by reading the record; so that when I saw somebody else's draft opinion, I simply checked it against the briefs as opposed to going to the record. If the briefs raised some particular question about it, it might require going to the record and I'd go; but that was very rare.

Margaret Grignon: And on your own cases where you were the author, did you read the whole record or just the part that was cited to by the parties?

(00:45:00)

Robert Thompson: Depended on the case. I think it was more likely by what was cited by the parties, to check the record against the briefs to make sure that the briefs weren't misleading. There might be a case to go to the record; but generally and practically, it takes a long time to read a record.

Margaret Grignon: Yes, it does.

Justice Thompson, you left the Court of Appeal in 1979, and you hadn't been on the bench for 20 years. Why did you leave in 1979?

Robert Thompson: I just wanted a change. *[laughing]* I had the chance to become a tenured law professor at USC, to be of counsel to Seth's firm. That seemed a lot more attractive than simply keep doing what I had been doing. I think I was getting bored.

Margaret Grignon: I can understand that. *[laughing]* And you went to USC. And what did you teach at USC Law School?

Robert Thompson: Oh, I taught Remedies—actually, I did a casebook on remedies—Evidence, Procedure. And those I think were the three main areas.

Margaret Grignon: And how many years did you teach?

Robert Thompson: I can't remember.

Margaret Grignon: And what kind of work were you doing with the Hufstedler firm?

Robert Thompson: Appellate work, mostly.

Margaret Grignon: Were you writing briefs and appearing in front of the justices?

Robert Thompson: Yeah.

Margaret Grignon: And how was that?

Robert Thompson: Oh, it was odd. I never did show up in Division One. But it had an odd feeling in the other districts, like I'm in the wrong place. *[laughing]*

Margaret Grignon: On the wrong side of the bench. *[laughing]*

Robert Thompson: Right.

Margaret Grignon: Tell me about your life now.

Robert Thompson: Life?

Margaret Grignon: Now.

Robert Thompson: Now?

Margaret Grignon: What are you doing now?

Robert Thompson: Getting older. *[laughing]* Getting bored, I think. I mean, I'm simply not that active. I spend a lot of time reading paperbacks, taking care of that cat that you see behind you, and simply growing old. *[laughing]*

Margaret Grignon: You have two children?

Robert Thompson: Right.

Margaret Grignon: Any grandchildren?

Robert Thompson: No grandchildren, sadly.

Margaret Grignon: And do your two children live near you?

Robert Thompson: No. My son, Bill, is a professor at the University of Utah in Salt Lake. My daughter, Elizabeth, is a lawyer; she's passed the bar, but she's not practicing. She's Public Affairs and Information Director of Planned Parenthood in Northern California. She lives in Eureka, which by time is much further away than Salt Lake.

Margaret Grignon: Yes, it is. Actually, my son went to school, undergraduate, at Humboldt.

Robert Thompson: Right.

Margaret Grignon: And so I spent many years going up to Eureka, which is impossible to get to. *[laughing]*

Robert Thompson: Right.

Margaret Grignon: It's a lot farther than anyone thinks. Well, anything else you'd like to talk about?

Robert Thompson: Not that I can think of.

Margaret Grignon: Okay. Well, thank you very much.

Robert Thompson: Well, thank you. It's been enjoyable.

Margaret Grignon: All right.

Robert Thompson: Do you have more interviews?

Margaret Grignon: No.

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