David Knight: Okay, we are ready to go anytime you are.

Norman Epstein: All right. This is part of the Judicial Council Legacy Project, in which a recording is made of an interview with distinguished members of the Court of Appeal, retired from that position. And it's my distinct privilege to be able to honor and interview my longtime friend and colleague for many years, Herb Ashby, who retired a number of years ago from the Court of Appeal, and he is here with us this afternoon. We're going to talk about his life, going through a lot of it geographically, chronologically, from just about the beginning to where he is now. And Herb is also going to talk a little broadly about some other things that he's observed with respect to the practice and the judiciary over these years. So ***[brief interruption]***. . glad to know that. We'll start at the beginning – a very good place to start. And you were born in New Jersey.

Herbert Ashby: Jersey City, New Jersey.

Norman Epstein: And that was when?

Herbert Ashby: August 13, 1929.

Norman Epstein: And that . . . . 1929. So just on the eve of the Great Depression.

Herbert Ashby: Yes.

Norman Epstein: Your parents did what? What was their work?

Herbert Ashby: Well, my father had a lot of different jobs. I don't know what he was doing right then. My mother was a housewife.

Norman Epstein: And if you recall, or if you heard, did the Depression particularly affect them?

Herbert Ashby: Well, it . . . . Yeah, it affected them like everyone else. I mean, they were a young married couple. My father was looking for work most of the time, and . . . but he was working most of the time, too.

Norman Epstein: Well, that was a differentiation for many. And I recall reading somewhere that your mother, among other things that she did, was handy with a needle and it helped with your clothes.

Herbert Ashby: Well, Mother actually could do anything. She was a great cook, she was good at everything. She was especially good at sewing. So later, when my brother and I went to school, she did make our clothes.

Norman Epstein: And your father taught you – besides guiding you, he and your mother, in school – taught you a couple of things that somebody of your age, a very young boy, ordinarily wouldn't know about. Like chess?

Herbert Ashby: I learned how to play chess when I was about five years old. And he taught me how to box. 3:15

Norman Epstein: How to box.

Herbert Ashby: Right.

Norman Epstein: Did . . . . Was that of any value when you were a youngster?

Herbert Ashby: It was of a ***lot*** of value, actually more than chess. I went to many elementary schools, and I don't think the average is even three-quarters of the school year, and we'd be in another school. And you're starting all over. And there's always somebody who doesn't like your clothes or the fact that you've read a book.

Norman Epstein: How about your first name? Did that cause any problems at the time?

Herbert Ashby: ***[chuckles]*** Considering the fact that we had a Depression, and the President's name was Herbert, that was not a good name.

Norman Epstein: So boxing helped out.

Herbert Ashby: It helped out a lot.

Norman Epstein: And I gather it entered your life again a few years later. Where'd you go to high school?

Herbert Ashby: I went to Rahway High School in New Jersey.

Norman Epstein: And were you involved in athletics there?

Herbert Ashby: Yes. I wrestled, I was . . . I ran track, and I also played football in a city league, and played baseball during the summer in the . . . in a summer league.

Norman Epstein: So you boxed, you were in track, and you played football.

Herbert Ashby: And wrestled.

Norman Epstein: So a pretty all-around athlete. The . . . . Tell me about football. Anything remarkable that you did in high school?

Herbert Ashby: Well, I didn't play high school football. I played . . . . My mother would not sign the approval.

Norman Epstein: Oh!

Herbert Ashby: I played in a city league. And the difference between high school and the city league – one of the differences – was in high school, the other players were from 14 to 18 years old. And in the city league, they were from . . . they could be from 17 to 30.

Norman Epstein: And how old were ***you***?

Herbert Ashby: I was 16. So my mother did not save me from being exposed to injury by not letting me play in high school. 5:28

Norman Epstein: What position did you play?

Herbert Ashby: Running back.

Norman Epstein: Running back.

Herbert Ashby: Well, actually we played offense and defense. I also played left linebacker.

Norman Epstein: Well, with all modesty, how'd you do?

Herbert Ashby: You're forcing me to . . . . Well, one season – and I'm not going to talk about one exceptional, unusual game when I played for another team – but my best year, I scored 32 touchdowns in one season.

Norman Epstein: Thirty-two in one season. I seem to recall reading something about a remarkable number in a single game.

Herbert Ashby: Yes, there was. But I'm . . . . It was so many in the game, and it was so easy, and my . . the only survivor of that game who is still living may not be here long enough to vouch for it. I hate to even talk about that game.

Norman Epstein: All right. Well, from high school, you went to college. And I understand you went to Rutgers, the State University of New Jersey.

Herbert Ashby: Yes.

Norman Epstein: How'd you happen to pick Rutgers, and how'd you get there?

Herbert Ashby: Well, I went by the practice field in late August. Very hot, muggy day. And I was talking to the assistant football coach, who was also the wrestling coach. And he asked me where I was going to college that year, and I told him I probably wasn't. He asked me about Rutgers; I said that I had applied and they . . . I was not accepted. So he told me – this was on a Thursday – he told me, "Meet me tomorrow morning 8:00 on the high school steps." He picked me up – he said, "Bring your wrestling gear" – he picked me up, we went to New Brunswick, I tried out, and the coach gave me a letter to hand them at Admissions. And I did, and I was in Rutgers and . . . with a scholarship.

Norman Epstein: And you were at Rutgers for the whole college period, or did you leave at some point and transfer?

Herbert Ashby: Well, my father worked for the Western Electric in Kearny, New Jersey, and he was transferred to Albuquerque, New Mexico. So he was there, you know, seeing if he liked it, from about January 'til June. Told us in April, "I like it." So we moved to Albuquerque and I transferred to the University of New Mexico.

Norman Epstein: So you finished up at University of New Mexico. 8:19

Herbert Ashby: Yes, I did.

Norman Epstein: Well, about that time in one's life, you have some heady decisions to make. You go to college, where are you going to go, what are you going to do. What did you do?

Herbert Ashby: I decided to go to law school.

Norman Epstein: The . . . . Just then and there, it came to you? Or what inspired you for law?

Herbert Ashby: Well, actually, my entire life from the time I was two or three years old, my mother and father always talked about my being a lawyer. The relatives had gotten used to it. So when I was . . . when I graduated, and I was standing around wondering what I would do, I decided to go to law school.

Norman Epstein: Anybody talk to you that had a role in that decision?

Herbert Ashby: Other than the people I've already mentioned, I can't remember anybody.

Norman Epstein: All right. Did you meet with the dean at some point before you went?

Herbert Ashby: Well, that was when I got out of the army. I was drafted after the first year of law school. I . . . Three fraternity brothers and I decided to go to Alaska during the summer and make a fortune.

Norman Epstein: Had the war started by that time?

Herbert Ashby: Oh, yeah, the Korean War was on. So we drove to Alaska . . . .

Norman Epstein: You drove to Alaska!

Herbert Ashby: Up the ALCAN Highway, five flat tires, and we . . . it took about a week. And we got up there and worked during the summer. I fell out of touch with the draft board during that period of time. Apparently they had sent me several letters which I didn't respond to.

Norman Epstein: Where was your draft board, in New Mexico or New Jersey?

Herbert Ashby: No, unfortunately it was in New Jersey, and I was a freebie if they drafted me. They didn't have to get anybody out of the neighborhood. So when I got back from Alaska and I contacted them, they set me up for a physical, which I passed. And about a week later I was in Fort Bliss, Texas.

Norman Epstein: Well, before we get to Texas, tell us about Alaska. What did you do there?

Herbert Ashby: Well, when we first . . . . We expected jobs to be very plentiful, and when we got there, we found out that they weren't. And we went to the local newspaper – I thought it would be a good idea, for some reason; it 11:03

wasn't – to maybe have a little article in the paper saying, "Four college kids from New Mexico here; give them a job." And when we talked to the editor, whose name was Jessen – it was ***Jessen's Weekly***– he felt sorry for us and told us that there were 200 stories like that already. But he let us put our tent in his backyard, which was adjacent to the printing plant. And he said we could use the facilities at the printing plant.

Norman Epstein: Well, you got into firefighting at some point.

Herbert Ashby: Yeah. I had . . . I was working two other jobs: one from 8 to 5, and the other from 6 to 2. And I had met several other people there. My fraternity brothers were somewhere else; they got different jobs. And I got a call one day – I was directing this crane – and I got a phone call and I said, "I'll be back." And I took the call, and it was my friends saying they'd gotten a call from the ranger station, we're on to fight fires, they'd pick me up in three minutes. So they did . . . .

Norman Epstein: In three minutes!

Herbert Ashby: In three minutes. And we drove up to the ranger station, which was up . . . pretty high up on a mountaintop, and next thing I know we were in a pickup truck heading for a little airport.

Norman Epstein: Had you had any training at all on fighting fires?

Herbert Ashby: You know, we hadn't had, but I'm not too sure – it's been a long time – we might have led them to believe that we had some experience. But none of us did.

Norman Epstein: Your friend must have led them to believe that. No doubt.

Herbert Ashby: Nah, I think we all . . . if we did, we all led them to believe it.

Norman Epstein: So they took you to a plane, and then what?

Herbert Ashby: Well, they gave us parachutes, which we thought would be normal if you're getting in a plane. We didn't realize that they might be necessary. And we flew out, and I don't know where we were going, and after about half an hour, or an hour, something like that, we got to use the parachutes.

Norman Epstein: What'd they do, just tell you to jump out of the plane?

Herbert Ashby: They did. And I think I was third. There were four of us – four or five of us. Anyway, I was next to last. But after the other people jumped out, I had to go. And . . . . But I'd . . . . I was . . . . I had some training. I had seen war movies ***[laughter from Justice Epstein]*** and I knew that you counted three and yelled "Geronimo." And that's what I did.

Norman Epstein: And you pulled something?

Herbert Ashby: Pulled the ripcord and . . . 13:57

Norman Epstein: And the chute opened.

Herbert Ashby: . . . and it opened. And I expected it to open; I didn't know, then, that sometimes they don't open. But I expected it and it was a nice ride down.

Norman Epstein: Ever do that again?

Herbert Ashby: No, no. And I'm not going to.

Norman Epstein: So you landed safely, and then what?

Herbert Ashby: When we all got together, we pulled the chutes down, and flattened them out, and then we . . . they dropped equipment, and we had water. I think they were . . . I'd like to say 15 gallons, but they might have been 5. They were very heavy when you put water in them, and there was a stream – ice-cold water off a glacier – going by.

Norman Epstein: And they gradually got lighter.

Herbert Ashby: And we filled them up, and we . . . there was a little forest there that was on fire. We went in. And we had gone in maybe, I don't know, 50 yards, and all of a sudden there was this tremendous, just, like suction – just air went right up. And the fire just crossed over the treetops, and it made a swishing sound. And we realized that the whole thing was on fire now. So somebody yelled, "Run!" and we started running. And we finally . . . . We carried the cans for a while, but after about 15 yards we realized we're not getting out if we don't drop them. So we dropped them and got out. And it was daylight 24 hours a day, so we were sitting out there, resting up, wiping the soot off ourselves, and we didn't know if it was noon or midnight.

Norman Epstein: Did you have any idea where you were?

Herbert Ashby: No.

Norman Epstein: What did you do?

Herbert Ashby: Well, we had to stay until two weeks after the last smoke. And somebody knew where we were, because they dropped supplies. And they . . . . And, you know, we just . . . . And I remember, I was with this . . . . I was sitting next to a fellow named Blythe Ahlstrom, and there was really nothing we could do that was . . . . The fire was in the tundra, and it was . . . every once in a while it would flare up if there was a little wind, but otherwise it was just . . . it just was burning like, you know, like straw two feet thick. And he got up, and I said, "What are you doing? We can't put the fire out." He said, "When I get paid for eight hours, I work eight hours." So I had to get up with him, and we went out, we went along the edge of it, and hit it with the shovels and things like that. But . . . .

Norman Epstein: How'd you get out? 16:45

Herbert Ashby: Well, we had . . . . We were there, you know, a couple of months. Maybe . . . .

Norman Epstein: You were on the ground there . . .

Herbert Ashby: Yes!

Norman Epstein: . . . for a couple of months?

Herbert Ashby: Yeah!

Norman Epstein: For jumping out of a plane.

Herbert Ashby: Right! It was just like . . . could have been six or seven weeks, I really don't remember now. And anyway, we hiked out to a place where they could land a plane. And they landed a plane, flew us to another place where we got in a pickup truck, and they took us back to Anchorage.

Norman Epstein: Did you have any means of communication during all that time?

Herbert Ashby: No.

Norman Epstein: Radio?

Herbert Ashby: Nothing.

Norman Epstein: Nothing.

Herbert Ashby: No.

Norman Epstein: So you just walked yourself out of the forest and found a flat place and they found you.

Herbert Ashby: Right. And the . . . . Blythe Ahlstrom and Ross Allen, who were with me, they were Eagle Scouts. So they were able to . . . . They were from Utah. They really knew how to build things. So they built us a pretty nice place to live during the time we were there. So we weren't just living in tents the whole time.

Norman Epstein: Was that the end of your firefighting career?

Herbert Ashby: Yes, it was.

Norman Epstein: What'd you do next?

Herbert Ashby: Well, we had to go in and get our checks from the jobs that we'd been on. We had worked at Eielson . . . . We were working at Eielson Air Force Base. So we had to survive a hostile personnel lady who told us that they would never hire anybody who was a college . . . was from college again, because we had left and, you know, just abandoned the jobs like that. She also didn't want to give us our checks. And I'm not even sure we even came back for them. I mean, we took quite a tongue-lashing. 18:47

Norman Epstein: Time to leave.

Herbert Ashby: Which, you know . . . . And it was hard to dispute what she was saying.

Norman Epstein: Well, after that, somehow you found yourself in the army. Tell us about that. How did that happen?

Herbert Ashby: Well, when I got back, as I said, I had these letters, and I contacted the draft board, and they were waiting for me. So they set me up for a physical, and I took it and passed it. And they drafted me and sent me to Fort Bliss.

Norman Epstein: And after Fort Bliss, where'd you go?

Herbert Ashby: Well, after Fort Bliss I went to Fort Leonard Wood in Missouri.

Norman Epstein: Is that a specialized school . . . program?

Herbert Ashby: The school that I was going to was specialized. They have all different specialties, but I was – apparently because of my test scores – was sent to tractor-scraper training school so I could be a heavy equipment operator.

Norman Epstein: And how long did that last?

Herbert Ashby: Well, when I got there, they reviewed our records, and the company commander apparently picked me to be the platoon guide. So I was told to report to the orderly room. I did, they gave me an armband with sergeant's stripes on it, and put me in charge of the platoon.

Norman Epstein: So you had stripes. How long had you been in the army when this happened?

Herbert Ashby: I'd been two months at Fort Bliss. But these . . . this was ***acting*** This . . . . These are not stripes that really mean much. I mean, a PFC outranked me. But, you know, we were working from . . . . You know, you get up at 6 in the morning and you go to the mess hall, you're in formation, you're out in the field, you're driving heavy equipment or learning how to drive it, then you're maintaining it, you come back, you . . . everyone falls out, you go down to the barracks, you wash your hands, you go to the mess hall, you come back, you might write a letter. You're so tired that basically there isn't much else to do.

Norman Epstein: Well, now that you've learned your craft as a tractor operator, where'd they send you next?

Herbert Ashby: Well, then they thought that they probably could use me in Korea. So I was sent to Fort Lewis, Washington, and within a week to 10 days we were on a ship heading for. . . I think it was either . . . I think it was Inchon. 21:41

Norman Epstein: And how long were you in Korea?

Herbert Ashby: Sixteen months.

Norman Epstein: And . . . . Sixteen months. Well, did you operate a tractor while you were there?

Herbert Ashby: ***[chuckles]*** I never saw a tractor anyplace.

Norman Epstein: You never saw another tractor.

Herbert Ashby: Never saw it.

Norman Epstein: What'd you do?

Herbert Ashby: Well, they pulled me out at group headquarters first, and so I was there for about a month or so. And I was . . . . Actually, I was offered a job teaching Korean businessmen English. And I actually ***did*** that for about two weeks, but then I was sent to a company. And I think it was the 630th Ordnance Company. But it was north, up near the . . . . They said it was 15 miles south of the 38th parallel, but, you know, the country, you're going through rice paddies, you're going through, you know, flatland. We really didn't know where we were. But that's what they said. So I was there the rest of my time. We had four Quonset huts, and the rest were tents. So we were in tents most of the time.

Norman Epstein: And what was your assignment while you were there? What were you doing?

Herbert Ashby: Well, I started out, I was Troop Information and Education NCO. And then Training. And then I was put in charge of . . . . Somebody rotated in and they put me in charge of the Korean laborers. We had a laboring force of 450.

Norman Epstein: You're in charge of 450 people.

Herbert Ashby: Korean laborers. And gradually what happens when you're, you know, anybody who's been in the army, if you have some education and you can write well and things like that, you end up in the . . . getting all kinds of other assignments. You know, they just give you projects. So I had a lot of projects.

Norman Epstein: Well, I gather that the conditions there – particularly the weather – were kind of harsh. Is there anything that you took out of that that you . . . that helped guide you later on?

Herbert Ashby: Well, I think the main thing I got was an appreciation of freedom. The appreciation that you could get up and go out, get in your car and drive someplace. That you could eat what you want. You could . . . . And the other thing, I think, was having a shower and all of the things that when you're in the States, you don't think about. And personally I liked my tour in Korea. I mean, I didn't . . . . I . . . . We had a lot of good guys in my company. It was good experience; it was the first real job I'd 24:52

ever had. And I was in charge of enough people where I really had to think about it and know what I was doing. I did find out, though, when we were transferred to a . . . . We took over another company; we went south; we were put in charge of another company. And I replaced a sergeant who spent all . . . the rumor was he spent all his time in the village. There was a village there. And in going through the . . . .

Norman Epstein: That sounds like a euphemism. "Village."

Herbert Ashby: Well, no, I mean, it was really . . . . That's what they said, it was a village.

Norman Epstein: Okay.

Herbert Ashby: But anyway, I went through the records and I could see that there were disparities. And I realized that out of the over 400 that we were supposed to have, we had about . . . less than 300 people. And the money was going somewhere. And it became apparent to me that there was a problem, because there was a person who was supposed to be the head of the Korean group, and he was . . . but he was a college professor, and I hadn't even met him yet. So when some of the people realized that I had, you know, I had quickly noticed this, I think they decided to put some pressure on me, because at that time if there was an ammunition car on the tracks, there was a demerge charge of . . . . And I don't remember what it was, but I think it was something like 5,000 a day. It was a large number. And this was four or five cars. And you had to get them off fast or you would have to start paying this money.

So I was called down to – and it was right around noontime – I was called down to the railroad siding, and when I got there, the people were up on a flatcar. I climbed up on a flatcar and they told me that everybody was on strike! And I looked over and I saw all of these workers, and they were all crouched, you know, squatting. And I realized that this was a pressure move to, you know, to put me in a position where I would have to go along with them. So I told them to tell them they were all fired. And they announced it, and it was just pandemonium. And I told them also to tell them that I'd be rehiring – that I was going to start hiring again at one o'clock. It was about a quarter to twelve. We had brought about 50 – or we didn't bring them, but they came – 50 workers from the other company, including the head worker, a fellow named Lee. And when we . . . after lunch, I went back to the office and the first thing I did was put Lee and his 50 people on the payroll. And then we had the other people and we hired them and sent them out to their assignments. And we . . . . The other people, who had been taking the money, left, you know, and you never knew where anybody went. They just disappeared. So I was able to then, with the money – since we now ***had*** the money – change a few things. And what I did is I had . . . I set up a training period for Saturdays, and we trained them in English and, you know, our propaganda, the TI&E stuff. And also, the professor who really didn't know anything about running anything, I changed his position and had him translate the ***Picatinny Arsenal Manual***, which is about a foot thick, and it's all about ammunition. And he translated it and he gave 29:00

courses on Saturday. And got armbands for the people in charge of the various little jobs that we had there. And we had a very nice operation.

Norman Epstein: The . . . . I gather about that time your tour of duty came to an end . . .

Herbert Ashby: Yes.

Norman Epstein: . . . and you're back in the States. Had you finished college at that point? Undergraduate?

Herbert Ashby: Yes. But there's something interesting happened on the ship. When I got on the ship. I was a PFC. We didn't get . . . . You know, the rank would start up the group and it would come through, and by the time it got to some of the companies, especially if you had a new company commander – and we had three of them – you didn't get a lot. So we were . . . . So I was a PFC.

And when I got on the ship, we had . . . they took 11 of us and put us on what they called ration breakdown, where you go down to the hold and you pick up the rations and you bring them up to the mess hall. And everybody else was a sergeant except one other soldier. He was a corporal who'd been busted from sergeant. And in the beginning, you know, I realized these guys aren't doing anything. You know, I was picking up the boxes and they were just waiting around, and so finally I just started . . . I took it all. So I was doing about 75 percent of the work. And I ***wanted*** to, because I wanted to get back in condition. I thought the exercise and the lifting would be good. And I guess about . . . must have been about five days later, one of them – we were on a break – and one of the other soldiers, a sergeant, pulled out a chess board, and he asked if anybody could play chess. And I said, "I can play." And he said, "Anybody else?" But he played me. And I . . . . You know, I had no problem with him and the chess. So finally he said, "You know, you're a lot different from what I thought." And I asked why, and he said, "Because . . . ." And he didn't want to say, "Because you're stupid; you were doing all the work." But he fumbled around on it. And I said, "Well," I said, "When I do something, I like to be the best at it." And I know they all realized they were looking down on ***me,*** but I was really looking down on ***them*** So later in the day more of them pitched in, and within two days everybody but the corporal was working. And we were . . . . Everything got a lot easier. We formed a line, we'd pass things down the line, and we had . . . we became very close friends. And when we got to Seattle, we exchanged phone numbers and . . . well, not phone numbers, but addresses and promised to write and to . . . . But, you know, only a couple of them did.

Norman Epstein: Mm hmm. Now, at this point you're back in the States, and you had finished your undergraduate, or not yet?

Herbert Ashby: No, I'd finished.

Norman Epstein: Okay. Well, tell me about law school, then. 32:19

Herbert Ashby: Well, I was considering going to law school. I'd also applied to UCLA. I thought I might study philosophy. And my mother was very upset with that. She was telling me you can't make a living . . .

Norman Epstein: Right.

Herbert Ashby: . . . all that. And so I got an acceptance from the law school, but I didn't get any reply from UCLA at all. Somebody suggested to me a couple of years ago that I did get a reply and my mother intercepted it ***[laughing],*** which I think is probably exactly what happened. I should have at least gotten a rejection, but I didn't. And anyway, I went over to the law school and I was standing around . . . .

Norman Epstein: Now, this is in Albuquerque?

Herbert Ashby: Yeah. And it was, you know, before school started, and I was looking at the bulletin board. And the secretary came out and asked me my name. And when I told her, she said, "Oh! The Dean wants to talk to you!" and she rushed me in to see the Dean. And anyway, I talked to him, and he welcomed me, and I didn't want to tell him that I hadn't decided, really, to go yet. But I decided, and he never knew that, you know, I hadn't been committed right from the beginning.

Norman Epstein: So you were at the University of New Mexico Law School for, what, a year?

Herbert Ashby: Yes.

Norman Epstein: And then you went to California.

Herbert Ashby: Right.

Norman Epstein: How did that happen?

Herbert Ashby: Well, I got . . . met a young lady from Montana, and she wanted to go to California some day. So did I. So we were married on a Saturday; Monday we got in a car and loaded it down with what we had and drove to California. Drove up to San Francisco, and I remember the first thing that happened. My bumper was about two inches off the road. I went up one of these hills, and the moron in front of me didn't pull all the way up to the line, so I was kind of hanging on it, and my car didn't have enough power to make it. So a policeman came along and he helped me back all the way back down this whole block. And then we drove away. We . . . . She was a teacher, so we went over to the Superintendent of Schools' office . . . .

Norman Epstein: Now, this is in San Francisco.

Herbert Ashby: Yes. She went in, and I guess it was about 1:30. She went in. I got a newspaper and started looking for apartments for rent – furnished apartments. And about 45 minutes later, she came out. She looked dazed. She had gotten a job, and she was starting the next week at an elementary school on Harrison Street. And we . . . . Meanwhile, I 35:21

had found a couple of apartments to look at. And it was . . . . It's not like that today. I mean, we didn't have any references, we didn't have first and last, we didn't have a security deposit. And we rented an apartment overlooking Golden Gate Park; it was right across the street.

Norman Epstein: Well, in the meantime you had to finish law school. So what'd you do?

Herbert Ashby: Well, I . . . . It started about, I think, in maybe 10 days. So I went up there, and it was interesting, because we went to . . . .

Norman Epstein: Now, this is USF.

Herbert Ashby: USF. We went to the mixer the night before classes started, or, you know, the week . . . maybe it was a Saturday. I don't know. I think it was during the week. But anyway, we went to it and we sat around for maybe half an hour; we didn't know anybody. So we went . . . we left and went to a movie. And came back and then I started law school.

Norman Epstein: And, let's see, so you finished . . . you did your two years finishing law school at USF.

Herbert Ashby: Yes.

Norman Epstein: Now, you held a student body office, I read somewhere, while you were there. What was that?

Herbert Ashby: Well, I was . . . . Yeah, I was student body president. But what happened was, you know, at every school you have the "in group" and the "out group." So people from the out group – and I was the personification of the out group, being a transfer student – you know, we're talking about the fact that you never knew what was happening and there was some kind of pre-meeting meetings, and you know, the kind of complaining you hear. So nobody wanted . . . everyone wanted someone to run, but nobody wanted to do it. So I . . . . They wanted me to do it, I said okay. So . . . .

Norman Epstein: Did you have any opposition?

Herbert Ashby: Yes. I had formidable opposition. But what happened is that there was . . . . It was a night school and the day school, so in the green-and-gold room, which is the cafeteria and meeting room, they had a social hour where the candidates would have an opportunity to talk and, you know, give a campaign speech. And you really had to be there. So I was there. Having a last name that starts with "A," I'm very well aware that a lot of people want you to do things alphabetically. I did ***not*** want to be the first speaker, so I avoided the chairman and was unavailable to him. So he lined up the speakers, and they were alphabetical. And there were four offices, and there were probably nine or ten speakers. So I reported in right near the end and was the last speaker. And I told them, you know, I'd make it very brief. Somebody before me . . . . I was very lucky, because somebody in the middle, there, got up and said he was president of the first grade, he was president of the second grade, he was also president in the fourth grade. He went on and on. He was 38:55

commissioner of this and, you know, just very impressive background of leadership. And I told them that I wasn't president of the first grade, I wasn't president of the second grade, I wasn't even commissioner, I had held leadership positions but I wasn't running so that I could stand up next year and say I was president of the student body. That I considered the office to be a trust, not a trophy. And I said, "If you elect me, classes won't get easier, you're not guaranteed to pass the Bar, you're not necessarily going to have a good career." I said, "Look. What I ***can*** promise you is you'll have equal representation; you'll be as good as anybody else. And I hope you vote for me." And I won in a landslide.

Norman Epstein: The . . . . So after that you sat for the California Bar?

Herbert Ashby: Yes.

Norman Epstein: And which you passed. You graduated, I know, with honors at the law school. And then you were back in Albuquerque. What happened then?

Herbert Ashby: Well, I . . . . It was . . . . I think it was the holidays. I think it was around Christmastime. We'd just gotten the Bar results, and drove back to visit my family in Albuquerque. And we decided to go up to Santa Fe. So my wife and my parents were going to go shopping, and I was going to go over to the Supreme Court and visit a friend of mine who had been in law school with me, you know, when I was in New Mexico. And I was going to meet them at the La Fonda Hotel. So I went in and I was talking to him, and he said, "I'm going to introduce you to the judge." It was Judge . . . Justice James B. McGhee, who was the Chief Justice. You know, and I talked to him, and he asked me questions, and then I went out and John – this fellow's name was John Isaacs – he talked to him some more. And finally, you know, after I visited there maybe 40 minutes, 45 minutes, John came out and said, "Okay, you got the job."

Norman Epstein: So you were then a law clerk to the Chief Justice of New Mexico.

Herbert Ashby: Yes.

Norman Epstein: Were you the only clerk, or did he have others?

Herbert Ashby: No, no, I was the only one.

Norman Epstein: You were the only one. Right out of law school, the only clerk to the Chief Justice of the state. And I think you told me that was an annual position.

Herbert Ashby: Yes. Yes, it was.

Norman Epstein: So you did that for a year. Any particular recollection you have from your experiences clerking for the Chief Justice?

Herbert Ashby: I think the main thing that impressed me is I really didn't know where I wanted to go as a lawyer. I wasn't really sure I even was going to practice law. But after I read a few transcripts, and I read the briefs, I started looking at it differently because I could see that these were 42:15

real-live problems that people had. And looking at the way the trials went, I thought I could do better than that. So I decided that I was going to go into a law firm.

Now, Justice McGhee was from Roswell, and Roswell is a big oil-and-gas center. And somebody he knew – maybe from his former firm, I don't know – came in and interviewed me at the court and offered me a job at the end of the year, and . . . with the promise that in two years I could be a partner. And it was one of the bigger firms, but that doesn't make it a giant firm, you know, in Los Angeles standards. But I thought about it and you'd be reading abstracts – property abstracts – and you'd be reading the . . . you know, hanging around oil fields, and I just felt that to be really be a lawyer you had to be in trial. So I turned it down. I'll get to that a little later. I turned it down and I . . . we headed back for California.

Norman Epstein: So you and your wife got back in the old Ford with the bad bumper and drove back to California.

Herbert Ashby: That's right.

Norman Epstein: And I know you were in Salinas in private practice at that point.

Herbert Ashby: You know, it was interesting in Salinas, because I . . . there was an attorney – he was also the city attorney – who needed somebody to work with him on a case. So a friend of mine from USF Law School mentioned that to me. So I went in and talked to this fellow, and he was very anxious to hire me to work on this case. And it was . . . . I don't remember the name of it, but it involved lettuce mosaic. A seed company had sold seeds and the crop was covered with lettuce mosaic. And it was . . . . The case had come from a Los Angeles law firm. So anyway, I worked on it, wrote up the briefs, and everything. And they went down to L.A. Years later, when I was at the Court of Appeal, I met John Cole. You remember him.

Norman Epstein: Oh, yes.

Herbert Ashby: And it turned out that John Cole worked for Loeb & Loeb.

Norman Epstein: Yes.

Herbert Ashby: And he was on the other end of the case. He was working on it from the . . . . He ***had*** that case, from their point of view, and he didn't even . . . . He had no idea who worked on it, you know, up in Salinas. But that was my case. And we won the case. And then I decided that I . . . there wasn't enough work with him, and I took an adjoining office. Had the same secretary.

Norman Epstein: Well, at some point you decided you were interested in working for a public agency – particularly a prosecutorial office. And you found Ventura. How did you do that? 45:36

Herbert Ashby: Well, the reason I was . . . I wanted to leave there – I'll mention this – is there was a . . . I had a case involving a church. And the parishioners came to me and they said they . . . that the minister was stealing money. And they wanted me to go over there and do something. Being, you know, new – not realizing what was involved – I went over there, found myself standing at the pulpit with hundreds of people in this church, with nothing to say except "Why am I here?" And . . . . But the minister wanted to talk to me. I talked to him. And he . . . . I'd like to take credit and say that I talked him into repenting, but I think repenting was something that came to him himself. And he repented. And everybody was happy, and they were all cheering and yelling. And about three months later he came to me and someone had turned him in to the IRS, apparently – before the reconciliation. And he was almost 50 years old; he had never filed an income tax return in his life.

Norman Epstein: They don't like that.

Herbert Ashby: And he had a small box with just a handful of records. I didn't want to take the case, because I, you know, I thought he was dishonest. But I didn't want to tell him that, so I told him that my fee would be $5,000 up front. Which was . . . considering the fact that that's about what I made the entire year, was a gigantic fee.

Norman Epstein: What year was this?

Herbert Ashby: This was 1960. So, anyway, he said, "Okay." And he gave me five hundred up front right then, in cash. I went to a CPA, handed him this small box of stuff, and said, "You know, see what you can do." And I went home and I told my wife, "This is really terrible. He's such a crook." And I kept mentioning it. And finally she said, you know, "Why do you keep mentioning it?" And I said, "Well, I guess because I really don't want to take the case." So she said, "Don't." So when he came back with the rest of the money, I told him that I couldn't handle the case for him, gave him his 250 back, gave him a receipt, you know, for the CPA. And I started looking at D.A.'s offices, you know, for a job.

Norman Epstein: Well, one of the ones you looked at was Ventura. You selected that one. And when you got down to Ventura, still another move for you and your wife . . . .

Herbert Ashby: Yeah.

Norman Epstein: Any children by then?

Herbert Ashby: No.

Norman Epstein: So you're down in Ventura. What did they start you as?

Herbert Ashby: Well, they started me as a Deputy I and at 525 a month.

Norman Epstein: You remember the number.

Herbert Ashby: Yeah, I remember the number. I thought it was big money. 48:54

Norman Epstein: And what was your assignment?

Herbert Ashby: Well, I was a prosecutor, so I had a lot of misdemeanor cases. And I had civil assignments, because that was one of the few offices where they had civil and criminal. So my original assignments were the Assessor, Tax Collector, and Harbor Commission.

Norman Epstein: There was a district attorney in Ventura who also acted as what came to be called County Counsel. Is that right?

Herbert Ashby: Well, the District Attorney handled all of the civil . . . .

Norman Epstein: That's what I meant.

Herbert Ashby: Yes. So it was a combination office.

Norman Epstein: Mm hmm.

Herbert Ashby: But nobody mentioned County Counsel.

Norman Epstein: There ***was***no County Counsel as such at the time.

Herbert Ashby: There was no County Counsel.

Norman Epstein: So you were doing criminal, and did you gradually get into some civil work?

Herbert Ashby: Oh, I got into civil work right away, because I didn't realize that nobody ***did*** civil work. I didn't realize you just . . . that four . . . two stacks of four feet of files was because nobody ever serviced the client. So I mistakenly called them and introduced myself and started doing civil work.

Norman Epstein: What agency did you represent? What parts of the government?

Herbert Ashby: Well, that . . . . The first ones were the Assessor and the Tax Collector and the Harbor Commission. But my second day there . . . . I arrived on a Monday. Tuesday afternoon I was handed a jury trial – an assault jury trial. The next day. And I guess I must have gotten pale, because the Chief Criminal Deputy who handed it to me asked me if there was a problem. I didn't want to tell him, "I've never had a trial before," so I said, "Yes. Where . . . . I don't know where Santa Paula is." And . . . .

Norman Epstein: That's where it was being tried?

Herbert Ashby: That's where it was being tried. So he told me.

Norman Epstein: And how did it go?

Herbert Ashby: It went well. I . . . . You know, I tried the case against a pro per. Unfortunately, he had more experience than I did. But it didn't help him that much. I still got a conviction. 51:08

Norman Epstein: So as time went on, you worked up through the ranks: Deputy I, I, III, I think you were made IV. And you were doing more and more civil work, I gather.

Herbert Ashby: Yes.

Norman Epstein: The . . . . Eventually . . . .

Herbert Ashby: Well, I kept my clients. I mean, in other words, when they did a rotation – when we got a new attorney and somebody left – they would take the cases, or the departments, and they would just redistribute them. And . . . . But I kept my clients. My clients wanted . . . didn't want to have another attorney, I didn't want to give them up, so I just built up a . . . more and more of the civil clients.

Norman Epstein: And I . . . . Probably over time, more and more people in the government who respected the work you were doing, which is why they wanted you.

Herbert Ashby: Well, I had a case . . . . I'd been there, I think, four months – four and a half months. And I had an equalization case that was sensational because the former D.A. – the one who had actually been there; he was still a D.A. when I was hired, but he was not there, he was starting his private practice – came in and it was against the county. And I was handed the case with zero information. And I handled it and won the case and almost got the assessment increased – doubled. And in fact it would be quadrupled. And there was, you know, a big article in the newspaper and all that. And one of the board members and the taxpayer's representative caught me before I left and asked me what my name was, because I'd never been in the board before and nobody knew who I was. And then the following year when they were going to get a new advisor, when their advisor was leaving, they were . . . several names were mentioned and one of them said, "What was the name of that guy?" And that's how I was picked.

Norman Epstein: Starts with an "A."

Herbert Ashby: Started with an "A."

Norman Epstein: Now at some point during your work in Ventura, the District Attorney decided it was time to spin off the County Counsel function – the civil function – and that you should be the County Counsel. How did that come about?

Herbert Ashby: Well, the . . . I was the attorney for the grand juries, too. And the . . . . I think it was the 19 . . . . I think it was the '63, and '64, and '65 grand juries. About three grand juries' representatives came in to see me. There was a municipal court judgeship which was being established in Camarillo. And the grand jury members came in and said that if I would put my name in, they would back me. So I put my name in. And . . . . But I didn't get the appointment. But during the month or so that it was going on, I, you know, I was thinking beyond the job I was on and I started thinking, "Oh, maybe it's time." And I was getting offers 54:39

to go into private practice. So I decided to go into private practice. I . . . . Naturally the D.A. and I were very close, and I confided in him and told him. And anyway, he went and talked to the board and told them he thought they could probably keep me if they would divide the office. So I was called in, they offered me the position – to create it for me – and . . . if I would stay.

Norman Epstein: Now, at that point you had been in the office for how many years? Four or five?

Herbert Ashby: I . . . . At that time, let's see. I started January of 1961. I . . . . In October of '62 I was Assistant D.A. in charge of the office. And this was . . . must have been, like, May of '66. So I had been there, at that time, whatever amount that is.

Norman Epstein: Yeah. Well, that's fairly meteoric. So you became the first County Counsel of Ventura.

Herbert Ashby: Yes.

Norman Epstein: How'd you organize the office?

Herbert Ashby: Well, I knew who all the good lawyers were, so I picked the . . . You know, almost everybody volunteered to go. And I picked what I considered to be the top lawyers out of the D.A.'s Office.

Norman Epstein: And you had the opportunity to organize the office from scratch, as you would like it to be.

Herbert Ashby: Yeah. So we started . . . . I was in my same office for about nine months, you know, so we were mixed in just like it had always been. And . . . . But we were . . . they were preparing an office space for us. We were on the fifth floor, and they were preparing office space for us on the second floor. And so we did move, and we went down there, and it was . . . . At that time, there was no carpeting and no drapes for any county office. And I wanted carpeting and drapes, because my feeling was we are up against good law firms, they have these things, and I don't want somebody from O'Melveny & Myers to come in and sit there with linoleum on the floor and a light green metal wall. And that's what I told the board. And the grand jury got behind me on it, and so we got it.

Norman Epstein: How did you organize the office? What did you do that was different from what had been done in government that you'd seen?

Herbert Ashby: Well, people underestimate how important the secretaries are. We had . . . . I remember I was surprised when I got to the D.A.'s Office and there was a secretary who did all the bond elections. And no . . . . And I was supposed to be . . . . One of my first assignments when I was hired was to ultimately become the school attorney. Well, I didn't know anything about the bond issue, and I . . . . so I thought that, you know, the school attorney who'd been in it for 25 years would know. But he didn't know, either. So I realized that we've got a secretary who, you know, if anything happens to her, we're . . . we can't have bond elections. 58:11

So I started trying to train our secretaries to do a lot more – things that the attorneys were doing that were more ministerial. They didn't . . . . You didn't need a law degree. You just needed to be smart enough. And so I had secretaries who could do most of the work on, as I said, the school bonds, on elections, on probate, on collections, on anything to do with other pleadings and contracts. And then I had backups. I wanted to have somebody who could replace that person if they were out or if something happened. And I waited about 10 months, and then I went to Personnel, and I . . . . Oh, I also changed the score for applying for a job in our office. It was 70 – passing was 70. On our test it was 80. So if someone didn't score an 80, they were not on our employment list. And I got our secretaries reclassified, so they were . . . . The term "paralegal" was not in use; I never heard that term before. So I called them "civil secretaries." And it was important, because we had a Public Defender then, and we had the D.A.'s Office, and they were . . . they couldn't be civil secretaries. So it was a title that we wouldn't have to argue over.

Norman Epstein: So you had a classification that was independent from the criminal part.

Herbert Ashby: Yeah, and we had a 12-1/2 percent salary increase.

Norman Epstein: Now, we're up to . . . .

David Knight: I'm sorry, I'm going to interrupt you and change . . . . And we're ready to go anytime you are.

Norman Epstein: All right. We're now up to about 1966, and a new Governor named Reagan had swept into office. And you were shortly swept into Sacramento. Where'd you go and how did it happen?

Herbert Ashby: Well, I . . . as assistant district attorney I used to go to . . . with the District Attorney to the D.A. . . . the County Counsel meetings. They used to meet together. And so, you know, for, you know, four or five years I had done that. And then in '66 I became County Counsel, so I wasn't . . . . When we went to the meetings, I would go to the County Counsel part. But I still had enough interest in the criminal side that I . . . if I didn't have to be in one, I would be in the other. And anyway, we had some kind of discussion involving district attorneys, and I got up and spoke my piece, which was, you know, contradicting something somebody said and taking a firm position on something. So then, you know, we were . . . I think we were at Sea World, and then we . . . that afternoon we got on a bus and took our kids around. So it was about four years later – I think it was like August of 1969 – that I got a call from Lucien Vandergrift. And he had been a D.A. He had been a D.A. of . . .

Norman Epstein: Butte.

Herbert Ashby: . . . Butte County, and he was at that meeting. And he called me and told me that he was . . . in the next few months was going to be promoted from Assistant Secretary of Human Relations Agency to the Secretary. And that he would like to talk to me about becoming Assistant Secretary. 1:02:02

Norman Epstein: Now, as I remember the organization, that agency was a super agency, and it had under its jurisdiction a major part of the whole state budget.

Herbert Ashby: We had two-thirds of the state budget. We had Corrections, Youth Authority, Welfare, Mental Hospitals, Health, Industrial Relations. I might have left something out, but that's enough.

Norman Epstein: That's enough. So he called you, and what'd you do?

Herbert Ashby: Well, we met, and we talked a few times, and I went up to Sacramento, and he showed me around. But I was . . . . You know, the more I thought of it, you know, resigning from a job that I loved, picking up my family – you know, my three daughters were like six, three and a half, and sixteen months, or something like that – and moving up to Sacramento, especially in a position where if there were a change of administration, you're . . . you know, you're unemployed, I was having trouble making a decision. But I called Lucien on . . . . It was a Saturday morning, and I called him and told him I decided that I couldn't leave Ventura. So he wasn't too happy about it. But then I went down to my office and decided to tackle some of the things that had piled up in the last couple of days while I was agonizing, and I found an application for a variance from some lady who wanted to change her fence from 48 inches to 50 inches. And it suddenly hit me that I had just sentenced myself to do this for the rest of my professional life. And it was a shock. And if I hadn't been forced to make a decision, I never would have known this. I could have gradually just done this until I was old and gray, and I would never notice it. But now I was going to notice it because I had made the decision. So that changed my mind. So I called Van about 19 times that day. He wasn't home. About 8:00 I got him and I asked him if the . . . he had filled the job. He said no. I said, "I'll be there." And that was it.

Norman Epstein: Now, I understand you didn't quite resign as County Counsel, though.

Herbert Ashby: Well, I went in to resign, and I told the County Executive that I was going to resign and I was taking this job in Sacramento. There was a year left in the Governor's term. So he met with the board, and then they called me in, and they told me that they would rather give me a one-year leave of absence. And when it was pointed out by the County Executive that I had six months left in my term, they reappointed me for another term.

Norman Epstein: That is extraordinary. And so you moved to Sacramento, and what are the highlights that you may recall about your work as Assistant Secretary?

Herbert Ashby: Well, I think the thing that . . . . I was surprised at how big the operation was. I was stunned by the budget. But I had a big advantage on . . . over a lot of people, because I was really a working attorney right on where the rubber meets the road in Ventura. I had . . . was the attorney for every department. And this was even before I was County Counsel. I mean, I had ***personally***handled almost every department. And as County Counsel handled ***every***department. So I was familiar with the . . . with everything up there. And the county is a microcosm of 1:06:26

the state in that regard. So I found that every problem was easy. When it came up I knew ***exactly*** what it was. And we had ***extremely*** good staff – hand-picked people out of . . . you know, on temporary duty out of the departments. And it was, you know, it just seemed like it was very easy to go in there and get things done and get things moving.

Norman Epstein: Well, there came a time when Vandergrift was about to leave; he was going to become a superior court judge in Butte County. And one would think you'd be the logical person to succeed. You had been working there as the number two person in the whole agency. How is it that you didn't?

Herbert Ashby: Well, I had always planned to go back to Ventura. And so my . . . I had about two months left in my leave, and I wasn't interested in . . . . I'd already done the whole job. I mean, I attended the cabinet meetings; I handled many, many things, just as though I ***had*** been the secretary. So it wasn't a new adventure or something like that for me. And although I enjoyed it, I had, on my mind, going back to Ventura. So I went over and told them at the Governor's Office that I had a nomination for them for the head of Human Relations and they laughed, because they thought I was going to say ***me***. And I named somebody else, and he was also a secretary of a different agency – a smaller one. So after that, you know, they accepted the recommendation and they did . . . he did get that appointment. But after that, Evelle Younger, who had just been appointed . . . had just been elected Attorney General, I guess called over there and said, "Do you know anybody? I'm looking for somebody to head up the Criminal Division." And I guess he talked to four or five people, and every one of them mentioned me. So he decided to call me.

Norman Epstein: And that position was Chief Assistant Attorney General for the Criminal division. I was in the Attorney General's Office for a time myself, and that is a ***very*** high position, one of the – what – top two or three in the whole office. And so you were offered, and accepted, that position in the A.G.'s Office.

Herbert Ashby: Yes. And it was interesting because, you know, when you walk in new, and you walk into a building you've never been in before, and you're dealing with all strangers, yet you are in charge, you know, it's kind of an interesting situation. So, you know, I met . . . . And I always got to work at 6:00 in the morning. So I was there when they got there. And, you know, it was a matter of meeting . . . I wanted to meet everybody, talk to them, and find out, you know, evaluate our personnel, see what our problems were. And I did that.

Norman Epstein: Well, in virtually every position you had held up to this one, other than fighting fires, you had – to a greater or lesser degree – reorganized things, made things work where they had not before. And now you're in something larger than most of these, and entirely new to you. What did you do there as Chief Assistant – Criminal?

Herbert Ashby: Well, I . . . . One of the things that I think is important in any organization is I think you have to have communication. And you have to be able to get information to the troops quickly, find out 1:10:48

things quickly. It was very cumbersome there. You couldn't . . . . You didn't know who was in charge of anything. And so what I decided to do was to take the people who had been in charge, who really were . . . . People were still doing their own work. In other words, they were promoted but they weren't really supervising anything; they were not leading anybody. They were just . . . . They just got more pay, and they were in their office working. And I moved them out of a command position, out of supervising positions. I decided to divide the . . . each office into teams of four, with one first among equals. And I had met everybody; I tailored it to the personalities. And by doing that, when you have people who are working as a team, they're a little more competitive. And production went up tremendously. Morale went up tremendously.

But one of the things that helped production was, over at the agency I'd been using a Norelco dictation machine. It was a hand-held machine. And I called and got the representative from Norelco to come in and I told him I wanted them to demonstrate these . . . this equipment to our people, so that they'd be able to use them. Because do you know how it is, Norm, when you're researching, you read a case and you close the book, you push it away, and then two hours later you realize that case is a case you really need? Now you're trying to find it again. Well, it's easy to do that sometimes if you will take and write down the citations as you go along. But a lot of times you don't do that. You're in a hurry; you just close the book. So I thought it would be much easier using a dictation machine to just dictate it as you're going along like an autopsy. And then it would help you, you'd be able to find things, you'd have much better notes, and it would improve your production. So I . . . . Knowing about budgets, I called our administration in the middle of June and I found out how much money they had. And they had enough money for me to buy a Norelco dictation machine for everybody in the Criminal Law Division. So I bought three extras, and we got them and we had . . . we also had little microphones so you could whisper. And I had them set up a training program.

Norman Epstein: Did you find a morale problem in the Criminal Division in terms . . . a structural problem, in terms of the career path?

Herbert Ashby: Yes. In Los Angeles, apparently for a long period of time they were hiring attorneys with the promise that if they did well they'd move them into Civil. So most of the people in the Criminal Law Division down there weren't that interested in being in the Criminal Law Division.

Norman Epstein: It was a place to be ***from***

Herbert Ashby: It was a place to be from. Very well put. But it was also a place you ***had*** to be from, because even if you kind of liked it, it was your guilty little secret, you know. You may not want to mention that to anybody. So I found out about that problem after I was invited to speak to the Deputies Association. And, you know, I told them when they confronted me and told me there was this policy and was I going to honor it, I told them that number one, the . . . you know, I would honor it if I could, for two reasons. One is because I want people in the Criminal Law 1:15:08

Division who are interested in criminal law, and I don't want people who don't want to be there. And secondly, if that's what they want and they were led to believe that this would happen, then I wanted to make it happen, but the A.G.'s Office wasn't there for their convenience. And I expected them to do a good job anyway ***[inaudible]***

Norman Epstein: So with that change in the direction of getting people in the Criminal Division who wanted to be there, rather than saw it as a stopover to somewhere else they wanted to be, and reorganizing into teams, did you find that the office functioned better than it had?

Herbert Ashby: Oh, the function . . . . Everybody, ***everybody*** was very enthusiastic. The esprit de corps was tremendous. But there was another change, too, that affected production. In Los Angeles the . . . there are other big legal offices that are competitors. And their salaries had gone up, and they were ahead of us. They were more than competitive on salaries. So we were hiring deputies out of the same pool. So Ev Younger wanted to have an office. We had a small office in San Diego. He wanted a regular-sized, large office down there. So . . . . I still lived in Sacramento at that time. So I went over to OB1, went to General Services, and talked to 'em about future space. And it was another lucky stroke, because when I got there they ***had*** future space, and it had just been . . . . They thought they had the people who were going to move into it, but they couldn't wait; they did something else. So there were like 24 offices. So I told 'em, "I'll take it." Called the Attorney General, told him I had the 24 offices. And what I wanted to do . . . . Since we were having problems recruiting in L.A., and we had people who didn't want to be in the division in L.A., I said what I wanted to do was move the workload – the proportionate part of the workload – down to San Diego, and I wanted to hire in San Diego, where we had . . . we were going to get the best people. And it's also a place people would like to live. Then I transferred one of the team leaders from San Diego to head up that office.

Norman Epstein: Was that . . . .

Herbert Ashby: Dan Kremer.

Norman Epstein: Okay. Of whom more . . . .

Herbert Ashby: Presiding Justice Dan Kremer.

Norman Epstein: Yes.

Herbert Ashby: Yes. Kremer was the one. And so Kremer took over the office down there, and we took L.A. cases and we put them down there and did all of our training. We had . . . . So we had . . . . And we replaced the people in Los Angeles with people who wanted to be in the Criminal Law Division. And also what they wanted to be in at that time . . . . 'Cause there was a big push from Special Operations, which was in the environment. So I just encouraged our people to speak out on the . . . on what was going to solve the environment. Was it going to be lawyers, or was it going to be scientists? Was it going to be politicians? 1:18:49

And it's obvious: the lawyers were not solving it. So we had a lot more . . . we made it respectable to be in the Criminal Law Division. And of course you have to do something else. Promotions. We got the majority of the promotions in the Criminal Law Division. I think in the first go-round – it was in Sacramento – there were 12 promotions; we got 10 of them. So it didn't take long before people started thinking, "Wait a minute," you know, "my future may not be there." And I made an agreement with the other two chief assistants to split the higher promotions by percentages of attorneys. And so I had the majority of the promotions.

Norman Epstein: That would ***have*** to help morale. Well, after a not terribly long period of time as Chief Deputy, something happened in your career that is not quite unique, but it's highly unusual. And that's your appointment to the court. You had a direct appointment to the Court of Appeal – that's what's so unusual. It's not unknown, but it's certainly not common. How did it come about, as far as you know?

Herbert Ashby: Well, the first I heard of it was Ev Younger burst into my office and shut the door, and he said, "Where can we talk alone?" And I said, "We're the only ones here." And he said that he had gotten a call from the Governor's Office and they were considering me for an appointment to the Court of Appeal to replace Justice Bill Reppy from Ventura County. And I told him I wasn't sure I was ready to leave the office; there were a lot of things to be done. And Ev showed, you know, the sterling character that he had. He was really a wonderful, wonderful man, and he would have been a great Governor, too. But in any event, he said, you know, "Don't worry about me." He said, "I could be killed in a plane crash tomorrow." He said, "If you want to be a judge, this is the time to consider it." And I think that was a Tuesday. And I thought about it for a couple of days, and then Thursday I told him, "Yeah, I'll do it."

Norman Epstein: So from your point of view, this kind of fell out of the sky.

Herbert Ashby: I never applied for it, never asked for it. I was, in fact, supporting somebody else.

Norman Epstein: As I understand this, the . . . it was understood that this particular position that had been occupied by Justice Reppy would go to somebody from one of the three northern counties – Ventura, Santa Barbara, San Luis Obispo – rather than a Los Angeles person. So you were still regarded as being from Ventura.

Herbert Ashby: Yes.

Norman Epstein: But your competition was from Ventura or one of the other counties.

Herbert Ashby: Well, I think there were other people had their names in for that. I don't know that it was strictly a Ventura . . . . I don't think they had Ventura seats at that time. I think they could have put . . . .

Norman Epstein: But wasn't one of the three northern counties was supposed to get it? 1:22:19

Herbert Ashby: Not necess . . . . I don't think there was any ***rule*** because I know Thax Hanson had his name in at that time, and so did Charlie Loring, and so did John Cole, because they all told me, after I knew them for a while, that they had been in competition for that same opening. But the leading contender was Judge Westwick from Santa Barbara. Everyone . . . . The rumor was that he was going to get it.

Norman Epstein: But as it happened, you got it, and you joined the Court of Appeal. And that was when?

Herbert Ashby: I got the phone call from the Governor on April 11, 1972, and I was confirmed, I think, the 26th of June.

Norman Epstein: And you served on the Court of Appeal for Division Five for about 20 years – a little over 20 years.

Herbert Ashby: Yes.

Norman Epstein: It's a good span of time. How did you find the work different, and how did you adjust to it? Or did it adjust to ***you?***

Herbert Ashby: Well, it was different, but a lot of things are the same, like there are a lot of people you have to deal with. People think that, you know, you just write an opinion – and I know this is true in some divisions; it was not true in our division – that you write an opinion, you send it out somewhere, and it comes back, it has signatures on it, it has a dissent. In our division, we talked about the cases. So we would write a draft and then we'd meet, and we would talk, and we would go over, and if somebody had a question, they would come in and ask you about it. And one of the things that we did – and I don't know how we started it and it just was . . . . we all seemed to be the same kind of people – we talked and listened. And the quickest way to get a dissent or have a problem is to just keep interrupting somebody who's trying to explain why they think it's a certain way and just wait for your chance to speak without ever considering what they're saying. And we didn't do that. And I think the fact that we all believed each other . . . in each other from the standpoint of actually listening and considering it. And we all wanted to be right, because the way we looked at the cases, if you signed it, it was your opinion. It wasn't just the author's opinion and you just went along because you were just nice. No, it was your opinion, too. So we felt that everybody had . . . should have a chance to express what they think about it, but the ultimate decision, of course, is up to the author, and you write it the way you believe it should be.

Norman Epstein: A lot of people who have come here have commented on the distinction between being an appellate judge and a trial judge, and I suppose there is a similar difference between being an appellate judge and being in a command position of an agency or in private work. And that is: on the appellate bench, if things are going to work, it has to operate collegially. Somebody doesn't sit there and say, "This is the way it's going to be." You have to get at least one other vote. You had come from an environment where I gather – or there was discussion – 1:26:09

nevertheless, there was a command structure. And here you were in one that operated collegially – supposed to. How did you find that adjustment?

Herbert Ashby: I really didn't see that much of an adjustment to make, because basically, as assistant secretary, we had these very important and powerful agencies – or departments, rather – and they were out, you know, working. They were dealing with the public. They were accomplishing things. And we had the Governor's Office, and people had policies, they had ideas, they had things they wanted to try, they had theories. And we were in between. So if somebody said . . . . And I'll give you a perfect example. There was talk about reducing welfare costs, and what a big problem the welfare costs were, and especially the unfairness of food stamps. So after you hear that for a while and there's a consensus of the group that something should be done, I said, "All right. What we'll do is this. We'll try a pilot program, and our pilot program will cut out food stamps, or will reduce them tremendously." And it took a little lead time, but we did it. And about 10 days went by, and got a call – Van got a call – and they said that there's a problem on the food stamp program and they wanted him to come over there. Well, he was . . . he didn't want to go over there because he had already clashed with the welfare mothers and he was their poster boy for bad guys. So he told me he was going somewhere and why didn't I do it? So I went over.

Norman Epstein: Now this was to a meeting at what?

Herbert Ashby: At the Governor's Office – a problem on food stamps.

Norman Epstein: Ah, in the Governor's Office.

Herbert Ashby: So, anyway, I walked into the big conference room and I didn't see any welfare mothers, but I did see six or seven people wearing suits and ties. And it was kind of a shocker for all of us, because as the story unfolded, they were representatives of the Chamber of Commerce and they were ***very*** unhappy with our pilot program because at that point the profits at their clients' supermarkets had dropped 19 percent. We were stunned. It . . . . We never put together, up until that time, that . . . . I don't know what we were thinking. I think we were thinking what most people think, is that you hand money out to people on welfare and they put it in a can and bury it in their backyard and it's gone. But that isn't what happens. They go down and spend it. And they spend it with small businesses and grocery stores, and then they hire people, and it's a very important part of the economy. And it was a real eye-opener.

Norman Epstein: The . . . .

Herbert Ashby: So, my point is, what you find out is that a lot of your dealing, in the position I was in, was bringing agreements – getting problems that . . . policies from either our agency, from the front page, from the Governor's Office, from the Legislature, to the departments, and getting people behind the wagon. And to do that you have to understand the problem, you have to understand the people, you have to be able . . . you 1:30:05

have to have their trust. And you have to make it happen. So to me, there wasn't that big a difference in going to the Court of Appeal.

Norman Epstein: And I see elements of that, and so many of the other things that we are talking about this afternoon, in other work that you've done in seeing what's really involved, understanding the facts, and finding a practical solution that will make things work. The . . . . You left the Court of Appeal – it's been a while now – and you're now quote "retired" but you're still working. You've been doing a lot of mediation and arbitration, I understand. How do you enjoy that, and how does it differ from what you've done?

Herbert Ashby: Well, there are a lot of similarities. The big difference is that there's not that much writing and research. But from the standpoint of persuading people, talking to people, it's very similar. The . . . . I know in the mediations . . . . They used to keep statistics on this – I don't know if they have them any more – but I know for about my first seven to ten years I had a very, very high successful mediation rate. I was told it was like more than double anybody else's. And so somebody asked me why, you know, why I thought that . . . why I had that, especially since I had not been a trial court judge. And I remember a story that Irwin Nebron told me. When he was a superior court judge, he had a problem. He thought he could resolve the case, and he told the insurance representative – the insurance attorney – to call Hartford, Connecticut, tell his insurance boss to get on a plane and fly to Los Angeles and answer some questions. And the response was, "Uh, what was that offer again?" And they settled the case. And I told Irwin, when we were talking about this, "At the Court of Appeal you can't do that. You have three other justices, and they're going to be with you on all the cases for your whole career. You don't tell them, 'You ***will***sign this.' You have to talk to them. You have to persuade them." I said, "So I feel that being an appellate court justice is probably the best training for being a mediator because you certainly are used to presenting both sides of it, understanding both sides of it, and looking for some resolution."

Norman Epstein: And you have to listen, too.

Herbert Ashby: And you listen to the other people, because if you don't know what they're talking about, if you don't know what their problem is, you can't respond to it or solve it.

Norman Epstein: I skipped over one other thing that you have done over the years, or at least you did a number of years ago when your daughters were little, and I think it actually has a bearing on some of the other things that we've talked about. And that's soccer. You were a soccer coach. Tell us a little about that.

Herbert Ashby: Okay. Can we take a break?

David Knight: And go ahead.

Norman Epstein: Soccer and your girls. 1:33:46

Herbert Ashby: Well, one of my daughters was playing soccer – the youngest one – and, you know, the other ones thought it looked like fun. So my middle daughter wanted to play. So I had never played soccer, had only seen the peewees play, so I didn't know anything about soccer. So I went over to . . . the night that they handed out the teams and they talked about it, and somebody saw me and said, "Would you mind holding this folder? We don't . . . . The coach isn't here." And I said okay. So I'm holding the folder. Then I got a call during the week saying, "Listen, can you take that folder over to the park? We have to take photos. And be with the girls because the coach isn't here." And I said okay. So we took the photos. And the next thing I knew, there ***was*** no coach. ***I*** was the coach. So I had to quickly learn about soccer. So that's how I got into soccer.

Norman Epstein: And what did you learn besides learning about soccer? Learning about coaching and working with the team.

Herbert Ashby: What do you mean?

Norman Epstein: Well, in term of inspiring the girls, teaching them something about teamwork.

Herbert Ashby: Oh.

Norman Epstein: This sort of thing.

Herbert Ashby: Well, I didn't learn that in soccer; I already knew that. And with kids, you . . . they have to feel that they've got an edge. And so this team in particular, we went out and we played the team that turned out to be the number one team; they gave up three goals the entire season. And they ***crushed*** us. And they didn't only crush us in the score, but they were knocking our girls down. We had . . . . I even had to put one daughter in as goalkeeper, because there were two other injuries, and she had never played goal.

So after we lost our first three or four games, I decided that we shouldn't be playing to win; we should be playing to learn. And everyone was going to be in the playoffs. So I announced to the parents that the kids would have to continue to go to school every Monday as losers, because I was playing to . . . for the . . . we were shooting for the playoffs. And, you know, I think they may have kind of believed me. I don't think they ***really*** believed me until the last game of the season. And we were ahead 1-0, it was the end of the third quarter, I took out our star and put in a sub, and they immediately scored on us, and we ended the season all losses and one tie. But I took my vacation then, and I spent two weeks working with the girls every day. And I was working on them, talking to them about the little things that they were good at. You have to find . . . . When you're dealing with kids, or actually any group, you have to pick something that somebody's good at. And you have to put them in a position where you ask them to do something and it has to be something they can't fail at. And that's what I did. 1:37:17

So we went out for the first game and we were playing the number one seed. And I remember walking across the field – I was going to shake hands with the other coach – but when I got over there, I heard one of the parents say to him, "What do you know about this team?" And he said, "They're a bunch of stumblebums." So I turned around; I didn't say anything. I went back. These were 13- and 14-year-old girls. I had seven kids who had never played soccer before. So you have a built-in, you know, losing system. But these were bright girls. Most of them were pretty athletic. We started with the basics: how to stop the ball. And we trained on this the whole time. And when we went out there in that game – we were ahead 1-0 at the half – this coach who was . . . shouldn't have been permitted near kids was ***screaming*** and yelling at them, and he refused to give them oranges or any drinks during the half. Meanwhile, our girls were as happy as larks, you know. They weren't losing. And we got a lucky break. I keep saying "lucky breaks" because I really feel that there were a lot of lucky things that changed results. We were kicking off and the ball bounced off somebody and came right back to us. We got a breakaway and we scored. So suddenly it was 2-0. The . . . . Now the ***parents*** got into it, so they were screaming and yelling at the kids. We should have won about 14-0; we had all those shots. But we didn't make them. But we did win 4-0. And the parents came up to me afterwards and they were . . . needless to say, they were pleasantly surprised. They . . . . People were confiding that they hadn't really believed me when I was telling them that we were training for the finals.

And to make a great story short, I found out about other coaches and sportsmanship. Because as soon as the game was over and we won, I saw this group of about five coaches coming toward me, and I was thinking, "Dammit! I hope they don't drop me when they carry me around on their shoulders." And they weren't thinking about that. They came up and they said, "Okay, tell your team to stay here. Somebody went to get the commissioner," and they said, "Is this the same team you had during the season?" And I said, "No. Same players, different team." Well, they said, "Well, we'll see." So they had the commissioner come and he had to vouch for every player we had. And I was thinking, what a bunch of sweethearts these guys were. But that's the way it is, you know, in youth sports a lot of times. You'd think something like girls' soccer, in that age bracket where you know that the girls mainly want to go on dates and not muss up their hair, that you wouldn't have coaches who were quite that rabid. But you did.

So we beat all those teams the second time around. The last coach we beat – the last team – he was very gracious. Instead of congratulating us, he came out on the field after the game was over and he said to me, "At least we don't have to play Oxnard." And that was the . . . you know, a lot of Hispanic kids there and they grew up on soccer. So we went to Oxnard and we won a 1-0 game. Had one of our girls get a broken leg. And we ended up in the regional finals playing a team from Ventura. And it was funny, because as I was walking toward the coach, he looked kind of familiar, and when I got there it was Mike Bradbury, who was the D.A. of Ventura. And anyway, we . . . my daughter committed a foul in the penalty box in the first 30 seconds, and they got a penalty kick, 1:41:44

and we lost 1-0. But it was . . . . And it was funny, because when we were . . . when we had to name the team, we had to name it after an animal. So I said – kidding around with the girls – and I said, "Well," I said, "We're going to be," you know, I said, "You name half the team and I'll name half the team." And they didn't know what I was talking about. I said, "You know, half the name." So I said, "Well, my name is Colts." And they still didn't know what I was talking about. But I said, "Well, I was hoping you'd say, "Dreaded." Well, then when we lost all our games, I was thinking to myself, "I hope they forgot this, because, you know, they'll be . . . ." It . . . Because what we did name it is Dreadful. Dreadful Colts. But at the end of the season I have a photograph. I'm standing there with the girls. We've got . . . . We won . . . just won the championship. And one of them pulled . . . . In fact, we had just beaten Oxnard that day. A little girl pulled on my sleeve. I leaned over to hear what she had to say. She said, "I guess we're the Dreaded Colts."

Norman Epstein: One of the . . . .

Herbert Ashby: I can't say that without getting emotional.

Norman Epstein: Yeah.

Herbert Ashby: Give me a minute

Norman Epstein: Well, there are a number of running themes that go through all of this. The . . . . One of them is leadership. And I have a quotation from you. When you were asked what makes a good leader, you said, "I think a good leader is a person who can look over the people that they're supposed to be leading, create a goal, build these people up, and make them believe that they can accomplish it. Never give them something that they're going to fail at doing." Which sounds like just what you were describing. And besides the quality of leadership, it's just the intelligence that goes with it. Which reminds me: I saw, in one of the bits of information that I got about you, that you're a member of Mensa. What is that?

Herbert Ashby: Well, Mensa is a society with one qualification to get in: you have to be in the top two . . . 2nd percentile of an IQ test.

Norman Epstein: Looking at things more broadly instead of at a specific, we're in a very difficult period right now in the judiciary and perhaps as a society, living beyond our means. In the case of the judiciary, suffering through a very substantial cut in the budget for the current year and the prospect of even worse the next year. Looking at things in the near term – this year, next year – and at the longer term, do you have any thoughts that you can share about the direction in which the judiciary and perhaps the justice system is headed, and how we get through these problems?

Herbert Ashby: Well, I . . . . You know, it's such an overwhelming problem, I might be able to, you know, ricochet off part of it. But it's something that . . . . You have to think about efficiency, you have to think about doing things differently. Sometimes efficiency requires an investment. I remember when I first went on the court – and it sure sounds bad, now 1:45:40

that I think of what I'm getting ready to say – they used to have mimeograph machines. So when you wrote an opinion, a secretary would type it onto a mimeograph, and then they would take and they would, you know, print 35 copies of it or whatever it is. And if you had something that you had written, there was no saving it like you can do now. They didn't have glossaries where you could have banks of citations where you know that the same issue's coming up again and again, and just click it in there. So to a great extent, there has been an improvement in productivity from a technological standpoint. I know when I first went on the court, the highest number of opinions filed in one year, in my division, was 76. When I left, I filed 150. I came back two months later and talked to the justice who had taken my chambers; she had filed 165. So we've had a tremendous increase in the productivity.

Norman Epstein: I might interrupt and say that you have over 500 ***published*** opinions – most opinions are not published – but over 500 published opinions during your period on the court, which I think is extraordinary.

Herbert Ashby: Thank you. You know, it's funny, because it sounds like a lot to me now. At the time, it was painless. It was . . . . It just seemed that you had the record, you read it, you analyzed it, you created the scenario of the facts so that you knew, really, basically where you were going right from the beginning. Another thing: The way . . . . I think a lot depends on how you write an opinion. I think if you write an opinion where you get the facts perfect the first time, you get the issues, and then you write the conclusion, what the answer is, and then in spare terms write down, you know, put in your citations and everything, it's a much better way to do it, I feel, than dictating a 92-page opinion and slashing and burning. But people do things different ways.

I don't know if technology is going to be that much more helpful. I'm sure there is some benefits that could be squeezed out of it. The cost in the system is personnel. That's a problem, because who wants to start creating unemployment by laying people off? I don't know if the court can get there that way. Probably some things that are handled in a certain way, maybe they shouldn't be.

I know one thing: A lot of people think the death penalty should be handled a different way. You know, having been, you know, having defended the death penalty in a number of cases including ***People v. Anderson,*** I don't feel that way. But looking at it from a practical standpoint, since they're only paying lip service to it, and they're not even following it, they probably would do well to look at the extra cost that's involved in that and consider possibly making some change there.

Norman Epstein: Overall, looking ahead in terms of the core functions of our justice system, are you optimistic? Pessimistic? Just unsure? How do you feel?

Herbert Ashby: Well, I'm optimistic, because the justice system has been in operation a long time. It's an experiment, to a great extent. You make a mistake, you find out what it is, you correct it. So the justice system should be becoming more streamlined and easier to accomplish all the 1:50:41

work that has to be accomplished. I think a lot of ways . . . . And as you know, I had a little different approach on the law and analyzing problems than a lot of people have. And I don't know if I sat down and looked over the system I would come up with anything that would be a noticeable improvement. But necessity is the mother of invention, and the reality is that there isn't that kind of money right now and there may never be again.

Norman Epstein: Well, you've proven that adage over an entire career, where you've been put in situations that . . . which you've had no direct experience before you were put there. And you found a way to work it out, you found solutions, you were able to be innovative just on your own intelligence and instinct and what experience you had and what might be analogous situations. And time and again you've solved the problem. You've done it in a variety of settings and with a variety of problems confronting you. I think if we had more people like you, we would be so much better off. I would personally feel more optimistic than I do, although I'm basically like you: optimistic. It's been a wonderful career that's still in progress, I'm happy to say, and I hope will be for a long time.

Herb, I want to thank you for the interview and for the contributions that you've made to the justice system and to everything you've touched all your life. Thank you.

Herbert Ashby: Thank you, Norm.

Duration: 113 minutes
August 26, 2011