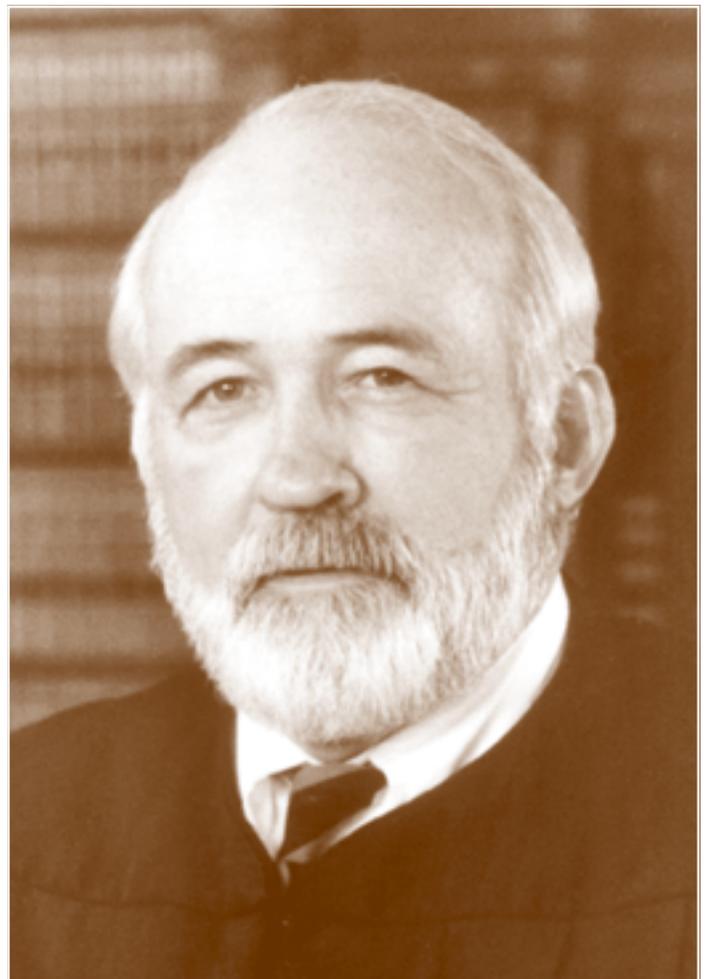


Supreme Court Series

James M. Dolliver

An Oral History



**Washington State Supreme Court
Washington State Oral History Program
Office of the Secretary of State**

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James M. Dolliver

An Oral History

**Interviewed by Norman H. Clark
and Susan McKeehan**

**Washington State Supreme Court
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FOREWORD

When I was elected to the state Supreme Court in November 1994, I eagerly looked forward to the opportunity of serving on the court. In particular, I looked forward to serving with my old friends, Justices Robert Utter and James Dolliver. They were then the senior members of the court, and I had known and admired each of them for many years. Unfortunately for me, Bob Utter retired just a few months after I came on the court. Jim Dolliver, though, stayed on and I had the distinct honor of serving with him during the last four years of his brilliant 23-year career on the Supreme Court.

My first recollections of Jim Dolliver roughly coincided with the beginning of my law practice in Olympia. It was 1964 and I had just graduated from law school and returned to my hometown to enter the practice. In the fall of that year, Daniel J. Evans was elected governor, and when he began his administration in January of 1965 he named James Dolliver as his number one assistant. Jim quickly developed a reputation in Olympia and elsewhere as the brilliant “assistant governor” whose energy and efficiency was the stuff of legends.

Jim, unlike many who come to Olympia with state government, quickly became a part of the community. Over the years he and his wife, Barbara, have lent their time and talent to a multitude of community organizations, all of which are the better for it.

In about 1970, the Alexanders and Dollivers became neighbors on Olympia’s West Side and our families got to know each other on a personal level. Indeed, there was a time when it was almost an everyday occurrence for a Dolliver child to be found playing in our yard or basement or vice versa. Jim’s neighborliness was best exemplified by his willingness to umpire some of my son’s little league baseball games, without a doubt the toughest judging chore there is.

When Jim was appointed to the Supreme Court in 1976 by Governor Evans he promptly developed a reputation as an outstanding jurist and overcame the concerns expressed by a handful of detractors that his experience as a private practitioner was too sparse. He also showed that he was an effective campaigner, surviving a strong election challenge shortly after his appointment. In succeeding years his fine reputation as a jurist grew, as did his fame as a public speaker. Jim was particularly noted for his booming speaking voice and on the stump he

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could give an effective speech on almost any subject. His colleague and friend, Justice Utter, a fine speaker in his own right, once commented that a group he spoke to on an annual basis never invited him back after Jim covered for him by speaking to the group one year.

During the four years I served on the Supreme Court with Jim Dolliver he was the real inspirational leader of our court. Though physically hampered by a stroke he suffered in 1993, he never once complained about the physical limitations that were forced on him by this setback and he went on with his work at the court with the same energy, devotion, and determination that he had displayed throughout his long period of public service. Indeed, during the four years I served with him, he never missed a day of court and he was always prompt and efficient in producing his written opinions.

His greatest value to the court during this period, though, was his mere presence among us. He was at once the court's wise senior member, its conscience, and our institutional memory about the court's hallowed traditions. In court, at case conferences and business meetings, he did not speak as frequently as I am sure he had at an earlier time. When he did, however, everyone listened with rapt attention and more often than not followed his lead. Although an open-minded person, Jim was firm in his convictions about certain fundamental principles and from these he was loathe to stray. On rare occasions, he could even be a bit blunt with the court and would not hesitate to take us collectively "to the woodshed" when he thought we were straying too far from common sense.

When Justice Dolliver announced his retirement from the Supreme Court, there were a great number of tributes paid to him by various private and government organizations. This significant outpouring of goodwill expresses, better than any words I can place on paper, the genuine affection and respect that Justice Dolliver's friends, colleagues, and fellow citizens have for him. It is only fitting that this oral history, which summarizes the life of this remarkable man, will be available to those of us who know him as well as to many persons in the future who did not.

JUSTICE GERRY L. ALEXANDER
Washington State Supreme Court

FOREWORD

Our entire office is pleased that the Washington State Supreme Court has agreed to publish the oral history of Justice James Dolliver. Jim's dedication to the people of Washington State and his commitment to public service will never be forgotten. He is a shining star.

Jim Dolliver has always been an exemplary public servant, serving as a community volunteer, an aide to Congressman Jack Westland, the chief assistant to Governor Dan Evans, and finally as chief justice of the Washington State Supreme Court. He has the keen ability to keep his eyes and his agenda focused exactly on the target. As we worked together during Governor Evans' administration, I once asked him, "What is the real role of governor?" He did not hesitate with his reply. He said that there is only one real role. That is to "set the agenda." Governors who don't "set the agenda" really don't govern.

Over the years, I have learned how right he was. Jim knows that there is more to governing than responding to the headlines of the morning paper. It has been an honor and a privilege to work with him through the years.

In public life and private, Jim has been a wonderful friend and a man to look up to. We are so fortunate to have known his compassion and vision; his honesty and integrity; his love of country, community, and family.

RALPH MUNRO
Secretary of State

PREFACE

The Washington State Oral History Program was established in 1991 by the Washington State Legislature to document the formation of public policy in Washington State. It is located in the Office of the Secretary of State and guided by the Oral History Advisory Committee.

Each oral history is a valuable record of an individual's contributions and convictions, their interpretation of events, and their relationships with other participants in the civic life of the state. By reading these oral histories, the complex interweaving of the personal and political processes that shape public policy are revealed.

In early 1998, a Supreme Court advisory committee was formed to create a Supreme Court Series. This committee consists of representatives from the Oral History Advisory Committee, Supreme Court, and the Office of the Administrator for the Courts, who guide the selection of the Supreme Court series candidates.

After a candidate is selected by their respective committee, extensive research is conducted about the life and activities of the prospective interviewee using legislative journals, newspaper accounts, personal papers, law reviews and other materials. Then a series of taped interviews is conducted, focusing on the interviewee's public life and contributions, but also including personal sources of their values and beliefs. Political and judicial values, ideas about public service, interpretation of events, and reflections about relationships and the political or judicial process are explored. When the interviews have been completed, a verbatim transcript is prepared. These transcripts are edited and reviewed by the interviewer and interviewee to ensure readability and accuracy. Finally, the transcript is published and distributed to libraries, archives, and interested individuals. An electronic version is available on the Secretary of State web site (www.secstate.wa.gov).

Recollection and interpretation of events varies. It is the hope of the Oral History Program that this work will help citizens of the State of Washington better understand their political legacy and judicial traditions.

ACKNOWLEDGEMENTS

The Washington State Oral History Program wishes to thank all of those who contributed to this project.

Justice James M. Dolliver, whose steadfast patience through long afternoons was both generous and gracious. He has our sincere thanks and admiration. We extend the same to Barbara Dolliver and to Governor Dan Evans for their time and their support for this project.

Members of the Supreme Court advisory committee, who provided invaluable guidance and support for this new series of oral histories. Justices Gerry Alexander and Phil Talmadge, who provided both expertise and background information on court processes and issues. Warren Bishop and former Senator Alan Thompson, who represented the Legislative Oral History Advisory Committee in our deliberations with the Court and gave generously of their time and knowledge to this project. Denny Heck, president of TVW, who enthusiastically shared his political insight and perspective. Chuck Fowler, Robert M. Henderson, Ed Mackie, and Professor Nicholas P. Lovrich of Washington State University, who provided knowledge of the culture of the Supreme Court and helped us identify significant issues.

Mary McQueen, Butch Stussy and Wendy Ferrell of the Office of the Administrator for the Courts, whose assistance and cooperation throughout the project was invaluable.

Members of our Legislative Advisory Committee, who have consistently provided guidance, encouragement, and support for the program. We appreciate their advice and unfailing interest in this work. The committee includes Senators Sid Snyder, Shirley Winsley, and Al Bauer; Representatives Karen Keiser, Don Carlson, Kathy Lambert and Patricia Lantz; Secretary of State Ralph Munro, Secretary of the Senate Tony Cook, and the Co-Chief Clerks of the House, Tim Martin and Cindy Zehnder. Ex officio members are Warren Bishop, David Nicandri, Dean Foster, and former legislators Robert Bailey, Eugene Prince, Alan Thompson, and Don Brazier.

The State Department of Printing, including State Printer George Morton, Dick Yarboro, Evonne Anderson, Steve Pfeiffer, Don Reese, Ron Mosman, Kelley Kellerman, Jade Joyce, and the efficient

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The Washington State Archives staff, who provided invaluable research support for this project and accessed many of the wonderful photographs that appear in this oral history.

Secretary of State Ralph Munro and Deputy Secretary of State Tracy Guerin, who have been a constant support. Their encouragement and dedication have sustained the program. Many others in the Office of the Secretary of State have lent their assistance to the program in innumerable ways. We thank them for their generous assistance.

All those named gave more than we asked. It is a privilege to acknowledge them.

INTRODUCTION

INTERVIEWING JAMES M. DOLLIVER

From the lofty position of his portrait hanging above the fireplace—it is in oil and three feet tall—James Jones Dolliver (1819-1906) is an imposing presence in the Dolliver home on North Sherman Street in Olympia. He was a circuit-riding Methodist preacher who with Bibles in his saddlebags rode out across Virginia to save souls in small towns and villages during the years before the Civil War. He was a loyal supporter of Abraham Lincoln, as were his three distinguished sons. After the war, the family moved west to Iowa, where one of the sons, an eminent attorney active in state Republican circles, married the governor's daughter. Another became a famous orator and a United States senator. The third, like James J. himself, became a prominent Methodist minister.

The portrait shows us a countenance that is not open to any single or simple reading. If your home were a way station on his circuit, you might suppose that he probably would not consign you to perdition without substantial evidence. But you will also suppose that here was a man of determined purpose, high integrity, and firm character who would certainly not sit quietly in your parlor and put up with any nonsense, either.

If you listen closely, and watch the body language, you might imagine the same qualities in the man who has lived for thirty-five years in the house on North Sherman Street, James J.'s great-great grandson, the former chief justice of the State of Washington, James Morgan Dolliver.

Though a full-time caretaker often moves his wheelchair around the house, Justice Dolliver can move himself well enough. And his powerful right arm can easily open the front door for visitors. His handshake is muscular and assertive. He invites guests to sit on a comfortable, brightly-patterned sofa near the large fireplace, in front of which—right hand upon the wheel—he positions himself carefully.

The fireplace is bordered by heavy brass. In fact, the visitor will notice the measured centrality of traditional metals—of shining brass, bronze, and steel: the brass fire tools next to the sofa, the brass candlesticks and oil-burning lamps on the mantel, a leather-and-wood magazine rack studded with brass nails (built in Iowa sixty years ago by Dolliver's father), a bronze bust of William O. Douglas, a

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sculptured steel mask that Dolliver calls simply “Greek Woman.”

This is a spacious, carpeted room where wide shelves along the walls support probably eight hundred books—history, philosophy, poetry, social analysis, leather-bound volumes of the Great Books classics. Where the shelves end there are framed pencil sketchings, several classical prints, and five original oil paintings done by Northwest artists. Four are landscapes, two of which—“Barn in Winter” and “Barn in Summer”—were done by Jerry Koukal.

But the portrait of the stalwart circuit rider, surrounded as it is by the polished metals, the books, and the paintings, does not predominate or control: the eye moves easily to the right of James Jones Dolliver to a large glassed frame that displays poems by Barbara Dolliver. They have been transcribed in an elegant calligraphy by Tim Girvin.

On the coffee table there is a book of Barbara Dolliver’s printed poems, hand-bound by a close friend who used her own heavy white paper made from wild flowers and fibers of cotton, linen, and silk. Under the book is a boxed kalimba, a wooden musical instrument from Africa that Mrs. Dolliver sometimes plays. Next to it is a book of poetry by Ted Hughes and a china dish of candies in bright red wrappings. Across the room, under a reading lamp, is a caned wooden rocking chair that Dolliver inherited from his great-grandmother and in which Barbara Dolliver has many times rocked to sleep each of their six children. (Dolliver says it “has a nice squeak.”) Somewhere in the room, waiting to join anyone who decides to sit, is a two-month-old dachshund.

On Friday afternoons between January 29 and July 2, 1999, the brass clock in the dining room always chimed twice as we prepared our tape recorder. While our visits allowed for occasional unstructured banter, most of our interviews were sessions of straightforward questions and answers. In most cases Justice Dolliver had seen a list of the questions before we arrived. At no point did he ever object to or refuse to answer any of them.

There were, however, difficulties in sustaining this straightforward motion. The problem was that Justice Dolliver has a mind so rich in significant experience and seasoned judgment that we were often tempted to list to port or starboard away from the straightforward

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questioning and to engage him in spirited analysis or good-humored argument. How to keep historians out of history is a very old problem.

At least we tried. We finished with fifteen tapes, most of them recording a full hour's conversation. Our approach was generally chronological, but with enough slack to allow generously for digressions. Tapes 1 and 2 are about the early years. Tapes 3 through 6 cover the years with Dan Evans. The State Supreme Court years are on 7, 8, and 9. Barbara Dolliver is on tape 10, Dan Evans on 12, and Dolliver's summation on tape 13. Tapes 11, 14, and 15 touched on a variety of topics and were deliberately undisciplined: we used them for explication and exploration. Copies of the tapes and of the original unedited transcriptions will be on file in the State Archives.

James Dolliver's career in state government began thirty-two years ago, and it has touched—indeed, it has often enveloped—episodes and developments of signal importance to a historical understanding of these years. A recitation of the events in which Dolliver took a leading role might suggest a long and exciting chapter for a thoughtful study of recent state history. This book, obviously, is not in itself that chapter. Although oral history can be rich raw material for the thoughtful historian—it can be mined, filtered, sifted, analyzed, graded, and washed before it is melded into other elements—it is still not *history* as we properly regard it. Our colleague Anne Kilgannon in the state Oral History Office likes to observe that, in working on these projects, we are surely not writing history; but we are engaged in what nevertheless can be a worthwhile enterprise: the creation of historical documents.

Which brings us to a note about our appendices: we are pleased by their significance and their abundance. Evans' "The Winter of Our Discontent" (Dolliver wrote a good part of it; see the discussion in Part 2 of the transcripts) is an important landmark in state political history and totally relevant to the structure and texture of Dolliver's political thought. Dolliver's Washington State University address is probably familiar to serious students of state government. We, of course, think that anyone who has even thought about state government should read it. This is the original, from Dolliver's files. (A shorter version is included in *Washington Comes of Age: The State in the National Experience*, edited by David H. Stratton and

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published by the Washington State University Press in 1992; this book also contains Dan Evans' reflections on his years in state government.) The Dolliver decisions we have selected are two that in our first reading demonstrated for us a superior intellect at work on profound and complex moral problems, a fine mind cruising with considerable grace at the height of its very considerable power. We had determined to reprint them here in abridged form even before we realized that they had been written after James M. Dolliver was severely disabled by a massive ischemic stroke in 1993.

This project began with three rewarding interviews—with Justice Philip A. Talmadge, Justice Gerry L. Alexander, and Secretary of State Ralph Munro. In developing an approach and in working up questions, we benefited from the tapes and books of Professor Charles Sheldon (see *A Century of Judging: A Political History of the Washington Supreme Court*, University of Washington Press, Seattle, 1988, and *The Washington High Bench: A Biographical History of the State Supreme Court*, Washington State University Press, 1992) and a transcription of Dr. George Scott's 1990 interview with Justice Dolliver. In determining the scope of questions about the Evans years, we were fortunate in having the index titled "Guide to the Governors' papers, Volume 5: Daniel J. Evans, 1965-1977," expertly compiled by David W. Hastings for the state archives in 1986.

Oral histories are almost always edited for clarity and coherence, and to these ends we have occasionally transposed parts of the transcriptions when we believed that the movement would be helpful to the reader. Justice Dolliver was of course involved in the editing, as were Barbara Dolliver, Dan Evans, Joan Dolman, Anne Kilgannon, Brad Benfield, and our dear friend Dorothy Conway, whose suggestions we deeply appreciate.

We have a very special debt to Joan Dolman, who, after seventeen years' service to Justice Dolliver as his administrative assistant, graciously agreed to transcribe our tapes. Her skills and experience have indeed made this oral history possible.

NORMAN H. CLARK
SUSAN McKEEHAN
Interviewers

BIOGRAPHICAL HIGHLIGHTS

JAMES M. DOLLIVER

James Morgan Dolliver was born October 13, 1924, in Fort Dodge, Iowa. He lived in Fort Dodge until he graduated from high school and joined the Navy Air Corps in 1942. As a commissioned officer and pilot, he flew search-and-rescue missions in 1945 for the United States Coast Guard.

In 1944, his father, James Isaac Dolliver, was elected to the United States House of Representatives, where he represented the Sixth District of Iowa for twelve years. James Morgan Dolliver often visited his family in Washington, D.C. In 1946, he entered Swarthmore College and began spending his summers working as a ranger in the Olympic National Park.

He married a fellow student, Barbara Babcock, and graduated with high honors in 1949. After law school at the University of Washington, he began the private practice of law in Port Angeles and later in Everett. He was immediately active in state Republican politics, and in 1953, he left for Washington, D.C. to work as administrative assistant to Congressman Jack Westland.

In 1964, Dolliver managed the stunningly successful gubernatorial campaign of Republican candidate Daniel J. Evans. Afterwards he served as the new governor's chief of staff and political advisor through the most turbulent years of the 1960s and 1970s. During this period Dolliver was deeply involved in administrative decisions that would have profound impacts on racial relations, higher education, environmental legislation, and the dynamics of the state's Republican Party.

Before Dan Evans finished his twelfth and final year in the governor's office, he in 1976 appointed Dolliver to fill a vacancy on the Washington State Supreme Court. Dolliver later won election to that position four times and served as Chief Justice from 1985 to 1987. As Justice and as Chief Justice, Dolliver wrote majority decisions—some of them riveting—on vital societal issues. These included capital punishment; the doctrine of proportionality in capital cases; and “the new federalism”—the movement on the part of some state supreme courts towards a fresh defense of the uniqueness and integrity of their own state constitutions.

BIOGRAPHICAL HIGHLIGHTS

Following his reelection victory in 1992, Dolliver suffered a severe stroke in January 1993. Though he has required a wheelchair since then, rehabilitation therapy made it possible for him to continue his work on the court until his retirement in January 1999.

Justice Dolliver has six children and three grandchildren. He has been active in many educational, religious, and professional organizations. Since the campaign of 1964, he has been one of the state's most popular public speakers.

CHAPTER 1

FROM FORT DODGE TO PORT ANGELES

Mr. Clark: James Morgan Dolliver. A good afternoon to you, sir. Let's begin with your telling us where the *Morgan* came from.

Justice Dolliver: Well, it comes from my mother's family. They were named Morgan.

Mr. Clark: Where does *Dolliver* come from?

Justice Dolliver: It is a Welsh name, actually. The original spelling, I understand, is D A L Y B E R, which is Welsh. My ancestors, as far back as I have been able to trace them, came from Dorset County, and probably came over from the Welsh side during the wars of the English and the Welsh. Dolliver is a Welsh name and Morgan is a Welsh name, and my maternal grandmother's maiden name was Rogers, so we have quite a bit of Welsh in the family.

Mr. Clark: I see. When did the Dollivers come to Iowa?

Justice Dolliver: They landed about 1630 in Massachusetts, and they gradually worked their way west. I think the main body arrived in Iowa some time about the middle of the nineteenth century. My uncle, Jonathan Prentiss Dolliver, and his two brothers, one of them my grandfather and the other a Victor

Brown Dolliver, came to Fort Dodge.

Mr. Clark: What did your grandfather do?

Justice Dolliver: He was a Methodist minister.

Mr. Clark: Please tell us about your mother.

Justice Dolliver: Well, I know very little about her. My father never talked about her. I know that she went to the Kansas City, Missouri, schools, went to the University of Chicago, and took a degree in home economics. She died about a year after I was born. She had infantile paralysis, and complications from the polio led to her death in 1925. That's really about all I know of her. I have a picture of her, but my father never talked about her other than to say he certainly loved her. When I was a boy, I spent a good deal of time with my maternal grandparents in Kansas City. I would go down to Kansas City during the summertime for, oh, three or four weeks and would visit with them. Because my mother had no brothers or sisters, I was really the last remaining generational link that they had. I was completely spoiled by my grandparents, particularly my grandmother, because I was the next generation. It was a great life while it lasted.

Ms. McKeehan: Did they tell you stories about your mother?

Justice Dolliver: No, they really didn't. I'm sure she was a very smart woman, a very bright woman. But as far as their telling me stories about her personal characteristics, the answer is "no."

Mr. Clark: Were they college graduates, your grandparents?

Justice Dolliver: I'm not sure. She may have

been. He was not, I don't think.

Mr. Clark: What did your grandfather do?

Justice Dolliver: He was in the insurance business. He worked for an insurance agency in downtown Kansas City in the Fidelity Building. I don't think they went to college. They may have.

Ms. McKeehan: But your mother graduated from the University of Chicago?

Justice Dolliver: In fact, she met my dad at Chicago. She was taking a course, a PHB in home economics; and he, of course, was taking a law course. But she was one of those persons who was really very mysterious. My father never talked about her. Never. Once he said she was a wonderful woman, and that's all.

Ms. McKeehan: Do you think it hurt him to think about her? Or, you don't know why he didn't talk about her?

Justice Dolliver: Well, I don't know. I suspect that for him it was like digging up the grave.

Mr. Clark: When you were growing up in Fort Dodge, did you have any kind of surrogate mother at home?

Justice Dolliver: Yes I did. Rachel married my father in 1928, and she adopted me. So I was an adopted child.

Mr. Clark: I see.

Justice Dolliver: And she is still alive. She has always been my mother, and I address her as "Mother." She and my father had three wonderful children. She was the only mother I ever knew. So, in a sense, I was fortunate: I had a mother who gave birth to me, and I had

a mother who raised me. Not many persons have that kind of advantage.

Ms. McKeehan: Did your father and Rachel have a good marriage?

Justice Dolliver: I think they did. They were married fifty years. Just barely. He died in November, and the fifty-year event had been in September. Though he had been a very ill man—he had a series of minor strokes—I think they had a happy marriage.

But he was not demonstrative. He was a manual training teacher before World War I, and he liked to putt around in the shop and work with wood. He was not what I would call a great woodworker, but he enjoyed it. He liked to play around with wood. That table right in back of me, the little one which has the names beaded in nail heads, was one he made. That was after his trip to South America when he was on one of the committees in Congress.

Ms. McKeehan: Did you do any wood-working with him?

Justice Dolliver: He was able to train and to help me. I make no claim to woodworking. The only thing he was able to teach me and I benefited from was electricity. I'm still competent in electricity. He was very skillful.

One of the things he liked to do, we would go down to Dolliver Park nearly every week and have a picnic, then drive around through the old towns in that area—the old clay towns. And we would walk. He was a good hiker. He would go on these hikes with me and my brothers and sister throughout the park. I enjoyed that.

Mr. Clark: Your father was in Congress for twelve years?

Justice Dolliver: Yes, he was.

Mr. Clark: What sort of burden did his being away place on the family?

Justice Dolliver: I never noticed. I suppose my mother would have a different story, but we were, as you might imagine, we were very proud of him and of J. P. Dolliver, the Senator.

J. P.'s presence sort of loomed over the entire family, and I guess it was second nature for me to expect the male members of the family to be involved in politics. So I was very proud of my father, and he had a lot of time left for us. We went out for picnics and things of that nature, and I never felt neglected at all.

Mr. Clark: Did he often take you back to Washington, D.C.?

Justice Dolliver: He was the county attorney of Webster County for a number of years, and he was on the school board. By the time he was elected to Congress in 1944, I had already gone into the Navy. I saw them at their place in Washington many times. Then after the war, when I was going to school in Philadelphia, I was close to Washington, D.C., so I saw a good deal of him during those years.

Mr. Clark: Your great uncle, the United States Senator, did you know him?

Justice Dolliver: I never knew him. He died in 1910 of a heart attack. He was extraordinarily popular, apparently, from all I've been able to find out. The best account of his life is, oddly enough, in a group of volumes called *Our Times* by Mark Sullivan. Sullivan was a newspaper man, and he liked J. P. very much. What people tend to forget is that the great divide in the Republican Party, between the progressives and the "stand-patters," was on the tariff. J. P. was, of course, one of the progressives. As a matter of fact, he led the fight against the Payne Aldridge Tariff Bill in

1909, which probably killed him. His attempts to get lower tariffs for agricultural products were quite well-known. He was a powerful speaker, a very fine public speaker, and he was this man's son by the way. [Justice Dolliver pointed to a large painting of his great grandfather hanging over his fireplace mantle.]

Mr. Clark: What was his name again?

Justice Dolliver: Jonathan Prentiss Dolliver. Prentiss was an old family name.

Mr. Clark: Was he a Teddy Roosevelt Republican?

Justice Dolliver: T. R. Republican, yes. Very definitely.

Mr. Clark: I have read that you grew up in a deeply religious household, and I am beginning to understand why. In what way was this apparent?

Justice Dolliver: Well, my grandfather was a Methodist minister, this man [pointing to his great grandfather over the fireplace] was a Methodist minister, and my father was active in matters concerning the Methodist Church. I guess it wasn't so much manifested by a sort of "you do this, do that, and the other thing," so much as it was by the fact that in those days everyone went to church. I mean everyone. We went to church every Sunday. We went to church because it was the thing to do. As far as any doctrinal religiosity was concerned, no, there was none.

Mr. Clark: Did the family have prayers together?

Justice Dolliver: No, we never did. My grandmother, who was my father's mother, was very religious. In fact, she had been a

Quaker first, and then she married into the Methodist Church. She was very much of a prohibitionist, W.C.T.U., and that kind of thing, and neither my mother or father either drank or smoked, and neither did I, as a matter of fact. That was not necessarily a touchstone of our religiosity, but it was there nonetheless. The thing that is different is nowadays if you take a representative group of people in the community and ask them what they are, they will tell you everything except what particular religion they belong to. When I was growing up, if you would ask people “What are you? Who are you?” they would identify themselves partly by whether they were Methodist or Episcopalian or Catholic or whatever. But that’s no longer true.

Mr. Clark: Do you remember anything of lasting significance that happened to you before you got into high school? Of course, there are a lot of things that happened to you before you got into high school, but was there any turning point in your life?

Justice Dolliver: As a matter of fact, people sometimes ask me, “When did you first learn to think? When did you first learn that there was something other than the way you always looked at things?” And I can remember the occasion very clearly. In junior high, it was a sunny day, and I was sort of sitting there looking out the window, and we had this teacher, her name was Lulu Haworth. Anyway, she was talking about the Civil War, and she brought it to the class’s attention that there may have been factors which caused the Civil War other than simply slavery itself. This was the first time I had ever heard that. As a consequence, I began a real lifelong study of the Civil War.

I can remember a couple of things—not turning points—from grade school. One is that I was called upon to sing once, which I did. I stood up on a little platform and sang “Away

in a Manger,” of all things. The other thing was—I don’t know when you were a child if you listened to the Damrosch concerts or not—we would have the Damrosch concerts once a week. One week Max Treloar, one of my classmates, was sitting there with his eyes closed. When it was all over, the principal, Maimie Foster by name, called our attention to it. She said now Max is a wonderful student because he loves the music so much he kept his eyes closed during the entire concert. Well, we got the message.

I know that when I was in, I think, third grade I came home and told my mother and father that there was a wonderful song we were singing called, “Hold to the Pie, Close to the Sky.” My mother said, “No, that can’t be. You have a song like that?” I insisted, “Yes we do.” And, finally, she went to this teacher whom she knew very well and said, “What are you having those kids singing at school?” And it was “Hold up High, Close to the Sky.”

Mr. Clark: At this time, did you have a clear goal in your life? Did you know pretty well what you were going to do?

Justice Dolliver: I always wanted to be a lawyer, probably because my father was a lawyer, and I suppose that I was always interested in political matters, and I was able to see at an early age that a good many of the people who were involved in political matters were also lawyers. But I knew nothing about it. Didn’t know a plaintiff from a defendant. Nothing about it, but, as I said earlier, I admired my father very, very intensely, and he was a lawyer, and I thought that it would be a good thing for me to do. Not really a goal; just an assumption.

Mr. Clark: I was going to ask you if at that early age you had a role model, but it sounds like you have answered that question.

Justice Dolliver: I suspect so. If you ask me who my heroes were, I would put my father first. If you ask me who my heroes in American history were, I would put George Washington first.

Growing up in Iowa, I had a very strong sense of identity. I mean, I lived in Fort Dodge; there was a geographic identity. My family was Methodist. We were Republicans. I identified myself through these institutions. I still do. I had no trouble ever knowing who I was. I had some doubts about how I was going to make a living. But I knew who I was.

But with my kids, the situation is just the opposite. There is enough money around. They can all make a living easily, but they haven't the faintest notion of who they are.

Thinking about my father, I suspect part of the reason I am out here in the state of Washington is that I needed to get away from him, even though I loved him. I was always in competition with him. I didn't realize it, but I really was, and that's probably a reason why I got myself elected to a statewide office. It is a reason that I rose to a high position in the Methodist Church. "Anything you can do, I can do better"—that sort of thing. These matters are usually unconscious, but if I'm honest with myself, I have to recognize that they are real.

Ms. McKeehan: Did you consciously decide to move here to get away from him?

Justice Dolliver: No. I think the reason I did come here was to get away, not necessarily to get away from him as a person, but to get away from Iowa. I mean the Dolliver name was a very well-known name in Iowa, and I, rather than trying to trade on it, decided I'd break away entirely and make a start on my own.

Ms. McKeehan: Did you feel freer when you did that and were out here?

Justice Dolliver: I'm not sure that I did.

Mr. Clark: Let's go back to high school. What were your academic interests?

Justice Dolliver: Well, my best grades were in, believe it or not, Latin—straight As four years. The other was history. I loved history. And I am another one of those students who did very well in mathematics, got straight As up until we went into algebra, and then right down the tube. I did not, and to this very day I still cannot, understand algebra. I was told you ought to be able to understand it because lawyers have a very logical mind, and algebra is a very logical kind of thing. I still can't understand it.

Mr. Clark: You clearly had an academic orientation, a humanistic orientation.

Justice Dolliver: I think that's correct.

Mr. Clark: Do you remember any books that you read during that period that stayed with you?

Justice Dolliver: When I got to junior high, they had some encyclopedias there on Ancient Egypt, and I was absolutely voracious in reading about Ancient Egypt. My father had a number of books. He was a sucker, as I am, for traveling book salesmen, and so he would buy books of one kind or another, and I would read them. I simply liked to read. The only thing I can remember specifically is the interest I had in Ancient Egypt.

Ms. McKeehan: Did you read mostly nonfiction or fiction?

Justice Dolliver: Hardly any fiction at all.

Mr. Clark: Were you involved in extracurricular activities?

Justice Dolliver: Yes, although I was not athletically inclined. As a boy, I was very small, so I didn't do any of that. Debating I did, and I was a pretty fair debater, and I was in student government at one time. I played the saxophone also, tenor saxophone, so I played in the band. Outside of school, I was involved in the DeMolay Boys; I became the master counselor. I can't think of anything else I might have done in school. It was not an unhappy time, but no one can say I was at the top of the social list. I certainly wasn't, and part of the trouble was I was extremely self-conscious about my small size. But I made up for it by playing in various swing bands. One band was so good that we finally got into trouble with the musicians' union. We were taking business away from them, so we had to slow that out a little bit. But I enjoyed my music. I enjoyed student government, and I liked debate. I did a lot of debating.

Mr. Clark: Did you continue in music after you got out of high school?

Justice Dolliver: No. When I got out of high school, I sold my sax. I took some piano, too, during high school, but I quit that also, to my regret now. I like music. I enjoy it very much, but I don't play anything.

Mr. Clark: I'm curious about your recreations in high school. Did you hunt or fish?

Justice Dolliver: I never was a hunter. Did some fishing. My mother would not allow a gun in the house, and my father didn't care about hunting. We did some fishing. The one occasion I remember, my father and I and my two younger brothers went on a fishing trip up in Northern Minnesota. Just the boys. Which was fine, except for two things. Number one, it rained all the time. Number two, my dad cooked, and we all got sick. I mean really sick, on pancakes. It was terrible.

As I am sure my mother would tell you, I was an indefatigable hiker.

And I would play with the neighborhood kids. Our great rave was old gasoline engines. If you remember, most of the Maytag washing machines had gasoline engines. So we would get these old gasoline engines and rig them up somehow and put them in a little car. It would be a putt-putt. So we would figure out a way to make them work, and we'd go up and down the street with those things, I'm sure making all sorts of racket so that the various housewives were wondering what we were doing.

At that time, we lived within one block of the corn fields, and the circus usually would come out. In those days, you may remember, they had the big circus tents, and they would have about, oh, I don't know, half a dozen men around singing in time to knock the stakes in the ground. Us kids would watch them and watch the other ones parade through town, which they did, from the railroad depot to the field. I remember that very well. I used to enjoy that.

Ms. McKeehan: What's the wildest thing you ever did as a kid?

Justice Dolliver: Well, I'm not sure. Something I remember from being in high school was that I went out skinny dipping in some of the holes that were left by the drag lines that would mine for gypsum. Fort Dodge is a large gypsum area, and the way they mined it, they would dig out the gypsum, and many times they would leave sink holes. So a bunch of us—girls and boys—went out and decided to go swimming one night at one of the sink holes. We did, we skinny dipped. I wasn't much of a swimmer, but I paddled around and managed to keep from drowning. I suppose that was as adventurous a thing as I did during my lifetime as a boy. The control that parents had over children was not at all what we see

today. There was no teenage culture then. We were extensively under the domination—whether we liked it or not—of our parents. The relationship of a child to a parent was entirely different then than it is now because we had no independent feeling at all. Whatever independence we had really didn't happen until after we left the family threshold. In my case, either to the military or to college.

Mr. Clark: Did Fort Dodge have more than one movie house?

Justice Dolliver: Yes, as a matter of fact. We had the Park Theater. The Park was the cheap movies. That was ten cents. And they had mostly shoot-'em-up cowboy movies of one kind or another and serials. And next was the Rialto. That was a "high-class" theater. The first movie I was allowed to see was "Heidi," with Shirley Temple. I also remember "A Midsummer Night's Dream," by Max Reinhardt. Then we had the Strand, which was up the street a little bit, and I guess I would call that sort of intermediate. And we had the Dodger, where they would show anything that came along. So we did have movies, and, of course, that was our entertainment.

But I didn't go to a lot of movies when I was a kid. My mother, she discouraged that. To this very day, I still have trouble going to a movie on Sunday. I suppose that goes back to John Wesley. He said don't engage in trifles, and going to movies is thought to be a trifle. Engaging in trifles on Sunday, well, after all. I will go to movies on Sundays, but I have a twinge of conscience when I do.

Mr. Clark: Did you have dates and go to school dances?

Justice Dolliver: I did some, but not as much as I wish I had. By the time I got to be a senior, I was a little more mature, as you might suspect, and I would have dates and go to

school dances and Rainbow and DeMolay dances, but I was not a social being at all. I really wasn't.

Mr. Clark: Did you have a steady girl friend?

Justice Dolliver: I had a girl, and she and I tended to see each other quite a bit.

Mr. Clark: These were the years of the big bands. Did you have a favorite band?

Justice Dolliver: Very definitely, Glenn Miller was my all-time favorite.

Ms. McKeehan: Did you have a best friend or a couple of kids you hung around with all the time?

Justice Dolliver: Well, when I got into high school, I think that the people I played in the band with were probably my best friends. Prior to high school, my best friend was a fellow up the street from me on Tenth Avenue named John Gustafson. He was a little older than I was, and in those days the grades were very compartmentalized. Once you were in first grade, and somebody else was in second grade, you never saw them again.

When I went into the Navy in 1942, there were four of us that went in at the same time, and I still am in touch with some of them. One of them died, but at Christmas time we stay in touch with each other. In 1992, I was back there for our fiftieth reunion and got to see them at that time.

Mr. Clark: In high school, did you have a paying job?

Justice Dolliver: Yes. As a matter of fact, I worked as a stock boy in a place called Jeffries Grocery Store. I can't remember what age I was when this started. And when I went to a year of community college after I graduated

from high school, I had a job then. I was a roofer and an insulator. I still know how to roof, and I did a lot of insulation, which is a miserable business. I didn't like it at all.

Mr. Clark: Did you have a car?

Justice Dolliver: I did not. The first car I had was the one my father sold to me. I am sure he was laughing all the way to the bank on this one. It was a terrible car. It was a Hudson, and, oh, I was very proud of it. But I did not get it until I was in college.

Mr. Clark: What was it like growing up during the Depression in Iowa?

Justice Dolliver: You know, I can't tell you. First of all, my father was a lawyer, and he did well. We were never down and out, so to speak, and we always had a maid, which people are rather surprised to hear sometimes. My mother explained it to me. She said if we didn't have a maid, these girls would have starved, literally, out on the farms. We would always bring somebody in from the farm and let them be a maid for us. We paid them, I think, five dollars a week, something like that, but there was room and board. One day off. But the entire time I grew up we had someone who stayed with us, and, if there were any rigors due to the Depression, I sure didn't know them.

I remember very distinctly when the farmers dumped all the milk into the sewers. And there was a bank holiday. We did eat a lot of cornmeal and a lot of tongue because my mother was very clever in those matters. But to me it was not a time of hardship.

I had an uncle who lived in South Dakota, and when we wanted to think about the poor, we thought of him. He was really poor.

My mother told a story about my father—and I think it is surely true—that he literally had to take a pay cut when he went to Congress

in 1944. He was also an attorney for the Illinois Central, and that helped. So we never suffered from the Depression.

Mr. Clark: Were these clearly bad times in Fort Dodge? Was there a hobo jungle?

Justice Dolliver: There may have been, but I didn't know about it. There probably was. One of the things Fort Dodge was noted for was a huge steel trestle bridge—the Great Western Bridge across the Des Moines River Valley. And we had the Fort Dodge Laboratories, which are still the largest manufacturers in the world for serum for animals. We had a packing plant, and Fort Dodge also has a very big gypsum center.

My father, you might suspect, had many farmers for clients. So we would visit the various farms, and I would work on farms during the summers.

If times were tough, I had no idea, and if there were hobo jungles, I didn't know about it. I guess we lived in a middle-class neighborhood. It wasn't a rich neighborhood, by any means, but we just assumed everything was all right. So, if somebody says, "How was your life during the Depression? What was it like to grow up during the Depression?" I suppose it was like growing up at any other time. I had no idea there was a Depression going on. We never talked about it in school or in my family.

Mr. Clark: Your father must have had strong opinions about Franklin Roosevelt?

Justice Dolliver: Oh, yes. Yes, my family, without any question, is a rock-ribbed Republican family. There are no ifs, ands, or buts about that. FDR was "that man" in the White House. I could never imagine my father voting for a Democrat, never, in my wildest dreams. My father was probably of the more progressive strain of Republicanism because

of J. P. Dolliver, who hovered above us like a patron saint. And I think part of that came from the Civil War. I know my loyalties come from the Civil War because the Republican Party stood for the Union and against slavery, and the Democratic Party was on the other side. My uncle had this saying—he was the Senator—that “Iowa will go Democratic when hell goes Methodist.” I’m afraid the old man was somewhat disappointed a few times, but there was only one party as far as I was concerned when I was growing up—the Republican Party.

I will not vote for the Democrats. As I say, it probably goes back to the Civil War. I’m a Theodore Roosevelt, Dan Evans-type of Republican. I am not one of these flaky born-again Christians. I can’t take that. I guess part of my thinking comes from a book I read a number of years ago about American politics by Daniel Boorstin, who says that the big differences are not between the two parties, Republican and Democrat. There are not enough real differences between them to spit upon. But within the party itself, there is a tremendous amount of difference between left-wing Republicans and right-wing Republicans. The same in the Democratic Party. The book is called *The Genius of American Politics*. The thesis is that the two parties are practically identical. The real fight is within the party itself and about who is going to control the party. I tend to agree with that, but, as I say, my loyalty probably goes back to the Civil War.

Mr. Clark: Did your father say much about Franklin Roosevelt?

Justice Dolliver: Not much. I guess my father was one of those persons who knew who he was and what he was, and there was no question about that. I was never in doubt as to what his party allegiance was.

Ms. McKeehan: Was your mother involved in politics or the temperance movement, or anything?

Justice Dolliver: She was a typical housewife, and she stayed at home and did not work for a living outside the home. She just took care of us kids. Looking back on it, I can put it in corporate terms: My father was the chairman of the board. My mother was the CEO. She was the chief operating officer, and make no mistake about that. When she said something, there was very little appeal. That’s the way it was going to be because they backed each other up.

My dad was actually involved in two things that gave him his prominence. One was the Methodist Church. The other was the American Legion. He became the state commander of the American Legion in the late 1930s and put an awful lot of time and energy into the American Legion.

Mr. Clark: Was he a World War I veteran?

Justice Dolliver: Yes. He was in World War I; he was in the Signal Corps. He didn’t go overseas. He was a second lieutenant. Later he became the state commander of the American Legion and did a lot of traveling around the state connected with the American Legion. Now, you must understand that in pre-World War II times the American Legion, at least in Iowa, was a fairly prominent organization. It’s not anymore, but it was then. To be commander of the Legion was quite an accomplishment.

Ms. McKeehan: What was he like? If you had to describe him in a couple of paragraphs, what would you say?

Justice Dolliver: When people ask me about that, I’m not sure that I can give an adequate answer. I intensely admired him, and I still

do. Much more than anything else, I suppose, because he was a lawyer and was a good one, and he managed to get himself elected prosecuting attorney. He was on the school board for a number of years. In fact, when I graduated from high school, he was on the school board and gave me my diploma. I wouldn't say that my father was one of those persons who would put his arm around you and have father-and-son kind of talks. On the other hand, I always felt very comfortable with my father.

Ms. McKeehan: It sounds like he and Rachel were both kind parents?

Justice Dolliver: Yes, they were. As a matter of fact, when he retired from Congress, I talked to the woman who worked for him, Jo Birdshaw, and she said the one thing she was going to remember about Mr. Dolliver was that he was very kind. I have always thought that one of the things you should aspire to was to be kind to other people. I do know that he had a terrible temper, and I think he spent most of his life trying to control it. I have a temper too, but I don't shout and don't curse. I never heard my father say "damn" during his whole life. He never cursed, never raised his voice, and he was very kind to us. He was a good man to grow up with. He really was.

Ms. McKeehan: You said Rachel is still alive. Is she still in Fort Dodge?

Justice Dolliver: No. She is in a nursing home in Columbia. A sort of half-way house, I guess it is. No. She and my father lived down by Waynesville, Missouri, until he died. Then she came up to Sedalia, Missouri, and bought a duplex. When she got too old to stay in that, she went to a place in Columbia so she would be near my brother. That's where she is now. She is ninety-seven.

Mr. Clark: Tell us about your brothers and sisters.

Justice Dolliver: I have a sister who lives in New Zealand and a brother who is retired from the insurance business. He lives right outside Kansas City. Another brother is a professor of psychology at the University of Missouri in Columbia.

Mr. Clark: Then there are four of you.

Justice Dolliver: Four of us; that's right. My sister went to New Zealand and married a New Zealander. In fact, he had spent most of his working life working for UNESCO. She had been up in British Columbia, in Victoria, and met him up there and married him up there. I take that back. She met him at the University of Minnesota. He was a Fulbright Scholar and was over on a Fulbright, and she met him there. Then they went to Victoria and worked for a while there for the British Columbia Hydro Power. Then he connected with UNESCO—he was a hydraulic engineer and went to various places around the world, finally winding up in Paris with UNESCO. They bought a place out in the country, an old farmhouse they refurbished and fixed up. The last summer they were in Paris was the summer that Barbara and I had a chance to see them—back in 1983, I think it was. We went to Paris and went out to their home in a place called Monneville. They took us around the western perimeter of France by automobile and went up to Normandy and over on the coast, down to Bordeaux, and up through the Dordogne River, then back up to the central part of France to return to Paris. We had a wonderful time with them on that particular trip. His family had emigrated to New Zealand from Scotland. There was some property in New Zealand, and so he went back there—and she, of course, went with him. She has become a New Zealand citizen.

Mr. Clark: Let's go to December 7, 1941. Do you remember where you were and what you were doing?

Justice Dolliver: Exactly. I was in the principal's office at Fort Dodge High School. A group of us were going to come up with ideas for the high school during the coming year. The principal was there. This was about one o'clock, and the news came over the radio that the Japanese had attacked Pearl Harbor. So that's where I was.

Mr. Clark: Did you hear Roosevelt's speech the next day, the "Day That Will Live in Infamy" speech?

Justice Dolliver: I can't remember whether I did or not. Prior to Pearl Harbor, my father expressed some antipathy toward England and Europe. He was an "America Firster" in the years before the war, but not virulently so and not standing on a soap box. His position was that he didn't want the United States to be involved in a European war. But once the war came, why of course, that all changed.

Ms. McKeehan: Did you know right away that you would go into the service?

Justice Dolliver: Yes.

Mr. Clark: Did you join the Navy the year you graduated from high school?

Justice Dolliver: Yes. What happened was I graduated in June 1942, and in August the four of us went to Minneapolis to enlist in the Navy. But we weren't called up until a year from that time. I went to school in the meantime at a community college, and we were called into the Navy in August of 1943.

Mr. Clark: How old were you when you enlisted?

Justice Dolliver: I was seventeen.

Mr. Clark: You had to have your parents' permission to enlist, didn't you?

Justice Dolliver: They gave it. No question about that.

Mr. Clark: Where did you report for training?

Justice Dolliver: We went, first of all, to St. Olaf College, which I suppose was a boot camp. Then we went to Iowa City for pre-flight training. Then we went to Minneapolis where we learned to fly a yellow biplane. It was the N2S. We called it "The Yellow Peril." This was in primary flight training.

Ms. McKeehan: Were biplanes the kind that people did stunts with? Did you fly upside down or do stunts?

Justice Dolliver: Well, obviously we did chandelles, and we did spins. The instructor was always interested to see if we knew how to get out of a stall, so he would stall the airplane and let us get out of the stall. We would do that, and then we would have a dead-stick landing. In other words, he would turn off the engine, and we would try to bring the airplane in without any power. Those are the kind of planes they use for stunt planes, and those are the kind of planes where they used to walk on the wings; but we didn't do that kind of thing.

We went to Corpus Christi for intermediate training. I got commissioned in Pensacola. I got commissioned in the Coast Guard, and I was sent back to Corpus Christi for some more training. I was there when Franklin Roosevelt died.

The reason I went into the Coast Guard was that I wanted to fly. If you got commissioned in the Navy, you were going to be a navigator on a B-24, which didn't

sound very appealing to me. If you got into the Coast Guard, you would fly. So I said, all right, I'll go into the Coast Guard.

Mr. Clark: Where were you stationed in the Coast Guard?

Justice Dolliver: At Elizabeth City, the main Coast Guard station on the East Coast, and they put me on detached duty to the Norfolk Naval Air Station. There were three or four of us who were pilots and a couple of Waves, or whatever they called them in the Coast Guard, and I think we had a chief. We may have had one or two enlisted men. I can't remember. We would fly these ancient old PBYS that had been wonderful planes, but we would get the planes that had been surplused by the United States Navy, and by the time they came to us, they were pretty bad. We flew them anyway.

Mr. Clark: You flew search and rescue missions?

Justice Dolliver: We were suppose to be search and rescue. By the time I got commissioned and went to Elizabeth City, the European war was, in effect, over. We did some flying out over the ocean just to check on the shipping. Most of the time we went up and down over the East Coast. At that time, as you will remember, the Coast Guard was part of the Department of the Treasury. We were like revenueurs. Anyplace we would see some strange looking smoke, we would report to our superior officers, and they would send somebody in to look for moonshiners. We never did catch anyone, I'm afraid. But we did an awful lot of low altitude flying looking for someone with a still. As far as the air search was concerned, we were mostly on standby.

I escaped by one number from being sent up to Greenland. The guy right ahead of me got sent up there, and they didn't get to me. I

was next in line, though.

Ms. McKeehan: Would you have wanted to go?

Justice Dolliver: Well, no. I would have gone, of course, but I was not champing at the bit to go to Greenland.

Mr. Clark: How do you look back on your military career? Did you have a good time?

Justice Dolliver: Yes, I guess I had a good time. But I must say, I was not a military person. My father offered to send me to West Point or Annapolis, but I said no. I didn't care for the life of the military at all. I was not opposed to it, but I didn't want to make a life of it.

Mr. Clark: After your discharge from the Coast Guard in 1946, did you ever fly an airplane again?

Justice Dolliver: I flew a couple of times. In fact, the last time I flew an airplane was when I took my soon-to-be wife up for a flight in Pennsylvania. I went out and rented a plane and then took it up for a spin. Not since then. That was back in 1946 or '47, I believe, probably '47. When I came out to Seattle to go to law school, I checked with the Navy at Sand Point where they had airplanes to see if they would let a Coast Guard Reservist fly, and they said no. I wasn't all that enthusiastic about flying anyway, so I have not done any flying since then. In fact, I don't have a license now, and I don't know whether I could fly an airplane now if I had to. I probably could, but I don't have any real interest in flying.

Mr. Clark: You entered Swarthmore College right after the war?

Justice Dolliver: Right, 1946.

Mr. Clark: And what was your major?

Justice Dolliver: Political science.

Mr. Clark: Were you involved in any out-of-class activities, like debate?

Justice Dolliver: I was a debater, and I was a disk jockey. As a matter of fact, that's how I met Barbara, as a disk jockey.

Mr. Clark: That's when Glenn Miller was still your favorite band?

Justice Dolliver: Yes. But as a D. J., I had a classical program. My theme music was the third act of the *Die Meistersinger* by Wagner.

Mr. Clark: How did you become interested in Wagner?

Justice Dolliver: Well, I liked Wagner. His music appeals to me.

Mr. Clark: Have you ever been through a full Ring Cycle?

Justice Dolliver: Yes. In Seattle at the Opera House. I guess it's sort of the seductive quality of his music, more than anything else, that I like. He knows how to use French horns and violins.

Mr. Clark: No tenor saxes, though.

Justice Dolliver: No tenor saxes, no. I must say his politics were a little screwy, but the music is wonderful.

Mr. Clark: As a college student, you took summer jobs in the Olympic National Park?

Justice Dolliver: Right. I started to school that fall, the fall of '46, and that next summer I came out and took a job with the Olympic

National Park. I was there for five years. Five summers. Three of the summers I was at the Elwha Ranger Station.

Mr. Clark: Oh, you were a park ranger?

Justice Dolliver: I was a park ranger. The year Barbara and I were married, the summer of 1949, I went to Elkhorn, which is in the interior of the park. And then in 1950, I went out to Ozette. At that time, Ozette and the whole ocean strip were not a part of the park. It was still under the control of the Interior Department. When Harry Truman left the presidency, he incorporated that into the park. I was the first ranger ever assigned out there, in 1950.

Mr. Clark: Why don't you try to give us your reaction, as a young man from Iowa, to the Olympic Peninsula when you first saw it. And tell us why you came out here in the first place.

Justice Dolliver: Well, I think I came here because I was looking for a job that summer. I'd never heard of the Olympic Peninsula, and I had never been here before. At that time, my father had been elected to Congress, the same term, the same year as Henry Jackson, and he knew Scoop, and, as apparently they do back there, he said, "I have a son who was in the service and who's looking for a job. Can you help?" Jackson was a member on the Interior Committee, and so I got the job at Olympic National Park. I guess the things that got me about the state of Washington are the trees and the mountains, the amount of forest you had. We had trees in Iowa, but not the big fir trees and the mountains. I just fell in love with the place. I can't put it any other way than that.

I got weary of the sameness of the Iowa scene, and when I came to Washington, it was a different country. And, of course, in the 1940s, Washington was a good deal more

primitive than it is now. I had the feeling that I was really coming out to the frontier, as perhaps I was.

Ms. McKeehan: Did you know the Quileute Indians very well in those days?

Justice Dolliver: When I was a ranger at Ozette, I would go down to the Quileute Reservation on occasion.

Mr. Clark: Have you walked the ocean beaches much like, oh, from the Hoh River up to La Push, or La Push to Neah Bay?

Justice Dolliver: I have walked La Push to Neah Bay. I have not walked from the Hoh to La Push, but I've gone from Cape Alava down to La Push, and I walked up in the other direction toward the Point of Arches. When I was a ranger out there, I made the trek from Ozette all the way down to the north side of the Quileute River, so I did see La Push right across the river from where I came out.

Mr. Clark: You graduated in 1949, and you were married in 1949?

Justice Dolliver: I was married in 1948. We were married on December 18, 1948.

Mr. Clark: Her name was then Barbara Babcock. Where was she from?

Justice Dolliver: She was from a place called Auburndale, which is right near Boston and is part of the city of Newton. I met her at Swarthmore.

Mr. Clark: Did you meet her your first year?

Justice Dolliver: No. I think it was the second year.

Ms. McKeehan: What was she majoring in?

Justice Dolliver: She is an English major.

Mr. Clark: Did she plan to teach?

Justice Dolliver: No, but she did some teaching. She taught when she got out of school for a while. And she used to teach out at the community college here and down in Centralia. Taught writing.

Mr. Clark: But you met her somehow in connection with your radio program?

Justice Dolliver: As I remember it, her roommate brought her into the radio studio to see me, and it was sort of a blind date. And the rest, as they say, is history. Barbara may have a different story.

Mr. Clark: You were married after your graduation?

Justice Dolliver: No, after her graduation in '48, but before my graduation.

Mr. Clark: After your graduation, you came to Seattle. Did you come to Seattle because you wanted to be near the Olympic National Park?

Justice Dolliver: Well, no. I came here because I wanted to go to the University of Washington. My father gave me some advice. He said to go to school where you would like to live. I liked the state of Washington so I decided to live out here. By going to the University of Washington Law School, I got to meet numerous other law students, many of whom subsequently became lawyers in the state of Washington. So, when I got myself involved in politics, I knew somebody in nearly every community of the state.

Before my father advised me about going to law school, I thought about going to Harvard. Now I don't think it is necessary that

you go to the law school in the state in which you plan to live. My son, for example, went to the University of Chicago Law School and got a good education there. Of course, I had lived out here so the Dolliver name, at least, had some currency. As I look back upon it, I think the reason for going to a place like Harvard is simply a matter of prestige. It had greater prestige than the University of Washington, which I think is unfortunate, because the legal education you receive at the University of Washington is just as good, if not better, than you receive at Harvard or Chicago.

Mr. Clark: So you showed up in Seattle in 1949, and you were married. Where did you live?

Justice Dolliver: We were lucky. We had a place in Carkeek Park. The house we lived in had been built as sort of a weekend retreat. An eye doctor found out, much to her sorrow, that she couldn't afford to maintain this place without any income from it. So, my entire career at the University of Washington, I lived in this particular house with Barbara. It had a large living room and a kitchen, bedroom, bathroom, and that was it. All on one story. Rather rustic. In the woods. We enjoyed it very much.

Mr. Clark: You were really fortunate.

Justice Dolliver: Very fortunate.

Mr. Clark: Were you ever around Union Bay Village where all the veterans, married veterans, lived?

Justice Dolliver: We had some friends who lived in Union Bay Village, and that's probably where I would have lived if this opportunity hadn't come along. This just came out of nowhere up at the Housing Authority

at the University of Washington.

Mr. Clark: Did Barbara enroll in graduate school?

Justice Dolliver: No, she did not go to graduate school. It was our feeling that an education from Swarthmore was probably worth most graduate degrees anyway. That was sort of a snobbish attitude we had.

Mr. Clark: What kind of social life did law students have in 1949?

Justice Dolliver: Well, I suppose you could say "limited." You had the pressure of law school on you all the time—trying to learn about tort reform, property law, criminal law, and so forth and so forth. It was a real wrenching experience, particularly the first year, when you had to begin to learn the various terms of law. So your social life was very limited. I think that, well, particularly because we were so far away from most of our friends who lived in Union Bay Village or in places like that. We would see them occasionally and visit back and forth with them, but it was quiet.

Mr. Clark: On vacations, did you go back to Iowa or go to the Olympic National Park?

Justice Dolliver: We would do both. My parents had a summer home on a lake in Northwest Iowa, and we would go back to see them for a couple of weeks. We would pack up the car and take the whole gang back there. And then I would always try to climb one peak a year, someplace in the Olympics, not necessarily the biggest. I had thought when I came out here that I would spend a lot more time hiking in the Olympics, but I really didn't.

Mr. Clark: When was your first child born?

Justice Dolliver: 1950. In April 1950.

Mr. Clark: In law school, besides reading law books, did you have time to read anything else or go to the theater or museums?

Justice Dolliver: I did lots of reading. You can see the books around here. I am one of those people who was blessed with a gift of reading very rapidly, absorbing very rapidly. I don't claim to have a photographic memory, but I am a fast reader. To me, reading was recreation. I enjoyed it.

After law school, we used to go to the opera regularly. But it became difficult. In the early years, I was living down here in Olympia as a law clerk, and it was hard to get from here to Seattle. It was only sixty miles away, but it seemed like an eternity. They had no freeways in those days.

Mr. Clark: A lot of people you knew as a student probably became quite prominent politically in later years.

Justice Dolliver: Actually, some did, although I think none was as involved in politics as I was. There were a number of persons in my class who became judges of one kind or another, superior court or federal judges. But the state of Washington has not, by any means, been vintage Republican country. I ran a couple of times unsuccessfully on the Republican ticket for prosecuting attorney in Clallam County and in Snohomish County and was roundly beaten each time.

Mr. Clark: As a law student in '49, '50, did you pick up any echoes of the Canwell hearings?

Justice Dolliver: I was aware they were going on, but I can't say that I paid much attention to them. At that particular time, I was not involved in politics at all. Of course, I looked

upon Mr. Canwell with a certain amount of disdain and wondered how, in the name of time, a good, loyal Republican like Canwell could ever get involved with stuff like this.

Mr. Clark: You were a contributing editor to the *Washington Law Review*?

Justice Dolliver: Right.

Mr. Clark: Did you find it stimulating?

Justice Dolliver: Yes, I did, very much.

Mr. Clark: What kind of stuff did you edit?

Justice Dolliver: Back in those days, the law review and the *State Bar Journal* were a joint publication, so we had both of them. We had to have regular stuff in there, the kind of thing they have now in the *Washington State Bar News*. Appealed to the working bar, so to speak. There were the *articles* themselves that usually were from my professors or from lawyers who had graduated and been in practice. Then there were *comments* by persons who had just graduated from law school. Then there were *notes* done by individual law students. I was responsible, mostly, for getting the contributions for the notes.

Mr. Clark: Did you go out and generate material, or did it all come in by the mail?

Justice Dolliver: Mail. We never had any trouble getting material.

Mr. Clark: I've read also that you were student body president. Is that of the law school?

Justice Dolliver: The law school. Actually, I sort of came in there backwards. I was elected vice president of the student body. Then, when

the president graduated in December, I became president for the last semester of law school—from December through May.

Mr. Clark: Were you planning, even then, to enter politics?

Justice Dolliver: Well, I suppose I was. Perhaps that is the sort of thing that was bred into me. I enjoyed it. I was president of the student bar association, and I was also the traffic judge for the University at the law school, dealing with a wide variety of people.

Mr. Clark: You were certainly involved in a lot of things. After graduation, you served as a law clerk to a State Supreme Court judge?

Justice Dolliver: I served as a law clerk to Judge Fred Hamley, yes.

Mr. Clark: What kind of job was that?

Justice Dolliver: Well, back in those days, it was somewhat different from what it is now. Currently, each judge has two law clerks, and they are so-called “elbow clerks.” They sit in the suite of offices with the judge. Back in those days, the judge was upstairs, and the law clerks were separate. In fact, we were so separate that some of us were in the “bays”—the bay windows of the library. That was where I was, and I had a desk and a chair. I was very comfortable there. Some of the other law clerks were downstairs sitting around a large table in the chief justice’s conference room. When a case was assigned to my judge, I would write a long memorandum to the judge (hoping some of it would appear in the final opinion) giving my views on a particular case, on jurisdictional questions, as well as substantive questions.

The major thing about being a law clerk back then, and I think it’s probably still true, is just the chance to work with the judges on

the Supreme Court, particularly my judge, who was really a very fine judge.

To give you some idea of how things have changed since then, I was simply a legacy, I guess, from the previous law clerk, Larry White, who had been a pal of mine in law school. He suggested me to Judge Hamley. And I went. I think I had one interview, and that was it. When it came time for me to leave, I suggested another person, Gordon Crandall, and Judge Hamley hired him. In those days, very few people applied for the position of law clerk. Now, judges are simply inundated with applications from all over the country, and they do a good deal of hiring. Most of the applications come from the University of Washington, Gonzaga, or Seattle University, but we get them from all over the country. My last law clerk, for example, was a man from Columbia University Law School.

Mr. Clark: I’m sure being a law clerk would have been quite a distinction. What were your job opportunities after you left the judge?

Justice Dolliver: The question is what are you going to do with yourself, and I, perhaps foolishly, following the example of my father, decided to start my own practice. I went to Seattle and had one interview at the Perkins Coie firm. I’ll never forget. I went in for the interview and saw the great man himself. The first question he asked was, “Are you an English major?” I stuttered and said, “No. My wife is.” And that was the end of that. He didn’t want me, and I didn’t want him.

Actually, I was surprised there were so few opportunities. In fact, that’s the only time in my life that I had to go out and make the job for myself, rather than have somebody come to me. And so I decided I would go to Port Angeles and set up practice there.

Mr. Clark: Were you sharing a practice there?

Justice Dolliver: No. I was alone.

Mr. Clark: What kind of practice did you have?

Justice Dolliver: Anything that walked in the door. In Port Angeles we had a fairly good spread of land, about ten acres, as I recall, and we would rent out the pasture to people who grazed horses. Some months I would make more from pasturing horses than I would from practicing law. One of the secrets that lawyers have is that there is a lot of work—appraising and things of that nature—that judges would appoint young, struggling lawyers to do. So I was appointed. In that way, I was able to keep alive.

We enjoyed Port Angeles very much. Our place was out in the country, up the hill toward the mountains. The heating system was...we had none, to be frank about it. The water system was a well, which went dry in the summertime, and the electrical system had to be fortified by pennies put in the back of the fuse box. So that tells you the kind of house we were staying in. It was a place called “Wagon Wheel Ranch.”

We had a wonderful time. We could see the city of Victoria from up on the hill. We had two children at that time, James and Beth. We had a third child, Peter, in 1953. So while living in Port Angeles, we had three children. Port Angeles is one of those towns which, because of its isolation, it really is self-contained, so you had to make do for the things you liked, like drama or the arts or anything of that nature. I know it’s hard to believe, but I was in a play while I was here in Olympia the year before, and then I went to Port Angeles and was in the same play and had the same part.

I tried to get involved in the life of the community as much as I could. Barbara worked for the newspaper. She was a proofreader. We had a great time.

Mr. Clark: That’s remarkable, because in many ways Port Angeles must have been rather confining. Wouldn’t you have rather been in Seattle?

Justice Dolliver: I liked the country. Port Angeles sits right below Hurricane Ridge, which goes up nearly 8,000 feet. We had to make our entertainment. We had our own drama society. That was the time, you may recall, when the University of Washington was running around and getting cities about that size to do a self-analysis of themselves, and I was there and active when Port Angeles was involved. Sure, I missed Seattle and all that went with it. But on the other hand, Port Angeles was a place that you could help grow and be a part of. It was very satisfying.

Mr. Clark: Was your family raised in the same kind of religious atmosphere you knew as a boy?

Justice Dolliver: I suppose, perhaps not, because by that time the world had changed. As I have mentioned, when I was growing up in Fort Dodge, everybody belonged to a particular church. There were, in fact, two different towns in Fort Dodge. One was the Catholic town; one was the Protestant town. And they were antagonists. Many cities had the same situation.

But by the time I got to Port Angeles, that was no longer the case. So, although both of us were very active in the local Methodist Church, and there was no question of our particular loyalty, it was never a “churchyness” in the sense of “do things this way, that way, or you are consigned to the devil.” Didn’t believe in that kind of stuff at all.

Mr. Clark: This may be a good point to ask you more about your family. I’ve read that your family was nominated to be the All-

American Family in 1970 and that you went to Gainesville, Florida, that summer to face a panel of judges headed by Margaret Mead. What was this all about?

Justice Dolliver: It was one of those things. Actually, the year before, the family that was the Washington state “Family of the Year” were friends of ours from Olympia. So they nominated Barbara and me, and I suspect the reason we were chosen was that we had adopted two children who were minority children. We went to Florida—it was Fort Myers, not Gainesville—and had a lot of fun.

My memory is a little blurry about the whole thing. I know that our kids were fascinated by Margaret Mead because she had a thumb stick, and she would put her thumb on a thumb stick, and they were fascinated by that.

Mr. Clark: How large was your family then?

Justice Dolliver: We had six then.

Mr. Clark: You had six then, and two of them were adopted and were of African-American descent?

Justice Dolliver: Yes.

Mr. Clark: When did you decide to have a biracial family?

Justice Dolliver: I think, probably, some time during the 1960s. During the 1960s it became a popular thing to do. I was of the view as a professional that ultimately one day all this racial nonsense is going to be a thing of the past. We will quit judging people by skin color. I guess I’m sort of a Martin Luther King advocate in that regard.

And I suppose in a sense I was trying to prove a point, although I would deny it publicly, because of the particular position I

had. Although no one has ever criticized me to my face, they might whisper behind my back, but I never worried about that kind of thing. As a consequence, we had no trouble at all in raising those kids. They were just as much a part of our family as anybody else could have been. From our standpoint, it worked out very successfully. But again, it was part of the temper of the times, I think, more than anything else.

Mr. Clark: When you decided to do this, did you know any other people who had done it? Did you have friends who...

Justice Dolliver: As a matter of fact, at that time I was in the governor’s office in the late 1960s, and a man whose name I can’t recall now, a secretary of state, had a son who adopted a biracial person. It got me thinking about it. Barbara and I both happen to like children.

Mr. Clark: Well, you went to Fort Myers, and you met Margaret Mead. What happened? Did you win?

Justice Dolliver: We did not win. And I guess we had sort of a superiority attitude, nose-in-the-air attitude. We were not down there to win. We were down there to have a good time, so we did. Whether we could have won, I don’t know. It was a P. R. thing more than anything else.

Mr. Clark: What was your impression of Margaret Mead?

Justice Dolliver: Oh, she was a nice person. Pretty bland. That’s the way she came across. At that time, of course, we weren’t arguing on an academic level about her experiences in the South Sea Islands, or anything like that, and she was fairly old by then. She was, as I recall, in her late sixties. She was more of an

icon than anything else at that particular time in her life, but, I guess I would have to say we were not particularly impressed by her one way or the other.

Mr. Clark: Justice Dolliver, this would be a good place for you to name all your children for us, sons and daughters, and tell us something about them and what they're doing now.

Justice Dolliver: The oldest one is Elizabeth Lee. "Lee" is a family name from Barbara's family. She is called Beth. She went to Sharthmore. She has three children: Annie, who is at Western Washington University; Katie, who is in high school; and Morgan, who is the infant. He is at home with them. She married a man by the name of Philip Thompson. She works for Seattle Metro. She is a personnel officer and has been there for, I don't know how many years now. He is with Perkins Coie.

The second one is James Rogers. He was born in 1951, November 2. "Rogers" is my grandmother's maiden name. He went to Evergreen. He is a whiz at computers and works for the Department of Labor and Industries. I have no idea what he does, except he understands computers. I think he is a troubleshooter more than anything else. He is not married.

Ms. McKeehan: What do you think about The Evergreen State College?

Justice Dolliver: Oh, I like Evergreen. I was on the committee that picked the third president, the successor to Dan Evans. The thing that bothers me about Evergreen is that everyone is in charge; therefore, no one is in charge. I think they still haven't come to terms, in my opinion, with the governor that started the institution. They've had some good presidents who, I think, did a wonderful job.

Back in the days I was working for the court, before someone told me to stop this, I used to pick up kids hitchhiking; and I picked up a lot of Evergreen students going from Olympia to Seattle. They were brilliant without exception. There is no question in my mind but that the kind of education that one gets at Evergreen is a good education. I think that both James and Peter, particularly James, had an excellent education at Evergreen.

But I myself would probably not fit in there. I am one who believes that with education you sink a shaft into a particular subject, whether it be English, or history, or you name it, and then go out and sort of side-drift to various other things in the particular area that interests you. At Evergreen, the idea is to divide everything up into various groups. I like a little more order than that.

In fact, I thought at least the education I had, and the interests I developed from the education, were not because they were in different departments but because one department would branch out and discover a wide number of things. I always felt that was a better way of having an education than to divide things up into a whole series of groups willy-nilly.

The next son was born in 1953. He is Peter Morgan. "Morgan" was the name of my natural mother. Peter also graduated from Evergreen. He is married and lives in Gig Harbor. He married an airline pilot, a Delta airline pilot, and she flies, I think, 757s. He works with the Department of Social and Health Services in Bremerton. They have a very nice place, not in Gig Harbor itself but on Point Fosdick, which has a beautiful view of the water down toward Olympia.

Ms. McKeehan: What does Peter do for DSHS?

Justice Dolliver: He works on developmental disability. That's why he's extremely helpful

to me because he deals with people such as I who are somewhat disabled—all the way from partially disabled to people who are profoundly disabled. He has over a hundred people, I think, that he has to work with. But he is primarily with the developmentally disabled persons.

Next is Keith Ranger. He was born in 1963. He's been married for about three years. His wife's name is Barbara, and they live in Bellevue, actually just on the line between Bellevue and Issaquah, out on Tiger Mountain. He's a lawyer. He's the only one that became a lawyer, and he used to work for the Preston firm, but he quit and now works with Microsoft as an in-house counsel. He went to Swarthmore and to the University of Chicago Law School. A very bright boy.

Ms. McKeehan: Is Keith involved in Microsoft's current antitrust lawsuit?

Justice Dolliver: I don't think so. He is in the legal department, and I have talked to him about that—sort of kidding him—but mostly he is in the acquisition field, merger and acquisition. As such, he goes to various countries. He's been to England, and he's been to Canada. He's been to Israel. I accuse him of going to Israel to buy the country, but he said, no, he just had a company over there that they were interested in. That's primarily what he does.

I have talked to him about what kind of lawyer he wants to be. He would rather be a back-room lawyer than a front-room lawyer. In other words, he doesn't like the activity in the courtroom particularly; but he does like the activities involved with Microsoft. He worked for Preston Thorgrimson for about a year after he got out of his clerkship. The Preston firm was the outside firm for

Microsoft, and so Keith decided he would join Microsoft.

Mr. Clark: What would your own preference be—back-room lawyer or front-room lawyer?

Justice Dolliver: Well, I liked appeal work. I'm not sure whether I would be a very good front-room lawyer or not. I don't know whether I would be able to put up with the rough and tumble of a courtroom; but I did like appellate work a lot. I enjoyed that when the problems are brought to you, and you are called upon to solve the problems, I liked that.

Next is Jennifer. She is one of the adopted children. She was born in 1967. She went to art school for awhile and was very talented at commercial art. She is not married. She is 31 now, and she works in Seattle for an outfit called Hairmasters. She is an assistant manager for Hairmasters, although she is a little uncertain right now as to what's going to happen because they were bought out by somebody else.

The last child is Nancy, who, I regret to say, is in prison. She is half black, half Japanese, and an extremely bright girl. I think she held every record in the state for the sprints when she was in high school, but somewhere along the line drugs got a hold of her. She can't let them go, unfortunately. So, she's been in jail and was out. Was on parole. Got a hold of them again, and they caught her. So, she's in the San Francisco Jail now, but, I suspect her case will come up soon, and she'll probably be sent to prison for another two or three years, I would imagine, plus the time she'll have for breaking her parole. But she's been in the San Francisco Jail for six months. And, that's it.

Ms. McKeehan: That's a very sad story.

CHAPTER 2

MANAGER, ADMINISTRATOR, POLITICAL STRATEGIST

Mr. Clark: In the late '50s you worked in Washington, D.C.?

Justice Dolliver: Right.

Mr. Clark: In the office of Congressman Jack Westland. Can you tell us how you got that job?

Justice Dolliver: Well, I think what happened was my predecessor, an insurance man from Everett, wanted to go home and work full time at his job. Westland had heard about me and asked me if I'd take the position. At that time, I was in Port Angeles, and I wasn't making a lot of money, and the job appealed to me. I got an increase in salary, and I knew Jack, so I went back.

Mr. Clark: You were there for six years?

Justice Dolliver: For six years, yes.

Mr. Clark: During that time, was there any memorably singular event that...

Justice Dolliver: Well, things were very quiet. It was the second term of President Eisenhower, and there were no memorable actions that I saw during that period.

Mr. Clark: Congressman Westland seems to have faded away fairly quickly.

Justice Dolliver: He was beaten in 1964 because he was a great Goldwater supporter and neglected to take care of the home front in the campaign. He moved to Monterey. He was also a great golfer. He won the national amateur championship in 1952, the year he went to Congress, and was much in demand to play golf with various dignitaries in Washington, D.C. He got out of politics entirely.

Mr. Clark: When you left his office, you became the attorney for the House Republican Caucus in Olympia in 1963?

Justice Dolliver: That's right.

Mr. Clark: Was it a big new experience for you, or did you already understand how state government works?

Justice Dolliver: That's really the first time I had been in state government. I was interested in politics, and 1963 was an exciting year for me in that position. But I knew nothing about state government at all. Why did I get the job? Well, my predecessor, Ray Haman, was a lawyer from Seattle, and he and I were good friends. He recommended me for the job, and I took it.

Mr. Clark: You were representing the caucus that Dan Evans had organized in Olympia?

Justice Dolliver: Yes. I was the attorney for the Republican Caucus, and that was the year of the great coalition when six Democrats joined with forty-eight Republicans to take over the House. In a situation like that, you're not going to get very much done substantively.

Mr. Clark: This was a kind of bipartisan

session, then?

Justice Dolliver: In order for the Republicans to control the House, they had to make a coalition with six dissident Democrats, one of whom became the Speaker of the House. It was a difficult session. I think that the major thing that happened was that some of the initiatives of Governor Rosellini were stopped. His ideas on the Liquor Board, for example, didn't go anywhere. I think the '63 session will be known more for the coalition itself, which was a stunning kind of thing, mainly because it was kept secret so successfully. Nobody knew about it. It marked the end of a particular era in Democratic politics, and a new era in Republican politics.

Ms. McKeehan: But nobody knew about it?

Justice Dolliver: It was the best kept secret either before or since. When the House convened to elect a speaker in January 1963, the first ballot showed 48 votes for Evans, 45 for the Democratic incumbent, John O'Brien, and 6 votes for Bill Day. Bill Day was a 300-pound chiropractor from Spokane who led a small group of insurgent Democrats who thought their state platform was a bit too liberal for them.

Anyway, on the third ballot, Evans signaled to Republicans that it was time to shift votes to the chiropractor. (They had worked all this out in an early morning caucus.) The first Republican voter was Al Adams, an orthopedic surgeon. You can imagine his feelings about voting for a chiropractor. I'll never forget it. Adams turned around and said in a very loud voice, "Day." And away it went. About a third of the way through the roll call, when the Speaker began to realize that he was going to lose because of the coalition, he came roaring down the central aisle, but it was too late. The votes had already been cast.

Ms. McKeehan: Who took the initiative to persuade those six Democrats?

Justice Dolliver: Probably Evans. Evans and Gorton were the two brains behind the operation, and there were two parts to it. First of all, they had to persuade the Democrats to throw in with the forty-eight Republicans, and secondly, they had to promise that certain jobs would be given out. The speakership, for example. Then the Republicans consolidated their position, and Bill Day became blind in one eye. He couldn't see the Democratic side. He saw only the Republican side. From that point on, there was nothing to it. The thing was well-organized by the end of the first week.

Mr. Clark: In the following year, 1964, you managed Dan Evans' campaign for the Republican nomination for the governorship.

Justice Dolliver: Right.

Mr. Clark: This must have been one of the most brilliant campaigns in all of state political history. I say this because, first of all, you took a little-known legislator from an elite Seattle district and ran him against a very popular two-term governor. Your candidate then refused to support Barry Goldwater, the Republicans' choice for president and thus placed himself at odds with the conservative wing of his own party. Your candidate had no obvious financial base. This becomes a very complex question. Maybe you can help me manage it, but the question, of course, is how did you do it?

Justice Dolliver: Well, I'm not sure. Looking back on it, I sometimes wonder myself. But it was a lot of hard work. There were lots of brilliant people that worked on the thing. Of course, Evans himself and Joel Pritchard and Frank Pritchard. C. Montgomery "Gummie"

Johnson. We—the steering committee—would get together Sunday afternoons someplace in Seattle. Dan and I would drive up from Olympia. We committee members would go at each other hammer and tong. I called us “the Chinese Communists” because we really shouted at each other as hard as we could. But at the end of the day, we decided what we would do. And no hard feelings. On Monday I told the troops, either by telephone or directly, what was going to happen each week, where we were going to be, what we were going to do, what I expected at the end of the week. Then I would report next Sunday as to what had happened.

We learned to use television. We had been afraid that Evans might appear uptight and very prim and proper on TV. You will remember that two years earlier the Republicans had a candidate by the name of Dick Christensen running for the United States Senate who was very good on TV. He came within 50,000 votes of beating the very popular Warren Magnuson. Well, he decided to go against Evans for the governor’s office in 1964.

But Evans beat him easily in the Republican primary. It turned out that Evans was an absolutely brilliant performer on TV. He would look right into the camera, and he was very serious. He had a good voice, and he was one of those people who, you know, had a perfect sense of timing. If he had ten seconds left, he took ten seconds exactly. It was amazing. He also had a phenomenal memory. He was able to recall things better than anyone I’ve ever known.

In the campaign, we enlisted the help of lots of people. We had an organization in every community. I had been active in Republican circles for many years, and I knew a lot of people, as did Dan. His wife, Nancy, had great connections through Whitman College. We found a number of her former classmates, and we enlisted them. So, by the

time it was over, we had a campaign organization that really worked.

We pioneered the idea of having a cheap flyer to hand out. It was a newspaper, actually, and we handed out literally hundreds of thousands. This described the Blueprint for Progress: it spelled out each goal, one through twelve. And these were not pie-in-the-sky ideas; they were specific goals that could be achieved. For example, eliminating the extra appointee for probate appraisals. That was a very simple kind of thing to do that saved money for every estate. And eliminate the Tax Commission. We did that very easily by simply setting up a tax commissioner, the director of revenue, who handled taxes instead of the commission. These were basically good government-type things. They were more procedural than substantive, I would say. They were easy to understand, and there were twelve of them. This idea of the Blueprint for Progress had a tremendous resonance among people.

The campaign had three parts. First of all, we had to get Evans known. Nobody knew who he was. I took on the driving responsibilities, and, I must say, I set a few records. For example, one day we started out in Spokane, went to Colville for breakfast, went to Republic, across Sherman Pass, for brunch, came down to Yakima for an afternoon coffee hour, then drove over to Tacoma that night for a big affair in one of the theaters downtown. The road across Sherman Pass was very convoluted and very slick because it was wet that day. But I enjoyed driving, so that kind of thing didn’t bother me at all. To make the Evans’ name known, we had to get him around everyplace we could. Where two or more people gathered, there he was.

The second thing was we had to beat Christensen. Evans’ absolutely brilliant presence on TV helped us there more than perhaps anything else did.

And third, we had to beat Al Rosellini, the incumbent governor. All this required raising money, and we raised about \$350,000, something like that. All of this in small contributions. That was before the Public Disclosure Commission and things like that. So we could raise as large amounts as we chose to, if we could, but we had a man working for us by the name of Fred Baker. As far as raising money was concerned, he was an expert, and he really knew how to do that and could shake the tree for us. By August of 1964, it finally appeared that Evans was actually going to win the primary. If he won the primary, he would win the general. Once that happened, why, we had all the money we wanted. Lots of money came in. The, what I would call, Republican establishment really began to give to the Evans campaign, but it was a remarkable campaign.

The number of people we involved in the campaign was phenomenal. We had another device, which is now used, but I think was pioneered by Evans, the newspaper ad. If you gave a dollar, you would help buy a newspaper ad. So we would have these row after row of names in a full-page ad paid for by friends of Dan Evans. The attempt was to get as many people as possible who were involved.

As far as Goldwater was concerned, Evans didn't, at any time, denounce him, but the thing we were concerned about was that he and Goldwater never get photographed together. We had a man, Don Moos, by name, whose responsibility it was to get on one side and go around to the other side and not to let the cameras get the two of them together. He was successful. At no time during the campaign were the two of them ever photographed together. Much of the strong support Evans had was from what I would call Goldwater people who could not stand some of the excesses of the Goldwater campaign. We got them to support Evans. So there was no ideological argument of any kind during

the campaign between anti-Goldwater and pro-Goldwater as far as the Evans camp was concerned. It simply didn't happen.

Mr. Clark: Remarkable. Do you remember what kind of newspaper support you had in '64?

Justice Dolliver: I don't recall. It was pretty good support, as I recall. We had the *Seattle Times*, and I think we had a good deal more. When we would go to a town where we didn't know anybody, the first thing we'd do is go down and sit at the local radio station and urge them to tape an interview with Dan. Then we would go talk to the newspaper editor. Dan gave lots of speeches and had lots of people working for him. But I suspect the newspaper support was pretty good during the campaign.

Mr. Clark: Tell us something more specific about the Blueprint for Progress.

Justice Dolliver: Well, the Blueprint for Progress—I think Joel Pritchard thought the name up. It demonstrated that Dan had specific ideas—rather than pie-in-the-sky ideas—of what we were going to do. It showed that he was a problem solver. And a person of integrity. People began using the sobriquet of “straight arrow.” People simply trusted the man. I can't remember all the points of the Blueprint, but within the first session of the Legislature, they were all passed. They passed very easily because there was no real opposition.

You know, good politicians are good at two things in this state. They are able to understand the science of politics and the method of putting it all together. You can do that, or you can run on substantive matters and be the champion of various substantive issues. But, rarely do you have the two of them together. And that's what you had in Dan Evans. You had somebody who understood

thoroughly how politics worked and who all were involved and what was going to happen. You also had someone who had a good feeling for what issues of the day were important. He could talk about them very fluently. He would go to coffee hours, and he was quite serious. We had a hell of a time trying to get him to move around. We said, “Dan, you can’t stand in a corner someplace. You’ve got to move around and talk to more people.” But he was good at talking to small groups. He would simply count things off on his finger, one, two, three, four. The people who attended the coffee hour ate it up. They thought it was great. For those coffee hours, of course, I was there with him. We were able to recruit the various people we needed for the door belling and other work within the campaign from those coffee hours.

Most importantly, I think, looking back on it, it gave him an opportunity to advance the cause by simply speaking. As I say, he knew this stuff forward and backward. He would talk on such things as Employment Security or Labor and Industries, and he would talk very knowledgeably. It made a difference to have somebody who was willing to take on the issues. Tough issues. And he was able to convince the group that he understood what he was talking about.

We had been afraid that he would lull the audience to sleep because he was so matter of fact. He was a good speaker, but it was not oratory. He didn’t give in to oratorical flourishes. No doubt Christensen was able to gain loyalty through a fairly emotional kind of appeal. Evans’ appeal was totally different, and the fact that he was able to do this so well was one of the little extra bonuses that we supporters got, in finding out that he was that good. He was able to really relate to people far better than we had thought.

Mr. Clark: You were working with a remarkable group of people. Did you organize

the campaign committee?

Justice Dolliver: Well, I would bring some of the people on, but the heart of the organization came from the State Legislature. We had people. I mentioned Joel Pritchard. Joel and Frank Pritchard. Joel was with the Legislature. Gummie Johnson had known Dan in the Boy Scouts, and I had known him also at the University. Mary Ellen McCaffree, who was in the Legislature, and Don Moos, who was in the Legislature from the East Side. And Marshall Neill helped us. He was a legislator with a very, very high degree of name familiarity. People trusted him. He introduced Dan at the Republican State Convention, and his willingness to do that made a lot of difference. But I can’t say that I put the committee together. I was involved in the process, along with a good many other people. But I was more active out in the local areas, in the various counties; I did put that together myself. As far as the actual steering committee was concerned, it was made up of Dan’s friends both in and out of the State Legislature.

Mr. Clark: Were there any marked differences between what you wanted to do and what the committee wanted to do?

Justice Dolliver: Not really. Actually, it all worked out fairly well. I can’t say that there were no ideological differences. It was clear, though, that Evans people were becoming more and more estranged from what I would call the lunatic right wing.

Mr. Clark: In 1964, in what part of the state did you find your most strength?

Justice Dolliver: We could read where the population was. A third was in Seattle. A third was in King County. The other third was in the rest of the state. We spent most of our time in the counties with the most people in them,

particularly in King County, but also in Pierce, Snohomish, Kitsap, and Yakima. We would spend our time mainly to get out what we thought was the Republican vote. In other words, we weren't trying to convert people as much as trying to get them to vote. I always have believed that the Republican vote is there, but you have to go out and get it.

Right after the legislative session of 1963, we started to campaign. It was interesting. A poll was taken right after the session to test the popularity of possible candidates for the governorship, and of those eight, Evans ranked dead last.

Mr. Clark: Were you confident in Spokane?

Justice Dolliver: We had some excellent people working for us in Spokane, and it turned out that in Spokane he did fairly well. He had as good a chance in Spokane as anyone else as far as the primary was concerned, so we spent a lot of time there.

Mr. Clark: When you got down to the end of the wire, say November 1 or 2, 1964, did you really think you were going to win?

Justice Dolliver: Really did. We had done polling all the way along the way. But we were convinced that the primary victory—he got more votes than either Christensen or Rosellini—would carry us through the general election.

Mr. Clark: It was certainly a remarkable victory. I hope you had a remarkable victory celebration.

Justice Dolliver: Well, we had a good time.

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Mr. Clark: You were just getting things underway in 1965 when Governor Evans

decided to go to a political meeting in Port Angeles and read the John Birchers out of the Republican Party.

Justice Dolliver: That's exactly right.

Mr. Clark: What about the Birchers did he find so objectionable?

Justice Dolliver: Well, I think, first of all, he couldn't talk with them; and secondly, they were people who would "rule the ruins" rather than have anything to do with winning elections. Dan was more interested in winning elections. The primary place where we had this problem was, of course, King County, and throughout his entire career as governor, his relationship with the King County Central Committee was very poor indeed.

I think his main objection to the John Birch Society was that they wanted to take over the Republican Party. He feared that their fanaticism would destroy the party by driving out the real Republicans.

Mr. Clark: Did they have any strength in the Legislature?

Justice Dolliver: Not particularly, no. As a matter of fact, one of Evans' strong points in the 1964 election was the fact that he had nearly unanimous legislative support. It was of tremendous advantage to him to have his legislative background when he was governor. The Legislature is a peculiar group of people. There are lots of bad ways and a few good ways to work with them. They all knew him, and he knew them, and this personal relationship was very important.

Mr. Clark: Well, this speech was headlined in all of the newspapers right away, and even today it's referred to as "the famous Port Angeles speech." Did you write it?

Justice Dolliver: I wrote part of it.

Mr. Clark: Who helped you?

Justice Dolliver: The last part of it I wrote by myself, and the early part of the speech was written by Gummie Johnson. Of course Evans gave the speech, but I was the one that wrote those famous words about “get out.”

Mr. Clark: What was the immediate reaction to it? Did Evans suffer politically?

Justice Dolliver: I don’t think he did. This had been done in some other states by persons who were Republicans, who were looked upon as conservative, and it had no effect upon them. As a matter of fact, so far as long-term effect, I don’t think it had any. It continued to curdle our relationships with the Central Committee in King County, but they were so bad to begin with that we weren’t going to go anyplace. In a few of the counties, there is no question that the John Birch Society was very powerful, and their way of thinking was very powerful. But if you are of the belief, as he was and I was, that these people are ultimately going to ruin the party, you tell them off.

I mean, when you think that during Evans’ tenure, really unbelievably, the State Republican Central Committee, not once, but twice, endorsed an income tax, you get some sense of the persuasive power he had among Republicans. Evans opened up the party rather than closed it down.

One of the things we discovered early on was that a governor in the state of Washington is fairly well limited. He has no control over the schools. He has no control over the universities. Of the entire budget, I would venture to say a major part does not belong to the governor. He can’t dictate what’s going to happen. But what a governor can do and what Evans did, more so than anybody before or since, was to set the agenda. This requires

the investment of a little political capital along the way, but you’ve got to do it, it seems to me, to be successful.

In Evans you had four things. You had honesty, intelligence, integrity, and guts. It became quite apparent that his intelligence was way beyond the intelligence of any of the other members of the Legislature. Simply by the power of his intellect as much as anything else, he forced them to come to him.

Mr. Clark: When the legislative session got underway in 1965, Governor Evans insisted that this Blueprint for Progress was really serious business.

Justice Dolliver: Oh, yes.

Mr. Clark: And he set about achieving it. He called for a series of reasonable and reform-minded programs that distinguish him as one of the most progressive governors in the nation at that time. Now, we’ll be talking a lot more about the programs, but first, let’s talk about the people in the governor’s office. You were named chief of staff.

Justice Dolliver: I was chief of staff, yes.

Mr. Clark: That means you organized the governor’s office?

Justice Dolliver: Right. Of course, a certain amount of this was hit and miss because we didn’t have the faintest notion of what to do. There were some people that had some experience in state government, but, by and large, most of them had not. One of the persons that we worked with and who had some experience in state government was the head of General Administration, Bill Schneider, and he was an Evans’ loyalist. So we had someone there who was very helpful. In almost every instance, we discovered—which was somewhat of a surprise—that state

employees, practically without exception, will be loyal to whoever is the head of the state. If it happens to be a Republican, well, they will be loyal to him or her. If it happens to be a Democrat, they will be loyal to him or her.

This was the first time there had been a change in political party since the passage in 1960 of the Civil Service Act, so nobody knew exactly what was going to take place. There was a new man coming to town. Granted, he knew something about state government, but he brought new people in with him. Who knew what was going to happen?

Early on he called a meeting of all those people who reported to him. Well, they filled the room. He said, this can't be. We've got to have better organization than this and figure out some way to combine some of these agencies.

He turned out to be a good administrator. The thing I had to do was to make sure that the various agencies would respond to the problems which we defined, and they did that very well.

Mr. Clark: Was your organization of the staff in any way innovative? That is, were there structural differences between your staff and the previous one?

Justice Dolliver: I'm not sure how the previous one was put together, but I know, with the staff I had, there was no question about who was the boss. I would tell the other people as they came in, "Now, look, in this particular area, you are the one that's going to manage it. So if it happens to be environment or if it happens to be social legislation or it happens to be whatever, you are the one who is going to handle that. You will appear before the Legislature." But it was innovative only in the sense, I suppose, that each person was assigned to a particular area. They would work in that area, and if there was a problem, that person and I would talk about

it and try to straighten it out. I guess I did more management by walking around than anything else and just talking to people and seeing what they had to say.

Mr. Clark: Did you, in your office, have anything resembling an affirmative action program, quotas, anything like that?

Justice Dolliver: The answer is no, but we tried in the office to be sensitive to the needs of affirmative action and make sure that in the office we would have persons representing various ethnic backgrounds. We had our chief receptionist—she was there from the beginning—Ruth Woo, Ruth Yoneyama, as she was known in those days. She was an ethnic second-generation Japanese. Then we had Nat Jackson, a black man from the Tri-Cities. We had a number of women in high places. I don't think it was any kind of quota. In fact, I'm sure there wasn't, but we managed to talk a pretty good game. I think the results showed in what we did.

Mr. Clark: In your office, do you think there was as much emphasis on race as on gender?

Justice Dolliver: I think it's fair to say that probably the greatest emphasis was on the matter of race. That was the era when you had, oh, riots in some places, and a feeling on the part of black persons that they ought to be regarded in a more beneficial manner. Gender was very much bringing up the rear.

Mr. Clark: How many people are we talking about when you say staff?

Justice Dolliver: Well, there was myself, and we had a press man. I usually worked on environmental legislation. We had someone who worked with the citizen councils and particular group problems. I would say on the professional staff in the office at one time,

probably no more than half a dozen people. We would have, of course, secretarial help of various kinds. We had Ruth Woo, who would answer the phone, but she was much more powerful than that. We had Esther Seering, who was the governor's personal secretary. Anytime anyone wanted to speak to the governor they cleared things through Esther. As far as the mail was concerned, I would try to answer as much of it as I could. When I say I answered it, I mean I assigned the agencies to draft an answer for the governor to sign. Sometimes we would give the stuff to the governor for him to answer, but by and large we tried to make certain that the vast majority of the mail did not go to him. If we could handle a problem at the staff level, we did. It was my belief that the governor had more important things to do than to spend his time looking at mail.

One of the things I think was an innovation was that we held two press conferences a week. One for the a.m. newspapers and one for the p.m.s. In those days we had lots of p.m. newspapers. We would hold a morning press conference and an afternoon press conference, and they were well-attended. They were enjoyable because they gave the governor a chance to meet the press, and gave the press a chance to see if they could put him in a corner someplace and really shut the door on him. They never did, but they tried. There was sort of a little game going. At least that's the way it looked to me as an outsider. The press's game was, "How can we capture the governor?" And the governor's game was, "How can I avoid being captured?" He eluded capture very successfully.

Mr. Clark: Were you a strict gatekeeper for the governor, or did you let people see him if they wanted to?

Justice Dolliver: If somebody wanted to see the governor, I would go to Esther or whoever

was acting as the secretary, and sometimes I would go to him directly. But after awhile, you begin to sort of intuit things, and you intuit the people he needs to see and the people he doesn't need to see. I set myself in a position so people understood that I was the key person in the office, and that if they needed to see somebody about a particular way of getting something, they'd talk to me. Yes, I would say I was a gatekeeper in the sense that I tried to make sure that the governor was disturbed as little as possible.

One of the things I found out fairly early in the game was that most people who write to the governor were interested in a psychological release more than anything else. They know you're not Santa Claus and can't snap your fingers and have magical things happen, but they want to write the letter and get something off their chests, so to speak, and see what the governor has to say. Part of the art in running the office was learning which letters were simply expressing psychological frustration and which ones required more direct answers. The art also included taking into account who were old friends or new friends of the governor or were owed a political favor.

You learn to figure those things out. One of the things I will say about the office is that we tried to keep it so that everyone talked to each other. I tried to make certain that everyone, no matter who they were, would have something to say about how the affairs of the office were conducted. Although it was fairly clear to everyone that I was the final authority, I think the method of operation was more collegial than anything else.

Mr. Clark: Did you have a major role in the selection of the nonelected heads of state agencies, like Corrections and Health?

Justice Dolliver: I had some, yes, but again, I would say it was only an advisory capacity

rather than a direct decision. The governor and I would always talk about those matters. As far as the governor's office was concerned, I would hire those people. I also would fire them, if it came to that. One of the things that the governor did was, when he came into office, he kept a number of people who had been there before. Been there before Governor Rosellini. They were staff people rather than issue-oriented policy people, but he kept those people, and I think it helped.

Mr. Clark: Did the agency heads ever meet as a cabinet to advise the governor?

Justice Dolliver: They would meet irregularly.

Mr. Clark: Did he encourage them to propose legislation?

Justice Dolliver: Very much so. In fact, he would talk with them about particular pieces of legislation which they would propose, and if he liked the ideas, they would become part of his executive request package to the Legislature.

Mr. Clark: Did the John Birch Society or the Goldwater Republicans present any real problem for the governor's legislative proposals?

Justice Dolliver: I think not. As far as the Goldwater Republicans were concerned, I think it is fair to say that the vast majority of the people who supported Barry Goldwater for president were people who also supported Dan Evans enthusiastically for governor. The people that were in the John Birch Society, the extreme, radical right, they had no legislative program of any kind. They were "againners" basically, so they presented no particular problem so far as a legislative program was concerned. They just were

against everything.

Mr. Clark: Well, before we discuss a lot of these programs, let's skip ahead, if we may, chronologically and politically, to the next gubernatorial campaign, 1968. Did you also manage that one?

Justice Dolliver: I was involved in it. I didn't manage it that time because I was actually working in the governor's office. We had to use some care that state employees weren't directly involved in the running of the campaign. So, I was certainly involved and was aware of it, but it would not be fair to say I headed the campaign.

Mr. Clark: Who would it be fair to say was the campaign manager?

Justice Dolliver: Well, I suppose we had pretty much the same cast of characters we had in the 1964 campaign. The state chairman by that time was Gummie Johnson, and he was very active. And, of course, the Pritchards, and all the people that were in the Legislature who had worked with Evans. I have to confess I was active, too, but as far as a direct managerial position, I would say no. I cannot recall who had that position.

Mr. Clark: Evans, by then—this is still 1968—was so famous that he was asked to deliver the keynote address at the Republican National Convention. Did you write that speech?

Justice Dolliver: No. A man named Jim Lane was the person who worked on that. I did not write it.

Mr. Clark: Did he discuss it with you?

Justice Dolliver: He did.

Mr. Clark: Were you at the convention?

Justice Dolliver: I was.

Mr. Clark: How did the speech go?

Justice Dolliver: It didn't.

Mr. Clark: It didn't?

Justice Dolliver: No. I suppose, as you recall, at that particular time there was a great contest as to who was going to get the Republican nomination, and Evans had not said who he was going to support. It was suspected he leaned more to the left than some of the rest of them. The Washington delegation was pretty much all for Nixon. He gave his talk, and it was a fairly cerebral talk, I think. He is a magnificent public speaker, but he is not the kind that raises people up in their seats whooping and hollering and clapping and cheering. He is not that kind of speaker at all.

Well, right after he gave his speech, he came out for Nelson Rockefeller, whom he had known as a fellow governor and whom he admired. Of course, that did not go well with the rest of the delegation, but he didn't care. He supported him for the nomination, feeling that if Nixon got the nomination of the party, there would be no one to push the viewpoints that Evans had expressed in his speech. Not that it wasn't a good speech, but given the circumstances at the time, it was one of those things that nobody paid any attention to. As I say, it was more of a cerebral speech than anything else. I did not hear him give the speech, but I was, of course, familiar with it.

Mr. Clark: Apparently, he didn't think much of Richard Nixon. But then he came home and campaigned again and won handsomely. How did he do that?

Justice Dolliver: By hard campaigning. I think Nixon was in an entirely different category from Goldwater. Goldwater tended

to polarize people, and Nixon did not do that. He was more inclusive, and Evans and Nixon actually got along famously during the campaign. There was no problem there at all.

During the campaign, it was disclosed by one of the Seattle papers that the Democratic opponent, John O'Connell, had been involved in gambling at Las Vegas, and whether that had anything to do with the final outcome, I don't know. We didn't talk about it. The *Seattle Times* and Mr. O'Connell said all that had to be said, but there was that plus the fact that the economy was good. Evans had been a good governor, and he campaigned hard.

Mr. Clark: Did you have any major political problems in '68?

Justice Dolliver: Well, in '68, the most serious problem was the rising sense of expectations in Seattle's Central Area among black persons who felt their time had come. I think it's fair to say that Evans was able to work on that problem fairly well. This did not become a campaign issue, but it was something that was going on during the campaign. You couldn't escape it.

Mr. Clark: As I review the very remarkable changes that occurred in state government between 1965 and 1975, while you were chief of staff, I am amazed that the Evans team could accomplish so very much. I say this because the state constitution leaves the governor's office, as you yourself have said several times, in a very weak position. It controls no significant patronage; even the judges have to run for office. The framers, apparently, had more trust in the electorate than they did in the elected. They did give the governor the item veto, but they held him away from any more conventional sources of power. Yet, by any measure, Dan Evans was surely a strong governor. How did he manage this given the weakness of the position?

Justice Dolliver: Well, I think first of all, as I have said previously, the most important power the governor of this state has is the power to set the agenda. Evans, to his great credit, had no trouble setting the agenda and defining the things he thought were important. Many times, it was done through executive request legislation to the Legislature. It may have been after 1968, but at one time he sent up seventy-six separate bills to the Legislature.

That's the first thing. The second thing was people tended to forget that he was a smart man, and I say that in the sense that he understood figures, and he could not be fooled on budgetary matters. To most persons, budgets are boring; to him they are exciting. I'll never forget the day—this is back in the days when engineers still used slide rules rather than computers—when he invited the Superintendent of Public Instruction, Louis Bruno, to the office and said, "I think I've discovered an error in your figures." He sat there and slipped his slide rule back and forth a couple of times and said, "Yes, there's a \$5 million error in your submission." Bruno said, "No, this can't be," and he said, "Yes," and moved the slide rule around and pointed to the budget document. He was right. There was a \$5 million error.

Well, pretty soon, all of the agency heads learned that he understood the budget. They couldn't pull anything over his eyes. Although the press doesn't particularly care for the budget, the fact of the matter is that I suppose ninety percent of what happens in the legislative session is dependent upon the budget. If you have a governor who is interested in the budget and who understands the budget and who lets people know that he can understand the budget and spends some time at it, you have a very formidable person working as governor.

Thirdly, what I would say is he was well liked, and I think that is shown by the fact he was not a partisan in the sense that if you are

a Democrat, out you go. That wasn't his style at all. He was of the belief that there were certain problems that needed to be solved in the state, so let's find solutions. Not necessarily Democratic solutions or Republican solutions, just good solutions. People began to understand that, and then he had this image of integrity—they called him "straight arrow." He would treat people fairly, and, I think, the constituency knew that. He campaigned hard. He campaigned all the time. He did lots of public speaking.

At first, among members of the campaign committee, no one thought of him as a particularly good speaker. As a matter of fact, I would go out with him on these various coffee hours, and because I was a fairly good public speaker, people would say, "Why doesn't Dolliver run for governor instead of Evans?" But in time they came to appreciate his particular style of speaking. As he made hundreds and hundreds of speeches, he became a good speaker in his own right. He was a very fast study. He was his own assistant in the sense that you didn't need to prepare a position paper for him or tell him what was going on. Just a few words or a few sentences, and that was enough. I recall his speaking many times before some exotic-sounding group that had some odd or technical purpose in life, and Evans would find out what they were about and what some of their ideas were and would stand up and speak. You would think he had belonged to that group all his life. He had an uncanny ability to learn quickly about what actually was involved in the particular organization, and from that he was able to extrapolate his own viewpoints very easily.

Mr. Clark: I like the idea of the governor, using a slide rule, checking agency figures.

Justice Dolliver: He was very good at that. I still don't understand how the thing worked, but he knew how and he would zip that slide

rule back and forth. He would go to the budget hearings for each individual agency. It was part of his secret in dealing with the Legislature. They were perfectly aware that he was a man who knew more than they did and who could stand on any particular issue of the day and speak with some authority. They learned to respect him.

Mr. Clark: Jim, about nine years ago, in a taped interview with George Scott, you and George were talking about that time in 1971 when the governor's office made seventy-six executive requests. You said at the time that was maybe too many.

Justice Dolliver: I think it was.

Mr. Clark: And this was controlling the agenda?

Justice Dolliver: Well, that was one of the ways. He would go to the various department heads and say, "All right, what are the best ideas you have for this upcoming session?" And they would talk and talk and talk, and he would select the ones he liked for his executive requests. The trouble with having too many was that you began to get the Legislature very tired after awhile. And for the staff, trying to keep track of seventy-six different executive requests became very difficult. When you get matters of such importance that they rise to the level of executive request, it's much more manageable if you have, say, under fifty. And even more manageable if you have about twenty-five or so, which was usually what he had. During this one session he went to seventy-six, and I think even he realized that was too many. So he didn't do it the next time.

Mr. Clark: Other than from agency heads, where did these ideas come from? Did they come from private citizens or special groups?

Justice Dolliver: Some came from private citizens, some from, I suppose, special groups. For example, the Washington Environmental Council was, at that particular time, extremely instrumental in getting a lot of legislation through. Some of the ideas which they had he was simpatico with and wanted to work on. He shared many ideas with particular interest groups, and they would form a coalition, so to speak.

Mr. Clark: Tell us how you would take an executive request from the governor's desk and place it where it would receive serious legislative attention.

Justice Dolliver: Let's say there's Bill X, which is going out as an executive request. If it were going to the House, we would try to get as a sponsor the chairman of the particular House committee which had the bill. And, of course, we would try to get both Republican and Democratic sponsors of the highest rank possible, so that we were sure the bill had some kind of presentation made before the committee. Sometimes we would appear, sometimes we wouldn't. For example, I handled the environmental legislation, and with most of the environmental bills that ultimately got through, I was involved in the drafting of the bill, and I gave the testimony from the governor's office for the bill. Somebody in the office would be responsible for the bill, and they would appear to present the governor's position. And, of course, we checked with him and made certain we knew what his position was before going up there. As I recall, this worked fairly well.

Mr. Clark: In regard to these environmental bills: With George Scott you discussed a thirty-three-day period in '71 when six major environmental bills passed through the Legislature. These, I assume, were all executive requests?

Justice Dolliver: That's correct.

Mr. Clark: And you described for George a sort of summit meeting about environmental concerns held on Crystal Mountain late in 1970. Please tell that story again for the record.

Justice Dolliver: Well, as I remember it, there was a meeting on Crystal Mountain at one of the lodges. We had representatives from the House and from the Senate—all Republicans and no Democrats—and from the Washington Environmental Council and other persons interested in environmental matters. At that meeting, we came to an agreement about which matters would be executive requests.

As that time, you should recall, the Republicans controlled the House. We, the Republicans, were going to get the bills through the House, and it was up to the Environmental Council to make sure the bills got through the Senate, which was still in control of the Democrats.

As you recall, this particular time was the beginning of the whole environmental movement. You had that, plus the fact that we were in an unspoken competition, I think, with the Republican governors of Oregon and Idaho, who were both eager to say they could do anything better than we could. The Crystal Mountain meeting was effective because the governor was able to solidly commit both the leadership of the House and the Republicans in the Senate, plus the environmental groups such as the Washington Environmental Council. We worked very closely with them.

We did everything possible to see to it that those pieces of legislation got through the Legislature. The only one that failed to pass was the Shoreline Management Act, but it passed later as an initiative measure in 1972.

There is no question that this particular time was a period of unprecedented cooperation among the Republicans, the Environmental Council, and the

administration. And we were helped by the fact that this was early in the environmental era. Most people had not heard the word "environmental" used in this sense, and there was therefore no organized opposition. So by coming in, in a sense, ahead of time to push environmental programs, we found a good climate for significant achievement.

Ms. McKeehan: Environmentalism wasn't identified with the Democratic Party in those days.

Justice Dolliver: No, indeed. In my mind it still isn't, but that's another story.

Mr. Clark: Anyway, you went there to plan the particular bills that you wanted to go through the Legislature and the political strategy to get them through?

Justice Dolliver: That is correct.

Mr. Clark: State Senator Martin Durkan, I know, was a strong environmentalist, and also a strong Democratic leader.

Justice Dolliver: Yes he was.

Mr. Clark: Did he play a role in all of this?

Justice Dolliver: Not at Crystal Mountain. Jim and I were in law school together. (His name is Martin James Durkan, and in law school everyone called him "Jim," so I called him Jim.) Through his efforts and some of the other senators, this legislation was able to go through the Senate. Durkan liked to put his stamp on the legislation that was going through because he was going to run for governor in 1972. For example, we had prepared for a Department of Environmental Quality, but Durkan wanted it called the Department of Ecology. It didn't make any difference to us what they called the thing.

When he insisted, we changed it to the Department of Ecology. But there is no question he was instrumental in the Senate. He deserves credit for it.

Mr. Clark: We are talking about six major bills in thirty-three days. A remarkable record.

Justice Dolliver: Well, as I say, it was fairly smooth sailing. Shoreline Management had to wait for the initiative in 1972, but actually things went very smoothly. The idea of environmental protection for the next generation was becoming a very popular notion. And we had good leadership. There was no question that the Republican House leadership was willing to go with Evans' encouragement. And in the Senate, the Environmental Council worked very hard. In the governor's office, we did everything we could. More than anything else, I would emphasize the particular temperament at the time. There was no suspicion of environmental supports, and the environment was not a partisan issue.

The whole thing really got started back about 1966 when I saw an article in, I think, *Harper's Magazine* about environmental matters. I wrote a long memorandum to the governor on this subject, and I suggested that this was a matter that should be on our political agenda and we ought to spend some time thinking about it. Well, we started, I think, in 1967, with an effort to protect the shorelines on the Pacific Ocean. We tried to keep the automobiles off the beach, but this effort was for the most part turned down by the Supreme Court. Certain segments of the beach we could make automobile-free. I'm talking about the Long Beach Peninsula, primarily. The whole beach was pretty much preserved for public use. All of a sudden, environmental protection became a highly popular thing. Both *Time* and *Newsweek* featured environmental matters on their covers, and, as I say, there was

considerable friendly competition between Tom McCall, the Oregon Republican governor, and Dan Evans, the Washington Republican governor, as to who was the better environmentalist. That kept things going.

Ms. McKeehan: Would Evans have been interested if you hadn't got him interested?

Justice Dolliver: When he was elected, it was thought that he would come in as an "education governor," and he did. The community college system we have today was due to Evans. Before then there were several community colleges around the state, but under his leadership, we formed a new statewide community college system. At the same time he was sort of casting about for other issues. I don't want to say he would not have got interested in environmental protection without me. But I was the first one who brought it to his attention and suggested the environment was something he ought to spend some time on. Of course, he had a good background. He was a hiker and a climber of considerable merit, and he spent a lot of time in the woods. He, in contrast to some other people, when he would talk about environmental matters, knew what he was talking about.

Mr. Clark: Your total environmental package included creating a Department of Ecology. It had to do with land use, with zoning, pieces of legislation about solid waste management, oil spills, surface mining, wilderness areas, scenic highways, and, among other matters, nuclear power siting. What was the administration's policy regarding nuclear power plants?

Justice Dolliver: I don't think there was any real policy because we didn't have the WPPSS situation, which came later on. We had the power plants over at Hanford, and I think it is

fair to say he was not necessarily pro-nuclear, but he certainly wasn't anti-nuclear. That whole matter warmed up after he left office, I believe.

Mr. Clark: Was there an effort to site a nuclear plant up in Skagit Valley someplace?

Justice Dolliver: Oh, there had been talk about that, but it never got anywhere. I think there had always been talk about bringing the nuclear site closer to the customers, but, so far as I know, the only site that was built west of the mountains was down in Oregon with the Rainier site which you can see when you drive south of Longview.

Mr. Clark: How about nuclear waste? Did you have the problem that people have today?

Justice Dolliver: We didn't have that problem.

Mr. Clark: You didn't try to ship it off to another state?

Justice Dolliver: Well, it just simply wasn't the great political problem back in the 1960s and '70s that it is today.

Mr. Clark: As an environmental matter, Governor Evans stopped the proposed raising of the height of Ross Dam on the Upper Skagit. Under what authority could he do this?

Justice Dolliver: Well, it's the same authority he had with anything else. He would take his political capital and say, "I think this is a bad idea. Don't do it." And, he was a formidable opponent. He found out very quickly that one governor making a statement on TV is worth two dozen legislators. They're all over the lot, but a governor can zero in on a particular point and make his views known. I can't recall anything beyond talking that he did about the

height of Ross Dam.

Mr. Clark: He also kept an aluminum plant off Guemes Island. Same thing?

Justice Dolliver: I think the same thing.

Mr. Clark: Was it prestige?

Justice Dolliver: He was well acquainted with the San Juan Islands and with Guemes Island and believed that was not an appropriate thing to have on Guemes Island. And said so. It made a difference.

Mr. Clark: Let's talk for a minute about the creation of DSHS—the Department of Social and Health Services. Did this originate as an executive request?

Justice Dolliver: Yes. I think two things happened. First was the belief that a person who was receiving several social services shouldn't have to visit several different offices. Rather than have the person be required to go here, here, here, and here, why not have it all under one agency, the Department of Social and Health Services?

Mr. Clark: Whose idea was it?

Justice Dolliver: It was Evans' idea, and I think the second thing was that he was appalled as a manager that he had to supervise so many different people. We found out very quickly when he became governor that the governor may be the chief executive, but mainly he is the chief administrative officer whose job is to make sure that the government is administered properly. A governor shouldn't spend his time trying to micro-manage various agencies; he should see to it that the various agencies are properly put together. So with Social and Health Services, for example, he took several agencies and put

them into a single agency.

This means he was opposed to any idea of having more agencies. The first veto we had—out of lots of vetoes—was the bill to keep the Veterans Administration as a separate agency. He thought it ought to be part of Social and Health Services. Well, they overrode the veto and said we're going to have the Veterans Administration as a separate agency of government, and we do to this very day.

Mr. Clark: DSHS has a very complex structure. Did you have a role in creating this structure, in organizing the thing? Putting it together?

Justice Dolliver: Well, I worked somewhat on the matter. I think it's best to say my role was pretty much confined to the office. Everyone from the various agencies understood that I was the key contact to make in the office, and I knew the people who headed up the agencies and was able to work with them very closely. I think that my role wasn't that of inventive genius, deciding this and that, but I was rather an energizer person who helped in putting it together.

Ms. McKeehan: Were the agency heads upset at no longer working directly for the governor?

Justice Dolliver: They didn't say so. I think he was a good salesman, and if there was such a feeling, it was kept well under control.

Mr. Clark: As these innovations were unfolding rapidly and more and more people were taking a keen interest in them, the writer Shelby Scates placed you and Evans in what he called "the progressive wing of Northwest politics," which he said includes liberal Republicans, some Democrats, and some early Populists. Is this the way you would see it?

Justice Dolliver: I think that's a fair

assessment. Evans was able to transcend party politics by saying that there is no Republican solution, no Democratic solution. If there was a solution, and it was a good one, he was going to back it. Oh, for example, even though the income tax during his administration had become deadwood in the Republican Party, and people said we would never have an income tax during his administration, he marshaled support for it. Twice an income tax was passed by the Legislature, and twice it was approved by the Republican State Convention. Unheard of. It was approved because of his energy and the ability to risk his political capital. He was simply smarter than the average guy. He couldn't be argued down. He was a very, very keen student of politics and understood where people were coming from and understood the power of the office.

As I told him one time, "You need to invite more people over to your mansion. You have no idea what a tremendous thing it is for Joe Smith off the street or a member of the Legislature to be invited to the mansion. That's quite an honor, quite a thing, and you should use that." And he did. He was able to use the executive mansion quite effectively as a place where members of the Legislature and others could talk and sometimes have a party while he was insinuating his views into their discussions.

Mr. Clark: In the late '60s and early '70s, you guys took a really disciplined control of the agenda; and to do so you had to define what was wrong in the state, then reform it. Did you see yourself as a reformer? Did you use that word?

Justice Dolliver: Rather than the word *reformer*, I think it would be *problem solvers*. We would see a particular problem out there, and it had to be resolved. The tax structure, for example, was and is a highly unfair tax

structure. So, how do you make it more fair? Evans' idea was you do it through the income tax. That's not a matter that's very popular with the public in general, so it was defeated. But he tended to look at things that way: how do we resolve the problem? Not, what are the political advantages one way or the other? Not, what is Republican or Democrat dogma, one way or the other, but how do you solve the problem?

Mr. Clark: That's a very good point. Did you ever use the word *liberal* in regard to your group?

Justice Dolliver: Other people have used that word in describing what was going on. I didn't. We tried to avoid tags like *liberal* or *conservative* and let our actions speak for themselves.

Mr. Clark: Let's get some more names. Who else in these years do we identify as problem solvers? Slade Gorton?

Justice Dolliver: Slade Gorton, the attorney general, no question about that. He and Evans worked together very closely. Of course, they had been in the Legislature for a time, and I think Gorton was elected in '56, and Evans in '58. Evans was the leader of the Republicans, and at that time, Gorton was a firm supporter. I think the only issue on which they had some disagreement was on Indians. Evans was far more attuned toward the Indian point of view on things than Gorton was.

Mr. Clark: Joel Pritchard?

Justice Dolliver: Joel Pritchard. He was the best lieutenant you could ever find anyplace. If you needed to have something done, Joel would do it. He was an expert. Everyone liked him. He was another one of these people who understood the policy side of matters but also

understood what the raw politics were. Who you had to get, and who had to be talked to. He was good. Joel was, as I say, our idea of the best lieutenant you could possibly find. He was a close personal friend of Dan's.

Mr. Clark: How about State Senator Martin Durkan?

Justice Dolliver: Rather than being led, the Senate was a series of, what I have always called "private dukedoms," and they had a number of dukes who were in charge. Durkan was one of them. Durkan and Augie Mardesich, and Bill Gissberg and Bob Greive; these were very capable men in their own right. They would run the Senate, not as one person being in charge of the entire Senate, but rather as persons having particular areas of interest. They each had an interest area, and their needs had to be met. There is no question that Durkan was a very firm supporter of environmental legislation in 1971. He ran, unsuccessfully, as a Democratic candidate for governor in 1972, but I think the governor thought highly of Jim Durkan and so do I. He is a fine man.

One of the things that tends to be overlooked in both my career and in Evans' career is that we knew many of these people before coming to office. Evans had considerable legislative experience, and although I had not been a legislator, I had a vast experience in dealing with many of these people and knew them all personally. This made dealing with the Legislature much easier.

Mr. Clark: Where does Don Eldridge come in? Did he help you a lot?

Justice Dolliver: He did. But he was not one of the inner circle of the Evans people. He became Speaker in '71, I think. He was a good Speaker, and he could be counted upon as a

good ally of Evans in the Legislature. When I think of legislators who were key people, I think of Don Moos, for example, who was a very key legislator. Mary Ellen McCaffree was a key legislator. These people had worked with Evans when he was the Republican leader in the House in 1962 and knew him and had sized him up.

Mr. Clark: Did George Scott help you a lot, as well?

Justice Dolliver: Yes, he did. He was in the Senate at that time when the Republicans were a minority party, so we could not rely on them alone. We had to learn how to pay a proper court to the Democrats in the Senate, and we did.

Mr. Clark: I was going to mention Democratic State Senator Augie Mardesich, but you have said he was one of the dukes in the Senate.

Justice Dolliver: Well, I would say he was a very capable man, a very smart man, one who could put deals together far better than anyone else I knew. He and Evans got along well. On some issues Mardesich could be particularly helpful. Let me give you an example. In 1968, the voters approved a constitutional amendment creating an intermediate court of appeals with separate divisions in Tacoma, Seattle, and Spokane. This created positions for quite a few judges. Evans for the Republicans and Mardesich for the Democrats came to a friendly agreement that a certain number would be from each party. Without this agreement, legislation implementing the new Court of Appeals would have gone nowhere, and people who had worked hard for the amendment would have been terribly frustrated. No problem. The two made a really good deal.

Mr. Clark: How about Ralph Munro?

Justice Dolliver: Well, Ralph, I think I brought him on. I hired him to work in the governor's office. Ralph had come to the governor's attention because of his great interest in handicapped persons. He worked very hard in that area, and we had many handicapped people in this town. The fact that in this community we have cuts in the sidewalk at the corners so a wheelchair can get up and down from the street is nothing more than the extended shadow of Ralph Munro. He is the one who pushed this, and all he has done for handicapped persons will never be known.

One thing he did was to say to Dan, "Look, Evans, you're going to have to sit in a wheelchair all day long to see what it's like and to see why we need to have these things like cuts in the sidewalk and other helps for persons who are handicapped."

Dan did. I don't know how, but he did.

Ralph was able to talk to people and persuade people. He had been active in bringing together citizens' groups from throughout the state to discuss the issues of the future. This was the beginning of focus groups, I imagine. But we tried to make them public and tried to make them both Democratic and Republican. They involved most of the people who had supported Dan Evans in years past. We would try for a broad-as-possible representation. Many times they would produce ideas that we could use immediately. Sometimes the ideas were no good at all, but they were ideas for the future. Ralph was really in charge of this and did a good job. In fact, he did an excellent job.

Mr. Clark: We're making an imposing list here. Is there anybody else you want to put on? We could put hundreds, I suppose, but is there anybody you think we have ignored?

Justice Dolliver: We should emphasize the importance of having Gummie Johnson as the State Chairman of the Republican Party during that era because there was no question that Evans and the King County organization in Seattle did not get along. King County was way to the right. They were not controlled by the John Birchers, but they were pretty close to it, and Gummie, through his work in other counties, was able to make sure that the state organization would always be favorable to Evans.

Now, another person I want to mention to you was not with state government but was of inestimable help as far as campaigning—Ritajeau Butterworth in Seattle. She was one of the best political organizers I have ever known and had a real flair for politics. I think that much of the success of Evans' ideas during the '64 campaign, as well as later campaigns, was due to her organizational skill and drive. She was outstanding.

Mr. Clark: We were talking earlier about executive *requests*. Let's look now at some executive *orders*. I am thinking particularly about the files in the Evans' papers labeled "Civil Rights crisis" and dated in the 1960s and '70s.

In May of 1965, Governor Evans met with real estate people to discuss housing and civil rights and to urge Realtors to adopt policies and practices of nondiscrimination. The group agreed with what he said, and they made promises, but apparently they did nothing. The Watts riots that year occurred in August. There was widespread fear all over the country that other cities would suffer what Los Angeles had suffered. I have seen a letter to Governor Evans from a man in Seattle advising him that "You must not allow a Negro, communist uprising here—you must call out federal troops from Ft. Lewis." Well, of course, the governor couldn't call out federal troops. What he did do, though, was to issue an

executive order outlining emergency procedures in the event of civil disorder. He informed city and county officials that the State Patrol and National Guard could be made available, but only under the direct supervision of his office. If officials were facing problems beyond their control, he said they were to call the governor or to call Mr. James Dolliver. Could you comment about that?

Justice Dolliver: Yes, I think the main thing you could say about the governor is that he was very unlikely to call out the state authorities, the National Guard or the State Patrol, because in his opinion that would be nothing more than calling for a state of war, and he was unwilling to do that. He believed that he could talk to people, and he did. He would go unannounced and unarmed and without any kind of entourage, so to speak, and go into the Central Area in Seattle, the black area, and walk around and talk to people. He had the reputation, and I think a proper one, of being a person who was willing to lay his authority on the line as far as civil rights were concerned. He didn't try to do the things that couldn't be done, but he would do things he could do. One of the things he could do is talk to people, try to jawbone people, try to persuade people to do things a particular way, in a pro-civil rights way. I think he was well known for this.

His belief was that the various demonstrations were, in effect, people letting off steam. They should be allowed to do that. If they wanted to march, if they wanted to parade around, if they wanted to do this or that, as long as they didn't destroy property, he saw no reason why they shouldn't. As I may have said previously, he was probably the only politician of that era who could walk on a college campus anyplace in the state of Washington and feel perfectly safe. He was not particularly anti-Vietnam as far as the war was concerned, and always had what I would

call a more pro-war than anti-war feeling. He had been the aide-de-camp to the admiral who led negotiations at the end of the Korean War, so he knew what negotiations meant. He would rather talk than fight. Even though he indicated that the State Patrol and the National Guard were available, during his time in office they were never used. He never called out the Guard.

One famous example that I recall: at the time of the great festivals, they had one down in the southern part of the state, down in Clark County, I believe. I suppose a certain amount of marijuana smoking and drinking was going on. Some of the citizens called him and said, "What are you going to do about this? Put these people in prison." He talked to the State Patrol, and the chief said, "They're already in prison. What this is called, it's called a rock festival, and they can't get out of there. They're absolutely trapped in a sea of mud, and that's where they're going to stay. If they want to get out, fine. But as far as me putting them in prison for this kind of gathering, no way." And as long as they stayed within the bounds of the rock festival, if they wanted to stay out in the rain, well, that was their business. He let them go ahead and have their way. Although it is quite clear that at no time did he have any particular sympathy with the views which were being expressed by these people, he had a feeling that one should do nothing and let them have their way as long as they didn't violate anybody's property or tear things apart. And they didn't.

Mr. Clark: Did you have sympathy with the anti-war movement?

Justice Dolliver: Well, I would say my feelings were about the same as Evans'. I didn't necessarily have any particular sympathy for them. But on the other hand, if they wanted to march around, as long as they didn't try to hurt somebody or destroy

property, they could go ahead. I refused to get unduly alarmed. There were some efforts to have us act like Kent State and call out the National Guard or call out the State Patrol, but this never happened.

Mr. Clark: When he made those expeditions into the Central District, did you go with him?

Justice Dolliver: I did not. He would take only Bill Lathrop, who was his personal aide with the State Patrol. Bill was in civilian clothes. The two of them would just walk up and down Twenty-third Street, talking to people. Of course, one of the things that Evans had going for him was that he was smart. It was very, very hard to catch him off guard.

Mr. Clark: Well, as things heated up, Evans issued an executive order banning the use, by state agencies, of the facilities of any private club that practiced racial discrimination.

Justice Dolliver: Yes. This was when he was running for his third term, which made it all the more difficult. A wife of a state department head was black and had gone to a local Moose Club for lunch with a friend who was a member of the club, and they wouldn't serve her. Word got back to Evans, and, of course, he was infuriated by this. Before that, he had been in considerable conflict with the Elks Club, trying to persuade them that they ought to get rid of their racial clauses and quit doing this kind of thing to people, with no avail. So, when this incident occurred, he simply issued an order that from that point onward no state meetings were to be held on the premises of any organization which still had a policy of racial discrimination. As far as he was concerned, if you had restrictive racial clauses, you got no state business, and that was that.

With most people it was highly popular.

When one thinks of the temper of the times back in the middle '70s, it was the right thing to do.

Mr. Clark: And there was an executive order which prohibited racial discrimination in state agencies?

Justice Dolliver: Yes, there was. But when I first came to Olympia with him in 1964, this was a white city. No question about that. It was a white town, and I'll never forget. I went to a meeting of the Rotary Club, and the president stood up and made a speech—the best speech about racism I've ever heard, and I told him so. He said there is an “invisible sign” at the city limits of Olympia, and it says, “No blacks welcome.”

Evans was aware of that. I think beginning with that executive order things began to look better and better.

Evans also insisted that those of us who were at high executive positions spend some time trying to make ourselves known in the community of Olympia. He felt a dichotomy between town and crown, so to speak. There was downtown, and then there was the state government. One of the things he tried to do was to have those of us who were in positions of authority to be part of the Olympia community. I think that was very successful because prior to that time, certainly prior to the passing of the Civil Service Act, most people would come into Olympia with pure patronage positions and would go out again when the next governor came in.

Evans forced agencies to learn that they could hire black persons, minority persons, without in any way hurting the civil service system. In fact, that would help make it work even better.

Mr. Clark: Meanwhile, Evans issued an executive request for House Bill 200, which was intended to ban discrimination in housing.

It was defeated by the Democrats in the Legislature, and black leaders were deeply disturbed. In October, Evans spoke to the Washington Association of Realtors, then in conference in Seattle. He warned the Realtors that if they themselves did not end discrimination, the state would surely do it for them. It was a very good speech, a very courageous speech, and a very polished speech. Did you write it?

Justice Dolliver: No, I did not. I agreed with it, but I didn't write it. One of the secrets about Evans was he was his own best speech writer. He would jot his speeches on the backs of envelopes, that kind of thing, and rarely spoke from a written text but usually spoke from notes. Part of his actions with the Realtors and with others was simply jawboning them, saying if you don't do this, this is going to happen to you.

Well, I won't get into partisanship because that would be unseemly, but I'm not surprised to hear you say that the Democrats were the ones that defeated the bill because they have not, to my understanding at least, really been for civil rights any more than the man in the moon. They have been anti-civil rights, but that's another story, and we won't get into that.

Mr. Clark: I take it that the Realtors finally came around rather than get clubbed by the state?

Justice Dolliver: I think the Realtors, as you say, did come around, and they found it was to their advantage to come along with his way of thinking. He would rather do things by persuasion, by getting them to do voluntarily what otherwise would be done by legislative action. It was characteristic of him. He was willing to risk a certain amount of political capital. He was famous for doing this kind of thing.

Mr. Clark: In any event, there were good things happening. Governor Evans had strong support from the Regional Conference of the Methodist Church. Did you play a role in that?

Justice Dolliver: I think I probably did.

Mr. Clark: He found a good friend in Carl Maxey in Spokane who wanted to promote desegregation in schools and unions and in college and university facilities. The governor made Carl Maxey chairman of the Washington State Advisory Committee to the United States Commission on Civil Rights. Did you play a part in this?

Justice Dolliver: I don't think I played a part, but I was certainly aware of his friendship with Carl Maxey, even though Carl was an ardent Democrat. This was another example, I think, of Evans trying to find the best man for the job rather than being bound closely by a partisan feeling one way or the other. I certainly agreed with the appointment of Carl Maxey because, no question, he was at that time and to the day of his death one of the real leaders in the civil rights area in the state of Washington.

Mr. Clark: Did you get very close to this State Advisory Committee that he was appointed to, State Advisory Committee to the United States Commission on Civil Rights?

Justice Dolliver: No, I really didn't.

Mr. Clark: During this period you were in charge of the State Office of Economic Opportunity, and that was the time when Lyndon B. Johnson was dumping tons of money into this. I'll bet you used a lot of it in the Seattle Central District?

Justice Dolliver: We did. A lot of it was used in the Seattle area. One of the things that was

done, and I did play a key part in this, was the setting up of a Seattle Center for Government, which was, I think, on Twenty-third and Cherry. We had a single building, and inside this building we had representatives from various agencies in state government. This was Evans' idea. If you were a person with a problem, you could come in and be helped. I think it was very successful.

Mr. Clark: Were you able to create many jobs with this money?

Justice Dolliver: I don't know whether we got many jobs. But it is fair to say that in working with people who were involved, we helped relieve a certain amount of tension. Of course, we had the problem, as always, of getting people to understand that this was a real multi-service center. It wasn't fake. We really intended to help people. I think we were very successful in doing that. It was a very popular idea.

Mr. Clark: This movement for equal opportunity came to another crisis in 1968 following the murder of Martin Luther King Jr. The movement sort of melded with the movement to stop the war in Vietnam. In Seattle there were incidents of vandalism, shooting, bombs, arson. Several policemen were injured. Most accounts agree that the principal agitators were members of the group that called themselves the Black Panthers. Ralph Munro told us that the Panthers came to Olympia one day and raided the governor's office. Were you there?

Justice Dolliver: Well, I don't know if it was the Panthers or not, but I was there. It was a large group. They simply took over the entire office, I mean, the entire office. And, as you recall, the governor's office has a large waiting room and a large board room where the governor would hold his press conferences.

Then the governor's own private offices and the offices of the staff. Before we knew what was going on, a huge number of, I would say, young people...

Mr. Clark: All males?

Justice Dolliver: No, not necessarily all males—male and female, black and white—came in and took over the entire office. We had, in effect, to run for our lives. We got into the governor's office, locked the door, locked the door to the staff offices so they could not get in, and what do we do? Well, at that particular time, all phones, save one, which I happened to know about, were connected to the outside office. So we would try to call out, and immediately they would pick up the phone. Who were we talking to but a member of the group that had taken over the office! Finally, I got ahold of the governor. He was at the mansion. We had this one private line, and I said, "Hey, this entire office has been taken over by this group, and they are making certain demands. Will you talk to those who want to talk to the governor?" I had told them that the governor was not here.

He said, "Well, now, wait a minute. You tell them that if they will disassemble and go down to the meeting room downstairs [where the Senate Rules Committee met] if they will gather there, I'll come down and speak to them, but I will not speak to a mob. I will speak to them if they come to this meeting room." They did and he did, and that was the end of it right there. He had no problem going down there and facing up to them.

Mr. Clark: They had no demand other than to talk to the governor?

Justice Dolliver: No. Their demands, as always, were somewhat inchoate, and their main demand was they were going to get him in front of them. Of course, that was like meat

and drink to him—being called upon to be in front of people. He had no problem.

But I really thought that I myself might be in some danger. I was in the board room, alone, speaking to a group of these people, black men in this case, and I mean big black men, who were concerned about the whole idea of helping poor persons—mostly black poor persons—get into a program which would help them ultimately get a job. I'll never forget this day. They were seated around this table, and I was standing at one end, standing up, and trying my level best to talk with people, and they sort of taunted me. They said, "Don't think you're safe just because you've adopted a black daughter." I said, "That had never occurred to me. I didn't do that to appease you."

One of the members got up and started to come toward me in a rather menacing look. The leader finally said, "Stop it." And he sat down. Where the meeting went from there, I don't know, but I managed to get out of that particular room, get them mollified, and get back into the other room where more people were.

Now, at the present time in the governor's office, there is a desk for the State Patrol, but we had no such thing. The governor was not a believer in the show of State Patrol force nor, in fact, was I. To this very day, I feel if somebody wants to get you, "bang, bang," well, they can get you anytime they want. All the State Patrol in the world is not going to stop you from being shot if someone really wants to shoot you. I suppose that the governor would be called extremely lax nowadays on security. He refused to have anyone in his office who was a uniformed member of the State Patrol.

I remember when I first came into the office, I found in the desk drawer in front of me a .38 caliber pistol, which I immediately turned in to the State Patrol and said we were not going to have that kind of thing in this

office. And we didn't. At no time did we make an attempt to have a "show of force" inside the governor's office. Didn't do it; didn't feel it was necessary; didn't feel it was proper.

Mr. Clark: When the raid occurred on the governor's office, what was the response of the State Patrol? They must have known about it.

Justice Dolliver: Well, they knew about it after we told them.

Mr. Clark: Weren't there patrolmen usually around the campus all the time?

Justice Dolliver: They were in the building, I think, but the Legislature was not in session, so there was no reason for the State Patrol to be there. We didn't normally have the State Patrol around. I think that's changed now, but at that particular time there was no security. The governor was notorious for his laxity. I happened to fully agree with him, that the need for security was a vastly overrated kind of thing, and that security begets security. The more security you have, the more secure you've got to feel, and you will get more and more and more security. After awhile, you'll be completely paralyzed by security.

Ms. McKeehan: Was the group in the governor's office at all threatening?

Justice Dolliver: No. We, of course, were worried about the files in the back offices. They never got back there. As far as the stuff in the front office, I think they may have taken the knickknacks off the various desks, but, surprisingly, they really were not very destructive. They were not destructive at all. They didn't spit on things. They didn't mess things up. We were not happy to see them, of course. We felt we were captive. The place was absolutely packed, wall to wall, with

people. We couldn't move. We had to escape. I am not sure we were concerned about physical harm, but we sure were concerned about just being caught in a large crowd of people and not being able to move and not being able to say anything. This gave us some time.

Mr. Clark: In this atmosphere, we had Carl Maxey working in Spokane to end segregation, while a young social worker named Edwin T. Pratt wanted to do the same thing, through the Urban League, with blacks in Seattle. He got money from the federal Office of Economic Opportunity, and he subsidized a lot of job training. He tried to raise the level of racial sensitivity among Seattle's teachers and did a good job. He tried to find real estate for black buyers. Did you work with him?

Justice Dolliver: I did not work with Ed directly. I think the governor worked with him. I worked with him indirectly. When he was shot, I was as stunned as anyone else in the office.

Mr. Clark: The murder is still unsolved, isn't it?

Justice Dolliver: Still unsolved to this day. Somebody came to the front door; he answered the front door; and they shot him right like that. Never knew who it was.

Mr. Clark: The report of Secretary of State Lud Kramer's Commission on the Causes and Prevention of Civil Disorder says that Seattle escaped any really terrifying or protracted riots because this state, compared to other urban areas, had so few minorities, had better ghetto housing, had strong political leadership in Olympia, and had a lot of sheer luck. Would you agree with that?

Justice Dolliver: I would absolutely agree. I think the one other factor that must be mentioned is that it was a very open administration. The position of the administration was not to be combative and come up against the demands or the actions of the civil rights movement, but rather to go along with it and to make it work.

But, there is no question that we were lucky. Let me give you an example. This was later on, when the people out at the University of Washington wanted to march to the Seattle Federal Courthouse. Evans happened to be in Japan, and I'll never forget it. We all gathered someplace in Seattle, the lieutenant governor, myself, the mayor of Seattle, the chief of the State Patrol, and the adjutant general from the National Guard. At that time the officials at the city of Seattle were absolutely convinced that our sewers were being infiltrated and that we were going to have a riot. To his everlasting credit, the lieutenant governor refused to buy that kind of thing and told the mayor of Seattle that, yes, they could march.

As you know, between the University of Washington and downtown Seattle, there is an express lane, and we said that we would open up that lane for them, and they could march as they chose. They would march into Seattle and gather on the lawn of the Federal Courthouse, and that would be it.

I remember I was standing that day on top of the Olympic Hotel Parking Garage with the, I think, Seattle police chief, or maybe it was the chief of the Washington State Patrol, watching them come from the freeway onto the lawn in front of the Federal Courthouse. They had speeches and clapping and shouting hooray and all the rest of it. That essentially was it. There was a little physical damage. There was some breakage, I think, but no looting, and it was a fairly orderly crowd. We didn't need the State Patrol.

At that particular meeting, Howard McGee, who was at that time the adjutant

general and an excellent adjutant general, simply said categorically, "Mayor, if we bring in the National Guard, we are going to be an army of occupation." I think that finally woke the city authorities up as to what they were asking for. They were asking for an army of occupation to come into the city of Seattle. Howard said that as far as the readiness of the National Guard, well, we can be ready if actual rioting breaks out. But as far as coming in now at this particular point and taking over, we will be an army of occupation. We won't do that unless we are ordered to by the governor. To his great credit, John Cherberg decided no, we're not going to do that. There was no problem at all.

I was in touch by telephone with Evans in Japan and told him what happened. We came that close to having troops fall out in the city of Seattle, and if the mayor of Seattle, Mr. Uhlman, had had his way, that's exactly what would have happened.

Mr. Clark: This, I guess, is what Lud Kramer was noting when he referred to strong political leadership in Olympia. Governor Evans did give very clear warning that he was not going to tolerate violence from either the demonstrators or the vigilantes.

Justice Dolliver: He wouldn't do it.

Mr. Clark: Were you discussing these things with him every day?

Justice Dolliver: Oh, yes, and I agreed with him one hundred percent. We had seen what had happened at Kent State. We knew the governor of the state of Ohio, Jim (I can't remember his last name right now). But in any event, we knew the governor of Ohio and knew that situation fairly well. But Evans absolutely refused to call out the National Guard or the State Patrol or anybody else to take care of an alleged demonstration at the

University of Washington or anyplace else in the city of Seattle. As I say, as long as there was no property destruction, people could do anything they chose, and they did, of course. I was involved in that. I perfectly agreed that if you can spread oil on the water, then you're much better off.

Mr. Clark: Backing up a few steps—in 1968, this Advisory Committee to the United States Civil Rights Commission, the one that Carl Maxey was on, and the State Board Against Discrimination wanted the Washington State Liquor Control Board to stop honoring liquor licenses held by any organization that practiced racial or religious discrimination. Were you at work with them?

Justice Dolliver: That was part of the pressure that was being applied, particularly to Elks Clubs and to Moose Lodges whose charters still called for racial discrimination. I recall that the governor went face to face with the grand exalted ruler of the Elks Lodge, urging him to end discrimination.

Far more important, however, was the governor's insistence on the establishment of the so-called Philadelphia Plan with organized labor. If you think the Realtors are tough to talk to, try talking to organized labor. It is very, very tough. Those people have bladders that are absolutely elastic, and they can sit forever. Many of the meetings that we had with the various craft unions went on into the night. Evans insisted that we try in the state of Washington a modified Philadelphia Plan, which would bring more minority persons into private employment. It was difficult to get things like the local craft unions to go along with this, but eventually they agreed to do it. Eventually, both in the crafts and in various private unions, the push for racial diversity began to make some sense. They learned that this was to their advantage, rather than to resist all the time.

It was a tough sell. Everyone talked a great line about civil rights, but when it came time to do something that they thought was against their personal interests, they would not. We learned a considerable lesson about the wiles of both the Democratic Party and organized labor. So far as civil rights were concerned, they talked a great game, but when it came time to do something, they were out to lunch and didn't do it at all.

I think Evans' attitude, which I fully supported, was a low-key attitude, a "let's talk" attitude, an attempt not to say things that were inflammatory, an attempt to keep the issues at a working level.

Mr. Clark: This State Board Against Discrimination—apparently they did a beautiful job after they got Alfred Cowles as executive secretary?

Justice Dolliver: That's right.

Mr. Clark: Earlier this week I read a letter that you wrote to Governor Evans. This was June 3, 1965, when you urged him to call that board together, the Board Against Discrimination, and ask them all to resign so that he could wash his hands of the whole thing. Apparently, there was so much bickering there that it threatened the whole program in the state against discrimination.

Justice Dolliver: I think that's right, and my feeling was that if he were going to do something in the field of discrimination, if he were going to make his ideas prevail, and if he were ever going to turn state government around, the persons who were already in positions of power had to be brought to understand that they were in a whole new era.

Mr. Clark: As a state board, if they found instances of discrimination, what authority did they have to do anything about it?

Justice Dolliver: Well, what could they do? They could take them to court. Of course, with the federal law against discrimination now, it could be done through the federal agencies, but back then they could take them to court.

Mr. Clark: Years after Dan Evans left the governor's office, he told Mike Layton of the *Seattle P.I.* that focusing the energies of the state "on the problems of our minority citizens" had been among his most gratifying experiences. And public reaction to the governor's responses to the civil rights crises and the anti-war demonstrations seems to have been quite positive. Newspapers admired his restraint and his moderation. Yet Evans came very close, within one percent, of losing the election of 1972 to the former governor, Albert Rosellini. How come?

Justice Dolliver: Well, I've quit trying to predict how elections are going to come out. There is no question but in that election he stood for some very unpopular things. For example, he was for the income tax. He was against the death penalty. On civil rights he took a very pro-civil rights position. And the fact that he'd been in for two terms shows that he was not like Aristides, who, when he lost public favor, found himself ostracized. Rather, by the end of his second term, a lot of the people in the Legislature that formerly had supported him, a lot of his former friends, had either died or gone on to something else. The more you are in office the harder it becomes for you to win the election. This state is not Republican, by any means. I suppose, if anything, it is a Democratic state. It leans in that direction. So, the fact is that he did have a close election, but he won, and I guess that's what counts.

Mr. Clark: Was there a lot of big money against him in 1972?

Justice Dolliver: I'm not sure there was a lot of big money. I don't know what Governor Rosellini raised for his campaign. We had to spend about \$360,000, as I recall, which today seems like chump change. It's very little, but I think the results of the election were not based upon money or who had the most money. In those days, at least, that was not the important thing. It was who was the better campaigner, and I think Evans was clearly the better campaigner. Evans had a good reputation. He had simply been in for two full terms. In Washington politics, that's a long time. Don't forget, he was the first governor ever to successfully get three consecutive terms. Governor Langlie had three terms, but he had a break between the second and the third term. Governor Evans was able to have three full consecutive terms by himself. I think the aversion some people had for a governor being elected for three terms played a part. But the fact was that the governor had a lot of support.

Mr. Clark: You guys had been pushing hard for a state income tax. Do you think that was a factor?

Justice Dolliver: It may have been. It's hard to tell. The people of the state didn't approve of the idea of an income tax. In fact, it is nothing short of miraculous that two times, really through the influence of Dan Evans, the Republican State Central Committee and the Republican Convention both supported the income tax. While it's quite apparent the people did a lot of talking about it and what a great thing it would be, and that the present tax system is unfair, the fact of the matter is that there really was not enough support for the income tax to make it happen. I don't know whether people opposed Dan Evans because of the income tax or not. I can't tell. Certainly, he was for the income tax, and he believed we had an unfair tax system in the state of

Washington. One of the ways to make it fairer was to have an income tax; he put his support on that basis, not on the basis of an income tax is good for you, period. A more balanced tax system would be fairer and therefore better for the people of this state in all categories, all economic conditions. That was not the will of the people by a long distance.

Mr. Clark: After the close call in November 1972—a one percent advantage is sure a close call—there was a lot more bad news for the friends of Dan Evans in Olympia. First of all, you lost the Legislature to the Democrats, and executive requests thereafter could simply be ignored. You lost the item veto, and this disarmed the governor. You lost the battle for tax reform, and, as we were just saying, the tax reform must have been a very high priority. And you lost it not in the Legislature but at the polls and were then stuck with this antiquated and conspicuously regressive state tax system. And, fourth, you lost control of fishing in the state waters due to the Boldt decision. Please comment on each of these in turn at any length that you want because I think these are critical to understanding the last Evans administration.

My first mention was that you lost the Legislature to the Democrats.

Justice Dolliver: Having the Legislature in your own party is not quite as much of an advantage as people like to think it is. It's nice to have one house of the Legislature belong to the same party as you do, which the governor had with the House for '69, for the '71 sessions. But losing it is not that great of a disadvantage. The biggest disadvantage was, as time passed on, we had a fairly rapid turnover in the Legislature. So many of the personal friendships and personal acquaintances which the governor had relied upon were no longer there. Politics isn't necessarily a personal kind of thing, but it

helps when you know, on a first-name, first-hand basis, the people with whom you are dealing. You will remember he was in the Legislature himself and was a prominent legislator for many years. When you finally begin to lose your friends in the Legislature, it becomes more and more difficult for you. So, I would say the problems of the 1973 and 1975 sessions were not that the Democrats took over control of the House. The important thing was that fewer and fewer people in the Legislature were persons who had been there when Dan Evans had been a legislator himself.

Mr. Clark: My second step down the hill was that you lost the item veto. People had to vote on this too, didn't they? It was a constitutional amendment.

Justice Dolliver: Well, this is a very complicated sort of thing. We, in this state, have what is known as a weak governorship. It has very little authority. The main things the governor can do are, one, control the agenda, which is a terribly powerful tool, and two, use the veto. There is no question that, as long as he had it, Evans used the item veto in a very creative way. In the case of the Landlord-Tenant Bill of 1973, he was actually legislating with it. Evans was for the tenants' side of the relationship, and the majority of the House was on the other side. So, he simply vetoed out those items of the bill which were pro-landlord and made them pro-tenant.

Well, that was too much, and the opponents decided they were going to take away his item veto. They were under the general leadership of Leonard Sawyer, who was the Speaker of the House at the time. As I recall the dynamics of the occasion, it was very, very close. You have to get a two-thirds majority in the Legislature to make this sort of thing happen. There was some hope he might be able to stop what was happening in the House, but no hope in the Senate. We lost

the House by one vote. It took a long time and a lot of persuasion on the part of the Speaker and the Democrats to finally get the two-thirds vote in the House.

Once it went to the people, Evans campaigned very heavily against it. I recall his going to the State Bar Association meeting in Vancouver, which, at that time was a fairly good-sized meeting, and speaking against the proposed amendment. But it passed.

What the people voted for was a constitutional amendment that didn't actually abolish the item veto: it simply modified it. The amended constitution says, in effect, that the governor cannot go into a proposed law and veto simple words or phrases – like changing “shall not” to “shall.” Now he cannot veto any less than a full paragraph.

As it finally turned out, with the way the Supreme Court has subsequently interpreted the modified item veto, the governor's veto powers have not been as much restricted as I think those who originally had the idea would like to think. But, there is no question that this was something that we would rather had not happened.

There were two factors in this defeat. First of all, I won't call it overreaching, but Evans was accused of overreaching, particularly in the Landlord-Tenant Bill. Second, the Legislature had changed in the 1970 and 1972 elections. So, Evans was no longer the dominant force he had been before.

Mr. Clark: The next matter was tax reform. Let's return to that for a minute, and let me understand it, if I can. The proposal was for an income tax, but a flat-rate income tax, not a graduated income tax?

Justice Dolliver: There were two proposals, actually. The first proposal, now, you're right. It was not a graduated income tax. It was a flat tax with very specific safeguards. The idea was to make possible the lowering of the

property tax by partially replacing it with an income tax. It was a very progressive proposal, but was defeated by the people, by a rather large vote. So, at the next session, another proposal was attempted. This was simply a corporate income tax, and that went before the people, and that was defeated. I said that if you live south of the Columbia River—Oregon has for years demonstrated this—you like an income tax. If you live north of the Columbia River, you don't like an income tax. That's the real difference. I say those of us who supported the idea of an income tax were trying to make the tax burden upon citizens more equitable. We failed to get the requisite majority from the people, so it went down.

Mr. Clark: Step four—you lost control of fishing through the Boldt decision.

Justice Dolliver: Well, you need to understand, first of all, that there were two kinds of fishing. Most salmon were then taken commercially, and controlled by the state's Department of Fisheries. No steelhead were supposed to be taken commercially—they were regarded as sports fish and controlled by the state's Department of Fish and Game. The governor directly appointed the head of the Department of Fisheries, so I think it is fair to say that the governor had direct control over that department. Not so with the Department of Fish and Game. The governor would appoint members of the Fish and Game Commission, who then could become as fully independent as they pleased, as indeed they did. We made many attempts to have the Game Department change its positions relating to the Indians' asserting their treaty rights to take steelhead in their traditional ways without interference from the state of Washington. It refused.

The actual case that went to Boldt was not brought by the United States but by the state of Washington. We wanted the matter before

the United States District Court because we wanted to get it settled one way or another, once and for all, so we wouldn't have the constant fighting and bickering.

At no time did we expect that the result would be the loss of the management of the entire fisheries resource, that both steelhead and salmon were to be taken out of the hands of the state of Washington and put in the hands of the federal government. You have to live with what you get, but that was not what we had hoped for. But it should always be remembered that it was the state of Washington that encouraged *United States v. Washington*.

There was no question in the governor's mind that some kind of accommodation was going to be made for Indian fishing. We had no doubt at all about that. With salmon fishing, we had some success in accommodation. With steelhead, we had no success at all. The Fish and Game Department absolutely adamantly refused to make any change, and the commissioners refused adamantly to make any change in their policies. The result was that we lost everything.

Mr. Clark: You are saying that the Fish and Game Department was out of control, and that their enforcement people were actually violating the treaty rights of the Indians?

Justice Dolliver: Well, we didn't quite put it that way. I remember accompanying the governor on more than one occasion to the department and asking the commissioners, asking them directly, if they would find out some way to accommodate the Indian demands for steelhead fishing, and they said, "No, we're not going to do it." And, they didn't. Of course, the governor had no control over them. He was not able to fire them, was not able to do anything to control their vote, except by persuasion. He failed to do so.

People tend to forget that there was a real

difference between the administration for the Department of Fisheries and for the Department of Game. I'm not trying to say that the Department of Fisheries was clearly white and the Department of Game was all black. Hardly. But the fact of the matter was that at least with the Department of Fisheries, which was under the direct control of the governor, some kind of accommodation was attempted, some way to resolve the matter was being worked on. In the Department of Fish and Game there was absolutely no attempt made of any kind. They believed that without sports licenses the Indians had no right at all to the steelhead and, therefore, they were going to enforce their own rules regarding who could take steelhead, and how and when. That was that. As you said earlier, the effect of *United States v. Washington* was that the state government lost its power to administer the fisheries resources of the state of Washington.

Ms. McKeehan: What the governor expected when he went to court was just that the Department of Fish and Game would be ordered to make some kind of accommodation?

Justice Dolliver: Well, that was the hope, at least. The hope was that the matter would be settled by allowing the state to continue its management of the fisheries resource but that some kind of accommodation would be ordered by the federal court.

Mr. Clark: Slade Gorton pushed it before the United States Supreme Court and lost everything there, finally and completely. Did he think he could win?

Justice Dolliver: You have to understand that Gorton and Evans had a somewhat different take on Indian fishing. Evans is much more pro-Indian than Gorton was.

Ms. McKeehan: Was Gorton opposed to Indians' treaty rights before the Boldt decision?

Justice Dolliver: Well, I'm not sure "opposed" is the word I would use, but his belief was that the Fish and Game Department was accurately representing what the situation was. Evans had believed that we ought to attempt some way to find a compromise between the demands of the Indians and the demands of the fishermen, be they sport fishermen or commercial fishermen, and not force the thing right to the wall.

Yes, I think Gorton thought he could win. He makes an excellent appearance before the Supreme Court. In fact, I've heard it said he gives the finest presentation of any of the state attorneys general before the Supreme Court, and I'm sure he does. But we lost that case.

Mr. Clark: I wonder if he really thought he could win, or was it just one that he had to go through?

Justice Dolliver: Well, I think he thought he could win. I think every attorney thinks they are going to win their case when they take it to a higher court. I think he thoroughly believed he was correct in his interpretation of the law.

Mr. Clark: Well, all these add up to a pretty gloomy feeling, I would think, in the Evans administration during the third term? Did you ever think you should abandon the ship?

Justice Dolliver: No, no. I did not at any time. I think the attitude Evans had was that even getting the Republican Party and the Legislature to approve of the income tax brought about a victory. It was a victory as far as raising the consciousness of the people of the state as to the kind of taxation we had. As far as *United States v. Washington* was

concerned, sure, we were disappointed.

Mr. Clark: Toward the end of the third term, in March of 1976, when the governor called in his closest advisors for a frank discussion about the possibility of running for a fourth term, you led the arguments against his running for a fourth term.

Justice Dolliver: I did.

Mr. Clark: What were the arguments against it?

Justice Dolliver: Well, the arguments were, if he were to win the fourth term, we would be having the same kind of meeting for the fifth term or the sixth term or the seventh term or the eighth term. My feeling was that for him, at least, three terms were enough. He had done what he could do. He had provided the leadership which he could provide, and we had had a close call, as you recounted a little earlier, with the third term. To run for a fourth term would, I thought, probably not be successful.

Mr. Clark: Was anybody really pushing for a fourth term?

Justice Dolliver: Well, I think the main advocate was the governor himself. But no one was pushing. We were mainly just going to discuss the idea. I think in the final analysis we thought that the costs would be considerable—I'm talking about psychic costs. He would be better off to have whatever legacy he had from three full terms, then go to something else, which is what he did.

Mr. Clark: When you had this meeting, did those involved vote on the matter, or did Evans just listen and make up his own mind?

Justice Dolliver: I think the latter. He could

make up his mind and did. We didn't hold a vote on it. Anyone who had something to say, said it. My recollection is that there was no general feeling against a fourth term, and I think I was probably the only one really speaking very forcibly against it. Not because it was a question of winning or losing. I didn't think it was worth it.

Mr. Clark: So, if the third term didn't include many of the things that the governor wanted, he could surely look back across twelve years of some signal achievements. In discussing these with George Scott nine years ago, you emphasized three: the environmental bills, the Department of Social and Health Services bill, and the Department of Revenue, which at least got away from the old Tax Commission. Would you have this emphasis today?

Justice Dolliver: Yes. But I think that something we tend sometimes to forget is the recasting of the whole community college system. Up until that time, why, the community college system could not really be called a system, but it was changed during the early years of the Evans administration to the system we have now, which I think works out fairly well.

Mr. Clark: Governor Evans was also very proud of what people were calling the "straight arrow" administration—the absence of any governmental corruption. And we suppose that you felt the same way, and we also suppose that you had a lot to do with it. Can you talk about that?

Justice Dolliver: Well, one of the good things about working with Dan Evans was that he was a person who was straight. In fact, I'll tell this story about Dan. I won't use any names, but one day somebody rose in the Senate and said, "What would Jesus Christ say about this particular piece of legislation?"

And, just like a shot, somebody on the other side of the aisle rose up and said, "Well, why don't you go and ask him? He has an office on the second floor."

Mr. Clark: Let's not mention any names, but did you have occasion to fire anybody because you feared potential corruption?

Justice Dolliver: Not for corruption. I did have to fire an individual, but it was more for incompetence than corruption. There was only one occasion I can recall when someone came into my office, and I'm not sure he tried to bribe me, but that was certainly the essence of the conversation, and I threw him out of the office. Wouldn't have anything to do with him. But that's the only occasion I remember.

Mr. Clark: Did you, yourself, ever consider running for governor?

Justice Dolliver: Oh, I thought about it once or twice, but I'm sure I wasn't using the position I had with the governor as a stepping stone. I have never tried to do that sort of thing. I figure if you have a job, do the best you can with the job. If something else comes along, you'll be asked. But at no time did I consciously set out to run for governor, but there's no question that the thought had crossed my mind. I did nothing about it.

Ms. McKeehan: So you would have waited to be asked? You wouldn't go organize the thing for yourself?

Justice Dolliver: Probably not. Maybe it was lack of ambition, I don't know, but I always was of the belief that the job I had was a good job, was an exciting job, and I was paid to do the very best I could, and I worked on this particular job as hard as I could and didn't try to spend a lot of time thinking about advancing to some other position. That was not my style

of doing things.

Ms. McKeehan: Did you ever consider running for any other political office?

Justice Dolliver: As I have said, I ran twice for prosecuting attorney and lost. Obviously, my interest has always been in politics. I have been in a political family since I was a child. I suppose at one time, if I had an ambition, it was to be a member of Congress, either a senator or a representative, like my father had been, like my great uncle. I thought, well, if lightning should strike, if I'm called upon to run for something, this is what I would like to run for. It never happened, and it's probably just as well that it didn't. I didn't have any fantasies in my waking hours about such things.

Ms. McKeehan: Would you have liked to have been on the United States Supreme Court?

Justice Dolliver: Well, at one time I used to tell people that I thought I had a chance because, you will recall, back in the Reagan era, he was nominating people with beards. I thought, "I have a beard," and there was a chance.

I suppose every lawyer would like, at some time, to be a member of the United States Supreme Court. But that sort of thing is going to happen only when the president finds you to be what he is looking for. I was not a particular friend of the president. I met him, and that's about all. I knew some of his associates, but I had not made an attempt to ingratiate myself. So, it was one of those things that you think about, perhaps, and sort of say, "That would be nice," but as far as doing anything about it, I never did.

Mr. Clark: Let me mention a few names, now, of people whom you may have met

during the political years and ask you to characterize them. Richard Nixon.

Justice Dolliver: Richard Nixon. I did meet him. In fact, the first and, I think, the only time I met him was in Palm Springs just after the 1968 election. I had gone down with the governor, and we met him. That was my only connection with Nixon. I was a loyal Republican and happy to see any Republican get into office. I have to be honest with you and say, though, if I had my choice of the various candidates who were running for the office of president, I would not have picked Richard Nixon. I was not against him, but he could not inspire this great feeling of support that other men could.

Mr. Clark: How about Ronald Reagan? You did say that you'd met him.

Justice Dolliver: I met Ronald Reagan. I guess the first time was at a National Governors' Conference, or perhaps it was the Western Governors' Conference, I don't know. But Mr. Reagan came in. He was accompanied by a large staff. The staff all marched in with him. The other governors had hardly any staff at all, and I'm afraid that the whole thing rubbed me the wrong way. I didn't know Reagan, and I certainly don't have a very heroic image of him.

When I was a kid back in Iowa, he was a radio broadcaster on WHO Des Moines, and I suppose his biggest skill at that time was announcing the Cubs baseball games on the radio. He was very good. I recall very well when Reagan finally left Iowa to go out to Hollywood to work in the movies because I had a high regard for him at that time. I think he was a good president, but I wouldn't necessarily say I was a great fan. If I had had a choice, I would have supported someone else for president. But he won, and that meant a lot. I was always worried that he was the kind

of person who always had something being done for him rather than doing it himself, either by his staff or his wife or whomever. The lingering concern I always had was—can the man do anything on his own? Is he any good by himself, or must he always depend upon someone else? That doubt kept with me throughout his career.

Mr. Clark: How about Warren Magnuson?

Justice Dolliver: I didn't know him too well. I suppose my fondest memory is that he could tell the greatest political stories of anybody who ever walked the earth, believe me. He had a raconteur's charm of being able to talk about things, and I think I recognized Maggie as someone who could get things done.

I know at the time that I was being considered for a U.S. District Court position, Magnuson came over, oh, it was about March of the year, and put his arm around me and said, "Jim, you understand how it works here." The Democrats at that time, of course, controlled the United States Senate. And he said, "You're not going to make it. Your appointment by the president will not get through the Senate, simply because you're a Republican and the Democrats control the Senate."

And I said, "I understand that."

And he said, "Okay." I mean he was very, very avuncular at that particular time. I guess my impression of Maggie is that if you wanted to have something done, if you've really had a problem in the state of Washington, Maggie was the one to go to.

Mr. Clark: Henry Jackson.

Justice Dolliver: I think Jackson and Magnuson were nearly inseparable. Jackson, in my thinking, had a much higher reputation than Magnuson, particularly in the field of foreign affairs. I have to agree with many of

the things Jackson espoused. I did not look upon him as a guy who would "fix things" for you like Magnuson would. I think Jackson did not have nearly the kind of influence that Magnuson had in dealing with the day-to-day operation of government, but I think, from his foreign policy position and from the fact that he was able to articulate his positions, I admired Jackson very much, more so, I think, than most other Democrats of the time.

Mr. Clark: Did you ever meet Senator Robert Dole?

Justice Dolliver: Never met him. I don't know Dole at all.

Mr. Clark: Did you have much to do at all with Governor Dixy Lee Ray?

Justice Dolliver: Well, I did have something to do with her. When Evans left the mansion, he put a bottle of champagne on ice and put two glasses on a silver tray for her to have. He might as well have been trying to impress the moon.

I think her greatest failure was the fact that she simply misunderstood what partisan politics were all about. Now there may be particular individuals I don't care for, but I'm able to distinguish between pure partisanship on the one hand and the ability to get along with people on the other. I'm afraid she never understood that.

For example, anybody who had been appointed to office by Dan Evans was immediately taken as an enemy. The first thing she did when she got into office was to fire the person who was the head of the Licensing Department. He was a Democrat from Tacoma, but that didn't make any difference to her. Evans had appointed this person, who had come through the ranks of civil service. She had no sensitivity to this kind of thing.

I think in her stated field, the field of

nuclear energy, she may have been an expert. I don't know. But in the field of politics, she just didn't know how to get along with people, how to relate to people, which is extremely important. She had no skill whatsoever in dealing with the press. Whether you like them or not, reporters are like the wind. You have to take care of them and appreciate them. She was unable to do that.

Mr. Clark: I have just finished reading Shelby Scates's biography of Warren Magnuson, and I learned in it that Montgomery Johnson managed Dixy's reelection campaign in 1980.

Justice Dolliver: He did.

Mr. Clark: What got into him?

Justice Dolliver: Well, that's the same question that we, the people in the Evans' camp, asked. I think what happened was that he saw the Republican opposition to Dixy, didn't like them, and liked some of Dixy's positions, particularly her position on atomic energy, and she needed help, and he decided he would volunteer for that, and was accepted. I can't be any more definitive than that. I think it really amounted to the fact that he was trying to help her because he basically agreed in the position she had taken, even though she sometimes took the matter ungracefully. He disliked her, I believe, less than he disliked whoever the Republican candidate happened to be. I can't remember now, but some of us who were at work with Gummie before asked the same question you asked. Why? I really don't have any better answer than that.

Mr. Clark: I was really startled.

Justice Dolliver: A lot of people were startled.

Mr. Clark: How about Booth Gardner?

Justice Dolliver: Booth was a charming young man who got along with everyone just fine. He came to the governor's office with some legislative experience, and I admired some of his ideas. He might have been a great governor, but he was not willing or able to risk any of his personal political capital to achieve greatness. He just sort of sat there, being nice to everybody, never making anybody angry. For two terms. He was very lucky.

Mr. Clark: During these twelve political years, who were your closest friends?

Justice Dolliver: Well, I suppose the person that I dealt with most was—he just lives right down the street from us—Dick Hemstad, who is now on the Utilities Commission but at that time was both in the governor's office and was also the head of one of the state agencies. I knew him and dealt with him, and, of course, the people on the staff of the governor's office. I knew all of them and dealt with them on a regular basis. I was not, nor have I ever been, known as one of those persons who was... I am not an easily sociable person. I never had that gift of being able to get along sociably with other persons.

Mr. Clark: During these years, did you and Mrs. Dolliver entertain a lot? Dinner parties, cocktail parties?

Justice Dolliver: We really didn't. That may have been one of my problems, that we did some, but I think a very limited amount. Neither she nor I were into that kind of thing, and, as a matter of fact, we did very little entertaining during the time I was in office. It just simply was not my style, never has been.

Ms. McKeehan: Did you like each other's company more than you wanted to have a bunch of other people to your home, or you

were busy with your kids?

Justice Dolliver: Indeed, we liked each other's company; and, of course, we were busy with the kids. It wasn't that we were against socializing—it was that we were the way we were. The effort required to be in a real party mode was more than we wanted to make.

Mr. Clark: As a transition now between the political years and the years at the Supreme Court, tell us something about your appointment to the Supreme Court.

Justice Dolliver: Well, it took a long time. First of all, Dan Evans had nominated me for a United States District Court appointment, but he had to withdraw that nomination because of opposition from a committee of the American Bar Association that complained about my very limited experience practicing law. Then Evans wanted me to take the place on the State Supreme Court created by the retirement of Justice Matthew Hill. The Washington State Bar Association—again, citing my limited experience as an attorney—objected to that.

Then, in about April of 1976, Justice Finley, who was my immediate predecessor, died in office. So here was a vacancy, and the governor simply came to me one day and said, "If I nominate you, will you accept?" And I said yes.

Why did I do it? Well, first of all, the job appealed to me. Secondly, I felt I could win elections. And this was beginning to be the tag end of the Evans administration. I didn't know what I was going to do. The court sounded like something I was interested in, and so I said yes, I would take it. I think it is fair to say that one of the reasons I took it was that my father had had some ambition to be a judge. He was trying to get the federal judgeship in Iowa for the circuit court, but, among other things, he was declared to be too old. I think that was an excuse, but, in any event, he did not get the nod. This was during the Eisenhower years. So I was, I suppose, in a sense attempting to do something my father had not done. Finally, it was a bit of a challenge.

Mr. Clark: Was your father alive when you went to the State Supreme Court?

Justice Dolliver: Yes. He died in 1978, and I went to the court in 1976. He had suffered a series of strokes over a period of time, so his health was not good. But he was aware that I had gone to the Supreme Court. When I had to run for the first time, he said, "Well, maybe you're going to get your freedom, and maybe you're going to win. At least, you will always be called a judge because you are a judge." I was determined that I was going to win.

CHAPTER 3

JUSTICE DOLLIVER: A JUDICIAL PROFILE

Mr. Clark: In the mezzanine of the State Supreme Court building there are displays that call visitors' attention to what are, in a historical sense, identified as "landmark decisions" of the Supreme Court, decisions that have clearly shaped the development of state social and political institutions. My understanding in reading about this display is that it was Justice James Dolliver who identified these decisions. Is that correct?

Justice Dolliver: That's correct.

Mr. Clark: As an approach, then, to our discussing your years as a State Supreme Court justice, let's take a look at these landmark decisions. Chronologically, the first of these is called *Culliton v. Chase*, which in 1933 declared that a state income tax initiative measure approved by the voters was inconsistent with the state constitution. Why did the court overrule the voters in this instance? Why is this a landmark case?

Justice Dolliver: Well, this was the graduated net income tax; and the question was: Was such a tax constitutional? The court decided, by five-to-four, that a graduated net income tax was not a tax which could be upheld under the state constitution. As I say, it was a five-to-four decision, and we are one of the few

courts that has gone this way. Other courts in other states that have decided the same question have gone the other way.

Mr. Clark: Is this because the constitution says that taxes on like property must be equal?

Justice Dolliver: That's correct.

Mr. Clark: And a graduated net income tax would not be equal?

Justice Dolliver: By definition it's graduated; it is going to be unequal.

Ms. McKeehan: Is this the only state with a clause like that in the constitution?

Justice Dolliver: No. There are some other states. Don't ask me what they are, but there are other states that have something at least comparable to that. We are one of, I think, two or three that have decided that the graduated net income tax will be excluded under those strictures.

Ms. McKeehan: But the people voted for a graduated tax in 1932?

Justice Dolliver: Yes, but since then they have changed their minds.

Mr. Clark: Was this because it was in the middle of the Depression?

Justice Dolliver: It may have been. Back in the early 1930s, the tax that was the worst on people was the property tax. I think the concern that the people had was once the Legislature got the authority to have an income tax, as well as a sales tax and a business-and-occupation tax, that they wouldn't know where to stop. They were afraid additional taxation would be put upon them. The fact that the present system is an

unfair system and is a highly regressive system seemed to have been outweighed by the lack of trust the people of the state really felt for the Legislature.

Mr. Clark: Was this because in the depths of the Depression, the property tax wasn't bringing in enough revenue? So people then turned to a graduated income tax?

Justice Dolliver: My history is a little vague on the subject, but I think that was part of it. Of course, part of it was that we were more of a rural state in the early 1930s, at the time of the Depression. The property tax was especially hard on persons who had large land holdings. I think the goal was to have the strictures of the property tax a little less by having an income tax.

On the other hand, there's been no question that a sales tax is a constitutional tax. It is a uniform tax applied to everyone, and therefore it's never been challenged. And we have a state business-and-occupation tax, which is, again, a regressive tax.

Mr. Clark: If the court had ruled in favor of a graduated net income tax in 1933, we perhaps wouldn't have a sales tax now?

Justice Dolliver: You're asking me to be a seer, a predictor, and I can't. I think most states that have an income tax also have a sales tax. It's not true in the case of Oregon, which has only an income tax and not a sales tax; but it's true in the state of California; it's true in the state of Idaho.

Mr. Clark: I think we have seen why it was a landmark. The second decision came down in 1936 when the court gave its approval to a minimum wage law that had been challenged in a case called *Parrish v. West Coast Hotel Company*. Why was this matter raised to the level of the State Supreme Court?

Justice Dolliver: We had, in the state of Washington, a law about certain benefits that employers were required to provide their employees, and the question was whether this was constitutional under the United States Constitution. We thought that it was, and it had passed our Legislature and had been approved by the Washington State Supreme Court. So, when it went to the United States Supreme Court, the question was whether this legislation, which helped the employee, would be upheld. Previous action by the United States Supreme Court had indicated it would not. With this case the Supreme Court did uphold the right of the state to require these benefits to workmen, even though it wasn't in the contract between the employer and the employee. This made a lot of difference. From that point on, the idea that governments, either state governments or the federal government, could mandate working conditions and mandate other benefits for the employees became accepted. It moved from the constitutional field into the political field. By that I mean it became not a question of constitutionality; it was a question of what the politics of the particular time were. So, it was a very significant case.

Mr. Clark: And some quick wit at the time—referring to the court—remarked that “a switch in time saved nine.” What did that mean?

Justice Dolliver: What happened was that the court had obviously changed its mind. You will recall that at about this time, Franklin Roosevelt had a plan to make the court more friendly to New Deal legislation: He planned to increase its size by nominating several more justices, all of whom would be good Democrats. But with *Parrish*, the court didn't seem so bad after all, and Roosevelt abandoned his “court-packing” scheme. And it occurred to somebody that a switch in time did indeed save nine justices.

Mr. Clark: Do you know who that was?

Justice Dolliver: I think it was Justice Owen Roberts.

Mr. Clark: The third case is called *Pierce v. Yakima Memorial Hospital*, a decision in 1953 that allowed patients being treated there as charity cases to sue the hospital for negligence. Please tell us how this came about.

Justice Dolliver: I am very familiar with that case. I was a law clerk for Fred Hamley, Judge Fred Hamley, who wrote the opinion. I worked closely with him in writing it. Up until that time, by an action of the Supreme Court, you could not sue a charitable organization in tort. In contracts, yes, but not in tort. If you were injured, you couldn't sue. So, you couldn't sue the Boy Scouts. You couldn't sue the Girl Scouts. You couldn't sue the "Y." You couldn't sue, in this case, a hospital. The theory was that it's only one person involved being injured here, and think of the fine work that the charitable institution is doing. Think of the hundreds, if not thousands, of people that are being helped by the charitable institution. Therefore, if you have to balance the two, giving some kind of reward to one person against the benefits that would go to lots of people, the courts came down on the side of allowing benefits to go to a lot of people and disallowing a tort action.

By the early 1950s, it became quite clear that things had changed, and the one thing that changed was—and it was one word—"insurance." The court recognized the fact that the Boy Scouts or hospitals or whatever the charitable institutions happened to be, instead of putting themselves at risk for the entire amount of the tort action, could buy insurance. For a very small, comparatively speaking, insurance premium they could protect themselves against this tort action. So, the Supreme Court of the State of Washington,

after reconsidering the issue, felt that, yes, there has been a change from what the original situation was in the early 1950s. The court decided to overturn the old rule, which, of course, was a court-made rule in the first place, and adopted the new rule that you could be sued in tort if you were a charitable institution. That was very significant because doing that forced all charitable institutions to have insurance.

Mr. Clark: The last of these four is a decision in 1969—when you were working with Governor Evans—holding that owners of lake-front property around Lake Chelan had no constitutional right to bring in fill dirt to shore up their property. The display for this in the mezzanine explains that it made possible the subsequent environmental legislation that you and Dan Evans guided through the State Legislature. What can you tell us about that?

Justice Dolliver: Well, I think the important thing about *Wilbour v. Gallagher* was the way it prefigured subsequent events. *Wilbour v. Gallagher* really said that the state, the people, had their interests. In this case it was the area between the high watermark and the low watermark on Lake Chelan, but, by analogy, it's the same thing as low tide and high tide. Who owns the tideland? Does the upland owner have a right to the tideland? Or, does the state have a right to the tideland? The case of *Wilbour v. Gallagher*, even though it was for fresh water, in effect decided that the tideland area, unless there had been a cession by the state to a private owner, the state maintained ownership in this land. In effect, that decision was the precursor of all of the environmental legislation regarding shorelines because it indicated that the state of Washington, rather than the upland owner, had the ownership of the tideland; and that made a very significant difference.

Mr. Clark: The court was saying that these people, then, were dumping fill dirt on state land?

Justice Dolliver: That is correct.

Mr. Clark: Let's move now toward some of the most important issues that came before the court during your tenure, which began, I believe, in 1976. Please tell us at length how you think and feel about these issues and whether or not, in the subsequent discussions with your colleagues, your views prevailed.

You have had a great deal to say during your tenure on the court about capital punishment.

Justice Dolliver: Yes. I think capital punishment is a good example of the point I want to make, that what my personal beliefs might be should not affect my actions as a judge.

Personally, I am opposed to the death penalty. I have never made any secret of that; and, as a matter of fact, when the matter came onto the ballot, I believe in 1974, I campaigned against the proposal to make the death penalty mandatory and continue to oppose it to this very day. A majority of my colleagues do not feel the same way, unfortunately. My belief is that the death penalty is a cruel, a barbaric, and an uncivilized method which has its basis in retribution, not in anything else. As far as being a deterrent to future murders, I think it has had little effect. However, the people have spoken, and the court has consistently upheld the death penalty. Once the decision is made, once the action of the constituents is held to be constitutional, then it is up to the Supreme Court to uphold the statute. If the person being sentenced has received due process and the statute itself has been followed, I, as a judge, have no choice but to uphold the sentence. I may not like it. In fact, I don't, but the way I feel about the judge's duty is that a judge must

overcome his own private, personal attitudes toward a particular piece of legislation and say, "All right. This is what the people want. This is what they're going to get."

Mr. Clark: This is the thrust of one extraordinary case before the court in which you concurred with the majority decision that the man should hang, but then you wrote a second opinion saying why you didn't believe in the death penalty.

Justice Dolliver: Yes. That's right. I had written the majority in this particular case (*State v. Brett*), and within the court there was a good deal of going back and forth on it. I was well known for being opposed to the death penalty; but I wanted it understood that, in my opinion, if I were going to be a good judge, I was going to be loyal to the Constitution of the State of Washington. I had my personal views, which I thought were appropriate to express, but they would not weigh against the views I would have as a judge. They are two different things. If I ever wanted to act on my personal views, the thing for me to do would be to resign as a judge.

Mr. Clark: How about hanging? Is this cruel or unusual punishment?

Justice Dolliver: Well, I thought it was. In fact, I said so in an opinion here a number of years ago. I couldn't get five votes to agree with me. I can't recall the name of the opinion now [*State v. Frampton*], but I went into considerable detail about what had happened on previous hangings and what the risk was. It seemed to me that hanging, in and of itself, was a cruel and unusual punishment. But hanging has been upheld in the state of Washington; and since it has been upheld by a majority of the Supreme Court, I will uphold it too.

Mr. Clark: People who get hanged in the state are usually involved in cases that involve aggravated circumstances. What is that? How do you weigh it?

Justice Dolliver: The decision as to whether a person shall be subject to the death penalty, or that a jury shall rule on the death penalty, is made by the prosecuting attorney. It's not by the Supreme Court. There will be a so-called "bifurcated action." The jury will first decide whether the person is guilty of the crime as charged. Then, if they find the person guilty, they must decide whether the person shall be sentenced to death. The same jury will decide both questions. It's like a mini trial. After the question of guilt or innocence had been decided, the next question is, "Are there reasons why this person should not be put to death?" Again, these decisions are not made by the court but are made by the jury. The attempt is made by the court to so focus the position of the jury in that it will be able to decide "yes" or "no."

In the Supreme Court, the only thing we are called upon to do is make sure that the statute itself was applied constitutionally. Then we look at the trial itself to see that proper process was given to the person who was going to be executed. If the statute is followed and if the act is done constitutionally, then the Supreme Court is in the position, it seems to me, of having to uphold the execution.

We have a dual kind of execution in this state. Not only do we allow death by hanging, but we allow death by lethal injection. In fact, the last two or three executions in this state were done by lethal injection rather than by hanging. I suspect that this will be the method by which we will execute people in the future.

Mr. Clark: This is fairly recent, isn't it?

Justice Dolliver: Yes, in the last six or seven

years, I believe. Certainly within the last ten years.

Mr. Clark: I've wondered about one thing. You are a very forceful opponent of capital punishment, but you write that you have to obey the law, whatever it is, in the state. There must be other people who share your hatred of capital punishment. Do they feel the same way about the law?

Justice Dolliver: He's not on the court anymore, but Justice Utter had a very strong opinion against capital punishment. To my knowledge he never voted for a capital punishment case. He always found some reason which satisfied him not to vote for capital punishment. Whether he had the same view as, say, Justice Brennan on the United States Supreme Court, that he would never vote for capital cases because they thought capital punishment was unconstitutional under the Eighth Amendment, I'm not sure. My belief is that if the people decide something, if it is constitutional, and capital punishment is constitutional in this state, and if the law has been adequately followed in the trial, I have no choice as a judge but to enforce the law. As I may have said in that special concurrence, if I disagree and think that capital punishment is so bad I will never vote for capital punishment, then it's time to get off the court and go out and do something else. Because one of the things the judge has to do is—and you have to constantly watch yourself on this—is not to go beyond what the law actually says or what the constitution actually says. I have a strong feeling that if the people decide to do something, right or wrong, you have to do it. Capital punishment is only one of the many things I may disagree with the Legislature on, but it was appropriately passed. Regardless of whether I agree or disagree with the Legislature, I have to enforce the law.

Mr. Clark: It seems to me that the death penalty is so burdened with heavy emotion that it might be a matter of acrimonious debate among your colleagues?

Justice Dolliver: Well, in my time on the court, the matter has never become acrimonious.

Mr. Clark: In debating questions of punishment, the court has spent a lot of time discussing what the justices call “proportionality,” which means, as I take it, that the sentence given in one case must be proportional to that given in other, similar cases.

Justice Dolliver: That is correct, but we are talking about capital cases where we fear that sentencing can become disproportionate. The important thing is that you can’t make proportionality a thing of mathematical precision. If you try, no case will be proportional to any other case. What you’ve got to ask is—was there a civil rights component to the case, and was it something that a civilized body could not put up with? Was the due process so bad that no one could put up with it? If the answer to both questions is “no,” it seems to me that there is proportionality enough. You don’t need to get any further proportionality if there is no civil rights component. If it isn’t something that would be against any normal person’s thinking, then you would go ahead and call it okay. That is the only proportionality you had to consider.

Ms. McKeehan: If it wasn’t cruel and unusual punishment, you don’t have to consider it.

Justice Dolliver: Well, we have decided that execution is not cruel and unusual punishment. I disagree, but that’s the rule of the majority. If the procedures that were involved in the case

were not such that would shock the conscience of the court, we should accept them. In fact, it seems to me that to try to have a mathematical proportionality is nearly impossible. You would turn yourselves inside out trying to identify proportionality by asking—is this case proportional with that case? Is that case proportional to another case? It can’t be done.

Ms. McKeehan: What if there was a civil rights component—say fifty percent of the blacks that were sentenced for murder were sentenced to die and only five percent of the whites who were sentenced for murder were sentenced to die? Would that automatically be a problem, or would you look at the cases and how severe the crimes were and see if the black crimes were more severe than the white crimes?

Justice Dolliver: I think we’d look at the cases themselves. If there were a civil rights component—black and white, for example; or white/Spanish; or white/American Indian—it would force us to take a look at the case. Fortunately in this state we have had no cases like this.

Ms. McKeehan: What do you think of the mandatory sentencing laws that take away the discretion of the judges?

Justice Dolliver: I completely disagree with them. It seems to me that judges are the only persons in our society who are trained—and we really are trained—to take a dispassionate view of things, a disinterested view. The way it is now, it’s sort of one size fits all. There is no account given for any discretion on the part of the judge who is trained to look at the case and see if there are discretionary matters which may mean a tougher sentence or a lighter sentence. It seems to me that to take that power away from the judges is improper. I can understand the feeling that people had that the

judges should not have the power to, in effect, give convicted criminals no sentence at all. But I still think that judges were far better than the Legislature in deciding how long a person ought to be in prison.

In my opinion, there may be some persons in the criminal justice system who are simply incorrigible—cannot be cured—but it seems to me the vast majority of people that go into the criminal justice system ought to have some kind of rehabilitation. One of the things that is barred under the present system is any rehabilitation, except for a sexual offender. If you're a sexual offender, you may have rehabilitation, but not otherwise. I think that's too bad because I think that people, by and large, are entitled to some effort toward redemption. You can't have this unless you have some method whereby, when they are sent to prison, you try to cure them of what their problem was.

More and more we are beginning to see the futility of simply using the prison system as a huge warehouse. We have the result that after a while we have a whole prison full of people who are educating each other to be crooks when they get on the outside.

I think a certain amount of it has to do with the public understanding of criminal matters. There is a feeling on the part of the public that if you can just punish the person, and that punishment is swift and certain, that will take care of the problem. Well, that's part of it certainly, and swiftness is important. To send a person to jail is important if they have committed a crime. But what are you going to do with that person once you get them there? Are you going to try to rehabilitate them? I think you should, and as I say, except in the case of sexual violations, we no longer have any authority. I think it's too bad. But more and more I think the lawmakers and the public in general are beginning to recognize that determinate sentencing, in and of itself, is no good—that we must have something

more or we'll just spend our lifetimes building prisons and finding people to fill them up. That's not a very good policy.

Ms. McKeehan: A lot of people think that if you just educated them while they were in prison that that would stop a lot of recidivism—teach them to read and write and do arithmetic.

Justice Dolliver: Well, that's possible. They have a very fine high school up at Shelton, where many of these people do take a GED and receive a further education. I simply don't know the answer to that—whether they will be better persons by having an education or not; but I do know that many of them graduate each year from the Garrett Heyns High School in Shelton.

Ms. McKeehan: What do you think of sentencing children as adults automatically if they have committed a serious crime?

Justice Dolliver: Most of the crimes, of course, are committed by people under the age of twenty-four. Most of the murders are committed by people under that age. If you can get a person in reasonably good shape beyond the age of twenty-four, beyond graduation from college, they're going to be a good member of that community. I think the age of majority at eighteen is a proper age. I think the way it is now, the judge has the discretion to try a child as a juvenile or to try them as an adult. If they have a long record of juvenile crimes, they will probably be tried as an adult if their age is close to the age of eighteen or if the crime committed was essentially a brutal, horrible crime, such as murder.

I agree with that. I think the discretion as to whether a person ought to be tried as a juvenile or as an adult ought to rest with the judge. I do not think that it ought to be automatic.

Mr. Clark: What do you think of “three strikes and you’re out?”

Justice Dolliver: Well, again, the Washington Supreme Court upheld that, as did the United States Supreme Court, and I don’t know whether any kind of work has been done to show whether that is effective or not. I understand the law, and that it is the law, but I think that it will not lessen the rate of crime in the United States or in the state of Washington. I think pulling discretion away from those—that is, judges and lawyers—who are trained to make discretionary findings is a bad thing. But it’s the law, and if I were a judge, I would enforce that law.

Mr. Clark: In recent years, the court has had many occasions to look at search and seizure, especially with the number of drug cases.

Justice Dolliver: Right.

Mr. Clark: How have you voted on this matter, or how have you written your opinions?

Justice Dolliver: On matters involving search and seizure we have a problem because of the difference between the Fourth Amendment of the federal Constitution and Article VII of the Washington State Constitution. There is a somewhat higher degree of privacy provided for in the Washington State Constitution than there is in the federal Constitution. By and large, the attitude of the Supreme Court has pretty much been that persons are going to be held liable for their own conduct. Now, in the decision of *State v. Boland*, which I wrote and which came down several years ago, it was a question of a person who was dealing in drugs. But he was doing it by mail. He had his receipts in the garbage. The police came and searched his garbage. The court said no. It was a five-to-four decision, a close decision. If the

state wants to search somebody’s garbage, which is held in the area immediately surrounding the home, it needs to get a search warrant. The point I made was that a person has a right of privacy even in his garbage, and if the state wants to search it, let them go out and get a warrant to do it.

Mr. Clark: Suppose the F.B.I. had taken the garbage?

Justice Dolliver: We decided the question on the state constitution under Article VII, and we said that it was a matter of privacy. It would make no difference whether it was a federal agency or a state agency. We simply said if you are going to invade this person’s garbage for this particular purpose, get a warrant.

Mr. Clark: There was another very complex case in Snohomish County—*Gunwall*—in which police had taken a person’s phone call records from the telephone company and used them, then, to go on and get evidence with which to convict him. The court said you can’t do that.

Justice Dolliver: The main thing in *State v. Gunwall* was that the court laid down a procedure which had to be followed by someone who’s going to raise the question of state protection. They had to raise it particularly, and there were several reasons given. We had been encouraged by various persons in the Supreme Court of the United States to consider Washington’s constitution as well as the federal Constitution, and to rule that the Washington constitution came first. If it had greater protections than the federal Constitution, Washington’s constitution would apply. We said this is fine; but if you are going to claim Washington’s constitution, there are certain things you must show, and we laid them down in the *Gunwall* case. That was the real significance of the *Gunwall* case.

Mr. Clark: The United States Supreme Court encouraged you to give preference to the state constitution?

Justice Dolliver: Well, I think the original person who made this statement was Justice Brennan, who taught us to pay attention to whether a state's bill of rights, or whatever it's called, is analogued to the federal Bill of Rights. What we did in *Gunwall* was to require six criteria which you must consider in deciding whether the state constitution would be more or less rigorous than the federal Constitution. Actually, I think it's a pretty good idea.

Ms. McKeehan: Did Justice Brennan tell you; did he make a speech somewhere, or was it in a court decision?

Justice Dolliver: Brennan had made these comments publicly. In fact, when I was chief justice, he came to Spokane and spoke to us. Under the Warren court, the incorporation, as it's called, of the federal Constitution into the state constitution was proceeding very rapidly, so the state courts really didn't pay attention to the state constitutions. Beginning in the mid-1960s, or perhaps a little later than that, the mid-1970s, Brennan and others, I think, but primarily Brennan, were encouraging us to give more consideration to the state constitutions. I think the state courts were happy to do that.

Mr. Clark: Then, possibly the police can search a person's garbage in Pennsylvania but not in the state of Washington?

Justice Dolliver: That would be correct. I'm not sure what the Pennsylvania law is, what the Pennsylvania constitution says.

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Mr. Clark: Lets look at some contemporary issues. How about free speech? I think everybody knows that a person can get up on a soap box and say what he wants, but how about erotic dancing that some people have claimed is protected by free speech?

Justice Dolliver: We have tried to allow municipalities, because that's where the pressure comes, to have appropriate regulation of erotic dancing and table dancing. By and large, we have been fairly successful. I have personally shown a fairly low tolerance for this kind of activity. We have tried to allow the community to protect itself, and at the same time allow a person to have free expression and to engage in free speech.

Mr. Clark: So, then, an erotic dancer is protected under free speech?

Justice Dolliver: That's correct.

Mr. Clark: So long as she doesn't get too close or make certain gyrations?

Justice Dolliver: You're correct—erotic dancing is upheld; but the community can put certain restrictions on it. They can have the lights dimmed, for example. They can have a certain space which is kept between the customers and the erotic dancer. They can have certain actions by the erotic dancer restrained by the court. But a strict ban against any kind of erotic dancing simply wouldn't fly.

Mr. Clark: Isn't there a lot of arbitrariness involved here—the dancer can get within, what, six feet but not two feet? Who's to say?

Justice Dolliver: There is no question that. Sure, there's a lot of arbitrariness, but that's what the law is. The law is setting the line someplace. In this instance we have said that

time and place and things of that nature can be regulated. Distance can be regulated. In the most recent case we had, a case involving lighting and distance and things of that nature, we upheld the authority of the local officials to make those kinds of regulations.

Mr. Clark: In your experience has the court ever come to grips with abortion?

Justice Dolliver: We haven't had to. First of all, the state of Washington itself has, by the initiative process or the process of legislation, given a person the right to abortion.

Mr. Clark: Was it ever challenged? Is it constitutional?

Justice Dolliver: It's never been challenged. Then, of course, we have the federal *Roe v. Wade* and its progeny. *Reproductive Services v. Casey* is the most recent and, I think, the most important, in which the Supreme Court, in effect, has made abortion constitutional. People tend to forget back in 1974, when we passed the initiative—it passed overwhelmingly, as I recall—that the idea was to make sure that neither one who provided an abortion nor a person who received an abortion would be sent to jail or would be fined or imprisoned. I still think that was an awfully good way to look at the thing. The only abortion case we had was one involving picketing. We held pretty clearly that there could be restriction upon picketing of abortion clinics. You can still express your views, but they are limited as to time and place. That's the only way we have had to face abortion. Otherwise, it's been pretty much up to the federal courts.

Mr. Clark: If someone were to challenge the constitutionality of this abortion initiative and you were on the court, how would you rule?

Justice Dolliver: I'm rather ambivalent about the matter. I would favor, and I continue to favor, the law holding that no person should be put in jail for either having an abortion or for performing an abortion. If, in order to get this, we have to amend the constitution, so be it. I would regret that.

However, the thing that has disturbed me about the abortion jurisprudence has been the reliance upon something called the right of privacy, which some people say is found in the federal Constitution. The word "privacy" is not mentioned once in the federal Constitution, not once. It's mentioned in the state constitution in Article VII, but not in the federal Constitution. I have a very difficult time finding that there is a right of privacy protected by the federal Constitution. On the other hand, it seems to me that the decision which was reached in the case against *Reproductive Services* was a correct decision; and if I had the chance, I would vote on the majority side.

Mr. Clark: Would you favor the legalization of drugs?

Justice Dolliver: With hard drugs, no, I would not. Perhaps I speak personally on these matters because I have seen how hard drugs can certainly ruin a person. I speak of my daughter, my youngest daughter, who got into crack cocaine while she was in high school. She is now in prison. It's ruinous. It seems to me that it's one thing to talk about marijuana for medical use. I don't quarrel with that, although I sometimes think that the people who are supporting marijuana for medical use are really talking about supporting marijuana period as a legalized drug. It seems to me that drugs which we now have on the restricted category, the hard drugs, ought to stay there.

Mr. Clark: The courts have had a lot to say recently about equal treatment before the law,

particularly in regard to gender differences, and some of the more interesting ones that I'm familiar with, at least, have to do with discriminating against women in the case of athletic scholarships or whatever.

Justice Dolliver: Right. The seminal ruling was against Washington State University. As a matter of fact, I wrote the decision. The question concerned the application of so-called Title IX, whether it should be applied to athletics across the board. We decided that, yes, it should be applied to women's athletics as well as men's athletics, leaving out football, the belief being that football is really not a sport. That it was more of a show than anything else. We weren't in the business of regulating show business. But that particular case, the court upheld that the female coaches and the female athletes at Washington State University, and by definition all other public colleges, had to be treated the same as men so far as athletics were concerned—so far as the amounts of money spent, so far as the various things that were given to coaches on both sides. They had to be equal—not identical, but equal. The only thing we have not faced—we may face it at a later date—is the question of football. Where do you put football? Our position was that because of its unique characteristics, football should be taken outside the general scope of Title IX. It will have to be dealt with another way and another day. What we have said is simply that Title IX requires men and women to be treated equally so far as the amounts of money and the numbers of people that were involved in student athletics.

Mr. Clark: A number of your cases involved right-to-work measures, and the court had to decide whether mandatory unionism is consistent with the constitution.

Justice Dolliver: The court has said that the

closed shop is unconstitutional. You can't require a person to join a union. But the agency shop is perfectly all right. As far as right-to-work is concerned, I will take off my judge hat and put on my political hat because, as a judge, I have not had to consider any of the cases involving right-to-work legislation. In my belief, the right-to-work legislation was nothing more, nothing less, than an attempt on the part of the Democratic Party to win an election. Republicans got beaten badly every time this matter came on the ballot. But as far as I am concerned, there was never a chance of right-to-work legislation being passed in this state. Bringing it on the ballot accomplished nothing except to elect Democrats and defeat Republicans.

Mr. Clark: Let's talk now about the function of the State Supreme Court in present-day society. What is the court really supposed to do?

Justice Dolliver: Well, first of all, we're not a trial court; we are an appellate court. So we don't hear the cases and try to figure out what the facts are. They are decided by the lower court. It seems to me that there are several things that an appellate court ought to do. Most important, we have to decide the case. That, in and of itself, is a hard job. We have to make up our minds. Someone will win; somebody will lose. In my opinion, that far outweighs any other duty of the Supreme Court.

The second thing: we, in effect, make the law. We're not like the Legislature, we don't make the law like the Legislature does; but, in fact, with the opinions we write, we are making the law. The analogy I use is that a common law court is somewhat like a coral reef. The coral reef builds slowly by accretions over a period of time. That's the reason for the Supreme Court. We will build a body of law by accretions over a period of time.

One of the differences of a common law

court from a civil law court is that we can change our mind. This is all contained in the *Washington Reports*. The founding fathers of this state required that all decisions of the Supreme Court be in writing. So, everything we do we do in writing. It is available to anyone who cares to see it. It's all a matter of public record.

The third thing, and I suspect that this is where the Supreme Court can get itself into real controversy, is we have to interpret the meaning of words. We take the undefined words of the Constitution—"free speech," for example, what does that mean? Nobody knows. "Freedom of religion," what does that mean? Nobody knows. The function of the Supreme Court is to take those words, which are undefined in the body of the Constitution or in the statute, and put meaning to them.

Many times the public feels the Supreme Court has defined the words improperly. At least, they don't like it. Someone said that he who controls the dictionary controls society; and, in a sense, that's what the Supreme Court does. We control the dictionary. Ever since *Marbury v. Madison*, the Supreme Court has been a final arbiter of the meaning of those words, both abstractly and in context.

Mr. Clark: In doing this, do you feel bound by historical context?

Justice Dolliver: We're bound first of all by the words themselves. The words will have a meaning, and the meaning today may not be the meaning of 100 years ago or 200 years ago; but the words must have a meaning. We need to acquaint ourselves with that meaning. Secondly, the words will be measured within the context of a particular set of facts. So, in this particular set of facts, what do these words mean? Thirdly, we have a living constitution. I happen to believe that we should apply the constitution in the twentieth century—not simply in the nineteenth century or the

eighteenth century. It is important that the words of the constitution ring true for people in 1999, just as it was true in 1889 or in 1797.

There is no question that in the Supreme Court or any other court you are going to have a changing pattern. As a matter of fact, I think on one of the previous tapes I talked about the case of *Pierce v. Yakima Memorial Hospital* where the court held that a tort action could be brought against a charitable organization. Back in the 1890s, I believe it was, the court said no, you cannot do this. But by 1950, when the court changed its mind, the whole situation had become different. Because the changes in the world actually change the meaning of the words, the court decided that it was appropriate to have tort liability for a charitable organization.

Ms. McKeegan: When you were on the court and people disagreed, who usually won the battles about what the words meant?

Justice Dolliver: Well, one of the things that you need to remember is that we don't use the constitution unless we have to. It's hard to say "who won." When you have a constitutional question raised in a case, if the court can decide it by a method other than a constitutional method, the court will do so. That's the universal rule in appellate courts because the danger is that once you interpret the constitution it's very hard to "uninterpret" the constitution. So, we prefer to rely upon the common law, which can be changed and is changed. The constitution is something that is enduring, and we are very loath to have a constitutional argument prevail when there is another argument.

Mr. Clark: Has the court changed its mind during your tenure?

Justice Dolliver: The only one I can remember was sort of a partial change of mind.

The question was: do the first ten amendments of the Constitution of the United States or the Declaration of Rights in the Washington State Constitution, do they apply between individuals, or just between an individual and that person's government? This question arose when someone went to a shopping mall and tried to set up a table to have people sign an initiative or a referendum. The mall was, of course, private property. Can you solicit signatures on private property if the owner doesn't want you to?

The court was sharply divided on that question. I happened to be the swing vote because I said that whether we like it or not, the initiative and referendum method is one that we hold very dear in the state of Washington. I thought there should be a rule which allows people to get signatures in a public place, and this was a public place. As to whether we should command that all shopping centers open themselves up anytime to public solicitations based upon the First Amendment, we said, no: the constitution only applies against the state and not against individuals. Therefore, we held that these individuals had no particular right to set up shop within a privately-owned shopping center, and if there was going to be such a right, it was going to be decided by statute. Shopping malls are not the equivalent of a downtown street corner. So, we decided that there was no constitutional right to express yourself inside a mall.

That's been pretty much the rule. We wavered for a while, but I think the court is now firmly on the side of believing that the Declaration of Rights does not apply from individual to individual, but applies from individual to the state. If you want to protect another individual, you will have to get a statute to do that. We will have to determine whether the statute is constitutional or not, whether it meets the rigors of the constitution.

Ms. McKeehan: By the state do you include city governments and county governments?

Justice Dolliver: Yes.

Mr. Clark: I have enjoyed reading decisions handed down by the State Supreme Court, particularly those you have written. You write very well. You write very, very well. But what intrigues me in reading the decisions is the often aggressive and confrontational language that the justices use against each other.

Justice Dolliver: That's true.

Mr. Clark: Let me read a couple of examples of what I'm talking about. In the case of *State v. Brett*, you wrote for the majority, affirming the conviction of a man found guilty by a jury in the Clark County Superior Court of aggravated first degree murder and sentenced to death. Justice Utter wrote in dissent:

"I write also to point out that the treatment of the proportionality issue in Justice Dolliver's opinion is untenable both logically and jurisprudentially. Justice Dolliver's opinion replaces the method by which the legislature has determined we are to decide the issue of proportionality with its own version of what the statute requires, a version that is not only irreconcilable with the statute's terms, but is completely unworkable... The danger created by the absence of analytical rigor...is dramatically evident."

And in the case of *State v. Frampton*, you wrote that:

"The medical evidence demonstrates that judicial hanging, even when performed by a competent hanger,

involves the infliction of unnecessary pain, lingering torture, and slow death... Under the circumstances, we find it inescapable that execution by hanging is that kind of cruel, wanton and barbarous act which offends civilized standards of decency and cannot be held constitutional under the Eighth Amendment... The present statutory scheme for imposing the death penalty is unconstitutional..."

Justice Dore, opposing your opinion, responded that "The majority has found a clear, well-reasoned and orderly statute to be ambiguous, and has fabricated legislative intent from impermissible inferences. Simply stated, this court has substituted its intent for that of our legislature. From this usurpation of legislative power, I dissent."

This is refreshing language. I don't think that in any legislative session I could hear expressions as sharp and as pointed as those I can read in State Supreme Court decisions.

Justice Dolliver: Well, we are paid a handsome salary—over \$110,000 a year—to express our views. Figuratively speaking, we are putting our hands out and grabbing other people by the throat, trying to impress them with our view. You don't call people names, but you can be very aggressive in holding that your side is right. Do not be misled into seeing this as a personality clash. Not so at all. We are trained both as lawyers and as judges to be severe in our official comments. But as far as our personal relationships are concerned, they tend to work out very well.

Ms McKeehan: There must have been times when a justice did not make what you considered good arguments. Did you find this hard to deal with?

Justice Dolliver: Well, not necessarily hard

to deal with. If someone makes an argument that doesn't appeal to me, it won't appeal to someone else, probably. I will tell you with a certainty that after a while you get tired of writing dissents. You say, "What the hell; I'm tired of doing this. Perhaps I ought to try to do a little better job analyzing what the court is about and what the court's trying to do and how the court will poll on this case so I can write some majorities." You are only one out of nine people, so you try to make your arguments appeal to maybe eight other persons. You are going to avoid personalities and avoid being too sharp. Where you would like to rake somebody's hide, you say, "Well, I'll write that down, and I'll think about it. I won't do it." So that after awhile, you come around. Getting a case out in a timely manner is by far the most important thing that we as a court do.

People should not have the impression that the court must be fighting all the time. In my experience on the court, we as individuals got along very well. We may have rather profound disagreements on matters pertaining to the case itself; but on personal matters—does A get along with B?—we did very well. As I say, you have to work at this kind of thing. It doesn't happen by magic. You have to work at being civil.

Ms. McKeehan: So you never, during coffee breaks, continue the arguments?

Justice Dolliver: Well, some do; I never did. It seemed to me that a coffee break or any other kind of break is a chance to get away from the rigors of the court's action and to relax a little bit—be social. My belief is that most judges, when they take a break, take it, in a sense, to recharge their batteries. They don't use that as a means to keep on arguing back and forth.

When the case comes up and I am assigned to it, I have my clerks do a prehearing

memorandum, which is circulated to everyone on the court. I then will recite on the case; and I will say what I intend to do and why I intend to do it. The chief justice, then, always gives any other member of the court a chance to disagree with my view. I have sat on the court when the reporting judge got one vote, his own, which is pretty damning, I must say. But, it's happened. Most of the time in most cases the reporting judge carries the day, and the decision, more times than not, will be nine to nothing.

But we do have some very intense arguments. At a later date, if anyone wants a post-opinion conference, we can have that and talk about the case some more. Those are not, in my opinion, as successful as they might be; but there is no question that on the day the case is heard there is a very robust debate by the members of the court as to what ought to be done.

Ms. McKeehan: When the clerks write their report, do they actually write the case as if you were writing it and deciding it? Or do they just do basic background research?

Justice Dolliver: I think each judge may do it a little differently. In my own case, I always told the law clerks to write what they believe is correct.

Ms. McKeehan: So, they write it as if they were deciding the case?

Justice Dolliver: That's right. I look upon the work of the clerks as part of their education. I would rather have them write what they thought. Now, this doesn't mean that I'm going to agree with it. I have had law clerks who have written a prehearing memorandum, and I have disagreed, and my particular viewpoint carried with the court. Most of the time, you agree with the law clerks. Most of the time, law clerks are fairly smart; and they

can figure out what kind of a judge they are working for.

Some members of the court I know are very concerned to see that what the clerks write is what they, the judges, believe—what they want. I believe that the clerks ought to be very brief and to the point and express an opinion—express a view—either affirm or reverse. I certainly will talk to them about the case before I have the hearing; but as far as the result is concerned, they make their own decision which, of course, is subject finally to what decision I make and then to the decision of the court itself.

Mr. Clark: Have you ever run a count on how many times you were in dissent and how many times in concurrence?

Justice Dolliver: I have no idea what the count is. When you first get on the court—and this is true universally of every judge—you are going to dissent more than later. When you first get on the court, why, you sort of have this feeling of saving the world. You soon find out you're not going to save the world, and it's a lot of work to write a dissent. You don't write a dissent if you're the only one who is going to dissent. I figure if I can't persuade some other people to go along with my dissent, I'm probably wrong and ought to shut up.

The second thing a new judge will do is try to write like an Oliver Wendell Holmes Jr. or like a Benjamin Cardozo. But you soon find out that most of the immortal phrases you have penned or the elegant style you have developed isn't really what you want. That isn't the most important thing in life, anyway. And maybe you're not as smart as Oliver Wendell Holmes, either.

If you are lucky, you come to what I think is the most important thing that a judge does: you make up your mind. You decide the case. If you decide it with elegant language, that's

good. If you decide it with rather pedestrian language, that's okay. The important thing is to decide the case. Decide it effectively. Decide it without using a lot of words. Make up your mind and say it. I object to the lengthy opinions that are coming out from my colleagues. Ever since we have gone on to the word processing system in our courts, I would say that the length of opinions has gone up at least a third.

Mr. Clark: Has the matter of freedom of religion often come up before the State Supreme Court?

Justice Dolliver: I suppose about once a year we'll have a case involving the matter of religion. It usually comes up when some agency, state agency of some kind, is spending money to allow someone to act in a certain religious capacity. The ones that are most familiar, I imagine, are those involving educating on religious matters. Can it receive state funds? We have a very strict rule in the state of Washington, a very strict constitution. As a matter of fact, even to allow a chaplain at a penitentiary, we had to amend the constitution. It's extremely strict.

The latest case we had was a case which will perhaps show you the way the court is tending to go. We had a case out of Tacoma, Pierce County, where the sheriff had a group that would go out and comfort people after some kind of a criminal activity. For example, if your house is robbed, they go out and comfort you. The question was raised—and these people had state money that was spent on their uniforms and transportation, and a stipend that was paid to them regularly. The question was whether this involved mixing up state and religion. The court decided, no, it did not. I have to admit that I voted the other way. I believe that this is banned by the constitution.

Mr. Clark: Have you had many cases where people have used the First Amendment as a shield for things that are illegal or almost illegal?

Justice Dolliver: That's one of the things I have been very, very concerned about. Let me give you an example. We had a case, again in Tacoma, where the newspaper had fired a person because, in effect, of her Communist leanings. There was no question about that. She was quite open about it, and she was fired. But she brought an action, claiming that this could not be done under our laws against discrimination. The defense of the newspaper was that they could fire her because it was a matter of freedom of the press.

My view was, no, that's not what the issue is at all. The issue is: does she do a good job? No one denied that. Has she ever used her particular political leanings to influence a story one way or the other? Never had. She was a good reporter. She always did a good job. As far as I am concerned, it was inappropriate for the newspaper to argue the First Amendment because it would have been entirely another matter if she had, for example, used her position with the newspaper to promote her political views. She never did that. That was clear from the testimony, and the newspaper admitted that. I felt that it was improper to raise the First Amendment when there was really no First Amendment case there. The majority of the court disagreed with me. I think I got three votes, maybe two. Anyway, it went down.

The other area which I have taken a view contrary to that of the court is on the matter of freedom of religion and historical preservation. I have been a believer that if a city or a town has a historical preservation ordinance, this should be upheld even when its use is protested by a church. In such cases I think the church ought to be required to show where its religion is being harmed. But

churches never do this. They have simply insisted on protection under the First Amendment. I disagree. I think the building itself is hardly the thing that's most important to a church. The most important thing is belief. Unless you can somehow connect the building with your belief or demonstrate that the preservation ordinance will harm your belief, you shouldn't rely upon the freedom of religion clause in the First Amendment. But I have not convinced many people.

Ms. McKeenan: Did you get involved in any of the prisoners' cases where they decided, for example, that they believed in a religion that required them to eat steak every Friday night?

Justice Dolliver: In cases in which a prisoner has brought an action against the administration of the prison, we have, unless the matter was so egregious that it cried out, we have generally held that the institution may conduct its affairs as it chooses. In other words, there wasn't going to be an overlay of the court in running the affairs of the institution. Now, there may be occasions when the administration goes too far and violates the civil rights of a prisoner. This idea of denying steak on Friday is not such a violation, and we would have refused to intervene. By and large, we leave the operation of the prisons up to the Department of Corrections, the judging up to the Supreme Court, and try to keep the two separate.

Mr. Clark: I haven't seen one in this state, but I have read about cases in other states where people claim religious freedom gives them the right to a ritualistic, ceremonial mutilation of females, for example. Has the court ever faced anything like that?

Justice Dolliver: We have never faced that kind of thing. I don't know what the court

would do. The court is certainly very much concerned with religious practices. The closest thing I can think of are the free speech cases which involved abortion. In Spokane there was a clinic where abortions were performed, and where women could go and receive advice about abortions. This building was picketed, and the persons going to use the services were also picketed. We said that the pickets could not interfere with people's coming and going. But they could go across the street and demonstrate. In other words, there were certain place constraints that we thought were proper. Although there was no question that someone had all the right in the world to stand up and say what they believed so far as abortion was concerned, they could not stand, for example, nose to nose on the sidewalk and try to grab people and prevent them from going in. Nor could they stand right by the building and hurl accusations at the persons who were going into the building to use the services.

But no, we haven't had any cases like those you mention. I think the closest thing we would have are those in which the Christian Scientists will claim when a child dies they were simply exercising their freedom of religion. The court's position has been that, no, you are not exercising your freedom of religion. Your freedom of religion does not allow you to deny this particular person the proper medical attention.

Mr. Clark: How would you have ruled 110 years ago when Mormons claimed that their religion included having four or five wives?

Justice Dolliver: I don't know how I would have ruled. The Supreme Court, as you know, upheld the United States government in its banning of polygamy, and we have effectively banned polygamy in this state. We have never had a case come before us. I'm not sure how I would have called it. I'm inclined to believe

that if the law of the state had said one man and one woman, that would be it. We have already said—this was a lower court decision written by Justice Horowitz many years ago—that as far as homosexual marriages were concerned, our statute says one man and one woman, not two women or two men, but a man and a woman. That’s what the law says, and that’s what we will uphold.

Mr. Clark: I read an article recently by Charles Sheldon in which he used the phrase “new federalism” in reference, I think, to the *Gunwall* case we were discussing. Is there an “old” federalism as well as a “new” federalism, and what is it?

Justice Dolliver: What’s happened was that, from about 1960 to 1970, the United States Supreme Court was so active in the field of the first ten amendments that we—meaning the Supreme Court of the State of Washington—did nothing. In effect, what the United States Supreme Court said, beginning with the case of *Near v. Minnesota* back in about 1929, was that the first ten amendments of the United States Constitution would be incorporated into the state constitutions. What this meant was that the restraints of the United States Constitution, which most people had believed only applied to the activities of the federal government, suddenly also applied to the activities of the state governments.

Then, in the mid-1970s, there was a movement urging states to look at their own constitutions, which, in many cases, are more liberal or more permissive than the United States Constitution. That would be the “new federalism”—the move to use the language in the state constitution when it is more permissive or more rigorous than the language in the federal Constitution.

That was the whole point in the *Gunwall* case. The *Gunwall* case attempted to set down a principled way in which we as state judges

could decide whether a provision in the state constitution was more rigorous than a provision in the federal Constitution. In the *Gunwall* case there are six criteria that you must use to measure the state constitution against the federal Constitution. Sometimes the state is more permissive, more liberal. Other times it’s not. Certainly, during my time on the Supreme Court, there was much more attention paid to what the state constitution has had to say. For example, the United States Supreme Court has held there is a right of privacy; but the word “privacy” does not appear in the entire United States Constitution. You can’t find it anywhere. In the state constitution, the word “privacy” does appear. We held in some cases that this right of privacy within the state constitution would override whatever is said in the federal Constitution, and that we are more “liberal” than the federal Constitution.

Mr. Clark: The new federalism, then, calls for a fresh reading of the state constitution?

Justice Dolliver: I think it’s fair to say that. At the very least, it means that when we have a case involving a civil right to discuss, we must look not only at the federal Constitution, but the state constitution as well.

Mr. Clark: Jim, in 1975, Attorney General Slade Gorton proposed that the number of State Supreme Court justices be reduced from nine to seven. What was your reaction to that?

Justice Dolliver: I favor that, but it’s not going to happen. The reason for it is that the current number of justices on the Supreme Court—nine—is all mixed up with gender politics and racial politics. Those who speak for minorities think that with nine rather than seven they’ll be better represented. So, it’s not going to happen. But I am for it for several reasons.

First of all, we are the only court in the Far West which has nine members on it. The only two courts west of the Mississippi which have more than seven members are Iowa, which has nine, and Texas, which has a split court—a criminal court and a civil court—has nine, I believe. Oklahoma may have nine, too; but California, for example, has seven. Oregon has seven. Idaho has five. Montana has either five or seven, I'm not sure. There is a historical reason for this, of course. It really concerns itself with the workload of the Supreme Court. It was in 1909 that nine was established by the Legislature as the size of the court. The idea was to make the Supreme Court large enough so it would not have to worry about the additional workload, which was beginning to show as early as 1913. By 1968 the workload was again too heavy, so the Legislature in 1969 created the intermediate Court of Appeals. Since then we have not needed nine justices.

Mr. Clark: I'm a little confused now. The state constitution says that the Legislature may, at times, "increase the number of judges," but it doesn't say anything about the Legislature's decreasing the number of judges.

Justice Dolliver: You're right. The constitution does talk about increase but not about decrease. Some argue that if you can increase you can obviously decrease. But some say no, the constitution only says "increase," and therefore you are stuck with nine. Be that as it may, the constitutional issue notwithstanding, the fact of the matter is that there is going to be no change.

Mr. Clark: The Legislature has, in fact, increased the number of justices—from five to seven in 1905, and then from seven to nine in 1909.

Justice Dolliver: Right.

Mr. Clark: And the Legislature's thinking was that these would be good changes because they would relieve the huge backlog of cases and accelerate the work of the court. Mr. Gorton hoped to achieve the same goal by reducing the number.

Justice Dolliver: Well, it used to be, for example, before the Court of Appeals, that the Supreme Court would hear cases in groups of five—four judges plus the chief justice. In fact, when I was a law clerk, most of the cases were decided by departments and not by the full *en banc* court. It was only a very rare case where the full court would hear cases. With the advent of the Court of Appeals, it makes no sense to have the court increase in size because any case we take is discretionary. We can control our own work flow. For example, the only exception to that is the death penalty cases. We must take death penalty cases which come from the Superior Court, but with anything else, we are purely a discretionary court. I think it would make the court more efficient to have seven rather than nine members. But, as I say, it is one of those issues which is dead, and I refuse to waste my time worrying about dead issues.

Ms. McKeehan: But you said there was a lot of gender politics and stuff.

Justice Dolliver: No question about it.

Ms. McKeehan: The governor, when he appoints somebody temporarily, has to take that into account?

Justice Dolliver: Yes. The governor is the chief political officer in the state; and he has got to be responsive to gender politics as well as to racial politics and to geographic politics. All sorts of things he has got to work into his calculus.

As it stands now, we have three women

on the Supreme Court. The initial woman was appointed by Governor Evans about the same time I was appointed. We have one black man. He is of Cuban extraction. The rest of us are all white men. The idea of changing the size of the court to make for a more efficient court is now politically impossible.

Mr. Clark: From time to time, somebody proposes that we amend the constitution so that the governor appoints the justices, thus freeing them from elections. What do you think of that?

Justice Dolliver: Well, there have been a variety of proposals. You mentioned one of them—that the governor appoints, and that a person is then confirmed by the Senate, like the federal system. I am extremely doubtful if the people of this state would countenance doing away with elected judges.

There is the so-called Missouri Plan, which many have proposed, which means the governor will appoint based upon a committee selection. They will recommend to the governor a certain number of appointees. Then, that person will serve for a certain length of time. At the end of that time, that person will be on the ballot with this question: shall so and so be retained as a Supreme Court judge? If that person gets a majority of the votes, they don't have to run again. If they fail to get a majority of the votes, then, in order to keep the seat, the person must run for election. That's the modified Missouri Plan that's being proposed now.

Mr. Clark: Wouldn't you rather not run for election?

Justice Dolliver: Oh, I don't mind elections at all. It may come from my background. I have a political background, and I have won elections and I have lost elections. I have worked for people who have won elections. I

have worked for people who have lost elections. In a very kind of, I suppose, perverse way, in my opinion a person who stands for election is in a much better position to do as that person sees fit rather than a person who is appointed. Because, if I am elected, I know where my power comes from. It comes from the people. If I am appointed, why, who knows where it came from? It may have come because the governor thought I was good looking, which I doubt, or because I have a certain legal ability, or any number of things could have gone into the mix. But the way it is now, in order to win, I must stand before the people. I will admit that it is extremely difficult to mount a campaign when you are nonpartisan, as we are; but that, it seems to me, is not reason enough for changes in the system we have now.

Mr. Clark: I would like to discuss some specific cases now—decisions in which you played a leading role. The case of *Gardner v. Loomis Armored, Inc.* involved a man who drove a Loomis Armored car and one day left his vehicle to come to the aid of a woman who he thought was threatened by a bank robber. Loomis fired the employee for violating a company rule that drivers are strictly forbidden to leave their cars. For the majority, you wrote that the company can't do that, and it can't do it because employees may not be discharged for reasons that "contravene public policy." You noted that public policy wisely encourages citizens to rescue persons from life threatening situations. I take it you regard this as sort of a landmark decision?

Justice Dolliver: It's a landmark decision in the sense that, as I recall, it was an eight-to-one opinion that allowed a person who sees someone in danger of losing their life to try to assist that individual. We had to balance two public policies: the public policy on the one hand of encouraging persons to help someone

else and the company policy—which is a good policy, I don’t quarrel with it at all—which said that the employee must not leave the inside of the van in which the money is located.

The company pointed out that within the van each driver has a radio with which he can call the police, and they could be there fairly soon in the case of a difficulty. In this particular case, the feeling was that this woman actually was in danger of losing her life; it was an objective danger; it wasn’t just that he felt she might be in danger. We tried to encourage the public policy that under these circumstances Mr. Gardner could not be fired for getting out of the vehicle and helping this woman. Now, if there had been a different set of facts, it might have been a different result; but with this particular set of facts, there was no question in our minds that the better public policy was to allow Mr. Gardner to get out of the car.

Mr. Clark: Was this in any way a departure from previous decisions? Had the court ever faced a similar situation?

Justice Dolliver: The court had never, to my knowledge, faced that. As you know, the Legislature has been very solicitous, I guess would be the right word, to make sure that the ordinary citizen is encouraged to provide help to someone else. The question we were posed with was not whether the public policy of the Loomis Company would be “unconstitutional” but whether it was a good public policy under these circumstances. We held that under the particular circumstances of the case, that the individual, Mr. Gardner—the driver of the truck—was entitled to attempt to rescue the woman. I’m not sure it was a real break with the past, but it was something we had not had to consider before. I think it was the right decision.

Mr. Clark: The bank robber, as I remember the case, was threatening her with a knife.

Justice Dolliver: That’s correct.

Mr. Clark: And she was in very immediate danger?

Justice Dolliver: There was no question in this particular case that there was immediate danger.

Mr. Clark: It would be interesting to know what you consider to be the most significant decisions rendered during your tenure. Let me suggest a few. Please tell me whether or not you think they are as significant as I do, and then go on from there. One that we have discussed in part already, *State v. Gunwall*.

Justice Dolliver: Yes.

Mr. Clark: The right to privacy that you find in the state constitution extends more protection than the federal Constitution.

Justice Dolliver: If we are going to overrule the federal Constitution and make our constitution apply, then we have to give some reasons for it, and that’s what the *Gunwall* decision attempted to do. I wouldn’t put it as a key decision, but it is important nonetheless.

Mr. Clark: How about the *Washington Public Power Supply System*, the *WPPSS* case, where the decision by the court brought about the largest municipal bond default in American history?

Justice Dolliver: Well, the *WPPSS* case, the question was whether the power companies had the authority to borrow this money. The majority of the Supreme Court, as I recall, it was seven to two, said no. I, on the other hand, was with the minority; and I felt that the

authority of the directors to accept loans of this magnitude was within the authority granted to the Public Power Supply System by its charter. I still, to this day, think that the Power System was correct in its understanding of the term, “authority.”

An interesting footnote of this case is that, as a matter of fact, before they made their decision, the directors were asked to give some concern about whether or not they had the authority. I recall sitting next to a person who was an attorney for the WPPSS power companies who had in fact said to them, “Well, do you want to consider the question of whether you have the authority to do this?” And this person was sort of waved aside by the power companies, who were confident that they held the authority implicitly. Whether the charter said so in so many words was beside the point.

I think that what this case showed is that when you are a lawyer drafting a document you’ve got to make sure that you take care of every contingency. In this particular case, the majority of the court felt that the authority which was granted to the power company was not such that it was granted the authority to take out these huge loans. It had a real impact on the financial markets.

Mr. Clark: Another one that had a real impact is the decision that forced the state to assume the whole burden of financing public education at a time when that cost ran to about half the state budget.

Justice Dolliver: That was a good case because what it said, in effect, was that you couldn’t use special levies to pay for maintenance operations of the school district. As a matter of fact, in some school districts, up to a third of their income was special levy income for maintenance and for operations. We didn’t ban special levies, but the special levy, indeed, had to be a *special* levy

thereafter. It couldn’t be something that was used for the maintenance and the operation of the school district. It had to be for extras, such as a football stadium and that kind of thing. I think it was a good opinion. We are the only state in the country that has the particular phrase, “the paramount duty of the state is to provide for the education of the young.” The term “paramount duty” was the one the court believes is important. I was on the majority of that case. I didn’t write it, but I signed the majority and I agree with the case. It had a revolutionary impact upon the funding of public schools in the state of Washington.

Mr. Clark: Can you think of other decisions of comparable significance?

Justice Dolliver: Of all the decisions I have sat on, I think that was, by far, the most important decision. From a financial standpoint, it had the effect of really putting the Legislature’s feet to the fire. They had to appropriate sufficient funds. On the other hand, we said that running the public schools cannot become like a roll of the dice. You can’t run a public school on the basis of what your special levy is going to be because forty percent of the people from the last election must turn out, and you must have a sixty percent majority.

In the Olympia School District, we have never lost a special levy. Never. I think we probably never will because we have an excellent school system, and people are dedicated to supporting it. On the other hand, there are some school districts for which special levies for maintenance operation became their very lifeblood. Really, the decision as to whether the school was going to be run properly would be made by a vote of the people every year with a special levy. This is not the way to run either a railroad or a public school.

Mr. Clark: Back in 1976, when you were first elected to the court, you won handily by almost 50,000 votes. You also spent almost \$100,000. This, I understand, was mostly for TV ads which were then being tested for political effectiveness.

Justice Dolliver: That's correct.

Mr. Clark: Can you tell us about the ads?

Justice Dolliver: Well, I can't give you the content of them. I can't recall. Nothing very sophisticated.

Mr. Clark: Did you work on them; did you write them?

Justice Dolliver: No, I didn't do that. I had the advertising agency do that kind of thing. One of the things that happened in that campaign was that there was no question that I was running against a Democrat, Senator Dore. Much to my surprise and my delight I had a number of rather well-known Democratic senators support me, some of whom I knew personally. Some, like Senator Durkan, I had known since law school days. And Senator Gissburg, he and I were from the same area, the Everett area, and I knew him also. They agreed to support me.

This was the first time, to my knowledge, that TV had been used in a judicial campaign. It's now commonplace. The \$90,000 that was spent in the 1976 election I think is a low watermark of what will have to be spent nowadays. I think if you have a really heavily contested election you would spend upwards of a quarter of a million without blinking an eye. Now, you may not be able to raise that kind of money, but that's the kind of money I think it would cost you. Television has simply skyrocketed the cost of elections. It's as true of judicial elections as it is with the other kinds of elections.

Mr. Clark: Were you personally featured in each of these ads?

Justice Dolliver: Mostly I was, but not all of them. If I was not featured, I would have a voice-over saying who I was and identifying myself and making some kind of comment. But on most of them I was featured coming up and down the steps of the Temple of Justice, that kind of thing. As I say, I can't remember exactly what all I did do. In most of the TV ads I was personally depicted; and in all of them I had something to say.

Mr. Clark: Did this campaign device allow you to slack off from more rigorous campaigning—running around the state?

Justice Dolliver: Well, as I indicated, the problem with being on the Supreme Court is that we run as nonpartisans. Now, every supreme court in the United States does not do this, particularly in the South. They run as Democrats and Republicans. I think in the state of Illinois they still run as partisans. Until a couple of years ago in the state of New York, they ran as partisans; but no longer.

The difficulty is when you are a nonpartisan it is very difficult to get people to sign up to support you for a continued length of time because they are much more interested in supporting partisan candidates, the party ticket, or a gubernatorial candidate, or a senatorial candidate, or a presidential candidate, but not a supreme court candidate. So it presents some difficulties in campaigning. During the six-year term, you are not spending much time—in fact, you are spending no time at all, if you're like I am—in trying to keep your political machine alive. You, in a sense, have to start over every time to get the people to work for you. It isn't so much a question of TV or slacking off. The fact of the matter is that without TV a judicial candidate would be pretty much lost.

Ms. McKeehan: Do you think that since the public owns the airwaves that TV stations should be required by politicians to give free time to candidates so that elections would not be as expensive?

Justice Dolliver: I don't know the answer to that. I have thought about it, certainly. The difficulty is the amount someone running for political office pays for TV is at absolutely the top rate, every station. But I have always maintained that money alone will not win an election for you. It may help, but just because you have a million dollars and your opponent has half a million dollars doesn't mean that you are going to get two votes for every one your opponent gets. It doesn't work like that. I recall a partisan candidate in, I believe, Minnesota, who ran as a Democrat for Senate and spent \$10 million of his own income, all for naught. He was defeated. On the other hand, there is somebody like a Jay Rockefeller who was able to spend his own money in West Virginia and win the election.

Mr. Clark: Do you agree with the federal court's decision that if you spend your own money you are exercising your right to free speech?

Justice Dolliver: It may well be that when you spend your own money you're exercising your own right of free speech. But the source of the money is beside the point. If it could be shown conclusively that money, in fact, does control elections, then it seems to me that the government has got to step in to make sure that everyone is on a level playing field. There is much to be said for a person who is not wealthy and who has to raise money. I always was of the viewpoint that if I couldn't raise the money, perhaps I wasn't as hot as I thought I was. You tend to get an inflated view of your own importance in this life. If you can't raise any money to go alongside of that inflated

view of yourself, maybe you're not the candidate you thought you were.

Mr. Clark: Your first election to the court was in 1976. Ten years later you were chief justice. Can you tell us about that experience, please?

Justice Dolliver: Yes. I sort of like the comment Disraeli was alleged to have made that when he finally became prime minister, he finally got to the top of the greasy pole. The trouble is you get to the top of the greasy pole, and it's still pretty slippery. You don't really care for it. As a matter of fact, I think anyone who is the chief justice of the Washington Supreme Court hasn't really found himself a very pleasant job.

Let me tell you my experience. In the first place, under the constitution, you have no authority except one: the power to preside. You are going to be sitting in the center chair. You are going to do everything that is involved with the setting of the schedule for the court, but you remember you have eight other people who have all got different ideas about how things ought to be run. When it comes to almost anything, why, you must have the say so of the other eight members of the court.

I don't know whether I was a successful chief justice or not. We have an entirely different system now that the chief justice is elected by a vote of the members of the court for a four-year term. It used to be that we would have a two-year term under a very complicated formula. The person who was the senior person on the Supreme Court—which I was, by 1985—who has not yet been chief justice—that was me—will become chief justice for the next two years. I became chief justice simply because of longevity more than anything else.

When you become chief justice, you have a lot of the grief and not much of the glory. You get paid no more. Your office is

downstairs. It's smaller than the other offices. The responsibility is piled upon you. You become the spokesperson for the court; but so far as its being a position that I would take again, I would say no. Somebody else can do that. I don't care to be chief justice.

Ms. McKeehan: Do you think the present system of picking the chief justice is better because somebody gets elected and presumably wants the job?

Justice Dolliver: Well, when I was on the court, I became thoroughly convinced that two years was not enough for a person to be chief justice. It takes you that long to learn what the job is all about. At the end of two years you had to go off. The majority of chief justices in this country are under some kind of a system similar to that when we had automatic accession. So far, the elections for chief have been fairly mild. I say mild in the sense that the people who were on the losing side didn't get mad and pick up their marbles and go away. On that point, the fears I had of unnecessarily dividing the court haven't come to fruition. On the other hand, it seems to me that everyone ought to have a chance to be chief justice. With the old system, we allowed that. It worked fairly well for a hundred years. I don't see any real difference in the system we have now as far as the impact upon the court is concerned. It's a wash. It can be done either way.

Mr. Clark: Did you enjoy the presiding over the sessions?

Justice Dolliver: Well, I like to preside. You preside over the session of the court; you preside over the conference; you have to decide who is going to take the case. I enjoyed that. I suppose, like everyone, it kind of appealed to my ego. I enjoyed presiding.

Mr. Clark: I was talking to a woman over in the state library the other day, and she mentioned that she had worked for the Ohio Supreme Court where, while she was there, there were several bomb threats that the justices simply suppressed. They never announced them to the newspaper. They never told anybody about them at all because they didn't want to have somebody trying to imitate. I wonder if things like that occurred in the '60s and '70s, or later, while you were on the court?

Justice Dolliver: There were some. As a matter of fact, when I was chief justice, somebody threw a fire extinguisher through my door. It was a glass door, and unfortunately, the glass was irreplaceable. This fellow was simply mad—he had a gripe of some kind against his lawyer, and he got mad all the way to the Supreme Court. He was, as I recall, from up in Skagit County. The judge was very wise. He brought him up in front of the court, and he said, "Now look. You can either go to jail here, or you can go back to Skagit County." So the guy left and went back to Skagit County and was never seen again. I don't know what happened to him.

Justice Smith at one time had had a bomb threat, but nothing ever came of it. We never found out who was responsible for it. There was a good deal of unrest, I think is the word for it, but I don't think, at least I never considered myself to be in danger of any kind.

Mr. Clark: Did this fire extinguisher episode get in the newspaper?

Justice Dolliver: No. It did not. What had happened is this personage had hidden himself back in the stacks of the library until the place closed down. Then he came out, and he wanted to make sure no one saw him. So he made sure the cleaning staff was gone, and he took the thing and heaved it through the door

because he was absolutely determined that he was going to get solace from the court, get the court to say something. And he thought if he did this he would be up for trial, and he would be able to call me in as a witness. Well, the judge didn't allow that. But so far as I know the matter was never a matter of any publicity.

Mr. Clark: Did you talk to him about his grievances?

Justice Dolliver: I never met the man. He did call me up once here at the house, and I was a little worried about that. Well, not because of my telephone number. It's listed in the phone book, but I didn't like to have people calling me at home. I can't recall the conversation, but I put him off. I think he was no more dangerous than he simply wanted to figure out an avenue to make himself heard, and this was what he chose.

Ms. McKeehan: If there had been other incidents like that, would you have kept them out of the newspaper on purpose?

Justice Dolliver: Well, this particular event didn't amount to very much. We certainly didn't try to tell the police what to do. We made no attempt as far as I know. Certainly, I didn't, and I was chief justice at that time, and I made no attempt to tell the papers what they could and could not print. So they just chose not to do it, apparently.

Mr. Clark: Every now and then somebody proposes legislative oversight of the Supreme Court. How do you react to that?

Justice Dolliver: Years ago one of my political heroes, Theodore Roosevelt, suggested that the legislature should vote on anything involving the Constitution, and the Supreme Court should be bound by the

position taken by the legislature. I disagree. Legislative oversight would trench very badly against the idea of the separation of powers. I will grant that the Legislature sometimes thinks it ought to be in charge of everything and anything, but I don't think the Legislature should have judicial oversight. We are audited regularly by the State Auditor, and we have that kind of oversight. But so far as the Legislature is concerned, we are very careful to see to it that what we do and what the Legislature does are two different things. We will pay attention to our business if they will pay attention to their business.

Mr. Clark: What is it you so admire about Theodore Roosevelt?

Justice Dolliver: Well, I suppose a number of things. He was a Republican. I admire that. But, no, seriously I admire him because he overcame a great handicap, both physically and personally, to become president. He had a zest for living, I suppose, that few people have. Of all the presidents we've had, he was probably the most intellectual. He was a real expert on certain things, and he was an author of many books.

Even when he was shot and wounded, he insisted on making a speech at the Bull Moose Convention. His message to the Bull Moose was, "We stand at Armageddon and we battle for the Lord."

I'm sad he finally decided he had to split the Republican Party in 1912. That was a terrible thing. We still haven't recovered from it. But, I suppose, I liked the man himself—the vigorous, decisive, simply unafraid man who would stand up and say what he believed and who said it very eloquently.

Ms. McKeehan: Do you think he was more intelligent than Thomas Jefferson?

Justice Dolliver: I do. I'm not in any way

deriding Thomas Jefferson, although he is not my favorite president by a long way. I think Theodore Roosevelt was not a man who would sit quietly in a corner and think great thoughts. His intellectual action was right on the firing lines, so to speak. Although Mr. Jefferson certainly had a fine command of the English language—attest the Declaration of Independence and the material he wrote for the state of Virginia. Still, overall it seems to me that Theodore Roosevelt was a man of far greater intellectual capacity.

Mr. Clark: Let's jump way ahead. In a broad sweeping kind of way, how would you characterize the Warren court?

Justice Dolliver: Well, I have to confess I am a great admirer of Earl Warren. I suppose if you had to rank the court on a liberal or conservative scale, you would say it was a liberal court, and that Earl Warren and his associates were liberal judges. But that is a rather imprecise way of defining what someone is. On the incorporation question, there was no doubt that the Warren court was well ahead of the legal thinking in this country. The incorporation of the federal Constitution Bill of Rights into the state Bill of Rights really happened during the Warren era, and this was due to Justice Brennan as much as anyone. They called it the "Warren Court," but in effect I think it is fair to say we could call it the "Brennan Court."

Ms. McKeehan: It sounds like you're in favor of court decisions or constitutions or judges that give people more rights, even though that's called liberal?

Justice Dolliver: I do agree with that. I think that the people should have as many rights as they possible can.

Mr. Clark: What did you think of William

O. Douglas?

Justice Dolliver: I think generally I would say I admired the man. But some of his opinions have caused all sorts of social troubles. He wanted us to consider "permutations" and "emanations" from the Bill of Rights. Well, that's a pretty indistinct kind of thing. I wish he had been more clear as to exactly what he had in mind. I have been told, and I think that it's probably true, he was not the greatest writer on the court by any means. But I have to confess I admired the man. I have a bust of him right behind me here, as you can see on the table. This business of permutations and emanations from the Constitution—you know you have to speak plainer than that. If you are going to find a right of privacy within the Constitution, why, say so. Don't talk about emanations and permutations.

Ms. McKeehan: What did you think about all the fuss about how many wives he had?

Justice Dolliver: Well, that was the way he operated. If women were ready and willing to marry him and he would divorce his former wife legally, why, that's his business.

Mr. Clark: How about some of your contemporaries? Robert Bork?

Justice Dolliver: Well, Judge Bork, I confess I admire him, and I think he was jobbed by the Senate in his attempt to be on the Supreme Court. But I think he was not a good witness. He didn't do himself any particular favors. Again, I think he was badly treated by the Senate Judiciary Committee, particularly by the chairman. I think the difficulty with Judge Bork was that he couldn't wiggle his way out of the position he had taken on *Roe v. Wade*, the abortion case. That was the sticking point. There wasn't any question as to where he

stood; but his analysis, I think, left much to be desired, and he was not a good witness at all.

Ms. McKeehan: Did you have strong feelings about Clarence Thomas?

Justice Dolliver: No. I didn't have strong feelings about him. I think he's a good judge. I believed Clarence Thomas. Other people believed Anita Hill. I'm not sure we'll ever know the truth of the matter. I think some of the things that were said about Thomas by the president—that he was the best possible appointee—were political claptrap.

CHAPTER 4

SUMMATIONS

Barbara Babcock Dolliver

(April 9, 1999)

Mr. Clark: Mrs. Dolliver, your maiden name is...

Mrs. Dolliver: Babcock.

Mr. Clark: And you were born in...

Mrs. Dolliver: In Boston, Massachusetts, so I'm a New Englander.

Mr. Clark: Tell us something about your family.

Mrs. Dolliver: My father was a wholesale building material salesman, and I used to go with him when I was a child on his route and had a happy time with that. Other times were not as happy. My brother was in the service, and my father also was in wholesale ordinance for the Army, so both of them had a wartime experience. My father had been in the First World War, which was the war to end all wars, they used to say. Then my brother was in. My mother learned drafting in high school, and so she worked for an engineering firm before the days of the computer. It really was big sheet, real stuff. I was very impressed.

Mr. Clark: How about your religious

background?

Mrs. Dolliver: We were brought up in the Congregational Church, which is more familiar on the East Coast. Jim and I were married in the Congregational Church in Auburndale, which was a village in Newton. The city of Newton was comprised of thirteen villages, and we were in Auburndale.

Mr. Clark: How about your political background?

Mrs. Dolliver: My family—our early days were in the days of Mayor Curley, and my family was terribly political. Once our class went on a field trip to Boston, and we went to the governor's office and shook his hands. My mother said, "Go wash your hands," because Mayor—later Governor—Curley was the one who ended up in jail during his term of office. *The Last Hurrah* was, really, a story of Jim Curley.

Mr. Clark: Then your parents were Republican?

Mrs. Dolliver: Absolutely.

Mr. Clark: Jim's family, apparently, put a great deal of importance on political and religious and regional identities.

Mrs. Dolliver: Oh, yes.

Mr. Clark: Do you think that was true of your family, too?

Mrs. Dolliver: No. No. It *is* Jim's identification tag, you know—political district, political party, church, all that. Mine was not so. Not against, but just simply not having that as a primary identification.

Mr. Clark: Had your father's family been in

New England for a long time?

Mrs. Dolliver: No. They came from Texas. When my sister and I were children, we went down to Texas to visit our grandmother and great aunt, who had named me “Barbara.” She had been a missionary, a Christian Science missionary, in Japan. So she named me—and I grew to care about my name—Barbara, which is, of course, Latinate and means foreign or strange. Our word “barbarian” comes from that; but I like that. I introduce myself to writing students as, “My name is Barbara Dolliver; and you know that ‘Barbara’ means ‘strange, from a different place,’ and indeed I am, as you will find out.” And they did.

Mr. Clark: What was your mother’s name?

Mrs. Dolliver: Katherine. A lovely, soft name. My sister is named Katherine also; but when she was a little girl we called her Snicky; and, of course, my brother-in-law said, “If I had known your name was really Snicky, I don’t know that I would have married you.” Kathy is her adult name, but I still write “Dear Snick.”

Ms. McKeehan: Were you the oldest or the youngest?

Mrs. Dolliver: I have a brother who is seven years older than I. My sister is three years younger.

Mr. Clark: You went to public schools there in Newton?

Mrs. Dolliver: Yes. I’m proud of that fact because the Newton public schools were very fine academically. I was early identified as someone who was “worth it.” I mean I was interesting—not sociologically, but intellectually—because I always was, that’s

all. I mean, who else begins in childhood writing poetry, terrible poetry? I gave the poems to my mother, and I cared about that.

She always encouraged me. By the time I got to high school, for my birthday she would take me to a bookshop and say, “You can buy any book of poetry you want.” So I became acquainted with Robert Frost, whom I heard speak and read his “Birches,” and I was very lucky. And my mother made possible all kinds of opportunities like that.

Mr. Clark: Marvelous. In high school, what did you do besides study and write poetry?

Mrs. Dolliver: I’m afraid I was an ugly duckling. I mean that. I have pictures to prove it—that I was tall, gawky. I took after my father rather than my mother. I was really an ugly duckling. I am much more attractive in my age than I was as a girl.

Mr. Clark: Did you ever study music?

Mrs. Dolliver: Oh, I took piano lessons from the woman next door. All I can play are folk songs and Christmas carols, that sort of thing.

Ms. McKeehan: What did you like best—what kinds of classes?

Mrs. Dolliver: English classes. English classes. I was a great reader. Having an extensive family library, I ranged freely, not supervised. One time I was injured in a car crash when my brother was driving, and we were going to Cape Cod. Because I cracked both collarbones and I wasn’t eating, my family sent me to their childless friends out in Camden, Massachusetts. I was very, very happy there—spoiled, undoubtedly—and began to eat again. They had a whole set of Balzac, and Ida, the woman, said, “Oh, you’re reading those naughty French novels.” I didn’t know they were naughty French novels. I

could read everything without restriction, which was good. It made my vocabulary—it flourished. I got into Swarthmore College on the strength of my English vocabulary. I was dumb at math and science.

Mr. Clark: Did you have a favorite author?

Mrs. Dolliver: Well, naturally, Robert Frost was very thrilling and, of course, Emily Dickinson really spoke to me. I felt I could understand her.

Mr. Clark: Jim, I think, graduated from high school in 1942. Is that when you graduated?

Mrs. Dolliver: Well, I think it was '44. He was a little ahead of me.

Mr. Clark: You were in school during most of the Second World War?

Mrs. Dolliver: Yes.

Mr. Clark: What do you remember about World War II?

Mrs. Dolliver: I just remember hearing the broadcasts on radio out in the backyard when Edward R. Murrow was broadcasting. It was important enough that my mother let me stay home from school. I had a cold or something, but I had that chance to hear history in the making.

Mr. Clark: I asked Jim if he remembered precisely what he was doing on December 7, 1941. Do you have a memory of that?

Mrs. Dolliver: Not clearly, no.

Mr. Clark: When you went to Swarthmore, the same question again. What did you do besides study and write poetry?

Mrs. Dolliver: I lived and enjoyed it. It was the first place it was all right to spread yourself on the lawn in the warm sun, look up at blossoming trees, and just *be*. It was all right for me to do that.

Ms. McKeehan: You had to spend your time doing something useful before that?

Mrs. Dolliver: Working at the Newton-Wellesley Hospital was my summer job. And I also was a waitress on Long Island. When my mother took in parents of LaSalle College students who came for graduations and things, she put the money in a little shoe box on her shelf in her closet. She was determined to make it possible for me to go to college, and I appreciate that.

Mr. Clark: Did your brother and sister go to college?

Mrs. Dolliver: My brother graduated from Bowdoin College in Maine, an excellent school, old school.

Ms. McKeehan: Did you make a lot of friends in college?

Mrs. Dolliver: Well, I met Jim. It was my delayed adolescence. It was just to be enjoyed. I couldn't believe it that my parents were paying, and it was all right for me to enjoy life.

Mr. Clark: Tell us how you met Jim.

Mrs. Dolliver: He was tall, dark, and handsome. Need I say more? I think it was my roommate who introduced me because he was working at the time on the campus radio station introducing classical music. So, I met him and went out with him. As I say, he was tall, dark, and handsome.

Mr. Clark: And you were married in the Congregational Church in...

Mrs. Dolliver: In Auburndale, yes.

Mr. Clark: Was this before you graduated or after?

Mrs. Dolliver: Well, it was my last year. When we wanted to get married, he came up and spoke to my parents the old-fashioned way, and they said it was all right. So I was married in the local church, and we had the reception at home in the living room. It was very small and modest, but I had my roommate and a good friend from school. And his family came up. It was very nice, quiet, low key.

Mr. Clark: Other than Jim, did you establish friendships at Swarthmore that are still warm today?

Mrs. Dolliver: My friend Beth, the girl who came to the wedding, she was a dear friend of mine. At Passover time, I would go to her room. She was Jewish and married a Virginia gentleman; and I do mean all of that social connotation. Beth was interested in drama and in college productions. At that time, W. H. Auden was a professor, a visiting professor, and she was in "The Ascent of F6," which was a play that he collaborated on. I remember seeing Beth and was so thrilled. She went to Yale Drama School and always was interested in theater. In the last few years, they visited us out here while we were in this house. But she contracted cancer and died. Her husband wrote and said, "Thank you for your support," because I had written so much that he really knew me. Our own oldest daughter is called Beth because of my friend Beth Ash.

Mr. Clark: What did you think of Jim's idea of coming out to Seattle?

Mrs. Dolliver: I was kicked out of Girl Scouts, for heaven's sake, so I had serious misgivings about that. We drove across the country, staying in ratty motels that were scruffy as all get out. The first day we got into Port Angeles, because Jim was going to be in the Park Service for a summer job, he took me to Red Wing Boots Company and bought me a pair of hiking boots. And we walked eleven and one-half miles up the Elwha Trail to get to his first station, which was the Elwha Ranger Station. So it was quite a shift and a shock. I had to learn to bake bread because all we had was a wood-and-coal stove.

Mr. Clark: You lived in the ranger station?

Mrs. Dolliver: Yes, we did, along with the upstairs population of pack rats who danced across the wire that crossed the room, and one fell into bed with us. I shouldn't be melodramatic. It was a mouse. But, still, it alarmed me, and we always had to hang all our clothing on that wire diagonally across the room because if they fell, theoretically, they would fall on the floor. But after it fell onto the bed, I kept saying to Jim, "You sleep by the wall or the other side of the bed," because I was afraid it might happen again.

Mr. Clark: How was life in Seattle? You were there for three years.

Mrs. Dolliver: We were in a weekend house that was built by that speed-reading, exercise, see-without-glasses woman, who couldn't afford to live in her own weekend house. So, we lived in it and had two children there. It was one bedroom. I borrowed a doll crib so that James, our first son, would have a place to sleep. Beth had a crib in our bedroom. The house was just tiny. When we showered in the morning this baby would be blinking himself awake because the spray of the shower splashed on his face.

Mr. Clark: Did you have an active social life in Seattle?

Mrs. Dolliver: Well, having the children, having a young family, was all I could manage. I enjoyed it.

Mr. Clark: You first lived in Seattle, and then you moved to Port Angeles. How was Port Angeles?

Mrs. Dolliver: Port Angeles was very friendly and open. They didn't care what you did. It was who you were—and I don't mean a relationship sort of way—but just how interesting were you as a person. I grant you I was able to join the A.A.U.W., which was a great way of being active and meeting people.

Mr. Clark: How about Everett?

Mrs. Dolliver: It's a factory town. Everybody worked at the paper mill, and that was about it.

Mr. Clark: Did you make many friends in Everett?

Mrs. Dolliver: I always had friends. I mean my kind of friends.

Mr. Clark: You went from Everett to Washington, D.C. How did you like that?

Mrs. Dolliver: Well, I thought that was great because it meant we're not going to live in Port Angeles for the rest of our lives. And I had thought that might be happening. Then we went to D.C., in the days when Watergate was only the name of a place instead of a synonym for scandal. We went to Watergate concerts, and the honeysuckle was in the air. It was lovely. They had Steve Lawrence singing, still in uniform, and so we had that as an outlet. We would buy ice cream cones

on the way back to the car, and Peter, who was the youngest at that time, would fall asleep in my arms.

Ms. McKeehan: So you would have liked to stay in Washington, D.C.?

Mrs. Dolliver: It was there that I started my research writing for another author, Francis Russell, who wrote for *American Heritage*. I assisted him with a book called *The French and Indian Wars*. I did research in the Library of Congress. That was a happy, happy time. I would pack a lunch, drive in to the Library of Congress, forget to eat my lunch, and just bury myself in these marvelous stories.

Later on, when I was teaching down in Centralia and over at South Puget Sound Community College, I could teach knowingly about the techniques of writing the research paper because I had done it. I had participated. I even got a credit in Francis's French and Indian War series. I mean one among many, of course, but every bit counts. So it was part of my credentials. I could write. I had written. I knew how to do it. And I could encourage and infect other people with the great enthusiasm I had for writing.

Mr. Clark: Do you continue to do research?

Mrs. Dolliver: No, but I have been writing. I've written articles. I wrote for the *Washington Evening Star* in D.C. when we were living back there. I thought it was interesting that in the grade school our children were going to, if they had any of the staff injured or sick, we parents would be called on to substitute in the kitchen. And we cooked what our kids liked. So I decided to draft an article on it, and the first thing I knew about it I was being called by the people who were all fluttery down at the grade school. They said, "There's a man here from the *Washington Evening Star*, and apparently you've written

an article, and they want to take some pictures.” So I went down, and it was fun.

Mr. Clark: In Olympia, have you worked as a research assistant the way you were doing in D.C.?

Mrs. Dolliver: No. No, because I began to write for myself, not doing research, but writing. I used to think when I was telling a story to a neighbor, why am I talking to a neighbor? I should go inside and write it down. Sell it.

Mr. Clark: Wonderful. How have you responded to Jim’s political activities?

Mrs. Dolliver: Well, it was fun. In a way I, too, was involved just a tiny, tiny bit. When Evans was supposed to be writing the Thanksgiving Proclamation, which is published everywhere, not read anywhere, but it’s published, Jim asked me, “Could you write a proclamation?” And so I did, and I sent it in. Dale Turner, who was a Congregational minister at the time, wrote a letter to Evans saying that most of these proclamations are dime-a-dozen stuff, but the one I had written—I mean, he didn’t know it was I—meant something real. So I was happy about that.

Mr. Clark: Jim was working for a member of Congress when you were in Washington, D.C.?

Mrs. Dolliver: Westland. Yes.

Mr. Clark: Did he come home every night and tell you all about politics?

Mrs. Dolliver: No. Leave business at the office. I had enough to do with my young family.

Mr. Clark: When you left Washington, D.C.,

you came to Olympia. Did you come to this house?

Mrs. Dolliver: Yes, because those were the days when nobody was going to rent a house to somebody who has four children. That would be improbable, so we looked around, and we thought this house is big enough to have a place for each person to go and have a bit of privacy. It had enough bedrooms, so we bought it. Thank goodness we did, because we couldn’t afford to buy it now.

Mr. Clark: You’ve been here for many years, then?

Mrs. Dolliver: Thirty years. Over thirty years, because Keith was just a baby when we came. Jim came here because he had to run Evans’ campaign and was his administrative assistant. In fact, when we came, this house had been owned by an anesthesiologist out at the hospital, and he had let the oil run out of the furnace; so all the plumbing was cracked and broken. The plumbers lived with us for a solid month as they repaired all that. When they came, they always turned the water off. I got to be very good friends, happily, with the people next door, who invited me over early in the morning, and I could stay all day. They had some children about our children’s ages, too. We slept in sleeping bags on the rug in front of the fireplace. It was difficult, but it was an adventure.

As I say, they kicked me out of Girl Scouts. Boy, have I learned since. I could handle anything, but when we were sleeping in front of the fire and all, and there weren’t all the fast food restaurants that there are now, it was touch and go. The children could buy their lunches at the school, so they ate a hot meal. We couldn’t produce it for them.

Mr. Clark: How long did you teach at Centralia?

Mrs. Dolliver: We were part-timers. It's obvious I quit too soon. Now, everybody is saying, "Pay part-timers what they're worth." I left too soon, though I enjoyed it. I drove down to Centralia or out to South Puget Sound Community College, and I really enjoyed teaching. I did.

Mr. Clark: Were you teaching composition?

Mrs. Dolliver: English 101 and 102, occasionally, or techniques of writing the research paper. I knew how to do it.

Ms. McKeehan: Were you teaching one class or a full load?

Mrs. Dolliver: Never. They don't pay part-timers for carrying a full load, but I certainly got all the classes that started at 8 o'clock in the morning. I taught every day, but just a class or two a day, so I was part time.

Ms. McKeehan: But you liked it. You didn't get discouraged by the students who couldn't write?

Mrs. Dolliver: Oh, no. I had students for whom English was a second language, and I got so thrilled at the opportunity because they wanted to be there at community college. Their parents weren't paying; they were doing it themselves. Ex-loggers, ex-truck drivers, many people who could no longer do physical work—they had to learn to use the brain, the mind—and I thought they were so exciting. Of course, I believe anybody can be a writer if you want to.

I hadn't taken any education courses, but I knew I could encourage students to write. I felt very secure. The president of the faculty said, "What do you hope to do?" as he interviewed a batch of us. "What do you think you should be doing by teaching?" And I answered, "I want to make an alert mind and

a tender heart." I thought that was the goal.

Mr. Clark: Did that attitude serve you well at South Puget Sound?

Mrs. Dolliver: Oh, yes.

Mr. Clark: Was there a difference between the two colleges?

Mrs. Dolliver: There seemed to be more—this is not a down-putting remark—blue collar workers who wanted to escape blue collar activities when they came to South Puget Sound. I gave them the best education I could. I gave them as much of a Swarthmore education as anything. I gave them opportunities, and I had standards and kept to those standards. I heard all the sad stories about absences. All the excuses. I didn't give what they now regard as sort of promissory notes. I was tough. They used to call me "Nails" Dolliver.

Mr. Clark: Wonderful.

Mrs. Dolliver: But I wasn't ashamed. After I had fallen down the stairs and had to be led around—I mean, I was just incapable—ex-students would come up to me in the supermarket and say, "You don't remember me, but I took your English class, and it's done this" And they told about going to four-year colleges and on into careers. They knew me, and I looked pathetic because of the accident. But they wanted to thank me. They identified themselves and said, "You made such a difference for me." That is the nicest accolade any teacher could have.

Mr. Clark: That must have been very gratifying. Were you doing a lot of writing during those years?

Mrs. Dolliver: I did one article for *Good Housekeeping*.

Mr. Clark: What was the article about?

Mrs. Dolliver: It was titled “We’re the Lucky ones!” [*Good Housekeeping*, December 1969] and was about our adoption of Jennifer when she was five months of age. We had earlier taken in a few foster children, just to keep my hand in it, because I liked it; I knew how to be a mother. That article got me one fan letter from a girl who was not out of high school who said, “I’m so glad I read your article. You made me believe in grownups.”

We had seen a commercial on the need for homes for children who had special needs or were not the “Gerber” baby that adoptive parents were supposedly looking for. I looked at it and said to Jim, “We could do that. Where shall we go?”

And he said, “Well, D.S.H.S., downtown.” I took Keith, who was then just four years old, and we went. A social worker interviewed me, and I said, “I’m interested in responding to this apparent need for homes for children of mixed racial heritage.”

She perked up and brightened and said, “Let me get some records,” and began writing down my background and noting our situation. I wasn’t just looking for a “Gerber” baby. She could tell. Then I took Keith to have a drink from a drinking fountain. By then, heavens, I was pretty old. I was over forty. She wanted to see that I could handle it. But I picked Keith up and held him up to the drinking fountain. She thought, “When I saw you do that, I knew you could.”

So I was rushed along, and pretty soon it all came true. I wanted to adopt, and I even testified at a hearing about social workers’ resistance to the idea of cross-racial placements. They felt if you’re going to be identified as black, or a different background, legally and socially, you had best be placed with the race with which you would be identified. But I testified against that. I said

love—everyone needs it; everyone wants it; I have it to give; and I am not filling unfulfilled needs. I have four children. That’s wonderful, but I would like to go on doing what I know how to do, and I thought I could.

Mr. Clark: Did you get a lot of response on the *Good Housekeeping* article?

Mrs. Dolliver: Yes. I took Jennie with me to be on TV somewhere, I think it was Cleveland. She sat beside me in the studio audience. She watched the monitor, and she said, “Mommy, TV, Mommy,” which was disarming. All our expenses were paid.

Ms. McKeehan: How long after this did you adopt the second child?

Mrs. Dolliver: Well, three years after Jennie we got Nancy. Jim had some meeting he was going to in Seattle. That was a time when there was a good deal of unrest in Seattle, and they were going to demonstrate on the freeway, and so I ran over to a neighbor who lived a block away and said, “I wonder if I can ask a real favor? Jim can’t take me, but we’re getting our next adoptive child. Could you drive me up?” She never even turned a hair. She said, “Wait ‘til I change,” and rushed up and changed into something easy to drive in. So we went up and got Nancy and brought her home. She was three months old. That was quite a big day, not just for us but for Jim because the governor was out of state, and it was an anxious time for people. But we managed very nicely.

Mr. Clark: Tell us about how your other children reacted to all of this.

Mrs. Dolliver: Well, James was one who put up the argument. He said, “Why do you want to get a baby? We don’t have another dog yet.” We had just lost our family dog. Then some

kid at Evergreen was guarding some electronic equipment, and into his sleeping bag crept this little dog. And he thought, “Oh, she just wants to be taken care of.” He heard that our family was a good possibility, and so he brought her, and so we got Ginger. I told James, I said, “Well, we have another dog, now can I get the baby?”

It was fairly casual in those days. Now you go to a college and take a course on whether you shall or shall not become a mother. In my day, which was eons ago, you had children, if you were blessed, or you didn’t. But you didn’t have to go and take a college course to find out whether you should. I was lucky enough to be able to stay home and be a full-time mother. That isn’t an option for women today, not many. “What do you do?” is the primary conversational opener; and woe be unto those who say, “I’m a mother,” as though that were enough of an answer.

Mr. Clark: Is Robert Frost still your favorite poet?

Mrs. Dolliver: Emily Dickinson. Emily Dickinson.

Mr. Clark: I read someplace that you collect Northwest art?

Mrs. Dolliver: Look around.

Mr. Clark: Who is your favorite Northwest artist?

Mrs. Dolliver: I think Paul Havas. The big one in the other room—you’ll just gasp when you see it. It’s so stunning, so engrossing.

Mr. Clark: Do you read much fiction?

Mrs. Dolliver: Not really, but I’m very interested in nonfiction. I even read the Sunday Supplement, which is where

recently I saw that great article by Muller on what’s happened to the Sabbath. He had written a book on whatever happened to the Sabbath, or the rhythm of activity and then reverence and rest. I just ordered it a couple of days ago from the downtown Fireside Bookstore.

I’m very struck by the idea that there could be an alternating rhythm between “activity, worth and doing” and then that other mysterious state which is “being.” I used to think that “to do” was the only thing that counted. After I fell down stairs and lay in bed for three weeks, because that’s how long the coma lasted, I learned that the most important verb—and a verb is a living word—is not “to do” but “to be.” So I’m really helped by anything that addresses that.

Ms. McKeehan: You’ve gone to church most of your life?

Mrs. Dolliver: Well, I was married in the Congregational Church and went to Swarthmore, which is a coed Quaker school. But I’m ready to move on to a more intimate, personal way of reaching for what lies within us all, and that is the inner light. It says a great deal to me.

Mr. Clark: You’ve mentioned several times your accident. Maybe you could fill us in in a little more detail. This was two or three years ago?

Mrs. Dolliver: It was about five years ago because, first, Jim had his stroke; I believe the date of that is January 2, 1993. At any rate, after that I turned my life over to him. I did everything. I managed the books; paid the bills; drove him everywhere, including to conferences; kept up the house; did everything. I was Doing instead of Being.

I couldn’t resign; there was no desk where I could turn in a resignation. So I fell down

stairs—not voluntarily; but sometimes the subconscious mind dictates and insists on being recognized and dealt with. I think that somehow that must have transpired, and so I got my rest—three weeks in a coma. Then for two years we had a horrible experience with caretakers. I was very unhappy with them. I did not think they cared about me, only my money. All I was good for at that poor broken stage was I could write checks.

Then, what I call my Christmas angel came, Maimie [Maimie Masson], who is out in the kitchen now. Well, she was one who dared touch me. She is a physical therapist, an educated R.N., and she has done psychiatric nursing. She can do anything.

Ms. McKeehan: How did you find her?

Mrs. Dolliver: As I say, she was a Christmas angel. When she registered at this place—an employment agency—they took a look at her resume and told her, “Goodness you could earn so much more money.” She said, “Have I asked about money? I want to go somewhere where I’ll be needed.” They sent her to us.

She came out and looked at me and saw a terrified, intimidated person. She could see that something was horribly wrong. I mean beyond the closed-head brain trauma and the broken wrists. She dared touch me. She loved me. That is something a caretaker is not paid to do; but Maimie loves and she wants to help. She felt she could. Every bit of progress has been because of Maimie’s encouragement and touching. She believed in me; she was in my corner.

Mr. Clark: Let’s talk a little more about your hobby of printing, about your Wentletrap Press. You and Susan were talking about it. Tell us how you chose the name.

Mrs. Dolliver: Well, because shells are also my hobby. What better field of terminology—

shells? The wentletrap is found off the coasts of New Zealand and Australia. It’s a gradually staircased sort of a shell—you know, one then another, upper, upper, upper. The pattern of the shell morphology to me is a wonderful parable. It explains my motto of “upward and onward.” So, when I took up my next hobby—printing, letterpress printing—I called it that.

Ms. McKeehan: How did you get interested in printing?

Mrs. Dolliver: James and Peter, who graduated from Evergreen, called up one day and said, “Mother, there is a course this summer that can teach you printing, and then you could print your own poetry.”

And I thought, what a delight, and so I went out and took letterpress printing. When I first called on the phone to see if it was still open, I said, “I’m not very good with my hands. I’m like the lily of the field. I knit not, neither do I spin.”

But she said, “Have you ever met me?”

And I said, “No.”

And she said, “When you see me, you’ll understand why I’m asking.”

When I went to see her in the first class, I discovered she had had a printing accident in her young life and that her hand had been caught in a press and mangled from the forearm down. When she was in the hospital being repaired, her husband bought her a set of primer crayons so she could practice using her left hand. She managed. I don’t mean managed: she was a printer. So if she could do it, then I could do it. I was patient, I had a good eye, and I had something to say.

Ms. McKeehan: How did your sons know this would be right for you?

Mrs. Dolliver: Well, they knew I wrote and sold poetry, and what a wonderful step it would be to print my own. If you print, you

can give poems to anyone who wants them. Like that little poem “Harper,” which is just a quatrain, but that I gave to one of my students one time who was going through a hard time. I said, “I have a good word for you. This is one of what I call my refrigerator poems. Put it on your refrigerator so you can let your eye fall on it and stay the course.”

Ms. McKeehan: So did you print a lot and give away a lot?

Mrs. Dolliver: Oh, yes. If anybody said, “I’d like a copy of that,” I said, “Just give me a week.”

Then I made chat books. The little chat book here is called “Night Sailing.” That is a tour de force because it is color printing—the titles and the end papers are dark blue. They have to be done with infinite care and patience. You set it up, and set the title separately because different inks are needed. I sold these little chat books down at the Fireside Bookstore when Coke Funkhauser had it.

I called one “Night Sailing” because I thought these are not happy, easy Hallmark stuff. Nobody will like these. Well, at that time I was on the Commission for the Humanities. Karen Munro had proposed me as a commissioner. Ralph Munro saw “Night Sailing” and said, “Karen would really like that, I’m sure.” I said, “Nobody will like these. They’re so dark and threatening.”

Ms. McKeehan: So did he give it to Karen, and did she like it?

Mrs. Dolliver: Yes, of course.

Ms. McKeehan: Would you please read this?

Mrs. Dolliver: Well, if you can bear it. My voice is not...

Mr. Clark: Oh, you’re holding up very well.

Mrs. Dolliver: Okay.

The church is not the place
Where questions may be asked.
Though words may be supplied
With which a void is masked.
A heretic may stand and visit
The faithful cry to suffering and early death.
Forbidden question.
Why the outcast’s starving
Gnaws the question like a bone.
His answer that he lives with none
But not alone.

Mr. Clark: Thank you. You served for several years, I believe, with the Washington Commission for the Humanities?

Mrs. Dolliver: Two terms.

Mr. Clark: Did you find that work challenging?

Mrs. Dolliver: Oh, yes. I loved it. I loved it. It was a bit, a part of being in on some of the shaping of the society.

Mr. Clark: Have you thought about writing more magazine articles?

Mrs. Dolliver: It’s hard for me to write now. I would like to write a prose work on “coming to life” because that is what I know something about. I could have died at the bottom of the stairs.

Daniel J. Evans
(April 29, 1999)

Mr. Clark: Dan, can you recall for us how you first met Jim Dolliver?

Governor Evans: Well, we were both active, but independently, in the Republican Party. He had served as administrative assistant to Jack Westland and then went into the private practice of law in Snohomish County, ran for prosecutor, and lost in what was then a pretty heavily Democratic county. In the meantime, I was getting involved politically and ran for the Legislature; and I don't remember exactly what year, but it was shortly after that that we first met as young Republican activists.

It was really in the 1963 legislative session that we asked Jim to serve as the caucus attorney for the Republican Party in the House of Representatives. I was the leader of the House Republicans at that time, so I played a major role in getting Jim to come and to work with us. That was a fascinating session of the Legislature because it was the one in which we formed a coalition with seven Democrats. Between the forty-eight Republicans and seven Democrats, we elected one of those seven Democrats as speaker, tipping over John O'Brien, who had served for a long time. That set in motion, as you might guess, a very contentious, always interesting, and exciting session of the Legislature; and Jim played a very big role as strategist and attorney. He was called the attorney, but he was, in many respects, much more—a chief of staff and strategist.

Mr. Clark: And later you appointed him chief of staff when you became governor?

Governor Evans: Yes.

Mr. Clark: Before that, he was the campaign manager, wasn't he?

Governor Evans: He certainly was. That campaign started in a very interesting way. We had finished the legislative session in 1963 in the early spring. I had gone back to my engineering practice and was happily engaged in catching up on what I had not been doing the last few months when I got a call from an Associated Press writer named Sally Ryan. She asked me, "What's this about a 'Draft Dan Evans' committee?" I just laughed, and I said, "Draft Dan Evans for what?" She said, "For governor," and I said, "Oh, you gotta be kidding."

It turned out that it was a group down in Cowlitz County headed by Herb Hadley, who had served for two years as a member of the Legislature and was an enthusiast. He and several other Republicans gathered down there and thought that it would be a swell idea to run me for governor. So, over coffee one morning, they initiated the "Draft Dan Evans" idea. It got some press, but what it did was trigger my getting together with a small group of advisors to seriously look at that and say, "Well, it's May of 1963. We're a year and a half away from the election. Does this make sense?"

As I remember, the people that I gathered together included Joel Pritchard and Slade Gorton—both of whom were very active supporters and colleagues and had played roles in the House and the legislative session just concluded—and Jim Dolliver, plus several others. I don't remember just how many. We talked this over, and it was Joel Pritchard who said, "If you really want to run for governor, what you should do is invite 200 of your best friends to a 7 o'clock breakfast and tell them in the invitation you are going to ask them for money and see if anybody shows up." It was good advice. I said, "How about 7:30?" And he said, "No, 7 o'clock.

Make it tough because you want to know who your friends really are.” It turned out to be an immensely successful breakfast. In those days, money wasn’t as important as it is now. We asked everybody for \$50. As it turned out, from that, plus another breakfast which we had shortly afterwards for those who weren’t invited to the first one and got kind of unhappy because they didn’t know what was going on, we raised \$10,000. That was to run—and did run—the campaign for the next six or seven months until we really got up into a campaign organization.

I asked Jim—I had immense trust in his judgment and his political skills, and we had worked very closely together in that session—I asked him if he would take the job as campaign manager. He said yes. One of the first things we did is go to a friend of mine who had an automobile business and ask him for support. He said, “Look, I can do better than money. Go out in my used car lot and find a car that you think is okay, and you can borrow the car for as long as you need it.” Little did he know we would borrow that car, and we would bring it back with almost 70,000 more miles than when we started.

Jim and I got in that car and began a tour of the state, well, a number of tours of the state. We would go out for about a week at a time, and we would visit every small town. We would stop by every weekly newspaper. We would hit every radio station. We would go to a small town and look for the antenna of the radio station, and we would find it, and usually there was only one person in there. They said, “You’re doing what?”

And I said, “I’m running for governor.”

They said, “Oh. But the election is *next* year.” But, almost always, they said, “Okay, let’s do an interview.” Frequently they would say, “I don’t even know what questions to ask.”

Jim would say, “I can supply the questions.” And so Jim would write them out.

We had quite a thing going, but it was a marvelous experience in many respects. We had time to build organizations. We had legislative friends from our House caucus in virtually every county of the state, and they were very helpful in building a campaign organization. And it was marvelous for Jim and me to spend time in a car together and talk about hiking and mountain climbing and things we were both interested in.

He was an extraordinarily well-read person. He has a huge library. I seldom ran across a book, during the time I was governor, that I didn’t mention to Jim and find that he’d already read it. He would frequently give me books to read that he thought were particularly impressive. So it was a marvelous six or seven months of just building that base because we started with no name familiarity and no support among those who were talked about as candidates for governor. Then we graduated—we just outlasted the rest of them. That was our first really extended get-together, and I couldn’t have picked anybody better.

Mr. Clark: Jim has told us about a one-day drive from Colville, down from Spokane, to Yakima, to Tacoma.

Governor Evans: Yes. A one-day, cross-state trip with a half a dozen stops.

Mr. Clark: I have wondered since then what you guys talked about.

Governor Evans: Yes, we just talked about everything. Some of it was on campaign strategy, but usually it was more on things we liked to do or were interested in, books that we had read, and that sort of thing, or hikes we had been on.

Mr. Clark: Did you hike together?

Governor Evans: Not very often. We did talk

about hikes and every once and awhile we would get out together. Jim had first come to this state as a ranger at Olympic National Park; and of course, that turned out to be his favorite hiking ground and mine as well. I came to it from being a Boy Scout at Camp Parsons on Hood Canal. I had started hiking in the Olympics in about 1940 and have been doing it ever since. So, between the two of us, we had covered virtually every trail and climbed almost every mountain in the Olympics. We would exchange ideas and places to go. That was great.

Mr. Clark: Jim referred to the campaign committee, of which he was chairman, as the Chinese Communists, because, he said, they were always arguing with each other. What was your observation of the committee's work?

Governor Evans: In fact, we had a fond name for it. Somebody, I don't know who, picked it and called it the DEGOHT group, which was the Dan Evans' Group of Heavy Thinkers. In reality, it was, you know, the people I had mentioned early on—Joel Pritchard and Slade Gorton and Joel's older brother, Frank Pritchard, and Jim and Mary Ellen McCaffree, and Helen Rasmussen, and John Haydon, who came from the *Marine Digest* and who was really more of a Democrat than a Republican. He gave us some important insights into Democratic places where we could gain some strength. My wife Nancy's brother, Bill Bell, was one of the group, and these were all very strong, very able people both politically and in their own profession or line of work. When we got together as a committee, there was no lack of ideas and certainly no lack of expression of ideas. I am not sure I would use quite the same term that Jim did, but he was certainly right in saying that there was a lot of—it's not necessarily disagreement—but a lot of talk and argument about best strategy

and how to do things. We were later joined by Gummie Johnson, who became chairman of the party, and Bill Jacobs, who was my chief of staff both as governor after Jim left and as United States Senator. All of these people played an extraordinary role. It was one of the finest campaign committees, I think, one of the strongest that's ever been assembled. And it was a classic campaign.

It started, as I said, with six months of Jim and me laying the groundwork; and we came perilously close to ending the campaign early in 1964 because of something I said to the committee. I said, "Look, I will run as hard as I can, put every ounce of strength and every minute of every day that I can into the campaign; but I do not have any personal money to put into the campaign; and we will not go into debt, *ever*." So we got to January or February, and I'll never forget a meeting when I said, "Look, we are just out of money, and we can't go very much longer."

We had two young fellows who had taken on the job as the advertising agency, and they said, "Okay, we'll do it for nothing for a while. We think this is worth doing."

Fortunately, within that week, we got the first really big campaign donation from one of the distinguished businessmen in Seattle, and that really helped. It was \$500 or something, but that was big money for us. But more importantly, it sort of ratified what we were doing. His willingness to step forward led to some others' willingness, and we got through that crisis. But there were a lot of times when we wondered which way to go next. Jim was always a very stabilizing, important influence in keeping us on track and keeping us focused on what we were trying to accomplish.

Mr. Clark: It's remarkable that the two of you found so much in common. Jim puts a lot of weight on matters of identity. He identifies himself as a person from Iowa, from the

Dolliver family, a Republican—a T. R. Republican, an Abraham Lincoln Republican, and a Methodist. You found this compatible?

Governor Evans: Oh, indeed, because I think we were from different places but from the same roots of identity. I've always had a very strong feeling of family identity. My grandfather served in the second and third sessions of the Washington Legislature as a state senator from Spokane. Interestingly enough, he served as a colleague of Senator Gandy from Spokane who was Joe Gandy's father, and Joe Gandy ultimately turned up as one of the candidates for governor during the same time I ran as a Republican. So, the generations keep coming back, but I think that family and place and identity help determine the kind of person you are and what's important. Jim and I, when I was governor, I never once felt uncomfortable about being gone and leaving the state to Jim. I just knew we would think alike. He could have as easily been governor as I.

Mr. Clark: Did you ever encourage him to run?

Governor Evans: I think he ran once for prosecutor and was defeated, and he never mentioned really wanting to run for partisan political office. He probably, secretly, would have had some interest; but he didn't voice it. He came from a political family. Both his father and his granduncle or his grandfather served in the Congress, and I think he would have liked to serve eventually in Congress himself.

Mr. Clark: He certainly doesn't mind running for election, or reelection.

Governor Evans: No, that's right.

Mr. Clark: Sort of enjoys it, too.

Governor Evans: Yes. And, of course, that whole element of his appointment to the court was one where I got very upset at the Washington State Bar Association and the American Bar Association and their ranking people for the federal bench. I had proposed to make him a District Court federal judge, and Scoop Jackson called me and said, "Gee, I'm sorry governor, I can't put his name forward because the bar association has said he was not qualified." I just really blew up at that point.

Mr. Clark: We were talking a couple of weeks ago about the disturbances in the late '60s and '70s, and he told us how you, with someone from the State Patrol, would spend a lot of time walking and talking around the Central District. Can you remember anything that Dolliver did during that time?

Governor Evans: Well, his wisdom was really extraordinary. He could pick up on crises and problems, and his advice was really always to try to find some way to cool things off—to engage in conversation rather than to stonewall those who were protesting. Of course, in those days, there were a lot of protests, and they were on every conceivable thing. It was the beginning of the environmental movement. It was sort of the culmination of a lot of the movements starting with the voting rights bill of 1965, which had been preceded by all of the civil rights actions in the South, and now they had spread to other elements of the civil rights movement in our state, and the Vietnamese War, all of which led to a period of really extraordinary turmoil. But I always thought extraordinary interest.

I spent a lot of time both in the urban centers of our cities and also on college and university campuses. A lot of that was with Jim's push or advice, and he would spend a considerable amount of time on college campuses. It was a good way to find out what

was going on—talking to students, listening to students, more than anything else. And, frankly, I found myself increasingly, as time went on, agreeing with students that we were engaged in a war that was both immoral and “unwinnable.” So we had some sympathy with what students were trying to tell their elders—sometimes in fairly outrageous ways.

Jim with his good advice was always saying, “Here’s an opportunity.” He was heavy during that time on meeting with the young and with people from the minority communities. That’s what we ended up doing, and I think that it was a real help in keeping us from at least having the blowups of the proportions they had in other cities in America and certainly on college campuses.

Mr. Clark: He told us of one day when a group of protesters raided your office and seized it. He apparently defused a very volatile situation. Do you remember that day?

Governor Evans: Oh, yes. He was very good at pulling the leadership aside and saying, in essence, “What are you doing? Don’t make an enemy out of someone who wants to be a friend.” They finally would realize that they were protesting against someone who really was pretty much on their side in terms of what they were trying to achieve. That really helped.

We also had sessions that he played a very important role in when we tried to break down the barriers for minorities, particularly young black apprentices, to get into apprenticeship programs. The unions are just impossibly rigid. In fact, it was the old-time guild system almost where you had to be the son of an electrician to get into the electricians’ union or the son of a plumber to get into the plumbers’ union. The apprenticeship programs were very much confined to white male apprentices. We ended up pushing hard for opening those to minority applicants and had two sessions in the governor’s office

where Jim and I and maybe one or two others who were there from the administration, but with probably a dozen labor union leaders from the craft unions, and we were determined.

Jim and I had talked about what to do, and we just started the negotiations and kept them going. We started about three o’clock one afternoon. We went through, we had a short break for dinner, came back, and went ’til about three in the morning, still with no solution. When it was apparent that people had gotten to the point where they were so groggy they couldn’t work anymore, Jim and I got together, and his advice was bring them back again tomorrow. Let’s keep going. We live here. They don’t. So we did. Brought them back the next day and worked, and it was not until about two o’clock the next morning that we finally got to a point where they agreed to accept the first apprentice minorities into their apprenticeship programs.

It was not violent. It was confrontational only to the extent there were wide differences of opinion, but it was just that constant negotiating and constantly pushing toward some kind of solution. Jim was just marvelous at that sort of thing and played a very important role in getting it done.

Mr. Clark: Did Jim ever discuss with you his plan to adopt children from racial minority groups?

Governor Evans: No. He didn’t discuss it beforehand but, of course, let me know when he decided to do it. I think it came from a lot of things, certainly from his and my experience with many elements of the minority community during the broader civil rights movement. Jim’s thoughts were always about the practical ways of actually implementing what you were trying to achieve—and that was equal opportunity. And I think that combined with his strong

Methodist religious upbringing caused him to say, “We can’t just talk about it.” And he and Barbara decided to do it.

One measure of his belief in people was that he never locked his front door. He said, “No, I’m not going to lock my front door. I’ve got neighbors, and I’ve got trust.” As far as I know, no one ever abused the fact, and I don’t know whether he still does; but all during that period of time and all during the time that I was governor, as far as I know, he always kept his front door open or at least unlocked.

Mr. Clark: Were you and he close socially?

Governor Evans: Well, yes. At Christmas, Jim played Santa Claus. We would have a Christmas party for the children of all of the department heads and the governor’s staff over at the mansion; and Jim was the traditional Santa Claus. In fact, one time one of his young daughters, one of his adopted daughters, looked up and said, “You’re Daddy, aren’t you?” He really had a tough time convincing her that he really was Santa Claus, not Daddy.

We would get together. We would either go there, or they would come to our place for dinners, usually with other friends. Conversation was always terrific. Those were marvelous times, but just being governor didn’t allow for a whole lot of slack for family and friend gatherings.

Mr. Clark: He has told us repeatedly that he is not an especially social person. He is a family person, but not a social person, so he doesn’t talk much about dinner parties.

Governor Evans: Barbara was a very good cook. She would just turn out some marvelous meals. These parties were always kind of low key, with good friends. I think we are both very much alike. I think that I much prefer a small dinner party with good friends to all of the big events, and especially stand-up

cocktail parties, which are an abomination as far as I am concerned. But you end up over the years having to go to an awful lot of them.

Mr. Clark: I remember him as a really impressive speaker. I heard him speak several times in Seattle.

Governor Evans: He was an impressive speaker for a number of reasons. He had a great speaking voice, and he had a presence at the rostrum, and he had just an incredible mind full of things he had read and the things he had learned. Even in an off-the-cuff speech, he could bring some remarkable background material to mind. He had the ability to recall that and to use it. Yes, he was a very impressive speaker.

Mr. Clark: Jim told us that you never liked to speak from prepared text. You spoke from notes and learned to do it very well. Did he use prepared text?

Governor Evans: I don’t remember that he did, and I think he also spoke from notes. Although as time has gone on, I have more and more tended to try to prepare a text, even though I may not use it exactly as I give it; but I found that the one good thing about a prepared text, especially in politics, is that it makes it easier for the press: They are more likely to use what you are saying than if they have to do the work of keeping good notes or of transcribing their tapes and that sort of thing. The fact that I did not use prepared texts very often probably kept me from getting the maximum benefit from ideas that I wanted to get across.

But I did use prepared texts on things that were of real consequence or in speeches where you wanted to make very sure precisely what you got across. The speech in Port Angeles where we read out the John Birch Society from the party was very carefully put together, and

it was a written text which I kept to because I wanted to make darn sure I said exactly what I meant and very precisely.

Mr. Clark: I wish I had heard that speech. Wish I had been there.

Governor Evans: I've had lots of speeches where I have seen people fall asleep; but I've only had one speech where people have deliberately gotten up in the middle and walked out. This was the speech where that occurred. So it was sort of the watershed for the party and the watershed in many respects that created the division that lasted during all the time I was governor.

Ms. McKeehan: Have you been wishing that you could read out the current right-wing Republicans?

Governor Evans: Well, the question is, "Have I gotten old enough and wise enough?" The old John Birch Society speech, which I re-read not long ago, wasn't so much reading them out of the party as saying these are the things that I thought were beyond the pale—the beliefs and the ideas and the stands that were outside the framework of a broadly-based Republican Party. So we weren't really reading people out as much as we were saying these are the kinds of things that are outside the bounds.

I think the same thing is true today. I think the Republican Party, with its insistence on abortion as a major stand, they have created a horrible schism. We better think of some different and better ways to approach what is, you know, kind of a fundamental issue. A broadly-based political party in this country isn't going to go very far by being both insistent and narrow on that issue.

Mr. Clark: Jim says that your strength as governor came in large measure from your

ability to control the agenda.

Governor Evans: This committee, the DEGOHT committee, and the campaign staff really put together the proposals that we had for governing. We thought it was important during that campaign not only to be against the current administration, but to have a pretty coherent set of proposals of things we wanted to accomplish. But it was couched in the terms of the campaign; and eventually someone came up with the title "Blueprint for Progress." We knew we had a good slogan when Governor Rosellini started to use the term "Blueprint for Progress" in a derogatory manner. He helped intensify the focus on the Blueprint. In the latter part of the campaign, we put out on about a weekly basis the five different elements of the Blueprint for Progress, and each one had six or seven bills or proposals in it. It all added up to about thirty-five points in the Blueprint for Progress, and these were the things that we said I was going to do.

When I was elected, we set about putting all of those into bill form. We actually presented the Blueprint for Progress in the first session of the Legislature. We didn't get all, but we got a significant proportion in a Legislature that was controlled, both houses, by the Democrats. We found that you could set the agenda.

In the first place, I've always been a great fan, like Jim, of Teddy Roosevelt. His belief that the presidency was a bully pulpit was exactly what I felt. I found very quickly that the governorship was a place where you could sound off with a much louder trumpet. That you really did have control—not control of the press, because nobody does—but you had a lot bigger voice to express what you wanted in the press. When that's combined with a set of proposals that are explicit, you do set the agenda; and that creates the arena within which a Legislature works. As I say, we didn't

win on all of them, but we sure decided what they were going to talk about.

That led to other sessions where, ultimately, tax reform was the focal point, and the Legislature didn't go off talking about something else. I still look back and wonder how in the world we did it—getting two-thirds of both houses, including a majority of Republicans, twice to vote for an income tax and get it on the ballot. It represented the focus on what I had proposed. So setting the agenda was important.

Jim was a great fan of constitutional revision. We figured that putting a rewritten constitution in front of the people would be almost impossible to sell because it was all wrapped up in the problems of income tax and tax reform. So, Jim, I'm sure, was the one who came up with the idea, "Well, let's give them about eight or ten or however many separate articles to vote on." And I said, "Well, gee, you can't do that. They might not accept all of them, and then where would you be?" That's when he set out to put together really a super combination. We did have a constitutional convention commission to help work on it, but Jim was the real guiding light of that. It was all written in a way that regardless of what combinations were chosen, the resulting constitution would be coherent. That took some real work to do, and that was Jim Dolliver's baby. But we could not get the Legislature to put it on the ballot. Montana changed its constitution during that time and simplified it immensely. Alaska came into the Union with one of the simplest, most straightforward, best constitutions that you could find. We wanted to cut about four-fifths of our constitution and get it back to what a constitution should be, which is a basic statement of rights and responsibilities. As I say, Jim played an important role both with his enthusiasm for doing it and then the cleverness with which he helped to put together this proposal.

I think we just missed the time. It was a short window for constitutional reform, and then it sort of closed. I don't know whether any elements would have passed. I think that there would have been a good chance to shrink the constitution back to what it ought to be instead of this loaded kind of thing that we have now that requires about four or five amendments every biennial session.

Ms. McKeehan: Besides setting an agenda, you have to be willing to use political capital to achieve it. Did Jim influence what areas you chose to fight hard on?

Governor Evans: Yes, we talked regularly and extensively about issues. He was not only a chief of staff but a lobbyist for those things he thought were important. We had some great conversations and would bring in other department heads and staff to go over some of them.

He, like I, was interested in the environment, and again, I don't recall precisely how we decided to do it, but Jim unquestionably played a key role in the decision to really focus on the environment in 1970. Remember, the first Earth Day was in April of 1970. We were there a year before when we thought, "Well, gee, what if we call a special session of the Legislature and just focus on environmental issues?" Fortunately, that was just at the time the Washington Environmental Council had been formed, and so there was an institutional focal point now for all of the environmental interests. Here was one umbrella organization that we could talk to.

So we called together a three-day meeting at Crystal Mountain in the fall of 1969 and brought together probably eight or ten leaders of the Washington Environmental Council, half a dozen department heads who had environmental concerns in their departments, and probably seven or eight legislative leaders.

We met for three days, and Jim was *the* key person on that.

We didn't do anything more sophisticated than talk about all the issues people were interested in and ultimately write them down on a blackboard. We ended up with about fifty, plus or minus, of the issues that someone in that group thought were really important. Of course, probably most came from the environmental representatives. I said at the end, "Okay, why don't each of you write down the five that you think are the most important. Then we'll go down the list. Number one, hold up your hand if it's on your list."

We just wrote down the votes. As I remember, I would call them out, and Jim was writing them down on the blackboard. It was interesting because six issues jumped out having considerably more support than any of the rest. So I said to the Environmental Council, "If we put these six proposals up as bills, and I call a special session of the Legislature, will you agree to lay off all these others until the next regular session? Let's focus on these six." They agreed. I told the department heads, "Now, you be helpful and do what is necessary to get these proposals into bill form." And then ask the legislative leaders if they would give them priority for hearing and for that sort of thing. That whole idea, I think, of bringing them together was Jim's.

We did call a special session that lasted thirty-two days. Five out of the six bills passed, and the sixth one, the shorelines management bill, passed by initiative. It was a spectacularly successful session and one of the rare ones in my memory where even the press after the Legislature went home said, "That was a swell session."

Then toward the end of the time I was governor, Jim and I really got together on shoreline management. And again, it was Jim's idea. He came in one day and said, "You know they've got the ocean beaches of

Olympic National Park, but then there is a gap between the ocean strip of the Olympic National Park and the Makah Indian Reservation and Lake Ozette, which sits out there, and is half in the ocean strip of the park and half outside. Why don't we do something to make a proposal to encompass all of Lake Ozette and all the remaining ocean strip up to the Makah Indian Reservation in Olympic National Park?"

I said, "Gee, that's a terrific idea." But, of course, we had no power to do it. That was a federal task. So I called the staff member who was the head of our environmental office, Elliot Marks, who is now the longtime head of the Washington Nature Conservancy, and we got the maps and the ownerships and drew out, really just the three of us, kind of drew out where we thought the boundaries ought to be. I think it was Jim who said, "Now, let's go clear up to the mountain ridges behind the ocean, so that we can maintain all the view corridor."

That was a pretty big chunk, and we found there were about six or seven major ownerships. The big timber companies owned most of that land, and the state owned some, but not much of it. We drew all the maps and then called the landowners in for a meeting. We laid out what we were thinking. They just died. "You can't do that." They just had a heck of a time. We said, "We think this is a good proposal, but what do you propose?" Of course, both Jim and I knew that we had asked for a whole lot and that we could get by with a lot less and still win the game. They were so shocked by how much they were going to have to give up that they voluntarily came back with a proposal that was pretty ample, saying, "We can live with this."

So we went to Scoop Jackson and to Don Bonker and made this proposal. They put it in. Don Bonker got cold feet after a little while because some property owners who lived on Lake Ozette, or had property on Lake Ozette,

really hollered about the fact that they were going to get enclosed in a park. So he kind of backed off, but Scoop didn't. He kept pushing, and we got it during that year—the last year I was governor it became law. That's a great, marvelous permanent legacy that really came directly out of Jim's concern for Olympic National Park and his brain working overtime figuring out how we could do something.

Mr. Clark: That's one of my favorite places in the world, and that's a marvelous story.

Ms. McKeegan: Why did you decide to make him a judge, and what kind of judge do you think he was?

Governor Evans: He was ready. He had served ten years as chief of staff. I think he felt ready to make a change. He was interested in the judiciary, and he indicated his willingness to serve. I hated like heck to lose him, you know; we were so close that the thought of not having him right there was a little difficult. But I just knew from working with him as long as I had that he would make an extraordinary judge.

The first opportunity was to put his name forward for a District Court judge on the federal bench. That's when we got word back from the American Bar Association that he was declared "not qualified" because, they said, "He has not been a sitting judge or has not practiced law in the last ten years or so." I thought to myself, "Not practiced law, my God! He's practiced something that is so much more important, and he has so many attributes that would make him a judge." In the first place, intellectually, he would have been in the top one percent of judges that I had known. He had the compassion and the understanding to make a good judge and a thoughtful judge. So I was really upset when I got the call from Scoop Jackson saying, "I just can't put his name forward."

Well, then some months later, and it wasn't very long, it was within a year, Justice Finley dropped dead very suddenly. He was on the Washington State Supreme Court, so there was a vacancy; and just after the appropriate few days of mourning for him, I asked Jim, I said, "Jim, would you like to serve on the Supreme Court?"

And he said, "Yes, I would."

About that time, I got a call from the State Bar Association saying, "Well, now, there's a vacancy on the Supreme Court. We'd like to present some names."

I said, "Don't bother." I said, "I know who I'm going to appoint, and I don't need your advice." I just went ahead and appointed Jim, and he made an extraordinary judge.

He was unquestionably, during the twenty-three years he was on the bench, the intellectual leader of the court. His ideas and his arguments were well-crafted. He had strong opinions and feelings about the constitution and what it said and how it was to be interpreted that sometimes put him in the minority; but I am confident that he, probably more than any other single justice, swung people to his side and helped create majorities on issues just by the force of his argument. He was, I think, an extraordinary judge.

Mr. Clark: At the time you appointed him, you told somebody that he was going to be the "people's judge." What did you mean by that?

Governor Evans: Well, his breadth of experience and what he had been engaged in for ten years as chief of staff, coupled with his other experiences before that, I thought, made him a lot broader in his experience and his viewpoint than someone who had been sitting on the bench for an equal length of time who sees only those who come before the bench in dispute on something. Jim's

experience had just been broader, and I think better, and that made him a more understanding judge—one who would see things from the perspective of the people who were going to be affected by his decisions. So, I think, his experience made him a whole lot better judge.

I had never felt that just picking Supreme Court judges from those who were already sitting on a superior court or lower court bench made any sense. Sure, there were some good judges, and I did appoint some who came from those lower benches; but I always felt that the court was better off to have someone who had broader experiences and different experiences.

Ms. McKeehan: Did the bar association ever agree with you?

Governor Evans: I never asked them. I think sure, as time went on, they recognized that he was an extraordinary judge. They're going to have an award ceremony and recognize him for his excellence on the bench. So they finally came to realize it; but it's one of those things where he had to prove it. I had no question in my mind that he would prove it amply.

Mr. Clark: Did the newspapers react in any way to your appointment?

Governor Evans: I think that they were generally pretty favorable because the political reporters, especially, who had been following our administration were very respectful of Jim's abilities. He was very open and would always respond to their questions and concerns and was always helpful at getting them in to see me when they needed to have a special story or a question answered.

Ms. McKeehan: Did he tell you his theory about the games that you played at the press conferences?

Governor Evans: Well, of course, I thoroughly enjoyed the press conferences. It's always a challenge to work on it. I don't remember what he would have...

Ms. McKeehan: When the press would try to catch you and you would not let the press catch you...

Governor Evans: Oh, yes, and I enjoyed it. You know, one of the first things that I asked my press secretary when I first got into office was, "When will I have a press conference?" I said, "How about once a week?"

And he said, "Well, one of the problems is that"—an interesting comment because it reflects the difference between then and now—"We have morning newspapers and afternoon newspapers. If you have a press conference in the afternoon, then the morning newspapers get all of the headline. If you have it in the morning, the afternoon newspapers get it."

I said, "I guess maybe we better have two a week—one in the morning and then two days later one in the afternoon."

We finally decided that that probably made good sense, but during the legislative session that wasn't enough. So we ended up with three a week, and then every time I went someplace, I would always have a press conference. Sometimes it would be beside the plane with one weekly newspaper guy and one radio station in a small town. We would sometimes, then, end up with maybe half a dozen press conferences a day. I counted them up when I left office, and I had had 1,200 press conferences in twelve years. This came about with no more planning than I just described. And it turned out to be a huge advantage because the press never had to wait very long to get answers. And in those days, there were more regular reporters assigned to Olympia and covering state government than there are today.

Ms. McKeehan: So, did you educate them by talking to them that much?

Governor Evans: Well, I hope so, but certainly I had my opportunities; and Jim's right—a lot of times they wanted to ask questions I didn't want to answer. They'd ask them again in a different way, and it was really kind of fun.

I would usually start a press conference with an announcement of some kind because we always had a story we wanted to get across, and some of the times it was just an announcement of an appointment to some office, or something like that. But most of the time, it was really an announcement of some policy or some kind of thing that we were going to propose, and you hoped that you would get the press asking questions about that. If they strayed a little, I would try to get them back to the original story that we were trying to get across. But it was fun.

Dan Evans was governor of Washington State from 1965 to 1977. He served as president of The Evergreen State College from 1977 to 1983. He was a United States Senator from 1983 to 1989. He is currently chairman of Daniel J. Evans Associates, Seattle.

James M. Dolliver
(April 30, 1999)

Mr. Clark: I would like to ask you a number of questions about a typical day in the life of a justice of the State Supreme Court. You can elaborate on anything you like; let's walk you through a typical day, if there was such a thing as a typical day.

Justice Dolliver: I'm not sure there was a typical day.

Mr. Clark: I'm sure there wasn't.

Justice Dolliver: But let's take an ordinary day. I would arrive at work about 8 a.m. I'm talking about prior to my having a stroke.

Mr. Clark: Let's go back to what time you'd get up in the morning.

Justice Dolliver: Well, I think it's fair to say I'm not a morning person. I don't like mornings. I much prefer staying up late. I stayed up until midnight every night. I would get up about 7 or 7:30 a.m. and usually try to get into the office about 8 a.m.

Mr. Clark: Did you have breakfast? Did you read newspapers at home before you went?

Justice Dolliver: I would read the *TNT*, the Tacoma paper. I would read the *Wall Street Journal* and the *Seattle Post-Intelligencer* in the morning.

At the office I would go through the mail, both official mail, on which some action was required, and the other mail. I would do some dictation. I am a person who never learned how to use the dictating machine. I never could, and I would have to dictate face to face. Fortunately, Joan Dolman, my administrative

assistant, was able to take shorthand.

I would try to have some conversation with my law clerks, not a directed conversation, necessarily; but “Where are we? What’s going on?” If it were a court day, at 9 o’clock I would go down, and we would hear cases—two cases in the morning and two cases in the afternoon. They would be anywhere from, typically twenty minutes to half an hour on each side. Then the judges would go into the conference room where we would discuss the cases. If case X were assigned to me, I would have my law clerk write a prehearing memorandum on case X, which would be distributed to all the members of the court.

I would usually take the weekend to read the briefs and get up to speed on what the briefs had to say. I would sometimes discuss the case with my law clerks. If it were a case of mine, I would indicate that they were going to work on the case, and I would indicate the position I would like to have taken.

And there are other kinds of administrative duties that the court has to go through. We have hearings on cases coming up from the lower courts—the Court of Appeals and sometimes the Superior Court—and we have to decide whether we will hear them. That takes up a certain amount of time. Then we are the rule-making body for all the courts in the state. We will have to debate those rules and whether we are going to adopt them. Usually, I would spend a certain amount of time in the afternoon trying to read, if I could. We do a tremendous amount of reading on the Supreme Court.

Mr. Clark: Doing research for your reports?

Justice Dolliver: If it’s a case in which you have particular interest, yes, you will engage in a lot of independent research. Before my illness, I was fairly adept at that. But mainly, my law clerks did the research for me. My

administrative assistant did the typing and checked the citations and checked the case. I tried to write so what I said could be understood. I used Joan Dolman as my checkpoint. I figured if she could understand—she had been trained in this kind of thing—it must be all right. If she could understand what I was trying to say, I would let it go through.

There were certain little crosses that I had. I couldn’t abide split infinitives, for example, and the term “that” or any other indeterminate pronoun tended to drive me up the wall. I absolutely would not have any footnotes of any kind. I was absolutely against them. I didn’t stop my colleagues from using footnotes; but, at least in my office, we never used footnotes. I was of the belief that, if it was important enough to say, it was important enough to say in the heart of the text, not relegated to a footnote. Besides, who knows what value to put into a footnote? I don’t. The courts never said.

Once I was able to figure out how the word processor worked, of course, I could shift pages, paragraphs, and sentences around and type it in as I saw fit.

I would suppose out of all the cases we have about half the cases I did independently. About a quarter of the cases, I suspect, I worked with the law clerks. The additional cases would be written by the law clerk. I would, of course, review them. I would read them carefully, make any corrections I thought were appropriate, and then send them on to Joan. I felt a real responsibility for every case that was assigned to me.

I don’t want to mislead you. As far as the prehearing memoranda were concerned, it was my feeling that these, as much as anything else, were tools for instruction and that I should let my law clerks write the prehearing memoranda as they saw fit. On occasion, they would talk to me, and I would have some suggestions. Most of the time, the prehearing

memorandum would be their work alone. Usually, probably ninety-five percent of the time, I would agree with them. I would base that upon not only my own feeling on the particular case, but my belief as to what position the other members of the court would take.

Every judge likes to get a majority. Nobody likes to write opinions that don't get a majority. I'm no different than every other judge. There would be occasions—rare, but it would happen—when my law clerks would take a position which I knew absolutely would not conform to the views of the other members of the court. In that case, I would take an opposite view and tell them that the view I took was one that would be consistent with the other members of the court.

I would leave, I suppose, between 5:30 and 6 p.m. When I was chief justice, there was a certain amount of administrative work that had to be done, so that would take more time.

Mr. Clark: How about lunch? Did you eat in or out?

Justice Dolliver: Unless I had a lunch out or a particular kind of lunch appointment, I would go home and have lunch.

Mr. Clark: You were a member of the Rotary Club. Did you go to their meeting once a week?

Justice Dolliver: Yes, I did. I can't say that I had one hundred percent attendance, but I went to most of the meetings. I still do, as a matter of fact. The ordinary run-of-the-course meal I would eat at home.

Ms. McKeehan: Was your wife at home when you would go home for lunch?

Justice Dolliver: She was at home, but I would generally make it myself. It would be a sandwich or something like that and a glass

of milk. But I just liked coming home. I liked the companionship. I liked being here. This is my haven, so to speak. Fortunately, I was able to get a house that was close to the Temple of Justice. I very rarely ate in the lunchroom over at the Capitol. In fact, I can probably count on the fingers of one hand the number of times I ate over there. I would come home because it seemed to me that that break in the day was good for you.

Mr. Clark: Did you take a rest after lunch, or did you go right back to work?

Justice Dolliver: I would go right back to work, but being here at home, I suppose, was rest enough. I would listen to music and have a book I was reading. Just the idea of coming home, being home, me and my wife—on occasion she would have something for me, but much of the time I simply prepared my own lunch. I didn't like the idea of being at the office and eating a sandwich at a desk. I have done that since I became ill. But when I was in good health, I would go home for lunch.

Mr. Clark: Back in those years you must have had what was almost a stunning amount of energy. Joan told me one time that you drove from Missouri back to Olympia with just a couple of hours rest.

Justice Dolliver: Well, I think I did have a lot of energy. I have always been a somewhat energetic sort of person. I liked to drive. What might seem to other people as a lot of work, to me was fun. I enjoyed what I was doing. I think you're right that I had a lot of energy. I was able to focus that on my work. It seems to me that the work is much more satisfying if you can work at it intensely.

Ms. McKeehan: Could you turn off thinking about work most of the time when you came home?

Justice Dolliver: I really could. I learned that from my father, I think. Except for the weekends when I would read the briefs, when I came home, that was it. I didn't talk about the cases. I didn't worry about them. I would sometimes write the cases in my head as I took the dog for a walk, and that kind of thing; but so far as being overwhelmed by my job, I tried not to do that. I tried not to bring my work home with me.

Ms. McKeehan: What was it like to work with a small group of justices like that, where you had the same people, some of them year after year after year?

Justice Dolliver: Well, actually it worked out fairly well. We didn't necessarily make social connections, but we were good friends in the sense that we saw each other every day and we talked to each other. We all came from different kinds of backgrounds. We had come from different law schools. But we didn't go through the rather formal process which the United States Supreme Court goes through of shaking everyone's hand the first thing in the morning.

We didn't do that, but we did talk to each other, and in between cases we took a recess and we'd go in and have some refreshments and we'd chat back and forth on anything but the law or the case which was being argued. We'd talk about, just like anyone else would talk about, things that were coming up. Talked a lot about politics. Although we had agreed as judges to be nonpartisans, all of us came on with some political background. All of us had a consuming interest in politics—Democratic or Republican. Not that we were going to do anything about it, but we did talk a lot about it.

You soon get to take a measure of the person fairly well, and I have to say in all honesty you become very fond of persons that work with you. To give an example, Justice

Horowitz, who was on the court in the late 1970s and sat right across from me. We sat by seniority. His arguments were excellent, and the admiration I felt for this man was unlimited because of the keenness of his mind and the elegance of his arguments.

After a while you don't necessarily know what a person is going to say, but you are going to have an idea of whether that person's argument is a good argument or a bad argument. Whether you will accept the argument easily, or whether you will be critical of the argument. Actually, the court is a small group—nine people—and there's lots of chances to form cliques and to get along badly with another person. But my experience was we didn't do that. We tended to get along fairly well.

Ms. McKeehan: Did some people make jokes and try to smooth things over if there were fights over cases?

Justice Dolliver: Well, we had a fairly easy-going court in the sense we didn't get into many fights. I have been told that previous courts had lots of table pounding. I know I got mad one day. This was early in my career. I had been writing these—what I thought were—brilliant dissents and not getting anybody to sign them, and I whacked my hand down on the table and said, "Why don't you people ever follow me? I know I'm right, but I can't seem to get any votes." Or something like that. That was a very foolish statement.

We all tried to get our work done as the most important thing we had to do. Get the cases out. There is a certain amount of pressure put on each member by the chief justice to get his or her work out.

Ms. McKeehan: When you were the chief justice, how would you go about getting the other justices to get their work done?

Justice Dolliver: Well, what we would do is—I suppose shame is the word that comes quickly to mind. You see, we’re still a very closed group, and these things are not made public. Judge X, for example, doesn’t get his cases out. Why, there’s no public record of Judge X’s slowness. It’s simply within the court. Every month we go through all the cases in the court, and we’ll find out who has written a case and who has dissented. Who has affirmed. And that’s all written down for us. If there is a case in which somebody has not come through with their opinion or come through with their dissent or assigned it one way or the other, that will be a matter going around the table. There will be a certain amount of, I suppose, peer pressure exerted on the recalcitrant one.

So we’re sort of a self-correcting group. Thus far, at least, the court has refused—and I think properly so—to make its inner workings a matter of public discussion. If a certain judge is going to be a slow judge, why, he’s going to suffer with his peers rather than with the public generally.

Ms. McKeehan: Who set up that record-keeping system so everybody knows where everybody is on every case? Did you do that?

Justice Dolliver: No, that was there. It’s progressed over the years, but it was there when I came there. I think within recent years we have become more and more aware of who is behind and who is ahead. So we can ask judge so and so, “When are you going to come up with your opinion?” “Well, next week, in ten days, or whatever the time is to be.” And, if a month passed and the judge still has not come through, the pressure will really be on him. And, if after a certain time, a judge is writing a dissent, let’s say, and there are already five votes for the majority, and the judge who was going to write the dissent simply doesn’t write it for whatever reason,

then we can vote as a court—it’s happened very rarely—to let the case go out as it is with five signatures.

I personally had a reputation, I think, for getting my work done quickly and on time. I was very dependable in that way. The last thing you want to do as a judge, it seems to me, is to get on the wrong side of your peers. And if you don’t get your work out, that’s where you are going to find yourself.

Ms. McKeehan: One time you said that managing a small group was like managing a bag full of cats, which I thought was quite a description.

Justice Dolliver: Well, there’s some truth to that, particularly on the court. If you look at us, why, we all have massive egos, and we’re all elected statewide, and we’re all different. The only thing that’s common is we all have to be members of the bar. But it is like managing a bunch of cats because each one of your fellow justices will all believe they can do things differently. They can do things better.

But when I used the analogy of a bag full of cats, I’m not sure *managing* is quite the phrase you would use when you talk about the other members of the Supreme Court. We don’t manage each other. We try to keep ourselves headed in a certain direction getting the opinions written and maintaining our relationships with the bar association and with other judges’ associations.

We are the ones in this state who make the rules of court, and we have to decide what are the appropriate rules of court. Whether it should be a rule of court or it should be something else. Then we have to vote on them. In the process we work with the bar association, and we have our own rules committee. I suppose as far as the outside world is concerned, there is nothing more important really than setting the rules which

the bar and other judges must go by.

Ms. McKeehan: Other than judges, how much did you socialize with the staff and the interns during the workday?

Justice Dolliver: Well, we socialized in a business sense, I suppose, and every once and awhile we would have a party of some kind in the chief's conference room or in the foyer to which everyone would be invited. We would have an annual potluck at Thanksgiving time. Somebody would always make certain that each judge and the members of the staff would have an opportunity to contribute to needy causes—Salvation Army-type causes. I think it is fair to say that the interchange between staff and judges was very close, very informal. Again, it tended to pretty much be during the business day. When the day was over, we tended not to socialize with each other.

Mr. Clark: Did you do any regular exercise?

Justice Dolliver: I was a member of the "Y" then. We played racquetball. I would get up early in the morning once a week, at least, to play racquetball. I was a fairly good racquetball player.

Ms. McKeehan: Who did you play with?

Justice Dolliver: The person I played most with was Coriless Hanson, a Methodist minister. And I played with Justice Bill Williams; he was very good. Sometimes we would play in the afternoon after work or, sometimes, say 2 or 3 o'clock.

Mr. Clark: Was dinner sort of a formal affair?

Justice Dolliver: Dinner was formal, I suppose. We sat down, and the kids came to the table. We had a tablecloth. We had silver,

and I served. We tried to keep the conversation as dinner conversation, if we could, and not sometimes slip into a more vulgar kind of conversation.

Ms. McKeehan: Did you talk about politics with your kids?

Justice Dolliver: Somewhat, although I have to confess, they do not have the interest in politics that I had. As I have said, one of the real differences between my life experience in growing up and my children's life experience in growing up was this absolute reliance upon institutions—in this case, a political party—which I had growing up and which was something that was absolutely foreign to them. They can't understand my absolute loyalty to a particular party.

Ms. McKeehan: What about current events? Did they listen to the news?

Justice Dolliver: Oh, yes. We listened to the news, and we took the Sunday *New York Times* in those days, until I finally got tired of it. Then we took the Tacoma paper. We didn't take the *Daily Olympian*. I got mad at them. They put too much of their editorial policy in their news lines, so I quit taking them. So we talked about current events somewhat. You probably better ask them what we really talked about because I simply can't remember.

Both my wife and I went to the same school together. We were fairly educated people, and many times we would talk about things of particular interest to us—adult matters and books. Talked a lot about books. We did not look at television during dinner. That was considered not the thing to do.

Mr. Clark: Did you often help your sons and daughters with their homework?

Justice Dolliver: I never did. This sounds odd

now, but in my years at high school and junior high, I never did any homework, never; and I got pretty good grades to show for it. I haven't answered your question. They had homework, but as a regular thing, I didn't work with them on their homework because, in my opinion, homework was not something that you needed.

Mr. Clark: Did you let them watch TV after dinner?

Justice Dolliver: Yes. They were pretty much their own bosses after dinner. If they had homework, I would ask them, "Do you have any homework?" If they would say, "Yes, we do," I would say, "Let's do that first." They usually would. A lot of nights I did a lot of public speaking, and I went out a lot of nights for the Boy Scouts, for the Republican Party, for this and for that, and I was gone a lot.

Mr. Clark: You must have been gone more than you were at home after dinner?

Justice Dolliver: I expect I was. I had a full, full schedule. That was the way I thought a man should be. I know my father, during the years I was growing up, would spend a lot of time in various places speaking. I belonged to lots of organizations that would take up your time—the Boy Scouts, the Methodist Church, for example, the Republican Party. I was in some demand just simply as a public speaker to various places before various groups—sometimes service clubs, sometimes other groups. So, I was gone a lot. In fact, I may have been gone too much. I just don't know. My children would be a better judge of that than I would.

Ms. McKeehan: But they haven't told you that you were gone too much?

Justice Dolliver: No.

Mr. Clark: You were going out frequently at night and coming home late. You said you were a late-night person. How much sleep did you get?

Justice Dolliver: Usually six or seven hours was enough for me. On a typical night, I would not get to bed until midnight. If I get in bed before that, I do some reading in bed—not to put myself to sleep, but simply because it is interesting reading.

Mr. Clark: Before midnight, a nightcap maybe?

Justice Dolliver: Yes.

Mr. Clark: You said that you didn't have a drink until you were forty-three.

Justice Dolliver: Yes. I was finally able to persuade myself that prohibition was a bad idea. It's one thing for a person individually to decide whether they will or will not drink; but it is something else for the government to tell you whether you can or cannot. This may apply to other things, but it certainly applied to alcoholic beverages. And I discovered that just because you had a drink every once and awhile didn't necessarily mean that you would go over the edge and become an alcoholic. I suppose I was as influenced as much as anything by my absolute abhorrence of the idea of prohibition.

The Methodist Church has changed its attitude markedly on the subject. It used to be that you couldn't be a Methodist minister or hold a position of authority within the church if you drank, but they got rid of that. They have no prohibition against a person having a drink. John Wesley, the founder of Methodism, he liked his Madeira.

Ms. McKeehan: When you started drinking, did your wife start, too?

Justice Dolliver: We both did, yes.

Mr. Clark: I would like to ask you some questions now about your stroke, if that's okay. Did you have warning signs or symptoms?

Justice Dolliver: Well, I may have.

Mr. Clark: Dizziness, visual problems?

Justice Dolliver: I can tell you how it happened. I was sitting on the sofa right here that Susan's sitting on, and Barbara was taking down the Christmas tree which was over in the far corner. I was feeling fine. That morning I had fallen out of bed, and I put my hand over on the reading table and it slipped, or at least I thought it had slipped. I went to the floor. That may have been a sign. I don't know.

Later that morning when I was sitting on the sofa, I got up and said, "Excuse me, Bob [his nickname for his wife], I have to go to the bathroom." I went to the bathroom, and all of a sudden, paralysis—best word that I can use. Finally, I found I couldn't stand up and went to the ground. I didn't realize what was happening. I didn't hurt. There was no pain, and finally Barbara came in. By that time, I was really laid out on the floor.

Mr. Clark: Did you lose consciousness?

Justice Dolliver: I did. She found me, and I lost consciousness at that point and didn't regain consciousness until I was in the hospital up at Capital Medical Center.

Mr. Clark: What went on between the time you hit the floor and the time you got some treatment in the hospital?

Justice Dolliver: Well, it was some time in the morning when I had the stroke; and I

suppose it was some time that evening that I regained consciousness in the hospital. They were sitting there, and they had all sorts of various heart monitors on me. I still didn't realize what had happened.

Mr. Clark: Was it in the middle of any particularly strenuous, stressful time?

Justice Dolliver: No. No more than usual. It just happened. I had high blood pressure. I knew that and I should have done something about it, but I didn't. My father had had a stroke, a series of strokes—but none quite as violent as the one I had, which was a completely incapacitating kind of stroke. For a while there, I couldn't talk. They fed me via tube. It was not until I got up to St. Peter Hospital and they started the rehabilitation, I finally got off the tube and was able to eat some solid food again. The particular kind of paralysis I had, which was back here at the base of the skull, left most people unable to swallow. I think they were quite surprised that I was able to come back as much as I did.

Mr. Clark: Could you communicate at all?

Justice Dolliver: I could speak somewhat and sort of grunt. When I was up at Capital Medical Center, they asked me if I wanted to have a tube put into my stomach, and I said, "No." So they put one down my throat, which I found very uncomfortable. Then I got transferred to St. Peter. At that time, they put a tube directly into my stomach. By that time, I had lost a good deal of weight. As far as hurting, I never had any moment of pain at all.

Now, did I have forewarning? The biggest warning I had I ignored—that was high blood pressure. I was having blood pressure over 200, which was way too high.

Ms. McKeehan: Why did you ignore it?

Justice Dolliver: Well, I don't know.

Mr. Clark: Was this close to the campaign?

Justice Dolliver: No.

Mr. Clark: What year was this?

Justice Dolliver: In fact, I had just finished a campaign. It was in January of 1993.

Mr. Clark: The campaign of 1992, then?

Justice Dolliver: The campaign of 1992. I had gone through that.

Mr. Clark: You had just finished that. You were just escaping...

Justice Dolliver: We had been on a cruise—my wife and I and two of our kids and their wives had gone on a Caribbean cruise. Of course, I was grumping about the idea of going on a cruise. I thought that was a terrible idea. Well, it turned out that I loved every minute of it. Had a great time. So I had a fairly relaxed kind of life.

The term was going to start in a few days. I think this happened on Monday, and the court was going to start the next week. So they had to get me sworn in. Apparently, I was able to raise my hand and mutter something that I can't remember. The only thing I remember is that I had a series of very distinct dreams. The last dream was a dream where, believe it or not, I wrote music, and I was out campaigning for Bill Clinton, of all people. When I related this dream to friends, somebody asked me if campaigning for Clinton had been a near-death experience. I said, "No. It was just a nightmare!"

I never suffered any pain during the entire experience. I can't say enough for the people up at St. Peter that were working on the rehabilitation and trying to make me better.

Mr. Clark: How long did it take to recover your voice, learn to speak?

Justice Dolliver: Well, it's hard for me to say. My voice still sounds a bit detached, and I suspect that's because I still have some lingering effects of the stroke right around my mouth. My nose is still frozen. I don't know. I have always been able to talk fairly well. The thing I haven't been able to do is the quick repartee back and forth between people. As far as the ability to use my mind, that's stayed with me; never left. My memory was not impaired, particularly. It's only been within the last few months that I have reached the point where, when I talk, I feel I'm talking with my own voice. When I hear myself on tape, I sound like I always did.

Little by little I try to do public speaking. I have spoken a couple of times to the new lawyers coming into the court. We used to have a member of the judiciary, one of the judges, welcome them; and I have done that a couple of times. I made a few short comments this morning for the senior citizens. We had a book signing for a book that I wrote the foreword to on *Immigrants in Courts*. So I spoke very briefly. I acted as the master of ceremonies. So it's coming back little by little. But my recovery has not reached the point where I declaim like I used to. It isn't going to happen.

Mr. Clark: Joan told me that you stand up when you speak in public. Amazing.

Justice Dolliver: Well, I can stand up a bit. Yes. I can stand up okay. But my ability to stand for long periods of time has been shut down. In fact, I can stand—the absolute maximum so far is eight minutes. Then I get a crick in my right hip here and have to sit down. When it comes to speaking at some kind of ceremony, I am able to stand up. For example, I go to Rotary Club still, and I stand

up there. Give the Pledge of Allegiance and listen to somebody's idea of a prayer for the day, and sing the *Star Spangled Banner*.

Mr. Clark: Has any of this changed your views of the world? Your attitudes? Even your religion?

Justice Dolliver: It hasn't changed my religion. I think it has given me a keener sense of the problems that a disabled person has in our society. I am a very lucky person in the sense that I am able to afford to have people come and help me, and they do. Having the stroke, at least for me, didn't change my views on religion. What it did do—I suppose all of us, before we have had a serious illness of some kind, have a feeling of immortality. It's never going to touch me. I confess I had that feeling. I knew in the back of my mind that somewhere off there someplace it's all going to end; but I never gave it a second thought. Then suddenly my own mortality came directly to the fore.

But death does not have the fear that it once had because I have been close to it. So if it happens, it happens. All I can do is just hang on the best I can. I am still a believer in the idea that each of us was put on the earth for some particular reason. You may not understand it, and I don't particularly understand it; but that's the way God works. I have no way of understanding what I'm here for, but I know I'm here to do the best I can in whatever area I'm working—whether I'm trying to stay on the court; whether I'm working with the University of Puget Sound. With what I have, I try to do the best I can.

Ms. McKeehan: Do you believe in heaven?

Justice Dolliver: Well, I'm somewhat like Pascal who said he would roll the dice, and if there is heaven, he will win. If there's not, he'll not win. So what difference does it make?

All I have to say is that it has not been an abiding concern of mine. I mean, when it's over, if there is a heaven, that's fine. I am inclined to agree with St. Paul that we haven't the faintest notion what it's going to be like. All my life I have tried to avoid things for which there is no answer of any kind, and I look upon that as one of them—both the idea of heaven and of hell. I have no idea. I will hope for the best, but who knows what will happen.

Ms. McKeehan: What about being physically handicapped? Do you remember when you realized that you were not going to get completely well, how that felt?

Justice Dolliver: I suppose when I was transferred from Capital Medical Center to St. Peter. I suppose that I realized then how serious this was, particularly when I was wheeled down, when they were going to put the tube in. They claim there was no anesthetic for that. In any event, it knocked me out to the point where I couldn't see what was going on. I'll never forget there was a Catholic priest there muttering away on something. Apparently, that's the rule of the hospital. Whenever they use the knife—and they were using the knife in this case—a Catholic priest is going to speak. I figured at that time...well, I knew that the kind of illness I had was a very serious thing.

Barbara came every single night to see me, every single night without fail. And we would go into the terrace room, I would call it. It was the gardening room. They had a potter's table. She would read to me, and you'll never guess what she read—it was someone writing about the psychological significance of *Winnie the Pooh*. So I would sit there and listen to maybe a half a chapter. Then she would wheel me back into the bedroom and go on her way. But she was very, very good to me during that time.

It was, you know, I never did feel that, well, I never felt that I was going to get up and walk. But I did begin to get stronger and stronger. The only thing that disappoints me is my sense of balance is still out to lunch. My sense of smell is pretty good. My sense of taste is very good. Touch is okay. But my sense of balance is just terrible. No matter how strong I get, I still have trouble standing up without some support—not support to stand up, but to keep from falling over. When I was on the court, for example, each of us who was going to give a report liked to stand up. Well, I did that for a while. Finally, I decided that was showing off, better not do that, so I stayed seated.

One of the things that my law clerks were able to help me on was that, every time there was a prehearing memorandum, I would ask for an outline of that prehearing memorandum. So they would take something that was twelve or fifteen pages and boil it down into two or three pages with the major points made, which I would use as a springboard to talk about.

Members of the court were fairly kind to me. I would have to answer questions on occasion, and I didn't necessarily win every case. I should say I didn't necessarily have a unanimous court agreeing with me on every case that I had, but the members of the court were very good to me as far as accepting me as I was. Justice Charles Z. Smith, whose office was right next to mine, would very faithfully push me down every day. And Justice Johnson, who is a big man, would roll me up the ramp every day and roll me down the ramp. So I had somebody to help me. The only difference was that I decided that because of my voice and my inability to have the quick back and forth, the repartee, I had better not ask any questions. So I didn't. I got through this last term without asking any questions at all. After awhile, I decided that not asking questions was a virtue. But practicing that virtue was a great disappointment.

Ms. McKeehan: It sounds as if you really liked being a judge. Which did you like better: being a judge or helping to run the state when you worked for Evans?

Justice Dolliver: I liked them both. It's awfully hard to make comparisons. They tend to be rather invidious. On the court, we take a case; we decide it; it's all over. You can forget about it. Another case, decide it; bang, it's all over. Forget about it. That wasn't the way it was in the governor's office. We had issues over there that carried on for years and years. They seemed to have a life of their own. You could never say, "Well, I'm all done with this. I'll go off and do something else," because the way it worked with the issues that the governor faced, they were ongoing. You never got rid of them. They lasted forever.

I liked them both. They were different kinds of work, and all those issues that we thought were important in the governor's office eventually wind up on the Supreme Court's doorstep. Nearly every great political issue of the day will wind up with the Supreme Court. The problem there is a legal question rather than a political question.

Ms. McKeehan: In both jobs, I take it, you wanted to save the world. How did you grow up with that desire to have an impact on the world?

Justice Dolliver: I'm not so sure. A couple of things. First of all, being brought up as a Methodist. Wesley said, "The world is my parish," and you feel responsible not only for yourself but for your community. I had a friend, a fellow Methodist, once tell me he'd rather be known as a do-gooder than a do-nothing, and I think that pretty well describes what I would be. I would rather be a do-gooder than do nothing at all.

Secondly, the education I had at Swarthmore, which is a Quaker institution—

it was founded by the Quakers. You could not go to that institution and not come out with some kind of a social conscience. It was impossible. But later you learn that you can't do good all the way around. If you are going to do something, you need to concentrate on particular areas.

Ms. McKeehan: You had to learn this by experience?

Justice Dolliver: By experience. That's right. You've got to learn it by getting in there and doing what you can do and finding out. I suppose everyone must find this out, eventually, that you can't save the world but you can save your part of it. You have a responsibility to work in your part of the world and try as hard as you can to save it. As far as agencies are concerned, I have always felt that I would rather—this will sound rather harsh—support the winners in the society than the losers. I would rather help people who are going to make something of the future. Like the Boy Scouts or college students, rather than persons who are going to be a drag on society for the rest of their lives. I have an interest in them, but the place where I give my money and the place where I give my activity is going to be with helping those people who will become good citizens and who will make a difference.

Ms. McKeehan: In one of our first talks, you said that your sense of identity came from knowing that you were a Methodist and a Republican and your father's son, but that your children don't have this same sense of identity.

Justice Dolliver: They don't.

Ms. McKeehan: Do they think they have a sense of identity that's just different than yours, or do you think they don't have one?

Justice Dolliver: Things that made the difference for me—things like church and political party and home town, all the rest of it—are not as important now to people as they were when I was a kid. When I was a child, these things were very important, and I identified myself with these things—with family, with party, with religion, with location. I think I said it sort of like a quip; but I think it's true that when I was a child I had no doubt who I was, but I had real doubts about earning a living. I look at my sons' generation, and they have trouble actually identifying themselves as to who they are or what they are. They have no problem with making a living. When I was growing up, there was always a doubt in my mind as to what I was going to do; but there was never really any doubt at all about who I was. That was very firmly fixed in my understanding.

Ms. McKeehan: Do your sons and daughters want to fix the world?

Justice Dolliver: I don't think the next generation necessarily does, so far as I know. For example, none of them go to church, which I don't object to; but I am sort of wistful about it. What is important for people in one generation is going to change in importance in the next generation. I don't feel badly that people don't have the same outlook as I had. On the other hand, the big problem for any parent is to do the best job that parent can do in equipping their children for the next generation. Of course, you would like to make a clone of yourself; but after awhile, you realize that's nonsense. You can't do that. If you can get them started and hope they make a success, both materially and emotionally, of their lives, that's all you can do. That's why parenting, to me, is such a very difficult kind of thing.

Ms. McKeehan: It sounds like you always

felt a certain amount of competition with your father to be good at the things he was good at, or outdo them. Do your sons and daughters feel that way about you?

Justice Dolliver: I don't think they do, but I certainly did. There is no question that one of the reasons I became a Supreme Court justice and ran statewide was because I was going to be better than my father. One of the reasons I was so active in the Methodist Church, and rose to a very high position, was I could equal what my father did. One of the reasons I left Iowa is because I didn't want to trade on the name. I wanted to get out by myself.

My children, all of them very nearly live right here in this particular area. I don't know what they...well, I just don't know how they think. It is fair to say that they are doing well and they are happy, and they come to see their mother and father on regular intervals. That's about all we can ask, it seems to me.

Ms. McKeehan: Were you more permissive with them than your father was with you?

Justice Dolliver: I guess one of the concerns I had in early life, at least, is that I didn't want to do anything which would bring disgrace to my family. Whether my children have had that view, I don't know. Again, you tend to pass through those things and don't worry about them so much. But it made a very great difference when I was a young person. I was going to succeed because it was something that would do well with my family, look good, and they would approve of it. I had a very strong feeling that way.

Mr. Clark: How extensive has your church work been?

Justice Dolliver: That's been fairly important to me. This man whose portrait is right above us is my great-grandfather. He was a

Methodist circuit rider, and from him sprang my grandfather, of course, who was a Methodist minister. My uncle was a Methodist minister. I think it's fair to say I was pretty immersed in the notion of the Methodist Church for a long time. I have been to the General Conference—that's their national conference—and I was elected for a term to the Judicial Council, which is the highest position a lay person can have at the Methodist Church. I've enjoyed that. Methodism to me has been a classic middle-of-the-road religion. It tries to avoid extremes on the left or on the right. I think it does fairly well. The middle of the road is going to change and shift over time, but it still is a middle-of-the-road religion, I think. It's been important to me, and I have enjoyed work in the Methodist Church.

Mr. Clark: The Judicial Council—is that a policy-making group?

Justice Dolliver: In effect, it was the supreme court of the denomination. We had cases from all over the world, actually. Most of them were from here in the United States. We would have them from all over the United States and, as I recall, one from the Philippines, one from Germany. I'm the only person ever elected from the Western Jurisdiction. But you were called upon to answer some fairly thorny questions. We tried to do that within the policy of the Methodist Church. To me, it was very satisfying.

Mr. Clark: Jim, you spent a good part of your life serving community organizations in which you volunteered your talents and energies. Which of these have been the most gratifying?

Justice Dolliver: Well, I think being a trustee at the University of Puget Sound in some ways was the most gratifying kind of thing I did. There were lots of different issues during my

time at the University of Puget Sound. It changed its direction from, in effect, a country club school to a school of high academic achievement. I was there when they made the change.

The second thing that I'll mention, which has helped me immensely, was being on the Community Mental Health Board. I'm not on it any longer, but I used to be. If nothing else, it gave me a better understanding of a person who has a mental health problem; that is, it is a real illness. A mental illness is just as real as a physical illness. You may not be able to see it, but it is real, and mental illness tends to go from generation to generation. I learned that, and I learned there is no cure, as such. It is the responsibility of society to take care of these persons. That was something I hadn't known before.

The Thurston Youth Services, working with the youth of this community, it seems to me, was a good idea. It was trying to get persons who were not bad people but who had

taken a wrong step—trying to get them straightened out and going in the right direction. I enjoyed that. And the Boy Scouts, which I mentioned. As I have said, I liked to deal with winners rather than losers. It seemed to me that the adults in the Boy Scouts were trying to prepare a younger generation, the generation that would be telling this nation, this state, this community what to do in the next few years.

I have strong feelings about helping the next generation. That's why much of the work I have done, outside of the court itself or the governor's office, has been youth and education-related types of things. Trying to help young people; trying to help people get educated; trying to help people prepare so that when I lay down whatever burden I have and move on there will be another group all set to take over. They are not going to be my clones, they are not going to think exactly like I do, but that they are going to be good citizens.



James Dolliver (left) served as Governor Daniel Evans' (right) chief of staff from 1965 until 1976, when Evans appointed him to the Washington State Supreme Court.

Appendix A

“THE WINTER OF OUR DISCONTENT”

AN ADDRESS BY GOVERNOR DANIEL EVANS TO THE REPUBLICAN STATE
CENTRAL COMMITTEE IN PORT ANGELES, SEPTEMBER 10, 1965

FROM: Office of
GOVERNOR DANIEL J. EVANS
Legislative Building
Olympia, Washington

For release after 7:30 p.m.
Friday, September 10, 1965

Speech by Governor Evans
Republican State Central Committee

We have had the Winter of Our Discontent and we have had our Long, Hot Summer; We have suffered through our own Private Little Hell and our Agonizing Reappraisal—and it is now time to discard hyphenated Republicanism, and the “splinterism” which seems to have captivated the political physicians who are conducting postmortems on our party, and return to the business of winning elections.

No one here has to be reminded of the opportunity and the challenge which lies ahead of the party in our own State of Washington in 1966. There is first of all the matter of winning back four—and preferably five—of the seats in the Congress. And there is the matter of electing a Republican majority in the House of Representatives and the Senate at Olympia. And there is the matter of rebuilding our influence at the courthouse steps.

Without in the least detracting from the importance of the Congressional or local races, it seems very much to the point tonight to remind ourselves that, thanks to the skill and leadership of our Republican legislators during the last session—Mr. Copeland in the House and Mr. Moriarity in the Senate, to name but two—we have an opportunity to win back in one election all that we lost in 1964—and a significant number more.

Not every state—and there were literally dozens of them where the Republicans were the victims of the most thorough political housecleaning of this century—not every state was so fortunate as Washington in passing a redistricting bill which guarantees a great opportunity to the Republican Party. But please believe me, we are not talking about a sure thing—only a sure opportunity. A chance—if that is the word—to win.

If you stop to examine it, this chance extends all the way up from the state legislature, through the Congress and, ultimately, to the White House itself. Why? Because for all the words that have been written about the hopeless situation of the Republican Party, there is more hope than hopelessness, and much of it is contained in one single, simple word—youth.

In spite of the Great Society, we live today in the age of the Young Society, growing younger with every stroke of the clock. By 1975, perhaps sooner, there will be more people under the age of thirty than there are over it in the United States.

Peter Drucker, a contemporary political writer—and a professor in the Graduate School of Business at New York University—makes some very interesting observations about this

“generation of youth” and about the latent, but very real Republican opportunity. He points out, for example, that these young people—these first and second time voters—are the first “haves” that, collectively, the American Society has produced. They are essentially well educated and, more to the point, they are as yet politically “faceless”. They haven’t committed themselves, they haven’t aligned themselves with either major political party. And here I believe, lies the real opportunity for the Republican Party—not only nationally, but locally; not only in the Congress, but in the State Legislature.

There is however, one vital ingredient to winning these uncommitted young people—and that is to understand what appeals to them, and what they are—and what they are not. First of all, they are an educated group; and for all the campus unrest and the marchers and the pickets, these young people respond to reason and not, in the majority, to emotionalism. To them the traditional clatter of politics makes very little sense. They would rather have solutions.

Beyond this, these young people are reasonably well secure, their incomes are reasonably above average, and their retirements are reasonably well planned for. So they do not, at least so far they have not, wrapped any banners of liberalism around themselves and tramped out to do battle. But they are not conservatives, not in our classic definition of the word, because in most cases they are hired hands. Most of them have never met a payroll and most of them never will; they don’t understand the small businessman because most of them work—or will work—for large corporations. If they have any identification, it is with management. If they have any philosophy, it is probably pragmatism. And if they have any crystal clear goal, it would be to solve the problems of society and the economy and of government in a logical, factual manner.

I am leading up to what may be an obvious conclusion. It is nevertheless an important one. And it is this: If we as a Party are to achieve a clear mandate once again; if we are to win in 1966 or 1976—we will have to be a party which appeals to youth. To do so we cannot be hidebound by the past, and we dare not miscalculate the future. Above all we must not be the party which forever gets “E” for excellent in defining the problems—and “F” for failure in coming up with the solutions.

I think it is especially important for those of us who are concerned about the State of Washington, for those of us who believe in the Republican philosophy that state problems should be solved at the state level, and that local problems should be solved at the local level—it is important for us to begin to provide answers.

Now we will not accomplish this by wishful thinking, nor will we recapture the center of power by all agreeing among ourselves that things are bad in the Congress and bad in the legislature and bad in the county courthouses.

What we must do is to start tackling the issues one by one, step by step, and in doing so, accomplish three basic essential things:

First, we must demonstrate to the people—young and old—that the Republican Party knows what the compelling issues of the day are; that we care what they are; and that, as a result, we

are not intellectually bankrupt. That we know, that we care, that we think.

Second, we must convince the people that a Republican Party, diverse in its view-points, united in its principles can, having defined the problems, come up with concrete, sensible, workable solutions.

And third, we must show the people that these Republican solutions can protect the system of government which serves us and preserve the individual liberty we seek—intelligently, progressively and responsibly.

If we can accomplish these three objectives within the State of Washington—and if we can implement them through the Legislature beginning in 1966—then I believe we will have taken a giant stride toward solving what many today are calling the “Crisis of Federalism”.

That “crisis” is not difficult to define—it is, in fact, fairly simple: the growth of centralized control within the federal government, and the accelerated decline in importance of the state governments.

Whatever else may share responsibility for this circumstance, the basic cause has been—and continues to be—the inability or the unwillingness—or both—of state governments and local governments to provide for the essential needs of its citizens.

The power has shifted not so much by design as by default; not so much because the federal government is a positive force in our society, but because state governments have been negative ones; not so much because the federal government has more answers, but because the state governments have provided fewer.

More answers, yes; Republican answers, yes; but, beyond that and equally important, implementation of those answers. During the last legislature, by executive request, we sought approval to set in motion the machinery for a constitutional convention and the Democrats turned us down. We will be back again. And again after that until such time as the citizens of the State of Washington are granted the opportunity to put their constitutional house in order—to erase from the statutes those ancient and outmoded restrictions which prohibit our state and our local governments from doing the job for which they were created.

Incidentally, not only did the Democrat majority in the legislature refuse to approve the machinery for setting up a constitutional convention but when a meeting was called to organize the Constitution Revision Committee the Democrats refused to allow the committee to be organized. It's pretty apparent they are interested in political obstructionism, not constitutional reform.

Not until we permit the states and their local governmental units to become an effective, positive force once again in government will we have the answer to increasing federal control.

And not until we have effective answers to the important issues which confront this state, will we become that positive force.

Eight months ago I stated in my Inaugural Address that “this administration is not ashamed of the word ‘conservative’ and that it is not afraid of the word ‘liberal’.” I have seen no reason to change my mind, because at the same time as I believe in drawing on the wisdom of the past, I also believe in utilizing new ideas.

There is nothing wrong—and quite obviously nothing to be lost—in undertaking a “Republican Experiment” in governing a state, or a county or a nation. In fact, it is high time that we did so, and it would be a very refreshing state of affairs to have someone say “look what the Republicans have come up with—that makes sense.” Ideas and imagination and a little intestinal fortitude in the field of government are not the exclusive property of the Democratic Party—in fact, historically they have more often and more effectively been Republican tools. ((Here refer to the brochure “Washington State’s Proud Republican Heritage” which will be available Friday.))

Tomorrow at the “workshop” session with the State Central Committee, we will take the first of many steps toward eventual victory in 1966 at all levels of this state.

You will hear a proposal that we—as a party and in the name of the party—establish at least three task forces to prepare material on specific issues for the coming 1966 campaign. One of these proposed task forces will deal with local issues, one will deal with state issues and the third with Federal-state relations.

To my knowledge we have never attempted in this state to give the party a definable position in studying and solving some of the important problems of state and local government. Such a position, in my judgment, would be the first move in the direction of creating a “Republican Experiment”. For out of these task forces—at the very least—will come a better understanding of the issues, and a better chance at ultimately constructing the solutions.

Two of the central issues of our time to which the task forces will address themselves are: the metropolis and the schools—the growing problems of an urban-suburban complex where 90 percent of all Americans will live by the year 2000—and the growing challenge of education. If you believe it “won’t happen here” you might be interested, as I was, in the fact that already, seven out of ten Washingtonians live in the cities and their suburbs.

The problems of pollution, mass transit, urban beautification; the need for responsible local units of government, the crisis in financing local needs are but some of the areas where we Republicans must present constructive solutions and then be willing, where necessary, to demand constitutional reform, encourage legislative action and insist upon executive leadership.

I know of no more important challenge to our party and our state.

We stand, our state stands, at the fulcrum of decision. As a party we have it within our power to make the decisions and provide the leadership which will allow our state to realize its potential. In the next ten years we will determine whether Washington will face the issues of our times and fulfill its promise of greatness or fall prey to those problems which now beset other areas of our nation—problems seemingly incomprehensible, impossible and incapable of solutions. The

time for decision and for action is now. The challenge to the Republican Party is at hand.

The question remains, of course, as to what kind of Republican Party. It will come as no surprise to you, I'm sure, that I believe responsibility on issues can begin only after we have achieved a degree of responsibility within the Party.

My position on this point has been made abundantly clear—before the last election and as recently as last week. The Republican Party is not narrow in scope, nor is it confined to one point of view. But those who seek to rally under its banner must be builders of success and not architects of disaster; responsible citizens and not character assassins.

As we lead up to the election of 1966—and to 1968 and beyond—we have a great responsibility to convince a broad segment of the electorate that the Republican Party has the capacity, the intellectual fiber, and the political courage to tread new paths; to chart new courses in devising a plan for citizens to live within, and to live with their government.

We bring to this moment of decision—to this watershed—not a formless and leaderless past, but a truly proud heritage. It is the party not only of Theodore Roosevelt, but of Charles Evans Hughes; not only of Wendall Wilkie but of Robert Taft.

We have, in history, sought not to rule or ruin, but to combine progressive action and conservative thought, to take the best of America's past and present and apply it with resolute courage to America's future. We have been a party of the republic as well as the Republican Party, a party of clear conscience, a party of men capable of deciding the great issues on merits and not on emotion. The right of dissent within the party is unquestionable; but not the dissent which breeds discontent and promotes divisiveness—and which ultimately brings dishonor.

For a discredited party—a fragmented party—cannot elect candidates; a party which cannot elect candidates cannot make decisions; and if we cannot make decisions, then we will forfeit the right to participate in the important issues of this state and of this nation; and, in so doing, place into jeopardy the future of the two-party system.

If we are to obtain the voters' commitment and their participation, it will not be on the basis of an "either this or nothing" party—or a "now or nothing" party, but on the basis of a thinking, probing, problem-solving Republican Party, dedicated to state constitutional reform; dedicated to a rebirth of local responsibility; and dedicated to re-establishing a proper relationship between state and federal governments.

If we cannot do this in Olympia and Salem and Sacramento, and in all the state capitols, then we will most assuredly not see it accomplished in Washington, D.C.

I am committed to the position that the modern history of the Republican Party should be written in the forum of responsible debate and constructive dissent—and not in the foxholes of irresponsible and irrational extremism.

And I am committed to the position that our Republican Party must grow and widen its horizons, willing to accept the risks of leadership and the challenge of constructive idealism.

It must be a strong and vital party, firm in its convictions and united in its actions.

One of the perplexing questions which all Republicans face is how to achieve this unity of purpose and action. In recent months the subject of so-called splinter groups has received perhaps an excessive amount of comment in the press. I think it would be well for us to give some attention to this subject and try to establish some guidelines for the use of our party.

There have always been extra-political groups which at times have supported the Republican Party just as at times they have supported the Democratic Party. I hope the Republican Party will always have its share of groups and organizations supporting its causes, but before each group is embraced there are tests to which it must be put.

First, is it a true splinter group of, by and for the Republican Party? If so, we have a responsibility to guide it and direct its actions; and conversely, to seek the guidance and counsel of its members. If not, then we still can accept those facets of its activities which are within the Republican tradition or which will help elect Republicans.

A second test: Does it operate within the traditional spirit of Republican procedures and within the accepted pattern of American politics? If not, those acts which are not within the tradition and the pattern should be rejected publicly if it otherwise appears that these are being blamed on the Republican Party itself.

Let me give six examples: Does the group operate publicly and above board or secretly and underground?

Is it motivated by faith and hope or by fear?

Does it use the tools of truth or of lies?

Does it teach trust in our established political institutions or does it teach distrust?

Within its own organization, does it follow democratic procedures or militant authoritarianism?

Do its people understand the art of political compromise or do they deal only in unrelenting absolutisms?

The third and final test is what can the group do specifically to help the Republican Party or what is it doing to weaken the Party and thus the two-party system and thus the nation?

There are five basic areas of political activity. In the field of Party organization, does the group bolster Republican organizations or do its activities cause a reduction in the number of Party workers or weaken their own beliefs in the Republican Party?

In the area of money-raising, does the group help the Party raise its funds or does it discourage fund raising for the Party or compete directly for the same funds?

On issues, does the group help to clarify the Republican position or does it distort and confuse the Republican position?

On candidates, do its activities encourage and attract responsible persons to run as Republicans or discourage and repel them?

And finally, in the areas of successful campaigning, does the group attract voters to Republican candidates or does it drive them away from our candidates and our cause?

If an organization passes all these tests then by all means Republicans should welcome its support in the political arena to help fight our cause. But if an organization cannot pass these tests, then we have an obligation as loyal Republicans operating responsibly in the political arena to reject the group and the things for which it stands that are outside the Republican Party's traditions.

Let me be specific. The Republican Party did not achieve greatness nor will it regain greatness by being the party of radicalism or of the lunatic fringe. Extremists of neither the Right nor the Left contribute to the strength of America or her political institutions. Both feed on fear, frustration, hate and hopelessness. Both have lost faith in themselves and the American Dream and both quite openly predict an American Disaster. Our Party embraces this "philosophy" only at its peril.

The John Birch Society and its frightened satellites, as shown by their methods, their leadership and their rash policies meet none of the tests and follow none of the traditions of the Republican Party. They care not for the Party's victory but for its defeat; they work not to strengthen it but to weaken it; they do not promote conservative principles, they pervert them.

I do not intend to watch silently the destruction of our great Party—and with it the destruction of the American political system. The false prophets, the phony philosophers, the professional bigots, the destroyers, have no place in our Party. Let them leave!

For our part, let us be on with the job at hand. We must be as we have always been, the Party composed of people alert to the menace of Communism at home and abroad and concerned over the erosion of our Constitutional guarantees; the party responsive and responsible to the needs of people; the party that believes in local self-government and is willing to take the risks and endure the sacrifices to make it work.

It must be a party which is color blind, which has no exclusions of race, geography, status or creed. A party which welcomes a diversity of opinions within the broad American political tradition but which refuses to become the captive of the narrow demands of the fanatic few. A Party of and for people, not pronouncements, propaganda and promises.

If this is our stand, if this is our party, we need not worry about the departure of the extremists. They will leave of their own accord, overcome by the vitality of a strong, united party.

The Democrats in this state lie in leaderless disarray. Their spokesmen have substituted the whine and the whimper for statesmanship and the petty complaint for imaginative leadership. They stand prisoners of their past, unwilling to face the problems of the present and inadequate to meet the challenges of the future. In contrast, with a strong, dedicated party our opportunities are unlimited. Here in Washington we have the opportunity to grow, to win, to lead. To confront the issues and to answer them. I ask you to reject those who would divide, but fail to conquer; to reject those who would render this party the Don Quixote of the mid-Twentieth Century.

I ask you instead to be—as we should be:

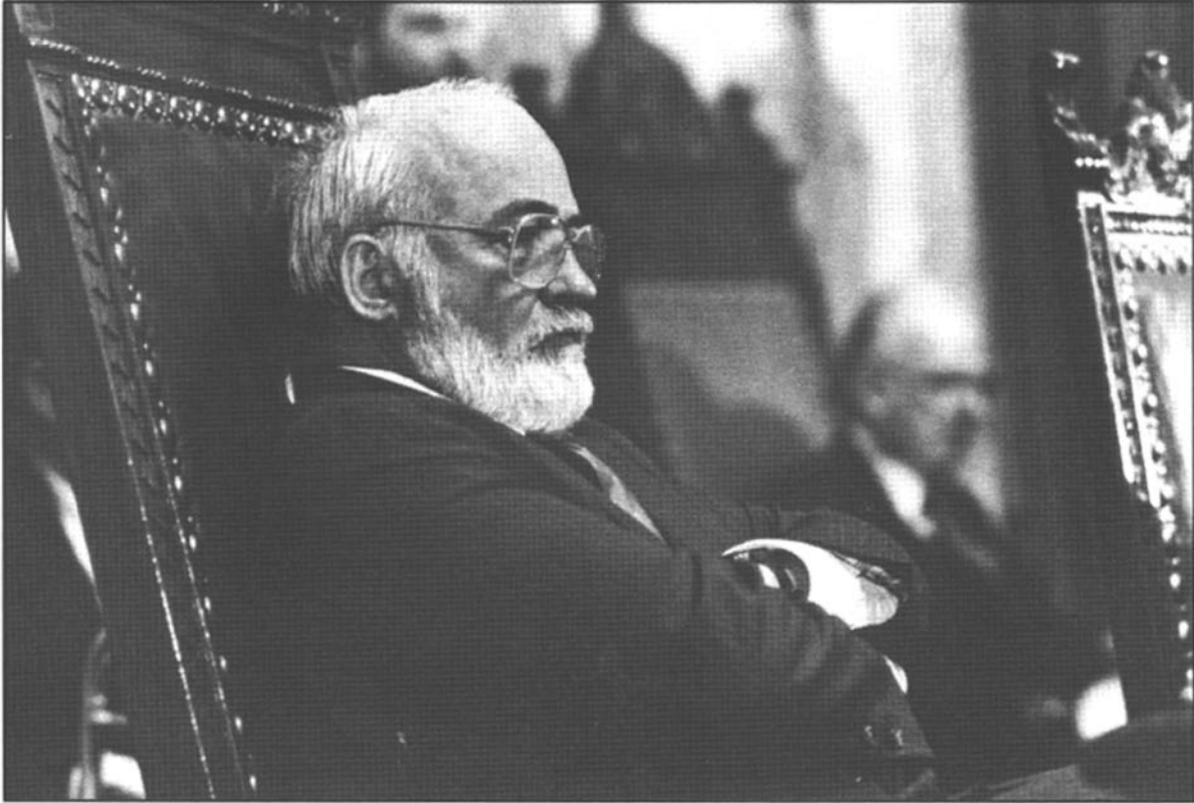
Republicans first and foremost;

Republicans first and always;

Republicans period.



*Governor Daniel Evans (left) and James Dolliver at a press conference on April 22, 1976, announcing Dolliver's appointment to the Washington State Supreme Court.
(AP photo)*



Appendix B

WASHINGTON STATE SUPREME COURT DECISIONS

STATE OF WASHINGTON V. JAMES LEROY BRETT

GARDNER V. LOOMIS ARMORED, INC.

[No. 59429-5. En Banc. April 4, 1995.]

THE STATE OF WASHINGTON, Respondent, v. JAMES LEROY BRETT, Appellant.

DOLLIVER, J. [*writing for the majority*] James Leroy Brett was convicted by a jury in Clark County Superior Court of aggravated first degree murder and first degree felony murder. The jury sentenced Brett to death following a sentencing proceeding conducted in accordance with the legislative guidelines set forth in RCW 10.95. Brett appealed directly to this court alleging numerous errors occurred in the pretrial, guilt, and penalty phases of the trial. After carefully considering Brett's arguments and conducting our statutorily mandated review, we find there is no reversible error and affirm the conviction and death sentence.

[Following this introduction to the case, Dolliver wrote sixty-nine pages of careful narrative and tight argumentation, concluding with "We hold the imposition of the death penalty in this case is not excessive or disproportionate considering the crime of the Defendant."]

In writing his concurrence, with which three other justices agreed, DURHAM, C. J., objected to the court's using different versions of proportionality in different cases and recommended that the court accept a proportionality test established in State v. Lord (1991).

Dolliver's response was an extraordinary "special" concurrence to supplement the opinion he had just written.]

DOLLIVER, J. [*specially concurring*]—The people of the state of Washington have expressed their will by enacting the death penalty, and my duty as a justice of this court is to uphold that law....Although I do not question my duty, I write this separate concurrence to state my objection to the death penalty in principle and to express the hope that someday we will eliminate the death penalty and be saved from cries of vengeance, revenge, or "justice" and thus become a more truly civilized community of citizens.

Until that point arrives, if the laws are both constitutional and exactly followed, as was the case here, the ultimate penalty must be enforced. I also do not question that whether one agrees, as I firmly do, with the majority's rule for determining proportionality or one adopts the test in *State v. Lord*...the result in this case is the same: the imposition of the death penalty for this brutal crime is not disproportionate under the law.

[126 Wn.2d 136, 892 P.2d 29]

GARDNER v. LOOMIS ARMORED
128 Wn.2d 931, 913 P.2d 377

[No. 63060-7. En Banc. April 4, 1996.]

CERTIFICATION FROM THE UNITED STATES
DISTRICT COURT FOR THE EASTERN
DISTRICT OF WASHINGTON
IN
KEVIN M. GARDNER, ET AL., *Plaintiffs*, v. *LOOMIS
ARMORED, INC., Defendant.*

DOLLIVER, J. [writing for the majority]—The United States District Court for the Eastern District of Washington asks whether an employer contravenes public policy when it terminates an at-will employee who violated a company rule in order to go to the assistance of a citizen who was in danger of serious physical injury or death. We answer in the affirmative.

Plaintiff, Kevin M. Gardner, worked for Defendant, Loomis Armored Inc. (Loomis), as a guard and driver of an armored car. On March 10, 1994, Gardner and his partner, Steffon Sobosky, made a scheduled stop at a Seafirst Bank branch in Spokane. Sobosky got out of the truck and entered the bank while Gardner stayed in the driver's compartment.

Gardner then saw a woman, whom he recognized as the bank manager, run out of the bank while pointing behind her and screaming. Gardner looked behind the manager and saw a man with a knife chasing her. The armed man (hereinafter referred as the suspect) was approximately 15 feet behind the manager. While running past the front of the truck, the manager looked straight at Gardner and cried out, "Help me, help me." Deposition of Kevin M. Gardner at 203 (Oct. 20, 1994). Gardner described the expression on her face:

It was more than fear. There was a real—it was like a horrified kind of a look, like you—I can't describe it other than that, I mean she—she was horrified, not just afraid.

Deposition of K. Gardner at 203. Gardner looked around the parking lot and saw nobody coming to help the manager. After the manager and the suspect ran past the front of the truck, Gardner got out, locking the door behind him. As he got out of the truck, he temporarily lost sight of the manager and the suspect, who were both on the passenger side of the truck. While out of Gardner's view, the manager reached a drive-in teller booth across the parking lot, where she found refuge. It is unclear whether the manager was safe before Gardner left the truck, but by the time Gardner walked forward to a point where he could see the suspect, the suspect had already grabbed another woman who was walking into the bank. Gardner recognized the second woman as Kathy Martin, an employee of Plant World, who watered plants at the bank. The suspect put the knife to Ms. Martin's throat and dragged her back into the bank. Gardner followed

them into the bank where he observed his partner, Sobosky, with his gun drawn and aimed at the suspect. When Sobosky distracted the suspect, Gardner and a bank customer tackled the suspect and disarmed him. The police arrived immediately thereafter and took custody of the suspect. Ms. Martin was unharmed.

Loomis has a “fundamental” company rule forbidding armored truck drivers from leaving the truck unattended. The employee handbook states, “[v]iolations of this rule will be grounds for termination.” Employee Handbook at 10. Drivers may not exit the compartment under any circumstance. ...

Gardner was fired for violating this work rule by exiting the truck during the March 10, 1994, incident. Gardner’s partner was not disciplined in any way for his involvement with the hostage situation. Gardner sued Loomis in the United States District Court for the Eastern District of Washington, making multiple claims, one being wrongful discharge in violation of public policy. Judge Quackenbush certified the following question to this court:

Does it violate public policy in the State of Washington to discharge an at-will employee for violating a company rule in order to go to the assistance of a citizen held hostage at the scene of a crime, and/or who is in danger of serious physical injury and/or death?

Under the common law, at-will employees could quit or be fired for any reason. *Roberts v. Atlantic Richfield Co.*, 88 Wn.2d 887, 891, 568 P.2d 764 (1977). In recent years, courts have created certain exceptions to the terminable-at-will doctrine. One of these exceptions says employees may not be discharged for reasons that contravene public policy. Almost every state has recognized this public policy exception. ...

Plaintiffs argue that Gardner’s going to the aid of a woman in a hostage situation furthered public policies embodied in common law and an assortment of statutes. Plaintiffs first point to statutes concerning citizens’ interaction with law enforcement. One statute gives citizens who aid police officers the same civil and criminal immunity as such officers. RCW 9.01.055. Another statute cited by Plaintiffs makes it a crime to obstruct law enforcement officers from carrying out their duties. RCW 9A.76.020. A third cited statute makes it a crime for a citizen to refuse unreasonably an officer’s request to summon aid for the officer. RCW 9A.76.030. Finally, the Crime Victims, Survivors, and Witnesses Act explicitly says victims, survivors of victims, and witnesses of crimes have a civic and moral duty to cooperate fully and voluntarily with law enforcement and prosecutorial agencies. RCW 7.69.010. Plaintiffs argue Gardner fits within the Act’s definition of a crime witness. These statutes allegedly express a clear public policy encouraging citizens to assist law enforcement in the effective apprehension and prosecution of criminals. Plaintiffs argue Gardner’s termination for leaving the truck in order to respond to a hostage situation contravened this public policy.

Plaintiffs also argue Gardner’s termination violates the public policy which encourages citizens to come to the aid of others in need of care. ...

Loomis argues it did not fire Gardner in retaliation for his saving a hostage – it fired him solely because he left the truck in violation of the work rule. This claim is supported by the fact that Loomis did not discipline Gardner’s partner, who was just as involved with the situation as Gardner. Gardner argues Loomis must take into account his reasons for leaving the truck when choosing the punishment for breaking the rule, but Loomis implies it would terminate an employee for violating the work rule regardless of what kind of excuse the employee offered. Gardner has offered no evidence questioning the sincerity of Loomis’ position.

Because the situation does not involve the common retaliatory discharge scenario, it demands a more refined analysis than has been conducted in previous cases. Loomis’ seemingly legitimate work rule has come into conflict with employee behavior that may have socially redeemable aspects. ...

First, Plaintiffs propose a public policy encouraging citizens to help law enforcement, and they point to several statutes as support for their proposal. RCW 9.01.055 grants citizens limited civil and criminal immunity when helping a police officer, but the statute does not apply unless the officer requested such assistance, or the officer was in imminent danger of death or serious injury. RCW 9A.76.030 makes it a misdemeanor to refuse an officer’s request to summon aid. RCW 9A.76.020 prohibits the obstruction of law enforcement efforts. The Crime Victims, Survivors, and Witnesses Act, RCW Chapter 7.69, urges citizens to help in the prosecution of criminals, and sets forth certain rights of citizens involved with the prosecution.

The four statutes, RCW 9.01.55, 9A.76.020, 9A.76.030, and 7.69.010, do encourage citizens to come to the aid of law enforcement but only under very limited circumstances. It would be more accurate to say the statutes support a public policy encouraging citizens to *cooperate* with law enforcement when requested or clearly required by law. *See, e.g.*, RCW 9.69.100 (requiring witnesses of violent crimes to report the crime to officials). Public policy is not furthered by encouraging citizens to jump into the midst of every criminal situation. Citizens have not had law enforcement training, and their involvement in many situations can create additional risks of harm to those involved. A limited, albeit clear, public policy can be found in the cited statutes, but Plaintiffs give an overexpansive reading of those statutes in their attempt to present a general policy encouraging citizens to help in law enforcement. Plaintiffs have not satisfied the clarity element with respect to their first offered public policy.

Since the “helping law enforcement” policy as argued by Plaintiffs fails to meet the clarity element, it is unnecessary to discuss further the alleged policy with regards to the other elements. ...

The certified question presents a third public policy when it points out that Gardner went “to the assistance of a citizen held hostage . . . and/or who is in danger of serious physical injury and/or death.” Society places the highest priority on the protection of human life. This fundamental public policy is clearly evidenced by countless statutes and judicial decisions.

The value placed on human life is demonstrated by the fact that courts have even suspended certain fundamental constitutional rights when a citizen's life is in imminent danger. For example, the Fourth Amendment's protection against warrantless searches is waived under limited exigent circumstances, including situations where the search is necessary "to prevent physical harm to the officers or other persons." ...

Defendant argues that, regardless of what public policies may have been served by Gardner's involvement with the hostage situation, the causation element is not satisfied. Gardner was not discharged for getting involved with the hostage situation; rather, the termination was solely because Gardner violated a fundamental work rule forbidding drivers from leaving their trucks. In support of this distinction, Defendant points out Gardner's partner was not disciplined in any way for his involvement in the situation because his presence in the bank was consistent with his duties.

Defendant's argument lacks merit. Gardner broke the work rule expressly in order to save a person being chased by a man with a knife. Gardner saw the bank manager pursued by the suspect and decided to exit the truck. After he got out of the truck a different woman already had been taken hostage by the suspect. Gardner's leaving the truck cannot be analyzed in isolation: his initial act of getting out of the truck is inextricably intertwined with his motive for leaving it and his subsequent actions.

The flaw in Defendant's argument can be demonstrated by the following example. If the truck were on fire, Gardner would have to leave the truck to save his life. If Defendant fired Gardner for leaving the burning truck, public policy would clearly be violated. Gardner's reasons for exiting the truck must be taken into account when determining whether his discharge was because of the public-policy-linked conduct. Plaintiffs have satisfied the causation element. ...

Loomis has exhaustively defended its work rule as an overriding justification. The rule is allegedly necessary to protect the safety and lives of Loomis employees. The drivers are safe inside the compartments and they can use the available two-way radio, public address system, and sirens to summon help. A driver's exiting the truck severs the partner's lifeline to safety and renders both employees more vulnerable to harm. In oral argument before Judge Quackenbush of the United States District Court for the Eastern District of Washington, Defendant cited a 1991 incident where an armored car driver got out of the truck in response to his partner being robbed. Upon exiting the truck the driver was shot six times and killed.

A more specific reason for strictly enforcing the work rule involves the risk of robbers using a ploy to get the driver out of the truck. Such resourcefulness amongst thieves is not uncommon when large amounts of money are involved. *See, e.g., Statler Hilton Hotel Corp. v. Wells Fargo Armored Serv. Corp.*, 370 A.2d 1358 (D.C. 1977) (guard robbed in elevator by suspects dressed as hotel maintenance employees); *Schwegmann Bros. Giant Super Markets v. Underwriters At Lloyd's, London*, 300 So. 2d 865 (La. Ct. App. 1974) (phony armored guard driving what appeared to be a company truck successfully picked up the store's daily receipts and escaped 15 minutes

before the real truck arrived). The risk of thieves resorting to trickery is evidenced by Loomis' rule requiring drivers to follow a police officer to the police station before getting out of the truck. If robbers knew they could trick drivers out of the truck every time it appeared someone was in need of help, the occurrence of such ploys could increase.

A third reason behind Loomis' work rule may involve insurance policies. Some insurance companies will not cover a loss if the truck was robbed while left unattended. *See, e.g., Save-Mor Supermarkets, Inc. v. Skelly Detective Serv., Inc.*, 359 Mass. 221, 268 N.E.2d 666 (1971) (insurance did not cover theft of truck and its contents when the guard and driver were 25 feet from the truck at a snack bar, thereby failing to be "in attendance" of the truck). Loomis did not discuss its insurance policy in this case.

Loomis has defended its work rule as part of a fundamental policy designed to guarantee the safety of its employees. This court must balance the public policies raised by Plaintiff against Loomis' legitimate interest in maintaining a safe workplace and determine whether those public policies outweigh Loomis' concerns.

The broad good samaritan doctrine argued by Plaintiffs is not a policy of sufficient importance to warrant interfering with an employer's workplace and personnel management. If we followed Plaintiff's broad reading of the good samaritan doctrine, an employer's interests, however legitimate, would be subjugated to a plethora of employee excuses. A delivery person could stop to aid every motorist with car trouble, no matter how severe the consequences to the employer in terms of missed delivery deadlines. Employees could justify tardiness or absence by claiming they drove an ailing friend to the doctor's office. The good samaritan doctrine does not embody a public policy important enough to override an employer's legitimate interest in workplace rules. Holding otherwise would not protect "against frivolous lawsuits," and employers would not be able "to make personnel decisions without fear of incurring civil liability." *Farnam v. CRISTA Ministries*, 116 Wn.2d 659, 668, 807 P.2d 830 (1991) (quoting *Thompson v. St. Regis Paper Co.*, 102 Wn.2d 219, 232-33, 685 P.2d 1081 (1984)).

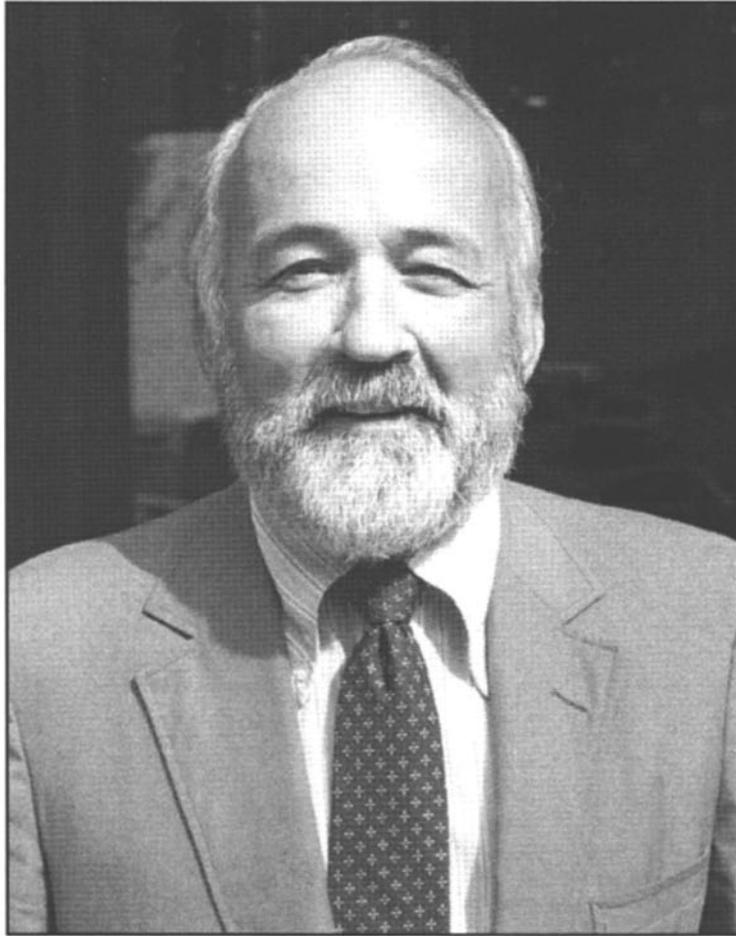
The narrow public policy encouraging citizens to rescue persons from life threatening situations clearly evinces a fundamental societal interest of greater importance than the good samaritan doctrine. The value attached to such acts of heroism is plainly demonstrated by the fact that society has waived most criminal and tort penalties stemming from conduct necessarily committed in the course of saving a life. If our society has placed the rescue of a life above constitutional rights and above the criminal code, then such conduct clearly rises above a company's work rule. Loomis' work rule does not provide an overriding justification for firing Gardner when his conduct directly served the public policy encouraging citizens to save persons from serious bodily injury or death.

We find that Gardner's discharge for leaving the truck and saving a woman from an imminent life threatening situation violates the public policy encouraging such heroic conduct. This holding does not create an affirmative legal duty requiring citizens to intervene in dangerous life threatening situations. We simply observe that society values and encourages voluntary rescuers when a life is in danger. Additionally, our adherence to this public policy does nothing to

invalidate Loomis' work rule regarding drivers' leaving the trucks. The rule's importance cannot be understated, and drivers do subject themselves to a great risk of harm by leaving the driver's compartment. Our holding merely forbids Loomis from firing Gardner when he broke the rule because he saw a woman who faced imminent life-threatening harm, and he reasonably believed his intervention was necessary to save her life. Finally, by focusing on the narrow public policy encouraging citizens to save human lives from life threatening situations, we continue to protect employers from frivolous lawsuits.



James Dolliver taking being sworn in as a Washinton State Supreme Court Justice.



Justice Dolliver, December, 1980.

Appendix C

“THE MIND OF THE FOUNDERS”

AN ADDRESS BY JAMES M. DOLLIVER
WASHINGTON STATE UNIVERSITY, SPRING 1986

The Mind of the Founders: An Assessment of the Washington Constitution of 1889

by
James M. Dolliver

We stand on the threshold of a considerable period of celebrating the beginnings of the United States and the state of Washington. The year of 1987 is the bicentennial of the year in which the framers gathered in Philadelphia to write the Constitution of the United States; 1988 is the bicentennial of the election of the first President and of the first Congress; 1989 is the bicentennial of the first Congress and the inauguration of the first President of the United States and, of course, it is also the centennial of the state of Washington; 1990 is the bicentennial of the introduction and passage of the Bill of Rights by Congress; and 1991 will mark the bicentennial of the adoption of the Bill of Rights. In 1992, we will celebrate the 500th anniversary of why it all happened in the first place: Christopher Columbus' voyage to the New World.

It has been said *Democracy in America* by Alexis de Tocqueville is the most quoted and least read book in America. If this is true about de Tocqueville, I suspect it is also true that constitutions generally, whether of the United States or of the individual states are perhaps the most cited and least read documents in American society.

Many people would look upon constitution reading as simply a way to cure insomnia—a literary version of instant Sominex. Constitutions are not well read and generally are little regarded as documents of literary worth. People, except for odd types like lawyers and judges and perhaps professors at Washington State University, rarely read them through consecutively. Constitutions are important, however, because they enable us to convert abstract political theory into concrete governmental reality.

I

In order to understand the Constitution of the State of Washington, we have to take a brief side excursion and talk about the Constitution of the United States. Although these documents have some differences, in many regards they are very similar. To a large measure the presuppositions which went into the framing of the Constitution of the United States went into the framing of the Constitution of the State of Washington. I suggest to you that those who framed the United States Constitution had three overriding principles.

First was a belief in self-government and that what the Declaration of Independence called the “unalienable rights” of “life, liberty, and the pursuit of happiness” could be secured by self-government. Or, as Lincoln put it at Gettysburg, that a “nation conceived, in Liberty, and dedicated to the proposition that all men are created equal...can long endure.” This was an outrageous notion. As you know, those who framed the American Constitution were students of history and government. They knew there had not been a human society in which democracy had ever worked over a long period of time. Democracy simply had not preserved life, liberty, and the pursuit of happiness. Democracy certainly had not lived out the notion that all persons are created equal. The framers knew democracy had not worked: It had either fallen into despotism or into demagoguery. But they had the audacity, and indeed, audacity was what it was, to say that they could make it work—not simply in a small, homogeneous state which Rousseau

suggested was the only place it would work, or in a New England town meeting, or ancient Athens, or in an Italian city state. No, they said, it can work in a vast, sparsely occupied, relatively heterogeneous continent.

They never doubted the maxim of Locke that “[t]he people shall judge.” The question they had and the dilemma they faced was not that the people should judge. That was taken as a given. The question and the dilemma were: The people shall judge *how*?

Not only did they take an audacious step in saying that democracy—self-government—was the way to preserve liberty and live out the ideals of the Declaration of Independence, they also believed in what I think by any standard was a fairly hard-headed and clear-eyed understanding and view of human nature. They neither looked back to a mythic Eden, nor did they look forward to an equally mythic utopia. They took people as they were. Let me read two passages from *The Federalist*, both familiar, but worth hearing once again to give an indication of how the framers looked at that elusive thing called human nature.

In the celebrated Number 10 of *The Federalist*, James Madison, in defining faction, said this:

[A] faction [is when] a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

And in Number 55, Publius said:

As there is a degree of depravity in mankind which requires a certain degree of circumspection and distrust: So there are other qualities in human nature, which justify a certain portion of esteem and confidence. Republican government presupposes the existence of these qualities in a higher degree than any other form. Were the pictures which have been drawn by the political jealousy of some among us, faithful likenesses of the human character, the inference would be that there is not sufficient virtue among men for self-government; and that nothing less than the chains of despotism can restrain them from destroying and devouring one another.

Not only did the framers try to do something which had never been done successfully, but they also proposed it could be done without adopting a utopian view of human nature but rather a very straightforward view of human nature.

How were they going to do all this? That gets us to the third principle. They thought it could be done because they had, in the words of Alexander Hamilton in Number 9 of *The Federalist*, discovered what he called great improvements in the science of politics. In fact, Hamilton called it a new science of politics. What the framers did was turn the objections to democratic self-government on their head. They said, yes, we understand that democracy, if it has worked at all, or self-government, if it has worked at all for even a limited period of time, has worked in a very small area, and we understand the limitations of human nature. But we believe, inherent in the constitutional document itself, there are provisions which on the one hand mean it will succeed in the United States and on the other hand will take care of, accommodate, and lessen the dangers of that factious human nature with which all of us are possessed.

They did it by establishing a government founded on the idea of republicanism and the idea of federalism. Furthermore, they did it in a written document. We tend sometimes to forget that part of the genius of the framers was that they did it in writing. They did not rely on the customs of the past, legislation, or one or two ancient documents, as the British did. No, they wanted to have a living, vital document called the Constitution, which in itself would do the things that would accommodate the kind of country in which we live and the kind of people which inhabit it.

Hamilton indicated four things he thought were important: (1) the allocation and distribution of power, (2) legislative checks and balances, (3) an independent judiciary, and (4) an elected representative self-government.

The Constitution also set forth those areas forbidden to government, *e.g.*, article 1, sections 9 and 10, in which the powers of both Congress and the states are very strictly and very carefully limited. There was a grant of power by the people in the Constitution, but it was a limited grant of power for a limited government. The framers protected individual rights. We sometimes overlook the fact that there are contained within the document of 1787 a number of basic individual rights. While I shan't get into the argument between the federalists and the anti-federalists as to whether a bill of rights was needed or whether there was any utility to it, I believe the Constitution probably would not have been ratified if there had not been a promise that a bill of rights would be added.

The Bill of Rights and the Constitution itself stand as eloquent testimony to the effort which we in the United States in every generation must continually make: to resolve the tension between liberty (majority rule) and equality (individual rights). One needs but to recall the Lincoln-Douglas debates to understand the overriding importance of this question to the Civil War itself to understand what occurs when this tension is unresolved.

Finally, the Constitution, by providing for regular elections and amending procedures, allows for orderly change. Put another way, the Constitution provides for the legitimacy of successor governments. We tend not to pay much attention to that after nearly 200 years of doing it on a regular basis. The legitimacy of the succeeding government and the fact the succeeding government is looked upon as the legitimate government is one of the marvels and the glories of the American system of constitutional government. We do that by having regular free elections and by having a procedure for the orderly amendment of the Constitution.

II

Enough of the United States Constitution; I have discussed it simply to indicate the Washington State Constitution has some of the same basic underlying ideas. But there is a lot more and that, of course, is the reason for entitling my remarks the “Mind of the Founders.”

First, some facts and figures which help to understand what happened in 1889 in Olympia when the Constitutional Convention met.

Washington became a territory in 1853. In 1878 the so-called Walla Walla Convention was held. Fifteen delegates attended. They were not men of any particular substance or experience. In 1878, there were about 70,000 people within the entire territory and only two cities had more than 4,000 people—Walla Walla and Seattle. The constitution written at Walla Walla was adopted by a fairly small vote. Some commentators indicate, with justification, that the whole thing was simply a maneuver to assure that when Washington finally became a state it would include the Idaho Panhandle. The matter did not even get out of the congressional committees in Washington,

D.C., and everything lay in a state of disrepair until the year 1889.

By 1889, several things had happened. First of all, the Northern Pacific Railroad had been completed in 1883. It had come to tidewater at the City of Destiny, Tacoma. By that time, the territory had not 70,000 people but 300,000. It was in the midst of an economic boom. Perhaps most importantly of all, in the 1888 election at the national level, the Republicans had swept the field. Without getting into unseemly partisanship, the fact of the matter is that the Democrats did not want any new states in the northern tier because of the well-grounded fear that they would all vote Republican. So as long as the Democrats either held the presidency or one of the houses of Congress there were not going to be any new states in the Northwest. But with Republican control in 1889 and 1890, six states entered the Union; in 1889, Washington, South Dakota, North Dakota, and Montana, and in 1890, Idaho and Wyoming came in. A Democrat of that time was heard to say that under Republican rule states “did not come in singly but in bunches.”

In 1889, admission was not an issue. The only issue was when we were going to get the constitution written and voted upon. It was simply a matter of time and the formalities.

On February 22, Grover Cleveland, the lame duck President (by this time the new Republican Congress had arrived in January 1889; these were the days when the new President was inaugurated in March rather than in January as now happens), signed the enabling act. On July 4, 1889, the Constitutional Convention was convened in Olympia. Seven weeks later on August 22, 1889, it adjourned. On October 1, 1889, the Constitution was ratified by a vote of the people; and on November 11, 1889, the state of Washington was admitted as the forty-second state to the American Union.

The delegates were an interesting lot. There were 75 of them. The split along party lines was: 43 Republicans, 29 Democrats, 3 Independents. Convention delegate John R. Kinnear in a memoir written in 1913 wrote: “It was a nonpartisan convention and politics at no time dominated or appeared in the discussions.” While that may have been generally so, I have a modest caveat which I will explain shortly, which disproves at least part of that statement. Democrats did, however, head a number of committees, for example, the Committee for the Preamble and Declaration of Rights.

The delegates, in contrast to the delegates to the Walla Walla Convention, were generally a prosperous lot. They were politically knowledgeable and politically effective. They had lived in other states and had other dealings with governmental matters. Some had been in Supreme Courts and a variety of other high ranking governmental activities. Their average age was 45. Finally, what is arguably the real reason things worked so well: one-third of them were lawyers. I will let you draw your own conclusions on that!

What was the political climate in 1889? What were the concerns the people had? As nearly as I have been able to discover based on my reading and research, I would say there were five primary areas that were of great public interest: (1) People were terribly concerned about the private abuse of public office. (2) They were concerned about the private use of public funds. (3) They were concerned about concentrations of power, whether this power was in or outside of government. (4) They were concerned with individual liberties. (5) Finally, they were concerned about public education.

The newspapers of the time wrote in their news and editorial pages about such things as restricting and regulating large corporations, especially railroads; about women’s suffrage and prohibition. (Incidentally, both women’s suffrage and prohibition were considered by the

Constitutional Convention. There was tremendous pressure, particularly in the area of women’s suffrage. The gentlemen who were at the convention did what legislators on occasion do; they referred the whole thing to the people. The people voted them both down. We were never a prohibition state and we did not become a state in which women were granted the right of suffrage until 1910, which seems to me, for a state which prides itself on its progressive outlook, was a little late in the day.) The press also wrote about the ownership of the tidelands and the municipal condemnation of private land. All of these matters, incidentally, were addressed by the convention.

In the archives in Olympia, there is a fascinating exchange of correspondence between one S. R. Frazier, who apparently wrote for a newspaper, and Eugene Semple, who was the Territorial Governor. On January 28, 1889, Frazier wrote:

I want to prepare an article for “The Sunday Budget” which will embrace answers to the following questions:

1. What existing, or prospective, interests in Washington deserve special constitutional protection?
2. What should be the character and extent of such special constitutional provisions?

A brief answer will be greatly appreciated. Please consider this letter confidential. I want to use the matter February 10.

Governor Semple replied, saying:

Replying to your letter of Jan. 28th in regard to protecting certain interests by Constitutional provision—I must say that in my opinion the fewer special features contained in an organic Law [that is, the constitution] the better. Such a document should have an ample bill of rights so as to secure the largest personal liberty consistent with proper administration of the government and should be so framed as to give the Legislature full power over all corporations and full power over the question of taxation. Novel features should be avoided as much as possible in a Constitution leaving experiments to the [then he wrote the word Legislature, crossed it out, and then put] Law making power [we judges have claimed for some time that we are if not legislators, surely lawmakers] which can be [struck that out and said] is more quickly responsive to the will of the people.

How did the delegates respond to these concerns? Let me discuss this from a number of perspectives. First, there is the question of the long-term allocation of power. We tend today not to pay much attention to this aspect of constitutions, but rather to spend most of our time looking at the Bill of Rights. While I would not denigrate bills of rights, it has always been my belief the most important thing constitutions do is to allocate the power coming from the people to the government. The allocations of power in the Washington State Constitution are quite comprehensive and in some ways quite detailed.

We do have a bicameral legislature. While unicameralism never got anywhere and we adopted the typical bicameral legislature, interestingly enough, in the Washington Constitution, we always had the principle of one person, one vote. You will recall that in 1965 we came under a federal

court order in this state because we did not have one person, one vote in our legislative apportionment. Any fair reading of the Constitution shows quite conclusively there had always been a constitutional directive that the Legislature was to apportion the legislative districts based upon the census. Unfortunately, we did not do it for most of our history until we were forced to do so by the federal courts.

Article 2, section 28, subsections 1 to 18, has a whole host of limitations on special private legislation. Obviously, the Constitution was meant to get at some particular problems which existed in the territory. Let me indicate just three or four of these to give you some flavor of the kinds of things with which the framers were concerned. The Legislature is prohibited from enacting any private or special laws in the following cases:

- 6. For granting corporate powers or privileges.
...
- 9. From giving effect to invalid deeds, wills or other instruments [there apparently were some lawyers down in Olympia in those days taking care of their clients].
...
- 14. Remitting fines, penalties or forfeitures.
...
- 17. For limitation of civil or criminal actions.

Article 2, section 19, and article 2, section 38, were the anti-logrolling provisions and they have worked fairly well. Section 19 provides there shall be only one subject in a bill. The Supreme Court is called upon constantly to define what that means. In addition, the subject of the bill shall be in the title itself. Section 38 forbids any amendment or change in a bill which was not within the scope and object of the bill. That is, of course, the matter presiding officers, lieutenant governors, and speakers are constantly ruling on—whether an amendment to a bill is within the scope and object.

There are some very specific provisions on bribery and corrupt solicitation (article 2, section 30). Similar provisions are not in the federal constitution, but apparently there were some problems in the territory of Washington.

A not so happy part of article 2 dealing with the Legislature is the alien land law, section 33. The Chinese were expelled from Seattle in 1886, and there is at least one school of thought which believes the alien land law was an anti-Asian, anti-Chinese, piece of constitutional tinkering. I am convinced it was not. I am persuaded by the debate which disclosed the perceived problem lay in the fact that those who supported the alien land provision claimed 21 million acres of land already were owned in the United States by foreign syndicates, European, British, and others, and they believed it was evil to have foreign ownership. Those on the other side said the new state should not inhibit foreign capital needed for development. In any event, it later became clear this unpleasant provision was being used as an exclusionary device for Japanese who owned land in Washington. Finally, after a number of tries, in 1966 the alien land law was stricken from our constitution.

In dealing with the executive power, the framers had a singular aversion to concentrations of power. From that aversion we have our fractionated executive. Within the constitution, there are eight separately elected state-wide officials. The Legislature has now given us a ninth, the

insurance commissioner. Each has an independent operation and each has control over the administration of substantial appropriations. As a matter of fact, the Governor controls the allocation of only about one-third of moneys appropriated by the Legislature. The framers were concerned public officials would fatten themselves at the governmental trough. Thus, there was a provision which provided no salary increases could be received during the term of any executive. This provision was repealed in 1968. There was some consideration at the convention to giving governors the power to set the agenda when they called the Legislature into special session. This was not done and governors ever since have wished it had been done.

The most interesting characteristic of the Washington judiciary is that it is a unified court system. We did not fall into the trap of some Eastern states of having a variety of courts, *e.g.*, common pleas, oyer and terminer, probate, and surrogate court. We have one court of general jurisdiction, the Superior Court. There was an attempt made to amend article 4, section 3 relative to the election of judges of the Supreme Court. The whole idea—this was said quite candidly on the floor—was that the Democratic minority at the convention felt that without this amendment the people would elect nothing but Republicans, even though it was a nonpartisan election then, as now. When the matter came up for vote, it was voted down on a straight party-line vote; the happy comments of John R. Kinnear about the lack of partisanship seem a bit disingenuous!

There is another provision which those who do not like judges as a general class might ponder. It is article 4, section 8. It deserves to be stated in its entirety:

Any judicial officer who shall absent himself from the state for more than sixty consecutive days shall be deemed to have forfeited his office: *Provided*, That in cases of extreme necessity the governor may extend the leave of absence such time as the necessity therefor shall exist.

So, if anyone has designs on a judge and does not think the electoral process will work, simply inveigle that judge to leave town, keep the judge out for 61 days, and you have got it made—unless you have a governor who will come to the judge’s rescue.

Article 12, deals with corporate regulation. As I indicated, the framers did not particularly like corporate power. The real problem, however, was to have enough regulation so as to control the corporations, believed to be absolutely essential by the overwhelming majority of the delegates, but so much as to discourage out-of-state investors. This was not a state then or even perhaps now with a lot of idle money sitting around. Money to invest in the machines and the mines and in the manufacturing plants must come in large measure from the outside. The question is where do you draw the line? At the time the framers did not know, but they did the best they could. I think experience has indicated they did fairly well because article 12 seems to have worked all right having been amended only three times. There are a number of specific provisions to protect the people against watered stock, trusts and monopolies and a variety of special privileges, including legislative extension of existing franchises.

These, then, are some provisions which in my mind addressed the issue of making sure that not too much power was allocated to anyone or for any one governmental body.

I have left out one office about which you may have at least a modest curiosity. What about the concentrations of power in the judicial system? What about the Chief Justice? I suspect there are very few, if any, here who have any notion of where the Chief Justice comes from other than Olympia. But how do we get where we are? Well, it is an exceptionally complex

provision. If you can understand tide tables and eclipses of the sun and phases of the moon, you might have a start in figuring it out. I will tell it to you once and once only. Listen carefully. It works like this: Every 2 years there are three of the justices who are going to run for reelection 2 years hence. Of that class of three the justice who is the senior justice elected to a full term who has least recently been Chief Justice becomes Chief Justice. It is a highly ephemeral office. I rose from the desert in the early part of January 1985; and I will sink back into the sands again, to the general relief of a good many people, I suspect, in the early part of January 1987.

There are some specific provisions in the Constitution to take care of some local problems, and some of them are rather entertaining. Article 2, section 24, originally said the Legislature shall not authorize a lottery or a divorce. Of course the lottery provisions have disappeared, but we still have the provision that the Legislature shall not authorize a divorce. When I mention this provision, many people give me a blank stare. How come? There is some specific history on that for the state of Washington. My understanding of the story is that the second territorial governor of the state of Washington came to the state of Washington with two thoughts in mind. One was to get a divorce. The second was to get out of the state of Washington as quickly as he could to get back to the state of Virginia where he could marry the wealthiest woman in the commonwealth. Both missions were accomplished. The convention delegates wanted to make certain we would have no more of that kind of nonsense!

Article 1, section 24, also applies to some specific local situations. This is what it says:

The right of the individual citizen to bear arms in defense of himself, or the state, shall not be impaired, but nothing in this section shall be construed as authorizing individuals or corporations to organize, maintain or employ an armed body of men.

Some of you who are students of the American Constitution will instantly recognize that this is our provision dealing with the right to bear arms, and you will also instantly recognize it is substantially different, in fact, radically different from the provisions in the United States Constitution. This seems like an odd thing to have in the Constitution. Again, there is a historic reason. In 1888, in Cle Elum and Roslyn, the railroads which owned the mines and were faced with a strike brought in armed strike breakers. Interestingly enough, really without debate, at least as is shown by the Journal, this particular provision prevailed. So, in this state under our Constitution, you cannot have your own privately armed force.

III

These provisions are all fairly straightforward. The difficulty comes when the Supreme Court is called upon to interpret the meaning of some of the more arcane and ambiguous provisions in the Constitution. The function of the courts, indeed the power of the courts, to interpret the Constitution had pretty much been agreed upon prior to 1787. But it was not until Number 78 of The Federalist Papers, written by Hamilton, that the notion of judicial review was set out quite concisely. Then, of course, in the great case of *Marbury v. Madison*, 5 U.S. 87 (1 Cr.) (1803), Chief Justice John Marshall for all time set down the position that the authority for the interpretation of the Constitution in a particular case was going to be within the power of the United States Supreme Court. Since then the courts in this country have adopted that as their view. This generally is accepted by most, although Theodore Roosevelt, in one of his

wilder moments, thought that judicial review ought to be subject to a review by the Congress. While I am a great admirer of Theodore Roosevelt, I can think of nothing worse than to have the Congress review any court's decision, much less the decisions of the United States Supreme Court.

What is it courts do? Essentially, when courts interpret a constitution they take the empty vessels of the words in the constitutional document and try to pour meaning into them. Read the United States Constitution and the Constitution of the State of Washington and you will understand what I am saying. The words read well; you think they have some meaning, and there *is* some meaning there. But what do the words mean when they come up against a particular factual situation? Judges are constantly called upon to declare the meaning of the Constitution. How do they go about doing it? If courts get into trouble, and we do from time to time, I suspect it is when people disagree with the interpretation a court of final resort places upon a constitution.

In my opinion, constitutional interpretation is no different than interpreting any other kind of document. Four things need to be done. First, courts look at the text itself. What are the words in the text? What is the meaning of the words? While this analysis is good for a starter, it is usually not the final answer. The meaning of words change. Sometimes it will change overnight. Sometimes it may take 10, 20, 30 years. Sometimes it will take centuries. Words which may have been appropriate in 1889 to explain something do not necessarily have the same meaning in 1986.

Next, after a court has looked at the text, it tries to discern the intent of the framers. What was it that they were talking about? What did they intend when they put the words on the page? As you know, there is a great controversy over this as to whether we should or should not look back to and try to discover the framers' intent. I am of the opinion that those who believe the framers' intent is important have by far the best of the case. While there are honorable persons on both sides of the dispute, I think those who believe a judge must at least attempt to discover the intent of the framers have the better of the argument.

As you know, in the United States Constitution we have the notes of Madison and others. We have no such fortune with the Washington State Constitution, regrettably, although shorthand reporters—the two best in the state, so the record indicates—came to Olympia to take down every word. They kept a complete record. The Convention then adjourned and the reporters were not paid. At this point, they gathered up their notes and went home. No money ever came from the appropriating or paying authorities; the reporters' notes apparently were never transcribed.

One of the sets of notes seems to have been lost in a transfer from one office to the other. As to the other set of notes there are two conflicting stories. One is that they were simply tossed in the furnace by the shorthand reporter—a rather prosaic ending. The one I like better is that they were stored in the attic of a frame house in Tacoma and some time during the 1930s the whole house burned down. You can create a marvelous scenario out of that set of facts! In any event, there is no record, so we have to rely upon the journal, contemporary accounts, newspaper accounts, recollections, and reminiscences. Interestingly enough, these sources are not all that bad. It turns out that from them you can get a fairly adequate record.

Thirdly, courts look at the gloss which has been placed upon these words, both by the Washington court and by courts in other jurisdictions where similar or identical provisions were in their constitutions.

Finally, and this is the difficult part, judges must try to apply the Constitution to contemporary

times. What did the Constitution mean in 1889? This is important. But it is equally important to decide what the words mean in 1986 when applied to the particular problems in 1986, which quite literally those who wrote the document in 1889 had never thought about. The challenge is to get the Constitution from 1889 to 1986.

IV

Let me give you four examples as to how it works, since I think it is important to indicate how this crucial matter of constitutional interpretation is acted upon by the Supreme Court. What happens when you get new facts to which must be applied old principles?

I begin with article 8, section 5 dealing with the lending of state credit. In its entirety, the section reads:

The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

That all sounds fairly straightforward. Back in 1889 it probably was fairly straightforward. For example, you cannot lend public money to the railroads. That was the major concern; everybody understood precisely what the framers were talking about. But by the year 1985, things had taken on a somewhat different cast. By 1985, the state had something called the Washington Higher Education Facilities Authority which was allowed to go into the market and sell bonds. The proceeds from those bonds would then be lent to various private colleges and universities for the construction of certain buildings on the campus.

What had happened in the intervening 90 plus years was that the state had different needs. To meet those needs a different kind of financing was adopted to take advantage of a different tax system. The genius of the Washington Higher Education Facilities Authority, of course, is that when the state borrows the money two things happen. First, whoever buys the bonds does not have to pay any income tax on the bond interest. Secondly, whoever pays back the bonds pays them back at a lower interest rate. Thus, there is a substantial fiscal advantage to both borrower and lender. The other aspect of the arrangement is that the State of Washington is not liable for default on the bonds. They are not general obligation bonds but are nonrecourse revenue bonds. This means in the event of default there is no recourse against the State by the lender for its money and the bonds will be funded by revenues which will be paid by the individual colleges and universities.

A writ of mandamus was applied for because the Governor refused to sign off on the bond documents prior to this case. *Higher Education Facilities Authority v. Gardner*, 103 Wn.2d 838, 699 P.2d 1240 (1985). It came before the Supreme Court of the State of Washington. The court had struggled for about 15 years on the question of article 8, section 5. In this case (and I must confess to you I wrote the opinion), the court finally did clarify what the Constitution meant. We held nonrecourse revenue bonds of this nature are not banned by article 8, section 5. The court took old principles, applied them to new facts, and was, I think, entirely true to the intent of those who framed the Constitution.

The second example is one that will be more familiar. It is article 9, section 1. This contains the celebrated statement:

It is the paramount duty of the state to make ample provision for the education

of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex.

Marvelous words! Now, what do they mean? Well, nobody had ever had to say what they meant. For about 80 years it was one of those great sentences in the Constitution which was uninterpreted. It is unique. There is not a single other state constitution which has language identical to that unique language. No one was quite sure what the words meant because no one ever had to use them. Finally, in the 1950s and 1960s, old doctrine and new facts intertwined.

You will recall in the 1950s, beginning in about 1957, and running well into the late 1960s and early 1970s, the State Legislature was not willing to appropriate the kind of money considered to be necessary for the maintenance and operation of the public schools. So public schools were required to resort to special levies. Now a special levy is not bad for enrichment programs, perhaps, and it is not bad when it is about 5 or 10 percent of maintenance and operation. By the end of the 1960s and the early 1970s, however, special levies were not 5 or 10 percent for maintenance and operation; they were reaching 35 or 40 percent. The Washington Constitution requires a 40 percent turnout and a 60 percent vote on special levies. With these requirements, when there is 40 percent of the maintenance and operation budget riding on a special levy, a school district and its students became engaged in a crap shoot, not in the orderly care for public schools.

So finally, in the mid 1970s, an action was brought by the Seattle School District, and the celebrated case of *Seattle School District No. 1 v. State*, 90 Wn.2d 476, 585 P.2d 71 (1978) was handed down. The State Supreme Court said the State did have as its paramount duty the ample provision of an education for all children in the state. The court held the duty ran not to the local jurisdiction to be met by special levies, but rather, the duty ran directly to the State and the State has an obligation to provide basic education. The definition of basic education came in a lawsuit some years later.

That's how it worked. Was the court true to the thoughts of the framers? I think it was. The vote was 6-3 on that particular case. While reasonable persons could go either way, looking at the situation with which we were faced in the 1960s and early 1970s and the absolute preeminence that those who framed the Constitution gave to public education—looking at those particular words “paramount duty”—it seems to me that the action taken by the court was indeed appropriate and consonant with the intent of the framers.

Let me next discuss the Declaration of Rights. This is one of those parts of the Constitution to which for years nobody paid much attention, except the article dealing with freedom of religion. We only paid attention to that section because we found out it was so strictly construed that we could not have chaplains at various state institutions, such as institutions for the blind and prisons. The people had to amend the Constitution (article 1, section 11) to allow that.

Otherwise, it pretty much lay fallow for a good many years. At the Constitutional Convention itself there was really no argument about the Declaration of Rights, except for two sections. The one was on the taking clause, the matter of eminent domain, which took up several pages of argument in the journal. The other one was on the Preamble to the Constitution. The issue was whether the deity should be mentioned at all in the Preamble. The original document, which was reported from the committee to the convention, read:

We, the people of the State of Washington, to secure the blessings of liberty,

ensure domestic tranquility and preserve our rights, do ordain this constitution.

This language is similar to the Preamble to the United States Constitution. This was defeated on the floor 45 to 22. The minority report came out like this:

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

This was adopted 55 to 19.

The Declaration of Rights is a fascinating document. It has some provisions which are identical to those in the United States Constitution. It has some in which the language differs somewhat from the federal Bill of Rights and what the difference means is not readily apparent. Here are some examples.

Article 2, section 10:

Justice in all cases shall be administered openly, and without unnecessary delay.

Article 1, section 22: We are one of about 25 states, and the United States is not included in this list, which provide for a *right of appeal* in all criminal prosecutions.

Two areas in which we tended in recent years to have a substantial amount of controversy are article 1, section 5, and article 1, section 7. Article 1, section 5 (freedom of speech) says:

Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

Article 1, section 7, is our version of the Fourth Amendment and its language is completely different from that of the Fourth Amendment. It reads:

No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Each of these provisions, with the exception of the one dealing with the right of appeal, has been the source of lively discussion in front of the Washington State Supreme Court in the last 10 years. In fact, it is fair to say that in the last 15 years there has been a resurgence of interest by state courts in their state constitutions. There are some who say this is only happening because all the “liberals” on the state supreme courts think the United States Supreme Court is becoming more “conservative” and they want to show that they are not going to let that happen in their states. I think this is a faulty analysis.

I think something far more profound is going on. In the first place, there are very few cases in our history on the Washington State Constitution, particularly as compared to the number of cases on the United States Constitution. Those cases which we do have are primarily noted for the lack of analysis given to the meaning of the language by the Washington State Supreme Court. One of the reasons for this is that before 1960 there did not seem to be much call to look at the Washington State Constitution Declaration of Rights. Since 1960, practically all of the

first eight amendments of the Bill of rights have been incorporated. That is, they apply to the states as well as to the federal government. So the Warren Court, specifically, and the Burger Court, to a lesser extent, have simply overridden any interests which the state might have.

An example of what has happened is the celebrated case from this campus, *State v. Chrisman*, 94 Wn.2d 711, 619 P.2d 971 (1980). Here, certain evidence was excluded and the conviction of the defendant was reversed by the State Supreme Court based on our understanding of the Fourth Amendment. The case went to the United States Supreme Court, which disagreed with our interpretation of the Fourth Amendment and reversed. No mention was made by counsel, only the court, as to whether article 1, section 7 applied to the case. On remand from the United States Supreme Court, however, the Washington State Supreme Court reconsidered the case and again reversed the conviction, this time relying on the State Constitution article 1, section 7 to exclude the evidence.

In this connection, it should be noted state courts are now specifically being encouraged by many of the members of the United States Supreme Court to look at their own constitutions.

Finally, when Supreme Court Justices take their oath of office, they swear to uphold the Constitution of the United States and the Constitution and laws of the State of Washington. If we are going to uphold the Constitution of the State of Washington we had better get at it to see exactly what the Constitution means. And that is what we have been doing.

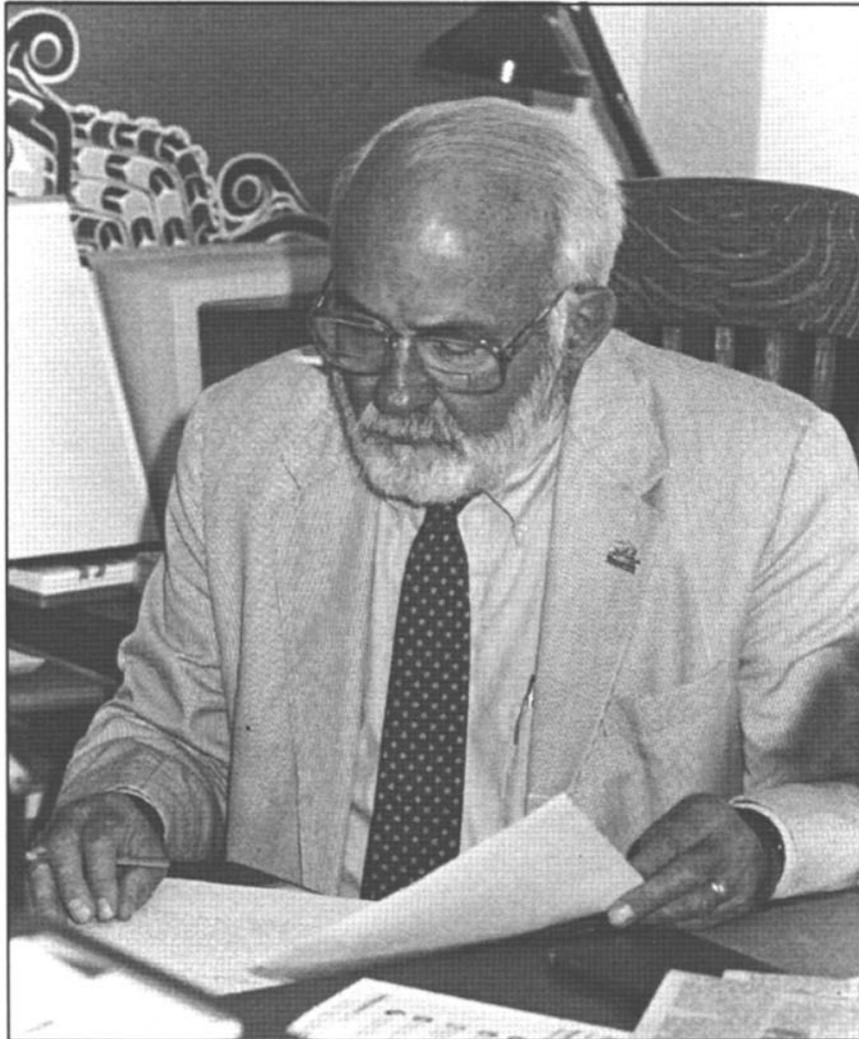
One final observation—this is example number 4—on the interpretation of the Declaration of Rights. This concerns the question of the fundamental premises which the framers of the Constitution had when they wrote the document. Let me give an illustration of the difficulties involved. We had a case called *Alderwood Associates v. Washington Environmental Council*, 96 Wn.2d 230, 635 P.2d 108 (1981) in which a 4-1-4 court addressed the question. Four were on the plurality; there was one concurrence who went with the result of the plurality; and four dissented. The question was whether the Washington Environmental Council could collect signatures in the Alderwood Mall north of Seattle when the private owners of the Alderwood Mall did not want them to do so. As a matter of fact, the owners got an order enjoining the collection of signatures. The division in the court, and this goes to the whole question of fundamental premises of the framers, was on this issue: Did the framers mean the Declaration of Rights to protect an individual against the government, which is the standard doctrine, or was it meant to protect a person not only against the government but against another private citizen? In other words, are individuals protected not just against the City of Seattle or the State of Washington in free speech matters, but also against the Alderwood Mall or some other private citizen who may be infringing upon what are perceived to be their rights of free speech? This is an important issue. Two members of the court have written law review articles on the subject, one published in the University of Puget Sound Law Review, and the other in the Willamette Law Review.

To discover the framers' intent involves not just a textual analysis, nor an analysis on a section-by-section or word-by-word basis. What has to be discovered is the underlying and fundamental premise of the document itself: Against whom was the document to be applied, the individual or the state? Most courts in recent years, and there have been about 10 of them which have acted on it, have taken a view that it is the individual against the state that is to be protected and not the individual against the individual. I believe this to be the correct view and the fundamental premise of the framers.

V

When I reread my title, I was struck by the presumption, and perhaps even the preposterousness, of in about an hour talking about the collective “Mind of the Founders” and the meaning of the Washington State Constitution. That cannot be done in an hour or a week; it probably cannot be done even in a lifetime. I hope if I have done nothing else this evening that I have encouraged you, not as lawyers or as judges or as students or as political scientists, but as citizens, to acquaint yourself more thoroughly with the Washington State Constitution.

We stand, in a very real sense, in the lengthened shadow of those individuals who gathered in those summer weeks in the city of Olympia in 1889 to form this document. They wrote a great document. They wrote a great document *for us*. They created a Constitution in 1889 which, in its essentials, is just as valid and just as vibrant today as it was in 1889. Each of us has a responsibility to know what is in that document, and we must strive in the best way we can to live up to the vision which was given to us by those who wrote our Constitution.





Supreme Court Justice Richard Guy, Secretary of State Ralph Munro, and Governor Daniel Evans (in back, left to right) with Justice Dolliver (seated).

Appendix D

LETTERS OF TRIBUTE

ON THE OCCASION OF JUSTICE JAMES DOLLIVER'S RETIREMENT

Stephen L. Bulzomi
John R. Christensen
John L. Messina
Cynthia M. Morgan
Jeffrey H. Sadler

MESSINA LAW FIRM, P.S.

Attorneys at Law
5316 Orchard Street West
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October 2, 1998

Justice James M. Dolliver
Washington State Supreme Court
Temple of Justice
Olympia, WA 98504

Dear Justice Dolliver,

I would personally like to thank you for your many years of service on our State's high court. First, I would like to take the opportunity to thank you for the impact you have had on my career. Working with you was an opportunity of a lifetime.

The lessons you taught me during my tenure with the court will guide me for the remainder of my career. Your integrity, knowledge, and personability are an inspiration. I consider myself lucky to know you on a personal, as well as professional, basis.

Currently, I am an associate with the Messina Law Firm in Tacoma. I worked with the firm during my last year of law school and continued on after being admitted to practice in 1997. I enjoy the challenge of being a trial attorney. As you may know, our office also does a considerable amount of appellate work. I look forward to the day I have an opportunity to argue in front of the Supreme Court. When I do, the lessons I learned from you will prove immeasurable.

Thank you again for the opportunity. I hope to see you soon.

Yours very truly,



Jeffrey H. Sadler

JHS/sj

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October 20, 1998

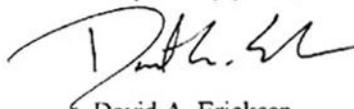
Justice James M. Dolliver
The Supreme Court
Temple of Justice, AV-11
Post Office Box 40929
Olympia, WA 98504-0929

Dear Justice Dolliver:

It was great to see you last week. I was thrilled and honored to be invited to your dinner. The program was amazing and inspiring, not to mention well deserved.

I cannot even begin to articulate the impact you have had on my life. I would not be the person that I am or have accomplished what I have without your influence, mentoring, and model. On a practical level, you taught me how to write. I often wish I could have my associates work through just one memo with you. More importantly, though, through your counsel and model I learned what it means to be a professional. From you, I learned that being a professional is more than developing business and billing time. It is being a part of and contributing to society. It is being respectful of the law and being grateful for the opportunity to be a part of it. It is about carrying yourself with morality, fairness, honor, and humility. Thank you for instilling your values in me.

Respectfully yours,



David A. Ericksen

DAE:bb

San Francisco & Orange County

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The Supreme Court
State of Washington

GERRY L. ALEXANDER
JUSTICE
TEMPLE OF JUSTICE
POST OFFICE BOX 40929
OLYMPIA, WASHINGTON
98504-0929



(360) 357-2029

January 7, 1998

Justice James M. Dolliver
Washington State Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

Dear Jim:

I received a copy of your letter to the chief justice advising her that you will not be seeking reelection in 1998 to your position on the court. The notice was in the classic Dolliver style -- to the point and dignified.

While I certainly understand why you will not be standing for reelection next year, it was with a touch of sadness that I read your announcement. My reaction is no doubt influenced by the fact that my career as a judge has had a close connection to you. As you may recall, in 1973 you called me on behalf of Governor Evans to notify me that the governor had appointed me to the superior court. That was, of course, the beginning of my judicial career. Not too long after I received that call, I was delighted to learn that you had also been appointed to the bench. Because of our association through the years, it has been a singular experience for me to serve on the Supreme Court with you these past three years. You have been and still are a great justice of this court and we will miss you very much when you retire. That still is a year away though, and I look forward to our continued association on the court in 1998.

Sincerely,

A handwritten signature in cursive script that reads "Gerry".

Gerry L. Alexander



Legislative Building
PO Box 40220
Olympia, WA 98504-0220
360/902-4151
Fax 360/586-5629

January 30, 1998

The Honorable James M. Dolliver
Justice of the Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Dear Jim:

Thanks for sending me a copy of your letter regarding retirement.

I must tell you that your letter sent shudders through my body. It is hard to believe we are reaching retirement age. Of course, you are a heck of a lot older than I am, but I suppose my moment will arrive soon.

You have done an outstanding job for the people of Washington State. First as a Park Ranger, than as a Prosecutor, as our boss when you served as Chief of Staff to Governor Dan Evans, and these recent years as Chief Justice.

The one special thing about you that I have always appreciated is your willingness to climb in the car and drive a couple hundred miles all alone in the evening to talk to some small group. To me, that was part of the learning curve that has made a difference in my career. The example you have set has certainly been a wonderful one.

My best to you. I look forward to seeing you and Barbara soon.


Sincerely,

RALPH MUNRO
Secretary of State

RM:rs



Christine O. Gregoire

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

December 21, 1998

The Honorable James M. Dolliver
Justice, Washington State Supreme Court
PO Box 40929
Olympia, WA 98504-0929

Dear Justice Dolliver:

It is with great sadness that I think about you leaving the State Supreme Court after 22 years of outstanding service. Your vast wisdom, common sense, and legal insights will be greatly missed.

I like to challenge the attorneys in our office to be stewards of justice – to help make the legal system really work for people through professionalism, high ethical standards, showing compassion and by being problem solvers. Throughout your long and distinguished public career you have been one of the finest examples I know of a true steward of justice. The public, the legal system, and government have all benefited from your work.

I wish you luck as you embark on the next chapter of your life. Thank you for all you have done and for the great dignity and respect you have brought to the legal system. I am honored to have practiced law before you.

Sincerely,

CHRISTINE O. GREGOIRE
Attorney General

COG:lf



November 18, 1998

Dear Jim,

How many ways do we know you?
How many virtues do you support?
Let us count the ways with full knowledge that we shall fall far short.

There is Dolliver the lawyer on a hill far away, Pilchuck its name and a road to the same.

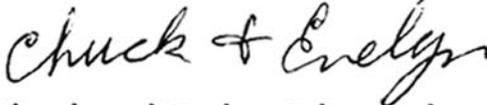
Dolliver the lawyer became the most able assistant to Governor Dan.
For that we say, Thank you.

Then came "His Honor" as you judicially served with those same in-born traits of intelligence, compassion, dedication and honesty. On a most personal note, we thank you for the marriage ceremony you performed in 1976 for Evelyn and me.

Throughout all of these 30 plus years, you have exemplified all that is good in government service.

And you have been and continue to be a very special friend.

Best wishes in your retirement,


Chuck and Evelyn Odegaard

United States District Court
Western District of Washington

William L. Dwyer
U.S. District Judge
502 U.S. Courthouse
Seattle, Washington 98104

January 13, 1999

Telephone
(206) 553-0103
FTS 399-0103

PERSONAL

Honorable James M. Dolliver
Washington State Supreme Court
Temple of Justice Bldg.
P.O. Box 40929
Olympia, WA 98504-0929

Dear Jim:

When I served briefly as a law clerk at the Supreme Court many years ago, it became clear that a few justices, and only a few, deserved to be thought of as "great." It is a pleasure to realize that you are now in that select group. Your contributions to the law will endure and will be remembered with gratitude and admiration. Congratulations on your retirement and above all on having served so long, so faithfully, and so well.

With best regards,



William L. Dwyer

WLD/tg



GONZAGA UNIVERSITY

CORPORATION COUNSEL

October 14, 1998

The Honorable James M. Dolliver
Washington State Supreme Court
Temple of Justice
Post Office Box 40929
Olympia, Washington 98504-0929

Dear Jim:

I am sorry I could not attend your retirement party last evening, but I had a local commitment I couldn't break.

During the twenty-five years I served on the various courts in this state, I have had numerous opportunities to hear you speak and to participate with you on commissions and committees. I've always had great admiration for your willingness to, unflinchingly, take a position on difficult issues and give reasoned support for your positions. The public generally is unaware of the terrific importance of off-the-bench participation of the justices in court administration.

I have had great respect down through the years for your commitment to the law and your ability to get to issues and dispose of them regardless of political overtones. Your approach to the law, common sense, good judgment and industry all give testimony to what, in my opinion, a supreme court justice should be. I've always admired your professionalism and the image you project as a representative of our highest court. History will chronicle your tenure on the bench as one of Governor Evans's wisest decisions.

The bench and bar and the citizens of the state will miss your wisdom on the court. I wish you well in your retirement and hope you can enjoy a well-deserved rest and many years with your family.

Sincerely,

Philip J. Thompson
Corporation Counsel

**WACAP**

WORLD
ASSOCIATION
FOR CHILDREN
& PARENTS

December 11, 1998

Jim and Barbara Dolliver
312 North Sherman
Olympia, WA 98502

Dear Jim and Barbara:

I have been meaning to write since the wonderful evening honoring both of you upon the occasion of Jim's retirement.

This was an extraordinary evening! At our table enjoying the evening was my mother-in-law, Mary Neilson, who worked in the Office of Economic Opportunity in Olympia many years ago, my husband Scott, myself and our son Trevor Neilson, now Communications Director for Seattle Public Schools and who has some political involvement himself.

Throughout the evening I was grateful that we three generations were able to absorb the quality and integrity of your many contributions which were displayed and explained throughout the evening, especially in this year with disheartening national news, it was a refreshing and inspiring evening to spend in honor of your terrific family.

Barbara, your poems which were read were really beautiful! I would love to have the opportunity to see more of your poetry.

Jim, we continue to think of you even though it has been awhile since your board tenure. I think you would be surprised at how very often we remember your participation. To have that level of support and expertise available to us was truly a gift and still imparts its value today. Best wishes for a wonderful holiday to you and your family.

Sincerely,

Janice Neilson
Executive Director
JN/dc



CHAMBERS COURT BUILDING

TOM CHAMBERS
AND ASSOCIATES
ATTORNEYS AT LAW

1400 BROADWAY
SEATTLE, WASHINGTON 98122
(206) 328-5561

TOM CHAMBERS

September 14, 1998

Justice James M. Dolliver
Washington State Supreme Court
Temple of Justice Building
P.O. Box 40929
Olympia, WA 98504-0929

Dear Jim:

I think it is human nature for any one of us who trips or stumbles to feel embarrassed, even if the stumble is no fault of our own. My guess is that following your tumble last Friday at the Bar Business Meeting you feel that your talk could have gone better. Nothing could be farther from the truth.

Everyone I talked to following the Bar Business Meeting commented on how courageous you are, and expressed admiration for the dignity with which you face adversity.

I thought your speech was witty, insightful, and informative. The misstep as you sat simply punctuated one of the many challenges that you have faced and overcome. I do not know a single person who does not like you, admire you, and respect you. I personally have immense admiration for you for the way you have steadfastly and skillfully discharged your duties as a member of our state's highest court in the face of tremendous challenges.

Had it not been for your slip last Friday, I probably would not have taken the time to express my respect and admiration for you.

Sincerely,

Tom Chambers

TJC:bbm

e:\wp\tjc.cor\letters\dolliver.res



James and Barbara Dolliver

Appendix E

POEMS BY BARBARA DOLLIVER

THE NEW CREATION

The clothing of my flesh
Has seen too many seasons.
New trim will not restore
Its earlier shape and bloom.
How pleasant to dispense
That morning in eternity
With poor appearance and step out
Into the light of grace,
No longer to appear,
Instead to purely be.

A WORD IN SEASON

Celebrate the rose
Before the frost
When ardent color goes,
Rare beauty lost.

The tender tribute pay
To one who's near
Before love moves away
And cannot hear.

SUMMER RAIN

A walk in summer rain
Is like silence between good friends,
Not uncomfortable, but strengthening.
Enduring relationships restore the past.
Present silence comes when we are both
Remembering - and reaffirmed,
Just as the warm summer rain
Reaches to the roots and renews
The brimming summer flowers.

COMMON PRAYER

I am thankful for the path
Of remembered prayer, rote formulation
Like smooth stepping stones along which
I move without being moved,
Intent on right order, not their meaning.

I recite the ancient axioms
Like a child the multiplication tables,
Faithful without understanding,
Following the words, still in darkness,
But, somehow, enabled to proceed.

BELIEF

In the morning I believe.
Has the world not sprung into being,
Complete, like the paper flower
Sealed in a shell and
Dropped in a glass of water, rising
With quivering leaves and blossoms
Simmering in a sea of light?

At night I am uncertain.
I stumble painfully, against furniture
Stacked haphazardly, stored
Who knows when or why, forgotten,
Till, restless, I encounter it
As I pace the dark attic of my mind.

DISTURBANCE

Why wind?
Breaking in on me like this,
Shoving open the door, sending
A wave of cherry blossom petals
Spinning across the floor.
Have you come to deliver
An invitation to the Dance? Be off!
My children are living their own romances
And I have ironing to do.
But I leave the door open.
Petals swirl like ghosts around my feet.
My heart swells with inexpressible longing
And I press new wrinkles
In my son's shirt sleeve.

WITNESS

A shadow of my former self,
I do not plan to be
A person who blocks out the light,
The shadow that you see.

I am alive and may I live
By standing all aglow,
I testify it is the light
In which I come and go.

EN ROUTE TO CENTRALIA

Driving to work down the freeway,
Peering through cobweb mist, I saw the sun
 Basking on a hillside farm,
 White house, outbuildings, a pasture
 Dotted with cows, no human figures,
 Small, precise as a primitive painting,
 Forever Eden, if Eden ever was.

 I wanted to throw it all up,
The car, the heater going in the grudging spring,
 Tape deck spinning elegant Vivaldi,
 Job, responsibilities behind, before,
 I wanted to be there, stand motionless
 In a pastoral idyll scarce a mile
 Away yet in a country infinitely far,
And yet in somebody else's life, not mine.

 But there wasn't any way to get there,
 No road that I could see, or I
 Had passed the turn and never noticed.
 I only saw it for a moment. Still,
It makes a difference that I caught a glimpse
 Of another reality, one lived in the sun.
 I'm thankful as I am thankful
For wilderness I shall probably never explore,
 Having lived indoors so long, no longer fit.
Enough that gracious trees and mountains stand
 And the meadow of that morning
 Still lies basking in the sun
 While I keep driving to Centralia.



Barbara (center) and James Dolliver (right) enjoying themselves at the 1976 Washington State Bar Convention.

Appendix F

PHOTOGRAPHS AND NEWS CLIPPINGS

Jim Dolliver class act then and now

OLYMPIA — Jim Dolliver came down to Olympia from Everett 20 years ago, administrative assistant to Gov. Dan Evans by title, surrogate governor in fact, until he moved across the Capitol plaza to the Temple of Justice.

Dolliver is now chief justice of the state Supreme Court, but his role as "Washington's second governor" during 11 years with Evans' administration is a memory that endures around this place of government.

"Who's to be the new Jim Dolliver?" is a question that follows a change at the top. The assumption is that each new chief executive will have a strong right hand, if not an alter ego.

The answer is that no individual has really filled the bill. Dolliver was unique in at least two ways: he had unusual rapport with Evans and extraordinary competence.

Informed, decisive

Jim Dolliver: son of an Iowa congressman, lay minister in the Methodist church, handsome, intense and labeled "liberal Republican" which is not so much an inaccurate description as an inadequate one. He comes from an almost forgotten part of the Republican Party, its roots pro-Union and anti-slave.

As Evans' right hand, he knew details of pending legislation as well as the bill drafters. He made quick decisions and didn't back down or screw up. Sometimes I thought him misplaced anywhere outside the



CEO's office at Boeing or Weyerhaeuser. Then I thought of that old fashioned term "public servant."

We reflected the other day on his transition from the fire brigade of the governor's office across the plaza to the calm of the state Supreme Court.

Fire brigade? In the late Spring of 1970, President Nixon escalated the war in Southeast Asia. Students followed suit on U.S. college campuses, no exception at the University of Washington.

This newspaper greeted UW student demonstrations with a page one, top-of-the-fold editorial calling on Evans to deploy the National Guard to protect life and property in Seattle's University District. When nothing happened, this reporter was assigned to find out why.

I got Dolliver on the telephone. I reminded him of pressure from good burghers to cool the campus. He said no. There's to be no campus Guard. I asked why and never forgot his answer: "because we fear students might get killed."

Two weeks later students did get killed by National Guard troops, but at Kent State University in Ohio. The

crisis passed at UW without casualties.

Justice Dolliver likes to talk about the Supreme Court, least known and in some ways most powerful of the three branches of government located around the Capitol plaza at the tip end of Budd Inlet.

He talks to civic clubs, school kids, churches and reporters about the role of the court, its ways of operating and its grant of power through election by the people, rather than lifetime appointment by an executive. He favors the election process.

"The court is tremendously exciting in its own quiet way," says Dolliver. "It does not handle every issue, but when one lands on its turf, the decision is final — unlike decisions by the executive and the Legislature."

The nine justices draw cases at random, rather than through assignment according to their expertise. Again, says Dolliver, it's a preferred system. All nine contribute, each with his own measure of intelligence and learning.

Decisions are at times regarded as less than exalted — if that's the word for it — more political than judicial, as when the justices ruled that state utilities did not have to pay their bonded debt on a pair of junked nuclear power plants — Justice Dolliver dissenting.

Dolliver doesn't wince at the charge. He could shake with rage over the partisan and inter-party politics of the 1960s. No more.

"We are certainly sealed off from partisan politics," he says. "We aren't sticking a finger into the political winds before reaching decisions. But we are part of our times and our community. I mean, had I been a judge in 1885 I don't think I would have seen things as I see them in 1985."

Evans took charge

Dolliver is part of an unusually happy chorus down here wishing well to Booth Gardner's administration. He thinks it will do good. It stirs a reflection.

In large part Dan Evans made his reputation as one of the great governors by ramming environmental protection legislation down a reluctant Legislature; a case of setting the state's agenda then forcing its implementation.

The chief justice wonders if Gardner can do the same with yet another issue whose time comes ripe.

"The executive has tremendous authority, not so much power," he says. "He can set the agenda, given the will and the perseverance. The Legislature has most power, but not so much authority. It can't get its act together."

The greatest change in Olympia in his 20 years, says Dolliver, is the growth of the legislative bureaucracy, not the long walk across the plaza from the governor's office to the Temple of Justice. He has taken that in stride.

□ Scates is a P-I staff columnist.

Former Federal Building renamed

■ **DOLLIVER:** The building, now a state property, will be named after Justice James P. Dolliver.

By Bob Partlow
The Olympian

OLYMPIA — The former Federal Building in downtown Olympia will be named after retiring state Supreme Court Justice James Dolliver, Secretary of State Ralph

Munro said Friday.

The building was turned over to the state this month by the federal government and will be renamed into offices for the Corporations Division of the Secretary of State.



Dolliver

Munro informally polled other members of the state Capitol Committee about the idea and got an enthusiastic reception, he said.

In addition to serving 22 years on the court, Dolliver worked as chief of staff to former Gov. Dan Evans for 11 years and served six years as an aide to former U.S. Rep. Jack Westlund of Everett. He also worked in numerous community activities.

"There's not one organiza-

tion in this community that he didn't serve on the board of or help," Munro said.

"It's just incredible. There's a lot of big shots come through this town. They live in Tacoma or Seattle and don't give a darn about this town. He cared about this town and has proven it every day of the year since he's been here. It's going to be a beautiful building, right on Capitol Way and it couldn't be a better tribute to Mr. Public

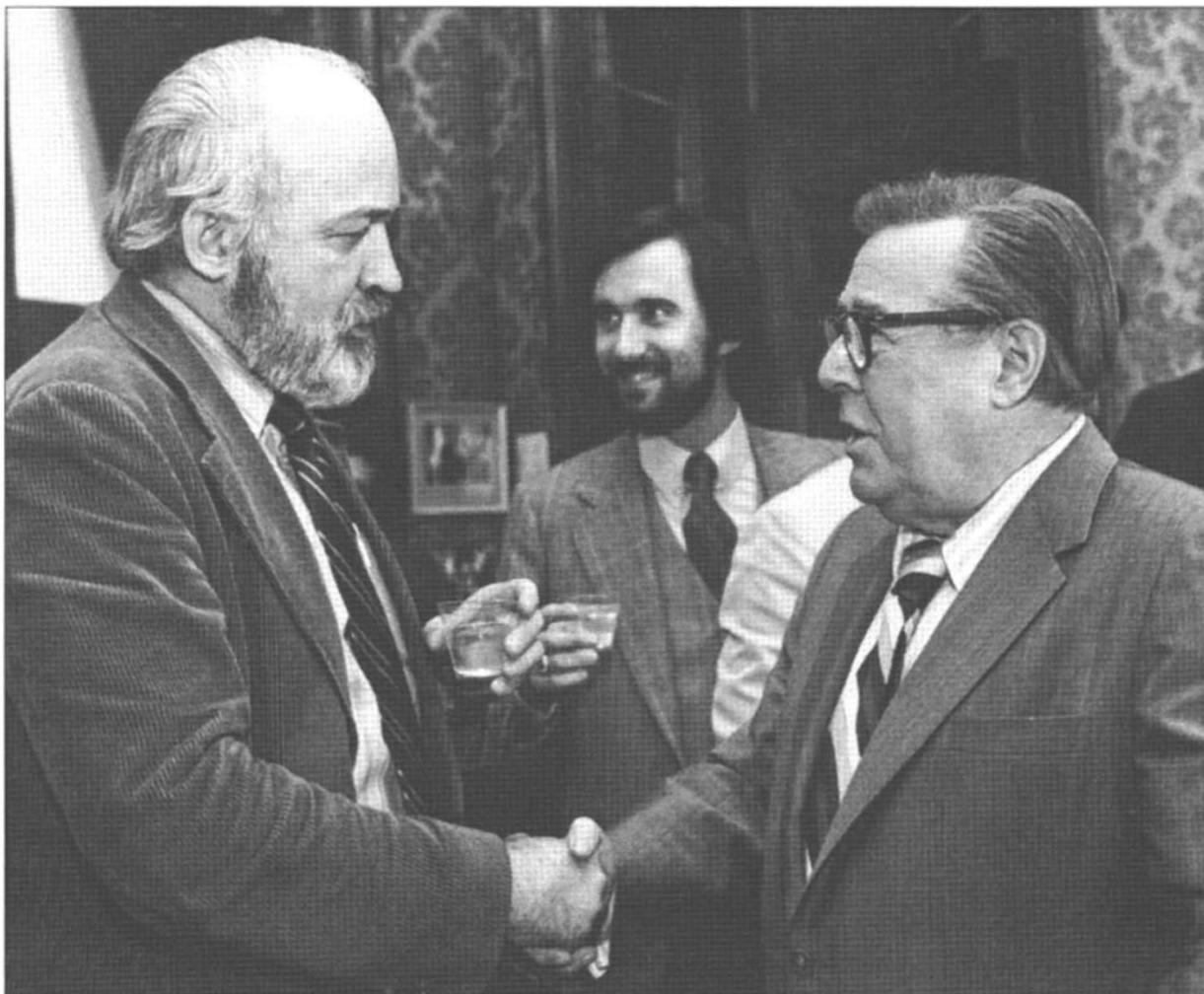
Service," Munro said.

The building was constructed in 1912 and is listed on the National Register of Historic Places. It has served as city post office and a federal office building.

The state has budgeted \$1.95 million to renovate it.

The Secretary of State's Office is scheduled to move in during the summer of 2000.

Bob Partlow covers state government for The Olympian. He can be reached at 753-1688.



Justice Dolliver greets U.S. Senator Warren Magnuson at a reception February 15, 1979.

The Olympian
Sunday, October 11, 1998

C4 ■ Washington state

► ANALYSIS

'Wise old man' leaving state high court

OLYMPIA — He may not be a household name, but for the past four decades, Jim Dolliver has been one of Washington's most powerful behind-the-scenes figures in government and civic activism.

He's led a congressional office, rode shotgun with Gov. Dan Evans for a record three consecutive terms, and, for the past 22 years, has served on the state Supreme Court, becoming the "wise old man" and centrist consensus-builder on the sometimes fractured court.

Dolliver is retiring after a career in Washington that began when this corn-fed Iowa lad came to Olympic National Park as a ranger in 1946. His pending departure from the Capitol has insiders bemoaning the state's loss and recounting their favorite Dolliver stories.

For the past six years, he's amazed friends and won admirers by his grit and grace in dealing with a devastating stroke that stilled his voice for a time and left him in a wheelchair that he uses to this day.

Evans, Secretary of State Ralph Munro and other admirers call Dolliver one of the giants of modern state government and say his accomplishments and pivotal roles have never been fully known or appreciated.

But the most touching testimonials are not about his government posts, but about his thousand small kindnesses to ordinary folk and his quiet work for the mentally ill, young people, history museums, racial and social justice, higher education and other causes. His bio sheet takes 25 lines just to list some of the organizations he has served as a volunteer and board member, not as just a name on a letterhead.

On Tuesday, his 74th birthday, he'll be honored at a gala dinner in Seattle, a civic sendoff as he prepares for retirement from the high court.

"His shoes will be awfully hard to fill," says Justice Phil Talmadge, who spent 16 years as a Democratic state senator, but who has nothing but high praise for Dolliver: an architect of the liberal brand of Republican politics that became known as the Evans Wing of the party.

Dolliver is one of those rare lions of Olympia who has collected friends and kudos rather than enemies and brickbats.

He shrugs off the gusher of compliments and reminiscences.

"It's been a great ride," Dolliver tells a visitor to his art-and-book-lined chambers. "But to everything there is a season. It's time to go."

Unexpected careers

Dolliver says his career has been a succession of opportunities that dropped into his lap



DAVID AMMONS
ON POLITICS

Between his Coast Guard tour and attending Swarthmore College, he got his first peek at Washington, tramping the width and breadth of Olympic National Park as a ranger. After college, he moved west and went to law school at the University of Washington. He clerked at the state Supreme Court, practiced law in Port Angeles and Everett and headed Congressman Jack Westland's staff for six years.

Then he came to Olympia as attorney and strategist for the House Republicans in 1963, meeting an earnest 38-year-old engineer who was the majority leader in a coalition, Dan Evans. Later that summer, some Cowlitz County supporters started a Draft Dan Evans Committee for governor, eventually drawing in Slade Gorton, Joel Pritchard, C. Montgomery Johnson and Dolliver as advisers.

"In a poll they took in June of 1963, there were seven candidates and I was seventh," Evans recalled the other day. "But none of them did what we did. Jim and I got a loaned car and put 50,000 miles on it in the next year, going into every little town across the state. We picked up steam."

Evans ousted sitting Gov. Albert D. Rosellini, bucking the Johnson landslide, and Dolliver was his first and only choice for chief of staff. Evans, who has been rated one of America's best governors of the century, gives a big share of the credit to Dolliver.

"Dan had the creative ideas and Jim made it work," says Munro, who worked in the inner office.

As his third term drew to a close, Evans wanted to appoint his old friend to the bench. The bar had a fit when he tried to get Dolliver a federal judgeship, calling him unqualified and not even a practicing attorney. Evans relented. But when a state Supreme Court vacancy occurred, he appointed Dolliver and told the bar to buzz off.

"I knew he was 10 times more qualified intellectually than anyone I could find and he has proved in every way that he was the intellectual giant of that court," Evans says



OLYMPIA ICON: Justice Jim Dolliver, shown in his home, is leaving the state Supreme Court after 22 years.

Court colleagues say Dolliver has been a superb jurist.

"Jim's departure is going to be a huge loss to the court and the whole judiciary," Talmadge says. "His views represent the core middle-ground, the common-sense core of the court's values. He is an amazing presence on the court and he will be really missed. He is the institutional memory of the court and has a good appreciation of all three branches of government and how they interrelate."

"He was a wonderful chief justice (1985-87) and was and is a very good lawyer," Chief Justice Barbara Durham says. "He is an impressive man and so brave. It will be very hard when Jim leaves. I can't imagine him not being there."

Justice Gerry Alexander calls Dolliver "the bridge" in the court, both philosophically and in helping bridge factions that can emerge.

"He is the wise elder of the court, and he's been known to take the court to the woodshed if he thinks we're doing something wrong," he says.

'No regrets'

This almost was the term that wasn't. In January, 1993, just a few weeks after he won re-election to a new six-year term, Dolliver suffered a massive stroke as he and his wife, Barbara, were taking the tinsel off their Christmas tree. A blood vessel at the base of his skull had burst, turning his world upside-down.

Dolliver, a tall, brawny man with a booming voice, was stricken so badly that friends didn't think he'd ever recover, much less be able to serve in the high-pressure position on the court.

After several weeks of intensive

care, he was sworn in. Munro and Justice Robert Utter took the ceremony to his bedside. Dolliver couldn't speak, but was able to squeeze Utter's hand as a sign that he understood the oath and was assenting to it. There wasn't a dry eye in the room.

After several months of rehabilitation, his double-vision and foggy-lifted and his voice returned, albeit in a gravelly, quieter version. By May, worried that he'd be asked to resign, he returned to court, relying on his clerks for extra help.

"I went back to show that I had this disability, but that I could work with this," he said later. Colleagues now say they're glad he made the extra effort, rather than retiring, as most probably would have done. He's held up his workload admirably and his wise counsel has been invaluable, they say.

Dolliver says he's learned to live with his limits: "My left arm is no good and my voice is somewhat suspect. My balance is very poor (when he tries to walk) and I'm wobbly. I get tired."

What is the worst of it?

"Having to depend on someone else, the loss of independence, which is so precious to anyone. I would certainly like to just walk and speak (more forcefully). The spontaneity of the moment is certainly limited."

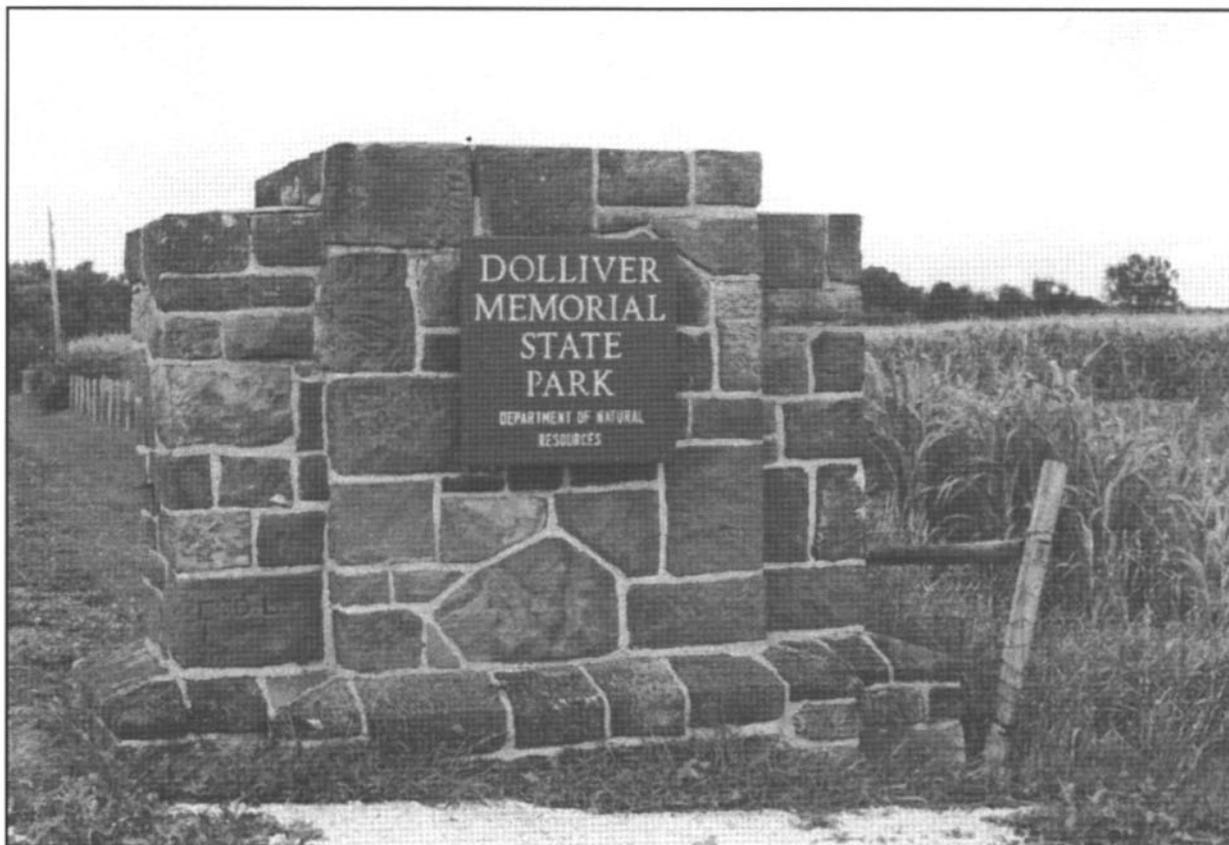
But he soon adds, "I have no regrets or complaints."

Evans says Dolliver is an inspiration: "It's difficult. I'm sure he'd like to be hiking the trails and climbing the mountains. But he just does not let it get him down."

David Ammons is the AP's state political writer. He may be reached at PO Box 607 Olympia WA 98507 or at dammons@ap.org on the Internet.



James Dolliver (far left) poses for picture with his wife Barbara, Governor Daniel Evans, and three of his children Nancy, Keith, and Jennifer (left to right).



Dolliver Memorial State Park was named after Jonathan Prentiss Dolliver, Justice Dolliver's uncle. The park is located near Fort Dodge, Iowa, where Justice Dolliver grew up.

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