

Access to the DVDs and transcripts is provided to CJCL users in accordance with library policy. Remote users are able to request electronic versions of the transcripts via e-mail through the CJCL website (<http://library.courtinfo.ca.gov>). Those who wish to purchase copies of the DVDs through a third-party vendor may contact staff through the Legacy Project page on the public California Courts website. Each appellate district library also houses a collection of the DVDs.

To ensure that the Legacy Project continues to meet its fundamental objectives — to facilitate research and educate the community about the history of the appellate courts and their role in California’s development — the committee is currently evaluating ways of expanding direct public access to the Legacy Project materials.

The remarkable result of this comprehensive oral history project is that it fills in the gaps in the written record and reveals attitudes and perspectives missing from traditional documentary sources. The hope is that it will ensure continuing awareness of the courts’

essential role in California society — past, present and future.

“I am delighted to honor the justices who have served our state,” Chief Justice Ronald M. George has said, “and am grateful that they are willing to share their wisdom, their experiences, and their memories so that they may be preserved for generations to come.”

The members of the Legacy Project Committee are: Hon. Judith L. Haller (Fourth Appellate District, Division One), chair; Hon. Timothy A. Reardon (First District); Hon. Laurence D. Rubin (Second District); Hon. George W. Nicholson (Third District); Hon. Rebecca A. Wiseman (Fifth District) [as of June 1; current committee member Hon.. Steven M. Vartabedian retired May 31]; Hon. Richard J. McAdams (Sixth District); and Frances M. Jones, Judicial Center Law Librarian.

For more information, or to see compilation videos of interview clips, visit the Legacy Project page on the California Courts public Web site at <http://www.courtinfo.ca.gov/courts/courts ofAppeal/>. ★

Project Documents the Lives of Retired Appellate Judges

LAURA ERNDE

Editor’s Note: This article appeared in the *San Francisco Daily Journal* on March 28, 2008. It is reprinted here by permission as it appeared on that date. Minor updates appear in the Introduction by Paula R. Bocciardi.

SAN FRANCISCO - John Gabbert decided on a legal career in high school after watching an attorney rescue his newspaper-editor father from a libel charge.

James Hastings befriended Joseph A. Wapner of People’s Court fame at the University of Southern California in 1938, when both considered themselves “big men on campus.”

Betty Barry Deal grew up during the Depression in a small pioneer town, but didn’t encounter sexism until she came to the San Francisco Bay Area and no law firm would hire her in 1955.

Those are just a few of the interesting tidbits squirreled away on videotaped interviews with retired justices of the California Court of Appeal.

The DVDs will soon be available to legal history buffs and members of the public as part of a project by the Judicial Council, the policymaking body of the state courts.

“Our goal was to interview everyone, so that we could record and document historically who these people were and what their backgrounds were and how the courts have evolved,” said 4th District Court of Appeal

Justice Judith L. Haller, who chaired the project.

So far, 68 of 86 retired justices have sat for interviews. Eight were unable to participate for various reasons.

The idea grew out of the Court of Appeal’s 100th anniversary celebration in 2005 and the desire to create a more lasting tribute to the court’s rich history, Haller said.

Most of the interviews took place in the courthouses where the judges used to work. Some were done at the justices’ homes or offices.

Current and former justices, along with several staff attorneys, volunteered to conduct the interviews. They spent 90 minutes to two hours with each justice, asking questions to elicit the events and people that shaped their lives.



Justice John G. Gabbert (Ret.) was interviewed in 2008 at the age of 98.

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MICHAEL J. ELDERMAN



Father and son justices — the late James Hastings and J. Gary Hastings (Ret.).

Hastings was interviewed by his son, J. Gary Hastings, both of whom are retired from the 2nd District Court of Appeal in Los Angeles.

On tape, the elder Hastings reminisced about his college days at USC. He talked about how his water polo team trained for the Olympics, only to have the games canceled because of World War II.

Hastings was a U.S. Navy veteran who was married and raising a son when he applied to USC Law School. And who happened to be standing next to him in the line to apply that day but his college buddy, Wapner.

Hastings might not have gone to law school without the help of the GI bill.

World War II figured prominently in many of the retired justices' lives.

After the Japanese attacked Pearl Harbor, the Red Cross recruited Betty Deal and some of her classmates at Munson's business school in San Francisco to help set up emergency field operations at the Presidio to help the returning soldiers.

"I'll never forget these young guys coming in with burns in a sort of a zombie state," Deal said. "It was quite a shock for me."

Another event that impacted Deal's life tremendously was the unexpected death of her husband as the result of a heart attack, which left her to raise a 3-year-old and a 5-year-old by herself.

Deal was able to finish her law degree at Boalt Hall while raising her children and renting an apartment from famed legal scholar Bernie Witkin.



Justice Betty Barry Deal (Ret.), photographed (ca. 1985) during her tenure on the California Court of Appeal, was interviewed in 2007.

But when she finally passed the bar at age 34, she found herself frozen out of the all-male law firm scene. She volunteered at the Alameda Public Defender's Office and then took what she considered a second-rate law job editing books for Continuing Legal Education.

When her children were older, she started her own firm at her home in Alameda and became a respected family lawyer before she was appointed to the Alameda County Superior Court bench and then the 1st District Court of Appeal in San Francisco, where she served from 1980 to 1990.

Gabbert, who retired from the 4th District Court of Appeal in 1974, was the oldest justice to be interviewed for the project.

The 98-year-old sat down at his former courthouse in Riverside with 4th District Court of Appeal Justice Betty Ann Richli and talked about his decision to become a lawyer like it was yesterday.

The seeds for Gabbert's legal career were planted on the high school debate team.

Gabbert didn't want to join, but his father insisted and helped prepare him for his first contest. Gabbert said he wore two pairs of garters to make sure he wouldn't be caught with his socks falling down.

The debate went well.

"From then on, the only thing I wanted to do was debate," he said.

Gabbert's other nudge toward the law occurred around the same time.

His father, the editor of the local newspaper, stood up for Chinese immigrant farm workers whose homes were set ablaze by the Ku Klux Klan.

Riverside's mayor, who was head of the KKK, sued the newspaper for libel.

A judge from Los Angeles heard the case at the local Elks Club and promptly threw it out.

At dinner that evening, his father revealed that he had paid the attorney \$1,000 for his services.

"The attorney appeared for 20 minutes," Gabbert said. "I said, 'My god, \$1,000 for 20 minutes? That sounds like a pretty good deal.' I also thought all a lawyer had to do was talk."

The subjects seemed to enjoy retelling their lives.

Several interviewers said it was fascinating for them as well.

"What these people have in their memory banks is something to be treasured," said Bob Wolfe, a staff attorney at the 4th District Court of Appeal.

Justice Steven Vardabedian of the 5th District Court of Appeal interviewed eight different justices, one of whom has died since making the tape.

Justice Robert F. Kane had so many rich stories about serving on the 1st District Court of Appeal and later as ambassador to Ireland for President Reagan that his interview lasted more than three hours, Verdabedian said.

Kane died in December at age 81.

The DVDs will probably become available to the public later this year, said Paula Bocciardi, a management and program analyst for the Judicial Council who staffed the project.

The courts are in the process of transcribing all the interviews. Once that is finished, the plan is to place the transcripts, the DVDs and a binder of biographical material about each judge at the Judicial Center Law Library, on Golden Gate Avenue in San Francisco.

A copy will also go to the Court of Appeal district from which the justice retired. ☆



In August 2009, Justice Gabbert returned to the bench, at the age of 100, for the inaugural event of the annual Justice John G. Gabbert Oral Argument Series, a reenactment of the Korematsu v. United States oral argument of 1944.

PHOTO COURTESY MICHAEL J. ELDERMAN

Death Penalty for Larceny

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Mr. George Congdon, of San Francisco, has informed the editor of this History that he was present in a con-course of three thousand people in the outskirts of Stockton, in the year 1852, and saw three men hanged at the same time for the crime of grand larceny (stealing cattle), whereof they had been regularly indicted and convicted by a jury in a legal court of justice. The sheriff of San Joaquin county, who officiated on the occasion, was the late Colonel R. P. Ashe, who left a large family and a valuable estate, and who is well remembered all over California. He was the father of Hon. R. Porter Ashe, of our own day.

The law of this State which first prescribed punishment for robbery and grand larceny, was passed, of course, at the first session of the legislature, in 1850. The penalty was alike for both offenses, namely, imprisonment for from one to ten years. It was at the second session, 1851, the draconian provision, authorizing juries in their discretion, to impose the death penalty for both robbery and grand larceny was passed, and approved by Governor John McDougal. This law remained in effect full five years. On April 19, 1856, it was amended, and at the same time a distinction made between the two crimes, so that robbery was punished by imprisonment for not less than one year, which might be extended to life, while the penalty for grand larceny was made from one to fourteen years' imprisonment, the court in all instances, and not the

jury, being the sole arbiter as to the length of the term. This law of 1856 was enacted by our only Know-Nothing legislature, and approved by J. Neely Johnson, our only Know-Nothing Governor. The degree of penalty for these crimes has fluctuated, but at present, it is for robbery, imprisonment from one year to life; for grand larceny, imprisonment from one to ten years, so that the present penalty for the latter crime is just the same as was prescribed by the original statute of the State.

Many cases similar to the above might be given. Three men were hanged in Sacramento in 1851 for a not very aggravated case of highway robbery. We had occasion many years ago to make allusion to these early trials, and thereupon a well-known editor of the time made these observations:

“No doubt at this distance the infliction of capital punishment for felonies other than murder must seem to have been draconian to an extent almost inconceivable. But at the time there could hardly be said to be organized society in California. The sternest measures were necessary to keep the vicious in subjection. The condition of things was as primitive as when the death penalty was prescribed in England for robbery. But when society in California became strong enough to deal with criminals of all grades and had jails to keep them in, our code became more mild — perhaps in some cases now, too mild.” ☆