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Oral History of U.S. District Judge Vaughn Walker

Confirmed November 27, 1989 – Retired February 28, 2011[1]

Interviews by Pamela A. MacLean

U.S. District Judge Vaughn Walker has the distinction of having been nominated to the same federal judgeship three times by two different presidents before he was confirmed.

His judicial career spanned 21 years. Throughout the course of his time on the bench he has overseen thousands of cases and at least 250 trials.

But it appeared at the outset that his judgeship might never get off the ground. In 1987, his nomination by President Ronald Reagan stalled over criticism of Walker's representation of the U.S. Olympic Committee in a lawsuit that challenged the trademark-protected use of "Olympic" in athletic contests featuring gay and lesbian contestants to be named "Gay Olympics." Another hindrance to confirmation was Walker's membership in the then all-male Olympic Club in San Francisco. In 1987, two dozen House Democrats opposed his nomination. California's then senior Senator, Alan Cranston, opposed the nomination and it died with the end of the congressional session.

Walker's initial nomination by Reagan in 1987 may have died without a Senate vote, but President George H.W. Bush re-nominated him in February 1989. When that failed to receive a vote and Congress adjourned causing the nomination to lapse, Bush submitted a third

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nomination on September 7, 1989. The Senate confirmed Walker by unanimous consent on November 22, 1989.

One factor not revealed at the time was that Walker was gay. The irony of his struggle for confirmation to the bench came with his last major trial; a challenge to the constitutionality of California's voter-approved initiative that amended the state constitution to ban same-sex marriage. Walker would write a landmark decision declaring the initiative, Proposition 8, unconstitutional and clearing the way for same-sex marriage in the state. The U.S. Supreme Court let his 2010 ruling stand.[2]

Throughout his tenure on the bench, Walker oversaw a string of high-profile cases including a series of lawsuits that challenged the National Security Agency's warrantless searches, with the cooperation of AT&T, under the Bush Administration's Terrorist Surveillance Program in the post-9/11 world. This included his rejection of the government's assertion that the cases were preempted by the state secrets privilege.[3]

In an international case, former World War II-era prisoners of war sought compensation for enduring Japanese forced labor by naming major Japanese companies that used their labor. It required interpretation of the 1951 Peace Treaty between the U.S., Japan and other nations. Ultimately, he found the treaty did not allow the individual compensation claims.

[2] Hollingsworth v. Perry, 570 U.S. 693 (2013)
[3] In re National Security Agency Telecommunications Records Litigation, 633 F. Supp. 2d 949 (N.D. Cal. 2010)

Judge Walker frequently drew national attention in major economic litigation in the civil arena, including his landmark resolution of Apple Computer Inc. v. Microsoft Corp.[4] *copyright infringement case over the "look and feel" of Apple's graphical interface. His rejection of Apple's claims altered the direction the nascent computer industry. He presided over an antitrust battle challenging the Hearst Corporation's purchase of the San Francisco Chronicle,*[5] *and Oracle's hostile takeover of PeopleSoft,*[6] *which he approved over Justice Department opposition.*

Walker never shied away from economic experimentation. In the early 1990s, he required securities class action lawyers to bid for the assignment as lead counsel as a means of keeping costs down. He also required those plaintiffs seeking lead status to show they could and would manage the case.

Routinely characterized as a libertarian-minded judge and independent conservative, he made headlines when he suggested that the war on drugs wasn't working and many drugs should simply be decriminalized.

In a 2003 case, Walker imposed an unusual punishment on a defendant in a mail theft case by requiring him to stand in front of a San Francisco post office wearing a sandwich board sign that said, "I stole mail. This is my punishment."

[4] Apple Computer Inc. v. Microsoft Corp., 799 F. Supp 1006 (N. D. Calif., 1992)
[5] Reilly v. Hearst Corp., 107 F. Supp. 2d 1192 (N.D. Cal. 2000)
[6] U.S. v. Oracle Corp., 331 F. Supp. 2d 1098 (N.D. Cal. 2004)

From 2004 to 2010, Walker served as chief judge of the Northern District, and retired from the bench in 2011 to focus on serving as a mediator and arbitrator in complex litigation and part-time teaching.

Walker grew up in rural Illinois and graduated from the University of Michigan in 1966. He studied law at the University of Chicago and Stanford University, receiving a JD degree in 1970. He was also a Woodrow Wilson Fellow in economics at the University of California, Berkeley.

The interviews were conducted between August 2017 and April 2018. --PM

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QUESTION: I wanted to start with your early life in Watseka, Illinois. Talk about how your family came to Illinois and what it was like there for you growing up.

WALKER: My mother's family came to Illinois in the early part of the nineteenth century. She came to Watseka shortly after marrying her first husband in 1923. She had grown up on a farm near a little town called Petersburg, Illinois, in the vicinity of Springfield.

Her mother's family were Pennsylvania Dutch although of the English rather than the Amish kind. They had the ineffable name Purkapile, which was some variation of a German name. Her father's family were of English and Scots-Irish descent. Their name was Miles.

I have been reviewing a little bit of all this because I'm interested in William Herndon who was Abraham Lincoln's law partner in Springfield—his third and last law partner there. He married my grandfather's aunt in 1860.

This grandfather was born the preceding year, in 1859. My mother's mother was born in 1860. My mother came along when her mother was 42. I came along when my mother was 42. So, there is some symmetry.

My maternal grandfather was a terrible businessman. He was involved in politics, not as an office holder but deeply involved. He spent a lot of time and effort on politics, was president of the Illinois state fair, bred pure-bred hogs and horses which, of course, were money-losing propositions. He was a hale fellow well met – played the fiddle and told great stories. Friendly, warm, you never knew how many people were coming to dinner because he would invite people on the spur of the moment. That kind of a personality.

My maternal grandmother's family were well off. Over the course of his lifetime, my grandfather essentially frittered away her inheritance. I, of course, don't know the details, and whether their declining circumstances had anything to do with it or not, it always seemed there was a sort of melancholy when I visited my mother's immediate family – her parents and her brother. This was less the case when visiting her more distant relatives, of which she had many. She never said so, but I always had the strong sense that she was greatly happy to be away from her parents and brother.

My mother taught school for a year or two before she went to college. She attended Eureka College in Illinois; Ronald Reagan also studied there a few years later. While in college, she met a man named John Ainsworth. He was the sixth of six sons of the Ainsworth family, who lived in Mason City, Illinois. The Ainsworths were pretty substantial people – well off. My mother's family were what you might call frayed gentility. They frayed more as time went on.

She married John Ainsworth in 1923. His family were in the seed business and in the ice business. This was an era when if you were shipping fresh produce, you had to cool it, but train cars and trucks lacked mechanical refrigeration equipment. You had to use ice and so the Ainsworths built an ice plant in Watseka where the Ainsworths had a good deal of farmland. They sent John and my mother, then a newly married couple, to Watseka to manage the business.

So that's how she came to Watseka. She and John had two children, both girls, born, I believe, in 1928 and 1933. He contracted some kind of an intestinal disease and died in 1936.

My mother was left with an ice business in the middle of the Depression. Mechanical refrigeration for shipping produce was coming into commercial use at that time, so it was not a business with a promising future. Times were tough, but she refused to give up the business and was managing it, running it. A couple of years later, my father came to town, then working for the Sinclair Refining Company.

His job was to find locations for gasoline stations and acquire the real estate and do what was necessary to build service stations. That included finding investors for these service stations because Sinclair would develop the station and then sell it to investors and lease it back.

So that was his job. He located a facility in Watseka and somehow or other was spending time there. He was a rugged good-looking guy and by all accounts; he never had any shortage of female companions. One evening, he and his date went to a Cab Calloway concert in Watseka. The bands used to travel around the country in those days. Cab Calloway was in Watseka entertaining and my mother happened to be there with a bunch of her friends. They met and the

next thing she knew, according to what she told me, he appeared at the ice plant. He chatted with her about various and sundry things. One thing led to another and an invitation to dinner.

So that was in the late 30s. They then married in 1940. He decided to go to law school about a year or so after they were married. This was the fall of 1941. He went off to the University of Michigan to study law. Well, you know what happened in December of 1941. He realized that he was not going to be able to continue in law school and so that was the end of his law school career.

He came back to Watseka and helped her manage the business; essentially, took over the business. They expanded into frozen food which was kind of a natural adjunct to the ice business. That was the beginning of their business career and married life together.

He had been born in Topeka, Indiana, but grew up in McComb, Ohio, which is a little town of about no more than a thousand people in northwest Ohio. The oldest child of a family of three children. His father was the station master for the Nickel Plate and Baltimore & Ohio railroads, which had a junction in this little town. Dad's father worked 50-odd years for the railroads, which at that time gave him, I think, a somewhat more worldly view than was typical of that area. The family was able to travel fairly extensively on railroad passes. They were able to get fresh seafood that had been harvested on the east coast in the morning or the evening before. At lunch time, they'd have fresh fish or seafood which at the time in rural northwest Ohio, was very unusual. Looking back on it, my father's family somewhat resembles the family depicted in that Thornton Wilder screenplay, Shadow of Doubt – without Uncle Charlie, if you know the story. They were all very nice people, very well adjusted, a happy family—I'm sure underneath they

had their ups and downs—but it was a kind of a classic American family. But, in answer to your question, that's how they came to Watseka.

QUESTION: All right. So, the town of Watseka was roughly or is roughly about 6,000 people today?

WALKER: Probably. It was around 5,000 people when I grew up there, maybe a little more than that today. I think it's still about the same.

QUESTION: So, did your family live in town or was it a rural existence or what was it like for you growing up?

WALKER: We lived in town until I was about six or seven years old when the folks built a house on the edge of town on about 15 acres. It was what you would call a kind of a hobby farm. It had farm animals and I had a pony, a dog and cat, of course, more than one dog but only one cat. It wasn't really a working farm, although for several winters, Dad would buy a carload of cattle —about 40 yearling calves, and then my job was to hitch up the tractor and the wagon and throw hay out to these cattle in the winter time, feed them and then they'd be sold in the spring, It was a good deal for me because I got to keep the money.

QUESTION: That's nice. My next question was about what you did for work and did you work while you were going to school? Was there generally plenty of work for teenagers in town or what was it like other than hay for cattle and getting to keep the money?

WALKER: Yes. Mow lawns and do that sort of thing in the summertime. And so basically that's what I did. I was always earning some money myself.

Then when I was 16, I got a job at the local radio station. It was a brand-new station, just opening up. I had been in school dramatics and speech contests and that sort of thing and so when the station opened, I applied for a job. Was told they didn't have an opening. They had on staff only one person who had a first-class engineer's license. The FCC required at least one first class engineer to be on staff. The fellow who had that first-class engineer's license was also going to do on-air work. When the station went on the air and he turned on the mike key and the red light came on, he got mike fright. He stuttered and stammered and so forth and within days of the station going on the air, I got a call asking if I could come out and go to work.

So at 16, I got a job at the local radio station and went on the air at six o'clock in the morning, would work until eight, go to school and then come back in the afternoon and go back on the air at three o'clock and work 'til six.

This would have been 1960/61 to 62. I did that until I went off to college.

QUESTION: And so, what were you doing at the radio station? Were you talking about sports and news or were you playing music? What were you doing?

WALKER: All of the above. I was working the board, doing commercials, doing the news, rip and read. Go to the UPI machine, pull off the news, which I'd read at the top of the hour and do the commercials, play music. The station was just starting out and they hadn't quite found their groove at that time which is probably why I was able to work there. I did work at another station when I was in college that was more advanced. It had what used to be called an MOR format: Middle of the road – Barbara Streisand, Frank Sinatra, a lot of Tony Bennett, Al Martino, that kind of music. Also, I did the news. I would go around to the police station and

the sheriff's office, go through the blotter for arrests, fines and accidents. If there was an accident or fire happening when making the rounds, I would go out and try to get some news on the spot and would either radio back, by remote, a report to the station or come back and write it up and go on the air.

QUESTION: Ok. All right. And what did you do with the money you earned? Were you a typical teenager and spend it on whatever or did you …?

WALKER: Probably. I can't remember exactly.

QUESTION: Okay, you weren't somebody that saved?

WALKER: Well, I did. I did save. I always kind of had my own money. I won't say that I wasn't dependent upon my folks; largely I was, of course, but I certainly had some walking-around money.

QUESTION: There's been mention of something about a glow worm and a water tower?

WALKER: Those are two different things. This goes back to Watseka, Illinois.

When I was a senior in high school and working at the radio station there, some student in the cafeteria discovered a worm in the noodles that had been served in the school cafeteria. [laughs] Well, you can imagine in a high school cafeteria: "There are worms in my noodles!" The news went like wildfire through the school.

The next morning, on the radio I played "Glow Little Glow Worm, Glow." I don't know whether it was the Ink Spots or Spike Jones or whose version it was. I dedicated the song to the cooking staff at the local high school.

The principal of the high school was so enraged that he called the owner of the radio station and said that I should be fired. Well, fortunately, the owner of the radio station had had his own scrapes of a like sort in school. His response was, "I think the cooking staff should be fired!" In any event, I was not fired.

But the water tower. There were three of us, one of whom lives up in Greenbrae now, Vince O'Brien, and a friend of ours, Richard Gaines, now a lawyer in Rockford, Illinois. We hit on the idea climbing the new water tower which had recently been built in town. It was the highest thing for miles around. Now this is the prairie – it's flat. And this water tower was actually pretty huge.

Our idea was to climb it and paint "Class of 62" on the side of it, which we did. We hung out in a garage near the water tower. We had our equipment for this escapade. We drew straws on the order in which we were to climb the tower.

I drew the straw to go up last. Frankly, the only reason I made it all the way to the top was, of course, the other two guys had made it to the top, and I would have been too embarrassed not to make it all the way. It was scary as hell.

We carried it off without personal mishap. Of course, it was the talk of the town. But we were found out. And our fathers, the three fathers, all upstanding members of the community, were called by the police to come down and meet with the police at one o'clock on the following Saturday afternoon. That was a pretty glum gathering for three culprits, as you can imagine.

I had no idea what was going to befall us. But two fortunate things happened. The authorities took an attitude of leniency towards the three delinquents, and secondly, the paint job

on the newly built water tower turned out to have been defective, and unbeknownst to us, the city had already arranged for the tower to be repainted at no cost to the city.

When the re-painting occurred, that covered over "Class of '62," and saved us the cost of the re-painting. We were assigned to spend two weekends with work crews working for the city, cleaning up trash and debris following a windstorm. So, our next two Saturdays were spent doing hard labor for the city as our punishment. It was my first encounter with a community service sentence.

But the event lived on. When I went through the confirmation process, the FBI agent was tracing my background, and by golly he found out about this episode and followed up on it. It appears in my background file. The FBI didn't follow up on the glow worm, but they did on the water tower.

QUESTION: I don't think you got questioned about it during confirmation?

WALKER: No, I didn't get questioned about it at the Senate hearings. But the owner of the radio station, who I worked for at the time and who remains a friend was asked about it by the FBI agent doing the background investigation. When the FBI agent started questioning him about this escapade, he said, "You gotta be kidding!"

QUESTION: You talked about being involved in dramatics in high school. What did you do, were you acting in plays or what …?

WALKER: Yes. Acted in plays.

QUESTION: And what attracted you to that? Was there an active drama department or were you just interested?

WALKER: That was what kids did. First play I was involved in was Rebel Without A Cause. The English teacher in the high school was in charge of the school dramatics. She was taken with Rebel Without A Cause which, of course, had been a film of several years before. I've forgotten what role I played. What was fun about it, one of the things that was fun about it, I was a freshman and a very good friend of mine and I were in the play together. There were these seniors who were in the play also who had the bigger roles. But we were able to pal around with the seniors, including three senior females, who were just a riot to be with, and so we had a lot of fun in that play and the rehearsals and the paling around associated with it. I was in other plays later. And also, in a lot of speech contests.

QUESTION: That's great. So, do you recall what you enjoyed studying? Was there any course that attracted you in high school?

WALKER: You mean any subject matter?

QUESTION: Subject matter. You know, thought about what you wanted to do. Was that forming in high school or is that just not something you considered?

WALKER: I can't think that I was particularly interested in any subject. I enjoyed English and history and those sorts of things and I enjoyed mathematics a little. I think it's fair to say that I was a good student. I wasn't the valedictorian of the class but in the upper tier of the class I'm sure, but I didn't exactly set the world on fire academically. At that age, there are other things to do.

QUESTION: And what attracted you to go to the University of Michigan? Was it because your father had gone there or had started at the law school or …?

WALKER: Yes. He had gone there to law school for a matter of months and his brother graduated from the University of Michigan. My dad went to Ohio State and graduated from Ohio State. And, of course, there's that great rivalry between those schools. And although Dad was a loyal Buckeye, he had a high regard for the University of Michigan. He had encountered in his early business career a man by the name of Walter Kirkbride who was an attorney in Toledo, Ohio. I think Dad had a lot of respect and admiration for Mr. Kirkbride, who was a very successful attorney and businessman in Toledo. Kirkbride was a graduate of the University of Michigan, president of the alumni association and so forth. So, it just seemed that when the subject of college came up, Michigan was always the place that came into the conversation. To some degree, that is ironic because the University of Illinois was closer and is a very good school. I never really thought about going anywhere else, but Michigan. I did, I guess, think about a couple of smaller schools but always kind of figured if I could get admitted to Michigan, that's where I would go and so I did. Didn't think too much about it. Michigan was a great place for me, and I thoroughly enjoyed my time there.

QUESTION: Going back a bit, you mentioned that your grandfather was involved in politics. Republican politics?

WALKER: Oh, yes. He was an ardent Republican. Staunch Republican. Although not everybody in his family shared that point of view by any means. His brother was an equally staunch Democrat.

QUESTION: All right. So, you went to the University of Michigan from ’60 …

WALKER: Started in 1962. Graduated in 1966.

QUESTION: Okay. University of Michigan was the place Kennedy used as a platform to propose the Peace Corps. Martin Luther King gave a speech there. Lyndon Johnson actually used it as the theater to describe his Great Society program. I was wondering, you were in that caldron, how did all of that affect you?

WALKER: Well, I was somewhat active politically at Michigan. Joined Voice Political Party, which later morphed into the Students for A Democratic Society—the SDS. I wasn’t I think an office holder of that organization but joined it, participated in the teach-ins against the Vietnam War, which came in1965, I believe. I helped in organizing that teach-in.

And helped approach some of the faculty members to participate in the teach-in. That was my role, fairly limited role, but nevertheless was involved in it. Did not hear Johnson’s Great Society speech. Did not hear Kennedy’s speech but I did hear at least one appearance by Martin Luther King in Ann Arbor and then later, when he was at Berkeley. I attended a speech that he gave on the Sproul Plaza. He was a compelling speaker.

QUESTION: You’ve already described it a little bit. What I was going to ask you about was the anti-war activity and the teach-ins and protests that began in ’64. There were sit-ins that were banned in ’66 when you graduated. I was wondering what you personally thought of what was the evolving culture at the time and all of the turmoil that was going on around the build-up in Vietnam, although I think it was mostly centered around civil rights in the early ‘60s. How was all of that affecting you?

WALKER: Well you can't have lived in that era and in that place without being affected by it. I kind of came in on the cusp of the change from the attitude of the '50s to the attitude of the '60s. When I came in and started school in the early '60s, it was all pretty button down. That's kind of the attitude that affected most students, I think. Joined a fraternity. However, I dropped out pretty quickly.

I'm not sure exactly how to describe what I was thinking at the time. Civil rights issues were very prominent at the time. I wasn't terribly active in the civil rights movement when I was in college. Sympathetic, yes, but I didn't go down to Mississippi to do voter registration or protests there. As I said I had some modest activity in anti-war activities at Michigan.

QUESTION: Well, how do you think all of that or that experience shaped your political views?

WALKER: Oh, I think definitely it did.

QUESTION: How so?

WALKER: Well, I was pretty liberal on those issues and quickly became pretty disillusioned with Johnson and the Kennedy/Johnson administration which, looking back on it, even then, you could see how they just literally slipped into the abyss of Vietnam. That seriously disillusioned me with this whole Great Society approach to government, the sort of muscular role for government in society. I quickly began to realize that those ideas while very appealing are fraught with a lot of dangers and risks because the use of governmental authority to effect social and economic change is very difficult to manage well and effectively. So, yeah, it had a clear impact.

QUESTION: Since you graduated in ’66, how did the draft affect you?

WALKER: It didn’t immediately. I received three induction notices. I can’t tell you exactly in what year each of them came, but one of them came in ’66 because I remember I went for a physical at Fort Holabird in Maryland. Maybe I didn’t receive an induction notice, but I received a requirement to show up for a physical. I was working in Washington that summer after graduating from college and went to Fort Holabird in Baltimore for a physical.

I recall at the time the physician came around with a stethoscope. He was kind of a doddering old character. He had a palsy, and he put this stethoscope up and he said, “How long have you had this heart murmur?” Well, I had never heard or thought that I had a heart murmur.

If I had been smart, I would have said “Oh, all my life, doctor.” But I said, “Heart murmur?” They took me aside and they did some more listening and decided, no, there is no heart murmur. I thought, well, that could have solved my draft problem right then and there if I had given the right answer. Your question was, how did the draft affect me.

I went to Berkeley in ’66 and studied there ’66-’67; studied economics. That extended my deferment—student deferment. It was basically, if I remember correctly, a one-year deferment. There was a change in the selective service law about that time. If I had been a year older, I would have been able to extend that student deferment for graduate school. But they changed the law, essentially eliminating graduate school deferments after the one-year grace period.

So, at that point, I was thrown into a draft and I received—I can’t tell you—I think three induction notices over the course of time. One thing or another happened. I managed to get

them postponed. Finally, the end of the story is I received an induction notice when I was at Stanford. It must have been about 1968.

I packed my bags, arranged for a friend of mine to drive me to the Oakland induction station which he did. I went through the physical again. I had had some surgery in the meantime. I didn't know how that might affect my eligibility, but I took the x-rays and the other medical records with me just in case, showed them to the doctor after going through the process and he said, "I've never seen anything quite like this." He said, "I'm going to send you over to Letterman Hospital."

So instead of getting on the bus and going off to wherever they sent the inductees, I went home. I went to the place I was living in Menlo Park and showed up two or three days later at Letterman Hospital. The physician came around. He saw quite clearly that I was not inclined to submit to the draft if I could possibly help it. At Stanford, I had sued to enjoin the induction, and lost. There were among the medical records papers that indicated that I was prepared to appeal the decision. He said "well, I've never seen anything quite like this condition." I'm not sure whether he was referring to the medical records or the proposed appeal.

He said "maybe what we could do is use you as an example at the University of California, San Francisco Medical School. I could use you in class. And I thought, well, this is kind of an odd thing to say. I think he was just toying with me and the next thing I knew, I got a 1Y deferment.

I think the 1Y deferment was a decision on the part of this physician who probably didn't bear much sympathy for the Vietnam war. Or he might have been thinking this guy (me) is going to be more trouble than he's worth and so we'll just give him a 1Y.

As mentioned, I had sued to enjoin the induction, was represented by Bill Kehoe who was an associate or assistant dean at Stanford and his law partner. The legal issue was this change in the law that eliminated graduate student deferments for persons, like me, that had begun graduate school. There was some wrinkle in the law, which I have now long forgotten that created an argument that once you've started graduate school, the deferment should run to the end of your course of study. That was the basis of the suit to defer or enjoin the induction. The issue was how my time studying economics at Berkeley related to law school. We had an argument that they were related.

The case came before Judge Sweigert. He granted a temporary restraining order and then after the hearing on the preliminary injunction, he vacated the TRO, denied the preliminary injunction and, of course, that then created the right of appeal. A copy of the notice of appeal was in the packet along with the medical records that the doctor saw when he made his decision to give me a 1Y deferment.

So, I was both a law student and a litigant when I was in law school. The first time I was in a court room at 450 Golden Gate Avenue, I was a litigant.

QUESTION: Great. That brings me to what you've already discussed a little bit, which is, after graduating, you became a Woodrow Wilson fellow in economics at Berkeley. So how did that come about and why your interest in economics?

WALKER: I became interested in economics because I had studied it and enjoyed it. It was my favorite undergraduate course at Michigan and did quite well in it actually. I had always thought that I would go to law school. I think that was in the back of my mind as far back as high school.

That was always kind of the path that I was on. But I became quite interested in economics and a professor, Shorey Peterson, at Michigan took an interest in me and said, "You know, you really ought to consider going on with your economics and maybe teaching or becoming an economist." He said, "What I'd like to do is propose you for a Wilson Fellowship," which he did. I went through the interview process and was given the fellowship.

It was one that I could use either at Columbia or at Berkeley. I wanted to go to Columbia because I wanted to live in New York. I thought that would be pretty exciting. But the wiser heads in the Department of Economics at Michigan said, "oh, no, no, Berkeley is much better for what you're interested in so you should go out to Berkeley." Well, I had no interest whatever in coming out to California, but thought, well, if they say it's the better department, that's what I'll do. I came out here with no interest at all in staying. I remember walking across the Berkeley campus after being out here for about six weeks. Winter was not coming in the way that it comes in Michigan. I recall saying to myself, "Walker, you know, it's not too bad out here after all."

QUESTION: And then what did you study; focus of the economic study?

WALKER: Well, it was the PhD program. First, the basic coursework of the Ph.D. program at Berkeley had a lot of mathematics, a lot of econometrics, some monetary theory. John

Culbertson was the professor who taught monetary theory. That was the subject I was principally interested in. I didn't think he was the greatest teacher. I was disappointed in his course. Dale Jorgenson taught a macroeconomics course which was quite good.

It was the general first year of the Ph.D. program, but it quickly became apparent that my mathematical skills were not of the same caliber as other students and not sufficiently rigorous that I could really expect to be a successful academic economist. I thought, well, if I'm just going to be a journeyman economist, I'd rather be a journeyman lawyer. That's kind of how I decided to go to law school.

Jim Hormel, who later moved to San Francisco himself and was President Clinton's ambassador to Luxembourg, you recall, was then the assistant or associate dean at the University of Chicago Law School. He was out here on a recruiting trip and he interviewed me at Berkeley. He persuaded me that the University of Chicago was the place for me, because, he said, it was about the only place at that time where you could combine economics and law. That wasn't quite true as I later discovered, but it seemed to me to be persuasive case and so I went back to the University of Chicago for the first year of law school.

QUESTION: In this period, you're finishing your fellowship at Berkeley; you're going back to Chicago for your first year of law school. Before you go to Chicago, I found one paper from the Berkeley economics department during this period, that was considered a landmark at the time, the market for lemons was the subject.

WALKER: The Akerlof paper?[7]

QUESTION: Yes. The subject was asymmetry in markets can make a market collapse. Was that the kind of thing that you were interested in? What was it about the economic theories at the time that interested you? Or was it more combining law and economics.

WALKER: It was combining law and economics although the Ackerloft article, I don't believe I had read it at that time. I certainly read it later. What I also found interesting was the Pigou article on externalities and Pigouvian externalities.[8] I think A.C. Pigou.

The teaching device that he uses stems from externalities created by a steam locomotive going down the track and creating pollution, starting fires, which, of course, locomotives used to do. It deals with the economic problems associated with attempting to price activities to embrace all of these costs. That leads pretty naturally into legal issues. So that was something that was of fairly keen interest to me at the time and still is, for that matter.

QUESTION: You've been known on the bench as someone who did embrace law and economics much more than perhaps your colleagues have. Can you explain how you've seen law and economics as a way to approach legal problems? What's the undergirding practice here or theory here that interests you in combining economics and law?

[7] Akerlof, George, "The Market for Lemons: Quality Uncertainty and the Market Mechanism." 1970 Quarterly Journal of Economics 488.
[8] Pigou, Arthur, The Economics of Welfare, 1920.

WALKER: Well, economics is a pretty interesting way to look at the world. It explains a lot of how institutions and people behave, looking for their incentives and how they respond to those incentives.

It makes sense of a lot of things that at first seem anomalous. It certainly doesn't explain everything, and people do act contrary to their self-interests at times. But most of the times they don't. Oftentimes, you can look at the economic incentives and the externalities associated with those incentives and explain ways that people and institutions behave. Judge Posner's thesis, early in his career, was that common law judges essentially apply fundamental principles of economics in deciding common law issues, particularly in the tort area. Posner was not theorizing that judges were responding to their own incentives, but that they looked at the facts of a case and decided the outcome based at least, in part, on what rule of law maximized the benefit to society in like cases.

I think there's a good deal of validity to that thesis. But one of the ironies of my academic training was that, I went to Chicago to combine law with economics. What I got at Chicago was basically the dreary first year curriculum of law school: torts, contracts, crimes, property and so forth. All are essential building blocks of a legal education, but not economics, as such. There were some great economists around the law school at the time: Coase[9] and Aaron Director[10] and so forth. I was not exposed to them. So, then when I transferred to Stanford and signed up for a

[9] Coase, Ronald H., British, Nobel Prize in Economics 1991. (1910-2013).
[10] Director, Aaron, 1901-2004. Central role in the development of the Chicago school of economics, with brother-in-law Milton Friedman, influenced a generation of jurists.

class on regulated industries, it turned out to be taught by Richard A. Posner, who was in his first year of teaching. He taught just that one year at Stanford.

In Posner's class, you knew at the time that you were in the presence of somebody who was exceedingly bright. I've used the expression that going into one of his seminars was like going into a dark room and having somebody turn on the lights. He just illuminated the issues in a striking way. There were others at Stanford, who were also law and economics scholars. Bill Baxter taught antitrust and I worked a good deal with Baxter. Ken Scott who taught corporations also had a law and economics focus. So, I actually got my law and economics more at Stanford than I did at Chicago, as it turned out, and Stanford is, of course, a much more pleasant place.

QUESTION: So, you worked for the SEC in this period. I'm not sure of the year. Could you tell me when you worked there and how that fit in with the Wilson fellowship?

WALKER: I don't know that it fit with the Wilson fellowship.

It was kind of the thing to do when I graduated from college: try to get a job in Washington. Some of my buddies or people that I hung around with were doing that sort of thing. I remember a friend of mine got a job at the State Department. All the rest of us were very envious of him. That seemed like a real coup.

I managed to get a job at the Securities and Exchange Commission and worked there two summers: the summer of 1966 and then the summer of '68, in what was at that time called the Office of Policy Research. I believe that branch of the Commission now is the Office of the Chief Economist. I was hired by a man by the name of Ralph Burgess, who left the Commission

to go to the National Association of Securities Dealers. I've forgotten who his number two person[11] was, but I also worked quite a bit with him, particularly, the second year.

It fit probably better with the economics background than it did with law school. I did work with Frank Wheat, who had been a partner at Gibson Dunn & Crutcher. I did a project for him, I believe, the first year that I was at the SEC. He prepared a study of the mutual fund industry. I compiled some data for him and had some interaction with him.

Many years later, I deposed Wheat in some litigation I handled. He recalled our brief association from years before. It was an amazing way for our paths to cross after so many years. He was a very good witness. I didn't get too much out of the deposition or his testimony when I put him on the stand. I also worked a little bit with -- he became director of the CIA and later a federal district judge -- Stanley Sporkin, who was, I believe at the time, head of the division of trading and markets at the Commission.

I've completely forgotten what I did for Sporkin. Yet, you can never forget encountering Sporkin.

QUESTION: How so?

WALKER: Well, he was a real character and still is, as far as I know. I don't think that changes.

QUESTION: So, what did you do at the SEC?

[11] Gene L Finn, later SEC chief economist.

WALKER: Basically, research. Data compilations, some writing. With Frank Wheat, I did contribute a paragraph or so to his draft of the mutual fund study. I did a project he had me do and follow-up on, and I wrote a report to him and some of it did find its way into the final report.

QUESTION: Can you describe your experience during your years at law school and did you pick a specialty in terms of practice or was it the economics that was the central core of what you wanted to do. I mean you didn't stay in Washington. You didn't stay with the SEC. So, what was going on when you were contemplating the future?

WALKER: Well, I think the fair way to answer that, Pam, is two-fold. I think it's accurate to describe me as a fairly indifferent law student. I was not terribly enthralled or interested in law when I was in law school.

I remember sitting in a criminal law class, which was a required course. I also took a criminal procedure course when I was at Stanford and an evidence course. I don't know why I took these courses. Maybe they were required. I found them utterly uninteresting. But both were taught by great teachers. Criminal procedure was taught by Tony Amsterdam, who was a wonderful teacher. John Kaplan, who was the evidence professor, was also a wonderful teacher. But I was just completely bored with these subjects. I thought the rules of evidence were kind of silly, based on a lot of pseudo-science about what's reliable evidence or not reliable. My views on that have not much changed. The whole process of criminal procedure seemed just a lot of formalisms and not terribly interesting and rather arcane.

I was much more interested in the business and economic courses: antitrust, securities, corporations. I just thought that those subjects were more useful, number one, and it's what I felt more comfortable doing.

QUESTION: This is now late sixties, you're finishing up at Stanford, you've been to Berkeley, lots of social tumult still going on. Were you just head-in-the-books, not worried about that or were you…?

WALKER: More so, much more so after I got to Stanford than at either Michigan or Chicago. The last spurt of social or political activism was when I was at Chicago working on the Eugene McCarthy campaign. Knocking on doors, doing canvassing in Wisconsin for McCarthy and that sort of thing.

I kind of disengaged from that when I went out to Stanford. Went to a few rallies but was not at all active. I did, however, when I was at Stanford become a Republican. As mentioned, I had become pretty disillusioned with the Kennedy-Johnson foreign policies. Pete McCloskey had run successfully against Shirley Temple Black in the Republican primary as an anti-war candidate. I wanted to support McCloskey. I did a little work for McCloskey.

Later, if I remember correctly, Norton Simon ran against George Murphy (1970) in the Republican U S Senate primary. He was certainly more liberal than George Murphy. I wanted to vote for Simon. Sometime while I was at Stanford, I registered as a Republican. Ironically, I eventually went to work for a federal district judge, Judge Kelleher who was recommended by George Murphy for his nomination to the bench. I don't think I ever told Judge Kelleher that I became a Republican so that I could vote against his candidate in the Republican primary.

QUESTION: Well, that was, and that was my next question that you did clerk for Judge Kelleher in Los Angeles. I was wondering how that came about? How did you end up going down there?

WALKER: At Stanford, I had worked with Bill Baxter on some telecommunications issues. And I don't know whether Baxter played a role in this or not but I had an offer to go back to Washington and work for the Office of Telecommunications Policy, as it was then called, headed by someone named Clay Whitehead.[12] That ring a bell?

QUESTION: Yes.

WALKER: And got a letter right toward the end of that third year of law school, shortly before I was to graduate that the funding for that office had changed in some fashion or other and I would not be an employee on the line of the Office of Telecommunications Policy but would be on the line—the budget line—of the Federal Communications Commission.

I thought that was some kind of a demotion. I didn't really want to go to work for the FCC. In an act of youthful impudence, I basically said, okay, if that's the situation, I don't want the job. When I woke up shortly after and realized that I was about to graduate from law school and I didn't have a job, I cast around for something to do.

[12] Whitehead, Clay, 1938-2008. Director of White House Office of Telecommunications Policy (ORC) 1970-74.

Tony Amsterdam, from whom I think I was either taking or had taken criminal procedure, said, "Well, why don't you apply for a law clerkship, judicial clerkship? That'll give you a year or two and you can figure out what you want to do." Well, that sounded like a good idea.

This was pretty late in the hiring season. Amsterdam put me in touch with Miles Lord who was a federal district judge in Minnesota with whom Amsterdam had a relationship and who had inquired of Amsterdam about prospective clerks. I either called -- I think I did call and talk to Judge Lord, if I remember correctly. It was very friendly, but I didn't get that job.

Somewhat later, I got a job with the Los Angeles County Superior Court, the appellate department, which in those days, handled all of the appeals from the municipal court. In Los Angeles, that was actually a pretty interesting little job. I thought it was kind of a down market job at the time but, in fact, there were a lot of first amendment issues that would come up out of the muni court and other cases. This was kind of the first stirrings of real interest in traditional law on my part.

The presiding judge of that department was Ron Whyte's father, James Whyte. And I think just three judges in that—three superior court judges—in that department at the time. I worked there from about September to the end of the year. That would have been 1970. A pal and classmate of mine at Stanford, Bill Westerbeke, who now teaches at the University of Kansas, was clerking for Judge Irving Hill on the Central District of California. Judge Kelleher was confirmed in December. Westerbeke called and said, "We've just got a new judge over here. He's undoubtedly looking for a law clerk. Why don't you track him down and apply for it?"

which I did. I went out and interviewed with Judge Kelleher at his law office in Beverly Hills and he hired me. And so that's how I went to work for Judge Kelleher.

QUESTION: Well, so what was the experience like?

WALKER: Working for Judge Kelleher? Well, it was wonderful. Number one, he was a wonderful man. Really kind and a very stylish personality. He had been a practitioner in Beverly Hills, had represented a lot of people in the motion picture business and show business. So, he knew a host of these folks. It seemed to me at the time to be a glamorous practice.

He was very deeply involved in tennis. He'd been non-playing captain of the Davis Cup Team in 1964. He was president of the U.S. Lawn Tennis Association. His wife was a wonderful tennis player. Their house up on Waynecrest Drive in Beverly Hills was on a knoll. In the front yard was a tennis court. They didn't have much lawn, but they had a tennis court. You'd sit on a little terrace at the front of the house which was like a reviewing stand for a tennis match. The court was in use most of the time.

Clerking for Judge Kelleher was a wonderful experience. I was his first law clerk. He was new to the bench. In some ways that's the best possible clerkship, a district judge who is brand new to the bench, because the judge is learning the job in somewhat the same way the clerk is learning the job. It's also better, I think, to clerk for a judge who has been in practice just before taking the bench, rather than one coming from another judicial position or who has been a judge for a long time , because you're both learning the job at the same time, in many of the same ways. Judge Kelleher was a marvelous teacher and I loved him and loved the experience.

QUESTION: And so, what did you learn about being a judge from him?

WALKER: I think one of the main lessons was learning to bite your tongue. He was a man who had strong opinions and he could make up his mind very quickly about things. But he managed to hold back and not reveal what he was thinking. What I learned from that experience is if you do that, you get a lot more information.

QUESTION: Interesting.

WALKER: Just kind of let the process play out. This was confirmed, I think, after I was on the bench. If you're the judge, the chances are you know less about the case than almost anybody else in the room. You certainly know less about the facts. And chances are you don't know as much about the law as the lawyers do who have been studying the applicable law for some time and maybe are specialists in this field of law.

Rather than to try to mold and shape the case yourself as a judge, just let it boil, let it percolate a bit. I think that was one of the lessons that I learned from Judge Kelleher. Plus, in part, and this may have reflected his experience with the motion picture business. Appearances matter in court. How you conduct yourself, the way you speak, the way you comport yourself, plays a role. It's not always decisive but you are on a stage and it's important to remember that.

QUESTION: And do you recall any particular cases that you found memorable working for him for good or ill? Is there anything that you got to work on that was …

WALKER: Well, one local practitioner I distinctly remember. It was the first time I laid eyes on Guido Saveri. He came down to argue *Feinstein v. Nettleship*,[13] an antitrust case. Joe Alioto,

[13] Feinstein v. Nettleship, 714 F. 2d 928 (Ninth Cir. Sept. 1, 1983)

Big Joe, had been elected mayor and was passing off his cases to various and sundry people. Guido picked up this particular case.

He was up against the luminaries of the antitrust bar in California: Jim Michael of my old law firm, Philip Westbrook of O'Melveny & Myers, Philip Verlager of the old LA McCutchen firm and I've forgotten who at Gibson Dunn & Crutcher, all of the big names in that field. Guido was there, singlehandedly fending them all off. I thought he made a marvelous argument and effort on his part. I have been a big fan of Guido's ever since.

There's oddly enough a patent case, which I thought was an extremely well-handled case before Judge Kelleher. It involved some kind of a refining process in the petroleum industry. Texaco was one of the parties. Filtrol,[14] I believe, was one of the other parties. William K. Kerr of the old Fish & Neave firm represented one of the parties, I've forgotten which one. Kerr was a marvelous lawyer, able to make this technology so clear. It actually made the decision—I won't say made the decision easy, but it was an extremely well-handled case and he was an extraordinarily able lawyer.

Manor Drugs v. Blue Chip Stamps[15] I remember distinctly because I recall drafting the opinion, which Judge Kelleher entered in the case. We worked on it and he entered it. It involved the purchase and sale requirement under, I believe it was the 1934 Securities Exchange Act. You must either purchase or sell the security in order to trigger the cause of action under the '34 Act.

[14] Mobil Oil Corp. v. Filtrol Corp., 391 F. Supp. 337 (C.D. Cal. 1974)
[15] Blue Chip Stamps v. Manor Drug Stores, 421 U.S 723 (1975)

Judge Kelleher's decision went up the Ninth Circuit. If I remember correctly, it was reversed. The parties took it to the Supreme Court and the Ninth Circuit was reversed, which effectively reinstated Judge Kelleher's decision. Of course, that all happened after I was gone. But I remember toiling away on that order. In those days, all the pleadings were on paper and in the Central District, they used blue backs. Judge Kelleher required me to go through the file and clip little tabs on each of the blue backs indicating the plaintiff's motion papers and the responding papers and so forth. So, in addition to writing up the bench memo, I had to prepare the file so that he could go through and flip quickly from one brief to the other. Law and motion hearings were on Monday in the Central District. Judge Kelleher would come early on Monday from the beach or Beverly Hills and whip through those files I had prepared, read my bench memos, take the bench and typically rule on the motions.

QUESTION: And what about writing? Did he teach you anything about writing? Were you fairly confident in that area? How did you feel about the kind of writing you had to do?

WALKER: Yes. Do not split infinitives. None means no one, so none of the items is… is the correct formulation. He was very particular about that.

Dick Odgers who I worked with at this firm also was pretty persnickety about some of these Latinate constructions.

Kelleher was a very kind and generous and understanding individual, but he had his—I won't say peculiarities—he had his standards. He expected you to meet those standards and to adhere to them. He could be a little brusque if you got off the rails, but it was a brusqueness that would pass quickly.

QUESTION: We're now at a time in your life when you were an independent young man on your own. Did there come a point growing up or when you were in college or later that you realized that you were gay?

WALKER: Oh, I knew that before I went to, certainly before I went to college. I think I knew that from the first stirrings of sexual impulses. I didn't understand it. I'm not sure when I began to understand it, but I knew those feelings were there and I also knew they were feelings to be kept to myself.

QUESTION: So now, moving to '72, you joined Pillsbury Madison & Sutro, which was a major firm in San Francisco. You were there from '72 to '90. So why did you choose to join a major white shoe law firm like Pillsbury as opposed to anything else you could have done?

WALKER: It was not my intention to join a big law firm. My intent was to find a small or medium sized firm. I asked Judge Kelleher if he had any recommendations for such a law firm in San Francisco.

"Well, I really don't know anybody up there except Jack Sutro," he said, "but Sutro knows everybody in San Francisco." So, he said, "I'll write Sutro a letter that you're interested in a small or medium sized law firm in San Francisco and we'll see what he says." The letter came back from Sutro, "I have arranged for Mr. Walker to meet our hiring partner, William E. Mussman."

Although that's not what I had in mind, I thought, what's there to lose? I came up to interview Mr. Mussman. I walked into his office and he had on the wall these big photographs of Tennessee Walking Horses. My parents had had Tennessee Walking Horses and had shown

them and rode them, really more before I came along. My parents were pretty much out of horse activities when I came along. But there was always a lot of reminiscing at home about Tennessee Walking Horses. I didn't know very much about them, but I remember walking into that office, seeing those photographs and saying to myself "Walker, we're going to be talking about Tennessee Walking Horses," which we did. And, of course, it was exactly what Mussman wanted to talk about. That was his interest.

He was very friendly. I said toward the end of the interview that I appreciated the opportunity to meet him and I wondered if it would be all right if I went up and met Mr. Sutro to thank him for the introduction. I remember Mussman kind of was taken a little aback a bit by that and he said, "well, okay." He picked up the phone and called Sutro and he said "well, let's go."

We went up to see Sutro in his corner office on the 19th floor of 225 Bush Street. Sutro was there, smoking a cigar. He had an associate, Michael St. Peter, to whom he was giving files and a secretary, Mrs. Penn, who he was dictating to at the same time. The phone was ringing, it was hubbub of activity. He was smoking on the cigar and barking directions this way and that.

It was, I thought, a very engaging scene, full of activity, a man doing whatever he was doing, but doing it with a sort of vim and vigor that I found very attractive. He was very blunt. He didn't pay much attention to me. But I thought this is kind of a groovy guy and kind of an interesting operation.

That must have been, well it would have been '72 I would think, maybe late '71. I've kind of forgotten now. I gave up the idea of a small or medium sized law firm in San Francisco. I

don't recall that I interviewed any firms in Los Angeles, at least not seriously. I'd kind of made up my mind somewhere in this process, I don't know exactly when and I don't know exactly how or why, that if I got a job at the Pillsbury office, that's what I would take.

Otherwise, I was going to stay in Los Angeles. And eventually I did get a job at the Pillsbury office.

QUESTION: Describe your work at Pillsbury. Who were you assigned to? I mean what would you initially do coming in, what kind of work were you doing?

WALKER: I was assigned to work with Richard J. MacLaury who was an antitrust litigator. Chain-smoking, ex-marine, profane. He kind of fit the mold in some ways. I worked for and with him and I must say I found him a very attractive personality. I went to work in his group. I was assigned to work with Harvey Hinman, who was the only one of the lawyers in the MacLaury group who was not engaged in the Western Liquid Asphalt cases. These were a series of antitrust cases arising out of the interstate highway construction project.

Mac had kept Harvey off doing other things on the theory that if the asphalt cases ever went away, he wanted to have something else percolating in the group so that he could pick it up. So, he kind of kept Harvey off the asphalt cases. I worked with Harvey on two or three different matters. After about a year of this, I began to get sucked into the asphalt cases, which I thought were awful.

The asphalt cases involved these tedious document reviews, the most boring kind of work you can imagine. I began finagling my way into doing other things. However, there's one other vignette I should mention since this is an oral history.

I did interview some other law firms in San Francisco besides the Pillsbury office. One of them was a medium sized firm headed by a fellow by the name of Peter Mayer. It was primarily a tax firm. I was kind of interested in tax work at the time. You graduate from law school; you can sort of toy with a lot of different things. I interviewed Peter's firm. I think he was about ready to give me an offer or would have given me an offer, but he said, "have you any offers from any other firms?" I guess this is after I had an offer from Pillsbury. I had set up the interview with Mayer, got the offer from Pillsbury and then had the interview with Mayer.

I think that was the sequence. In any event, I had the Pillsbury offer in hand at the time. And he said, "have you any other offers?" And I said well, I have an offer from Pillsbury Madison & Sutro. "Oh," he said, "you ought to take that rather than come to work for us." I said why is that? He said, "Two reasons. Number one, we're just a tax law firm and if you get into actually doing tax work and you don't like it, we don't have anything else for you to do." He said, "at Pillsbury, if you start in one thing, if you don't like it, they've got lots of other fields that you can practice in and number two, it's my law firm. I use Pillsbury for my personal business work."

Well, I thought that was a pretty good recommendation. That kind of sealed the deal. The other vignette – another firm that I interviewed was the Bronson & McKinnon firm. The hiring partner of which at the time was Charles A. Legge. I didn't get an offer from Bronson. One of the first cases that I worked on after coming to Pillsbury was a case in which we represented a defendant in an antitrust action brought by Legge on behalf of a client of his, William Penn Patrick.

Chuck later admitted that it was a mistake taking that case and taking that client on but, he did. We beat Legge in that case, which gave me some satisfaction, of course. Then just within the past six months, Ed Morris, a former partner of Legge's at the Bronson firm, who is now 92 or 93 years old and is someone I see occasionally, came over and he said, "You know, I want to tell you a story. You interviewed the Bronson firm when you were looking for a job and just out of law school."

I said, yes. And he said, "Bronson didn't give you an offer, did it?" I said, No, it didn't. He said, "Our hiring partner, Chuck Legge, told us you weren't smart enough for the Bronson firm." He said, "I thought you would enjoy hearing that."

QUESTION: Oh, my God.

WALKER: And I must confess, I did enjoy hearing that.

QUESTION: I'll bet. Who were your mentors then in the firm?

WALKER: Well, the first mentor at the firm, Harvey Hinman was a great guy to work with at the very beginning, but we only worked together for about a year. My real mentor was Dick Odgers. He was a wonderful lawyer and a wonderful person. I loved working with Odgers. He was fun.

He could be pretty testy about some things. He had a dry sense of humor and a touch of sarcasm and he could sort of twist the knife a little bit. I was usually on the pointed end of that knife. But somehow or other I loved that. I enjoyed it. He was almost always right about whatever the subject was.

He was definitely a mentor. We worked together on a lot of things. He basically had two clients that he worked for—the telephone company and Safeway Stores. He had two associates who worked with him. Jim Young worked with him on the telephone company matters and I worked with him on Safeway matters. He kind of operated in his own orbit at the firm. He was not really in one of the firm's practice groups.

When I was working with Harvey Hinman, Harvey had assigned me to work with Dick on some assignments. They were Safeway matters. So that's the way I managed to transition out of the MacLaury group and I kind of latched onto Odgers. I enjoyed that association very much. And that was kind of my exit strategy from the asphalt cases.

Of course, it then developed into other things as well. As I said, Odgers was kind of in his own orbit in the firm. But they had to put him somewhere on the organizational chart and so they put him with Allan Littman and Bill Edlund's group.

I worked with them and with Noble Gregory, who was an appellate lawyer, did a lot of work with Noble over the years. I never really considered them mentors in quite the same way. They were colleagues. They were good guys, excellent lawyers and I enjoyed them. Noble may have been something of a mentor because he was always, he was somebody you could go to and talk to about your case and he would give you some pretty pungent advice.

He'd tell you all the ways you can lose your case which is extremely valuable advice. He'd tell you what your problems are. He was a mentor in this way, but Bill and Allan were more colleagues and wonderful lawyers, good to talk to and work in the same group. But really, the mentors were Dick Odgers and Noble Gregory.

QUESTION: So, what did you learn from these folks about the practice of law? In particular what did you take to the bench with that? I mean what did you glean from it?

WALKER: Well, as I said, with Noble, it's how you're going to lose your case. All the pitfalls associated with the procedural rules and the necessity of making sure that you got your record put together. I think both Odgers and Gregory, in somewhat different ways, were very conscious of what lies beyond the trial court when you're in the trial court.

They always had an eye on the appellate court and what you needed to do to protect your record so that you could either get affirmed or how, if the case went against you, you could get it reversed, if necessary, without falling into the trap of invited error. Recognizing that the process doesn't stop when the jury comes in with a verdict or when the judge renders a decision. The process goes beyond that and I think that was a very important lesson.

QUESTION: And tell me about some of your favorite cases. I remember covering probably at the tail end of your work at Pillsbury; the horse racing farm case.

WALKER: Oh, Spendthrift Farms. I don't know that it was a favorite. It certainly was an enjoyable series of cases; there were a number of cases.

The first client we had was John B. Crook, so the case is *Crook v. Spendthrift*. We didn't actually denominate the case in that fashion, but our client had invested, I believe, it was two and a quarter million dollars in this horse racing stable.

It was a public offering of a breeding establishment near Lexington, Kentucky that had been developed by the Combs family. Frank Wheat of Gibson Dunn & Crutcher had done the

legal work on the underwriting. Encountering Wheat like this shows how things go around in life.

We filed an action on behalf of Crook and I'm pretty sure the amount of his investment was two and a quarter million dollars. Almost by return mail, we got a check for two and a quarter million dollars. It was just - boom.

Well, once the other investors heard about this, they started coming to us. We filed a number of actions and eventually we recovered, not as much as we would have liked and should have recovered, probably, but recovered a fair amount of money for the group.

The issue, and the reason we were successful in the Crook case so quickly is the statute of limitations on a section 11 claim had not run by the time we filed the action on behalf of Crook. By the time the other clients came to us, that statute had— it's a one-year statute of limitations -- had run. So, we had to pursue claims on behalf of these other investors under section 10 of the '34 Act and various and sundry other state remedies which had longer statutes of limitations and less favorable remedial avenues.

That was part of the problem. The other part of the problem was proving that these investors, who were all very sophisticated investors, were defrauded in a horse breeding establishment investment. By nature, horse breeding is a very risky enterprise. The nature of the business does not admit of people wearing white hats and black hats quite as easily as in some endeavors. The legal principles were of a fairly typical securities or fraud type action in which we were contending that misrepresentations had been made to the investors, but the case was full of colorful characters.

QUESTION: That I remember. It was the first time I'd ever heard of Blue-Sky laws.

WALKER: State securities laws. Right. Blue Sky laws, well, our clients were sold blue sky instead of things of actual value. It was hard to get a jury sympathetic to investors in a case like that.

Calvin Klein and Barry Schwartz were two of our clients. The former ambassador to New Zealand was a client. A real estate guy in Ohio and various and sundry others. It was certainly fun litigation. I remember one deposition; I think it was the deposition of Leslie Combs back in Lexington. By this time, Richard Haas, formerly of the Brobeck office and then with Moses Lasky, of Lasky, Haas and Munter, I believe was the name of the firm, had come into the case representing the senior Mr Combs.

By the time Haas had come into the case, we were taking these depositions in Lexington. Haas was a great guy. Excellent lawyer. Great big booming voice. It got to be about 5:30 in the afternoon and somebody suggested we have a coffee break. Haas said, "I was thinking about a Beefeater break," which seemed like an even better idea.

QUESTION: But, in any case, favorites, awful experiences?

WALKER: Well, there were a series of cases for Safeway that were a lot of fun. They began with a case that the Alioto office had brought on behalf of some farmers and ranchers against Safeway, Kroger and A&P, three major food retailers, contending that these food retailers had conspired to depress the prices that they paid for dressed beef to packing houses. The packing houses allegedly had passed on these depressed prices to the feed lot operators, who in turn passed on these depressed prices to the farmers and ranchers.

Kind of a crazy theory, actually, with that series of pass-ons. It was called the Bray case, after the first named plaintiff, a rancher down in San Benito County. Bill Schwarzer, at the McCutchen office, represented Kroger. That was the first real encounter that I had with Schwarzer. He was lovely to work with.

I mean, as you know, he had this bit of a Teutonic manner that could be a little abrupt at times. He was forever telling me what I was doing wrong, but he was right. So, I couldn't get angry. He never told me what I was doing right. He just kept quiet. I knew then that I was doing okay. Although at a different and competing law firm, he was kind of a mentor in a way.

He was very helpful and had no reason to go out of his way to be helpful to a young associate at another law firm, but it was just the way that he was. I thoroughly enjoyed working with him.

Kroger settled out of the case for $40,000 after three years of litigation, which was peanuts. Safeway settled for 45. Kroger wouldn't settle unless it was for less than Safeway. Wisely, Safeway wasn't going to let $5,000 stand in the way of a good settlement. Odgers really had to negotiate hard to get Safeway a settlement for $45,000.

By this time, Big Joe was mayor and Young Joe, or Joey, was just cutting his teeth in the business. He offered to settle with A&P, according to my understanding, for $25,000. A&P turned him down. They tried the case before Judge Carter. The jury came in with a verdict, after trebling, of $36 million.

Talk about falling into a bed of roses. It turned out there were some thorns in that bed of roses for the Aliotos. But the case precipitated a whole series of similar cases against the food

retailers involving all kinds of different commodities. The one I worked on most extensively involved oranges. I was pretty much in charge of that case – the first time I had principal responsibility although, of course, I never did anything of significance without conferring with Odgers.

I've forgotten all the different commodities that were involved in the fallout from the Bray case, but there were a whole series of these commodity cases on essentially the same theory. I worked on those for Safeway for a number of years. What I liked about those cases and what was a fortunate circumstance, these were big cases, but these were not humongous cases, like the asphalt cases.

Odgers always was the lead partner on these cases; I was the associate. In the course of this, I became a partner. But, as I said, these were manageable cases. It was basically just the two of us although from time to time others were enlisted to help. As a result, I was able to get some first-hand experience faster than was typical for many fairly young lawyers in the firm.

Somehow or other, I also got involved in timber harvesting cases, which were a lot of fun, a lot of work, on behalf of some people who wanted to cut down some redwood trees.

I had a number of those cases, most of them against Santa Clara County, which was attempting to shut down all timber harvesting in that county. I have forgotten how many cases we had and how many folks we represented. We won for all of them except the case the first client brought us – another irony, because he brought us all the others.

QUESTION: So, 70s, 80s, how was your social life during this whole period? Gay rights are becoming more and more of an issue. We've passed through the 60s, the war is over, people

have moved on to other issues. And practicing in a firm that's fairly conservative, I assume. How did that affect your social life?

WALKER: Yes, I think, it's fair to describe the atmosphere of the firm as fairly conservative. Although, I always felt and observed that there was a tolerance for eccentricity in the firm. There were some real characters in the firm. If you did your job, were a good lawyer, had a good practice, you could be a little weird. Nobody really bothered about personality quirks. I kind of liked that aspect of the firm. I don't think that was appreciated by the outside world quite as much as it truly existed at the time.

In terms of my personal social life at the time, I was pretty active socially. I was certainly not out as a gay man. I dated women and actually had some fairly significant relationships. I was definitely in the closet at the time, but pretty active socially. I'm sure at some point or other, the question arose in some minds, well, why isn't he married. But that didn't really bear down on me terribly heavily.

QUESTION: All right. Didn't affect clients you got? Didn't affect advancement in the firm?

WALKER: Not that I could perceive. Not that I could perceive.

QUESTION: What sort of courtroom experience did you get? You were talking about the antitrust cases where it was just the two of you and all of the different commodities. Did that lend itself to you getting courtroom experience, to be a litigator? I mean how did you get courtroom …

WALKER: Yes. I think in those cases, it was more often law and motion practice and appellate-style experience than jury trials.

I think my first trial at the firm was over in Alameda County. It was not a particularly interesting or memorable case. It involved somebody who had welched on a purchase contract. It was not a jury trial.

In those days, the major firms had clients that generated a fairly steady stream of work. The Morrison firm had Crocker Bank. Brobeck and Heller Ehrman had Wells Fargo. Banks, of course, generate a lot of fairly routine litigation matters and business matters. That sort of work increasingly dried up for the big-name law firms as the ‘70s and ‘80s wore on. Those cases provided opportunities for young lawyers to get into court, if you were a litigator, and actually practice your craft in a way that really no longer exists. And, of course, trials are fewer now than was the case then.

QUESTION: Do you remember spending any time in federal court practicing in front of people that were on the bench when you got there?

WALKER: Oh, yes, absolutely. I always felt much more comfortable in federal courts than in state court. Hated going to state court.

QUESTION: Why?

WALKER: The master calendar system. You’d go out to trial. You’d wait around in the presiding judge’s department to be assigned out. You’d be assigned out to a judge who had just received the file and knew nothing about the case.

You'd had no experience with this judge and so you were starting quite literally at ground zero. Then you'd be impaneling a jury.

In federal court there was a lot more build up. I felt much more comfortable there. Yes, I had appearances before Schnacke. Before Legge. You mentioned the *Spendthrift* cases, they were before him. Gene Lynch. Judge Wollenberg, that goes way back. Judge Burke. Judge Peckham – a lot of cases before Peckham. I had appearances before Judge Conti. Absolutely, I had appearances before all of them.

QUESTION: At what point did you get interested in joining the federal bench?

WALKER: I had practiced for roughly 14, 15 years, and I was reasonably happy doing what I was doing. But doing something for 14, 15 years, you think about doing something else.

The position of California Corporations Commissioner became available. I've forgotten who the incumbent was. I thought that would be a nice way to transition into another phase of my career. And it would be something that I could do for three or four years and then come back to the firm or go on to something else. It's often as important how you leave a job as how you get the job. No one at the firm would question why I wanted to move to the Corporations Commission – it offered an opportunity for a smooth career step.

I knew Marvin Baxter, who was then Governor Deukmejian's appointments secretary, and slightly knew the Governor. So, I called Baxter and said I was interested in this position.

He said, "You're not a corporate lawyer, you're a litigator." I said, "Well, I've done some securities cases" and so forth. He arranged for an interview with the Governor and I spent the

day up in Sacramento interviewing with Deukmejian and Steve Merksamer [chief of staff] and other people.

It all seemed to be going along swimmingly. But I didn't get the job. It went to somebody who was with Karl Samuelian's firm in Los Angeles, Parker Milliken.[16] There's obviously a connection between Samuelian and Deukmejian. Meanwhile, [then U.S. Sen.] Pete Wilson had a group that was looking for people that they could recommend for the federal bench. Paul Haerle, who was later on the California Court of Appeal – I knew and had worked with Paul on a number of things – got wind of my interest in the Corporations Commission job. He called and said, "Well, I understand you've been looking for a job."

I said, "Well…" He said, "I understand you didn't get that one but how would you like to be a federal district judge?" Needless to say, that's a much better job. I said, "Well that sounds interesting." That's how it started.

The fact of the matter is, I was not seeking a judgeship. I didn't have my cap set on it. I had really not thought about that as an exit strategy from the law firm. Nor was I really thinking of an exit strategy; I just wanted to do something different for a while and either come back to the firm or go on to something that offered another opportunity. The opportunity that I followed up most enthusiastically was the Corporations Commission job. By happenstance that led to the bench.

QUESTION: What did you have to do to secure the nomination?

[16] Christine Bender of Parker, Milliken, Clark, O'Hara & Samuelian.

WALKER: Not too much. I knew Wilson. I know at some point I had to fill out a questionnaire, gathered the cases that I'd worked on, and the lawyers that I had worked with, and opposed in litigation. I put all of that together, as well as various affiliations with this group and that group.

I don't remember the exact sequence of doing all of that, but obviously that was part of the process. Haerle was very definitely in my corner.

[Judge] Bill Schwarzer was pushing Tom Rosch, Bill's former colleague at the McCutchen office. And Schwarzer had some say in the process – I don't know whether it was a committee assignment or some kind of an informal group. And there were others under consideration. Dick Haas of the old Brobeck firm, and the later Moses Lasky's firm, had his hat in the ring. I'm sure there were others.

But I didn't really have to campaign for it with Wilson or the Wilson group. In fact, I think a campaign probably would have been counterproductive.

I do recall one call from Haerle. He had called one of my partners at the law firm about me. "Well," the partner said according to Haerle, "Vaughn's a good lawyer and a good guy and so forth, but if you want somebody who's really good" – another name was mentioned. Haerle called me and he said, "Do they know what's going on over there?"

And I said, "No, I haven't said anything to anybody about it." He said, "Well, you'd better do something before they torpedo this idea!" [laughs] But really, until I think it was around the Fourth of July, this would have been 1987, I didn't have to do very much.

Wilson called at about that time and said that he was going to send the name down to the White House. He said, "You will then get a call from the Department of Justice, the Office of Legal Counsel. They'll invite you back to Washington for an interview." And that happened. I went back I believe in September of that year.

QUESTION: Your hearings were in '88, and they had been delayed a little.

WALKER: This would have been in '87. Well, I had that interview in Washington. I spent a day back there at the Department of Justice. And that seemed to go well. Steve Markman – who was then the Assistant Attorney General in charge of the Office of Legal Counsel – he was very encouraging at the end of the interview. I recall he called me in September, so the interviews in Washington were earlier. Maybe they were in August. In any event, Markman called in September and said that I was going to get a call from the president.

QUESTION: Your first confirmation hearing was in June of 1988, but it had been delayed, for six months.

WALKER: Well, I can tell you, I eventually got a call from the President, and I think that was almost Christmas time in '87. So, all of this Department of Justice business was before that. And there was a hiatus between the interviews in Washington and the call from the President.

It was somewhat amusing. Markman called some weeks after the interviews and said that everything looked fine. He said, "It looks to me like you're going to get a call from the President." Reagan had a practice of calling people whose names he was going to send up. I think some presidents have followed this practice for Article III positions or at least Reagan did.

In any event Reagan did it. And Markman said, looking at his schedule, "I suspect that the call will come in on Wednesday, so if I were you, I would be close to your telephone on Wednesday and not wander too far." In the meantime, Doug Ginsberg's[17] nomination for the Supreme Court had come and gone.

QUESTION: I remember that.

WALKER: And you'll recall one of the grounds on which that nomination foundered, and I said to Markman with that in mind, "Well, Steve, you remember at the end of the interview you asked if there was anything in my past or background which if it became known would prove embarrassing to the administration?" And he said, "Yes" rather ominously. I said, "Well, it never occurred to me to mention this." I had mentioned some things, because I wanted to get some things on the table.

I didn't think they were problems, and evidently, they weren't. And I said, "It never occurred to me to mention that while at the University of California at Berkeley I, of course, smoked pot," and so forth.

There was dead silence on the other end of the phone. And he thanked me, and the conversation ended. And that Wednesday came, and that Wednesday went, and there was no call from the President. And the next day came and went. And the next week came and went. A month came and went. And I thought, "Well, Walker, you have just booted this damn thing."

[17] Judge Douglas Ginsburg of the DC Circuit Court of Appeals withdrew his nomination for U.S. Supreme Court after his use of marijuana years earlier created a controversy. His withdrawal came after the failure of the nomination of Robert Bork.

Eventually, in December the call came. And Reagan was very gracious about it. Of course, he had a light touch about many things. The way that he phrased it was, he said, "Mr. Walker, I have this commission for you to serve as a United States District Judge but before I send it to the Senate I want to make sure that it meets with your approval."

I told him that it met with my approval. Then when I got to the office, I got a call from Steve Markman who said, "Well, I understand you got a call from the President this morning." "Yes." "Well," he said, "I want to mention that the delay had nothing to do with the subject of our last conversation.

What it did have something to do with, is that they had in the meantime nominated Tony Kennedy from the Ninth Circuit to the Supreme Court. Kennedy was a member of the Olympic Club. I was a member of the Olympic Club, and they though it better not to have two nominees up there with that tag. So, needless to say, it was pretty easy for them to decide which one of us got delayed.

QUESTION: How did you know Senator Wilson, and were you active in Republican fundraising? Was that any part – a lot of people who are fundraisers for Senators also get nominations.

WALKER: The answer to that is: mostly yes. I had become acquainted with a fellow who'd just moved up here from San Diego. This was in 1972 when I came to San Francisco and started practicing law. We met at a party for a woman who was a friend of mine at the University of Michigan. She'd come here and was running against Willie Brown for the State Assembly, as a

Republican. When I learned of her candidacy, I called her and said, "Joan, gee whiz, I didn't realize you were in town, and what can I do to help with the campaign," and so forth.

She invited me to a gathering, and I met a fellow by the name of Doug McClendon who worked for the Bank of California. He had just been reassigned from San Diego to San Francisco and was raving about the Mayor of San Diego. He said if the mayor ever runs for statewide office, he's somebody we ought to get behind. So, in 1978 Wilson ran in the Republican primary for Governor. Doug and Alice, his wife, and Jim and Marian Robertson – Jim is a Superior Court judge now and has been one for several years -- and I put on a little fundraiser and party at the Assay Office.

It is still in business but under a different name. It was a party for Wilson. We invited everybody we knew. It was kind of a success. That was my first encounter with Wilson. He came in fourth in a field of four candidates. But a good politician remembers who is supportive, and I thought he was a very capable guy, in any event.

I supported him obviously in that race and then supported him when he ran for Senate in, I believe, it was '82 the first time. I can't say we're close friends, but I was a supporter and I knew him. That is why, I think, there was not a lot of work or effort in getting his recommendation for a nomination – he knew enough about me that I don't think he felt he needed to do a major investigation.

QUESTION: It was 1987, and it's nearing the end of Reagan's second term, and… it's the year before the November '88 election. I was wondering if you got blue slipped at that point when your nomination came up?

WALKER: Senator Cranston did not send in the blue slip. That squelched committee action on the nomination. The committee nonetheless held a hearing. I think it was in the summertime, July? In any event, we had a full hearing…

QUESTION: It was June 13, 1988.

WALKER: Okay, June 13, and we had a full hearing before the committee. Of course, I testified. Mary Dunlap, who had represented the San Francisco Arts and Athletics, testified about what a homophobe I was. Ephraim Margolin went back and testified on my behalf.

In fact, he went back twice to Washington. The first time the committee called off the hearing while Ephraim was mid-flight, and so he didn't get to testify that time. But, bless his heart, he went back and testified a second time. And Wilson testified or appeared before the committee. It was not a very pleasant experience.

QUESTION: I have some questions about that. But before I get to that, I want to go a little bit more into a blue slip. A blue slip is the 100-year-old Senate tradition that requires both of the nominee's two home state Senators to return a positive blue slip for the nomination to be confirmed. So, if one is withheld…

WALKER: Well, I suppose you can say they are positive blue slips. If they don't return the blue slip – the practice has been for the chairman of the committee to receive both blue slips. If the chairman does not receive both blue slips, then historically the chairman has not called the nomination to a vote.

QUESTION: So, describe what happened in the blue slip process for you? Because Sen. Cranston did, at some point, return it.

WALKER: No. There were three individuals, John Vukasin, me and a judge from Mississippi of all places, who were the subject of the home state Senator withholding the blue slip. It gets a little complicated.

The blue slip was not returned on the first nomination. Pat Leahy of Vermont was chair of the committee. His practice was not to call a nomination for a vote unless he had both blue slips. And that held up the first nomination. That's the reason that nomination cratered.

The second time, a couple of things happened. One, through a friend of mine, I became acquainted with Senator Heflin of Alabama, who was on the Judiciary Committee. I spent some time with him, and he promised to support the nomination. I did this on my own.

The people in the Bush White House said, "Don't do anything on your own. We'll take care everything."

I thought, that's not going to work. In any event, I reached out to Heflin, and he promised to support the nomination. And I believe, if memory serves correctly, I needed two Democrats on the committee to put me over the top.

We had an appointment set with Senator DeConcini and I just happened to run into him at a restaurant in Washington. I was with one of Pete Wilson's aides. We ran into DeConcini and DeConcini said, "Oh, yes, I have heard about you from Judge Heflin. If you're good enough for

Judge Heflin, you're good enough for me." So that made two votes that put us over the top, if I got a vote in the committee.

The other kind of ironic thing about it, the other two instances where the nomination was confirmed over withholding of the blue slip, occurred in situations where the President and the majority of the Senate were of the same party. That was true with Vukasin's nomination and it was true of this judge from Mississippi.

In my case the President was of a different party from the majority in the Senate. The issue that the chair of the committee, which was Joe Biden, had to decide, was whether or not he was going to honor the blue slip practice in this instance.

I had the hearing. Recently, I saw Biden. I told him I owed him a note of thanks for calling my nomination up for a vote over the objection of a house-state Senator of his own party. Biden replied that in all the years he chaired the judiciary committee my nomination was the only one in which he had done that.

QUESTION: And that was in the second confirmation try?

WALKER: That was the second time.

WALKER: And eventually the vote on the committee was 14 to 2.

When Wilson called to tell me the vote, I said who were the no votes and he said it was Paul Simon and Teddy Kennedy. And I said well that means Metzenbaum voted for me. And he said you know the only doubt I ever had about you was when Metzenbaum voted for you. [Laughter]

Metzenbaum had chaired that hearing the second time around. That hearing went very well. That was a lot of fun actually.

QUESTION: What happened while waiting for confirmation to go through?

WALKER: Your work begins to dry up. Fortunately, I had plenty to do and so I was pretty busy at that time, but there was nothing left in the pipeline.

QUESTION: [Laughter] Right. So, your first confirmation hearing is June 13th, 1988. It had already been delayed once. You waited six months for that first hearing and you already knew there was a blue slip issue. The first question from Senator Leahy, who is the Democratic Chairman at the time was about your membership in an Olympic Club.

I wanted you to talk about how you confronted that issue and dealt with it for your hearing. The other thing that was going on and this was a separate question, but Justice Kennedy had been, like you mentioned, nominated six months earlier. He was a member of the Olympic Club, but he had quit just before his nomination. But you didn't. And so, talk about how you dealt with it.

WALKER: Well, I was not about to quit if I could avoid it. I swam there regularly. I loved the Olympic Club and I still love the Olympic Club. I was there yesterday swimming.

Wilson did not insist on me quitting during the first nomination, but he did the second time. So, with great reluctance, I submitted my resignation. Happily, when the club changed its membership practices, which came after I was on the bench, they reactivated the membership. I

was not the only judge in that situation. How did I confront the Leahy questions? Frankly, I don't remember.

QUESTION: But the hearing itself you said was kind of a painful process.

WALKER: Oh, it was.

QUESTION: Well, describe that. Talk about that a little.

WALKER: Well, the painful part of it were the accusations of homophobia that Mary Dunlap presented to the committee. I was not out as a gay man at the time. I didn't exactly know how to handle the issue.

Whether to make an issue of this or just exactly what and so, of course, I didn't say anything. The accusation basically that she had raised, if I remember correctly, was that I was a closeted gay and that is the reason that I conducted the Gay Olympics litigation in the manner that I did.

That, I do think, is personalizing the lawyer who represents a client. Frankly – I don't know whether I can say this – each of the tactical decisions in the case was a decision made with the client. So as a lawyer, you defend your client's position and try to not to inject yourself as vouching for your client. So, it really does put a lawyer in an awkward position if you're representing an unpopular position.

QUESTION: There was a great deal of discussion about the Gay Olympics case and I was wondering how long you - had the USOC been a been a client of yours and did you come to represent them through Charles Renfrew?

WALKER: Yep.

QUESTION: Okay, so how did that work?

WALKER: The trademark counsel for the USOC called Charlie and asked Charlie to represent the USOC in the Gay Olympics case. Charlie and I had worked together on a number of matters.

This is after he had come back from Washington where he was Deputy Attorney General. He was then with the law firm for at least a couple of years, maybe three years and then went to Chevron. Of course, I had appeared before him as a lawyer when he was on the bench.

In any event, he called, and he said how would you like to represent the United States Olympic Committee. Why, I thought, well that sounds like a pretty classy client. He told me about the case. So, I started gathering all the materials and prepared the complaint and summons. We were seeking a temporary restraining order. After preparing them, I sent the papers down to Charlie to review. He called and said well I've read your papers and they look fine. There's only one suggestion.

What's that Charlie? Well, the banner on the title page was Pillsbury Madison & Sutro, Charles B. Renfrew, Vaughn R. Walker in that order. He said you're going to be doing all work on the case, so why don't you just take my name off. You should get all the credit.

I had never been first on the masthead in a case at that point in my career. I thought, oh, this is great. So, I took Charlie's name off and he was absolutely right. I got all the credit.

QUESTION: [Laughter]

WALKER: Charlie knew the direction of the political winds far better than I did. Years later, I reminded him of this a couple of times, and he professed not to remember it, but I certainly do. He's a very good guy, by the way.

QUESTION: The chairman's questions focused on the liens that had been placed on Dr. Wadell's property, who was the plaintiff in the case, to pay legal fees and some other costs, I guess. Can you talk about that part of the hearing? That dispute about the timing of – I think that was one of the things Mary Dunlap was so exercised about, was failure to get the liens lifted.

WALKER: That's true. The USOC made a decision that it should collect its costs. So that's what we set out to do. It turned out that Dr. Waddell, who was a very good guy who had gotten some, I think, very poor legal advice, had AIDS and was increasingly ill.

He was a sympathetic individual and that generated a good deal of publicity that was adverse to the USOC. Eventually, they decided to withdraw the liens and not try to collect because the principal asset he had was his residence. He had a daughter, I believe. So, the committee decided that it was just better to drop the matter.

QUESTION: Correct me if I'm wrong but is it standard that in an instance like that, where there's a lien pending and the plaintiff wants it lifted, that the plaintiff's lawyer would go to the court and say to the judge, we need these lifted. Get an order. Let's have a hearing, or how is it typically done? To get a lien lifted.

WALKER: The lifting of the liens or the placing of the liens?

QUESTION: The lifting. If there's a lien in place, typically what would…

WALKER: Well you just file a withdrawal of the lien.

QUESTION: Does it matter which party does it? The person that placed the lien.

WALKER: Well, it's the lienholder.

QUESTION: Okay.

WALKER: If you – if you are holding a lien. You can withdraw that lien and it's a quite routine act, ministerial act. And let me just back up one step.

The committee's thinking was not unreasonable. It needed some leverage against this group, particularly with the rather truculent attitude that Mary Dunlap was taking. She was threatening still more litigation and even defying the injunction. USOC's concern was that unless it had some leverage over her group, they would defy the injunction and run-up more litigation. Importantly, before the litigation began, Dr. Waddell had committed in an agreement with the USOC not to use the "Olympic" trademark. Then, he backed out of that agreement, evidently on Mary Dunlap's advice. So, it was not unreasonable for the USOC to believe it needed some leverage over Waddell.

So, it was not, from a business point of view, not an unreasonable decision on USOC's part. From a public relations point of view, it was very unattractive.

QUESTION: During the hearing, Senator Strom-Thurman asked if you believed you could be impartial to everyone, including the gay community. You responded by talking about understanding how unpopular the case was and how the committee should look for judges willing to take stands that are correct legally, even though they may be unpopular.

Can you talk about the difficulty of handling that case and, meaning the USOC case, and how that informed your approach to judging? If it did.

WALKER: Well, I think the statement is one that I would subscribe to today. That a good judge may have to make a decision, which is not popular in the community in which the judge lives. But if the judge believes it is a correct decision based on the law and the facts, you simply have to make that decision.

And I don't think it's incorrect to look for lawyers who've had to do that in the course of their practice. There is this tendency to identify the lawyers with their clients. They're not the same. There's no reason why a criminal defense lawyer would necessarily be a bleeding heart when called upon to serve on the bench and handle criminal cases.

No reason why a corporate lawyer could not be quite friendly to, and sympathetic to, consumer cases. It really depends on something more complicated than the clients that the lawyer had in practice. So, I don't have any difficulty with that statement at all. Even today.

QUESTION: There was also a protracted debate among the directors of the Bar Association of San Francisco about whether to support your nomination. And ultimately, they voted overwhelming to support you, but I was wondering, did you have to weigh in with them? Did you have to lobby them? How did you deal with the Bar Association?

WALKER: I don't think I appeared before the Bar Association. I could be mistaken in my recollection. I would not deny that I appeared before a committee of the Bar Association, but I don't have a recollection of doing so.

I do recall one Bar Association meeting, probably at about this time, whether it was in connection with the nomination or something else. Jerry Falk was on the committee or the Board of Directors. He referred to members of the "other" party. [Laughter] Everybody in the room was of "our" party – definitely, not my party at the time.

QUESTION: Describe the process leading up to the hearings. Today it seems that judges meet privately with each member of the judiciary committee and they'll answer questions prior to hearings. Did you meet with senators individually? And how did that work?

WALKER: Not all of them. Some certainly would meet with committee staff. I mentioned meeting with Senator Heflin, and frankly just encountering DeConcini, and lining up those votes.

I think I met Senator Simpson. I mean, informally before the hearing. Probably Senator Thurmond too. I certainly met with Senator Thurmond's administrative assistant. A fellow by the name of Duke Short.

Thurmond was the ranking member of the Committee, so he was an important player. I do remember meeting him. I can't be sure that I can recall all the meetings that I had with the senators. But there were a number of them.

QUESTION: The first hearing ends, and you wait. And it died in committee. Now, did you already know that it was not going to go anywhere because of the blue slip issue?

The public rationale at least was your membership in the Olympic Club and representation of the USOC in the Gay Olympics case. Is that accurate as far as you're concerned? And did you think at that point that your chances of being a judge were over?

WALKER: No. I was told by Wilson and his staff, the point person on his staff, a fellow by the name of Ira Goldman, that it was unlikely that the nomination would be acted upon during that session of Congress.

And that my chances of becoming a judge would turn on the outcome of the Presidential election. If I remember correctly, they didn't say it's a certainty that you will not be confirmed, it is unlikely until after the election.

I didn't think that my prospects were completely dead. I was beginning to think what Plan B ought to be.

QUESTION: [Laughter]. So, did you work with Senator Wilson to get it renewed after the election? How did you get the second nomination from President Bush once he was elected?

WALKER: I didn't do a thing. It happened. Wilson, I believe I can say because he said this, he thought that it was kind of a dirty deal that I got the first time. He didn't like it. He was going to send the nomination back to the new President. It wasn't long after President Bush came into office that the call came, and I was re-nominated.

QUESTION: Now in your second hearing you had resigned your membership in the Olympic Club in early 1989. So, talk about that decision, which I think you've mentioned already.

WALKER: I did mention it. I guess, now that you raise that, Wilson did make it a condition of the re-nomination that I pull out of the Olympic Club.

I must say I gave that some thought. It was not an easy decision. But I acceded to that. That was the only condition that he asked for.

QUESTION: Your second hearing was delayed by the October ’89 earthquake in San Francisco. And ultimately, your hearing was in November 1989. And that was I thought, from reading, it was kind of a tough hearing, but maybe you disagree. And Metzenbaum chaired the hearing. So, describe what went on the second time.

WALKER: Metzenbaum presided. He’s a – I guess he’s deceased, isn’t he? He was a wily guy. A lawyer. He asked some pretty tough questions.

The opponents who appeared in opposition included Louise Renne, then the City Attorney, who focused on the Olympic Club issue.

Terrence Hallinan, who I believe at the time was, not district attorney, but a member of the Board of Supervisors, appeared and spoke against the nomination.

I believe they were the only two witnesses at that hearing – negative witnesses at that hearing. But rather unlike the first hearing, we lined up – I won’t say a parade – but a number of positive witnesses.

Ina Gyemant and Diane Wick, who testified that I was really not a misogynist. [Laughter.]

They’d known me for a long time. They weren’t worried about me. Jack Friedenthal who’d been one of my professors in law school appeared. Chuck Hanger, who was a partner in the old Brobeck office, and had been an adversary in USOC litigation that had nothing to do with the Gay Olympics.

I’d handled a number of cases for the USOC involving various athletic contests, and Hanger and I went up against one another in one of those. And he was a great guy. He must have

been 6'6" or 6'7" and he'd been a basketball player at Cal. Big booming deep voice. Terrific trial lawyer. He testified favorably. Of course, I testified as well.

These committee hearings are orchestrated. The senators have their questions. They read their questions. They don't listen to the answers. They just go on to the next question. Some are better than others at examining the witnesses. But they all come to the hearings with an agenda and know what's going to happen. This one was orchestrated to come out well and it did.

QUESTION: You said the vote was 14-2 when it came out. Sen. Wilson, who was the Republican senator from California, supported your nomination. But Sen. Cranston, who was the Democrat from California, didn't. How difficult did that make the second confirmation vote?

WALKER: The key decision was the decision on the part of the chairman of the committee, Joe Biden that he was going to let the nomination proceed to a vote, notwithstanding Sen. Cranston withholding the blue slip. I do recall a meeting with Sen. Cranston's chief aide, a fellow named Roy Greenaway. We met in his office in the dome of the capitol building. Great office. Cranston was the second ranking Democrat in the Senate at the time.

To let the nomination proceed was probably not an easy decision for Biden – to let the nomination go forward. I assume Wilson had talked to Biden about this. They must have worked out some sort of understanding. I've never been privy to the details.

QUESTION: I don't mean to interrupt but if Metzenbaum was chairman of the committee how does Biden come into play?

WALKER: Biden was the chairman of the committee, but he did not preside at the hearing. Biden turned the hearing over to the next senior member of the committee who was Metzenbaum. That's quite frequent when the chairman is absent.

QUESTION: There was a nominee of President Tyler's who was nominated three times. But that wasn't for a judgeship. Did you know that you were the only judicial nominee who had been nominated two times by two different presidents?

WALKER: Actually, I was nominated three times. Between the Bush nomination in February 1989 and the hearing Congress adjourned and when Congress adjourns all nominations lapse. So, the White House had to send the nomination back up. I remember getting the call that the nomination had lapsed. It was one of those, if you'll pardon the expression Pam, one of those 'oh shit' moments. I think it was Ira Goldman who said don't worry, this nomination is going back in ASAP.

It wasn't three times you're out. It was three times you're in.

QUESTION: You were actually confirmed November 21, 1989 and it was by unanimous consent when it got to the floor. How did that happen, when two dozen Democrats had opposed you the year before? How did that happen?

WALKER: Well, two dozen Democrats did not oppose my nomination the prior year. That first nomination never came to a vote. The chairman of the committee, Senator Leahy, simply did not call for a vote on that first nomination. At the time of the second or rather third nomination it was getting to be the end of the session. After that second hearing in November 1989, there was not much doubt that if the nomination got to the floor it was going to be

approved. As I said, the vote in the committee had been 14-2. It was simply a question of whether the nomination would make it to the floor, and if it did, it would move along.

Somebody put a hold on it at the last minute. It wasn't Cranston. And it wasn't directed at me particularly. It was some procedural matter. There was some last-minute hitch. It had nothing to do with me. Some senator exercised a hold on confirmations for an arcane legislative matter.

When my nomination got to the floor it was moved along with a host of other things, lost in the crowd, so to speak.

Let me say one other thing. Going through that confirmation process was not pleasant. In due time, however, I came to view myself as lucky to have had the experience. So many nominees sashay through. There are no serious questions asked. There is no opposition. Sure, they have to go through all the paperwork and have the FBI look into their background, which is not cheery or pleasant. But when it actually comes to the confirmation process most of them don't face any kind of opposition.

At the time, I thought woe is me for having to confront this. But you learn who some of your friends are and you learn about the process. And you develop a little thicker skin than you had before. I wouldn't want to have to go through it again. I wouldn't wish it on anyone. But it turned out just fine. I think, frankly, I benefited from the experience and I don't have any regrets about it. I'm not sure Justice Thomas views his experience that way, but I view mine that way.

QUESTION: Then before we leave it, you talked about Mary Dunlap's suggestion that you were closeted and that's why you were being the way you were being in the USOC case. You said you

had to wrestle with how to handle that. Did you ask advice of other people? What did you go through to decide how to respond in 1988 to that issue?

WALKER: Things are quite different today than they were in 1988. I don't recall seeking advice from anyone about that. I do recall in Judge Peckham's courtroom when I went out to argue the temporary restraining order on behalf of the USOC to restrain the group's use of the Olympic trademarks in connection with those games.

Sitting there in the courtroom, waiting for the matter to be called, sitting next to the general counsel for the USOC, and Mary was arguing vehemently about how this was a discriminatory action against gay people. I remember toying with the idea of saying, 'why Judge Peckham, this can't be discriminatory. I'm a gay man and I'm representing the US Olympic Committee in this matter, and proudly doing so'. I didn't make that argument, of course.

Particularly after having been on the bench and having heard lawyers make arguments vouching for their clients, I realized what a mistake that would have been to make such an argument. Fortunately, I avoided that mistake at the time.

Yes, it was not an easy thing to have to deal with. I had not resolved my sexuality at the time. That fact added to the angst of the experience. You know, when you can't be yourself, it does take a toll. Being an out gay person, being nominated for the federal bench or even in a large law firm in a professional capacity, 30 years ago, there were obviously people who were out. But it was a touchy, touchy thing. Most of us in that position put a seal around that part of our personal life and didn't allow the rest of the world to invade that space.

When you do that, or feel you have to do that, I don't know if taking a toll is the right way to put it. It has an effect and it is not a particularly pleasant effect.

QUESTION: Moving to the next stage of your career. When you arrived on the court there were a number of what I'd call 'old guard' judges on the court. There were appointees from Eisenhower, Kennedy, Johnson, Nixon, Ford and few recent appointees by Carter. I wondered what your first reception by the court was and how you were welcomed into the court? What was that like?

WALKER: By and large it was pretty welcoming. In a way, a little more welcoming outside the district than inside the district. Going to Ninth Circuit meetings and meetings in other districts, a lot of judges were very warm and very welcoming. In part, that was the result of the support that Judge Kelleher had given me. I had been his law clerk. I'm sure he talked to his colleagues in the Central District about how proud he was to have a former law clerk join the federal bench.

Quite a number of judges in the Central District knew my story and I think they thought I had been unfairly treated in the confirmation process. So, whenever I encountered one of them they were welcoming. Same in the Southern District of California. Bill Enright[18] almost hugged me when I first met him.

I'd become a little notorious because of the controversy. I think most judges, certainly outside the district, were very welcoming. I don't mean to say the ones inside the district were cool. But I was the new kid on the block, and they knew, unlike the out-of-district judges, they

[18] William B Enright, senior district judge, Southern District of California.

had to live with this character. They weren't quite sure about him at first. Seemed kind of odd that the cooler reception was at home, rather than outside. But when you think about it, I think it's easy to understand.

QUESTION: There was a tradition of judges eating together in the judges' dining room. I don't know if that was starting to fall by the wayside. Do you remember if there was still a regular gathering? Were judges still doing that?

WALKER: Absolutely. In the Stanley A. Weigel judges' dining room. Judge Weigel would sit at the head of the table and preside. You couldn't read a newspaper in the judges' dining room when Weigel was presiding. You had to be on your P's and Q's.

Regular attendees were Judge Weigel, Judge Schnacke, Peckham not quite as regular, Judge Zirpoli, Judge Conti. Judge Patel from time to time.

QUESTION: Orrick?

WALKER: Oh yes. Great stories about the Kennedy Administration. I think Wollenberg was deceased by this time. Lowell Jensen was still on this side of the bay at that time.

QUESTION: Legge and Vukasin?

WALKER: Legge was not a regular. He would come once in a while.

QUESTION: Lynch?

WALKER: Yes, fairly often.

QUESTION: Aguilar and Smith?

WALKER: Aguilar was in San Jose. Smith was not there often. I heard Schnacke's stories about his wife's farms down in Watsonville. Little did I realize when he told those stories that I would end up owning those farms. That turned out to be the case.

QUESTION: Was this strawberries? Artichokes?

WALKER: Strawberries and vegetables. Wonderful farmland.

QUESTION: How did you come to own the farmland?

WALKER: This was many years later. I had been looking to buy farmland in California for many years. Mrs. Schnacke, June, her father had put the properties together. He had come to the United States from Croatia sometime in the early part of the 20th Century and was an apple farmer, which was a principal crop in the area at the time. He had two daughters, June and Mary Ann.

Both went to Stanford as undergraduates. June went to law school at Stanford and became a lawyer and eventually district attorney of Santa Cruz County. I think she was the first female district attorney in the state. She was selected by the Board of Supervisors to fill a vacancy and then she was elected to the office in 1950 but defeated in 1954 for re-election by an individual who campaigned on the slogan, 'Don't send a woman to do a man's job.'

Needless to say, she was unhappy about that. She pulled out of Santa Cruz County and came up to San Francisco where she worked as an assistant United States Attorney. She met Bob Schnacke, who was also an AUSA, and they married and made a life together.

Her sister managed the farm properties until her death in the early 90s. Then June managed them until her death in 2000. June left the properties to a charitable trust and foundation that had a limit on its duration keyed to the life of the principal trustee, who in about 2012 was diagnosed with ALS. He saw that his time was coming, and the trust put these properties on the market. That's when I learned about them and acquired them.

I will say that it gave me some assurance knowing this history. Buying any piece of real estate, you never know exactly what you're getting into. But I thought that with this history, it must be pretty good land.

QUESTION: How much land?

WALKER: About 500 acres. (points to wall-mounted crate label.) NMB, that was Nico M. Borina. They grew apples at first and then strawberries. These are the crate labels. I feel very fortunate to have been able to acquire those properties.

QUESTION: Back to the court. How did you perceive that the court was changing from its traditional practices? We have this group that includes three or four presidents prior to you, and Carter has some appointees and there are Reagan/Bush appointees. How did you feel the court was moving away from the traditional judge's lunch, or did you?

WALKER: You're talking about the social dynamics among the judges. That's a little different from what I first thought you were asking about.

The key change in the social dynamics among the judges was the San Jose courthouse and then the Oakland courthouse, which took out a segment of the judges and put them in a remote

location, at least remote from the San Francisco headquarters. Thus, the judges did not see one another with the same regularity and did not have the same intimacy that they had had. I think that changed the social dynamics of the court, amongst the judges.

The second factor that plays into this is the increased prominence and participation of the magistrate judges, which occurred gradually over the time I was on the bench. When I joined the bench in 1990 and would go down to the judges' dining room, only the district judges were permitted. There was some talk about having the magistrate judges join in the judges' dining room but that was not accepted by some of the older judges. In due course that changed.

Of course, the role of magistrate judges has expanded in the work of the court. At least a third of the cases are assigned to the magistrate judges and a high percentage of those stay with the magistrates. The lawyers accept the magistrate. So, they are handling the same types of cases, at least civil cases, as the district judges. And they continue to play a significant role in settlements, and they do arraignments and other things. Their participation in the life of the court is greatly enhanced from what it was in 1990.

They have long been invited to the judges' dining room and participate in all the other activities. When the judges have their retreat and other offsite meetings the magistrate judges are there and they participate. If you were a visitor listening to the discussion you wouldn't know the difference.

So, I think those two factors have changed the social dynamic of the court. And the latter much for the good.

QUESTION: Early in your tenure you almost never, or rarely wore your robes on the bench, and I wondered why?

WALKER: Jack Weinstein, who I think is a marvelous judge, frequently did not wear a robe. I never, frankly, felt comfortable in a robe. I thought it was kind of a costume. I didn't think I had to wear one. I think state judges have to as a matter of law. But federal judges can do anything they want to.

I remember Judge Kelleher did not approve of not wearing a robe. I eventually came to wear one on a regular basis, primarily because you have to wear a pretty good-looking suit if you're not wearing a robe. You can be a lot less dressy if you wear a robe, so I succumbed to the custom. At the first, though, there may have been just a bit of wanting to be a little different too.

QUESTION: You also broke with tradition to hold court for fairly long hours. You started early and you would go late into the evening on occasion. I wondered why you thought that was necessary? And why you stopped?

WALKER: I remember one instance of going quite late on a Friday afternoon and I think it was the court reporters who had a conniption. But I just wanted to get things done. You know you come to the bench with new ideas and, I don't know if you want to revolutionize things, but you come in with a lot of enthusiasm and energy and you want to try to move things along and do things differently.

I think it was all just part of that. Eventually, the institution knocks the rough edges off and you blend in. You learn these institutions have customs, habits and practices. And it is better to save your energy for things that are more important.

QUESTION: Do you remember your first day on the bench?

WALKER: No. Do you? Was there any news made that day?

QUESTION: No, not that I know of. I usually drop in after the first day.

WALKER: I was in Lloyd Burke's old chambers for the first months. It was the corner chambers on the 17th floor, which is a chambers I eventually had when I left. I remember the first trial. Was it the first criminal trial? If it was, it was a counterfeiting case and the defendant won a flat-out acquittal. The irony is, the last criminal trial that I tried was an art fraud case, somewhat similar to counterfeiting, and the defendant won an outright acquittal. So, it was a complete bookend.

I remember both of those cases. But whether the counterfeiting case was the first trial or the first criminal trial, I don't remember. I believe Paul Wolf was the criminal defense lawyer in the counterfeiting case and Alan Dressler defended in the art fraud case. Tracie Brown, who is now on the state court of appeal prosecuted the art fraud case.

As a judge, you don't remember too many of the cases but those two are kind of memorable.

QUESTION: What about the handling of early criminal cases since that was not your practice prior to joining the bench. How did you prepare for criminal cases and where did you go for help?

WALKER: Learning to try the criminal cases was easy, for a couple of reasons. The law is pretty straightforward. The substantive law is pretty straightforward. The procedural aspects of a

criminal case have some wrinkles you simply have to learn. The criminal lawyers particularly the criminal defense lawyers and the US attorneys are very good at teaching the new judges what they need to do and not do in criminal cases.

These lawyers, as you well know, have been around, especially the criminal defense lawyers. They know their way around a courtroom. They know how to deal a case. They get a new judge and I'm sure they say to themselves, ok, we have to break this guy in. They are really very helpful. It is very refreshing when you're on the bench. And the lawyers are looking out for your record, partly out of self-interest. But also, institutionally, I think these lawyers have very good instincts.

The criminal defense lawyers are really about the only thing I miss about not being on the bench. They are a great bunch. I think they do a wonderful service. I think we have a wonderful criminal defense bar in this area. They are very professional. They have a very tough job. Often thankless. They are helpful in teaching a new judge what needs to be done and how to do it. I also miss the interaction with my former colleagues on the court, but there I've picked up other associations.

In February 1989, a United Airlines flight with 337 passengers and 18 crew members took off from Honolulu bound for Auckland, New Zealand. The Boeing 747-122 aircraft suffered serious damage at 22,000 feet, after an explosive decompression ripped a cargo door and a section of the fuselage and portion of the passenger compartment from the aircraft. Nine passengers were sucked out of the plane and died. The remaining passengers and the crew did not suffer physical injuries of consequence and the plane was able to return to Honolulu and land 30 minutes later. The families of those who died sued for wrongful death and most of the passengers brought claims seeking compensation for emotional distress. The cases were

consolidated and transferred to Judge Walker in 1990, after Judge William Schwarzer who briefly heard the case left the bench to oversee the Federal Judicial Center.

QUESTION: One of the earliest cases you had was an air disaster near Honolulu[19] that arose out of a mid-air incident. A portion of the plane came off and nine people were sucked out of the plane at 22,000 feet. You held that maritime law, not state law applied, which limited damages and excluded wrongful death claims. Was it difficult legally?

WALKER: It was. There were a lot of different laws that came into play in the case; maritime law, death on the high seas law. There were obviously state law claims that had to be dealt with. There were survivor claims for the survivors of the decedents.

The wonderful aspect of that disaster, with the exception of those nine deaths, everyone else survived. There were no or extremely moderate physical injuries. But these passengers had the ride of their lives. I can't remember the number of trials we conducted but the testimony was extremely graphic. It was at least a couple years after handling those cases that I was again comfortable riding in an airplane.

One witness testified that he was seated in the business class section and a flight attendant was coming down the aisle when the fuselage and part of the business class section with the seat of the passenger he had been chatting with moments before, separated from the aircraft. His fellow passenger had gone off into oblivion and this passenger was left next to this big hole in the plane.

[19] In re Air Crash Disaster Near Honolulu, Hawaii, MDL No. 807, 783 F. Supp. 1261 (N.D. Cal. 1992) and 792 F. Supp. 1541 (N.D. Cal. 1990).

The flight attendant, who was coming down the aisle, he grabbed by the arm. She managed to struggle into a seat behind him and strap herself in. There they were. The air blowing through the airplane. There was testimony like that and there was also testimony from passengers in the back of the economy section of the craft. All they knew was that the lights went out and there was some kind of jostling of the plane. They didn't know what was happening. So, you had all those personal experiences being told in the course of those trials. That had a dramatic effect on the outcome of the personal injury or the emotional distress damage claims that were tried.

It was a terrific learning experience in handling that case. Personal injury claims, multi-district litigation. In those days, the multi-district panel would not assign MDLs to judges who had been on the bench for less than five years. But thanks to Bill Schwarzer, who went on to the Federal Judicial Center, I inherited his caseload. The judges in our district decided rather than to spin those cases out in the usual way, and make up a docket for the new judge, they would simply take Schwarzer's cases and assign them to me. This was one of those cases, or group of cases.

I was very fortunate to get those cases and be broken in on that kind of litigation very early in my career. Wonderful lawyers. Elizabeth Cabraser was involved in that case. She made a motion to have the case proceed as a class action and I gave that some very serious thought.

Ordinarily, you think that a class action is not suitable for personal injury claims. But this seemed like maybe this could be an exception. I remember thinking very seriously about doing that, but eventually decided not to. But she made a very compelling argument in favor of it. That

might have been worth a try. A whole bunch of very able lawyers were in the case – Perkins Coie lawyers represented Boeing. The Sedgwick office represented United Airlines.

Another thing, I mentioned a moment ago about how the criminal defense lawyers break in the new judges. There is something of the same, not exactly the same way, that works with lawyers in the aviation bar, or any of these specialty bars. Lawyers who see one another on a fairly regular basis. They know one another, they know the lay of the land in their cases. They too have a way of breaking in a rooky judge on a case of the type of which the judge has never seen before, and of being very helpful to the new judge.

You don't think of breaking in the judge as the lawyers' function. Maybe they don't think of it as their function. But the way these lawyers conduct themselves and run the case helps the judge learn the judge's job and task.

In 1994, federal prosecutors obtained a 42-count indictment against Pius Ailemen[20] and 17 others, charging that Ailemen ran a heroin smuggling organization. Prosecutors obtained much of the evidence through wiretaps authorized by another judge. Ailemen was accused of enticing attractive women to courier drugs into the U.S. by promising them money and the chance to travel. Ailemen asked the judge to suppress the wiretap evidence alleging multiple false statements by a DEA agent Robert Silano. A review by a magistrate produced a 129-page review that found 17 misstatements and omissions in the affidavit submitted to the judge to justify a wiretap. The magistrate recommended suppression.

QUESTION: In 1994, you had a criminal case where you suppressed five months of government wiretaps against the suspected ringleader and 11 co-defendants in a heroin case

[20] U.S. v. Ailemen, 986 F. Supp. 1228 (N.D. Cal. 1997)

because the DEA agent had misled the judge about the need to obtain the wiretaps. This was the Pius Ailemen case and it was a very serious slap at the government's power. How did you come to that ruling?

WALKER: I really don't remember the issues in the Pius Ailemen case. I remember what he looked like.

QUESTION: This was '94, so only a few years after you got on the bench. And it is unusual to suppress wiretaps.

WALKER: Was I affirmed or reversed?

QUESTION: I didn't look that up. Maybe we'll come back to it.

WALKER: I thought you were talking about Jamie Besalo.

QUESTION: That was much later. We'll come back to it.

A year later you gave the same sort of warning to the government. You said a drug agent appeared to be lying in his testimony in a drug case and it prompted the prosecutors to dismiss the case, it was US v. Nelson. Maybe we'll come back to these next time.

WALKER: Well I can say this. Listening to the evidence in these drug cases, where the evidence consists of cooperators' testimony could disillusion one pretty quickly. I think I was going through my period of disillusionment. The differences between those cases and an armed bank robbery is the difference between night and day. In an armed bank robbery case, the witnesses are people who were customers in the bank, or the teller, or the guard or passersby who have no axe to grind except to tell the story. And they do the best they can.

In these cases, with cooperators' testimony, there are more axes to grind than Ace Hardware has. Perhaps it was a bit of naivete on my part, but I was pretty skeptical of the way the government put these cases together. And no doubt that is reflected in some of these cases you're asking about.

QUESTION: In 1990, you had just been on the bench three months and you took on *In re: Oracle Securities Litigation*. There were two warring camps of lawyers and they both thought they should be designated class counsel. You ordered competitive selection of class counsel. You said it wasn't a grand plan but you were just a judge trying to deal with a problem on the docket.

WALKER: That's exactly right. David Gold and Sherri Savett. David Gold, a prominent securities lawyer here in town, and Sherrie Savett from the Berger & Montague firm in Philadelphia, were contending for lead counsel status. Oh, it was nasty. It was a kind of scratch and hiss cat fight sort of thing. They both disliked each other. And they said, "Judge you can't have any confidence in the other lawyer." It was just nasty and unusually so. And personal.

I remember I was kind of amused by it at first and then it began to sink in that I'm going to have to do something here to sort it out sensibly. It was east coast versus west coast. David argued it should be the west coast group and Savett argued that we've been involved in these cases and know them well and on and on. Finally, I said, why don't you both submit proposals on what you're going to do to represent this purported class. I assume the class definitions were the same or very similar. Submit a proposal. If you have your house built or remodeled, you ask for proposals. If you are undertaking any other kind of project, you get a proposal. So, submit a proposal and I'll take a look at it.

That shut them up. The next thing that occurred was they submitted a joint proposal. They had buried the hatchet. And if I remember correctly, that really ticked me off. I had asked them to submit competing proposals and they tried to end-run that. I said wait a minute, we'll just open it up and let others submit proposals. I wondered at the time if anyone would submit a proposal because the bar that handles those cases is a pretty tight group. I really didn't need to worry as it turns out. Dick Dannenberg in New York of the Lowey Dannenberg firm and I think Gold submitted a proposal and I believe Sherri Savett's firm submitted a proposal. But Dannenburg's firm submitted what I thought appeared to be the most attractive proposal, so I designated Lowey Dannenberg as class counsel.

They came in with a very nice recovery and that was that. One of the very interesting aspects of this was that defense counsel were not at all enthusiastic about this competitive selection process. Much later, I learned that Mel Goldman at Morrison & Foerster, was very unenthusiastic about competitive selection of class counsel, because he thought that once the judge designated somebody as class counsel through the competitive selection process that the judge would feel committed to reward that counsel in some fashion or another. I think he was seeing ghosts in the shadows. But that was his thinking.

As it turned out almost nobody liked the idea. The plaintiffs' lawyers didn't like the idea, although Lowey Dannenberg did just fine. I've talked to some of their lawyers since and they actually said some very nice things about it. The defense counsel, or at least some of them, didn't like it as I mentioned. But it turned out to be a pretty good idea.

QUESTION: This was at a time when it was first in the courthouse door was the lead?

WALKER: Generally, it was two things. First in and the old boy network. And the big old boys in this field of practice were the Milberg Weiss folks. They kind of had a lock on the business. Exactly how they maintained their market dominance I'm not sure. But they managed to get the lead plaintiffs' position through relationships with broker dealers and others. So, they frequently came in with the lead plaintiffs within hours of a major price change in a stock and had a plaintiff on top who they could allege had lost money. For many years and in many cases, they had a plaintiff, Mr. Weinberger, and a Mr. Weinberger was one of the most unfortunate investors you can imagine because almost every time there was a major drop in a stock price, Mr. Weinberger was the securities plaintiff taking the loss. Milberg was able to trot out Mr. Weinberger as a lead plaintiff.

In one of the depositions, or more than one that I read, Mr. Weinberger didn't know straight up about the case. He was obviously a figurehead.

QUESTION: You were new on the bench and you had these lawyers fighting. Talk about how this affected your transition from being an advocate to being a judge. Did this case present problems? How did you make the transition?

WALKER: I don't remember thinking about it in those terms. I don't know how others go through the process. You do look at things differently once you get on the bench. I don't think you have to go through a lot of, 'well I'm putting aside my private practice role. I'm putting aside my practice as a prosecutor or a defense lawyer.' At least, I didn't go through any of that kind of conscious transition.

QUESTION: Or they're doing it this way and I'd do it that way?

WALKER: Well, you do sometimes wonder why the lawyers are doing it the way they're doing it. One of the things you learn after being on the bench a while, there usually is a reason they're doing it the way they're doing it. So, it is best not to be too judgmental about it early on, but let it play itself out.

Here was the more difficult transition. I was a great admirer of Bill Schwarzer. He was a great judge. I considered him a personal friend. He had been very nice to me as a young lawyer. I admired what he had done on the bench. I admired his role in the civil rules process, and I thought he was an excellent role model. I acquired his cases. He went on to the FJC.[21] The court, rather than put together a docket of randomly drawn cases, shifted his caseload to me. So, I got a very well-tended docket of cases, including the MDL case that we've talked about at a very early time, when typically you didn't get an MDL case if you were a brand new judge.

So, in thinking how I should conduct matters as a judge, I would kind of ask myself, 'What would Judge Schwarzer do in this situation?' That was more the focus of my thinking than going through the process of putting my lawyer hat aside and putting on my judge hat. It was more what would Judge Schwarzer do.

What I found over the years was that was not a very good approach either. Judge Schwarzer was obviously a very different person and had some different ideas and his ideas evolved over time. We had occasion to discuss this many years later. Through much of his

[21] Federal Judicial Center

judicial career, he had been a very vigorous case manager. He became a much less hands-on management kind of judge as the years went by.

By the time I came on the bench and the time he left to go to the FJC he was still very much in his hands-on management style in handling cases. So that's what I tried to do. I found that didn't work as well for me as it did for him. And I think he eventually came to the conclusion that you need to leave a lot of play in the joints for these cases to work themselves out.

That's much more the learning process that I went through at that time, rather than trying to remember I was a judge, not a lawyer.

Cylink Corp., a provider of encryption-based network security for secure data transmission over the internet, was sued by shareholders after the company disclosed in 1998 that had materially overstated earnings by nearly $12 million in the first half of the year. Multiple shareholder class claims were consolidated before Judge Walker in Wenderhold v. Cylink Corp.[22] In this case, the judge used a sealed-bid auction method to select lead counsel.

QUESTION: Another case right around that time was *Wenderhold v. Cylink*. You talked about trying to standardize a bidding process for class counsel and about facilitating the comparison of bids. Talk a little bit about that.

WALKER: I struggled with that in a number of cases. Bill Alsup also submitted a few cases to competitive selection. Judge Shadur in the Northern District of Illinois did also. There were a few other judges around the country who picked up on this idea. The judge, however, who

[22] Wenderhold v. Cylink Corp., 188 F.R.D. 577 (N.D. Cal. 1999)

figured out how to do it correctly was Judge Lew Kaplan in the Southern District of New York in the Auction House cases.[23] He wrote a couple of published decisions on how to simplify the process to get it down to one variable that nevertheless captures the competitive nature of the process. What he did was impose a method in which bids would be submitted on what he called the X-factor. The lawyers committed that they would take no fee up to a certain level of recovery and then they would get a straight 25 percent for every dollar in excess of that level of recovery.

The Boies Schiller firm was the successful bidder in the Auction House cases. I believe the X-factor they submitted their bid on was $425 million. I forgot what the recovery was, but it was in excess of that number. It's a simple straightforward way to establish a common metric for competing proposals. Lew Kaplan is the one who figured this out. He wrote a couple of decisions explaining how to do it.

In his first case, he had two variables. Then he discovered the problem I had been struggling with. That is that lawyers aren't very good at algebra. When you have two unknowns, it's hard to figure out what the right answer is. Well, about the time he solved that riddle the Congress passed the Private Securities Litigation Reform Act, which put all of us doing competitive selection of class counsel out of business. It was an interesting exercise, nonetheless.

QUESTION: Another thing that you incorporated was having class counsel pay their share of expenses out of the recovery and that created an incentive to minimize expense. That was in the Wells Fargo securities case. How did you come to that conclusion?

[23] In Re Auction Houses Antitrust Litigation, 158 F. Supp. 2d 364 (S.D.N.Y. 2001)

WALKER: You have a fiduciary obligation to the class. And you want to ensure that class counsel aren't overloading expenses and sluffing things on to the expense side, which is basically something they take off the top of any recovery, when basically it is something that ought to come out of the attorney fee. So that was the idea.

QUESTION: Where were you getting your inspiration to do these things? How did this come about?

WALKER: Basically, from the submissions of the parties. Once you open up the process, then the lawyers come forward and say, well we have this idea judge. Most of the ideas came in one fashion or another from the lawyers, who were submitting proposals.

QUESTION: What was the reaction you were getting from other judges about what you were doing?

WALKER: Varied. Some very favorable. Some absolutely, maybe not horrified but, Charlie Brieant from the Southern District of New York told me that when he had lawyers fighting it out for class counsel designation, "What I tell them is, you know there is this judge out in California. As soon as I mention your name, peace reigns in the courtroom." He was a funny guy.

The reaction of judges varied. Some thought it was a great idea, some thought it was not. It was kind of out of step with the process that Sam Pointer and the others who had developed the Manual on Complex Litigation had put together on the selection of lead counsel. The mantra of the multi-district transferee judges at the time was these cases ought to settle. What you ought to do is set it up so there are incentives to settle the case. Anything you can do to move the case to settle, you ought to do.

In fact, in those initial MDL transferee judges' meetings that I attended, when you were called upon to report on your case you sort of had to put your tail between your legs if your case hadn't settled or was on the way to settlement. You were tapped on the head, 'oh poor kid.' You're just not quite doing the job right.

The judges who were handling those cases at that time were part of a relatively small group, a great group of judges in many ways – Milton Pollack in New York, Charlie Brieant was another, Morley Sear in New Orleans, Hu Will in Chicago, John Grady in Chicago, wonderful Lincolnesque kind of individual. Jack Nangle was another one. He was appointed to the Eastern District of Missouri, but managed somehow to get his chambers in Savannah, Georgia. These are the guys who played the Article III position like a fine musical instrument. They were very good judges, but they were very deft case managers. That was one of the best parts of the experience, the first five years or so, going to those MDL meetings and participating in those cases.

QUESTION: When you did that was any of the bidding process discussed…

WALKER: Oh yes.

QUESTION: … did it help move things toward settlement or were you being told too bad its…

WALKER: No, there was a lot of interest in the bidding process at the time. They thought this was something to consider. Some of them tried it. Some of them thought it was goofy. I know there was a lot of interest among that group of MDL judges. One thing that I found particularly personally satisfying was here I was the new kid on the block and here I was with all these old hands addressing the MDL conference meetings and being taken at least semi-seriously. I found that very rewarding.

QUESTION: What were you hearing from the lawyers at this time? It had been going on for a little while and you've had a few cases. Were the lawyers any less shocked or repulsed by the idea?

WALKER: Yes, they eventually figured out how to handle the situation and how to submit their proposals in a sensible kind of a fashion. One of the best was Elizabeth Cabraser. Elizabeth has never candidly told me what she thought of the whole idea. She's very able and very smart and she knows how to read judges. She says alright this is what the judge is interested in. This is the judge's sandbox. This is what we've got to do to handle our case in this sandbox. That is exactly the right attitude. You take the process seriously. If it seems a little unconventional, well maybe there is something to it. And you try to play along with it. That's exactly how she handled everything that she handled before me when I was on the bench. I think that's the way she handles her cases. In one of these securities cases I made her firm file a completion bond to provide assurance that her firm would complete the assignment.

She got out and got some insurance company and paid the premium and got the bond. That was the condition that I required for her appointment as lead counsel. She had never done that before and probably nobody has ever asked her to do it since. She said, I'm sure, that's what the judge wants, that's what we're going to give the judge.

The really able lawyers can deal with those kinds of things.

QUESTION: Did you think that the lead plaintiff should always be from the ranks of institutional investors because somehow, they have better ability, or more incentive to negotiate better terms?

WALKER: Even before the PSLRA, I had awarded lead plaintiff status to a pension fund, the Colorado State Employees Retirement Fund, on the theory that institutional investors are the big players in the market and they have the most to lose. You could count on them to monitor class counsel and you could count on them to make reasonable supervision of class counsel decisions. They did in that case. They did an excellent job.

Jim Finberg was involved in that. Joe Hassett of Hogan, the old Hogan and Hartson firm in Washington. They handled that litigation and came in with a very nice settlement. Their fees were well below the 25 percent benchmark. They were still generous. The idea that there is an automatic 25 percent, or one-third no matter what the recovery, that always seemed to me almost medieval. Class counsel are entitled to a reasonable fee and generous compensation. The number can get pretty big, pretty fast when you're dealing with a percentage.

QUESTION: Do you think today judges tend to accept the fee proposals made by lawyers without too much investigation, or without enough investigation?

WALKER: In many ways, Pam, the spirits conspire against the judge scrutinizing the fee applications too closely because the case is going away. The case is going away, it is going off the docket. Why should the judge upset this applecart? All you can do is make trouble for yourself by scrutinizing too closely. Some judges take this responsibility seriously. Judge Alsup – he's not going to let anybody fast talk him into something. And there are a few others but there are not a lot who are quite as rigorous in their scrutiny.

A copyright battle erupted among the major corporate players in computer technology in the 1980s. Apple Computer had registered a copyright in 1987 for the "Lisa" computer and its

Macintosh Finder program. Apple sued Microsoft Corp. and Hewlett-Packard Co.[24] *for infringement and unfair competition for use of its icons and pull-down menus, known as the graphical user interface. The copyright war eventually became known as Apple's claim of theft of the "look and feel" of its screen graphics, so commonplace on computers today. Adding to the complexity of the litigation, Xerox weighed in with its own claims.*[25] *Xerox, which developed the first computer language in the mid-1970s to allow users to interact with a computer using a hand-held "mouse," granted Apple a license to develop Smalltalk for the "Lisa." Xerox later sued Apple claiming that Apple derived Lisa and Macintosh Finder copyright from the Xerox Star copyright. Judge Walker inherited the cases when he joined the bench. What ensued was an epic courtroom battle over the symbols so common on all screens today.*

QUESTION: Moving to a slightly different era and different kind of case. In 1999, Xerox sued Apple for copyright violation. Xerox said Apple illegally used Xerox' copyrighted screen display in the 1984 MacIntosh for a computer that Xerox had developed in 1981 that it called Star. It wanted $150 million. You ultimately dismissed five of the six claims and I wanted you to tell me about that case.

WALKER: That was a kind of baptism by fire. That was another case that I inherited from Judge Schwarzer. Apple believed that Microsoft had stolen the graphical user features of the Apple MacIntosh and Lisa finder operating systems and incorporated that into the Windows operating system Microsoft developed. There were some 220 graphical user features. The scroll bar, the collapsing rectangles, hourglass all of these things we think nothing of because we're so used to them. At the time, they were thought to be unusual graphical user features. Jack Brown represented Apple. Jack was a wonderful lawyer at Brown and Bain, very sweet man. Dave

[24] Apple Computer Inc. v. Microsoft Corp., 759 F. Supp. 1444 (N.D. Cal. 1991) and Apple Computer, Inc. v. Microsoft Corp., 35 F.3d 1435 (9th Cir. 1994)
[25] Xerox Corp. v. Apple Computer Inc., 734 F.Supp. 1542 (N.D. Cal. 1990)

McDonald and Karl Quackenbush represented Microsoft. They had broken off from the Siler Gates firm, Bill Gates' father's firm in Seattle, and were handling the case for Microsoft. And Jonathan Marshall of Pennie & Edmonds represented Hewlett-Packard, which was in the mix because it had an operating system called New Wave.

It was the highest profile case of my early time on the bench. Full of a great deal of interest because of Silicon Valley. I was completely at sea about the case. I worked very hard on it with a couple of law clerks and spent hours looking at those graphical features on the computers. Some of them operated on an old Lisa, which Apple installed in chambers. We were told there were only about a dozen of those machines extant and operating. They set one up in chambers and said don't turn it off because we're not sure we can get it started again. And it made this awful grinding noise and for months we had this in chambers with this awful grinding noise so we could watch these graphical features on the Lisa finder and compare them with other programs. The case involved not only Apple and Microsoft programs. There were all these other operating systems that needed to be considered as well. Commodore was one. I can't remember all the names.

We had a motion for summary judgment. I remember granting most of that orally. It cut out most of Apple's case. I remember when I was on the bench, reading the decision. There was a gasp in the courtroom, like I had just sentenced someone to death.

QUESTION: Well, maybe… (laugh)

WALKER: In any event, Jack Brown moved for reconsideration, which I granted, and we revisited the whole subject again without anything really changing. It went up on appeal and it

was affirmed, except in one respect. I had denied attorney fees because of a 9th Circuit decision that was later overturned by the Supreme Court. That got unwound. The merits were all affirmed. That was the end of that litigation.

QUESTION: In a later case, Xerox sought to have Apple's copyright to the screen features declared invalid. So, you got the case from Judge Schwarzer – you had to handle that sort of offshoot part of the case…

WALKER: Apple had accused Microsoft of stealing Apple's graphical features. Then Xerox came in and accused Apple of stealing its features first. These had all been developed at the Xerox Palo Alto Research Center in the 1970s. A woman I knew when I was at Stanford named Adelle Goldberg was at Xerox and low and behold, small world, she was involved in all of that. Xerox said if Apple has a claim to these features, we have a prior claim. I think Henry Bunsow pursued that on behalf of Xerox, but I threw that case out.

Then, there was Borland. Borland produced a spreadsheet, a competitor of Microsoft's Excel. Borland got into the mix. There were competing lawsuits. One filed before me and one filed before Judge Keaton in Boston. I have forgotten now why I deferred to Judge Keaton, but I did, and that case went back to Boston.

I believe he came to a different decision from me. I believe he was reversed, however.

QUESTION: Describe handling a case that had such a high profile so early in your tenure. How did you handle that?

WALKER: There was some tension there, sure.

QUESTION: But, I mean, it is not going to cost you your job, so how is the pressure felt?

WALKER: No, there are not too many jobs where you can abuse your discretion and get away with it. I don't want to sound too Pollyanna-ish. As a judge, you have an interest in doing the right thing, one, and two, you have an interest in your reputation. You want people to think you're making the right decision for the right reasons. So, it is important that you try to do the right thing, and do it in a way that will appear to be the right thing to people.

QUESTION: There was some expert analysis at the time, did Xerox wait too long to file its claims so that it had to rely on weaker unfair competition claims?

WALKER: I've forgotten what the problems with their case were. I think they did wait too long. I don't think they realized the value of what they had. I don't think people could see where this was going. Little did we know in the 70s and 80s how computer literate we would all be today.

QUESTION: Before you got that Apple/Microsoft look and feel case, Schwarzer had already examined this list of 189 list of similarities in the features in Apple. He had ruled that all but 10 were covered by a 1985 licensing agreement.

WALKER: I believe that's correct.

QUESTION: Talk about how that narrowed the case or directed things going forward?

WALKER: It narrowed it tremendously. I believe that Apple tried to upset that order of Judge Schwarzer. I don't know that he had definitively determined that the license agreement precluded Apple's claim so much as making a determination that those graphical features were subject to

that agreement. That's a little different. It seriously simplified the case. What we had to do was go through and compare the 189 features that were subject to the license agreement and compare those with the various operating systems. Plus, the remaining 20 or 30 features, so it was very fact intensive.

QUESTION: In 1991, you issued a mixed ruling, while Apple, "their borrowing of ideas from others does not deprive Apple's works of the copyright validity." That the 1985 license does not cover the total concept "look and feel." I'm interested in getting to that point and sorting that out in the law because of the amount of money they were seeking and the size of the case. Did you think about, at the time, that this was changing that industry? That you could change the future of the industry in some significant way?

WALKER: People seemed to think that it was going to change the industry.

QUESTION: Anything you want to say about how you sorted all that out over the months of looking at these things to decide that the license didn't cover the total "look and feel"?

WALKER: The whole concept of "look and feel" was pretty amorphous. I didn't think Apple's position was terribly persuasive, although in the hands of Jack Brown anything could be persuasive. He pushed this "look and feel" business very hard and very ably. There is something to it in terms of a concept. Trade dress for example. There is something distinctive if it has secondary meaning. So, Jack was attempting to build his case on that fundamental principle.

Where it all began to break down, however, and Judge Schwarzer had set the path, once you begin to analyze the individual parts, it becomes much harder to make a persuasive case that there is an overall "look and feel". If you have to find the protection based on an analysis of the

individual elements of the claim, then it's a lot harder to have a gestalt that covers the whole. As a fundamental legal principle, it certainly is true that one can put together unprotectable elements in a fashion that is sufficiently distinct to warrant protection for the combination of elements. But you begin to lose focus on the gestalt when you analyze the elements one-by-one.

In retrospect, that might have been a good case to submit to the jury. I didn't do it at the time. With a little more learning on the bench I would have given that serious consideration. Possibly an advisory jury. But I think that was an issue that could have been tried to a jury. It might well have been better to do it that way, but in any event, who am I to complain. I made the decision and got affirmed. That's now a quarter century ago.

In 1994, California Micro Devices Corp. announced that it had issued materially false financial statements. Securities class lawsuits[26] followed. Judge Walker established a bidding procedure to select class counsel, but before it was completed, certain plaintiffs and Cal Micro engaged in settlement talks without notifying the court. The two sides submitted a proposed settlement and in August 1995 the judge rejected it as inadequate. He then selected Colorado Public Employees Retirement Fund as lead plaintiff and their lawyers to act as class counsel.

QUESTION: In 1994, California MicroDevices securities litigation, that was filed after the company admitted they filed materially false financial statements.

WALKER: Wasn't that the one where Joe Hassett was involved? He was the lawyer from Hogan & Hartson?

QUESTION: In 1996, you rejected a proposed settlement.

[26] In re California Micro Devices Securities Litigation, 965 F. Supp. 1327 (N.D. Cal. 1997)

WALKER: Yes, that's the one.

QUESTION: I wondered why. You did suggest there was collusion between plaintiffs' counsel and the company. It wasn't selected by competitive bid.

WALKER: That was the Jim Finberg case. Finberg represented the plaintiffs. Ethan Schulman of the old Howard Rice firm represented the company defendants. The lawyers essentially came in with a settlement on the day the case was filed or shortly thereafter and presented that for approval.

I said, 'wait a minute. I've hardly seen this case. How can I approve the settlement?' I rejected the settlement. That's when, I've forgotten the process by which I accomplished it, but that's what led to the Colorado Public Employee Retirement Fund coming in to represent the class. It retained Hogan & Hartson and Hogan & Hartson wisely associated Finberg as co-counsel. They proceeded together. Eventually, the case got litigated somewhat and then settled.

At first, I thought you were going to raise the issue of Chan Desaigoudar, who was the CEO of MicroDevices and got involved in some criminal proceedings in which Frank Ubhaus of the Berliner firm appeared. That was tag-along litigation to the securities litigation.

That lingered on for a long period of time. There were a lot of proceedings related to the conditions of his release and whether he could have his passport to go to India. He was an Indian national to begin with and I've forgotten whether or not he was also a US citizen. He had family in India and business interests in India.

There were a lot of issues associated with that and I remember struggling with those. Ubhaus is a very good lawyer.

QUESTION: What was the fallout of the securities case. You later approved a significantly larger settlement and you talked about selection of class counsel.

WALKER: The settlement that Finberg and Schulman came in with at the beginning was pretty small. Eventually, after the Colorado fund came in there was a significantly larger settlement that they were able to recover on behalf on the class.

QUESTION: What was the fallout? Since people could see the larger result. Did that make people more sympathetic to the institutional investor negotiating.

WALKER: I think it did. I think that's exactly right. When the marshal is on the job, people behave themselves.

QUESTION: Speaking of the marshal being on the job, I want to switch to some criminal cases. I want to go back to the Pius Ailemen case we discussed earlier. In 1997, you suppressed five months of government wiretaps against the suspected ringleader and 11 co-defendants in the Pius Ailemen case. You said the DEA agent had misled the judge about the need for wiretaps.

This is an international heroin trafficking ring that he ran. Do you recall how you came to the decision to suppress because it is such an unusual thing to do?

WALKER: I have no recollection at all. I remember Pius Ailemen, I remember what he looks like, or what he looked like then. He was a good looking fellow, who seemed to be charming. He

did not look like the kind of person you would associate with running a large drug ring. Was he Nigerian?

QUESTION: I think he was.

WALKER: Other than that, I can't remember a thing about the merits of that case.

QUESTION: I have one other question about it. See if you remember this part of it. You also dismissed the indictment against him at one point, based on double jeopardy because you said the government couldn't bring criminal charges because they had already seized through forfeiture about $4,900 and his Alfa-Romeo.

WALKER: That I do remember. There was a 9th Circuit case I relied on. Between the time of my decision and the appeal the Supreme Court had reversed the 9th Circuit so that undercut the grounds of my decision. I was just doing what the 9th Circuit told me to do.

QUESTION: About a year later, another case, I don't know if you remember this one, US v. Nelson. You gave the same sort of warning to the government. You said the customs agent appeared to be lying in his testimony about a drug bust and that prompted prosecutors to dismiss charges in a cocaine smuggling case. I was hoping you could talk about that and if it created this reputation for you of being unpredictable as far as prosecutors are concerned?

WALKER: This may sound funny to you, but I never found criminal cases all that interesting. The issues never resonated with me. I'm sure my memory is foggier of the criminal cases than the civil cases.

I can picture some of these people. I can picture Desaigoudar and I can picture Pius Ailemen and Christian Martinson and Donovan Long and the third person, whatever the kid's name was, in the case of the Grateful Dead camp followers, and some of the lawyers.

[Defense counsel] Scott Sugarman was involved in the Chen case and Garrick Lew. They are certainly lawyers who have that empathetic ability to deal with difficult clients. But I never liked the criminal cases. Never enjoyed them. Never thought they were particularly interesting. I did enjoy the criminal defense lawyers. I thought they were a fun bunch.

QUESTION: Was it around this time that you came to the conclusion that drug prosecution and the war on drugs wasn't working? And you started talking about decriminalizing…

WALKER: About that same time.

QUESTION: How did you get to that point? What was the thinking behind that?

WALKER: I had never given any serious thought to the war on drugs before going on the bench. It may sound like a funny thing to say. But I hadn't really focused on the subject. Yet, you sit on the bench and you see these cases and you see how futile the prosecutions seem to be in addressing the underlying social and criminal problems that are associated with narcotics. And how little seems to be accomplished by these prosecutions that seem to entail very long sentences of people and involve luring people into the net of these prosecutions. Cooperator testimony, which plays a large role in these cases, and is inherently problematic. So, it was the first time I had come face-to-face with these realities. I disliked the fact that I was playing a role in this process. It seemed to be doing so little good and that's what eventually changed my

thinking. Then it was your colleague Howard Mintz,[27] I've forgotten exactly how it came about, but I was perhaps a little too candid with him and gave him an interview and gave him my views. He thought that was a story and it ran. It did create a kerfuffle at the time.

QUESTION: What was the reaction of other judges at the time?

WALKER: I don't remember that anybody really said anything. I think some of them thought I was speaking out of turn and ought to keep my mouth shut. Maybe they were right about that. It probably contributed to the iconoclast reputation that you mentioned a moment ago. As Judge Patel said, 'You've got life tenure, if you don't have guts now, you never will." So why not speak out. That became my attitude.

Latrell Sprewell, the one-time NBA Warrior's guard, sued the team in 1998 seeking $30 million for lost wages and damages he said was caused by his suspension for attacking his coach P.J. Carlesimo. The NBA and Warriors suspended Sprewell for 68 games after choking Carlesimo during a team practice in 1997. The NBA allowed the Warriors to terminate the last three years of his $24 million contract. An arbitrator reinstated him and cut the suspension as excessive. Sprewell accused the league of violating his civil rights and a conspiracy to cut off his endorsement contacts.

QUESTION: Back to 1998, Latrell Sprewell, an NBA player for the Warriors, brought a sweeping 13th Amendment challenge to his 68-game suspension. He had choked P.J. Carlesimo, his coach, during a practice and threatened to kill him. It was a 13th Amendment involuntary servitude claim. You don't see many 13th amendment claims. In addition, he claimed conspiracy to interfere with the arbitral process by producing false evidence, interference with a contract and

[27] San Jose Mercury-News reporter.

a host of other claims.[28] How did you approach that case? You realized it was frivolous case. What do you recall about that?

WALKER: What I recall is Frank Rothman making a swell argument. I think everyone thought that Latrell Sprewell was at best a highly immature individual and needed to be shaped up. Whatever irritations your coach may impose, trying to strangle him is not an appropriate reaction.

QUESTION: The other aspect of that case is you ultimately slapped his lawyers with $154,000 in sanctions, both the lawyers and the law firm. What was going on there?

WALKER: Who were the lawyers?

QUESTION: They were from Atlanta. Thompson & Associates, Gist Kennedy & Associates as well as the San Francisco Law Office of Paul F. Utrecht. You kept asking them, 'you sure you want to do this?' And they kept coming back for more. Ultimately, were sanctioned quite a bit of money for a frivolous case.

WALKER: I think it was a frivolous case. The sanctions were reversed in some fashion, weren't they?

QUESTION: I think but it dragged out for a very long time.

WALKER: It dragged out and I lost interest in that case a long time ago.

[28] Sprewell v. Golden State Warriors, 99-15602 (9th Cir. Nov. 7, 2000)

A former member of the Thailand parliament, Thanong "Thai Tony" Siriprechapong,[29] *was accused of being the leader of the largest known marijuana-smuggling ring in Southeast Asia in 1996. During his racketeering case, defense lawyers discovered a U.S. Customs agent Frank Gervacio lied to grand jurors to obtain the indictment in 1991 and lied to win extradition and had taken a $4,000 kickback from the informant in the case. In addition, the former prosecutor in the case, John Lyons, failed to disclose the kickback to the defense. As the stories unfolded, Judge Walker threatened sanctions against the government and eventually freed Siriprechapong from prison following a plea bargain.*

QUESTION: Another case that fascinated me for a long time was Thanong Siriprechapong, a Thai politician who was believed by the government to be the head of a drug smuggling operation, probably the largest marijuana smuggling operation in Southeast Asia. He was the kingpin, but the defense discovered that a customs agent took about $4,000 in kickbacks from an informant. So, the case unraveled.

WALKER: This was the Gervasio case. Poor old Gervasio.

QUESTION: Can you talk about that because that went on for a very long time, unwinding this very long prosecution. At one point, you ordered the unsealing of documents that forced Gervasio to admit that he took kickbacks. So, can you talk about that case?

WALKER: I don't remember how it all came about other than it just smelled that something fishy was going on. If I remember correctly Gervasio was in the informant's wedding.

[29] U.S. v. Siriprechapong, 181 F.R.D. 416 (N.D. Cal 1998)

QUESTION: He was. He was best man at the wedding.

WALKER: Best man at the informant's wedding. Well, it's nice to be in touch with your informants but that seemed awfully close.

QUESTION: Just the entertainment factor. I was highly entertained, so I assumed you must have been.

WALKER: I really wasn't. You may find this hard to believe but I never found those cases all that interesting. I hate to pop your balloon.

QUESTION: Fair enough. You've always talked in the past about the enforcement of criminal laws being a state responsibility rather than a federal responsibility. Talk about what that means to you in terms of federal prosecutions.

WALKER: Federal prosecutions have to be based largely on the Commerce Clause. As you know, we've gotten a long way from linking federal crimes to interstate commerce. This came up with Kevin Paul Woodruff.

QUESTION: That's the case I was going to ask about.

In 1991, Kevin Woodruff robbed an Aptos Jewelry story of $200,000 worth of jewelry and later the same month robbed a Shreve & Co. jeweler in Walnut Creek of $300,000 in jewelry. The string of jewelry store heists continued until his arrest and indictment[30] *in 1993 on four counts of interfering with commerce by robbery under the Hobbs Act. He sought dismissal, arguing that the evidence of interference with commerce was insufficient to sustain a conviction.*

[30] US v. Woodruff, 941 F. Supp. 910 (N.D. Cal. 1996),

WALKER: The Hobbs Act, isn't that the act under which he was prosecuted? If I remember correctly what he had done was rob a jewelry store, broke into some of jewelry display case, stole some jewelry. Somehow that got transformed into a federal case. And I never could see the connection to interstate commerce. The law has developed in such a fashion now that the connection can be extremely faint. That's all that's required to bring a case into the federal realm.

I thought they had gone a step too far with poor old Kevin, who was a problematic individual. Wasn't he represented by Harriet Ross? Harriet Ross is a defense lawyer. Has been around for a long time. Talk about people who live in different orbits. Harriet lives in one orbit and Kevin Paul Woodruff lived several orbits removed from Harriet. That was quite evident from the relationship they had in court.

So many of the criminal defense lawyers have a remarkable ability to maintain relationships with their clients. Mike Stepanian being one of them, although there are many others. Richard Mazer is another one. Gil Eisenberg. Once I start thinking about them, I can think of a lot of them. They have this remarkable ability to be empathetic with people who are sometimes very difficult to be empathetic with. Well, poor Harriet was a little shy in that talent, at least as far as Kevin Paul Woodruff was concerned. I think at some point I got Ephraim Margolin to come to represent Kevin.

I really felt sorry for the guy. But feeling sorry for the guy is really something different from trying to deal with the person's legal problems. I did think the government was really overreaching by prosecuting him for what was essentially just plain old-fashioned state theft.

And subjecting him to the considerably enhanced federal penalties that he was prosecuted for, I thought unfair.

Three Santa Cruz men were accused of selling $400 worth of LSD at a Grateful Dead concert in a 1991 case.[31] Despite mandatory minimum sentencing rules at the time of 10 years in prison for first offenses, Judge Walker cut the time in half. He opposed sentencing the men based on the weight of the LSD and the blotter paper to which it was attached.

QUESTION: Along that continuum are the mandatory minimum sentences that have been a thorn for a lot of judges. You cut mandatory minimum sentences in half when it called for 10 years for a first offense. This occurred in the case of three Santa Cruz men who were accused of selling $400 of LSD at a Grateful Dead concert.

WALKER: Yep. Christian Martinson, Donovan Long and who was number three. That was another case where I thought the government was just overreaching. And those folks kept coming back in one guise or another. I can't remember all the details. But in the years subsequent I learned something about Christian Martinson, who is happily married and has kids and is leading a perfectly normal suburban life.

Donovan Long graduated from the University of Oregon. One or more of those folks stayed in touch over the years. As it turns out, it was the right decision to spare those kids the heavy punishment that otherwise would have been imposed on them.

The system is not as bad now as it was, with the ability to depart from the guideline sentences and indeed from the guidelines altogether. But the kind of one-dimensional nature of

[31] U.S. v Martinsen, CR91-87.

criminal punishment is a real shortcoming of the system. You either sentence people for a long period of time or not. There needs to be a more measured way of imposing penalties without necessarily taking away freedom for long periods of time and incarcerating people in institutions where they become more hardened than they were before.

We have come up short in our social policy dealing with criminal law violations, particularly with these lifestyle offenses like drug abuse. That's what was bothering me at the time of all these decisions. It still is a problem we're bedeviled with.

Five Taiwanese nationals were accused of smuggling $3 million worth of heroin. NBC learned the Customs Service was conducting a months-long stakeout of a warehouse where 1,080 pounds of heroin was stored in a shipment of plastic bags. The government said NBC threatened to expose the investigation if it was not invited in to cover the surveillance. NBC insisted it was invited to come along and videotape. Judge Walker said the level of cooperation between law enforcement and the news media created an "agency" relationship and therefore it was not the defense's but the government's obligation to subpoena NBC for all of the videotape.[32]

QUESTION: I wanted to ask you about U.S. v. Chen in 1991, which is the indictment you threatened to dismiss. This was a case of a thousand pounds of heroin smuggled into the United States because NBC went along with a news crew and shot the drug bust. You found that the U.S. had invited the news crew along. You said that NBC and the government had an agency relationship and thus it was up to the government, not the defense to disclose the tape. How did you get to that? And why do you think it's significant?

[32] U.S. v. Chen, 820 F. Supp. 1205 (N.D. Cal. 1992)

WALKER: It was pretty clear what was going on. The government wanted some footage it could run on the evening news about the hard, aggressive prosecution that they were engaged in. They lured NBC, or NBC was a willing participant in all this. They got the NBC camera people to go with them into the warehouse. They prepared the footage.

NBC argued these were outtakes and reporters' notes and all of that sort of stuff. I thought, OK, but nevertheless, you were along with the government on this ride, so it is up to the government to produce this stuff. What's so funny about it is the way it resolved.

I can't remember the sequence of events, but eventually NBC did throw in the towel and produce all that video footage and did not take the case to the Supreme Court. Probably wisely enough, because my guess is, it could have created a bad precedent for NBC or the government, or both.

In 2000, the Federal Judicial Panel on Multidistrict Litigation consolidated many state and federal cases by individuals seeking compensation for Japans' use of foreign slave labor during World War II, which exploited an estimated 24 million slave laborers. Recognizing the difficulty of redressing claims, the California legislature created a cause for victims and removed the statute of limitations obstacle to claims. Thirty lawsuits were filed in California courts in the first year. The defendants included the Japanese government and major Japanese firms such as Mitsubishi, Mitsui, Kajima, Nippon Steel and Kawasaki Heavy Industries. Japan maintained that the 1951 Peace Treaty with Japan resolved any reparations question. The U.S. sided with Japan and argued the lawsuits were an intrusion on the federal government's foreign affairs power. The state cases were consolidated in a federal proceeding and handed to Judge Walker.

QUESTION: I want to discuss the World War II Japanese forced labor cases.[33] If you can talk about how you handled that. I know they were ultimately dismissed based on the 1951 peace treaty. Also talk about, when you have a case like that where justice, and what is fair, may go one way and the law goes another. How do you cope with that? What were your feelings about that?

WALKER: The oral arguments in that case are some of the oral arguments I remember distinctly. They were very good. The principal argument for the defendants was presented by Margaret Pfeiffer, who, I think, is now retired. She was a partner in the Sullivan and Cromwell Washington office. She made one of the best oral arguments in a motion hearing in 21 years on the bench.

What made it so good and so helpful was that we were able to have a conversation about the case. It wasn't really an argument in which she was thumping the podium. I had a number of questions and she had answers. We engaged in a dialog. That's really what you want when you have a case where you have to make a decision that has some of the conflicting influences that you describe.

[33] In re: World War II Era Japanese Forced Labor Litigation, 114 F. Supp. 2d 939 (N.D. Cal. 2000). Deutsch v. Turner Corp. 317 F. 3d 1005 (9th Cir 2003). A World War II reparations case of 25,000 families of American prisoners who sought damages from Japanese corporations for being forced to work as slave laborers. Named Mitsubishi Corp, Mitsui, Nippon Steel Corp, Nippon Sharyo Ltd, Japan Energy Corp, Ishihara Sangyo Kaisha Ltd. And others.

Bill Edlund, my former law partner, made the argument on the other side. He was also very good. He had the tougher of the two positions. He distinctly had the tougher case on the law. He was naturally enough emphasizing the equities of the situation.

One of the things that made the case so interesting was, in thinking about the case and preparing for the argument, I had to go back and read all these documents associated with negotiation of the peace treaty. I was reading speeches, debates in Congress, letters written by some of the towering figures of that era; Senator Vandenberg, General McArthur, President Truman, Secretary Acheson, John Foster Dulles, General Marshall.

This was a chance to dive into some rich history. That made it very interesting. A few minutes ago, I pointed out the tension that sometimes arises between what appears to be fair and just, and the law. You're correct that at a superficial level the equities favored the former prisoners, but at a deeper level, I think the equities were on the side with the defendants in that case, for this reason. The larger interests the parties to the treaty were attempting to achieve at the end of the second World War was to create a world order where the conflict they had just come through was less likely to occur in the future. And the best way to do that was to build a strong and vibrant Japan. To try to extract reparations from that country, which was essentially devastated at the end of the war, would have made that country's recovery much more difficult.

We were in Japan late last year. You go to Japan today and it is a remarkable country. Very high standard of living, a productive member of the world community, so the larger objective was achieved. That I think is the larger equity in the case, rather than simply compensation to people for what the Japanese military did. War has lots of victims, inevitably. I think these

statesmen recognized that and tried to move the world order to a higher plain not so much for those that came through the war, but for future generations. I think that was the real equity of the case.

I think that point came through when the case went up on appeal. When I saw that Judge Reinhardt was on the panel, I thought, oh boy, he will be thinking about the Holocaust and associate that with the victims of the Japanese military. He wrote the opinion.[34]

In a way, however, I was not surprised that it was affirmed. But I could imagine a judge who is more attuned to what I call the superficial equities of the case could have gone the other way. I thought Reinhardt might do that. But he didn't and I took some comfort in that.

A footnote: in attempting to make the point that there were larger stakes than just the immediate compensation of victims, we added some language at the end of the opinion. I don't remember it exactly. It was a little corny, frankly. It was one of those times when you say something that you think is hitting the right note, but it seems to hit the wrong note.[35]

I can't tell you the number of bitter letters that we got that focused on that phrase, as bitter as any I've gotten in 21 years on the bench. The law clerk and I worked on it. We thought it was the right touch. What we tried to say was we were not ignoring the equities associated with

[34] Deutsch v. Turner Corp., 00-56673, 9th Cir. Jan. 21, 2003.
[35] "The Treaty of Peace with Japan, insofar as it barred future claims such as those asserted by plaintiffs in these actions, exchanged full compensation of plaintiffs for a future peace. History has vindicated the wisdom of that bargain. And while full compensation for plaintiffs' hardships, in the purely economic sense, has been denied these former prisoners and countless other survivors of the war, the immeasurable bounty of life for themselves and their posterity in a free society and in a more peaceful world services the debt."

victims' claims, but we didn't turn the phrase in a way that got the point across, which was too bad.

A private antitrust action filed in 2000, challenged a 1999 deal to combine San Francisco's two major daily newspapers. Clint Reilly, a real estate investor and former professional political campaign manager and failed candidate for San Francisco mayor in 1999, brought the action. He opposed the buyout contract by Hearst Corp., a New York-based media company and owner of the San Francisco Examiner, to purchase the Chronicle Publishing Co., owner of the Chronicle, alleging it amounted to an unreasonable restraint of trade and an illegal conspiracy to monopolize. He sought an order to block the deal. To smooth the way, Hearst agreed to spin off the Examiner in a sale to the Fang family, which owned a free distribution paper plus pay them $65 million to run the Examiner for several years. Judge Walker granted a temporary restraining order to block transfer of assets and both sides agreed to proceed to an immediate trial without an injunction. Further complicating the litigation, the two newspapers had for years relied on a joint operating agreement to share business operations under the Newspaper Preservation Act.

QUESTION: In 1999, you got *Riley v. Hearst*,[36] which was the Hearst Corp., which owned the Examiner, making a deal to buy the Chronicle. Then came the Clint Reilly antitrust lawsuit. Could you talk about that case and dealing with that case, the complexity of the politics involved, beyond just the law.

WALKER: I have said on more than one occasion, if every case were like that case, I would never leave the bench. That was my favorite case. Why shouldn't it be? Dealing with the newspaper business, which is a storied and interesting business. Terrific lawyers: Joe Alioto, on the plaintiff side, Gary Halling representing Hearst, Tom Rosch representing the Chronicle. A

[36] Reilly v. Hearst, 107 F. Supp. 2d 1192, (N.D. Cal. 2000)

parade of witnesses that were fascinating to listen to, and this political overlay in the case. And there was a real San Francisco flavor to the case. Some of the great figures of the area. The ghost of William Randolph Hearst walked through the courtroom along with the de Youngs. All these folks made it a fascinating case.

The first witness that Alioto called was Tim White the publisher of the Hearst-owned newspaper, who admitted that he had offered favorable coverage of Willie Brown, if Brown got behind the merger. And he brought that out the very first day of trial at the end of our proceedings. He did it with great flourish. I wondered all night how Halling was going to rehabilitate White. And Halling was smart enough to know just to leave these things lie. He stood up and said, 'Your honor, no questions.' So, the case moved on.

It was just a romp in the courtroom. I loved that case.

QUESTION: You were not just dealing with antitrust law, but also the Newspaper Preservation Act, so it may have created an exemption. Was that something you had to sort through?

WALKER: Yes. And that was something that I had been interested in for a very long time. I did some work when I was at Stanford, with Bill Baxter, that touched indirectly on the Newspaper Preservation Act. We did an econometric analysis of whether advertising rates for radio and television were higher in markets where there was cross ownership of newspapers and radio and television stations. That really did touch on the issue of media concentration. I was interested in the subject in law school. When I came to the Pillsbury office, I worked first for

Dick MacLaury, who had tried the Tucson newspaper case, lost it, and then began the lobbying effort that ultimately resulted in the Newspaper Preservation Act.

He was a fierce litigator. If he lost a case, he would find some other way to get the result. He did a very good job for his client. I didn't work on that case. It was over by the time I got to the firm. But it was part of the lore that I picked up. With that background, the Reilly versus Hearst case was of keen interest to me. The case just happened to fall into my lap and with all these factors made it even more interesting.

QUESTION: At one point you made it clear you were offended by the cronyism behind the deal. What were you talking about?

WALKER: The cronyism was quite obvious. First of all, the Justice Department dragged its feet in approving the merger for no apparent reason, except for a lot of local politics seeping into the review process at the Justice Department. It was, I thought, quite apparent. It was resolved by Hearst agreeing to pay the Fang group $65 million and assume the Examiner banner and trademarks. It was a quite obvious payoff to a politically connected group. That I found offensive. When the order came out, I got a scathing letter from Senator Feinstein, a scathing letter from Joel Klein, who was head of the antitrust division. I'm not sure about the Feinstein letter, but I'm pretty sure we put that [Klein] letter in the record with an offer to reopen the case, which of course the department did not do.

The other irony of it all, I thought Joe did an excellent job of litigating the case and pointing out the kind of undercurrent of local politics. I figured out a way to make an award of attorney fees to him, even though he'd lost the case. I figured the Hearst attorneys were so

anxious to close the deal that they would pay the fees. And they did. It was a case where everybody won.

QUESTION: Except Clint Reilly.

WALKER: Reilly won. He got bragging rights and Hearst paid his attorney fees.

QUESTION: At one point during the trial, Chronicle executive John Sias was caught in what was called a misrepresentation during cross-examination by Alioto and people started shouting perjury. Do you remember that episode?

WALKER: I do indeed. He is now deceased. He was a very nice man and he did a wonderful job for the families that owned the Chronicle, selling those assets at very high prices. He had been with Capital Cities Broadcasting in the east but grew up in California. Went to Stanford. So, after a career in the east, he and his wife retired here and lived on Nob Hill.

He was a guy with a very keen sense of humor and very glib. But on the witness stand, being glib is not an asset. He had been caught in some kind of inconsistency between what he wrote and what he said on the stand. He said to Alioto, now that you've proved that I'm a perjurer, or words to that affect. Alioto just let that lay on the record. Sias was saying it more in jest than admitting perjury.

QUESTION: Irony is hard to convey on court transcripts.

WALKER: When you read it in a transcript it sounds different from how it sounds in court. I think I tried to bail him out by saying something like, surely you jest Mr. Sias.

QUESTION: When you are presiding over a case like that where you are enjoying yourself just listening to the testimony, how do you keep yourself out of it. You were enjoying it. Is there a temptation to ask questions?

WALKER: There is always a temptation to ask questions. It was enjoyable just to listen to this case where almost everybody was a nice person. That helped make it more enjoyable. I had known a number of the people in the courtroom for a long time. There is a bit of stagecraft in the courtroom. A bit of a play, a morality play. This was a case where you had that morality play but it was not dealing with some God-awful event or some personal tragedy or some accident or something where there was loss of life or injury. The issues were serious, a lot of money at stake, but you were dealing with something that you could treat in a little lighter vein than you could many other cases.

That helped make it more fun.

QUESTION: It is 18 years later and both papers still exist. Amazingly, the Examiner still exists, though I think the papers are shadows of what they were at the time. Do you have any thoughts about the decision now, the bargaining that was going on? Thoughts about the success of the antitrust law?

WALKER: I don't think anything would have been any different if the department had approved the deal without the spinoff to the Fangs. The Examiner was sold a few years after by the Fangs to Anschutz in Denver. He couldn't make any money out of it. He off-loaded it to somebody else. I don't know who owns it now.

There is always going to be a market for a throwaway paper of that kind. And we all know what's happened to the newspaper business. I don't think in 2000 we foresaw how rapid the change was going to be and the extent of the change. I don't have to tell you, Pam, that the newspaper business is significantly different from 18 years ago.

One of the things about antitrust, not only does life move on but business and the economy move on, inexorably. There is really a limited efficacy to twist and turn the dials of competition through legal mechanisms.

QUESTION: Years ago, when I talked to Judge Browning[37] who did antitrust, he didn't like the way it had evolved. He preferred the more consumer interested aspect that would break up companies that were too large. I'm wondering what you think of how antitrust has evolved and is it as effective a tool? Can you use it in a world with Google's and Facebooks?

WALKER: Browning had a kind of populist view toward competition issues. That was quite common among people of his generation. It's a romantic view – big is bad; small is good. But contrary to the description of Browning's view in your question, Browning's view is not consumer-interested. Indeed, consumer welfare is standard in antitrust today and this has led to tolerance of big enterprises which benefit consumers through efficiencies. The Browning view is still held by a lot of people. They want to break up Google, Netflix and other big tech enterprises. We see presently the Justice Department under no less than Donald J. Trump going after the vertical merger between ATT and Time Warner. Vertical mergers have historically not been challenged, only horizontal mergers. The notion is basically, well it's too damn big and it is

[37] Chief Judge James Browning, 9th US Circuit Court of Appeals

going to stifle competition. I'm not saying there is nothing to that argument. I am more skeptical than the Judge Brownings of the world, because people and competitors do find a way to work around impediments that you put in the way of them making a living.

In 1996, California First Amendment Coalition and news reporters challenged new prison rules that prevented viewing California's execution process from start to finish, that is, from the time the condemned enters the execution chamber until the needle is inserted.[38] *Prior to the use of lethal injection, executions in the gas chamber had been viewed from the time the inmate was brought in and strapped in the chair until death. Judge Walker first allowed viewing but limited it to the time the of the insertion of the intravenous lines. But in a second ruling, in 2000, in a later version of the claim, he expanded that right to the time the condemned enters the execution chamber.*[39]

QUESTION: There is a first amendment issue. In 1997, you ruled on the right of access to witness executions. It defined for the first time the scope of the public right of access to executions. You extended the media rights in California to look at lethal injection, but you limited it to the time that the needle is inserted, rather than the time the time the prisoner enters the chamber, which is what the media wanted. I wanted you to talk about that particular limitation.

WALKER: I have no idea.

QUESTION: What do you recall about that case?

[38] Cal. First Amendment Coalition v. Calderon, 92 F.3d 1191, (9th Cir. 1996)
[39] Cal. First Amendment Coalition v. Woodford, 2000 WL 33173913 (N.D. Cal. 2000)

WALKER: What I recall is Judge Schnacke had a very similar case a few years before and he had barred media access to the execution chamber. This decision was contrary to Judge Schnacke's decision.

As best I can recall, the argument the state made against access was that we can't have the press viewing all aspects of the management of our prisons. It would be an undue intrusion into the state's process to allow every aspect of prison management to be subject to media scrutiny. So, the distinction was between, on the one hand, management of the penal authority and the imposition of punishment, on the other. And what I think I eventually concluded was that the point of where imposition of punishment began was the point where the needle was inserted. That must have been the rationale. That perhaps was a way to overcome the limitation the prior cases imposed on public access.

I haven't thought of that case since 1997, twenty years ago.

QUESTION: Now we go to criminal law. In 2000, there was a San Quentin capital case, Robert Lee Massy. This was, again, California First Amendment Coalition and viewing of lethal injection. You said that public witnesses at the execution should be allowed to see the process from beginning to end. There had been three prior 9th Circuit decisions that said no, prison security was more important. But then the 9th Circuit sided with you. How did you get to your position given the appellate rulings?

WALKER: I don't remember what the legal analysis was. It was more of a kind of common-sense approach. The prison security argument seemed to be pretty weak in that context. The beginning of the execution process was when the condemned was brought into the death

chamber. I forget when the prior cases allowed the observers, but it was hard to discern that prison security was materially affected by allowing people to see the prisoner being brought into the death chamber and strapped in and the apparatus of death attached. So, I think it was just common sense, with respect to when the right of viewing should begin. I do not personally oppose imposition of a death penalty, but it is a pretty awesome matter for the state to sanction putting someone to death. When you're going to exercise state power, and particularly state power of that awesomeness, it seems to me it is particularly important for the public to have an opportunity to see that is being carried out.

Needless to say, there are some difficulties in doing that. There are the safety and security interests of everybody involved. You want to be sure it is conducted in a dignified fashion. Yet if we are going to impose an awesome penalty, the public ought to be able to see it, or at least have access to see it.

I think the prior decisions of the 9th Circuit seemed to be animated by a concern that if we allowed people to see how the death penalty is actually carried out that will prompt people to reject the death penalty as the appropriate means of punishment. Well, if that's the case then we ought not to have a death penalty. If it is unacceptable to the public at large then we ought not to have it. I think now the opinion seems to be swinging in that direction. A death penalty sentence is a pretty awesome exercise of authority.

QUESTION: In 2000, you struck down the voter initiative in San Francisco that banned ATM fees charged for non-customers of the bank. The 9th Circuit upheld it in 2002. These were pretty unpopular.

WALKER: When you say it was upheld by the 9th Circuit, I think of Judge Weigel's remark when he was told he was upheld by the 9th Circuit: "I still think I'm right."

I'm pretty sure without recalling the case that the initiative was pre-empted by federal law. That was probably not a hard decision.

QUESTION: *Cavanaugh v. District Court*[40] was interesting because you took the step of filing your own defense to the 9th Circuit on appeal. This had to do with the practice of selecting lead plaintiffs in class action cases. Why did you decide to do that and what was going on?

WALKER: A law review article in about 1990 or the late 80s got me to thinking that the competitive selection of class counsel, at least in securities cases, was an idea worth trying. Eliott Weiss was a law professor at the University of Arizona. I was in touch with him at some point. I probably had been on some panels with him in advance of this case. When this challenge came, I don't remember who called who, but he may have called me. He agreed to represent me in the 9th Circuit. And he did. And we lost.

I think Kozinski wrote the opinion. What had happened in the meantime and what made our case difficult, was Congress had passed the Private Securities Litigation Reform Act of 1995, which set up this lead counsel mechanism. These competitive bidding cases began prior to the 1995 act. It was a changed circumstance. I was sorry to lose that case, as you're always sorry to lose a case. But I didn't feel too badly about it.

In June 2003, Oracle Corp. made a hostile tender offer for PeopleSoft, Inc., its rival in the market for enterprise resource planning software. The tender came just days after PeopleSoft

[40] In re: Cavanaugh, 00-cv-3894VRW, N. District of California, and 01-70772, Ninth Cir., Sept. 16, 2002.

announced it had made a deal to acquire another rival, J.D. Edwards. PeopleSoft CEO was extremely unhappy and pressed his board to reject the bid on antitrust grounds. It did. Then in February 2004, the Department of Justice challenged the proposed Oracle tender, but the DOJ may not have counted on Oracle CEO Larry Ellison's willingness to battle this out. It paid off for Ellison. Ultimately, Judge Walker found the government's evidence did not measure up to the alleged antitrust harm.

QUESTION: In 2004, *U.S. v. Oracle* and the whole Oracle-PeopleSoft case. The government was trying to block Oracle's tender offer for PeopleSoft. I think the trial was in 2004. The case involved Oracle, PeopleSoft and SAP and their competitors. Talk about that case.

WALKER: Well, that's another antitrust case. It is another case that if you are skeptical about the ability to change the competitive playing field it's pretty hard to rule for the government in that kind of case. It was particularly difficult in Oracle because the government could never define the market. They had an excellent, well-regarded economist as their principal expert, Elzinga[41], I think from the University of Virginia. Basically, his market definition was, "I know it when I see it." It was difficult to define the market in that case. But doing so is kind of the sine qua non of enforcing section 7, the merger provision of the Clayton Act. You've got to define what the market is and the market in which competition is being foreclosed by a merger.

That is a point on which the government bore the burden of proof and I thought they simply failed to present sufficient evidence to sustain that burden. It was a hard-fought case because there was so much at stake. But I didn't think the decision was that difficult. And as you know, the government did not appeal.

[4141] Kenneth G. Elzinga, University of Virginia antitrust expert.

QUESTION: The reason it fascinated me was it occurred just as journalism was changing quite a bit, very fast. Instead of having to run down the hall to the pay phone to call in what had happened, now people were bringing computers into the courtroom and they had access to immediate headlines. There were a lot of business reporters there and things would move the market. Testimony was moving market prices. The companies were savvy enough to figure this out. Somebody made some statement in testifying with regard to Microsoft. As soon as the statements were made someone from Microsoft in the courtroom was handing out statements and press releases to all the reporters who were sitting there. They also put it out electronically, so all our editors got it. That was the first time in my experience where that immediate reaction to testimony was going on in the courtroom. I wondered if you were aware of that?

WALKER: I wasn't aware of the immediacy of the information going to the market as you described. I was certainly aware that what happened in the case would affect the market. I wasn't really aware of the immediacy of that at the time.

QUESTION: What do you think about that? Does it affect the way trials progress or is it just part of the evolving news coverage of courts?

WALKER: I think it is more the latter than anything else. We have pretty short news cycles today. Almost the blink of an eye. Not like the nineteenth century when you had to wait a week to get the news from the east coast.

QUESTION: The other part of the case was that it was followed by the Commission of the European Communities. Did you find that gratifying? What were your thoughts about how Europe was reacting?

WALKER: Actually, I did, I'm glad you mentioned it. The European Commission, at least by reputation, has taken a more stringent view of these mergers. The fact that a commission in Europe that was perhaps more sympathetic to the government's position came out the same way I did gave me some reassurance – well, I can't be all wrong.

QUESTION: Now we get to the *Lockyer v. Mirant Corp.* and the cases that stem from the California energy crisis in 2000. Mirant was really a collection of cases of wholesale energy providers, also commodities case. I wanted you to talk about how you sorted that out. It was really complicated. All the cases that grew out of the energy crisis were complicated because of FERC and the evolving energy market California was trying to create. I was going to ask about *US v. Reliant* next, but it is all a part of a piece. Just talk about how you sorted it out.

WALKER: I don't think I ever did sort it out. How did it sort itself out? I recall the case just died. I do remember this; Haywood Gilliam was presenting the government's case. He is a great guy and a good lawyer. And I really gave him a hard time. He stood his ground.

QUESTION: I remember that day. I told him outside you really gave him a hard time and he did well.

WALKER: But there wasn't a trial. There must have been some kind of resolution.

QUESTION: I think they came to an agreement with the government. Everybody went away. Reliant along with four executives were accused of trying to manipulate the state market and engaged in commodities price manipulation and conspiracy and wire fraud. In 2006, you refused to dismiss the indictment on statute of limitations grounds. Did that case present any difficulties you remember?

WALKER: I don't remember that one. I just remember poor Haywood standing in the courtroom.

QUESTION: He seems to have done alright for himself.

WALKER: He's done very well. I figure I toughened him up.

A series of major national security cases landed in Judge Walker's hands in 2007. AT&T, and other telecom companies, had cooperated with the National Security Agency to conduct warrantless eavesdropping. Lawsuits challenged the cooperation and Judge Walker denied motions by the defendants to dismiss the litigation on the ground that it would reveal state secrets.[42] In later rulings he said the Foreign Intelligence Surveillance Act preempted the state secrets privilege with respect to foreign telecom surveillance.[43]He ruled in favor of plaintiffs in one case but ultimately, in others, dismissed on the grounds that Congress had enacted retroactive immunity and standing.

QUESTION: In 2007, the Multi-District Panel assigned you the National Security Agency cases, the National Security Telecommunications cases.

WALKER: Sometimes you're just unlucky.

QUESTION: I remember that going on forever. I think you started out with Hepting and then you got the whole shebang. Tell me about that. You refused to dismiss Hepting initially based on the government's claim that it would reveal state secrets. Can you talk about the juxtaposition of dealing with privacy and national security?

[42] Hepting v. AT&T, 439 F. Supp. 2d 974 (N.D. Cal. 2006)
[43] In re National Security Agency Telecommunications Records Litigation, 564 F. Supp 2d 1109 (N.D. Cal. 2009)

WALKER: That was actually a very difficult case, or series of cases, because they brought into conflict two very important values – the national security of the country and individuals' interest in the privacy of their communications. The country certainly has a legitimate role in protecting itself by tracing people who want to harm the national interest. That sometimes involves surreptitious activities. If something happened, was an attack by some hostile force, and a hostile force these days may be something other than a country. It may be terrorists of one kind or another. If something happened, you can bet your boots there would be a lot of recriminations. The right of privacy would bend pretty fast, pretty far, in response to that. And yet, privacy is an important value we all cherish. Those cases really did bring those values into conflict with one another. I thought it was very hard to resolve them.

Thinking about the cases in retrospect, it might have been better to have some trials. Maybe if I had stayed on the bench longer, I would have set a few of those cases for trial and let the parties present their evidence and see how it sorted out. It is basically what I did in the Proposition 8 case, and what I did in the *Reilly v. Hearst* case and the same in the Oracle PeopleSoft case. But I was anxious to get off the bench and end my judicial career. I did not want to leave those cases unresolved. In fact, I extended my time on the bench to finish those cases. But maybe in retrospect it would have been beneficial to have had some trials and let these issues play out. My guess is these issues will play out in other cases in the future.

QUESTION: One of the interesting things that came out of the Hepting case was there was some discussion of AT&T letting the NSA install a listening system in room 641A so they could monitor all this traffic. That is kind of fascinating to hear the inside workings of how this kind of

thing comes about. I was wondering what you thought about the kind of evidence of how people spy. If you have any thoughts about that.

WALKER: I think it is a lot less glamorous than it appears. It is certainly less glamorous than it appears in movies and in novels. It is a lot of hard work, piecing together a lot of bits and pieces of information, and never seeing the whole picture crystal clear. It is tough work.

What are you going to do if you're AT&T? Some credible government agency comes to you and says we need to get this information to protect the country. Is AT&T going to say, oh buzz off government? I don't think so.

QUESTION: You at one point held that the Foreign Intelligence Surveillance Act preempted the State Secrets Act on foreign telecom surveillance. In one case you entered a judgment for the plaintiffs in 2010. Do you recall?

WALKER: Wasn't that reversed? I've forgotten. Those cases lived on.

QUESTION: After Congress enacted retroactive immunity and standing, I just wondered what your thoughts were on that aspect?

WALKER: Well, that solved some of my problems, didn't it?

QUESTION: Do you think it is wise for Congress to step in and do things like that in the middle of cases? Retroactively giving them immunity?

WALKER: You can understand Congress doing it in that context. When Congress attempts to legislate a solution to something that came out in court that Congress doesn't like, I don't much care for that approach. But you're dealing here with exceedingly important issues of

national security, it is perfectly understandable that Congress would be motivated to pass an immunity for that kind of conduct.

QUESTION: A slightly lighter case, in 2008, there was the case of Jeffrey Pecover, who claimed that Electronic Arts monopolized video football games and in particular Madden NFL.

WALKER: Didn't Claudia Wilken get that case?

QUESTION: A different version but yes. You narrowed the case by partly granting dismissal, but you didn't do it entirely. It kept alive Sherman and Cartwright antitrust claims. I wondered if there was anything unique in handling videogame antitrust or anything about that case the stood out.

WALKER: No. Really wasn't. I have never been much interested in football, either on the field or on the screen. It is fun to watch once in a while. I am not a gamer. I don't think Judge Wilken is either. I thought you were going to talk about the tableware antitrust case.[44]

QUESTION: Please talk about it.

WALKER: That was another fun trial. Another Joe Alioto trial. Almost any trial with Joe is fun. Guido Saveri was in the case on the plaintiff side and Christopher Micheletti. The basic argument was that the department stores had a gotten a lock on Lenox and Waterford tableware and had foreclosed lower priced retailers from selling these tableware manufacturers' products.

The problem the plaintiffs had – some of the products of these manufacturers had found their way into Bed, Bath and Beyond, which sold the products at higher prices than the

[44] In re Tableware Antitrust Litigation, 485 F. Supp. 2d 1121, (N.D. Cal. 2007).

department stores which were the defendants. I think that was the basic problem. Plaintiffs had a difficult time with the case. They tried it and lost. Guido Saveri told me later that he thought this was the first consumer antitrust, consumer class action that had ever gone to a jury trial in the Northern District of California. I'm not sure of that. But it was a fun trial. Good lawyers in an antitrust case is always fun.

I do remember, we tried the case for two weeks. It concluded on a Friday night. The case had been given to the jury. I was in chambers alone and the phone rang. It was Joe Alioto. He said all the lawyers on both sides are going out to the North Beach Restaurant for pasta and they'd like me to join them. I thought for a moment, well, I'd love to be there. I said, I'd love to join you. But I turned down the invitation. It would have been fun. That is really a tribute to these lawyers, that you can fight in the courtroom all day long, all week long, all month long, and yet go out and have a personal relationship. It speaks well of them. That's the way law should be practiced.

And you see that among the criminal lawyers, much more than among civil lawyers generally. Criminal lawyers can beat each other up in the courtroom and then go out and enjoy each others' company.

In a personal injury class action, air passengers sued asserting air travel could cause them to develop deep vein thrombosis, a medical condition in which a blood clot forms in a deep vein, usually the leg, and can cause serious injury if it breaks free and lodges in the brain, heart or lungs.[45]

[45] In re Deep Vein Thrombosis Litigation, 2006 WL 2547459 (N.D. Cal. 2006)

QUESTION: Delta Airlines, and some other airlines: In the personal injury context, you sided with Delta Airlines in the Deep Vein Thrombosis cases, failure to warn about being in cramped seats. Then I think the 9th Circuit ordered some review about seating configuration? What do you remember about the case?

WALKER: Not too much. It didn't seem like a very strong case. I'm sure I was thinking that while the case was in court. I wish the airlines would do something about the seating on these damn planes. The case was interesting. After those cases the airlines did have fliers about how you should stretch and move around.

QUESTION: There was a trade secret misappropriation dispute in the *UniRam Technology Co. v. Taiwan Semiconductor*.[46]

WALKER: It went to trial. Max Tribble of the Susman Godfrey firm in Houston represented the plaintiff, basically a small inventor, an individual inventor. Matt Powers and Ed Reines represented Taiwan Manufacturing. Again, excellent lawyers, a trade secret case. It was a plaintiff verdict.

QUESTION: Was there anything significant about the outcome with regard to trade secrets beyond the case itself?

WALKER: I don't think so, other than it showed the risk that a large manufacturer has arrayed against a single individual who has come up with a claim of trade secrets. All the

[46] UniRam Technology Inc. v. Taiwan Semiconductor Manufacturing Co., 617 F. Supp. 2d 938 (N.D. Cal. 2007).

sympathies were with the plaintiff in the case. Tribble played that very well. He was assisted by Jay Neukom, who is Bill Neukom's son. Jay second-chaired that case.

His dad was general counsel to Microsoft when I had the Apple v. Microsoft litigation. He went on to be head of the ABA and become managing partner of the Giants.

I've always been a little envious of lawyers and judges who could recount stories of cases and go into great detail about what happened in court. Somehow what I remember are little vignettes. But I have moved on.

QUESTION: In 2003, there was US versus Shawn Gementara [47] case, the mail theft case and the billboard.

WALKER: Oh, (laughs) the sandwich board?

QUESTION: Yes. You gave him a hundred hours of community service, which required wearing a sandwich board saying, "I stole a mail. This is my punishment." The Ninth Circuit affirmed two to one. But they were a little critical of shaming as a punishment.

WALKER: Mike Hawkins was on that panel. I had lunch with Mike a couple weeks ago and he's kind of come around on that case. The sentence that I gave Gementara was a good deal less than the alternative sentence, which would have been a longer period of incarceration.

[47] US v. Gementera, 379 F.3d 596 (9th Cir. 2004)

So, the sandwich board and the other conditions were in lieu of a longer period of incarceration. The idea being this guy needed a wake-up call, needed to see that what he did was not a victimless crime, but it had real victims and had serious consequences and so forth.

It turned out that the message didn't sink in, but be that as it may, it was an effort in that direction. And Mike now recognizes that, particularly after Jeff Hansen, who represented Gementara and who appealed to the sentence, to the Ninth Circuit told Hawkins as he told me that, during the appeal, Gementara was saying, 'I'll take the sandwich board, I'll take the sandwich board.'

I don't blame him. I would take the sandwich too, rather than, I've forgotten what the alternative sentence was, but it was a lot longer. Hawkins is very nice guy and we had a few chuckles about that case.

QUESTION: Why did you decide to do that in the first place?

WALKER: It happened essentially on the spur of the moment. At least the first idea was on the spur of the moment. His lawyer was a nice guy, Arthur Wachtel.

I do remember the dialogue. I asked Mr. Wachtel, what can I do that's going to get the message across to your client that what he has done is harmful to other people. That his conduct is not only hurtful to them, but it's hurtful to society in general. He needs a wake-up call. What can I do? I've forgotten what Wachtel said but it was not helpful.

I was searching for some alternatives and he didn't provide any. So, I said, what I'll do is make him stand in front of the post office with the sandwich board or something like that. There was a lot of, 'Oh, you can't do that. That's a shaming punishment.' And a lot of throat clearing.

We had a couple of sentencing sessions, if I remember. I asked the probation department to actually put together the sentence with the conditions. They weren't too helpful either. They'd never seen anything like this.

In any event, it got my goat. So, I decided to include something like this. It also included that he had to stand at the lost and found window as people were reporting lost or stolen mail. There were about a half dozen different conditions he had to do. The sandwich board was of course, what got everybody's attention, but there were other elements of it as well.

It was not a very well thought out plan, but it was a rather clumsy effort to try to find a condition of sentencing that would send a message to the defendant.

QUESTION: What did you think of public reaction?

WALKER: I don't think I really gave that any thought. I was a federal judge for heaven's sake. There were some people who thought it was a grand idea. And some thought it was just hideous. They thought, oh the poor kid. You know, it's like the kid standing in the corner in kindergarten when he's naughty. Some of us had to do that and it's not a bad thing.

QUESTION: Moving on from that. Between 2004 and 2010. You were chief judge and I wanted you to describe what the job entails.

WALKER: It entails more than I thought when I got into it. Let me make the following observation. Number one: A lot of the responsibility of running the court, probably most of the responsibility, falls on the shoulders of the clerk of court. During the time that I was chief judge that was Richard Wieking, who was very capable.

He had the confidence of my colleagues and he took his job very seriously and worked hard at it. So that relieved me of a lot of the tasks that would ordinarily fall to the chief judge.

Rich also had a stubborn streak, as well. So, he was a little hard to move off some of his ways of running things. He'd been clerk for a very long time before I became chief judge. I think he went all the way back to Peckham's time.

So, he become pretty set in his ways. That would occasionally result in some tension, but to the degree that the court ran well during that period of 2004 to 2010 most of the credit should belong to him.

The chief judge runs the judges' meeting. It is rare that there is a matter of controversy among the judges.

There are certainly policy issues that come up that have to be dealt with and discussed.

I think our court has historically always been quite collegial. While you've got a group of people who did not choose one another as their colleagues, nevertheless, they are on an even playing field with one another, at least the district judges. They have managed to get along, I think, quite well notwithstanding that there are inevitably some differences in points of view and some disagreements along the way.

But really nothing by way of a bitter personal dispute among any of the judges, as I have heard, has existed in other districts. So that all made the chief judge job more pleasant than it could otherwise have been.

We had Judge Breyer who was very interested in projects. The attorneys' lounges, for example, in each of the three areas in which the court operates. That was kind of his baby. And he loved doing that. So, it was very easy to delegate to him the responsibility for handling those projects.

Sometimes the way to get things done is to put people in charge who like doing whatever it is or who feel it's important. And that was something that was important to him and he loved it. That made things easier.

There are inevitably personnel issues that come up. We did have some difficult personnel issues during that time, with a probation officer, chief probation officer, and a somewhat later with the chief pretrial services officer. Those were probably the most difficult aspects of being chief judge.

There was one thing that I found irritating. My predecessor as chief judge was Judge Patel. She thought and perhaps some of the others, that I was unpredictable and might try to make changes in the operation of the court. So, they adopted an executive committee process with a quote elaborate way of constituting the committee's membership. The idea was to shift the chief judge's authority to the executive committee. That would rein any wild and crazy things the chief judge wanted to do. Needless to say, this was directed at me. But the solution proved pretty

simple. The executive committee never or hardly ever met. As far as I know, it just died on the vine. Some routine case assignments are made in the name of the executive committee, but these are performed by computer.

QUESTION: Were there any specific administrative things that you wanted to change or that you wanted to introduce when you were chief judge?

WALKER: We were going to electronic filing at the time. I was very strongly in favor of that. The technology group leader Buz Rico came on the scene. That made adapting new technology much easier.

He was really good. He was capable; he was easy to work with. If you wanted something done or thought that something ought to be done, you could tell Buz and he would either do it or he'd tell you how it can be done, even though it may not have been able to be done in the way that you initially thought.

He made a lot of the changes in that regard possible, A welcome change. When Buz came on the scene the technology aspect of running the court ran relatively smoothly. The adaptation to electronic filing, which was no small change, has proven to be quite successful.

One endeavor of mine that I think I did not succeed at was to persuade my colleagues that they should abolish their individual standing orders and we should all have either a uniform standing order or simply have the local rules and nothing more.

Well, talk about whistling in the wind. That didn't work. I had standing orders for a long time myself. But I've always thought the idea that you have different rules in one court room from another court room in the same courthouse doesn't make a lot of sense. Part of the reason why individual standing orders are unnecessary is, basically, you don't need to write those things down the way the judge likes things to run in the judge's courtroom.

If you want the lawyers always to stand at the podium, all you have to do is make it clear that's where you want them to stand. They'll get the message. If you want the papers to be filed in a certain way, all you need to do is to say it a few times in court and the message gets around. You don't need these complicated procedures in individual standing orders.

But in any event abolishing individual standing orders didn't succeed, what else?

One of the rewards of being chief judge is that you interface with other chief judges around the country. There is a meeting of chief judges every year in Washington. The Ninth Circuit has a group of Ninth Circuit chief judges who obviously have common issues to deal with. Meeting and getting to know those folks and working with them proved to be very pleasurable and rewarding.

I was not looking forward to being chief judge, particularly. Judge Patel was my predecessor and, she loved it. Basically, I took the job because I was eligible to take it and because she could not have it any longer. In retrospect I'm glad I didn't pass on it. Some judges do.

You get an extra law clerk. And I was wise enough to hire Lynn Fuller who is a wonderful person and was a splendid a law clerk. In addition to being very smart, very capable, and a great colleague, she was willing to tackle things that other people dislike doing.

So, for example, we took in quite a number of prisoner habeas cases from the Eastern District of California, which is inundated with these things. I think I managed to persuade our colleagues that we take a bunch of those. Lynn took it upon her shoulders to work on a great number of those cases. She also took some interest in some of the pro se cases, the state habeas cases, which I didn't like doing. She would assume a laboring oar on that. So, it proved to be a wonderful way to balance things out.

We also started the pro se help desk while I was chief judge. I think that was a big move in the right direction given the huge number of pro se cases. These are non-prisoner pro se cases. The law clerk who was, I think we had the only one at the beginning, Julie. I've forgotten her last name. We got started with that. And I think that's been a useful development.

QUESTION: In 2004, you commuted a 24-year sentence of Michael Medjuck,[48] the hash kingpin, down to 13 years from 24. It was a reward for his cooperation with federal officials because he infiltrated a prison gang in Illinois and exposed a lot of guards working together to smuggle drugs. The 11-year reduction was more than the prosecutors wanted. Why did you take off so much time?

[48] US v. Medjuck, CR91-0552 VRW (N.D. Cal. July 8, 2004)

WALKER: I've forgotten the personal characteristics of the defendant. But I believe that it was a combination of his age and I thought the heroism that he displayed deserved quite a substantial reward. I don't know how close he was to being released.

My recollection is that with the reduction he was pretty close to the end of his sentence.

QUESTION: I think there were some added fears that he had been moved around from prison to prison because they'd figured out, he was an infiltrator and it was not safe.

WALKER: I believe that is correct. I think there were a host of factors like that. Being a prison snitch is a pretty unenviable a role. There was no question, as I remember, that the government agreed he had been extremely helpful in getting at some serious problems in the prisons. I suppose there was also this factor, you know, the word gets around. People in prison learn that if you stand up and do the right thing, you get rewarded for it.

This is the guy who did, and I'm sure that one of the factors that I thought about was why be stingy with credit for somebody who's put himself in a dangerous position, and has done something that was doubly beneficial. It's a quite significant reward for that kind of work, hoping that it might encourage others to do the same thing.

In the fall of 1997, environmental activists staged nonviolent protests against logging ancient redwood trees along California's northern coast. Nine of them brought a civil rights violation action against Humboldt County, the sheriff, city police and the deputies and officers. The officers used Q-tips to apply pepper spray under the eyes of protesters locked in metal devices known as "black bears" and could not be separated. The event was videotaped. A jury trial proved divisive.

QUESTION: Now tell me about presiding over the three, anti-logging protester trials.[49] The Humboldt Sheriff police with the pepper spray dabbed in people's eyes.

There was a civil rights trial and I think 2004 was the end of it. Nine environmentalist's, fourth amendment protection claim. In 1997 they had a series of protests including a congressman's office. They claimed excessive force. The first trial was a hung jury. They came back a second time and I think you said at one point you were going to try the case in Eureka.

WALKER: We had the first trial. This is why writing fiction is a vain endeavor because what really happens is much more fun and much more interesting.

You're refreshing my recollection. There were nine defendants and they all had forest names like Whispering Wind, Babbling Brook, Rustling Leaves, that sort of thing. One of their lawyers from San Diego, a woman, had the most emotive manner in court you can imagine. When there was something pleasant in court she would smile beatifically. When there was something sad, she would kind of tear up. The law clerks gave her the forest name, Torrential Rain.

The facts are, as you recited them. The contention was that swabbing with Q-tips, pepper spray underneath the eyes of the defendants was excessive force. It was interfering with their expressive rights and, was an abusive practice. But it was pretty clear that these folks were asking for trouble. Sure, they had a right not to be abused by the police. But you might with no

[49] Headwaters Forest Defense v. County of Humboldt, 240 F.3d 1185 (9th Cir. 2001)

little justification call them “environmental troublemakers.” They plainly wanted to precipitate an incident. You could see that people's views on this could differ quite dramatically.

I mean, you could just sense that in the court room as the trial was going on. In fact, you could sense it when the case came in the door. Some people were bound to be sympathetic, probably due to political views on the environment, and others not sympathetic. We tried the case. Just exactly as I had sensed, the jury split right down the middle six and six. Six said pepper spraying these kids was police brutality and the other six people said the plaintiffs were asking for trouble. Or maybe, it was four and four. But the split went right down the middle.

We had a video of the police interaction with the plaintiffs. I don't know how long, about 20 minutes but it seemed like hours. Whoever made the video forgot to take the lens cap off. So, all we had was the audio. All we heard was the screaming and the yelling and we sat in the darkened courtroom for 20 minutes or so listening to these cries of anguish from the plaintiffs being pepper sprayed – more precisely, the area around their eyes being swabbed with pepper on Q-tips. So, it was a miserable trial and I thought, good Lord, I don't want to go through this again after the hung jury.

The case came around a second time. Dennis Cunningham and Tony Serra came in to represent the plaintiffs. And I believe Nancy Delaney, the lawyer from Humboldt County, from Eureka, represented the defendants. I liked her. She’s very down-to-earth.

I remember she had appeared before me in a number of other matters. She's a good lawyer and a kind of a good soul, good hearty fighter. I remember sitting at counsel table in a case

management conference with Delaney, Tony and Dennis Cunningham and telling them that I thought in view of the hung jury and since the matter arose in Eureka, we ought to try the case in Eureka. We had a facility up there. So, I'm going to try the case up there.

Well, Serra and Cunningham, both of whom I also like, because they're scrappy lawyers, took it to the Ninth Circuit on some kind of a writ of mandamus. Pregerson and Willie Fletcher were on the panel. I forget who the third court of appeals judge was. They issued the writ that the case had to be tried in San Francisco and removed me from the case, which is the first and only time that occurred. It was, I thought, pretty ridiculous – I was biased because I wanted to try the case where the incident arose. But believe me, I was not at all sorry about it. I was happy to be rid of the case.

As a footnote to that, years later, after I had become a hero to him for some decisions I made in the wire-tapping cases. Pregerson and I were at a program back in Princeton, New Jersey. He was singing my praises to the other judges there for having issued these decisions in the wiretap cases calling me his hero and so forth.

I said, well, now Harry, remember in that logging case, you removed me from the case. You took the cases away from me because you said I couldn't be fair. Oh, he said, that was Fletcher that made me do that. Anyway, so poor [Judge] Sue Illston drew the case after I was kicked off. She tried it, and by golly, she got a hung jury.

She later told me that she thought very seriously about entering judgment.

I left out a step. After the first trial, I issued a summary judgment. That got appealed. That was reversed and sent back. So, smarting from that reversal was when I suggested that we ought to try the case in Eureka. That's the sequence.

Anyway, Sue said, you know, I looked at your summary judgment order. But she said that in view of this history of the case, I didn't think I had any choice but to try it again. She did try it a third time and got a verdict after almost getting down on her hands and knees, begging for a verdict from the jury. It was for the plaintiff's: one dollar in damages. So, I did feel vindicated that this was a case that was not going to go anywhere.

QUESTION: It even went to the Supreme Court at one point and they vacated the Ninth Circuit and sent it back.

WALKER: I didn't really follow it other than Sue complaining about having to try the damn thing twice. I was off of it and I was happy to be off of it. There are some cases like that are kind of tar babies. They are sticky and a mess.

I think it would've been fun to try the case in Eureka. That was actually another thing that I wanted to do as chief judge. This was actually in the back of my mind. I thought we ought to have more of a presence up there. I'd gone up and spoken to the Bar Association and traveled up there a number of times.

There isn't a lot of business up there, but I thought we ought to have a facility to handle the business that is there, so the lawyers don't have to come all the way down to San Francisco. The

280 miles from Eureka to San Francisco is a long way to come for a 10-minute status conference, for example.

I thought our service to the community required us to have more of a presence there. I thought that, frankly, was more important than having an Oakland courthouse, 12 miles away. But that's water over the dam. I'm sure that was a factor in my thinking also. Now we have a courthouse up there, in Eureka. Nandor Vadis, bless his heart, was willing to handle those cases up there.

QUESTION: He did a lot of the Sacramento habeas cases.

WALKER: Yes, he did. Nandor did a great job and was a real soldier. He's another guy who made being chief judge easy.

In 2008, California legalized same-sex marriage as a result of the California Supreme Court ruling that a state law barring same-sex couples from marrying violated the state's Constitution. In response, a voter initiative to change the state Constitution was placed on the ballot as Proposition 8, barring same-sex unions. It passed. A federal legal challenge followed claiming violation of the U.S. Constitution, as Perry v. Schwarzenegger. That case, claiming due process and equal protection violations, was assigned to Judge Walker as one of his final cases on the bench.

QUESTION: Now we get to June 2008. The California Supreme Court ruled on the same sex marriage cases. This is before you get the case. It found that barring same-sex couples from marriage violated the state Constitution. The state stopped issuing marriage licenses from Nov.

2008 to June 2013 after passage of Proposition 8, banning same-sex marriage in a constitutional amendment. So, it's got this whole long history in the California Supreme Court.

Superior Court Judge Richard Kramer, in 2005, struck down Proposition 22, which limited marriage to opposite sex couples. It had gone up through the California appellate courts. A court of appeal decision reversed Kramer and allowed the limitation on marriage and confined it to same sex couples.

The California Supreme Court reversed the court of appeal and reinstated Kramer's ruling.

In May of 2008, they ruled that the voter initiative limiting marriage was unconstitutional. Then opponents came up with the ballot initiative that would amend the state Constitution in Proposition 8.

WALKER: At issue in those state cases was a statute that had been passed by an initiative measure in 2000. That was challenged and the California Supreme Court eventually held because it was a statute, it was subject to review under the California constitution. I think the challenge was both on due process and equal protection grounds under the California constitution. The statute was held invalid.

QUESTION: So, opponents proposed a constitutional amendment which became Proposition 8 and in November voters passed the initiative 50-47 percent. A gay couple sued. It was first known as Perry v. Schwarzenegger.

WALKER: They were claiming that the prop eight initiative was invalid. It violated the single subject rule; that was the challenge. The case was Strauss versus somebody or other. That produced a decision by the California Supreme Court that the source of constitutional authority in the state is the people and the people have a right to declare what the constitution provides. They've done so through the initiative process and therefore Proposition eight was constitutional. Of course, in the meantime, quite a large number of same sex couples got married. That was in the May to November period. Or I could even roll it back further to [Mayor] Gavin Newson's act of civil disobedience in the city and county of San Francisco when he ordered the city clerk to issue marriage licenses to same-sex couples.

QUESTION: Now we get up to the point where the couples who sued. It's Perry v. Schwarzenegger which later became Hollingsworth vs Perry and it landed on your desk. How did you find out that you had that case?

WALKER: Same way that I typically found out about the cases that I got. The clerk would bring in the stack of complaints every week, at least once a week, that had recently been filed. It was just my regular practice to go through them, in part just to see what was coming in, and in part occasionally you could do something more like an order to show cause why there's federal jurisdiction here.

And that way knock out a case or two every once in awhile. I would look at the new complaints that came in. She didn't flag the Perry case. I just saw Schwarzenegger's name in the heading. I wondered what is this about?

QUESTION: What was your first thought when you saw it was such a significant case?

WALKER: Well, the background is this. I had the NSA wiretapping cases at the time and I was not enjoying those. They had been multi-districted to me. We were working our way through them.

The government was dragging its feet in those cases. I had made up my mind I was going to leave the court, retire from the bench. Yet I hadn't said anything to anyone about it, in part, because I knew that if the government saw me leaving, they would drag their feet even more. There was no way I would be able to get the cases wrapped up. I didn't want to leave them unaddressed at the time that I left the court.

I thought I'll just keep my mouth shut. And until you're ready to state a definitive departure date, it's not a good idea to announce that you're leaving. So, I hadn't said anything to anybody about leaving the court.

When I got this case I thought, oh, maybe I shouldn't leave so soon. This looks interesting. I had in my mind the idea of leaving at the end of the year. That would've been the end of 2009. Well my goodness, I could get this case out of the way either in that timeframe or pretty close to it. We got Oracle-PeopleSoft case done in a short time, and *Riley v. Hearst* done in a short time. You really can crack the whip on some of these cases and get them out in a short time.

My goodness, with lawyers like Olson and Boies, these guys know how to move things along. So, I decided that's what we'll do.

QUESTION: At the core of the case was due process and equal protection claims.

WALKER: Right.

QUESTION: So, you began with a denial of a preliminary injunction in July, 2009. Why?

WALKER: Well, one of the things you can do when you are asked to issue a preliminary injunction is to deny it and set an early trial. We did that in the Oracle People Soft case. You do it where you think you have got some factual issues. Or even if you have just legal issues, but you need a fuller record.

I would rather decide the case on a fuller record when it goes up to the court of appeals than to issue a preliminary injunction, which inevitably produces a less robust record than a trial. So, if you could get a trial record built in an efficient way, in a relatively short timeframe, that's the thing to do.

People had waited 150 years in California for same sex marriage. I thought they can wait a little longer.

QUESTION: Then you clearly thought there were issues because in October you denied the defendant's summary judgment motions.

WALKER: If you looked at their papers, both sides were screaming about the factual propositions they were asserting. It's true, as Chuck Cooper never ceased to say, 'these are legislative facts.' But they're still facts.

You can adjudicate a fact – whether it's a legislative fact or whether it's a who hit mama over the head with a frying pan fact.

QUESTION: You set a trial date based on disputed factual premises. So, what did you see as the disputed facts at that point?

WALKER: Just what the parties were talking about: whether a marriage inevitably is an institution that is confined to the opposite sex couples; to the extent that we had that tradition is it warranted and whether extending the tradition to same-sex couples would adversely affect the tradition of marriage.

Gender is a big factor in all of this. Notions of gender have changed. I don't have to tell you, they've changed quite a lot, in your lifetime. In fact, the understanding of the changing role of gender in society leads, I think inexorably, to the result in the Prop. 8 case that we no longer have, in terms of constitutional rights and responsibilities, gender-based rights and responsibilities.

Gender roles were accepted for a long time in society, to a considerable degree even in your lifetime. That's gone by the boards. If gender is not a factor in employment, is not a factor in political participation, is not a factor in economic life of the community, why should it be a factor in one of the most important relationships that people have?

It seems to me that question or issue implicated equal protection and also due process.

QUESTION: The trial was set to be January 11th through the 27th in 2010. You decided to record it. Which technically, I guess the rules at that point weren't even voluntary at that point.

WALKER: I think it had been kicked around. I think since 2007.

QUESTION: The Ninth Circuit had done it, but the district courts weren't doing it.

WALKER: The Ninth Circuit had adopted a policy or a statement that approved a pilot project for cameras in the federal trial courts. Not much was done to implement that because there was also a similar proposal under consideration at the national level. The AO was doing a study on this. The circuit probably wisely, or at least in figuring that they were in enough hot water with the Supreme Court anyway, thought, well, why should we get out in front on this issue?

We'll just put it on the back burner while the AO study goes forward. Then this case came along, which I thought was ideally suited for a broadcast of the proceedings. There was no jury. It was a case of widespread public interest. The issues were vigorously debated. The issues pretty easy to understand. This was not a patent case where you've got some abstruse technology.

It's not a criminal case where you've got a sensational crime or other sensational events. So, I thought this was an ideal case for the people to see how a trial really worked. Not Judge Judy, but a real trial with superb lawyers.

Chief Judge Kozinski, my old pal, was very enthusiastic about it. He and [Circuit Executive] Cathy Catterson worked weekends getting things ready, getting everything coordinated. We were all set to go with the broadcast. Buz Rico, our technology officer in the

Northern District, had set up all the technology. The lawyers were shown how it works and it did indeed work.

Chuck Cooper and the proponents of Proposition 8 did not want to see the trial broadcast. They took a writ to the Ninth Circuit and were turned down. They took a writ to the Supreme Court, which you know, for the first time in the history of the United States Supreme Court took an interest in the local rule-making process.

They said the way we had adopted the local rule to permit this process was somehow defective. I've forgotten what their grounds were, but it was obvious what was going on. They didn't want to have cameras in the Supreme Court, and they could see this as the camel's nose under the tent.

QUESTION: So, you were not going to broadcast it but instead you recorded it.

WALKER: Well, actually we weren't going to broadcast live. We were going to make it available on a delayed basis. And there was another element of this. We cast around for alternatives. It turned out that far and away the best technology and the easiest to work with was YouTube. Yet there was a kind of a patina, a not helpful patina, that was associated with YouTube. People post all manner of things on YouTube.

People post all kinds of bizarre things on YouTube, as well as some very useful things. But it turned out that YouTube was the most efficient, easiest, most transparent, disseminator of this trial. But YouTube had an aroma to it that hit a sour note to some.

QUESTION: Again, you did record it though.

WALKER: Yes. We started the trial before the Supreme Court issued its writ. We'd started the cameras rolling. We are underway with the trial and then during the first day or at the end of the first day, they issued an order saying they were considering the matter.

Well, I thought let's keep the tape rolling for the second and third day. Then on the third day the Supreme Court came down with its decision. Cooper, of course, asked for the taping to cease. I thought, my gosh, we've gone three days, we might as well get the whole thing on tape. It was going very smoothly. Perhaps, unwisely, I said, well, I'll just use the tapes for a recollection of what the testimony is when writing the findings. That, of course, has become a hook, which has been construed as grounds to keep the tape under wraps. In any event, we did record the whole trial. The tape is there somewhere in the bowels of the Northern District of California.

QUESTION: Did you think about the historic importance of having a visual record?

WALKER: Yes, I did. Absolutely. It's a historical record, number one. Number two, it would be a wonderful teaching device for law students to see the examinations of the witnesses. It's a wonderful example of how very skillful cross-examination, direct examination and cross-examination occurs. The issues are easy to understand.

QUESTION: At the beginning of the trial did the proponents know you were gay before the trial started, and was there any effort to ask you to recuse?

WALKER: My impression is they knew because they were quoted in some publication that they were not going to raise the issue. I had thought, I will tell you since you were on the newsfeed at the time, that at some point in my career, somebody would ask the question. I thought the Pam MacLeans of this world would ask, or the Bob Egelkos [San Francisco Chronicle reporter]. That there would be some case that would come along and I'd get a call, because I did talk to reporters. I'd get a call, and somebody would pop the question. Nobody did.

QUESTION: There is a certain amount of debate about that kind of thing.

WALKER: First of all, it's essentially irrelevant. Secondly, it is intrusive. And I'm in San Francisco, right? It's not like some parts of the country where being gay is unusual, at least openly gay is unusual.

When I went on the court, I was not open. That for me was an evolution, as it is with most people. It seems a little late in the day to be coming to these realizations, but nevertheless, that was the situation.

My colleagues knew. Or if they didn't know, they weren't paying attention. I'm sure a substantial segment of the bar knew. My guess is that most people didn't think much about it. It just isn't something you focus on particularly.

It had never become an issue as far as, being a judge, at least not an issue that came to my attention. So perhaps foolishly I thought, well, it's just never going to come up. Why do I have to answer the question? It didn't come up. So, there was no reason for me to make a declaration of sexual orientation.

QUESTION: Were you concerned that it might come up right in the middle of trial and then what?

WALKER: I don't know whether it was the middle of trial, but Matier and Ross wrote a column that appeared in the Chronicle. I've forgotten when that was. I ran into Andy Ross in a restaurant, shortly thereafter. I forgotten now the conversation. But he was very friendly, and we had a friendly chat about it. That column may have been to what either Cooper or his team responded to, and said, we're not going to raise the issue. I think maybe that's the sequence.

So, if you found the date of that column you could pinpoint exactly when this was. It was either before the trial or during the trial. [50]

Now, I will tell you candidly that I should myself have raised the issue with counsel. It would have cleared the air and I think that would have been helpful. I doubt that Cooper would have sought recusal, but even if he had I'm confident a recusal would not have been granted even if the matter had been referred to one of my colleagues. I thought if I raise the issue with counsel, it would highlight the matter. So, if ultimately I ruled for the plaintiffs, the story would be a gay judge rules for same-sex marriage. Besides, my state of mind was that if the proponents could present a credible defense of Prop 8, I could see myself ruling in their favor. I really had no doubt about that. The proponents, however, made it easy to rule against them.

[50] "Judge Being Gay a Nonissue During Prop. 8 Trial," Matier & Ross, San Francisco Chronicle, Feb. 7, 2010.

QUESTION: On the first day of the trial, the proponents dropped a bunch of their expert witnesses. They said that they feared for their safety if the trial was broadcast. Did you think that was reasonable at the time?

WALKER: No, I thought that was complete rubbish. Here are people who have mounted a wide-spread, very public political and public relations campaign. Gone on television, given stump speeches and to suddenly feel intimidated because a court proceeding might possibly be broadcast struck me as poppycock.

QUESTION: You even used some portions of the tapes in talks after the trial was all over, but you were told to stop. There was a court order along the way that you couldn't use the tape.

WALKER: Correct. There was so much interest in the case that a group in Los Angeles got the daily transcripts and put together a team of actors who reenacted the trial and video-taped the re-enactment.

I didn't much care for the reenactment because the fellow who played the judge looked like a department store Santa Claus. In at least one speech I gave – I gave it at the Villa Taverna here in town – I used a couple of segments of that reenactment. And I think I did that on more than one occasion, but I remember doing it there.

The talk was very well received, and it made the point that I was trying to make. When the next invitation to speak came in, I thought, well, hell's bells, why should I play the reenactment when I've got the real thing? Jim Ware, when he took over as chief judge, gave me a hard drive

that had the video of the trial. He presented it at my retirement ceremony and presented it rather grandiosely. So, I had that.

So, I thought why play the reenactment, why not I play the real thing? And I did this in a speech at Arizona State University in Tempe.

Justice O'Connor was in the audience. I had just played a segment of the cross examination along with some other things. I'd put it all together, played it at that presentation. It turned out that that presentation itself was picked up on YouTube. Needless to say, that is what the proponents of Proposition 8 picked up and that's what led to the kerfuffle about my possession of the hard drive with the tapes on it.

That was a hubbub. I think that led to the proponents' motion to vacate the judgment on the grounds that I was gay. Or that I had failed to disclose that I was gay, and it had tainted the proceedings. Jim Ware drew that motion and he denied the motion.

I don't think they ever appealed that. I think it died at that point. There was also the issue of what to do with the tapes. That went up to the Ninth Circuit. Judge Steve Reinhardt was drawn for the panel. This was before the Prop. 8 case got to the Supreme Court. Reinhardt knew full well what attitude the Supreme Court had about cameras in the courtroom. He decided the best thing to do in the larger interest of the case was to seal these tapes for 10 years. And that's exactly what he did.

KQED sought the tapes in the wake of Obergefell[51]. I thought their request made a lot of sense. Judge Orrick did some handwringing and said the Ninth Circuit sealed them for 10 years and the judge, meaning me, said he was only going to use them to refresh his recollection, so Orrick kept the tapes under seal. I think we're two and one-half years away from when time is up.

So, keep up the suspense.

QUESTION: The reason that the Supreme Court case became kind of configured the way it was; who the defendants were, that was because the state of California didn't defend the initiative. How unusual is that? How much did that complicate the case for you?

WALKER: It's very unusual. And it complicated the case quite a bit. Actually, there were two factors that are important in this respect: the state's refusal to defend the initiative made it jurisprudentially complicated. I had urged the state to take a position, the governor to take a position. The attorney general said that he thought Proposition 8 was unconstitutional. It was Jerry Brown who was attorney general at the time.

Usually, in that situation, the state would concede and that's the end of the matter. Well, they didn't do that. Let me back up a step. Because the state was not defending the initiative, the governor was not taking a position and the attorney general agreed on the unconstitutionality of

[51] Obergefell v. Hodges, 576 U.S. __ (2015)

the proposition, that left no one to defend the measure except the proponents. They moved to intervene under Rule 42, I believe. I granted that under permissive intervention.

There was a case out of Arizona that resulted in a decision written by Justice Ginsberg in a somewhat similar situation, arising from the enactment of an English only language state proposition in Arizona. The state either didn't defend the proposition or didn't take a position and interveners who had been the proponents of the initiative defended it. When the case got up to the Supreme Court there was dictum in her opinion in which she expressed grave doubt whether interveners in this situation have Article III standing under the constitution because they have not suffered constitutional injury.

They've simply suffered the enactment of a law with which they disagreed. That is not constitutional injury within the meaning of Article III.

I recall discussing this with Cooper at some point. I think it was before the trial. It was in some status conference or motion hearing. I pointed out that case to him, which of course he knew about anyway. Essentially, I said the difficulty of this situation, with the state not taking a position, Mr. Cooper, is that if you lose, you may not have standing to appeal an adverse decision.

"Oh yes we do, your honor. We're not worried about that." Well ok. I think that conversation was probably in connection with the motion to intervene. That's when Cooper and I had that discussion. But, of course, it became the key issue with the Supreme Court. Actually, it turned out all to my benefit.

I like [Judge] Steve Reinhardt very much, but he made a very goofy decision, in which he affirmed the outcome of the trial on the ground that California allowed initiative proponents standing to defend their enactments, that in California, the initiative had a very special role in state government. It was obvious what he was trying to do was to find a ground that was insulated from Supreme Court review.

First, the Ninth Circuit remanded the case to the California Supreme Court for its interpretation of California law. You can imagine they wanted exactly nothing to do with the case. They'd gotten into hot water over the issue of same-sex marriage. But Reinhardt got a declaration by the California Supreme Court that the initiative process is somehow a unique feature of California law. So that initiative proponents had Article III standing to challenge my ruling invalidating Proposition 8.

You had to talk pretty fast to make that argument even half plausible. It obviously didn't work in the Supreme Court as Article III standing is plainly a matter of federal law. But, in any event, the Ninth Circuit affirmed my decision. Then the case goes up to the Supreme Court, which addressed the standing issue and reversed the Ninth Circuit ruling that the proponents lacked Article III standing. The Supreme Court's decision vacated the Ninth Circuit's decision, essentially holding that the Ninth Circuit was without jurisdiction and this left the district court decision as the last word on the subject.

It is not often that the district judge gets the last word on a major constitutional issue or, indeed, any issue at all. The other odd thing about the case, less important, jurisprudentially, was

that the proponents did not put on more of a case. I thought for sure that the proponents of the initiative would get on the stand and defend their handiwork.

That they would call some of the folks from the Knights of Columbus and maybe the Mormon Church that had been very active in supporting the initiative. They didn't do it.

QUESTION: Any suspicion about why?

WALKER: One, I think they saw the handwriting on the wall that they were fighting a losing battle. Two, it was frankly an embarrassing position to take. It's inconsistent with the values that these organizations profess to support. I think it's a combination of those things.

QUESTION: You've talked about the lawyering. You had this unusual combination in this case of David Boies and Ted Olson on the same side on the constitutionality of the initiative, when they were very famously upon the opposing sides in Bush v Gore in the presidential election in Florida. I was just wondering what your experience with them was, what you thought of that coincidence and just having them in the courtroom?

WALKER: That coincidence attracted attention and interest. They're both very talented lawyers, at the top of the profession, but with quite different skill sets. Olson is a marvelous appellate advocate, a marvelous law and motion lawyer. Just a really the top of the game lawyer. In the same way, Boies is at the top of the game as a trial lawyer, great at examining witnesses, great in cross-examination. He knows the feel of a trial courtroom, in exactly the same way that Olson knows the feel of an appellate courtroom.

I have seen, not in person, but some tapes of Boies', appellate arguments. Let's put it this way, in an appellate argument, he's a notch below Olson. And Olson in the trial court room was a notch or two below Boies. Clearly, they have their vineyards in which they excel, and they do excel. They're exceptional lawyers. And, of course, they put together a terrific set of witnesses. A lot of time, effort, money went into the case from their respective law firms. They had a lot of help from Terry Stewart, who is now on the state Court of Appeal, who litigated some of the California cases and put together a lot of the material for the trial. So, she was a big help to them.

The lawyers on the plaintiffs' team deserve a tremendous amount of credit for the hard work that they did in putting this case together.

QUESTION: And then what about the proponents' arguments that the state's secular purpose for Prop. 8, that it is stability in relationships between men and women and because they produce children and because it promotes child rearing households? Was proving or disproving that any core part of the trial or was that a problem?

WALKER: That was their basic theory that confining marriage to opposite sex couples unites the couple with their offspring. The problem with that notion is that marriage has components in addition to raising children.

There's no question that raising children is an important reason that people get married, but it is not the only reason. People who do not have children, who marry, are no less married than people who do have children. In addition, the notion that societal stability depends upon uniting a biological parent with a biological child hasn't been true for a very long time, if ever.

You can count any number of times when a family unit has been formed by people who are not biologically connected.

It just seemed to me that proponents' theory was not only implausible, but there was a kind of a meanness associated with it. The implication being that if a couple adopted children who are not biologically related they are somehow or other less connected to those children is kind of offensive. Or if one parent with a child marries someone who has no biological connection to the child, that someone else is less connected to the child than that child's biological parent doesn't comport with reality. The notion kind of denigrates what are often exceedingly wonderful relationships. So, perhaps that's another reason why those folks from Knights of Columbus, Mormon Church and others were unwilling to get on the stand and take that position in court and be subject to cross-examination.

QUESTION: You touched on this a little bit earlier, but why did you go to the length of having a trial? Couldn't you have safely ruled on the briefs or on whatever was submitted?

WALKER: Probably.

QUESTION: Why? So why have a trial?

WALKER: A trial brings credibility. Put people on the witness stand and have them testify, be subjected to cross-examination. You have a much richer record. You can bring out facts and bring out arguments that can't really be brought out in a law and motion proceeding. This aspect of trials is undervalued, I think. It's the teaching function of trials. A trial not only determines the outcome of a legal controversy, it can also teach the public about the subject the trial involves.

If there is anything I regret in my career on the bench, it is not having more trials. I don't say that for those instances in which I got reversed for granting of a summary judgment motion. That's not really the reason. It didn't happen much anyway. It's not fully appreciating the richness of a trial record. If there's any criticism that I think our court here in this district might be tagged with, it is we've been awfully quick to dispense with trials in some cases.

Part of the reason for the trend away from having trials is that trials have become more expensive, time-consuming and complicated with the vast amounts of discovery now available. Evidentiary materials that are now generated extend the length of trials. To some degree, both the judges and the lawyers have lost trial skills.

If you don't try cases. You kind of get stale. I think that's true of lawyers and it's true of judges.

I think we have become a little stale in trying cases. There's always in this business an on-the-other-hand. I can't tell you the number of times when I have denied summary judgment because I thought there's a factual issue to be tried. Then you get in the trial and there really is not anything in dispute factually. You see a few of those instances and you think, oh, well, why go to the trouble of a trial?

It might very well have been said in the Oracle/Peoplesoft case that it could've been decided on motion. It could have been said that about Riley versus Hearst. But like those cases, the Prop 8 trial had a value in simply airing the issues in a trial.

Why deny yourself the fun you can have in a trial like that and rule on motions? There are other cases that I can think of that were just fun to try. The trial process has a value that can't be replicated by a law and motion proceeding.

QUESTION: At the trial the proponents presented only one witness to address the government interest in marriage.

WALKER: Well, they had two witnesses. David Blankenhorn was on the stand. There was also Howard Miller, who was a professor at Claremont Mckenna. He did not address the merits so much as he addressed one of the constitutional prongs: strict scrutiny.

QUESTION: Was that a significant problem for them? You've mentioned that already a little bit, but just having such a limited case?

WALKER: Go to trial with no witnesses? You've been in the court room. You know what the problem with that is. [laughs].

QUESTION: You kept the trial on a very even keel, especially when Blankenhorn became upset with the plaintiff's lawyer, with Boies, saying that he was laughing at him. You suggested that Boies wasn't laughing at him, but was "amused by the back and forth, as many of us are." How did you keep that tension level down in a trial that was so emotionally fraught for many?

WALKER: Well, I don't want to sound immodest, but I think in 21 years on the bench, I learned how to try a case.

One of the enjoyable aspects of being a district judge, you're the center of attention in the courtroom if you want to be. You can run it. You can also get out of the way at times and let the lawyers take over or let the witness take over and be the stars of the proceeding. But, as a judge, you have the option of taking charge of the proceeding or not.

You also have to keep things moving. Trying to be, if not genial, at least pleasant usually is what works best. You try to diffuse the tension and keep things moving and not lose your temper. That's a little hard sometimes. It's a lot easier for the judge to keep his temper reigned in than it is for the lawyers who are all wrapped up in their case. I think the art is just how you run a trial. A lot of that comes from experience and I must say, I do think I got better at it as time went on. I was a little shaky at first.

QUESTION: The trial included testimony by Ryan Kendall, who was a gay man who had undergone conversion therapy. It was fairly emotional testimony for you, and I think you even talked about it in some news stories. Can you tell me about that and why it affected you so strongly?

WALKER: I don't think I was the only one affected by it. He testified about his experience growing up in a Christian, evangelical family, and his parents sending him to reparative therapy, which didn't work.

Of course, he didn't want it to work. He couldn't make it work. He recounted that at one point in his life, his mother said she would rather have had an abortion than to have had a gay son. I must say when he gave that testimony, David Boies' eyes welled up with tears. It was a

very emotional moment. There was a quiet pause in the proceedings when that testimony came out. High points in trials are often very quiet.

Kendall didn't raise his voice. Boies certainly didn't raise his voice. It was just that the story was so human and so compelling. That was one of the defining moments in the trial. It was testimony obviously that was very effective.

QUESTION: So, in the nearly 140-page opinion and findings of fact, I'm assuming it's safe to say that you wanted to make the opinion bulletproof on review, if at all possible. So how did you go about thinking about that? How did you do that?

WALKER: We had a kind of a strange circumstance or an unusual circumstance. There had been some discovery disputes between the proponents and the plaintiffs. The Ninth Circuit was not very helpful in some of these disputes. I had allowed some discovery about the supporters of Proposition 8 that the plaintiffs wanted from the proponents. The proponents appealed on the grounds that this discovery was off limits relying on those old NAACP cases that arose out of the south during the civil rights movement. The argument was that discovery about political activities can impinge upon the exercise of First Amendment rights.

I've forgotten the name of the case. NAACP is one of the names in the key case. Ray Fisher was on the panel when the proponents challenged the discovery order in the Prop 8 case. He got carried away with that First Amendment argument. I've forgotten how that played out exactly, but it was all before the trial. The plaintiffs petitioned for rehearing because the Ninth Circuit decision was just wrong – a misapplication of that First Amendment line of authority.

Plaintiffs got rehearing and eventually the Ninth Circuit reversed ground and permitted this discovery to go forward. That occurred just on the eve of the trial beginning, at which point the proponents said, well, wait a minute. If the plaintiffs can get discovery about our supporters, then we want the discovery about their supporters.

I was not about ready to postpone the trial, for the reasons that we've discussed earlier, and also the proponents did not ask for a postponement of the trial, if my memory is correct. The trial goes forward and we still have this uncompleted discovery.

If I remember correctly, the proponents said they wanted to carry on with that discovery after the trial and presumably then we would reopen the record to present whatever they came up with in that discovery. That can, of course, be done in a trial to the court as opposed to jury trial.

The discovery did go forward after the trial itself. In the meantime, the ACLU got into the picture on the side of the proponents to prevent this discovery because they could see that they might be subject to this kind of discovery themselves.

I remember Steve Bomse arguing in court. His argument and the position he was taking irritated the bejesus out of me, because it was holding up getting the case wrapped up. We had kind of a testy session in court. This was weeks, maybe months, after the trial. I'm always a bit embarrassed when I remember those times I let my temper flare up in court.

We concluded the trial in either late January or early February but the discovery was not complete until the end of May or the first of June. At which point the proponents said they weren't going to use any of the discovery that they had obtained.

So, we set the case for final argument in June. Well, the result of all that was we had that period of time from early February to late June to work on the decision. We had the transcript and we had the tapes. I set Katharine Van Dusen, who was one of the law clerks in that period, to work on the order. She combed over the record thoroughly. We worked on that decision for those months. So, the decision went through a lot of different drafts. So, we had more time than usual.

Once in a while, it will take six months to develop a decision that you're satisfied with. But here we had a very good reason why we couldn't finalize it in less time. That was because of this bizarre discovery dispute.

So, your question was what did we do to sort of make it bulletproof? You do it by relying on the record, combing through the record, getting the points down as firmly rooted in the record as possible and that's exactly what was done.

At the time, I had three law clerks, of course being chief judge. And usually in most trials, one law clerk will have responsibility for a case. Of course, I think one of the values of being a law clerk is sitting through trials and watching what happens. Because you're knowledgeable about the case, have worked on it and so forth, you can play a very key role as well, if you're the law clerk.

But this was one of those cases where I couldn't keep any of the law clerks out of the courtroom. It was just too interesting. And the externs, too. They were all there.

QUESTION: What was the significance of the strict scrutiny aspect of the ruling, the standard strict scrutiny?

WALKER: Strict scrutiny is kind of a talisman. If an enactment is entitled to strict scrutiny you can bet your boots, it's going to be declared unconstitutional. If it's intermediate scrutiny, maybe it'll survive, maybe it won't survive. The third standard, what is it, rational basis. It's anything goes. Strict scrutiny amounts a conclusion in search of an effect.

It's just a classification that the Supreme Court has given us for deciding when a case or proposition or statute or judicial determination is going to be held constitutional or not.

The rational basis test means if anybody can articulate a reason for the enactment, it'll survive. It's a dodge frankly.

QUESTION: The U.S. Supreme ultimately found the defenders had no personal stake, so they didn't have standing. You didn't really write about that in your final decision? Was there no need to go over that?

WALKER: I don't recall if we said anything about that or not. Probably I didn't want to raise the issue. I knew we were aware of the issue because I discussed it with Cooper in a court hearing. I don't think it probably would have made any sense to have raised the issue in our decision.

We had an intervener. We had a party, which claimed to have an interest in the outcome of the proceedings. I don't think there was any question about the legitimacy of the intervention. I don't believe that was ever challenged.

QUESTION: Should the Supreme Court have taken the case and addressed the issue head on?

WALKER: You mean on the merits? I made a bet. I don't want to say with whom, a friend, that the Supreme Court would take the case. And the reason I bet they would take it was to set aside that goofy Reinhardt decision, which was a transparent dodge to try to avoid Supreme Court review. They weren't going to let him get away with it.

He's great. I like him very much. He is very funny, a good sense of humor, a very nice man. Whether you agree with him or not, doesn't make too much difference. But his decision in the Prop 8 case would have made some pretty bad law. So, the Supreme Court felt it necessary to nip that in the bud.

QUESTION: None of the justices of the Supreme Court mentioned your findings of fact and the ruling, but Justice Alito took a swipe at the opinion in a different case the same day. He dissented in a case striking down a part of the Defense of Marriage Act. He said the traditional view that marriage was inherently an opposite sex institution, but the new view is, it's consent based, using his words, and he was critical of you for not taking into account the Eighteenth Century jurist, William Blackstone's view of marriage. Because you at some point said Blackstone hasn't testified. I wonder were you aware of that?

WALKER: Frankly, it was a cheap shot by Alito more than anything else.

What he was referring to was, a piece of the reporter's transcript of the closing argument in the case. Cooper was arguing about this ancient and accepted understanding of marriage. He was quoting some philosopher and he quoted Blackstone. I said, Now Mr. Cooper we've had a trial.

Blackstone didn't testify. What in the record of this proceeding can you point to that supports this proposition? It was that 'Blackstone didn't testify' point the Alito picked up on.

QUESTION: There was also a published report that you emailed Ted Olson or his firm maybe and asked if attending the oral argument at the Supreme Court would be OK or if it would be a distraction. You apparently didn't go. Was there contact about that?

WALKER: John Olson, who is the other Olson in the Gibson Dunn office in Washington, is a long time, very close personal friend. He and I had been in communication because I was going to be in New York. He has an apartment in New York as well as Washington. He and his spouse were going to be in New York and we were making arrangements for Christmas.

I emailed in one of those communications. I guess this was shortly after the Supreme Court took the case.

The question, as you put it, would it be a distraction if I attended? He apparently did ask Ted, who said, yep. So, I didn't go. I'm not sure I would've gone anyway. But, that's how that came about. But here is the interesting, sequel to that story.

Somebody got a copy of that email chain between me and John Olson and published it. By this time, I'm already off the bench and here in this office.

John Olson and I wondered, did we get hacked? He set the Gibson Dunn tech people to work on whether the Gibson Dunn server had been hacked. And I called [United States Attorney]

Melinda Haig, and said, what, what should I do? She said, this relates to your judicial function. We'll ask the FBI to investigate.

And they did. They couldn't find any evidence of hacking. The IT people that I work with here couldn't find evidence of hacking. The Gibson Dunn people found no evidence of hacking.

QUESTION: Now coming to the end of this discussion about Prop. 8 case, I also wanted you to talk to me about the arc of your career on the bench. You started out in the beginning with this hard-fought battle over the Olympics and to even get confirmed and the fact that you were gay, but it didn't come out in the confirmation hearings. But you were being attacked by people because you represented the US Olympic Committee. Then the case at the end of your career, which is about gay marriage. So just reflect on that a little bit.

WALKER: Life is full of ironies, isn't it? It's kind of a bookend.

QUESTION: Could the person that you were in 1989 have foreseen this and do you think that the conclusions about gay marriage that you came to…

WALKER: No, I don't think so. I don't think society in 1989 was at that point. I don't think I was. But as President Obama evolved, a lot of people have evolved on this issue.

You know in retrospect, when you look back and say, but how could you be so stupid or how could you be so insensitive? How could you not have perceived the injustice in 1989 that you so clearly saw in 2009.

Well, you could ask the same question about people's views on gender and race. A lot of life is a learning experience. You have seen an evolution in thinking on a lot of subjects. This just happens to be one. It's kind of a fundamental one and an important one but look how people's perception about race and ethnicity is so different today than it was in 1989.

It's all part of the changing scene and changing understanding of yourself and of society and other people.

QUESTION: Have you ever considered taking advantage of the new marriage laws yourself and getting married?

WALKER: Yes.

QUESTION: Are you?

WALKER: Yes.

QUESTION: Congratulations. When did that happen?

WALKER: We are in our second year. The ceremony was performed by none other than [former California Supreme Court Justice] Ronald George and Barbra George was, so to speak, the matron of honor.

She was the only witness. We did it at their home, very quietly.

QUESTION: So now we get to you leaving the bench.

WALKER: Something I had wanted to do for a long time.

QUESTION: Because?

WALKER: I can't tell you the number of times that I sat in the chambers and thought this is a great set-up, but I would prefer to be doing my own thing. Able to work on the matters I want to work on, the cases I want to work on and pick and choose what I want to do.

Frankly, this setup here is not at all unlike a judge's chambers is it? But I don't have to work on anything I don't choose to work on. So, that's what I get to do now. It's worked out very well.

QUESTION: Talk about the kinds of cases that you're doing now. What are you doing?

WALKER: They are almost exclusively commercial cases, which is what I liked anyway. They tend to be more interesting. They are not all big cases, but many of them are, and some involve a significant amount of money. Consequently, the lawyers are very good. I like the informality of the process. Obviously, mediations are very informal, but even arbitrations are informal. I like the flexibility, the ability to pick and choose what you want to do.

For 21 years I was setting deadlines for other people. Now deadlines are being set for me. That's kind of a rude awakening.

There's another aspect of this, more of a big picture. You have watched the court for a very long time. The number of cases filed, the number of trials, the number of proceedings, it's not

really grown very much. If you look at federal filings, for example, they've grown, some. They've grown some, but not nearly as much as the growth in the economy.

Civil litigation is largely a product of economic activity. The more economic activity, the more disputes. That's just part of the process. But the growth in, I think, both state filings and federal filings has certainly not been commensurate with that of the economy. The reason; people are finding other ways to resolve these disputes – mediations and arbitrations mostly. Being part of this so-called alternative process, I think, is kind of exciting. This is the growth industry. Traditional litigation is just not a growth industry. You go through any of the big law firms, and if you find a trial lawyer, a real trial lawyer, that is a real rare bird. That wasn't true when I started. At least it wasn't as true. But it is very true today.

The reason is because there just aren't that many trials. I've been singing the praises of trials. I think we don't have enough of them in some respects. But one of the reasons we've gotten out of the habit of trying cases, as I said a moment ago, is because there are alternatives which parties that otherwise would be litigants find these alternative dispute mechanisms to be more satisfactory.

So, you talk about a book end of a career. I think what I'm doing now is kind of a book end of a legal career.

There's another bookend or irony of my judicial career albeit a less significant one. I went to the bench with basically no experience in criminal law. The first trial I had was a counterfeiting case, kind of a garden variety federal crime, Flat out acquittal was the verdict.

The last trial I had was an art fraud case involving allegedly fake Miro prints, counterfeiting of a different kind. The result, a flat-out acquittal. Bookends.

QUESTION: Can you give me an example of an individual case of the kind of either mediation or arbitration that you're doing?

WALKER: Well, most of the mediations you're not supposed to talk about. An arbitration that I can talk about because it's been quite public, was a dispute between the Radio Music Licensing Committee and SESAC, which is one of the music licensing organizations. There is ASCAP, BMI, SESAC and another one, GMR.

I was part of a three arbitral panel. Ken Feinberg and Lee Freeman were the wing arbitrators. I was the chair. What we were essentially arbitrating was what was a fair and reasonable licensing fee for the Radio Music Licensing Committee, or members of the committee to pay to that licensing organization for the right to use the copyrighted material that the SESAC has in its repertoire.

So that's something that I did. It was a very interesting case and it had excellent lawyers, Greg Joseph for SESAC and a King & Spalding lawyer who is here in town, Kenneth Steinthal.

Both sides said they were happy with our decision, which is a way of saying both sides were unhappy. So, we must have done the right thing. It was a lot of fun and that's something that I can talk about.

QUESTION: I know from Judge Conti that you worked on the …

WALKER: Special master on the CRT litigation. I've done that for other judges. I've done some teaching, Berkeley and Stanford and now at Hastings. I have been doing some work with a litigation finance organization. That's a relatively new field and very interesting and am teaching a course on it. When you don't know anything about a subject, teach it. It forces you to learn.

I actually think this is the best career that I've had; being a lawyer, and a judge, and now this. I think this is the best. There is a fair amount of traveling in this practice. I've always done traveling anyway, so it's just about the right amount of traveling.

I'm scheduled for a very long arbitration this summer. I'm not sure it is going to go. One of the troubles with arbitration is, like trials, they sometimes settle out from under you.

So, you set aside a block of time to handle a case and then it goes away. Well, if you're on the bench, that's not a problem because you can always fill it up with something. It's a little different in an arbitration practice because you have to turn away things for the time you block out for the arbitration.

I'm thoroughly enjoying what I'm doing.

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