ORAL HISTORY

JUSTICE JESSE W. CARTER

CALIFORNIA SUPREME COURT (1939–1959)

Oral History of

JUSTICE JESSE W. CARTER

INTRODUCTION

JOSEPH R. GRODIN*

Jesse Carter came to the California Supreme Court by appointment of Governor Culbert Olson in 1939 — at a critical time in the Court's history. Up to that point, the Court had been entirely competent, but not yet as recognized nationally as it later came to be. Carter's appointment was followed in rapid succession by the appointments of Phil Gibson and Roger Traynor, and, in the decades that followed, the California Supreme Court gradually came to be a leader in the development of new approaches in a variety of areas — criminal procedure and consumer protection, among others.

It is Gibson and Traynor, both of whom became chief justice, who typically get the credit for the Court's preeminence, and certainly their reputations as legal giants are well deserved. Carter played an important role, however, and his role has been largely ignored. In large measure that is because Carter authored few majority opinions of prominence. His contribution lay mainly in his frequent dissents (510 of them, if one counts dissents from denial of hearing), sometimes joined by others but

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Jesse W. Carter,
Associate Justice of the California Supreme Court, 1939-1959.

Courtesy J. Scott Carter.

often solo, which asserted positions that in a significant number of cases came to be embraced by the majority of the Court, or (where federal law was implicated) by the U.S. Supreme Court. Carter's dissents were often vitriolic[1] — he was taken to task by no less a personage than Roscoe Pound for his lack of collegiality — and were often characterized by expressions of righteous indignation, but if one focuses upon substance rather than style, his position on the frontier of legal change is readily discernible, and quite remarkable.

His dissent in *People v. Gonzales* is an example. The issue was whether illegally obtained evidence should have been rejected in the defendant's criminal trial. The majority opinion, authored by Traynor and joined by all but Carter, held that it should not. Carter's dissent insisted that, whatever the rule might be under the federal Constitution (and at the time the rule was unclear), "the provision in our state Constitution compels the rule that evidence obtained in contravention thereof shall not be competent or admissible." Permitting such evidence to be used, he argued, is "an invitation and encouragement to law enforcing officials to violate the Constitution."[2]

This opinion deserves recognition as a landmark in the development both of the rationale for an exclusionary rule and of the significance of state constitutions as an independent source of rights. Thirteen years later, in *People v. Cahan*,[3] the Court in an opinion by Justice Traynor came to accept Carter's reasoning as to the need for an exclusionary rule, as well as his argument for grounding that requirement in the state Constitution. Justice Traynor's *Cahan* is widely acclaimed both for its prescience in requiring exclusion of illegally obtained evidence before the U.S. Supreme Court's opinion in *Mapp v. Ohio*,[4] and for its impetus

[1] In a 1953 case in which the majority rejected a finding by the Industrial Accident Commission that the employer was guilty of "serious and willful misconduct," Carter's dissent characterized the majority's view as "the old story of the people and the legislature being defeated by reactionary court decisions." Carter responded to criticism by saying that a conference of appellate judges "is not a prayer meeting where everyone is expected to nod 'Amen.'"

[2] 20 Cal.2d 165, 174-175 (1942).

[3] 44 Cal.2d 434 (1955).

[4] 367 U.S. 643 (1961).

to the later development of independent state constitutional analysis. Meanwhile, Justice Carter's contribution has gone virtually unnoticed.

Equally ignored have been the cases in which a Carter dissent was subsequently "validated" by the U.S. Supreme Court, either through direct reversal or subsequent disapproval. In *Takahashi v. Fish and Game Commission*,[5] Carter authored a dissent, in which Traynor and Gibson joined, disagreeing with the majority's conclusion, reversed by the U.S. Supreme Court,[6] that it was constitutionally permissible for California to exclude aliens from offshore fishing. In *Rochin v. California*,[7] the U.S. Supreme Court held that the due process clause of the Fourteenth Amendment required a state court to exclude evidence obtained by pumping the defendant's stomach, and reversed a California Court of Appeal decision which allowed the evidence,[8] the California Supreme Court had denied hearing, with only Justice Carter voting to grant. In *San Diego Building Trades Council v. Garmon*,[9] the U.S. Supreme Court held that, under federal preemption principles, a state court had no jurisdiction to grant relief against union activity arguably prohibited or protected by the National Labor Relations Act, and reversed a contrary decision by the California Supreme Court, from which Carter, joined by Traynor, had dissented.[10] In *California v. Taylor*,[11] the U.S. Supreme Court in effect disapproved of a prior California Supreme Court decision holding that the Railway Labor Act had no application to a state-owned railway in *California v. Brotherhood of Railroad Trainmen*.[12] In the prior decision, Carter's had been the only dissent. And in *Konigsberg v. State Bar of California*,[13] the U.S. Supreme Court reversed an order of the Supreme Court of California, from which Carter had dissented, denying Konigsberg's admission to the California Bar based upon alleged communist affiliations.

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5 30 Cal.2d 719 (1947).
6 334 U.S. 410 (1948).
7 342 U.S. 165 (1952).
8 101 Cal.2d 140 (1950).
9 353 U.S. 26 (1957).
10 45 Cal.2d 657 (1955).
11 353 U.S. 553 (1957).
12 37 Cal.2d 412 (1951).
13 353 U.S. 252 (1957).

Carter's dissents in these cases, along with others, reflect a strong-willed commitment to a constellation of values that include self-reliance, individual liberty, procedural fairness, distrust of the state, the importance of juries, protection of the underdog, and collective bargaining. It is a constellation which cannot easily be characterized as "liberal" or "conservative," but against the backdrop of Carter's life experiences, reflected in part in this oral history, the constellation takes shape as the expression of a fiercely independent spirit.

From this oral history we learn of Carter's pioneering forebears; of parents who were small farmers and miners in the California northwest; of Carter's birth, the seventh of eight children, in a log cabin on the Trinity River; and of his early education — at home until the age of eight, because the nearest school was seven miles away, but an avid reader and intellectually curious. We learn how he left home at the age of fourteen, and worked in mines and logging camps in order to earn enough money to go to San Francisco and enroll in Wilmerding School; how he went to work for United Railroads, repairing electric motors in the day and taking night classes at YMCA (later Golden Gate) Law School; how he became politically active in the Progressive Movement, and later in the New Deal, but always, it seems, with reservations stemming from his own independent thought. Carter had a colorful career as a plaintiff's lawyer, a defense lawyer, a district attorney, a city attorney, and a state senator before his appointment directly to the Supreme Court.

Not long before his death in 1959, I remember seeing a newspaper story about Carter's involvement in a dispute with Marin County officials and his neighbors over a dam he had constructed on his ranch. The county insisted the dam was unsafe, and demanded it be removed. There was a picture of Carter, standing outside his ranch house, holding a rifle, and quoted as threatening to shoot "the first S.O.B. who sets foot on my property." But after several engineers testified the dam had been made safe and was no longer a hazard to nearby residents, the dam was allowed to stand. Carter's last dissent ultimately prevailed.

EDITOR'S NOTE

The oral history of Justice Carter was recorded in five interviews in the spring and summer of 1955 during his tenure as a member of the California Supreme Court. The interviews were conducted by Corinne L. Gilb, PhD (1925-2003), founding director of the Regional Cultural History Project (later, Regional Oral History Office — ROHO) at UC Berkeley. In Gilb's introduction to the original transcription, she indicated that Justice Carter was interviewed in his chambers in San Francisco on April 14 and 27, May 19, and June 6 and 27, 1955. Thereafter, Justice Carter supplied a number of exhibits to document subjects he had discussed, which approximately doubled the length of the transcription. The oral history itself is presented here in its entirety, but for reasons of space, only a few of the most notable exhibits have been included.

The oral history has been reedited for publication. Citations have been verified or provided. A few of the section headings added by the interviewer have been modified. Notations in [square brackets] have been provided by the editor. The oral history and exhibits are reprinted by permission of The Bancroft Library at UC Berkeley. The original transcription may be viewed at the Library or online at http://bancroft.berkeley.edu/ROHO/collections/subjectarea/law/ca_supremecourt.html.

The Table of Contents of the oral history also serves as a concise biography of Justice Carter. For a personal remembrance of Justice Carter, see Daniel S. Carlton, "In Memoriam — Jesse W. Carter: He Died As He Lived — Fighting," *Hastings Law Journal* 10:4 (May 1959) 353-359.

In the companion article by Leon Green, "'He Never Declined to Do Battle for His Convictions,'" Ibid., 360-369, the author examines the contribution of Justice Carter's opinions and dissents to the field of tort law. Additional biographical information may be found in the following articles: Corinne Lathrop Gilb, "Justice Jesse W. Carter, An American Individualist," *The Pacific Historical Review* 29:2 (May 1960), 145-157; and J. Edward Johnson, "Jesse W. Carter," in *Justices of California*, *vol. II: 1900-1950* (San Francisco: Bancroft-Whitney Co., 1966), 161-169.

Jesse Carter's advocacy for farmers' water rights, during his earlier legal practice, is the subject of a new article by historian Douglas R. Littlefield for this issue of *California Legal History*, to be found immediately following the oral history.

A significant collection of Justice Carter's papers is available in the Law Library of Golden Gate University in San Francisco. Information about the collection is available at http://www.ggu.edu/lawlibrary/jessecarter.

Photographs credited to "J. Scott Carter" are courtesy of Jesse Scott Carter, son of Harlan Carter, and grandson of Justice Jesse W. Carter. He is a retired instructor of history at Shasta College and former mayor of Redding, California.

Photographs credited to "Scott H. Carter" are courtesy of Scott Henry Carter, Esq., of Napa, California, from the collection of his father, John H. Carter, son of Henry Carter (brother to Jesse W. Carter).

—SELMA MOIDEL SMITH

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THE CARTER FAMILY

CARTER: My father, Asa Manning Carter, was born at Bowling Green, Kentucky, in 1846. His father was born in Virginia and had moved to Kentucky where he was engaged in farming. My father was born on his father's farm there. The family was divided on the slavery question, and at the age of seventeen my father ran away from home and enlisted in the Union Army in Iowa in 1863. He fought in several battles of the Civil War, including Antietam and Vicksburg and some of the lesser battles. I think he referred to Twin Oaks. At the time the war ended, his enlistment had not expired so he was assigned to a regiment which was sent west to suppress the Indians through the Rockies and in northern California and southern Oregon.

GILB: Was he a private all this time?

CARTER: He was a private. I don't think he attained any rank, either commissioned or noncommissioned. He was in the cavalry and he told me, when I was a boy, about some of his experiences coming through the Rocky Mountains, killing buffalo and elk. He finally arrived in southern Oregon and came down into Siskiyou County and was mustered out at Fort Jones in Siskiyou County in 1865. He was allowed a day's pay and a day's ration to return to his place of enlistment, in southern Iowa. He returned there by horseback, overland.

He then organized a caravan consisting of about twenty wagons, oxen and horses and piloted that caravan to California in 1866. He went into the mountains of Trinity and Siskiyou counties and engaged in mining.

He met my mother at Carrville in Trinity County in 1872. She was born in San Francisco in 1852. Her father came from Maine, around the Horn, and arrived in San Francisco by boat about 1849. Her mother came from Ireland and arrived in San Francisco about the same time. They were married in San Francisco in 1850 and my mother was born here in 1852. About two years later they emigrated to Siskiyou County and my mother lived near Callahan in Siskiyou County where she attended the public schools. She was visiting at Carrville in Trinity County when she met my father in 1872.

GILB: Was your father looking for gold up there?

CARTER: Yes, he was mining also, although he had a farm. It was quite the custom in those days to farm in the summertime and mine in the wintertime.

GILB: These were homesteads?

CARTER: Yes. Most of the mining was hydraulic and they only mined during the season of maximum run-off, which was in the winter and spring. Then, when the water got low they would farm.

Mining and Farming in Trinity County

My father and mother were married at Callahan in Siskiyou County on December 23, 1872. My father was engaged in mining in Trinity County at that time and they moved to some land that he had settled on there. It was before the government survey went through and he didn't know if the land he had settled on was railroad or government so he merely

The Carter siblings at the funeral of their mother, Josephina Amanda Sweet Carter, April 20, 1909, Watsonville, California — left to right, seated: John, Elizabeth, Emma, and Jesse; standing: William, Chester, Henry, and Charles.

Courtesy J. Scott Carter.

settled on it, built a cabin, cleared some of the land, fenced it and developed it for farming. It later developed that 160 acres of the land was railroad which he bought from the railroad company and forty acres was government and he homesteaded that.

GILB: Was that the farm on which you grew up?

CARTER: Yes, that's the farm. It consisted of 200 acres of land situated on the Trinity River about two miles north of the little town of Carrville. There is no town there now; it's just an abandoned hotel. At that time it was one of the stage stations when the stage carrying the United States Mail ran from Marysville to Portland. The mail was brought up to Marysville by boat up the Sacramento River and was taken there by horse-drawn stage and carried overland to Portland, Oregon. They changed horses every twelve miles and drove the horses on a run between stations, so every twelve miles there was a stage station where they changed horses and the driver would immediately start off to the next station on the run. Carrville was one of those stage stations.

That was before the railroad was completed. I have no recollection of it, but from history I learned that the railroad was completed along in the '80s.

My father developed this farm on the Trinity River. He first built a log cabin and then added to that a board structure when he was able to get lumber. I was born in that log cabin on December 19, 1888.

GILB: Were you the first child?

CARTER: No, I was the seventh child. There were eight in my family. I have one younger brother who is about three years and eight months younger than I am. My oldest brother, Henry, who is still alive, was born there on November 14, 1874, and all the rest of the family were born there.

I lived there almost continuously until I was about fourteen years of age. Some winters we would go out to a milder climate, either in Shasta County or Siskiyou County. The snow got very deep on our farm. In fact, one year it was twenty feet deep. That was the year after I was born — twenty feet on the level. The average depth of the snow during the

wintertime would range around six to eight feet. The most I ever saw was twelve feet on the level one year.

GILB: What did your father raise on this farm?

CARTER: He raised all kinds of vegetables; he had about five or six acres in orchard, and about a hundred acres in hay. He had livestock — cattle, horses, sheep, hogs and poultry.

GILB: No cash crop? Was it all subsistence?

CARTER: Well, he sold some. He would sell some cattle and hogs. There was practically no market for the vegetables, you know. There was some market at the time in the mines but not a considerable market. There was, of course, a market for the livestock and he sold some of that.

He made what little money he had at mining in the wintertime. He operated a hydraulic mine, just about two miles away from the farm, known as Hostetter Gulch, and he worked there in the wintertime and would take out gold. That varied from year to year. I would say that probably a couple thousand dollars would be a large yield at that time, and that, of course, was used to buy food and clothing. Practically all of the produce of the farm was consumed right there.

GILB: Did you feel any poverty in these early days?

CARTER: Yes, considerable. Our clothing was very meager, I would say. We children went barefooted in the summertime and we managed to have one or two pairs of shoes or boots in the wintertime. My father was very handy at keeping them in repair. I remember mother used to buy what they called blue drillon in large bolts and make overalls and what they called jumpers out of that, and she made most of the clothes for us children.

School Days

There was no school near the place until about 1896. The nearest school was seven miles and my older brothers and sisters used to drive a horse and buggy to that school. I was too young so I got most of my early education at home. I learned to read and write and learned the multiplication tables and could work out some mathematical problems before I ever

went to school. I read all of the readers that my older brothers and sisters would bring home from school which consisted of all of McGuffey's Readers — and I also read the history and geography books which they brought home.

I didn't start to school until I was eight years of age. At that time I was way ahead in reading, spelling, arithmetic and the elementary subjects. I had not learned to write longhand. I could print very rapidly, but I hadn't been taught to write longhand.

GILB: Did books and magazines and newspapers come into your home?

CARTER: Oh, yes. Yes, my father was quite a reader and he had a modest library of the kind of books they had then.

GILB: Of novels, or things like Henry George, for instance?

CARTER: Yes, I remember we had *Progress and Poverty* and my father read that. Book salesmen would come through and we would buy books from them. I remember one book that was in the nature of a book of knowledge called the *Compendium of Forms*. It's a very large book I still have it ... about sixteen inches high and four inches thick and a foot wide. It contained a synopsis of the laws of the different states largely relating to the law merchant, dealing with bills of exchange, promissory notes and various things like that. It also had some very select literature; it had codes of ethics and things like that. I read that book and it contained very valuable information from a cultural standpoint. There were a lot of poems in it of a philosophical nature. I memorized many of those poems and I still remember them, like, "Oh, why should the spirit of mortal be proud?" "Eternal Justice," "Maud Muller," and many others I still remember.

Politics

GILB: Did your father have any pronounced political views that came to your attention at this time? For instance, was he a Populist in his sympathies?

CARTER: He died when I was eight years of age so my contact with him so far as political views were concerned was very limited. I do remember

this. He was a Republican and generally voted Republican. Of course, in those days county politics were along party lines as well as state and national. But in 1896 when William Jennings Bryan was running for President against McKinley, my father's nearest neighbor and probably his closest friend was John S. Strode, who was from Mississippi, and he was a Democrat, but he had a gold mine and he would come around and try to talk my rather into voting for McKinley because he thought that Bryan's free silver policy would be detrimental to gold mining. My father had made up his mind to vote for Bryan. He was not very well satisfied with the country's economy and he thought that Bryan had a better political philosophy than McKinley. I remember hearing that discussion. Mr. Strode, carrying his own stool with him, would come around where my father was working out in the field and would discuss these political problems with my father and he was quite adamant. I remember my father saying that he was going to vote the Democratic ticket for the first time in his life, and he voted for William Jennings Bryan, and Mr. Strode voted for McKinley.

That had some influence on me, I think. It at least caused me to think about political concepts.

Financial Difficulties

GILB: Did your father blame your personal property conditions on general conditions?

CARTER: No. Oh, to some extent. I remember some discussion along that line. For instance, I remember he brought home a small bucket, I think it was a five pound bucket of lard, and he said he had to pay $1.25 for it which he thought was outrageous and he said he thought there must be some manipulation in the market or that wouldn't happen. Of course, I was rather young then and those things didn't register very strongly on me.

But after he died my older brothers maintained the home for several years. My mother lost her eyesight. She started to lose it about 1892 when I was about four years of age. That was my first memory of it. At the time my father died in 1896 she was quite blind. She had a cataract that never matured completely. While she could tell daylight from dark,

she couldn't read or recognize people. She could move around, but she never regained her sight. She went to various eye specialists but they said they couldn't operate until the cataract had fully matured. So I would go around with her to guide her when she went places.

My father had applied for a soldier's pension as he had been wounded in battle, but it was not granted before he died. My mother continued with the application and finally, the pension was granted. I went with her to a notary public who made out the papers and sent them to the pension office. It took several years. I do not know when he applied for the pension, probably in '94 or '95, and he died in '96, and I think she got the pension in 1898.

GILB: It must have been very hard in those intervening years for your family.

CARTER: Yes, it was. Living on the ranch where we raised vegetables and livestock, we always had plenty to eat. I think our clothing was rather scant at times. We usually left Trinity County in the winter and I attended grammar school in Siskiyou County one winter and in Red Bluff, Tehama County, one winter, but most of my schooling was right there in the little rough board schoolhouse on Coffee Creek which was about two miles from our home. I walked back and forth every day. This farm was right on the Trinity River and we had to cross the Trinity River where I did a lot of fishing as a boy. I graduated from this grammar school, I think it was, in 1902. I say this rather facetiously, that I have one distinction, and that is, I am the only student that ever graduated from this grammar school, but the reason was that the school burned down shortly after I graduated and was never rebuilt.

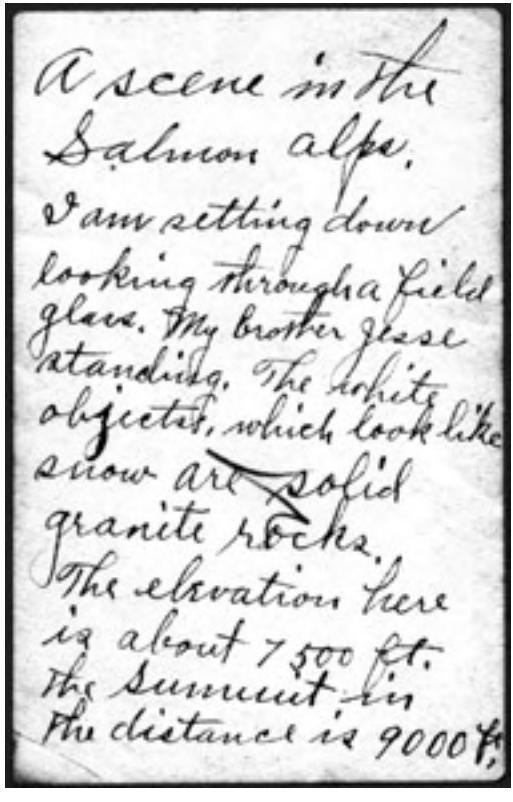
Religion

GILB: Was religion ever a factor in your home?

CARTER: Well my father was a religious man. There was no church or Sunday school within range where we could attend. My father, I've heard him say he was an Orangeman, whatever that means. I've never known of that denomination or heard of it.

GILB: Was he Irish?

(Above)
Henry and
Jesse Carter
in the Salmon Alps
of Northern
California



(Right)
Inscription
on reverse by
Henry Carter.

Courtesy Scott H. Carter.

CARTER: No, the Orangemen in Ireland were Protestants. He was not Irish. His folks came from England. His mother was Dutch and French.

GILB: What was your mother's religion?

CARTER: Well, her mother was a Catholic and she came from Ireland. Her father was a Protestant. When she was a young girl she didn't join any church, but when she was older she became a Presbyterian.

Whenever we were within range of church attendance, the children went to a Presbyterian Sunday school and church, so I might say I was raised as a Presbyterian. In fact, I joined the Presbyterian church. That's a very fundamentalist type of church with strict ideas.

GILB: Did your family adhere to these?

CARTER: Yes, very much so. My mother was very strict and so were my sisters. My brothers went along but were not very devout. It didn't seem to mean as much to them as it did to my mother and sisters.

After I came to San Francisco in 1905 I attended church here and became very active in church work, and in 1909, I think it was, the San Francisco Presbytery voted me a scholarship in Occidental College. I never accepted it. At that time I thought I would because I thought I was going to become a Presbyterian minister, but I became very much interested in civic affairs here due to the graft prosecution which created both a political and social upheaval.

THE PROGRESSIVE ERA IN POLITICS

The San Francisco Fire, 1906

GILB: Had you been interested in civic affairs back home before you came to San Francisco?

CARTER: Well, not particularly. I had taken an interest, but I was quite young then. I came to San Francisco when I was sixteen.

GILB: What brought you to San Francisco?

CARTER: To go to school. I left home when I was fourteen and I worked in mines and logging camps and saved up something over $300 and came to San Francisco in the fall of 1905 and enrolled in Wilmerding

School. It was a private school established by the Wilmerding Foundation where the industrial arts were taught. I attended that school until the earthquake in 1906. Then I went back to Shasta County and worked during 1906; then I came back to San Francisco.

GILB: Did the earthquake make an impression on you?

CARTER: Well, yes, considerable. I was living at 20th and Mission and the fire burned within three doors of where I was living, and stopped. I would say it was quite a shock to me. I had never seen anything like that before, the destruction and the hysteria. What I was amazed at was the control exercised by the authorities over the frightened, hysterical mass of people who were rendered both helpless and hopeless by the destruction and devastation which followed. I was really amazed at how it was brought under control very readily.

GILB: Do you think Mayor Schmitz was to be credited with this?

CARTER: That I don't know. Of course, the Army took over immediately and the whole city was put under military control. I don't know to what extent the civil authorities had anything to do with it. I know that wherever I went the Army was in control. I stayed here about a month afterwards and then I went back up North. Of course, when I came back the civil authorities were in control.

To School in San Francisco

GILB: Had you had any connection with the Barbary Coast or any or those elements?

CARTER: No, I, never had.

When I came back in the fall of 1906, I went to work for what was then the United Railroads and went to school at night. I started to Drew's School to take the regular high school course and I went there for about two years. It was a night school.

GILB: What did you study?

CARTER: I studied the regular high school course. In fact, I was then intending to go to Occidental College and I took history, English, mathematics, Latin, Greek and physics.

GILB: Were you a good scholar?

CARTER: Well, I thought I was in some subjects. I finished two years of Latin in six months and about the same in Greek and could read both. That was a private school; I paid the tuition. I don't recall that they gave any grade marks. When I was in grammar school I used to get 90's generally. In fact, quite often I would make 100 in examinations.

Then, after I decided to study law in 1909 I entered what was then the YMCA law school, and in law school I got very good marks. They used to mark by percentage, and if I got below 95 I was very disappointed.

Labor Conditions at the United Railroads

GILB: You were working for the United Railroads in 1906 as what?

CARTER: I went to work for United Railroads, I think it was in the fall of 1906 or the early part of 1907, in their electrical department, the repair of electric motors.

GILB: How did you know how to do that?

CARTER: Well, I started in as an apprentice and learned it, and I soon was able to do what they called the work of a journeyman, and I worked at that until the spring of 1907. Then there was a strike and, while I didn't belong to the union, I went out on strike and I didn't come back until the strike was broken. I think I came back in December of 1907.

GILB: Did you have any strong attitudes about the union?

CARTER: Well, I had strong attitudes about labor. I felt that the laboring men were not getting a fair deal, and I thought the unions were aiming in the right direction. I didn't approve of their methods. I thought that the union management was not always very healthy. In fact, it wasn't in those days. But it was at least concerted action to get better working conditions for the men, and while they were not very effective in those days, because they were not strong or under good leadership and most of the strikes were broken, I thought their objectives were in the right direction.

GILB: Were you incensed by Calhoun's methods of strikebreaking?

CARTER: Oh, yes. Of course I thought they were absolutely wrong and unjustified, and not only that, but United Railroads wanted to control not only the economic welfare of their employees but the political as well.

The Graft Prosecutions

In fact, in the election contest of 1909, I think it was, the United Railroads asked all their employees to sign a pledge card to vote for Charles M. Fickert who was running against Heney for district attorney.

GILB: Were you still working for them then?

CARTER: I was still working for them. I wasn't old enough to vote then but they presented a card to me to sign pledging my support to Fickert. I said, "Well, I'm not a voter so it isn't necessary for me to sign it." I wouldn't have signed it anyway, but most of the men signed and said that they didn't intend to vote for him, but they signed the card because if they didn't they'd probably lose their job.

GILB: Was the voting secret enough so they couldn't be checked on?

CARTER: Well, I think so. Of course, I didn't vote then. My first vote was in 1910. But I went around to the political meetings.

GILB: When did you first start that?

CARTER: That was in 1909. I think the first time I regularly attended the meetings here was in 1909. That was when Heney ran for district attorney. Langdon had been district attorney and Heney was running to succeed Langdon, and Fickert got the Union Labor endorsement. The paradox was that Calhoun was supporting Fickert, and Calhoun was the only man who had ever broken up a labor union in San Francisco and yet the Union Labor party endorsed Fickert. Fickert was elected and he did just what Calhoun expected him to do, he moved to dismiss the indictments against Calhoun and all those who had been engaged in the purchase, the illegal purchase of franchises.

GILB: Did you follow the graft prosecution from the very beginning?

CARTER: Yes, I came back here in the fall of 1907. After the strike in April, 1907, I went to Watsonville and I remained there until November or December, 1907, when I came back to San Francisco and went back to

work for the United Railroads then. The graft prosecution was going on and I did follow it closely.

During that time I got acquainted with Langdon.

GILB: How did you meet him?

CARTER: I met him at a political meeting. They were asking for volunteers to distribute literature so I went down and volunteered to distribute literature during that campaign. Heney was running for district attorney and Dr. T. B. W. Leland was running for mayor on the Democratic ticket, and P. H. McCarthy was the Union Labor candidate for mayor.

GILB: Who were you for?

CARTER: I was for Leland because I didn't trust McCarthy. Heney was running for district attorney and I was for Heney so they gave us this literature to pass out. We went around from door to door leaving these pamphlets stating what the candidates stood for.

GILB: Was there anything in the graft prosecution that particularly impressed you?

CARTER: Yes. I felt that men who were elected to public office and who took an oath to uphold the law and to serve the people should not sell out to private interests and give special privileges to these private interests which were clearly detrimental to the people — selling long-term franchises to the railroad company and putting the money in their own pockets. These men who did that, Schmitz, Ruef, and the supervisors, had been elected by the people to serve the people. If the railroad company paid for a franchise, that money should go into the public treasury and be used for the public benefit. Instead of that, they gave the franchise away and put the money which was paid for it in their own pockets. The money that was paid was clearly a bribe as it was appropriated to their own use, and that seemed to me to be highly improper conduct for a person who had been elected to fill a public office. They were certainly not acting in the public interest.

The Progressive Movement in State Politics

GILB: Were you familiar with the Southern Pacific's activities?

CARTER: Yes, to a certain extent, just what I read. Then, when Hiram Johnson ran for governor in 1910, I supported him and I was for his program. I felt that he had the right philosophy and would accomplish something for the people in reorganizing the Railroad Commission, getting it out from under the control of the railroad company and also his industrial program . . .

GILB: That came a little later.

CARTER: Yes, a very little later. It was in his program. He talked about an employer's liability act at that time and then the workmen's compensation act came along later. But during the 1911 legislative session, which was the first session under Johnson, they enacted the Rosebury Employer's Liability Act, which was a great boon to the working man because, while it was voluntary on the part of the employer as to whether or not he would come under it, it abolished the defenses of assumption of risk and fellow servant rule and modified the contributory negligence rule. It established a rule of comparative negligence rather than contributory negligence which could only be used to reduce the damages. If there was contributory negligence on the part of the employee, that would reduce the damages, but it would not defeat recovery by the employee. Of course, before that it was almost impossible for an employee to recover from an employer for injuries resulting from the latter's negligence because they would invoke one of those three common law defenses of assumption of risk or the negligence of a fellow servant or contributory negligence and I would say that at least seventy-five to eighty percent of the judgments recovered by injured employees against employers were reversed by the Supreme Court on one of these theories.

GILB: You say you were for Johnson. Did you do anything besides vote for him?

CARTER: I electioneered for him. I distributed literature just about the same as I did in the Heney campaign. That was a year later. The Heney campaign was in the fall of 1909 and Johnson was in the fall of 1910.

GILB: Did you do this for any particular group in San Francisco?

CARTER: Yes. There were various groups organized. In the community where I was living out in Mission, they had a group organized for Johnson.

GILB: Who were your leaders? Who were the big names, like Phelan or Weinstock?

CARTER: Yes, Harris Weinstock and James D. Phelan and Rudolph Spreckels. They were all in this group. I didn't come in contact with them. In fact, I never met Johnson until he became governor. I saw him, I attended meetings where he spoke, but I never became personally acquainted with him until after he became governor. I did meet Langdon and I met Heney.

GILB: What did you think of Heney?

CARTER: I thought he had a very brilliant mind and was quite adroit and forthright. I had a feeling at the time that his belligerence probably lost him some prestige and support that he might have had otherwise. That is, a more tactful approach might have been better, but that's just merely an assumption because the lines were very closely drawn. There was the impact of the Progressive Movement against this old, staid, conservative, special privilege group that was entrenched and wanted to stay entrenched, and they were resorting to everything to try to discredit the people who were trying to bring about a change. So Heney replied in kind. He was castigated. He was charged with all kinds of things, and of course, he was infuriated by the things they said which were absolutely untrue, and so he made some rather caustic replies. I don't think anyone, regardless of how shrewd they were, would have accomplished any more.

Now, Johnson was more polished. He fought hard and he became quite caustic, too. Of course, he wasn't right in the forefront of that fight like Heney was. I heard Johnson and Heney speak from the same platform. Johnson would get an ovation. Heney would get applause, but Johnson would get an ovation, because of the different manner of approach — Heney would come in just biting wire nails in two and Johnson would be more suave and polished.

GILB: As a boy, which did you admire the most, the polish or the belligerence?

CARTER: Well, I admired Heney. I thought he was doing a great job. I thought he was fighting against terrific odds. Just to use the common expression, he was giving them the word with the bark on it. He wasn't mincing words at all. I heard him say one night, "I believe in calling a spade a spade and a liar a liar." (Laughter)

GILB: And you liked that?

CARTER: Yes, I did. But of course I heard criticism. But I think that criticism would have come anyway. In other words, I now have grave doubt that Heney's abrupt, unpolished approach alienated very many votes from him. In fact, it may have won him some.

GILB: At this time, did you identify yourself with the middle class or did you think of yourself as with the lower class against the vested interests?

CARTER: Well, I thought I was probably of the middle class, or I'd say that while my sympathies were all with labor and the underprivileged, I was aiming to get into the group which I considered the middle class to help to carry on the fight, and that's why I studied law. I could visualize myself in the legal profession and holding positions which would enable me to render a public service and accomplish results for the people, which I did. It all worked out very much as I had planned, rather, as I had envisioned.

The National Elections

GILB: How long did you remain a Republican before you became a Democrat?

CARTER: My first registration was in 1910, and I registered then as a Republican. I went to the registration office and said, "I want to register in the Lincoln-Roosevelt League," and they said, "Well, there is no such party, but you should register Republican if you want to vote for the syndicates endorsed by the Lincoln-Roosevelt League." So I registered Republican in 1910.

However, I took a great interest in the 1908 national campaign and was then for Bryan, but Taft was elected. I followed the rise of the Insurgents during the Taft administration, La Follette, Norris and that group that led the fight against the reactionaries in the Taft administration. The only reason I registered Republican was I wanted to vote for Johnson. I remembered what he did in the graft prosecution, and of course, I wanted him to win so I registered Republican and supported him.

I registered as a Democrat in 1912 and supported Wilson.

GILB: In spite of the fact that Roosevelt was running?

CARTER: Yes, I didn't think that Theodore Roosevelt would bring about the change that Wilson would bring about. Their philosophy was almost the same, but Roosevelt had sponsored Taft who had been President for nearly four years and while I thought that Roosevelt was not controlled by special privilege, I felt that he couldn't do anything without the support of his party, and the only way to get any change was to elect a Democrat who would have the support of his party. So I voted for Wilson in 1912, and then, in 1914 when Johnson ran for governor for the second time, I switched to the Progressive Party. He started the Progressive Party at that time and I switched to the Progressive Party and voted for him as a Progressive.

GILB: Were you dissatisfied with any of the elements of his administration?

CARTER: No, I think I was pretty much in favor of his whole program. I really thought he sincerely carried out the program that he undertook in 1910, and I still think so. I think he gave an honest, efficient administration and I think he did the greatest work that was ever done by any governor in California.

And then in 1916 I again registered Democrat and supported Wilson. In fact, I was on the speakers' list then. I was in Shasta County. I gave several talks for Wilson in the 1916 campaign.

LAW SCHOOL IN SAN FRANCISCO, 1909–1913

GILB: It was in 1909 that you decided to be a lawyer, wasn't it, as a result of this campaign? When did you enter law school?

CARTER: I entered law school about the first of December, 1909. I hadn't finished my course at Drew's; I wanted the pre-legal, and I finished that about December 1st, and I went to the education director of the YMCA law school and told him that I felt that I had finished those subjects and would like to enter law school. He permitted me to enter then. I was just about three months late and I had to make that up, which was quite difficult, but I did, and I passed the examinations in the first year subjects.

GILB: This was a night school, wasn't it?

CARTER: Yes, three nights a week.

GILB: Were you still working for United Railroads?

CARTER: Still working for United Railroads. I used to get up at two o'clock in the morning and study until seven and then go to work. On Monday night I would have to be at school at seven, seven until nine. I'd get home about nine-thirty. On the school nights I'd go to bed about ten and get up at three, and on the other nights I'd go to bed at nine and get up at two. I found that I could make better progress in the morning. Then, of course, I'd study during the noon hour. I read numerous law books during that fifteen minutes I had at noon. I read Blackstone's *Commentaries* and Kent's *Commentaries* and all the codes and several textbooks during that fifteen minutes.

GILB: Did you do any general reading? For instance, did you read Lincoln Steffens or Ida Tarbell or any of the muckrakers?

CARTER: Well, I read periodicals. I don't recall any books that I read, but I read magazines, periodicals and editorials, things like that.

GILB: Did San Francisco's crusading editor, Fremont Older, have any influence on you?

CARTER: Yes, I wasn't an admirer of Fremont Older. I thought he was on the right side, but I thought he was probably promoting Fremont

Older more than he was the liberal cause. I met him once. Of course, he was on the right side.

GILB: Well, you sound as if you were a very serious boy during all these years. Didn't you have any fun?

CARTER: I must have been serious. No, I'll tell you, from the time I started studying law in 1909 until I passed the bar in 1913, I never had any social engagements at all. I never went to a theater or any kind of a social function. I just studied all the time. On weekends, I would put in the whole time.

GILB: No girls?

CARTER: I got married in 1910.

GILB: You must have had some spare time then. How did you meet your wife?

CARTER: I met her at church, the Presbyterian Church. I was active in church work right along, the Presbyterian Church. I met her out at the church in Glen Park, the Sunnyside Presbyterian Church. We were married in 1910.

But I just kept on with my work. It had its unpleasant nature too. Of course, it's difficult to do that, just sacrifice everything, but I made up my mind I was going to go through law school and be admitted and I was.

GILB: Did you form any friendships in law school that had lasting influences?

CARTER: Yes, all the men in law school were very good friends of mine. Some are still living. I just got a letter from one of my classmates who is now retired and lives over in Castro Valley, Frank Warner, a very fine man. Another one, Harry Corwin, who's still practicing here. He's made quite a success.

GILB: How about your teachers. Was anyone outstanding?

CARTER: Yes. I had some very wonderful teachers. The one I admired the most and who is still a very good friend of mine is Edward Hohfeld. We became very close friends and still are. When I came on the Court here I had to have a lawsuit to establish my eligibility and he was one of

my lawyers. Oh, there were a number of very wonderful men who taught school there: Mr. J. E. White; I think he's dead now; Mr. Gilbert Farrell, who later became district attorney of San Mateo County.

GILB: Do you think it was a good school?

CARTER: I think it was a wonderful school. While we paid a tuition, it was a non-profit school. They didn't make any money out of it; in fact, they lost money on it. It only cost us, I think, $50 a year for tuition and about that much for books, but that was more money than we had to spend. They gave a very good course.

Well, they had professors from the University of California and from Hastings and from Stanford. We got about the same course they gave in those schools.

ADMISSION TO THE BAR, 1913

CARTER: I decided to take the bar examination before I finished my law course. I was to graduate in June of 1913 and the bar examination was given in April before the District Court of Appeal. So I studied almost day and night for about two weeks, preparing for the examination, and took the first written examination that was given in California for admission to the Bar — a day written and a day oral. They gave thirty written questions and about half-an-hour oral examination.

I passed the examination. I don't recall what the percentage was, but I was among the few at the top. There were only nineteen out of forty-nine that passed the examination. I was admitted on April 11, 1913.

There was an incident connected with my admission that was very interesting. I was president of the student body of Golden Gate College, and we had a professor who taught Corporations during my third year. Every student was very greatly dissatisfied with him and at the end of the third year a committee of the student body called upon the educational director who was in charge of the school and objected to this professor teaching any courses in the fourth year. We were assured that he would not be reemployed.

But when we received a list of courses and professors for the next year, this professor was scheduled to teach Evidence. I immediately

called the student body together and we passed a resolution opposing the reemployment of this professor on the ground that he was incompetent, and I presented this resolution to the educational director. One of the students, who was present at the time the resolution was adopted and who had voted in favor of the resolution, was not present when the resolution was finally prepared and signed by all the students. I called him on the telephone to see if I could contact him so that he could sign the resolution and he said he was going out of town and that I could sign his name to the resolution, which I did. Being rather inexperienced, I didn't write after it "by me" or designate that I had signed his name.

The educational director immediately called this professor in and showed him the resolution, and he then proceeded to contact the various students.

All said that they had signed this resolution except this one man and he stated he did not sign it, but he did not tell the professor that he had authorized me to sign it for him. Nothing further was said. The professor was not reemployed. We got a very good man, Mr. Golden W. Bell, who was teaching Evidence at Hastings and I think was also teaching at Boalt Hall — a very outstanding man — and I was very happy over it because that is one thing I've always prided myself on, as having a very good knowledge of Evidence.

So when I took the examination and passed, the clerk of the District Court of Appeal called my home and stated that I had passed the examination but that a charge had been filed against me, and I went down to the clerk's office. There was a letter there from this professor stating that he objected to my admission because I didn't possess the moral character requisite for a member of the Bar. The court set the matter for hearing and I immediately requested all the students to be present at the time of the hearing and also the sponsors who had signed my application for admission, including Mr. Edward Hohfeld, now of Morrison, Hohfeld, Foerster, Shuman and Clark; Mr. Gilbert Farrell of the firm of Willard and Farrell; and Mr. Hugo Newhouse in whose office I had worked for a while.

They all appeared before the District Court of Appeal, and this professor appeared and narrated his version of this affair and stated that I

had signed this student's name without his permission. I was called upon to reply and told my side of the story, and then the presiding justice, Mr. Justice Lennon, called upon this student and asked him if my statement was correct, and he said it was. Mr. Justice Lennon said, "Well, we have the wrong man on trial here. You should dismiss this charge, Professor."

And the professor refused to do it, and Justice Lennon became very angry and threw his pencil across the desk and said, "The charge is dismissed. No record will ever be made of it. It is groundless and without foundation." And then he turned and gave me a lecture. He said, "You've done nothing wrong at all." During the hearing several of the professors spoke very flatteringly in my favor. Judge Lennon said, "I don't know what kind of a fellow you are, Carter, but unless you get your feet on the ground, nobody will be able to speak to you for about two weeks." (Laughter) So that was the end of that. I've never seen the professor from that day to this, although he's now practicing law in Oakland and I'll not mention his name.

So I got my license that day, April 11, 1913.

GILB: But you continued to go to law school?

CARTER: Yes, I continued on and graduated in June of 1913.

BEGINNING YEARS OF LAW PRACTICE

CARTER: At that time I was working part time in the office of Hugo D. Newhouse in the Kohl Building, San Francisco. I continued on. I was also working for the United Railroads in their electrical department. I had been working there for seven years as an electrician.

The master mechanic had recommended that I go into their legal department and gave me a letter to their chief counsel who was then William M. Abbott of Abbott and Cannon. They were quite prominent lawyers.

I went down to their office and sat there for two days and was unable to get an interview with either one of them. That probably spared me from becoming a railroad lawyer. My career might have been quite

different if I had been employed in the legal department of the United Railroads at that time. (Laughter)

I continued working in the electrical department of the United Railroads and practicing law. Whenever I got a case, I could leave my work there and go and handle it. My first appearance in court was before I was admitted. It was in the fall of 1912. I appeared in the Superior Court of San Mateo County and argued a demurrer. The demurrer was sustained without leave to amend, and I won the case.

I continued practicing and had a number of minor matters in the superior and justice courts.

In December of 1913 my brother William, who was in the contracting business in Shasta County, died. His wife asked me to go up there

JESSE W. CARTER IN HIS LAW OFFICE, REDDING, CALIFORNIA, DECEMBER 1915.

Courtesy J. Scott Carter.

and help her administer his estate. I went up, and stayed about a month and took care of all the legal matters pertaining to the estate.

While I was there, one of the leading attorneys of the county, Mr. Daniel G. Reed, and one of the superior judges — they had two superior judges — died, and it seemed to me that that was a pretty good place to start in because one of the leading lawyers was appointed to the bench.

I bought a part of the library and a part of the furniture of this lawyer who died and occupied the office of the attorney who was appointed judge, Mr. W. D. Tillotson. So I started practicing in Redding.

I opened my office on February 5, 1914. Business came rather slowly. There were enough lawyers there to take care of the legal business, and most everyone who had any business had a lawyer. And I was a very young lawyer then, only twenty-four years of age. So most of the business I got was what the other lawyers turned down.

But I gradually picked up a little here and there. I followed the advice of my friend Edward Hohfeld, a very able lawyer: to outwork the other fellow, put in more time, prepare cases better. So I would get down to my office at seven o'clock in the morning and I would make a very thorough study of every case that I had, even though it was of very minor importance. I would go into court well prepared and I took a lot of the older lawyers by surprise who were resting on their laurels of long experience and recognized legal ability and who expected to win their cases on their ability to speak without preparation. It wasn't very long before I won some cases that surprised, not only the lawyers, but a lot of the people in the county.

DISTRICT ATTORNEY OF SHASTA COUNTY, 1919–1927

Running for Office

CARTER: I didn't intend to run for district attorney that year [1914], but the then-district attorney, who was a very able man, Mr. Orr M. Chenowith, had been district attorney for four years. He had not been very successful. It probably had not been his fault; he had some very difficult cases which he lost, and he had antagonized a good many people and

some of the real substantial people of the county. People came to me and said, "We don't like the set-up here. We think there's too much back-scratching among the county officials. The district attorney is letting things get by that are detrimental to the taxpayers and we'd like to see a change." So quite a number came to me, including the sheriff, and asked me to run and stated that they would give me some moral and political support. What I needed more than anything was financial support, but that was not forthcoming. I went to the bank and borrowed $200.

GILB: Did you have any children by this time?

CARTER: Yes, I had two boys, Oliver and Harlan. (Oliver is now a federal judge and Harlan is a teacher.) My daughter Marion was born April 25, 1915. She graduated from the grade school and high school at Redding and then attended Chico State College for two years. She married Silvio Eugene Bui while she was attending Chico State. He is a merchant in Redding. They still live in Redding. They have three children, the oldest of which is now married.

So I made the fight as best I could and I lost that election by twenty-three votes, but I made a wide acquaintance and met most of the people in the county. I was sure that I could win next time. I wouldn't have run that time had it not been for the pressure that was put on me by some very substantial people of the county.

After the election, my opponent, who won by a very narrow margin, came and offered to appoint me his deputy and I declined to accept it, although it was quite a temptation because I really hadn't built up much of a practice yet, having been in the county less than a year. But I felt that my political future would be jeopardized if I accepted the deputyship and became associated with him. He did not typify the political philosophy that I believed in, although he was a very fine and able man and has made an outstanding success, a very fine lawyer.

Enforcing Honesty in Government

CARTER: So I continued on with my practice and by 1918, the next general election, I had built up a fair practice and was doing very well. I had won several important cases and so I decided to run then. I felt that I

could render a service to the people of the county. By that time I had learned of the different alliances between county officials. The then district attorney was winking at a lot of things which might not have been strictly illegal but were not, I thought, in the best interests of the people of the county. The coroner, who was a client of the then district attorney, would call one or two doctors to investigate each coroner's case. Such cases arose whenever a person was found dead who did not have an attending physician. The coroner would take these doctors to the place where the body was found and the doctors charged $1 a mile plus $10 for the examination. The coroner would charge 25 cents a mile, which the law allowed. The coroner would ride with the doctor so that he would not be out anything for transportation. In some of those cases they traveled as far as eighty miles, so there would be a bill of $80 for the doctor's mileage, $10 for the examination, and $20 for the mileage for the coroner, and he also got a fee for the examination. In many of the cases there was no need of a doctor at all. The cause of death was well known and the only cases that should have had a doctor were where there was doubt as to the cause of death and there might have been foul play.

Jesse W. Carter as Shasta County District Attorney, 1919-1927.

Courtesy Office of Shasta County District Attorney.

So I made this fight and was elected by about one thousand votes that year, 1918.

I immediately advised the coroner that I would not approve the bills of the doctors in such cases. A grand jury was called and I submitted the matter to them, and they made a recommendation in accordance with my views. The practice was then discontinued. I figured up the next year that by taking the number of death cases that occurred and their location, I had saved the county something over $3,000 in fees and mileage which would have been paid to doctors in such cases.

Then I found a supervisor, who ran the morning newspaper, soliciting printing business from the county officials, and in some instances

he charged three times the county rate for such printing. The Board of Supervisors fixed the rate for printing, and of course, he, being a member of the Board of Supervisors, voted for that rate. While he did not control the majority of the board, he naturally had a lot of influence with the other board members because of the power of his newspaper. He also told the county clerk not to turn over any of his bills to me. I was supposed to pass upon the legality of those bills. I didn't even know about them. He put the bills in, in the name of his job printer, so they didn't appear in his name or that of the newspaper. He and his job printer had a falling out in about a year or so, and the job printer came and told me about it.

So I immediately submitted the matter to the grand jury, but he had enough influence to keep from being indicted. I could only get eleven votes for an indictment and it took twelve.

So then I sued him for the amount he had collected, which amounted to about $10,000. I tried the case before an outside judge, Judge J. J. Trabucco of Mariposa County, who was called in to sit in the case, and he gave judgment for the county. Moody appealed the case and it was affirmed on appeal, *Shasta County v. Moody*;[1] see, also, *Moody v. Shuffleton*.[2]

Then Moody immediately transferred the paper to his son, Herbert, and took a chattel mortgage back for $20,000. Then Herbert proceeded to do printing for the county while his father sat on the board and approved the claims, but I held those claims illegal.

They then brought suit against the auditor, because the auditor refused to audit the claim unless I would approve it. Another judge came in this time, Judge Landis of Placer County, and he decided in favor of Moody. So I appealed and the District Court of Appeal affirmed the judgment. I petitioned the Supreme Court for a hearing, which was granted, and the Supreme Court reversed, sustaining my position.[3]

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1 90 Cal App. 519, 265 P. 1032 (1928).

2 203 Cal. 100, 262 P. 1095 (1928).

3 *Id.*

Before Moody became supervisor I had advised him that he could not do the county printing, and I also got the opinion of the attorney general to that effect.

From the time I sued him, his paper devoted a large portion of the front page to saying derogatory things about me.

GILB: But you had the support of the *Independent*?

CARTER: I had the support of the *Independent* and the *Free Press*; there were two. There was the *Courier Free Press*, which was a daily evening paper, and the *Independent*, which started out as a weekly and later became a daily. I had the support of all the other papers in the county, but they were all small. The only other daily in the county at that time was the *Courier Free Press* and it was not too strong a paper. It was all right, but it wasn't nearly as strong as the *Searchlight*.

The *Searchlight* had been quite a progressive paper at one time. It had taken a very strong stand for issues that were favorable to the people, but this man Moody was just a downright grafter. He said, "Carter, I haven't anything against you, but I'm in for making money and I'm going to make it any way I can, just as long as I can stay out of jail." That was his philosophy. Because of his attitude we had some very bitter battles. My sole aim was to make him comply with the law.

That was really quite a decision for me to make. When I discovered what he was doing, he came to me and wept bitterly. I wrote him a letter when I found out what he was doing, and I told him that he had to pay the money back. He said, "You shouldn't do this to me. I know my paper has not been very friendly toward you, but you can put anything in my paper you want. I'll support you for anything you want. I'll see that nothing ever goes in there again that is derogatory to you. All I want to do is to be left alone and be able to continue doing the county printing." I said, "Well, Mr. Moody, you can't do that. I took an oath that I would enforce the laws without fear or favor. You're a very influential and powerful man in this community, but I just can't permit you to violate the law without taking action against you."

I spent several sleepless nights struggling with myself as to what I should do and finally concluded there was only one thing I could do and

that was to bring the action. So I did and it was bitterly fought. It was one of the things I did that I look back on with real satisfaction.

GILB: Did you encounter any other examples of graft in the county?

CARTER: Oh, yes, minor, such as a city councilman selling material to the city. He was a lumberman. He resigned and paid the money back.

The superintendent of an irrigation district was caught filing fictitious warrants with the district and I prosecuted him.

Oh, there were a number of minor infractions, but on the whole, I would say that the county officials were essentially honest, and I think they really wanted to do a good job and generally their offices were conducted in a commendable manner.

Moody was a very unethical person and had a very unsavory background. His idea of public office was to get all the money he could without, as he said, going to jail. There can be no doubt that he knew that he would violate the law if he did business with the county while he was a supervisor, but thought I would not proceed against him.

Fish and Game Laws

GILB: Did you have much of a problem in enforcing fish and game laws?

CARTER: Oh, not very much. We'd have a few cases. Most of the cases, the defendant would plead "guilty" and the case would be disposed of. There were very few cases that went to trial until the Fish and Game Commission appointed a fellow by the name of Frank A. Greene, who was a very disreputable character and had a very bad reputation for truth. He had some political influence and used it to get this job. I told the commission that I wouldn't prosecute a case that depended upon his testimony, so they sent their own attorney up to prosecute some of the cases and he lost every one of them. Of course, cases where they pleaded "guilty," I didn't have anything to do with. He was finally caught falsifying his expense account and was discharged. I had nothing to do with that. They checked up on him and they found he was turning in mileage that he didn't travel.

After I had written to the commission when I heard that he was going to be appointed and said that he was an irresponsible person and I would regret very much if he were appointed, and that if he were appointed I would not ask a jury to convict anybody on his testimony because I couldn't believe it myself and I couldn't ask a jury to believe him, they appointed him anyway. Then the investigator for the Fish and Game Commission came around to me about a year or so afterward and very sheepishly said, "Well, your prediction was right. We caught him grafting. We're not going to prosecute him. He resigned." And that was the end of it.

Miscellaneous Duties

GILB: Other than in enforcing Prohibition, where did most of your time go?

CARTER: First, I had to advise all the county officials. They were asking me for opinions on the law from time to time. I attended the sessions of the Board of Supervisors to advise them. I attended sessions of the grand jury. I conducted all the criminal cases. I had one deputy who generally handled the preliminary examinations in the justice's court. I also handled all the civil cases for the county. The county was involved in a number of civil cases including cases to recover taxes that were assessed against the big copper companies, some road and bridge construction cases.

I would say the district attorney's office took up about half of my time. The rest of my time, I was permitted to devote to private practice.

GILB: Was this a particularly lawless community at this time?

CARTER: Well, the lawlessness came generally from the transients. The real solid residents of the county, I would say, were a law-abiding people, but the big mining camps brought in a lot of what you might call riff-raff and most of the crimes were there.

Then, when the Pacific Gas and Electric Company commenced construction of their power plants, they brought in a large floating element, and a lot of the crimes were committed there. But among the citizens of the community I would say that there wasn't very much crime.

GILB: The stable citizens were mostly farmers, were they?

CARTER: Farmers, yes. Well, at that time I would say the major industry of the county was farming. The second industry was mining — copper mining. The third would probably be lumber. There was very little tourist travel then, back in the early '20s. That has become quite a business there now, since the Shasta Dam construction.

Cleaning Out Prostitution

CARTER: When I became district attorney in 1919, there were numerous houses of prostitution in Redding. In fact, right after I was elected, the owner of one them, on what they called the Row, I think his name was Vasconi, I'm not sure, asked me how I felt about letting these places run. And I said, "It's my understanding that that's against the law, and I'm going to enforce the law."

GILB: Was this local law or the red light abatement act?

CARTER: The red light abatement act.

He said, "Well, if you just don't do anything about this, we'll see that you get something in the mail every month."

I said, "Well now, you've placed me in a very difficult situation. If I don't do it, people will be thinking that's what's happening, so I'll have to be a little more vigorous than I would have been otherwise."

So I immediately had an investigation made and determined the condition and brought abatement suits against every place in town, the first abatement suits that had ever been brought in the county. I closed a number of places.

Under the law at that time, you had to give notice to the owner that his place was being used illegally and that unless he eliminated the condition, you'd bring the action. So I first gave notice to these owners — I think there were some ten or twelve, or more than that. Some of them closed. Those that did not, I made an investigation after that — I brought the suit and a number of the places were closed. Under the law at that time they were closed for a year, had a padlock on the door, and couldn't be used for anything. Then they were permitted to be opened again.

GILB: Not for prostitution!

CARTER: Oh, no. I closed every one of those places. I don't know if they ever reopened or not.

GILB: But I wonder if you really got rid of prostitution?

CARTER: I'm afraid we didn't. I'll say this. We restricted it. We had complaints later that some of the women went out into the residential section and would rent a house and that people would see men going there at all hours of the night. I had complaints from neighbors, and of course, I'd have to make an investigation and then, of course, they'd move somewhere else.

While the law has a very salutary objective and it has really raised the moral standard and the moral tone, I think the problem is one of education more than it is of criminal prosecution.

GILB: Of course, here there was a large transient male population.

CARTER: Oh, yes, the mines and logging camps brought in these men.

But at least I closed the worst places. Then, of course, they had the bars and the houses right together and they just ran rampant before. Just before my election, a report came in from the federal government that the percentage of men infected with venereal disease from Shasta County was pretty high. They'd gone into service. Of course, that was another thing that this helped to prevent.

I don't think anything was done after I went out of office for a good many years until just a few years ago. Another district attorney came in and went after them again.

I think it really raised the moral tone of the community to see those laws enforced. I don't think a public official has any right to take it upon himself to say, "Well, this is an unpopular law, or I don't agree with it, and I'm not going to enforce it." I can't reconcile that with the oath that an official takes that "I will support the Constitution of the United States and the Constitution of the State of California and will see that the laws are faithfully executed, that I will faithfully perform the duties of district attorney to the best of my ability."

Gambling Laws

GILB: Did the lawless element introduce a problem when you tried to enforce gambling laws?

CARTER: Yes, they did. The state law on gambling was inadequate and the county ordinance could not be enforced inside an incorporated city. Redding was the principal incorporated city at the time; there was another one, Kennett. Redding had no ordinance against gambling, so I could enforce the county ordinance outside of Redding but I couldn't enforce it within Redding. So I proposed to the city council that they pass a law prohibiting gambling, which they did. I couldn't enforce that law because I wasn't city attorney.

Prohibition

The same thing was true when national Prohibition went into effect. I couldn't enforce that and what happened was that there were over forty saloons in Redding and all the reputable people in the liquor business closed their doors and went out of business, and all of those who had no respect for the law continued on. So while we had forty licensed saloons before Prohibition went into effect, we had probably fifty or sixty unlicensed places afterwards that were selling liquor.

I asked the county Board of Supervisors to pass an ordinance and they first turned it down by a three-to-two vote. Then I got out a petition for an initiative and when that came up, they passed it. Then the state passed the act which was applicable in cities as well as counties.

There was quite an influx of those people into the county after Prohibition went into effect because they thought it was a pretty good field. When a law was enacted that could be enforced, I rounded up all of the violators, and I think that within a year after Prohibition went into effect the law was very rigidly enforced. In fact, I employed detectives to investigate whenever I would hear that some place was selling liquor. I've had detectives work a week at a time and they couldn't get any evidence at all, the law was that rigidly enforced.

One time, as I recall — I think you'll probably find it in a speech I made just before the November, 1922 election — we had about twenty prisoners in the county jail, and I think some seventeen or eighteen of

them were unnaturalized foreigners and some of them were ex-convicts. They were all in there for violating the Prohibition law. In other words, that was the type of people who were violating the law. They didn't have any respect for the law or the government.

GILB: Would the community have voted "wet" rather than "dry," had they had the chance?

CARTER: I believe they would have voted "wet" by a narrow margin. However, when the Wright Act was adopted in 1922, I think the community voted "dry" by a very narrow margin. That was when I had the bitter campaign because of my Prohibition enforcement, when I was elected by six votes and then on the recount I was elected by ten. That fight was purely a "wet" and "dry" fight although I took the position that I was not fighting for Prohibition; in fact, I didn't believe in Prohibition as such.

My fight was to enforce the law and to prevent people from violating the law because of the damage they were doing to the community, because of the type of people who were doing it, and the element that it brought into the county. Children were getting this poisonous stuff and it was creating a bad situation in the schools. I felt that the law should be vigorously enforced.

GILB: How did you feel about alcohol personally? Did you drink?

CARTER: I never drank any kind of intoxicating liquor until after I was forty years of age. My family were not teetotalers. My father would take a drink occasionally. I would say he was a very moderate drinker. My mother was very much opposed to drinking any kind of liquor and so were my sisters. Of the eight children in my family, there were six boys and two girls, none of whom ever drank except my two oldest brothers. They didn't drink to excess, but they would drink. None of the rest of them ever used intoxicating liquor at all. I never took a drink as a beverage until after I was forty, and then it was at a social gathering.

GILB: When you were trying to enforce Prohibition, did you have the help of federal agents?

CARTER: It was a rather limited help. They were not equipped to enforce the law. They were doing it in a very half-hearted manner. A few times I gathered the evidence and turned it over to the federal officers and they

would prosecute the cases, but they didn't get very good results. It was not a very satisfactory method of enforcement.

GILB: In other words, it had to be enforced by the local district attorney.

CARTER: That's right, it had to be enforced locally. And I found that the people responded, generally. Even people that liked to drink would nevertheless convict the bootleggers.

General Comments on the Functions of a District Attorney

GILB: Were there any major laws you had to enforce which you wished would be different?

CARTER: Oh, I don't think so. I didn't like some of the dairy regulations that they had. I thought that some of the regulations they tried to impose on farmers were ridiculous — that he couldn't have his dairy adjacent to his barn — [and have] been changed since.

GILB: But you went ahead and enforced them anyhow?

CARTER: Yes. Well, if the complaint was made by the State Dairy Bureau, I would write to the farmer or go and see him and tell him he'd better conform. I never had any prosecutions because I'd handle it that way. They'd come in and want a warrant for John Smith out here because his dairy house is part of the barn. I'd say, "Well, Mr. Smith is a reputable man. I think he doesn't want to violate the law. Probably I can persuade him to do this." I'd go out and talk to Mr. Smith, so I never had a prosecution.

GILB: Of course this suggests that there might have been variations in the degree of zeal with which you enforced the laws.

CARTER: Well, I don't think so. You can't do that with the criminal element. You can do that with substantial citizens that are violating some *malum prohibitum* law which really isn't a violation of the moral code at all. But these people who want to make money off of law violation, I don't believe that you can negotiate with. There's no basis for negotiation. If you attempt that, it sort of gets into the realm of appeasement. What they try to do is to euchre you into something that's a little more mild.

For instance, when I kicked the slot machines out, they would come around and submit various types of devices to see if I would approve this or that and finally I said, "Gentlemen, I'm not going to give my approval to anything. If you attempt to operate these machines here, you do it at your peril. And if I find that they violate the law, I'm going to prosecute you. I'll not put myself in the position of saying this is all right when it might turn out to be a gambling device." Now, that may have been undiplomatic. I may have lost votes by it — I'm sure I did — but I don't think it's within the province of a public official, particularly a district attorney, to do that. I think he's got to say, "It's my duty to enforce the law. If you violate the law I've got to prosecute you, that's all."

GILB: Could your role have been improved upon by any general laws pertaining to district attorneys?

CARTER: Not that I know of.

GILB: Before we leave our discussion of your work as a district attorney, would you like to sum it up? Your overall accomplishments and the major problems you encountered?

CARTER: Well, I feel that I accomplished a great deal as district attorney because I tried to conduct the county's business on a business basis and I prosecuted the cases vigorously. I got good results. I think in my eight years there were only two acquittals in the superior court and the jury disagreed twice. The rest were all convictions.

In the justice court, of course, sometimes we had to prosecute cases when we didn't have the evidence that we should have had. I don't remember what the percent was of misdemeanor cases. I tried to be discriminating and prosecute those cases where I thought the defendant was guilty and he should be prosecuted, and where the evidence seemed weak, I would recommend a dismissal. That was my practice clear up to the end of my term.

However, a grand jury came in as my term was expiring and they indicted a number of people against my advice and my successor prosecuted them and they were all acquitted. You get one of these grand juries on a rampage sometimes, and they have it in for somebody so they indict without evidence and that is what happened then. Up to that time, the

grand juries followed my advice generally on whether or not there was sufficient evidence.

GILB: You were regarded as a very vigorous prosecutor and district attorney. You received a nickname in the newspapers. You were called the "Wild Ass of the Desert," weren't you?

CARTER: Oh, yes, they called me that. Oh, they called me a lot of things. One person said that I believed in convicting the guilty and making it damned hot for the innocent. That was an extravagant statement.

GILB: Did this group which opposed you represent any specific economic or political interest?

CARTER: No, they did not. They were generally people . . . well, some of them were opposed to me politically, and then some opposed me because they were doing business with the bootleg element and getting business from them. Then, probably, I wasn't quite as diplomatic as I might have been, and I could probably have made friends with some of those people if I had yielded somewhat, but I felt that I couldn't afford to yield. I had to take a stand and fight it out.

Then, of course, the Moody affair. He had quite a lot of influence, of course — the fact that he controlled this paper. A lot of folks were afraid to oppose him, and probably more people opposed me on account of that than anything else, except bootlegging. Moody was a very wealthy man and owned a lot of property, and he had this newspaper which was quite a power. A lot of people were just afraid to take a stand against him.

GILB: Yet all during this time, you were building up your own law practice?

CARTER: Oh, yes. I was recognized as being a good lawyer. In other words, I was successful in my law practice, and so business came to me.

Reasons for Leaving

GILB: Why did you eventually leave the job of district attorney in 1927?

CARTER: The job didn't pay enough. The salary was $175 a month and the deputy got $125 a month. Then, they paid a portion of my office rent, telephone and so forth. My time was so much more valuable than that,

and I just couldn't afford to stay with it. I wouldn't have run the second time if it hadn't been for the Moody litigation, and when that came on and Moody said I was afraid to run. I said, "Well, if anybody says I'm afraid to do a thing, I'm going to do it." That's why I ran the second time. I figure I lost $15,000 or $20,000 anyway, during my second term, in business I would have received if I had been in private practice exclusively.

Campaign ad for reelection as Shasta County District Attorney, fall 1922.
Courtesy Golden Gate University Law Library.

PRIVATE PRACTICE OF AN "OUTSTANDING TRIAL LAWYER"

CARTER: Then, I started in trying water cases. I was successful, and that was a very difficult field and took a lot of hard work. I used to work five or six nights a week into the wee hours of the night. I think for a period there I worked all night for one or two or three nights out of the week and would be in court the next day because I was trying cases alone and doing all my research work, too. I just had the type of constitution that would enable me to do that. And, of course, because I did work hard and prepare my cases, I won them. And that brought business.

GILB: Did you have partners?

CARTER: I took in, first, a man by the name of Dean who studied law at home and was admitted. He didn't prove capable of doing the work I wanted him to. I think he was with me about two and a half or three years. Then I took in a man by the name of Smith and he was with me for about four or five years. He did not prove satisfactory.

Then I contacted the deans of the law schools and had them send me some graduate students. So I started in 1929 and took in a man from Stanford named Glen D. Newton. He was with me about five or six years; and Mr. Dallas Barrett — he was sent to me by Dean Kirkwood of Stanford; then Mr. Daniel S. Carlton from Boalt Hall and Samuel P. Finley, who was a graduate of Hastings; and Richard B. Eaton, a graduate of Stanford — he is now superior judge of Shasta County; and Miss Ferol Thorpe, who is a graduate of North Dakota; then Mrs. Annette Adams, who was practicing in San Francisco, did quite a lot of my research work.

GILB: She was a very outstanding lawyer.

CARTER: A very able lawyer, yes. She later became presiding justice of the District Court of Appeal in Sacramento. She's retired now and I understand is not in very good health. But she was a very able lawyer and a very able judge. We were associated together for a good many years. In fact, I had an office with her in San Francisco in the Merchants Exchange Building for a number of years.

GILB: As time went on, did your law firm handle most of the water cases in the county?

CARTER: Yes, I think we were on one side of every water case that was tried in either Shasta, Siskiyou, Trinity or Tehama counties and some in Modoc and Lassen. I would say that for twenty years, starting with about 1919, that about seventy-five percent of my practice was related to water litigation.

Of course, during that period I was city attorney for Mt. Shasta, 1927 to 1939, for twelve years; city attorney of Redding from 1937 to 1939. Then, we took special work for irrigation districts, and I was special counsel for the city of Redding in a few cases too. I was appointed city attorney of the city of Redding in 1937 and held that position until I went on the Supreme Court in 1939.

Northern California Farmers vs. Private Power Companies

GILB: Now, most of your clients were farmers, weren't they?

CARTER: Yes. Naturally, I was on the farmers' side of all this water litigation. Of course the farmers were more interested in the water than

anyone else and when the power companies moved in and proceeded to take the water, what they attempted to do was to reduce the quantity that the farmers were using so that there would be more water for the development of power. The farmers fought to retain their rights — the rights they had acquired through immemorial use even though their method and manner of use was quite primitive. They had gone in there and taken a piece of land and used the primitive methods they had for the development of the land, and it took more water to irrigate the land in that condition than if they had leveled and used modern methods.

But the law, as it stood then and I think still is, is that you are entitled to the quantity of water necessary to irrigate your land in the condition it was in when the right was acquired. And so the McArthurs — they used what was called the pondage method — they had big levees and they would divert large quantities of water and flood this land, sometimes as much as five or six feet deep, until the land was soaked up, and then drain all the water into the Pit River. That was a very wasteful and extravagant method but it would have cost a lot of money, I don't know how much per acre, but probably around $50 to $100 an acre, to put the land in shape so that a lesser quantity of water could be used.

Of course, when the PG&E came in, they said, "McArthur's using too much water. We want this water to run through our power plant. We think you can irrigate this land on two-fifths of an inch to the acre."

The McArthurs employed me, and I said, "Well, under the law you are entitled to continue to use water in the manner in which you have been using it all these years. You started back in the '70s or '80s." Of course, they gradually increased their irrigated area. And the court held that they were entitled to use that quantity of water, even though it was more than would be required if they would put their land in better shape (*Mt. Shasta Power Corp. v. McArthur*).[4]

GILB: What was the crop of most of these farmers?

CARTER: The McArthurs had hay land. They raised hay for stock. At one time they had around three thousand head of cattle. This was during the First World War. They also raised horses. They were irrigating

[4] 109 Cal. App. 171, 292 P. 549 (1930).

at one time about four or five thousand acres. Of course, that took a lot of water, and they were taking it out of the Fall River which the PG&E wanted to use for the development of power. The PG&E finally acquired by eminent domain about four thousand acres of land that belonged to the McArthurs — Scott McArthur — and that was involved in the trial of Mt. Shasta Power Corp. against McArthur.

They finally paid him about a half a million dollars for that water and land, and that left Roderick and Luther McArthur with about two thousand acres, and that was the case we finally fought through the superior court. And it came up to the appellate court, and that was affirmed by the appellate court for the quantity of water that was allowed to them. It amounted to somewhere around three inches to the acre.

GILB: With diminished water, could they have gone on agriculturally anyhow?

CARTER: No. If their rights had been reduced to what the PG&E experts claimed, two-fifths of an inch per acre, it would not have been economically feasible for them to continue to operate their farm — with the obsolete system. It would have cost so much to have put the land in shape and to put in a system so that they would have been able to use a lesser quantity of water, that, at that time, considering the value of the land at that time, it wouldn't have been worth it. That was in the '20s. Then, of course, the Depression came along and they would all have been bankrupt if they had attempted it. But they came through the Depression in very good shape because they did have this very good land, and with that quantity of water they could operate it very economically.

GILB: Were most of these farmers large land holders?

CARTER: No, I wouldn't say most of them were. The McArthurs were and Joerger. He had about eighteen hundred acres and the McArthurs, at the start of the litigation, must have had about forty thousand acres. And the PG&E acquired about five thousand from them. The McArthur family still has large holdings.

But the others . . . for instance, in the *Callison* case,[5] I represented about twenty-five or thirty people there, and their average holdings would run around two or three hundred acres. They were along Fall River.

And along Pit River the McArthurs were the largest holders but others had — I think one had as low as a hundred acres. But generally they had a considerable area of land.

GILB: They were fairly wealthy people then?

CARTER: Well, they were. The Depression hit them pretty hard, farm products went away down, and a lot of those farmers would have gone into bankruptcy if the Roosevelt administration had not liberalized the Federal Land Bank so they could borrow money on a long-term basis for a low rate of interest. They were right up against it when the Roosevelt administration came in and liberalized the Federal Land Bank so that they could borrow up to $50,000 at four percent interest amortized over a forty-year period so they could pay it off in small payments. Practically every one of them was saved. They were right on the verge of bankruptcy.

GILB: I wondered if any case could be made for the power companies. When did they first come in and start to build?

CARTER: They started in in the Hat Creek and Pit River area in 1920. Before that they had gone into the Battle Creek area in Shasta County which was in the southeastern part of the county. They started in there about 1907, '08, '09, around in there. Some of the cases were being tried when I went to Redding in 1914.

I came into the picture in 1918. Some of the cases were tried and appealed and reversed. Then I came in and took them over after that and retried them.

GILB: What companies were they?

CARTER: The first was the Northern California Power Company, and that was taken over by the PG&E. Then, the Mt. Shasta Power Corporation was organized as a subsidiary of the PG&E. It was merely a construction company. All of the stock of the Mt. Shasta Power Corporation

[5] *Callison v. Mt. Shasta Power Corp.*, 123 Cal.App. 247, 11 P.2d 60 (1932).

was owned by the Pacific Gas & Electric Company and the officers were the same. It was the construction agent of the PG&E.

GILB: Were many of the local people stockholders?

CARTER: No.

GILB: Were the local officials of the PG&E local people?

CARTER: No. Generally they would send in from some other locality their general manager. Of course, their engineers were practically all sent in from somewhere else. They had a lot of the local people employed as mechanics and in doing ordinary work. But I think practically all of their superintendents, managers and engineers were sent in from other localities. They had been operating down in the Sierras for a good many years and they sent them in from there.

GILB: Did the local people feel that outside elements were being sent in to exploit the region?

CARTER: Well, I think there was that general feeling. I think they felt that they were coming in and taking their property. In those days public utilities did not pay any local taxes at all. All taxes were paid to the state. Every piece of land that they bought was taken off of the tax rolls of the county. The only tax they paid was a percentage of their gross revenue which was paid to the state. That, however, was changed later on by a constitutional amendment.

This was an ideal situation for power development, especially in eastern Shasta because Fall River was a very large river. In fact, it is the largest river from its source to its mouth in California. It rises in a big spring and has a minimum flow of about 1,200 cubic feet per second, which is 48,000 miner's inches. A cubic foot per second of water is the amount of water contained within a cubic foot which will pass a given point in a second, which is quite a considerable quantity of water. The maximum flow of Fall River was about 1,800 cubic feet per second. From its mouth to its source it was forty-one miles long. It flowed through this beautiful valley of about sixty thousand acres, practically level, and it wound around and finally dropped into Pit River at a waterfall about seventy-five feet in height. That's why they called it Fall River.

Pit River rises in either southern Oregon or northeastern California. In fact, there are periods of time when water comes into the upper reaches of the Pit from Goose Lake in Oregon, and the Pit flows southwesterly through Modoc, Shasta, and Lassen counties. Fall River flowed into the Pit in Shasta County. Then the Pit flowed down through a canyon and on into the Sacramento River just above Shasta Dam.

GILB: So it's really the life blood of the whole region.

CARTER: Oh, yes. The Pit was a very flashy stream. In the summertime practically all the water was taken out above its confluence with Fall River for irrigation, and the entire flow of the Pit below the mouth of the Fall River was Fall River water.

Fall River is a very cold stream. It rises in a spring, and I would say the temperature of the water is around 50 degrees, or 52 degrees in the summertime. Pit River water was very warm.

Those people had a very delightful set-up on Fall River. The river wound around and someone said it came to every farmer's door. The farmers owned this land along the river and they just put a pump into the river and pumped all the water out of it they wanted.

The power company took all the water out of the Fall River above the confluence of the Fall with the Pit and took it through a mountain by means of a tunnel and dropped it down about five hundred feet into the Pit One power plant. Then they built these other power plants down below. I think they've built Pit One, Three, Four and Five now. They only had three built before I left Shasta County.

GILB: Did they buy much of the land?

CARTER: Well, they bought land along the river where they were going to take the water out. They represented that they were buying it up for a cattle company so they got most of it rather cheaply. Those who didn't want to sell, and I think most of the people didn't want to sell, held on. They got a very good price for their land. Of course, when it was disclosed that it was a power development, why, then the farmers thought the land was worth more. Of course, they valued the water, too.

Then, when they put in their dam on Fall River, and they used that dam as a reservoir to back up the waters of the Fall River and store them

during the nighttime when the power demand was low and then drawing it down in the daytime, that was practically ruining the farmers.

The *Callison* case against the Mt. Shasta Power Corporation was brought to correct that situation. All of the riparian owners along the Fall River joined in that suit against the power company, and I tried that in Shasta County and won it. As the result of that injunction now, the power company has to maintain Fall River at a uniform elevation. They have tried to buy out the farmers' rights since then but they haven't been able to.

That was a very important case for the farmers because the way the power company was operating the river, they'd back it up at night and the river would flood their lands because the valley is practically level and the river doesn't vary in elevation over a foot, winter and summer. In fact, the bridges are built right on top of the water because the river never raises or lowers over a foot. Then, in the daytime, they would draw the water down and the farmers couldn't get water into their ditches.

GILB: How did the farmers react to the possibility of getting power service?

CARTER: They had power service before.

GILB: They didn't think this was going to help them then?

CARTER: Oh, it didn't help them at all. They had a power plant right there on Fall River. They were using the falling water of Fall River in a private power plant that was serving the farmers then.

GILB: So they thought all the benefits would go someplace else?

CARTER: Oh, yes, there was no question. The power service has been improved, of course, since the PG&E came in. They bought this local power plant which was owned by local interests. Now they have installed service in the valley which I think is very satisfactory. No doubt it's improved service.

The PG&E got this water for practically nothing, outside of what they had to pay the riparian owners for the land, which was a very small sum compared to the value of the water. They got it for no charge at all. It's a very valuable utility. All of this water generates a lot of kilowatt hours.

GILB: Well, in the long run do you think the power company's activities hurt the economy of the Fall River region?

CARTER: Oh, there's no doubt about it. There are areas up there that are now just waste land. The land that they bought and still have, about all the value it has now is as spring range for cattle. Of course, they've taken the water off of it. I think about four thousand acres they bought from Scott McArthur. It overflows in the wintertime and they rent it for pasture. When it belonged to the McArthurs, they cultivated it and raised cash crops on it. I think it's in the neighborhood of four or five thousand acres that has practically gone back to swamp lands. The McArthurs had reclaimed it and put it into crops.

GILB: Was there any argument on the basis of conservation, or any aesthetic argument against the power company, or was it all economic?

CARTER: It was all economic. This little valley was almost a unit in itself before the power company came in there. There were around five or six hundred people there with nice homes, good farms, all making a good living and raising families — two little towns: Fall River Mills and McArthur. McArthur was founded by John McArthur, the father of the boys I represented. It was a very, very happy community when I first went in there in 1914. They were isolated, about eighty miles from Redding, the nearest town. All their merchandise had to be hauled in there by horse and wagon. Now it's hauled in by trucks.

I would say that the economic welfare of the community was greatly damaged by the power development.

However, from the overall picture, there's no doubt but what this power development was a great advantage to the state. Power developed there is being used all over northern California.

GILB: I remember you were president of a small bank which had to liquidate. Was that due to power company activities?

CARTER: No, that had nothing to do with it at all. The bank was in a small agricultural community, Cottonwood, and practically all of our loans were agricultural loans. The farmers were hit first right at the beginning of the Depression. The savings department was made up of the savings of the farmers and the farmers drew out their savings deposits

and couldn't pay their loans. They used their savings for their own maintenance and they owed the bank money and couldn't pay it. However, the bank paid out. I think it finally paid out 100 percent, even with the heavy cost of liquidation, because the loans were all good, but the values were depressed. They closed out about 1940, and I think their last dividend was about 98 percent of the total deposits.

GILB: I know Joerger got so angry at the long, drawn-out litigation that he dynamited one of the dams. Did this happen often?

CARTER: No. It would have if it hadn't been for me. I pleaded with them not to do that. They wanted to resort to direct action. They had heard of Owens Valley and they thought that they had gotten some results over there. I pleaded with the farmers not to do that and I pleaded with Joerger not to do it.

Joerger was a rather temperamental individual and he had a wife who was more temperamental. They were nice people, but he had just reached the point where he thought he'd take the law into his own hands.

The farmers of Fall River wanted to do the same thing. They wanted to dynamite the Fall River Dam and the Pit River Dam and I pleaded with them not to do it. It would just hurt their case.

The man who was really the mainstay in the whole case was Roderick McArthur. He was very brilliant, very shrewd, very honorable. He and I were very close friends. He would get wind of a thing like that and would come to me and we'd stop them. Although at times he was almost a direct actionist himself. What he wanted to do was to bring the thing to a head, a culmination. He didn't think we were getting a square deal through the courts and I assured him that I thought we would. I said, "I will fight this thing out through the courts and then, if we finally lose, you can pursue your own course. But as long as I'm representing you, you'll embarrass me and you'll hurt your cause if you resort to anything like that."

GILB: Did they have the backing of the Grange or any other organization?

CARTER: Yes, there was a Farm Bureau there, and the Grange too, and they all supported our cause, naturally. It really was a cause.

GILB: But most of your redress was right through the courts?

CARTER: Oh, yes. We fought them right through the courts and we won practically every case. The only case that was lost was the *Fall River Valley Irrigation District* case.[6] I was not in the case to start with. I was called into it before it was tried. They organized an irrigation district in Fall River Valley to take water out of Fall River for the irrigation of this land which was at that time, and still is, arid and always will be because the power company claimed that as a riparian owner they were entitled to take all the water. This land was not riparian, because technically, whenever the title is severed, the right is severed. So all this land which was not adjacent to the bank of the river was not riparian and under the law as it stood at that time, the court held that they couldn't take the water and use it on non-riparian land. So the PG&E won that case.

I think the district would win the case now, under the more liberalized concept of the water law.

I would say that in that respect the PG&E, or the power development there, retarded the economic development of that community immeasurably, because there are thousands and thousands of acres there, probably in the neighborhood of twenty-five to thirty thousand acres, that are capable of raising very fine crops of hay and forage grasses that during this and succeeding generations will remain arid because of that decision which held that they couldn't take the water out and use it on this land.

GILB: I wanted to ask you something about the situation in the courts. Were many of these jury trials, besides the personal injury cases against the power company?

CARTER: The power company took the water before the farmers acted. The farmers didn't know that the diversion of Fall River was going to affect their land on Pit River. If we had known that it would, we would have brought suit to restrain the power company from diverting Fall River. The *Callison* case was an action for an injunction, an equity case. The *Joerger* case was for both, because they damaged his property and also

[6] *Fall River Valley Irr. Dist. v. Mt. Shasta Power Corp.*, 202 Cal. 56 (1927).

he was seeking to restrain them. We got an award of water and also an award of damages.

In the *Pit River* cases, that's *Albaugh*, *Crum*, *McArthur*, etc., we were there suing for damages because, under the law, when the power company once takes the water, you can't get the water back. You can only get damages. It was only in cases where they had taken the water that we sued for damages and those cases were tried before a jury.

GILB: Did the power company's attorneys feel that they had a hard time getting juries that would be impartial?

CARTER: I think they did. I think they felt that the sympathies were with the local people, and I think they were. But on the other hand, I think the juries were very fair because the awards were not excessive. Some of the awards were very moderate. Some of them were higher than others, but the average award of damages for those lands up there was about $150 an acre. Of course, the farmer still had the land, but without the water. They figured that the land with the water was worth $150 more than without the water. The award in the *Joerger* case was not excessive. In fact, eight of the jurors wanted to give Joerger $75,000 instead of $40,000. In those days that was a lot of money, in 1924. The awards now would have probably been two or three times as high, but they were not excessive.

The power company officials complained a lot about it and they came into the Supreme Court and pleaded, with tears in their eyes, that they were being mulched for a lot of money.

GILB: You were so successful so often. Did they ever complain about your tactics?

CARTER: No, I don't believe they ever did. I think they criticized me for being overly zealous and vigorous and relentless; in other words, not yielding anything. We fought every step of the way. Of course, neither would they. They never made us an offer of settlement in the Pit River cases. Downing, the general manager of the PG&E was supposed to have said, "A million for defense but not a cent for tribute," so he paid the million for defense and he also paid the tribute. I think it must have cost the PG&E easily a half a million dollars to defend those cases, outside of what they had to pay in damages, because they had three or four firms

of lawyers, the leading lawyers of San Francisco, and two firms in Redding.

They had Goodfellow, Eels, Moore and Orrick; Haven, Athearn, Chandler and Farmer; Creed, Jones and Dahl and Garrett McEnerney and then their own staff, Mr. Bosley, Mr. Straub, and some others in their office. And then they had the local firms of Carr and Kennedy and Chenoweth and Leininger. Then, they hired many experts as witnesses. Sometimes they would have five engineers who would testify to the same facts in each case, and who admitted they were getting $100 a day plus expenses, and sometimes they would be in court for two weeks at a time in a single case. It must have cost them a fabulous sum to defend, and then they had to pay the damages, too.

I've been told by disinterested persons that their remarks about me were more commendatory than derogatory.

GILB: I remember one case — it was a personal injury case, the *Martin* case,[7] in which they thought your handling of the trial was intended to inflame the jury.

CARTER: Oh, yes, I made some statements in the closing argument in that case which they challenged. They offered to admit liability and said it was just a question of damages and I made the statement, I said, "Oh, yes, they want to admit that they were wrong, but of course, the thief who is caught with the chattel on his back has to admit it too." They thought those were inflammable remarks. The Supreme Court approved it. The District Court of Appeal thought I was a little bit too zealous in the case. But I got a substantial award of $25,000 there. That was a substantial award at that time.

GILB: Francis Carr, who was often attorney for the power companies, was a Democrat, so apparently the division between those representing the farmers and those representing the PG&E wasn't a political one?

CARTER: No. It was not. It was not a party issue at all. We didn't divide over that.

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[7] *Martin v. Pacific Gas &: Elec. Co.*, 195 Cal. 544, 234 P. 321 (1925).

GILB: Did the power company vs. farmers issue arise when it came to the election of judges?

CARTER: Oh, yes, but the anti-power company element was much stronger than the power company. The power company couldn't elect anybody up there.

They tried to defeat me when I ran. I lost out in the precincts where their employees were dominant, although I got a good many of their employees whom they couldn't control. But they could control enough of them, those that didn't know me. Even when I ran for the Senate I lost those power company precincts.

GILB: Herzinger was the one who presided over most of them?

CARTER: Yes, and also over the personal injury cases, the *Martin* case and the *Amstead* case.

Judge Herzinger was a sound, down-to-earth sort of a lawyer. He had not had very much background as a trial lawyer, but he was honest and sincere and really studied his cases. He was very conscientious. I think his sympathies were with the farmers. I think he wanted to be fair and I think he was fair. The incident of his son going to work for the PG&E was rather unfortunate. It disqualified him in one case — that was the McArthur case — and Judge Burrows sat. But then his son either quit or was discharged and Judge Herzinger sat in the other cases, until he died, I think in 1931.

Judge Ross presided in the last cases we tried.

I don't think Judge Herzinger liked me very well to start with. I was probably a little impetuous and over-zealous and sometimes vitriolic, but after I reversed him a few times we became very good friends. The last few years, I think he had a very high regard for me.

I was always very frank with him. I would never try to mislead him. If I saw that he was being influenced by something other than the law, I would very frankly talk to him about it, and I found him to be a very honest, fair man. I greatly regretted his death. It was untimely. I don't think he had reached the age of sixty yet when he died.

GILB: In litigation, were there lumbering or mining interests opposed to the power company, or mostly just farmers?

CARTER: Mostly just farmers. I would say that there was no occasion for the lumbering and mining interests to be opposed. Of course, they were mostly patrons of the power company.

GILB: In other words, they would be more apt to be sympathetic.

CARTER: Yes, that's right. That is, the officials of those companies.

Municipal Water System for Redding

GILB: You carried your interest in municipal water supply over into your work as city attorney, didn't you?

CARTER: Yes.

GILB: Was that primarily what your work was as city attorney?

CARTER: Yes, at first I was employed as special assistant to the city attorney of Redding to handle the litigation which was anticipated when the city attempted to put in its own water system in 1937. The city attorney was a very able man. He was getting a little old, but he was a very able lawyer. But the council thought that they needed someone with more vigor so they came over to me. They anticipated some real battles and we did have a battle. Then, after I took the litigation over, the then-city attorney, Mr. Tillotson, had some disagreement with the council over some special fees he thought he was entitled to and he resigned. So they appointed me as city attorney. And I handled the litigation from then on although they paid me according to my contract — I had a contract with them for handling the litigation.

We tried one phase of that litigation in the federal court in San Francisco. We won there, and the water company appealed to the Supreme Court of the United States, where we also won.[8] We tried the other phase of it in the Superior Court of Shasta County. They didn't appeal that. We won all the cases.

GILB: The issue in all these cases was between the private water company and the municipal water company, was that it?

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[8] *Calif. Water Service Co. v. City of Redding*, 22 Fed. Supp. 910; 58 S.Ct. 865, 304 U.S. 252, 82 L.Ed. 1323 (1938).

CARTER: Yes, the California Water Service Company owned the old water system. It had belonged to the PG&E and they sold it to the California Water Service Company, and they tried to block the city from the construction of a competing system. The city had been given a grant from the Federal Emergency Administration of Public Works. I think it was $200,000. The city had voted bonds, as I recall, of $200,000, and they tried to prevent us from selling our bonds. If we couldn't sell our bonds, we couldn't get our grant.

The city attorney had advised the council that they would have to advertise the bonds for sale. One member of the board came to me and asked if they would have to advertise the bonds for sale. I said, "No, you can sell them without advertising."

He said, "Well, then, suppose that we contact someone who'll buy these bonds and sell them without advertising so that we've got the bonds sold and we'll have the money, and they can't stop us from selling the bonds." I said, "Yes, you can do that."

So I contacted Mr. Carl Youngberg of Stone and Youngberg in San Francisco, brokers, and we worked out the plan whereby the bonds would be prepared and all ready for delivery, and they would come in and offer a bid at an open meeting of the council, which they did, and we had all the papers prepared. They offered the bid, the council accepted the bid, they paid their down payment, $10,000 or something like that, and then Mr. Youngberg said, "Whenever these bonds are delivered in my office in San Francisco, I'll pay the balance." This was at a night meeting, at eight o'clock, and I had it all arranged for the chief of police to take the mayor, the treasurer and the clerk to San Francisco as soon as the meeting was over, take the bonds, and they were to be delivered the next morning to the Bank of America at eight o'clock and the balance of the money would be paid.

The water company's attorney was there and objected to the city accepting the bid, but we got the bonds down here and delivered them and had the money in the bank before noon the next day. At two o'clock that afternoon they brought suit against the city to restrain the sale. Of course, it was too late because we had the money. The bonds had been

sold, the brokers had the bonds and the city had the money. That was the suit I defended in the federal court. It was the California Water Service Company against the City of Redding.[9] We defended that here before the three judge court, Denman, Roche and St. Sure. The court held unanimously that the private company had no cause of action. They appealed from that decision and the United States Supreme Court affirmed.

Then they brought suit in the Superior Court of Shasta County and they lost that case, too. The court up there decided in our favor.

In the meantime, we had the money and went right ahead building the system. We got the $200,000 grant from the Federal Emergency Administration of Public Works, so we put in the new water system. That was in 1937 and 1938.

Summing Up

GILB: Is there anything you would like to add about your law practice, summing it up?

CARTER: In 1931, I couldn't find enough office space to rent so I bought a lot and built my own office, eight rooms and a basement, just half a block from the courthouse. Then I increased the number of men with me. When I quit practicing in '39 and went on the Court, I had seven lawyers with me and I had two offices, one in Redding and one in Yreka.

Samuel F. Finley, who is now superior judge of Del Norte County, was in charge of the Yreka office, and he had one man with him. The other six of us were in the Redding office.

Our practice was general; we didn't specialize in anything, except that I would say the major portion of our practice was still water litigation, probably around seventy-five percent.

We tried a lot of cases. I remember in 1938 we tried fifty-two cases, and we won fifty of those cases. The other two were appealed and we won those on appeal. It was our policy to investigate and weigh every case carefully and determine whether or not we were justified in trying it. It was a matter of being able to appraise the case and determine before trial

[9] *Id.*

the probable result. We endeavored to settle cases where a result favorable to our client seemed improbable.

There were four men in my office who tried cases, three and myself. The others did mostly office work.

I would say that we had a very active and successful practice. We had a lot of very important cases which paid well, and we handled a lot of small cases, too.

We were generally on the plaintiff's side. We did some defense work. I would say about seventy-five percent plaintiff work and twenty-five percent defense work.

GILB: You were regarded as an outstanding trial lawyer.

CARTER: That's what they've said.

Starting in, in 1918, I handled quite a few cases against the Southern Pacific — crossing cases and federal employers' cases, and so forth. In 1937 they came and wanted to hire me. I think I had tried some twenty-five or thirty cases against them and I never lost a case, but I had cases against them at the time and I couldn't accept the employment. They finally said, "Well, we'll settle these cases." Then I accepted employment. I was attorney for the Southern Pacific Company the last two years that I practiced. They paid us a retainer and we did all their work for them in those counties up there. We were to handle all the cases in Tehama, Shasta and Siskiyou counties.

GILB: By this time you were the largest law firm in northern California?

CARTER: I think so, the largest north of Sacramento anyway. There were four partners in our firm, and we employed four lawyers and I think we had five stenographers. It was quite a problem sometimes to get in money enough to take care of the overhead and leave anything for the partners. I figured that at that time it took a minimum of $3,500 a month just to take care of the overhead, to pay the help and to allow a minimum for the partners.

GILB: This was a small enough community that your trials were probably a great focus of public attention.

CARTER: Oh, yes, as you can see from those old newspapers.

Jesse W. Carter as a young lawyer, ca. 1920s, Redding, California.

Courtesy J. Scott Carter.

GILB: You made the headlines all the time.

CARTER: Yes, in fact, we were just constantly in the public press. There were reporters calling at our office practically every day.

GILB: Were you in the nature of a public hero?

CARTER: (Laughter) Well, I suppose I was. Every lost cause came to me to try to pull them out. Well, we were most always on the side of the common person, and we were fighting for the rights of the common man, the underdog. We were generally against the big corporation that had money to hire fine counsel and talent and engineers and so forth. We represented a good many local businesses and small corporations.

GILB: It was profitable for you to champion the cause of the little man, wasn't it?

CARTER: Oh, yes. Whether I would have made more as a corporation lawyer I don't know, but I did make money. I made quite a lot of money. I was able to send my children to college and acquire a little property. I didn't become wealthy by any means. In fact, if I had been a good businessman and properly invested my money, I'd be worth something today, but as a matter of fact, I'm not.

I presume that in my law practice I made over half a million dollars in the twenty-five years that I practiced. When I retired from practice, I was worth about $75,000.

I lived well and educated my family, but I lost a lot of money. During the Depression a lot of investments went sour. I lost about $20,000 in the Bank of Cottonwood stock that I had. They paid nothing on the stock. I had a couple of ranches I sold during the Depression for much less than I paid for them. If I'd held them until after the World War, I'd have made a lot of money on them.

Looking back, I have no regrets. My family were educated; they've made a success. I was really very happy in my practice. I enjoyed getting results for deserving people. Good, honest, substantial people who really had a cause, I enjoyed going in and fighting for them. I felt that I was on the right side during my fight for the farmers. I don't think I'd have been very happy if I'd been on the other side.

I think that little phrase, "There's a destiny that shapes our ends," is quite true. I think I really attained the end that was intended for me. I felt that I was in the cause that I should be in, fighting for the common man, for the farmer, for the cities against the big utilities that were trying to get some advantage I didn't think they were entitled to. I got more happiness and satisfaction out of it than if I'd become a corporation lawyer.

WORK FOR THE CALIFORNIA LEGAL PROFESSION

Creation of the State Bar, 1927

GILB: Were you interested in the development of professional organizations from the very beginning, or was that a later interest?

CARTER: My recollection is that I first took an interest in bar organizations along about 1920, in the early '20s. I remember trying to do something for the Sample bill. Then, when the group started out to organize the State Bar and prepare the State Bar Act, I gave some assistance to that. I was chairman of the committee in Shasta County for the promotion of the State Bar Act.

GILB: Then you had belonged to the old California Bar Association?

CARTER: I'm not sure. I had attended some of the sessions of the old California Bar Association. I think I started to attend along about 1924. I don't remember the year. I think my interest in the California Bar Association was started with the proposal that we have an integrated bar in this state, that we have a State Bar Act which would create a self-governing bar.

Some of the proponents of the self-governing bar had talked to me about it, and I had given it consideration and worked with the committee that was proposing the self-governing bar. I have a recollection that along about 1924 or 1925 Joseph J. Webb came to Redding and talked to me about the matter, and I agreed to become chairman of the committee there to sponsor this bill. I supported the bill that was first adopted in 1925, when Governor Richardson vetoed it.

I remember that the Bar Association met at Tahoe that year, and there was rather sharp criticism of the governor for vetoing this bill that passed the Legislature in 1925.

GILB: I know that a lot of country lawyers, lawyers outside of the cities, opposed the integrated bar. I wondered why you were an exception among them.

CARTER: That is true. I recall very well now that Francis Carr and Mr. Chenoweth, who were very prominent attorneys in Shasta County at that time, were opposed to it. Mr. Chenoweth was a member of the California Bar Association, but opposed to the so-called integrated bar.

GILB: Why was he opposed to it?

CARTER: Well, he thought that there would be an attempt to supervise the practice of law, that is, that they would attempt to direct lawyers how to practice and so forth.

I was for the bill from the beginning because I thought the lawyers knew more about governing the legal profession than the Legislature or even the courts, and we all knew that we had members of the profession who were pursuing unethical practices and that some curb should be placed upon them.

There was no curb then except to bring disbarment proceedings before a court, which was a rather cumbersome matter, and it was rather difficult to get results in those proceedings.

The next bill went before the Legislature in 1927.

GILB: Did you object to any feature of the State Bar bill as it was passed in 1927?

CARTER: No. The act had been carefully prepared, and I felt that any defects could be corrected by amendments as they became apparent.

GILB: Did the fight against the lay practice of the law figure in your desire for an integrated bar?

CARTER: Yes, to a very great extent. The lay practice of the law was then becoming rather flagrant, especially with respect to the banks and trust companies, and also notaries and justices of the peace and real estate agents, and various people of that kind were preparing deeds and wills.

They were usually charging less than what a lawyer would charge, but they made so many mistakes that it made more business for the lawyers. It was not fair to the public and my thought was that the profession should endeavor to protect the public by undertaking to have better lawyers, not only better equipped, but people of higher moral character.

GILB: Did you also want higher educational requirements?

CARTER: Yes, I was chairman of the first committee on requirements for admission to practice when I was on the Board of Governors. I was chairman of that committee for three years. That committee proposed the rules on requirements for admission to practice, the first ones that were promulgated after the State Bar was organized under the State Bar Act of 1927.

Six Years on the State Bar Board of Governors

CARTER: I was elected to the first Board of Governors from my congressional district. There were fifteen on the board at that time. There were eleven congressional districts in the state at that time, and the act provided that there would be one member of the board from each district and four elected at large. I was elected from the Second Congressional District, which was the largest in area and the smallest in population in the state.

GILB: Did you compete against anyone for that position?

CARTER: Yes, I think there were four or five who ran for it. I was elected four successive times. The first term was for one year and I was reelected for a second one-year term, and then they made it two years. I was elected for two terms of one year each and two terms of two years each. I served a total of six years. As I recall, I had opposition each time I ran.

GILB: Were you aware that many lawyers were charging the leaders of the State Bar with being a sort of royal family?

CARTER: Yes, I knew that. In fact, I received a good many letters from prominent members of the bar anticipating that we were going to have an oligarchy among the bar and anticipating that this new creature of the law in the form of the State Bar was going to lay down rules that would

be burdensome to the lawyers and to the practice of law in general. I remember writing a good many lawyers trying to allay the fears of those who wrote me.

GILB: Do you think the fears were justified at all?

CARTER: No, they were not. There was no tendency at all on the part of any of the members of the board to impose any restrictions on the members of the bar generally. We started out first by preparing rules of professional conduct, we prepared rules of procedure, we tried to charter a course that would inspire confidence in the members of the bar, and we tried to make it appear clear that what the board had in mind was to give any member of the bar who felt that he had a grievance, an opportunity to be heard and to have his case impartially considered.

I remember a very interesting debate — I think it was at either the first or second meeting of the board that I attended — on whether or not the hearings on accusations against a member of the bar should be public or private. The board was very closely divided on the question. I think the first vote was by a margin of one that the hearings should be public and then there was a motion to reconsider and it was further debated, and finally we decided that the matter would be left to the accused. If the accused demanded a public hearing, he would be entitled to it, but if he wanted a private hearing, he would be entitled to it. We felt that there were cases where, if the hearing was public, an innocent lawyer might be very seriously damaged by matters that were brought out, wholly without any foundation at all. The press would get a hold of them and make that lawyer look rather bad in the community. It was decided that way at that time, and I think that is still the rule.

The Discipline of Lawyers

GILB: Did you think that the disciplinary program during those years that you were on the board was excessive?

CARTER: No, I do not. I think in the beginning we were inclined to go rather slow on disciplinary matters. When a disciplinary matter came before the board, it was assigned to one of the members of the board to review. I had the first case, a man by the name of Smith who had embez-

zled some money, and disbarment had been recommended. I reviewed the case and wrote a report on it, and I remember that when I presented my report to the board and suggested that I thought the proposed discipline was not too severe in this case, several members of the board objected — especially the older members of the board felt it was rather severe. We laid the matter over for a month to give it consideration before passing on it. My recollection is that disbarment was recommended in that case because it was a rather flagrant case of embezzlement of the client's funds.

GILB: What types of lawyer breaches of professional conduct did you consider most important at that time?

CARTER: Oh, I think by far the first and most prevalent then, during the Depression, were misappropriation of the client's funds by the lawyer. Probably the next would be subornation of perjury, that is, the lawyer inducing someone to swear falsely in order to prevail in the case. Of course, there were various types.

While I was opposed to lawyers' soliciting business — I thought it was unprofessional to do that — I thought that the discipline in those cases should be rather mild to start out with. I remember one case: there was a young fellow who hadn't been in practice very long but he was rather aggressive, and he went out and solicited a lot of personal injury cases and, I guess, made some money. If I'm not mistaken, his name was Smith, too. I remember one of the members of the board whose principal business was representing casualty companies, he wanted to disbar him, but we finally agreed on a six months' suspension for him and I think the Supreme Court reversed that as too severe.

GILB: I know that the board was accused of having too close an affiliation with insurance companies and other groups. Did this figure in their disciplinary program?

CARTER: Oh, yes, it did, but I believe that in the six years that I was on the board the representatives, or the men on there who were employed by casualty companies or utilities and so forth, did not predominate by any means. I would say that there were enough general practitioners on there to overcome any influence that might have been brought about by some

of those who were regularly employed by casualty companies, and there weren't very many of them.

GILB: But there was a strong anti-ambulance-chasing program? Could that have been motivated by insurance company lawyers for other than professional reasons?

CARTER: Well, I don't think so. I remember that I prepared the rule against solicitation. These rules were assigned different members of the board and, probably because of my outspoken criticism of some of the methods of obtaining business, I had been assigned the preparation of this rule and I prepared it. I think it is in almost the same language as I submitted, with slight changes, and the rule was adopted, that a member of the bar should not solicit employment. We considered the proposition that in some cases it was quite beneficial to the client that he be solicited by a good, reputable lawyer because he might have fallen into the hands of a lawyer who was not qualified and would get poorer service than if he had fallen into the bands of some of these good personal injury lawyers who had runners out to get business for them. Some of the very best and most capable lawyers in California who were handling personal injury business had investigators who would go out and solicit the business for them, and they were giving good service. Another reason why we were reluctant to go too far on the subject was because the insurance companies and the utilities, as soon as an accident happened in which someone was injured, in which they were involved, would send their investigators out and get all the information they could, and if there was no one there to represent the plaintiff, he was at a disadvantage.

All those arguments were made and considered. The personal injury lawyers were not the only ones soliciting business. There were lawyers employed by trust companies, and banks, and agents of these corporations were soliciting business for them. The lawyers who sat on boards of directors of corporations had agents who acted as their solicitors, too.

GILB: Do you think that the solicitors for the large companies were disciplined as frequently as the solicitors for . . .

CARTER: No, they were not. I think that there was some discrimination in favor of the lawyer who represented the large corporations. In

fact, there was a case came up when I was on the board where a lawyer had solicited a client — had a client solicited for him — and as I recall, the attorney for the railroad company then resorted to some unprofessional conduct himself in the case. Some of the members of the board wanted to discipline the lawyer for the plaintiff but not the lawyer for the defendant. I insisted that they both be brought in, and they were and had a hearing. I don't recall the result now, but I said, "What's sauce for the goose is sauce for the gander. Treat them both alike."

GILB: But you don't think this was uniformly done?

CARTER: No, I really think that the lawyer for the big interests got more consideration than the lone wolf plaintiff's lawyer who was called an ambulance chaser, or employed ambulance chasers to get business for him.

GILB: What final consideration caused you to overrule your doubts about this solicitation rule and include it in the rules of professional conduct?

CARTER: I never had any doubt that a rule of professional conduct should prohibit solicitation. I never had any doubt about that at all. I was always against solicitation of business by lawyers. What I wanted to do was to formulate a rule that would protect the person who could be interviewed by the representatives of the defendant but not by a representative of the lawyer who wanted to take his case, and that was the difficult problem. The claims adjusters for the railroad companies and for the bus companies were laymen and we couldn't reach them. It was a difficult problem that we considered very carefully.

I think the solicitation of business in the legal profession had reached a point where it was detrimental to the profession and to the public. I think it was salutary that the State Bar came into existence at the time it did and adopted the rules of professional conduct and proceeded to curb it.

Educational Standards for Admission to the Bar

GILB: One other thing that the State Bar did was to try to promote higher educational standards, and you said you were on the committee. The

original idea was that the State Bar was to set up the standards. Wasn't that power taken away from it?

CARTER: The Legislature stepped in and passed some statutes regulating the requirements for admission, for instance, fixing the pre-legal requirements and also the period of time that a person should study law. I think that the State Bar has gone to the Legislature from time to time and made proposals along that line, some of which were adopted by the Legislature and some were not.

GILB: Now, there is more than just an issue of power here, because the Legislature has tended to have much, much lower standards than the State Bar would have imposed. Do you approve of the fact that the Legislature rather than the State Bar is the primary formulator?

CARTER: I think I do. I think that the Legislature is the body that should determine the educational standards for the learned professions.

GILB: Did you think so at that time?

CARTER: Yes, I think I did.

I haven't thought about this subject for a great many years, but the committee that I was on when I was on the Board of Governors proposed these requirements for admission, and I think we submitted them to the Supreme Court. I don't recall that we submitted them to the Legislature then, but there was some opposition from the Legislature to the proposals we made, so then the Legislature proceeded to adopt these statues fixing the standards for admission and the State Bar didn't oppose them. The Legislature, of course, could have repealed the State Bar Act if it saw fit, and if it could do that, it could set up these standards. It set up standards for the medical profession and the dental profession, and so I think it could properly set up the standards for the legal profession.

GILB: These standards were set very low. In fact, they were set lower than standards in most other states in the country. Did you approve of their being so low?

CARTER: No, we did not. We set out to raise the standards, and we did. The standards were raised. I think the standards are much higher than they were when the State Bar was organized.

GILB: Of course, they are still lower than in most states.

CARTER: Yes, lower than some states, but I think that from the standpoint of the bar examination, California is criticized as being the state in which it is most difficult to pass the bar examination.

GILB: That brings up another point. Some of the criticism of the State Bar has been that it tries to cut down overcrowding, and particularly overcrowding through migration from outside the state, by artificial means. For instance, in 1932 the State Bar set up very careful standards for out-of-state attorneys. Do you think that was done to prevent overcrowding?

CARTER: It was probably a factor, although I think generally the rules were designed to keep out those who were unqualified. I have always taken the position that, while I think that the present method of examination is unfair, the unfairness is not in the way of discrimination or giving any preference to anyone; it is in submitting questions so difficult that very few can answer the questions so as to get a passing grade. I think that the examinations should cover a wider field than they do and that questions should be asked that the ordinary lawyer could answer, if they were submitted to him in his office, without going to the books, and not these very difficult questions which probably a lawyer would not see once in several years. That is the criticism I have of the present method of examination.

The Problem of Lay Competition

GILB: To jump to another topic, at the time you were on the Board or Governors, there was a great deal of criticism because the board did not go after lay competition as they had said they would, and this was attributed to the fact that members of the board were actually in collusion with lay practice by banks and insurance companies and so on.

CARTER: That is true. The board moved rather slowly toward preventing what we called the unlawful practice of law. They did until I was appointed chairman of the Committee on Unlawful Practice. Then we moved in and made a very thorough study of it, and I made a very comprehensive report on the subject during my last year on the board. As an

outgrowth of that, they exacted an agreement from the banks and trust companies that they would desist from many of the practices that they had pursued in the past.

GILB: I know that the banks and trust companies did desist, but some of the subsequent agreements with other lay groups, modeled after that original agreement, have not brought about the kind of results that the State Bar would like.

CARTER: That may be true. I couldn't say as to that. I recall that when I was chairman of the Committee on Unlawful Practice, we consulted an attorney and were preparing to bring a proceeding in court, and I think the proceeding was brought in Los Angeles to get an injunction against the practice that was then being carried on by certain institutions. I don't recall just how far that proceeding went. I think they confessed judgment. I think when we brought this suit and alleged what they were doing and asked for an injunction, they came in and said, "We'll desist. We'll desist." They recognized that it was practicing law and so they desisted. I think it was in 1933 that I submitted that report to the State Bar Convention.

Local Bar Associations

GILB: Another question occurs to me about the State Bar. It was a centralized organization, and before that there had been rather decentralized, little local bar associations. Do you think that in matters of legislation, lobbying, that it usurped some of the functions which the local bar should have carried out?

CARTER: No, I think now that there is more of this type of activity among the lawyers. I think that the members of the bar now take more of an interest in bar organization work than they ever did before. I think that in practically every county where there are ten or twelve lawyers, they have a local bar association and they send delegates to the State Bar every year.

GILB: In other words, local interest has been stimulated?

CARTER: Oh, yes, very much so. In fact, there was no local bar association in Shasta County and other sparsely populated counties when we

started to organize the State Bar. The bar groups very seldom met. They would meet informally once in a while; they generally met at funerals and on occasions where there was a subject of special interest to the bar, but there was really no organization.

After the State Bar was organized, I went around to the different counties and got the bar together and encouraged them to organize and take an interest in the State Bar and send delegates to the conventions. I think now that is the practice in practically all of the small counties as well as the large.

GILB: Were you active in your local county bar organization?

CARTER: Yes, I was president of the bar association, after it was organized in 1928. I doubt if there were any meetings called while I was there that I wasn't instrumental in calling.

THOUGHTS ON SELECTION AND DISCIPLINE OF JUDGES

GILB: All during this time that the California legal profession was going from a state of disorganization to a state of organization, there was a parallel move toward appointment of judges and toward longer tenure, a sort of shift in attitudes toward the role of judges. I wanted to get some of your views on that. In the early days when the bar first started to propose appointment of judges rather than election, were you for it?

CARTER: Yes, I was for a system for the selection of judges other than by election. I don't believe I ever favored a straight-out system of appointment. I have felt for years that there should be a screening by the bar before an appointment is made. I think the screening should come before the appointment and not after. I favor and I have advocated a plebiscite of the bar to select at least a panel from which the selection should be made. Details would have to be worked out, but the thought is simply this: a vacancy occurs on the bench in a county, the plebiscite would be submitted to the members of the bar to vote on candidates . . .

GILB: Candidates selected by whom?

CARTER: The lawyers themselves.

GILB: A sort of primary.

CARTER: A primary, certainly. We'll say a city like San Francisco, the ten highest would go on the second ballot and then the five highest, one of the five highest would be selected for the position. I'd make a panel of at least that many, and for the Supreme Court the same thing. It would be a statewide plebiscite. For District Court of Appeal selections there would be a plebiscite of the district.

GILB: Governors, for many, many years, have had the right to fill vacancies due to death or illness, and I think that many posts were filled that way by appointment rather than by election, since the incumbent would usually then be re-elected.

CARTER: Oh, I think most of the judges of the state were first appointed and then elected.

GILB: From your experience in Shasta County as the leading attorney, would you say the local bar has had much actual influence upon the governor over all these years?

CARTER: No, I would say very little. In the first place, the bar was not united; they never agreed. I don't think as they ever tried to agree. I remember when Judge Herzinger died, I called the bar together and we endorsed Mr. Herman Baker, I think he was district attorney at the time. We passed a resolution endorsing him and sent it to the governor, but one of the present judges, Judge Ross, was in the Legislature and he went to the governor and said he would like to be appointed. Rolph was governor and Rolph said, "Sure," and appointed him. Probably if Judge Ross had not sought it himself, Baker would have been appointed. He was recommended by the bar. At that time there were about twenty members of the bar in the county; I think there were about fourteen or fifteen of them at the meeting. The others wouldn't come; they didn't believe in making an endorsement — but if we had known Ross wanted it — I think the bar would have endorsed him.

GILB: Do you think that some of the earlier governors, Stephens or Richardson or Young, made out-and-out political appointments?

CARTER: Oh, there's no doubt that all governors have at different times made political appointments, and when you say "made political appointments," I take it you mean appointed someone that had done them some political favor in the past. Naturally, they would appoint people that they knew, and, generally, someone the governor knows has had some political connection with him, because men don't become governors who haven't had some political background.

GILB: Was your advocacy of a bar [plebiscite] primarily based on a distaste for the political elements which enter into the appointment of judges?

CARTER: Oh, yes, yes. Primarily and fundamentally, my position on a bar plebiscite for the selection of judges is based upon the proposition that lawyers are the best judges of who should be judges. First, the lawyer wants an honest man or woman on the bench. Secondly, he wants one that is qualified, but if it were a question of one having the educational requirements and being dishonest and another not quite so smart, but honest, he would take the honest one rather than the dishonest one.

I think the great majority of lawyers would follow that thought. I think that the bar would have a better idea of who would make a good judge than a governor or the people at an election.

GILB: How do you account for the fact that the amendment to the Constitution in 1934 permitting a judge to run only against his own record was never adopted for any but the appellate courts?

CARTER: I think the people are opposed to giving up their right to select judges. The 1934 amendment to section 26 of article VI of the Constitution which provided for this hybrid system of selecting judges was a part of a larger program by the Commonwealth Club. It went in with the rest of the program, most of which was good. I favored it, I supported it, I made talks in favor of this proposal. I thought it was a step in the right direction. I didn't like the Qualifications Commission; I still don't like it.

GILB: On what grounds?

CARTER: In the first place, I think it is too limited, and I don't think that the attorney general should be on the Qualifications Commission.

He probably has more cases before the supreme and appellate courts than any other litigant in the state. For that reason I don't think he is the person to be on the Qualifications Commission.

Neither do I think the presiding justice of the District Court of Appeal should be on the Qualifications Commission, passing on the qualifications of a member of the Supreme Court. I think the chief justice is all right or, in case the chief justice's position is to be filled, the senior member of the Supreme Court. I would place the lieutenant governor, the speaker of the Assembly, and the president of the State Bar on the Qualifications Commission. There you have probably people of different political, economic and social views; and while it is true that the lieutenant governor is not always a lawyer — he isn't now — he's a man of pretty broad views and he's not always of the governor's party or the governor's philosophy. Yet, I think he would be a good man on the Qualifications Commission. The speaker of the Assembly is a man who has been chosen by the members of the Assembly as the presiding officer of that body and is generally an outstanding person.

GILB: If the people in the counties were unwilling to adopt the plan provided for in section 26 of article VI, it seems that they want to retain the power to elect judges. It's unlikely that they'd go for a bar primary.

CARTER: That may be true. I don't think there is any possibility of my idea about this being adopted in the near future. I think it would take a long process of education, but I think if there was united action on it, if there were enough people who believed in it and who would proceed to advocate it and write about it, that the time would come when we would have some system of that kind. I think it is better than anything I've heard yet.

I think probably the Missouri plan is better than ours. Under the Missouri plan, they have a screening process before the governor makes the appointment.

GILB: By an especially appointed commission.

CARTER: Yes, that's right. And I think the screening should take place before and not after the appointment.

GILB: Let's move on from the subject of the selection of judges to the conduct of judges. This state has been charged with having, not only out-and-out corrupt judges in the early part of this century, but judges very closely affiliated with the Southern Pacific and other special interests. Do you think we've gotten away from that, and if, so, how?

CARTER: I think we've gotten away from it. I think our present system of selecting judges has helped on that as far as the supreme and appellate courts are concerned. Under the present system, I don't believe that any interests could possibly get control of the court, for very long at least, because the appointees now generally serve a considerable period of time and no one administration, even if it were under the control of some special interest, could possibly get control of the courts of this state because the administration probably wouldn't continue in office long enough.

GILB: [interjecting] Since we still have the same old system of electing judges in the superior courts . . .

CARTER: Oh, in the superior courts, I think that there are places where special interests probably do have some influence on the election, but I think the secret ballot and the modern methods of campaigning have practically destroyed any hold that they might have on the people. Of course, where it does have some effect is where if they want to go in and finance the campaign of some judge and afford him the facilities of radio, television, newspaper advertising, and distribution of literature and so forth, that can go a long way toward electing that judge. There's no doubt that in some instances that has happened. Of course, I think it hasn't happened any more often because, as a general thing, a person who might be under the control of special interests, if he undertook to run for a judgeship, if that fact were known, would have strong opposition, and if that were called to the attention of the people — which it likely would be — it isn't likely that such a person would be elected. Of course, there are exceptions, and no doubt there are instances now where there are men on the bench who were put there by special interests and are kept there. I can't think of any right now.

GILB: Of all of the rules in the codes of judicial ethics, what rules do you think are most important for judges?

CARTER: I haven't any particular rule in my mind right now. I think that a judge should be free from having any bias or prejudice against a person involved in litigation. I think, if he is biased, he should step out of the case. I think that a judge, if he feels that he would be influenced either by his association with the party or the attorney for the party, should not participate in the case. Of course there are various rules of ethics such as refraining from participating in partisan politics. I think a judge should so refrain. I also think that he should refrain from making contributions to candidates in partisan politics.

Unless my attention is called to some particular rule, I haven't any thought as to the value of one rule over another.

GILB: Were you for the application of recall to judges? You were awfully young when that first came in under Hiram Johnson.

CARTER: Yes, I was for it. We then had election of judges, and I was for it and I think I'm still for it. While there might be an abuse sometime, I think it would be rather difficult to recall a judge or any other official unless it were shown that he was guilty of some corruption. It might be that in a time of extreme tension a judge might be recalled for doing nothing more than his duty, but I can't think of such a thing happening right now, and I doubt if it would happen.

GILB: Do you think there should be some means of disciplining judges for less than flagrant misdeeds?

CARTER: When you talk about disciplining, yes, I think so. If a judge became an alcoholic, there ought to be some way to discipline him for that, or rather, to try to cure him. That's more of a disease than it is a violation of ethics. Of course, if a judge commits a crime, he's treated the same as anyone else. He's subject to indictment and prosecution.

GILB: I think in a way the judges are in a position, in matters of ethics, that the attorneys were before the State Bar, and that only the most flagrant cases can be disciplined, and they have to be undertaken most publicly.

CARTER: Yes. There should be some body in the state that would have the power to remove a judge who had become incompetent mentally,

either from illness or injury, or excessive use of drugs or beverages, and also as a result of old age. There are cases where judges have continued to try to serve after they have become incompetent, and I think this is detrimental to the public in general and to the administration of justice.

GILB: One of the ideas of the State Bar when it was first organized was that it was going to discipline judges, and I remember that you had some connection with the Hardy case where that idea was thrown out. Were you for the idea?

CARTER: Yes, I was. At that time, when the Hardy disclosure was made, about Judge Hardy accepting a "love offering" of $2,500 from Aimee Semple McPherson, I thought that that was misconduct and that it should be investigated and that we should at least ascertain the facts and report them to the Legislature. Well, we were restrained from doing that on the grounds that judges were not lawyers and were not subject to discipline.

I was on the committee. The committee consisted of Eugene Daney of San Diego, David M. Burnett of San Jose, and myself. We held meetings in Los Angeles and subpoenaed Judge Hardy to appear before us. He appeared and refused to answer questions, and we had him cited before the Superior Court of Los Angeles County to show cause why he shouldn't be held in contempt. The superior court held that he was not a lawyer subject to discipline by the State Bar, and the Supreme Court sustained that.

GILB: Are you happy with that decision now?

CARTER: Yes, I think it was a wise decision. I think that there should be a complete separation between the judiciary and the bar.

GILB: Except for the matter of selection.

CARTER: Yes, the reason for the selection is that the lawyers have a better idea of who should be a judge than anyone else.

GILB: Although you said that you thought the Legislature could set admission standards for the practice of law, wouldn't the same logic apply? That lawyers have a better idea of who should be a lawyer than the Legislature would?

CARTER: Yes. As a matter of fact, I think that the Supreme Court has the power to determine standards for admission. That is a part of the judicial system, and I think we have permitted the Legislature to usurp that. Whenever a majority of this Court feels that they should exercise that power, they have the power. The matter of admissions and expulsions is a part of the judicial process, a part of the judicial system, and we could say to the Legislature, "We are going to regulate that instead of you." But the Court is not disposed to do that now.

GILB: Would you be on the majority?

CARTER: I would. I would be willing. I think the Court should do it, I think it is a function of the Court, and I would be willing to undertake it. I think that the Court is in a better position to determine that than the Legislature.

GILB: In other words, the general tenor of all your viewpoints concerning the profession is that the profession is better equipped to select its members and to select judges than the laymen.

CARTER: Oh, yes, I think so.

POLITICAL VIEWS AND ACTIVITIES, TO 1939

GILB: I know that politics has been a strong interest of yours and that you have thought of yourself, with some exceptions, as primarily a Democrat over all the years of your life.

CARTER: Well, I'll try to articulate my political philosophy as far as partisan politics are concerned. I feel that I am a free thinker in politics, an independent, but I have found myself aligned with the philosophy of the Democratic Party in most of my experiences. I have not always supported the Democratic candidates. I don't believe in people dogmatically following a party line regardless of who the leaders are or what they stand for.

I found myself joining the Lincoln-Roosevelt League and voting for Hiram Johnson in 1910, and then I found myself in the Woodrow Wilson camp in 1912, and in 1916.

GILB: I think a lot of Progressives would have liked to have been in the Wilson camp, too.

CARTER: Yes. In 1920 I still followed the Democratic line. I voted for Cox and Roosevelt. But in 1924 I just couldn't go for Davis and Bryan, and because I felt that they were not following the liberal philosophy that I believed in, so I supported La Follette, realizing of course, that he had no chance at all, but I liked his liberal philosophy. I thought it was a protest vote, and if he got strong support, it might have some influence in bringing the Democratic Party back to the liberal concept that I thought it had.

We come to 1928, and I felt that Al Smith was a machine Democrat, controlled by Tammany in New York, and I thought it would be a detriment to the Democratic Party and to the country if Al Smith were elected so I came out for Herbert Hoover. But I didn't change my registration. I still remained a registered Democrat. In 1932, I had not intended to be active in that presidential primary election, but I was asked to become a delegate for Garner to the Democratic National Convention.

GILB: Did you take an active interest in gubernatorial candidates?

CARTER: Yes, I generally supported the Republican governors, and I supported Hiram Johnson for United States senator. I think I supported Johnson every time he ran.

GILB: Did you subscribe to Johnson's isolationism?

CARTER: No, I did not. That was one respect in which I did not agree with Johnson. I thought he was wrong. I was for the League of Nations. I thought it was a step in the right direction, and I went right down the line with Woodrow Wilson in that respect.

But it happened that Johnson was elected in 1916, and he didn't come up for election again until 1922. By that time the League of Nations was dead, and so I presume that I sort of forgave him for that. Furthermore, there was no one running on the Democratic ticket that I thought was worthy of my support.

GILB: Is that the reason you voted for Republican governors usually?

CARTER: Yes, the same reason. I supported Stephens in 1922 when Richardson defeated him. I supported Young in 1926 and Young in 1930.

GILB: You mean in the Stephens-Richardson fight, you supported Stephens in the primary?

CARTER: That's right.

GILB: In the election, did you vote Democratic or did you vote for Richardson?

CARTER: I think I voted for Tom Woolwine. He was district attorney of Los Angeles County and I knew him pretty well.

GILB: In other words, you wouldn't have been for Richardson?

CARTER: No. I liked Richardson in some respects. I thought he was an honest man, but I was not in sympathy with his program generally.

GILB: He was pretty conservative.

CARTER: Oh, very.

GILB: I wanted to find out how your viewpoints compared with those of most of the voters in northern California, Shasta County. What percentage of the people up there were Democrats at that time?

CARTER: When I went to Shasta County in 1914, I think the registration was pretty strongly Republican. It shifted over during the Wilson administration and there was probably pretty close to a majority that went Democratic. Then it began to shift back again during the '20s and was pretty strongly Republican.

I wasn't very active in the local Democratic organization at that time, but I considered myself a Democrat on national issues as a general thing.

Delegate to the Democratic National Convention, 1932

GILB: How did you happen to become a delegate to the Democratic convention in 1932?

CARTER: Annette Abbott Adams, with whom I had been associated when she was practicing law in San Francisco (she later became presiding justice of the District Court of Appeal), asked me to become a delegate in

my district. The delegates were elected in districts. Her friend, Mrs. John Raker, wife of the former congressman, was the other delegate.

GILB: How did Annette Adams have the power to ask you to be a delegate?

CARTER: She was quite active in Democratic politics. The group had met in San Francisco to select the delegates and she, having some acquaintance in that district, was asked if she could suggest someone. In 1928 I had allowed my name to be used as a delegate for Senator Walsh who was the Democratic candidate in the California primary for President. She knew Senator Walsh very well and had asked me if I would allow my name to be used as a delegate for him, and I did. But we lost. There were several candidates for President in the California primary that year.

As the result of that, knowing that I yielded to her suggestion and permitted my name to be used as a delegate that year, she asked me if I would become a delegate on the Garner ticket and I told her I would.

GILB: You say you had not been active in the local Democratic organization. Had you done anything in the statewide organization of the Democrats?

CARTER: No, I had not. During some of the campaigns, like the Wilson campaign, I had made talks for Wilson. During the 1920 campaign I made some talks for the national Democratic campaign. In 1924 I made some talks for La Follette. In 1928 I didn't make any speeches for Hoover. I just came out with a statement that I was for Hoover instead of Smith.

GILB: You went to the 1932 Democratic convention. I've heard stories about the switch from Garner to Roosevelt in the convention. I'd like your version of that switch.

CARTER: The Texas and California conventions, both being for Garner, caucused together. We voted for Garner on the first three ballots. Roosevelt had gained on each ballot, and after the third ballot we held another caucus. The information came to us that Roosevelt would have enough votes on the fourth ballot to get the nomination, or probably would. We felt that it would be better if we could make a deal whereby we could get Garner nominated for vice president than if we just stayed by Garner and voted for him on the fourth ballot because if Roosevelt was

nominated, of course, probably some of the other hopefuls for President would have switched over and would be in a better position to get the vice presidency than Garner. So we authorized the head of our delegation, Mr. McAdoo, to go to the Roosevelt headquarters and submit the proposition that if we switched to Roosevelt, would they support Garner for vice president. They said they would, so we agreed to vote for Roosevelt.

GILB: It has been claimed that William Randolph Hearst held the Garner delegation in his hand and that it was he who personally engineered the switch. What would you say to that?

CARTER: I would say that there was not a word of truth in it. I do not remember any Hearst influence at all. I knew a number of the delegates very well. I knew he had no influence whatever with me and, so far as I know, he didn't have any with the other delegates. We discussed the matters in caucus. Several of the delegates spoke very freely on the subject. There didn't appear to be any domination or control from anyone. We took a vote on it and it was decided by vote. I don't think there is any justification whatever for saying that it was the Hearst influence that caused the California delegation to swing from Garner to Roosevelt.

GILB: Would you have preferred Garner to Roosevelt?

CARTER: Well, I had the feeling at that time that Garner had a very sound political philosophy. He had been in Congress for, I think, nearly thirty years at the time. He was the leader of the party there. I felt that he would make a good President.

Frankly, until I got to the convention, I had a lingering suspicion that Roosevelt was still aligned with Smith and frankly, I didn't like that alignment, but when I got back there, the California delegation happened to be seated right behind the New York delegation. The New York delegation was split between the Smith and Roosevelt supporters and they were very bitter. Then I found that there was a complete break between Roosevelt and Smith and that Smith was just trying to cut Roosevelt's throat, so my admiration for Roosevelt raised immediately. My reluctance to go for him on that account had practically vanished. You might

say that I changed my views entirely from the time I left here and the time I got back to Chicago.

That proved out because Smith was very bitter. He appeared before the convention and seemed to be very resentful of the fact that Roosevelt was being considered ahead of him. Although he did come out and make some speeches for Roosevelt in the campaign, he later turned very bitter against Roosevelt and made some very caustic remarks about him.

Suggested for United States District Attorney, 1933

GILB: How did you happen to be suggested for U.S. District Attorney in 1933?

CARTER: I don't recall where the suggestion came from, but there were a number of groups that suggested that I be appointed. In fact, the suggestion was first made, to my knowledge, after the election of President Hoover in 1928, whom I supported because I didn't like Al Smith. I was then recommended by a number of people. Whether I was considered or not, I don't know, but at least there was some comment that I had been recommended. Then, after the election of Franklin Roosevelt in 1932, there were several groups that endorsed me for the appointment. I recall one now, the Railroad Brotherhoods. I think also some Democratic groups endorsed me. I never sought the position, I never made application for it.

GILB: I have a note here that George Creel was rumored to be opposed to that appointment. Were you aware of that?

CARTER: I wouldn't be surprised. I didn't support Creel when he was a candidate for office.

GILB: Why was Creel in a position to be influential?

CARTER: I don't think that he was. He was considered quite influential during the Wilson administration, and he tried to come back in the Roosevelt administration, but he didn't get any recognition during the Roosevelt administration.

GILB: What was his position at that time?

CARTER: He had no position at all. He was a candidate for the nomination for governor in 1934, as I recall, and he was defeated for the nomination by Upton Sinclair. I didn't support either Creel or Sinclair in that campaign. In fact, I didn't like either one of them. Right now I don't recall who I voted for at the primary, but at the general election I voted for Governor Merriam, who defeated Sinclair. I didn't believe in the so-called EPIC movement. I thought it went a little too far.

GILB: Would you have liked the post of U.S. District Attorney, had you gotten it?

CARTER: I really don't know. I wasn't seeking any political position at that time. My private practice was very good. I was making a lot more money than I could have made in a political position. My recollection is that I discouraged those who tried to promote my appointment. I was not really interested in it.

Comments on the Roosevelt Administration

GILB: How did you like the Roosevelt administration?

CARTER: Well, generally I liked it. I thought probably that some of the proposals were not sufficiently thought out. In fact, in some respects they didn't go as far as I would have liked to have seen them go. In other respects, I thought they had embarked upon some theories that were probably a little vague.

GILB: Specifically, what aspects of the administration were you against? For instance, you said that you were in favor of Hiram Johnson, and I know that he and Roosevelt came to blows over the question of isolationism.

CARTER: Not immediately. That was later. They were very friendly. In fact, Johnson supported Roosevelt, and Johnson was responsible for the appointment of Ickes. They were very friendly. Roosevelt was appointing federal judges on the advice of Johnson. He appointed Judge Roche here on the advice of Johnson. They did not have conflicts until the beginning of the war.

GILB: At that time, which side would you have been on?

CARTER: Oh, I was with Roosevelt all the time on that, right down the line.

GILB: Then it was on domestic issues that you disagreed?

CARTER: Yes, absolutely. In fact, Johnson and Roosevelt were very close together up until the beginning of the war.

GILB: What domestic policies of Roosevelt's did you think were not what they should have been?

CARTER: You might say his rehabilitation policy. I presume it was worked out in the councils of his administration as to how we were to pull ourselves out of the Depression. They established various agencies such as the NRA, PWA and WPA to handle the industrial situation. I was not impressed with the wisdom of this legislation. I was very much in favor of liberalizing the Federal Land Banks so that farmers could get more and longer loans. On the so-called WPA policy of employing people on various projects, I think it helped to improve the unemployment situation, but instead of their dishing the money out that way, I favored making loans directly to individuals who had projects, and let private individuals hire the people. They could have made loans on long terms at low rates of interest so that people who desired to improve their property or develop their business could borrow the money from the government which would have been repaid in due course. This is really what the government did after we began to prepare for war. It resulted in solving the unemployment situation and brought us out of the Depression.

GILB: In other words, you do approve of the idea of private enterprise, and you are against too much stateism in relation to private enterprise. Would that be the basis of your disagreement?

CARTER: That's right. I don't think that the WPA program was very successful. I think it helped, probably in its supervision and operation. Now, the Public Works Administration — I came in contact with that very definitely and I think that was very helpful. That is where the government loaned money to public corporations, to cities and counties, not loaned, gave money for the purpose of stimulating employment. For instance, the city of Redding got grants of about a half million dollars

— not as loans — they gave them the money if the city would put up an equal amount and construct some public projects in order to increase employment. I think that was a marvelous program. I think the government could probably have loaned that money at a low rate of interest rather than just giving it away, but they wanted to overcome this serious unemployment crisis immediately, so they gave these outright grants to public corporations that would put in an equal amount and construct public improvements. So the city of Redding constructed a half-million-dollar water system; they put in a sewer system and a fire system.

The Federal Emergency Administration of Public Works was the correct title. I know because I wrote them many times. Mr. Ickes was the head of it, and I think he did a marvelous job.

I was city attorney of both Redding and Mt. Shasta at the time and we got grants for both cities, and I think that department was administered in a marvelous manner, a very efficient manner.

GILB: Among the men who had played key roles in the Roosevelt administration, which did you admire the most?

CARTER: I had great admiration for Secretary of State Cordell Hull. I thought he was outstanding, both in the field of diplomacy and as a great public servant. The other man I thought was outstanding was Harold Ickes. I think he did a magnificent job as secretary of the interior. I had more contacts with him than I did with Secretary of State Hull. I had the occasion of contacting him many times when I was city attorney of Redding and Mt. Shasta.

Then, I also had occasion to contact him in connection with the development of the Central Valley Project and I found him very thorough and very capable in everything he did in connection with those matters. I regard him as one of the great public servants that we have had in recent years.

Right now no one else connected with that administration comes into my mind. I think it was singularly true that there was not a breath of scandal that was brought to light on any of Roosevelt's cabinet appointments. They were all men of ability and character and I think rendered a very high quality of public service.

GILB: As an attorney, what did you think of the attitude of the Supreme Court in the early phases of the Roosevelt administration?

CARTER: I think it was very unfortunate. The Court was quite conservative then, and I think that we would have made progress faster if the Court had been more sympathetic toward the New Deal measures for relieving the economic crisis that existed.

GILB: What attitude did you have when Roosevelt proposed the "court-packing" scheme?

CARTER: To my mind, it did not justify the criticism that it received. Lincoln did the same thing.

I think if that program had gone through, it would probably have been in the best interests of the country. That we don't know. The men he would have put on the Court had to run the gamut of the Senate, and they would no doubt have been men of ability and character. I think he wanted to increase the court to fifteen. Then we would have had fifteen minds up there instead of nine to pass on these problems. I can't see that it was anything out of line. The Congress increased the Supreme Court to ten during the Lincoln administration so they could get another judge on there who was anti-slavery to even up the Court which was predominantly pro-slavery at that time.

GILB: In other words, you would say that a court, and especially the Supreme Court, should not be divorced from political issues?

CARTER: Well, it isn't. You can't divorce it from political issues. The Supreme Court follows the election returns. Mr. Dooley said that a good many years ago, or Peter F. Dunne wrote it, and I think that was true then and it's still true. It's not only true of the Supreme Court of the United States; it's also true of the Supreme Court of California.

GOVERNOR OLSON'S ELECTION AND ADMINISTRATION

GILB: You said that you were a liberal in politics and yet you supported such a conservative as Frank Merriam for governor in the early '30s and were against the EPIC movement and against Creel. Why was that?

CARTER: I didn't vote for Merriam against Creel. Creel wasn't in the final election.

I thought that Upton Sinclair was altogether too visionary. I read his articles, I listened to his speeches, and I just thought that his ideas were too fantastic. I knew Merriam, I thought he was honest, I knew he was conservative, in fact, I knew he was reactionary. I knew him well. I called him Frank and he called me Jesse. And yet I opposed him when Governor Olson was running. But I just couldn't bring myself to a position where I could vote for Upton Sinclair for governor. That was my honest conclusion. I thought he was altogether too visionary. I thought he went beyond the realm of liberalism. I thought he went into the field of fantasy.

GILB: And yet you did want to see a Democratic governor enough to conduct quite an active campaign for Olson?

CARTER: Oh, yes. I went to work with this group right after the election of '34. We started in '35 or '36 to select candidates. In fact, some of this group wanted me to be the candidate but I couldn't see it that way. When Olson came to the Legislature and made such a good showing there, we had conferences with him and liked his philosophy. He had such a charming personality, and we thought he could be elected, so we decided to run him.

GILB: What group is that?

CARTER: They are scattered all over the state. There was Mitchell Bourquin here in San Francisco, Attorney General Brown, Judge McCage, now of the Public Utilities Commission, Judge Shoemaker; several others are dead; Mr. Knox who was appointed superintendent of banks, Judge Robert McWilliams, Mrs. McWilliams. There were about thirty or forty of us who held meetings and worked on the program.

GILB: Were many people in Shasta County Democrats? Did you have hope that the Democrats might carry northern California?

CARTER: Oh, yes, at that time the registration was pretty strongly Democratic.

GILB: Caused by the Depression?

CARTER: Oh, I think so. In fact, Roosevelt carried California by almost 750,000 votes in 1936, so the trend was overwhelmingly Democratic. I don't remember what the registration was, that is, the percentage of Republicans to Democrats. I think the Democrats were probably almost two to one.

GILB: And this was true in the region from which you came?

CARTER: Oh, yes.

GILB: You said you presided over the meeting which practically picked Olson. Was that in about 1937?

CARTER: Yes, it was after we had held several meetings or conferences, and had decided to present him to the public. We had decided he was the candidate we would have. So this meeting was held in a high school auditorium in Oakland and I was asked to preside. At that meeting a resolution was passed asking Olson to run for governor.

I wrote to him and sent him the resolution, and shortly after that he announced that he would run.

GILB: What did you do personally to try to get him elected?

CARTER: I was chairman of the northern California campaign.

GILB: You made speeches, collected funds and did all that sort of thing?

CARTER: Oh, yes. I traveled all around over northern California introducing him and speaking on his behalf.

GILB: Then he became ill after he was elected.

CARTER: He had a coronary thrombosis the day he was inaugurated. He was making a speech at the fair grounds.

GILB: I think he was criticized for having let many of his supporters down. Were you happy with his administration?

CARTER: I would say yes, on the whole, although I thought he made many mistakes which if he had not made, he would have been re-elected even against Warren. I think his mistakes were, and I told him this, in the caliber of people he had around him in his immediate surroundings, and in his office. That was to start with; he improved that later on, but

he had people there who were, in my opinion, not the type of people that should be around the governor's office. They were good enough people, but I think he should have had older people of more experience and discretion and people who could speak for him. In the beginning, he didn't have any of that type. If he wasn't there, no one could speak for him; you would just have to wait for the governor.

GILB: It has been rumored that his son played a large part in alienating his supporters.

CARTER: Well, I think that is true. Richard Olson was a very, very brilliant mind. I've heard him make some marvelous speeches, and one argument that he made before the Supreme Court since I've been a member was one of the finest arguments I think I've ever heard But he is unstable. I understand that he has a mental quirk, that he just loses control of himself at times. Whether it's due to drink or not, I don't know. He's a very charming young man, nice personality, good conversationalist, well educated, a graduate of Harvard, an excellent lawyer. I've never seen him in one of those wild times, but I've been told that he becomes irrational at times. He would irritate people by his domineering, demanding attitude, and he did alienate people from the governor, I'm sure of that.

GILB: Were the people with whom you were acquainted in Shasta County satisfied with the Olson administration?

CARTER: Oh, I think so.

GILB: On what issue had you tried to sell Olson to them?

CARTER: That he wanted to administer the government for the benefit of the people, that he was for the things that I stood for, and that he was strongly for the Central Valley Project. He was very strongly for the Central Valley Project. He wanted to protect the people against the interests. The appointments he made to the Public Utilities Commission were men who were on the people's side rather than on the utilities' side. They were not what you might call "public utility minded" as some other commissioners have been. He wanted to put people in office who he thought would serve the people and who would not be the tools of the special interests. He was genuine and sincere in that regard.

STATE SENATOR, 1939

GILB: 1939 marked a new phase in your career when you became a state senator. Hadn't you been a candidate for state senator before that time?

CARTER: I ran for the Senate in 1926 and was defeated at the primary. There were three candidates: James Allen of Siskiyou County, myself, and Dr. Dozier of Redding. I carried three counties — there were four counties in the district then — I carried Shasta, Modoc and Lassen. Siskiyou was by far the largest county in population, and Allen carried Siskiyou County by a large enough majority so that he defeated both Dr. Dozier and myself. Dr. Dozier got very few votes. I came within less than five hundred votes of getting the Democratic nomination.

GILB: And then you didn't try again until 1939?

CARTER: No, I stayed out of politics after that.

GILB: What made you decide to run in '39?

CARTER: The governor called me after Senator McColl's death and asked me if I would come down and help him out. I told him I didn't like to do it, but if he couldn't find anyone else, I would, so I yielded.

GILB: There were other men who would have liked to have taken the post.

CARTER: Yes, Mr. Menzel was the only other contender that had any chance at all. He was selected by the Board of Equalization and they tried to elect him. He would have carried out their program. He was a Republican.

GILB: Was this specifically on liquor?

CARTER: All the interests supported him. They must have spent a tremendous amount of money. All of the lobby interests supported him. I have no idea how much money they spent, but from the posters and advertising — they just bought whole pages of newspapers, and they put on a very expensive campaign.

Of course, the others didn't amount to anything at all. Dr. Dozier had run practically every time. He was a sort of a freak, and he didn't get anywhere at all. Roscoe Anderson was just a youngster and he didn't

amount to anything. Kendall was a newspaperman, and he was through before the election; he wasn't getting anyplace. I got more votes than all the rest of them.

GILB: That's really quite impressive considering all the money and power was on the other side.

CARTER: I don't say this to flatter myself, but I don't think they could have defeated me in Shasta County at that time. I was born and raised in Trinity County, and in four precincts up there along the Trinity River I got every vote cast. There was one precinct where I lost one vote.

GILB: Was Francis Carr a supporter of yours?

CARTER: Well, it went this way. We were opponents in lawsuits for many years, and I would say that our relations for a good many years were not very friendly, but when the governor asked me to run for the Senate in 1939, Francis Carr came over and said, "Well, let's bury the hatchet. I'm going to support you." And he did.

GILB: He was a Democrat?

CARTER: Yes, he was a Democrat. I think he was afraid that I might take some of the glory away from him if I became active in the party organization.

I was elected a delegate to the Democratic National Convention in 1932, something that had never happened to him. Then, I successfully handled the Olson campaign up there in '38.

Francis Carr was a good, loyal Democrat. He belonged to the conservative side of the party, while I was on the liberal side. Our differences in politics were generally along those lines. My political philosophy was different from his.

GILB: What bills or policies did you specifically want to carry out when you became senator?

CARTER: Of course, the major project was Shasta Dam, the Central Valley Project. We had some very critical situations there. One was the road. They didn't have a road out there. I got a bill through getting the state highway out there. There hadn't been an extension of the state highway

for fifteen years and that met a lot of opposition. I just got it through by, I think, one vote in each house.

Then, there were no schools out there. For the first time in the history of the state, I got an appropriation through for schools to provide for the children who were coming in there.

Then, I defeated a number of bills that were designed to cripple the project. Someone told me they were trying to throw some monkey wrenches in it and I fought those bills.

Then, I had a program for the protection of the forests, experimental burning to burn off the debris and underbrush to protect the large timber. I got that through.

GILB: That was vetoed, wasn't it?

CARTER: That was vetoed because it carried an appropriation and the governor said he was sorry but he couldn't find where the money was coming from to take care of it, but he was for it. He really wanted to sign it, but he couldn't see where the money was coming from.

The school bill, I think, carried 300,000; the road bill carried 200,000.

GILB: Did you work very hard for the Pierovich bill?

CARTER: Yes, I supported that.

GILB: Had you done any active lobbying on the public power issue prior to 1939?

CARTER: Oh, yes, right along as best I could. We were working on those things all the time.

GILB: When did you first begin your lobbying for a Central Valley Project — I know the campaign for the Water and Power Act first started in 1922.

CARTER: I was active on committees and I made talks around over the state for the Central Valley Project. Right now I can't mention any specific date.

GILB: You didn't begin as early as 1922?

CARTER: Well, it was along there. I'd say '23 or '24.

GILB: In your efforts to support the Pierovich bill, did you discover much power company lobbying?

CARTER: Oh, yes, the power company lobbying was strong. At first, they only had certain people they could reach. They had their supporters in the Legislature, and they were not in a very fortunate situation because the administration, of course, was all for the Central Valley Project. All of the governor's appointees, the director of public works, and the whole administration right down the line were for the Central Valley Project.

GILB: 1939 was the year the *Collier's* article came out on the notorious Artie Samish situation. I suppose it applied to the Legislature in which you participated.

CARTER: Yes, well, I'll say this for Mr. Samish. I never saw him but once and that was at Senator McColl's funeral in Redding. I said then that if Mr. Samish ever attended my funeral, it would be to make sure that I was dead (laughter). I will say this to his credit, he never approached me on any occasion to ask me to vote for or against a bill.

GILB: He probably thought it was a waste of time.

CARTER: That's right. He had his votes. He didn't need mine, but I don't think he would have tried it anyway. His group, his liquor interests, spent thousands of dollars trying to defeat me, and then they spent probably two or three times that much trying to defeat my son in 1940.

GILB: You did propose a liquor control bill that was somewhat progressive. That was defeated.

CARTER: Oh, we didn't get it out of committee.

GILB: Why not?

CARTER: The lobby was too strong against it, that's all. It wasn't time for it. It takes years and years for things like that to crystallize. It finally came about.

APPOINTMENT TO CALIFORNIA SUPREME COURT, 1939

GILB: I wanted to ask you about your appointment to the bench, which came right after your work in the Senate.

CARTER: Yes, Justice Seawell died on July 7, 1939. Governor Olson phoned me at Redding and stated that he now had a vacancy on the Supreme Court and wanted to appoint me to the vacancy and asked me

SUMMER 1939. (KENNY HAD SERVED PREVIOUSLY AS A MUNICIPAL COURT JUDGE AND WAS LATER ELECTED STATE ATTORNEY GENERAL, FOLLOWING WHICH HE SERVED ON THE SUPERIOR COURT, BUT HE WAS NOT APPOINTED TO A JUDICIAL POSITION IN 1939.)

Courtesy Scott H. Carter.

to come to San Francisco, which I did. In fact, I came down to Judge Seawell's funeral, whom I had known very well, and I met the governor there. He said to come over to the office. He said, "Well, there are some others who would like this appointment, but I've made up my mind to appoint you." He called in his secretary and asked her to make out the commission. Then he left for Los Angeles. That was about the 9th or l0th of July.

Then I heard that some pressure was being put on him to appoint someone else.

GILB: Robert Kenny?

CARTER: Yes, Robert Kenny and Phil Gibson.

I said, "Well, Governor, it's your appointment. If you want to appoint someone else, you're not going to incur my enmity. After all, it's your responsibility, and you know whom you would like to have on the Court. If you think I am qualified and that I have the philosophy of the person you would like to see on the Court, I'm willing to take it now. I'm in a better position than I ever was because I've been away from my office for six months, and the men associated with me have gotten hold of the practice pretty well. I would rather go on the Court now, than go back there and have to go over everything that has been on my desk which has been stacked up since I've been in the Legislature."

He said, "Well, I've made up my mind to appoint you, and I'm going to do it. What do you think about the Qualifications Commission?" Because I had been a senator and there had been some talk that a senator was not eligible.

I said, "If you want to appoint me, you give me the commission and I'll fight that out."

So he handed me the commission which is hanging up there now.

GILB: The issue about appointing a senator wasn't confined to you. There had been several others, hadn't there?

CARTER: Yes. There were several others. They had never been appointed to the Supreme Court but to superior courts, and opinions had been given that they were eligible.

GILB: Because superior court judges are elected officials, but it wasn't clear about the Supreme Court.

CARTER: That's right. So the governor wrote to the commission and said that he had appointed me and asked them to confirm me. They held a hearing here in San Francisco and I appeared. They held that I was ineligible, and therefore, they would not pass on my qualifications.

That left the door open for me to bring a "mandamus" proceeding in the Supreme Court to have the Court pass on my eligibility, and the Court did and held unanimously that I was eligible. Then the commission met.

In the meantime, Justice Langdon had died, and the governor named Phil Gibson to Justice Langdon's place, so we were both confirmed on September 8.

OTHER OLSON APPOINTMENTS

GILB: In the *State Bar Journal* for those years, the statement appears that there was a great deal of hostility toward the Olson judicial appointments in the Assembly in particular and among the bar. There was a feeling that he was making some very bad appointments.

CARTER: That would not pertain to either Gibson or myself. I don't think in the Legislature or among the bar generally there was any opposition to either Gibson or myself. I have been told, and I'm satisfied that it is correct, that attorneys for insurance companies, public liability companies, did write to the Qualifications Commission opposing my appointment because they thought that I was too sympathetic toward the plaintiff's side, and they were right. I don't know how many did it, but I was told that some did it. The file was not available to me.

Outside of that, I don't know of any opposition, but there was some from that source. I've been told even the attorneys for the PG&E did not oppose my appointment because they felt that I was qualified even though I had successfully opposed the company in several cases.

GILB: What do you think caused the opposition to some of the other appointments?

CARTER: Well, I'll tell you. There was opposition to the appointment of Max Radin because they thought he was too liberal, that is, he was criticized as being pro-communist, which I think was ridiculous but, nevertheless, they accused him of that.

GILB: Was that Warren's motive in blackballing him?

CARTER: I think so. Radin had criticized Warren for his prosecution of the so-called Ship Murder Case — King, Ramsey and Connor.

I think Max Radin was a marvelous character. In fact, he was one of my attorneys in my fight for eligibility and a very good friend of mine, and I think a wonderful lawyer and wonderful man.

Then he was criticized for appointing Paul Peek. Peek had been defeated for speaker of the assembly. He had been appointed secretary of state by Olson and then defeated as secretary of state. It was contended that Peek did not have the legal background for that position.

Olson was criticized for appointing Annette Adams, not because of her ability or because she was a woman but because she was not then a resident of the third appellate district. She was living then at Palo Alto. She had been in Los Angeles. She was born and raised in the third appellate district, she had practiced law there, but most of her life she had practiced law in San Francisco. Then she had gone with Judge Preston in Los Angeles in this oil controversy against Standard Oil and some of those oil companies, and then she had moved to Palo Alto and was living there at the time, but not practicing law. When the vacancy occurred, a few of Mrs. Adams's friends, including myself, suggested to Olson that he appoint her, and he appointed her. But there was criticism by members of the bar in northern California and also members of the Legislature that he would select someone from out of the district for that position.

I don't recall any other appointments that were criticized. I would say the Radin, Adams, and Peek appointments were criticized for the reasons I have given.

I believe he also nominated Rudy Allport for the District Court of Appeal in Los Angeles, and there was some opposition to him because of some connection he had with a state contract. I don't know the details of it. I think he withdrew. I don't think the commission turned him down.

The commission turned Radin down. They approved Peek, they approved Mrs. Adams. Allport is now a regent at the University of California; I think he withdrew his name as an appointee of the District Court of Appeal.

GILB: Of course, the bar has been traditionally conservative. I wondered if there was any feeling among the bar that Olson was trying to create far too liberal a bench to suit their tastes.

CARTER: No, I wouldn't say that. I don't believe that criticism could be leveled at Annette Adams. She was a sound and able lawyer. She had been United States attorney, she had been deputy attorney general of the United States, she was considered an outstanding lawyer and I never heard of her being criticized for being too liberal. Of course she was a Democrat. She had been appointed by Wilson, first as deputy United States attorney, then United States attorney, then assistant attorney general of the United States.

GILB: Well, all of his appointments were Democrats, were they not?

CARTER: Olson? No, he appointed some Republicans to the superior court. He appointed Judge Ames here to the superior court, a Republican. He appointed McCabe to the court in Los Angeles. He appointed a number of Republicans to the superior court. Justice Schauer — I think he was registered as a Democrat at the time he was appointed here. I'm not sure how long he had been a Democrat.

CARTER AS CALIFORNIA SUPREME COURT JUSTICE, 1939–

On the Role of Juries

GILB: After you were appointed to the Supreme Court, you made the transition from being an extremely active attorney, winning most of your cases, to being a judge. I would like to ask you some questions about how this affected your attitudes toward the role of the Supreme Court in relation to other courts and to other branches of the government.

One of the things you've stressed in your opinions as a judge is that you think juries as fact-finders ought to be respected. Do you think there is a trend away from the jury system?

CARTER: No, I think the trend, if there is a trend, is probably the other way. I wouldn't say that there is a trend. I think that the jury system is so completely enmeshed in our system of jurisprudence that it is destined to remain, at least as far as I can see into the future.

GILB: There are some straws in the wind. For instance, the American Law Institute's Model Code of Evidence gave a lot more power to the judge as opposed to the jury. Of course it hasn't been widely accepted. There has been a certain amount of talk about cutting down the function of the jury.

CARTER: There probably has been. Of course, there is not complete unanimity of opinion as to the scope of the function of the jury and the function of the judge. I might say that I'm somewhat of a fundamentalist when it comes to the jury system. From my study of history, it seemed to me that many of the abuses in the administration of justice, that is, where there had been a miscarriage of justice, were more attributable to the judges than to the juries. In other words, I think that a jury, properly selected, is a better instrumentality, if we want to call it that, for the determination of factual issues than is the judge, as a general thing.

In my practice, I tried cases for defendants in civil cases as well as for plaintiffs, and I found that the juries, as a general thing, were just as fair to defendants as they were to plaintiffs. In fact, I really preferred to have a jury when I was defending a civil action — most civil actions — than a judge.

I would say that in certain circles there is considerable opposition to the jury system, but I think if you take lawyers generally — you take a cross-section of the lawyers — I think you would find the lawyers overwhelmingly for the jury system.

GILB: You say in certain circles. What circles?

CARTER: I would say that if you attended a meeting of the directors of the National Manufacturers Association, you'd find those people were not very sympathetic toward juries or the jury system. But take the rank and file of the people, while they may have some criticism of the system

Jesse W. Carter, after taking the oath of office as an associate justice of the California Supreme Court, September 10, 1939.

Courtesy Scott H. Carter.

in some respects, I think if an attempt were made to abolish the jury system it would be overwhelmingly defeated by the people generally.

GILB: I don't think the attempt would be made to abolish the jury system, but I think there is some attempt to enhance the judge's role. Another example I can think of is the 1934 amendment to the California Constitution which gave the judge power to comment on evidence that he hadn't had before. Of course, he hasn't used it.

CARTER: It has not been used. In fact, I have never participated in the trial of a case where the judge saw fit to comment on the evidence. I think

JESSE W. CARTER, AFTER TAKING THE OATH OF OFFICE, SEPTEMBER 10, 1939, WITH HIS BROTHERS AND SISTERS, LEFT TO RIGHT: HENRY CARTER, EMMA SUSAN LANE, JESSE W. CARTER, ELIZABETH WILLIAMS, AND JOHN ERROL CARTER.

Courtesy Scott H. Carter.

that the amendment was a mistake. It was one of the so-called reforms that were advocated by certain people who thought that the jury system could be improved upon. I wouldn't say that the jury system could not be improved upon because I think there may be, in certain areas, great improvement that could be made, especially in the manner of first selecting the jury panel from which the jury is to be selected. There have been great abuses in that respect, and I think improvements can be made in that direction.

But the concept of having a cross-section of the community, people who represent the rank and file of the community, sit and listen to the evidence and pass upon the credibility of the witnesses, I think that that is fundamental in our law. While there are a lot of people who would like to do away with the jury system because they think the judges are more inclined to be conservative, yet I think if there was an attempt to abolish it or even restrict it, there would be tremendous popular opposition to it.

GILB: I take it that your views are not shared by a majority of the Supreme Court or you would not have had to dissent so many times.

CARTER: That is right.

GILB: What is the basis of their attitude? What is the background?

CARTER: Frankly, it is this. I think probably a majority of the members of the Supreme Court feel that juries are sympathetic toward plaintiffs and that some restrictions should be put upon the function of a jury. I think that probably some of them would like to see the jury system completely abolished. I made a comment once in a memo I put out in opposition to a proposed opinion that if a certain member of the Supreme Court of California had been at Runnymede, he would have pleaded with King John not to yield to the barons in their request that they be permitted to be tried before a jury of their peers. I think also that if he would have been in the conventions of 1791 which adopted the Bill of Rights, he would have argued that the right to a jury trial should not be included in the Bill of Rights. If he had been a member of the constitutional conventions of California in 1849 and 1879, he would have vigorously opposed those constitutional provisions that the right to a jury trial shall remain inviolate.

GILB: Now, you've said that you don't think that juries favor plaintiffs against defendants. What do you think was the motivation behind insurance company advertising not very long ago telling people that jury verdicts were going to raise their rates?

CARTER: I think the insurance companies were alarmed at some of the big verdicts. Of course, the people who wrote those advertisements and authorized them had not had their bodies mangled and broken in traffic accidents, and they didn't have to go through life maimed and disfigured without being compensated for it. It was purely a selfish motive on the part of those people just to try to keep down awards of damages, whether they were justified or not, and I think it is an improper attitude to take. While I will frankly admit that some jury verdicts are wrong, I have no idea as to percentage. That would be impossible. But in my experience, I think the juries were more nearly right than the judges in the cases that I tried. In other words, I think that juries are better fact-finders than judges, and I think their verdicts are less subject to influence by local sentiments, particularly newspapers and political consideration.

Picture, for instance, a judge in a small county sitting in a case where he knows that the right decision would be unpopular. He's going to be mindful of the fact that if he decides that case the way he feels it should be decided, he's going to lose some votes at the next election.

GILB: Unpopular with whom? I should imagine the jury would probably represent the popular viewpoint.

CARTER: No, they would not. They don't always do that, not as much as a judge because these jurors are not going to worry about how many votes they are going to lose at the next election by deciding the case the way they think is right, where a judge would. I think that the juries are much less subject to pressure than judges.

GILB: Judges are usually on the conservative side of the issue whereas the populace as a whole, the voting public, is less apt to be conservative. How do you account for that?

CARTER: Of course it depends on the case. Take a community like Shasta County. There are two daily papers in the county. One is on one side of the issue and the other is on the other side. They're whipping up a

lot of sentiment for and against the case. The judge is more apt to have a correct appraisal of how this would affect the vote generally than would the jury because the jury comes from all over the county and, in fact, some of them don't even read the newspapers. They're more apt to go into the jury box without any fixed opinion or feeling one way or the other. Of course, I recognize the fact jury verdicts are sometimes influenced by popular sentiment. My argument is that judges are more susceptible to local influence than juries in deciding cases.

GILB: Another question is, aren't judges supposed to be influenced by popular sentiment? Isn't that the idea of an elective judge, to reflect local opinion?

CARTER: Oh, I don't think so. No, not at all.

GILB: Is it that the judge is afraid of going contrary to special interests which are backing him, perhaps financially, or to a class group with which he identifies himself?

CARTER: That is true also, but he is also influenced by popular sentiment, public sentiment that leans one way or another in a case. Of course, we have some of these courageous judges who stand up against that and I've seen them. I've seen a good many of them.

A strong judge is not influenced by those things. He may be unconsciously, to some extent, but when you get a weak judge who is, then, of course, you're going to have a miscarriage of justice and you are more apt to have it than if it were a jury.

GILB: When we were talking about Shasta County, I asked if it were possible for an anti-public power judge to get elected and you said, "No." And also I asked if the juries were inclined to be anti-private companies and you said, "Yes." There would be a clear-cut example of how both the judges and the juries can be influenced by public sentiment to the detriment of the defendant.

CARTER: That's right.

GILB: And you think that would have been bad?

CARTER: I think it would have been bad, but I don't think in those cases that . . . in other words, subsequent events have shown that there was no

miscarriage of justice in the awards that were made in those cases. In fact, subsequent events have shown that the awards were very, very moderate compared to the loss sustained by the farmers and the rights gained by the power companies. If those awards were appraised in the light of conditions as they exist now and have existed for the past ten or fifteen years, the awards would have been three or four times higher than they were.

GILB: Then I could summarize that you think there was an influence in local sentiment in those cases, but it was on the side of the right.

CARTER: Yes, I think that's true, but I think even then both the judge and the juries were quite conservative. In other words, they didn't want to give more than what was fair and just, and I think that's what they felt they were giving. I don't think they gave excessive awards at all. In other words, I don't think there was any particular prejudice against the power company, but they felt that these farmers had been damaged and they were entitled to awards, and it was just a matter of how much. Of course, they were all well within the evidence — in fact, far less than what the witnesses for the plaintiffs testified for. There wasn't any of them that even approached that. On the other hand, they were far above what the witnesses for the power company estimated.

On Judicial Review of Administrative Decisions

GILB: On a related matter, California is pretty well known for having very thorough judicial review of administrative decisions compared with most states. As I understand it, the facts are looked into all over again by the superior courts.

CARTER: In certain cases.

GILB: What do you think of that general situation?

CARTER: I think it is a healthy situation. Of course, it depends upon the administrative agency — the agencies such as the medical, dental, cosmetology boards and such. They try these people for misconduct. It was felt that there might be some prejudice on those boards in passing upon the conduct of the members of their profession, and that they would be

more apt to have exact justice if their records were reviewed by a judge and he exercised independent judgment upon the facts.

With reference to the Public Utilities Commission and the Industrial Accident Commission, the Industrial Accident Commission's awards can only be reviewed by an appellate court and the Utilities Commission's can only be reviewed by the Supreme Court, and we accept their determination of the facts. In other words, they are fact-finding bodies whose determination we accept.

I think probably the reason for that is that they are considered specialists in their field. We consider it advantageous, both to the litigants and to the public, that there be a speedy and quick determination.

GILB: In *Mercer-Fraser Co. v. the Industrial Accident Commission*,[10] you said in your dissent that you thought evidence was sufficient to support the board's award and, furthermore, you thought the majority of the Court ruled the evidence was insufficient because of certain sympathies which were not quite articulated.

CARTER: Yes. It is because the majority of the Court are more sympathetic with the employer's view than with the employee's view. In other words, they felt in that case that too great a burden was cast upon the employer to require him to comply with all the safety rules of the commission to guard against an accident of that kind, which was wholly unnecessary because if they had complied, the accident would not have happened and these men would not have lost their lives. That was a willful misconduct case. But that penalty could not be insured against. The statute prohibits insuring against willful misconduct. It is an increase of the award by fifty percent, which must be borne by the employer. I think the majority of the Court thought that was too much of a penalty to put on the employer.

GILB: Again, I'm going to make a statement with which you can take issue. Would you say that in certain boards, such as the medical board and some of the others, you would not tend to trust their judgment, you would tend to trust the judge more, but on boards such as the Industrial

[10] 40 Cal.2d 102 (1953).

Accident Commission, you would have more respect for the board's opinion than that of the Court?

CARTER: Well, I think my answer would be "yes" for this reason. These various professional boards are political appointees of the governor, they are inexperienced in passing upon factual situations. They are not trained at all in the law; they are trained in their respective professions.

GILB: They do have the help of hearing officers?

CARTER: Yes, they do now. That's recent. The hearing officer hears the evidence and advises them, but the board itself makes the decision.

Also, I know from my own experience, and it's a matter of common knowledge, that there are professional jealousies that enter into those hearings, and I have known, in my own experience, of men who were members of the profession and were charged with misconduct and could not get a fair trial because of the attitude of members of the board.

So the Legislature — this isn't a court matter — the Legislature saw fit to provide that people who were subjected to charges before those boards should have an independent review before the court. And I agree to that. I think that there may be cases in which a great injustice may occur unless they are reviewed by the courts.

Relation of the Supreme Court to the Legislature

GILB: Another question I had was what you think the relationship of the Supreme Court should be to the Legislature? Whether you think that a statute should be interpreted strictly according to intent or whether the court should pass on the wisdom of legislation?

CARTER: Oh, I don't think the Court has any function at all to pass on the wisdom of the legislation. I think that the wisdom of legislation is entirely within the province of the legislative branch of the government, and I think the Constitution makes it very clear that the only function of the Court is, first, to determine whether or not the legislation is valid, in other words, whether it contravenes any provision of the Constitution, and secondly, to interpret it according to its spirit and intent. I think the

Jesse W. Carter's official Supreme Court portrait inscribed by him to his older son Oliver J. Carter on the occasion of Oliver's election to Justice Carter's vacated seat in the California State Senate.

Courtesy J. Scott Carter.

law is very clear on that. There is a statute that provides that in construing a statute, the court must take the language that is there and not add any language or delete any language. It must use the language that the Legislature has used in drafting the statute.

GILB: In *Werner v. Southern California Newspapers*,[11] a libel case, the majority stated that the Court had no business to interfere in what the Legislature wanted to do in this matter, and you dissented and, in dissenting, hinted that there were pressure groups behind this particular legislation . . . .

CARTER: Oh, there's no doubt about that. There's no doubt but what the newspapers forced that bit of legislation through the Legislature, not a bit of doubt in the world. I think they would admit that it was the pressure put upon the members of the Legislature by the newspaper groups that secured the adoption of that for the sole purpose of protecting the newspapers against verdicts for general damages in libel suits.

GILB: As a judge, don't you find that you are more apt to find unconstitutionality in legislation that disagrees with your personal views than otherwise?

CARTER: No, I do not. What I do in construing a statute, I lay it down alongside of the constitutional provision that it is claimed to violate, and if the statute can be held valid in the light of that constitutional provision, I will uphold it even though I do not agree with the legislation. I have said that a good many times.

Here, in the *Werner* case, it was a question of whether or not it violated the due process and equal protection clauses of the Constitution, and I thought my opinion was clear in that regard. In fact, it was so clear that the Supreme Court of the United States granted *certiorari*. And then the newspapers, fearing that the Supreme Court was going to agree with me and hold it unconstitutional, went out and raised about $30,000 and paid this man off, settled with him and the appeal was dismissed the day before it was set for argument. Yet, they would never have settled that case if our decision had been final, but the Supreme Court granted *cer-*

[11] 35 Cal.2d 121 (1950).

tiorari and they (the newspapermen) were satisfied the Supreme Court was going to reverse.

So rather than get a reversal and have that statute held unconstitutional, they would rather pay this sum of money now, hoping the case would never get before the Supreme Court of the United States again.

GILB: Would you say that the majority finding that the statute was constitutional reflected a sentiment in favor of the special interests which were involved?

CARTER: Yes, the same as the Legislature. I would say so.

GILB: To sum that point up, you think that you do interpret legislation strictly, and that you don't go into the wisdom of legislation, and that you are not influenced by your own social judgments, but that the majority on the court is?

CARTER: I think it would be a little more accurate to put it this way. Going into my own psychoanalysis, I believe implicitly in our constitutional form of government, in the division of powers. The function of the Legislature is supreme in its field and the function of the Court is supreme in its field and the executive too. Unless this legislation contravenes the Constitution, it should be sustained even though it is, in my opinion, bad legislation.

Now, an act comes before our Court. I think I know at least one other member of our Court felt the same way about this act that I did, yet he went along with the majority because I think he was afraid to do otherwise. The difference between that man and myself is that I'm not afraid. I'm going to do what I think is right and express the views that I think are applicable regardless of consequences. I don't care if the newspapers want to attack me. That's their privilege. I'm going to decide the case the way I think it ought to be decided, whether it affects the newspapers or any other great power that might try to use their influence against me. I'm just an instrument in the judicial process. In the next few years, I will be only a memory as far as this Court is concerned, but while I'm here, I'm going to decide these cases the way I feel they should be decided.

GILB: Have you ever found, either in dissent or as a part of the majority, a statute unconstitutional which you greatly favored and a statute which you wished were constitutional?

CARTER: I think I have. I can't mention one right now, but I think I can find cases where I have said, "Well, that is good legislation. I would like to see it upheld, but we just can't do it under the rules pertaining to constitutional law." I really have felt that way on a good many occasions.

GILB: Would you be willing to accept the jury's finding of the facts, even though you personally felt that the verdict ought to have been the other way?

CARTER: Oh, yes, I have said that in many cases. Read my dissent in *Gray v. Brinkerhoff*,[12] where the verdict was for the defendant in a personal injury case. This Court reversed it and held that as a matter of law the defendant was guilty of negligence, and the plaintiff was not guilty of contributory negligence. I wrote one of the most caustic dissents since I have been on the Court, taking the Court apart because they were in effect depriving the litigants of a jury trial. They were deciding the facts instead of the jury. That's been my fight up here for the last several years. This trend has only come about in the last four or five years. It's just in the last four or five years that the members of the Court have decided that when they don't like a case, they'll just say that the evidence doesn't sustain that view. I think that's a very reactionary view.

The soundness of a decision must be tested by the reasons given as its basis. The thing that means more to me than anything else is being able to transmit to posterity through my decisions, both majority and dissenting, something that will be a guide to the future. If I depart from logic and reason and common sense in writing my decisions, either majority or dissents, those decisions are not going to be accepted; they are going to be repudiated. If I get any satisfaction out of doing this work, it is in the thought that what I say is going to receive not only contemporary approval but what it will mean in the future. A decision that stands for all time means something. If a hundred years from now a lawyer gets up in court and says, "This very lucid and illuminating decision was

[12] 41 Cal.2d 180 (1953).

written by Mr. Justice Carter in 1955," well, I won't be there to hear it, but it is the thought that a hundred years after I am dead and forgotten, men will be moving to the measure of my thoughts.

Stateism and Private Property

GILB: We've been talking about the role of the Court and how you arrive at your decisions, to a certain extent. Now I would like to go into some of the basic ideas which you have expressed in your many cases.

One quotation of yours I have here, completely out of context, is, "I am opposed to state supervision and control of privately-owned water rights." I wondered what you meant in general by that, not in terms of the case it came in, but in general.

CARTER: I'll have to give you a little background. About forty years ago the Legislature passed what was known as the Water Commission Act which purported to give the Water Commission, which was appointed by the governor, power to make certain investigations into water rights and so forth. Now that agency has grown until it is now the Division of Water Resources in the Department of Public works, and like all other bureaucratic agencies, it has reached out for work. It has got to find something to keep it going. Bureaucracy never yields anything; it asks for more. And that division has developed so greatly in recent years that they go out and make investigations of private rights and then attempt to curtail these rights. What I mean by a private right is where a right has been in existence for years and years and probably has been approved by a court decision. They make an investigation and say, "This farmer is not using all this water, or he can use less, or he can remodel his irrigation system," or something like that.

These state agents, and they have been doing it for years, are attempting to supervise the distribution and use of water by private owners who are not asking for it at all. That was probably in the Pasadena case that I said that. This agency came in and just ran rough-shod over private rights and proceeded to make a present-day apportionment of the water among everybody who was using the water and disregarded those rights that had been in existence, some of them for a hundred years.

GILB: Couldn't you call those "vested interests" instead of "private rights" and call the government action "action for the social interest as against vested interests"?

CARTER: They are vested rights. You could call them vested interests if you want. They are vested rights that were acquired and settled, most of them by court decision.

Now then, that property is in private ownership just as much as a city lot or a farm or any other piece of property. And our Constitution wisely says that one of the inalienable rights is the right to own, possess, use and occupy real property. I believe in that. I believe in private property.

GILB: Even if the possession is contrary to what later generations might think is a wider social interest, you believe in these individual rights?

CARTER: That's right. I believe that once these rights are acquired and become vested, and I say that even with respect to the big corporations, some of which acquired property by methods which are now frowned upon and which I, if I had been in government service then, would have vigorously opposed, but the right was acquired, the crime was done and they got the property and they now have it — under our system of government, under our Constitution, that property cannot now be expropriated except by lawful means, eminent domain and so forth.

GILB: Do you carry this philosophy not only into the realm of water rights, but generally? I have another quote from you, "I have long argued against stateism and for the protection of individual rights." You mean that in a general sense?

CARTER: In a general sense to this extent. If you talk about stateism exercised against individual rights, that would probably occur in a great many fields, but particularly . . . I think probably I said that in a zoning case where a city counsel or a board of supervisors adopted a zoning ordinance which, if it were complied with, would require people to entirely change the manner in which their property was being used. Now, I am generally in favor of any zoning ordinance that would apply to the future use of property, so long as it is reasonable, but I am opposed to a zoning ordinance which would force a property owner to change the use to which his property is now being devoted. It is being proposed to rezone the area in

which I am living and to put certain restrictions upon the use of property there. For instance, they propose to zone that entire Sleepy Hollow area against its use for various things that I am using it for right now — the raising of livestock — and I called up the attorney and I said, "Well, if you propose to get the Planning Commission to approve this ordinance and go before the Board of Supervisors, I'm going to oppose it because I bought this land for agricultural purposes, it is classified for agricultural purposes, I am using it for agricultural purposes, and I don't think the people living down along Butterfield Road below me, who are living under purely urban conditions in a suburban area, have any right to say to me how I'm going to operate my place so long as I don't interfere with them at all, and I don't one bit." Well, he agreed with me and he said he would see that a provision was put in, that so long as the land was already being used for agricultural purposes, it would not be subject to the zoning ordinance.

I think I made the statement you quoted in a zoning case where they attempted to force persons to change the manner in which they were using their property, not to prevent property from being used in a certain way in the future, but forcing them to make the change right now when they had been using the property in a certain manner from time immemorial. And I don't believe in those things.

I believe that so long as it does not affect public health or morals or is not a fire hazard, the present use should be permitted to continue. If it were for the protection of public health, like sewage or something of that kind, then of course, the public has the right to control those things, and should do so, and I've always gone along on that. But I don't agree that a group can move in, like they are attempting to do over there, and I don't think the people below would even advocate that, but they've got in their ordinance now that the whole valley would be controlled by this ordinance.

Free Enterprise and Governmental Regulation

GILB: Usually people who say they are for individual rights and against stateism are also people who say they are for "free enterprise" and against such executives as Hiram Johnson and Wilson and Roosevelt.

CARTER: I'll give you my mental slant on that very clearly. I am in favor of free enterprise, private enterprise. I am in favor of the public control

of all businesses that affect the public interests, such as public utilities. I would even go further than what our present law says, so far as the list of public interests is concerned. It now extends to transportation, communication, utilities such as light, heat and water. I would carry it to gasoline. I think the oil companies ought to be made public utilities because we couldn't live in our present economy without oil products. I think the price of gasoline ought to be regulated. And I think the regulation of the price of milk, too, was in the public interest.

But when it comes down to a business that doesn't necessarily affect the public health, morals or safety, like the grocery store, the dry goods store, the hardware store and so forth, that people can engage in generally, I can see no justification for the regulation of such businesses by a public agency.

I was in favor of the price-fixing statutes for dry cleaners. I think that that is affected with the public interest, and I joined with the dissent when the majority held that the statute was unconstitutional. I think that statute was constitutional and in the public interest.

Now, how far we are going and where we are going to stop, I don't know, but unless it can be said with reason — and in the first instance that is up to the Legislature — if the Legislature says a certain business is so affected with the public interest that it should have some public control, then I think that this Court should be very cautious in holding that it does not.

Criticism of California's Bar Examination

GILB: Would it be correct to say that a belief in free competition is behind some of your criticisms of overly strict admission and disciplinary standards for the bar? Do you believe lawyers, or any professional people, ought to be sifted out by competition rather than by prior, superimposed standards?

CARTER: Well, on the mere matter of admission of lawyers to practice, I think there should be a fair test to determine the qualifications of the person to practice law, both mentally and morally. After that, of course, their place in the profession is determined by themselves, by competition. I don't think the present method of examination is fair. I think it

Jesse W. Carter (right) with his son, Oliver J. Carter, following Oliver's induction as a judge of the United States District Court for the Northern District of California, October 9, 1950.

Courtesy J. Scott Carter.

is more rigid and rigorous than it should be. I think it is in the type of examination, not in the way that it is administered, that it is unfair. It is unfair, not only to the person of average mental capacity, but to some who are above the average — because some of the students in the higher scholastic brackets have failed.

GILB: In other words, you are against the present type of examination because it eliminates some potentially very good lawyers rather than because it fixes the standard for all members too high.

THE CARTER FAMILY, ON THE OCCASION OF OLIVER J. CARTER'S INDUCTION AS A JUDGE OF THE UNITED STATES DISTRICT COURT, OCTOBER 9, 1950 — LEFT TO RIGHT: MRS. HARLAN CARTER, HARLAN CARTER (YOUNGER SON OF JUSTICE CARTER), MRS. TINY CARTER (MOTHER OF THE CARTER CHILDREN AND FIRST WIFE OF JUSTICE CARTER), MRS. OLIVER J. CARTER, KARIN CARTER, HON. OLIVER J. CARTER (OLDER SON OF JUSTICE CARTER), JUSTICE JESSE W. CARTER, MRS. MARIAN BUI (DAUGHTER OF JUSTICE CARTER), AND HER HUSBAND, SILVIO BUI.

Courtesy J. Scott Carter.

CARTER: I don't think it does fix the standard for all members too high. I think that it is not a correct statement. I think the examination is difficult because of the type of questions selected and that a very good student who would make a very good lawyer might fail that type of examination where he would pass a fair examination, where he would pass an examination where the questions submitted were fair to all. They are not fair to all; they are not fair to any because of the type of question.

GILB: Then you do believe in eliminating the potentially unfit before they enter?

CARTER: Oh, yes. The type of examination that I proposed would do that.

GILB: We talked about your attitudes on various bar matters while you were an attorney. Has your attitude changed on any of these things since you have become a judge?

CARTER: I don't think so at all. I criticized the method of bar examinations even before I became a member of the Board of Governors of the bar. I criticized them then, I sat with the Committee of Bar Examiners — I was the chairman of the Committee on Requirements for Admission to Practice. I assisted in preparing the rules on requirements for admission to practice. The method of examination, the way it is administered is perfectly fair, there is no fraud, there is no inequality. It is just in the type of questions I do not favor.

GILB: I remember a dissent that you wrote in a bar examination case which was not filed, and there was some controversy in the Court about that. Could we insert into the record the material you have on that?

CARTER: If the record is not going to be subject to use without my permission, it may go in, but I feel that material contains some inter-court communications that should not be made public during the lifetime of the judges who participated in that.

Outside of that, I'm perfectly willing to have it all go in. In fact, I retained it because I expected to write it up some day myself, but I wouldn't do it as long as the present members of the Court were either on the Court or still alive. [The documents are omitted here for reasons of space.]

Civil Liberties, Communism, and Loyalty Oaths

GILB: I have page 457 here of the volume 29, November-December 1954 issue of the *California State Bar Journal*, which quotes a question which is now asked of every applicant for admission to the bar, namely, "Are you, or have you ever been, a member of or affiliated with (a) the Communist Party, or (b) any political party or other organization which advocated or advocates the overthrow of our constitutional form of government in the United States by force and violence, or (c) any group, association or organization which lent or lends support to any organization or movement advocating the overthrow of our constitutional form of government in the United States by force or violence?"

CARTER: Well, I am opposed to all that type of inquiry because I think it violates what I think is a constitutional right of the person to entertain such religious, political and social beliefs and concepts as he pleases. Some legislative committees have taken the position that the Communist Party does advocate the overthrow of the government by force. I don't know whether it does or not. I have heard some arguments that it does not. I've heard others that it does.

My view is that persons should be judged by what they say, rather than the organizations they belong to, or may have belonged to. In other words, I don't believe in "guilt by association." I don't believe in classifying a person as being unfit for a profession or a public office because he may have belonged to some organization that is now in bad repute. I remember the time when people of different religious sects were being persecuted. I remember a time when a Catholic couldn't be elected to a public office in a certain community because of the prejudice against the Catholic Church. I was just as much opposed to that as I am opposed to the present trend, of putting everybody on the blacklist who has ever belonged to the Communist Party or so-called Communist front organizations. I do not think that that necessarily places them in the category of a bad security risk or bad people. I think that there may be some people who may have belonged to the Communist Party who are probably just as loyal and honest as people who belong to the Republican or Democratic parties.

GILB: Well, say they were disloyal to the basic ideologies of our American way of life, though not in a subversive way. Would you feel that they ought to be permitted to express their views freely, to hold jobs, to teach?

CARTER: Absolutely. I believe in the right of freedom of expression, even though it conflicts with the common accepted concepts of our political and economic philosophy. I believe with Jefferson that "If there be any among us who would wish to dissolve this union or change its republican form, let them stand undisturbed as monuments of the safety with which error of opinion may be tolerated where reason is left free to combat it." It was in such an atmosphere that this government was formed, the Constitution was written, and I think if our democratic way of life is going to continue, people should be able to freely express their political, economic and social views.

GILB: Was this behind your unwillingness to sign the state loyalty oath in 1950?

CARTER: No, I refused to sign that because the Constitution said that a public official should not take any other oath than the one contained in the Constitution.

GILB: And your feeling that the Levering Act was unconstitutional was behind your dissent in *Leonard v. Pockman* [sic; *Pockman v. Leonard*]?[13]

CARTER: Oh, yes, I don't think there's any question about that. I never found an intelligent, unbiased person who didn't agree with me, one who wasn't subject to political pressure.

GILB: Apart from the question of constitutionality, you would be against loyalty oaths anyway, wouldn't you?

CARTER: I think that loyalty oaths are a mistake, generally. I believe that any person who takes a public office should take a simple oath to support the laws of the state and nation and a pledge to perform the duties of the office according to the best of his ability. I don't think any form of a so-called loyalty oath adds anything to this simple oath. A person

13 39 Cal.2d 676 (1952).

who takes an oath to support the Constitution of the state and nation has said about all that can be said on the subject if he takes that oath honestly and sincerely, and he really means it and he supports the Constitution and laws of the state and nation. I think any attempt to inject statements as to what he has thought or done, or organizations he has belonged to or beliefs he has had in the past are a violation of his constitutional rights to entertain such views as he may have had in the past. Furthermore, I do not think that loyalty oaths accomplish the purposes intended because a person who is disloyal and wants to conceal it would gladly take a loyalty oath when, as a matter of fact, he is not loyal. I think the whole theory of loyalty oaths is wasted effort, if they are an honest and bona fide attempt to determine a person's loyalty.

GILB: I know that your viewpoints are ones shared by a good many liberals, but certain people who think very largely the other way might suspect you of being pro-Russian in the current international situation. I have a quote here from a speech which you made in San Francisco in 1945 in which you said, "I am convinced the Russian people are our friends." I wondered whether you still feel that way?

CARTER: Well, I was talking about the Russian people. At that time Russia was our ally. I based that statement upon statements made by people who knew, or claimed to know, the attitude of the Russian people. I still feel that if the Russian people were free of the pressure that is put upon them by their totalitarian dictators, they would be disposed to support our philosophy of freedom. In other words, I think that the Russian people, as well as other people, if left free to their own choice, would prefer an atmosphere of freedom of thought and expression, freedom of press, freedom of religion and all of the other freedoms that we enjoy here. I can't help but feel that the Russian people, the rank and file as distinguished from the dominant group in Russia, would be and are our friends.

I have recently expressed my views in regard to test oaths and inquisitions into the social, economic and political beliefs of a person as a test of his loyalty.[14]

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[14] *Board of Education v. Mass*, 47 Cal.2d 494 (1956); *First Unitarian Church v. County of Los Angeles*, 48 Cal.2d 419 (1957).

Carter's Statement on His Refusal to Sign the Loyalty Oath

[The following document was supplied by Justice Carter to augment his comments on the State Loyalty Oath.]

> OCTOBER 30, 1950
>
> STATEMENT OF JUSTICE JESSE W. CARTER OF THE SUPREME COURT OF CALIFORNIA RELATIVE TO HIS REFUSAL TO SIGN THE SO-CALLED STATE LOYALTY OATH
>
> I refuse to take the so-called loyalty oath for the following reasons:
>
> (1) The Constitution of California (article XX, §3) prescribes the oath which a Justice of the Supreme Court is required to take and declares that ". . . no other oath, declaration, or test, shall be required as a qualification for any office of public trust." I have taken that oath many times.
>
> (2) Since a Justice of the Supreme Court is not required to take the so-called loyalty oath, I would be disqualified in any litigation involving said oath, if I should take it. I am not disposed to so disqualify myself in such litigation.
>
> (3) The so-called loyalty oath is ineffective as a test of loyalty. Even its most ardent proponents say that it will be taken by those who are disloyal, and I believe this to be true. If it is true, then what will the oath accomplish? Absolutely nothing.
>
> In my opinion, a much more effective loyalty oath would be a declaration under oath that declarant had never interfered with anyone in the exercise of his constitutional rights, particularly those rights which totalitarian governments deny their subjects, such as freedom of religion, speech, assembly, privacy, etc., or discriminated against anyone on account of his race, color or creed — and that declarant had aided and will continue to aid the government in its war effort by not hoarding or violating rationing laws, rules or regulations, or in failing to report correctly, or pay, all taxes due the government, except in the following particulars

(_____Insert particulars in which declarant has so failed), thus making himself guilty of perjury if he failed to state any item or particular in which he had not lived up to constitutional mandates, or failed to support the government in its war effort. I wonder how many of the zealous advocates of the loyalty oath would take such an oath.

(4) I have been a public official of this state for over thirty years, and I resent having my loyalty questioned by now being asked to take a loyalty oath. If what I have done and said, both as a public official and as a private citizen does not establish my loyalty to the Government of the United States and this state, no amount of swearing will do so.

(5) The oath which I took in 1913 when I became a member of the Bar of this state — the oath which I took when I became District Attorney of Shasta County in 1919 and again in 1923 — the oath which I took when I became a member of the Board of Governors of the State Bar of California in 1927 and again in 1928, 1929, and 1931 — the oath which I took when I became City Attorney of the city of Mount Shasta in 1927 — the oath which I took when I became City Attorney of the city of Redding in 1937 — the oath which I took when I became State Senator from the 5th Senatorial District of this state in 1939 — and the oath which I took when I became Associate Justice of the Supreme Court of California in 1939, and again in 1941, and again in 1949 — all contained a solemn vow that I would support the Constitution of the United States and the Constitution of the State of California. If I have lived up to any one of those oaths, I am a loyal American citizen. If I have not lived up to those oaths, no amount of swearing now, and no loyalty oath, however artfully worded, will make me loyal.

(6) In my opinion, the so-called loyalty oath is a reflection on the intelligence of the people of this state. Anyone who thinks that taking such an oath is a test of loyalty is, to say the least, naive. The federal government adopted a similar loyalty oath twelve years ago and repealed it in 1949 because it was found to be wholly

> ineffective. No doubt all of the so-called communists whom Senator Joseph McCarthy *failed* to find in the State Department took this oath. I have no objection to loyalty tests, but such tests should be based upon an investigation of what the person involved has done and said. Such investigation should be made by an agency equipped for such work and not by the Legislature or other public body motivated by political considerations. The federal government has such an agency — the F.B.I. If the Legislature would follow its traditional business of legislation and leave loyalty investigations to agencies equipped for such work, both the legislators and the people they represent would be better off. The hullabaloo and hysteria over so-called loyalty oaths has made California the laughing stock of the nation.
>
> Oh, wad some power the giftie gie us,
> To see ourselves as others see us!
> It wad from monie a blunder free us
> And foolish notion.
>
> (Burns)

Police Methods and Individual Liberty

GILB: Your belief in the freedom of the individual has been expressed in many court decisions trying to protect the individual from what you call unfair police methods. I wondered if you would care to make a general statement about that or add to what can be found by reading the cases.

CARTER: I don't know that I can add anything to what I have said in the various opinions, both majority and dissenting, on this subject. I think I have pretty well covered it. I have a very strong feeling that the individual should live in peace and security and dignity and that he should enjoy life, liberty and pursuit of happiness as defined in our fundamental law and that his rights should not be invaded by the police — that the police should be required to respect the law and take all the proceedings necessary to make a valid arrest and a valid search and that when they do invade the privacy and the rights of the individual, it should be entirely in conformity with the Constitution and laws.

At Justice Carter's Lodge in the Trinity Alps, High Sierra region of Northern California, 1949 — left to right: Harlan Carter (son), Judge Ben Gardner, Silvio Bui (son-in-law), and Jesse W. Carter.

Courtesy J. Scott Carter.

GILB: Was this sort of thinking behind your issuing a stay of execution for Caryl Chessman?

CARTER: No, not at all.

The Caryl Chessman Case

GILB: Would you give us the story of the Chessman case?

CARTER: The problem involved in the Chessman case is very simple. It has been obscured by misleading statements that have been made in the press generally and also by some of the courts. Chessman was convicted of several crimes of kidnapping and robbery. There was no charge, no evidence that he had committed murder, but the California statute

provides for the death penalty for kidnapping by means of force and violence, and he was convicted of that crime and sentenced to death.

GILB: The kidnapping involved sexual acts, too, didn't it?

CARTER: Yes, there was some claim that with some of the victims there were sexual acts or attempts at sexual acts. His trial lasted, as I recall, about three weeks in the superior court, and after his conviction the law accorded him an appeal to the Supreme Court because the statute provides for an automatic appeal in all death penalty cases. Under the law, a complete transcript of the trial is required to be prepared by the reporter and filed in the Supreme Court. Before some 1,200 pages of this transcript had been transcribed, the reporter died. Mr. Perry, I believe his name was. He was a very elderly man, and I believe in his time was a very good reporter, but he had reached the time when he wrote with a very trembling hand and the characters he made were known to himself alone. He had to dictate his shorthand notes into a Dictaphone, and then the transcriber would write it up. So there were about 1,200 pages of the transcript which had not been transcribed at the time he died.

The district attorney presented the shorthand notes to all the reporters in Los Angeles County, there being well over a hundred reporters, and the notes were examined by many, I don't know how many, reporters, and they stated that it was impossible to read Mr. Perry's notes, that they could not give a correct transcription of his notes. The Reporters' Association passed a resolution to the effect that it could not be done, which of course would mean that if the record could not be transcribed, Chessman would have to be given a new trial in the superior court.

The district attorney then imported a man by the name of Stanley Fraser from Seattle who was a relative of the deputy who had prosecuted the case, and this man Fraser, who I understood from the record presented to us had been discredited as being an alcoholic. He had been convicted fourteen times of various offenses relating to the use of alcohol, driving while intoxicated, disturbing the peace and the like — he had served several jail sentences, and he had been discharged from two superior court positions because of his inability to do the work, and probably that was attributed to his drinking. This man said he could read and transcribe these notes.

GILB: Are you implying that his alcoholism impaired his ability . . . ?

CARTER: Oh, there's no question about that, according to the record presented to me. Yes.

Nevertheless, he appeared before the superior judge and said he could do it and the district attorney approved it and prepared a contract whereby, as I recall, they paid him I think $6,000 for transcribing the notes when it was considered worth about $2,000. It is also claimed that he transcribed these notes in cooperation with the deputy district attorney who had tried the case. And the judge accepted his transcription. Chessman challenged it, said that the transcription was incorrect and that a proper record had not been presented to this Court.

The California Supreme Court, by a five-to-two decision, held that the transcript was sufficient and then Chessman's conviction was affirmed. Justice Edmonds and I dissented.

Then Chessman went through the various other court proceedings and in July of 1954 he presented a petition for writ of habeas corpus to this Court. I was away on my vacation at the time. The court denied the petition. In that petition he, for the first time, set up the facts of Fraser's inability because of his alcoholism to correctly transcribe this record, and the reason that he had not brought this up before was because he didn't know about it. He had been in San Quentin all the time and, after he wrote his book, he was able to hire an attorney, and the attorney, upon making the investigation, found out these facts. And he also called attention to several grave errors in the transcription, omission of instructions that the court gave, and so forth.

He had applied to the Supreme Court of the United States for a review of the decision of this Court in the habeas corpus proceeding, and that was presented to me. I concluded that he had made a prima facie case and that the Supreme Court should have an opportunity to review our decision. The Supreme Court of the United States was on vacation at that time and, according to the attorney for Chessman, he was unable to contact any of them. The application was made to me, as I recall, on the 26th or 27th of July. Under the federal statues, I had the power to grant the stay, and I felt that it was my duty to do so. So I granted the stay,

which meant that the Supreme Court of the United States did have an opportunity to pass on the petition.

The Supreme Court denied the petition without prejudice to Chessman's applying to the federal district court where the court could determine the factual issues involved, and that was the only thing the Supreme Court could do because they couldn't determine the factual issues.

GILB: I noticed among your clippings that there were several notes sent to you anonymously calling you all kinds of names for this. Did you receive many such communications?

CARTER: I received, I would say, about as many commendatory communications as there were condemnatory. In other words, I think probably there were more who would commend my action than there were those who would condemn. I think it was a campaign put on by Fraser and the district attorney's office down there to have those things sent, because they mostly originated from Los Angeles, and they all had the same characteristics. It should be of interest to note that neither Fraser nor Miller Leavy had the temerity to deny any of Chessman's charges, and they never have denied them. I think the attack against me originated right there in that set-up.

GILB: Your feelings weren't shared by the rest of the Court, were they?

CARTER: Well, they were shared by at least two other members of the Court who didn't feel disposed to give expression to their feelings, but they agreed with me when the motion was made to set aside the stay; they agreed with me that the stay should stand, which it did stand. In fact, the Court unanimously denied the motion to set aside the stay, but the majority of the Court merely said they were denying the motion because it would be futile to grant it anyway, that the Supreme Court would soon pass on the application for *certiorari*. So it wouldn't have been of any value to have set aside the stay because the Supreme Court of the United States would have passed on it anyway.

GILB: I think you probably realize that to the untutored public mind it might seem that you were putting a legal technicality in the way of quick justice.

CARTER: No, it was not a legal technicality at all. I wasn't passing upon the merits of Chessman's petition. All that I was doing was saying that the Supreme Court of the United States should have an opportunity to pass on it, and if I hadn't granted the stay, they would not have had the opportunity. I wasn't passing on it myself. I felt, just like Judge Denman said when a similar application was made to him a few months ago, that there was probable cause and the court should pass upon it.

Ultimately, the court might not agree that he was right, but he should have the right to have the court of last resort pass upon the question.

GILB: That's a pretty fundamental principle, isn't it?

CARTER: Oh, yes, it is absolutely fundamental. In fact Attorney General Brown said to me, "You couldn't do anything else. You were absolutely right in granting that stay." And that is the way I felt about it. Of course, any one of my associates could have done the same thing, but they didn't see fit to do it. The matter was presented to me, I had the power to do it, with or without the concurrence of my associates, and having the power to do it, I felt that it was my duty to exercise that power.

GILB: Regardless of the consequences.

CARTER: That's right. If I had not done so, I would have felt that I had been a coward. I would have failed to do so because I was afraid to do it.

Carter's Speech on the Chessman Case

[The following document was supplied by Justice Carter to augment his comments on the Caryl Chessman Case.]

> ADDRESS DELIVERED BY JESSE W. CARTER, ASSOCIATE JUSTICE OF THE SUPREME COURT OF CALIFORNIA, BEFORE THE LAKE MERRITT BREAKFAST CLUB AT THE SAILBOAT HOUSE ON BELLEVUE AVENUE IN LAKESIDE PARK, OAKLAND, CALIFORNIA ON THE 16TH OF JANUARY, 1958 ENTITLED "THE CHESSMAN CASE"
>
> I have been asked to speak to you today on the Chessman case. This case has received much publicity during the last nine years. Most of this publicity arose out of the fact that, during his incarceration

in Death Row at San Quentin, Chessman has become the author of two best-selling books and he has also written two other books, which I understand, are now in the process of being published and sold to the public. Because of the notoriety created by the publication and sale of these books and the numerous court proceedings he has instituted to set aside the judgments of conviction against him, the Chessman case has probably received more publicity than any other case during the last decade except cases involving our national security such as the Alger Hiss and Rosenberg cases.

While everyone who reads the newspapers has heard about the Chessman case, there are very few people who have any knowledge as to what the case involves or the cause of the delay of over nine years in disposing of the legal problems presented for solution.

I offer no apology for speaking on this subject because I am frequently asked by thoughtful, intelligent people how it is possible, under our system for the administration of justice, that a person convicted of seventeen felonies, two of which carry the death penalty, can escape the infliction of that penalty for over nine years, and the case is now back where it was the day the judgment was pronounced on June 25th, 1948. I have always endeavored to answer this question and will endeavor to do so today. I want it clearly understood, however, that it is not my purpose to discuss the merits of the case or express any opinion in regard to the guilt or innocence of Chessman. Neither will I venture an opinion as to what may be the outcome of the case. What I have to say will relate solely to what has happened in this case in the past as shown by the record.

The record in the Chessman case discloses that on May 21st, 1948, Chessman was found guilty of seventeen felonies by a jury in the Superior Court of Los Angeles County, and on June 25th, 1948, sentence of death was pronounced against him. While he was not charged with or convicted of murder, the two counts carrying the death penalty arose out of an alleged kidnapping, robbery and rape episode which is made punishable by death under a California statute.

Under California law, every person convicted of a crime involving the death penalty has an automatic appeal to the Supreme Court of California, and the members of the Supreme Court are required to read the entire record and determine whether the defendant was given a fair trial before an impartial judge, where a jury trial is waived, and whether any errors were committed in the trial court prejudicial to defendant which resulted in a miscarriage of justice. Since the state law makes it the mandatory duty of the Supreme Court to review all of the proceedings in the trial court in such cases, it is equally mandatory that a full and correct record of such proceedings be prepared and presented to the Supreme Court.

The record in the Chessman case discloses that a man by the name of Perry was the official court reporter who took shorthand notes of the proceedings at his trial which consumed approximately eighteen trial days. He was an old man and was suffering from a fatal illness. He died after only 648 out of 1,810 pages of the trial transcript had been dictated into a recording machine. Thereafter the deputy district attorney who prosecuted Chessman arranged with one Stanley Fraser who was an uncle of the wife of said deputy district attorney to transcribe the remaining notes of the deceased reporter. Fraser was not an official court reporter of Los Angeles County.

On September 16th, 1948, when the appointment of Fraser was under consideration, the chairman of the executive committee of the Los Angeles Superior Court Reporters' Association wrote the Board of Supervisors respecting the matter, as follows: "We believe the purported charge against the county is not only an exorbitant one per se, but will reflect further adverse publicity upon our group because we have serious doubts that any reporter will be able to furnish a usable transcript of said shorthand notes. Other reporters of our number have examined and studied Mr. Perry's notes and have reached the conclusion that many portions of the same will be found completely indecipherable because, toward the

latter part of each court session, Mr. Perry's notes show his illness. We feel that this should be brought to your attention."

In November, 1948, Chessman unsuccessfully sought to have the Supreme Court of California halt the preparation of the transcript on the ground that Perry's notes could not be transcribed with reasonable accuracy. Fraser then went forward with the work of attempting to transcribe Perry's notes, and was occupied with it over the next several months. A rough draft of the transcript was submitted to the trial judge in February, 1949, but was not made available to Chessman, although he had requested that it be furnished him. After this draft had been gone over by the deputy district attorney, it was filed with the judge in final form on April 11th, 1949, and a copy was then sent to Chessman who was in Death Row at San Quentin Prison. Thereafter, Chessman sent to the trial judge a list of some 200 corrections to the transcript and at the same time moved that he be given a hearing in open court to enable him to determine whether Fraser had the ability to read Perry's notes and to point out to the court the many inaccuracies and omissions in the transcript, asserting that he could prove these inaccuracies and omissions and desired to have the court consider the proof he had to offer in opposition to the transcript prepared by Fraser.

Chessman's motion was denied by the trial court, and the court proceeded with the settlement of the transcript in the absence of Chessman or his counsel. At a hearing held on June 1st, 2nd and 3rd, 1949, in which Chessman was not represented in person or by an attorney, the trial judge, after hearing Fraser's testimony as to the accuracy of his transcription and allowing some eighty of the corrections listed by Chessman, settled the record upon which Chessman's automatic appeal was to be heard. Thereafter, Chessman made a motion in the Supreme Court of California attacking the adequacy of these settlement proceedings, claiming, among other things, that he had not been permitted to appear at such proceedings. While that motion was pending, on August 18th, 1949, a further hearing was held before the trial judge with reference

to the settlement on the record at which two witnesses were examined. Again, Chessman was not represented at this hearing either in person or by counsel. The sufficiency of the record, as thus settled, was upheld by the Supreme Court of California by a five-to-two vote. Mr. Justice Edmonds and I dissented from the holding of the majority of the Court. Thereafter the Supreme Court of California considered the case on its merits and relied upon the transcript prepared by Fraser for its review of the proceedings in the trial court. Again by a five-to-two vote of the Court the judgments of conviction against Chessman were affirmed. Again, Mr. Justice Edmonds and I dissented from the holding of the majority of the Court.

On July 16th, 1954, Chessman presented to the Supreme Court of California a petition for writ of habeas corpus charging fraud in the preparation of the record in his trial. In this petition he alleged that he had just learned that Fraser was related by marriage to the deputy district attorney who had prosecuted him and that Fraser had collaborated with said deputy district attorney and some of the witnesses for the prosecution in the transcription of the record. None of these facts were known to the Supreme Court of California when it approved the record or when it relied upon the record in affirming the judgments of conviction against Chessman. The Supreme Court of California denied Chessman's petition for habeas corpus, and he then petitioned the Supreme Court of the United States for review, but that Court denied his petition without prejudice to him to apply for a writ of habeas corpus to a federal district court. He applied for such a writ to the United States District Court in San Francisco, charging the same fraudulent conduct in the preparation of the record which he had first charged in his petition for habeas corpus to the Supreme Court of California on July 16th, 1954. His petition to the United States District Court was summarily denied by Judge Louis Goodman, and he appealed to the United States Court of Appeals which affirmed Judge Goodman. He then appealed to the Supreme Court of the United States, which reversed the court of appeals and Judge Goodman and

directed that Chessman be given a hearing on his charge of fraud in the preparation of the transcript. He was then given a hearing before Judge Goodman who found against Chessman on all issues. He again appealed to the United States Court of Appeals which affirmed Judge Goodman, with Chief Judge Denman dissenting. He then appealed to the United States Supreme Court, and that Court on June 10th, 1957, reversed both the United States Court of Appeals and Judge Goodman and directed that Chessman be permitted to attack the accuracy of the transcript in a proceeding in the Superior Court of Los Angeles County in which he could participate either in person or by counsel. The Supreme Court of the United States held squarely, and I quote, "We accept fully Judge Goodman's finding that there was no fraud. Even so, the fact remains that the petitioner has never had his day in court upon the controversial issues of fact and law involved in the settlement of the record upon which his conviction was affirmed . . . . Under the circumstances which have been summarized, we must hold that the *ex parte* settlement of this state court record violated petitioner's constitutional right to procedural due process. We think the petitioner was entitled to be represented throughout these proceedings either in person or by counsel."

The effect of this decision of the Supreme Court of the United States is to render null and void, not only Judge Goodman's decision, but the order of the Superior Court of Los Angeles County approving the trial record and all of the decisions of the Supreme Court of California overruling Chessman's objection to the transcript and affirming the judgment of conviction against him.

So, after nine years the case is now back where it was on June 25th, 1948, the day that sentence of death was pronounced against Chessman by the Superior Court of Los Angeles County.

We now come to the crucial question — why all this delay? Looking at the case in retrospect, the answer is simple. Chessman should either have been granted a new trial back in 1948 after reporter Perry died or he should have been given an opportunity at a hearing in open court to show that the transcript prepared by

Fraser was not a full or correct record of the proceedings at this trial. While this conclusion has always seemed abundantly clear to me, the trial court ruled otherwise, and thus committed an obvious error which had the effect of denying Chessman due process of law. The majority of the Supreme Court of California, on three different occasions, had an opportunity to correct this error but failed to do so.

It should be of interest to the people of California to know that it is the law of this state that in civil cases the death of the reporter before his transcription and certification of the record gives the trial court the discretionary power to set aside the judgment and order a new trial. But there is no such provision in criminal cases even though the death penalty is involved. In granting a certificate of probable cause for appeal to the court of appeals in the present proceeding, Chief Judge Denman noted: "How important the California law regards this transcription [of the trial proceedings] and certification [as to the correctness] by the reporter is apparent from the fact that in *civil* cases the death of the reporter before his transcription and certification, gives the trial court the discretionary power to set aside the judgment and order a new trial.15 By some quirk in California legislation this does not apply to criminal cases. However it is obvious that if the reporter's transcript is so important as to give the court such power in a civil case, *a fortiori* it must have such importance in a criminal case in which, on the evidence to be transcribed, the accused is sentenced to death. Likewise its importance is emphasized by the California law making the appeal automatic from death sentences."

After the case got into the federal court, it took two hearings in the trial court and two appeals to the federal court of appeals, and finally two appeals to the Supreme Court of the United States before a final clean-cut decision was reached on the due process of law issue. The phrase "due process of law" was borrowed by our forefathers from the Magna Charta. It had a meaning of great

15 California Code of Civil Procedure, section 953(e). The bracketed insertions are in the original transcription.

significance to them. They engrafted it into our fundamental law. By a provision contained in the Fifth Amendment to the Constitution of the United States the government of the United States is prohibited from depriving any person of "life, liberty or property without due process of law," and by the Fourteenth Amendment to the Constitution of the United States the same prohibition is extended to action by a state.

It has been said that the term "due process of law" has "broad contours," and may be invoked to protect those fundamental civil liberties guaranteed to every person by the Bill of Rights. Some of these rights are: the right to be informed as to the nature of any criminal charge; security against double jeopardy and self-incrimination; the right to a speedy and public trial by an impartial jury in the district where the crime was committed; the right to be confronted with the witnesses against the accused; and the right to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense at all stages of the proceedings against him; the right to be admitted to bail and the right not to be subjected to excessive fine or cruel and unusual punishment. These rights form the basis of the American system for the administration of justice.

Here Chessman was obviously denied due process of law in not being permitted to be present either in person or by counsel when proceedings were had in the trial court for the settlement of the record of his trial. Obviously, this was a matter of great importance to him. The seriousness of an error in a trial record in a case such as this should be obvious to everyone — judges, lawyers and laymen alike. A mistake in the transcription of one little word may mean the difference between guilt or innocence — imprisonment or freedom — life or death. The little word — "not." "I did not see" — "I did not hear" — "I do not know" — "I was not there." Omit the word "not" from any statement and it means the opposite. I do not know whether Stanley Fraser could decipher Perry's notes or not. But I do know that in my twenty-six years of law practice I never found a reporter who would undertake to decipher the notes

of another reporter. I was told many times that it could not be done, especially where the notes were made by a reporter who had done reporting for many years and had developed his own system which was known only to himself.

Be that as it may, the case is now back in the trial court where the matter will be heard in the form of an adversary court proceeding — witnesses may be examined and cross-examined in the presence of Chessman and his counsel. The matter will be argued and finally decided by the court, and it is hoped that these proceedings will comply with the due process of law requirement of both our state and federal Constitutions.

It may be true that there are many people who criticize our system for the administration of justice because of the delay which has occurred in this case. I agree that there has been unnecessary delay. But courts are administered by human beings and errors are bound to occur. Our judicial system consists of a trial judge, an appellate court of three judges and a Supreme Court of seven judges in this state, and a Supreme Court of the United States of nine judges. The higher courts are established to correct the errors committed by the lower courts. The people are not willing to have their lives, liberties or fortunes entrusted to the decision of one judge, however wise or just he may be, and I think the result achieved by our appellate court system demonstrates the wisdom of those who framed our Constitutions.

The result in this case is not only gratifying to me personally, because it is in accord with the views expressed in my dissenting opinions when the case was before the Supreme Court of California on at least three occasions, but it renews my confidence in our system for the administration of justice and in the strength of character and outstanding ability of the men who are now serving as justices of the Supreme Court of the United States. In my opinion it is a great court, presided over by great judges. The decision of the Supreme Court of the United States in the Chessman case will stand as one of the judicial masterpieces in American jurisprudence. It was written by a great jurist, the Honorable John

Marshall Harlan, whose grandfather by the same name graced the bench of that great court for nearly thirty-five years and is recognized as one of our greatest jurists.

After reviewing the factual and legal background of the Chessman case, Mr. Justice Harlan, speaking for the Court, made the following dynamic statement: "Without blinking the fact that the history of this case presents a sorry chapter in the annals of delays in the administration of criminal justice, we cannot allow that circumstance to deter us from withholding relief so clearly called for. On many occasions this Court has found it necessary to say that the requirements of the Due Process Clause of the Fourteenth Amendment must be respected, no matter how heinous the crime in question and no matter how guilty an accused may ultimately be found to be after guilt has been established in accordance with the procedure demanded by the Constitution. Evidently it also needs to be repeated that the overriding responsibility of this Court is to the Constitution of the United States, no matter how late it may be that a violation of the Constitution is found to exist. This Court may not disregard the Constitution because an appeal in this case, as in others, has been made on the eve of execution. We must be deaf to all suggestions that a valid appeal to the Constitution, even by a guilty man, comes too late, because courts, including this court, were not earlier able to enforce what the Constitution demands. The proponent before the Court is not the petitioner but the Constitution of the United States."[16]

The judicial philosophy inherent in the foregoing declaration should appeal to everyone who believes in the ideal of "equal justice under law." In essence it means that Chessman is only a symbol — that the constitutional guarantee of due process of law applies to all alike, whether rich or poor, high or low, guilty or innocent. While Chessman, a much publicized malefactor, may be the recipient of the benefit of this salutary pronouncement, it applies equally to you and to me and to everyone who may seek its protection.

16 *Chessman v. Teets*, 354 U.S. 156 (1957).

> In conclusion I desire to leave with you this thought. The Supreme Court of the United States is the court of last resort on all matters of law arising under the Constitution of the United States and its amendments. That court has squarely held that Chessman was denied due process of law by the California courts. Those of you who believe in a government of law, as I do, must feel as I do, that it is a horrifying thought that even a guilty person could be executed on a conviction obtained in violation of the due process clauses of the Constitution of the United States. But it is even more horrifying to realize that if this may happen to a guilty person it may also happen to an innocent person, because you cannot protect the innocent without, at the same time, protecting the guilty. Let one man be deprived of his property, or his liberty or his life without due process of law, and the property, liberty and lives of all of us are in danger. These are not mere words, they are the armor which shields our liberties from destruction.

Equal Rights

GILB: Moving from the question of individual freedom, there's another set of principles with which you are identified. It is a belief in people's equality, regardless of sex, race, or country of origin.

CARTER: That's right.

GILB: The story there again is well documented by your opinions, but I wondered if you wanted to summarize it, or add to it.

CARTER: I doubt if I can add anything to what I have said in my opinions: in my concurring opinion in *Perez v. Sharp*,[17] which was the miscegenation case, the right of people of different races to intermarry; and in my concurring opinion in the Alien Land Law case, *Sei Fujii v. California*,[18] in which we held the law unconstitutional; in fact, in my opinion in *Takahashi v. Fish & Game Commission*,[19] where this Court upheld a statute which prohibited Japanese from obtaining a commercial

[17] 32 Cal.2d 711 (1948).
[18] 38 Cal.2d 718 (1952).
[19] 30 Cal.2d 719 (1947).

fishing license, I dissented, Justice Traynor and the chief justice concurred with me, and the Supreme Court of the United States adopted my dissenting opinion, holding the statute unconstitutional.

I think about all I can say on the subject is that I have this feeling, and it isn't anything of recent origin. It goes back, as I remember, to my early student days. I had then, and I still have, the feeling that people are just people whether they are black, yellow, brown or red, that their race or color should have nothing to do with their rights or their privileges.

As Justice Harlan of the United States Supreme Court said, "Our Constitution is color-blind," and no restrictions or discriminations should be invoked against anyone because of their race or color.[20]

GILB: Of course, way back at that time you were sympathetic with the Progressives and they were quite anti-Oriental.

CARTER: Oh, that doesn't mean that I adopted all of the concepts of the Progressives. I disagreed with many of the things that some of the Progressives advocated. Of course, there were a lot of those men who were just politicians, pure and simple, and they were Progressives because they were fair-weather liberals and there was a liberal trend so they got on the bandwagon.

GILB: California labor has been quite anti-Oriental also.

CARTER: They have changed, and their views, the views of their leaders, are quite different now. In fact, I received a great many congratulatory statements from labor leaders on my concurring opinion in the Alien Land Law case. Congressman Shelley, who was a very prominent labor leader, had my concurring opinion entered in the Minutes of Congress and sent me a copy of the Minutes.

GILB: That's a complete reversal from the early days.

CARTER: That's true — a complete reversal.

And on the question of religion, I feel that religion is a personal matter, that it should not affect one's right to hold office or to any privilege or immunity that he may enjoy. I feel that a person should have the right to believe as his conscience dictates, and he should have the right to free

[20] *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896).

expression and exercise of his religious beliefs, and that he should not be discriminated against for any of his religious concepts. So I refuse to draw a line against any person because of his race, color or creed.

It's part of my nature. I made the statement to a man not very long ago that I do not believe there is anyone more tolerant than I am. I feel this, absolutely sincerely. I do not believe that anyone could be any more tolerant than I am in granting to every human being, regardless of their race, color, creed or previous condition of servitude, their equal rights.

Employer-Labor Relations

GILB: I notice in the labor field that you went along with the Jurisdictional Strike Act. You thought that was constitutional.

CARTER: Yes.

GILB: In other words, in employer-labor relations you would put some limit on labor's right to try to get its demands?

CARTER: Well, of course, I think that is a legislative policy. I think it is within the scope of legislative action to say that two contending labor unions, where there is no dispute with the employer — the employer has complied with all of the demands, wages, hours, working conditions and he says, "I yield to all of your demands," and then one labor union says, "We're entitled to this contract," and the other labor union says, "We're entitled to it," and if he has a contract with one already and the other one says, "If you don't kick that one out and give us this contract, we'll picket you and ruin your business" — then I think that the Legislature can declare it a policy of the state that where the conflict is solely between labor unions and not between a labor union and the employer, that the labor union can be restrained from doing that. That is the jurisdictional dispute.

However, I stated my position very clearly in that group of cases. After writing the *Seven-Up* case,[21] in which we held the act constitutional, there were a number of other cases where there was a dispute between the employer and one labor union and the employer had refused

[21] 40 Cal.2nd 368 (1953).

to renew the contract and then the other labor union stepped in and took a contract more favorable to the employer than the other union had had; and then the union that had had the contract and had been performing under it, said to the employer, "We're going to picket you," I said there that the Jurisdictional Strike Act could not be used by an employer to substitute one union that had offered more favorable terms for the other one that was offering less favorable terms. That was not the purpose or intent of the Jurisdictional Strike Act. Justice Traynor and I dissented in all those cases.

GILB: That sounds pretty reasonable to me. I noticed that you declared the "hot cargo act" unconstitutional on the grounds that it was too broad and too vague. Would you have considered constitutional a well-drafted "hot cargo act"?

CARTER: Well, that's impossible to answer. I think the Legislature does have the power to legislate on that subject, and a properly drawn statute would be valid. The reason the "hot cargo act" was held unconstitutional was because it prohibited both lawful and unlawful acts. It denounced as unlawful, acts that were lawful within the Constitution. Such a statute cannot stand because on its face it declares acts unlawful which the Constitution says are lawful. For instance, peaceful picketing was rendered unlawful. Well, of course, that statute could not stand under the settled rule of the decision of the Supreme Court of the United States. There were numerous decisions to that effect. There wasn't any question about the soundness of my decision.

GILB: Sometimes in your desire to implement your views about the equality of human beings, do you find these views in conflict with your feeling that the state should stay out of human affairs as much as possible? Let me try to give you an example. Some groups are in such a minority position that it requires positive state intervention to raise them to a level of equality. Would you be for that kind of stateism?

CARTER: I think so.

On Judicial Dissent

GILB: Moving to another topic, I know that your viewpoints which you have held very sincerely and very strongly have caused you to dissent many times.

CARTER: That's right.

GILB: The frequency of your dissents was commented upon in an article in the *American Bar Association Journal* by Roscoe Pound.

CARTER: Did I give you his letter? My letter to him and his reply?

GILB: Yes, I have that in my file. Could we read that into the record?

CARTER: Yes, read them both in. [They are omitted here for reasons of space (sixty pages in the original).]

GILB: Is there anything more you want to add?

CARTER: Oh, I don't think so. I expressed my views as clearly as it was possible for me to do. Pound purported to criticize me because of what he intimated was the intemperate language I used in regard to the position of the majority, but as I stated in my speech to the Lawyers' Club, I believe in using language that is commensurate with the problem that you are dealing with. I said that when Winston Churchill expressed his opinion of Hitler and Mussolini, he referred to them as "the jackal and the guttersnipe"! [sic; reverse order] When Franklin Roosevelt expressed his disapproval of the sneak attack on Pearl Harbor, he said that it was a "crime that would live in infamy." [sic; "date which will live . . ."] So when I express my views in regard to some of the opinions written by my associates which are very bad, I can't just use mild language in connection with them. That's about all I have to say about it.

GILB: Do you think if it's a non-crucial subject, even though you slightly disagreed, there would be some merit in going along with the majority?

CARTER: Oh, I've done that time and again.

GILB: I remember your making the statement to me that many, many of your dissents have since become law. Can you name some of those?

CARTER: Oh, yes. My dissent in *Takahashi v. the Fish & Game Commission*, and *Anderson v. the Atchison, Topeka & Santa Fe Railroad Company.*

Justice Jesse W. Carter (right) with U.S. Supreme Court Chief Justice Earl Warren, ca. 1955.

Courtesy J. Scott Carter.

In fact, there is one — it may have been filed in the last two or three days or it may not be filed yet, *Richardson v. Ham*.

GILB: Then you have found yourself in the enviable position of having many of your opinions upheld by the U.S. Supreme Court. Do you have a pretty good record there?

CARTER: Well, I think so. I've had more of mine upheld than any other member of the Supreme Court of California. Not as many as I would like to have had upheld, but more than any of the rest of them.

[Justice Carter subsequently prepared the following list of his dissents upheld by the U.S. Supreme Court.]

List of Carter's Dissents Upheld by U.S. Supreme Court

LIST OF CASES IN WHICH I HAVE DISSENTED WHERE THE SUPREME COURT OF THE UNITED STATES HAS AGREED WITH MY DISSENT AND REVERSED THE SUPREME COURT OF CALIFORNIA

GOSPEL ARMY v. CITY OF LOS ANGELES,
331 U.S. 543 [1947] reversing 27 Cal.2d 232; 163 P.2d 704

TAKAHASHI v. FISH AND GAME COMMISSION,
334 U.S. 410 [1948] reversing 30 Cal.2d 719; 185 P.2d 805

ROCHIN v. CALIFORNIA,
342 U.S. 165 [1952], which reversed *People v. Rochin*, 101 Cal.App.2d 140; 225 P.2d 1

ANDERSON v. ATCHISON, TOPEKA & S.F. RY. CO.,
333 U.S. 821 [1948] reversing 31 Cal.2d 117; 187 P.2d 729

GARMON v. BUILDING TRADES COUNSEL OF SAN DIEGO,
decided March 25, 1957 by the Supreme Court of the United States and yet unreported, reversing 45 Cal.2d 657 [later: 353 U.S. 26 (1957)]

CALIFORNIA v. TAYLOR.
decided by the Supreme Court of the United States on June 3, 1957 and yet unreported, reversing *State of California v. Brotherhood of Railroad Trainmen*, 37 Cal.2d 412 [later: 353 U.S. 553 (1957)]

KONIGSBERG v. STATE BAR OF CALIFORNIA,
decided by the Supreme Court of the United States May 6, 1957 reversing the order of the Supreme Court of California denying the admission of petitioner to practice law. There was no written opinion by the Supreme Court of California. [later: 353 U.S. 252 (1957)]

CHESSMAN v. TEETS,

decided by the Supreme Court of the United States June 10, 1957 and yet unreported, reversing several decisions by the Supreme Court of California including *People v. Chessman*, 35 Cal.2d 455; *People v. Chessman*, 38 Cal.2d 166; *In re Chessman*, 43 Cal.2d 391 and 408. [later: 354 U.S. 156 (1957)]

In only one case has the Supreme Court of the United States reversed the Supreme Court of California where I prepared the majority opinion. This was *Richfield Oil Corp. v. St. Bd. Equalization*, 329 U.S. 69 [1946], reversing 27 Cal.2d 150; 163 P.2d 1.

JESSE W. CARTER
June 19, 1957

A Judge's Relation to the Passage of Legislation

GILB: In connection with a controversy over failure to publish your dissent in a bar exam case where a majority opinion was not filed, Senator O'Gara in January 1953 introduced a bill in the state Legislature seeking to remedy that situation. Did you have any connection at all with that action?

CARTER: No, I didn't have any connection with the introduction of the bill.

GILB: Did you know O'Gara?

CARTER: Oh, yes, I knew him quite well, but I think the bill was introduced as the result of the publicity that was given to the failure to publish the dissent. After that, when the bill was pending in the Legislature, the Court adopted a rule, entirely in accord with my attitude, a unanimous rule, that made the bill unnecessary, and then I joined with the Court in suggesting that the bill be not passed because the Court had taken care of the matter with the rule, a rule which the majority of the Court had opposed up to that time.

GILB: Let me ask the general question, if a judge were unable to implement his social views in the Court, do you think he would be justified in resorting to trying to get the bills he favored passed?

CARTER: Oh, yes. I think so. In fact, there is a precedent for that. Justice Stephen J. Field had many bills introduced into the Legislature and passed to implement his views on the Court.

GILB: Have you ever done that yourself?

CARTER: I have suggested . . . yes, yes, and some of them were passed. I have suggested some that were not passed and some that were passed. Well, one of them was the right of a married woman to recover for her personal injury where she and her husband were hurt in an accident and her husband was guilty of negligence.

GILB: *Zaragosa v. Craven*.[22]

CARTER: Yes. Then the statute, section 107a of the Civil Code, was amended to nullify the effect of the majority opinion in *Zaragosa v. Craven*. I called attention to that in the subsequent case of *Kesler v. Pabst*.[23]

Communications from the Public

GILB: Did you, as a judge, ever receive communications from the public about your viewpoints?

CARTER: Oh, yes, I receive numerous letters. In some cases I have received as many as between fifty and a hundred communications, generally commendatory. Very, very seldom does anyone write a letter of criticism on any of my dissents or majority opinions. I presume those who are critical think probably it is a better policy not to criticize a judge's views, although I've invited criticism.

GILB: You like it?

CARTER: Oh, I invite it. I write to these people and I say, "I'm glad to hear from you in regard to any decisions, whether you agree with them or not."

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[22] 33 Cal.2d 315 (1949).

[23] 43 Cal.2d 254 (1954).

GILB: Now, this is after the decisions have been made. What about while the case is pending?

CARTER: No, I very rarely receive a communication. Once in a while, by some layman who does not appreciate the ethics of the judiciary . . . . Of course, no person should approach a judge in regard to a case pending before him until it's been decided, but some people do.

I got a letter from a friend of mine, a very close friend, I hadn't seen her for years, and she wrote me about a certain case. I didn't even take the time to answer her letter; I don't even recall the case being before us at all. It came up and was disposed of, and I never even thought about what my friend had written me about the case. It was disposed of on its merits as it should have been.

Comments on U.S. Supreme Court Justices

GILB: I have one more question, and it may be a hard one for you to answer. Of all the United States Supreme Court justices there have ever been, which one do you think you resemble most, and why?

CARTER: Which one do I think has my philosophy?

GILB: Yes. I don't mean personally.

CARTER: That is a pretty hard question. I would say that in some of my views, I think my philosophy harmonizes with Justice Hugo Black. In some, with Justice William O. Douglas.

GILB: Holmes rather than Brandeis, you would say?

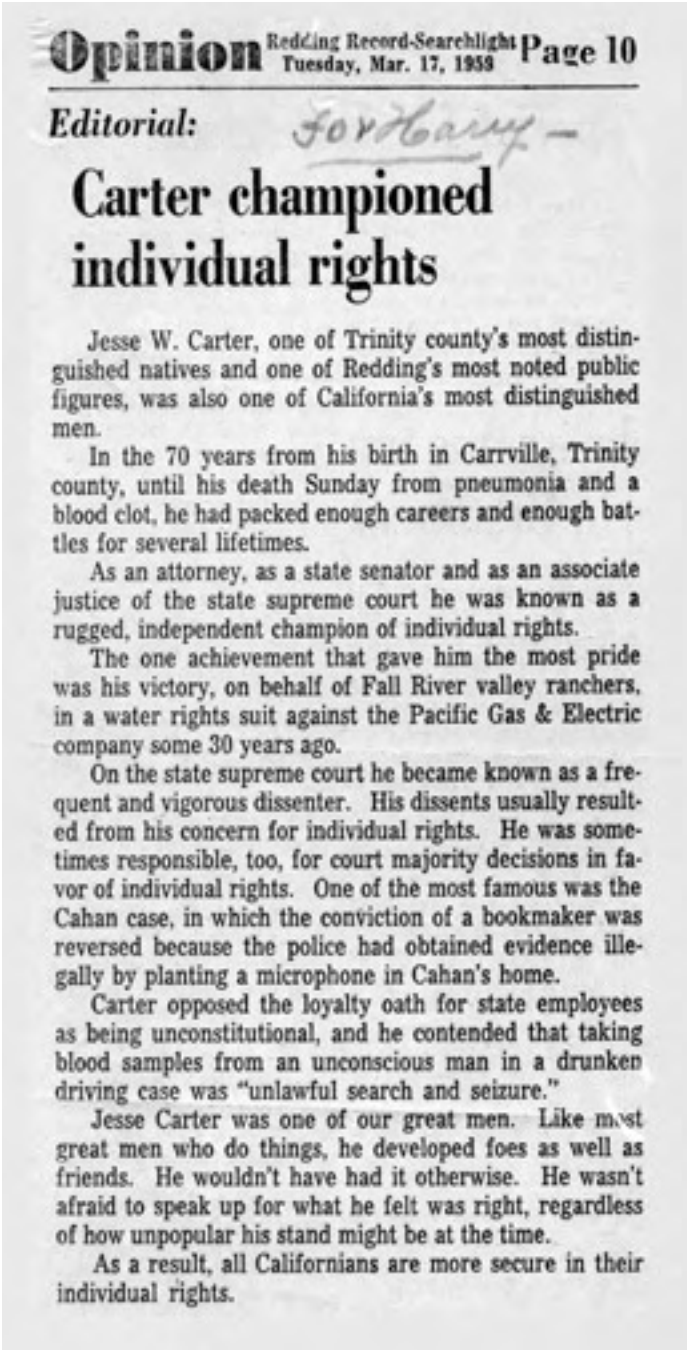
CARTER: Yes, I think so, although I have a great admiration for Brandeis. I think he was a very great judge, but I think probably on the subject of civil liberties I typify more the views of Holmes.

I had great admiration for Chief Justice Hughes. I think he was a great lawyer and a great judge and a great American. I admire greatly many of his opinions.

When I was a law student, I thought Justice John M. Harlan was outstanding at that time. In fact, I named one of my sons after him.

Then, later on . . . well, Harlan and Holmes were on the Supreme Court together, and then Brandeis. I didn't have a very high regard for

the Court that was there during the Taft, Harding and Coolidge administrations. I thought the Court that succeeded that, consisting of Stone, Black, Douglas, Murphy and Rutledge were a very great Court. I greatly admired Justice Stone. He was one of the greatest justices who have sat on that Court, and was also a great chief justice. ✯



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Editorial: For Harry –

Carter championed individual rights

Jesse W. Carter, one of Trinity county's most distinguished natives and one of Redding's most noted public figures, was also one of California's most distinguished men.

In the 70 years from his birth in Carrville, Trinity county, until his death Sunday from pneumonia and a blood clot, he had packed enough careers and enough battles for several lifetimes.

As an attorney, as a state senator and as an associate justice of the state supreme court he was known as a rugged, independent champion of individual rights.

The one achievement that gave him the most pride was his victory, on behalf of Fall River valley ranchers, in a water rights suit against the Pacific Gas & Electric company some 30 years ago.

On the state supreme court he became known as a frequent and vigorous dissenter. His dissents usually resulted from his concern for individual rights. He was sometimes responsible, too, for court majority decisions in favor of individual rights. One of the most famous was the Cahan case, in which the conviction of a bookmaker was reversed because the police had obtained evidence illegally by planting a microphone in Cahan's home.

Carter opposed the loyalty oath for state employees as being unconstitutional, and he contended that taking blood samples from an unconscious man in a drunken driving case was "unlawful search and seizure."

Jesse Carter was one of our great men. Like most great men who do things, he developed foes as well as friends. He wouldn't have had it otherwise. He wasn't afraid to speak up for what he felt was right, regardless of how unpopular his stand might be at the time.

As a result, all Californians are more secure in their individual rights.

Courtesy Scott H. Carter.