David Knight: Your last name, and give me your title.

Judith Haller: Judith Haller, H-A-L-L-E-R, Appellate Justice, Fourth District Court of Appeal, Division One.

Charles Froehlich: Charles Froehlich, Retired Justice in the Court of Appeal, last name's spelled F-R-O-E-H-L-I-C-H.

David Knight: Excellent. And Justice Haller, we're ready to begin.

Judith Haller: All right. Good morning, Justice Froehlich, how are you?

Charles Froehlich: Fine, thank you, good morning.

Judith Haller: Before we begin, I thought I would just give a real quick capsule of the fact that you were with our court for seven years, from August of 1988 until July of 1995. You have had a very distinguished 51-year career in which time you have been in private practice; you've been on the superior court, the appellate court; a professor at Boalt; and currently you're still actively doing mediations and arbitrations.

So in the next hour or two, I hope to explore more of those things with you, but I wanted everyone to know just how long and distinguished your career has been and how you're still actively involved in the practice of law and contributing to our legal system.

Well, let's see, you were born in 1958, correct?

Charles Froehlich: Twenty-eight.

Judith Haller: 1928; just a smidgen of a difference, right? 1928, in San Jose, California, correct?

Charles Froehlich: Yes, that's right.

Judith Haller: And I know that you graduated from Fullerton High School. And what took your family to Fullerton?

Charles Froehlich: My father was in the canning business, Hunt Foods, and he was transferred from wherever we were before to Fullerton as the superintendent of the canning factory there.

Judith Haller: Tell me a little bit about Fullerton. It must have . . . at that point in time it was fairly rural or a lot of orange groves.

Charles Froehlich: Yes, it was a small town, a lot of orange groves. The canning factory was, I think, the biggest business in town. It was a very nice place to grow up.

Judith Haller: And then you graduate from the high school in Fullerton and you head for Stanford; was it your dream to go to Stanford? How did you end up selecting Stanford and going there?

Charles Froehlich: No, I didn't have a dream to go anyplace in particular. My sister had gone to Stanford and she thought that would be a good place for me, so I took her advice.

Judith Haller: You were there and graduated in 1951, and you met Millicent, your wife, there, did you not?

Charles Froehlich: Yes, we were in the same class.

Judith Haller: Tell me a little bit about your recollections of Stanford in terms of your schooling, what you did, outside activities you may have participated in.

Charles Froehlich: Stanford also was smaller at that time. The ratio of men to women was about three to one. So I was very fortunate to be able to find somebody among the cadre of women. I recall there was one black student in the whole university. It was a very nice place to go to school; Palo Alto was a nice, quiet town—still is pretty much, I suppose. I just had an ordinary college education.

Judith Haller: You were in ROTC, correct?

Charles Froehlich: Yes.

Judith Haller: And your major was?

Charles Froehlich: Economics.

Judith Haller: And Millicent's was English, was it not?

Charles Froehlich: That's right.

Judith Haller: Also you mentioned, I know that you were on the fencing team. How did that come about? I mean, you hadn't fenced in Fullerton, I take it?

Charles Froehlich: No, very few people fence in high school; it's sort of an athletic activity for older people. It was an activity that I could excel at, mostly because there's very little competition. I tried to play tennis, but I wasn't good enough. I wasn't big enough to play football. I wanted to do something, and fencing was very interesting.

Judith Haller: When you graduated from Stanford, because you've been in ROTC I know you had . . . you then went into the service, correct?

Charles Froehlich: Yes.

Judith Haller: Tell me a little bit about your military service.

Charles Froehlich: I did go into the service just very shortly after I graduated. That was the time of war in Korea, and everybody my age either was worrying about being drafted or if they were in the ROTC, they knew that their time for service was coming up. We had an obligation to serve for a couple of years if it were necessary, and of course it was necessary at that time.

(00:05:02)

Judith Haller: Right, just because of sort of the height of the Korean War; it went on 1951 to 1953.

Charles Froehlich: Yes. So I eventually found my way to Korea and the 7th Infantry Division, which at that time was in the middle of the campaign for Korea. I served in the Quartermaster Company of the 7th Infantry Division. I was there for somewhat over a year.

Judith Haller: Did you see combat?

Charles Froehlich: No. Well, in the sense that I didn't wander around shooting a gun. I was pretty close to combat. The North Koreans didn't have much of an air force, so we weren't worried about bombing, but we got shelled once in a while with artillery. And we had to have foxholes at the ready.

I had a tent with one tent mate; that's what officers were privileged to do. And we got tired of getting awakened in the middle of the night to run out into foxholes, so we dug a big foxhole in the middle of our tent and put a radio down in the bottom of it. When we started hearing the shells come in, we jumped into our big foxhole.

We lined it with tarpaulin, but we didn't calculate on the wet winters in Korea, and it very promptly filled up with water. *[laughing]*

Judith Haller: That's a practical problem. I know that you were awarded the Bronze Star while you were in the service in Korea.

Charles Froehlich: Yes.

Judith Haller: That was awarded in connection with a specific event or overall service or what?

Charles Froehlich: Must have been overall service. There was no specific event; a Bronze Star is an award for good service. It isn't awarded to everyone, but it's awarded to many people. It's not like the Purple Heart; you don't have to be injured or wounded.

Judith Haller: Was there some life-changing event in your military service that impacted you in some fashion? Did you come to some sort of awareness about life in general when you were serving in the military?

Charles Froehlich: Yes, I suppose that military service is kind of an awakening for most people, at least young people. I had never been in the military. The only military contact I had had was in the ROTC, and of course those were all college boys. But when I got mixed up with ordinary people, I was rather quickly impressed by the fact that education is the key to avoiding very undesirable service one way or the other.

Although I had not intended to go back to school after my graduation, and I really didn't have much of an idea of what to do, I thought it would be a good idea for me to go get an advanced degree of some sort. I cast

about as to what sort of a thing I could do; I never have been scientifically inclined, and mathematics is not a strong feature. I wasn't interested in medicine.

So like a lot of us lawyers, we turn to law because that's something we think that we might be able to do.

Judith Haller: One thing I failed to mention, because we need to put this in perspective, is that you had quite a fine time at Stanford and graduated Phi Beta Kappa. So we know there were some, you had some, very strong and good scholarly abilities, and undoubtedly that was significant with respect to going to law school, correct?

Charles Froehlich: I think so.

Judith Haller: Also I should have mentioned, because I think this is such a wonderful story, you and Millicent were actually married in the chapel at Stanford, correct?

Charles Froehlich: Yes. We were married in our senior year in Stanford chapel.

Judith Haller: That is a . . . for anyone who has not seen it, that is really a beautiful, beautiful facility.

Charles Froehlich: It certainly is.

Judith Haller: Well, let me take you back to, you're in Korea; it's about time to leave there and you've decided you're going to go to law school. Where do you take the . . . I don't know if it was called the LSAT then, but where do you take the achievement exam or aptitude exam for law school?

Charles Froehlich: It was the LSAT, and they gave the exam in Seoul, which was quite a ways away. I got up around three in the morning to travel to Seoul and take the exam.

(00:10:12)

Judith Haller: So you drove there and got there in some fashion; were many people there, many of your colleagues, or was it a group of 5 or 6 or 30 or what?

Charles Froehlich: I don't remember. It wasn't a large group.

Judith Haller: So you took that and did well, and then where did you apply to law school?

Charles Froehlich: University of California, Boalt Hall.

Judith Haller: Entered Boalt in, it would have been 1953, correct?

Charles Froehlich: Right.

Judith Haller: So you came straight out of the service over to Boalt?

Charles Froehlich: That's right. And I had the benefit of the GI Bill at that time.

Judith Haller: Any recollections about Boalt—professors, students, some of the activities you were involved in?

Charles Froehlich: Well, most people, I think, who go to law school, at least if they're successful law students, look back on their law school experience with pleasure, although at the time it could be somewhat of a hardship. Law school requires diligent effort. I did do that. I didn't work or anything during my law school. Well, except in the summertime.

But it was a fine experience. Law school is very stimulating. It's different from the education that most everyone has had before law school in that it's a participatory sort of learning. And that is very stimulating.

Judith Haller: You were editor of the law review, correct?

Charles Froehlich: Yes.

Judith Haller: I had a chance to look at . . . as usual you were very prolific in writing and I was able to pull up some of the notes in your law review articles. Let me see if these ring a bell. You wrote the imputation of contributory negligence between spouses to bar recovery for personal injury. Do you remember that one at all?

Charles Froehlich: Very vaguely.

Judith Haller: All right. And you wrote a note called "Reimbursement for Corporate Campaign Expenses Incurred in Proxy Fights." And you also wrote one concerning . . . it was one on procedures, appears to be some new CCP sections on motions to quash, strike, and dismiss.

Charles Froehlich: One of the things that we were doing on the law review during this period of time was to review new legislation. I think that was one of the new legislative provisions.

Judith Haller: It appeared to be.

Charles Froehlich: So these little notes were not terribly scholarly; they were more for the purpose of notification of what had been done rather than any analysis of it.

Judith Haller: You were also Order of the Coif, correct?

Charles Froehlich: Yes.

Judith Haller: Tell me where you graduated in your law school class.

Charles Froehlich: Well, I was first in the class.

Judith Haller: No surprise. *[laughing]*

Charles Froehlich: It was kind of amusing, because my good friend Helmut Loring at the end of the first semester was first in the class and I was second. I had been studying with a fellow who sat next to me in class, and he wound up in the middle of the class. And so I thought, "Well, I better study with Helmut." So I did, and I was first in class ever after. *[laughing]*

Judith Haller: The two of you were quite a study group team, then?

Charles Froehlich: Yes.

Judith Haller: And you and Millicent had your first child while you were in law school.

Charles Froehlich: That's right.

Judith Haller: Is Marion the one who went on to become a lawyer?

Charles Froehlich: I had two daughters, the first and the second Marion and Susan, both of whom went to law school, both of them after doing something else first. I don't think they considered it to be very attractive to be a lawyer until they tried to do other things, and I suppose came to the same conclusion I had come to—namely that if you don't have great talent for much of anything, you can be a lawyer.

Judith Haller: *[Laughing]* It does seem that a legal degree gives you a professional degree that allows you to go into many, many areas.

Charles Froehlich: That's right.

Judith Haller: Unlike our friends who are perhaps more talented in terms of science and technology; they're somewhat more limited.

Charles Froehlich: True.

Judith Haller: So obviously having had such a distinguished career at Boalt, I would have supposed that when you graduated back in 1956, you virtually could have gone anywhere you wanted to in California. And I know you ended up in San Diego with a small firm; tell me a little bit about how that happened.

(00:15:11)

Charles Froehlich: It's true that at least in those days, people hiring new lawyers relied very heavily on the academic background of the new person. And so if you were editor of the law review or graduated high in your class, you had entrée to various potential employers. And I interviewed around California.

Judith Haller: Well, let me back up. You interviewed with some fairly large firms, correct?

Charles Froehlich: Yes, I interviewed with major firms in San Francisco: Pillsbury Madison, McCutcheon firm, Gibson Dunn in Los Angeles. But by that time, I was kind of weary of a lot of bookwork, and I knew that first-year lawyers,

and second-, and usually third-year lawyers spent most of their time in the law firm's library. I wasn't really attracted to that. Besides, I don't think I was interested in moving to a big city. So I got the California map out and found San Diego, which I had not lived in previously, and came down here and interviewed with firms down here.

Judith Haller: Let's talk a little bit about your first experience with private practice. You arrived as a brand-new lawyer in 1956 and you were there for about four to five years. Who did you practice with and what kind of work did you do?

Charles Froehlich: I practiced with another Boalt graduate who was about four or five years older than I was, named Byron White. We formed a firm called White & Froehlich. And then later one of my other classmates, Paul Peterson, joined us, so it was White, Froehlich & Peterson. We did everything.

Byron was a CPA-lawyer, and so he attracted tax work; but I wasn't, and so I did everything. Back in the '50s, many lawyers did everything; they don't much do that today, but then people were general practitioners mostly.

Judith Haller: Just to put things in perspective, of course Paul Peterson is someone who has been in the San Diego community for years, and I always associate real estate work with Paul Peterson. Now, did you do real estate work or just a potpourri of everything?

Charles Froehlich: Pretty much everything. I even did some criminal defense work.

Judith Haller: Give me a sense of how big the bar was at that time in San Diego.

Charles Froehlich: I think the bar association was 200 or 300 people, but the downtown active bar people numbered probably 75.

Judith Haller: Did everyone tend to know each other?

Charles Froehlich: Yes. You pretty much knew people. There was a camaraderie among people who practiced downtown. We would go to court and probably know most everybody who was there on the law and motion calendar, for instance; and of course we would know all the judges, and the judges pretty much knew us.

Judith Haller: And help me with a sense of how many judges were where there back in the mid-'50s.

Charles Froehlich: I think there were nine superior court judges and then some municipal court judges.

Judith Haller: If my memory serves me correctly, we didn't have a federal court down here at that time. Did you have to go to L.A. at that point?

Charles Froehlich: No. I think it was a branch of the Los Angeles court with one judge.

Judith Haller: At least you could do all your federal and state work out of San Diego. How is it that you took a bit of a respite and you ended up teaching at Boalt? Tell me how that happened.

Charles Froehlich: It happened because I had contact with the dean of the school at that time and at some meeting or other. He knew I had graduated high in the class and that I was out in practice. He asked me if I might like to come back and teach law. Well, I thought that was a great compliment, because I had always conceived of the law professors as being very intelligent and talented people and also thought that that occupation would be very pleasant—certainly more pleasant than practicing divorce law and criminal law and everything else in San Diego. So I said, "Sure, I think that would be great."

(00:20:09)

Judith Haller: What did he want you to teach?

Charles Froehlich: He said, "There's only one drawback. The reason I'm asking you is because you would have to teach income tax law."

Judith Haller: Had you had any experience in income tax law at that point?

Charles Froehlich: No.

Judith Haller: So what did you do?

Charles Froehlich: I said, "Sure, I can teach income tax law." *[laughing]*

Judith Haller: Did you spend the summer getting up to date on income tax law?

Charles Froehlich: Yes, I tried to memorize all the code sections, which is what all income tax lawyers and judges are supposed to know. And I did that pretty well.

Judith Haller: Let's talk about that for just a minute, because it appears again that you did quite a little bit of writing. You were at Boalt from 1963 to 1965, correct?

Charles Froehlich: Correct.

Judith Haller: And you taught tax, probate, and trust, correct?

Charles Froehlich: That's right.

Judith Haller: You wrote, it looks like, a couple of—were they books? "Selected Papers on Problems in Taxation of Business Enterprises" and "Selected Tax Problems of Lawyers." Now, were those books or articles, or what were they?

Charles Froehlich: They were segments of books. I think some of them were CEB books I wrote chapters on.

Judith Haller: Again, so, notwithstanding the fact that you hadn't really practiced in tax or taken many tax classes, all of a sudden by 1963, '64, and '65 you're not only teaching tax, you're writing chapters for books.

Charles Froehlich: That's right.

Judith Haller: You must have liked it.

Charles Froehlich: I did like it.

Judith Haller: Shortly after that it appears you wrote also an article called "Clifford Trusts' Use of Partnership Interest as Corpus Leaseback Arrangements." Do you remember that one?

Charles Froehlich: Yes, all new professors are obligated to write something, and that's what I did.

Judith Haller: Did you find that teaching was all that you expected and hoped it would be, or were you after a few years anxious to get back to the practice of law?

Charles Froehlich: I found teaching very enjoyable, and as a matter of fact even after I left Boalt, I continued to teach on a part-time basis at the local law schools.

Judith Haller: Here in San Diego?

Charles Froehlich: Yes. I enjoyed that, but I concluded that the milieu in Berkeley at that time and maybe at most law schools was kind of stultifying. I have always been sort of a conservative person politically and socially, and that's a minority in most law schools and certainly was at that time in Berkeley. Berkeley was going through a difficult period of time at that time.

Judith Haller: Right, because '63 to '65 would have been the beginning of the very strong student activism—if I can politely say that—at Berkeley, correct?

Charles Froehlich: That's right.

Judith Haller: Things became even more intensified as the '60s went on.

Charles Froehlich: Yes.

Judith Haller: So you returned to San Diego to practice again with Byron White and Paul Peterson, correct?

Charles Froehlich: Yes.

Judith Haller: Tell me—that would have been basically '65 to '72—what kind of law did you practice at that time period?

Charles Froehlich: Since I had been teaching income tax, I knew something about that. And so I attracted some clients who had tax problems and business problems. So I did more business in tax law than certainly I had done before I went

up to Boalt. But we still had a general practice, the whole firm. We would take almost anything that walked in the door.

Judith Haller: The legal community in San Diego was growing by that time, correct?

Charles Froehlich: Slowly.

Judith Haller: At one time the name of the firm was White, Price, Froehlich & Peterson, and the Price is Sol Price of Fed-Mart and Price Club?

Charles Froehlich: Yes.

Judith Haller: How did that come about?

Charles Froehlich: Well, I think when I was talking to you previously, I mentioned the incident; Sol Price was a very competent lawyer and he was a senior partner of a firm called Price, Procopio, Cory & Schwartz.

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But then he went into the retail business, starting Fed-Mart and then later starting Price Club, and pretty much got out of law, except he continued to have his bar card and he was a licensed practitioner.

But he didn't go back to his old law firm very often. And then one day when he came back, he found they had moved and hadn't given him a key to the new office, and he was a little put out about that. He talked to Paul Peterson about it, and Paul said, "Why don't you come and join our firm? We'll give you a key." *[laughing]*

Judith Haller: So, a nice addition.

Charles Froehlich: And he did. And then we got some very interesting legal business.

Judith Haller: I bet you did. If nothing more, he was certainly a rainmaker for the firm, I would imagine.

Charles Froehlich: He certainly was.

Judith Haller: Speaking of that, is that when you started doing some securities work?

Charles Froehlich: Yes, during that period of time the firm started doing securities work, which was very interesting.

Judith Haller: Now, when you say securities work in this day and age, I envision teams of lawyers trying cases, and discovery with boxes and boxes and boxes of discovery; was that your experience doing securities work back then? Tell me about it.

Charles Froehlich: No. We weren't doing securities litigation work; we were doing securities promotional work—that is to say, fighting with the Securities and Exchange Commission, dealing with brokerage firms, helping people go public with their small firms. We didn't do any litigation.

Judith Haller: But you were doing what today would be . . . if you were taking people public, that's certainly a highly controlled area of the law at this point in time.

Charles Froehlich: That's right. As you say, if you do that today, most people will have cadres of lawyers working on any one case. We didn't do that; we had one lawyer or two at the most. And we didn't have Xerox machines. We didn't have fax machines, had to type everything. Can you conceive of a secretary typing long documents with six carbons?

Judith Haller: Well, I can certainly recall even when I started we were just going to electric typewriters, but certainly we didn't amend things and revise things with the level of frequency that we do now. It's too easy now.

Charles Froehlich: Yes.

Judith Haller: Let's see. I know that you were admitted to the tax court, and was that at Boalt or while you were practicing?

Charles Froehlich: That was after I came back.

Judith Haller: And did you find the nature of this work satisfying, working directly with clients and helping them achieve whatever business objective they had?

Charles Froehlich: Yes. Conducting a business law practice in a small town is a satisfying experience because you wind up representing interesting people—people you like to have lunch with, that you like to be friends with. And you wind up handling most all their problems. We hardly ever referred anything out unless it was a criminal problem.

Judith Haller: So you were full service to whatever the client needed other than perhaps criminal or . . . did you do family law for clients as well?

Charles Froehlich: Yes. One recollection I had is representing a major brokerage firm in town. And one of the senior partners needed a divorce, so I helped him get his divorce.

Judith Haller: At the same time I know that you were involved in bar activities. You were president of the Barristers Club, correct?

Charles Froehlich: I don't know if I was president or not, but I was on the board of directors.

Judith Haller: But you did become president of the San Diego bar in 1971?

Charles Froehlich: Yes.

Judith Haller: There were a couple of activities that took quite a little bit of your time at that time. Can you tell us a little bit about the bar building and if you recall about the request by the bar that there be a study of the grand jury in San Diego?

(00:30:00)

Charles Froehlich: I only vaguely recall the grand jury issue. The bar was small potatoes in those days financially compared to what it is now. And we didn't have much money, but we cast about for an appropriate place for the bar office, had a small building on 5th Avenue for a while. And that was one of the things that occupied our time at the bar. And of course we did the administrative things that bars are supposed to do. We managed the monthly meetings; we had monthly meetings then.

The bar is so big and anonymous now that it doesn't do that much anymore, but we had monthly meetings.

Judith Haller: And by monthly meetings you mean where you invited every attorney to attend?

Charles Froehlich: Yes. Luncheon meetings, come have lunch, hear a speaker.

Judith Haller: And, would you have 100 people?

Charles Froehlich: Seventy-five hundred people maybe, and we would all walk to the meeting at the old San Diego Hotel from downtown where everybody officed. Now you couldn't do that; they office out in University City or someplace.

Judith Haller: Sure. And I'm thinking the old San Diego Hotel which is on Broadway that was directly across the street from the state court and the federal court and recently was imploded.

Charles Froehlich: That's right.

Judith Haller: Yes, certainly one of our historical buildings. What was the relationship between the bench and the bar?

Charles Froehlich: It was very cordial and close. The judges, most all of them would come to the bar meetings; they would all be introduced and stand up and participate. They would come to most all of our social occasions. There wasn't the potential problem that's seen to be conceived today in relationships between lawyers and judges. If you went to the Grant Grill after a trial and the judge who was listening to your case was there, well, you'd sit down and buy him a drink. Nobody thought anything about that.

Judith Haller: As we all know, that would not be considered appropriate in this day and age.

Charles Froehlich: A judge wouldn't even go to the Grant Grill these days.

Judith Haller: Speaking of another historical place in San Diego's legal history, the Grant Grill, let me ask you one thing. I'm trying to put this in time perspective. There's sort of this legend about the San Diego County Bar Association, that someone was very bright and purchased some property that's right by the courthouse that's used for parking space. Do you know anything about that, what time period that was? Was that before you?

Charles Froehlich: That was after I was president and the person who bought that piece of property was Jim Hervey . . .

Judith Haller: I didn't realize that.

Charles Froehlich: . . . who was a prominent divorce lawyer in town. Subsequently when the bar was again looking around for property, my recollection is that Jim sold it to the bar at a very reasonable price. And later the bar experienced tremendous appreciation and value in that piece of property.

Judith Haller: Absolutely. And I know they have wrestled many, many times with the issue of, do we keep it as a very profitable parking lot or do we use it to build our own building or sell it off. So we'll see what happens 20 years from now; right now it's still sitting there as a parking lot.

So you were in private practice, back to Boalt, and now it's 1972 and a big change in your life occurs: you're appointed to the superior court.

Charles Froehlich: Yes, by Governor Reagan.

Judith Haller: Yes. Was that something you had always thought you wanted to do, or was it just time for a change?

Charles Froehlich: It was just time for a change.

Judith Haller: Because let's see, by that point in time you'd been practicing what, 15, 16 years?

Charles Froehlich: Yes.

Judith Haller: All right. And what do you recall about the appointment process at that time? Did you have that horrible PDQ to fill out, the 25-page questionnaire, or was it a simple application?

Charles Froehlich: It was just a simple application.

Judith Haller: So you applied and—

(00:35:00)

Charles Froehlich: There was an appointment secretary from the Governor's Office who interviewed you. And I think we had the bar committee that evaluated people at that time.

Judith Haller: But not the JNE yet?

Charles Froehlich: I don't think the JNE, no. But it was some kind of committee.

Judith Haller: So there was some evaluation process, and I think JNE came in during the Governor Brown time period?

Charles Froehlich: Right.

Judith Haller: So you go to superior court, and what kind of assignments did they give you?

Charles Froehlich: I did most everything. The only specific assignment that I didn't do was juvenile law, but I did everything else. I started out in the downtown facility, but then I thought it would be nice to go to Vista, and they transferred me to Vista. I was the second judge in Vista.

Judith Haller: At that point was it you and Judge Lopardo?

Charles Froehlich: Judge Lopardo and me. I think there are 35 in Vista now, or something like that.

Judith Haller: That sounds about right.

Charles Froehlich: Amazing.

Judith Haller: Yes. It is, of course, a very fast-growing area. So when you were in Vista, then, I would assume you did virtually everything up there, correct?

Charles Froehlich: Yes, we did.

Judith Haller: You had everything except juvenile delinquency and dependency matters, then, out at Vista.

Charles Froehlich: That's right. I did everything else. Judge Lopardo liked probate, so he did that, and I did everything else.

Judith Haller: And then did you come back down to the downtown courts?

Charles Froehlich: No. I retired in 1982 from the courthouse in Vista.

Judith Haller: Before we get to that, was there any assignment that was a favorite of yours on the court?

Charles Froehlich: Yes, I liked the law and motion calendar, the civil law and motion calendar. I didn't much like the domestic law and motion calendar, but the civil law and motion calendar is a very challenging and interesting activity.

Judith Haller: Because today not everybody has what I'll call an old-fashioned traditional law and motion, civil law and motion calendar. Why don't you describe what a typical day was like in a civil law and motion calendar?

Charles Froehlich: As you know, but maybe everybody else doesn't, the job of the civil law and motion calendar is to hear and decide small matters, procedural matters, sometimes important matters, but things that come up in the preparation of a lawsuit for trial: demurrers, motions to strike, discovery motions, summary judgment motions. These things are brought to the court on briefs, paperwork. And when the paperwork has matured and everybody has filed his or her brief, then it's presented to the judge in

calendar. At that time, a law and motion judge would calendar anywhere from 20 to 30 of these motions in an afternoon.

Judith Haller: This was a master calendar, so whatever was in the civil system potentially came your way, correct?

Charles Froehlich: It had to come my way. It was channeled that way, so I had a finger in practically every case that was active. Now, that we calendared 20 or 30 in an afternoon doesn't mean that we necessarily heard that many, because a lot of them would fall out or get resolved—negotiated or something. But we would hear a good number in the afternoon. Sometimes it would run rather late.

Judith Haller: Did you have anyone assisting you, or were you doing all the research and workup?

Charles Froehlich: We had one, a lawyer, assisting us; one full-time assistant lawyer working the cases up. The lawyer would provide a summary of the paperwork and usually a suggestion as to how he thinks it might be resolved.

Judith Haller: I know that during this time period you were assigned, at least temporarily, to our court, to the Court of Appeal.

Charles Froehlich: Yes, I spent . . . well, I don't know whether it was a month or two months up here.

Judith Haller: You wrote some published cases during that time period?

Charles Froehlich: I think so.

Judith Haller: Do you have any recollection of . . . you and I talked about a criminal case that you had that found its way to the Court of Appeal and then back to you on a sentencing issue.

(00:40:00)

Charles Froehlich: Yes. Well, that came up in our discussion when we were lamenting the fact that there's too much formality and too much detail these days. When I was involved in sentencing someone, I got caught up in this problem of having to recite for the record certain things; I don't remember exactly what it was.

The crime as to which trial I had been the trial judge was a very serious, severe crime. It was a gang attack and rape on a family who was vacationing in Vacation Village. So when the time for sentencing came, I sentenced the ringleader of this group to as much time in prison as I could. And of course the case was appealed. The appellate court sent it back, saying I hadn't intoned the correct verbal formula, and I was sort of irritated by that.

Judith Haller: And written by someone who became a later colleague of yours, correct?

Charles Froehlich: Written by Justice Wiener, I believe. So when this felon came back to the bench to be sentenced I went through the formula and then I said, "For the record and for the benefit of the appellate court who may be reviewing this matter again, I want to emphasize that this defendant, this criminal, is one of the worst kinds of people that you will ever run across. He is a worthless piece of humanity. He will be no good to anyone, ever, and he should not ever be released to society. And the reason I'm saying this is to impress the Court of Appeal with the fact that whatever I can do or say to keep him in prison I want to do."

When it came back, that opinion was published by the Court of Appeal and my statement was included in the case.

Judith Haller: Yeah, I haven't checked that published appeal, but I have a feeling that what you recited is pretty close to what it probably said on the transcript, correct?

Charles Froehlich: I think so, yeah.

Judith Haller: You were on our superior court for 10 years, 1972 to 1982; did you enjoy that time?

Charles Froehlich: Yes, certainly did. I got bored at the end; that's why I retired. But I enjoyed it.

Judith Haller: The boredom related to the fact that things became repetitious?

Charles Froehlich: Yes. Having recited the same jury instructions hundreds of times, it becomes boring.

Judith Haller: So it was time for you to move on. And what did you do?

Charles Froehlich: Exactly. I went back into private practice.

Judith Haller: With the same folks you had practiced with before or—

Charles Froehlich: I rented space from them; basically that's all. I didn't participate in their practice, although I received a few referrals from them; but mostly it was a new practice.

Judith Haller: So you were an independent soul starting again?

Charles Froehlich: Yes.

Judith Haller: This time period is basically 1982 to 1988. And did you find yourself doing the same kind of work again, or were things slightly different?

Charles Froehlich: They were different. When I retired, I thought maybe I should go into estate planning and probate and things like that; and so I took some CEB courses on the subject to brush up, but nobody hired me to do that. I think that people thought that because I had been a judge for 10 years that I knew something about trials.

So I had got quite a few retentions in trial work and did some trial work, which was very interesting.

Judith Haller: You enjoyed that?

Charles Froehlich: Yes.

Judith Haller: And did you try them in both state court and federal?

Charles Froehlich: Yes.

Judith Haller: At least one of your clients, you represented the tuna fleet, didn't you?

Charles Froehlich: Most of my litigated cases came out of the tuna industry. I got to know a number of sea captains and tuna boat owners. So I got quite a little tuna business.

Judith Haller: Did you do their Jones Act work or other type of work for them?

Charles Froehlich: I didn't do any Jones Act work; I did business litigation of one sort or another.

Judith Haller: That was a fairly tight community. I mean, at that point in time, the tuna business in San Diego was very important to us commercially, correct?

Charles Froehlich: That's right.

Judith Haller: And so primarily the Portuguese community?

(00:45:01)

Charles Froehlich: Well, they were all people with some immediate European background: Portuguese, Italian, Yugoslavian.

Judith Haller: And because I did a little bit of Jones Act work, they are very hardworking people. That's not easy work; difficult work on the boats. But certainly people who have a strong work ethic.

Well, let's see, you practiced—and by that time, by the '80s, San Diego, the community here, was growing quite a little bit. Was the bar different by that time?

Charles Froehlich: Yes, the bar had increased in membership quite a bit. People were officing outside the core of the city.

Judith Haller: So by that time we had El Cajon, we had UTC was starting, and North County was growing by leaps and bounds; and South Bay was still a little community, nothing like it is now in terms of such growth down there. Also this was a period of time in San Diego when the—I'll call it the law firm invasion—had started to occur. We started to have . . . the L.A., San Francisco, New York, Chicago firms started to open up branch offices here.

Charles Froehlich: That's right. The big stampede of that, of course, came later, but they started intruding in our practice.

Judith Haller: What thoughts or observations do you have about how—I called it an invasion, you called it a stampede—what kind of impact do you think that had on our legal community?

Charles Froehlich: Changed it. Because it was so much more populous you didn't know as many people in the bar, and you certainly didn't know the judges as well. With the influx of people from Los Angeles and San Francisco and other places, we had people who didn't have the personal relationship with other lawyers in town that we used to have.

Let me give you an example of that. When I was practicing in the late '60s, I represented somebody in litigation and Howard Turrentine was the lawyer on the other side. I am sure you know Howard Turrentine.

Judith Haller: Of course, he became . . . on our federal court for many years.

Charles Froehlich: Yes. There was a pleading that I prepared for my client and I filed it. I don't remember exactly what it was, but Howard called me up he said, "Charles, you didn't do such and so in your pleading, and you're going to lose this case if you don't correct that." Now, what lawyer would do that today?

Judith Haller: Probably no one. I've heard those kinds of stories; I've even heard stories during that time period of a medical malpractice defense attorney from one firm who basically shepherded the cases going on in another firm because the attorney, the defense attorney there, was suffering from some medical issues. You wouldn't hear of that today, I don't think.

I take it that . . . we know you didn't have faxes back then and slower practice, and more genteel, and people kind of looked out for each other.

Charles Froehlich: They did.

Judith Haller: Not to say that people weren't competitive, because clearly they were, but—

Charles Froehlich: Oh, yes, they certainly were.

Judith Haller: I know that San Diego has always prided itself that the way in which we practice law here is different than San Francisco or L.A. and that we're more civil. Do you think that was true back then, and is it true now?

Charles Froehlich: I think it was true back then; I'm not sure whether it's true now or not. I remember the judge in San Diego who had a sign, maybe it wasn't exactly this, but I think the sign said, "I don't give a damn how you do it in Los Angeles." Or maybe it just said, "I don't care what you do." But the message was there.

Judith Haller: Understood. So we're now about 1988, and you've been in private practice again for about six years. And then you make a big change and you come to our court on the Court of Appeal.

(00:50:09)

Charles Froehlich: Yes.

Judith Haller: What precipitated that? Was it just time to move? Did you apply? Did somebody approach you? How did that come about?

Charles Froehlich: I applied. I think after my tour on the superior court, and after my one-month stay visiting the appellate court, I thought that that was probably the best legal job that there was.

Judith Haller: And many would agree with you.

Charles Froehlich: *[Laughing]* Yes. So one of the reasons that I retired from the superior court and didn't try to get on the appellate court at that time was that there was a Democratic Governor who never would have appointed me.

Judith Haller: That was Jerry Brown back then.

Charles Froehlich: That was Jerry Brown. But then in this later period of time, Governor Deukmejian was Governor; I thought I'd have a chance to get on the appellate court, so I applied.

Judith Haller: Again, I take it it was a more intensive application by that point in time, if I remember correctly.

Charles Froehlich: I think so.

Judith Haller: Yes. And then by that time the JNE was in place and local evaluation committees. And you joined our court August of 1988, and two other people joined with you the same day, correct?

Charles Froehlich: Yes. I think the court was increased by three positions at that time. And the Governor appointed Justice Nares and Justice Huffman and me.

Judith Haller: Since you were all confirmed on the same day, how did they decide seniority?

Charles Froehlich: I was told by the then–presiding justice, who was Dan Kremer, that the tradition was to draw straws. So he prepared the straws of three different lengths and we drew them.

Judith Haller: And what happened?

Charles Froehlich: Huffman drew the best straw, I drew the second, and Nares drew the third.

Judith Haller: So that established your seniority.

Charles Froehlich: That's right.

Judith Haller: Let's see if I can do this by memory. It was Dan Kremer, Ted Todd, Pat Benke, Don Work, and Howard Wiener. That sound right?

Charles Froehlich: That's right.

Judith Haller: All right. So the three of you arrived, and I would assume that the reason we got three new positions is that the workload must have been pretty horrendous.

Charles Froehlich: I would assume so. I don't remember that there was a horrendous workload.

Judith Haller: Maybe the number is justifiable.

Charles Froehlich: Coming out of private practice, the office of the Court of Appeal justice seems rather relaxed.

Judith Haller: I would agree. Having a husband who still practices in the private practice, he reminds me of that from time to time. But in any event, we clearly . . . To be more grounded, San Diego had grown tremendously both in North County, East County, and the South Bay. I've looked at some of those numbers, and we were . . . certainly the caseload suggested we needed help.

Now, I wanted to go back to an issue, because you came to our court and you were here for seven years. And I want to spend some time talking about the types of cases that you had, but the first thing I want to talk to you about was this.

On the superior court you never had a dependency assignment, or as a private practitioner you never had any dependency work; and yet we all know the contribution that you made to not only the case law but to the statutes that apply to dependency. So let's talk a little bit about that. What happened?

Charles Froehlich: The system of assignment of cases in the Court of Appeal at that time, and probably still, was pure chance. So every justice would get his or her share of whatever there was in the pipeline.

Accordingly, I turned up one day with an important dependency case. I didn't know much of anything about dependency law and neither did my research attorneys. But we slogged through it, and I concluded that it maybe created some new law, though we published it.

(00:55:01)

Judith Haller: Do you remember what the issue was?

Charles Froehlich: No.

Judith Haller: Okay, fair enough.

Charles Froehlich: Well, dependency, usually the issue is whether the child gets taken away from his parent or not.

Judith Haller: So it may have been a 2-6 or something, a termination issue, but in any event, you wrestled through the legal issues and published this opinion and what happened?

Charles Froehlich: That's right. Well, there was and perhaps still is a trial judge in Santa Clara County who specializes in dependency law and is very expert at that. He kindly but rather directly wrote me a letter saying, "Justice, that's a very interesting opinion you wrote. You misconstrued certain areas of dependency law which I would like to point out to you."

That was very kind of him to do that. And I was somewhat humiliated to recognize that I really was over my head. And as a result, I diligently applied myself to learn something about dependency law. Read the statute, to start with, try to figure out what it meant. And in the process, I became convinced that we were doing things badly in the dependency area, mostly because we didn't get things decided promptly.

A problem would arise, and some claim would be made against a parent, and it would take months or years to resolve the issue. And in the meantime the little kid is growing up, either in the wrong environment or improperly taken away from his parent, and by the time the Court of Appeal gets around to doing something about it, it's too late. The problem has gone on.

I don't exactly remember how we started the campaign.

Judith Haller: But you recognized that in the life of a child, and the younger the child, the more important this was. Six to eight months was a very long time period.

Charles Froehlich: That's right, and that was characteristic, and it could be longer.

Judith Haller: Absolutely.

Charles Froehlich: So I worked with a lawyer named Gary Seizer, who was in the county counsel's office and was in charge of the dependency section.

Judith Haller: And still is.

Charles Froehlich: And we came up with the idea that we should require that review of dependency decisions be made promptly, right away—not in the usual appellate system. The way to handle that was to require that they be reviewed by writ.

There was some precedence for this in other areas of law; some things had to be reviewed by writ. And we thought, well, why don't we require this to be reviewed by writ? So we got together and crafted a proposed piece of legislation that would do just that. And I think it had some time

requirements too; you had to file your writ within a certain period of time or else you lost your right.

We managed to sell that to the Legislature. And that was a big change.

Judith Haller: And you testified, did you?

Charles Froehlich: Yes. I went up to Sacramento and testified before the subcommittee that was working on that. I don't recall that we had any great opposition.

Judith Haller: Did you attempt to find someone in the Legislature from San Diego who would support this?

Charles Froehlich: I think we did, yes. We got somebody. Now I don't recall who it was; he's not there any longer. I think we got somebody to sponsor the bill.

Judith Haller: And when you say "we" this is you and Gary Seizer?

Charles Froehlich: Yes.

Judith Haller: In listening to you talk about the fact that after you received the letter from the superior court judge and you started really concentrating, it sounds a little bit like the summer you spent concentrating on tax law at Boalt; you just put your heart and soul into it and learned what you needed to learn and then started this campaign to get the law changed, correct?

Charles Froehlich: Yes. When we did get the law changed, then all of a sudden we had this big flow of writs coming in. The judges—

Judith Haller: Well, let me back up just a smidge. How did the local dependency bar respond to the idea that suddenly they were going to have to be bringing writs as opposed to appeals? Were they enthusiastic, or did you have to do a little sales drive?

Charles Froehlich: The response was variable. Some of the people congratulated us and accepted the idea of prompt appeals. But a number of people in the bar who did work in this area were just scared about it, because they didn't know how to file an appeal or a writ and probably didn't know the difference between the two.

(01:00:09)

So I embarked upon an educational campaign. We held two or three meetings with the bar trying to explain to them what this new system was. Everybody knew that ordinarily writs aren't granted, they're usually denied. Not because you decide whether they're proper or not; you just decide that you can avoid determining.

Judith Haller: Sure, it can be taken care of later.

Charles Froehlich: It can be done later. But that's not what we wanted. In the statute it said that we won't deny the writ based upon procedural grounds; we'll resolve

these writs and we'll do it quickly. So I tried to convince these people of that. I said, "We're not going to turn down your writ just because you don't know how to file a writ. Tell us what happened; give us the record of what happened in the trial court below. We don't care if you don't know how to do this. We'll handle it."

I even said, "Buy some red binders, which you need to file a writ, and a stapling machine, and take your superior court paper and staple it with a red binder and we'll read it."

Judith Haller: And we did.

Charles Froehlich: And we did.

Judith Haller: Justice Froehlich, let me ask a few more questions about the juvenile dependency.

So you convinced the Legislature, you ultimately convinced the attorneys, that this was the right way to go and not be afraid of it, and then what? The writs started to pour in?

Charles Froehlich: Yes.

Judith Haller: How did your colleagues respond to this? Were they behind this to begin with?

Charles Froehlich: Yes, they were, particularly since they had the impression that if problems came up, they could shunt them off to me to solve one way or the other.

Judith Haller: Did it turn out that they were shunted off to you, or what happened?

Charles Froehlich: Yes, that's how it turned out. As I think I mentioned previously, the assignment of cases in this court has always been on a random basis. But with this new procedure of multiple writs coming in every month, the court got together and decided that we should assign somebody to handle these writs, which of course we did. For all writ work, we had a rotating panel of writ people, but they decided we should just have one person handle these writs because that way we would get some uniformity in the decisions. And of course so they assigned me to do that. I had a period of—I don't know whether it was six months or a year, but a long period of time—when I handled numerous dependency cases. And as a result I became something of an expert in the field, which as you suggested earlier was somewhat ironic, because I really didn't have any background in it at all.

I prepared a diagram, I remember, of the channel of dependency work and how you had to do this within 30 days and this within 90 days. And Howard Wiener came over once and he said, "I hear you've got a chart that shows how to handle these." And then I gave him the chart. He said, "That's wonderful." *[laughing]*

Judith Haller: I bet it was very, very useful. So you were lead, then, for some period of 6 to 12 months in the early stages of this, correct? And then your two other members were randomly assigned.

Charles Froehlich: Yes, I believe so.

Judith Haller: One of the cases that is cited—I think it's probably the most frequently cited case in all of California—is *Autumn H.*, which defined beneficial relationship and parental relationship. And for a long time I thought you were lead on that, you were on that panel; but apparently Don Work was lead, it was Don and you and Dan Kremer. I don't know if there was any conflict over that decision.

Charles Froehlich: We all agreed on it.

Judith Haller: You obviously did.

Charles Froehlich: I had a number of published cases, and for a long period of time, I wrote cases that said, "You cannot appeal this dependency case because you did not file a writ." And finally the bar figured this out, but it took a while.

Judith Haller: And indeed, we know statistically that to this day, I think our court probably handles the most dependency cases of anyone in the state.

(01:05:08)

Charles Froehlich: We've never figured out why that is.

Judith Haller: No, we haven't.

Charles Froehlich: It's not because of our court; it's because of something that happens before they get here.

Judith Haller: Even whether you look at it on a per capita, however you look at it, we have the most of the cases. Do you consider your work in the dependency field to be one of your most important contributions?

Charles Froehlich: I really do. I think that change in the way that we handled the dependency issues was very beneficial to people.

Judith Haller: Certainly the idea that these little ones, we make the decisions sooner rather than later is very, very important, that we keep everyone focused on the fact we need to make decisions and get enough information so you can make a decent decision.

Charles Froehlich: Right.

Judith Haller: You had 176 published cases during your tenure at our court, which includes that time you were here for about a month pro tem, but that was just 2 or 3 cases—and about 11 published dissents and 8 or 10 concurrences. You were involved in an awful lot of insurance cases as well.

Charles Froehlich: Yes.

Judith Haller: Any recollections about any specific insurance cases?

Charles Froehlich: This was a period of time when insurance law was changing.

Judith Haller: And fluid.

Charles Froehlich: And fluid. We three new Republican members of the bench were not as favorable toward expanding the potential liability of insurance companies and were not so ready to find bad faith and punitive damages. And so in general, during this period of time there was a restriction or a constriction of the area of potential damage liability of insurance companies. I participated in that, along with other people.

Judith Haller: When you came, Ted Todd had done insurance coverage work when he was practicing, so he certainly had a strong background in that. And then I think two things were happening during this time period. You had the issue of what rules were going to apply to interpret insurance policies, and some up to that time had used, "Let's treat them as what they are"; they're contracts and apply contract law. And others had a different way of looking at insurance, how you interpreted an insurance company or insurance policy.

Charles Froehlich: Yes, they labeled insurance companies as fiduciaries, which we decided at some point that they were not.

Judith Haller: Right, the Supreme Court agreed.

Charles Froehlich: Yes.

Judith Haller: And during this time period you wrote many cases about the fact that you look at an insurance contract in the same way you do any other contract and you apply the rules that apply to other contracts in terms of interpreting what a policy means.

Charles Froehlich: That's right. Justice Staniforth, one of our predecessors, had the view that if you can figure out a way to construe an insurance policy against the insurance company, you would do it. We decided that wasn't really quite appropriate.

Judith Haller: And again, the Supreme Court at that time was writing a number of cases that confirmed that point of view, correct?

Charles Froehlich: Yes.

Judith Haller: And then I know there was a case . . . You mentioned the bad-faith issue and the punitive damage issue, and of course the Supreme Court during this time was very active in that area with *Moradi-Shalal*. But they also wrote a case called *Waller v. Truck Insurance,* and you were on the panel in that case, were you not?

Charles Froehlich: Yes.

Judith Haller: Why don't you set the stage in terms of what that case was all about, because that's a very important case in insurance law.

Charles Froehlich: Well, I haven't reviewed that case, but I know that it had to do with the obligation of defense and the question of bad faith for failure to defend.

Judith Haller: Let me set the stage. It was a scenario where Truck Insurance had an insured by the name of Waller, and Waller had been sued in a third-party case that was basically a business dispute. And there were allegations in that third-party complaint that as a result of economic damages, supposedly caused by Waller, the third-party plaintiff had suffered emotional distress.

(01:10:06)

Charles Froehlich: That's right; you're very much on top of that case. *[laughing]*

Judith Haller: Only because I looked at it again yesterday. *[laughing]* So here was the issue: the issue was emotional distress damages had been alleged by the third-party plaintiff, and the question is whether or not that triggered the duty to defend.

Charles Froehlich: Yes.

Judith Haller: And our court said?

Charles Froehlich: Our court said no, but the way we got there I recall with interest and fond recollections, because Justice Todd was the lead author in the case. And I got his draft, and he was of a mind to reverse part of the decision and affirm part of it. And I knew that Rivian, his assistant, had written the draft. So I talked to her, I asked her to come and see me, and I said, "Rivian, this is a case that's just plain wrong. You can't just reverse part of it; you've got to reverse all of it."

Judith Haller: Because the other issues were waiver and promise and detrimental reliance.

Charles Froehlich: Yes, a bunch of other issues.

Judith Haller: And whether or not you have bad faith, if there was never a duty to defend a "no coverage," can you still have a bad faith?

Charles Froehlich: Exactly. And Rivian said, "Well, I've done the best I can with this case. You tell me what you think should be done." And I said, "Okay." So I just rewrote the whole case the way I wanted it to be, sent it back to Justice Todd, and he came and he says, "Charles, I think that you're right." You know how Ted is. "I think you're right. Let's publish it." He signed it, and we published it.

Judith Haller: And then of course, as it should have, it went up for review and it was accepted; because at that point in time the cases were going in a lot of

different directions and the Supreme Court affirmed on all grounds, six to one.

Charles Froehlich: We had really good assistance in that case. I don't know if you saw the lawyers who were on the case, but it was argued by Horvitz & Levy.

Judith Haller: Yes, I noticed that.

Charles Froehlich: He did a great job of arguing. We accepted his position.

Judith Haller: Let's talk a little bit about that right now, in terms of some observations or thoughts you have about just how critical the briefing is for us in what we do as appellate justices.

Charles Froehlich: The briefing is very critical because the nature of the system is that we rely on what we see in the briefs. It's very seldom that the justice has the time or the inclination to go behind the briefs and do the work that the lawyer should have done. Sometimes we have to do that because it appears that an injustice will occur if we don't do it. But ordinarily we rely, and it's appropriate that we do rely, on the briefs. I think more and more we're seeing professional appellate practitioners prepare briefs rather than trial practitioners preparing their own brief, and so the briefs are better.

Judith Haller: Why do you think they're better? Because they're specialized, they understand the process, what?

Charles Froehlich: They're specialized, they understand the process. They know what it is that we are looking for, and they know what it is that will result in possibly winning the case for them—whereas the trial lawyers, although perhaps being well versed in trial law, don't always understand what it is that we need.

So yes, we rely very heavily on the briefs. Now, whenever you go to a seminar on appellate practice people will be asking, "Well, how important is the oral argument?" And of course old-time lawyers think that oral argument is the greatest thing in the world and that they can sway—you know, they're all Clarence Darrow–type people—they can sway people with their oral argument.

It's very seldom, in my opinion, that things get changed in oral argument. Some appellate justices really like oral argument because it's their only chance to mingle with the bar, and they use it as an opportunity to harass lawyers and give them a bad time. But that doesn't help us much when that happens.

There is occasion, however, when you do have a difficult issue, as in the *Waller* case, in which the appellate argument can be very instructive, and so—

(01:15:00)

Judith Haller: Helps to refine.

Charles Froehlich: Helps to refine, yes.

Judith Haller: Clarify.

Charles Froehlich: And that's particularly true if in fact someone on the panel has a bona fide question that he or she doesn't know the answer to and thinks that maybe he can get that answer from the lawyer; and sometimes we do.

Judith Haller: Did you ever have the experience of a case where the written work just didn't help you get to where you wanted to understand the case, and suddenly at oral argument—because the attorney may have been a better oral advocate than a person who is able to write—that suddenly the light went on and you would say to yourself, "Oh, now I finally get what you want to do"?

Charles Froehlich: I really can't recall that, but I certainly can recall situations at which the light went on because of the opposing counsel who said to the court, "Appellate members, my opposing counsel says this, but you've got to understand the following that you didn't really understand." So it's seldom that an incompetent lawyer improves his position with oral argument, but a competent lawyer certainly can devastate the other party in oral argument.

Judith Haller: Also I recall when I was brand-new on the court, and we had a case and you were on the panel and it was a new issue; there was no law. It was a question of whether what was going to be the level of proof that was required in a family law matter. And I remember it was written to say, "(a), and after oral argument." We all looked at each other and said, "Whoops, it should be the other way," and we rewrote it.

You probably don't remember that, and I don't remember the name other than I remember it because I think it was the first month or two I was on the bench.

Charles Froehlich: That happens occasionally. Usually, though, that happens because somebody on the panel has picked up deficiency in the brief.

Judith Haller: I think that's a fair observation as well. Now, any other cases that you recall during your time period that stand out or that you wanted to comment on?

Charles Froehlich: Well, I'm always amused and I occasionally review and reread my dissent in one of your cases. *[laughing]*

Judith Haller: *[Laughing]* Oh, you're talking about the knife case?

Charles Froehlich: Yes, the knife case.

Judith Haller: I think it was a concurrence, because you agreed in the judgment. Yes, why don't you tell that story? *[laughing]* It was a question of how do you measure five inches, correct?

Charles Froehlich: Yeah, it was a question of how you determine whether the knife that the child had violated the law that said, "You cannot bring to school a knife longer than such and such." And there was a question about it; and the trial court, who was a, she was a, very competent trial judge, I thought, had decided one way—I don't really remember what it was—but the appellate court reversed.

And I wrote a very sarcastic dissent, I think, saying, "Good Lord, can't we leave a few little trivial things up to a trial judge instead of trying to remake everything?"

Judith Haller: I think I remember after reading your dissent, I thought, "Oh my goodness, I've just been Froehliched.'

Charles Froehlich: I occasionally get somebody . . . on at least two occasions, an appellate justice has written me a little note saying, "I was laboring over this problem, some kind of a problem, and then I read your dissent, and I thought, my god, he's right. Leave it to the trial judge; we don't have to fix everything in the world."

Judith Haller: Maybe you didn't experience this, but I look back to some of the early months on the bench and I think you certainly . . . sometimes there's a level of maturity that comes after you've been on the bench or on the appellate court for two or three or four or five years as you go on.

Charles Froehlich: Yeah, I fear that there may be a level of something else that occurs after you've been on the appellate court for 10 or 15 years, which is one reason why I decided I'd better get out. *[laughing]*

Judith Haller: All right, well, there you go. You did decide to leave, and you went back to not exactly private practice; you left our court in July of 1995, and you went into private judging, and you've been there ever since, quite actively, correct?

Charles Froehlich: Yes. I did return to active membership in the bar and I still am a bar member.

Judith Haller: Do you handle any cases as a lawyer at this point? When you went back after you left our court, did you do any traditional lawyer work as opposed to mediation, arbitration, private judging?

(01:20:09)

Charles Froehlich: Yes, but only for people who were already old clients.

Judith Haller: All right, then, let's concentrate on, tell me a little bit about, the nature of the work that you've been doing over the last . . . it's hard to believe, but what, it's been 12 years.

Charles Froehlich: Yes. During that period of time and indeed before then, the practice of resolving cases by structured negotiation by a mediator or an arbitrator came more into vogue than it had been. I'm not sure why; I think

possibly because the courts were becoming very crowded and litigation, I believe, had become much more expensive.

When I first started practicing law, if you filed a case you expected to go to trial. And some of them negotiated out, but a lot of them went to trial. One did not spend dozens of thousands of dollars preparing for trial. You did an investigation, you figured out what the case was about; sometimes the first time you heard from the witness's mouth what he or she thought was at the time of trial.

Well that's passé; you can't do that anymore. You've got to prepare diligently and use up a lot of paper and time. Things have become very expensive. And as a result, in the '80's and '90s, and now especially, it's very prudent for lawyers and their clients to find some way to resolve a dispute without going to trial. And the way that you do it is either through mediation or arbitration.

There's some problem about people resolving cases by direct negotiation; it just doesn't seem to work as often as it should, whereas if they have an intermediary, either in the sense of arbitration or mediation, it's more successful.

Judith Haller: If I understand correctly from some articles that I've read, you prefer the arbitration process over the mediation process, correct?

Charles Froehlich: In my participation in it, I'm happier to be a participant as an arbitrator than a mediator.

Judith Haller: And why is that?

Charles Froehlich: Well, I think I'm better as an arbitrator. Mediation doesn't necessarily involve resolving the law one way or the other. It's more a psychological process. You hunt and search for the key to getting these people to get rid of their case, and it doesn't necessarily hinge upon their legal rights; oftentimes it's something else.

And it takes a personal of particular talent to do that. Some people do it much more effectively than others. Although I've been successful in mediations and I still do mediations, I find it terribly difficult work—very time-consuming, very tiring.

Judith Haller: It's very emotionally draining sometimes.

Charles Froehlich: Exactly. If you succeed in settling a very difficult case and the parties, although not happy, are resolved and happy to get the case over with, then it is a very satisfying feeling. But sometimes you work all day long—and sometimes more than that—and you get close and the offer is $150,000 and the demand is $175,000, and you just can't settle the case; and that's very disturbing.

Judith Haller: I've heard some mediators say that they're relieved when they come in with a great difference than a small difference because sometimes it's harder to resolve the small differences than the huge differences.

Charles Froehlich: Sometimes.

Judith Haller: On the arbitrations, do you think that arbitration is faster and less expensive than going to trial, or is it turning into just a different form of trial work that is expensive and long and difficult?

Charles Froehlich: It unfortunately is not always faster and unfortunately not always less expensive. For instance, I'm currently arbitrating or preparing to arbitrate a number of cases, and a couple of them involve a three-judge panel, which will take anywhere from two weeks to five weeks to arbitrate. Each of those judges charges an average perhaps of $400 an hour; a typical day is seven or eight hours.

(01:25:07)

Judith Haller: Right, and it's an intensive seven or eight hours.

Charles Froehlich: Well, that's right, but the cost is what I'm talking about.

Judith Haller: I understand.

Charles Froehlich: The cost is $3,000 a day per arbitrator; that's roughly $10,000 a day. It's a lot of money.

Judith Haller: Times 15 days is a lot of money.

Charles Froehlich: Yes. So you start this arbitration and all of a sudden the American Arbitration Association sends you a letter and says, "You need to deposit $75,000."

Judith Haller: That could take your breath away.

Charles Froehlich: If it's a case that involves $10 million, I suppose that's all right, because the lawyer is charging that much himself. But the original concept of arbitration was to get rid of these little cases where the cement contractor poured a bad slab and the homeowner wants it re-poured, and you should do that in three hours without any preparation. Unfortunately that has gone by the by.

` On the other hand, there are still some significant advantages to arbitration. First of all, you get to select the arbitrator, and that is a major advantage for some people; because if you go to superior court, you're going to usually take potluck, and you may find somebody that just isn't appropriate for your issue.

Judith Haller: Sure. If you have a tax issue, it's nice to have someone with a tax background.

Charles Froehlich: Yes. And second is you will go to the arbitration hearing when it was set and you won't wait around for an hour while the arbitrator sentences some people to prison. And it's flexible in the sense that if you have difficulties with a witness, you can set up the testimony when the witness

is in Hong Kong if you want, if your arbitrator allows it to be done. So it's a much more flexible proceeding, but it's not necessarily quicker and it's not necessarily cheaper.

Judith Haller: I know certainly we've had so many judicial decisions regarding the issue of, can you force someone into arbitration and the enforceability of an arbitration contract. I have heard it said that some business attorneys have some reluctance to arbitration or are not as enthusiastic as they used to be because of some of the issues you're talking about: it's not necessarily less expensive and it's not necessarily faster; you still have the same discovery.

But they worry about the fact that there is no right of appeal; or it's not there's no right, but it's so limited in terms of correcting what everyone might agree was clear legal error. Any thoughts on that issue?

Charles Froehlich: You are correct; there is no effective appellate right. The only grounds for appeal, there are only about two of them: one that the arbitrator did not disclose a bias or a previous relationship with some of the parties; and the second one, unfortunately, is that the arbitrator didn't hear all the evidence, and the discouraging result of that is that, unlike in the superior courts, you just cannot turn off people.

If the lawyer wants to examine a witness for three days when he should have done it in two hours, he gets to do it, because arbitrators are very reluctant to say, "I've heard enough, I don't want to hear anymore." You just can't do that. And that extends the arbitration proceeding, but that's a great advantage and also a disadvantage of arbitration.

Many people say, "Look, if we've got a good judge or a good arbitrator, we want to get this over with; that's why we went to arbitration. We don't want to go through another five years of appellate process. We want to get it done." Now, some of us arbitrators, including some of the people I work with, like Howard Wiener and Ted Todd and Jerry Lewis.

Judith Haller: Let me just make sure everyone understands, those were all your colleagues on our court at one time.

Charles Froehlich: That's right. We have proposed from time to time to people that they include an appellate provision in the arbitration. And some people have done that, but very few. The trouble with arbitration clauses is that usually it's the last thing the lawyers think about in the contract. They worry about the terms of the contract and at the end they say, "Let's put in an arbitration provision." So they dig one out from somewhere and slap it in.

(01:30:00)

If you're really worried about the appellate process, you can say that there is a right of appeal from the arbitrator's decision, and then of course you have to figure out how you do that.

Judith Haller: Right, and there is at least one case out there that says that those are not enforceable because you don't have the statutory right. But in any event—

Charles Froehlich: That's because you can't vest jurisdiction in the court to do it. But you can create an appellate arbitration panel, and that's perfectly logical, except it costs a lot more money.

Judith Haller: Well, while we're on the appellate issue, I know that one other thing you're doing in your private capacity is assisting lawyers who are writing appellate briefs. Tell me a little bit more about that.

Charles Froehlich: Yes, I do do that, and I like to do that, and the lawyers find that very helpful.

Judith Haller: What do you do?

Charles Froehlich: It depends on the stage of the proceeding that which I'm employed, but the most common situation is in the middle of a briefing that the lawyer will send me like the opening brief and his draft response and part of the record of the case and ask me to critique it, to tell him what I think. And he always wants me to tell him in written form in detail, or even to make suggestions as to how to rewrite it.

I'm sure that's helpful. And I've been told it is very helpful. But it's clear to me that there is another very logical reason for doing this; in every case somebody is going to lose. And it's very helpful when you're talking to your client after you've lost a case to pull out the letter from this old retired justice who said, "You've got a good brief, you've done this as best you can."

Judith Haller: Yes, understood. I hadn't thought about that part; that's interesting. Do you think that in your experience in doing this, is it a scenario where you have predicted what the Court of Appeal is going to do, or simply identified problems, or a combination of both, or what?

Charles Froehlich: Combination of both. Of course, sometimes people send me cases in which their clients demand that they file an appeal and they don't think it's warranted. That's a good lawyer who will tell his client that, but the client doesn't believe him, so he asks me to review the case and usually tell him the same thing; and I do do that.

We've had in this alternative dispute resolution arena a number of cases over the last few years, and these are big cases, important cases, where the lawyers have finished their briefs and they want to practice their oral argument; and so they convene an appellate panel, almost always retired appellate justices.

Judith Haller: So basically a mock?

Charles Froehlich: A mock appellate hearing. And we hear it and we read the briefs at a time, we try to stage it just like the appellate court would stage it—

asking him questions, trying to prep him up. And the lawyers think that's good.

Judith Haller: And you've enjoyed that, I take it.

Charles Froehlich: Yes. They make a big thing out of it; they hire a room with a stage if possible, and usually it's a case that several lawyers in the firm have worked on. And so the guy that they pick to argue is presenting not only to us but to all of the people from his law firm.

Judith Haller: Who know the case intimately.

Charles Froehlich: Who know the case, yeah.

Judith Haller: I want to talk a couple of things about some of your hobbies because they're so interesting, and then I want to get back to just some sort of general observations you have; but is there anything that I haven't covered so far about your career that you would like to comment on?

Charles Froehlich: Well, you pointed out that it's been now 12 years in this practice.

Judith Haller: It's one of your longest stints.

Charles Froehlich: Do you think the Governor might appoint me back to the bench?

Judith Haller: If the Governor had good sense that would be great.

Charles Froehlich: *[Laughing]* Oh, well, I don't think he will; but anyway, it's time to move on.

Judith Haller: *[Laughing]* All right now, you have some hobbies that you list in a manner that if I listed them in their proper term, a lot of people would not know what they are. So I'm going to do the easy version.

(01:35:02)

You grow grapes for wine; you, as one person described, are a Renaissance man. You make wine, you grow avocados, you commercially raise bees, you also study agriculture, and you play handball. Let's do the ones that are agriculturally related; have I missed any of them?

Charles Froehlich: No, I don't think so. I've been interested in agriculture for a long time. I like to get out and roam in my avocado grove and attend to my bees.

Judith Haller: Therapeutic?

Charles Froehlich: Yeah, it is. It's completely different than the practice of law. Some people play golf on the weekend, but I work in my avocado grove.

Judith Haller: And do you still make your own wine?

Charles Froehlich: Yes. I was an owner and manager of a winery at one time in the '80s for a long period of time, and I engaged in wine importing for a number of

years on a semi-commercial basis. In other words, importing not for my own purpose, although I always drank my share, but—

Judith Haller: Yes, there are some stories of the wonderful wine that you would bring to the court for very special occasions.

Charles Froehlich: But anyway, I curtailed all that business, so now I just have my own little home vineyard, which is a small vineyard—it's about 40 vines. And I make my own wine out of it.

Judith Haller: And it rivals any California wine, correct?

Charles Froehlich: Well, it's just like cooking; sometimes it turns out like you hope and sometimes it doesn't. And the discouraging thing about that is, it's awfully hard to throw away wine once you've made it. And yet when you go down to the cellar to pick out a bottle, you know which one tastes better than the rest, and so you drink up the good wine; and after about 10 years you've got a cellar full of bad wine. *[laughing]*

Judith Haller: *[Laughing]* Everyone knows if wine doesn't taste right. I have a vague recollection of . . . we overlapped a very short period of time, and there was a time when we used to meet every morning for coffee. Do I have a vague recollection of you having an involvement with scallops, or oysters? I must not be remembering correctly.

Charles Froehlich: I enjoy fresh seafood—raw oysters and things like that.

Judith Haller: I thought one of the children was involved in some kind of a—

Charles Froehlich: One of my children?

Judith Haller: Yes. What was that?

Charles Froehlich: Yes, my third daughter Helen lives in Cayucos, which is up on the coast, and her husband George is the manager of an abalone farm, grows abalones. That is a very interesting business.

Judith Haller: I bet it is. Have you had any involvement in that?

Charles Froehlich: Just eating them once in a while, but they're so valuable he doesn't give me very many.

Judith Haller: *[Laughing]* You still play handball, do you?

Charles Froehlich: Yes.

Judith Haller: And at one time you were involved in the Civic Youth Orchestra; was that because of your own children?

Charles Froehlich: Yes. The kids were in the Civic Youth Orchestra and parents had to do their duty on the board.

Judith Haller: What instruments did they play?

Charles Froehlich: They play string instruments and also one of my daughters played piano.

Judith Haller: Let me take you back to just sort of generally, do you have any advice for young attorneys? Would you recommend someone going into the legal field at this point?

Charles Froehlich: Yes, certainly. It should be someone who is adept at the things that are required in the legal profession, mostly knowing how to read and write. My daughters, as we mentioned, were initially interested mostly in music, and once they graduated from their music school, they considered a career in music, and we quickly concluded that in the sphere of music maybe 10 percent or less of the people who would like to be professional musicians wind up making a living at it.

(01:40:01)

In the law, I would say 80 percent or more of people with a legal education who would like to make a living can do it. So it's a much more successful occupation. I'm always amused at my second daughter, who decided that music was not the best thing for her and she wanted to do something part time, and I said, "Well, why don't you go to shorthand school and learn how to take shorthand? You can make some money at that for a year or two." She did and she was very good at it.

But after about a year of doing that, she concluded that most of the lawyers who were appearing before her seemed less competent than she herself was, and so she went to law school. *[laughing]*

Judith Haller: And did well, I know. Do you think the legal profession is headed in the right . . . life and society are different than they were when you were born or even when I was born, and there are many new and different developments. Do you think the legal profession is keeping up with the needs and demands of the society? Do you have any thoughts or observations about that?

Charles Froehlich: I don't think we are.

Judith Haller: What should we be doing?

Charles Froehlich: The legal profession may be keeping up with the requirements of a small segment of our society, those people who need high-powered advice about corporate mergers and initial stock offerings and major business activities. It is possible—I don't know the answer—it is possible that the people in the field of criminal law are doing their job.

But in terms of the rest of societal activities, we have become too cumbersome, too expensive and difficult to work with, and I don't think we're providing the service that people need. We over-litigate too much. I don't know whether it's because of the advent of malpractice claims or what.

But advice that used to be given by lawyers without a great deal of pre-preparation or expense, and usually was the correct advice, is hardly ever given now. I don't think there are very many lawyers who have clients who come in and say, "John, here's my problem, what do you think I should do?" and they tell him. I don't think that happens; I think they say, "Well, write it down." And they send it to an associate, who researches it, comes back with a memo. That's okay for big business, but not for the ordinary person. And of course litigation is like we talked about before, becoming almost impossible.

Judith Haller: Yes. If you had the authority and ability to change things, do you have any suggestions of what we ought to be doing?

Charles Froehlich: Well what Howard Turrentine did on the federal court was a step in the right direction. Do you remember when he said, "You can issue 20 special interrogatories and that's all?"

Judith Haller: I didn't realize he was the one behind that.

Charles Froehlich: He was.

Judith Haller: Justice Froehlich, as you look back, I know that you were very proud of the work in the dependency field; any other matters that you're particularly proud of?

Charles Froehlich: I think that our appellate system in general is pretty good. I just got through criticizing the legal profession in a sort of broadcast manner. I don't think that applies to our appellate system. And I may be referring specifically to the California appellate system, because I really don't know about the rest of them, but I think we do a good job, basically. If I were to be asked to make suggestions as to how to change it, I don't think I would have very many suggestions.

Judith Haller: Any advice you would give to new lawyers, perhaps not in the area of how to be a competent attorney but just any overall advice to them in terms of entering the practice?

Charles Froehlich: I think if a lawyer can find a position in which he is thrown into ordinary and not too important legal issues early on is a good thing.

(01:45:01)

I know it's difficult for young lawyers to find any real trial experience these days. But if they can, even if they don't want to be trial lawyers, it sure is a lot easier to make silly mistakes in your first year or two in the practice than it is if you try to go back and try a lawsuit after being in the practice for 10 years and you don't know how to do it.

Judith Haller: Well, thank you. I don't have any other questions. If there is any other observation you would like to make, we would certainly like to record it. I appreciate you doing this.

Charles Froehlich: It's been a pleasure to talk to you, and I'm very appreciative of you taking so much time out of your day for this.

Judith Haller: Not at all. All right, okay.

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