David Knight: If you will start by giving me your name, and spell your last name and your title.

Arthur Gilbert: Okay, I am Justice Arthur Gilbert, and I am the Presiding Justice of the California Court of Appeal, Division Six of the Second District—the successor to the gentleman sitting across me.

David Knight: And Justice Stone, if I could have your name and spelling and your title?

Steven Stone: Sure. I am Steve Stone, S-T-O-N-E. I am the former Presiding Justice of the Court of Appeal, Division Six. I am sitting here, going to have a conversation with, my successor and contemporary, Art Gilbert.

David Knight: Great. I'm ready anytime you are.

Arthur Gilbert: Well, this is part of the Appellate Legacy Project in which we take oral histories of prominent justices of the Court of Appeal for future generations, for their either amazement and, I hope, enlightment. Today I have the pleasure of interviewing Steven Stone, who was the first Presiding Justice of Division Six of the Court of Appeal in the Second District. And here we are sitting in my chambers—or is this your chambers, Steve?

Steven Stone: Our chambers, I think.

Arthur Gilbert: It's our chambers because—

Steven Stone: You inherited them for me.

Arthur Gilbert: I did, and in fact these chambers that we're sitting in now, it's rather spacious—it has an octagonal shape to it, doesn't it?

Steven Stone: Yes, it does; it's sitting on a corner of the building, overlooking old Ventura.

Arthur Gilbert: This was your office when we first moved into this building. Do you recall when that was?

Steven Stone: In 1994.

Arthur Gilbert: 1994. And we'll talk a little bit later about that; you were instrumental in getting this building, and helping design it, and building for yourself the most spacious and opulent chambers I've ever seen. And I resisted moving into these chambers, you know that?

Steven Stone: Yes, I know you did. I don't know whether that was for show or for go, Arthur. But these are very nice chambers. And actually when we were designing the building—and all of us participated in the design—it was actually the developer and architect or

designer who thought that this would be a good setup for the presiding justice, and he thought well.

Arthur Gilbert: No question. In fact, we all agreed on this. In fact, I really encouraged these chambers to be built, because I was hoping it just could be that someday I might inherit this from you, if you would retire.

Steven Stone: I think we all agreed that it was pretty opulent. It was a little embarrassing, frankly, for me to be in here, because it's unlike our rather modest lives we've led throughout.

Arthur Gilbert: So, Steve, let's see; our division was created in 1982.

Steven Stone: It was quite a fight in 1982, because if my memory serves me correctly, the Legislature had authorized this division to start early in '82, except that there were some people that didn't want the then-Governor Jerry Brown to make the appointments, and they instituted some lawsuits to prevent it.

Arthur Gilbert: In fact, it was before 1982.

Steven Stone: It was before 1982, that's correct.

Arthur Gilbert: Yes, it was; I believe it was 1980 or '81 that this division and Division Seven and some other divisions in the state were created. And some of the legislators fought it, didn't they—that's right?

Steven Stone: Not only the legislators, but the Republican Party as a party filed lawsuits in order to hopefully postpone the appointment of the justices until a new administration was seated.

Arthur Gilbert: That's right, and we had word that we were at least slated to be nominees for this division, and so our appointments were put on hold for a couple of years.

Steven Stone: They were delayed, and of course the shifting alliances of politics and things, it was never certain, first of all, whether we would ever be appointed, or whether the appointments would come in time for us.

Arthur Gilbert: That's right, and the case wound its way up. I think there was a judge in—was it a superior court judge in El Dorado County, do you recall that?

Steven Stone: Could have been, could have been.

Arthur Gilbert: I think some county—

Steven Stone: That didn't care.

Arthur Gilbert: Yeah, they didn't care or didn't want us, and ruled that it was unconstitutional for . . . I don't remember the rationale for the decision, and it worked its way up to the Court of Appeal. I believe it was the Sacramento division; Justice Puglia, I think, wrote the opinion. Am I right about that?

(00:05:00)

Steven Stone: I think, and it was rather remarkable, because Justice Puglia, generally his judicial philosophy and his political philosophy was so different than Governor Brown's. But he was a man of great integrity and judicial honesty, and he saw that it was, the blocking was, merely political, and was poorly grounded, and ruled in favor of Jerry Brown making the appointments.

Arthur Gilbert: That's right, that's right, I do remember that. I owe you big, fellow; I owe both of you big.

So we were talking about Justice Puglia, who wrote the decision, and you mentioned that he was a person of great integrity, and I think we all respected him.

Steven Stone: Great integrity and occasional temper.

Arthur Gilbert: Yeah, an occasional temper, and wit; he was really a first-rate justice.

Steven Stone: Justice Puglia was one of the smartest persons, and certainly smartest justices, I ever met. There are a lot of smart justices, but he was outstanding, and he was of enormous assistance to me when we were all establishing this division, because none of us had ever been here before. I would call on Justice Puglia from time to time for advice and counsel, and it was always sound.

Arthur Gilbert: Yeah. So he wrote the opinion, and the opinion upheld the Governor's appointment process and the constitutionality of the formation of these divisions. This was at the end of Jerry Brown's term. It was 1982. And then he had to make the appointments and then they had to set up our confirmation hearings. And those occurred, do you remember . . . I remember that.

Steven Stone: I remember, I think.

Arthur Gilbert: December what?

Steven Stone: 27th.

Arthur Gilbert: 27th. Wow, just at the end of the term.

Steven Stone: We were appointed, I think, in the first week of December, and we then had to organize ourselves in a way as to meet the

demands of the confirmation hearings. You and I, I know, spoke on the phone a few times, and we met, and we discussed the upcoming hearings, knowing that they could be a challenge.

Arthur Gilbert: Right, because what had happened, if you recall—now it's all coming back to me—the Attorney General at that time was Deukmejian, who became the Governor.

Steven Stone: Yes, he was going to be seated within weeks of our confirmation hearing.

Arthur Gilbert: That's right. He had sent a letter to us and to other justices earlier in the year about their judicial philosophy, and asking questions regarding how we might rule on certain cases. Do you recall that?

Steven Stone: He did that and—

Arthur Gilbert: And we had some real problems with the letter.

Steven Stone: Yes, the letter asked for answers to questions in a way which would indicate to he and the public how we might rule in the future on cases that come before us. We had discussions about that, because there was a feeling—certainly I, and I think you too, felt that we could not and should not answer those questions, at least directly, at all, because it's generally considered unwise to say things which might give you predictability in the future, in a sense of prejudging a case.

Predictability is perfectly all right, but not in a given case, since we are supposed to consider the evidence and the law at the time. And we were trying to think of answers that would indicate our feelings about that without antagonizing Attorney General Deukmejian or anyone else, but simply to indicate how we felt about it in an intellectual way.

Arthur Gilbert: That's right, it comes back now. I recall he had modified his letter to us in the sense that it was less offensive than the letter that he had sent earlier appointees, because there was some criticism in it, it was in the press, I recall that. Some justices or potential nominees at that time—not potential nominees; they were nominees but they hadn't been confirmed yet—had said, "None of your business, we refuse to answer." You and I were far more diplomatic, weren't we?

Steven Stone: Yes, we thought we didn't have to . . . it was not the time or place to challenge the propriety of the questions, except in a mild and intellectual response.

(00:09:53)

Arthur Gilbert: So we wrote respectful replies and explained our position and to the questions we could answer, we did. It's ironic, we all

became really good friends with him afterwards, and he really turned out to be just a wonderful gentleman. I thought he was a fairly credible Governor. I mean as a Governor, he wasn't . . . we're both Democrats, and I certainly didn't vote for him, but I found him to be a person of integrity and honesty, and I really admired him.

Steven Stone: That's correct. He had a very strong conscience and a strong philosophy; but he had an open mind, and he could listen, and he did indeed and in fact listen.

Arthur Gilbert: Now, you were confirmed, I was confirmed, and so was Richard.

Steven Stone: We were all confirmed on the same day.

Arthur Gilbert: We can talk about this later when we talk about Richard Abbe because there are some funny things there. But he had voted against some other people, but he did vote for us. The hearings, how would you characterize the hearings?

Steven Stone: I thought the hearings were exciting for me. Interestingly enough, I wasn't nervous about it. Let me put it this way: I was nervous, but not anxious, because I actually felt all of us would be confirmed, although whether it was going to be two to one or three to zero was uncertain.

Arthur Gilbert: Now, who was on the panel that was voting for us?

Steven Stone: It was Lester Roth, who was the senior justice in the Second District; it was Attorney General Deukmejian; and Rose Bird. And they were our three interrogators. They were very interesting. I can't remember the sequence of who went forward, but I think there were six of us to be confirmed or not.

Arthur Gilbert: I think there were more.

Steven Stone: The Orange County division.

Arthur Gilbert: The Orange County division.

Steven Stone: Oh, and Division Seven.

Arthur Gilbert: And also the Supreme Court, Joseph Grodin; I think Grodin had his hearing.

Steven Stone: Was he with us that day?

Arthur Gilbert: I think he was with us that day. Was he? Am I—

Steven Stone: He might have gone first.

Arthur Gilbert: I think so.

Steven Stone: I don't recall it. But there were nine justices of the Court of Appeal to be confirmed, so it was a long and interesting day. It was fascinating for me; I had never known a Court of Appeal justice, much less been one, and the only one I happened to know was Ed Beach, who we will deal with later today. But meeting our colleagues was a lot of fun.

I think because we were all new and forming three new divisions, we had a bonding in the sense that we were inventing something new, in a way, trying to keep with the traditions of the old; yet none of us had the help of existing justices sitting with us. It was a welcome challenge, I think, for all us. We were very eager; I think it came with our youth.

Arthur Gilbert: Youth. Oh yes, that was only, what, 32 years; no, no, it wasn't.

Steven Stone: No, it wasn't that long.

Arthur Gilbert: How long have we been on the bench? It was, what, 26 years ago? It was 1982, and now it's 2007.

Steven Stone: Twenty-five years ago, quarter of a century. In part it seems like yesterday and in part it seems like ages and ages ago.

Arthur Gilbert: Now, as I recall . . . well, after our hearings, you and I got together, and I remember sitting in a restaurant with you in Cheerio's.

Steven Stone: Yes, it was a rainy day, and I had come down from Ventura to Santa Monica. I met you in your chambers and we said, "Let's go someplace so we can talk about our future."

Arthur Gilbert: Would this be—I don't recall—was this before our hearings or after?

Steven Stone: I think it was before.

Arthur Gilbert: Was it just before or after? I don't recall now.

Steven Stone: I think it was before, I think it was before. It was in December or early January, but it was a cold and wintry day.

Arthur Gilbert: Yeah, it was raining, I think.

Steven Stone: As we start our books, "It was a dark and stormy night."

Arthur Gilbert: Yes, if we started writing our own biographies. So now we weren't really enthralled about being appointed to the Court of Appeal, were we?

Steven Stone: Well, no. I had been on the superior court since 1976, so that was only six years, five or six years on the superior court, and I

absolutely loved my work on the superior court. I had a ringside seat, had a replay of the human drama, and I was in full control. I was an advocate, and I really enjoyed that, and I enjoyed what we did; I thought it was important to the people we served. And it was a delightful experience, I thought.

(00:15:12)

When our names went out for the Court of Appeal—and I'm sure, like you, Arthur, we were asked if we would do it—and frankly, I gave it a little bit of thought, but I knew that you can't pass up these opportunities, these career opportunities; because if you do, you may never have the opportunity again.

So I, like you, agreed to be a nominee, if that's what the Governor wanted; but it was with not . . . We accepted this eagerly, but not without reservation, because we knew we would miss the give and take of the human contact of the trial court, where we actually dealt with on a face-to-face, nose-to-nose basis with people really affected by the judicial system—that is, the litigants. They were before us and seated in court. We made our rulings, looking at them in the eye. And it was a task which I think I know you welcomed and I welcomed, as difficult as it was. We were giving that up for the intellectual challenge of the Court of Appeal, which has its own attractions.

But it was, we thought, a mixed blessing. But in the end what made the Court of Appeal such a remarkable experience for me—it was 17 of the best years of my life, professionally speaking—and it had to do primarily not with the task, but with my colleagues: you and Richard, and then Paul, and Ken, and the rest of us. That was an opportunity, whatever positions we might have held; it was really, I thought, the core of my joy.

Arthur Gilbert: We had a wonderful time together and maintained a very close friendship throughout the years that we still have; so it's really fortunate.

Steven Stone: It was a friendship born of intellectual challenge and dialogue and trialogue, if there is such a word. Those are the kinds of things, when we're dealing with matters that are important to other people and trying to do the right thing, that I think brought out the best in us and never the worst in us; it's remarkable.

Arthur Gilbert: It's kind of funny. I recall Clay Robbins was the clerk of the court then, and you and I were unsure about the job, and I remember we were . . . Most people are like, they're screaming with joy and they're on cloud nine; and we're very reflective thinking about it. I remember Clay Robbins said something: "You guys have just been appointed to a job that people would kill for, and you look like you're going to a funeral." I remember

he said that. We laughed and got together, and then saw what a wonderful—

Steven Stone: It was also, though, the uncertainty of wanting to do it right; but we were uncertain because we really had very little guidance. I mean, we had wonderful guidance from our colleagues in other divisions, and we sought them out and we used them. I think to the extent we had success, I think a lot of it was because we were new, and we were not bound by—not so much tradition—but we were not bound by any feelings that we had of having to do things the way other people did in a division. We were freer to expand, I think, than might otherwise have been the case.

Arthur Gilbert: Under your leadership I think we really established a very unique division that was sui generis, and is to this day.

Steven Stone: Well, I was a titular leader. I think the leadership was shared by all of us, and one of the reasons we all listened to each other with respect.

Arthur Gilbert: In fact, we got you to stop smoking—I think one of the greatest accomplishments.

Steven Stone: Yes, yes, and I thought that was . . . I probably wouldn't be here but for the pressures of you and Richard.

Arthur Gilbert: I do have—

Steven Stone: Or I would be here with oxygen.

Arthur Gilbert: That was a great story, because I remember you had smoked; and during your confirmation hearing, Richard and I were sitting listening to you and you were talking, and they mentioned the things, some of your many accomplishments, and one of them was you were a chairperson of the American Heart Association.

Steven Stone: Yes.

Arthur Gilbert: Richard and I looked at each other and we said, "We have to put a stop to this right away."

Steven Stone: Times change quickly. *[laughing]*

(00:19:56)

Arthur Gilbert: But we will talk about how the division developed. But I would like to go back a little bit in your life to see your formative years—how you got into law and how you eventually got on the court. Then maybe we can talk a little more about the Court of Appeal, if that's all right?

Steven Stone: Sure.

Arthur Gilbert: Now, you are a twin?

Steven Stone: Indeed I am.

Arthur Gilbert: There is a friend of mine who had appeared in front of your brother, who was a superior court judge in Santa Clara, and said, "My god, I couldn't believe it, Steve Stone was sitting in Santa Clara." He actually thought the brother was you.

Steven Stone: Well, you raised an interesting little story when in the late '70s, my brother Peter was a, as you say, Santa Clara County Superior Court judge, and I was a Ventura County Superior Court judge. I and my family, we went north to spend a few days with my brother, and it was during the week.

So I went to work with my brother one day to his superior court, and we decided to switch. He was doing the law and motion calendar, and in the law and motion calendar you always have somewhere between 40 and 80 lawyers in the courtroom, all clamoring to be heard in a way, and have their motions heard.

Instead of my brother coming out on the bench at 9:00 in the morning, I did, pretending to be my brother—because we were identical twins, or are identical twins, and at that time we looked pretty much exactly alike, at least from a distance of 30 or 40 feet.

So I took the bench and called the first case. The lawyers came up and started arguing their case, and my brother, wearing his robe, burst out the side door, into the well of the courtroom, screaming at all of the lawyers and the audience, and pointing wildly at me on the bench, claiming that I was an impostor and he was the real judge, Peter Stone. I stood up and said, no, I am the real judge, Peter Stone. There was instant chaos in the courtroom. It was just one of those, I guess, looking back from somebody at my age, a childish trick.

Arthur Gilbert: No, it was—

Steven Stone: But it was a lot of fun.

Arthur Gilbert: That's what we do here; that's the ambiance that you have established here.

Steven Stone: It's interesting, and my brother and I always use this same hackneyed line that, both being judges, it must be a genetic defect. But our career paths . . . as a matter of fact, our lives have been not dissimilar, although we live 400 miles apart, and have since we were probably 22 years old.

Arthur Gilbert: I think you should submit to a study, the two of you, because they have all these studies of twins and how they'll be thousands of miles apart and do some of the same things and get married on the same day, and all these kind of odd things happen with twins.

An odd thing happened because the two of you were headed for another profession, other than the law profession.

Steven Stone: Yes. We were a family of immigrants; we were both born in Austria, in Vienna, and we came out during the war through the underground as Jewish refugees. We had the, what was a not uncommon refugee experience: we came to New York, and the first thing we did in New York was choose a name.

Arthur Gilbert: Incidentally, how old were you then?

Steven Stone: We were three years old. We were born in 1937. We started our exodus in late 1939, and we ended up in 1941 in Stockton, California, where we started our new lives.

Arthur Gilbert: Now, Stockton of all places, why?

Steven Stone: Yes, a dusty farm town in Central California.

Arthur Gilbert: I mean, here you are in New York, this bustling metropolis.

Steven Stone: Yeah, and our name at the time was Silverstern; that was our last name. My dad concluded quickly that it was not a name that was very easy to assimilate with, and my parents, having gone through the early part of the Holocaust, thought it was very important to assimilate. That was the ethos of the time.

So my mom and dad went to the phone book and they boiled down the name between Scott and Stone; they ended up with Stone. One of the first things we did in New York was legally changed our names to Stone, and then through the refugee organizations my mom and dad had to find work.

(00:24:53)

A job came up in Stockton, California on a ranch. My dad had been a banker in Europe, and it didn't translate well here, so he became a bookkeeper on a ranch.

My mom was a teacher, a preschool teacher in Vienna with Maria Montessori. She taught with Maria Montessori and Anna Freud in the early years of Montessori experimentation. So when she came to California she went back to school at what was then the College of the Pacific, now the University of the Pacific, and got her teaching credential in the late '40s, and began a career as a teacher in Stockton.

So we grew up in Stockton. And it was my parents' dream that we be doctors, so being relatively obedient children, we took that path and studied science. After high school we went to the University of California at Berkeley, and took premed. In our third year of premed we were accepted to medical school at the University of California, which in those years the first year was on the Berkeley campus, and the next three years were in San Francisco, at what became UCSF.

So we both entered medical school at the end of our junior year; so our senior year at Berkeley was also our first year of medical school. All the classes were on the Berkeley campus. There were a couple of exceptions. We went to San Francisco, but it became clear to both my brother and I that it was not something we really wanted to do, to spend our lives doing.

We had worked in a hospital as part of our education—not a formal education, but we worked at the San Joaquin County General Hospital in summers, at night in the emergency room as well as other wards. When I was in Berkeley—we came from rather modest financial backgrounds—I worked at Berkeley and I worked at Cal hospital, which was on the campus.

It became clear to us during our first year in medical school that we weren't at all sure this was our life's work, so we looked at doing some other things. At the end of our first year, we sort of crossed the street and simply went to Hastings and took up law. Neither of us had ever met a lawyer before, but we thought that it was a profession in which we worked directly with people, working with people's problems, not dissimilar from medicine in a way. But that's what we decided to do, and we did it, to the temporary chagrin of our parents.

The only scary thing about it, really, was that we worried about the potential wrath of our parents, which never really happened.

Arthur Gilbert: Now, did the two of you consult together, or "I'm not doing this, so if you did this—"

Steven Stone: Yeah, we did this together.

Arthur Gilbert: This was a joint decision?

Steven Stone: Absolutely, yes, because until that time we had lived together completely at Berkeley. Although we weren't in the same room, we were at Bowles Hall, and we had an apartment together our fourth year at Berkeley. Then my brother got married, and after he was married, and during our first year at Hastings, we lived in the same apartment house in San Francisco, for goodness sakes. Then our lives started spreading out. But we sat—because in law school it's alphabetical how you sit—we sat next to each other for three solid years in law school.

It was only after law school that we really separated geographically. My brother stayed in Northern California and I came to Southern California.

Arthur Gilbert: Now that's really quite an amazing story. In law school was there any confusion about the two of you answering questions because you were sitting next to each other?

Steven Stone: Yes, we were, because . . . Occasionally the professors would come up with their usual hypothetical question to terrorize the students with, and they would call out "Mr. Stone," and one of us would usually say, "Which Mr. Stone?" And of course we learned quickly that was the wrong thing to do, because the professor would say "You." There was occasional confusion, but it was always fun.

I think my brother and I . . . I can't speak for him, but—yes, I can, I can speak for him—we enjoyed the experience. In a way it set us apart and gave us something to talk about to the girls and that sort of thing. We always had fun; we were best friends, and we still are.

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As a matter of fact, in 48 hours we're going to go up and meet my brother at Lake Tahoe, where we're going to take a week's vacation together.

Arthur Gilbert: Terrific. I can't help but ask this question: Did you ever switch off and appear at each other's dates?

Steven Stone: No.

Arthur Gilbert: Come on, are you sure?

Steven Stone: No. *[laughing]*

Arthur Gilbert: I've always thought about that. One twin has a date and then the other twin would go in that place.

Steven Stone: No. We would fake it once in a while, but never on a date. I think we were too—

Arthur Gilbert: Too much integrity, shall I say?

Steven Stone: No, no, you can say that, but it wasn't the integrity thing, it was the insecurity of dating that we didn't want to. *[laughing]* There were too many ways to mess up a date; we didn't want to add one. *[laughing]*

Arthur Gilbert: You didn't want to add one. What I recall, I just have to throw this aside in, and that is, during our time together on the court,

all of us, whenever any of us had a medical problem, we would always go to you for advice, so that medical school . . .

Steven Stone: And you always got what you paid for.

Arthur Gilbert: . . . had a lingering effect.

Steven Stone: Indeed it still does, because I have maintained my interest in medicine. When I was a lawyer I emphasized a medical-legal practice—both in medical malpractice cases, as well as the years went on, I came to represent doctors in their business matters and their family matters.

Then in the trial court I always looked forward to dealing with medical-legal matters as they came through the courts. In the Court of Appeal I always enjoyed medical-legal matters, including the first DNA case, *People v. Axell*; I took great interest in that case, and spent a lot of time doing that.

Arthur Gilbert: I remember we had a lot to read on that; I was on that panel with you.

Steven Stone: Yes, you were.

Arthur Gilbert: And that was the first DNA case in California, a very significant case that you wrote. We had to come up to speed—

Steven Stone: It was one of the longest. Since it was the first case, I felt that it was important to lay out the scientific background in lay terms to the best that I could so that people reading the opinion could understand what DNA was all about and why it was important, and why its identification process was sound enough so that people could make life and death decisions based on DNA scientific evidence. And it was a challenge, and it was a particular challenge that I welcomed.

The research attorney I worked with on the case came up to speed quickly. She had been married to a doctor, and had some basic knowledge of basic science to give her a start on it. And it was a fascinating experience. I remember taking a week's vacation in Palm Springs and bringing all of the scientific material with me, and sitting poolside poring over DNA studies and transcripts of experts; it's a fascinating case.

Arthur Gilbert: And trying to bring us up to speed on it, your colleagues up to speed on it.

Steven Stone: Well, that was the hopeless task. Just kidding, Arthur, just kidding. *[laughing]*

Arthur Gilbert: So is there anything else in your childhood that you would like to . . . that you think might be significant?

Steven Stone: I had what I think was a typical American upbringing, but it was different because we were immigrants. Because of the horror of the Holocaust, it was, as I think I said before, important for my parents that we assimilate, because they saw firsthand what happened, what can happen to people who are different—whether it be by race, religion, culture, or anything else. But being different, there was a penalty in Europe at the time; that penalty was life and death.

So they tried to minimize our differences and maximize our similarities with that of our culture. It was an interesting life in that respect. We wanted to honor and cherish our Jewish heritage, yet we also wanted to protect ourselves from the dangers of being marked again.

(00:35:00)

It was certainly much more interesting and difficult for my parents than it was for my brother and I. We were children, what do we know? So it didn't really, I think, impact us except subliminally at the time. It wasn't overt; it was covert, in a way. But it I think launched in me or instilled in me a love of this country that I think native-born Americans don't really have. I think native-born Americans tend to take their freedom for granted, and we never did. It's a marvelous country, and when I look back on my life, only in America.

Arthur Gilbert: That sensitivity has shown through your work as a judge, certainly.

Steven J. Stone: It has certainly influenced me. Being a judge in a judicial process is, frankly, more than dispute resolution. There are a number . . . one of many judicial philosophies is that judges and jurors merely resolve disputes. I disagree with that. It goes far, far deeper than that. The judicial system, in my view—in this country, especially—is the last bulwark between the people and a potentially oppressive government. Make no mistake; I'm not a conservative in the conventional sense of keeping government out of our lives. I believe in keeping a separation between government and ourselves in terms of oppression—not necessarily regulation.

I know firsthand what can happen in a country in which the government is all powerful and too powerful, because that was the Holocaust. I think the people are entitled to have a screen between the government and themselves, and that's what the judicial system is. They are unelected; they're accountable, but being unelected, in a sense they don't have to respond to a mob, to what can be an out-of-control majority. They are there with the law and the Constitution, using those as weapons against a potentially oppressive government.

I think that's very important. I think we have to keep that in mind. I treasure that and I value that, and I really, really have welcomed the opportunity to be a part of that protection of the people, and I think my experience as an immigrant heightened that.

Arthur Gilbert: So after you graduated from law school, what happened?

Steven Stone: And I really did graduate from law school, Arthur.

Arthur Gilbert: And you actually passed the bar.

Steven Stone: And I actually passed the bar. I still find that hard to believe.

Arthur Gilbert: Now, when did you take the bar exam?

Steven Stone: I took the bar in 1961, and passed and took the oath. I think it was in early January of 1962 that I took the oath in Los Angeles, had the mass swearing-in at the Dorothy Chandler, which had just opened.

Arthur Gilbert: That's right, my gosh. Now they're talking about renovating it; time goes by, doesn't it?

Steven Stone: Yes, as I renovate myself, they are renovating the Dorothy Chandler.

Arthur Gilbert: Wow. So now your roots are in Stockton.

Steven Stone: Yes.

Arthur Gilbert: You take the bar . . . why did you take the bar in Los Angeles rather than San Francisco?

Steven Stone: Well, I took the bar in San Francisco.

Arthur Gilbert: Oh, I see, you got sworn in in LA.

Steven Stone: Right, I was sworn in down here, but the bar was in July. I was looking for work, as we all did. I was offered a job in San Francisco, but I was relatively newly married and we decided that we would prefer to be away from a metropolitan area and raise a family in a small community, if we could.

I loved San Francisco, but I had been living there for three years—actually for two years. I commuted the first year from Berkeley, and I was offered a job at a large law firm where I had been clerking while I was in law school. But we thought we would look for something elsewhere.

(00:39:59)

I preferred Northern California, but I didn't find a place or a job and wasn't offered a job in a situation that I thought was good.

But after I took the bar, there was a posting at Hastings, the law school I went to, by a lawyer who was looking for an associate in Southern California. I had only been in Southern California once before, so my then-wife and I decided we'd take a trip to Southern California and interview for the job. We thought we had an opportunity for a free dinner, perhaps, and look around Southern California for a couple of weeks and see what it was like.

So we came down, and I interviewed with a lawyer, Ed Beach, in the small community of Santa Paula, which I found to be very attractive at the time. But we didn't look at it seriously; we went back up north to continue the job search as we were waiting for the bar results.

Then I received a call from Ed Beach asking to come back and reinterview, because he was serious about hiring me; and I needed to get serious about it. So I went down and we met again, and he offered me a job, and my wife and I talked about it and we took it. We liked him very much. It was an opportunity. He was a sole practitioner, and it was an opportunity to start a law firm. We liked the town of Santa Paula very much, and thought it would be a good opportunity for us, and a place to settle down.

So we came in September. We came to Santa Paula, with a little trailer behind my Hillman Minx convertible.

Arthur Gilbert: You know I had a Hillman Minx?

Steven Stone: You had a Hillman Minx?

Arthur Gilbert: I cannot believe this.

Steven Stone: That makes two people in the United States.

Arthur Gilbert: Maybe we're twins. *[laughing]*

Steven Stone: *[Laughing]* There were triplets; my mother never told us.

Arthur Gilbert: Oh, my heavens. How many people have a Hillman Minx?

Steven Stone: I had a 1959 Hillman Minx convertible, and the color was white, called Moonstone, and my brother had a light blue Hillman Minx sedan.

Arthur Gilbert: Oh, my goodness, no wonder there's an affinity.

Steven Stone: So anyway, I started practicing law actually in September, three months before I was admitted to the bar, but doing things that you could do as a law clerk.

Arthur Gilbert: I think the statute of limitations may have run.

Steven Stone: I certainly hope so, especially for malpractice. *[laughing]*

Arthur Gilbert: So what kind of practice did you have?

Steven Stone: It was a general practice. We did absolutely everything. There were four, five lawyers in town, maybe four. It was a town at that time of 12,000 to 14,000 people, and we did wills and estates, we did transactions, we did ranch sales, land sales, business sales.

Arthur Gilbert: Cattle rustling? *[laughing]*

Steven Stone: *[Laughing]* We did personal injury work. Ed Beach had developed a reputation as a personal injury lawyer, had sued the railroad very successfully on a number of occasions, and all kinds of . . . did a little workers' comp.

Also, Ed had a practice representing Mexican Americans. Ed spoke Spanish very well, and so we had a significant clientele that was Mexican American. I can't tell you how much I enjoyed that aspect of the practice. The Mexican-American community was a joy to me. They were wonderful people. I didn't speak Spanish and I've never picked it up very well, but it was a wonderful small-town practice in those years. I could walk to work, and did. We had a small office; it was terrific.

We grew over the years. We grew to have five lawyers by the time I went on the bench, and I practiced for, I think it was around 14 years.

Arthur Gilbert: So you stayed with Ed Beach during that entire time?

Steven Stone: Stayed with Ed Beach. It became over time . . . it started out with Edwin Beach, and then Beach, Stone & Smith. Then Ed went on the bench in 1969, and it became Stone, Smith & Drescher. Then it became Romney, Stone, Smith & Drescher, and it went on in various permutations and combinations until after I left in 1976, when I was appointed to the superior court.

Arthur Gilbert: So now you were married, you had a couple of children.

(00:44:55)

Steven Stone: Yes, I was married in 1960. We had two children. They were born in 1962 and 1964—a boy and a girl, Brian and Julie. We were divorced in 1971, and I eventually remarried or married

again in 1988 to Kate McLean, and that marriage has been totally and utterly successful.

Arthur Gilbert: And your ex-wife—

Steven Stone: And now I have grandchildren.

Arthur Gilbert: Yes. One of your daughters is in practice as a lawyer?

Steven Stone: Yes, my daughter Julie is a lawyer in San Francisco, and she has three children, who are in town as we speak. They live up in Oakland, but they're visiting down here now.

Arthur Gilbert: And your son is quite an interesting—

Steven Stone: My son is a symphony orchestra conductor, and he is a professor at the University of Delaware. He got his master's and Ph.D. in conducting from the Peabody Conservatory at Johns Hopkins. He is enjoying what I think is a successful career there.

We have three wonderful grandchildren, and I have also a stepgrandchild, who is equally wonderful.

My ex-wife, Katherine Stone, she went to law school after we divorced and became a very successful lawyer, and lives on the beach with her husband now. And we visit each other often; we travel together.

Arthur Gilbert: In fact, didn't you author some articles with her?

Steven Stone: Yes, she and I did a couple of articles on matters of mutual interest involving the law. So it has been an interesting, eclectic life.

Arthur Gilbert: So now, how did you get on the court, how did that happen?

Steven Stone: Barely. *[laughing]*

Arthur Gilbert: *[Laughing]* "Barely"—we all can say that. But I mean, did you have any aspirations or thoughts about being a judge?

Steven Stone: Not really. When I was practicing law in the '60s and early '70s, the general feeling that I had, and the tradition that I had thought, was that people became judges who were the lions of the bar, who came from what I would call silk-stocking law firms that had family connections, political connections, and were politically active in what I thought was generally the more traditional causes—conservative causes, if you will, under today's standards.

I know that, for instance, the ABA, the American Bar Association, was a generally conservative organization in those

years. Now it's considered relatively liberal—if you use those conventional labels, which I don't like but can be useful.

So I had no aspirations to be a judge, because it appeared to me that Jewish immigrants who were practicing lawyers in the small towns, that was not the thing of which judges were made.

However, in 1974 when . . . but I was active in Democratic politics at rather low local levels; not in terms of financial support—I never was a financial supporter of any political causes of any sort—but I was active other than financially. I was on committees, I helped get out the vote. I helped Democrats get elected. I helped Democrats who didn't get elected.

But Jerry Brown became Governor in 1974 . . . And I was a lawyer who represented a local gentleman, Omer Rains, who became a state senator, and I represented him and his campaigns as a lawyer. He had two campaigns for the state Senate; he won both. He had to fend off lawsuits from Republicans who had campaign lawsuits, and I defended Senator Rains in those matters, so I came to know politicians. He would seek out my advice from time to time in legal matters involving the Legislature. I went to Sacramento a few times to meet with him and consult with him. He became chair of the Senate Judiciary Committee.

A new position opened up in Ventura County in 1975, and Senator Rains asked me if I had an interest. I said I would have to think about it, because I'd never thought about being a judge.

(00:49:58)

I thought about it and discussed it with colleagues at the bar, and I decided after six or eight weeks to give it a shot. So I told Senator Rains of my interest, and he conveyed that to the State Bar and to the Governor's Office. And the people who made the decisions in those days I was interviewed . . . We didn't have the Jenny Commission at the time, so I was interviewed by the Board of Governors of the State Bar, and went to San Francisco and did some interviews there.

I solicited support from the Ventura County Bar Association and some of the leaders of the bar and some of the litigators. Eventually I was appointed in 1976, and I took a seat in early September of 1976 on the superior court, and served in that capacity until 1982, when I was appointed to the Court of Appeal. I served in all capacities in the superior court, juvenile court; and I think I met you, Arthur, when you were doing juvenile court work on the Los Angeles Superior Court. We met at seminars and workshops that were held; we met at various

workshops. We didn't know each other well until we were both appointed to the Court of Appeal.

Arthur Gilbert: All right. Now, your brother was also appointed to the superior court.

Steven Stone: Yes, he was.

Arthur Gilbert: I just thought, twins, both on the court, how did that happen?

Steven Stone: Interestingly enough, he took the bench in Santa Clara County six months to the day after I took my seat on the superior court of Ventura County.

Now, he went a different route. He knew politicians and he, too, was active in what we like to call humanistic causes and Democratic politics. He was a friend of Norm Mineta, and remains a good friend of his to this day. Norm Mineta at the time, I believe, was a congressman, and he knew the local politicians. Their names escape me; I know them too, but not very well.

Who was that big fellow, very liberal guy in the Assembly, always had his face on TV? The last I knew of him he was fighting for a law promoting self-esteem.

Arthur Gilbert: Oh, naturally.

Steven Stone: A very controversial guy.

Arthur Gilbert: Yes, yes, I know exactly what you mean, I can see him.

Steven Stone: A big fellow; a big, burly guy.

Arthur Gilbert: Yeah, yeah. In fact, *Doonesbury* had so much fun writing . . . isn't that amazing?

Steven Stone: Right. He was a friend of my brother, along with people you knew: Marc Poché.

Arthur Gilbert: Yes, that's right.

Steven Stone: The fellow from Boalt, what was his name—his wife got him in trouble over the years.

Arthur Gilbert: Halvonik.

Steven Stone: Yeah, Paul Halvonik.

Arthur Gilbert: Paul Halvonik.

Steven Stone: Very smart guy.

Arthur Gilbert: That's a story. Someone has to do an interview with him.

Steven Stone: Someone has to interview him.

Arthur Gilbert: Has to interview him, absolutely.

Steven Stone: But anyway, my brother knew those folks and knew Rose Bird, so he was . . . I talked to my . . . My brother was thinking of running for Congress. Norm Mineta was trying to persuade him to do that, but he didn't really want to be an elected politician. My brother at the time was the city attorney of San Jose and it was a position of some influence, but I talked to him and he saw how much I was just so much enjoying my work on the bench. So he decided to give that a shot. And he was appointed—there you have it—and I swore him in.

Arthur Gilbert: Oh, my goodness, how nice. That must have been interesting.

Steven Stone: Well, it was interesting because we looked much alike at that time. There were a lot of photographers. As I had him raise his hand wearing a robe and I raised my hand . . . where we're facing each other. And those photographs were all over the press, and as a matter of fact it was either *People* magazine or *Us* magazine called us up one day and wanted to do a piece on us. And they hired someplace in a warehouse with a bunch of mirrors and they did a daylong—

Arthur Gilbert: Did they do the Groucho Marx—

Steven Stone: They did a daylong photo shoot of us.

Arthur Gilbert: Do you remember that scene in the Groucho Marx movie where he's dressed in—Groucho is dressed in—the nightgown and someone else has a nightgown imitating him and he tries to make all these . . . He's looking in a mirror, but it's not a mirror.

Steven Stone: That's right, and that's pretty much what they tried to do, but it was never published.

Arthur Gilbert: It wasn't?

Steven Stone: Somehow it ended up on the cutting-room floor.

Arthur Gilbert: My goodness, it's still not too late. Maybe we can put something together.

Steven Stone: I think the film has probably deteriorated.

(00:54:56)

Arthur Gilbert: Right, okay. So you're on the superior court. Now you've told us a little bit already about the superior court; you've had all

these different assignments. And I do recall that you were awarded Trial Judge of the Year by the Ventura lawyers.

Steven Stone: Yes. I loved my trials. I got that award twice in the six years I was on the bench. As you know, Arthur, judges tend to get honored for this and honored for that, but those were two that I valued because these were the people who tried cases—and after all, the trial, that's what the trial court is all about, trials. We say everybody is entitled to their day in court. That's their day in court, the trial, whether it's criminal or civil; that's what it's all about. And to be honored by the lawyers who represent those people who have their day in court was important to me. It was something that I felt warmed the cockles of my heart.

Arthur Gilbert: Well, not to embarrass you, but you were really considered one of the premier trial judges in the state; you had that reputation. Everybody loved trying cases in front of you—didn't matter what side they were on—and it was a reputation that you kept throughout your judicial career.

Steven Stone: Well, interestingly, you and I share some . . . we shared some viewpoints—I like to call them attributes. And one of the attributes I think you and I share and that I'm proud of and I think you should be too is our sense of humor. I think you and I, Arthur, are aware . . . we have a sense of the absurdity of some things that happen in life. I think our ability to see the ironic side of that and, if I might, the humorous side of that . . . And I think it comes from similar heritages, from families that have struggled over generations to see those . . . And to understand that gives us, I think, a better understanding of the human condition and makes us better able to deal with it in a neutral way, to see that justice was done. I think the use of humor, which you have written about and very eloquently, I think we share that. And I think the gentle use of that you and I both have done, both in the trial courts as well as the Court of Appeal; I think has served our constituency well and perhaps served us well—certainly in our personal lives and our personal attitudes.

Arthur Gilbert: What I've noticed too about you is it was never at the expense of a litigant or anyone, so it defused the tension in the courtroom. And it's something that I think has been sort of inherent in this division. I think people really enjoyed arguing in front of you and presenting a case no matter how difficult it was, because with you it was not a reign of terror, but it was an open, frank discussion about things.

Steven Stone: Well, I've always thought that both on the trial court and in the Court of Appeal, frankly, it's a team sport, and it's a collaborative effort. On the trial court, I felt that every trial was teamwork and I was just the quarterback; but to be successful the entire team had to work well together. My job was to see that we all worked together well for a common goal. And the

same on the Court of Appeal—it's a collegial court, it's designed that way to maximize the best of three justices on every case and to take the best of each of the three of us, no matter who was the author of the case. But it had to. I think the goal was—and I hope we had some success at it—that it was the best of the three of us, that the three of us could do. It wasn't any given opinion—it was the product of three people and not the product of one person.

Arthur Gilbert: Now, when our division was first created I think we got a firsthand example of your love of the trial court, because you sat on the trial court for almost a year.

Steven Stone: Well, I did.

Arthur Gilbert: But of course we didn't have a chambers, did we? We didn't have a building.

Steven Stone: We had no real place to work. We had three small offices in a building across the street from the Ventura County courthouse.

Arthur Gilbert: But we didn't get to those buildings for a while, did we?

Steven Stone: No, no. We were the wheels of justice; we operated out of our cars.

Arthur Gilbert: That's right, for the first year.

Steven Stone: We had a couple of hearings a month and we would have those hearings wherever we could, whether it was in a courtroom in Santa Barbara or a courtroom in Ventura or San Luis Obispo or the Board of Supervisors chambers—wherever we could hold court, we did.

(00:59:53)

Arthur Gilbert: Now I got a chambers down in Los Angeles, and so we maintained some kind of a presence in a court facility while we were looking for a building, and that kind of . . . establishing ourselves.

Steven Stone: That's true. We were truly orphans for a year or so; I don't remember how long. And then when we finally got office space all we had was some small offices, a library in a clerk's office. And we operated. You're right; I continued to sit on assignment in the trial court.

Arthur Gilbert: And do your work on the Court of Appeal.

Steven Stone: And do my work on the Court of Appeal as we went forward. And we really never had a courthouse until we had this location in 1994, which was 12 years after we were invented.

Arthur Gilbert: One thing I do recall—if I can just interject this—when we finally got established as our division in a real building and we had fairly nice chambers, the chambers were comfortable; they were offices, but they were nice. I remember I said something to you about, "Steve it's time to cut the umbilical cord." And you said, "Next week I'm leaving the superior court." I remember that.

Steven Stone: That was interesting, because I stayed and I was trying cases; and then as we got busier and got into the rhythm as a Court of Appeal, I would go back about three or four times a year for a few days and try a few cases. I did that for a couple of years. And as you might recall, Rose Bird, our then–Chief Justice, felt very strongly—at least my understanding, and we both knew Rose I felt rather well, professionally, anyway. . . . She believed in a classless society. She did not believe in a separation or hierarchies of any sort. That was my take on Rose. She thought about equality in everything.

And in my conversations with her, I indicated to her on a number of occasions that I felt strongly that appellate justices should sit occasionally and do trials so they don't forget, they don't get locked up in their ivory tower and forget how life in the trial court really is. The trial judges should go to the Court of Appeal periodically so that they could understand the work and the mechanics as well as the interplay between appellate courts and trial courts and how they do things.

Rose believed in that, and as a matter of fact she brought municipal court judges over and superior court judges of all stripe to sit on the Supreme Court from time to time, whereas historically only presiding justices of the Courts of Appeal sat on assignment to the Supreme Court.

So I thought I had her full support for sitting on the trial court periodically. But one day she called me up and she said, "Steve, we really need to have a separation between the courts. So I would appreciate it if you wouldn't go back and sit on the trial court."

I just said, "But Rose . . ."

Arthur Gilbert: I didn't know that.

Steven Stone: " . . . I thought we agreed. I thought we had some agreement about these things." And she said, "No, I would rather you didn't." And I said, "Okay."

Arthur Gilbert: I didn't know that; how interesting. Now, a number of superior court judges sat by assignment with us.

Steven Stone: Yes.

Arthur Gilbert: In fact, she had that process.

Steven Stone: She had that and she did that a lot. So I got a mixed signal on that one. Maybe somebody complained, some disgruntled trial litigant—"What's he doing?"

Arthur Gilbert: So anyway, let's talk about our division a little bit. I do recall this, some of the people smoked in the division, and Richard Abbe and I were strong antismokers. And maybe we'll just talk about this later; we got you to stop smoking.

Steven Stone: Yes, you did.

Arthur Gilbert: You were very sensitive about it. And sensitive I don't mean personally, but I mean towards us. When we'd have a conference in your office, you remember what you had? You had a fan, you had a little fan on your desk, and you would blow the smoke away from us so we wouldn't have to be exposed to it.

Steven Stone: Yeah. I knew I was being objectionable and I wanted to reduce that as much as I could.

Arthur Gilbert: And we just might mention briefly that I recall the trip you and Richard took to Nicaragua—Richard Abbe, our colleague. Didn't you go to Nicaragua with him?

(01:05:04)

Steven Stone: I didn't go to Nicaragua. He went to Nicaragua and I went to Nicaragua separately with a mutual friend.

Arthur Gilbert: Okay. The three of us went to Cuba.

Steven Stone: The three of us went to Cuba.

Arthur Gilbert: In 1991, something like that?

Steven Stone: It was in either 1990 or 1991.

Arthur Gilbert: 1990 or 1991?

Steven Stone: Right.

Arthur Gilbert: At a time when it was pretty difficult to get to Cuba. But we got there through the government sanctioned it; it was a study group.

Steven Stone: There was a loophole in the State Department rules, which permitted us to go to Cuba to take a look at their legal system and their medical system because we went with a bunch of docs.

Arthur Gilbert: We went with some doctors, some teachers, and a journalist, and some lawyers.

Steven Stone: Yes.

Arthur Gilbert: That was really quite an interesting trip. We had a wonderful time.

Steven Stone: We had. That trip showed, I think, a small aspect of the bonding the three of us had over the years as what we sometimes call the orphan division of the Court of Appeal because we didn't sit in the same building with the other six divisions.

Arthur Gilbert: And we're going to keep it that way. *[laughing]*

Steven Stone: *[Laughing]* We're going to keep it that way. We even made an effort—at least I made an effort, and I think you guys felt the same way—to be our own district. We wanted to separate completely and be our own district. Well, with hindsight that was probably foolishness.

Arthur Gilbert: Yeah. I was opposed to that.

Steven Stone: Oh, you were opposed to that.

Arthur Gilbert: Yes, I still am.

Steven Stone: So you were the one who torpedoed that.

Arthur Gilbert: Yes, I hope so, and I hope I succeeded.

Steven Stone: And wisely so.

Arthur Gilbert: I think wisely so. So I think we're good to be a part of the Second District. So we had this division and we sort of formed our own kind of atmosphere.

Steven Stone: Yes.

Arthur Gilbert: We never dressed up, did we?

Steven Stone: We never dressed up. We took a walk to the . . . we walked on the beach and we rode our bikes periodically from Santa Barbara to here, or from here to Santa Barbara. You used to stay overnight in Santa Barbara at Richard's house when we had sessions up there, and we did a lot of things together that we enjoyed as friends and not just professional colleagues.

Arthur Gilbert: We would have oral argument up in Santa Barbara and then we'd get on our bikes and ride down to Ventura.

Steven Stone: Yup.

Arthur Gilbert: Now, here's an interesting point where there was some legislation involved. We were initially supposed to be the Santa Barbara Division.

Steven Stone: They called us that in the legislation.

Arthur Gilbert: Right. In fact, our chambers were supposed to be in Santa Barbara.

Steven Stone: Well, there was a division of . . . you say they were supposed to be. Nowhere in the legislation did it say where they were.

Arthur Gilbert: No, it didn't.

Steven Stone: It was just called the Santa Barbara Division.

Arthur Gilbert: Okay. We were looking for housing in Santa Barbara initially.

Steven Stone: We did, and we didn't find any.

Arthur Gilbert: Well, we found some, did we not?

Steven Stone: I think we felt that they were inadequate.

Arthur Gilbert: Well, also they were . . . the rents were very, very high there.

Steven Stone: The rents were high and they weren't . . . My recollection is they weren't big enough; they just couldn't . . . it wouldn't last. And I wanted to stay, I preferred to stay, in Ventura in a way, although I love Santa Barbara and I would love to live there. I think as time went on, I think you were a little loath to go to Santa Barbara; you're from the west side of Los Angeles, from the Santa Monica area, the Palisades. You had a whole life there—I mean, a whole life.

I remember having a chat with you and Barbara, and I could see that moving to Santa Barbara put Barbara, your wife's, teeth on edge a little bit. It wasn't something that would . . . but it was a long shlep. I know that Richard Abbe would have liked to have had the court in Santa Barbara, because he moved to Santa Barbara and he loved Santa Barbara—and what's not to love, except for the price?

Arthur Gilbert: Now, I recall you went to the bar associations and asked them if they really cared where our divisions were and we talked to the presidents of the Santa Barbara bar and the Ventura bar.

Steven Stone: And the San Luis Obispo bar.

Arthur Gilbert: And said, "Hey, if we have our offices . . ." And do you recall what their response was?

Steven Stone: Nobody cared.

Arthur Gilbert: Nobody cared. They said, "Go anywhere you want."

Steven Stone: Absolutely. We looked at the lawyer population of the three counties and interestingly enough, there were just as many lawyers north of Ventura as there were south of Ventura.

(01:10:04)

Arthur Gilbert: In fact, weren't there more lawyers in Ventura?

Steven Stone: In Ventura and Oxnard. And now it's enormous, the wait is enormous, the South Ventura county—well, Ventura County alone has about 1,500 lawyers, which is way more than what's in Santa Barbara and San Luis. It's just the nature of the growth pattern of Southern California. And you know probably better than I, in the last eight or nine years what the weight of caseload is, in terms of the three counties. I don't know the answer to that; I don't know whether it's maintained that or not.

Arthur Gilbert: We asked the legislators and they didn't care where we are.

Steven Stone: No, nobody cared.

Arthur Gilbert: We were able to save the state a million dollars in rent over a 10-year period by . . .

Steven Stone: . . . by building a place here. I continue to believe that . . . well, I think this courthouse, the courthouse where this interview is taking place, has been a major contributor to a piece of California—that is, Ventura on the coast—to maintain the value, if I can put it that way, of a way of life in California that's rapidly disappearing and I think but for this courthouse would not have the kind of life that it does now. And just on a personal basis, our ability here in working in this courthouse to walk down to the beach, to mingle with the people on Main Street here in town, there's something, there's a little left of *To Kill a Mockingbird*—ambiance if you will—that is so missing and disappearing. And I regret that; I sound like an old guy, I suppose, but it has some value that I think this division has kept and continues to keep under your leadership.

Arthur Gilbert: Now, you were instrumental in bringing this whole thing about and getting this building. You worked very hard for this.

Steven Stone: We worked hard for it because we wanted it, and we wanted it badly. We thought it was important for the work of the court and important for the community. Every courthouse is a major part of a community. If you look back over history, it's that town square where there were town meetings, where decisions

were made that involved the citizens; and this courthouse, I believe, plays no small part in that in our area.

Arthur Gilbert: We used to have our oral argument only in Santa Barbara, and we were called initially the Santa Barbara Division.

Steven Stone: Exactly.

Arthur Gilbert: Do you recall why we could only have our oral arguments in Santa Barbara?

Steven Stone: Because we felt we ought to, simply because we were the Santa Barbara Division. Maybe there was more to it.

Arthur Gilbert: Oh, no, that's right; but there was another factor. And that was, as I recall . . . and you brought about a change here that I just happened to recall during this interview. And that is, we were required to hold at least four hearings a year in Santa Barbara, according to the statute, because we were called the Santa Barbara Division, and there was a statute that required . . .

Steven Stone: There was an interpretation.

Arthur Gilbert: . . . that we have to meet at least four times a year in Santa Barbara. Now, when we didn't have a courtroom, hey, we didn't care; and then when we established this courthouse, you got some legislation changed.

Steven Stone: Yeah. I think there was more to that. I think a Court of Appeal had to meet at least four times a year. We met in Los Angeles once a year because there was some concern.

Arthur Gilbert: Now we could do that, but I think we had to meet in Santa Barbara.

Steven Stone: Four times a year.

Arthur Gilbert: Four times a year. And you had the legislation changed. You called the legislators and they said . . . and a statute was changed to allow us to have hearings in any of—regular hearings—in Ventura or any of the three tri-counties.

Steven Stone: Any location in the tri-counties.

Arthur Gilbert: Yeah.

Steven Stone: We could do that. And we did feel that it was important that we conduct court, we hold our court, out in other areas of our constituency. We had a lot of fun doing it, and I know that you continue to have not just a lot of fun, but a lot of good, professional collegiality with the members of the bar in what other people might think are the outlying areas. Other Courts of

Appeal are doing that now, I understand. They go to remote locations from time to time. And of course the Supreme Court has always done that with their meetings in Los Angeles, Sacramento, and San Diego.

Arthur Gilbert: We are encouraged to do that by the Chief Justice Ron George, to have outreach to make the court as visible as possible.

(01:15:12)

Steven Stone: As a matter of fact, I think you made arrangements, Arthur, to have the Supreme Court sit in this very courthouse.

Arthur Gilbert: Yes, that's right. I remember the Chief Justice calling, and he called me and he says, "I have some good news and bad news." And I said, "What's the good news?" He said, "The good news is we're going to hold our hearings in Ventura for your new courthouse." And we said, "Gee, that's wonderful."

"And the bad news," he says—"three of your cases are on the calendar." *[laughing]*

Steven Stone: That's interesting.

Arthur Gilbert: It was true. *[laughing]*

Steven Stone: So of those three, Arthur, how many were affirmed and how many were reversed?

Arthur Gilbert: I think I recall one was reversed seven-zip; I forgot about the other two.

Steven Stone: Well, I have a recollection that the first case that this division had in the California Supreme Court was reversed seven-zip.

Arthur Gilbert: That's right.

Steven Stone: It was a criminal case.

Arthur Gilbert: It was a criminal case and it was my case. It was a very liberal Supreme Court case—I mean, a liberal Supreme Court. And the case had a more conservative and, if you will, holding, that we all agreed upon. And then a subsequent Supreme Court changed that decision and came back to our original idea.

Steven Stone: Everything that goes around. The last case I had as a justice on the Court of Appeal that went to the Supreme Court was reversed seven-zip. It was a case where we held that in a construction defect case if it's bad enough you can get emotional damages.

Arthur Gilbert: Oh, yes; oh, yes.

Steven Stone: We got killed on that. *[laughing]*

Arthur Gilbert: I knew I shouldn't have listened to you on that case.

Steven Stone: That was the last case I had in the Supreme Court.

Arthur Gilbert: Yeah, that was your parting shot. Now, you mentioned the DNA case that you authored, and I know you've done some very significant cases. Anything else that stand out in your mind that you—

Steven Stone: Well there were a couple of cases that I think were important and that you played a major role in. Because at the time, I did the first drafts on those two cases. I was uncertain as to what to do and you, Arthur, helped me come to what ultimately was and now obvious the correct decision. One of them was a case called *Collier vs. Menzel*, in which some homeless folks who gathered at the large Moreton Bay Fig tree in Santa Barbara wanted to vote and the county clerk said, "You cannot vote because you don't have a permanent street address." In other words, you needed to have a place with four walls and a ceiling on it in order to be a voter.

In the first draft of the case, which was assigned to me, I went the other way, and I was very uncomfortable with it. And you came in and said, "You can't do this, Steve." I said, "You're right, Arthur, I can't do this." We rewrote it the other way so that anybody could vote who could identify a place where they could be found to provide the voting materials, and that's all you need to vote. I think it's important; I think it's an important principle. And you were a big help to me in that case, and you should be proud of that.

Arthur Gilbert: Well, thank you. I have to just tell you, this case that you mentioned, just recently a lawyer called me and that case was prominent in a major decision about voting in one of the local cities in L.A. County. So I thought you'd like to know that your legacy lives, on because this case . . . All our opinions are collaborative efforts, and we all realize that; but this was a really wonderful decision that you wrote. I mean, we talked about it, but you crafted it, got it together; and so it still has an important effect on California law. So what's the other?

Steven Stone: Another one was *People v. Boulas*.

Arthur Gilbert: Oh, yes. I remember that one. *[laughing]*

Steven Stone: Yeah, that was a case in which members of the district attorney's office in Santa Barbara as well as members of the sheriff's office in Santa Barbara were dealing with some narcotics cases. And they had arrested a person by the name of Boulas—and in an effort to get him to roll over on his suppliers and the people who dealt the dope to him, tried to persuade

him out of the presence of his lawyer that his lawyer was also a doper and was involved in the business and that Boulas should roll over on the lawyer as well some other people.

(01:20:08)

Now, this was done out of the presence of his lawyer, and we held that that was a huge no-no. And the district attorney's office . . . or let me put it this way, the government can't get away with that kind of an intrusion on a person's right to counsel. What should we do about it? And that was the debate. And we were going to do something about it, but the debate was how far to go with it. We felt that the intrusion was so significant and the lesson had to be so carefully learned that we dismissed the case.

Arthur Gilbert: Before it got to trial.

Steven Stone: Before it got to trial. It was a person who had confessed in this process to law enforcement that he was a doper, or guilty of something. But we dismissed it and turned him loose because we felt it was such an intrusion by the government that in these very unusual cases—which come up very rarely—that the only appropriate sanction was to dismiss the case.

Arthur Gilbert: Richard Abbe dissented in that case.

Steven Stone: I don't remember his dissent.

Arthur Gilbert: Yes, he did; I remember quite dis—. I remember his dissent.

Steven Stone: I haven't read it in a while.

Arthur Gilbert: We'll talk about that later. *[laughing]*

Steven Stone: All right.

Arthur Gilbert: Now, he did dissent very strongly, and this case . . . I don't know what happened, but the Supreme Court never touched it, because we thought that—

Steven Stone: Well I think for two reasons: number one, it was correct; and number two, they didn't want to take the media and political flak that would have happened if they said it. And they let it be, the law; and as far as I know it's still the law.

Arthur Gilbert: Oh, yeah.

Steven Stone: And it's good law.

Arthur Gilbert: Yes. So now what about your . . . you mentioned a little bit about your judicial philosophy and you talked about being open and warm to litigants. We talked about that a little and also

that all people are equal; we don't consider the differences of people. Any other thoughts you have about your approach to cases?

Steven Stone: Well, one thing, as an intermediate Court of Appeal or as any Court of Appeals, just basically the trial court should be respected and the decisions of the trial court should be respected, particularly that of juries.

Over the years I've developed a greater and greater respect for the jury system and for juries. I personally believe that juries get it right more often than judges do. Judges too often get bogged down in some side issue or some detail and they don't look at the big picture. They don't look at what's really going on, while juries do. And you need in the civil case only 9 out of 12 jurors. The 3 crazies drop off and the 9 get it right.

I learned to value that. We had a case here in this court, Arthur, where I valued the jury verdict more than you and the others. It was a case coming out of San Luis Obispo in which an expert, who you didn't think was so expert, testified and moved millions of dollars from one side to the other. I said, "Look, the jury spoke, the jury heard the evidence. The evidence wasn't crazy. They looked at it differently perhaps than we do, but I want to leave it alone." You and . . . I can't remember who else was on the case—

Arthur Gilbert: I think Richard was on the case.

Steven Stone: No, Paul Coffee was the trial judge.

Arthur Gilbert: Paul Coffee was the trial judge, that's right, who now sits on this bar.

Steven Stone: I ended up dissenting, I think it was. I say that only to point out my value, how much I value, jurors generally. They get it wrong now and then, and we're here to stop that, to prevent a miscarriage, but—

Arthur Gilbert: One thing that I'm glad you mentioned that, because if you recall in this division, not only was there never any bad blood about a dissent, but we would help each other with our dissents.

Steven Stone: Yes, yes.

Arthur Gilbert: We might discuss that a little bit.

(01:24:47)

Steven Stone: That's true. Because I think we all understood the value of dissents. Because a dissent is an opportunity to directly present a different viewpoint. And those of us who would be on the

majority would want that dissent to point out the important differences and the choice that was made by the majority over the dissent. The better the dissent is written, the sharper it is in terms of intellect, in terms of its intellectual honesty and directness, helps us better craft the majority opinion; and I say that both vice versa.

We all know that dissents in other courts have been biting, have been personal, have been acrimonious, and tend to increase the separation to a degree that shouldn't be there. Dissents are intellectual and philosophical, generally speaking; and it should be that way, without rancor and with respect—because I think that that highlights the opportunity to present two opposing views. They don't happen to be equal—it's two to one—but dissents really have their value. And that's another thing about Richard, with his "DISSENT" license plate.

Arthur Gilbert: Yes, his license plate said "DISSENT" on it.

Steven Stone: Right.

Arthur Gilbert: You have been very outspoken about your beliefs and views, and always expressed them in a principled way while you were on the court as well. I do recall something that really made an impression on me, and that's your feelings about the death penalty. And I recall that while you were on the court and incidentally were up for reconfirmation by the voters, and you did a radio interview in which you were sitting as a jurist. And now, of course, we don't hear death penalty cases on the Court of Appeal.

Steven Stone: That's why I felt comfortable discussing it.

Arthur Gilbert: But I thought that was quite courageous—if you would like to just summarize your feelings about that.

Steven Stone: Well, in terms of the death penalty, there are two basic reasons I am against the death penalty. One is that I don't believe the government should have the power to kill anyone for any reason. It is a power of the government that in my view goes too far—and that is because I am a child of the Holocaust, in a sense a Holocaust survivor. I know, personally speaking, how many members of my family—and it was a great number—were killed by the government in Europe, were killed by the German government and subsequently with the cooperation of the Austrian government. I don't want any government on this planet to have that power. It's just too much power.

And because the government has so much power in its judicial system or however it wants to work administratively and through the executive branch or any other branch, they can kill, and I don't want them to do that. I don't want to give them any route to that.

The other reason is, certainly here in California and probably most of the other states that have a death penalty, the cost is enormous. The fiscal, financial cost to kill somebody in this state by use of the death penalty costs way more—that's not a very sophisticated phrase, but a great deal more by magnitudes, geometrical magnitudes—than to keep them alive, than to keep them in prison for life. Just the economic cost of it, we can't afford it; not only that, we can't find the lawyers to defend them. So we're killing people 20 to 30, 20, 25 years after, whatever it is. It's almost pointless; it's almost pointless.

I reluctantly sentenced a person to death in 1980, I believe it was. That person isn't even close to exhausting his appeal. Think of it: 27 years later, this person is still in the federal Ninth Circuit Court of Appeals with a couple of cases that they can't decide whether to affirm or not. What a waste of judicial resources, for goodness sakes; for goodness sakes.

Arthur Gilbert: Thank you. I can see you feel as strongly as you did, and your eloquence hasn't left you. So tell me a little bit . . . I just want to touch briefly on your retirement and what you . . . I use that term advisedly, because you're working probably as hard as you ever have. Any other thoughts about the court? I know we have one period of time when we had a horrendously large caseload. We were doing 190 or 175 to 190 cases per year per judge.

(01:30:08)

Steven Stone: That's exactly right.

Arthur Gilbert: There was a caseload; it's not like that now. *[laughing]*

Steven Stone: Congratulations.

Arthur Gilbert: But it was pretty tough, wasn't it?

Steven Stone: There were times where we had to work very, very hard to get a timely decision out that was well reasoned, well crafted, and not rushed through; that was difficult.

Arthur Gilbert: We never wanted to have cases on ourselves, so we really worked; we put in extra hours.

Steven Stone: We did. For years we were essentially the most . . . we got our cases done quicker than any other division in the state—or certainly as quick. And I think we knew and understood that—it's a trite phrase—that justice delayed is justice denied. We felt very . . . We would get a case out in seven months, where some other division would take five years; and that isn't right.

Arthur Gilbert: You retired in, what, 19—

Steven Stone: 1999.

Arthur Gilbert: 1999. I remember that. And that was a little . . . kind of an emotional time for us that you were leaving.

Steven Stone: For all of us. I was the first justice to retire.

Arthur Gilbert: Yeah.

Steven Stone: No, I was the second, actually; Richard retired.

Arthur Gilbert: That's right, Richard retired. What prompted you to retire?

Steven Stone: My pension had vested completely. I was getting a little itchy to get back on the street. By back on the street I mean dealing directly with the litigants and lawyers on a nose-to-nose—not in a controversial way, not in an adversarial or advocacy way. I also had been in the system for a long time and had done all of the jobs, so to speak, that you can do in the system.

I felt I had something to contribute back on the street, so to speak, and use everything that I had learned in a different way to get people out of the system of litigation. Litigation is the best system on earth to ultimately resolve a dispute. But there are problems with litigation: time and money and diversion. I got the feeling that the question that was answered by us in the Court of Appeal in a written opinion was not the question that people went to their lawyers with some years before. Different questions got answered, almost always correctly; but the case had morphed, the case had changed. Discovery changes it, the lawyers change it, the judges change it, the jurors change it, and litigants will have lost control—the real people lost control.

I wanted to go back on the street and deal with the litigants directly with their own issues and get those resolved years before they would get resolved in litigation. Litigation is expensive, it's time-consuming. It takes people away from what they really ought to be doing, whether it's in business, at home, or anything else. Litigation is a good thing and it's a bad thing.

So after, I don't know, figure out the years . . . In the business of litigation, I now work every day, full time, getting people out of litigation and getting them to resolve the disputes themselves. All I do is assist them to make their own decision. And I think there is something morally and intellectually and even spiritually wise about people resolving their own disputes and not handing them off to third parties, whether they would be judges or juries or arbitrators—but to make their own peace, cut their own deal. And to the extent I can help people do that . . . There is something, not magical, about it; but it's something that makes me sleep well on those occasions when I

can pull it off. All I do is help them—make no mistake, I don't decide anything. I just help them cut their own deal. It's a different aspect. It's not litigation; it's the antithesis of litigation. But it's something very valuable and it's an opportunity to do my own thing.

There is a certain freedom to it that I can do it, and it's great. But make no mistake, it's something else now that I do with the same joy that I had on the Court of Appeal and the same joy that I had as a lawyer and as a superior court judge. It's not different.

(01:35:07)

Arthur Gilbert: You've made the most eloquent argument I think I've heard for mediation, which is what you're doing now.

Steven Stone: Which is what I am doing.

Arthur Gilbert: And not to embarrass you again, but your reputation is, I think it's gone beyond the borders of California, because we know that people who want to use your services have to book a year in advance or so. You're so busy, it's really quite remarkable.

Steven Stone: I'm happy to go anywhere, particularly Hawaii or elsewhere, to serve my clients.

Arthur Gilbert: So you're having a very fulfilling life now?

Steven Stone: It is . . . I think that's a good word, Arthur; it's very fulfilling, and at times overfilling. I really want to thank the court's project, the Legacy Project, for an opportunity to reflect on the system that we've all served and continue to serve. I think this kind of reflection is something wise to preserve. Now, as I was telling our videographer, I don't know that anybody is ever going to see this or hear this, since it's on a voluntary basis—but to make the record I think has some importance, and even if it isn't important, it's a joy to me to do it.

Arthur Gilbert: Well, it's a joy to have had this experience talking with you. I want to ask one last question, if I may, and that is, you have seen the court system and the legal system over several decades; I guess we both have. And you have been on this court and in the trial court and you're still dealing with the courts in a way from a different perspective now. Do you see any major changes or differences insofar as civility is concerned, or lawyering, or the profession for the judiciary that you think—

Steven Stone: Well, what has changed is the practice of law. When we started the practice of law you couldn't advertise; everything was word of mouth. Your reputation was based on your conduct and your skills solely and only.

The change came with a case called *Bates and O'Steen v. Arizona*, I think it was, which permitted lawyers to advertise. That changed the practice of law to the business of law, and the business of law made it very competitive. And different factors entered into the profession; it's still a profession, but it's also more of a business. Marketing became important. We'd never even heard the word "marketing" in connection with it. And that has changed things. It's made the system more adversarial than I think it was intended.

So there has been a dramatic loss of civility because people think that you market well when you beat people up and become a "winner." That has changed things. It's changed the way disputes are resolved in court. The tone of the legal debate has coarsened over time, I think because of that. And the courts have had to deal with this change, and it has made it harder for judges, I think, especially in the trial courts, to deal with these things. They are assaulted; they have to deal with verbal assaults in the courtroom far more often than they used to. And we are poorly equipped to do that. It's not a good thing. It diverts the litigation away from the litigants. Lawyers have a tendency in this competitive age and marketing age that . . . They're there to serve the clients, they're there to get that dispute resolved in some way that's helpful to their clients. And that has been lost to a certain extent. And it's coarsened what we do, made it a little more difficult to do what we do. That has been a change also.

The other change has been the political influences on judicial selection. I think that's with the advent of instant media, instant sharing in technology—it's too easy to torpedo something. Everybody knows everything about everybody and people's warts get magnified by their opposition, and it makes it hard; nobody's perfect.

So who's ever involved in judicial selection, whether it be the judicial nominee or the people that make the choices, it has become another coarsened public soap opera and makes it more difficult. And there are good things about it and there are bad things about it, and it's made it more difficult and more problematic.

(01:40:10)

Arthur Gilbert: Well, thank you for a very informative and interesting interview.

Steven Stone: Thank you.

Duration: 100 minutes
July 30, 2007