Laurence Kay: All right. I am Laurence D. Kay, Laurence is spelled with a U, last name is spelled K-A-Y. I was in this division, Division Four, First District, one year as an Associate Judge and four years as PJ, and I retired in September of 2005.

David Knight: Justice Reardon, your turn.

Timothy Reardon: Yes. I am Timothy A. Reardon, R-E-A-R-D-O-N, Associate Justice of the California Court of Appeal, Division Four. Today's date is 0ctober 12, 2007. This interview is being conducted as part of the Appellate Court Legacy Project, the purpose of which is to create an oral history of the appellate courts in California through a series of interviews of retired justices who have served on our court. I'm Tim Reardon, an Associate Justice for the First District Court of Appeal, Division Four, and we are honored to have with us today the Honorable Laurence D. Kay, who served on the First District from 2000 to 2005. Welcome, Larry, and thank you for participating in this project.

Laurence Kay: Thank you, Tim.

Timothy Reardon: It's a particular pleasure for me because we have been colleagues both on the San Francisco Superior Court and the California Court of Appeal for a number of years, and we're also very good friends.

Laurence Kay: You ought to keep that in mind as we go by.

Timothy Reardon: *[Laughing]* So there will be no tough questions here.

Laurence Kay: Oh, good.

Timothy Reardon: You, like myself, are a native San Franciscan. Can you tell us a little bit about the Kay family and growing up in San Francisco?

Laurence Kay: Sure. My dad came out here in the middle of the Depression, 1934 or '35, and met my mom and went into a retail clothing business on Mission Street; and from there got involved in real-estate investing and some other things. I was born in 1937, went to Winfield Scott Grammar School, Raymond Junior High, Lowell, then on to Berkeley. And after Berkeley I went into the construction business for a couple of years, and decided to come back and go to law school, and went to Boalt, where I graduated in 1963.

Timothy Reardon: You mentioned Lowell here in San Francisco, a fine high school, and as I recall there are a number of judges who are graduates of Lowell High School.

Laurence Kay: Stu Pollak is one.

Timothy Reardon: Stu Pollak is one, I know, and then—

Laurence Kay: Chuck Breyer, Stephen Breyer, United States Supreme Court.

Timothy Reardon: The Breyer brothers. So obviously it speaks well for Lowell High School, and for yourself, having graduated from Lowell. You have moved ahead here. After graduating from Lowell and you went to UC Berkeley and then from there to Boalt Hall School of Law, what is your major and at Berkeley undergraduate?

Laurence Kay: Economics.

Timothy Reardon: Okay. What caused you to pursue a career in the law?

Laurence Kay: Well, to be honest with you, I was working for a construction company in Southern California as kind of an assistant expediter on job sites for Sears Roebuck, and the construction company ran into financial difficulty and that didn't look like it was going to be a future for me. I got a call from a friend of mine from undergraduate, who suggested maybe we ought to become lawyers. It sounded like a good idea, so we both applied and were accepted to Boalt; and I'm very glad I made that decision. I supposed I should be grateful to the construction company for running into difficulty.

Timothy Reardon: *[Laughing]* Well, on a somber note, I know you were very close to your dad, and he recently passed away; but obviously he had a great influence on you as well.

Laurence Kay: He did, indeed.

Timothy Reardon: You mentioned attending Boalt. What do you think . . . apparently there is some move to change the name of Boalt Hall to . . . I don't know if you're aware of that or not.

(00:04:59)

Laurence Kay: I was not aware.

Timothy Reardon: Well, I was going to get your reaction to that, but it's probably better—

Laurence Kay: From Boalt to what?

Timothy Reardon: That's the question.

Laurence Kay: Oh, I see. *[laughing]*

Timothy Reardon: *[Laughing]* Now, you moved on describing or discussing attending Boalt Hall, but you didn't mention, and it certainly must have been an honor, that you served as the associate editor of the *California Law Review* at Boalt Hall in 1963. Was that a good experience for you?

Laurence Kay: It was. I even remember some of the articles and notes that I wrote. Actually, these days the further away an event is, the better I seem to remember it.

Timothy Reardon: *[Laughing]* All right. Then of course you got your J.D. degree, or law degree, and passed the bar and then entered private practice. What was the name of the . . . Did you enter, or did you do a firm or—

Laurence Kay: Yes, I did. I went to work for a firm that is still in existence. It was then called Severson, Werson, Berke & Larson and I worked for Kurt Melchior and Bob Zang in that office. And after a couple of years Bob Zang wanted to split off and form his own small office and asked me to go with him, so I did.

Timothy Reardon: Yeah, those names, of course, are very familiar to me as well.

Laurence Kay: Bob was a great tax lawyer.

Timothy Reardon: Did they have kind of an influence on you with respect to—

Laurence Kay: Yeah. I had tremendous respect for both of them and especially for Bob, for whom I left the firm. And he was a brilliant guy who worked 18 hours a day and was kind of a lawyer's lawyer. And he would get a lot of referrals on really complicated transactions and so forth. It was a great experience. I felt that I learned under a master.

Timothy Reardon: The nature of the practice itself is commercial?

Laurence Kay: It's commercial—mostly transactional litigation, shopping-center developers, people start-up companies, and some very large companies and very complicated estate planning and tax-related issues.

Timothy Reardon: My notes reflect that you were in private practice for approximately 17 years. Was it all with the same firm?

Laurence Kay: No. After a few years . . . Bob Zang had a social relationship with Isabella Grant, who I had known for many years—actually ever since law school; and I went then with Isabella and we had a firm known as Livingston, Grant, Stone & Kay.

Timothy Reardon: That was a family-law type of practice?

Laurence Kay: Well, it was for them, not for me. I was never in the family-law side. I still did the transactional land developer and some landlord-tenant and so on, mostly involved in getting use permits and appearing before various administrative bodies, doing leases.

Timothy Reardon: All right. I guess the tough question. What influenced you to seek an appointment to the bench?

Laurence Kay: Well, I'll try to keep this short. I wasn't hit by a bolt of lightning, nor can I honestly say that I had always wanted to be a judge, which is what Charlie Clifford told me to tell Jerry Brown when I went to Sacramento to be interviewed.

The fact of the matter is that one day I got a call from one of my commercial clients, a fellow that owned some shopping centers, and he told me that his son had gotten into trouble in Oregon, and he wanted me to go up and see if I could do something about it. The trouble involved rolling a pickup truck on the highway that was full of marijuana. So I tried to convince him, unsuccessfully, that I was the last guy in the world; I'd be happy to try to find him somebody in Oregon, but it shouldn't be me.

Anyway, for one reason or another I was able to get a pretty good result. He was a Berkeley student, and pretty soon my phone started to ring, and I was getting all these drug defense cases. I found it interesting for a while, but I was doing a lot of traveling, and I began to doubt the wisdom of that direction. I had a big federal case in South Carolina involving South Americans and so on, and I began to get a little uncomfortable, to tell you the truth.

(00:10:08)

As I look back, I saw that my friend Jerry Brown was ending the end of his second term and might—we had become friendly in his campaign—and might be willing to put my name forward for muni court, as he had recently done for Isabella Grant. And he was amenable, and he was kind enough to appoint me to the muni court.

Timothy Reardon: Larry, that was in 1981 that you were appointed, and you served in San Francisco Municipal Court until your elevation to the San Francisco Superior Court.

Laurence Kay: About a year later.

Timothy Reardon: Okay, 1982, 1983. You had a long and distinguished career on the superior court; in the 17 years you served on the superior court, you handled a variety of assignments. Could you tell me about some of the different assignments that you had and whether you had some favorites in connection with those assignments?

Laurence Kay: Well, you and I were right down the hall from each other at the Hall of Justice, and we had a wonderful collegiality. I think we moved the calendar along and tried to be fair with everybody, and accurate.

Timothy Reardon: I think I followed you into the master calendar?

Laurence Kay: That's right. I was a master calendar judge, which we used to refer, incorrectly, to ourselves as the presiding judge of the criminal division.

Timothy Reardon: *[Laughing]* But it sounds good.

Laurence Kay: It sounded very good.

Timothy Reardon: To your credit, I think you served for two years and my stint was just one.

Laurence Kay: Well, I liked the administrative aspect of it and trying to work down the cases to a manageable number. I firmly believed, and I think you do too, that things can get out of hand and you can get too many cases backlogged and then the outcomes are affected by the backlog. And we try to not get into that situation, and you and I were both, I think, pretty successful at keeping that manageable.

Timothy Reardon: That's true. Now, I know toward the end of your career on the superior court you were in probate.

Laurence Kay: Right. Well, that was something that I frankly appointed myself to after I was presiding judge.

Timothy Reardon: That's right. I skipped over that important fact, which you did serve, I believe it was, in 19—; my notes in terms of your service is 1996 elected by your colleagues to serve as presiding judge of the entire court. But after your service as presiding judge . . . which I assume you enjoyed?

Laurence Kay: I did enjoy that. That was during coordination; that was before consolidation. And so while I worked with the presiding judge of the muni court, I didn't have the same responsibility as those who do it now have for as many judges; it was probably easier than it is now.

Timothy Reardon: But you did go through that period of time, the coordination aspect of superior courts to municipal courts.

Laurence Kay: Right, and there were a few political difficulties, as you know, on the way toward consolidation; but everything worked out.

Timothy Reardon: Let me ask you—

Laurence Kay: Before that I had done complex civil and class actions and actually met Judge Kremer and now Judge Appel, when they appeared before me opposite each other in a big civil case, a big antitrust case.

Timothy Reardon: That must have been an interesting case.

Laurence Kay: It was an interesting case.

Timothy Reardon: In the time that you did serve on superior court, both as presiding judge–criminal and presiding judge of the entire court, and the numerous assignments that you had . . . I know, as I mentioned earlier, you did do probate; that was the last probably assigned.

Laurence Kay: Yes. That was the last thing that I did before I was elevated to the Court of Appeal, for three years; that was exceptionally rewarding.

(00:14:54)

Timothy Reardon: Let me just jump ahead a little bit, although we should probably cover this in another point. It's good to see you back here, but you've been back quite often since your retirement; and that's because you serve on certain task forces by appointment of the Chief Justice.

Laurence Kay: Yeah. Actually I think on the occasion of my retirement, when he came down here and was nice enough to send me off as . . . Marvin Baxter and some of the other friends I made while I was on the Judicial Council immediately appointed me as chair of the statewide DV task force reporting to the Judicial Council. We were about to wind up our report after all this time. I've had many meetings and a lot of contact with both people on the Judicial Council and the AOC. And so it kind of eases the postpartum syndrome for me and makes me feel relevant to the judicial branch. And so I'm also on a probate and conservatorship task force, which the Chief also put me on.

Timothy Reardon: I was very impressed—I mean, not just because of the appointment by our Chief Justice Ron George, but by virtue of the fact that someone who has spent so much time as a judge that you'd willingly come back on these special assignments and—

Laurence Kay: I'm grateful for them.

Timothy Reardon: Well, I think the court itself is very grateful to you for doing this, as well as litigants and other members of the public and the task forces. Again, my notes reflect that it was almost 20 years that you spent on the trial court, considering municipal court and superior court. And then you sought appointment to the Court of Appeal, and in recognition of your talents and experience Governor Davis appointed you to the position of associate justice of Division Four.

Laurence Kay: Right, that was to replace Marc Poché, initially.

Timothy Reardon: Right. Then approximately a year later you were appointed presiding justice of Division Four.

Laurence Kay: That's because you wouldn't do it.

Timothy Reardon: *[Laughing]* I won't comment on that at all. But you've certainly served us well, members of Division Four, and I mean that very seriously.

Laurence Kay: Thank you. It's good; I loved it here.

Timothy Reardon: I know you did.

Laurence Kay: We really got along, didn't we?

Timothy Reardon: We did. We had a great group, and I was going to say we felt that we were very productive. And I think in terms of our productivity, much of that is attributed to your leadership, which . . .

Laurence Kay: It's very kind of you.

Timothy Reardon: . . . which still keeps us fairly well off in the statistics, even to today; so again, thank you for your leadership.

Research discloses that during the five years that you were on the Court of Appeal, you authored over 50 published opinions as well as 4 published dissents. Can you tell us, perhaps, a little bit about a few of those opinions that might stand out from your perspective?

Laurence Kay: Let me begin by saying that when I got this binder and saw that I had published 50 opinions in five years, my first reaction is I can't possibly have had that much to say, to add to the totality of human knowledge, and I must have overpublished, I'm sure I did. So I went through the list and I recalled some of the cases; and some of the cases I recalled less . . . And then it also occurs to me that I'll recall those cases longer than anyone else, and so what does that tell you about the permanency of what we do? In any case, I made a short list here . . .

Timothy Reardon: Excellent.

Laurence Kay: . . . of the cases that I remember fondly. One was *Birschstein v. Union Motors*. And that was a case in which we held that staring in the workplace under certain circumstances where the starer had previously been a stalker and had been warned by management to stay away from this woman can constitute sexual harassment.

Timothy Reardon: I remember that case, even though I wasn't on the panel. As I recall, we had Judge Chiantelli, who was sitting pro tem for us on Division Four. And I forget who the fourth judge was, the third judge was; I guess it was—

(00:20:11)

Laurence Kay: Pat Sepulveda.

Timothy Reardon: Justice Sepulveda, who currently sits with us. As I recall there was a lot of discussion not only in chambers, but in hallways and things of that nature.

Laurence Kay: You mean when we were screaming at each other in the hall in talking about those events? Yes, actually my opinion started out as a dissent. It's the only one that I can recall in the five years in which that occurred and that the dissent ultimately became the unanimous opinion of the court.

Timothy Reardon: That was my recollection, is the same as yours, and that's impressive when you can start out with a dissent and somehow convince your colleagues that—

Laurence Kay: I felt good about that. Another case was *In re Providian Credit Card Cases;* that was in 2002, which I think was the first case after the adoption of California Rules of Court 243.1 and 243.2, limiting the manner in which a court could seal records in the course of a trial. This case involved the trial court judge Stu Pollak, as a matter of fact, at that time who had unsealed records; and the question was, what is the standards for unsealing records? Are they the same as sealing records? With sealed records you have to make certain specific findings. Can those findings be implied if you unseal records? And we said yes, they can, and that the trial court judge has considerable discretion in that regard.

Timothy Reardon: Yeah. That's an oft-cited case.

Laurence Kay: I think it is often cited. Another case was the case of *McKesson v. HBOC;* that was in 2004. In that case the Department of Justice had opened up a criminal investigation against McKesson following the virtual collapse of the shares after it had acquired HBOC and then corporate takeover. That was McKesson's position—that it was all unknown to McKesson, that HBOC had misled them in that regard. They hired an outside law firm to come in and generate a report, basically an audit, and it contained deposed interviews of chief executives and others and so on.

They gave that to the Department of Justice with an agreement between McKesson and the Department of Justice that it would remain secret, that it wouldn't waive the attorney-client or work-product privilege: we show no one else. Thereupon the Department of Justice refocused their interest on HBOC. The shareholders later filed suit, and McKesson refused to give that report on the basis that it was privileged by the attorney-client, work-product privilege; and we held that it was not, that McKesson was not then or ever on the same side of the case as the Department of Justice, that the real parties injured here were those very shareholders trying to get that report. We held

that they were entitled to it. There were obviously policy considerations that were worrisome in the case, because you do want to encourage cooperation with law enforcement; but it seemed to us that did not outweigh the right of the shareholders to that information absent privilege, and we found the privileges had been waived.

Timothy Reardon: Now I recall that case.

Laurence Kay: That is not a unanimous view across the country. There are lots of splits on that opinion, but it remains the law in California.

Let's see, there was *Bowman v. City of Berkeley* in 2005. There the city granted a permit for the construction of a low-cost, multi-unit dwelling in a blighted, highly commercial area; and the neighbors objected to it on the basis of artistic merit of the structure—purely aesthetics. And while there was a case somewhat similar to this, and I think it was Justice Simons's opinion, actually, of Division Five said that that kind of objection is sufficient, at least in the wilderness we're talking about hiding a lake or covering a reservoir with some kind of a contraption that is an eyesore.

(00:25:07)

We felt that didn't apply in a blighted commercial area, and if objections were made purely on the basis of aesthetics, they do not rise to sufficient objections to require an environmental impact report.

Timothy Reardon: That was a heavily contested case. I remember I was on that panel, so I'm somewhat familiar with that case.

Laurence Kay: Right. Let's see, are there any others in here? You asked me about dissents. The dissent that stands out—and there were very few, and we can talk about that and why—but I dissented in a case called *Citizens for Better Streets v. the Board of Supervisors.* And in that case—following the earthquake of 1987, was it?—the State of California, through Caltrans, and by contract gave to the City of San Francisco some land down near the freeway, where the former freeway overpass had collapsed at the foot of Broadway; and it said this must be used for the purpose of reconstructing the streets and the freeway on-ramp.

The city then instead used the property to transfer, for virtually no consideration, to a developer for the construction of low-cost housing. And while I admired the social benefit, I was taken by the fact that it seemed to me that, at the very least, they should go back to the Legislature, or at least Caltrans, and seek some kind of blessing or offer the property back because it was given for a different purpose. My colleagues disagreed.

Timothy Reardon: I was not one of them.

Laurence Kay: You were not on that case. I'm going to say that if you were on that case, I think we would have been two to one in favor, but I'm not going to stick your neck out.

Timothy Reardon: No, but I do remember that case very well, and it was an interesting issue.

Laurence Kay: It was.

Timothy Reardon: Yeah.

Laurence Kay: Those are my cases of note.

Timothy Reardon: All right. Well, thanks, Larry, and as I say I was with you on some of these, and I know I didn't dissent from anything you did.

Laurence Kay: No. We never dissented much here in my tenure; it's either because the cases were fairly clear . . . but I like to think that it's also because we tried to build consensus, because there's real value in doing that. Not to say that there isn't value in dissent—there is—but it seems to me we all tried to agree if we could, and it was only when we couldn't agree after a reasonable attempt that there would be dissent.

Timothy Reardon: Right. I think that's a very good approach to things.

Because it's hard for one to talk about oneself, I'm going to just go through some of the law-related organizations that you belong to; and I'm doing that because it's a very impressive list, some of which we've already covered. But you served on the Appellate Courts Committee of the California Judges Association; you've been a member of the Judicial Council, appointed by the Chief Justice, serving on the Probate and Mental Health Advisory Committee and chair of the Rules Subcommittee. And in connection with serving on the rules committee, I still recall you walking down the corridors here with those huge binders that you had to review.

Laurence Kay: That was a spectacularly intense job because almost everything that is destined to become a rule or a form has to be vetted through RUPRO, Rules and Projects Committee. So every week I would receive from two to six binders of proposals both from all the task force and sometimes from individual judges, sometimes from people running projects within the AOC, and so on; and it was just a lot of work. I really enjoyed it, and I had good people on RUPRO and wonderful staff.

Timothy Reardon: I mean, this is the work in addition to doing your cases?

(00:29:53)

Laurence Kay: Right. It's kind of a full-time job by itself. But it was made possible because the people that are working in the AOC are astonishingly professional and motivated, and they work long hours and they really are terrific, and I can't say enough about them.

Timothy Reardon: Now, in addition to what I have already discussed with you, you served on the Executive Board of the National College of Probate Judges. You're a board member of the Bar Association of San Francisco, litigation section. You're a founding member and president of the USF Inn of Court, which my daughter belongs to.

Laurence Kay: She is now on the board.

Timothy Reardon: *[Laughing]* I didn't know that. Okay. And impressively, I mean, I know you've received many, many honors and awards, but you were voted the Trial Judge of the Year by the San Francisco Trial Lawyers Association. I don't have a note on this. You also received, as I recall, because I was probably at the dinner, the Consumer Attorneys' award for Judge of the Year or something.

Laurence Kay: Justice of the Year.

Timothy Reardon: Justice of the Year. So it's a high honor as well. Do you believe that it's important for the judiciary, for judges, to be involved in these types of organizations?

Laurence Kay: I do. It establishes a communication with the legal community. It shows that you're willing to socialize, and it kind of softens the ivory-tower, unapproachable nature of what we do. You learn things, you teach, and you also learn.

Timothy Reardon: I was going to say, through the Inn of Court, which you're past president of the USF Inn of Court, another big plus is that I think you have an opportunity to teach younger lawyers things about the law that are very important.

Laurence Kay: Right. And I still teach in the probate area and enjoy that too.

Timothy Reardon: Right, and you also serve on a task force dealing with the probate court.

Laurence Kay: Right. I think we're all done now. We've submitted our report to the Judicial Council and we've dissolved, but I'm still working on the DV task force report.

Timothy Reardon: Yes. Now, you're retired—a well-deserved retirement, I might add, with the number of cases you handled being presiding judge of Division Four, the administrative end of the thing, your commitment to these other organizations, and everything you've been doing as a judge for an awful long time—and this retirement was well deserved. However, you can't help yourself,

I know, Larry, because although you've retired, you're still doing a number of things in retirement, including coming back on task forces for the court here. So are you enjoying retirement? I know you're doing some private judging, of course.

Laurence Kay: Yes, I am. I'm with ADR Services, along with your friends Al Chiantelli and Alex Saldamando and Dick Hodge and M. O. Sabraw, still.

Timothy Reardon: It's a good group you have.

Laurence Kay: Yeah, a good group. It's very challenging, and instead of dealing with people who can be unreasonable who have to listen to you, you're dealing with people who can be unreasonable who don't have to listen to you. It's quite a catharsis—somewhat stressful, actually; more so than I had anticipated.

Timothy Reardon: I assume there has to be a little adjustment, because as a judge you're going to be—

Laurence Kay: There's a big adjustment.

Timothy Reardon: Yeah. But, you're adjusting to it well?

Laurence Kay: Well, I hope so. I'm really enjoying it, and it's a challenge. And I'm trying not to do it on a full-time basis, but a substantial amount of time. The idea behind my retirement was to try that as a challenge, see who would be willing to pay for my services instead of having to take them involuntarily; and also having some time to travel and play golf and pursue other interests—photography and so on—and just kind of slow down a little bit.

Timothy Reardon: Well, I don't know how much you're slowing down; you still seem very, very active, as you have been your whole life. Let me just ask you this. Maybe you don't have any advice, or maybe you do; but with such a long and distinguished career as an attorney, a trial judge, an appellate court justice, including all the organizations you've participated in, do you have any words of advice for anyone considering a career in the law?

(00:35:15)

Laurence Kay: Well, I anticipated that question, and without pontificating, I just think it is a wonderful profession. It can be whatever you want it to be, especially if you're lucky enough to, as you and I were to, be in the right place at the right time with the right background and be able to be on the bench. That was a sensational life and career, and even without that it's a very rewarding thing. It can be a scholarly enterprise, a collegial one if you allow it to be and insist that it be. I would recommend it to anybody.

Timothy Reardon: Larry, I just would say—I mean this very seriously—with your years as an attorney and on the trial bench and on the appellate court, your dedication to these various organizations, your volunteer work has made a remarkable career. I think it's not just we thanking you for your service, but I think the public citizens of the state of California should be, and they probably are, very grateful for the giving of your time and talents. I hope you take some pride in that and some solace in that, because you've had such a long and distinguished career.

Laurence Kay: More every moment that I hear your generous remarks.

Timothy Reardon: *[Laughing]* Okay, Larry, I'm going to wish you best of luck and congratulations again for everything you have accomplished, which has been a great deal; and continue enjoying your retirement.

Laurence Kay: You're very kind, thank you.

Timothy Reardon: All right. Thanks.

Duration: 37 minutes
October 12, 2007