

## Presiding Justice Stuart Pollak, Court of Appeal, First Appellate District

- Sandy Margulies: This is the Appellate Legacy Project. I'm Justice Sandy Margulies and today, I have the honor and privilege of interviewing my friend, Justice Stuart Pollak who we like to refer to as Stu at the court and Justice Pollak, I'd like to start out, get a little information about your family background. So, let's start from the beginning. Where were you born?
- Stuart Pollak: I was born in San Pedro, California.
- Sandy Margulies: That's Southern California.
- Stuart Pollak: Southern California. My father at the time was the circulation manager of the San Pedro News Pilot.
- Sandy Margulies: How long did you live in San Pedro?
- Stuart Pollak: Only a couple of years. I don't have any recollection of San Pedro, but my father became the circulation manager of the San Francisco Chronicle and we moved to San Francisco I think when I was about two years old, so I was raised in San Francisco.
- Sandy Margulies: So, we can almost say that you were born and raised in San Francisco.
- Stuart Pollak: Almost.
- Sandy Margulies: Where did you first live in San Francisco?
- Stuart Pollak: We lived for many years on Broderick Street, in the Marina District.
- Sandy Margulies: And I've seen your family home. You were kind enough to point it out to me one day.
- Stuart Pollak: We moved from that home on Broderick Street when my younger brother managed to set a fire in the house with a non-flammable chemistry set and then we moved down to Marina Boulevard.
- Sandy Margulies: Okay, so Marina Boulevard --
- Stuart Pollak: Marina Boulevard home that I showed you, yeah.
- Sandy Margulies: How long did you live in the Marina area?
- Stuart Pollak: Until I was married and moved out.
- Sandy Margulies: We heard what your father did.
- Stuart Pollak: My father was in the newspaper circulation business, but he left the newspaper and actually began his own company, a company called Pollak's that was involved in sales promotion, but directed mainly towards newspapers, newspaper circulation and newsboys, who then delivered newspapers, an industry -- it's gone the way of the buggy whip.
- Sandy Margulies: Did you ever work at your father's business?

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Stuart Pollak: I did every summer and Saturdays and in fact, probably the most difficult decision I made in my life was not to go into the family business but to go to law school.

Sandy Marguiles: Which we're going to get to in just a little bit. So, siblings?

Stuart Pollak: I had a younger brother, no longer living.

Sandy Marguiles: The one who set fire to the first house?

Stuart Pollak: The one who set fire. He died as a result of another accident.

Sandy Marguiles: Tell us something about your mother.

Stuart Pollak: Well, my mother was a homemaker. Prior to the years that I can actually remember, she worked in my father's office but for as long as I can remember, she was a homemaker. I can remember her lady friends or mahjong games and very good genes I got from my mother. My father passed away relatively at an early age, but my mother did not die until she was just a couple of months shy of 102.

Sandy Marguiles: Wow, that's impressive. Very impressive. Let's talk about Lee. Lee is your spouse.

Stuart Pollak: She is.

Sandy Marguiles: And where and when did you meet her?

Stuart Pollak: Well, that's kind of an interesting story. I mean, we both grew up in the Marina District and we were both at Lowell High School together. She was a year behind me, and we knew each other. We didn't actually live far from each other, and we knew each other slightly, but we never dated. We had very little to do with each other and we didn't take an interest in each other until she was going to Sarah Lawrence, and I was at Stanford.

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Sandy Marguiles: Isn't that sort of a large distance?

Stuart Pollak: It was a large distance. Our relationship really began at a dinner at Steve Breyer's house. He was good friend. Steve, yeah. Justice. He and I were friends from high school, and we live together at Stanford and one winter vacation I think it was, it was a winter vacation. There was an occasion at his house where both Lee and I were invited and that's where we struck up contact again and then we had a corresponding relationship for a couple of years until finally, she left Sarah Lawrence and came to Stanford.

Sandy Marguiles: Were you both intentionally invited to dinner with the idea that perhaps you would hit it off?

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Stuart Pollak: No. Quite the contrary. In fact, this may be more than anybody is interested in, but I'll tell you the story. This is really what happened. The Breyers, the parents, invited Lee's parents over for an evening where they were going to play bridge together and Steve was there and said, "Bring Lee. Bring your daughter." So, I think Mrs. Breyer probably had in mind to contact friend Steven, Lee said that Lee was very resistant. She didn't want to go. She didn't want to go but anyway, it was worked out and well anyway, Steve was going to invite a friend and I forget -- and that was it. I was the friend and Steve was going to be there and Lee told her mother that she didn't want to go. She didn't have any interest in either Steve or me and she was going to raise a fuss if they stayed a long time. So, they came to the Breyer's house and Lee's mother made this excuse that they had to leave early for some reason or other.

Anyway, Steve and Lee and I are downstairs in a room visiting and Lee's mother had said, "We have to get home." So, she came down to get Lee. "All right, honey. Let's go." And Lee says, "Oh," or I think I spoke out and said, "I can give her a ride home." And Lee said, "I'll go home with him." So, her mother never forgave her, so they had to go home. They didn't get to play bridge.

Sandy Marguiles: That's a very good story.

Stuart Pollak: And as a matter of fact, the truth of the matter is both Steve and I started dating Lee at the same time.

Sandy Marguiles: Oh, there was a competition.

Stuart Pollak: We were both dating her at the same time, and Steve and I were living together at the time, and we were both, you know, there's still a day when you wrote letters and we had a third roommate who is a dear friend of both of ours, who started keeping track on who is getting more letters. So, both Steve and I opened post office boxes so he wouldn't get our letters addressed to the house. Anyway, we both dated her for a while, but the end of this story, I'll tell you, at our wedding, at Lee and our wedding, going through the reception line, Steve's mother whispers to Lee and says, "I still think you made the wrong choice."

Sandy Marguiles: That's a good story. That's a really good story.

Stuart Pollak: We are all still good friends.

Sandy Marguiles: Yes, you are. So, you and Lee have four children.

Stuart Pollak: We do. Three girls and a boy.

Sandy Marguiles: So, tell me something about your children. What they're doing these days.

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- Stuart Pollak: Our older two daughters, our older two kids, who are both girls are teachers. One of whom has just retired from City College. She was teaching English as a second language and has just left. That's one child who just retired while we're still working and our third child's our son Harrison is the one lawyer in the family, who just retired as he says repotted but has just left the attorney general's office where he was an attorney in the environmental section. Then our fourth daughter, the youngest daughter is very much involved in prisoner's rights. She's head of the California Prison Focus, and she's very much involved in that.
- Sandy Marguiles: You have one of your daughters who's still teaching?
- Stuart Pollak: Our second daughter, Lauren, she lives in Bolinas and teaches in the primary school over there.
- Sandy Marguiles: Very good. So, you have two children who are retired or repotted and you're still working.
- Stuart Pollak: I'm still working and so is Lee. What's wrong with that picture.
- Sandy Marguiles: So, what is Lee doing? I'm going to ask you a follow up question on that, but so, what is Lee doing?
- Stuart Pollak: She's an LCSW, licensed clinical social worker, her field really is grief counseling, and she is still seeing clients and she is the clinical director of a program that it's a retreat -- weekend retreat for people who are in mourning, and she is the clinical director of that and still involved in doing that.
- Sandy Marguiles: How long has she been involved in that field?
- Stuart Pollak: She's been involved in that field for probably now 20, 30 years, I guess. 30 years at least. I mean, she didn't complete her education, which I interrupted by my moving back and forth. Until I was out here finally practicing law and she went back to school, got her degree including her master's degree, and then started in that field. So, that must be since 1970 probably, something like that.
- Sandy Marguiles: That leads to my next question. Why are the two of you still working? And you have two children who are retired?
- Stuart Pollak: We haven't figured that out. We've treated them too well I guess; I don't know. The quote retiring kids say that they're both simply repotting, and I have no doubt they still have a lot of energy and they're going to get involved in something else, but they want to do something different.
- Sandy Marguiles: Let's talk about your education. You went to Lowell High School and were there --
- Stuart Pollak: The old Lowell.

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Sandy Marguiles: The old Lowell, not the new Lowell. And you were the valedictorian, right?

Stuart Pollak: I was valedictorian and Lee was the valedictorian the year after me.

Sandy Marguiles: That's very impressive. And you followed high school by going to Stanford and how would you describe your years at Stanford?

Stuart Pollak: Very favorably. I mean, it was a wonderful period of my life. I enjoyed Stanford from beginning to end. I think I got a good education there.

Sandy Marguiles: What was your major?

Stuart Pollak: I majored in economics. I took up my minor which I think had more of an influence on me in philosophy. And that, I really enjoyed much more.

Sandy Marguiles: You graduated from Stanford with great honors.

Stuart Pollak: I did.

Sandy Marguiles: And then it was time to go to law school. So, why did you decide to go to law school?

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Stuart Pollak: I was just interested in doing it. Through high school, I've been involved in debating. That was my principal activity in high school. Started off at Stanford, Steve Breyer and I debated once and we both decided after the first time that we'd had enough at the high school doing it and we didn't continue it, but I was interested in law from the beginning and as I mentioned, I've been working at my father's business and he had hoped that I would go into the business and that was a decision I made to go into law school, which he supported, which I always appreciated. He never gave me any trouble about that, but I know that's what he wanted me to do, but anyway it was never a tough choice in terms of direction I wanted to go.

Sandy Marguiles: So, you went to which law school?

Stuart Pollak: I went to Harvard, Stanford of the West at Stanford of the East.

Sandy Marguiles: Were you involved in any particular activities while you were at Harvard?

Stuart Pollak: I was fortunate enough to get on the law review and so, the second two years of law school were devoted predominantly to work on the law review. I became the book review editor, third year. And that really took all of our time, all my time.

Sandy Marguiles: I bet.

Stuart Pollak: It was highly worthwhile.

Sandy Marguiles: Well, you graduated magna cum laude from Harvard, correct?

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- Stuart Pollak: I did.
- Sandy Marguiles: Were there any particular classes or professors that had some sort of influence on you, or you just enjoyed the particular professor or the particular class?
- Stuart Pollak: No particular professor at law school in the way I can think of a couple back as my undergraduate years at Stanford.
- Sandy Marguiles: Go back. Sure. Go ahead.
- Stuart Pollak: At Stanford, one of the professors I was most taken by was Professor of the philosophy course from whom I took several courses and had a great influence. And actually, another is -- it's terrible, I can't remember his name but when I looked back at my education. I mean, I think one of the things I'm a fairly decent writer, which I attributed --
- Sandy Marguiles: I think you're underestimating your -- I read your opinions. You're an outstanding writer. But go ahead.
- Stuart Pollak: Whatever ability I had there, I, in my own mind, attribute to a teaching assistant my first year at Stanford and you had to take an English course and you had to write a lot of essays and I still remember my first paper came back all red, just torn apart, crushed and this one teaching assistant really is a person I attribute taught me how to write.
- Sandy Marguiles: This is really interesting that you are bringing this up because my husband is a Stanford grad. He has told me almost the identical story that same thing with the teaching assistant and the first paper he got back was just all marked up.
- Stuart Pollak: He was the same one. I feel guilty I can't remember his name but I give him credit in my mind.
- Sandy Marguiles: So, you finish up with law school. Where do you take the bar exam?
- Stuart Pollak: Took the bar exam in California.
- Sandy Marguiles: You did?
- Stuart Pollak: I took it in California. At the time, I was back in Washington.
- Sandy Marguiles: Right. That's why I asked.
- Stuart Pollak: I was in Washington but I flew out to take the exam and then I was back in Washington and my poor mother, the newspaper prints the names of the people who pass the bar exam, but it prints the names of people who are California addresses, and my address was back east, so my name wasn't there. My mother called me and she thought I hadn't passed the exam. Fortunately, it was just the newspaper didn't pick it up.

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Sandy Marguiles: Well, thank goodness that you were able to correct the misunderstanding. So, you're in Washington DC, what were you doing there?

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Stuart Pollak: After law school, I got a clerkship. At that time, Justice Stanley Reed and Harold Burton, two retired Supreme Court justices still had offices in the Supreme Court building, were sitting by designation on the Court of Appeal and the Court of Claims and shared a law clerk with the Chief Justice, Earl Warren. And so, I got that clerkship. I worked for the three of them during first year after law school.

Sandy Marguiles: Did they have you drafting opinions?

Stuart Pollak: Yeah, for all three of them.

Sandy Marguiles: I must ask what was it like working with Justice Earl Warren.

Stuart Pollak: It was a great experience. I mean he was just a wonderful human being and he had all his law clerks. We had our Saturday lunches with them and he calls us in and we go over cases and so forth. And is a very, very easy person. Very, very decent human being. One of the most traumatic evenings in Lee's life was the night that we had Chief Justice Warren and his wife over for dinner. Lee prepared the dinner about three times to be sure she had it down to serve him. But anyway, he was a very interesting man.

Sandy Marguiles: I'm sorry to interrupt, but I thought you were going to tell me and she burned the roast. So, it went fine.

Stuart Pollak: No, the dinner went very smoothly.

Sandy Marguiles: And you said he was a very interesting person.

Stuart Pollak: He was very easy to get along with and when people ask me about Earl Warren and the thing about him, I think you know is he had an incredible common sense. The law clerks would come in and we'd go over, we've written memos and so forth, but we would discuss cases with him and all of us, some are legalistic, we would go through the cases and distinguish and so forth. Warren did not get involved in going back and analyzing the cases like that. He just had a common-sense way of cutting through and putting his finger on what was significant, what was important. It was really uncanny, but that was him.

Another interesting thing about Warren is the law clerks drafted all his opinions. I mean, he told us what he wanted them to say and he would go over them but we drafted them all. But Warren wrote all of his public speeches. He was still a public figure and that was --

Sandy Marguiles: I wonder if it had to do his background of coming out of a prosecutor's office and being used to speaking --

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Stuart Pollak: And the governor, though I'm sure that's right. And that's still where he was.

Sandy Marguiles: That's fascinating. I learned something new. Did you have an opportunity to interact with any of the other Supreme Court justices during your tenure there?

Stuart Pollak: Marginally. Not in any significant way, each of the justices at the time would have all of the law clerks to lunch on one occasion. We'd all sit around and talk with them and occasionally, we would see them but never in terms of working on a case or exchanging views on a case or anything.

Sandy Marguiles: During your tenure at the Supreme Court, were there or was there any cases that came out that were significant?

Stuart Pollak: Yeah, there was some big cases. The New York Times case was there. The right to counsel cases, criminal cases was being decided then. I think we granted cert my term on the one-man vote -- one vote, it became a decision. There were a number of significant cases.

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Just as an aside, one of the great ironies I think was my year was the year that Justice Ginsburg at the time graduated first from Columbia Law School, and up until that point, the person who graduated first from Columbia always got a Supreme Court clerkship. She did not. There had never been a woman clerkship and she was passed over. Fast forward a number of years, one of the clerks in another chambers organized a reunion of all the law clerks who had been there that year in the different chambers and wanted to have it at the Supreme Court and we needed to have a Supreme Court Justice who would host us, so we could be there. And of course, who was that host other than Justice Ginsburg, she was there on the court and we were all there and it was really a very moving moment in a sense.

Sandy Marguiles: That's a very interesting commentary.

Stuart Pollak: How the world has evolved and improved.

Sandy Marguiles: And look where she ended up.

Stuart Pollak: Yeah, absolutely.

Sandy Marguiles: So, after you were done with your clerkship at the Supreme Court, where did you head next?

Stuart Pollak: Head next to the justice department. I worked as a special assistant to the assistant attorney general in the criminal division of the justice department.

Sandy Marguiles: Tell me what you did.



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Stuart Pollak: I did a whole variety of things. I mean, I got deeply involved in a couple of cases where I traveled down south and there were some fraud cases that I was involved in. I worked marginally on that time, was the Hoffa prosecutions and prosecutions against the Teamsters. I did a little bit in connection, wrote some motions and got involved in that. I spent a lot of time working on the -- at the time, the federal rules of criminal procedure were being amended and the justice department had a good deal of input into that. And I spent a lot of time working on that project.

Sandy Marguiles: You were a staff member on the President's Commission on the assassination of President John F. Kennedy. Did you get involved in the Commission in your capacity as the special assistant to the attorney general or was that independent of that?

Stuart Pollak: It happened as a result of that. What actually happened was my immediate boss at the justice department was Howard Willens and Howard was the liaison between the justice department and the Commission and ultimately moved over and became the second person. There were two second people under Lee Rankin, who was the head of the staff. There were two assistants under him and Howard was one of them. Howard asked me to come over at the beginning and one of the decisions -- I always wondered whether I made a mistake or not, at that particular time, I had been promised -- when I went to the justice department, I had been promised the opportunity to go over to the US Attorney's Office and actually try some cases and I was scheduled just at that point to do that. So, I turned down the Commission, I said, "I didn't want to go to the Commission, I wanted to go to the US Attorney's Office and try the cases," which I did. I went over and first cases, I actually tried half a dozen street crimes. When that was done, took about three months I think, I came back and then Howard asked me again to come over and then I went over to the Commission, and I was on for the final six months or so until the report was issued.

Sandy Marguiles: What did you do with the Commission?

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Stuart Pollak: I was primarily involved in the writing and there were two areas that I was most involved in. One was the chapter concerning the killing of Oswald by Ruby in the police department and I was deeply involved in that and then secondarily, I got involved in editing the portions having to do with the life of Oswald and Marina and so forth. But I spent -- when Oswald was killed in the police department, there were all these cameras focusing on the situation. I spent a couple of days at the Pentagon where there was a room where they had all the cameras and they had all the footage and watching and re-watching the footage, looking for any indication of anything that there was anybody else who's connected. Of course, never found anything.

Sandy Marguiles: Was the Commission ever able to determine what motivated Jack Ruby to kill Oswald?

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Stuart Pollak: I think it was very genuine feeling. I mean, he was absolutely devastated by the killing of Kennedy and it was a sudden impulse. I mean, the whole thing -- people may not realize, it was absolutely fortuitous that he was there at the time that Oswald was being moved from the police department to jail. He wouldn't have been there had Oswald been moved at the time that it was originally announced. But that movement was delayed at the last minute because somebody else wanted to interview Oswald before he got moved and it so happened that Ruby again, fortuitously was down there, sending money, wiring money to one of his strippers who wasn't getting paid because they've been shut down. And in any event, it was all fortuitous and he was there and it was a sudden influence, a sudden impulse and because he hung around the police department, they all knew him. He was able to get in there, but it was really just totally fortuitous.

Sandy Marguiles: That's very interesting. See, I never heard that. So that's more insight and was the Commission ever able to determine what motivated Oswald?

Stuart Pollak: Not really, I mean Oswald was crazy. He had shortly before, weeks before made an attempt to assassinate General Walker, who was a very conservative figure and that proved unsuccessful. Then, Kennedy is coming to town and again, totally fortuitous event. The night before, he had tried to reconcile with Marina. He wanted to move back and had had she accepted him, that never would have happened. But fortuitously that didn't happen. The thing unfolded the way it did, but there was really one fortuitous event after another and two very unstable individuals perpetrated both of those crimes.

Sandy Marguiles: After the Commission, did you move back to San Francisco?

Stuart Pollak: After the Commission, I went back to the justice department for a short period but then I wasn't there too much longer and then came out to San Francisco in 1965. Yeah, that was when I came.

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Sandy Marguiles: Why did you decide to come back to San Francisco?

Stuart Pollak: I had never -- my family was here. Lee's family was here. We like the city. There was absolutely no reason not to. I had spent a summer in law school working at Cravath in New York, which I really enjoyed and if I didn't have ties to San Francisco, I think I probably would have gone to New York, but there was no reason not to come back home and practice law. Although, another interesting thing, the summer that I worked at Cravath, this is I guess my second year of law school, I can still remember standing at a window looking out at the East River I think. And one of the partners in the firm came up, put his hand on my shoulder and he said, "Stuart, I just want you to know that there is no law practiced on the other side of that river."

It was all happening there in New York, but I wanted to come out to San Francisco. And it was truer then than it is today. I mean, all the major

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corporations were headquartered and using East Coast attorneys and so forth and all of the California lawyers, they were handling minor matters that were --

- Sandy Marguiles: That California lawyers were in the Hinterlands.
- Stuart Pollak: Yeah, exactly. There's a wonderful cover of The New Yorker, we can all remember. And there was nothing else.
- Sandy Marguiles: So, you joined a law firm out here?
- Stuart Pollak: I came out to what was then Howard, Prim, Smith, Rice & Downs.
- Sandy Marguiles: However, became?
- Stuart Pollak: Became Howard, Rice, Nemerovski, Kennedy & Pollak at one point.
- Sandy Marguiles: You obviously became a partner. Did you have a particular area of specialty?
- Stuart Pollak: I was doing commercial litigation, a variety of commercial cases, fair amount of securities and antitrust were but all kinds of others.
- Sandy Marguiles: How long were you with the firm?
- Stuart Pollak: I was with the firm from '65 is when I came back and I left the firm for the court in 1982, which relatively short number of years compared to the time that I've been on the court but it's still in my mind, seems like a much bigger part of my life.
- Sandy Marguiles: Now, why is that?
- Stuart Pollak: It was an important time. I mean I really enjoyed practicing law. I enjoyed the law firm. It was all very exciting. It's when I was raising my kids and I developed you know many close friendships with people in the law firm.
- Sandy Marguiles: One of whom I can think of or two of whom are on our court now. Justice Stewart and Justice Miller.
- Stuart Pollak: Justice Stewart and Justice Miller, both from Howard Rice. Well, and, also, she came after my time Justice Carin Fujisaki. Carin was one of the law clerks who worked for me while I was on the superior court and frankly and I called somebody at Howard Rice, and I take credit for this. I said, look, here's somebody you've got to hire. She's just great. She went to Howard Rice for a while and then of course, has returned. She worked upstairs in the Supreme Court and is now in our court. She is now in my old division.
- Sandy Marguiles: You decided to apply for superior court position on San Francisco Superior Court as a judge. Why did you decide to put in the application?

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Stuart Pollak: It was I think not something I had in mind originally, but practicing as a trial lawyer, it just appealed to me as something I wanted to do. I mean, frankly, I had the feeling I said to other people at the time is I had a feeling, thought I could do better than a number of the judges that I appeared in front.

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There were a number that I really admired, and I think learned something from, but I had a few experiences where I had, you know, I could do better than that and I wanted to do that. I reached the point where I was tired of being -- although I developed friendships with a number of my adversaries, I was tired of arguing with people, fighting with people that I wanted to try to resolve things and not be a protagonist in matters. And I was hopeful I could work and get things resolved.

Sandy Marguiles: And which governor appointed you to San Francisco Superior Court?

Stuart Pollak: I got appointed by Jerry Brown, his first time through. I had known Jerry. Jerry and I debated against each other in high school. I knew him. We were rivals. He was at St. Ignatius, I was at Lowell and we were rivals in the debate world. So, I had known him. But anyway, he appointed me to the court.

Sandy Marguiles: Well, you joined the court in 1982?

Stuart Pollak: '82, right.

Sandy Marguiles: What was the biggest adjustment for you transitioning from being an attorney to being on the bench?

Stuart Pollak: I always felt that the way I put it, the difference was that as a lawyer, I felt cases in my stomach. I worried about them. I mean, I had a client who was counting on me, was in the controversy of one thing or another, and I really worried about the case that I felt in my stomach, I'd lose sleep at night. On the court, I felt I was concerned and I thought about it but I felt the cases in my head. I didn't have the same emotional thing. I was going to have to decide one way or the other and it was less upsetting. I didn't lose sleep at night. There was only one case I can remember losing sleep over all the years I've been on the bench, but that was the main difference, I think. It became much more cerebral than emotional.

Sandy Marguiles: Did you find it difficult to transition to the bench?

Stuart Pollak: Not really. I found it surprisingly, there's not a difficulty. I was appointed when I came on, my first assignment was in the law and motion department.

Sandy Marguiles: Civil law and motion?

Stuart Pollak: I was the law and motion judge. Bill Brown at that time --

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Sandy Marguiles: Did you replace Bill Brown?

Stuart Pollak: Bill Brown at the time who had been the law and motion judge for years.

Sandy Marguiles: He was like an icon.

Stuart Pollak: He was an icon. He was the presiding judge and actually, he and I had a case against each other when we're both lawyers. And when I had been appointed, and he called and before I was sworn in, before I was on the bench, he sent me to the program for new judges, to get me indoctrinated, get me educated and I came on and the first thing I did was in the law and motion department and that was somewhat similar to my field of practice, so I didn't feel too much out of water. There's a little transition but I didn't find that particularly difficult.

Sandy Marguiles: Did you feel any sense of isolation when you got on to the superior court?

Stuart Pollak: Not really. I mean, I felt much more in contact with the -- first of all, other judges on the court but with the lawyers, had a lot of contact with the lawyers, law and motion, you see a lot of them in the court. I went to all the events, kept going to them and so, I didn't feel particularly isolated. I think it's much truer on the appellate court where you have far less contact with members of the bar. They appear before you for arguments and for half an hour and that's it.

Sandy Marguiles: What other signups did you have on the superior court?

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Stuart Pollak: I had pretty much all of them for a time, but most of them, I mean, I was in a regular trial department for a while. I spent a year at juvenile hall, juvenile cases. I spent a year at the Hall of Justice doing criminal cases but then, I came back and for a time, we set up a writs and receivers department in San Francisco, which I presided over and then we set up a complex litigation department and I was the first judge in that department. So, I was doing mainly litigation for civil litigation, most of the time I was on the court, but I was presiding judge for a year. But the most prominent thing I did was with civil litigation on the court.

Sandy Marguiles: Of all the assignments you had including being presiding judge, which one did you find to be the most challenging?

Stuart Pollak: The one that I find most rewarding, I think -- I think the one I worked the hardest, was most difficult I think was the law and motion department. I think that was the number of cases, the number of summary judgments you'd have to deal with in a day, that kept me up nights and into the court on weekends to getting that done. What I think I was most satisfying, I think was the complex litigation department. I really think that a single assignment is a much better system for many reasons, and I enjoy doing that and also, I think you

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tend to have the better attorneys appearing in those cases and there was much less squabbling, that went on. I was dealing with the issues in a very professional way and I enjoyed that I think the most.

Sandy Marguiles: You were confirmed to the First District Court of Appeal in 2002, what motivated you to apply to be a Justice on the First District Court of Appeal?

Stuart Pollak: Initially, when I went on to the superior court, I really thought I would have no interest in doing appellate work. I mean, I was interested in the by play and the activity that goes on in the trial court and I didn't think I would have any interest in doing appellate work. But I found, I did a lot of writing. I wrote decisions both in law and motion department and subsequently and doing that appealed to me and I thought I did have an interest in going on and doing the appellate work because of the writing involved. My attitude changed. I really thought at the outset, I never want to do that.

Sandy Marguiles: So, you were nominated by which governor?

Stuart Pollak: Nominated by Gray Davis.

Sandy Marguiles: There were four openings at the time in our district. If my recollection serves me correctly, there were three other individuals who were nominated at the same time you were and those three individuals were?

Stuart Pollak: Well, you were certainly one of them. It was also two of us in the last two standing here, but Justice Rivera and Justice Gemello. And we were all sworn in on the same day, which I think was relief to all of us. Certainly, relief to me because going through the process, we knew our names were and I knew my name was in, but I kept hearing about, "Oh, there's this judge down in the peninsula and this judge over in Contra Costa who are very, very --," you don't know, that's your competition. Well, we all wound up here at the same time.

Sandy Marguiles: We were all sworn in or confirmed on January 25, 2002. And we try around January 25th every year --

Stuart Pollak: To have our reunion lunch.

Sandy Marguiles: We have our reunion lunch. And that's become a tradition.

00:50:00

Well, let me ask you this question. Did you find the transition to the court of appeal particularly difficult?

Stuart Pollak: I wouldn't say so. I think the colleagues at the division that I moved into were very welcoming, very helpful and actually I had sat years I was on the superior court, I had been over here sitting pro tem on two prior occasions. So, I had a pretty good idea of what to expect.

Sandy Marguiles: Who were your original three colleagues?

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- Stuart Pollak: My original three colleagues were Justice Corrigan, Justice Parrilli, and Justice McGuinness.
- Sandy Marguiles: And then Justice Parrilli retired.
- Stuart Pollak: She left and she didn't retire, Parrilli retired.
- Sandy Marguiles: And Justice Corrigan went to the Supreme Court.
- Stuart Pollak: And Corrigan went to the Supreme Court and they were replaced by Peter Siggins and Marty Jenkins.
- Sandy Marguiles: At some point, you applied to be presiding justice, which turned out to be of division four and why did you decide to do it?
- Stuart Pollak: Well, it's interesting. I had not applied to become presiding justice at division three because frankly, I thought at that time that Justice Siggins, my colleague, would be interested and would have been a logical person to become the APJ if Justice Humes had not become it and you have to be a presiding judge in order to be the APJ so I didn't put my name in. I got a call from the governor's office asking me why I hadn't done that. So, I was encouraged to put my name in but by this time, Justice Siggins had been appointed to be PJ of three and so --
- Sandy Marguiles: Because Justice McGuinness had retired.
- Stuart Pollak: Justice McGuinness had retired, that's right. So anyway, my application then got changed to an application for division four. Anyway, I thought particularly in moving to four, four had at that time for a variety of reasons, which doesn't reflect poorly on anybody, but there were a number of reasons for which things -- there was a real backlog in that division.
- Sandy Marguiles: Which I'm going to get into in a minute. I'm going to get into that in a minute.
- Stuart Pollak: I thought that that was something I could handle and after having been on this court for as many years as I had, just seemed like a natural thing.
- Sandy Marguiles: At the time you left division three to become presiding justice of division four, the justices in division three were Justice Siggins, yourself, Justice Jenkins.
- Stuart Pollak: That's right. McGuinness had retired and with the three of us -- through that one year, we had a pro tem judge, we had somebody come over. Jeff Ross was the pro tem.
- Sandy Marguiles: That's right. Now, you are currently the presiding justice of division four of our court. What's been the difference in terms of being an associate justice and now being a presiding justice?

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Stuart Pollak: Not a great deal. I mean, three of us who are on the case at one-time. There's no particular significance to the attaches, the fact we need the PJ and the way the case gets handled and decided.

Sandy Marguiles: And you're carrying the same case load as the other justices?

Stuart Pollak: Yeah, absolutely. There are some administrative details that you need to take care of and you've got to handle a number of routine motions - - request for extensions at the time and things of that sort that you didn't have to handle before, but that's not really particularly significant and you preside at the hearings.

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But the nature of the job, I don't think is particularly different because you're the presiding judge as opposed to an associate justice.

Sandy Marguiles: So, you were confirmed as presiding justice of division four in 2018. If I'm not mistaken, we had a repeat of a governor who nominated you for that position and that governor was?

Stuart Pollak: That was Jerry Brown the second time around. He made that appointment.

Sandy Marguiles: Now I want to get into that when you arrived in division four, you arrived at a situation where this division had a very large backlog and I now believe in the year 2021, it has the lowest backlog in the court.

Stuart Pollak: We've improved.

Sandy Marguiles: What did you change? What did you do to accomplish this?

Stuart Pollak: I deserve a little more than one-fourth of the credit for that improvement. I mean, I did a few things, went down at the clerk's office, changed some forms in the way in which they kept track of matters so that we had a much better handle on what our caseload situation was and changed the way in which we handle our writs, but basically, the four of us just all buckled down and made a real effort to handle as many cases as we could and get them decided and get rid of that back load.

Sandy Marguiles: And your colleagues are?

Stuart Pollak: My colleagues were all relatively new in the court but all very fine colleagues and all of them really just buckled down. John Stewart.

Sandy Marguiles: John Streeter?

Stuart Pollak: John Streeter, absolutely, who had been here the longest and then Justice Tucher, who had been here just a short time and then Justice Brown, who came onto the court the same day I became the presiding judge. We were sworn into our position on the same day. So, it was all relatively new members of the court other than myself.



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Sandy Marguiles: Sounds like you changed the culture.

Stuart Pollak: I don't know, I hadn't been in the section before and it's all new personnel. I mean, Justice Streeter was really the only one who had been on the court with the former members of division four. So, I don't know if it was a change in culture or just the culture that was adopted, but it was certainly a conscious attempt to let's get ourselves out of this back load. And all of us, I mean, I think some members of this court or the court in whole, some members of the court tend to have their research, their staff attorneys draft all their opinions and they edit them and approve them. But I know the four of us, all four of us made an effort to draft some opinions ourselves. In addition to what our attorneys were writing, we were writing opinions and we made the effort to -- all of us, to do that to get our caseload to where it is today, where we're very current at the moment.

Sandy Marguiles: Yeah, and I understand because speaking from personal experience, I think when a justice is involved in drafting some of the opinions, that certainly helps to keep the backlog down.

Stuart Pollak: I think you make a real difference.

Sandy Marguiles: I think so too. So, during your tenure on the court of appeal, are there any particular cases that come to mind that are significant in your mind or impactful or that you're most proud of?

Stuart Pollak: I think the one I was most proud of was the dissenting opinion I wrote in the education case, whether or not the California Constitution provides minimum standards for the quality of primary and secondary education.

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And that was a dissenting opinion which I put a lot of effort into and disappointed I couldn't convince my colleagues to go along and also disappointed that the Supreme Court decided not to take the case, although Justice Lui probably -- agreeing with my opinion, but I put a lot into that and took a lot of pride in that case. We took back in division three, we handled the first fast track CEQA case where that case -- CEQA cases, as you will know, take a lot of time there, a lot of records and many issues, they take a lot.

And under that fast track statute, all the time limits get cut down and there's a real effort and we had the first case that involved the basketball arena here. We had that case and we got that opinion out. We handled that case differently from any other case. In our chambers, we broke down the issues and had different attorneys and working on different parts of that case.

And we got a pretty good opinion out I thought upholding the validity of the EIR and permitting the arena to go forward and that was a real undertaking and I take some pride in that. Over the years, there's some

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decisions that I think had some impact. I mean none that changed the face of the law but I wrote the Kullar decision, Kullar against Footlocker I think it was. That had to do with the question of whether in approving a class action settlement, the superior court judge could rely upon the fact that there had been a neutral involved and others involved to make the determination as to whether rights were adequately protected or whether the judge himself had to dig into it enough to make that decision which I decided he had to do. That opinion I think had a little impact.

I wrote the opinion that upheld the stem cell research institute, which had some impact.

Sandy Marguiles: That was pretty significant.

Stuart Pollak: Wrote in the fairly recent times, the asbestos litigation is going on forever, to tell you a story about that. But we wrote the -- trying to think of the name of the case. Klesner, I think was the name of the case that held that there could be liability for people who are exposed to the asbestos as a result of take-home asbestos, people that carried - - secondary exposure to people in the household, which I think is a significant case.

Sandy Marguiles: You were going to tell me a story about asbestos?

Stuart Pollak: Asbestos. Way back in the superior court. After my stint in law and motion, I got into a trial division and I tried a couple of asbestos cases and I saw Nancy Pelosi about that time.

Sandy Marguiles: Speaker of the House.

Stuart Pollak: Speaker of the House. She was not in this -- I don't know that she was the speaker at that point but she might have been but I remember having this conversation with her saying what we need to do is we need to set up a diminished sort of agency to handle these asbestos claims.

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It's really foolish what's going on and she said -- her response to me was, "That's a good idea but it's 20 years too late." She had thought at the time, which I understood that this asbestos litigation which had been going on for 20 years was just about at an end and nobody foresaw that was going to go on for another 20 years and lord knows how much longer, so that didn't happen.

Sandy Marguiles: It was a good idea.

Stuart Pollak: It was a good idea.

Sandy Marguiles: Currently, are you involved in any organizations or outside activities given the limitations that our judicial canon of ethics place upon us?

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Stuart Pollak: I have remained involved in a couple of organizations. I mean, for a while, I was involved in an organization, Hebrew Free Loan Association which makes interest free loans to people who need it and I said this is kind of strange because one of the things you do in that position is fundraising and one thing I can't do is fundraise -- in fact I've often said, the one perk I get out of being on the court is that I can't ask people for money, which I don't like to do. So, I thought there was this certain irony in having a position, but I always manage to carry that on and stay involved in that organization.

And I'm involved in other organizations. I've been involved in the New Israel Fund and in the last number of years, those are the two organizations and there was a number earlier on. But those are the two that have taken most of my time. For a long time on the bench, I was involved on a couple of committees, Judicial Council committees that took a lot of time.

Sandy Marguiles: Which committees were those?

Stuart Pollak: The one I took the most pride in was I was involved in the task force that rewrote the civil jury instructions.

Sandy Marguiles: Yes, I'm quite familiar.

Stuart Pollak: That's right. You were in the criminals. Well, that was a real undertaking. That was a real pleasant undertaking I must say and it was a lot of work, but it was also during the era when we can have committee meetings around the state. So, we traveled and had meetings and it was a pleasant experience working on that but it was a lot of work, that was important work. And after that, I was involved in the Rules Committee for a number of years. That was a number of works. I've been less active and probably unactive doing a little bit of judicial education on a panel coming up next week, but much less than that than I did for a while.

Sandy Marguiles: When you were involved in judicial education, just briefly, what did you teach? Where did you teach?

Stuart Pollak: I taught a couple of things. A couple of years, I taught the CEQA course. The one thing I did for several years is I did the jurisprudence, with Connie Rushing, which was a lot of fun. Connie Rushing, that was really his course, and I was his foil, but that was very interesting, caused me to read a lot of interesting things that I probably wouldn't have read otherwise, which I give Connie credit for it. And then I did other things in civil litigation, but that's really where I did my teaching.

Sandy Marguiles: Let's switch to another topic which is what is your judicial philosophy and has it evolved over the 30 some odd years you've been on the bench?

Stuart Pollak: I suppose in terms of philosophy, it's an overriding concern that our job as judges is to try to make sense out of the law and to see that it's

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applied in a way that fits with the circumstances of our society today in the situation today.

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So, I have less patience with philosophy that gets tied to history that is no longer applicable or too literal interpretations that wind up with a result that doesn't make sense in terms of the actual problems of the day.

Sandy Marguiles: Are you bothered by certain judicial decisions interpreting either the California Constitution or the US Constitution in such a way that it doesn't jive with the 21st century?

Stuart Pollak: Absolutely. The case that bothers me the most frankly is the Heller case, the gun decision case. I mean number one, I think history was rewritten a little bit in that but even aside from that, it's a case which does not take into account the reality of civilization today, of our society, of the problems today and the recognition of the right to slaughter people as it has been happening. It's terribly upsetting. I mean, that case bothers me and similarly, some of the abortion decisions, which just do not take into account with what they're doing. Voting rights decision, which again is not taking into account the realities of what's going on out there.

Sandy Marguiles: Would I be correct in saying that you believe that US Constitution, the California Constitution are flexible?

Stuart Pollak: Absolutely. I mean, I think in terms of philosophy, I think there are principles to be derived from the constitution, but their application has to be made with a view towards current conditions and I think that's crucial to the role of the judiciary to make sense out of these laws so that they fit society and ultimately serve the best interest. I mean absolutely.

Sandy Marguiles: Do you think your role as a judge/justice has changed over your tenure on the bench?

Stuart Pollak: I'm not so sure that it really has. I mean, I think the role of the judiciary has remained fairly constant. I mean, I think one change that has taken place in the larger society which is for the better, if we went through a period in the criminal law where there is this distrust of the judiciary and the removal from the role of neutral independent judges to make decisions too hard and fast rules that were set by the legislature and I think in the last several years, the pendulum has started to swing back the other direction, which is for the better because I do think that all in all, judges removed from the political fray with basically a nonpartisan approach are going to make better decisions and in general, appointees who are not appointees, but people who are subject to election to their positions, who are more likely to be influenced by the politics of the situation and I think the recognition of that and there is returned to greater role of the judiciary in making these decisions is certainly a positive development.

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Sandy Marguiles: Do you think the public perception of the judiciary has changed since when you first went on the bench?

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Stuart Pollak: Possibly and I think again, in terms of recent times and you see this most in the federal level, where what's going on with the appointees to the Supreme Court and the process has affected the outlook of the court as being much more politically directed than has been the case. I'm not sure that's true in California. I think with respect to the California Supreme Court, the California Judiciary is probably not affected by that, rightly so. But I think on the national level, federal courts, what's happened is unfortunate, and is yet to be played out.

Sandy Marguiles: If you have to live your professional life again, is there anything you would do differently or are you satisfied with the direction it took?

Stuart Pollak: I'm fortunate enough to say that I don't look back in any decisions I make and kick myself, I should have done something differently. I mean, I wonder about my decision to not join the Warren Commission at the outset where I would have had a different role. I don't know that it's the right decision or not, but on the other hand, I'm still glad that I had the benefit of trying those cases at a time when I needed to do that.

I think in retrospect, here I am at a fairly advanced age still going strong. I think one of the things that has kept me going is that I did have the benefit of a change in my role along the way. I had a number of years, as a trial attorney, as a trial judge and now as appellate judge. And the fact that I was not doing the same thing endlessly I think has been a positive thing and avoiding burnout. I think you do need to change. I think doing the same thing for 50 years is a problem but doing different things but using whatever knowledge, experience you've had and putting it to use can keep you going.

Sandy Marguiles: What would you say have been the rewards of being a member of the judiciary?

Stuart Pollak: It's a very satisfying career, cases that you decide, you can take pride in where you help decide things properly, maintaining respect for the system and deciding cases, writing some new laws you know tackling issues that haven't been answered before and writing something that helps advance the law, you take pride in that. As a trial judge, one of the greatest personal satisfactions as far as I was concerned and the one thing that I miss from the trial court is the ability to act as a settlement judge. There's nothing more satisfying than the lawyers come in in the morning and the lawyers say, "Judge, don't bother with this case, this case just can't be settled." And say, "Well, okay let's talk about it."

And the end of the day they walk out shaking hands. Oh, you think you've done something worthwhile and that was a good feeling. I enjoyed that. But at the appellate level, you take pride in particularly

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dealing with an issue that hasn't been answered before and we hopefully shedding some light on it and writing something that will influence future cases. That's very satisfying.

Sandy Marguiles: Do you take particular pride when you have written the opinion yourself? In other words, it's not a draft by a research attorney?

Stuart Pollak: Probably. I mean, one of the things as a justice, you decide which cases you're going to write yourself.

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We do have that luxury and very often those -- take a case where there was a real issue and a problem and that was the case I would dig into. Sometimes, wouldn't work quite that way where I could see that this was a difficult case, and I really wanted the benefit of a second person and my staff attorneys have been over the years a number of them have been very bright helpful people and I really want their thinking on it. So, in those cases, other than a "routine case," where I would give it to a staff attorney and just ask him to write it without telling him what I thought the conclusion should be, I had my own opinion, my own notes, but I didn't tell them and I wanted to see how they came up, but in some of these more difficult cases, we would talk about it as the writing process was going on. Even though they were drafting it, I was much more involved -- a lot of back and forth as we went along.

Sandy Marguiles: Is there anything else that you'd like to talk about?

Stuart Pollak: I think at this point, in the life of the judiciary, we're in a point where it will be interesting to see how it evolves and to the extent to which it returns to the practices beforehand as a result of the last year --

Sandy Marguiles: And I guess we should clarify that we are in the midst of a COVID-19 pandemic, which has brought about a number of changes of how we operate.

Stuart Pollak: It has been, I think over a year at this point that we have not been working in the courthouse. We are conducting our hearings virtually and the end of the pandemic is at least in sight, we're not there yet by any means, yet hopefully, but it's in sight and so, we're thinking about well, are we going to be returning and to the extent to which we will return and the extent to which we will retain practices, that all remains to be seen. I think we've all learned from working at home that we can be productive and that there are certain advantages, there are certain disadvantages but there are also advantages to what we have been experiencing last year.

Now, in terms of just ending, the one thing which is unrelated but the one change that I'm hoping to see made has to do with the -- this is fairly mundane issue, but the treatment of non-published cases. I think it makes sense that not every decision is published those that don't deserve to be. But today, the technology is far different than it was in the past. There was excellent reason in the past why attorneys couldn't

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cite non-published cases. But today, the way research is conducted on the computer, it's almost the mistake that people make is inadvertently citing a case that, "Oops, that one wasn't supposed to be published." And it makes no sense because all the attorneys, all the judges are aware of the non-published cases and it makes absolutely no sense in my mind that they cannot be referred to in the course of opinions.

Sandy Marguiles: Well, and I was just going to say not only are we and the attorneys aware of the non-published cases, we will look at them to see if they can provide us with any assistance or guidance.

Stuart Pollak: As a matter of fact, there have been a couple of arguments over the years where there was a particular non-published case that was -- the facts was very relevant to the case that we were dealing with and at oral argument, both the judges and the lawyers are referring to this case without referring to it, and it was bizarre. Everybody was aware of the rule, but everybody is also aware that this case had something to say about the issue that we were dealing with. I am hoping that -- there was a task force that was looking into this general issue a few years ago and they came up with other recommendations.

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But really did not address this issue and I'm hoping that the Chief Justice will appoint another group to really tackle that and correct them.

Sandy Marguiles: Well, I want to thank you Justice Pollak for what I would describe as a fascinating, insightful and very informative interview and I've learned things about you I didn't know. Thank you again for agreeing to participate and we will bring this interview to a conclusion.

01:25:33