Barbara Jones: My name is Barbara J. R. Jones, Presiding Justice of the First District Court of Appeal, Division Five. And with me today as we practice our opening line is Retired Associate Justice Zerne P. Haning, with whom I had the privilege of serving for how many years? I don't remember.

Zerne Haning: I'm not going to say "too many." I don't recall; it was—

Barbara Jones: When did you retire? Two thousand and—?

Zerne Haning: Well, we were still at Marathon.

Barbara Jones: No, we were here. You were next door.

Zerne Haning: When you came; no, when you came on—

Barbara Jones: I started in 1996.

Zerne Haning: We were still at Marathon Plaza. I retired in 2001, I think.

Barbara Jones: Well, when we talk about that . . . I know it's longer.

Zerne Haning: Yeah, because I went on the bench in 1981.

David Knight: All right, Justice Jones, whenever you're ready.

Barbara Jones: We are here today to talk with my former colleague, Associate Justice Zerne P. Haning, as a part of the court's Legacy Project. My name is Barbara Jones. I am Presiding Justice in Division Five and had the privilege of serving with Justice Haning for a number of years after my appointment in 1996.

Justice Haning, I first want to talk with you about the formation of Division Five. You were appointed to a newly created position of associate justice in the newly created Division Five of the First District by Governor Jerry Brown on December 2, 1982, and you were confirmed by the Commission on Judicial Appointments on December 29, 1982. I came aboard some 14 years later in December 1996. Division Five was still a three-justice division. Tell me about how Division Five was composed. What was its composition at the time it was created, and how did you and your colleagues go about setting up a new court?

Zerne Haning: No one told us how to set up a new court. Don King, Harry Low, and I were appointed at the same time.

Barbara Jones: And the presiding justice was Justice Low?

Zerne Haning: Was Justice Low. We were all over in the old State Building at that time with the old Annex, and we were scattered all over the building. I mean, the judges, research attorneys, secretaries could be in opposite corners of the building. There was no organization. They didn't have room for us. They hadn't

planned for us, so we had to scramble to find offices. We had no staff. We had to hire judicial secretaries, we had to hire a research attorney, because at that time we were only allowed one research attorney. We had to find furniture.

Barbara Jones: And did you have to find books? Was there such a thing as a chambers library when you started?

Zerne Haning: There was a small one. We scrambled and put books together. Our immediate concern was an enormous backlog that the district had at that time. I came close to going back on the superior court when I saw the size of it. *[laughing]*

Barbara Jones: How did you and your colleagues communicate? Did you walk down the hall, as we have done over the years that I worked with you, or did you have to pick up the telephone?

Zerne Haning: Sometimes the intercom worked, sometimes it didn't. We would walk down the hall. We didn't have computers. We didn't have e-mail. We had no electronic form of communication. So we would get together. We'd always go to lunch together. We'd meet in someone's chambers and talk about the cases. That's how we did it.

Barbara Jones: You spoke of a backlog. Tell me about the size or the scope of the backlog that you had to address.

Zerne Haning: I can't give you numbers per se, but I can tell you that many of the cases that we inherited had been fully briefed for over four years.

(00:05:00)

The average age was about three years. That was a challenge, because as you know the law changes, the statutes change, and new appellate opinions are published which change the law.

Barbara Jones: At the same time was there an inventory of new cases coming to Division Five through the clerk's office?

Zerne Haning: Yes. We immediately started picking up our own inventory of new cases and also petitions for extraordinary writ—habeas corpus, mandamus, that sort of thing.

Barbara Jones: Can you give me some kind of an idea how you addressed the backlog? Did you assign them en masse to one of the three chambers as the authoring judge? Did you have ways of addressing the question of scheduling oral argument in those cases where the parties had requested oral argument, if it in fact had been determined how to do that as opposed to working up cases and filing opinions where argument has been waived?

Was there that kind of . . . how did you address the problem among the three of you?

Zerne Haning: We did a couple of things. First, we cheated a little bit. We had this enormous backlog and we had new research attorneys. We felt in order to get through the backlog it would be easier for the new people if they were dealing with familiar issues, if they got acquainted with a particular area of the law, and so they could work with the same issues every month until we got through it. So Justice King had a reputation, as you know, as a family law judge; we gave him all the family law cases as I recall. Justice Low took governmental cases; I took torts and a lot of the criminal cases. We divided them that way in terms of the backlog. As the new cases came in for about the first year we assigned them the same way, and then as we gradually began to see the backlog subside, we assigned a wait to the cases. We adopted a waiting system from one through five—I think that's the numerical scale we used; it's the degree of difficulty—and divided them that way, so everybody would have an equal workload.

Barbara Jones: Did the lengths of opinions or the type of opinion that you wrote in addressing each of the appeals change as you worked through the backlog? Were there any summary opinions written as to some of these cases, or were they all generally the same length, fully setting forth procedural factual background and the analysis, as you did in later years?

Zerne Haning: As you know, the Constitution requires a written opinion in every case, so I don't think—I hope—we didn't change at all. I don't believe we did. You have to remember that . . . perhaps you don't remember. At that time when I joined the court, they had a very active settlement program sponsored by the American Bar Association, and I was active in that. And in addition to our other workload we had a fairly active settlement calendar. That dried up when the ABA funding left the court, quite frankly, and then we continued it on our own, as you know, after that. We worked hard to settle cases at that time, and we were settling about 45 percent.

Barbara Jones: Were these cases assigned or distributed from other divisions? That is, did Division Five work to settle cases that were assigned to other divisions and then vice versa?

Zerne Haning: Yes. We obviously didn't take—we didn't try to mediate—cases that were in our own division.

Barbara Jones: The judges themselves served as the mediators?

Zerne Haning: The judges themselves served as the mediators.

Barbara Jones: Did you have any type of word-processing equipment to assist you in this process?

Zerne Haning: We had yellow pads and pens. The secretaries had a very primitive form of word processing. They used the old Wang system, which has . . . it's what's called, they have an ASCII set.

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It's a very proprietary system. But only the judicial secretaries had that. We had Scotch tape, yellow pads, erasers, that sort of thing. It was a cut-and-paste operation.

Barbara Jones: In 1982 and now, the First District was located in the old State Building on McAllister street, 350 McAllister Street, across the street from Brooks Hall on the Civic Center Plaza. You had told us that the justices were housed all over the building. Were some in what might be described as the newer portion of the building on, or the complex on, Golden Gate Avenue, and some on McAllister Street?

Zerne Haning: Yes. I recall I, Justice Rattigan, Justice Caldecott, Justice Rouse, and I think Justice Smith and a few others were in the old building. Others were scattered throughout what we called the Annex, which is that portion of the State Building attached to the original State Building, in no organized fashion; my secretary was in a different building then I was in.

Barbara Jones: What type of library support did the First District have?

Zerne Haning: *[Laughing]* We didn't have a librarian at that time. We did have a central library. Judges had books in their chambers. Of course, the Supreme Court's library was on the same floor and they had some books we didn't have; we had some volumes that they didn't have. So it really wasn't a very efficient system. If you want to ask me about the earthquake, I'll tell you some more about our library.

Barbara Jones: *[Laughing]* Well, that is indeed one of my next questions. At some point, I'm trying to remember when, the Loma Prieta earthquake occurred in San Francisco, or in the Bay Area. What was the condition of the building?

Zerne Haning: I thought you were going to ask me about the Giants and the A's, because they are playing in the World Series at that time. I had a corner chamber at that time. I'd moved into the chambers that were previously occupied by Justice Tom Caldecott, who had since retired, and I didn't have a book fall off the shelf. That's perhaps because I was in the corner. Parts of the building looked liked they'd been bombed out—huge chunks of rubble fell on the stairways, bookcases collapsed. The Attorney General lost their library. We had just installed seismic bookshelves and I was amazed that they worked; we didn't lose

a book. In fact, for some time after that the Attorney General was using our library, because their books were all piled up.

Barbara Jones: Did the court continue to function as a court in any part of this complex?

Zerne Haning: The first thing that happened, the Chief Justice wisely extended all guidelines for filings and hearings because it was several days before we could get back in the building. We all, everyone—remember, all of the Supreme Court was in the old State Building—we all had to evacuate the original State Building and move into the Annex. And some of the offices—the Judicial Council, the Administrative Office of the Courts—were housed in other office buildings, downtown San Francisco, and then we were squeezed all over the building. We lost our courtroom. Some of us were on the fifth floor, some of us were on the second floor; we were just scattered all over.

Barbara Jones: Was there a courtroom in the Annex . . .

Zerne Haning: No.

Barbara Jones: . . . in which you heard oral argument?

Zerne Haning: Division Five, we used the workers' comp hearing room downstairs. Some of the divisions went to—what's the name of this other State Building over here in the Civic Center?—went over there and used their facilities. We decided it was easier to stay in the building, because the clerk has to transport files back and forth; it was just easier to stay in this building. So we heard our cases down on the first floor in what was then in the old Annex, not this modern building. The old Annex, the workers' comp hearing room.

Barbara Jones: Then you did have access to the record through this process or this time period when you were still in the Civic Center location.

(00:15:07)

Zerne Haning: We did.

Barbara Jones: Eventually the court moved to Marathon Plaza. How did the organization of divisions and staff change in this so-called new building, the new location, which I guess was a temporary location?

Zerne Haning: It was. We were housed together, so to speak. In other words, all the justices in a particular division had their chambers adjacent to one another. They had their staff and their secretary, either next to them or right across the hall.

So that was a much more efficient operation. By that time, we had started to get word processing for the judges and the attorneys as well, which was a blessing.

So it was easier for us to function on a day-to-day basis in Marathon Plaza.

Barbara Jones: I'd like to focus on that. When I joined the court, you were chair of the First District's computer committee; and I believe you're known to have a long-standing interest and, I would say, expertise in information technology and computerization. Tell us about how the First District became automated. How did it change from the yellow pad and Dictaphone era to its present era, when we're all networked?

Zerne Haning: Division Five was the first division to be fully . . . to become automated, because we're the smallest and it was probably the least expensive way to go. There were only three of us. Originally what we got were simply word processors. We sometimes had to carry disks back and forth, and we didn't have e-mail; we didn't have any of the sort of software you think of when you have a computer today. We had word-processing ability and that was it; but that was tremendous, because it enabled us to get our opinions out more quickly.

Barbara Jones: Did staff—that is, the research attorneys as well as the judicial assistants—have word-processing workstations?

Zerne Haning: Yes. They started to get them, but that's all they had, just the workstations. Interestingly, they fought against it; they didn't want to give up their typewriters. They rapidly did when they found how easy it was to use word processing, and then many of us who had computers at home got what we call a translator program, so we could work at home on the Wang system, because in those days we did a lot of work at home. And that was a great boon to us, to enable us to keep up with the workload and to eat into the backlog.

Barbara Jones: Did the court eventually change from the Wang system to a different word-processing software program?

Zerne Haning: We did. We gradually switched over, and by that time we were getting computers, and of course with computers, we were able to establish an e-mail system so we could communicate with other staff and other people more easily. And then we switched over to a commercial word processing. We used the Microsoft system and that made it easy, not only for everyone to communicate here, but to work much more easily at home.

Barbara Jones: Did the court—the full court—eventually become automated in the same fashion that Division Five was automated?

Zerne Haning: It did. We got computers, real computers, for everyone; by real computers I mean they had access to e-mail. We established an issue-tracking system that we wrote here for the First District; we brought in professional programmers to write it for us. We were able to send written work back and forth to each other through e-mail, from one justice to another, and also to our attorneys.

Barbara Jones: Did research become computerized?

Zerne Haning: Yes, it did. We finally got access to Lexis and Westlaw, which really helped speed up the process.

Barbara Jones: Did chambers libraries change as the court became computerized and research through Westlaw and Lexis became available?

(00:20:08)

Zerne Haning: Well, libraries grow, as you know; there is no end to the cases. But you know, as all this material—all the cases and statutes—become available online, it's easier to get rid of your books. You don't need as many books then. You have more room in your chambers and you can also do a lot of research. You can find things more quickly. I still like to lay the books out on the table once I've found them. I found that many people like to operate that way and still do, but now that we're here in this building, as you know, we're right next to the combined library, so that's not a problem.

Barbara Jones: Tell us about the move back to the Civic Center in the year 2000. Were divisions organized differently, or did the arrangement that was in place in Marathon Plaza continue here at the Civic Center?

Zerne Haning: Divisional organization continued even to a greater extent. You probably remember while they were constructing this building you and I were over here in our hardhats tromping around trying to pick out a space where we might locate. And of course when we came over here each division was self-contained, as they are now, which is a much more efficient manner of operating.

Barbara Jones: The library in the building as it was rebuilt here at the Civic Center is now a combined library. Has that been a help in working up cases, doing research, and so on?

Zerne Haning: It was an enormous help. We combined our library, the Court of Appeal's library, with the Supreme Court's library, so we no longer . . . this is a big building . . . we no longer have to walk clear across the building to find a book. We can just open the door, step in there, and all of the volumes are there in one locale. It's a much more efficient system.

Barbara Jones: When you came back to the Civic Center, did you find that the way of or the interchange between your colleagues was better than it was when you left? How was it different?

Zerne Haning: Well, when . . . As I indicated before, before the earthquake we were not contiguous to one another; we were scattered around the building. And after the earthquake, even when we were in the Annex, we were even on different floors. When we came back here, we were right next door to one another. And as you know, in a small court, three or four justices on a panel, there has to be a lot of interplay, a lot of discussion about the cases. Now I could just step next door and talk to you about a case. I couldn't do that in the old State Building; I couldn't even e-mail you then. So it was much better. I think there was more interchange between the judges when we got back over here. We spent much more time talking to one another about the cases.

Barbara Jones: Did Division Five conference cases before argument, the cases that were on the argument calendar in the old building before the Loma Prieta earthquake?

Zerne Haning: We did; we've always operated the same way. We always had a case conference prior to oral argument, in which we discussed not only the cases that are going to be argued, but those in which argument had been waived. And then after oral argument we always met again, immediately after the argument—usually the same day—to see if anyone had said anything that had altered our perspective, given us new thoughts on the case, make sure we were going the right way. And that was the system all the time I was on the court.

Barbara Jones: I have to say that during the time that I have served in Division Five, the conferencing system has been a boon to me as presiding justice, as I suspect it was to Presiding Justice Clint Peterson, my predecessor, and the other judges on the panel.

Zerne Haning: Well, you know, we didn't just conference on the cases; we also made it much easier to conference on the writs. As you know, we have no control over the writ petitions that come in.

(00:25:08)

One could come floating in here in the next 15 minutes; and they always have short timetables, which means they demand your immediate attention, which means we have to get together and decide them, as you know, very quickly. The current arrangement, the way that the divisions are located now, makes that much more efficient. And as you recall, we always met at that round table in my chambers, and we dealt with the writ petitions as they came in.

Barbara Jones: And I might add a footnote, we still discuss writs around the round table in the chambers that is now occupied by the judge that succeeded you, Justice Simons.

I'd like to talk a little bit about your professional history. You went to law school in Kansas.

Zerne Haning: You're not going to embarrass me now, are you, Justice Jones?

Barbara Jones: Did you grow up in Kansas?

Zerne Haning: I did.

Barbara Jones: And when you graduated from law school—class of 1962, Washburn University of Topeka, School of Law—I read that you were editor-in-chief of the *Washburn Law Journal.* And then—

Zerne Haning: You can fool some of the people part of the time.

Barbara Jones: You were admitted to the Kansas bar, New Mexico bar in 1962, and then came back to California; you went to college in California?

Zerne Haning: Yes, well, I started at the University of Kansas and made the mistake of dropping out of ROTC so I could swim, and my draft board found out about it, so my education was interrupted.

Barbara Jones: Eventually you, when you finished law school, came back to California for your private years, when you were in private practice from 1965 through 1981—which was when you were appointed to the San Mateo Superior Court.

Zerne Haning: Yes.

Barbara Jones: Tell me about your practice. What areas did you focus on—civil, criminal, both?

Zerne Haning: Both. I ran the defender program in San Mateo County several years ago for a while, and then I chaired the committee that oversaw it. San Mateo County doesn't have a public defender—they have what's called a private defender, where the cases are dealt out to private counsel who agree to represent indigent clients for a particular fee. So I handled a lot of criminal work, and basically we had a civil litigation practice.

Barbara Jones: You were then appointed to the San Mateo Superior Court?

Zerne Haning: That's correct.

Barbara Jones: Where you served for two years before your appointment to the Court of Appeal?

Zerne Haning: Yes.

Barbara Jones: Do you have any thoughts on how your years in private practice prepared you for your role as a judicial officer?

Zerne Haning: If you spend a lot of time in the courthouse, you're comfortable there, so that helped a lot. And you have to remember, at the time I went on the bench I had appeared in front of every judge in the county. I tried cases in front of them; I had worked with them on bench-bar committees. These were people I had known for some time, so it was a comfortable fit for me. I knew these people. As I indicated, I'd tried cases before them, they knew me, and it was a good working relationship.

Barbara Jones: You were also active in local bar activities, as well as the California State Bar. One of the positions you held was vice-president of the California State Bar.

Zerne Haning: That's right.

Barbara Jones: And before that the Board of Governors of the State Bar?

Zerne Haning: Yes, I was on the Board of Governors for three years.

Barbara Jones: And you spent a good bit of time teaching. Tell me a little bit about that.

Zerne Haning: Well, that probably occurred by accident rather than design. I've done some lecturing for, in the old days, CEB; in the last several years for the Rutter Group. I've done various programs for Rutter, but primarily annually I do a . . . we put on a couple of seminars for personal injury, wrongful death, and associated torts.

(00:30:05)

Barbara Jones: Do you also write?

Zerne Haning: I do; I'm one of the authors of their *Personal Injury Practice*.

Barbara Jones: Since you've left us, retired from the First District, have you continued to pursue hobbies? What do you do for fun?

Zerne Haning: I go fly-fishing.

Barbara Jones: And have you done that for a long time?

Zerne Haning: Since I was about eight years old; yes, a long time. *[laughing]*

Barbara Jones: Rumor has it that you float the rivers.

Zerne Haning: I do.

Barbara Jones: In Montana.

Zerne Haning: I do, in not just Montana; all over the west.

Barbara Jones: And is there a skill—technique—that one develops in fly-fishing that takes a long time to develop? Are you good at it?

Zerne Haning: You try awfully hard not to slip in the river and drown and to keep your boat free of water; other than that you'll do okay. *[laughing]*

Barbara Jones: Justice Haning, thank you very much for coming back to Division Five.

Zerne Haning: My pleasure.

Barbara Jones: And we've really . . . I've enjoyed our visit this afternoon. Thank you.

Duration: 31 minutes
June 6, 2007