David Knight: All right, just give me your name and spell your last name and tell me your title.

Edward Hinz, Jr.: Edward A. Hinz, Jr.

David Knight: And the spelling.

Edward Hinz, Jr.: E-D-W-A-R-D A. Last name Hinz, H-I-N-Z, J-R.

David Knight: Okay, and when you were on the court, your title was—

Edward Hinz, Jr.: Associate Justice of the Court of Appeal of the State of California, Second District, Division Three, and now retired.

David Knight: Justice Ashby, your name and title.

Herbert Ashby: Justice Herbert L. Ashby, Court of Appeal.

David Knight: All right. We're ready for your first question anytime you're ready.

Herbert Ashby: We are here today for the Legacy Project, videotaping various retired justices for historical purposes, and you're about to become a part of history. Now Ed, you were born in York, Nebraska.

Edward Hinz, Jr.: I was born in York, Nebraska, May 26, 1933.

Herbert Ashby: And how long did you live in York?

Edward Hinz, Jr.: We lived there till I was 15. And that's 1948. And just after a week of 10th grade, we moved to Long Beach.

Herbert Ashby: What was the reason for the move?

Edward Hinz, Jr.: Well, my dad was a salesman in York, which involved calling on grocers within about a 50-mile radius of York taking orders and then having the Brown Fruit Company ship the vegetables and canned goods and everything to the grocery store. And those little towns mostly were connected with gravel roads. And he's fighting Nebraska blizzards and he finally had enough of it. So he had two sisters, and their families lived in Long Beach. So we moved to Long Beach.

Herbert Ashby: And you attended Woodrow Wilson High School?

Edward Hinz, Jr.: Right.

Herbert Ashby: Did you have any problem integrating into the school?

Edward Hinz, Jr.: No, I don't think so. I think that's because I was both on the basketball and baseball team and the teammates get friendly in a hurry. So there was no problem.

Herbert Ashby: Now, at Woodrow Wilson, you met the most important person in your life, didn't you?

Edward Hinz, Jr.: I sure did. *[laughing]*

Herbert Ashby: And who might that be?

Edward Hinz, Jr.: That's Pat, my wife, and I met her. . . . This is kind of sad. I went through three years of high school and never dated her. And then at the end of the school year we had Ditch Day at Catalina, and when we docked, I waited. She came down the gangplank and I asked her if she wanted to go out to have our lunch with a bunch of people, and she said yes. Next thing, we were going to the senior prom and the graduation dance and all that.

Herbert Ashby: Now, at that time, did she know that you intended to go to Harvard?

Edward Hinz, Jr.: Yeah, that had already been decided.

Herbert Ashby: At that time, did you know that she would become an internationally known artist?

Edward Hinz, Jr.: No, I didn't know that. *[laughing]* But she sure has. I mean, I'm talking about Japan, Russia, England.

Herbert Ashby: Reagan Library.

Edward Hinz, Jr.: Reagan Library. At the Bush Library. She gets around with her artwork.

Herbert Ashby: Well, how did you pick Harvard?

Edward Hinz, Jr.: Well, when I was a junior at Wilson, they every year awarded, they called the *Harvard Prize Book*. This was some famous book that they had printed up with a red cover that said "Harvard" on it, and they would present that to a junior boy, because girls didn't go to Harvard. And that put you in line to be considered for a scholarship when you were a senior. So I got that book and I decided I wanted to go to Harvard. I also had been admitted at Caltech, but I decided that Harvard was better.

Herbert Ashby: So when you were taking the pre-college course, what were you majoring in?

Edward Hinz, Jr.: Well, pre-college?

Herbert Ashby: In high school.

Edward Hinz, Jr.: Oh in high school. Well, it was just a general high school thing. I had a lot of science. I wanted to be a chemist, so I had chemistry and physics and all the math I could get.

Herbert Ashby: In high school?

Edward Hinz, Jr.: In high school.

Herbert Ashby: And so you were a chemistry major at Harvard.

Edward Hinz, Jr.: I was; that's right.

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Herbert Ashby: And how long did you attend Harvard?

Edward Hinz, Jr.: Two years.

Herbert Ashby: And did you decide at that time that you should have gone to Caltech, or did some other intervening force?

Edward Hinz, Jr.: I ran into one of four draft boards in Long Beach—129, to be exact, which was probably the worst draft board in the United States. They had a tremendous dislike for Long Beach men who went out of state to college. So they drafted me, and I should have been deferred because I was in the upper third of the class. I should have been deferred because I took the exam they had and passed it with flying colors. But they informed me that those things were not mandatory, they were advisory.

I had to take a number of papers to the registrar at Harvard, whose name was Skiddy von Stade, and he was a very precise, distinguished gentleman. And I handed him the papers and he looked them over and he said, "Ed, you have the goddamnedest draft board I've heard of." Well, the upshot of it was I got drafted, and so I went off to the Army.

Herbert Ashby: Where did they send you?

Edward Hinz, Jr.: I went to Fort Ord for basic training, eight weeks. And about the last day of that one—I was looking forward to two weeks leave and then not looking forward to eight weeks of advance deputy training—they called me to the day room and said, "You're going to Fort Monmouth to signal school for six months." So I was happy to do that.

So I went there for six months, and when I graduated there, they transferred me to Fort Hood, Texas, where I joined the signal company of the 4th Armored Division, which was being reactivated.

Herbert Ashby: And what were your duties?

Edward Hinz, Jr.: Well, we repaired field radio repair, and field radio is any radio that four men can pick up. So we had everything but big installations.

Herbert Ashby: Has this training helped you any in the rest of your career?

Edward Hinz, Jr.: Not really. *[laughing]*

Herbert Ashby: Okay. When you got out of the Army that was what year?

Edward Hinz, Jr.: 1955.

Herbert Ashby: In September.

Edward Hinz, Jr.: September of 1955.

Herbert Ashby: And you went back to school?

Edward Hinz, Jr.: Well, what happened was, I was going to be released—two years would be up about the 18th of September—and I was going to go to UCLA. And the first day at classes was the 20th of September, as I recall. And so I came home two months early, and Pat and I got married so we wouldn't have to worry about a honeymoon when I should be in school. And then when I came back home two months later I started at UCLA, and that's where I stayed.

Herbert Ashby: Now, just detouring from school for a moment; in your marriage, you had two children, is that correct?

Edward Hinz, Jr.: Two boys, yes.

Herbert Ashby: Edward and Steven.

Edward Hinz, Jr.: Right.

Herbert Ashby: What are they doing now?

Edward Hinz, Jr.: Ed is the number-two clerk at the Norwalk courthouse with the superior court. And Steve is a civil engineer and he is with U.S. Highways; he's been with them 20 years and his current job is, he is the head engineer for all of the U.S. highway projects in the state of Alaska. So he's got a big responsibility.

Herbert Ashby: So he's not living in Washington near Portland anymore?

Edward Hinz, Jr.: He lives in Vancouver—that's where his office is, Vancouver, Washington, but he flies to Alaska probably four times a month.

Herbert Ashby: So now you're at UCLA studying chemistry.

Edward Hinz, Jr.: Yeah, and after my first year at Harvard, I wrote a letter to Shell Oil Company and Dow Chemical asking for summer

employment, and they both offered me jobs. Shell was the best one money-wise, and so I worked for them, and then I worked two succeeding summers there. And I found out, thank god, that I didn't want to be a chemist when I saw what they did all day. It wasn't my idea . . . you didn't see anybody, you didn't deal with people. You're just in a cubicle and you're washing dishes and pouring stuff from one thing to another.

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So I went to my advisor at UCLA, Dr. Shields, and he said, "Well, we're going to give you two aptitude tests. I'll give them to you today and then you come back in a week and we'll know what to do." So I took the two tests and I came back in a week. And when I walked in, he said, "Hi," and then he says, "Well, it's all settled." And I said, "What's settled?" He says, "You're going to law school." So I said, "What?" And so I ended up going to law school, and I said, "Which one? I don't know anything about law school." He says, "Go to Hastings; they've got the faculty, the 65 Club. You ought to go there." So I did, and that's where I went to law school.

Herbert Ashby: Now, did you live in San Francisco?

Edward Hinz, Jr.: No, we lived in Berkeley. We lived in Berkeley and Pat taught elementary school in Berkeley. And we lived about a block and a half from her school and then I commuted to San Francisco, and that way we only needed one car. And Berkeley School District was a great school district to work for, and Berkeley was a great place to be because it was before the revolution. So it was a very quiet, wonderful place, and they were much better than San Francisco. She applied there to be a teacher, but they wouldn't tell her what school she was going to be in and they said, "If we do hire you, you're going to be on a stage; you're not going to be in the classroom." She wasn't interested. So that has happened.

Now when I was in UCLA, I graduated with honors in political science and went on to law school.

Herbert Ashby: What was your favorite subject in law school?

Edward Hinz, Jr.: Criminal Law.

Herbert Ashby: *[Laughing]* I can see a real consistency here. And you were a member of Order of the Coif.

Edward Hinz, Jr.: Yes.

Herbert Ashby: Were you on the law review?

Edward Hinz, Jr.: Yes, I was. Our law review came out four times a year and I was an editor of one of the issues.

Herbert Ashby: And in that capacity did you meet anyone who had any influence on your future as far as your actual legal career?

Edward Hinz, Jr.: Well, yes, that was very fortunate. My issue was on government regulation and the source for people to write those articles was the Attorney General's Office. So I went to the San Francisco Attorney General's Office and met Ted Westfall, who was the chief of almost everything. And I got along real well with him and when we got through, he said, "You know, you ought to think about applying to the AG's Office for employment." He said, "The only thing is, we don't have any vacancies in San Francisco, but there are two in Sacramento." And I said, "Okay, I'll do it." So I did, and that's where I got hired.

Herbert Ashby: And when you were hired in Sacramento, what was your assignment?

Edward Hinz, Jr.: Well, Ed Bernard was in charge and he said, "Well, Ed, I've got two vacancies. You can have your choice. One is fire suppression." I said, "What is fire suppression?" He said, "That's where the state sues somebody who started a fire, it got out of control, and the state forestry had to come in and put out the fire. So we sue them for the cost of putting out the fire." And the other one was criminal law, and I said, "I'll take criminal law." *[laughing]*

Herbert Ashby: Well, in criminal law, how many years were you in the division?

Edward Hinz, Jr.: I was in the division 13 years.

Herbert Ashby: And any interesting or notable assignments or—?

Edward Hinz, Jr.: Well, I went up through the chairs, the various steps, and the last year . . . plus, I was chief assistant, criminal. And it was a fantastic job because the deputies in it were so talented that if you had a problem come in a memo and you sent it off to somebody to handle, you'd just say, "Take the appropriate action," and they knew what to do.

It was fascinating, and I had a number of interesting cases. One in particular was a narcotics case where the defendant had been sent to the narcotic program, the compulsory narcotic program. And he was attacking that on the grounds that the code says "substantial compliance" with a section that required two doctors and they only had one. The argument was, that was substantial compliance.

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But I found out by researching the case and all, that this guy wasn't eligible for that program anyway because his prior

criminal record was so horrendous. So I'm up there arguing in front of the Supreme Court and Tobriner hits me with that—well, how can two be in compliance with one? I said, "Well, it really doesn't make any difference, because he's not eligible. He has two prior robberies and what have you, and he's not eligible." And he says, "Okay," and then the other lawyer got up to argue. Tobriner, with tears in his eyes, bouncing up and down in the chair, said, "If what the AG says is true, what can we do for this guy?" *[laughing]* Well, they had to do the right thing, which means I won the case.

Herbert Ashby: Now, do the words "Isla Vista" mean anything to you?

Edward Hinz, Jr.: Isla Vista. They had the big riot down there in Santa Barbara, in Isla Vista, which is the bedroom area of the college, and things got out of control. The Santa Barbara cops had no control over what to do, and so they realized that their salvation was to call the L.A. Sheriff's Office and have the Special Enforcement Bureau come up. And these guys are all 220, 230 pounds, can run like deers, they can lift 500 pounds; they're just monsters. And they got up there and brought control to the area.

For instance, if Santa Barbara sheriffs were going down the street in a truck, these kids would throw rocks at them. Well, they'd stop the truck and they'd chase them, the sheriffs would chase them, until they got on their property, and then they would stop. So it was King's X. Well, here comes a truck full of SEB guys and they threw rocks at them, and boy, these guys chase these guys all the way up to their apartment door and knock the door down and carry the guy out of there by the back of his neck. So they really solve things.

So there were a lot of . . . there were several deputies down there and a whole bunch of investigators looking at claims that students had made against law enforcement arising out of that thing. And so I was sent down there to find out what was going on. So I go to the deputy in charge of it and I said . . . he said, "We've got 300 cases." I said, "Wait a minute, I can't read 300 cases. I want your three best, the strongest three cases you've got. I want to look at those first." So he brought in three cases and I read them and I said, "You don't have a case here. There is no evidence that anybody did anything to these kids."

And it turned out they didn't have a case in the whole carload. A whole lot of complaints were made against the campus cop who that whole month was on vacation in the state of New York; but they were accusing him of beating them and what have you and another.

A girl, her father was a bigwig, he called the Attorney General and said, "My daughter was groped up there, I want something done with it." So the investigator goes out there and finds out that the complaint was made by a girlfriend of this girl; and she

hadn't seen anything happen and she just made it up. And so this girl was never groped in the first place. Well, we never did file anybody with charges, because they didn't have a case where a guy was identified as having done anything wrong.

The U.S. attorney called me and tried to lord it over me, and he said, "We're investigating this, and if you don't indict somebody, we will." And I said, "Listen, get this straight, I'm not indicting anybody that I haven't got a case on, and if you want to indict the whole bunch, that's up to you." Well, the upshot of it was we didn't get an indictment and he didn't either.

Herbert Ashby: I probably shouldn't mention this to you, but he called me first and I referred him to you. *[laughing]* Now, who was the Attorney General at this time, at the time of Isla Vista?

Edward Hinz, Jr.: Oh, that was Evelle Younger.

Herbert Ashby: Any other notable cases that you worked on?

Edward Hinz, Jr.: Well, I had a number of death penalties. And for 12 years I was a deputy doing nothing but writing criminal appeals, and there were a whole lot of cases. I have to tell you one thing about Evelle Younger. He had a son, Eric, and Eric was working in the criminal law division, which meant I was supposed to be his boss.

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So I called him in to give him an assignment and he didn't want to do it, and I said, "Well, it's not a question whether you want to do it, you've got to do it." He said, "I'm going to see my dad." *[laughing]* So off he goes, and about 10 minutes later the phone rings and my clerk says, "The Attorney General wants to see you right now." And I'm walking up to the top floor and I'm thinking, "God, if he lets him get out of this thing, I'll never have any control."

Herbert Ashby: Not a chance.

Edward Hinz, Jr.: So I go in there and Evelle says, "Ed, Eric was up here complaining about something you told him to do. I said, 'I don't even want to hear it. If Ed Hinz tells you to do it, you do it. Have you got that?' " So that relieved all my fears, and I thought Evelle Younger was the greatest boss in the world. *[laughing]*

Herbert Ashby: Yup, I have to agree on that one. Okay, now when did you get the idea that you would like to be a judge?

Edward Hinz, Jr.: Well, you know, I don't really know; I don't really know when that was. I can't answer.

Herbert Ashby: When was the subject raised to you from the standpoint of your applying or trying?

Edward Hinz, Jr.: Whether I should apply?

Herbert Ashby: Yeah.

Edward Hinz, Jr.: Well, I had a great mentor who gave me strong advice, and that was Herb Ashby. So that's where I got the information about what I should do and how I should do it, and that same good advice followed me to the superior court and to the Court of Appeal, and also to become chief assistant attorney general. So when you have an advisor of that capability, there's not much you can't get done.

Herbert Ashby: Well, you moved very quickly; you were on the municipal court for about a year?

Edward Hinz, Jr.: One year, yeah.

Herbert Ashby: And then you moved up to the superior court. Did you notice much of a difference? Were you a lot happier in one or the other?

Edward Hinz, Jr.: Oh, I was a lot happier. I enjoyed being on the municipal court; don't get me wrong, I enjoyed that. I spent the whole time in the traffic courts building, and most of the first six months I did nothing but try drunk-driving cases. And the last six months I was the presiding judge and I enjoyed that. But the superior court is handling cases of much more substance, and there's more legal issues involved. And that was really my forte, because I had spent 12 years learning the criminal law, and I enjoyed the chance to use some of that knowledge.

Herbert Ashby: Now, in the superior court you had one case that became very famous like 20 years after you tried it, and that was Tookie Williams.

Edward Hinz, Jr.: That's right, Stanley Tookie Williams, in 1980 when I was sitting on the superior court and assigned to torts. I got that case because I was the junior guy and nobody else in the building wanted it. So Tookie was charged with four murders, seeking the death penalty on all of them. He had gone to a 7-Eleven store to show his two friends how to conduct a robbery, which consisted of going into the store with a sawed-off shotgun, blowing the head off of the victim so he never could identify you, and then taking the money and run. So they had a practice run at a 7-Eleven store, where they made $35.

And then a few days later they go to a motel in Compton. The office to the motel was open; they went in there, they opened the cash drawer, and they took $75. And there was a locked

door behind the office where the family lived, an Oriental family, father and mother and a daughter and a son, all adults; and Tookie for some reason hit that door. And he was the most powerful guy I ever saw in person; I mean, he was huge and muscular and mean. He hit that door so hard he didn't break the door; he just took out the door frame and everything.

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The father comes running up to see what's going on. He blows his head off; the mother gets that same treatment; the daughter gets that treatment. The son is one of these types that it takes him a while, when he wakes up, to realize where he is. So he delayed coming out there, and when he got out there Tookie was gone.

Well, Tookie had two words of advice for his people: use a shotgun, kill all the witnesses, and pick up the casings, and they'll never make a case on you, ballistics case. So Tookie left a casing that got lodged between a coffee table and the couch, and when the cops got out there they got the casing. They arrested Tookie; he had the shotgun, and they proved that his shotgun fired that casing.

So that was it. Now Tookie, when the jury got under consideration whether or not he committed first-degree murders, four of them, and whether he was special circumstances with the robberies and burglaries and all that associated with it . . . And while they are deliberating, of course he's locked up downstairs and the jury's up on the fifth floor locked up. The jury arrives at a verdict. My bailiff gets the two alternates in court, and one of the alternates says, "Tookie threatened the jury." And I said to him, "How did he do that when he's downstairs locked up and the jury is locked up five floors above him?" Turned out that when the jury returned his verdict finding him guilty of all those murders and special circumstances in the other crimes he turned toward the jury and mouthed the words, "I'm gonna get you, you blankety-blanks."

Now, the court reporter didn't hear it because he just mouthed the words, but the jurors sure did; and so I had to have a little hearing about that. And so I had the foreman in court and I said, "Now, did that subject matter come up about the threat?" He said, "Yes, some jurors said he threatened us." And the foreman said, "I don't want to hear anything about it. We can't consider that; we want to do our case and once we get done we can talk about that all you want to," which was about the best answer anybody could give to that question.

So they found him guilty of everything under the sun. The penalty phase Tookie refused to let his attorney put on any evidence. That was kind of dicey from the legal standpoint

because one of the Supreme Court decisions said the attorney's got to put on something; there's something you're going to find good about everybody. But I had a hearing and found out that the reason that the lawyer—who was a good lawyer; he was named Defense Lawyer of the Year in the L.A. County that year—was concerned that if he put that on about his good character they would then bring in the fact that Tookie was leader of the Crips and was responsible for 1,000 deaths. And they got into a war with the Bloods, and they were killing 300 or more of them each year. They finally settled their differences after six, seven years; and in the next year they got into a whole new battle over who has which corner to sell cocaine from.

So Tookie was responsible, as leader of the Crips, for the LAPD thinks over 1,000 murders.

Herbert Ashby: So with everything you learned about him during that trial, when he was up for execution 20 or 25 years later, did he sound familiar? What they were saying about him?

Edward Hinz, Jr.: Yeah. Well, the people that were supporting him were, I'm going to use the word "dishonest"; that may be a little strong, but they made him look like a choirboy, or tried to. And one of the big factors was this. They have the Nobel Prizes in Sweden. Any member of the Swedish legislature can nominate anybody in the world for any Nobel Prize, and they're nominated; they may not make it, but they're one of the nominees.

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So this woman who was anti–death penalty nominated Tookie for a Nobel Prize for Literature—first for Peace, Nobel Peace Prize, along with Ralph Bunche—he Nobel Peace Prize because he had allegedly written books telling kids not to commit crimes. Well, that was all hocus-pocus. But she nominated him three years in a row, twice with the Nobel Peace Prize and once for the Nobel Prize for Literature; but they made it sound like here was the Nobel Prize winner that was being cast.

Here's one other factor that's just atrocious. From the time that I pronounced four death penalties on this guy, it took the California Supreme Court seven years to decide that appeal. They argued the case—Rose Bird was on the court—and they couldn't find anything that they can reverse it on. But Rose Bird came up with some new theory. So they sent it back to the attorneys to brief that issue and bring it up for argument; they did that four times.

The fourth time they sent it back, Rose Bird had gotten voted out of office. So when it came up the fourth time they affirmed the conviction. Now, it took them seven years. And then the Ninth Circuit got the case and they took 17 years—17 years to

resolve that case. And his claims were, to be charitable, bogus. For one, he claimed the jury was biased against him because he threatened to kill them. Well, when the lawyer brought that up to me at the time of sentencing, I said, "Hey, your guy's like the guy that killed his parents and then asked for mercy because he was an orphan." They're not going to find . . . and then he claimed that he wrote copious notes and his lawyer wouldn't read them. And then he claimed that it wasn't fair because his wrists were chained to his waist, on a waist chain, because he tried to escape a couple of times. So the issue comes up is, how could he write copious notes when his wrists are attached to his waist? *[laughing]*

Those were the kind of things, and there was never any doubt who did it, because there was no defense evidence. He didn't take the stand. He didn't have any witnesses that amounted to anything. They had ballistics on him; they had two of his confederates who were given immunity to testify against him. They had people that saw him do this and that and the other thing. And he bragged to the family he was living with about what a professional job had been done at the Compton Motel and I did it and I'm the big hero on how to do these things. So between confessions and ballistics and eye-witnesses, it was an open and shut case.

Herbert Ashby: Well, based on your experience in that case and in other cases and your experience in the Attorney General's Office with the appeals generally, what comments do you have, if any, about the death penalty, the way it's being handled in the state of California?

Edward Hinz, Jr.: Well, it's almost more accurate to say we don't even have the death penalty. The law was reinstated in 1978 and there have been something like a dozen deaths imposed since then. Today—and I just checked this before I came here today—right now there are exactly 660 people on death row waiting for their appeals to be decided, 660. We don't even execute one a year, not over one a year; but say they did five a year. Well, that's 120 years or better before they could even get rid of the backlog; and the cases are coming in faster than they're doing them.

So it's atrocious. Right now there are more people dying on death row from old age than from the death penalty. They have hundreds of cases where the Supreme Court claims they can't find lawyers to represent them. Well, that's hocus-pocus; you've got to get lawyers assigned to those cases. You wait 10 years to get a lawyer and the appeal is 10 years old before you even get serious about it.

So I think it's just atrocious, and here is my concern. Back when Donald Wright was Chief Justice of California, they had a

backlog of about 100 death penalty cases, and it was a tremendous burden.

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So what did they do? They ruled the death penalty unconstitutional, on bogus grounds, I mean, it was quickly reversed by the people and many of the Constitution. . . . But he reversed those 100 cases, which meant every one of those defendants could no longer get the death penalty—including Manson can't get the death penalty. Those cases all then were shipped out of the Supreme Court to the Courts of Appeal because they didn't involve the death penalty. I'm concerned that that's going to happen in California when some federal court says 120 years is too much. And god knows what it'll do; and if they end up throwing out the death penalty for 660 of those people, that's chaos.

Herbert Ashby: Considering your background as a chemistry major, can you think of any way that it would be possible to create a lethal injection that wouldn't be cruel and unusual so that they can have an execution?

Edward Hinz, Jr.: I'm sure they have. Now here's something I don't understand at all. Those people that were giving the death penalty before they provided for the alternative of lethal injection passed legislation to give that inmate a choice. If he wanted to have the injection, they would do that instead of gassing him. Now some federal judge decides that they can't do that. So why don't they gas him? Why are we waiting?

Herbert Ashby: Well, do they still have the alternative? Is this still a choice?

Edward Hinz, Jr.: I think so.

Herbert Ashby: Well, what if the inmate chooses lethal injection but with the condition that he not feel it, that it not be painful?

Edward Hinz, Jr.: Well, I don't know; I don't think he has any say in that. I think they just ought to . . . if he is selecting an alternative which is not available, then use the one that is available.

Herbert Ashby: What do you think about doctors taking the position that they can't be involved in this because it's their mission to save lives?

Edward Hinz, Jr.: Well, I don't understand that at all. They're part of the public; they've got a duty to follow the law. They're needed in the medical field and their advice is needed; they ought to be more than willing to provide it.

Herbert Ashby: Of course if the individual doctors wanted to, the medical association would then hold them to be in violation of their standards—isn't that correct?

Edward Hinz, Jr.: Well, I don't know, I think if that became a problem, you get the Legislature to change it.

Herbert Ashby: Okay, any comments concerning other current problems facing the judiciary?

Edward Hinz, Jr.: Well, I have a sense that we're in an era—and it's grown in the last 10 years—where the courts are trying to become the public's buddies. They want to have all this social interaction and all what have you. I think a certain part of the integrity of the judicial system is that the judges are above this and they have a certain amount of mysticism, and that lends to the strength of their opinions, and we ought to be stressing that.

Another thing that concerns me is where I have never heard anybody in authority say we've got to do a better job trying cases. California is notorious for having a judge handle the case that has no business handling the case, and a fiasco results and nothing is ever done. In fact, in one famous case the judge refused to properly instruct the jury. It was crucial to the case, and there was no discipline, there was no nothing, no one ever even commented about it. They just let them go their way. And I think part of the judicial system is that we ought to be improving our performance and we ought to work at it; and that doesn't mean having coffee klatches with the local merchants.

(00:40:00)

Herbert Ashby: Well, do you have any words of advice to the courts or to society about the legal system and improvements that there might be or—?

Edward Hinz, Jr.: Well, I think one thing . . . and there are a lot of good judges, don't get me wrong, there are a lot of good judges. It's just too bad that some of those don't get on these high-profile cases, really talented judges who know what they're doing. They had good judges on *Manson*; that didn't turn into a circus. They handled that, Chuck Older, and Bill Keene was on there, and all those guys, they knew how to handle a case. I think we've just got to work at it.

Now part of it is that there are some judges, and I hate to see this, that there are so wishy-washy, you don't even know who the heck is in control of the court. There are some that I've run into them, who say, "Ed, if you want to avoid being reversed just give the defendant everything he wants." Well, what kind of a judge would do that? You've got to call the case the way it is and not worry about whether you're going to get reversed or not. In fact, one of my superior court colleagues says, "Don't worry about getting reversed; the appellate court has a constitutional right to be wrong." *[laughing]*

Herbert Ashby: You probably don't like that saying as much as you did before you were on the court. Do you have anything else you would like to say about not only this but anything else—things that are happening today, music?

Edward Hinz, Jr.: Well, I'd like to comment a little bit about my experiences on the Court of Appeal. I was in a very active division and there were a lot of really opinionated people.

David Knight: Could you repeat that question, please?

Herbert Ashby: I doubt it. *[laughing]*

Edward Hinz, Jr.: Oh, we're talking about the Court of Appeal.

Herbert Ashby: But remember where you were on the Court of Appeal; wait, I don't think we're started yet.

Edward Hinz, Jr.: So we had this criminal case, of all criminal issues, and my colleagues used to say—I was the criminal law guru because my whole career as a lawyer in the AG's Office and my whole career almost without exception on the superior court was in criminal law—that I was the expert on that; but that didn't stop them from going the other way on a case. And one I've just got to mention. We had this case.

Herbert Ashby: Was this *Polanski*?

Edward Hinz, Jr.: *Polanski*. I couldn't think of his name. Polanski had raped this girl, a young girl, and he had been convicted and he fled to France. And they couldn't extradite him from France because the extradition treaty with France provides that a French citizen in France can't be extradited anywhere. I mean, it's ludicrous, but that's the way it is.

So after a number of years, she got around to suing him. And she filed, sent to him a bunch of interrogatories she wanted answered, and he took the Fifth Amendment and said, "I'm not going to answer them." So the issue came up to the Court of Appeal. And my colleagues came up with this: If a private lawyer asks a potential defendant a question about any subject matter, he has to answer it and he gets immunity.

Herbert Ashby: From prosecution?

Edward Hinz, Jr.: Yeah, immunity for answering the question. And I said, "You can't do that. You can't have a private lawyer decide who gets immunity; that's a job usually for the DA with the court's approval. It's not something that you can just willy-nilly . . ." And they said, "Well, give me an example." And I said, "Well, suppose a lawyer says to the guy, "After you shot him, where'd you throw the gun?" "In the lake." They find the gun in the

lake. Well, you can't use it. That's baloney. Why should he insulate that defendant by asking him a question like that?

(00:44:51)

Well, so they wrote the opinion and I dissented. And you talk about a firestorm; it was unbelievable. Six or seven DA's offices in California wrote petitions for rehearing. The DA's association wrote it, the Attorney General's Office wrote one, and the U.S. Attorney General wrote one. So they grant a rehearing.

Now we're all in court; we're going to hear oral argument on the rehearing. It's the turn for the U.S. attorney to stand up, and he's a big wheel from Washington, DC, and he stands up and he says, "May it please the court, I am so and so, chief assistant or whatever, U.S. attorney." He said, "I'm sure that you're aware that we're not allowed to appear in state courts unless the Attorney General personally approves of it. And I might say in this case he readily approved of it." Well, of course they were in full retreat, and they rewrote the opinion; but that could have been saved if they just would have listened. *[laughing]*

Herbert Ashby: Any softer cases—kittens, things like that?

Edward Hinz, Jr.: Oh, yeah, the famous cat case. *Nahrstedt* was the name of the case. This woman was renting or leasing—I don't know, one or the other—a place in a big apartment complex. They had a provision in the contract, no pets, except you could have a bird in a cage—but no cats, no dogs, no nothing.

She had a cat. The homeowners told her to get rid of the cat; she wouldn't do it. They assessed damages against her, she still didn't, they assessed damages against her, she finally came to court. And she wanted that thrown out on the grounds that that was a violation of her rights as a homeowner to have a cat. So we're sitting around discussing the case, and I'm saying, "Well, you know, she signed this thing; she knew when she was signing it said no pets. And pets bother people and they don't want to be around that. So if she wants a pet she should go to an apartment complex where you can have pets."

And one of my colleagues said, "Oh, poor Mrs. Nahrstedt, she's 80 years old, all her companions have passed on, she has no friends, and the only thing in the world she's got is this cat. And how can we take it away from her?" And I said, "Where in the record does it says she's 80 years old and her friends are gone and all this and that?" Well, nothing of it.

That night I'm looking at the evening news and they have a camera at Ms. Nahrstedt's apartment and she's dolled up like you can't believe; she's relatively young; she has this suave-looking boyfriend in there with her. So I came back the next

day and said, "Well, forget about her, she's got all the companionship she wants." *[laughing]* it didn't change their mind. So that's the way the opinion came out, with my dissent. And we said, among other things, we had never seen an apartment that looked like a castle; they claimed her home was her castle.

The Supreme Court reversed them, thank god, with one dissent. Armand Arabian said she should have the cat.

Herbert Ashby: Wasn't he in your division prior to—?

Edward Hinz, Jr.: Oh, I took his place; when he went to the Supreme Court I came in for Armand.

Herbert Ashby: Well, I guess the way things have changed now the lawsuit would be filed for the rights of the cat.

Edward Hinz, Jr.: *[Laughing]* It probably would be.

Herbert Ashby: Okay. Anything else, or do we say good-night?

Edward Hinz, Jr.: Well, I just want to say that I enjoyed the Court of Appeal. I consider that the greatest job there is; I just enjoyed every minute of it. My colleagues were great. We got in some heated arguments, but at all times we were always friendly; there was no personal animosity. And it was a good place to be and I wouldn't have traded it for anything. It solved the big bugaboo I had as a trial judge, which is jurors—and I'm going to tell you one last one before I quit.

I had this case; we recess at noon, I order everybody back at 1:30. One-thirty rolls around, we got all of the jurors, we got the alternates, we got the attorneys, the witnesses, we got everything but one juror: Mrs. Smith. And that's not her name—I don't remember what it was—but she was an elderly lady, and she wasn't there.

(00:50:07)

So we sat in the courtroom waiting for her. At 2:30 instead of 1:30 she walks in the door. I said, "Mrs. Smith, what happened?" She said, "It's too horrible to talk about it." I said, "Well, you're going to have to tell me, because I've got to know what happened." She said, "Well, I was in this shoe store and I couldn't make up my mind what pair of shoes to buy."

So I told her I was going to take that, that's okay, but if it happens again, "you're going in that lockup, and we'll have you there 12:00 to 1:30 so we'd know where you are at 1:30." Well, I never had any more trouble with jurors. *[laughing]*

Herbert Ashby: Is there any question that I haven't asked you that you would like to answer?

Edward Hinz, Jr.: Well, I think that number one, Evelle Younger was one of the greatest guys I ever saw, and he was a tremendous boss. And he would never criticize you in front of others. He had great confidence in what you were going to do and let you do it, and he supported you to the hilt. And the same thing with Justice Ashby, who was my boss in the AG's Office when he was chief assistant and I was a deputy; so I was very fortunate.

Herbert Ashby: All right, thank you, Justice Hinz.

Edward Hinz, Jr.: Thank you!

Herbert Ashby: That will conclude this interview.

*Duration: 52 minutes*
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