Gary E. Strankman: Gary E. Strankman.

David Knight: Can you spell your last for me, please?

Gary E. Strankman: S-T-R-A-N-K-M-A-N.

David Knight: Great. And your title when you were on the bench?

Gary E. Strankman: I was the Administrative Presiding Justice of the First District Court of Appeal.

Douglas E. Swager: This interview is being conducted as part of the Appellate Court Legacy Project, the purpose of which is to create an oral history of the appellate courts in California through a series of interviews of justices who have served on our court.

I am Douglas Swager, an Associate Justice on the First District Court of Appeal in Division One. And we're honored to have with us this morning the Honorable Gary E. Strankman, retired, who served on the First District from 1988 through 2001.

Welcome, Gary, and thank you for participating in this project. Gary, you were born in Washington and raised on an Indian reservation. Could you tell us a little something about the Strankman family and your childhood as you were growing up?

Gary E. Strankman: Well, both my parents were what some people now call cross bloods, people of mixed ancestries. And we were living at a place called Neah Bay, which is the most northwestern point in the continental United States, at the end of Olympic Peninsula. And the reservation is the Makah reservation—although neither of my parents were Makah—and it was very remote. It was almost 100 miles of gravel road from there to the nearest town that had a hospital or doctor. I went to a federal government school, and it was a very unique experience. Of course there was no television in those days. Half of our radio came from Canada because Vancouver Island is right across the Strait of Juan de Fuca.

I went there until the sixth grade, the end of the sixth grade. Our family was involved in a horrific automobile accident involving a logging truck and my father was killed. And we moved into where my mother's parents lived in a little town called Shelton, Washington, which is on Olympic Peninsula and midway between two reservations where we had friends. One was the Skokomish reservation. And now . . . although it wasn't called a reservation then, it was just tribal lands. But they have a casino out where my grandparents lived, at Kamilche of Washington.

Douglas E. Swager: You went on to attend the University of Washington; and what did you major in, in the University of Washington?

Gary E. Strankman: Well, I went in a two-step process. I first went to Willamette University in Salem, Oregon. And I was put on probation there because a friend of mine and I, during what was then a compulsory chapel, let a bag of marbles down, and they rolled all the way to the front during the Lord's prayer. And people took umbrage at that and the dean put me on probation. And a friend of mine and I—not the guy who let the marbles go—another friend and I decided we'd just go to the University of Washington and be a little more anonymous. So I transferred up there my sophomore year, and I majored in English literature and had a minor in English history.

Douglas E. Swager: Why did you decide to major in English?

Gary E. Strankman: I decided that because one, I didn't know what I wanted to do and didn't know what I wanted to major in. But when I was at Willamette, at the end of the first semester my freshman English teacher said that he wanted me to transfer to a different section—that he felt that the fellow that taught the other section would be much better suited to me. And he did, and it turned out to be true; Dr. Baker and I became lifelong friends. And he had a Ph.D. from Harvard and studied under Alfred North Whitehead at Harvard, and he was on—in fact, Whitehead was on his Ph.D. committee. So he kind of influenced me into going into English, I think.

Douglas E. Swager: At that time did you have any thought about pursuing a legal career?

Gary E. Strankman: I don't really know; but I will tell you the story of how I got into law school. The reason I say I don't know is as early as second grade, my second-grade teacher told my parents that I ought to become a lawyer.

(00:05:04)

I didn't know that till some time later, and I don't think it had any influence on my decision at all. But what really motivated me was I was in my last year at the University of Washington and I was planning on going to graduate school in English, and an uncle of mine who had owned a logging company down in Oregon told me that he wanted me to come down to the Benson Hotel and meet him and a friend in Portland.

So I took a little train over to where my mother lived, borrowed her 1957 Chevrolet, and drove down to Portland. And this fellow was there with my uncle and they talked to me. My uncle had never graduated from high school but was extremely successful. They talked to me for a while, and it was obvious the lunch was wrapping up, and the other fellow told my uncle, "He'll do," and he left. So my uncle said to me, "What are you going to do?" And I said, "Well, I'm going to go to graduate school, probably at the University of Washington, in English."

And he used some expletives I won't use here, but he basically said any damn fool, including a woman *[laughing],* can be an English teacher; and if you think our family is going to give you any money to become an English teacher, you can forget it. Now, if you want to go to law school, I'll help you, but if you're going to go to graduate school in English, forget it.

So I went back to Washington, decided I'd better become a lawyer. And he told me three schools to apply to, and I applied to all three. I was admitted to Boalt, and he found out from this—it turned out the other fellow was a lawyer—where I should apply. And I got admitted to Boalt, and so I went to Boalt Hall.

Douglas E. Swager: What other law schools did you apply to?

Gary E. Strankman: I applied to Harvard, and this happened—my uncle didn't know anything about anything. It happened—in those days of course you didn't have prep classes for the LSAT or any of that—but I could only take one LSAT test because it was at the end of the time. So by the time I got my applications in I was way behind everybody else, and I got admitted to Harvard provisionally; if somebody dropped out I guess they'd let me in. Stanford, amazingly enough, I never heard from, I never got a reply back from them at all. I never got a yes, no, or a maybe back from Stanford. But Boalt admitted me, and I wanted to go to Boalt anyway; so I was perfectly happy.

Douglas E. Swager: You obtained your law degree from Boalt in 1966. So for your three years at Boalt, that was sort of a tumultuous period in Berkeley. I was an undergrad there at that time. What was going on in the campus? Did that have any impact on you, coming from a pretty remote area in Washington?

Gary E. Strankman: I don't know if that had anything to do with it, but I actually participated in the free speech movement. I sat around the car, the infamous car. John Taylor, who his father was the publisher of the *Boston Globe,* was in our class. And one night John and I were sitting in the administration building, and I went back to the apartment and he decided to stay. Next thing I know I got a call and had to borrow a friend, go out to Santa Rita and bail John out of jail. And subsequent to that I found out that guys like Ed Meese were on the other side, who I now know; and it was sort of ironic that I was sitting there in the group at that time.

Douglas E. Swager: Did you have any favorite professor at Boalt or any favorite classes?

Gary E. Strankman: Yeah, I did. My favorite professor at Boalt was Bob Cole, and I still know Bob. In fact, I ran into him and a woman professor that he goes out with occasionally at Cafe Rouge here about six weeks ago. And I sent him . . . I bought whatever they were

having at the bar—and they had some finger food—and told them it was from a grateful student of the class of '66. And Bob, being the kind of guy he is, he jumped out of the seat, walked right down, and said "Hello, Gary!" So we knew each other.

Douglas E. Swager: You were admitted at the bar in 1967. What was your first legal job right out of law school?

(00:10:05)

Gary E. Strankman: I really didn't have a legal job when I first got out of law school. When I first got out of law school I thought maybe I'd want to go up to Oregon and practice law, and then that didn't really pan out. So I came back down, I took the California bar. In the meantime I'd been admitted to a master's program in English literature, so I still liked English at that time. So I actually was admitted to the bar and still finishing my master's program and then I met a fellow named Eugene Swann, who ran the Contra Costa Legal Services Foundation, at a Christmas party. And he asked me what I was doing and at that time I was just preparing for my orals. He said, "Well, why don't you come out and work part-time for me?" So I did, and I was only there for about a month on a volunteer, part-time basis and they hired me. And I was there.

And at that time Murphy was a senator from California, and there was an attempt to shut down legal services foundations; and Eugene Swann called all of us into his office. There were only about 10 of us, I guess. He said he was going to talk to each of us because he thought that they would pull the funding on the program; we'd better start looking for other jobs. He brought me in and he says, "You know, after watching you, I worked at the Contra Costa County DA's office and I think you'd make a good district attorney. I think you'd be a good trial lawyer. So why don't you apply there?"

And I applied. And at that time the public defender and the DA, who was the county counsel at one office . . . but the chief deputy–criminal and the chief deputy–civil and the public defender all interviewed us, and it was the day after Bobby Kennedy was shot. And I was in no real great mood for that interview, and you couldn't shade anything anyway. And the chief deputy–criminal found out that I had belonged to the American Civil Liberties Union—which will come as a shock for a lot of people—when I was in college. He decided that he didn't want to hire me.

So things drug on until September, and I got a call from him and he said he wanted to meet me in Richmond. He said he really didn't want to hire me, but they'd hired everybody else on the list. There was less than, I think, 25 people, and he didn't want to hire me because of the ACLU thing, but the civil service wouldn't let him—at that time that whole office was civil

service, as you remember, Doug; you were in it. *[laughing]* They wouldn't let him run another list, and they had to have a body. So they hired me and stuck me in the Richmond DA's office, and that's how I ended up there.

Douglas E. Swager: That was a good move.

Gary E. Strankman: Yeah, I don't know if he thought it was good. I later turned out to be his boss, so I don't know if he thought that was a good move or not. *[laughing]*

Douglas E. Swager: How large was the Contra Costa District Attorney's Office when you first joined it?

Gary E. Strankman: I'm not really sure. The Richmond office had about 12 deputies at it, I think, at that time, because at that time it was county counsel and the DA's office; it hadn't split up yet. And frankly, West County people never went out to Martinez. And I don't know—except for maybe one or two training sessions—that I ever went out there. But I would guess there were probably no more than 25 to 30 people at the most in that office.

Douglas E. Swager: How long had you been in the DA's office before you had your first jury trial?

Gary E. Strankman: I can't tell you for sure, but I'm almost certain it was less than a week.

Douglas E. Swager: Do you remember that trial?

Gary E. Strankman: No, I really don't. I remember I won, which is probably a bad thing because it gets you off on the wrong foot. But I don't even remember what court it was in; I couldn't tell you.

Douglas E. Swager: Now, you stayed in the district attorney's office until 1980; you became chief assistant in 1978?

Gary E. Strankman: That sounds about right, yeah.

Douglas E. Swager: Are there any particular cases that stand out in your mind that you prosecuted during your time in the DA's office?

Gary E. Strankman: Not particularly. I mean, I think I've always looked at cases as being the most important case to the people involved at that time, and I've never thought about ranking them in my own mind as to which ones are more important than others or which ones are particularly standout. I enjoyed my time in the DA's office a lot.

(00:15:09)

I mean, I've told people many times that being the head of the Richmond DA's office is the best job I ever had. And I'm not so

sure that that isn't true. I really enjoyed working in the DA's office, but I don't remember particular cases. Somebody, if they asked me about a case I've prosecuted, I could probably tell you about it; but I don't really, I don't think that way.

Douglas E. Swager: In 1980 you decided to make a career change and run against a superior court judge in Contra Costa County. What led you to make that decision? It was at that time a big decision in Contra Costa County; it was not something that was normally done in the county to have someone run against a sitting judge.

Gary E. Strankman: Well, I had become the chief assistant and Prop 13 had hit. And Gary Yancey, who later became the DA of Contra Costa County, was probably my best friend at that time. And Gary had left the office and he wanted to come back and the only way we could get him back was for me to give up my civil service position. I was an assistant district attorney; that was my civil service position. The chief assistant, he served at the pleasure of the DA. So I gave up that position so we could get Gary Yancey back into the office, which meant that I was serving at the pleasure of the District Attorney Bill O'Malley, which was fine. I mean, he was a good friend of mine, we had no problems. But I had no real job security at that point. And Mike Phelan had been the chief assistant just before I was, and he had left and ran for municipal court judge and won the judgeship out in Walnut Creek, in '77 I think the election was. And I think he took office in '78, which is why I became the chief assistant in '78. I actually served as chief assistant.

Once he started running Bill asked me to perform the function of chief assistant, and Mike went out and ran the Concord office. So Bill was going to obviously be the DA for some time, and I was ambitious—I had a young family, I wanted to do more. And I was sitting there one day—this will also come as a surprise to some people—and a political operative for the Teamsters Union came into my office. He said that they were going to run, they were trying to run, someone against Judge Calhoun. And that they had approached—and I won't tell you the name, but named two prominent lawyers, one of whom I know you know very well. And they declined to do it. So he asked me if I would do it. I'm always about the last guy asked to do anything; it's a pattern in my life you can see developing here.

But anyway, I said, "Well, give me a weekend at least." So I talked to Dick Rainey, I talked to Bill O'Malley; Dick Rainey was the sheriff at that time, later became the state senator from Contra Costa County. And talked to my wife, and I begged for another week. I went down to the DA's convention, which was being held in connection with the Bar Association Annual Meeting. And somehow—not from me, but I suspect from the Teamsters or some of the people I was talking to for advice—the word had gotten out that I was considering running for the judgeship against Calhoun. And I'll never forget this. I walked

up to where the rooftop swimming pool was and there are a couple or three lawyers from Contra Costa in there who had been friends of mine, and they deliberately went to the other end of the pool than wanting anything to do with me, And I thought, you sons of—; I'm going to run. and that's the day I decided to run and I did. *[laughing]*

Douglas E. Swager: How did you find the campaign experience? It was, as I recall, a pretty hard-fought campaign.

(00:20:00)

Gary E. Strankman: It was a hard-fought campaign and I got to where I liked it. I took a six-week leave of absence at the end of the campaign, and I walked in every town in Contra Costa County. I literally set a schedule for myself. I'd get up in the morning . . . I knew I couldn't reach every household, but I wanted people to say in every neighborhood, well, they came by here. So I walked in every community in Contra Costa, and I got to know Contra Costa and the people of Contra Costa a lot better than I did even after having been in the DA's office for 12, 13 years. It was a very good experience, and I think it was good preparation for being a judge, going through that experience.

Douglas E. Swager: There have been some ideas raised about the retention and electoral process for judges in California—in fact, nationwide. Having gone through a hard-fought campaign, do you have any thoughts on whether the system we have here in California is a good system or you think it should be changed?

Gary E. Strankman: Well, when the counties were smaller when I ran, the judges were known figures; people knew the judges for the most part. And I don't think it's unhealthy to have the people have some say in who's going to be performing a function within the community. And I know as a DA, I ran into some pretty tyrannical judges, both muni and superior, even justice in my day—a couple of whom weren't even lawyers. And the idea that people would have some say in that, I don't see too much wrong with that. My opponent wasn't of that type. He was a very nice fellow; in fact he and I have gotten along very well since then.

But I think if you had an ideal system . . . Maybe some modified federal system would work, but certainly at the trial level where the counties are small and people know each other, I'm not too opposed to the election system. At the appellate court level and the Supreme Court level I'm not so sure, because people vote for the wrong reasons; they don't even really know the names of the people they're voting for. And I'm not overly happy with the system, but I don't feel bad enough about it that I'd try to lead a movement to change it.

Douglas E. Swager: You were elected by quite a wide margin, as I recall, in that election. What do you attribute that to? Do you have any thoughts on that?

Gary E. Strankman: I remember the day before the election going to the political editor Pat Keeble, who you know of the *Contra Costa Times,* an almost legendary political figure in Contra Costa. She said to me, "This is going to be a very close election." And I said, "No, it's not." She said, "What do you mean, it's not?" I said, "Dick and I both got our message out there and it's a pretty stark choice, and I think one of us is going to win big. I'm not going to tell you which one I think; I'd like to hope it's going to be me, but one of us is going to win big. It's not going to be a close election." And it wasn't.

Douglas E. Swager: And what do you think your message was to the voters at that time that apparently hit a chord with them?

Gary E. Strankman: Well, the problem was that Judge Calhoun had over a number of years been subject to a lot of criticism in the local papers for his criminal sentences. There'd been editorials, letters to the editor, even news articles that placed him in an incredibly unfavorable light. Some of the sentencing was—well, it was kind of shocking and surprising, frankly. And I think that that was at the wave of people wanting a stronger, more law-enforcement-oriented system, and Reagan was running at that time. There was just a more law and order kind of feel, and I think that's what happened.

Douglas E. Swager: And what was your first assignment on the superior court?

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Gary E. Strankman: I think the first assignment was a general trial assignment in the old veterans building in Martinez, built over a swimming pool where you shared the restroom with all of the litigants and everyone else. I think I may have been put there for a reason. *[laughing]* But I was there, and that was my first assignment.

Douglas E. Swager: Now, after defeating one of their colleagues how were you accepted by the judges on the superior court?

Gary E. Strankman: Well, at first I was accepted very warmly by the then–PJ, Pat Herron, who was very gracious, and I would say the bulk of the other judges were. There were probably two judges, maybe three, who had some misgivings about the whole process and weren't sure about it. I think within six months to a year they were very supportive, and I think you probably know their names, one or two of them, turned out to be very good friends of mine.

Douglas E. Swager: I was going to ask you about that because one of those judges, Coley Fannin, who was extremely active, as I recall, in supporting Judge Calhoun.

Gary E. Strankman: Yeah, he was his almost unofficial campaign manager, you might say.

Douglas E. Swager: And you and Judge Fannin developed a very close relationship. Tell us how that sort of developed after this campaign.

Gary E. Strankman: I'm not sure how it developed. I suppose it—and I'm guessing here—but I think it really kind of started because both of us had a habit of showing up in Judge Arnason's chambers at 7:00 in the morning and having coffee with Judge Arnason for an hour or so before we went over to the courthouse. I think he, who had always been supportive of me because I had a lot of trials with him, I think we just developed a rapport from that that just continued to grow and grow.

Douglas E. Swager: Was there any particular judge who you looked to as a mentor or a role model?

Gary E. Strankman: Yeah, absolutely. In fact, in those days you were assigned a mentor judge. The AOC had a program then where a mentor judge was literally selected for you, and my mentor judge was Bill Channell, who then went to the Court of Appeal here and actually became my unofficial mentor when I came over here. But he was very, very pivotal in that regard; and I'll mention two other names who were, although they were not my mentor judge. It'd be Judge Arnason and Judge Rothenberg. Rothenberg, by the way, is the other judge who had a lot of misgivings about me at first; but he and Judge Arnason often would provide me with different advice but they both gave me good advice.

Douglas E. Swager: And later on you were to join Judge Channell over on this bench.

Gary E. Strankman: I did. A. F. Bray, who was the first judge from Contra Costa County on this bench, then Wakefield Taylor, who had been the chief assistant DA and then had been Department Five, which became my department when I went on that court. Then he came over here and became the PJ of Division Two. He had left the court, although I knew Wake very, very well, and he'd always been a kind of mentor to me and I kept his picture in my chambers the whole time I was on this court. He was the second. And then Bill Channell was the third, and if my memory serves I was the fourth judge from Contra Costa. I guess that sort of broke the dam, because since then there's been a lot of us.

Douglas E. Swager: You served as a trial judge on the bench over there for a number of years. Where there any types of cases that you

found harder to handle or hard as far as the decision making process is concerned?

Gary E. Strankman: Absolutely. And that never changed; even over here they were the hardest. The hardest cases I had to handle were to declare a minor free from parental control cases. The notion that a judge has the authority to take a child away from its parents was one that I always struggled with. They weren't legally the most complex, and often they weren't even factually the most complex. But I found them to be the most difficult in terms of causing me worry.

The criminals, yeah, it's horrible when you have to sentence a young man or a young woman to prison for an extended period of time; but at least you feel that they had some hand in where they are. But in the family situation you're dealing with kids who have almost no responsibility for what happens to them.

(00:30:08)

Then there are parents often in situations where one is abusive and the other is not. I just found those cases to be heartbreaking. And I even remember reading a book at that time entitled *Somewhere a Child Is Crying*. At any moment in the day somewhere a kid's crying. So those were the toughest cases I had to deal with.

Douglas E. Swager: You handled a number of civil cases too; you mentioned earlier that some of the members of local bar associations sort of walked away from you at this conference.

Gary E. Strankman: Yes, they did. Well, "swam" was a better word.

Douglas E. Swager: Your relationship with the bar after you went to the bench changed all for the good as far as the bar is concerned. How did that happen?

Gary E. Strankman: It did. I mean at first it took a while, and there were some misgivings. Some lawyers would paper me at first, and I would say within a year to a year and a half that it sort of turned around, but there were still some misgivings. As you know, the first time I was nominated for the Court of Appeal, the Contra Costa bar basically wrote in that I was unqualified. And that dramatically turned around, and I think what turned it around really was just performance in the courtroom. People come in; they feel like they've been treated fairly, they feel like I knew a fair amount of civil law and they would recommend me to their friends or they would quit papering me. And I had many of them come in and say they were sorry, they'd made a mistake. But I didn't hold any bad feelings about it. I understood about their position.

Douglas E. Swager: You were elected presiding judge in the Contra Costa Superior Court in 1987 and you served two years as a—

Gary E. Strankman: For two years, first judge to do that. Two years in a row.

Douglas E. Swager: How did that change come about in the court, where you were the first judge to serve two years straight?

Gary E. Strankman: Well, when I became PJ there were a lot of things I wanted to do administratively, and I started doing them. Also at that time was the very beginning of fast track, and I took our bench on a retreat to San Damiano—the entire bench, the only time that it happened. We worked out how we were going to handle the fast-track process. I think the judges felt that it would be better to have somebody to have continuity through all of that, so they asked me if I'd serve a second term. And frankly I was ready to stop, because I actually started my first term a little early. My predecessor Judge Spellberg had gone off on like a six-week trip, then he had had some medical problems as you may recall. So I had actually served a little more than a year when they asked me to do it again.

Douglas E. Swager: Did you like being presiding judge?

Gary E. Strankman: I did, although at that time it was a lot different than it is now. We still had a courtroom, and I had jury trials while I was presiding judge, believe it or not. Not long cases, but I'd take jury trials if we were clogged up. I ran a couple of calendars; I think every day morning and afternoon calendar, and I handled all of the mental cases at the end of the week. Those cases were all brought into the PJ and I would handle those. I took a lot of family law matters off the family law calendars when they'd get clogged.

So you were still a functioning judge even though you were the presiding judge. It's not the way it is now where it has become a total administrative position; it wasn't that way then. I liked it. But I'll tell you, when I was told . . . when my second term was up when I was ready to go back to being a trial judge, I was very happy to do it.

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That first year, as you know, there is sort of a tradition out there that the PJ who is leaving gets to sort of pick assignments, and I picked general trial and tried to do as many nonjury civils as I could, because that's always my favorite thing to do.

Douglas E. Swager: One of the things you had to do during your tenure as presiding judge is also wrestle with the county over funding for the courts, which they don't have to do now. Did you enjoy that process, the give and take with the county administrators and—?

Gary E. Strankman: I did, and we set up a system where we actually on a monthly basis—myself, the DA, the public defender, the sheriff, and the person from the county administrator's office that was assigned to the justice system, and they had a probation. We'd meet on I believe on a monthly basis; and before then, it was a sort of, we go over there and demand and they might give us or not, give us or whatever would happen. But we turned that into a process that I think turned out to be very beneficial for the courts. And just little things, like I talked them into allowing us instead of renovating the whole courthouse to do a rolling renovation, where we would paint X number of courtrooms a year, and rotate things through the system. We did a lot of things like that that benefited them, but they also benefited us.

Douglas E. Swager: What advice would you give to the new presiding judge in the trial court?

Gary E. Strankman: Well, you never want to be too dictatorial because it's not a permanent position; and whatever you do to your colleagues, they're going to be able to do to you later if they choose to. It's definitely a temporary leadership position; it's not permanent. But I think the biggest advice I give to people is not to be afraid to look out and look at other sources of management material outside of the judiciary. I got a lot of help during the whole time I was . . . well, when I was running the DA's office, second in command for the DA's office, a lot of help out of just general business management books that were very, very useful. And I think you can learn a lot from those books and that experience that can carry over to the court settings.

Douglas E. Swager: Well, I remember one piece of advice you gave me when several years later I took the PJ's position over there. You said, "Get out of your courtroom and walk around the hallway to see what your judges are doing."

Gary E. Strankman: Absolutely.

Douglas E. Swager: Great piece of advice.

Gary E. Strankman: I did that, and I think they even had a name for it, when I was a PJ, because it hadn't been done before. And more than one judge was shocked to see me stroll into their courtroom, sometimes when it was dark and it shouldn't have been.

Douglas E. Swager: Well, in 1988 you were appointed to Division Three of the Court of Appeal, in the First District here. What brought you to think about moving on to the Court of Appeal?

Gary E. Strankman: Well, I should have been encouraged. And then I applied that first time, and then the bar basically didn't want me to come over, and Deukmejian was the Governor at that time. Unlike some governors, he wouldn't appoint if the bar was negative on somebody. He just took that position; not all governors have

done that. But his office told me through Marvin Baxter not to worry about it, that they were going to try again. And in 1987 I was up in Oregon. My daughter wanted to look at Willamette, of all places, and I was over at my uncle's ranch in central Oregon. I was sitting there and my wife called. She said a man named Marvin Baxter called and said they wanted to send your name out—is that important? My wife was a Canadian since that time, and really didn't understand our system too well. I said, "Yes, it's sort of important." And that time there was no problem; I went through very easily.

Douglas E. Swager: This despite the marble incident and your participation in the free speech.

Gary E. Strankman: All that; it just went very smooth. I don't know if Deukmejian knew about the free speech and the ACLU business at that time. Anyway, there was no trouble.

(00:40:04)

Douglas E. Swager: What judges were on Division Three when you came here?

Gary E. Strankman: Justice Clinton White was the presiding justice, Judge Betty Barry-Deal, who is still alive, was the associate justice, and Bob Merrill, who has been deceased, was the other justice. So it was the four of us.

Douglas E. Swager: How did you find the transition from trial court judge to being over here on the Court of Appeal? Did you find it difficult to make that adjustment?

Gary E. Strankman: Well, to tell you the truth, even though there was a huge backlog generally in the courts—not as big as it had been, but pretty much of a backlog in those days—there were times I wasn't sure exactly what to do. You don't want to lose yourself in just one case and lose perspective. I wanted to maintain the ability to write on other people's cases and think about their cases too. And finding the balance between what I wanted my elbow clerks to do and what I wanted to do and how much interaction with the other judges I felt comfortable with and developing their trust so I could look at their cases if it was one that interested me more, frankly, than one of my own sometimes; just finding that balance was difficult, and at times I didn't know how to do that or what to do.

I would say I was here almost five years before I felt really comfortable, really comfortable. And I didn't find it isolating the way most people describe it from the trial court. As you know—you were there—when I was at Contra Costa, people came in and out of my chambers constantly. It was like a railroad train station. People would ask me whether or not I felt isolated, and I never did. Because over here you're involved with other judges, where you really don't care what other judges think on

the court or on the trial court; you just do what you want to do, and you're involved with your lawyers and their lawyers and constant dialogue and conversation. And I didn't find it isolating.

The only thing that you're isolated from are the lawyers. No lawyer after or before an argument is going to walk into a district Court of Appeal judge's chambers—at least in the First District—and have a cup of coffee. Well, that happened all the time under the trial department, and I missed that connection with the lawyers, with the bar; but in terms of just general human contact I didn't notice it.

Douglas E. Swager: In 1991 Governor Wilson appointed you as presiding justice in Division One to replace Justice Racanelli, who'd retired. Did you encounter any problems in moving from an associate justice position in Division Three to the presiding justice position in Division One, where you had a new set of colleagues all of a sudden?

Gary E. Strankman: Not really problems. Division One had a very different system of handling their cases than Division Three did, and when I got here Division One was the furthest behind of all of the divisions in the Court of Appeal. And their system was such that all of their backlog or cases that were assigned them were held by the principal attorney, who would then by some system known only to himself and God I guess, assign them to the judges. As a result, no one felt the pressure of the backlog—because they never saw it and they didn't have to deal with it.

So one of my true heroes among California DCA judges was Jim Scott, the late Jim Scott. Jim Scott was an administrative genius in my view, and he had developed a system of conferencing in Division Three that was pretty unique. So I had a series of lunches with Jim and I talked to him about Division One. And he knew Division One very well because he and Racanelli had been friends for many, many years from San Mateo County, and knew their system. And he gave me some good advice.

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I modified some of it, but I took a lot of it, and one of them was, get those damn cases away from the presiding judge. And you get control of all of them and you assign them out. And I did that, and for the first, oh, year and a half it was a really hard go. But by the end of that time we were totally current. If a case became fully briefed even within a week of the time, or two weeks of the time, of a conference, it would appear on the conference for that next time and it'd be assigned to a judge.

So it worked, and that was the biggest difficulty, because some of the lawyers . . . The judges for the most part were open to it; at least they were open to letting me try it. But at that time

that was Justice Newsom, Justice Stein, and Justice Dossee were the three justices here. And they were open to it, but some of the staff were resistant.

I got the permission of the other judges that I could meet without them with their lawyers in group settings—with their clerks in group settings and with their secretaries in group settings. And I basically taught them how to use a different system. And I know you know who the strongest critic was, because he eventually ended up working for you; but even he came around to thinking it was a pretty good system by the end of the day.

Douglas E. Swager: How often would you have these conferences under this system?

Gary E. Strankman: We conferenced twice a month.

Douglas E. Swager: You think that that's a good system to have?

Gary E. Strankman: Absolutely, because the difference is this: Every case is subject to conference. And all four judges are sitting around the table, with three of them having read the brief and one of them the tentative author who presents the case just as if he were in law school.

Now on a lot of routine criminal cases he may well say, or she may well say, "Well, this is a pretty simple burglary; the issue is a sentencing issue or the issue is X. And the law is pretty clear: Y. Is there any questions?" And there'll be no question. It takes less than a minute to do. But people say, "Well, that's a waste of time; we should only conference the cases that we want to conference." The problem with that is often then the conferences are only held when there is contention or when people don't agree about how the case ought to be worked out. So the differences get magnified. In fact, at the DCA level, in my experience in 95 percent of the cases all the justices agree; it's a rare case where people really have strong disagreements about everything in the case. They may worry about an issue or a legal theory, but that can all be worked out. But it's harder to work that out if you only talk to your colleagues when you've got a difference of opinion with them. It's much easier when you're seeing them on a regular basis.

So we conferenced everything but, obviously, the Wendes. The writs were held at a separate conference, which again not all divisions do; but we conferenced all of our writs. And workers' comp we didn't conference. We had quite a bit of workers' comp at that time and we didn't conference those cases. The only thing that we did do is the cases were assigned in my division by rotation. I had no say in who became the author; I didn't know what cases I'd become the author of. But I would look through all of the cases for the next conference and I

would designate if there was one what I would call a big case so that one judge, if there happened to be two big cases in the cart, took them both. Those cases ran on a separate list, but also I didn't know who was going to get that case. I mean that was handled by the clerks, so I just put it on the list, and whoever was next up for a big case would get it.

Douglas E. Swager: And in 1997 the Chief Justice appointed you as administrative presiding justice of the entire First District. What challenges did you face in taking on that position?

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Gary E. Strankman: Well, that was a big challenge in many ways. There were a lot of changes going on in the court and everyone has a very different style. And I'm not saying any style is right or wrong, but they're very different. The entire time I was a presiding judge, my predecessor only had one presiding judge meeting with the other presiding justices, and that was a non-sit-down meeting where we were required to vote on something. So the four of us went to his office, we stood around his desk, voted, and left.

I started having regular meetings with the presiding judges and finally got to where I met with them one month, had a meeting of the entire court the alternate month. So instead of having 12 full court meetings a year we had six, and then we had six presiding judges meetings. That was very useful because we could get information out, build consensus on what we wanted to do with the meetings. The meetings became much less contentious; the bimonthly judges meetings became much less contentious, because the PJs would thrash the issues out and then go back and talk to their colleagues. So everybody was sort of ready for whatever was going to have to have happen.

I also met with the head of the clerks department, the administrative assistant and the principal attorney and one other person. I think it was the two principal people in the clerk's office. It was a different organization than it is now. But anyway there were five of us, and we would meet on a monthly basis and thrash out the administrative issues, which also hadn't been done.

So I would say mainly what I did was provide more administrative structure on a regular and ongoing basis, so that problems could be worked out without them blowing up and then having to have a meeting to solve a problem. We'd solve a problem because we saw what was coming.

Douglas E. Swager: You also had a fair amount of interaction with the other APJs across the state.

Gary E. Strankman: Yeah, a lot.

Douglas E. Swager: It periodically would be with the Chief.

Gary E. Strankman: Right, and we'd talk to each other on the side too.

Douglas E. Swager: Were there any administrative presiding justices that sort of influenced you or you found that a common ground with more than others?

Gary E. Strankman: Well, one of my judicial heroes for years is Bob Puglia. I think a lot of people know the story about how Bob was nominated and didn't go to the Supreme Court, why the reasons are and all that. I'll leave it for others to tell, although if somebody ever . . . No one knows the story I do because he told me over a glass of beer in Bleecker Street in New York City. But it was a true act of courage. He was a fierce defender of the independence of the judiciary. He had no qualms about speaking up in the APJ meetings. So whether the L.A. chiefs I served with were . . . although I wasn't the APJ, but I was at APJ meetings because of my status as assistant APJ with Malcolm Lucas and Ronald George. But under both of them Puglia was not a shrinking violet. He was more than willing to speak up and say what he felt he needed to say to defend not just the Third District but the entire district Court of Appeal.

As you know, I talked in a conference back in Indiana just after I left here, and the title of the conference was "Caught in the Middle." And it was about the DCAs and how we're in between the Supreme Court and the trial courts and the special tensions that grew out of that particular location—both for the judges and for the way in which the work is done and in the relationships with the other two. I found that fascinating to study. But Puglia was the fellow that really influenced me the most as APJ, as a fellow APJ. There were other remarkable people; I don't want to start listing names because I don't want to slight anybody. They all in their way contributed to my success; all of them I knew to a degree had success. But Puglia was clearly a hero of mine because he'd been the chief assistant district attorney in Sacramento County. So we had a relationship that worked, from shared experiences, just with different—

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Douglas E. Swager: Well, perhaps if you feel comfortable sharing with us the story about why Justice Puglia never got to the Supreme Court, since he is not here unfortunately now that—

Gary E Strankman: Yeah, Judge Puglia is not, and I can tell you my version of it. And my version is the one he told me, although I frankly have heard different versions of this story. And I do it in honor of Bob. He was on the commission to confirm Justice Coleman Blease to the Third District Court of Appeal. And as you know,

that commission is comprised of the Chief Justice, the Attorney General, and the senior presiding justice of the court to which you are going to be assigned; and of course in the single PJ courts like the Third District that means Bob Puglia in those days.

So it was the Chief Justice, who was Rose Bird. It was George Deukmejian and Bob Puglia. And George Deukmejian, who I honored greatly; don't get me wrong—I wouldn't be here if it weren't for George Deukmejian. I can tell you wonderful George Deukmejian stories too; he also is one of my heroes. But they had a difference of opinion about Coleman Blease. George Deukmejian felt that Coleman Blease, because of his association with the ACLU and his liberal background, would not make a good district Court of Appeal justice. And if he and Bob voted together—and Bob is known as a very conservative Republican, as you know—they could block the nomination, because Rose Bird was the other vote.

Bob Puglia told the Attorney General—Deukmejian at the time—that he couldn't do that because Coleman Blease had appeared in his court, he was a very competent lawyer, and he didn't . . . Well, he differed with his judicial philosophy or what he thought would be his judicial philosophy. He had no basis to vote against Coleman Blease based on qualification. And Deukmejian let Puglia know that people knew George Deukmejian would likely be the Governor someday; that if he became Governor Bob Puglia would stay on the Court of Appeal. And he did.

Douglas E. Swager: On your desk here at the Court of Appeal you had a quotation of Oliver Wendell Holmes, and I believe I have it accurately set forth here. It read, "I long have said there is no such thing as a hard case. I am frightened weekly but always when you walk up to the lion and lay hold the hide comes off and the same old donkey of a question of law is underneath."

Gary E. Strankman: Right.

Douglas E. Swager: What struck you about that quotation to have it in front of you all the time?

Gary E. Strankman: It was my . . . It was as if he had lived my experience to write that. I can't tell you how many times I've looked over it, whether as a trial judge but especially on the Court of Appeal, seen five or six boxes worth of trial records; briefs that were permitted by some PJ, sometimes made to be over length; and terrifying legal questions prominent, well-known, very competent attorneys on both sides approach the case with trembling.

But over the years I also had Holmes's second experience. No matter how complex or difficult the case looked or how long it

was, once I got into the case, the old donkey of the law showed up, and it had be resolved and could be.

That goes back to something Bill Channell told me. Let me share this because it's kind of a good story, especially for judges to hear. I walked out of the courthouse one day. I hadn't been on the trial court more than four or five months if that, and Judge Channell was walking to his car too and he says, "Hey, you look kind of troubled today."

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I said, "You know, I got this case, it's . . . I don't know what to do. One side says this and I believe them and then the other side gets up and says that and I believe them." I said, "I don't have a jury and I don't know how to decide this case." He says, "What's the matter with you? Did you forget your first year in law school?" I said, "What are you talking about?" He says, "Always remember who has the burden of proof; if you remember what the law is you can find the answer." And that helped, because if they couldn't convince me, if I were in that state, I knew they hadn't met their burden of proof—and it wasn't my problem anymore, it was their problem.

Douglas E. Swager: That quote that you had in your office that we discussed, you also had some Native American memorabilia and sort of artifacts spread around your office. Do you think during the course of your judicial career that your Native American heritage influenced your judicial philosophy in any way?

Gary E. Strankman: I don't think so in the sense of affecting judicial philosophy, other than obviously it shaped who I am and what I think about responsibility and a lot of other things. What I do think it influenced was the conferencing system. The reservation I was raised on had less than 500 people, and virtually everything was decided by consensus, talking. No one really ever told anybody what to do; they just sort of talked about it. I mean, even when I was a kid I remember people say, if some kid was apt to do something to hurt themselves, and they'd say, "Well, that's his way, you know; he'll learn it's not a good thing to do and . . ." It's just sort of should talk about things.

We had a jail on the reservation, but there was no judge; and if someone got out of hand people would get together and say, "Well, you know, old Blue Jay is kind of acting out, he's been abusing his mother, we'd better stick him in the jail for a while." So they'd put him in there and leave him there until they decided it's time to let him out. And this is the literal truth. In fact, I remember as a kid walking by the little jail and because there was no sheriff department, there was no jail, there was no police department. Once in a while they would appoint one of the guys a marshal, but that wasn't even there all the time. And the prisoners would throw money out the

window and have us go buy candy bars and something, and then we'd stick it back through, and then they would give us one of the candy bars or something.

But anyway, it was all done by consensus, and of course the phones were all party line so they could basically set up a conference call if they wanted to. So it was a cheap way to set up a conference call. And I think there were five or six people on our line, but it did mean that you were patient and talked things through rather than just telling people what to do. I think that's probably the thing, if anything influenced me.

Douglas E. Swager: You also found time after you got on the bench to go back and teach at Boalt, I believe a few classes. What type of classes did you teach over there?

Gary E. Strankman: I never taught full-time at Boalt. Henry Ramsey had me come over and teach with him a couple, three times, but that was about it. I didn't spend that much time teaching at Boalt.

Douglas E. Swager: And what type of things were you involved in at Boalt?

Gary E. Strankman: I taught at Cal, not at Boalt, more than I did at Boalt, and at Cal for I think it was six summers, five or six summers. I taught in a special summer program where not exclusively but primarily kids from overseas were encouraged to come to Cal and take classes in American culture and American art, American literature, that sort of thing. I taught a class that was called Literature in the Law, and it was primarily built out of ethnic and diversity, that sort of thing. We talked about *Brown v. Board of Education*. Several times we used a murder case that involved a Native American that a friend of mine had written up. But I did that for maybe five or six years at Cal.

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Douglas E. Swager: You also found time to get a master's in law back at the University of Virginia.

Gary E. Strankman: Yes, I did.

Douglas E. Swager: And you participated in that program, which spanned a few years. How did you find that experience? Did you enjoy that?

Gary E. Strankman: It was the greatest judicial educational experience I ever had. And I'm saying this in front of an AOC camera alone. In my day there was . . . at first, especially, CJER was off by itself, and then they got put together; but far and away that was the greatest experience I had. There were professors there that one of them I maintained contact with up until he passed away here a couple of years ago. Others I still see if I'm back in Charlottesville. It was one of the most remarkable experiences in my life. There are about 30 judges from all around the

United States, federal and state, and the camaraderie that built up over that time is remarkable. In fact this last December I was down with friends of mine that I made in a program in Texas. I don't think a week goes by that I don't get an e-mail from somebody from that program.

Douglas E. Swager: And what did you write your thesis on after that program?

Gary E. Strankman: What I wrote the thesis on was an idea that that old Professor Bill Baker back at my first year in college gave me. He said to me when after I started law school, when he was at Harvard he actually lived in a dormitory that was basically law students, and he got to know a lot of the law students. And he got to know Roscoe Pound through those associations; he was studying for his Ph.D. in English literature. And Pound told him that he believed that the law, the English common law, and the English novel were linked in the way in which they developed. And Bill said he didn't have enough of a law background to ever really explore that, but he kept talking to me about this idea. So I decided to explore that in this thesis. And it is remarkable: the beginning of the English novel, you have people like Henry Fielding and Sam Johnson. Well, Fielding ended up his career of course as a judge, a police court judge in London. And Johnson, we now know, literally wrote lectures for the law professor that succeeded Blackstone at Oxford University.

So these people had a deep understanding of law. And put into a nutshell, what it was, when the English novel first began—aside from the epistolary novels, but even with those with Richardson's—there was that strong notion that they should be a way of conveying knowledge or wisdom or how to live. There's that wonderful quote in a later novel where Nicholson says—in a book he wrote about Africa, a novel, he said, "It's like when you go into the forest and you see a leopard, and you escape, and you come back and you tell a story about it; those are the stories that tell us how to live."

And the early English novel was quite didactic, and both Fielding, especially, in *Joseph Andrews* and Johnson in *Rasselas* would put characters in situations and then you would learn from how whether they did it well or didn't do it well as to what was going to happen. And that is the way in which the common law developed, not by some abstract theory the way French novels developed, but by concrete examples where a person would do something. Well, was that or was that not a burglary—sticking an arm through a window to grab a pie? Those stories were the stories that told us what law is. And the law, and the English common law and the English novel both developed by telling stories, to tell us how to live.

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And they proceed very much by example. You're not told the difference between a shrub and a tree or a couch and a chair by some abstract definition. You're given an example of a burglary or a robbery or whatever or in a novel of a situation, and then through that experience you learn what it is without an abstract definition. The abstract definitions came later. The codes followed the law in English common law and not the other way around.

Douglas E. Swager: The program there at the University of Virginia used to be, as I recall, sort of promoted; there's a little more money in the system now.

Gary E. Strankman: Well, now it doesn't exist, if you know; it's disbanded. They couldn't fund it. Yeah, it was funded pretty well when I was there.

Douglas E. Swager: You also had a burden when you were on this court. You were appointed by the Chief Justice as chair of the appellate task force that labored for sometime to look at the appellate process in the Courts of Appeal. From that work and what you learned, did you conclude that any fundamental changes should be made to how we process appeals in the Courts of Appeal?

Gary E. Strankman: Well, that was interesting. I guess I got that job because earlier I had been appointed the chair of what came to be known as the Strankman Committee, eventually the AIDOAC Committee which went through a couple of different iterations, but it was finally worked out; the system is now in place for compensation for attorneys who represent the indigent on appeal. And at the time that work started, that was all over the block; each individual judge, if he chose to, would make the award and it was completely arbitrary.

As you know, it's a highly developed system now. But I was the chair of the committee that developed that. When I became a PJ I couldn't serve on that anymore, or APJ I couldn't serve on that committee anymore—after I became the APJ, because that committee reported to the APJs. So I left that committee and it wasn't long after that that Justice George asked me to serve on this appellate . . . not necessarily reform, but look at the appellate process and see what could or couldn't be done. And we did several things: We issued a white paper on publishing, nonpublishing cases; we issued, thanks largely to Justice Rylaarsdam, a report on appellate work in the trial courts. We made a long report that Clark Kelso helped us prepare on the appellate process in general.

Your question was whether or not I learned anything out of that. And I'm going to put a plug-in for something that came out of that that never found its way into any of the reports for all kinds of reasons, but that I felt could be a benefit—and I still

think might well be a benefit, although I don't think it'll ever come to be.

For the most part the Courts of Appeal at that time were facing a horrendous volume problem. I remember the first meeting of that committee. We went around the room. There must have been 35 people there: judges, lawyers, academics. And the universal consensus was the biggest problem facing the Courts of Appeal was volume. I'm not sure that's true anymore, at least across the board in all of the Courts of Appeal. It may be in some there are stresses and strains. But for the most part, I think, time has taken care of that to some extent. The number of appeals, except in areas that have a growing population, have stabilized or declined even; the number of justices has increased. But I still believe that there ought to be a way to move justices when we have needs to courts that have them, without having to go through the rigmarole of going through the whole legislative process. And this maybe is the first time this has been said in a total public setting, but it's said here. So I guess it is now, and I have said it to other people.

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At one point, I recommended that they close Division Five here in the First District. At that time we had openings, two openings in other divisions. Assign those judges to those two open positions in Division One so nobody got displaced and move those positions down to Southern California, where they needed them. That never happened; there are all kinds of reasons for that, including the Legislature.

I'll give you one more example. When we got an extra judge when I was PJ, I didn't even know we were going to get the judge. The Legislature never communicated with me, never asked me if we needed it.

Douglas E. Swager: That was the fourth position in Division Five?

Gary E. Strankman: Yeah, and the same thing happened to I believe Chris Cottle, although I don't want to blame him for anything or . . . well, I'm not blaming me or him, but I believe it was Chris, but I could be wrong. I believe he told me he was not talked to either. It was done for political reasons that probably had little, really, to do with the needs of the individual court; and that to me always seemed to be a shame. The Legislature, because of their own politics among themselves—if you get X number of judges here, well, my district's going to get one or two or whatever, whether they need them or not. That always seemed very foolish to me, and it seemed to me that if we have the ability—which we do, the Chief does—to move cases . . . which is very controversial, as you know, because, one, judges of course don't want to turn loose their cases; and two, lawyers don't want to travel all up and down the state. But if we could

move those empty positions as they become empty around the state, especially in the courts that don't have divisions . . . I mean, if they really don't need a position, say so and move it. That never happens.

Now the second thing I think about this—am I taking too long?—that I think about this has to do with the Supreme Court.

Douglas E. Swager: I think they have all kinds of tape here, Gary.

Gary E. Strankman: This has to do with the Supreme Court. This is another idea I had that I never got to see the light of day and then never got anywhere. It so happens in this state just by pure chance that there are six districts. And in the six districts it turns out again by purest chance, three of the APJs are picked by the Governor—because if he makes someone the PJ, they are automatically the APJ. Three of the APJs are picked by the Chief Justice. So you have two independent appointing authorities. The Supreme Court periodically has real backlog problems, not just with death penalty but overall. I recommended and have been an advocate—and again it has never seen the light of day, never could get anybody to agree with me.

What ought to happen is that there ought to be a court in between the Court of Appeal and the Supreme Court, made up of the six APJs staffed by people from the Supreme Court, so they feel comfortable with it. When an appeal came up out of a division or out of a district that judge would not participate; the other five would decide the case. These would be cases in which . . . and there are, as you know, a number of those, in which frankly—I hate to say this, but it's true—the lawyers and the public probably doesn't care which way the decision is. They just need to know it's either this way or it's that way. Sometimes there's even a split among the divisions, some going this way, some going that way. Those kinds of cases, a lot of that housekeeping work where one division maybe gets a little out of line but until the Supreme Court tells them they're wrong they have a tough time disagreeing with their colleagues in their own divisions. So they keep following a limb on the judicial tree that's not going to bear any fruit.

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All the other five divisions have gone the other way, but they can't get off it. That court, it seems to me, could take those cases. There could be a writ process at the Supreme Court. If the Supreme Court wanted to take the case, they could take the case and do something with it. But that court, it seems to me, could take care of a lot of just the smaller-potato cases that the Supreme Court has. The Supreme Court, those cases don't take as much time. So that's probably one good reason why they wouldn't want to turn most of them into discussions

with people; that's one reason they give. Another is the continuity, with that court somehow not having the real authority that they have, which it probably wouldn't. But in a day where you have limited resources, there are only seven of them up there, and they've got that crushing burden of the death penalty. I've always felt that that, or something like that, might be useful.

Douglas E. Swager: Do you think there is anything that—?

Gary E. Strankman: I'll give you one more example where I think it would . . . Some of the sentencing cases—not now, because of *Cunningham*, but in the old days—there are these endless questions coming out of indeterminate sentence law that frankly nobody cared which way the law was. The trial judges just needed to know so they could sentence appropriately. That kind of thing, it seemed to me, a court like that could take of very easily.

Douglas E. Swager: Do you think there are any particular reasons why some of these suggestions you've just made haven't seen the light of day, as you put it?

Gary E. Strankman: I think most of the time they're sort of political. People are . . . whether it's a court wanting to keep as many people—justices—as it can so it looks bigger and better, bigger, stronger; or whether it's a Supreme Court kind of having a prerogative, holding its own cases and not letting go of them. There is a lot of political inertia where people don't want to change things like that, and I think especially with the idea of changing judicial positions around. I think the Legislature is very jealous of its prerogatives in that area, and I don't think they would like it to be changed. But I frankly would like the Chief Justice to have the authority to take an empty position from one division or one district and move it to another district without waiting for the Legislature, based on need.

Douglas E. Swager: You've been involved in the legal profession and the judiciary now for 40 years. Do you think there've been any major changes that you've seen in the judiciary during this time?

Gary E. Strankman: Oh yeah, huge differences.

Douglas E. Swager: Do you think they did good changes or for the worse?

Gary E. Strankman: I think they were all done for reasons that people thought were good—whether they've turned out to be as good I'm not so sure. There's always the law of unintended consequences that occurs. I have long, and continue, and was when it happened, been an opponent of the consolidation of the muni and superior courts. I think that was, and is, a huge mistake.

Douglas E. Swager: Why do you think that?

Gary E. Strankman: I think especially in counties like I grew up in, where we had multiple municipal courts, that the people actually felt much closer to the judges than they do now. They were of that community; they generally lived right in the towns where they were judges; there were seen, they were known; justice had a friendly face to it. This whole business that added a 20-20 of creating judicial kiosks and all this business about reaching out—I mean, that was done on a normal, regular basis. It wasn't a program; it was the way it was. You served as a municipal court judge, you understand that.

Superior court is a little more distant because they tend to be at maybe only a couple of locations, except in the bigger counties; some counties they only meet in one location. I thought that lessened the public's connection. Frankly, I also think it's tougher—and I know this is going to offend a lot of people, but I think it's true—I think it's tougher to find people who are truly competent superior court judges to handle everything from death penalty to medical malpractice to deciding whether kids are going to be taken away from their parents than it is to find people who are going to do prelims, municipal court actions up to a certain monetary level that are not too complex, small court, that sort of thing.

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And I'm not degrading it, but I think that some of the judges at that level you don't need quite the same amount of judicial horsepower that you need at superior court level. And I think it has created problems at the local courts and assignments—how you assign cases. It has created conflicts between judges, some of them feeling their fellow judges aren't carrying as much of the work as they should. I just don't think it was a good idea overall.

Douglas E. Swager: There are also frequent articles now that we see in the legal publications and actually elsewhere about the gloomy lack of civility in the legal profession. Have you seen that in your experience?

Gary E. Strankman: I don't really know. I think in some ways, it's gotten better. When I first became a lawyer, almost all the lawyers in my county, Contra Costa, all knew each other. So if you hated somebody, you really hated him, and you got to see him all the time, and you got to develop lots of reasons to dislike him. And I can remember some pretty "uncivil" scenes going on. Now, it's a lot more anonymous. I was just down on a mediation in Southern California and two extremely competent lawyers had only ever seen each other—or only talked to each other—on the phone. They'd never met each other; and through the mediation they got to meet each other. They're both first-rate lawyers and practicing in basically the same area, the same type of law, and they didn't know each other. That couldn't

have happened when I started. I'm sure because of that there are people who take advantage of it or are less civil.

I do think that lawyers in my day, probably because of the economics of the law, we had, I think, a lot more respect for judges than I see some of the younger lawyers experiencing now. But as I read in the paper the other day, a lawyer from San Francisco is giving a first-year associate $160,000 a year and probably he's never going to appear for several years in front of a judge who makes as much or more than he does—or she. It's pretty difficult—it's going to be difficult—to have the same kind of respect we had when I started.

Douglas E. Swager: Talking about mediation, you now work for ADR Provider JAMS. Do you think that the increase in use of ADR—and I think it's fair to say that, but a lot more litigants, a lot of the attorneys now are turning to private providers now to mediate cases, private trials, and arbitrations—do you see that as a good thing for the system, or do you think it somehow detracts, as some of our colleagues have said, from the development of the common law in California?

Gary E. Strankman: Before I answer, let me say that I am also the special master of the Buck Trust, which takes half my time.

Douglas E. Swager: We were going to get to that.

Gary E. Strankman: Okay. I'm the only part-time employee at JAMS. Yes, yes, yes, and yes and yes. There has unquestionably been a growth in mediation whether in or out of court. When I started as a lawyer, the way you resolved cases, criminal or civil, is you just talked to the other lawyer. There was no intermediary. You didn't . . . you knew him. You just talked, picked up the phone, talked about the case, maybe resolved the case. Now no one can do that. It seems like no one can do that unless somebody is being paid some money or someone's been told to do it by a judge, which seems very odd to me. But that's what it's evolved to.

To go back, I hear lawyers tell me—now they may not be telling me the truth; I'm just reporting what I'm hearing—that the reason the case is in ADR is because of the very thing involved in consolidation. They're not sure what judge they're going to get and they want to be able to pick one that they know has background in the kind of material they're dealing with, and they're afraid. In some courts at least they are going to get stuck in front of a judge who really doesn't have the capacity to handle the matter that they have, and that's led to a growth, the growth, of ADR. Does that detract from the ability of the law to grow? Absolutely.

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I mean, one of the things that I do worry about with ADR, frankly, is that if you get too many of the quality, cutting-edge cases going into ADR, the courts don't have the ability to frame and shape the law the way they should. And their cases become more routine, and they don't get to speak out on some of the issues they should be speaking out on. However, to counterbalance that, in my experience at least, if it's truly a cutting-edge issue people want to know about, they're not going to be satisfied with an ADR provider's answer. Those cases, if the insurance companies have enough money on the table or whoever it is, they're going to go to the courts to get an answer. So I think that risk can be exaggerated.

But I think we have sucked out some of the more interesting and complex cases. And I'd say I do probably as many arbitrations as I do mediations, and a lot of that arbitration work is work that 20 years ago would have been going to the courts, no question about it.

Douglas E. Swager: You mentioned you do work with the Buck Trust. I remember when you told your colleagues, and myself included, that morning that you were going to retire as you have this opportunity to become the special master for the Buck Trust. Will you tell us a little bit about what you do as special master?

Gary E. Strankman: It's turned out to be an amazing opportunity. When Homer Thompson decided the *Buck* case—which is notorious, and I don't want to go into all that—he created four entities through which all of the money generated by the trust is paid. He left the investment trustee as being Wells Fargo Bank but diverted the funds through four really court-created entities: the Marin Community Foundation, the Marin Institute, the Buck Institute for Age Research, and the Buck Institute for Education. Those have remained solid through the years; those are the four. All the money goes to the Marin Community Foundation because of tax reasons and other things. But there is a specific set aside for each of the other three. But the bulk of the money is discretionarily distributed by the Marin Community Foundation.

There are limitations coming from the will and the court orders about how that can be done, who it can go to, and all sorts of things of that nature. Each of these entities have their own lawyer, each of these entities have their own accountants, and each of these entities have their own boards of trustees. So it is a complicated and complex situation.

The first special master was Larry Sipes, who wasn't a judge; but most of the people who see this will know who Larry Sipes was, and Larry was the first special master. I understand that Larry literally okayed, bought and sold pencils, and told them when to turn the lights out because they were just getting busy; and that's what was needed.

Second special master was Justice Scofield, from down in Orange County, and he was only special master for a brief time and then went right back to Orange County. And then Warren Conklin took over, who is the one most people know, and served for 10, 12 years. By the time Warren had stopped, the position instead of being full time was half time and had kind of resolved itself into an advisory role. We make two formal written reports to the courts every year—probate court. And one of them is a formal presentation with the person, the other is a written report—both written, but one is presented orally too. And there still remain all sorts of issues between and among these entities, them and the bank. And I know I can tell you now, I'm confident that no one who's in an administrative position in any of the entities wants the special master's office to go away.

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When I first took the job, I literally thought that after five years we could phase the special master's job out. I think eventually that will happen, but probably not now; there's too much going on, it's too complicated. The Attorney General would have difficulty—and has told me this—having someone spend enough time on it that needs to be spent. But I think half time is adequate. But it's fascinating, because while you're dealing with the law, it's on a different level—a lot of consultation and a lot of very gratifying moments too, because the money goes to some pretty remarkable things. And it feels good to know that, for example, every kid in Marin County, no matter how poor they are, get their vaccinations and free medical because we provide that for them.

Douglas E. Swager: Other than working part time with JAMS and half time for the Buck Trust, what else do you do in your retirement? I know you have some grandchildren.

Gary E. Strankman: Well, I've been doing a fair amount of traveling when I can book off the time, both in and out of the United States. And I continue to have a lot of academic interests; I have a lot of friends who are academics. I live in Berkeley, and I do some writing periodically. I still enjoy hiking—although my knees aren't as good as they used to be—up in primarily the Oregon Cascades is my favorite area: Three Sisters, Jefferson Wilderness Area, Three-Fingered Jack Wilderness Area.

Douglas E. Swager: Looking back on your judicial career, do you have any regrets about becoming a judge and making that decision back in 1980 to get on the superior court?

Gary E. Strankman: I do, but it's the one everyone has who's really enjoyed something; I just wonder how much I would have enjoyed something else. So I see people who've taken different career paths that were in theory at least open to me at the time I

made either decision to become a lawyer, the decision to become a DA, the decision to do a lot of administrative work in the DA's office, the decision to become a judge, the decision to become an appellate judge. And I wonder what my life would have been like, but the regret is one of curiosity, it's not one of sadness. I'm curious about how I would have turned out in some other areas, but I'm not sad that I made the choice I did. I had a wonderful career—wonderful as far as I'm concerned.

Douglas E. Swager: Do you have any advice for lawyers who might be thinking about putting in an application to get appointed to the trial court now in California?

Gary E. Strankman: Well, I think the main thing to remember is that it's a multiphase process. This is just pragmatism now. The first level is to get the Governor to send your name out. You don't want to use all your big guns to get that done—just enough to get it done. The second level is you've got to work with the bar and enough that they give you a really good rating so that the Governor wants to appoint you. And then out of the people who got the rating, you've got to do the push to get yourself to be the one named, which does require you to bring in the people like you think may know the Governor if you don't. So it's a three-step process.

So for those people, that's the advice I always give them; to think about it in three steps. Think about who you're going to use differently; think about how you're going to approach each of those levels differently, because they're different processes.

Douglas E. Swager: Do you have any advice that you want to pass on to the newly admitted judges, people who've just been appointed either with the trial court or the Court of Appeal?

Gary E. Strankman: I would say, I think everyone who becomes a judge, almost without exception, has a strong desire to do the right thing. One of the most difficult times is when you're not sure whether that conflicts with what the law is compelling you to do. When you get that feeling, that's the case you've got to slow down on and think about, because your sense of justice may well be right.

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On the other hand, given the level that you are in the system, maybe all you can do is signal to the next level—which I did on the Court of Appeal and at the trial court: "I hope you change it, because I feel compelled to follow this law." But I think you should never abandon your sense of justice.

Douglas E. Swager: What would you say are your proudest accomplishments as a judge?

Gary E. Strankman: I was very gratified when my colleagues reelected me as presiding judge in Contra Costa; I mean, it's one thing to get elected, it's another thing to have elected you a second time. As you know, that's not a seniority system out there; that was just election. I was proud of some of the changes, administrative changes, I was able to make when I was there that I think benefit probably PJs that are still out there—even though they may not know how they got started or where they came from.

Here, there are so many things, but I think one of the things is a really pragmatic thing. You were here, I think, at the time. I got the idea that we ought to open up our computer systems to the lawyers so they could access the computer and find out where their cases were without bugging our clerks. Because I'd made a survey of our clerks' office, and they told me that over a third of their time was answering questions by lawyers which the lawyers could look up themselves—scheduling questions, that sort of thing. We fortunately were going off Wang at that time, so we were able to develop a system to do that with appropriate firewalls. I had a lot of resistance for that from my other APJs—as I shared at our own PJ meetings, some opposition among my own court. The Supreme Court couldn't do it at that time because they were still on the Wang system; so I couldn't get a lot of support from them because they couldn't do it, not because they were adverse to it. They just couldn't do it. But we got that pushed through, and I think now it's standard throughout the state. It's a very small, pragmatic thing, but I was very proud of that. *[laughing]* It's not some big, major thing.

Douglas E. Swager: How would you like to be remembered in terms of your legal career?

Gary E. Strankman: Oh, I don't think anybody's going to remember me or my legal career, to tell you the truth. *[laughing]*

Douglas E. Swager: I think you're being a bit modest?

Gary E. Strankman: No, I don't think I'm being modest, I just don't think that . . . We walk on a seashore and the tide comes in. The idea that you think you're making a mark is an illusion, and I don't have that illusion. I mean, I think while you're there you do the best you can; and if somebody chooses to remember it later, great. But I don't have any . . . I think mostly what people remember are probably funny stuff that's better not said on this tape rather than anything that ought to be said. *[laughing]*

Douglas E. Swager: Well, thank you very much, Justice Strankman, for taking time out of your busy schedule to come in and go through this—

Gary E. Strankman: You are welcome! Let me tell you one story that came to mind.

Douglas E. Swager: I was going to ask you if you had anything else you wanted to add here.

Gary E. Strankman: Just one little story; it's kind of funny. Former Justice Kane, Bob Kane, came in to argue a case in Division Three just not too long after I was put on there. And the case involved the Olympic Club and its discriminatory clause. And Bob told me this story later because we got to be friends at retired DCA judge dinners and things around here. Anyway, he looked up and he saw Clint White, who was a black man; he saw Betty Barry-Deal, who was a woman; and me from the reservation. And he said, "Oh, my God!" *[laughing]* He said, "I think I'm going to lose this case." Fact is, he did, but it wasn't because of that; he should have lost. *[laughing]*

Douglas E. Swager: *[Laughing]* Well, thank you again for coming in here.

Gary E. Strankman: You're welcome!

Douglas E. Swager: And fighting the BART delay. And thank you for being here with us.

Gary E. Strankman: No problem.

Douglas E. Swager: Thank you.

Gary E. Strankman: It was fun.

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