David Knight: Last name, and give me your title.

Elwood Lui: Elwood Lui, L-U-I. Associate Justice, retired, in the Second Appellate District, Court of Appeal, Division Three.

David Knight: Great, and Justice Gilbert?

Arthur Gilbert: You remember all that. I am Arthur Gilbert, G-I-L-B-E-R-T, the Presiding Justice, Court of Appeal, Division Six, Second District.

David Knight: Excellent.

Arthur Gilbert: State of California.

David Knight: All right, we're all set to go.

Arthur Gilbert: Well, welcome to the Court of Appeal oral history project. I am Arthur Gilbert, Presiding Justice of Division Six, and I have the distinct pleasure of interviewing my dear friend. We both started on the court together as municipal court judges some 32 years ago—Retired Justice Elwood Lui, who has a fascinating life. We will probably be here about two or three days just covering your interesting biography.

But welcome, Elwood. It's good to be talking to you; we talk on the phone about three or four times a week. But you have a really interesting history. You're a native of Los Angeles, right?

Elwood Lui: Well, thank you, Arthur. I'm pleased that you're doing this interview of me as opposed to others.

Arthur Gilbert: I know an awful lot about you.

Elwood Lui: Yes, I am a native of Los Angeles. I was born and raised here in Los Angeles.

Arthur Gilbert: In fact, you live pretty close to where you were born, don't you? You live in Silver Lake?

Elwood Lui: Actually, I was born on East 18th Street, which is not too far from here. It's at approximately Maple and Washington, which puts us within two miles from where I was born.

Arthur Gilbert: We're downtown at the Court of Appeal building on Main Street. You're a real Angeleno. Tell me a little bit about your childhood.

Elwood Lui: I'm the seventh child of my parents, who emigrated from China in the early teens. My father was here first, by 1916 or 1917. He stayed here for a few years and worked in what immigrant Chinese-Americans did when they came to the United States—worked in pretty menial jobs because he could not get regular employment at something that he was more skilled at. He went back to China in the '20s, and he eventually returned to the United States in about 1925 with my mother.

Arthur Gilbert: So they settled . . . you mentioned you have seven brothers and sisters, seven siblings.

Elwood Lui: That's right. I have three sisters, who came first, and three brothers. I'm the end of the line.

Arthur Gilbert: You're the baby of the family.

Elwood Lui: Yes.

Arthur Gilbert: Okay. When you were born, how many years ago was that now? What year was that?

Elwood Lui: That was 1941. The war had broken out. I have to check my history, but I was born on February 4, 1941, in Los Angeles at the address that I had indicated before. In those days, we had midwives that delivered babies. I was delivered by a midwife.

Arthur Gilbert: That must explain some of your peculiarities. Is that it?

Elwood Lui: Maybe a lot of them.

Arthur Gilbert: You were born in the house. There's an old joke: "I was born in the house. It was after my mother saw me that she went to the hospital."

Elwood Lui: A doctor was summoned fairly quickly, and maybe there was a problem. The same doctor who attended to all my siblings supervised, I think, the final delivery stages of my birth.

Arthur Gilbert: Where did you go to school?

Elwood Lui: I went to public schools in Los Angeles. I went to Arlington Heights Grammar School, which is near 7th Avenue and Washington. Adjacent to that grammar school was a junior high known as Mt. Vernon. It's now renamed for that attorney whom we both know, Johnnie Cochran—it's now Johnnie Cochran Middle School.

Arthur Gilbert: Really—is that something?

Elwood Lui: From there I went to Los Angeles High School.

Arthur Gilbert: You went to L.A. High. A number of your contemporaries who became quite successful and community leaders were at Hollywood High at the same time you were, right?

Elwood Lui: Hollywood High?

Arthur Gilbert: I mean—whoops, that's where I went; that's where I went to school. *[laughing]* We were rivals with L.A. High.

Elwood Lui: Right.

Arthur Gilbert: But tell me some of the other people that were there.

Elwood Lui: My classmate that I retained the longest relationship with is Dick Tevrizian, who just recently retired from the United States District Court. He is now with JAMS, but he and I—

Arthur Gilbert: Now, JAMS is the Judicial Arbitration and Mediation Service.

Elwood Lui: Right, what they would like to call the primary provider of dispute resolution services. And a number of well-known and distinguished judges stayed in favor of, joined that, organization following their judicial careers.

(00:05:12)

Arthur Gilbert: Now, Dickran Tevrizian was a municipal court judge. In fact, he was on the court when you and I both—we're getting a little ahead of ourselves—for just a little bit of history, when you and I both went on the municipal court. Right? Then he was on the superior court. Then he went into private practice. Then he went on the federal court. When you guys were classmates, I bet the last thing in the world you would have believed was that you would wind up doing what you were doing.

Elwood Lui: One thing that happened, we ended up on the right side of the bench rather than the left side of the bench; the other side of the bench. But I think if you would ask our classmates in the 1950s, and '58, when we graduated, who would be the two judges out of the class—who would become in that position—they would probably pick us last. I would be before last, and Dickran would be the last person.

Arthur Gilbert: In Hollywood . . . I think Burt Pines—who was the city attorney and now he's a superior court judge, and he was Governor Davis's judicial appointments secretary—he went there, didn't he?

Elwood Lui: He was the student body president, a year before my class. Kathryn Todd, Doi Todd, was in the class behind us, who is now on this district's Court of Appeal.

Arthur Gilbert: She is of Japanese descent and she was in the camps, wasn't she? Her parents were sent to the camps.

Elwood Lui: She was.

Arthur Gilbert: In fact, we were just discussing this before the interview that she has a picture of that in her chambers just down the hall from here. You and Kathy, and myself as well, we're all very close friends. You see her quite often, don't you?

Elwood Lui: She is a neighbor.

Arthur Gilbert: She is a family friend and a neighbor.

Elwood Lui: Right.

Arthur Gilbert: So I bet you all would be amazed if you could glimpse into the future and see where you wound up.

Elwood Lui: Well, because at that time, the number of Asian lawyers, and particularly Chinese-American lawyers, was few; you could count them on one hand, the number of lawyers that we had in our community.

Arthur Gilbert: At L.A. High you were kind of an athlete, weren't you?

Elwood Lui: I aspired to be one. *[laughing]* Everybody aspired to be an athlete at L.A. High because that gave you social status—so one of the things that I had to do was excel at school so my parents would let me participate in athletics. You had to do both; you had no choice. It was a great school. The athletics were at the top. The academics were at the top. We had a very racially balanced student body. In fact, if I could trace back to anything, I think my education going through public schools in the inner city, which moved from a pretty unsegregated grammar school to a very highly segregated junior high school and then back to a racially balanced high school, was something that I think molded my own personality, my philosophy in life, and my ability to relate to others. I think it was a great experience. I would never trade it for anything.

Arthur Gilbert: Terrific. You don't realize that at the time when you're there.

Elwood Lui: No.

Arthur Gilbert: Then you look back on it and you can see.

Elwood Lui: Yes, when you were going through fights, every day fight for existence at a junior high school, which was pretty tough—that Mt. Vernon Junior High School at that time—you learn how to survive and how to get along with people.

Arthur Gilbert: You were a track; didn't you—

Elwood Lui: I ran track.

Arthur Gilbert: You gave me some advice about how to run, I recall. What were some of the events you were involved in?

Elwood Lui: On the track team I ran the mile. That was the longest distance there was. We had some very fast guys. Even though I could run 100 pretty fast, I was one of the slowest guys on the team. I could only run it in about 10.3 or 4, and we had three or four guys coming around under 10-flat. Lui got to run the last and the longest race.

Arthur Gilbert: That's a pretty fast time for those days.

Elwood Lui: Well, it was, but it still wasn't fast enough to get a lane in my high school track team.

Arthur Gilbert: So, after high school, is there anything about high school that strikes you that you want to talk about before we go on?

Elwood Lui: I have had relationships with people in high school that lasted a long time. I had a good friend. Richard Maullin, who was in a semester ahead of me and later introduced me to a fellow named Jerry Brown.

Arthur Gilbert: Richard Maullin became Jerry Brown's energy secretary, was he not?

Elwood Lui: He was. Before that, he was the Deputy Secretary of State, when Jerry Brown was the Secretary of the State. He joined him in his cabinet and was the first, I think, energy commissioner or the head of the Department of Energy. He is a very thoughtful, analytical person who has great skills and is very sensitive to the environment. I think he did a lot of things at the beginning of his career in that department that have helped us improve or prevented some potentially bad things happening in our environment.

(00:10:15)

Arthur Gilbert: Yes, he was an energetic energy secretary.

Elwood Lui: That's right. We also went to UCLA together after that, so I retain him . . . that's one of my good friends from high school.

Arthur Gilbert: After L.A. High you went to UCLA.

Elwood Lui: I did, yes.

Arthur Gilbert: You majored in?

Elwood Lui: I first started out as an engineering major. Then that lasted for about a week. I went to the school and I saw these guys with slide rules, and I hadn't really been well versed in a slide rule, which was the predecessor to all these calculators. So I thought I would move on, so I just slipped around between history and French.

Arthur Gilbert: French? I did not know about this.

Elwood Lui: I had the skill of memorizing things. I could memorize all the lessons in French. I wasn't really good in pronunciation, but I scored well in tests. So I said I could be a French major. But it got harder, and the ability to retain all those French words and idioms and so forth, it was too difficult. So I then moved on to business because I wanted a skill that I could have when I'd leave college. I wanted to be employable. In those days, it was not easy for an Asian to get employed in the marketplace. A skill that you needed to have would make you employable. I wanted to be employable when I left college.

Arthur Gilbert: You went into business.

Elwood Lui: I went into business and I became an accounting major.

Arthur Gilbert: That's a far cry from French.

Elwood Lui: It is, but it's a skill that served me well in my career. Even though I eventually became a CPA—and I didn't really like it and that's why I went back to law school—it's something that, a skill that served me well in my entire lifetime.

Arthur Gilbert: You became a CPA. Now, the CPA exam . . . I remember I had friends who were in that field, said it is probably one of the most difficult exams, one of the hardest CPA exams in the country. So you had to take that tough exam, right?

Elwood Lui: Yes.

Arthur Gilbert: After you took it, then you worked for an accounting firm before you went to law school?

Elwood Lui: Well, what I did was I went in the Army after graduation. For six months I was in the Army Reserve. When I came back, I went back to the UCLA graduate program and I received an MBA that next year. Then, I joined what is now Deloitte & Touche.

Arthur Gilbert: Were there many minorities?

Elwood Lui: There were two; two Asians.

Arthur Gilbert: Wow.

Elwood Lui: One left and then I took that one's place. There were no other blacks or Hispanics. In the Los Angeles office, I was one of two. That shows you. *[laughing]* I interviewed with the big eight accounting firms then, and I received offers from six of the big eight. I was at the top of my class. I had straight A's in graduate school. I had the exam passed. I didn't get offers from everyone, but I was able to get enough offers that I could have my choice of that.

Arthur Gilbert: You weren't married yet; were you married?

Elwood Lui: I was married.

Arthur Gilbert: Crystal is your wife. You and Crystal knew each other in high school.

Elwood Lui: I knew her when she was in high school.

Arthur Gilbert: What?

Elwood Lui: She was a couple of years younger than I was.

Arthur Gilbert: You knew her in high school.

Elwood Lui: I didn't meet her in high school—maybe before, because my parents knew the family and it was a small Chinese-American community. We kind of knew everybody. I knew her and I knew her brother.

Arthur Gilbert: I just have to interject this one little ironic personal note—that is, my wife Barbara went to Marshall High School. She and Crystal discovered that even though they weren't buddies, they knew of each other and they were in high school around the same time.

Elwood Lui: In the same class.

Arthur Gilbert: In the same class, that's right. Isn't that amazing?

Elwood Lui: Right.

Arthur Gilbert: Years later we discovered that.

Elwood Lui: Years later we discovered that. I grew up on 4th Avenue and my neighbors included Laughlin and Mary Waters and Frank Waters. Laughlin became a federal judge who was a U.S. attorney. He was a big guy on the block, the U.S. attorney, one of two or three Assemblymen in the state and in the city that lived in our area. So we were well protected. We had a nice, clean street. *[laughing]* So Laughlin was somebody that I admired because I played with his nephew. We were good friends.

(00:15:07)

But I discovered that our neighbor on Market, the foreign market, was a place where your father had a delicatessen. I know that we met at a dinner, and you were talking to Dr. House of the House Eye Clinic and you were describing growing up in the area. And Dr. House was delivering newspapers in the Silver Lake Area and then you talked about your father and his delicatessen. And I looked at you. That was the gentleman who had the delicatessen, and you didn't believe me, and I then described the foreign market in detail, including where the potatoes were situated.

Arthur Gilbert: And the pickle barrel.

Elwood Lui: The pickle barrel.

Arthur Gilbert: That was unbelievable. Judge Dickran Tevrizian was there, and he knew my father as a kid. I never knew that. He knew the whole market. He used to go there all the time as well.

Elwood Lui: This is something that's probably never going to exist in Los Angeles again, because in that time, the city was not as big. We had one freeway, the Pasadena freeway. People knew each other. They got along well with each other. Oh, for a minority there was racial discrimination—you had to be careful with that and understand that people didn't always agree or like you—but the kids all got along. They knew each other. That was something that was remarkable. Hopefully it does exist still out there in the world.

Arthur Gilbert: You met Crystal and you were dating. When did you marry Crystal?

Elwood Lui: We got married when I just had finished my MBA and was a teaching assistant at UCLA. Before I started working at Deloitte, it was in the early part of 1964, we got married.

Arthur Gilbert: When you started practicing as an accountant, you were married then?

Elwood Lui: Yes.

Arthur Gilbert: Then you had a child.

Elwood Lui: At the end of the year of 1964. I continued working in accounting; then I discovered that while it was a great education, it was not something that I wanted to do for the rest of my life. So I started law school at night at Loyola in 1965. I don't remember all those dates, but '65. Eventually, I spent a year there and transferred to UCLA Law School in 1967.

Arthur Gilbert: You were raising a family at the same time.

Elwood Lui: It was difficult. I was raising a family and working full time. I was in the Army Reserve on weekends because of the Vietnam crisis. We had to go to double meetings. Working as an accountant was not easy, but everything held together and I was able to get through it all and get through law school.

Arthur Gilbert: Were you able to sleep at all?

Elwood Lui: Not too much.

Arthur Gilbert: You were working full time while you were at UCLA Law School?

Elwood Lui: Yes. I have to admit that that is a violation of the rules. *[laughing]*

Arthur Gilbert: Yes. That is just unbelievable. That is where your great work ethic comes from, because I don't think anything has changed.

Elwood Lui: You can either say work ethic or desire to switch from being an accountant to something else. *[laughing]*

Arthur Gilbert: Yes, but you had the motivation. Did you have another child during that time?

Elwood Lui: Yes, in the last quarter. We were in the quarter system then; actually, it was in the second to last quarter of my law school. Chris, our youngest son—Brad's our first son—but Chris was born in March of '69. That was during final exams. I can remember we were in the hospital. Not only was it an imminent delivery, but it was the night of the SC-UCLA basketball game.

Arthur Gilbert: Which we go to.

Elwood Lui: Which we go to, and Crystal was having her labor contractions but they weren't fast enough, so we took a timeout and listened to the ballgame. I

said to her, "I'm not a rich guy. In fact, we're short on money. You'd better have this baby soon." Though he was born the next day.

Arthur Gilbert: My goodness. We might just mention in passing that your sons have carried on the legal tradition. Tell us a little about what they're doing now. One is a partner in a law firm.

Elwood Lui: Bradley was our first son, went to Marshall High School. He went to public school. Then, he went to Yale, got his undergraduate degree; and then he went to Boalt, became a member of the Department of Justice, antitrust division, in Washington. He stayed in Washington and lived in Washington. He did come back after law school to clerk for the family judge, who was Dickran Tevrizian. And they both earned the ability to be a clerk to a federal judge. They chose Dickran Tevrizian to be their judge. Bradley then went back to Washington, where he was an antitrust lawyer, and he eventually joined Morrison & Foerster. He is a partner there in that firm.

(00:20:12)

Arthur Gilbert: And quite successful.

Elwood Lui: Very successful.

Arthur Gilbert: Your other son now is—

Elwood Lui: Chris, our free-spirit son. He went to Marshall as well. He went to Cal and then he went to Loyola Law School. After clerking for Dickran, he went to O'Melveny & Myers. Now he's with the U.S. Attorney's Office in Los Angeles.

Arthur Gilbert: Okay, so now you have gone to UCLA. You've taken the bar exam and you passed the bar. Now what?

Elwood Lui: Again, I was at the last year of law school. You look around and see if you can get employment. Having been a CPA, I thought that it would help me to seek employment in a law firm, that it would be unique to have someone who is both a lawyer and a CPA. Again, I met some racial barriers, although there were some fine firms that offered me positions. I decided to work for government because I would get much more experience. I had a difficult choice between the U.S. Attorney's Office and the Attorney General's Office in California. I chose the state Attorney General's Office. I worked there for almost three years as an appellate and antitrust lawyer.

Arthur Gilbert: That's right. You decided that would be a better avenue to take than private practice because you'd been in private practice as an accountant.

Elwood Lui: Quite frankly, there weren't any Asian lawyers in any of the big firms in Los Angeles. You couldn't say there was a racial barrier, but there just simply weren't any Asian lawyers there.

Arthur Gilbert: Here you are at the Attorney General's Office for three years. Then you move on from there to what?

Elwood Lui: Moved into a smaller firm that specialized in Asian business. I was the guy who was responsible for the tax work and corporate work. About six months before I became a judge, which was in August of '75, I went out on my own practice. There were a number of clients who were interested in having me do their work, and I felt that I had a greater flexibility and better financial rewards as a sole practitioner.

Arthur Gilbert: Here you're a sole practitioner now. This is a new practice.

Elwood Lui: Yes.

Arthur Gilbert: You've brought some clients who've stayed with you, but you're on your own now. Then, all of a sudden, how does this judgeship come up?

Elwood Lui: Actually, during the campaign, a number of people—

Arthur Gilbert: This is the gubernatorial campaign.

Elwood Lui: The gubernatorial campaign; Jerry Brown was now running as the incumbent Secretary of State for Governor. I worked on that campaign a little bit, not much. Because of my friendship with Richard Maullin, I was trying to introduce him to people to be supporters. Richard floated the idea of me being a judge. I said, "I haven't had much of a break to really enjoy my family." I was working pretty hard. That wouldn't be bad; I would do it for a few years. I might be reintroduced in my family instead of these long working hours. So I said, "That's something I would be interested in." I actually filled out that application right after the election, sometime in March or April. It percolated to the top of the list, I guess. By August, I got a call about an appointment.

Arthur Gilbert: August, as I recall, Jerry Brown was not in his first term in office. He was not making any appointments.

Elwood Lui: No.

Arthur Gilbert: Everyone was complaining. You had an application in, I had an application in, other people did. Nobody was being appointed. All of a sudden in August he started appointing people.

Elwood Lui: Actually, as I recall it, there was one appointment in Riverside—Ernest Sanchez, I think it was, then Frances Rothschild, who is now a member of this court in Division One. And then it was a group in which we were included. About a dozen or so people were appointed the same day.

Arthur Gilbert: We both were called around August 18th, to be exact, I think it was.

Elwood Lui: Who got the call first, Arthur?

Arthur Gilbert: Yes, that's the joke. I'm sure we've asked the Governor and he won't tell us, but I know we were both called on the same day.

Elwood Lui: I think I have to confess: you were called first.

Arthur Gilbert: How do you know? I don't think so.

Elwood Lui: Because you told me.

Arthur Gilbert: I just said that. I don't think we'll ever know.

Elwood Lui: But I got sworn in first.

Arthur Gilbert: You got sworn in first and you ran down to get sworn in a day ahead of me. You were just a baby.

Elwood Lui: I was 34.

00:25:00

Arthur Gilbert: You're 34 years old and you were appointed to the court. You're probably one of the youngest. I think there was one that beat you in the Reagan Administration, Eric Younger.

Elwood Lui: Eric Younger and Dick Tevrizian both beat us.

Arthur Gilbert: They were 30. Actually, Stanley Mosk, when he was appointed by Culbert Olson to the superior court, he told me he was 28 or something like that. So, but anyway, now here you are, you were appointed; and how many Chinese judges were on the bench at that time?

Elwood Lui: In California alone, I was the fourth.

Arthur Gilbert: You were the fourth ever appointed.

Elwood Lui: Ever.

Arthur Gilbert: Ever, within the history of the state.

Elwood Lui: Right.

Arthur Gilbert: At that time, were there any Chinese judges on the court?

Elwood Lui: Delbert Wong, Harry Low in San Francisco, and there was a Chinese municipal court judge in San Francisco. His name escapes me.

Arthur Gilbert: You were sworn in on the day before Labor Day, because I was sworn in on Labor Day. You always had seniority over me.

Elwood Lui: That's right.

Arthur Gilbert: I have never been able to live that down. The first day you went to court, was that day after Labor Day, right?

Elwood Lui: Right.

Arthur Gilbert: Whatever that was, Labor Day was on a Monday; and the next day, you and I met.

Elwood Lui: We met in the traffic court, and I remember—my recollection is pretty distinct about it—we were to be indoctrinated or supervised by Nancy Brown, then a traffic court commissioner.

Arthur Gilbert: That's correct.

Elwood Lui: Municipal court commissioner in the traffic court building. She then said, "After doing the calendar, one of you guys will take the next case." I said, "Nancy, your robe only fits Arthur." So you took the first case.

Arthur Gilbert: I did. She said, "The next case will be heard by Judge Gilbert," and I almost fell out of my chair.

Elwood Lui: And not only that—it was funny. I think subsequently that person who you found responsible or whatever the proper term is—

Arthur Gilbert: Culpable.

Elwood Lui: Culpable, yes.

Arthur Gilbert: I think they said "guilty" in those days.

Elwood Lui: Right. What happened is, that person appealed you and you had to make a statement of decision.

Arthur Gilbert: Right. I was appealed on my first case, but I think that was affirmed. Here you are on the municipal court. What was it like being a judge now?

Elwood Lui: It was different. I think, for me, I love the camaraderie. You and I became very good friends, and you showed me the ropes because you had more experience in trial work. My experience basically was as an appellate practitioner, so I appreciated all your help, as well as Dickran. Many people helped us out there to make our go easier. But one thing that is remarkable is I traveled a lot in my practice. Here, you don't travel. It's 9:00 in the morning to noon, 1:30 to 5:00. You're there all the time. You know where to go. The court can't start without you, so you're captured. That's something that you have to get used to.

Arthur Gilbert: One of your mentors, I think too—was Delbert Wong an influence?

Elwood Lui: Yes.

Arthur Gilbert: He was quite respected in the legal community and the Chinese.

Elwood Lui: Delbert was the first Chinese-American appointed inside the continental United States. There were Chinese judges in Hawaii, and a few . . . but he was the first Chinese American appointed in the United States, the 50 states. It was remarkable. He lived down the block from our house. I always admired him. When I passed the bar, I went to talk to him about

employment. He was also a member of the California Attorney General's Office in his career. He thought it was great and I said, "Well, Delbert, maybe I should follow in your footsteps on this one."

Arthur Gilbert: You were talking about you being hired as an Asian, and what influence Asians have within the legal community, and I recall you were inviting me and saying, "We're going to lunch today. I'm taking you to lunch." I said, "Where are we going?" You said, "You're going to go to your first meeting of the Chinese-American Lawyers." Correct? Do you remember that?

Elwood Lui: Yes, I do. It's a case . . . I also invited Loren Miller.

Arthur Gilbert: That's right.

Elwood Lui: The occasion was a speech by Burt Pines, who was then the city attorney. We were talking about the formation of a minority bar in Los Angeles. The Chinese-American lawyers, which is now called the Southern California Chinese Lawyers Association, is the first minority bar, other than Langston bar, in the city. There was even a debate then between certain Chinese lawyers as to whether or not a separate bar association was necessary because the L.A. County Bar would look out after us, and I think that was a distinct minority. Anyway, in order to gain recognition of the organization by the county bar and by the state bar, you had to have a sufficient numbers of lawyers to be recognized. I think the number was somewhere upwards of 75. So the first year, the Chinese-American Lawyers Association included Arthur Gilbert and Loren Miller, who were passing as Chinese in those days in order to help us out.

00:30:26

Arthur Gilbert: Actually, you didn't have to be Chinese to be a member.

Elwood Lui: No, absolutely.

Arthur Gilbert: They were very open. In fact, I remember there were some other people that wanted to be members of the bar. It was really small. We were what, 15, 20 people, or something like that. We used to meet in Chinatown. How many members are there today? Incidentally, I don't know if we mentioned the date that we were appointed, that you were appointed—and that was 1975. We're having this interview in 2007. Tell us, how many members does the Chinese-American Lawyers have now?

Elwood Lui: Not all of the Chinese-American lawyers are in the organization. But I think the organization numbers at least 300, 400.

Arthur Gilbert: When there is a dinner, the annual dinner, the Governor shows up, the Attorney General; all the top political officers are there. And there is generally how many people? Close to 1,000 people are there.

Elwood Lui: Close to 1,000.

Arthur Gilbert: Yes, there's 1,000 people who show up for dinner now. Every political person is there. Everyone in the community knows to be there to show up. and it's just remarkable to see how this organization grew from a group of us sitting around the table in Chinatown at a restaurant. Great strides have been made.

Elwood Lui: You're a pioneer.

Arthur Gilbert: You were the pioneer. You just took me along. Tell me, now here you are on the municipal court, and we were all hearing traffic cases.

Elwood Lui: It only took me two weeks to be asked to leave for another assignment. I think as the younger judges on that court, you and I were given calendar assignments because of our ability to handle the volume—and to handle cases with dispatch and fairness, of course. So you became eventually the king of traffic court as a presiding judge of that court, or the master calendar court, Division 66, is that correct?

Arthur Gilbert: Yes, my goodness, that's right. *[laughing]*

Elwood Lui: I moved over to the arraignment courts with Dickran and I was there for over a year. Then I moved to the criminal courts building.

Arthur Gilbert: I just remember this story, because we were all a bunch of cutups. It was really an incredible experience because I recall, prior to Jerry Brown taking office as Governor, the court really had a lot of very good people. There were some . . . we had some wonderful colleagues, but they were all a bunch of white guys. All of a sudden we have blacks, Asians, Japanese, Chinese, Mexican Americans, Filipinos. It looked like the United Nations. Things just overnight, almost, changed when Jerry Brown started appointing people.

Elwood Lui: He did a much better job of diversity than other governors before him. I think that pattern has been continued probably because there would be no good explanation for doing something otherwise. We did have a very racially balanced court eventually in the municipal court.

Arthur Gilbert: We had a lot of fun. Do you remember one incident when you were going out on the bench? Do you want to tell them about that?

Elwood Lui: Yes, my birthday, sometime in 1976, or it could have been Chinese New Year's; but in any event, when court proceeded, I get on the bench and I saw my bailiff, who was a very large, muscular African American with a shaved head with his shirt off, ringing a gong, and then proceeded to have a line dance which was led by Dickran Tevrizian. And they had a carpet over their head. *[laughing]* They were marching down and pretending they were doing a dragon dance. Everybody had a great time.

Arthur Gilbert: This was the end of the session, of course.

Elwood Lui: End of the session.

Arthur Gilbert: Let's make that clear.

Elwood Lui: It was a special session after the court.

Arthur Gilbert: Things are a little different today.

Elwood Lui: Yes.

Arthur Gilbert: We won't go into all the pranks that we had because we were serious while on the bench; but off the bench we'd do that sometimes.

Elwood Lui: But that was an expression of how well people got along with each other. People of different backgrounds and ethnicities and race were all able to get along and do the work, which is hard work. You're dealing with people who are under the thumb of the justice system and they had been accused of committing a crime. We had to have some levity to our work and to our relationships. We imposed it upon ourselves to have that kind of fun.

00:35:09

Arthur Gilbert: You moved on to the criminal courts from there, right?

Elwood Lui: I moved on, and again, I had another volume job.

Arthur Gilbert: A big volume job.

Elwood Lui: Yes, a master calendar judge for a couple of years. I don't believe that I was able to get a trial court until almost my fourth year as a judge.

Arthur Gilbert: You really moved those cases out.

Elwood Lui: It was an interesting statistic. Our good friend Loren Miller, a well-known and respected judge, he and I calculated one day that between the two of us . . . And he was in Division 50 and I was in Division 40. His division was to be a mediation environment where cases could be settled on a little more staged basis. He and I said to ourselves we were responsible for at least 30, 40 percent of the county jail population. So if we didn't let people out on OR who were qualified or didn't give them bail . . . We were like the innkeepers of the county jail system. It was remarkable that we would have that much responsibility for people being incarcerated.

Arthur Gilbert: What just strikes me as we're having this discussion, we're talking about a court that doesn't exist anymore. People watching this video will say, "What court was that?" This is the municipal court of Los Angeles that went out of existence several years ago. We have a unified court system. In those days, we had the municipal court, and that court heard misdemeanor criminal cases. In those days, civil cases, I think the maximum was $15,000 or $20,000 or something like that—a low figure by today's standards. That was it. Then we had the superior court; we had two trial courts. And now we have a unified superior court. This is a court that is going to be in people's memory but does not exist anymore.

Elwood Lui: But you know, there are a lot of benefits of having a unified court system. I think, on balance, it may tip that way. But some of the things you lose from not having a municipal court anymore is the training ground we had—to be as new judges to learn our craft, to work with people, to use it as a test situation for us and for others. I think now, when people become judicial candidates, it is much more difficult to have them appointed first to the superior court, although they do the same work. They can become assigned to a civil or felony department with unlimited jurisdiction, both in civil and criminal cases, which is much more of a serious choice that needs to be made by a governor. I think we benefited. One of the reasons that I was appointed at my age and you were appointed at your age is that there was a municipal court that we could show our abilities as judges to move on.

Arthur Gilbert: You certainly did show your ability, because you were appointed not too long thereafter to the superior court.

Elwood Lui: I didn't get to one step. I wanted you as my campaign manager. We were not able to break the seniority system, which was eventually broken by Norm Epstein.

Arthur Gilbert: Yes, that's true. You ran for presiding judge of the municipal court. Tell us about it.

Elwood Lui: In the old days it was picked by seniority. The next person down in seniority would obtain the position. I think there were a number of judges on the lower end of the scale, the more junior scale, that did not believe that was the correct system of selecting their leader.

Arthur Gilbert: In fact, it reminds me that our current Chief Justice Ron George ran. He was appointed by Ronald Reagan, and he was already on the court when we got there. He tried to break the minority system. We were these new Jerry Brown judges, and the Reagan judges—that's how we referred to one another—got a hold of us and said, "Ron George is really good." And we knew him and we met him and we supported him; a number of us supported him. He didn't break it, did he?

Elwood Lui: No, he didn't. I think there were too many people who had a vested interest in becoming a presiding judge when their turn came. He would have made a great leader, but we never got the chance to have him. By that time, we had moved on to the superior court.

Arthur Gilbert: You took a run at breaking the seniority system. I guess I was your campaign manager.

Elwood Lui: We only needed two more votes and we would have done it.

Arthur Gilbert: Remember, Dickran Tevrizian gave us some interesting advice. Do you recall that?

(00:40:02)

Elwood Lui: I don't know if we should say that, but he said, "You had to factor in 10 percent for double cross."

Arthur Gilbert: That's right. People will assure you they were going to vote for you and there is a 10 percent double-cross factor. That's right. We thought we had the election won, but at the last minute some people didn't vote the way they said they would.

Elwood Lui: The Dickran rule applied.

Arthur Gilbert: Yes, it applied. But you came close.

Elwood Lui: I came close.

Arthur Gilbert: Shortly thereafter you went on to the superior court.

Elwood Lui: I did.

Arthur Gilbert: How old were you then? You were still a baby.

Elwood Lui: I was 38.

Arthur Gilbert: Thirty-eight? All right, one of the younger superior court judges.

Elwood Lui: Yes. Then I was assigned to the juvenile court. It wasn't my first choice, but in order to avoid an assignment in Pomona, which I was told if I would pick a juvenile court assignment, I would not have to go Pomona, which I did not want to do because it was a long drive. That was where the new judges usually went, to Pomona, because there weren't too many appointments to the East District to our court.

Arthur Gilbert: It's such a large, sprawling judicial district that sometimes you'd have to drive 60 miles to get to one of the courts. If you're a new judge that's what happens.

Elwood Lui: But Ron George and Loren Miller, from the west side it would take them an hour and a half each way.

Arthur Gilbert: Yes.

Elwood Lui: It took me over an hour to get there every morning, but I liked the assignment. I was just going to say, two weeks after I accepted the judicial appointment, or juvenile court assignment, or I was given it—whichever way you want to look at it—I found myself in the juvenile court in Pomona. I liked it there. But I eventually moved around. I was asked to accept the position of presiding judge of the juvenile court, the position that Skip Byrne had had for years, and he wanted to turn the reins over to someone else. So I served as his assistant presiding judge and I ran the dependency court. One of my jobs was to recruit good new judges—like you when you became a member of the superior court. You came and took a juvenile court assignment. We had a really great camaraderie of new people to kind of change the guard and have a fresh approach to juvenile cases.

Arthur Gilbert: You were intimately involved. You had a famous case too, I recall.

Elwood Lui: Yes, the Armenian baby case, which I acquired because of affidavits. The ACLU who represented a putative parent, who was actually a foster parent in charge of the care of this child, sought to have permanent adoption rights. The county counsel rejected. What was at issue was a policy that all foster parents sign agreements that they would not try to adopt a child because their primary function as a foster parent of a young child was to get that child ready for adoption by someone else. If they had a dual loyalty to that and wanted to adopt themselves, they would never prepare that child for adoption by others. It was exactly what happened here.

That case was highly visible in the community, because the foster parent was a black mother with other foster children in her care and the baby's mother was an Armenian. So there was some racial overtones about an Armenian baby being adopted by a black parent. So it became a cause célèbre. I stepped in the courtroom. An order had already been made for cameras in the courtroom, a public forum, even though these cases are typically confidential and proceedings closed.

Arthur Gilbert: That's very unusual, isn't it? That wouldn't happen today, would it?

Elwood Lui: It would happen today.

Arthur Gilbert: It would?

Elwood Lui: It didn't happen then, in those days.

Arthur Gilbert: I'm sorry. I misunderstood you.

Elwood Lui: It would happen today with proper procedures. But thrust upon me was the case that was covered by the national media. I think the interests were treated by the foster parents, who wanted a vested right to adopt—that was a question. Ultimately, the case was settled and the foster parent withdrew for reasons that are confidential. But it embellished in my mind a need to look at these cases appropriately. I did not like the Department of Adoption's view that there should be a prohibition against biracial adoptions, because I think that is not appropriate.

(00:45:09)

Moreover, there are a lot of children who never would be adopted if, for example, a white family could not adopt a black child, because there are not enough black foster parents to step forward and have these adoptions. They could never have children adopted. On the other hand, I don't think a foster parent should have an accelerated right to this or some preference because they're the foster parent—indeed, when their job is, and agreement is, to help this child move to a permanent situation. I think those two issues were important. So when I came on the dependency court and leading that court, I tried to work some

resolution of those cases in. But it was a difficult case—one that probably I remember of all the cases the most.

Arthur Gilbert: I remember when you and I had discussed it. It was a difficult case, and with such media attention on it.

Elwood Lui: Yes.

Arthur Gilbert: Anything else on the superior court that you would like to talk about before we move on?

Elwood Lui: No, my stay on the superior court was about a year.

Arthur Gilbert: That's all?

Elwood Lui: A little bit more than a year. Then I became a candidate for the Court of Appeal.

Arthur Gilbert: You were on, as they call, the fast track.

Elwood Lui: I guess so.

Arthur Gilbert: You were appointed to the Court of Appeal.

Elwood Lui: In 1988.

Arthur Gilbert: You were in Division Three.

Elwood Lui: Right. In fact, my judicial office would have been in this very chambers had I stayed on the court.

Arthur Gilbert: Tell us a little bit about this change from the trial court and all the publicity with the cases and in dealing with these volume courts and master calendars. Now you're in what some call a rarefied atmosphere.

Elwood Lui: Well, the rarefied atmosphere was quiet—in fact, when you think about it, too quiet.

Arthur Gilbert: Incidentally, what year was this?

Elwood Lui: This was 1980. In August I became a judge. One thing is, my colleagues were much more senior to me, I think, at 39 years old. I think back in the years now—

Arthur Gilbert: Now you were about one of the youngest.

Elwood Lui: I was 40 then, in '81.

Arthur Gilbert: You were one of the youngest.

Elwood Lui: I was the youngest that was ever appointed.

Arthur Gilbert: Yeah, to the Court of Appeal.

Elwood Lui: Right. As I think back, with the exception of two Ninth Circuit judges of Chinese ancestry, Thomas Tang and Hiram Fong of the Ninth Circuit, I may have been the only state appellate judge appointed at that time who was Chinese American. I don't know of anybody outside of Hawaii in the 50 states that had that position before me. There are some that have it now. Obviously, Justice Chin became a member of the Supreme Court. I was thinking about that, because one of the cases that we have in the history of California jurisprudence is a case called *People v. Hall*. *People v. Hall* was about a murder case in which the defendant was accused of murdering another person. The defendant was Caucasian. There was a witness to that murder, and he was an Indian man. The law at that time prohibited an Indian from testifying against a Caucasian.

I'm sorry; I got the facts a little bit different. It was a Chinese man who observed the murder. The ruling of the court and confirmed by the Supreme Court was that since it was a Chinese man who was the witness who was going to testify against a Caucasian man, the witness was incompetent to testify because the court ruled that Chinese were Indians, and therefore they couldn't testify. The theory, I guess, was they crossed the Aleutian Islands down to Southern California and parts of the southwest and were Indians in origin.

So the rule was that if you could have a Chinese who was an Indian testify, that would not be a fair proceeding because they were incompetent. They could become members of the jury, they could become lawyers, or, if god forbid it, they could be members of the court. They just can't have that. It was an 1850s or '60s decision of the California Supreme Court. So I had to chuckle a bit, because during my tenure as an appellate judge, I was the first Chinese American to ever sit, albeit pro tem, on the Supreme Court; so the fear of people all came to fruition in my short case assignments in the Supreme Court. I think when I explain that case to people these days, in the last 5 or 10 years, they're shocked by the nature of that case.

(00:50:12)

Arthur Gilbert: They can't believe it. I know; they look in disbelief. But I guess one of the wonderful things is that within a generation or two, things have changed.

Elwood Lui: There's a funny thing, a prologue to that. I was in Gonjo, China, about two years ago and there was a newly found excavation of a tomb of an emperor or an emperor's close relative or a son of an emperor—I can't remember. But you had to go down about 300 or 400 feet to see the ruins. So you go down to the burial chamber, you see scattered remnants of the different artifacts that were left with the decedent, who carried on to eternity with his possessions. There was a lot of pottery there; there was broken pottery. I looked at the pottery and I said, "This is of a Chinese emperor or an emperor's son ancient years ago, many years ago. The pottery looks like what I saw at the Acoma Indian Tribe in New Mexico." *[laughing]* I said, "Maybe there is some truth to this." I was chuckling when I looked at that pottery and said "Chinese are Indians" or "Indians are Chinese."

Arthur Gilbert: We were right about something, right?

Elwood Lui: Yes.

Arthur Gilbert: However wrong the decision was. So anyway, so now you're on the Court of Appeal. You don't have to remember all the cases you've been on. I know you had some disagreements with some of your colleagues on cases; and you did, in a very respectful manner, dissent on some cases. Those dissents, what happened with them?

Elwood Lui: The court changed when I first came on. When I first came on, Rod Potter, who became a dear friend of mine; and who was the former state senator?

Arthur Gilbert: Yes. He was a state senator. He was very involved in the . . . Cobey.

Elwood Lui: Justice Cobey and Justice Potter were wonderful lawyers and judges who were a generation ahead of us. They were always talking about the big W, the big war, World War II. I told you at the early parts of this interview that's when I was born. They were a generation ahead of us. In fact, Potter was a war hero. Potter was on the destroyer. The destroyer was blown up and he single-handedly saved two other seamen by just keeping them afloat until they were all rescued. When he retired, I gave him a bonsai flag and we had a ceremony including Japanese Americans who wanted to recognize his war hero status. I think it was long unnoticed.

But we got along. There was a change, and there were some different members of the panel. We did differ philosophically on a number of occasions—not many, but the ones that I think were significant, I thought that part of my role as a judge is to highlight our disagreements, to write a dissent and let the Supreme Court deal with it, either in terms of writing a review or depublishing a case or rejecting my views. I think, as an appellate judge—which is the one right of appeal that you have as a litigant—part of our job is to help shape the law and put it in the right direction. If you think that a choice between alternative legal theories is better, you should point that out—respectfully, but you should point it out. On a number of those occasions either review was granted, depublication was granted, or the court would take over the case and decide it one way or the other. I think that as a role of a judge on the appellate courts, that that is a very high-priority item.

Arthur Gilbert: That's a good point. Many people talk about "Well, this judge dissents a lot or doesn't dissent." As I gather from what you're saying is, dissenting in a case is not a reflection of congeniality, necessarily; it's just a reflection of a different point of view about the law. And the law is developed and shaped through dissents often.

Elwood Lui: Yes, I think that's correct. You can respectfully disagree, and there are reasons—because people can read a rule of law, which is a living document, a living process, and disagree with legitimate reasons. There is a tendency sometimes—and I did do it sometimes—where I would

concur in the result, because although I think you reached the right end result, the analysis of getting there is something that I wouldn't agree with. I don't subscribe to any inappropriate means of simply concurring in a result, because while you agree with the result, you don't necessarily agree with the analysis.

(00:55:06)

Arthur Gilbert: There is differing views about that. Your view is interesting. Would you consider in some of those cases where you don't agree with the reasoning but you do agree with the result that you might write a concurrence describing how you would approach the problem differently rather than saying "I concur in the result"?

Elwood Lui: Usually I would do that only if the case is published. In most occasions, I did so—concur in a result and give an explanation. That would be my primary way of operation. But sometimes you do it in a nonpublished case and sometimes later it becomes published. You can't go back and restore what you felt and end up with concurring results and someone says "Why are you doing that?" I think it's exactly what you just said. You concur in the result.

Let's assume that you really differ in the analysis and there is another case. You look like you're going backwards on your analysis in a subsequent case. But if you said, "I concur in the result and I can now elaborate in a subsequent case my analysis," I think that's appropriate so you look consistent. Because one of the things we have to be careful as judges—I don't have to be careful anymore because I'm no longer a judge in that aspect—but is to leave tracks so that people could follow the development of the law and have some predictability in what litigants know. That when they take words in an opinion, "What did Gilbert mean when he said these few words? Does it mean he was going in one direction as opposed to another?," that you would have some predictability in the law. That makes us a better system.

Arthur Gilbert: Who knows who is going to be looking at this video in the future? Right now they may not even know what we're talking about when we say published and depublished. Right now we publish a certain number of cases—a small percentage, actually. I think it has grown a little bit, but it is usually about anywhere from 20 down to 10 or 15 percent of cases that are decided by the Court of Appeal that are actually published. There have been moves afoot to have everything published, and there are controversies about the pros and cons. So, who knows, in the future maybe they will all be published, or maybe they won't be; but what we're talking about now is a system in place where not all cases are published. Is there any particular case on the Court of Appeal that strikes you that you want to talk about?

Elwood Lui: It's been 20 years. I think back and look at them, which I haven't had the chance to do; there'd be one or two. I had a couple of cases that I thought were important that dealt with *Cumis* counsel, for example. I had a case—I don't even remember the name of the case—but I think my

case analyzed the need for *Cumis* counsel in a disagreement with the carrier on a problem.

Arthur Gilbert: So people understand the *Cumis* issue, you're talking about when an insured is represented by the insurance company and there could be a conflict—they're entitled to their own attorney as well, supplied by the insurance company. You wrote a case that anticipated that result.

Elwood Lui: Yes. For example, where the policy limit is $1 million and the case can be settled within the policy and the insured wants to settle it or fight it and the carrier feels differently. I think the insured should have a right to participation at certain levels.

Arthur Gilbert: You also decided some obscenity cases, did you not?

Elwood Lui: *[Laughing]* Yes, one case which is interesting, highly debatable. It was a case involving a 995 motion, the criminal case where you hold somebody over for a trial. This involved a pimping and pandering case in which the DA charged an actor and actress for committing a sex act for pay while filming a movie.

Arthur Gilbert: By filming a movie, and whether that movie would qualify.

Elwood Lui: Yes, I studied this case for quite a bit of time and talked to my good colleagues, Cobey and Potter, and we reached an agreement. Our analysis was if you were to commit a petty theft and say, "I'm going to go commit a petty theft. I want you to film it and pay me for this. But you're paying me to steal a product," would that be a crime?

Or let's assume . . . in those days when we were judges there was a big thing with the snuff movie. Someone actually would commit a murder and have it filmed, and would receive pay for that. And that would be a rule murder. Is that a violation, a crime? We add sex on top of that and we have the obscenity issues; we have the First Amendment and all these issues come up. We ruled that the DA was correct.

(01:00:08)

Arthur Gilbert: That they are actually violating a crime even though they're doing it as part of a movie, of a pornographic movie.

Elwood Lui: Yes. The funny part of that is the day after the decision was entered, I woke up with an alarm and the radio went off and it said that Justice Lui declared sex a crime. My wife said to me at 6:00 in the morning, "Is that what you did?" *[laughing]* So there are a lot of jokes about this. The case goes to the Supreme Court and the court reverses us seven to zip. So we were thoroughly wrong.

Arthur Gilbert: They were thoroughly wrong, and written by a very conservative judge.

Elwood Lui: That was the thing. It was Marcus Kaufman, who was an outstanding judge.

Arthur Gilbert: Yes, he was a brilliant guy, very conservative.

Elwood Lui: He is very conservative, and he looks at this and he says, "The legislative history does not demonstrate that that was the intent of the Legislature to declare this a crime." Here I am, looking at a case objectively. Justice Kaufman reviewed the legislative history of the statute, which there was none, incidentally; there was no legislative history whatsoever. It said that the Legislature never intended this result. Here, we have the most conservative, maybe perhaps one of the most conservative, judges the court has ever had on the Supreme Court, who said that ruling in favor of criminal law prosecution of these cases was wrong. The court didn't favor it.

We had no vested interest in this case. I sat down and I talked to my colleagues and we said, "Analytically, it works." If it's a film and it just involves a sex act, how is it different from any other crime? We're not the ones that created the crime.

Arthur Gilbert: Right.

Elwood Lui: That's great, but it got a lot of chuckles from people who thought I was a very liberal judge. Years later, I used that as an example of why you can't use an opinion by a judge. Because when I told different people—particularly in a very conservative setting like an election problem which occurred in a convention, discussing the politics of judges and whether or not they should be supported by the Republican party—I brought up this case. I said, "You think this liberal-leaning opinion was incorrect?" "Absolutely." I said, "Well, Justice Kaufman wrote it." My point was, let's not go against judges for the political views you think because they rule on a certain way on the law; and I made a point.

Arthur Gilbert: That's right. You weren't a flaming liberal. You were sort of middle of the road. This might be considered a liberal opinion, but it doesn't typify what your philosophy is.

Elwood Lui: It was a conservative opinion, and what Kaufman wrote was the liberal opinion.

Arthur Gilbert: That's right. I'm sorry; the other way around, of course.

Elwood Lui: Yes.

Arthur Gilbert: I'm sorry. That's right. It was Kaufman who one would say would be a liberal opinion. You don't have a vested right one way or the other.

Elwood Lui: No, one way or the other.

Arthur Gilbert: Well, you're bringing up a little bit about your judicial philosophy, and I think you've voiced some of that already. Do you want to expand on that a little bit?

Elwood Lui: I always looked at the case as "If you could follow the rule of law and follow the precedent, you had to have a good reason to disagree with it."

Court of Appeal judges don't have the luxury of trying to disagree with a Supreme Court decision. They can only articulate why it's wrong and flag it. Indeed, there's a couple of instances I believe I got the Supreme Court to change direction when I flagged it with a concurring opinion with a separately issued decision. I'm particularly pleased that I was able to shape the law in certain instances—not a large number, but in my time, it was six-plus years on the court, I was able to make somewhat of a mark on the court and the development of the common law of California.

Arthur Gilbert: During that time you were involved in some other judicial activities as well. You were involved with the California Judges Association.

Elwood Lui: Yes, I was. In my last years on the bench, I was president of the CJA. We had faced against, the judges, at that time a proposition which would limit judicial salaries of judges and any other constitutional officers to $64,000 a year, which was a significant amount of money less than what we were all making at that time. And government service is always going to be less than the public marketplace, but that was just an entitled bit of . . . an attempt by some to point particularly at the judges. So we got on an aggressive campaign with CJA. We organized a very political movement to block that initiative.

(01:05:14)

We made a voluntary assessment against members, depending on their court, to help fund a campaign. The proposition was soundly defeated. I remember one of the great things that year: in December we returned some of the assessments back to the members with a 25 percent dividend. It was a significant amount, because we were very careful with our money. One of the judges on the committee was a treasurer, Judge Olson. He signed all the checks, and it was in the back of my car on Christmas Eve. I put them in the mail personally. I get my check in the mail after Christmas before New Year, a sweet Christmas present, and he forgot to sign my check.

Arthur Gilbert: You've never let him forget it.

Elwood Lui: I've never let him forget that.

Arthur Gilbert: Is that Lester Olson?

Elwood Lui: Lester Olson.

Arthur Gilbert: Who is really one of the outstanding private judges out there. He was one of the first to go out and has a nationwide reputation.

Elwood Lui: He is superb.

Arthur Gilbert: He really is a superb judge. He forgot to sign it; isn't that typical?

Elwood Lui: I said, "Is this a joke or is it on purpose?" *[laughing]* He pleaded innocence. It was unintended.

Arthur Gilbert: You're on the Court of Appeal, you said, for six years.

Elwood Lui: Yes.

Arthur Gilbert: I've been there forever, it seems like, and other people have had longer tenures; and you're still relatively young.

Elwood Lui: I was 46. And I look back. . . . Remember when I told you, when I looked at this job initially as being a judge, as a profession, I said to myself, "I would have to look at this in the future as to whether or not I would want to stay on the court"? I had grown very fond of this position. It's a great position. It's something that lawyers all should seek to attain and do seek to attain; then they retain it. It's a once-in-a-lifetime job to have. I did look at my family situation. I had a son at Yale. The tuition was $30,000, which was about close to 30 percent of the gross pay. My other son was going to Cal. I thought to myself, "Political winds change, but maybe it's the time that I have to leave the court. If I miss it too much, I can come back. A good friend of mine, John Van de Kamp, will be the next Governor of California. He'll let me back in."

Arthur Gilbert: He didn't quite make it, did he?

Elwood Lui: He didn't quite make it. I'm now in private practice with a firm that had talked to me over time. I had one of the partners there that was interested in Jones Day, where I am today, and I decided . . . it was an agonizing choice that I thought about for many sleepless nights. I decided that I would go for it and leave.

Arthur Gilbert: What year was that?

Elwood Lui: This was 1987. I left the court on September 30, 1987.

Arthur Gilbert: You joined the firm of Jones Day, and you're still a partner in that firm. In fact, you were one of the managing partners.

Elwood Lui: I've had a 20-year career, and what I've seen during that 20-year period is that since I've left private practice to become a judge, the acceptance of minorities into the profession in astronomical and accelerated fashion. I went to Jones Day, and instead of seeing all white faces, there was diversity—in any of the firms who wanted talent. By that time, the accounting profession, instead of two at Deloitte Touche, you would have 25 percent of the staff being Asian; because Asians had that reputation, and they earned it from being very diligent and good at their work. You see that in law firms now, where good law firms of any stature have diversity. They seek out minority members because business demands it. It's the right thing to do.

I started there, and it took a while to get acclimated. I was no longer a judge; I was an advocate. That transition for a couple of years was difficult. But I got into the flow of it. I didn't turn back and look back. I kept my connections with my friends on the bench. I was given assignments. One assignment I was given by the board of supervisors was that they asked me to take over the Children's Services Department.

(01:10:09)

Arthur Gilbert: I remember that.

Elwood Lui: I got a call, probably prompted by you, Arthur.

Arthur Gilbert: Well, I had something to do with it, but I just suggested you, and everybody immediately . . . They asked me about you. As a matter of fact, they suggested you. I said, "He is the only person to do it," but everyone knew that. And that was really quite an experience you had.

Elwood Lui: Ed Edelman called me, and he said he had talked to you.

Arthur Gilbert: Ed Edelman was one of the supervisors; in fact, the Edelman court is a juvenile court that has been designed for juveniles and for dependency cases, where kids can play; and it's a centralized court for all juvenile matters. He pioneered that, and it's named the Ed Edelman Court.

Elwood Lui: Yes, and for good reason. He called me and told me that you had told him to call me. He said that on Tuesday they had just terminated the director of the Children Services Department.

Arthur Gilbert: In the Children's Services Department what do they do?

Elwood Lui: The department handles abuse and neglect cases for the foster children cases in the county. I didn't know it then, but it had a staff of 4,000 employees. It had a budget of $600-plus million and multi-offices stretched out all over, and a lot of litigation problems. I had been away from it a while. He said they had just fired the director and they wanted me to take the job. This was Tuesday night after the board meeting. He said, "Can you come down and talk to the board on Thursday?" I said, "Wait, Ed, I have a private practice, I have a number of cases."

Eventually we worked out a basis upon which the firm and I could accept and they would accept that I could continue to do my legal work. As long as I did both things to satisfaction, they didn't require me to disengage from the firm, which I would not have done.

Arthur Gilbert: You had a lot of practice when you were in law school and accounting school and working and raising a family. So you were an old hand at this.

Elwood Lui: This was long hours, seven days a week, they said for two months. "We just need time to pick a director." Two months passes, there is still no one. They hadn't even conducted an interview. They hadn't even put it out for search. It lasted five to six months, this assignment. One of the most enjoyable, challenging things that I have ever done in my life is run that department.

Arthur Gilbert: You turned it around, didn't you? Amazing things happened.

Elwood Lui: I turned it around and restructured it. They had a pyramid, and I flattened it. I wanted all the social workers and supervisors to go out and

work on cases so that the children would be watched. One of the problems then was the children were abused because there was not enough contact with a social worker who could then look and see by visitations whether the child was having any problems—whether there were further abuse issues, getting care, schooling, education, medical care. So all of that took place.

Eventually, at the end of 1990, they found a person. The department had many leaders. Peter Digre lasted over a decade; then there's been a couple of people after. But it was a hard task to fill. I think being someone who wasn't vested with wanting to have this job, someone can come up with a fresh approach into the judicial system. The judges knew—because this is litigation, with the dependency cases—that I was able to make some headway just because of my former position, and get a cooperative spirit.

Arthur Gilbert: In fact, the whole staff, they wanted you to be the new director. But you turned that down.

Elwood Lui: Yeah, and then the other occasion since I left was a problem that occurred during Governor Wilson's administration. There was an impasse politically, I guess between the bar, the Conference of Delegates, and the Governor. The Governor vetoed the fee bill, so there was no funding for the State Bar and the disciplinary system that goes along with it. The Supreme Court, as the supervisor of the judiciary system, could not tolerate a shutdown of the lower disciplinary system, a system that they had the ultimate authority over.

So I got a call from the Chief Justice, now Ron George, who had moved on from the municipal court up to the Chief Justice position. He asked me to be the special master of the bar, and I accepted. So for over the next two years, while the bar was shut down and continued to shut down, I helped reorganize the bar and implement new technology and new rules—a variety of things—and tried to streamline the system. Then we restarted hiring people, and I turned it over after a couple of years.

(01:15:27)

Arthur Gilbert: Was there a case involved with that?

Elwood Lui: It's *In re Attorney Discipline System*.

Arthur Gilbert: That case mentioned you as being really responsible for solving the problem and praises you to the skies. It's not often . . . You're being a little bit modest here and not talking about it, so someone has to. But this was another one of your remarkable achievements. There were so many dissident groups. You had to bring them all together and formulate a plan. The Supreme Court recognized the really magnificent job you did and gave you the credit that you deserved in a published opinion. We should have the cite for that opinion here if anybody wants to look it up. But I don't have it at my fingertips, and you're so modest you don't either. *[laughing]*

Elwood Lui: It's in these papers somewhere.

Arthur Gilbert: What year was that? Do you remember the year that the case was published? I remember reading it.

Elwood Lui: It's the *In re Attorney Discipline System* and it's about 1996 or 1997.

Arthur Gilbert: You and I are alike in that we never remember case names or case citations. I remember a wonderful judge, Jerry Pacht, who is deceased now, who said, "For every case name I remember, I forget a line of poetry." I always use that quote, and I give him attribution when I forget a case.

Elwood Lui: I had a hard enough time remembering your name today.

Arthur Gilbert: *[Laughing]* We're more interested in the substance, right? You're interested in what's going on and not the case name. I know you're modest, but you really were recognized for many of your achievements. You've won a number of awards. We talked about being president of the California Judges Association. You were elected by judges statewide to have this position. It was a much stronger organization back in those days than it is today. Who knows what it'll be like in the future? But it was really a major representative of the judges throughout the state that dealt with numerous issues: ethics, the judicial education, the media, and all aspects of judging. And you were really noted as one of the leading presidents of that organization. You won an award. You won the Witkin Award?

Elwood Lui: I was pleased to be presented with the Judicial Council's Witkin Award, Amicus Curiae Award, which is given annually to a judge or a lawyer. I received it after the conclusion of my work on the special master. Last year I was the recipient of the Bernard Witkin Medal from the State Bar of California, which I cherished as a part of something that I felt was very significant and special. UCLA has also made me the Alumnus of the Year. That was a very nice award. I remember how difficult it was to be a student at UCLA for me and how I really wanted to excel but just didn't have the . . . and to excel in every possible way I could. I did well in school, but I was having to work, and I really didn't do all the studying that I would like to have done in those days.

Now on the court you get to study, and you could see the development of the law, especially in the appellate court—you can take the time to really do something with the development of the law. I think my real law school came on the Court of Appeal—the first time I was really able to sit down and think through the law and what it means, and get to the underpinnings of the reasoning and policy behind the law. I liked the Court of Appeal. Of any assignment I have ever had on the judiciary, I liked this the best. I also liked the fact that we're not tied down to the nine to five, except for the two court days that we have. We were very flexible. We were portable and could telecommute. And nevertheless, I was here every day when I was in the Court of Appeal. It's just that that nagging thing that the jury is waiting is not with you. I think that's why this is the best job there is in the court system.

(01:20:06)

Arthur Gilbert: You have also had a profound effect on how we dress for the Court of Appeal. I know today you're extremely elegant. You always are an example of sartorial splendor and just look as sharp as possible; and you always looked sharp, no matter what you wore. But I remember on the court, didn't you introduce jeans and an open shirt? *[laughing]*

Elwood Lui: I didn't see the need to have a suit and tie on to come and read briefs and look at the law. In law school, I didn't wear a coat. Yes, I did have to wear a coat because I was working as an accountant, but I had to. And so here, I didn't have to, so I kept a suit and tie in my closet and I'd come in what was casual, which happened to be jeans.

Arthur Gilbert: I think you were a pioneer in that area, because many of us dress that way now.

Elwood Lui: One funny story is that after Chief Justice Lucas became the Chief Justice . . . He was a guy who always wore a coat and tie, because he was a federal judge as well before he was on the Supreme Court. I caught him one day in chambers in a pair of jeans and a lumberjack shirt, and I said, "Tsk, tsk, you're the leader of the court. You can't dress like that."

Arthur Gilbert: You have also been in the *Daily Journal*; our legal newspaper has rated you for year after year as one of the top 100 most influential lawyers in the state. Now that you've been in private practice for quite a while, you've been a managing partner of a large law firm that has offices all over the world. Has the judiciary changed? What is your perspective of judges today as opposed to when you were on the court?

Elwood Lui: When we became judges, the salary differences were not that great. They are substantially different now.

Arthur Gilbert: When you're talking about differences, do you mean private practice?

Elwood Lui: Private practice and the judgeship. The superior court judge in those days, compared to what they were making as a partner in a law firm, it could have been twice as much in the '70s. Now it's probably 10 times as much in a good practice, a good kind of law firm.

Arthur Gilbert: You're talking about a major law firm with offices worldwide.

Elwood Lui: Or a big California law firm. If you're a senior partner, you'll be doing well.

Arthur Gilbert: Does this mean that the middle class is being priced out of the market for legal representation?

Elwood Lui: That's my sense. At Jones Day, we heavily invest in a community through pro bono projects, principally through public counsel.

Arthur Gilbert: You're on the Board of Public Counsel.

Elwood Lui: I was on the board for 10 years. I handed it over to one of my partners. Public counsel represents the indigents. The corporations and the wealthy have funds that hire a lawyer like Jones Day lawyers. The middle class comes up short. You can't qualify for pro bono services unless you have some attachment to a corporation. It could really affect you financially if you got into a litigation matter. So insurance is important, but there are some things that you can't insure against. You could have a significant divorce that doesn't involve any kind of insurable interest.

I think that's an unfortunate part of today's society. That's why mediation and dispute resolution has its place. Although there were criticisms against it being a hybrid of a third branch of government, it's still necessary for our middle class—one in which you can have some relief with the court's record.

Arthur Gilbert: Maybe we should form a new commission and have you head it to look into this issue.

Elwood Lui: Only if you're on it.

Arthur Gilbert: I'm glad that we had this discussion here, because it is really a problem affecting our society.

Elwood Lui: You mentioned I was a managing partner. We call them partner in charge, and I was, for the last six years, was a partner in charge of our San Francisco office and started it. To my firm's credit, I became the first person in the management committee of 12 of Jones Day who was a minority. We try, like any of our competitive law firms try, to have a diverse core group of lawyers in our firm. I am particularly proud that, for whatever reasons that got me there, I was able to work for a firm in the last 20 years and get to a leadership role, have the opportunity to help others in my capacity, starting off with being involved in one of the largest firms in the world, with 2,267 lawyers.

(01:25:23)

I don't intend this to be an ad, but the depth and breadth of the firm, it's astounding to give some context to why I feel that the firm, as far as I am concerned, has done a job of helping integrate me into a system where years before it was not possible. I'm pleased to be a part of firm that I was the first Asian partner in the firm's history. At that time, it was 100 years old. Now it's commonplace, and it should be. I look at the opportunities my sons have. They have it much better than when I started out or when you started out. I know you are Jewish; I know that some firms wouldn't hire Jews.

Arthur Gilbert: That is true, yes.

Elwood Lui: I know some firms would not hire a woman. Those things have changed for the better.

Arthur Gilbert: Just before we close, you have mentioned some changes in the judiciary, and we have touched on them: the practical aspects of pay and also that there are more minorities. Now we have a really diverse bench, which has greatly improved our system of justice in California. Have you noted maybe more subtle changes in judicial, in concepts—I don't know if we want to get into a long philosophical discussion—but in the way cases are decided or whether the judges are more activist or conservative or liberal? Has there been a change in that area, or from your perspective as a lawyer now rather than a judge?

Elwood Lui: What I hear—this is not necessarily my view, but I think parts of it are—the way the judiciary's shaped up in recent years is that it has become more of a place where government practitioners were losing out because just of the economics of it. We are losing out on people who have had civil practice, who have significant cases. You now have a civil bench where a good number of them are government prosecutors who never were in a situation where they would have to represent a party. It's like you and I are going and trying a felony case. I've never tried a felony case—

Arthur Gilbert: As a lawyer?

Elwood Lui: As a lawyer. Now, you have a DA, and I'm not criticizing the DA . . .

Arthur Gilbert: I understand.

Elwood Lui: . . . or a public defender or a U.S. attorney with great experience, a great background, and a criminal judge who is the best. But a lot of these judges have served their time and say, "That's enough of that criminal; I want to learn civil. I want to become a mediator or a private judge after the end of my career. I want to go to family law and learn family law. I want to go to civil and learn civil." But there is an experimentation of deciding cases in a situation where they never served in private practice. That's not an accusation or a criticism of the system, but a fact that we have to do something to encourage a well-rounded bench—because we could not do without the DAs. You and I were civil practitioners. We learned the criminal law as municipal court judges. We learned how to do it in speeding tickets, in misdemeanors, in juvenile court, and then felony trials.

Arthur Gilbert: Of course, I did some criminal work in some practice as well, so I had a little bit of a handle on that. But your point is well taken. A lot of these judges have never been a partner. They've never been in a civil firm. They haven't dealt with that on a practical level.

Elwood Lui: Yes. And the criticism, just to make it in context, could have been levied on me.

Arthur Gilbert: Right.

Elwood Lui: Had I been one of the people we're looking at now. So I'm only criticizing my own candidacy as a judge. I was able to have a very accelerated path. They would say, "Lui, did you ever try an antitrust case?" Well, I

was on an antitrust team, but "Did he ever try one? Did he do this and that?" The answer is no. What I would like to do is see us have a more well-rounded bench, because it's important. Not that we can't get that.

(01:29:58)

I think that judges, given the opportunity, can learn the system from the inside. We had to by the fact that we were there. We need to encourage a well-rounded bench. I see now that Governor Schwarzenegger has reached into the civil practice, appointed some very good civil practitioners who were in their 60s from large law firms, who probably under different criteria would have been excluded. So now we see a recognition of that. I think we have seen recognition that it needs diversity, so a person of color who comes in the court continues to see a different face there on the bench. It's the same thing. We walk into a civil courthouse and the judge has never had a civil case before. Let's assume you and I were the litigants. You're my lawyer and I'm the client.

Arthur Gilbert: It makes you nervous.

Elwood Lui: It makes you nervous. It's not an indictment against who we have now. It's a caution, I think, that we need to make the bench well rounded. I did that in the context of serving as chair of the selection committee for the U.S. District, Central District of California; I'm the chair of the bipartisan selection committee.

Arthur Gilbert: This is for the federal judgeships.

Elwood Lui: Federal judge. And I'm on what used to be the undisclosed panel of persons on the committee for the L.A. Superior Court, so I do see the candidates who come before us. I see the numbers of people from certain *[inaudible]*; but we have a great bunch of new judges. They are as good as the candidates we've had before, but we ought to continue to be careful about having a well-rounded bench.

Arthur Gilbert: Two other things I want to just mention that just occurred to me. You authored a book, and you're the expert in the state on judicial retirement and the tax consequences of that. You have lectured extensively throughout . . . the Supreme Court calls you to lecture them. Do you want to just tell us a little bit about your book?

Elwood Lui: The book is a book that I picked up from the Chief Justice. I'm getting bad with names again. *[laughing]*

Arthur Gilbert: Let's see, who was your predecessor on that? Levitt?

Elwood Lui: Judge Levitt.

Arthur Gilbert: I'm coming through already.

Elwood Lui: Yes, you're coming through.

Arthur Gilbert: I usually don't remember these things.

Elwood Lui: Since Levitt passed away . . . And Justice George, when he became a member of the Supreme Court, he should not participate in the book, so I have carried it on through three editions. The new edition is coming out shortly. This is not an ad, because I don't get paid for the book. *[laughing]* It is free to members of CJA.

Arthur Gilbert: One thing we've just mentioned, your family, and we just mentioned Crystal, your wife, in passing; but she had a very significant role as well in the judicial process. Why don't you just tell us briefly about that?

Elwood Lui: She's recently finished, at the beginning of this year, her eighth year on the Commission on Judicial Performance. She is no longer a member of that commission. I'm not sure whether her slot has been filled yet. But she served eight terms. It was a difficult task. She worked very hard at it. She ignored me for many hours, and when she was reading volumes of books about cases . . . And I could tell you, no one . . . And everyone knows on the commission, when Crystal looked at files she knew what was in them.

Arthur Gilbert: She knew everything backwards and forwards. She is as thorough as you are.

Elwood Lui: It's a good thing I never went before the commission when she was reading my file. *[laughing]*

Arthur Gilbert: I would say the same thing. I was very careful. Remember when we would go out socially? *[laughing]*

Elwood Lui: She was great. And she was not a lawyer; she was a public member and did it the right way. I'm proud of her doing that.

Arthur Gilbert: With a great deal of dedication, because I know we would be going out, she said, "No, I'm busy reading files, so we'll have to do it another night."

Elwood Lui: It was a funny joke. You may not have appreciated it, but I said, "We can't go out to dinner tonight because she's reading your file." *[laughing]*

Arthur Gilbert: *[Laughing]* Yes, you used to say that all the time. "I'm sorry. Crystal is really busy. She's working on your file." That's what you would say to me.

It was a pleasure talking to you and reliving your life with you, and good and continued success in your practice and your life.

Elwood Lui: One final thing.

Arthur Gilbert: Yes.

Elwood Lui: I can't pass this up. Let's talk about you a bit.

Arthur Gilbert: No, this is your interview.

Elwood Lui: No, it's going to involve both of us. You were appointed to the Court of Appeal about a year after I was.

Arthur Gilbert: Yes.

Elwood Lui: You are the presiding judge now of the Sixth Division of the Second District. You have your own facilities. You didn't then when you got appointed. In fact, we are now in Division Three, the chambers of Justice Croskey, who succeeded me on the court. It's a fitting note that we're here doing this interview. On your first day in the court, I took you into my chambers because you had nowhere to sit, and we shared a conference room. You accused me of making too much noise when you were writing your first opinion.

(01:35:17)

Arthur Gilbert: That's right. We didn't have a facility and you graciously said, "You can use my chambers." I used your chambers for almost a year, and you used to say, "I had no idea that when you get this job, you get a roommate." And I was your roommate for the first year. *[laughing]*

Elwood Lui: You get on the Court of Appeal, you get a roommate. *[laughing]* That was the continuation of a very great relationship between the two of us, two guys from L.A. who grew up in the city—one from Hollywood High School and one from L.A. High School.

Arthur Gilbert: Who had never dreamed they would be doing what they're doing today.

Elwood Lui: But I have one question for you. Why did Hollywood High School have a square track that was not a quarter mile?

Arthur Gilbert: I don't know. I think we needed some additional funding for that.

Elwood Lui: You didn't have enough room.

Arthur Gilbert: L.A. always got it. It always had the best over us. Anyway—

Elwood Lui: Thank you.

Duration: 96 minutes
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