ORAL HISTORY

LEON THOMAS DAVID

(1901–1994)

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Courtesy Contra Costa County Historical Society

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EDITOR'S NOTE

The oral history of Superior Court Judge Leon Thomas David is one of four oral histories conducted by the former California State Bar Committee on History of Law in California in 1987. These were the final oral histories conducted by the committee, and they are published for the first time in the present volume of *California Legal History* (vol. 6, 2011). Judge David served as chair of the committee in 1977, and he was interviewed by committee member Raymond R. Roberts on January 16, 1987.

The oral history has been reedited for publication. Citations have been verified or provided, and the spelling of names has been corrected wherever possible. Explanatory notations in [square brackets] have been added by the editor. The sound recording and original transcription are available at The Bancroft Library, UC Berkeley. The oral history is published by permission of the State Bar of California.

A biographical sketch of Judge David by Superior Court Judge Roger Alton Pfaff was published in 1962 by the *Los Angeles Daily Journal*. It is reproduced below as a brief introduction to Judge David's life and career.

— SELMA MOIDEL SMITH

LEON T. DAVID[1]

Judge Leon T. David has led a busy life since his birth in San Francisco, August 25, 1901. His early years were spent in the Bay Area. He attended Alameda, Berkeley and Vallejo High Schools before entering Stanford University in 1921.

In 1924 he received his A.B., and in 1926 his Juris Doctor from Stanford. Thereafter, he migrated to Southern California where he studied Public Administration at USC, from which institution he received his M.S. degree in 1935 and in 1957 a doctorate in Public Administration.

In 1926 he was admitted to the California Bar and engaged in the private practice of law under the firm name of Malcolm and David. He also accepted an appointment the same year as deputy city attorney and city attorney pro tem for the City of Palo Alto, a position he held until 1931. In 1931 he became assistant professor of law at USC law school. For one year, 1930-31, he was retained as deputy city attorney for the City of Lakeport, California. In 1934 he accepted an appointment as assistant city attorney for Los Angeles, a position he held, except for his absence during World War II, until 1950.

In 1927 he married the talented Henrietta Louise Mellin. The Davids are the proud parents of two children, Mrs. L. Perry Holmes, Jr., of Lafayette, California, and Leon Colby, of Honolulu. They have three grandchildren. Mrs. David majored in music at USC and for many years sang professionally in church. She is a past president of the Women's Auxiliary, Society for Cancer Research at UCLA, and is listed in *Who's Who of American Women*.

While a student at Stanford, Judge David was on the staff of the *Daily Palo Alto* and *Stanford Quad* and actively engaged in intramural athletics, including track and football. In 1921 he was discus champion and record holder of the California DeMolay track and field.

As a student at Stanford, Judge David took ROTC training and was commissioned a 2nd lieutenant, Field Artillery, ORC [Officers' Reserve Corps], in 1924. He maintained his reserve status, and in July, 1941, he was called to active duty by the War Department and thereafter served in a

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[1] P.A.R. [Roger Alton Pfaff], "Leon T. David," *Los Angeles Daily Journal*, June 22, 1962, p. 1. Reprinted in *Judicial Profiles of the Superior Court of Los Angeles County, California* (Los Angeles: Los Angeles Daily Journal, 1963), p. 23 (in which articles signed "P.A.R." are credited to Judge Roger Alton Pfaff).

number of command posts, including chief of Special and Morale Services, NATOUSA [North African Theater of Operations, United States Army] on General Eisenhower's Special Staff in Algiers in 1943. He was honorably discharged in 1945 with the rank of colonel, and was retired from the AUS [Army of the United States] as colonel, Artillery, in 1961. Judge David is the recipient of the [U.S.] Legion of Merit; honorary officer [of the Order of the] British Empire; Brazilian Medalha de Guerra; French Médaille d'Honneur; Italian Commander [of the Order of the] Crown of Italy; European Theater Medal and three Battle Stars.

Upon his return from service, he resumed his duties as a senior assistant city attorney for Los Angeles, which he held until 1950 when he was appointed to the municipal court by Governor Earl Warren, who elevated him to the superior court in 1953, a position to which he has been continually reelected.

Throughout Judge David's career, he has engaged in many varied activities, including journalism and teaching, both in Law and Public Administration, at the University of Southern California, and also as an instructor at Command and General Staff School at Fort MacArthur, San Pedro; and the Presidio, San Francisco.

The Davids attend the Westwood Presbyterian Church. Judge David is a member of many professional, fraternal and civic organizations, including the Los Angeles, American, and Westwood Bar Associations, American Judicature Society, Phi Alpha Delta, Order of the Coif, American Legion, Reserve Officers Association, Acacia Club, Masons, and Shrine.

Tracing his ancestry back to early American colonial days, Judge David is a member of the Sons of the Revolution and a vice chancellor of the Society of Colonial Wars for California. He is chairman of the Los Angeles County Bar Association Legal Aid Committee and president of the Kiwanis Club of Los Angeles for 1962. He is a member of the Jonathan Club and numerous civic organizations.

Judge David is an amateur radio operator, holding General License W6QFA, and a student of portrait painting. Other interests are speaking and writing on historic and legal subjects, travel, and the study of foreign languages.

He sums up as one of his philosophical guideposts, the following maxim:

"Time is our priceless commodity which never can be replaced; use it, don't waste it."

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Q: I am in the home of Leon T. David, who has graciously consented to reminisce with me on his observations of the history of law in California. Before we go into any of the particular details, he has offered to play a tape that he made of reminiscences that will be by way of introduction to the formal interview.

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DAVID:[1] As of August 26, 1976, I was in the practice of the law and on the bench for a total of fifty years. Over that period of time, there have been many experiences it may be well to record, particularly as I now serve as chairperson of the State Bar Committee on History of Law in California. I was born on August 25, 1901, in the 300 block of Leavenworth Street in San Francisco, where my parents, Ella Thomas David and Leon Kline David, lived upstairs in Mrs. O'Halloran's flat. My father at that time was a bookkeeper and teller in the old First National Bank. Shortly after my birth, the family moved to Alameda at 1109 Pacific Avenue, down the block from my grandfather's residence, Edward E. David, at 1223 Pacific Avenue.

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1 "The Practice of the Law" by Judge Leon Thomas David, recording on July 31, 1977.

I remember the 1906 earthquake. My crib rolled across the bedroom floor, and struck the opposite wall. Above, the chimney collapsed and the bricks hitting the roof made a fearsome clatter. The green Antikamnia pain pill calendar, with its life-size portrait of the president, Teddy Roosevelt, with his eyeglasses and big-toothed smile, fell on the floor. The little sheet iron stove made a rasping noise as it slid along the floor. My father dashed in to see if I was all right. I think I was more mystified than scared. Our house stayed on its brick foundation, with only the bricks at the top of the chimney to be replaced. When permitted to go out, I saw a house around the corner on Bay Street where the main floor was sitting down on a collapsed basement. I remember my father setting off for San Francisco with a shovel over his shoulder to aid in digging out the remains from the bank.

People displaced by the San Francisco fire came to Alameda, looking for places to stay. Our house was not very large, but mother and father made the rear bedroom available to a homeless couple. They stayed for a year. After they left, mother was scandalized! The couple were not husband and wife.

The following year, of course, there was a panic. There were hard times, and my father found another situation at the Henderson Bank in Elko, Nevada. The family thereupon moved to Elko. It was a frontier town. Indians gathered upon its wide main street. Sheepmen and cattlemen gathered in town — the cattlemen on the one hand, and the sheepmen on the other — keeping discreetly apart, and each patronizing a separate large saloon at opposite ends of the block.

There was an Indian camp about one mile north of the town. There were some Shoshone Indians still living in teepees. Others had built small cabins and cottages. These were said to be the small cabins of Indians who went to Indian school but who had, nevertheless, come back to live the life of their people. The Indian squaws came to town to work in washing and other household chores. The Indian bucks would come in on the weekend to collect their wages. I remember seeing Indian squaws sitting down on the high curbs in the main street, chewing large wads of gum, pulling the gum out a great distance from their mouth, sprinkling it with cheap cologne and then putting it back into their mouths and chewing again. This was a cheap way of getting a jag on, since the sale of liquor to Indians was prohibited.

The street to the school passed the county courthouse, a large structure with a broad stairway leading to the courtroom. My father had not been in town very long before he was summoned for jury duty on a murder trial. The county judge was Judge Brown, who afterwards, I believe, was a justice of the Supreme Court of the State of Nevada. The defendant was found guilty in the murder case, and I remember that my father reported afterwards that he had shaken the hand of the defendant. The defendant had loaned him a horse to ride around and see the country shortly after my father arrived in Elko, Nevada, right after the first of the year 1907.

The bank shortly afterwards was rebuilt. Inside, the cashier and other attachés of the bank served behind the counter. The entire counter was surmounted by a latticework, which was supposed to be bulletproof. Under the teller was a trapdoor, which he could use to drop out of sight in case there happened to be a holdup.

My schooling began in Elko, Nevada. I attended school in the first grade in a little two-story brick schoolhouse in a room presided over by Miss Rose Gardner. Upstairs, Mr. McQuinney, the principal, conducted classes. I made rapid progress in the first grade, thanks, first of all, to the fact that in the family I had been presented with a blackboard with a scroll, which carried all the letters on it. I had learned to read after a fashion from the Sears Roebuck Catalog, where the names of items were given and little pictures were shown of the items themselves. My brother, Persis Anderton David, was born in Elko, Nevada, on December 28, 1907, and my grandmother, Ella Thomas, from Vallejo, was present. When she returned to Vallejo, I accompanied her and was entered in the Jefferson School in Vallejo. Thanks to my reading ability, I was placed in the high second grade. When I returned to Nevada in the fall of 1908, I was placed back in second grade there. As a matter of fact, although this was a pioneer community, Miss Gardner had been using the Montessori system of instruction, particularly in reading, and I was simply keeping pace with the class there.

In the spring of 1909, my father, along with other young men in the community, went prospecting. In doing this, they waded up through icy creeks and he came down with inflammatory rheumatism, rheumatic fever, which he once had before as a boy. This was so severe that he almost died. He ultimately went back to the Alameda hospital in order to fight for

life. Unfortunately, right in the midst of this, while playing with boys on a road scraper in front of the school, I was pushed into the wheel and my leg was broken near the hip. I came home and was immobilized in bed, cared for by my mother along with my bed-bound father. With three other children in the household, this was a tremendous chore for her.

Recovered a bit, my father was warned that he could not return to that climate, and secured a position in Gustine, California, where a Miller & Lux Bank was maintained. This was a branch of the Bank of Los Banos. My father was placed in charge of the Gustine bank. Gustine was a company town, named after the wife of Henry Miller of Miller & Lux fame. The bank was in a building owned by Miller & Lux, and in which a general store was conducted. The town had about 400 inhabitants at that particular time. As far as I can recall, there were no lawyers in the town.

We attended a little one-room school, a white schoolhouse in the south of the town where Miss Hoyt and Mrs. McClusky were the teacher and principal. Back in California, I again skipped a grade and was placed in the high third. This posed certain difficulties for me, in that the students were in the multiplication table and doing fractions, ahead of what we had had in the second grade in Nevada.

There was a Kerr family in town, father and son. The son, as I recall, was called Frank Kerr and I believe was the express agent in the town. On my ninth birthday, August 25, 1910, I had my first ride in an automobile. Mr. Kerr gave me a ride up to the town of Newman, seven miles away. We seldom saw any other automobiles at that particular time, and those that did come into town and needed repairs or new batteries, were taken care of by the village blacksmith, who I believe was a chap by the name of Jensen. In 1911, my father was offered the position of auditor for Miller & Lux, headquartered in San Francisco, traveling the length and breadth of the Miller & Lux holdings, auditing accounts at the banks and the various ranches. We moved back then to Alameda.

With my brother Edward and my sister Dorothy, we were enrolled in the Porter School. The Porter Grammar School was an old school in an old building where my father had attended back in 1896 or 1897, where my aunt Juanita David had attended and in which, for a period of years, my maternal grandmother, Alice White David, had been a teacher. The principal was Sam M. Cohn, a one-armed, black-eyed, black-haired man of great

vitality and energy with a great interest in his students. Mr. R.H. Bosshard, as I recall, was the vice principal. The teachers I remember were Miss Mamie Hunt and Miss Edna Patterson. I ran into trouble right away with my arithmetic, but my other studies were reasonably good, I believe. In fact, I was quick enough with my lessons so that from time to time I got into little bits of devilment. After one such incident, I recall that I was called to see Mr. Cohn in the office, and I expected something severe to happen. However, what he did say was that he had asked me to come down because he wanted to send me to the public library. He wanted me to go over to the public library, a couple of blocks distant, and come back and write a paper on the origins of Thanksgiving. He had called up the librarian and told the librarian I would be there and the librarian had agreed to show me how to use the Dewey Decimal System and the card indices and to undertake that little research project. This, I believe, was a wonderful demonstration of pedagogy as it was practiced in those days. He took me out of mischief, he gave me something to do, and over the years that one learning experience in using the library and its resources was to be most valuable.

At that time, at some twenty-minute intervals, a red electric car came by the school on the tracks on Encinal Avenue, behind the schoolyard, and proceeded then to make a loop and go back to Alameda pier, carrying commuters to the Alameda pier and the ferry to San Francisco. Before the Fourth of July, a group of us had acquired a stock of caps and other assorted pyrotechnic devices, and thought it would be a swell show if we put caps on the tracks for three or four blocks before the car reached the school. We did, the train did, and there were bangs all along the way. We visited Mr. Cohn. Again, he gave us a lecture, saying he recently had been to San Quentin and had visited all the men who were there for misdeeds. He said he was impressed by one fact — they were not there because they were *not* bright, but because they were *too* bright. He cautioned us all that we should direct our energies toward lawful activities and explained that train men use caps and torpedoes on the tracks as signals and so this prank was a very dangerous thing to do. So that was that.

Another incident we recall of Porter School was this: we had all to take manual training, which consisted of woodworking. The woodworking class was conducted in the seventh and eighth grades by a woman teacher, whose name I unfortunately do not recall. We were upset because

we thought that carpentry was a man's occupation and wondered why we didn't have a man teacher. Again, we dreamed up a situation and so we went to Mr. Cohn as principal and said that since we did not have a man teacher for manual training, we thought we ought to be enrolled in the girl's class in domestic science, so that we could learn to cook. He didn't ridicule the idea or put it down directly, but I recall he turned to me and said, "Leon, think probably you want to be a lawyer, and if you're a lawyer you're going to have to handle a lot of cases that may involve land and boundaries. Now, if you answer a question I'm going to ask you correctly, right off, I'll let you go over to the domestic science class, but here it is: A man has a field, and one side of it is a hundred rods long. He wants to put a fence up. Now, quick, if he puts a fence up and puts a post every ten rods, how many fence posts would he need? And I said, right away, "ten." And he said, "Ah, no, the correct answer is eleven — so you go back to manual training."

Had I determined to be a lawyer at that time? Not exactly. A group of boys, by name Harold Newman, Gordon Gould, Willy Condon and I, had all become interested in wireless. Willy Condon and I ran a telegraph line along the neighbors' rear fences over on Park Avenue where he lived and buzzed dots and dashes. Harold Newman was quite devoted to the new art of wireless and had money enough to buy equipment, including rotary spark gaps and things of that sort, which were far beyond us, but which entranced us no end. I had the idea that I would like to be an electrical engineer. That idea persisted after I entered Alameda High School but died, when, at the end of my freshman year, I flunked algebra. I was assured that perfection in mathematics was necessary to an engineering career, and from that time on, I shifted toward becoming a lawyer.

From Alameda, our family moved to a new home which they started to buy in North Berkeley, over at San Lorenzo and Ensenada in what was then called Thousand Oaks. My father continued to travel for Miller & Lux. He made the acquaintance of Mr. Edward F. Treadwell, who was the attorney who had been in charge of the Miller & Lux legal interests, particularly in the realm of land and water law and water rights. From time to time, my father brought home bits of information he had gathered from Mr. Treadwell about legal practice and more or less encouraged the idea that perhaps someday I might become a lawyer.

At the close of 1915, old Henry Miller, the cattle baron who had put together this empire, died, and there was a great commotion in the readjustments made by such an event, not the least of which was the necessity of paying a tremendous inheritance tax at a time when the company was land rich but cash poor. One of the readjustments was that Mr. Treadwell was said to have collected a million dollar fee for his work in reference to taxes and inheritance and water rights. In the midst of the readjustments, my father left Miller & Lux.

We moved to Vallejo from which my mother had come and where my maternal grandparents, Mr. and Mrs. J.W. Thomas had lived ever since 1883. My father became the vice president and manager of a new bank, called the Central Bank of Vallejo, which opened up its doors in May of 1916. Across the street from us where we resided at 909 and then 915 Georgia Street, lived W[illiam] T. O'Donnell, the superior court judge of Solano County. Judge O'Donnell talked to me about the practice of law and loaned me a two-volume edition of Story's *Commentaries on the Constitution of the United States*. While still in my junior year in high school I read this from cover to cover. Mr. L[ewis] G. Harrier was the attorney for the bank, practicing with Harry Gee, who was city attorney, and with Harlow Greenwood. Harlow Greenwood, a Stanford graduate, had acquired quite a reputation in regard to matters of land law and land titles, and later became a judge on the Superior Court of Solano County; and at a later period lived across the street from my mother's home on Camino Alto in Vallejo. All of them were friends of mine, with whom I talked about law practice.

My father decided that he wanted to know more about the law, and so he enrolled in the LaSalle Extension University [of Chicago] correspondence course and got the texts and proceeded to write his lessons. At the time, Arthur Lindauer was district attorney and one of the younger attorneys in town was Russell O'Hara, "Pat" O'Hara, who was to become president of the State Bar and who was well known to us.

In my senior year in high school, 1917–1918, of course we were involved in war. In this particular year, I wrote an essay for the statewide contest of the Sons of the American Revolution on "America in the War" and won the first prize. Later on, the proprietor of one of the town's theaters hired me to memorize and deliver every night for a week the entire text of President Wilson's war message to Congress. This I did, for which I received $35 plus

a pass for two to the theater for two years. I think I valued the last more than I did the first. I could take girls along on that pass.

Father died in the influenza epidemic on November 2, 1918, and most of the family, including me, ended up in the influenza hospital, hastily improvised and set up at the Boys' School in Vallejo, watched over by the nuns of the local parish. I had been working on Mare Island Navy Yard doing a number of jobs but from high school days on had been writing sports and other items for the *Vallejo Times*. My career as a workman on Mare Island Navy Yard and all the events there were very interesting and instructive, but I shall pass on to the matters which pertain ultimately to the practice of law. Well, a lot of my experiences pertained ultimately to the practice of the law.

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Q: I don't think that there's anything that a person does that doesn't eventually become useful in law practice.

DAVID: I became a writer and full-time newspaperman for the *Vallejo Times* in 1921, and also became correspondent for the *San Francisco Call-Bulletin* and the *Sacramento Bee*.

At my father's death I suffered what amounted to a nervous breakdown, plus various infirmities which attended the recovery from the influenza. During the period 1918-1921, I was treated, among others, by Dr. J.J. Hogan. Dr. Hogan was a forward-looking doctor in Vallejo and became a legislative representative before the Congress relative to the naval base controversy and the status of Mare Island Navy Yard. He was a Stanford graduate, and he began to tell my mother that I should go to Stanford, as did Robert McPherson, assemblyman from Vallejo and who was one of the few Stanford graduates in the city. At this time, Mr. Robert Walker was the proprietor of the *Vallejo Times*, and the shop foreman in the printing shop was Mr. Luther Gibson. Bob Walker, under Governor Frank Richardson was to become state printer, and Luther Gibson was to become state senator of many years' service in the state legislature, of considerable political stature as well as building up a substantial business interest in Vallejo, including the ownership of the *Vallejo Times* which became the *Vallejo Times-Herald*.

In the course of my newspaper work, I made the acquaintance of Captain Edward L. Beach, who was the commandant of Mare Island Navy Yard. He and his wife also became members of the Vallejo Presbyterian Church, of which we were members, and which I attended, as well as my wife-to-be, Louise Mellin. In the late spring of 1921, I was doing well in my newspaper work and was very interested in my young lady, and so my mother and friends got together and decided a crisis was at hand — I would have to decide whether I was going on to the university or not, and they prevailed upon me that I should. At that particular time, it was thought best that I should attend the university summer session to refresh myself after the three years I spent following high school in other pursuits. At the time in question, it was too late to enroll for the summer session at the University of California, toward which my efforts had always been pointed, and where most of my friends were. It was possible, however, to enroll in the summer session at Stanford, and so that was what happened. Off I went to Stanford University in the summer of 1921. Before this time, I had corresponded with LaSalle Extension University, and they agreed that I might go ahead and continue with the law course that my father had not completed. And this I did for a considerable spell, covering their generalized text.

When I arrived at Stanford University, my aim was to be enrolled in the law school forthwith, and I sought to be enrolled as a special student. At the law school I met the acting dean for the summer session who was Professor Arthur Martin Cathcart. Sitting in his office and urging my case to be admitted as a special student, I was comforted by noting a set of the LaSalle Extension text high up on a shelf in his office, and I remarked that I had noted his particular contributions to it. He immediately disabused me, saying that "that is what we lawyers call "farmer's cyc" [cyclopedia] to be used by laymen and artisans but not for the professional study of the law. He informed me that I could enter as a special student, but that it would cost full tuition, I would not have the benefit of any corrections or examinations on the part of the instructors, and I would not go forth formally to a bar examination with the blessing of the school. On the other hand, I could enroll if I wished. However, his recommendation was that I proceed promptly to cover the two years' instructional requirement necessary for

entry into the law school and that that would be the best for me and my career. So I set out to do it.

I had saved $700 when I hit Stanford. Although tuition was $66 a quarter, that was enough to tide me over most of the year, and I soon found enough jobs of all sorts to produce a little income. My first quarter in Stanford was rather reassuring. I took 17 units to bridge this two-year requirement fast. I passed all of them and acquired something like 17 plus 21 grade points which was regarded to be very good. Suffice it to say that in four quarters, instead of six, I presented myself for enrollment in the introductory course to law which was given by Dean [Charles Andrews] Huston. In this was presented some of the old common law cases and some more modern cases that had been decided by the courts. He used these as a method of introducing us to the legal method, the case method, and also a little bit into the history of the English law. I remember particularly that in the introduction we studied the case of *Turberville v. Stampe* — the escape of fire from one man's premises to another. And secondly, we discovered the basis of the master and servant liability was control by the master in the family over the servant in the family in which he served, and so forth and so on.

In fall, 1921, my roommate was Daniel W. Evans. Dan Evans was the son of the county clerk of San Bernardino County, a returned war veteran, of an engaging Irish disposition, with a good sense of humor, a great talent in writing which he exercised in writing up some of the campus plays and eventually becoming student body president. He launched me into a number of activities on the Stanford campus, such as that of being on the *Stanford Daily* where, for a number of years, until I abandoned journalism, I stood at the top of the roster in terms of seniority on the staff. He also got me into the Glee Club. He also saw that I became a member eventually of the law fraternity, Phi Alpha Delta, and into which I was initiated in 1923. Many of the members then achieved legal greatness in future years, including Philip Grey Smith of Los Angeles and C. Victor Smith of Oakland and Homer W. Patterson who served many years as judge of the superior court in Contra Costa County with whom I've met frequently since our removal to Danville in Contra Costa County.

There was an annual debate between Phi Alpha Delta and Phi Delta Phi in which I participated in one year when I was opposed from the other

fraternity by Lon Luvois Fuller, a classmate who later was for many years on the Harvard Law School faculty. Mr. Justice [Frank] Angelotti of the California Supreme Court was among the debate judges and I made his acquaintance at the particular time. That, at a later period was a key to becoming acquainted with other members of the California Supreme Court. In the early Stanford years, I had been supporting myself by journalism, and carrying on as correspondent for the *San Francisco Call-Bulletin*, the *Fresno Bee* and the *Sacramento Bee*, with some barnstorming with free-lance contributions to NEA (Newspaper Enterprise Association) and other publications.

In the fall of 1923, I became the publicity man, so to speak, for the Board of Athletic Control, and for a year's time put out bulletins praising the rise of Stanford football under Andy Kerr, looking forward to Pop Warner's arrival. I covered the small and large newspapers all over the state of California, but toward the end of the year it became evident to the graduate manager, Paul Davis, that this was not quite what was wanted or expected. It was good for promoting the name of Stanford generally, but what Stanford wanted to do was to promote Stanford football and the recruitment of Stanford football players and other athletes. The only place where football in high school had any substantial footing was in Southern California and Southern California high schools. Therefore, it was felt that the campaign for that year had not been effective, and therefore I was relieved of my job as publicity director. In the summer of 1924 I took the only vacation in my career in Stanford University in order to attend the final ROTC training camp at Fort Lewis [Wash.] where I received my commission as second lieutenant in the field artillery.

In the following fall, I was driving my old 1914 wreck of a Model T Ford along Palm Drive toward the university when Professor Cathcart was walking on the sidewalk, and I hailed him and he took a ride. After some preliminary remarks, he said, "Well, Mr. David, I hear rumors downtown that you are thinking of running for the Legislature. I assured him that I neither knew anybody downtown nor had I any such ambition, after which he replied, "Well, I wasn't too surprised. In my classes you showed a great ability to determine what the law ought to be. I can't say you know as much about what it is."

A little time after, he summoned me and my roommate, Mr. Andrew R. Boone (both of us were writing articles and features for our support), and told us directly that he thought we had a choice to make, that it was necessary for us to decide whether we were going to be lawyers or journalists. He advised us that he thought we could have great success with the law if we would abandon our journalistic efforts and put in all our time to our law studies. Andrew Boone, or as we called him, Dan, and I went to our rooms and debated most of the night as to what should be done. Dan decided to stick with journalism, and up until the time of his death he did, and was a frequent and valued contributor to *Popular Science* magazine and others of that particular sort in which he then specialized. I abandoned my journalistic career, but at that time still retained my job as a hasher at the Stanford Union and also as custodian of the Stanford Union where I collected the rents, stowed the baggage and handled the keys for the tenants, and so forth. I studied very hard for a quarter on the subjects of sales and negotiable instruments which were thought to be hard courses, and soon found that I was running very short of funds, and it did not seem likely that I could come back the next succeeding quarter and proceed with my law studies. There was an unwelcome break. I consulted Dr. Barnett, the men's physician at the gymnasium, about my red spots; measles, again? He looked me over at the Palo Alto Hospital. Immediately, he said, "They will not thank me for bringing you here. You have scarletina." For three weeks, with a nurse in attendance, I lay banished in solitary isolation in a house on the Searsville Road. After every inch of my skin had peeled away, I was permitted to read, and to write letters which were baked in the oven before mailing. This was a serious break in my law school studies. I was advised to withdraw in all classes, retaking the subjects the next time given. Add another quarter, when I was almost broke and anxious to finish? I gambled. I borrowed some lecture notes, read the cases, and completed the courses. I passed in the end-quarter examinations, at the probable expense of some grade points. But I was nervous and somewhat weak after the disease and the catch-up effort. It was some time before I could recite in class without faltering.

When I left the Navy Yard as a woodworker's helper, I'd received an "excellent" discharge which, presumably, I could present again and be employed over the summer or employed during the ensuing spring, and I had

in mind that this was what I would have to do. I sold my typewriter, I sold my spare books and was prepared to leave school to go back to work for a spell. I went in to see Dean George Bliss Culver, the dean of men to whom I reported in connection with my job as custodian of the Stanford Union, told him of my plight and of my probable resolution; and then he said, "David, there's only one thing that you haven't learned. When you have done the best you can, you haven't learned the knack of saying 'to hell with it.' I want you to go back and take your Christmas vacation and not make any determination, but come back in here at the beginning of the quarter in January, and we'll see what is to be done."

I went back home to Vallejo and in three days wasn't quite sure what was going to happen next. Then the mail came with my grade slips and I found that I received 17 hours of A's or A-minuses in my law school courses for the preceding quarter. It seemed to prove that the study of the law had paid off so far as results in the law was concerned, but it still didn't answer the other question. But quite unexpectedly, in the succeeding mail came an announcement that I had been awarded the Mrs. Ira S. Lillick Scholarship in the sum of $500 for the ensuing semester. This scholarship and that given by her husband, Ira S. Lillick, were the best ones available in the law school. I was awarded it a second time and with university scholarship and tuition loans had managed to finish the university course although the demands for work still cut into time that perhaps should have been devoted to my law studies. My attention was somewhat diverted by the opportunity I had to go to San Francisco in the afternoons to the office of Sawyer and Cluff, where my friend Dan W. Evans was located. Harold Sawyer and Alfred T. Cluff were engaged in the admiralty law practice and it was interesting to do small tasks, to run errands around San Francisco, to check jury lists in the federal court, to serve witnesses subpoenas and the like, all of which satisfied an urge to be in on the action when I was still supposed to be putting all my attention on the books.

Dean Huston had a heart attack while at the swimming pool and died shortly after. Marion Rice Kirkwood was named dean to succeed him. Dean Kirkwood was brilliant in his field, particularly in real property, was entirely professional in his manner, in his dress, and in his language, and held up to us the highest ideals of being a professional man. He was a disciplinarian in one respect, however. One had to be in his classroom

and seated when the bell rang. From that time on, the door was locked. We have visions of students standing out in the old quadrangle outside of the classroom itself, with the windows raised, with their notebooks on the window sills, taking notes through the open windows. One of these we recall particularly was [Walter A.] "Pete" Starr, later a Sierra Club devotee who fell to his death while mountain climbing. I took Professor Kirkwood's courses in real and personal property. In Real Property, of course, a great deal of attention was given to the different types of estates in land. I found in an old copy of Blackstone that I purchased for twenty-five cents at a bookstore that the footnotes carried a great number of the examples which Dr. Kirkwood had given us, and therefore, I studied some of the footnotes greatly to my advantage. Chester Garfield Vernier was a long lanky hoosier who never quite forgot his Indiana twang. We took Criminal Law from him and also Domestic Relations. His lectures were quite matter-of-fact. However, someone studious read some of the cases cited in his lectures, and reported they were "hot stuff," either in their language or the facts: 111 Atl. 599, "Men are still cavemen in the pleasures of the bed," where, in an annulment suit, his plea of non-intercourse was rejected in colorful language; or where a husband was held guilty of raping his own wife, having inspired his coachman to do so.

Professor George Osborne, with his stentorian lectures and Socratic dissection of the rationale of the judicial decisions studied, became a legendary figure, both at Stanford and at the Hastings law school, where he taught after his Stanford retirement, until his death. I benefited a great deal from his instruction, and his friendship extended long after my graduation.

Considering a legal proposition, a student might be called upon to present arguments supporting it; but having done this, Professor Osborne would require him to argue for the opposing view. Or he might express a view and ask the student to argue against it. Then there would follow evaluation of the diverse points of view. This battering give-and-take took well-prepared students to stand up to it and appreciate the mental gymnastics. It was a good firm basis for lawyerlike assuming and lawyerlike procedures, and he had a very high regard and reputation among practicing lawyers who had been subjected to his courses. He was not without his sense of humor, however. On a dreamy summer afternoon we were gathered in one of his classes which happened to be on the subject of quasi-contracts. He

went down the line on the question of unjust enrichment. “If John invited Mary out to dinner for a period of time after which they became engaged following which she broke the engagement, could John go ahead and sue her for the value of the entertainment he had afforded, Mr. Jones?” Well, Mr. Jones would answer, “No, this was not intended in any other way than a pure gift and, therefore, he could not recover.” “Well, John gives Mary an engagement ring and when the engagement is over, can he get the ring back from Mary? It was a good ring, diamond all of half a carat.” And the same answer came again. “Well, Mr. Smith, suppose John invites Mary to his home and thereupon gives her a series of dinners in the home and the engagement is broken, can he thereafter recover from that?” “No, he cannot.” In the back row was Brown, sitting very quietly and half sleeping; “Mr. Brown,” the name came out, and the man next to him hit him with his elbow to wake him up. “Mr. Brown, suppose Mary was invited to his home and while there for a period of some months she got free room and board. Could he, thereafter, on breaking the engagement, sue her and recover?” Mr. Brown stuttered and stuttered and finally said “No, he could not.” “Well, why is that?” said Professor Osborne. “Well, because he would have been amply repaid.” With that, there was laughter in the classroom and Professor Osborne slammed his book shut and left the room for the day.

Professor Cathcart, in addition to having taught us in Torts, taught Common Law Pleading, and it was certainly a very worthwhile and important course in our later law practice. We were forced to analyze and determine what the elements were that were actionable in any given legal situation. He was very matter-of-fact but had a very dry sense of humor and was on top of a situation all the time. One day in our Torts class we had the case where a pregnant woman aboard a train was injured when the train collided and the question came up as to the railroad’s responsibility. Professor Cathcart called upon the lone young lady in the class to recite the facts of the case. And when she got down to the word “pregnant,” that sort of thing not being generally discussed in those days, she stuttered around it, whereupon he drew himself up and said, “Miss Cox, the word is ‘pregnant.’ Do not shrink from it. It refers to a definite human situation you will meet many times, a condition desired by many women, acquired by a great many, and sometimes not desired by a few.”

Professor Joseph Bingham, known generally as "Smokey Joe," seemed to have less student contact than other members of the faculty, who, like George Osborne, would pause on the law steps to smoke a cigarette between classes and talk back and forth with members of the law classes. Bingham was one of the early "realists," so called, in the law. The law was what the court said it was; the law was what the courts actually did in the given controversies. He was actually reported to be a brain whose major activity was playing chess at the faculty club. He lived in Palo Alto and walked to and fro the mile or mile-and-a-half to his home every day, at a brisk pace, bare-headed, and thereafter, was holed in his office at the law school, and was rarely seen by any except the students in his immediate classes. He was very informal, but very pointed in his comments. One day, after I had made an explanation, I think perhaps on the cy-près doctrine, he said, "Mr. David, that is just as clear as mud." I retorted, "We can only reflect what we get as mirrors from the faculty." Now this is very cheeky, of course, and after class I went around and apologized for my statement. He dismissed it curtly, with a wave of his hand, saying "harmless persiflage, harmless persiflage." I believe I got a "C" in the course. I was very much upset because I thought I had done very much better in the examination. I went back to see him, and was greeted cordially, and said, "Mr. Bingham, I'm very disappointed in the mark I got in this course." He said, "Mr. David, so was I. Good day." And that was all there was to that. Some three or four years later, when I was deputy city attorney of Palo Alto, Joe Bingham was suddenly found to have built an addition to his house into the forbidden setback line area on his particular street. He came up the steps in our office in the Thoits Building and said he was very sorry that this had occurred and wondered what could be done about it. We said, of course, that he would have to apply for a variance and see whether or not the city fathers would authorize it by way of a variance. He apologized again as he was leaving and as he left, I said, "Well, think nothing of it, it was only harmless persiflage."

Professor William Owens, of course, taught Practice. His "California Form Book" [*Forms and Suggestions for California Practice* (1924)], in which forms were set out in full for the benefit of lawyers and their stenographers, became a bible for us in class and also for us after we began

our practice. He was very approachable, had a nice smile and was a very pleasant friend to all of us.

Clark B. Whittier taught Evidence and had at one time, I believe, taught Contracts. I was very interested in his course, and one day, as I was coming in from Palo Alto with my old flivver, I met him walking on Palm Drive, and I picked him up and gave him a ride. We entered into conversation and I happened to say that I'd been pondering over the doctrines of consideration and particularly the old doctrines in regard to livery of seisin. It seemed to me that ceremonies such as livery of seisin were purely evidentiary and designed to impress unlettered people that the parties had been in earnest when they entered into their agreements. He immediately was greatly pleased. He said that was exactly so, and that if we understood that, we understood a lot of the mysteries of the early doctrines of consideration and livery of seisin, like exchange of rings before witnesses to a marriage ceremony. I took a seminar course from him in the Administration of Justice and do not remember much about the course except that one of my classmates was J.A.C. Grant, who later became a professor of political science at the University of California at Los Angeles. My research and papers in this course related to quiet title under sections 738 and 749 of the California Code of Civil Procedure. In my conversations with him, I remember one occasion I was wondering about the progress of young lawyers in the law after they got out of the law school, and he said, "Let me assure you, Mr. David, that within five years after you get out, you'll be making $5,000 a year." That seemed like a princely sum at that particular time. And as it was, he was very nearly right.

The average law school class at this time was about thirty-five students, with a trifle greater number in the first year. In the entire law school during this period, there were only five women whose names I recall. There was Ruth McBride Powers, Frances Sheldon Bower, Carolyn Loeb Boasberg, Pauline May Hoffman Herd, and Hope Cox Lefferts. Carolyn Loeb Boasberg got her J.D. degree in 1926. The others were of different classes.

The Stanford Union Dining Hall at this time was manned by student waiters or hashers including a great number of law students. They were a rather remarkable group. Among those who served as hashers were Calvin Conron, later a leader of the bar in Bakersfield, Clarence J. Tauzer (Red Tauzer) of Santa Rosa and Charles E. Beardsley of Los Angeles, who later

became president of the State Bar. Then, Leonard Avilla, Anthony Brazil, Norman Main, William Bradshaw and I all became judges of the superior court and all served for many years. Norman Main and Bill Bradshaw were both judges in the superior court in Kern County. Anthony Brazil was in Monterey County. Leonard Avilla was in Santa Clara County before his untimely death. I served on many court assignments in Los Angeles County and on appellate court assignments, and Percy C. Heckendorf, who had some administrative experience with the State of California, later became a judge of the superior court in Santa Barbara County.

In the Juris Doctor class of 1926 there was Milo E. Rowell, later to become a leader of the bar in Fresno, and who would have a distinguished career in military government in World War II when he served in Japan and helped to draft the new Japanese constitution. Another in this class was Claude R. Minard, who practiced in Fresno and served in the Legislature. Claude became secretary of the State Bar and served for many years up to the beginning of World War II, when he went into military government and again had a distinguished career, coming back to represent railroad interests before the legislature until his final retirement. He was also a member of the Committee on the History of Law in California. Gilford Rowland was the youngest president ever elected to head the State Bar. He was in law school at this time and received his J.D. the following year.

The Stanford campus at this time was divided into what were known as the Hall men and the Row men — as between those that were residents of the dormitories and those that were members of the social fraternities. Encino Hall was the largest hall in 1921 and 1922, and the aristocracy of Encino Hall was found in three eating clubs established nearby, chief of which were El Campo and El Taro and Breakers. Daniel W. Evans was a president of the El Campo Club, and I and Claude Minard became members of it. We, together with Dan Evans and Wardwell Evans, his brother, formed the legal contingent of this club. Board at that time was one dollar a day, based upon a rather simple but substantial diet. The club employed a cook and a manager who saw to all of the arrangements for the maintenance of the little building and also for the supply of meals. In the summertime, when most of the members of the club had dispersed, the manager was sometimes permitted to receive summer boarders, and this was done at El Campo. Late in the fall of 1926, the club was presented with a fuel bill by

Mr. Worrell of Palo Alto which had not been paid by the summer boarders and their summer manager. The club demurred at paying this bill and Mr. Worrell sued in the justice court in Palo Alto. Minard and David were employed, though not attorneys, to represent the club before the justice court as they were then permitted to do under the law. They worked together and produced a magnificent brief on the law of unincorporated associations, showing that the liability could not be asserted against any of the members of the club that were not present during the summer session. This was presented before Isabel Charles, who was then justice of the peace, and in due time and no doubt duly impressed by the voluminous briefs, she gave judgment for the club. The club thus being vindicated, proceeded to pay Mr. Worrell his bill and as a fee, Claude Minard and I each were given one month free board. This probably was our first legal fee.

Moving on into 1926, I and Minard decided that we might like to practice law together. Minard was suggesting that Fresno was a proper place to begin, that being his home town, and we having a friend also in Gilbert Jertberg, who was ahead of us in law school and who had gone down there and had started a successful practice.

During the last year in law school, I and Minard studied together, looking forward to the anticipated bar examination in June, 1926. A method of study was first of all to take a copy of Wigmore's "Pocket Code of Evidence" [*Pocket Code of the Rules of Evidence in Trials at Law* (1910)], which was annotated to the California codes in respect to evidence and also to Clark Whittier's lectures on evidence. Then, the same thing was done in regard to the Civil Code and the Code of Civil Procedure, which were cross annotated to the class notes from the courses given in practice and also in pleading. We proceeded to study the codes, section by section. At this time it was customary for law students to go to quiz courses where a few bright people reviewed particularly the late cases in the advance sheets with the idea that this would anticipate questions which might be given in the bar examination. Indeed, by making a review of the California law, particularly the late cases, the good review courses offered a considerable chance of success. Neither of us had the money to put into any review course, and so we conducted our own.

In regular law school study, pre-legal, as it were, I had accumulated a considerable background in courses in history — English Constitutional

History, American History with Edgar E. Robinson, who was an exceedingly wonderful teacher, Reginald Trotter in English History, Carl F. Brand, later teaching English History. I had also taken Russian History under Professor Frank Golder. Russian History was a new course and was a matter of curiosity at that time, since we had had our first taste of Russia following World War I and of all the propaganda put out regarding the Communist state.

About this time, in my junior year at least, Captain Edward Latimer Beach, who had been Commandant at the Mare Island Navy Yard and whom I knew, came to the Stanford faculty to teach military and naval history. Therein lies a story, of course. Captain Edward Latimer Beach and Curtis D. Wilbur were both classmates at Annapolis about 1888. Curtis D. Wilbur, as one will recall, had become the chief justice of California after being a judge of the superior court in Los Angeles County. Also he was a brother of Ray Lyman Wilbur, the president of Stanford. I renewed my old acquaintance with Captain Beach, and I took both of his courses in military and naval history. Before I had finished my law course, Captain Beach had retired from the faculty and had been appointed city clerk of the City of Palo Alto and held forth in an office in the City Hall on Ramona Street with Mrs. Kidd, his secretary and assistant. The City Council at that time, of a membership of fifteen, was largely composed of University professors and University oriented people.

Dr. Frank Golder, who taught Russian History, being a resident of the Stanford Union, became a personal friend, and after taking his course, or enduring it, he employed me to become his reader in Russian History. That was a very interesting job and, as it turned out in future years, a very rewarding one. The reader had the task of correcting the theme books and exercises and also the examinations in the first instance for the professor. Whereas each student was required to read one book on a recommended list of readings, there being ten on the list, the reader had to read all ten, so I got well acquainted with *War and Peace* and *Crime and Punishment* and a lot of the famous books in Russian history and literature. That provided some little stipend as I went ahead to finish my law course.

Minard and I went to San Francisco together to take the bar examination and registered at the Clift Hotel. We studied hard and even carried with us copies of the latest advance sheets just in case we might find something

there that might light our way. We finished our first day of written examinations and were very tired and sleepy. Claude rolled over and was prepared to go to sleep and I was reading advance sheets, and all of a sudden I shook him and said, "Wake up. Here are two we should pay attention to." Here were two late cases in the advance sheets, one of which I still recall. It happened to be a case involving the doctrine of *Rylands v. Fletcher* [House of Lords 1 (1868)] where a swimming tank had collapsed in a building in Long Beach during or after the earthquake. The California doctrine was established that *Rylands v. Fletcher* as such did not apply. The other case was a community property question that I do not recall. But sure enough, the very next morning in the examination, a question was asked on each of those cases, and we were very happy that we had been forewarned, even at the last minute. We finished our written examinations for the second day, and then we were conducted on the third day to the oral examination. The oral examination was conducted by members of the Board of Bar Examiners who received students in groups of ten or fifteen and proceeded to question them much as the justices of the appellate courts had done before for candidates who had been presented for admission upon motion. Our particular examiner was Mr. George F. McNoble of Stockton. He had the reputation of being a classicist, and he believed that a lawyer should be an educated and accomplished fellow as well as a legal technician. He came around the class asking a broad scope of questions. He reached me and his question was, "Mr. David, can you state the doctrine of *McCullouqh v. Maryland*?" Well, if there was one case that I had learned under Professor Arthur Martin Cathcart, it was *McCullouqh v. Maryland*, fortunately, I believe I did very creditably. Then he said, "Mr. David, I suppose you studied a foreign language — Latin, perhaps?" I said, "No, sir, I did not study Latin, but I studied Spanish." "Well," he said, "will you please say for me in Spanish, 'Will you kindly step out and get me a glass of water?'" The examination over, Claude and I celebrated. My sweetheart, Louise Mellin, came down from Vallejo and Claude's apple-of-the eye, Dolly Paulson, came up from Palo Alto, and we joined forces and danced and dined that night in the Redwood Room, I believe it was, at the Clift Hotel.

Then came a period of waiting for the results of the bar examination. I spent some time in San Francisco with Dan Evans of the office of Sawyer and Cluff. A little earlier, I had attended a trial in the federal court before the Honorable John Partridge. It was an admiralty insurance case.

The vessel had burned at the dock in one of the Northern Coast cities. The question at issue was whether or not the heat had been such as to render its engines unsalvageable although they apparently were intact after the vessel was scuttled at the dock. In this particular case, there was a good deal of testimony of experts about the condition of the boat and a great deal of speculation about the degrees of heat to which the engines had been subjected. It had been conceded that if that heat had exceeded a certain figure, the engines thereafter would be unsafe and unserviceable. The experts had been on the stand for a couple of days when I happened to look at a picture of the engine. I had become acquainted with marine engines in a way when I worked on Mare Island Navy Yard and particularly the boat shop. I knew some of the parts of the engine, such as what we would call in an automobile the connecting rod that came down to the crankshaft, and that those particular shafts had to be oiled. And they were oiled by means of an oil box on the side of the engine, the oil being conducted by a tube of copper down to the particular bearings. After the debate had gone on for a couple of days about the degree of heat to which the engine had been subjected, I called Mr. Sawyer's attention to the fact that in the picture of the engines, these copper tubes were still intact and indicated that from what I knew of the testimony, if there had been a temperature as great as that which had been claimed, the copper tubes would have melted, and they did not. "Out of the mouth of babes," he yelled. "Are you admitted to the bar, Davy? If you are, I will hire you right now." So I admitted I was not, but the marine surveyors who were working on the case verified the fact that I had pointed this out, and Mr. Sawyer sat down and wrote me a check for, I believe, fifty dollars, which was the first legal fee I ever got for any expert testimony.

While waiting for the results of the bar examination, I lived with Dan Evans in Palo Alto during the absence of Ellowene Evans, his wife, in the Southland visiting her relatives. It was while I was living with him, cooking the breakfast and relaxing, that the postcard came through, announcing that I had passed the bar examination. As I recall, this was a birthday present, received on or about August 25, 1926, my twenty-fifty birthday.

We were sworn in by the District Court of Appeal, the Honorable Presiding Justice [John Frederick] Tyler and his division. Following that, we went almost en masse to the federal court where we were admitted to the Federal District Court of the Northern District of California, and then

proceeded on to the Circuit Court of Appeal and were admitted then to it. When it was over, I went back to Palo Alto, packed up my trunk locker and got ready to go to Fresno, where Claude Minard had preceded me, hoping to find a way to start practice there and some way to eek out the small amount of change that still remained in my pocket. As I was walking along the main street in Palo Alto, I came face to face with Captain Edward Latimer Beach. Captain Beach exclaimed when he saw me: "Hello, Leon, I was just looking for you. You're just the man I wanted to see." He said, "You're to be the next city attorney of Palo Alto." I said, "What?" He said, "Well, come on to the office and I will explain." Well, I went on over to the office and he told me that the city attorney, Norman E. Malcolm, had served the City for many years, that the City Council was desirous of retiring him, and that before they did that, they wanted to have some understudy come in and learn the ropes in regard to city business for a year, and that he was recommending me for that particular opportunity. At that time, of course, my old professor, A.M. Cathcart was a member of the council; so were J. Pearce Mitchell, Edwin A. Cottrell of the political science department, with whom I had worked while at the University, and others of the fifteen members.

Norman E. Malcolm was a greying man with mustaches and watery eyes who looked a great deal older than he probably was. He had been admitted to the bar at about the turn of the century, had been in the California State Legislature, had been one who helped get a nomination through for United States Senator [George C.] Perkins, and as a reward for it, was made a United States commissioner for Alaska. He went to Alaska during the Klondike rush and was United States commissioner there, where he had an appetite to learn the law but also an appetite for liquor, which proved his periodic undoing. He had been a schoolteacher and at one time was offered the job of becoming a superintendent of schools for Hawaii when Hawaii was made a territory, but had gone to Alaska instead. He had married one of his pupils, Mrs. Vernelia D. Malcolm, and had been practicing in Palo Alto for some twenty years, and had been city attorney for some time. During that period, he had been the president of the League of California Municipalities and had been active in its proceedings. He was a good man to be a preceptor in municipal corporation law as I found out over the next five years. The office he occupied first was in the Bank

of America building in which also was the office of Egerton D. Lakin, and one of my late classmates, Lewis Hayd Leve, from Stanford Law School. The secretary was a Miss Laura Vaughn, who related that she had been the secretary for Mr. Gary of steel fame in earlier days. She sat in the outer office in a rocking chair and rocked and knitted, which should have been a sign to me that the promise also held out by Mr. Malcolm that there would be a lucrative private practice which we might share in association was not quite the fact.

The arrangement was made and I entered his office with his full knowledge and consent to what the city had in mind. He was kindly and a good teacher in matters involving the city, whereas I picked up a certain number of cases of the sort that lawyers ordinarily get when they first start, justice court cases, automobile claims and the like. He had only one big case in the office, which was the Estate of Morgan [200 Cal. 400 (1927)]. Ynez Morgan had been a bank clerk in the bank below where our offices wore. She had died, I believe, of consumption. Upon her desk by the side of her bed was written what she had set forth by way of a will. It began, "I, Ynez Morgan, do hereby . . . ," and so forth and so on, vesting her estate in her nieces Alma and Renette Prior. It bore no signature at the bottom, but otherwise it was entirely written, dated and signed in the handwriting of the testator. She had been abandoned by her father in her infancy, and now that some fourteen to fifteen thousand dollars was in the offing, he suddenly appeared out of the woodwork and laid claim to the patrimony on the ground that this was not a valid holographic will. Norman Malcolm appeared on behalf of the executor, and Lakin appeared on behalf of the two wards. Malcolm permitted me to write the brief in support of this will, and in doing that, I researched the law for holographic wills through all the civil law countries, and we published a book of some 180 or 190 pages, where the law from the Philippines and everywhere else was gathered in regard to this kind of testamentary disposition. So we filed a brief in the Supreme Court and, likewise, Lakin's office (by Lewis Hayd Leve) wrote a brief, a very short compass, simply saying that this will comported with the tests laid down by *Estate of Manchester* [174 Cal. 417 (1917)] which had preceded it, and that it sufficiently appeared from its form, and so forth, that it was intended to be the last will and testament. Whichever was persuasive, or if both were persuasive, the fact is that the will was sustained, and out of

the situation, the attorneys were to receive roughly $3,000. Norman Malcolm shared $1,000 with me; another share was for him, and another cut was made for the Leve and Lakin firm. The guardian of Alma and Renette Prior was not quite happy about this, so there was a hearing before Judge Brown in the superior court in San Jose, and he convinced him that this was reasonable under the circumstances. With this $1,000 in hand, I was able then to proceed and get married and set up housekeeping with my wife, Louise Mellin David.

In the first year of my association, I was not formally recognized as an attorney for the City of Palo Alto as a deputy or otherwise, but I was employed to codify the ordinances of the City of Palo Alto. This I did in an editorial way, collating and codifying them and also correlating them with the provisions of the charter upon which they were based or to which they related. This was published, and I believe for that whole effort I got something like the banner sum of $300. For this first year, 1926 down to the *Estate of Morgan*, when it came through in 1927, my brother Edward had supplied me from time to time with the funds necessary to keep going. At the end of the first year of practice, I found that the net of the whole business had cost me $75. On July 1, 1927, I was made a deputy city attorney of Palo Alto.

Q: Leon, I think it might be of interest to tell me the particular date on which you got married, and if anything else besides your marriage was of importance that day.

DAVID: Well, that would be May 22, 1927. We were married in the Stanford Church. Louise's vocal teacher came down from San Francisco to sing the solos, one of which is still in mind, "On Wings of Song." Warren D. Allen, the university organist, played it as his wedding present. As we came into the city, Sergeant Curley Greeb of the Police Department of the City of Palo Alto came ahead of us with his motorcycle and the sirens blaring. We had to take up residence then, after we made a brief honeymoon trip in a Chrysler I rented for the sum of $100 for the week. We traveled to my grandmother's and grandfather's in Lodi, and went down to Yosemite, then went on over to Carmel. And when I came back and paid the $100 for the Chrysler rent, the dealer was a little perturbed because he said "$500 more will give you the Chrysler," and I loved it — it made all of 40 miles an

hour on the road. But I didn't have the $500. But while we were being married, Lindbergh was flying the Atlantic and his landing in Paris coincided, more or less, with our wedding day. So we've always remembered that.

Q: We haven't talked of your Palo Alto experiences, contributing to your reputation and advancement. Did you ever formally become city attorney, or why not?

DAVID: It was generally understood that after a year of apprenticeship, so to speak, provision would be made for Mr. Malcolm in retirement, and I would be appointed. Appointments were made at the first city council meeting in July of each year. But on July 2, 1928, no pension plan had been enacted, so old friends of Mr. Malcolm on the council were implored not to take action without one, and his termagant wife campaigned against the young man who was "going to take the bread out of our mouths." From the start, Mr. Malcolm knew that I was to replace him, and never raised one word against me in our association, designed from the start to lead to my appointment. So on July 2, 1928, he was reappointed; but my salary was increased and his reduced by $25 a month. The situation was the same on July 1, 1929. He was reappointed, my salary as deputy city attorney was raised, and his was reduced as before.

By 1930, it was no secret that the bulk of the work of the office had fallen on me, as well as the trial of a condemnation suit and defense of the city officers in *Black v. Southern Pacific Railway*, a personal injury suit against city officials based upon an automobile collision with a wigwag signal standard at the Embarcadero [Road] crossing. Mr. Malcolm refused to have any part in this litigation, the plaintiff being a prominent clubwoman and friend of his wife. Approaching July, 1930, there were caucuses of council members considering the city attorney appointment. They faced again the absence of any retirement plan; some felt that it would be set up if the changeover occurred. I had no part in any discussions. A majority, eight votes, was required for the appointment of city officials. Returning from vacation to attend the council meeting, one councilman died of a heart attack and another was hospitalized. Only thirteen were present, and thirty-one ballots taken, seven to six, six to seven, without electing either Mr. Malcolm or [me; so he held over] pending the appointment of a successor.

By late spring of 1931, membership on the council had changed. There was no more certainty than before that the council would face up to the situation on July 1st. Personal attacks launched against me unsettled my wife. The Depression was under way, and I was embedded in the community. I was the president of the Palo Alto Kiwanis Club; I had been initiated in Palo Alto Lodge #346 of the Masons, and was at the lowest step of advancement in its hierarchy; I was an elder in the Palo Alto Presbyterian Church, and had been its Sunday School superintendent; I belonged to the local Parlor of the Native Sons of the Golden West; a charter member of the new Stanford Golf Club; and an interested and active member in the California Taxpayers Association.

There was a banner headline in the *Palo Alto Times* when it announced that on July 1, 1931, I would join the faculty of the Law School of the University of Southern California, as assistant professor and director of the legal aid clinic.

Q: You had already gained some prominence in municipal law practice throughout the state, had you not?

DAVID: Yes, I had, in several respects. As of 1930, I was chairman of the city attorneys section of the League of California Municipalities. The league was organized into functional sections, city councilmen, city planning, public health, etc., and the city attorneys throughout the state were in the city attorneys section. The league's board of directors were past chairmen of the sections. Thus, in 1931, I was a member of the board. In the 1931 meeting at Santa Cruz, the league was reorganized by the directors as the League of California Cities. At this meeting, the young city attorney of the City of Montebello, Louis Burke, was appointed legal counsel for the new league. (My friendship with him continued through all the years until his death after retirement as an associate justice of the California Supreme Court. In retirement in Marin County, he continued oil painting of scenes of the environment. I had introduced him to this hobby through the Business Men's Art Institute, where also Judge Aubrey Irwin and I were painting.)

Attorneys from all over the state participated in the city attorneys section. At that time, there were two major legal concerns: (1) The increase in claims brought against cities and their officers for personal injuries, arising

from alleged defects in streets and sidewalks. Suits were brought long after the event, when witnesses had dispersed, and where the physical condition had changed, and the lapse of time made investigation and defense difficult. (2) In the apparent prosperity before the panic of 1929, cities and counties, large and small, undertook ambitious local improvement projects, principally street opening, widening and improvement. Special assessments for the cost of such work were made against adjacent properties, at least theoretically benefited. It was settled that there was no general municipal liability for delinquencies where bonds were secured by direct liens against specific properties. But under the Improvement Bond Act of 1915, bonds were issued secured by collective assessments in a district, and two methods of meeting delinquencies were provided. Suits could be brought to foreclose delinquencies. This had been done by the City of Burbank, represented by James H. Mitchell, and the Brown-Crummer Company was very dissatisfied with the sum produced, and suit against the city was pending in federal court. The bond act also provided, in effect, that the delinquencies could be foreclosed by tax sale procedures, and that cities were authorized to buy in the delinquent properties, and to levy a ten-cent tax to provide the funds. The fight was on. Did cities have to levy the tax and buy in the delinquent properties? If so, how many times? Companies and banks holding 1915 bonds were insisting there was this quasi-general liability. The city attorneys assembled considered that cities had the option to choose. They also knew from experience that a test case would soon be brought, and that it would be brought against some small town where the amount involved would be small, and the town's resources too small to resist adequately.

Q: Did this happen, and did you get into the controversy?

DAVID: It certainly did. The target was the little city of Lakeport in Lake County. A short section of road by the land of one Blakemore was improved, and the payment due became delinquent. The American Company brought suit. Lakeport attorney [George D.] Hazen called for help. James H. Mitchell, Burbank city attorney, and I responded.

Q: What experience did you have in street proceeding matters?

DAVID: I began a study of street improvement laws when the City of Mountain View requested Mr. Malcolm and me to review an entire street

proceeding, to determine compliance with the statutory requirements. I read all of the decisions relating to the requirements, and also those which covered the constitutional issues and construed antecedent improvement statutes, and did all the checking. In Palo Alto, I utilized the Improvement Act devised by Everett Mattoon, county counsel of Los Angeles County, for the widening of California Avenue, and the levy of assessment for the work. In the work, we did house-moving and relocation in connection with the eminent domain assessment of damages. I went to Los Angeles to check with Mr. Mattoon concerning this operation. He was aghast at the work included in the project. The work was completed and there was never any challenge.

Q: What happened in the litigation?

DAVID: We tried the case in Santa Rosa, and won. There was the appeal to the Supreme Court, two hearings in which I argued the case, supported by amici briefs in which city attorneys throughout the state appeared. Ultimately, it was held that the remedies of foreclosure and purchase on tax sale were cumulative, not separate remedies; and that the cities were obligated in default of other purchasers to buy in the delinquent properties to the extent of funds made available by the ten-cent tax levies.

There were other suits involving the issue of general liability for delinquencies. Had certain cities followed the law in levy and collection of taxes, and sales for delinquencies? Liability might follow failure to do so. I went afield and checked procedures. In King City, I found that for years the tax procedure was that which prevailed when it became a city. For fifty years, no one questioned it, until there were street bond delinquencies and outsiders came in. In Monterey, City Manager [R.M.] Dorton accepted payments in any sum, toward payment of taxes. Only seasonally did fisherfolk have any money. Payments went into a trust account. When amounts credited to X were sufficient, they were transferred to meet his tax liability. These examples indicate that there was latent home rule, statute or no statute, so long as no one questioned it.

Q: Did you carry on street bond litigation after you left Palo Alto? After you joined the law school faculty at USC?

DAVID: It was understood when I accepted appointment there that I might conclude the bond fund litigation. Though over thirty cities cheered us on

in the several appellate cases, they were not very remunerative when expenses were considered.

In the summer of 1934, I was the speaker at one of the spasmodic meetings of the nebulous City Attorneys Association of Los Angeles County. The topic was the 1915 Bond Act litigation, flavored a bit with tort liability considerations. Los Angeles City Attorney Ray L. Chesebro attended. He had been police judge, and was drafted for his office by reform-minded businessmen in the municipal election of the year before. This was my first, and eventually momentous, meeting with him.

Q: What about the law school appointment and your activities from 1931 to 1934?

DAVID: I had set my sights on the city attorneyship in Palo Alto. With my time through five years primarily devoted to city government, I had built up little private practice, shared with Mr. Malcolm, and he had almost none shared with me in our association. For the summer of 1931, my close friend, Professor Cathcart, was acting dean of the Stanford Law School. I asked him if any information about possible placements had come to him. He said that Dean William Green Hale of the USC law school was searching for a lawyer to manage the legal aid clinic, and be responsible for other courses. "If you are interested, I will find out if he would care to interview you." "What is a legal aid clinic?" I asked: "Dean Justin Miller, now at Duke University, by analogy perhaps to medical school clinical instruction, set up a legal clinic. Third year students, under supervision of the staff and volunteer attorneys, interview indigent clients, record the pertinent information, and decide what action may be taken or advice given. This is checked by the supervising attorney, and advice given accordingly. If court action is involved, the student prepares the necessary papers, and assists a volunteer attorney when he goes to court. The course, I understand, is mandatory for all third year students. Some other teaching may be involved."

I was intrigued at once. I had a glimpse of university instruction as reader in Dr. Frank Golder's Russian History course. I had been brash enough to earn a little money by conducting a paid seminar in Agency for first year law students. When the wolf was at the door, banker friends in Palo Alto induced me to conduct American Institute of Banking classes for banking personnel at San Jose. Starting first with a course in negotiable

instruments, I was hired to teach economics and commercial law; and thanks to what I had learned by osmosis from my banker father, standard banking also.

In Los Angeles, I was interviewed by the dean, by members of the Legal Aid Foundation (which raised the money to operate the clinic while the University provided the facilities), and by Dr. Rufus B. von KleinSmid, president of the University. The new director would succeed Professor John S. Bradway, who would follow Dean Justin Miller, to set up a clinic at Duke University Law School. Bradway had worked up a manual of procedures. I had sat up all night reading the manual, coming down to Los Angeles on the Lark.

I was appointed director and assistant professor of law for $4,000 a year, one month vacation. Law review articles by Bradway and myself have described the legal clinic work, I need not repeat it here. The legal aid clinic was ahead of its time, so far as law schools have been concerned; extern training now is the vogue.

The demand for legal aid services grew and outran the ability of the law school to provide the facilities. The demand on student time perhaps impaired their other studies. Concededly, there was not great variety in the subject matter. But over fifty years, lawyers who had the experience under my directorship assigned high value to the instruction. From the graduates in that era have come many judges and celebrities, including U.S. Senator Tom Kuchel.

Q: Besides managing this law office for poor people, did you teach other courses?

DAVID: I taught at various times Municipal Corporations, Damages, and Research and Briefing. The latter was a basic course: how to find law in law books, how to analyze cases to separate ratio decidendi from discussion and dicta, how to prepare an appellate brief.

Q: Did much of your legal writing originate in this period?

DAVID: Yes. With cooperation of Professor Robert Kingsley, faculty adviser to the *Southern California Law Review*, my series of articles on "Municipal Liability for Tortious Acts and Omissions" was published; it was later published in book form by Sterling Press [1936]. It was cyclopedic rather than an analytical work, and had wide circulation. Articles on specific topics, or

in reference to specific officials, appeared in *Western City* magazine. Then came the various published articles relating to the legal aid clinic. The *Review* published a number of book reviews I wrote, including a review of Professor John Pfiffner's new work on public administration. This not only attracted his attention, but that also of Emery Olson, dean of the new School of [Citizenship and] Public Administration. The dean had been an old friend of mine in Palo Alto days, and had organized institutes attended by public officials, from which the School of Public Administration was established.

Out of this arose a colloquy about the role of lawyers in government. Were they merely hired technicians or active policymakers in governmental positions? Until his death, my friend John and I debated this. Contacts with him and the dean led to my enrollment and receipt of an M.S. in Public Administration in 1935; and ultimately Doctor of Public Administration in 1957. The title of my lengthy thesis was, "The Role of the Lawyer in Public Administration." For many years, while assistant city attorney and as a judge, I was a lecturer in the Civic Center division on public administration topics, including taxation and administrative law.

Q: Apparently, you were quite satisfied to be on the USC law school faculty, and with the management of the legal aid clinic. Why did you choose to become an assistant city attorney? How did your appointment come about?

DAVID: 1934 was a Depression year. A salary of $6,000 a year looked better than $4,000, already subjected to a "voluntary donation" to the University of a ten-percent reduction. In August 1934, I delivered a paper at the Municipal Law Section of the American Bar Association at its annual meeting in Milwaukee. The subject was tort liability. In the middle of the session, there was a telegram from Ray Chesebro, city attorney: "Please see me immediately on your return." I met Ray in person when I addressed the city attorneys group in Los Angeles County. Some time before, the City Council requested USC and UCLA (unpaid) to survey the organization of the Los Angeles city government, under the charter, and recommend changes. Professor Leon T. David was one of the three on this committee. To place the City Attorney's Office under civil service was one of the recommendations.

Ray Chesebro, in the election the year before, defeated incumbent Pete Werner for the office, aided by rumors of Werner's misfeasance, which proven,

sent him to jail. When Chesebro took over the office, he made a clean sweep of perhaps seventy-five of Werner's appointees. Some three or four top echelon attorneys, of undoubted integrity who had served under prior city attorneys were retained. Chesebro said: "I couldn't have cleaned house if the office was under civil service; it was corrupt also." But having cleaned house, he had been able to fill vacancies with many able attorneys willing to serve since the Depression left them struggling without clients. They were now struggling to become competent in municipal corporation law.

One of my legal aid students, Leroy Garrett, called his attention to my articles in the *Southern California Law Review*. Upon my return from the convention, I was curious to know what Mr. Chesebro wanted, and called at his office. I thought perhaps he wanted to talk about the organization survey. Without preliminaries, he asked if I would accept an appointment as assistant city attorney, at $500 a month. This took my breath away. As I had signed a contract with the University running until July, 1935, and though I was inclined to accept, the University would have to release me, and that was doubtful, as the fall term was beginning. "I will hold the offer open," he said, "and I hope you can accept soon."

Q: Just by way of background, although it is not part of legal history, I wish that you would give me a brief summary of your military career, especially with reference to World War II.

DAVID: Before sketching my military career generally — it was not wholly disassociated from law — in the Morale Branch of the Adjutant General's Office, I was assigned the revision of the Army's manual of courts martial; and to make a study of disparity of sentences for the same offense in different commands. Likewise, where the offenses were identical or parallel to those handled in civil courts, the study was to study disparities.

Only the results in general courts martial were on file in the War Department. Reports of special and summary courts martial in corps areas and major commands were requested to be sent in. I started to work with the material at hand. There were conferences with officers in the Judge Advocate General's department, with Mr. [James V.] Bennett, director in charge of federal prisons. But by October, there was general belief that conflict was imminent. While awaiting the reports, I was pulled over into the planning section of the Branch, and after December 7th, 1941, into other assignments.

Within two weeks after my arrival at AFHQ [Allied Force Headquarters] in Algiers, the judge advocate general, Adam Richmond, phoned me, requesting me to serve on a general courts martial. Due to my recent arrival I was excused. If I had ever paraded my legal background, I would have ended up in his department. In a group departing for the U.S. after the war, he asked what I would be doing. I told him, and he exploded. "In all our contacts, you never told me . . . !"

As you say, my military career is not "legal history"; it had its effect on my legal career, and I will try to summarize it, from 1927 to 1961, when I was retired in my rank as colonel, particularly from 1941 to 1946.

I was just below the age of some of those of my classmates in high school who went off on the draft under the 363d Infantry, and so forth, from Vallejo in 1917. I went to work on Mare Island Navy Yard as a boy at $1.58 a day to do my war effort at that time. However, when my comrades came back, they told me what a terrible experience it had been, that some of them had served under the so-called "ninety-day wonders"' who didn't really know what to do, and therefore, they swore if another war came, they wanted officers to know what side was up. At that particular time, I asked for an appointment to Annapolis.

Congressman [Charles F.] Curry was the chairman of the House Naval Affairs Committee, but he said he had so many applications at that time he wasn't going to grant any of them. But in preparation for any appointment, I had taken Mr. Wells's *Algebra*, which I mentioned was my high school nemesis, and I worked every problem in the doggoned book. It had answers in the back, so I knew my algebra and I thought that would get me by. But, no, that approach to the naval side failed, although at work I got well acquainted with boats. I drove oak pegs in the teak decking of the battleship California before it was launched and helped build the submarine chasers that were built there at Mare Island Navy Yard. So anyway, the other report I got from my friends coming back was that November 11th, after all, was only an armistice. And they were sure that hell would break loose again. And how right they were. We expected things to be better under the League of Nations, and we all became ardent Democrats for Woodrow Wilson. He was quite my hero for some time. And of course, he made the mistake of not asking the advice and consent of the Senate before he went abroad, and you know the story politically from there on.

I thought that if war were renewed, I would be of draft age. I would be an officer who would not be unprepared. Anyway, when I got down to Stanford University, I decided that I would enter the ROTC, which was the field artillery unit. And I began my training with the ROTC. We had some very fine officers who were in that detachment, and even the non-coms who were part of the detachment were World War I veterans, and had been commissioned, in some cases, in the war. So I went through the ROTC. It normally was a four-year course. I took it in three years. I did not make my summer camp after the second year. I was interested after the first two basic years in it, because, among other things, the advanced students got their uniforms, which were nice leather puttees and nice serge suits, and they got $16 a month, which was the equivalent of the commissary costs for board or which we could have taken by boarding out with the detachment at Stanford.

So, in the summer of 1924, the only one I took off from Stanford till I graduated from law school, I went to Fort Lewis and there, after a month's training at Fort Lewis, I was given my commission as second lieutenant Field Artillery. General [Charles T.] Menoher of the Army Command presented us with the commissions. I came back to Vallejo. I remember the first participation I had in my uniform with my gold bars, in October of 1924. There was a Defense Day. By that time I had been assigned to an aerial reconnaissance unit. But I didn't reconnoiter, I marched in the parade that particular day. The Army had a very good system of correspondence instruction, and there were unit instructors in Los Angeles to whom I reported, after I came down there. However, before that, I went to the Presidio of Monterey and had duty with the 76th Field Artillery for training. The training was actual, real training. I was put in as a junior lieutenant in the D Battery. The junior lieutenant had to be the mess officer. He went on out and fired his required problems with the other officers. He rode the horses, and [so] I conducted battery drills, drilled the whole battery out on the parade ground. We learned our horsemanship fairly thoroughly under our instructors at Stanford. Some of the officers of the 76th Field Artillery asked me why didn't I apply for a commission in the regular Army. But I was intent on the law and I didn't do such. I had other periods of service at a later time down there, actual service, and put right in as an officer in a regular outfit and was supposed to do what they were supposed to do. I

early was made the officer of the day of the whole post, and I had to go down and inspect the guard, and I got all the treatment that you would expect. I inspected the guard mount. You were supposed to pick out the likeliest looking soldier who then would be sent up to be the orderly for the commanding officer of the post. So I inspected the guard as officer of the day. And I picked out a fellow who seemed to have the brightest buttons and the shiniest shoes. And afterwards I found out that I had picked out a recruit. They said, "Don't you know what you should do? You should always consult the sergeant who is in the guard detail and knows the men. He can tell you who is the sharpest." I went down the line, inspecting the weapons and doing all of that sort of thing. They also told me at that time that the officer of the day had to inspect the guard between midnight and morning. And on the morning before he was relieved, he had to stand and take reveille. Each unit would report the number present and absent and so forth. So I was gung ho on that. So I decided that I would really do it. I went out around midnight, went out back of the post hospital in Monterey. I came up to the guard on that post and he met me with a raised pistol, and as he did he tripped the little button, which sent the magazine sailing out towards me. I remembered that, and of course I had to report it. And then I found out again that I didn't know what I was supposed to do. The officers of the regular garrison would make their inspection trip just before reveille, and then go right on and take reveille and make it all one deal. And of course, that's what those who were posting the guard at the other end of the place had figured out. Therefore, the trained men who knew all the orders, who could repeat, "My duties are to walk my post in a military manner," and so on, would be on that shift. Well, anyway, I really learned the hard way.

We had a fine artillery instructor in Los Angeles by the name of Colonel Louis Daugherty. We actually got up in a loft and had a little pneumatic gun and would conduct firing practice shooting large ball bearings — gunnery practice. I was originally in the 439th Field Artillery as long as I was in Palo Alto and a Colonel [Arthur L.] Keesling from Santa Rosa — a World War I man — commanded it. I remember some of the names of fellow officers that are not important. But there was one that was, and that was Homer Spence. Homer Spence at that time was secretary to the governor, and later became judge of Alameda County and an associate justice of the Supreme Court of California and was my friend over all the years.

Q: Where were you militarily in 1940?

DAVID: In 1940, I was at that time in the 426th Field Artillery (Res.) in Los Angeles. I was a major and was executive officer of the regiment.

Q: Was your outfit called to active duty in 1940?

DAVID: With the Selective Service Act, most of the men in that outfit were called to active duty, but the Army was a little laggard in calling up the field officers. I was a major at that time, and furthermore, I was an assistant city attorney and was special counsel for the Harbor Department. We were fighting with the federal government over the harbor at Terminal Island. The Navy Department wanted to condemn the whole thing, and brought a suit called "339.6 Acres of Land" to do it. The only trouble was, the engineers for the Army had spent seventy-five million dollars building up the harbor and the City had spent a lot more trying to develop this area as a deep-water terminal, which didn't please the Harbor Department at all. So I was charged with the defense. So in 1940, they gave me an exemption from coming out then since this was a matter in which the U.S. Navy was interested as well as the City.

Q: When were you called to active duty?

DAVID: July 4, 1941. The circumstances were not very good. I went back to Washington in this harbor condemnation case. I had done something nobody had ever done before — outrageous! I actually wrote a history of the Los Angeles Harbor. Every time the federal government had asked anything of the City or got any permit to berth a ship or put sand behind a bulkhead, I had it listed. And furthermore, I illustrated it. I got particular photographs of the development of the whole Los Angeles Harbor. Among others, there was a deed authorized by an act of Congress for the exchange of the lands of the City of Los Angeles with the Army for part of Fort MacArthur. And I had that in there, too. My friend, John Preston, lately associate justice of the [California] Supreme Court, was my opponent on the other side of this case. Right in the middle of it, after I had filed this answer in response, he called me up and said, "Leon, you know you can't estop the federal government." I said, "No, I can't, but how about the Congress of the United States exchanging land down here when we eliminated Dead Man's Island?" Well, about that time, I had a call from the naval intelligence in

the federal building, right across from the City Hall, and I came over to see them. An officer said, "We've had a look at this document you filed in the court. And what do you mean? You've got photographs there of the whole harbor and here off at one corner is a picture of the big gun placement for our 16-inch gun up at Fort MacArthur." I said, "Well, I realize your concern for security. I'm a major, Artillery, ORC [Officers' Reserve Corps], but I wonder why it's taken this long. That picture has been on sale down here at the Fairchild Flying Service for the last three years and that's where I got it." Well, they knew then that I had military connections. Finally, we got a telegram that said the attorney general, Robert Jackson, wanted to have an interview in Washington about this case. So I was sent in June of 1941 to have this interview. We spent a week in the interview with Robert Jackson and his other men. It was determined that the Navy was not only interested in the site because of the possibility that there was oil, but also because they had documented the fact that more than a thousand illegal aliens had come in with the fishing fleet, largely Japanese. And the Japanese were all organized. A magazine or sheet which, as I recall was called the "Jiji Shimpo" [*The Rafu Shimpo / Los Angeles Japanese Daily News* ?] was published, saying that Japanese who had served in the Japanese army were organized into reserve units right in Los Angeles. There were Japanese gardeners running around with little leggings which went up half the leg which were Japanese army leggings, and the Navy men were very much concerned about the whole business. But anyway, I said, "We want to settle this case, but you know . . . ."

Q: I want to interrupt, because I think from a historical standpoint we should mention something. And that is that, in 1941, two who were considered the most liberal politicians in the country, one of them being Earl Warren and the other Franklin Delano Roosevelt, both agreed that the Japanese should be excluded from the Pacific Coast. And ten, twenty, thirty, forty, and fifty years later, we can see the folly of such actions. But I lived through those times and you just mentioned it. And I think it would be interesting if you would elaborate, for just a minute, on perception of the danger as we saw it at that time, whether it was true or not.

DAVID: Well, let me finish this, and I'd be glad to. I've written long letters on the subject because I had other viewpoints to express. Anyway, we had

this conference with Attorney General Jackson. When it was over, Hugh MacDonald, who had been in our City Attorney's Office in Los Angeles, and had been called to duty, was serving over at the Adjutant General's Office. I decided that on Friday when I was to go out on the "Chief" that night back to Los Angeles, that I would go over to see Hugh. I came through the front door of the Munitions Buildings Office and went in. I met Hugh, and Hugh said, "Well, here's Major [K.D.] Pulcipher. He would like to know you." Major Pulcipher stepped up to me and handed me an order that Leon David, now being in Washington, will report to duty immediately, there. And to myself, I said, "dirty pool, dirty pool!" Why? Well, any person in the armed services guilty of prosecuting a claim against the United States can go to Leavenworth for an indefinite period or a $10,000 fine. But worse than that, they ordered me here to duty without the possibility of bringing my family or bringing my goods or anything else for the one-year term that we were supposed to have. So they went clear to the adjutant general, James Ulio, and they rewrote my orders so that I could go back home, report and take the train on July 4, 1941, to come back to Washington. So that's what I did. I stayed up all the night, writing all this report to the Harbor Commission, and when I got home I found that they weren't around. But I had to tell them that I wasn't going to be there any longer. Anyway, I got on the train on July 4, 1941, and started for Washington. I reported then to the adjutant general. Under MR1-10 Mobilization Regulations, it was provided on the basis of World War I experience that there would be an officer appointed at all major commands to look after matters of morale and welfare of the soldiers. So there I was in Washington, D.C., and I was placed in a little branch which had expanded, called the Morale Branch of the Adjutant General's Office. Anyway, by October, it was well assumed that things were going to happen in the Pacific.

Q: What year?

DAVID: October of 1941. In the Philippines, my two unit instructors in field artillery had both been sent down the year or so before to train the Philippine army, and they were due to come home in July, 1941. The Army extended their duty there, and they got the Philippines to initiate their selective service in October of 1941. They also started to build up our forces in the Philippines and also to send them materiel and everything.

On December 7, 1941, those were on the ocean. The men were diverted to Australia. The supplies and so forth were all diverted to Batavia and New Guinea.

Going back to my own experience, in the course of this negotiation with the City, a second act came when the Navy Department asked to have some representative come before them, before Secretary [Frank] Knox, to talk about the case. We'd said that the City had already leased the Reeves Field for a period of years for a dollar a year for Navy aviation and that, therefore, instead of destroying the terminal facilities for the City, they ought to negotiate with the City for some leasehold, which would not give up what the City owned, and they could have it for a reasonable fee. Why try to condemn and take away the big asset of the port? So anyway, the Harbor Commission telegraphed me, asking if I could appear before Secretary Knox to present the case. I said, "A military officer before Secretary Knox?" "Well," they said, "can't you go as a friend of the court or something like that?" I went to the adjutant general and told him about the situation, and I got the go-ahead, not as a representative of the City, but as an officer of the armed forces, intent on giving whatever information I could to aid the armed forces. I went to the office of Secretary of the Navy Knox, and was received by him along with a couple of admirals, one of whom I believe was Admiral [Stuart H.] Ingersoll and he asked me to relate to him the story of our dealings in regard to the harbor at Los Angeles. So I spent some little time covering the various steps of the development of the harbor and the fact of the exchange that Congress had authorized and so forth. I finished and one of the admirals said, "You've just left out one thing." He added some other little detail. They'd studied my answer from Hell to breakfast. Well, anyway, there wasn't any conclusion at that time. But the next fact is that they asked to have the officials come in and sign an agreement. So the Harbor Department Commissioners came to Washington to do so, headed by Ray Chesebro, city attorney.

During the interim, the summer, I had been history-minded. With Hugh MacDonald, likewise a major at that time, I traveled the whole country, and had gone up particularly to Gettysburg. All of our training maps and problems were based on the old terrain of the Gettysburg Quadrangle running through Pennsylvania and Maryland and so forth. So it was quite familiar to us from our studies. So I went up frequently and became quite well

versed in the Battle of Gettysburg. When the port commissioners came up with Ray Chesebro in December (in fact, they were there earlier; I think Ray was even there during Armistice Day and went to a memorial service at that time). They wanted to see the place, and on December 7, 1941, they said that they would like to go up to see the battlefield of Gettysburg. We entrained in my old Studebaker and another car and went to Gettysburg and got there real early, smelling the apple fields as we went through Maryland, and I went over the battlefield, bit by bit with them, and the net result was that we got dinner somewhere, but didn't get news of Pearl Harbor. At 9 P.M. we came rolling in to my little place in Arlington and as we came to the front door, my daughter rushed out and said, "The Japanese have bombed Pearl Harbor! The Japanese have bombed Pearl Harbor! What does that mean, Daddy?" And Ray Chesebro said, "That can't be, that can't be," But it was. The next thing over the radio, everybody was directed to report for duty the next day, which was Monday, in uniform. We'd been out of uniform all the time. So, we reported in uniform, and there we were.

During the interim between July and December, the section I was in had expanded from about eight or ten people to some eighty and our little section was then called the planning group. And so I started doing planning, all kinds of planning. These were still Selective Service days. The main idea, among other things, was how to make Johnny happy and make his folks happy while he was away in Selective Service, and how to keep his congressman happy. So the department was engaged in building field houses. We worked on the camp newspapers, we worked on radio, we worked on telling people why this special service operation was necessary, and among other things, we were faced with the expansion of the army by the selective service system, and the question was, where do we get the morale officers who have not even the slightest idea of what we were after, to man them? So, it was decided that the Army didn't have qualified officers but a lot of officers were already assigned around the country. So we had a big conference in Washington in December, and those officers came. During this time, I'd made studies of different things. The first was to find out what the cost would be of taking the National Guard divisions that were harbored in their own home states and moving out of the state to get them out of the political deal of always writing their Congressmen and raising hell. So I made that study, and what happened? I had to go through

the different departments to get the prices and everything of that sort. On that deal, I presented the plan. General [James] Ulio looked at it and said, "David, did you write that?" I said, "Yes, sir." He said, "Thank you very much. I congratulate you." He put it on his desk. Two weeks later, it came back, disapproved. Among other things, besides having made up training schedules for troops, I made up a program for establishing a school where we could give training to some of these new morale officers, and I worked it out in some considerable detail, and sent it up to General Ulio and it came back with a compliment, "Disapproved." Back in the drawer it went.

The war broke on the 7th of December. The first thing that happened of personal interest to me was that as of the first of February, all of the officers on active duty were to be promoted. Originally, it was provided that all of the regular army officers were promoted as of February 1st and all reserve officers on duty would be promoted as of February 7. Well, that didn't last, and very shortly we were all promoted, and so I became lieutenant colonel on February 1, 1942. And at that particular time, the War Department was now convinced that we had to have a school. So right away, orders came buzzing back to our branch, "We've got to set up a school." Somebody said, "Well, David worked out a plan for the school." So out it came, out of the drawer. Colonel Taylor E. Darby, an old wartime veteran, who had been an instructor in the Command and General Staff School, had been the executive officer of the Surgeon General, was the head of my particular section. He was made commandant and I was made an assistant commandant of the new school to be set up at Fort Meade, Maryland, on February 4, 1942.

So anyway, we went over to Fort George Meade and opened up a school. We opened it up for a hundred officers a month. We had to improvise our studies pretty much. We found that we could bring in a lot of physical training people, that being one of the things that we were charged with. We had an education group, and so forth and so on. So the school got running and I was assistant commandant, and Colonel Darby was the commandant. As it turned out, he was more interested in what was going on in the classroom than I was, so I, with some false steps, was helpful in running the school. We had a faculty that we gathered out of the more promising people out in the field. In October, 1942, we were sending the first contingent over to England which was II Corps, reinforced. The planners immediately said to us, at the school, "We want to know the officers in

the school that can be sent to the Corps." We scratched our heads and said, "well, we've got a bunch of lieutenants, and we've got a bunch of captains, but no lieutenant or captain is going to set up a program with the generals in the Corps; he has to have some rank." So, actually, we stripped the faculty of four of our majors and sent them over with the II Corps to England.

Later in the year, the brass understood that 100 officers a month were not enough — they wanted a 500-officer school. So Colonel Darby and I went around at that time inspecting civilian institutions that had been denuded of their male contingent by the war and which wanted to be put to work by the Army. We ended up at Washington and Lee University in Lexington, Virginia. Colonel Darby and I had arranged to come down and open the school on December 5, 1942, and I was sent to Fort Benning, Georgia, to see the training methods there and to meet General Manton Eddy who was then the commandant. I had just returned to Washington when I found that Colonel Darby had been recalled and was going to take charge of the big new Army hospital down in San Antonio, and I was to be the acting commandant of the 500-officer school at Lexington.

So I went down to Lexington, brought the family down and we started in to set up the school. But we didn't have faculty, we didn't have an Army installation to support us, and so it was quite a wrestle. In the meantime, we were trying to develop courses that would be apropos to overseas. All those majors who had gone to II Corps from the school at Fort Meade ended up in November in North Africa. So I received personal letters from them. I asked when I wrote them, "Tell us which of these things that we have been trying to teach the men have been of use?" Well, they came back with some very pungent comments about some courses. A lot of activities, however, related to physical training. After their landings they were able to take troops out for some training or let them play volleyball or active games, to take tension off and to steady them down. As fast as I got the letters from these officers, I sent them on to the then Special Services Division in Washington.

On December 21, 1942, I was promoted to the rank of colonel. We carried on with the school, trying to struggle along to set it up shorthanded and work out a curriculum. But one day, two generals came down from Washington. They said, "You know, David, we've been trying to find out what the situation is over in North Africa, relative to the special personnel

services. Almost the only information we have is from these personal letters that came to you from North Africa. They sent a major to Ike's headquarters in Algiers to explain the functions morale and special personnel services were to do. Then a cable came stating a long list of things the command wanted. After things they needed to set up a program, the cablegram asked for "one qualified officer to take charge." The generals came down again and said, "Colonel David, you seem to know more about this than anybody else, you are it."

I went to Washington for a brief spell to prepare. Among other things, I worked out a multi-million dollar procurement list of things that had to be sent, and the staff was really astounded. But General Osborne, who had been promoted to head this operation, regretfully signed it, and then I took off and I went to North Africa by way of South America. We flew out and went down to French Guinea, British Guinea, and ended up at Natal and then over the South Atlantic into Dakar in West Africa. I then flew over the Sahara to Marrakesh and then to Casablanca, and ultimately, in April, I reported in Algiers.

Q: I want to get back to your legal career just as fast as I can, but I just noticed on the wall of your den some pictures from Bob Hope and Irving Berlin. Were they associated with you in any of your activities overseas?

DAVID: Yes. Bob Hope and associates were the first of over 100 USO entertainers that we cared for and routed. "This is the Army" was a unit of Army personnel which came to Italy.

Q: Tell me the particular awards that you got, especially from foreign countries.

DAVID: I received the Legion of Merit from the United States; honorary Officer of the British Empire, military division (O.B.E.); Commander of the Crown of Italy; Medalha de Guerra (War Medal) from Brazil; and the Mèdaille d'Honneur d'Or (Gold Medal of Honor) from France.

Q: Did you ever supervise the firing of a gun in anger, after all of your field artillery experience?

DAVID: All the colonels of field artillery were staff officers. The field artillery was reorganized into battalions that served individual infantry or armored units and so the artillery as a regiment didn't exist. Battalions were

commanded by lieutenant colonels. So we were spare parts. And I didn't fire, although I did pull the lanyard of a gun when I was at a unit firing at Monte Cassino.

But anyway, you asked about USO performers. Among others, I had a section which originally came over as so-called theatrical specialists. The plan was that they would teach the soldiers to put on soldier shows. Well, it was fine in the training and service areas, but we wouldn't set up such activities except in the back areas and the men there weren't the fellows who needed such diversions the most. So they ended up as being officers that moved USO people as mobile units around the Theater. There were over a hundred of those different USO troops that my section took care of. Among them, of course, was Bob Hope's unit. Bob Hope was one of the best. He was in North Africa just at a time when we could move his unit about by air. We had just chased the Germans out of Tunisia and were getting ready for Sicily. So he had good audiences and had a good reception. On my 42nd birthday, August 25, 1943, he was broadcasting from Radio Algiers, back to the United States. I remember that quite well, because that night we got a big bombardment from the Krauts and Italians. So I saw quite a bit of him. He stayed at the Hotel Aletti in Algiers. When his troupe arrived. and the first time he left the hotel, he was waving his arms as we came down the steps and he said, "Here comes Arab Bob Hope." I said, "Yeah, take a look at yonder fellow out here in what looks like a bed sheet. There's your Arab." Then he said, "He looks like a walking lister bag." He used that comparison later as an army gag. Bob Hope had a great knack of sensing the temper of a crowd and ad-libbing. He didn't write all of his stuff, although a chap by the name of Block came down from Britain and put out Hope's broadcast from Algiers to the States.

Irving Berlin, of course, in the United States, organized the show, "This is the Army." The show was destined to have a great deal of acclaim through the camps and training stations. But the time came when "This is the Army" was a bunch of Army guys who had never seen a battlefield and had never been where the fighting was; so it was decided to send them over to us. They arrived after we'd taken Rome. I worked with Irving Berlin and his manager, Ben Washer. So we later brought them to Rome and gave a big performance there. In fact, you see there wasn't any place outside of that where you could take 100 men, or even 75, under security. But in the

Brancaccio Theater of Rome they put on a show. So the men filed in and went up tier after tier of seats, all in helmets and carrying their guns, to sing their songs. And I had the then ambassador to Rome and the admirals and everybody else to witness the show. And they just got started, "This is the Army," and putting on some skits that in fact they really were soldiers, when some jerk in the back row let go his rifle and it went bump after bump down to the stage. That turned out to be the hit of the show. But anyway, I asked Mr. Berlin if I could have a photograph. He said, "Gladly, if my manager says it's all right." So he did, and he wrote this, and he wrote it for Louise — he autographed it. I have pictures of Bob Hope along the line in several situations. But the one that hangs up here with his autograph on, I got back from him more recently, when he had his big anniversary party. And I wrote him a nice letter and he came back with that picture you see there and to decipher what he wrote, it's, "Thanks for the Memories." Then, of course, he wrote his little story, *I never Left Home* [1944], about his trip over there. He wrote about borrowing Colonel David's big-bottomed suit. I was told when I got aboard the airplane to be prepared with civilian clothes. So I had a loose summer suit that I took, thinking perhaps they would land in neutral Portugal on the way, but no, instead went to Natal and Dakar. So, I loaned it to him. So it was immortalized in the book.

Q: What date were you discharged from active duty after the war?

DAVID: February 26th, 1946. We had V-I day in Italy before V-E day in Europe and V-J day in Japan, and after the time we got the Germans out of Italy, we'd been getting ready to ship everybody to Japan. I'd initiated tours for the troops up through Italy and Switzerland and that sort of thing, but headquarters around August of 1945 began releasing men to the States on the basis of the time overseas. So my number came up, and so I came back to Fort MacArthur in Los Angeles and then was given all my leave, so actually I was not discharged until February 26, 1946.

Q: Leon, I've got a list here that I've acquired on some of the writings that you have made and some of the things that you have published, and I see from my list that you began publishing in law reviews as early as 1934. Is that substantially correct?

DAVID: Yes.

Q: I noticed that most of the time prior to World War II that your writings were concerned with the clinical lawyer, with the formation of legal aid societies, and in general, the clinical work of lawyer reference and legal aid. Is that substantially correct?

DAVID: No, because, you see, I had my articles and my book on tort liability. I had written articles on taxation, municipal organization and planning and zoning. In 1935, I received an M.S. degree in Public Administration at USC. After the war I received the degree of Doctor of Public Administration. My thesis was on "The Lawyer in Government."

Q: Well, I'll get to the tort liability.

DAVID: It was in that interim, I authored and published a survey of the handling of tort claims in the City Attorney's Office. Then I had some in eastern law reviews, all dealing with the general subject of tort liability.

Q: Well, I'm going to intrude in your memory a little bit and tell you that this includes not only the *Hastings Law Journal* and *Hastings Constitutional Law Quarterly*, to which you contributed several articles. According to this list, you have written for the *UCLA Law Review*, for the *USC Law Review*, the *L.A. Bar Bulletin*, and then in the East, the *Minnesota Law Review*, the *Annals of the American Academy of Political and Social Sciences*, the *American University Law Review*, *University of Pennsylvania Law Review*, the *Tax Digest*, and at least two chapters in the CEB [Continuing Education of the Bar] book, *California Civil Procedure During Trial*. According to my notes, you began writing law review articles in 1934, and at least the last one that I see published was in the spring of 1980. Is that correct, or substantially so?

DAVID: Of course, the big one written and compiled in the last part of the eighties was the State Bar history, not published.

Q: Well, during this period of some forty years, you have certainly written on many, many aspects of public tort liability and the role of city government, so far as tort liability is concerned. Can you tell me what general fields you consider that you've contributed the most in?

DAVID: You have named them in general. I would add my California constitutional law articles and my doctoral dissertation on the lawyer in government [*The Role of the Lawyer in Public Administration*]. I have also

entered the historical field. For instance, my great aunt went to Reverend Jason Lee's mission in Oregon in 1839. She wrote letters back home which I suddenly came upon and so I edited them, annotated them historically, and published a volume called, *The Raymond Letters* [1959]. The letters themselves are regarded to be the only account extant by any woman who'd written at that time from Oregon.

Q: And this was what year?

DAVID: 1839-40. So the Oregon Historical Society was interested, and I spent some time up there with them. Aside from my gathering up my things here, my various perpetrations in prose and poetry, called, *Old 89, My Horse,* [*and Other Tales, Essays and Verse*, 1974]. I wrote a 25,000-word novel which made its rounds to several publishers and finally to a well-known critic who persuaded me that I'd better try again. It was a story of the *Sun Traveler*. The *Sun Traveler* was a tuna fishing boat out of Los Angeles that burned off of the Galapagos Islands one Christmas Eve. The insurance company sought after some years to try and recover the insurance money they paid for it on the ground that a man by the name of Musgrove had confessed that he had set the fire and had been paid $5,000 by the owners of the boat to do it. I tried that case and it came out as a verdict in favor of the boat owners. I rolled that into a novel involving a mythical fisherman and his sweetheart who, however, decided she wasn't going to marry a fisherman, and his various pursuit of her till finally they caught up with each other in Hawaii. She, in turn, had been left an orphan by her mother and didn't remember her father or her father's death. And her father's death was revealed to her when she went to the Islands and it turned out that he, all along, had been one of the crew of the fishing boat who had lost his mind by amnesia and had known his daughter for several years without recognizing her. The main objection to the novel was that it was a large number of well-written scenes, according to my critic. "But," says he, "the public now is used to television. The first scene in television must show the actors; it must immediately show the problem that they are going to meet, and when they meet one problem, it has to lead itself logically to the next. All the pretty descriptions of life on the sea and Hawaii and so forth, are overdone from the standpoint of the current public, and they won't pay you for that."

Q: Well, aside from your novels and non-legal writings, you have written a published history of the first 128 years of the City Attorney's Office in Los Angeles, haven't you?

DAVID: I did that in 1950 [*One Hundred Twenty-Eight Years in the History of Los Angeles City as Seen from the City Attorney's Office,* republished in the present volume of *California Legal History* (vol. 6, 2011)].

Q: What else have you published, either orally or in writing, as far as the history of law in California is concerned?

DAVID: The California Judges Association, through its committee on the history of the association, wanted to have a history of the judges, and so I undertook to start in on that. In the course of time, Judge Mark Thomas, whom you know, was the chairman, and you also were on that committee. I made some preliminary starts on that, but based on my family situation for the last year and a half, and the fact that these latter days of the California Judges Association all occurred really after I retired, led me to sign off that project.

Q: Well, didn't you write some sort of a history of the State Bar of California?

DAVID: Yes, I wrote a draft of a history of the State Bar of California, and that is one that I have described in a way to you, which, however, never saw normal publication for various reasons.

Q: What year did you write that?

DAVID: Research and writing on this took almost three years. And it really began on the fiftieth anniversary of the State Bar in 1977.

Q: You began your history with 1927 on the formal organization of the State Bar?

DAVID: I began earlier than that, insofar as the judges were concerned, because in the judges section I tried to get together what I could find out about the activities of the judges from the time that the old California State Bar was in being. From the very start of the bar associations, it was recognized that when a man became a judge, he wasn't quite on the same plane as the attorney. His interests led him in a different direction. The attorney was interested in winning the case, and the judge was interested in achieving justice, if you want to use some trite terms. Therefore, the judges were

encouraged to have a section of their own at the early bar meetings, and they did. That carried on through to the organization of the California Bar in 1927. I, having been admitted in 1926, attended that first meeting of the State Bar.

Q: Where was it held?

DAVID: I recall it was held at Del Monte. I may be in error, because another one of the very first ones was held at the Hotel Del Coronado in San Diego. But the judges were active in that meeting, and some were very active. Then, there appeared on the scene the feminine lawyers — Clara Shortridge Foltz, being one of the first.

Q: What political office did she hold, do you remember?

DAVID: None. Her father [sic; brother], Sam Shortridge, of course, was a United States senator from California. She was admitted very early, and some other women were admitted early and were active. Let's see what I can find here for you. You want to hear particularly about the judges?

Q: No, whatever you have written — the reasons why you wrote it, so far as the State Bar or the judges are concerned.

DAVID: The State Bar, at the start, of course, was puzzled by the fact that the purpose of organizing the State Bar was really to get a procedure to discipline lawyers. Some judges in San Francisco had been recalled on account of their activities, and attorneys wanted to discipline them. And that precipitated, coalesced, the idea to get the local bars together, because there wasn't any formal way of discipline. Each court could discipline the attorneys. The bar associations as such had no standing before a court to initiate the proceedings.

Q: Certainly among your close acquaintances were some of the early leaders of the State Bar. Can you tell me some of those names?

DAVID: I'm trying to recall the time frame, because I attended these State Bar meetings rather religiously for a number of years. I have in the draft of my history for the State Bar, Chapter Nine, "The State Bar and the California Judiciary." There had been a Judicial Section in the California Bar Association. That section in 1925 secured the introduction of a bill in the Legislature to establish a conference of judges. My old friend, Judge J.R. Welch of Santa Clara County Superior Court, was the chairman of that particular

section. That bill passed in the Senate but was killed in the House. In 1926, Judge John Perry Wood in Los Angeles had been the chairman, and Judge Harry Holzer of that superior court served as a secretary of that organization of judges. For several years, Holzer had been very diligent in reporting judicial and legislative matters to the judges. And on formation of the Judicial Council in 1926, Holzer became its all-important first secretary. And later on, that passed. In 1926, before the State Bar was started, there was a movement for a constitutional amendment providing for judicial retirement and retirement pay. That was defeated in a general election. Some said the title on it was misleading. I don't know. The amendment was supported by the California Bar Association, and the brief of Chief Justice [William R.] Waste was put in, examining the statutes of seventeen states, or something like that, providing such systems, and that was published in the *State Bar Journal* in 1926. I remember Chief Justice Waste presiding over a meeting of the State Bar, and the Morrison Lecture. This one was definitely at Coronado. The Lord Chief Justice of Canada, as I recall it, was to be the speaker. But Chief Justice Waste got up, and absolutely forgot the name of the speaker, and he fumbled for his notes and said, "I have the name here, somewhere, my secretary must have provided it. Oh yes, here it is . . . ." And he introduced the Lord Chief Justice that way. Well Chief Justice Waste was reaching the age of retirement, and shortly he actually did.

Before the State Bar met at Del Monte in 1929, the so-called Hardy decision had come out. Carlos Hardy, a judge of the superior court in Los Angeles, was a very active member of Aimee Semple MacPherson's Angelus Church Center. I made the point, as I think in my correspondence with you, that that was quite a vigorous evangelical concern. It was, however, embellished by the showmanship of Aimee Semple MacPherson. She was hailed as being the prime advertiser of the time by Bruce Barton, or somebody of that sort. She was always putting on the bizarre. She was allegedly caught in a love nest at Carmel with the radio announcer of the Temple, and thereafter disappeared for a time, and a story was given out that she had been kidnapped and was down in the Arizona or some other desert. She reappeared. Then Asa Keyes, as district attorney of Los Angeles County, tried to make something of it, and indicted her for fraud of some indefinite sort. So Judge Carlos Hardy rose to her defense. Allegedly, he was paid $2,000 for the services. The State Bar sought to bring him to answer the

charge. This was resisted, and the Superior Court of the State of California, the presiding judge of that time being Marshall McComb, in the case held that judges were not members of the new State Bar and couldn't be disciplined by them, which very greatly distressed leaders of the Bar. He held also that impeachment was the only remedy. And impeachment of Judge Hardy was initiated, as you know, and failed.

Q: Let me pick up a note that you neglected to say, and that is that the State Bar started disciplinary proceedings against Judge Carlos Hardy, and that's what gave rise to the lawsuit in Judge McComb's court.

DAVID: That's right. He refused to honor the summons to appear, among other things. And I guess they wanted to remand and compel him.

Q: When that case was finally decided by the Supreme Court it was definitely stated then that judges were not subject to State Bar discipline and, in fact, were not truly members of the State Bar. Is that correct?

DAVID: That is correct. After that, the Hardy decision was one of the chief things that was discussed at the 1929 meeting at the Del Monte convention. I was there. I seem to remember that, in the general bar session, the motion to have a committee appointed to determine how judges should be brought into the State Bar, integrated, was laid on the table. The judges at that time ran their own Judicial Section. C.J. Goodell, San Francisco Superior Court, was their chieftain. Presiding Justice [Nathaniel] Conrey of the Second Appellate District, and Judge William Finch, of the Third District, urged that judges should find some way of returning to State Bar membership. After all, they were lawyers. Presiding Judge [Lewis R.] Works of the DCA argued that judges were lawyers and hence were required to be members of the State Bar, but were not subject to its discipline. But the Supreme Court Justices [William H.] Langdon and [John E.] Richards, who came before the State Bar meeting, explained their court's position that judges should be dissociated from the State Bar. Well, therefore, the judges founded a new Association of Superior Court Judges. Judge Raglan C. Tuttle of Nevada County was president of it, and Judge Homer Spence, of the Alameda County Superior Court at that time, was on the executive committee, and Judge [John F.] Fleming of Los Angeles was on it, and also Judge [C.E.] Beaumont of Fresno was on it.

Q: He was later a U.S. district judge, wasn't he?

DAVID: Yes. In October at the State Bar Convention, it was decided that all judges should be retained as honorary members of the State Bar, with all privileges except the right to vote and hold office, and to be free of dues and assessments. And they let that be known in the Judicial Section. Though I almost quoted that back to them when, for a brief time, I became a member of the State Bar after I retired and reneged, and went back to being a judge, retired.

Well, the first program of the 1930 Convention (now I have my notes) was the first meeting of the association which was formed, called the Association of Superior Court Judges. Judge Raglan Tuttle of Nevada County was the president. Morris T. Dooley was there, I know, and later on he gave his impressions, which I think were published in the *State Bar Journal* or the *L.A. Bar Journal*. There were some thirty or forty judges present at these original meetings. In 1933, the organization became known as the Judges Association of California, so that they would include if they wanted to, to have them there, the appellate judges, because although there is a differentiation between the State Bar and judges, there was also a distinction between judges of the superior court and of the other courts who were superior to them.

The Judges Association organized its own committees; they had one on legislation, and they were primarily concerned with legislation affecting the practice of the law and things that affected the courts. And the judiciary began to expand about that time, after the depression and so forth; the population increased and judges came on up along the line. However, the Association of Judges meeting, held at Yosemite in 1941, found only fifty-seven judges present, according to the report.

Q: That entire association meeting was held at the Awahnee Hotel. And the hotel hasn't increased in size since then.

DAVID: Well, there came in some people that I got very well acquainted with. Robert Scott of Los Angeles was made chairman of the Association. That September I'd already departed for the Army but got to know him on our court. And Judge [Andrew C.] Scottky of Mariposa County and Judge A.P. Bray of Contra Costa County were supposed to work with the California Youth Authority to assist in its development. That was the kind of

thing they were in. Well, by 1946, five years later, they changed their name again, and then it was known as the Conference of California Judges. And at that particular meeting, in 1946, which I attended, Mr. Justice Raymond Peters declared, "The Conference of California Judges is a judges union. It has all the municipal, all the superior and all the appellate court judges of the state as members."

Q: I think now would be an appropriate time to put a personal note in, because I want to get back to Leon David. In the memoirs that Earl Warren wrote, he mentions, to the best of my memory, only one judge as being associated with him early in his career, and that was a man later made judge, by the name of Victor Hansen. But somehow or other I associate Victor Hansen and Leon David and Louie Burke as a triumvirate. Can you tell me a little about the three of you working together?

DAVID: In my legal aid work, one of the first people I met was Kimpton Ellis of Los Angeles. He was very much interested in it. His office mate at that time was Joe Vickers, who had resigned from the court and become a practitioner. (He was later reappointed to the court.) Over the years thereafter, I was perpetually a member of the State Bar Committee on Legal Aid, and its chairman on various occasions. In that connection, Earl Warren was a member of the Legal Aid Committee of the State Bar in one year, which year I do not recall exactly. But I do recall that I came north to meet with the Northern California members and I met with Earl Warren in his office as district attorney of Alameda County. And that was my first connection with him. Victor Hansen was a Los Angeles attorney, and I did not know him particularly until after the war, and then I met him in Los Angeles, the first time, because he had been the adjutant general of the state [National Guard] under Earl Warren, and was a brigadier general in the National Guard. I was interested in the National Guard. We participated in Earl Warren's campaign for governor . . . .

Q: What year was this? Not his first campaign, was it? His first campaign was 1942, so the next campaign would be 1946 or 1950.

DAVID: The campaigns that I took part in were in both those years. I became a member of the Republican Assembly in Los Angeles, with Ed Shattuck, with whom I had been associated in the Junior Chamber of Commerce, before the war, before I outgrew the age of thirty-five. So I was the

vice president of the Los Angeles Republican Assembly. And interestingly enough, one Edmund G. Brown was vice president of the Republican Assembly in San Francisco at the same time.

Q: I just wanted to make a note here that you weren't misquoting or misspeaking yourself, because, in fact, Edmund G. Brown, Senior, was at that time a Republican. Is that correct?

DAVID: That's right, yes. I ran and was elected to the County Central Committee of the Republican Party, and I was elected twice to that committee and I got very handsome votes, because at that time, we were listed alphabetically, and I ran out in the Santa Monica area. We had some other legal lights who were in that operation, and I was still a member of the County Central Committee when I was called to active duty. So I had that background, at least, in the political scene. And I came back in 1945 and 1946. In the 1950 campaign, I was asked whether I would go and be a speaker in the [Warren-for-Governor] speakers bureau, and there was where I first came in contact with Victor Hansen.

Q: Was Louie Burke on that speakers bureau with you?

DAVID: I don't recall that he was. He may have been. That was the campaign of 1950, it comes to my mind now, because when Governor Warren phoned me and told me he would appoint me to the municipal court, he said, "Of course, I'm sorry to do that because I'm losing one of my best speakers."

Q: When were you appointed to the municipal court?

DAVID: In October of 1950. That was a rather interesting operation, anyway. It had been suggested to me, long before that time, that I should go and let my friends put me up for a position on a court. That was even before the war. In fact, one or two municipal court judges at the time suggested that. The salary didn't attract me.

Q: But at that time you were still assistant city attorney in the City of Los Angeles.

DAVID: That's right. And furthermore, I sat in the office next to the chief, and it was generally assumed that I was aiming to be the next city attorney of Los Angeles. When the initial suggestions were made, the municipal courts weren't making very much money, and the city attorney of Los

Angeles was making at least $10,000 a year, which was pretty good in those days. Cabinet members in the U.S. Cabinet didn't get much more at that moment, as I recall — $12,000 or something like that.

Q: But that was considerably more than what judges were making at the time?

DAVID: Yes. So anyhow, be that as it may, a number of my friends after the war were concerned about what I was going to do — whether I was going to take a regular Army commission and go out that way. But in the City Attorney's Office another situation had arisen. Here I was away for practically five years. When I went away, I was a crown prince, and when I came back, there were a lot of others who had their mind set on that office and had spent their time working.

Bill Neal was in our office, one of the old timers and a very fine lawyer, who had been the advisor to the City Council over the years, although I'd been his substitute when he was gone and had generally worked on the opinions that went to the city officers. Bill had been in Sacramento as part of the city lobby for many years and knew the governor quite well. The governor offered him an appointment to the municipal court and told Bill that he was capable and deserved more, and would be advanced at the proper time, but Bill turned him down. So one day, before we went to lunch, Bill Neal and Ray Chesebro and perhaps one or two others were all seated in his office discussing things, and he told Bill he thought Bill had made a mistake in turning this down. But Bill didn't think so. And actually, of course, he was well entrenched in the city government and looked forward to retirement under the city plan. And then I said, "Well, I wonder what I'd do if the governor made me an offer." "Oh," Ray Chesebro said, "don't be silly — you'd take it." Well, I got back from lunch earlier that day than the rest, and lo and behold, here's a call from Governor Warren. He wanted to know if I'd accept an appointment to the municipal court. I could have plenty of time to discuss it with my associates and with my wife, and I said, "Well, Governor, I won't take that time, but I accept your invitation right now." So, they came back from lunch. I went in and saw Ray, and Bill was there, and I said "Well, that man called while you were away." He said, "What do you mean?" I said, "The governor called me and asked me if I'd accept an appointment to the municipal court, and I told him 'yes.'" "You

did what!" The net result was that I did, and I was inducted into the municipal court. Governor Warren expressed to me again that he was quite confident of my ability, and that in the course of time, if things went well, that I might make superior court.

Q: So you were on the municipal court when? October . . .

DAVID: Of 1950.

Q: All right. Then, in September of 1953, you were appointed to the superior court. I think that the largest group of judges ever appointed at one time was appointed by Governor Warren. I think that through legislation and other reasons, there were some nineteen vacancies.

DAVID: Eighteen. The Legislature increased the number of judges to eighty in the superior court. The appointments were made by the governor in September.

Q: September of 1953?

DAVID: Yes. At that particular time, I had been serving on the superior court by assignment for two years or a little less. I served in the Brunswick Building [843 S. Spring Street, Los Angeles], and in September 1953, I'd spent six months being the Criminal Department in the Long Beach branch of the superior court.

Q: Just to jump ahead a minute — something very drastic happened in October of '53. The chief justice of the United States, [Fred] Vinson, died. And shortly thereafter, Warren became chief justice. So you were among the last of his appointments.

DAVID: That is correct. As a matter of fact, he had to chase me around. At that particular time, I was the assistant commandant of the United States Army Reserve School at Fort MacArthur. And he caught me at Fort MacArthur and told me he would be pleased to appoint me, and I said I would be very happy. And I congratulated him on his prospective appointment to the U.S. Supreme Court. I saw him on occasions after that. I remember he came and talked to the L.A. Bar Association one day. He came by and said, "Well, Leon, how do you like this business of judging we are in?" So I had to tell him it was going well. He said, "I've had good reports on you." I said, "That's fine." Then, of course, he came for the dedication of his portrait in the Los Angeles courthouse. After that ceremony, when I chatted

with him, I asked, “Would you autograph photographs of your portrait for all of the judges that you appointed?” So I got the photographs, and I got them all autographed, and I have mine hanging up upstairs. That was the last official contact I think I had with him. I had other informal contacts, which were a surprise, because of my son. He met the daughters down on the Santa Monica Strand and sparked around with them, and brought them to our home where we had lunch together.

Q: According to some notes that I have, you served in the Appellate Department of the superior court for two years.

DAVID: That’s right. I went in and served with Ed Bishop and Frank Swain for those years. When Ed Bishop retired, Harold Huls joined the Appellate Department. After retirement, I served on a further appointment.

Q: Well, I don’t want you to be unduly modest, but who was the better author of trivia, you or Frank Swain?

DAVID: That’s a sad story, my friend, and I’ll tell you why. Frank Swain and the other two of us (Ed Bishop and I) for a long time before we had the judges’ lunchroom in the new courthouse used to meet in a little cubbyhole and eat our lunches. And at every lunch, Frank would say, “Well, when I was coming in this morning a little rhyme occurred to me, and it goes like this.” And so he would rhyme it out. And then the next time, I’d come in and give a rhyme, in competition with him. I didn’t realize that maybe that was a little irritating because he thought he was pretty good. Then, one rhyming occurred which was connected with our Christmas celebration. You remember, three judges, namely, Swain, Huls and David, came up and sang a ditty, called “The Man on the Flying Trapeze,” where we talked about the man above us and where the end result was a quatrain with “ninety day flitting, they all call old Witkin and our judgments go floating away.” Well, the Chief didn’t like that very much. He thought that was disrespectful to the Supreme Court. The judges and lawyers thought it was great. Anyway, I was not reappointed and A. Curtis Smith took my place after that.

Q: That was in 1960. When did you actually retire from the Superior Court?

DAVID: On July 1, 1967.

Q: And you didn’t stay retired from judicial activity very, very long, did you?

DAVID: I may have told you how rapidly Louise and I became pedestrians, had our house sold out from under us, so to speak, and came north. Shortly after that, I had a call to go down and sit in San Luis Obispo County. The situation was this: there were three judges on the court, but they had Cal Poly in San Luis Obispo, the whole student population. They also had the California Men's Institution there, and they were deluged with writs for habeas corpus and everything else. They got so far behind, they wanted help. I found Justice A.P. Bray on the appellate court had been down there sitting pro tem, and I followed him for a month. The judges down there were very canny. They tried through their supervisors to get another judge and they couldn't. They had to rely on Judicial Council assignment. So anytime anybody offered a disqualification, they automatically accepted it. So the result was that there was a whole flock of divorce cases that hadn't been tried because one or the other or both had disqualified himself from hearing it. And so, I went to work on them. That was assignment number one. Then, again, out of Berkeley, where I was temporarily, I was assigned to sit in Napa County. And I sat up there for a spell. Louise and I moved over here to Danville, and then I was the impartial visiting judge who could be called in to hold all the hot rocks for the Martinez Court. And I did.

Q: How about on the Court of Appeal?

DAVID: In the Court of Appeal, my assignment came from a compound of various circumstances. One was that I had been recommended for the Court of Appeal appointment, and it actually had been carried up from the State Bar. And at the last moment, in a political move, I didn't get appointed. But the chief justice, Roger Traynor, knew it. I'd known him when he was working on the State Board of Equalization. And then, A.P. Bray, presiding judge of the First District and whom I had followed down into San Luis Obispo, spoke a good word for me. I had made his acquaintance down in Los Angeles where he served on appointment down there. So, I came in to the First District Court of Appeal to temporarily fill the vacancy of Byrl Salsman, who had been elevated to that court from Santa Clara County, and had retired. Byrl Salsman, incidentally, had been the thirteenth lawyer to hit Palo Alto when I practiced there and was pounding the pavement when I left. So, that was the start. Then a succession of events happened in the First District where Justice [James R.] Agee was incapacitated, and

I served then and after he died in office because of cancer. I temporarily filled that vacancy. Then Justice [Daniel R.] Shoemaker retired. The net result was, I spent three years on that court. Also, retired Justice Bray had been assigned and was serving, helping out, up in the Sacramento District. I don't think he liked to make the long trip from Martinez, he not driving. So he suggested that I be assigned up there, and I was. I spent a month there, and I was assigned down to Fresno, when a vacancy occurred there. Then back again to the Sacramento District.

Q: Again, on the appellate court?

DAVID: Again, on the Court of Appeal.

Q: A printout shows that you wrote some fifty or so opinions. Is that substantially correct?

DAVID: I haven't stopped to count them, but I don't know whether you have all the printouts. Anyway, I served down in Fresno and I went back to the Sacramento Court a second time for another month. Frank Richardson, who went to the Supreme Court, was then the presiding judge, and I served under him at that particular time. In each of those instances, particularly in Fresno and Sacramento, I had some very involved cases.

Q: Tell me about what you consider one or two of the most important for which you wrote opinions.

DAVID: Well, importance is in the eyes of whoever is concerned.

Q: Well, what do you consider important?

DAVID: In Fresno, we had a very interesting case involving timber rights and the transfer of timber rights down the line in a series of alleged powers of attorney. Parties, relying upon an opinion of the title company, went in and took out $50,000 worth of timber on a particular timber claim, and the heirs of the original owner came in and wanted it. And so in *Jay v. Dollarhide,* in 1969, which is 3 Cal. App. 3d 1001, I went through the whole thing. Its ramifications were so involved that I had to diagram them on a blackboard and explain them to my fellow justices. My research assistant was a Mrs. Leonard at that time, who now is on the very court she served, the appellate court in Fresno. The result was that I found more points than the appellants, and I got in the David habit of retrying the case. So having raised up all these points, we called for a second hearing, whereupon these

new points were presented for argument. The net result was that the title company had to pay $50,000 on their title policy. But *Jay v. Dollarhide* is still remembered by the people who were there. The presiding justice at that time, after the death of his predecessor, which was the reason I was sent there, was Fred Stone, and he also had been active in our conference of judges at the time.

We had another case, in 1970, in San Francisco, called *Sousa v. Freitas* (that's in 10 Cal. App. 3d 660), that has been embedded in some textbooks before we met palimony of live-in spouses. Mr. Freitas lived in the Azores, and he came to Oakland. And his wife in the Azores wouldn't follow him. So, in the course of time, he got a divorce from her in California, and married again, and then died. But in the meantime, his son by the first marriage had known of the second marriage and no doubt advised his mother of it. After Freitas died, the first wife came in with her claim for the estate. And the second wife claimed under the putative spouse doctrine. So, it really got involved because Mrs. Sousa, back in the Azores, apparently knew what was on. In fact, she wouldn't go to the post office to draw down registered mail which was sent to her in constructive service in the divorce suit.

Then we had another case in Sacramento, which involved taxation. And the case involved taxation of computers which had been rented to the State of California. They, having been rented for about ten years, the valuation at the end of ten years had become minimal because of technical obsolescence, so the owners claimed. But the Board of Supervisors refused their claim, and it went to a Board of Tax Appeals. And the Board of Tax Appeals was advised by the county counsel, who also advised the Board of Supervisors that there wasn't anything to it. Some of the members from the Board of Tax Appeals said, "That's not so. We're independent. We're going to decide this on our own." And so they went out and hired counsel on this question of valuation. So this taxation went on for about three years, as l recall it. And the nub of the opinion was that the Board of Tax Appeals is not an agency of the county government; it's an independent quasi-judicial body which is entitled to have its own attorney, since there was a conflict of interest where the county counsel was concerned. Therefore, I had to do justice without any particular precedent by ordering the whole matter to go back to the boards of appeal for three different years, and they were to pass on the assessments, and the assessors were to conform accordingly.

Well, it was so complicated, I had to diagram it on the blackboard and explain it to my fellow justices. The opinion went up and it was affirmed on appeal.

Q: How about when you were on trial court? Were there any trials that stand out in your memory as being particularly interesting or significant?

DAVID: Well, I think the most interesting one was where the insurance company came in and tried to recoup their insurance on the ground there had been deliberate burning of the boat insured.

Q: It was while you were an attorney that you were responsible for legislation that set up a time schedule for filing tort claims against a public entity?

DAVID: That went to the Legislature, I guess, in 1931.

Q: What was your role in that legislation, or what led up to it?

DAVID: We had this case of *Black v. City of Palo Alto,* wherein the lady had sued the city officials of Palo Alto for alleged injury at a railroad crossing. A complaint was filed on the last day of the statute of limitations, and the summons was filed on the last day it could have issued.

Q: You're talking 364 days after the accident?

DAVID: Summons wasn't taken out at that particular time, I don't think. But the net result was that the city officials and the railroad company were faced with a $100,000 lawsuit for alleged injuries for Mrs. Black. And it came up on trial almost three years after the event. In the meantime, the witnesses, such as there were — the flagman at the crossing — had disappeared and had to be found. The membership of the Board of Public Works had changed. Circumstances and the physical condition had changed because the Railroad Commission had finally granted permission to open the Embarcadero [Road] as it passed Palo Alto High School, across the tracks at that time.

Q: You got a trip up to Idaho out of that, though, didn't you?

DAVID: I didn't go to Idaho, but the Southern Pacific finally found their flagman up in Idaho, and I went down to Santa Monica to check up on a previous lawsuit that the plaintiff instigated and pulled out of; and threw away a crutch after an alleged injury in a department store in San Francisco. So we were just mad about it, and knowing about claim statutes, we

said, "Well, anybody who wants to make a claim such as this should do it in a timely fashion." And one of the main points of timeliness is the ability to go out and find the facts of what happened. That's particularly true with sidewalk injuries, where somebody says, "I hit a one-inch dip in the sidewalk and I fell down, I did all of this, that, and the other thing." So, the attorneys section of the League of California Municipalities went to work on that. I was a draftsman of the 1931 statutes and I think Earl Sinclair, of Berkeley, and I collaborated on it. It went to the Legislature and was enacted. The General Laws, I think 5618, 5619 and 5621 were the claims statutes that resulted because of it. We did something else. We went to San Francisco and hit the underwriters. If we're going to be subjected to liabilities like this, why can't cities and counties get insurance against defects, like any other landowner? So we dealt at length with Mr. Cleverdon, representing the underwriters. The net result was that the first insurance policies against such tort liabilities were made available to municipal corporations.

Q: Prior to that time there were no insurance policies?

DAVID: There were no insurance policies.

Q: My memory seems to say that there was a doctrine of sovereign immunity that took care of most of the situations then. Is that really correct?

DAVID: In 1923, the Legislature enacted the Public Liability Act which was based upon a case called *Chafor v. Long Beach* [174 Cal. 478 (1917)] involving the auditorium of Long Beach, where the court drew the distinction between proprietary and governmental functions. Defects in public property could be the basis of liability if two things occurred: one, that the officials in charge had notice of the condition and had reasonable time to repair, and the funds were available to do it. Those were the conditions. Then, when it came to the liability of the individual officers, practically the same conditions were stated. It wasn't until much later, you see, that the present general public liability act was drafted by the California Code Commission, I believe, and adopted after the California Supreme Court negated the sovereign immunity doctrine, forcing the Legislature to spell out the bases of liability or limited immunities.

Q: In the sixty years that you have been associated with the practice of law, I think it would be fair to state that the changes in tort liability have been

greater than any other field. And in the field of tort liability, the field of tort liability of municipalities and other government agencies is certainly far different now than it was then.

DAVID: Well, it's the same story with the municipal corporations, let's say, as it is with other corporations. When we first established that they could be insured, that was not an unmixed blessing. Because now, with insurance for automobiles or anything else, jurors say, "Well, the municipality is insured." The courts also began to get that way. In other words, they are down to this business of expanding liability and spreading the "social cost" of injury. In workmen's compensation, the idea of fault disappears there. But the relationship there is enough to satisfy liability as part of the cost of doing business. So then others turn around and say to the public agency, "These kinds of accidents are inevitable, and therefore, as part of your cost of doing business, why not be subject to the liability?" And courts have had that idea. You will find in one of my law review articles, the alternative to municipal tort immunity and liability is more or less based on that principle. And judges, trying cases, have no doubt the juries have the same idea. I remember one case I tried, arising down in one of the residential subdivisions of Los Angeles. There were streets and banks up alongside it. A lady was driving about ten or fifteen miles an hour through a subdivision, keeping a good watch out, because she thought there might be children at play. And sure enough, up on the bank there was an infant of one or two years who was playing, who came rushing down the bank and ran into the rear wheel of the automobile. So they sued. And we tried the case.

Q: You mean the parents of the child sued?

DAVID: Yes, they sued. That jury got hung up interminably. And I gave them the instructions two or three times. And finally I called them in and said, "This jury has heard my instructions. Is there any instruction I can give, or is there any clarification I can make that will help you reach some verdict, because I think by now you should have reached one." Well, one lady hesitantly put her hand up and said, "Judge, if we follow your instructions, does it mean we can't give this little baby something?" And that was true, although in some cases — a criminal case — I don't know about the jury. I got prejudiced a bit. But I'd always kept, in my cases, a little guess under the blotter of what the jury might award in a given case. And

I accumulated those over some seventeen years. And I found out actually that high verdicts weren't given in Los Angeles. If I had decided the jury cases, on the average, the verdicts did not exceed my estimate more than ten or fifteen percent.

I found out something else, though. When I was out in the branch court in Inglewood, we tried some liability cases. And the jurors were largely the wives of people who worked down at the airplane factories where a good wage was, say, $500 a month. An attorney would come out there in that court and come in with all kinds of claims of injury and so forth, and you could just see that the staid ladies sitting around there were figuring, my old man doesn't get so much for pain and suffering for each of these days that the plaintiff took healing up. So they came out with a conservative jury. Normally attorneys wouldn't set the case for trial there. They did set one, though, that I remember very well. The case was brought by a man who was working down in the foundry and claimed that he lifted a heavy casting and, what happened, way up and down? He was all broken up. Plaintiff's attorneys brought in their expert witness and put the plate on the screen. He pointed out this little white spot, and that little white spot, and so forth. "That's the injury." Then one of our perpetual defendant doctors came on, whose name you might recall. And he testified, "There's no such thing. What they pointed out are the normal cartilages, the intercostal cartilages and so forth on the chest." That particular jury was largely made up of women. The habit at that particular court at that time was to try to qualify a jury at least by the interrogation in the morning so attorneys could go to real trial in the afternoon. So, they meticulously went down, qualifying the jurors, and they got down to juror number eleven. "What is your occupation, ma'am?" "I'm chief nurse at suchandsuch hospital." "Do you always follow the directions that doctors give you?" "We do." "Would you discount the testimony of one of the doctors and prefer it to one of another? Or could you differentiate between these two doctors?" Well, she allowed as how she could, but they excused her. Then they got to juror number twelve. "What are you?" "I'm a housewife." "Where do you live?" "I live in Torrance." "Are you presently employed?" "No." "Have you fixed any opinion of the merits of this case at all?" "No." Passed juror number twelve. It turns out that juror number twelve is a retired nurse in the very same hospital. But that was not the point. The attorneys got down

to argue this case. The argument was that all plaintiff's injuries were real. The defendant's attorney was young [William C.] Wetherbee. And like the plaintiff's attorney, he thanked the jurors by name in the usual fashion. He said, "Ladies and gentlemen, my argument is very short — a single sentence. All I have to say is 'city slickers.'" The basis for that was that he had shown in evidence that this particular lawyer and doctor had appeared together in sixty-nine personal injury cases in our court inside of a year and a half.

Right away, motion for mistrial. "I won't deny it, I'll hear your motion." So they came in to argue the motion. And the argument was that this really was very highly prejudicial conduct on the part of the attorney, and then plaintiff's attorney made an impassioned pitch to me. "Oh, the judge is always the thirteenth juror, and the judge can give his independent judgment and we think your independent judgment will show that we were prejudiced and that we ought to have a new trial." And so I said, "Well, you think that the statement was prejudicial, do you?" "Yes, we do." "Well," I said, "yes, I can rule a mistrial but I must confess that the judge, or the thirteenth juror, was thinking the same thing!" It was right after that that I was transferred to the Civic Center and went up to the Brunswick Building. The first day I went to my courtroom, I looked into an adjacent courtroom and here was the same doctor, same attorney in another personal injury case.

The very first case I tried was an interesting one about the jury, too. Max Gilmore in Hollywood was suing for his fee in the famous case in which the furrier Teitelbaum was found to have robbed himself by taking stuff out the back door and collecting insurance on the loss. Gilmore, was suing for his fee. Well, the attorneys started to impanel that jury and it wound up, I think, with eleven women and one man. Any woman with any business experience or who had a husband engaged in business received a peremptory challenge. So we ended up with eleven women and one man. So, Max Gilmore came in and brought in bigwigs from the Bar Association who testified his fee was quite reasonable and that, in fact, he was entitled to more in this criminal defense. So it went, and we came down to the jury argument. The argument began and, of course, the defense attorney got up and said, "You know, ladies and gentlemen, how these lawyers stand together. You've listened to this man and that man and that man, and they're

all testifying to give their fellow lawyer this amount of money. But I want to tell you, ladies and gentlemen of the jury, I'm sure the judge will instruct you that out of your own experiences you can fix the value of these services." Now, when he said, "out of your own experiences," eleven ladies just laughed out loud. I never forgot that.

But anyway, another of the interesting cases involved a woman from Camarillo. She filed habeas corpus to get out from the mental institution, which she could do, and have a jury trial as to her competency and release. So, she came before ME! and testified, and she was quite an imposing lady, you could say of the "grand dame" type, and very precise in her English and very accomplished. The doctors from Camarillo said, "Mrs. soandso has made great progress, but we are afraid she might not hold up under any little strain. She needs to continue treatment." Well, they finished all the arguments about this, and I was looking at my notes. All the time I was looking at my notes, she was looking at the judge, me, and all of a sudden, she burst out in a great tirade. She began to think the judge wasn't going to let her out. That triggered the outburst and defeated her bid for freedom.

In another trial, a very prominent attorney, later a member of the Board of Governors, represented the plaintiff. Every time I made a ruling against him, he would make an aside to the jury. My stenographer was Trudy Jankey. Trudy used the stenotype, but she and I worked out a deal where she also tape recorded all the testimony and the arguments. So, I wanted to get a hold of this lad and I called him in, and said, "This must stop. You know that's contempt of court, and you should know better than to do all of that." "Judge, I haven't done anything," I called in Trudy who brought in the tape recorder, and out it comes, loud as can be, everything he said. After that, he always was good and he always was my friend. So I found that very handy. When one talks about tape recording, I think it's excellent, providing the stenographer can make a differentiation between the parties that speak. If she herself, or he himself, transcribes it soon, they can do it well, because they remember the names. If they have to do it cold, it's something else.

I had another trial up here which also took the cake. It involved a libel suit against a prominent subdivider, for telling around that a man who claimed to be a joint venturer and partner was a liar, and wasn't entitled to a share in the profit, and all that sort of thing. We went the whole round in

that case, and the defendant's attorney began a course of conduct I'd never seen the likes of before. Every time I made a ruling, he would say, "An offer of proof, Your Honor." I said, "All right, we will meet at an appropriate time and decide your offer of proof." Well, during the course of the trial, he did it a hundred times. So, I took him out in the anteroom and followed a practice of Judge Joe Vickers. When he made his offer, I said, "You have to offer to prove by a certain witness that he is going to testify to a certain thing. So we are going to have the witness right here, and you make your offer of proof; you ask the witness if he would so testify. If he will so testify, we will then allow you to restate it in court." So, we did that. And, of course, practically every one of those offers of proof went down the drain. But then five years, five years, almost, after all this had been decided, and an appeal taken, the defendant came back "because there were gaps in the transcript." And by gosh, the way the reporter wrote it up, there were gaps in the transcript. Every one of these offers of proof showed that it had been denied, all right, but didn't say what the offer was. So defendant came in and wanted to revise the transcript. This was the one time that I got a "Bird call" back to duty. After much deliberation on the Judicial Council, they called me back, because I always kept an almost verbatim copy of answers and everything else in my own type of shorthand. And all the stenographer did was put a paper clip on the tape when she typed it up, it didn't show what the question was. So I went back to my paper notes and refilled all these missing parts. But that sort of stalling procedure I thought was worthy of being reprimanded except that the case was on appeal and I had lost jurisdiction in reference to counsel's obstructive comment. It seemed apparent that the defendant had a lot of money and was trying to wear out the other attorney who was on a contingency basis. So, that kind of behavior on the part of the counsel was so noteworthy that I remembered it. Ordinarily, it was evident the minute a counsel tried to take advantage of the judge, the jury were on the side of the judge. And the judge didn't have to do anything. If he was courteous and still tried to keep counsel harassment down, by and by the jurors would try to react to it. Our juries would, anyway.

The only jury I got hung up with in Los Angeles was one where two colored men, I should say black men, were called on the jury. And the jurors took a ballot to elect a foreman, and one black man who thought he

ought to be elected wasn't, and the other one was. The one who wasn't elected went over to the corner and said he would have nothing more to do with it. And by and by, one of the other jurors thought to tell the bailiff, so I had to discharge the jury.

Q: Well, we have come to the end of a very wonderful day.

DAVID: It has been a pleasure to recall the events of my rather varied life, with you to spur on my recollections and to patiently listen to them.

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