Judith Haller: All right, it is my pleasure today to be talking with Retired Associate Justice Gerald Lewis of the Court of Appeal, Fourth Appellate District, Division One. My name is Judith Haller, and I am an Associate Justice of that same court located in San Diego.

As part of the Centennial of the California Courts of Appeal, the Appellate Court Legacy Project Committee is creating an oral history of our appellate courts and their justices. Good afternoon, Gerry, and thank you for participating.

Gerald Lewis: Well, it's nice to be here.

Judith Haller: Thank you. Before we begin, I want to say, this is really a pleasure for me. I first met Justice Lewis when I was a very inexperienced deputy district attorney in El Cajon, at which time Justice Lewis was then a judge on the municipal court. Since that time he has certainly been a mentor to me, so it was my pleasure. Although I thought I knew a lot about you, I learned much more in preparation for this.

All right, Gerry, let's just go chronologically. And I know you were born in New Jersey back in September of 1933. Did you spend your entire formative years there?

Gerald Lewis: Yes. I was born in Perth Amboy and spent a few years of school in Woodbridge, and the main part of my schooling, grammar school and high school, in Plainfield, New Jersey.

Judith Haller: All right. I know you graduated from Plainfield High, from high school in 1950, and you were only 16 years old. Did I calculate that correctly?

Gerald Lewis: That's true, yeah.

Judith Haller: That's pretty young.

Gerald Lewis: Well, it sure is, and it was an accident. My mother had taught me to read before I went to kindergarten, and after two weeks in kindergarten they thought I was a nuisance because I could read, so they moved me ahead to the first grade.

Then besides that, my birthday was in September, which made me the youngest you could possibly be for that year. So I ended up basically two years ahead of things, which had some disadvantages in sports and being able to drive and things like that. I was still 16 years old for the first week of freshman football practice at college.

Judith Haller: That's something I wanted to ask you about. What position did you play in football?

Gerald Lewis: Wingback.

Judith Haller: All right. Any thoughts or observations about high school—were you in student government, or on the debate team, or anything of that sort?

Gerald Lewis: I played basketball in high school and was on the track team and was involved in student government and things of that sort. I pretty much did a lot of things in high school.

Judith Haller: You're probably being very humble. What positions did you have in the student government?

Gerald Lewis: I think I was vice-president of the student council.

Judith Haller: Well, that comes as no surprise. Then you went off to college and you went to Tufts University. Why Tufts and why Massachusetts?

Gerald Lewis: I had already been accepted at Colgate and had my room assigned at Colgate with a roommate from my hometown. Tufts had come down to interview at my high school and invited me up for a scholarship weekend, and called and offered me a full-ride scholarship at Tufts, which was out of the blue. I guess I caused my parents a heart attack when I asked if I could have two weeks to think it over. *[laughing]*

Judith Haller: I bet. *[laughing]*

Gerald Lewis: The dean said, "Well, nobody has ever asked for that before, but I guess so." So that's how I ended up going to Tufts.

Judith Haller: By the time that you went off to college, did you know you wanted to eventually go to law school and become an attorney?

Gerald Lewis: That's what I always assumed. My uncle was a lawyer, the only one in my family who had gone to college who was a lawyer—my mother's brother. It was assumed that I would do that by my family.

At the time, 1954, the difference between Harvard Law School and Harvard Business School wasn't all that easy to make a choice between. The common perception in those days was that law school was just as good an education for business as business school was.

So all things considered, the advice was to go to the law school. And that's what I did, without any notion that I was ever really going to practice law as a practicing lawyer.

(00:05:04)

Judith Haller: Interesting. Well, let me take you back to Tufts for a bit. I know that you entered Tufts at just almost 17, not quite 17, and that

you played football. What were some of your other activities at Tufts?

Gerald Lewis: I was on the freshman wrestling . . . well, I wrestled for three years and I played lacrosse for three years. We were the New England champion lacrosse team in 1953.

I'm trying to think back of whether there was anything else going on in college. Academics and the Theta Delta Chi fraternity and sports were I guess the main things.

Judith Haller: All right. You graduated from Tufts in 1954—again, very young, at the age of 20—and you graduated magna cum laude, right?

Gerald Lewis: Yes, yeah.

Judith Haller: What was your major at that time?

Gerald Lewis: I graduated with a major in government, which is what they called political science. Along the way I was an English major and a history major, and for one semester even a physics major so I could take a course in optics. But I ended up graduating as a government major.

Judith Haller: You mentioned your uncle before, and he was involved in politics, was he not?

Gerald Lewis: He was very much involved in politics. He was a very active Democrat in Middlesex County, New Jersey, which was very, very heavily Democratic. And he was very much involved in that. As a matter of fact, he was the head of the New Jersey delegation to the 1960 convention in Los Angeles, where Jack Kennedy was nominated.

Judith Haller: I remember that well because I was living in L.A. at the time. Did you come out for that?

Gerald Lewis: Well, I was here; I was a—

Judith Haller: Oh, that's right.

Gerald Lewis: I was a lieutenant in the Navy in San Diego, and I went up and spent that week with my uncle. I was in all the smoke-filled rooms. It was the last real smoke-filled-room convention, and I got to sit in at three and four in the morning on all the caucuses with all the pressure negotiations going on.

Judith Haller: Right. Did you actually meet JFK?

Gerald Lewis: I did not meet him there that week. I met Johnson, Symington, Humphrey, Mansfield—practically everybody but Kennedy.

Judith Haller: Okay. All right, well, let me not get too much out of chronological order. And let's take you back to law school. So we know you went to Harvard. And any thoughts or reflections about your three years at Harvard?

Gerald Lewis: Well, at the time when I got there, I thought it was a remarkable thing to be there. You were very conscious of what a highly selected group it was. I think we were 550 entering, and we knew what a large number of people had applied for that class. You were very conscious of the quality of the professors and the quality of the other students. Between those two things, the students and the professors, and the overall environment of Harvard in those days, the intellectual stimulation was really remarkable.

Judith Haller: Any student activities beyond classes?

Gerald Lewis: I don't think so, not in law school.

Judith Haller: Well, I have to ask you this—was it like *The Paper Chase*?

Gerald Lewis: It was in the sense that . . . The professor that they modeled that after was not a contracts professor; it was A. James Casner, who was my first-year property professor, first- and third-year property professor. As a matter of fact, they re-created his classroom, Langdale, South Middle, up in Canada, where they filmed the movie. They re-created it right down to the smudges on the wall by the light switch. He was my favorite professor, so in that sense it was remarkable to watch.

Judith Haller: All right. When you graduated from Harvard in 1953, did you take the bar at that point in Massachusetts?

Gerald Lewis: That was '57.

Judith Haller: Oh, I'm sorry, I'm sorry, that's my fault, you're absolutely right—in 1957. Did you take the bar in Massachusetts?

Gerald Lewis: No, I took the bar in the District of Columbia, because New Jersey, where I was a resident, had a nine-month clerkship requirement before you could take the bar at that time. The only place that I could take the bar without being a resident was the District of Columbia. So I went down there and took the bar because I was on my way into the Navy.

(00:09:59)

Judith Haller: I know that you went directly into the Navy, and that apparently . . . I know you were in Newport for a short period of time, but am I correct in remembering that most of your time was spent in San Diego?

Gerald Lewis: Yes, as soon as I finished . . . In those days, even though you were a lawyer and admitted to the bar, you had to qualify as a naval line officer first. So you had to go through the regular Officer Candidate School in Newport, Rhode Island. Then from there I was sent to duty in San Diego, and that's how I got here, and how I spent my three years here.

Judith Haller: All right. When you were here, were you a JAG officer or—

Gerald Lewis: Well, we didn't wear any different kind of uniforms. We wore a star on our sleeve, because we were line officers, but we had a JAG job, in the sense that I was attached to the Eleventh Naval District, general court-martial, where I ended up as the senior prosecutor for the last two years.

Judith Haller: When you left the Navy in 1961, it was at the rank of—?

Gerald Lewis: Lieutenant.

Judith Haller: Now, I know that when we were preparing for this, we met at the U.S. Grant Hotel, which is, historically speaking, a very famous hotel in San Diego. And you had kind of an interesting story concerning your first meeting at the U.S. Grant.

Gerald Lewis: Well, I was invited to accompany a member of the Office of Naval Intelligence to watch a stakeout they had going on in the lobby of the Grant. It was hilarious because the ONI agents that were involved in the stakeout were coming back and forth through the lobby in different outfits: mailmen, painters, waiters, same guy in different outfits; and the subject never noticed the difference. It was really funny to watch.

Judith Haller: Now, let's go back to your experience in terms of . . . with the courts-martial. How do you think that influenced your subsequent work as a trial attorney, or your philosophy towards the law, or eventually when you went on to the bench?

Gerald Lewis: Well, in two ways. I had never had any plans to be a practicing lawyer going into courtrooms; the Navy put me in that position. I did nothing but try cases for three years in the Navy, criminal cases.

Judith Haller: On both sides?

Gerald Lewis: Well, for one year as defense and then two years as a prosecutor. This was the busiest general court-martial in the Navy. We tried big cases, lots of them, and I got lots of trial experience against local civilian defense lawyers, including some very well-known criminal defense lawyers in San Diego; got to try lots of cases.

So willy-nilly, there I was as a lawyer with a lot of courtroom experience, and that had a big effect on my eventual practice.

The other thing was, the Navy is the best teacher I've ever encountered; the Navy can teach anybody to do anything. If the Navy can teach me to do celestial navigation, they can teach a chimpanzee how to fly an F-18.

At the justice school, which they sent me to for five weeks, they teach you some very simple things about how to get things into evidence; three simple questions to ask about how to get a photograph into evidence, instead of worrying about f-stops and lens widths and all things like that. It was very useful for the rest of my whole career in terms of understanding how to get things into evidence.

Judith Haller: I see. I will jump way forward. Now I know why they selected you to teach the Inn of Court on evidence for so many years.

Gerald Lewis: Well, I also taught evidence at Western State Law School at night, because one of the things that shocked me, frankly, when I was a young lawyer practicing in the courts in San Diego was how little a lot of trial judges knew about evidence. We had jokingly referred to what we called the San Diego hearsay rule which was applied—and that was, somebody would object, saying "Objection, that's hearsay, it was a statement made out of the presence of my client." The judge would say "Sustained." It was a very easy rule to apply.

So I thought that a trial judge owed it to the lawyers to at least know evidence. So as a consequence I taught evidence practically the whole time I was on the bench, which kept you pretty current.

(00:15:03)

Judith Haller: All right. Having attended that evidence course on the Inn of Court, I know what a good course it was. Let me just ask you—this is kind of an out-of-the-blue question—you mentioned that when you were trying cases you tried some of the cases against some very well-known private criminal defense attorneys. By any chance was Judge Enright one of those people?

Gerald Lewis: He was not. Cliff Fitzgerald was maybe the most famous defense lawyer at the time in San Diego. His brother, Roy Fitzgerald, was the municipal court judge. I tried lots of cases with and against Cliff. Red Boudreau was another one that I tried cases with.

Judith Haller: Well, and just to put it in context, Red Boudreau, of course, was a very successful attorney here; and there is a Civility Award named after Red Boudreau. All right. So again, more history that I didn't realize. Any other thoughts about your career in the Navy?

Gerald Lewis: It was really the most valuable time of my life. You come out of four years of college and three years of law school thinking that you have some special status in the world, and the Navy disabuses you of that idea in a big hurry. They shave all your hair off and give you a uniform that's four sizes too big. They teach you very early on that if the ship leaves the pier at 8:00 and you get there at 8:01, no one really is interested in why. That's a very valuable lesson for a young person coming out of Harvard.

Judith Haller: Yes, I bet. When you were here, did you think in your own mind that you wanted to eventually open a practice in San Diego?

Gerald Lewis: I don't think I did. In fact, I went back to New Jersey to my uncle's law office to practice law in my uncle's firm. They were saving a political seat for me and all kinds of things like that. It took me about six weeks to realize that this was a big mistake to move from San Diego back to New Jersey, and it took me six months to get around to leaving and turning around and coming back to San Diego.

But when I came back here, I got a job with General Atomic as an in-house lawyer. And I hadn't yet taken the California bar; it was only a couple of years later, in 1963, that I decided that what I really wanted to do was start practicing the law on my own.

Judith Haller: Okay. I was aware that you went back briefly to New Jersey to practice with your uncle in 1961, but what I didn't realize, and you said this so casually, is that there was a "seat" that was open for you. What did they have in mind for you, to become a member of the legislature or—

Gerald Lewis: A congressman. My uncle was the chairman of the Democratic Party in that part of New Jersey, and he had just made his county a separate congressional district. A lawyer down the hall, Ed Patten, had played defensive tackle for the New York Giants, and he had agreed to take the congressional seat until I was ready to assume that seat; that was the deal. As it turned out, Ed kept the seat until he passed away, I think.

Judith Haller: All right. So again, you were still very young, because you went directly to high school, college, law school, four years in the Navy; and there you were back in New Jersey.

Okay. Well, let's bring you back out to San Diego and talk a little bit more about your work at General Atomics. What was General Atomics doing at that time?

Gerald Lewis: Well, number one, they were designing and building high-temperature, gas-cooled power reactors: one in Peach Bottom, Pennsylvania and another one in Fort St. Vrain, Colorado. They

were in the power business, competing with General Electric and Westinghouse. They had gas-cooled reactors and the other companies had water-cooled reactors.

Besides that, they had what they called a TRIGA reactor for producing isotopes for research at universities. They had about 30 of those installed around the world.

Other than that, they had special weapons effect divisions and fusion projects. A lot of very, very forward-thinking, lots of Ph.D. physicists at General Atomics; the biggest collection in the world, I guess.

Judith Haller: All right. Now, and I have to ask, did your class, your physics class in optics come in helpful at General Atomics? *[laughing]*

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Gerald Lewis: Well, not really, but I became a quick study and learned enough about physics to know from a legal point of view what mattered and what didn't matter to the Atomic Energy Commission.

Judith Haller: Most of your work was either with or interaction with the Atomic Energy Commission?

Gerald Lewis: Well, yes, Atomic Energy Commission, the Department of Defense, and NASA.

Judith Haller: Would you say that most of your work in that capacity was transactional as opposed to litigation?

Gerald Lewis: Oh, it was almost all transactional.

Judith Haller: Also, how is it that you ended up at General Atomics?

Gerald Lewis: I needed a job, and it was at a time when San Diego was going through a slowdown. The process had been that everybody—guys like Tom Sharkey—would get a job with an insurance company as a claims adjuster until they could pass the bar and then start practicing. Well, there was a slowdown and the insurance companies got tired of that, and they wouldn't hire me as a claims adjuster because they had had 10 people do the same thing and then leave.

So I wandered around and finally met Sam Farmer, the vice-president of General Atomics, and he took a liking to me and gave me a job, which was a big help.

Judith Haller: Again, for context, Tom Sharkey was a very successful trial attorney in our community for years. I had no idea you knew him back then.

So you're at General Atomics and you take the bar. What was the bar like back then—three days, two days, what was that?

Gerald Lewis: It was my recollection . . . I took the February bar, and it was given I think in the afternoon and night, and it was three days up in Los Angeles. I had to stay at the downtown Hilton hotel or something like that. It was pretty much of a struggle to do that; it was a pretty scary process.

Judith Haller: Did they have bar review courses, anything analogous to that?

Gerald Lewis: I'm sure they had some here. As a matter of fact, I think I got the notes from one of those bar review courses. But I had taken a bar review course in Washington, DC, from a guy named Joe Nacrelli, who had a wonderful ex–prize fighter's approach to how to answer a bar exam question. I used it on all three bar exams: the District of Columbia, New Jersey, and then California; and it got me through all the way.

Judith Haller: Do you remember . . . nowadays you have to wait so long to get bar results. What was it like back then?

Gerald Lewis: I can't even remember how long it was.

Judith Haller: Was it a matter of weeks, or it was months or—

Gerald Lewis: I don't recall California. The District of Columbia, I took the exam in June and got the results in August. New Jersey, I think, was only a couple of weeks. I've forgotten how long it took in California.

Judith Haller: I know that you entered private practice in 1963, and you were there for 14 years till 1977; and it was basically the same partnership, was it not, the entire time?

Gerald Lewis: Well, it was.

Judith Haller: Let's talk about that.

Gerald Lewis: It grew a little bit, but it started out with me and Judge Tom Nugent, who sits on the superior court in Vista now. It started out as Lewis & Nugent, and it eventually became Haskins, Lewis, Nugent & Newnham. There were a few others along the way.

Sam Farmer, the former vice-president of General Atomics, came in with us for a while, before he got an illness and went up to Richland, Washington, to go back in the atomic energy business. But it was the same firm for the whole time.

Judith Haller: Back in 1963, how big was San Diego, how big was the bar, how many judges where there, just kind of in rough numbers?

Gerald Lewis: If I had to bet I would say there were about 20 superior court judges—maybe not quite that many, 19 or 20. There were about 600 or 700 lawyers in the whole county. There was more business than there were lawyers, in the sense that when we started . . . We started stone-cold, Tom and I. We had no clients; started stone-cold on September 1st of 1963. Rented an office, started stone-cold.

Judith Haller: Here in downtown San Diego?

Gerald Lewis: Downtown San Diego, in what is now the Charter or the Chamber building. It was the Electronics Capital building or something at the time.

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We would get court-appointed cases, and we would get referrals from older lawyers, including some actual cases. The lawyers were so busy that somebody like John Holt would call me up on a Tuesday and say, "I've got a case going to trial on Wednesday. Could you pick up the file and go try the case for us?" Literally, things like that would go on.

Judith Haller: I always think about John Holt as doing family law dissolution matters. Was his practice bigger than that back then? Or were you trying some dissolution cases?

Gerald Lewis: That's what I did for John. One of my early divorce cases was a trial against John Holt, and after that case he started sending me cases, and started asking me at the last minute to fill in in a trial or a deposition or something like that.

Judith Haller: With the bar as small as it was, everybody got along? What was kind of the feeling of camaraderie back then?

Gerald Lewis: It was so remarkable compared to practicing law in New Jersey. You practiced law on the telephone. Everybody's word was good. There was no such thing as a confirming letter. I went 10 years without getting a confirming letter. When you finally got a confirming letter, it was such an insult, you couldn't believe it.

Your word on the phone was good, and the feeling among the lawyers was that everybody felt it was an honorable profession. And it was a pleasure to be in San Diego where everybody acted that way. The older lawyers would take you aside and say, "Look, there's about three or four guys in town that you can't trust and here's who they are, and just watch out for them. Everybody else is fine, their word is good."

Judith Haller: Was the only courthouse in downtown San Diego at that time?

Gerald Lewis: Right.

Judith Haller: So no branch courts.

Gerald Lewis: Well, there were municipal courts.

Judith Haller: Okay, all right, but the only superior court was in downtown?

Gerald Lewis: Right.

Judith Haller: Okay. How about the relationship with the bench—fairly casual, amicable?

Gerald Lewis: Well, casual. I was young lawyer, but it was very cordial. I mean several of the . . . I remember Judge Schwartz, the first time I appeared in front of him, invited me back in his chambers and introduced himself, and told me that I was going to have a successful career. The judges kind of looked out for the young lawyers, and it was a real pleasure to practice there.

There were some judges that were regarded as curmudgeons, and the other lawyers would tell you look out for this and don't do that; and some of the clerks were the same way in the sense that in certain departments you had to be very careful about the clerk because the clerk kind of ran that department. We had the old stories about certain judges that would . . . You would make an objection, the judge would look at the clerk, and the clerk would nod, and the judge would say "Sustained."

Judith Haller: Notwithstanding the standard hearsay rule?

Gerald Lewis: Yeah.

Judith Haller: I'm going to jump ahead for just a minute: your comment about Judge Schwartz taking you back into chambers and such. I do recall early on . . . and we'll get to this. When you were in El Cajon as a municipal court judge and I was a brand-new DA, the judges did do that. They would invite both the defense attorney and the DA back in the chambers and say, "Well, you really did well on this; but boy, what were you thinking on that particular issue?"

Gerald Lewis: Yeah.

Judith Haller: Not so much of that anymore.

Gerald Lewis: Well, I don't know, I don't suppose there is. I always felt . . . when I was a trial judge I always felt that the lawyers were nice people, and I treated them as much like friends as I could under the circumstances, and tried to be helpful to them.

Judith Haller: And you were. Okay, let's go back again when you first -- so when you first started the firm with Tom Nugent, you were doing a little bit of everything: civil, criminal.

Gerald Lewis: Right. We had been hired as the city attorney for the City of Del Mar, as of September 1st, the day we opened our office. Judge Lou Welsh was the back, behind-the-scenes legal advisor and organizer of the City of Del Mar, and he interviewed us and hired us as the city attorney. I was the one that went to the council meetings and the planning commission meetings on Monday nights.

(00:30:01)

Judith Haller: You held that position for years.

Gerald Lewis: Ten or 12 years, something like that.

Judith Haller: So you simultaneously were city attorney for Coronado, were you not?

Gerald Lewis: Well, when Rich Goodbody had a heart attack, Coronado asked me to fill in for a little while, when it became permanent. Because of those two things, I was also hired by the comprehensive planning organization, which was SANDAG or vice versa, because they wanted somebody that knew something about municipal law; and they figured I had so many conflicts that it didn't matter at that point, so they hired me as the attorney for that organization.

Judith Haller: Throughout your 14 years in private practice, a considerable amount of your work was then municipal law, correct?

Gerald Lewis: Well, yes, just those three things; I dealt with those two cities and SANDAG, but I also represented a lot of medical organizations. I was general counsel for the California Society of Anesthesiologists, and the California OB/GYN Society, and the San Diego County Medical Society.

Judith Haller: How did those positions—by those positions I mean the medical professional organizations—how did you end up representing them?

Gerald Lewis: Tom Nugent was playing tennis against Dr. John Haddox, who was the president of the California Society of Anesthesiologists, and they had an antitrust issue to deal with, and he asked who could deal with it for them; Tom told them I could. And that was my first contact with the California Society of Anesthesiologists, and through that I became their general counsel, and then that led to the other things.

Judith Haller: Did you also do medical malpractice litigation or—

Gerald Lewis: I did not, I didn't do the . . . we had insurance and then we created our own self-insurance trust for Anesthesia Service Medical Group. But we still used at that time the standard

medical malpractice defense firms, the same ones that the insurance companies hired.

Judith Haller: So you did municipal law, quite a bit of . . . you represented professional organizations, particularly in the area of medical. You also did corporate and business work, did you not?

Gerald Lewis: Yes.

Judith Haller: Tell me a little bit about that.

Gerald Lewis: It's hard to remember much about that, frankly. *[laughing]* At that time I wasn't that much interested in, I really didn't do much corporate or business stuff, except in connection with the medical organizations and their relationships with the government and the insurance companies and things of that sort. Then I got involved up in Sacramento representing the anesthesiologists when MICRA was written, which I participated in on their behalf.

Although the theory was that I was going to be doing trial work, the practicalities were that I practiced law on the telephone most of the time, and didn't have time to go to court.

Judith Haller: Tell me a little bit more about your involvement in the legislation that ultimately became known as MICRA. Were you testifying in front of committees, or were you behind the scenes, or what were you doing?

Gerald Lewis: Well, let's see, I had to register as a lobbyist because I was up there full time. We had representatives from the California Society of Anesthesiologists who would be there testifying at the committees about what their insurance rates were, and what the risks were, and how to fix the situation so they didn't have to leave the state; and I would be there as their counsel.

Judith Haller: I'm remembering now that part of the, maybe the . . . I think this is a fair statement—sort of the pinnacle of the crisis had to do primarily at that point with the anesthesiologists, didn't it?

Gerald Lewis: Well, anesthesiology was one of the high-premium specialties at that time. It doesn't sound like much now, but I think that in 1974 dollars, the premiums were like $36,000 a year, and it was a lot of money.

Judith Haller: Yes, indeed. All right, so about . . . Well, let me go back; any other observations about your time at the firm before we go into a very interesting turn in 1975? But any other thoughts about the firm?

Gerald Lewis: Well, it was a very enjoyable thing to do. I thought it was just a wonderful way to practice law and a great community.

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Now, the sad thing is that none of my partners nor I ever had a very good understanding about making money at practicing law, which some lawyers did. To us the issue of how much money we could make in a year was just a scorecard of how good a lawyer we were being. We never had any notion that the money was something that we could get and keep and not have to work anymore.

Judith Haller: I was going to say, did you even keep time sheets?

Gerald Lewis: That came along pretty late in my practice, time sheets; fixed-fee things was the more common experience.

Judith Haller: Back again—sort of setting the stage back in the 1975 and 1977 time period—San Diego was primarily two or three "large" law firms, all homegrown, lots of small law firms, and a lot of people in solo practice. Think that's a fair—

Gerald Lewis: Yeah, I think that's fair.

Judith Haller: So by 1980—and we'll talk about that later—things started changing, with the large L.A., New York, Chicago firms coming to town?

Gerald Lewis: Yeah. I was already gone from the practice in 1976, I guess, or 1977, whatever it was, but yeah, things were starting to change at that point.

Judith Haller: Okay. Now, let's talk about this turn in 1975 and the Ramona Justice District. Tell me about that.

Gerald Lewis: Well—

Judith Haller: In excruciating detail. *[laughing]*

Gerald Lewis: You have to remember that the Governor was Jerry Brown, whom I owe a great deal of things to, as I will explain; and I have told him this personally, by the way. People were unhappy with some of his judicial appointments who were young, inexperienced lawyers, compared to what had been expected of older, more experienced lawyers being appointed to the bench.

So there was considerable unhappiness about that, and as a consequence the county board of supervisors was facing a situation where Judge Will Stalnaker, the justice court judge in Ramona, was getting ready to retire. So what they did was timed their elimination of that court until like three weeks after he retired, and then they would appoint somebody to be the justice court judge for three weeks, and then merge that court into the El Cajon court, and whoever was in that seat would have an option to go on the El Cajon court.

Judith Haller: So you were the appointed person, correct?

Gerald Lewis: Yeah, they announced the scheme, and I think they had 100 lawyers sign up for it, and they appointed a committee of judges to make the selection. They selected me, and so for two days a week I was the justice court judge in Ramona hearing small claims cases involving dehorning goats, and serious felonies, and everything else, all on the same calendar. It was quite a zoo.

Judith Haller: Let's talk about it, because the drive out there was a treacherous drive, was it not?

Gerald Lewis: Oh, yeah, Highway 67—it was a long trip out there.

Judith Haller: Right. You would go there two days a week?

Gerald Lewis: Two days a week.

Judith Haller: Very rural area.

Gerald Lewis: Right.

Judith Haller: But this was their court.

Gerald Lewis: Well, it was a very nice court, it was a beautiful courthouse, and they had a great staff. And the clerks told me what to do. I tried to do what the clerks told me to do; but, you know, I didn't know anything about all these things, about how to take a plea or allocutions or anything like that. So I would go through the whole calendar in a very short period of time.

I would just say to somebody, "What are you here for?" He would say, "I'm here for a 502." I would say, "What do you want to do?" He says, "I can pay the fine." I would say, "How much?" He would say, "I can pay 50 bucks a month." I would say, "Okay, see the clerk." That would be it, and none of those pleas ever came bouncing back, as far as I know.

Judith Haller: A different time. *[laughing]*

Gerald Lewis: Yeah. *[laughing]*

Judith Haller: If I have this correctly, I think you were in the justice court for about six weeks, correct?

Gerald Lewis: It could have been that long.

Judith Haller: All right. Did you go on to the El Cajon court as believed would happen?

Gerald Lewis: No, the Governor figured out what was being done, and so he filled the vacancy on the El Cajon court with Dennis Adams. So I went back to my firm full time, practicing law. I owned an option for two years to take any vacancy on that court, a statutory option, and within the end of the last month of the two years, Judge Al Lord from El Cajon called me up and said the Governor had made another mistake; he had appointed Al to the superior court, leaving a vacancy that I had a 10-day window in which I had to decide whether I was going to do that.

(00:40:08)

In the meantime, I had bought a new house in La Jolla, and had incurred lots of other obligations. So I had a hard choice, but I finally decided to do it, and I did go on the El Cajon court at that time.

Judith Haller: Again, you made . . . over the years when we've talked about things, you made a comment to me, and in one of the comments you said that you always knew you wanted to be a judge. Is that one of the reasons you think you took that position?

Gerald Lewis: There's no question about it. Whatever I thought about whether I would ever be a practicing lawyer, I grew up with the idea that all lawyers should want to be a judge. I don't know where I got that from; there were no judges in my family. But that was always the idea I had since I was young.

Judith Haller: So it was what—about May, June, of 1977, that you take the oath of office in El Cajon, correct? Does that sound about right?

Gerald Lewis: I don't even remember.

Judith Haller: Let me put it this way: that's what your bio says, so we'll accept that. Let's set the stage. El Cajon was a branch court, municipal court only, correct?

Gerald Lewis: At that point it was just a municipal court. I think there were five judges out there. It was famous for trying cases in one day, as you will remember when you . . . We would sometimes do a jury trial in one day, from start to finish.

Judith Haller: I remember there were five judges in a small, little building, lots of . . . The role of the judges was to educate the new DAs and the new defense attorneys, because most of us were put out there to get trained before they took us downtown. But the El Cajon Municipal Court was very . . . The judges there were very aggressive in attempting to bring superior court work there. Were you still there when that was happening?

Gerald Lewis: I was; it wasn't me that did that, it was Judge Duffy and Judge Smith, and the people that were there. I guess it was the first

in the state that created this arrangement, where they by some device were created as a branch superior court that did some superior court cases. The El Cajon Experiment, I think it was called.

Judith Haller: Right. Would you do only criminal superior court work, or both criminal and civil superior court work?

Gerald Lewis: I recall that we were doing some divorce cases and some civil cases.

Judith Haller: Any thoughts about your years out there?

Gerald Lewis: Well, it was like being thrown into the deep water right off the bat in the sense that we worked very hard. You never left at 5:00 at night; you were always doing things past 5:00, finishing up the calendar. We did—

Judith Haller: Just by the sheer nature of the amount of work?

Gerald Lewis: We started—when I say we, I'm talking about all the judges out there, started—I think we started small claims at 8:00 in the morning, and you would have . . . The courtroom would be filling up with lawyers for the motion calendar at 8:30, and they would be standing back there snickering while you were trying to sort out these six small-claims court cases in front of you in 10 minutes.

Then you would go on from there to trial calendar at 9:00, or preliminary hearings or whatever, and you just had it as fast as you could go all day.

Judith Haller: But good times. Now, you were there about a year and a half, and then there's an open seat for the San Diego Superior Court, correct?

Gerald Lewis: Well, actually there were two, yes. Judge Lazar and Judge Levinson were both coming up to the time that they were going to retire. I'm not sure about Judge Lazar's appointment, but I know Judge Levinson had been appointed by Pat Brown, and he decided he didn't want to have Jerry Brown appoint his successor; this is not a secret.

Judith Haller: No. So he let it go to an open seat?

Gerald Lewis: Well, he timed his retirement so that it had to go to an election. He called me up and told me that he was going to do that.

(00:44:52)

The logical person to have run for that seat from El Cajon was Judge Duffy, but the problem was that his seat was up for renewal that year. He couldn't afford to not file for his own

seat, and possibly be eliminated. So Judge Duffy and Judge Smith talked me into being the one who would become the candidate, which I did. There were two other candidates: a politician, Floyd Morrow, and a municipal court judge from San Diego, Judge Cooney.

Judith Haller: All right, so there was this . . . you stood for election and you were ultimately elected. Was there a runoff, or did you win in the primary?

Gerald Lewis: No, I got like 49 percent of the vote in the primary, but then there has to be a runoff, so in the end it was Judge Cooney and me in the runoff.

Judith Haller: Just how political was it as compared to today? Did you have to raise money, was there a campaign, did you have signs?

Gerald Lewis: Listen, I did the whole thing. I come from New Jersey, from a political family. We had fundraisers, I had TV ads and radio ads; we did the whole thing. I got like 75 percent of the vote. I like to tell people I got more votes than the stadium did.

Judith Haller: *[Laughing]* All right. You were then . . . you took the bench in January of 1979?

Gerald Lewis: Along with Dave Gill, who ran for Judge Lazar's seat and was elected. So Dave Gill and I were sworn in on the same day in Judge Yale's chambers. He flipped a coin as to which of us would be senior, and Dave called heads, and it was heads, so he became whatever it was, the 23rd judge, and I became the 24th, or whatever the numbers were.

Judith Haller: Just for a little bit of San Diego lore, Judge Gill is still on the superior court and is the person who every day with great enthusiasm welcomes the jurors to jury duty.

Gerald Lewis: Yes. And to his everlasting credit, on that day in January of that year he went into the criminal departments. And of course I, being more of a civil person, of course I had to do a year in divorce law and motion, and that's where I went. Dave, to his everlasting credit, has been trying criminal cases—is probably the outstanding criminal trial judge in the state, I would guess—has done it the whole time ever since.

Judith Haller: And some very heavy ones as well. Let me take you to law and motion. It was an old-fashioned, no independent calendar, old-fashioned law and motion department. Tell us a little bit about that.

Gerald Lewis: Well now, I think you're talking about now civil law and motion. After the one year where I was divorce law and motion, I was the divorce judge for a year; well, actually Judge Henderson had another department that did that. But then—

Judith Haller: All right, so let me back up. So your initial assignment then was in family law?

Gerald Lewis: Family law, yeah.

Judith Haller: All right. You had done some family law work in the firm?

Gerald Lewis: Yeah.

Judith Haller: Okay. So you were not—

Gerald Lewis: But this was heavy stuff, 40 cases on a calendar in the morning, 40 in the afternoon—lots of stuff, really something.

Judith Haller: So you did family law for about a year; very, very busy, heavy calendars. And then did they put you directly into civil law and motion?

Gerald Lewis: Into civil law and motion, yeah. As you said, there was no independent calendar system; civil law and motion was handled in that special department, and so you had all the law and motion work for all the civil cases. I did that for a year.

Judith Haller: At that time was it this system where you had a morning calendar and another judge had the afternoon, or did you have both morning and afternoon?

Gerald Lewis: My recollection is I had both morning and afternoon, but then maybe six months along, Justice McConnell came in as the second civil law and motion judge, so we had two of us. We had research attorneys; Cindy Muckey was one of them, and Judge Joyce Wharton was one. So we had real good help.

Judith Haller: Did you always have a research attorney when you were in civil law and motion, or was it only when Justice McConnell—

Gerald Lewis: No, we always had research attorneys.

Judith Haller: Again, you are talking about Justice Judith, Justice McConnell, as in my boss and APJ of the Fourth District?

Gerald Lewis: Right, right.

Judith Haller: All right. Cindy Muckey, of course, is a research attorney here.

Now, I know that when I eventually had a civil law and motion assignment, you told me a story about how exhausted you were at the end of the day. Do you remember that about . . . you had made so many decisions that when you went home at night—

(00:50:06)

Gerald Lewis: Well, that's true. When I would get home at night and Laura would say, "What do you want to drink with dinner; do you want coffee or tea" or whatever with dinner, it sounds crazy, but I would literally say, "I cannot make any more decisions today. I've made all the decision I can make in one day; I can't make any more decisions."

Judith Haller: Understood, understood. Were you noticing anything different about the nature of the legal practice in 1979, 1980, when you first became a superior court judge?

Gerald Lewis: Well, I think there was a lot more going on in the way of discovery disputes and things of that sort. When I was a practicing lawyer it was considered kind of impolite to send interrogatories. You wouldn't do that if it was a good friend on the other side of the case. But there was a lot of that going on. I think some of the bigger firms were sending brand-new associates down to argue 50 issues on answers to interrogatories to get some time in court, and it was really overburdening the system at that point.

Judith Haller: If I remember correctly, there were not discovery sanctions at that point; or if they were, they weren't used?

Gerald Lewis: Well, after a few weeks I realized what was going on; I mean the calendar in the afternoon would be loaded up with all these discovery fights, and so I got a little adding machine and put it on the bench, with a little handle on it. I would have them argue one question at a time, and then I would crank the handle, and after the first day I did this, about 15 minutes into it, one of the lawyers said, "Excuse me, what's with the machine?" I said, "Well, it's 100 bucks a question, and right now you're down $700."

There was a recess and 40 lawyers went out of the courtroom and out in the hallway, and all of a sudden we didn't have that many discovery disputes going on anymore.

Judith Haller: So after your . . . Let me ask this: Is there any law and motion case or law and motion matter that stands out from that time period?

Gerald Lewis: Well, I can't really think that there is a specific law and motion matter that's able to be talked about at least.

Judith Haller: Well, part of it was, just get the decision made and move on.

Gerald Lewis: Yeah, yeah. I mean—

Judith Haller: No time to second-guess yourself.

Gerald Lewis: Well, now you had . . . Some of these things were very complicated things, and the research attorneys would have done a real good job presenting you with the stuff. So it wasn't quite like being in a trial court, where there's an objection to a piece of evidence and you've got to make a ruling right now. You can't say, "Well, that's an interesting issue; let's appoint a committee and look into it." You've got to call it a ball or a strike right now. In trial, the main thing is you've got to make the calls and you've got to be consistent; that, I think, satisfies the lawyers most of the time.

In the civil law and motion thing, there were some very complicated issues, but you did have to make rulings. You had 40 cases on that calendar and you had 40 more tomorrow, so you had to make the rulings. The main thing was that you had to get it done.

Judith Haller: Then was it after that assignment that they put you into civil trials?

Gerald Lewis: Yes, from there I was in civil trials. Although there was not an independent calendar system in effect, Judge Yale kind of created one, in the sense that he would ask the lawyers, "Well, okay, do you want to agree on a judge, and we'll send this case to the judge for all purposes? You waive any challenges right now, and then the judge will have this for all the pretrial stuff and all the way through.'

Judith Haller: Many of those cases came to you, did they not?

Gerald Lewis: Yeah, I had a lot of those.

Judith Haller: You developed quite a reputation in the community as a settlement conference judge. Why don't you tell us a little bit about how your day developed, and the kind of work you did on settlement conferences.

(00:54:47)

Gerald Lewis: I don't remember how it happened, but as soon as I was in the civil trial departments, I would see people on settlement conferences every day at 4:30. We would stay as long as we would have to stay; sometimes it would be till 8:00 or 9:00 at night. I did that I think five days a week the whole time I was a superior court civil trial judge. I really enjoyed it. I got a big kick out of it; it was a lot of fun.

Judith Haller: So you were popular with the attorneys and with your colleagues because you got the cases settled?

Gerald Lewis: Well, I had a good record of settling cases.

Judith Haller: All right. And then, when you think back to your success in that area, was there a secret to your success in getting those cases settled, do you think?

Gerald Lewis: I have no idea. People have asked me about that over the years, and I don't have a formula or a standard approach; everything just depends on the case and on the lawyers. I would just try to listen for a while until it would become clear to me what the critical issues in the case were going to be and what the evidence would be on either side.

Now, you have to depend . . . in those kinds of situations you have to depend on the candor of the lawyers on both sides, and so you have to kind of know the lawyers and know whether you can rely on what they say or not.

But I don't think I had a particular style, except that I guess my style was to believe that you just have to keep doing it, you have to keep it going. If you put up with the first answer and said, "Well, with that kind of a demand we're not going to make any offer," nothing would ever get settled; you'd have to ignore all that and just keep talking and keep it going. And remarkably, sooner or later a lot of them do settle.

Judith Haller: Typically back then, would the attorneys ask you your assessment of liability and ask you to assign a dollar value?

Gerald Lewis: I think in a lot of cases they would, sure. But you know that, that what you do is you kind of are sounding out both sides, and you kind of get a sense of where they think this thing really is. You're not telling them they're wrong, you're telling them what they already are thinking; and you're telling them look, this is a 70/30 liability case really, and the range is going to be between X and Y. So figure it out; that's where the value is.

Judith Haller: Any recollections about the quality of the . . . Let me go to cases that you've tried, civil cases where you were the trial judge. Any thoughts or observations about the quality of the lawyering?

Gerald Lewis: I was so lucky in the quality of the lawyers that I had in front of me that they should have made me buy a ticket. It was a great show, and they should have made me buy a ticket just to watch. I never had one of those purposely obstructive lawyers in my court. I never, ever had to threaten a lawyer with contempt or anything like that. I got to see some absolutely marvelous jury lawyers at work, like Bill Fitzgerald and Dan Hedin and other people from your old firm. I got to see some absolutely marvelous bench trial lawyers like Jim Harvey and Jerry McMahon. It was a great show; it was a privilege just to see these people work.

Judith Haller: All right. Well, you've had very nice things to say about the lawyers back in that time period; but of course you were selected as the Trial Judge of the Year in 1984, so it must have been a mutual admiration society back then.

Gerald Lewis: Well, I think the probable reason for that was that I presided over a three-month long trial where Mickey McGuire got his first big $11 million verdict on a construction defect case. Plaintiff's lawyers think that any judge that is sitting there when they get $11million is a really wonderful judge.

Judith Haller: All right. Well, in that same year you ultimately at the end of the year were elevated to the Court of Appeal and took Justice Cologne's position. Now, how did that come about? Did you apply, did someone encourage you, were you ready to move on? What happened?

(01:00:06)

Gerald Lewis: Well, of course you have to apply, as you know; you have to fill out an application and send it in.

Judith Haller: I have to ask you, was the PDQ back then as daunting as it is now?

Gerald Lewis: Oh, it was very substantial.

Judith Haller: Okay, all right.

Gerald Lewis: But my honest assumption was that I was putting my application in to get in line. I don't know if you want to edit this out, but my assumption and a lot of people's assumption was that Judge Jack Levitt was going to be the first appointment to the Court of Appeal from the superior court in San Diego.

Judith Haller: At this point in time Governor Deukmejian is in office, correct?

Gerald Lewis: George Deukmejian was the new Governor, and this was his first appointment. My assumption was that Jack Levitt was going to be appointed. I sent my papers in to get in line, on the assumption that well, if I wanted to do this in three or four years, you've got to get in line.

Well, as it turned out, there was some opposition to Judge Levitt's appointment, I guess; I was never told this, but to my astonishment, I got a call from the Governor in the middle of a final argument on a medical malpractice case. I had to interrupt your partner, Mr. Weismantel, in the middle of his final argument, to take the call from the Governor. He told the jury, "Ladies and gentlemen, that's either the President or the Governor, or the judge would never interrupt me under any other circumstances." And he was right, it was the Governor.

Judith Haller: Well, Al had a pretty good sense of things back then; he was quite a trial attorney.

You arrived here, and I know they had the same sort of . . . the Governor made a selection, and then they had the same kind of process where you had to go through the confirmation process. And of course the Chief Justice at that time was Rose Bird, correct?

Gerald Lewis: Right.

Judith Haller: Tell me about your connection with her during that process.

Gerald Lewis: Well, I have nothing but the highest compliments about her for that process. I don't know if it's still the same, but there is a time period when people can sign up to speak against you; they have a hearing with the senior appellate judge and the Chief Justice and the Attorney General. These hearings were in Los Angeles. The Chief Justice called me up to tell me that she had to go to the doctor that afternoon, but she had left word with her clerk—this was the last day that anybody could file their papers to speak against me—and if her clerk did not call me at 5:00, that meant that nobody had filed anything, and that I could count on the fact that there would be no one speaking in opposition against me.

She went way out of her way; she didn't have to that. It was very nice of her to do. Then she called me a couple of weeks later before the actual hearing and said it was up to me where I wanted to be sworn in, but if I wanted to, she would have a ceremony in her chambers for my family right after the hearing, which she did; and it was awfully nice of her to do that.

Judith Haller: So you were literally sworn in, in Los Angeles, immediately after your confirmation?

Gerald Lewis: Right.

Judith Haller: All right. When you joined this court you were—let's see, there were five or six of you?

Gerald Lewis: I think there were six altogether.

Judith Haller: Yes, there were. So it was Justice Brown, Staniforth, Wiener, Butler, and Work?

Gerald Lewis: Right.

Judith Haller: Do you think it's fair to say that in terms of when you came on to this bench that you were probably the "most conservative" of that group of six?

Gerald Lewis: I think so.

Judith Haller: All right. Rumor has it that there was sort of an odd procedure back then with respect to the distribution of appellate briefs, is that right?

Gerald Lewis: Well, yes. I mean, when you used to show up in front of the court, and the presiding judge would say, "We've all read the brief, so don't repeat anything that's in your briefs," that was not literally true, at least in my experience, that we would. The typical system was we would have like 9 cases. If you had three judges on a panel, you would have 27 cases for the month, and each judge would be assigned 9 cases.

Judith Haller: As lead?

Gerald Lewis: As lead, and you would only get the briefs on those cases. What you would see of the rest of the other 18 cases was what they euphemistically called the bench memo, which was in fact the opinion, the draft opinion in the black notebook that you would get a couple of days before the oral arguments.

(01:05:06)

So I wasn't comfortable without ever having seen the briefs, and I started making an issue about that, and Judge Wiener did the same thing, I think, and we changed the system

Judith Haller: So in other words, thankfully we can say that after 1984 every justice on the panel had the briefs to read?

Gerald Lewis: Right. It was my view that you were just as responsible for the other 18 cases that you were not the lead on as you were for the 9 that had been assigned to you.

Judith Haller: By the time you arrived at our court, you had been practicing and/or on the bench somewhere in excess of 20 years—maybe 23, 24, something in that neighborhood. Did you have a fairly defined judicial philosophy by that point?

Gerald Lewis: I don't know if I thought about it in those terms.

Judith Haller: When you sat down to decide cases, was there something that sort of drove you in terms of your decision making?

Gerald Lewis: Well, I think it was just the simple proposition of following what you understood the law was supposed to be, and not making things any more complicated than they had to be. I think at the intermediate appellate court level you have to be conscious of the fact that it's really the bottom line that matters to the litigants, and in the vast majority of cases this is going to be the end of it. So there are real litigants involved, real parties involved, and so having the right result is more important than

having the right language in the opinion, it seemed to me, on most of them.

But there was the occasional case where you had the sense that there was a possibility that what you would write on this issue would matter later on, and you took some special pains with those.

Judith Haller: Again, over the years we've talked about this, and one thing that you mentioned to me was your view about the fact that it's very important, too, that the law provides stability. Would you elaborate on that?

Gerald Lewis: Somehow I grew up with the idea that the oldest cases where the most important, that things weren't supposed to change in the law. If you've ever been involved with the Legislature, you know that's not true; but my belief was that people relied on what the law is, and they govern their conduct by what the law is, and that's what people were supposed to do.

So the law was supposed to have a sense of stability and stay the same from decade to decade without changing, without sliding the support out from under people that had been relying on it.

Judith Haller: Whether they were businesspeople or a mom and pop operation, or even perhaps a criminal, deciding whether that conduct was prosecutable or not?

Gerald Lewis: Yeah.

Judith Haller: All right. Well, during the time you were here—and you were here for about what, two and a half years? Is that correct?

Gerald Lewis: I think that's about it.

Judith Haller: Okay. In that time, thanks to the modern marvels of computers, you published as lead 42 cases, and you also wrote 13 dissents. That's a lot of work in terms of published work in two and a half years.

Gerald J Lewis: I would never have guessed it was that many.

Judith Haller: All right. Well, let's talk about a couple of your -- or two or three of your dissents, because people will recognize some of these names. Tech-Bilt, tell me a little bit about Tech-Bilt?

Gerald Lewis: Well, my best recollection -- the name of it was *Tech-Bilt v. Woodward-Clyde*, and my recollection is that it involved a, one of the . . . It was a construction project, and one of the defendants was settled out for a waiver of costs. Then the cross-complaint by one of the other defendants was said to be barred because they had a good-faith settlement, and that

struck me as ridiculous that cutting somebody loose for a waiver of costs was not a settlement in the world that I lived in.

(01:09:59)

That happened to be a time when I was sitting temporarily on the court from the superior court. And I spent all summer working on that case, and analyzed all the other good-faith settlement cases, and pointed out why this wasn't like any of them, and that this really was not a settlement, this was a dismissal.

That dissent, I think, was taken up by the California Supreme Court, and they changed the law on good-faith settlements, which led to the Legislature creating the statute 877.6.

Judith Haller: All right. Again, to place this in perspective, San Diego had oodles—it's a very judicious term, but lots and lots—of construction defect cases, and the primary way these got tried was the plaintiff against the general contractor, and then the general sued all the subs. So this turned out to be a big issue in San Diego.

Do you recall if when you wrote that dissent in *Tech-Bilt*, you identified some of the factors that the Supreme Court ultimately identified in their opinion?

Gerald Lewis: I must say, I can't recall now.

Judith Haller: The famous ballpark; it's in the ballpark, but here's how you figure it out. All right. Another one that took a lot of twists and turns was a family law case that in this court was called *Casas v. Thompson*. That had to do with military pensions and support obligations. Now, you were a dissent in that one as well.

Gerald Lewis: Yeah, there were two at the same time: *Casas* was one, and . . . There were two different panels dealing with similar cases, and I was on both panels.

One of the issues in the case was whether there was any jurisdiction to go back now and divide this Navy pension that had not been divided at the time of the divorce trial.

My understanding of the law was that if the court had jurisdiction at the time of the trial and failed to exercise it that the law was that you could now go back and divide something that the court should have divided at the time; but if the court did not have jurisdiction, then you couldn't do that.

The majority took the view that if the court thought it had jurisdiction that you could now go back. And they based their position . . . There was a federal case or statute, perhaps; there was a statute and a federal case that said that Navy

pensions could not be divided differently in one state than another. That was what was behind it. It said that a sailor shouldn't come out with different money in his life depending on what state his wife filed for divorce in. I thought that that was clear, that if the Supreme Court said we didn't have jurisdiction then we didn't have jurisdiction, and so I wrote that dissent.

The other part of the dissent had to do with whether you could divide the whole pension or just what was called the disposable income part of it. I wrote a dissent on that also, and maybe that was in *Casas*. Eventually the United States Supreme Court made that ruling years later.

Judith Haller: So in other words, they saw the law the same way that you had seen it?

Gerald Lewis: Yeah, but I still think I was right.

Judith Haller: All right. Now, one other one that -- another dissent that had quite a bit of local attention was *Avalon v. Hartford*, which was a coverage issue. You probably remember that the plaintiff's attorney in that case was Jim McIntyre, now a member of our court. The question was whether there were was a $250,000 limit or a $500,000 limit in terms of . . . it was a personal injury, and the wife's claim was for loss of consortium.

Gerald Lewis: Yeah. The policy language was that whatever the number was, 250,000, for all damages resulting from injuries to any one person. There was only one person who was injured in the accident, but . . . Justice Staniforth I think wrote the majority opinion; I could be wrong about that. But they treated it as though the question was whether the loss of consortium was a compensable item. Of course that wasn't the issue at all; the question was how much insurance did you buy if you injured one person in an accident, and the answer was $250,000.

(01:15:00)

Judith Haller: For the record, you remember the language precisely; it was precisely that. Let me turn to one of your majority published opinions, and it was a case called *People v. Wells*, in which you were called upon to determine whether or not the Posse Comitatus Act had been violated. How in the world did we end up in this court with a Posse Comitatus issue?

Gerald Lewis: Well, you have to help me with that because all I can remember is it was up in Oceanside, I think, and the Marines were doing something to help the civil authorities.

Judith Haller: Right, the Navy Investigative Service was conducting an investigation and went to the police department and asked

them to be of assistance. Eventually, Oceanside arrests these folks, and the claim was that this had violated Posse Comitatus.

Gerald Lewis: Yeah, and I guess the idea was that we were using the federal troops to help enforce the local law. I don't know what we wrote about it, maybe that the . . . but they weren't really enforcing, that they were just supplying information or something.

Judith Haller: Yes, the distinction was that it was the Oceanside Police Department who ultimately made the arrest, so no violation.

Well, any thoughts about your time on the court here?

Gerald Lewis: Well, I've had a lot of thoughts about it. It was, in all honesty, it wasn't as much fun as being a trial judge. Being a trial judge, as I have said, is the best job. Judge Welsh used to say this, that the best judicial job in the United States was being a superior court trial judge in San Diego County, because we got to try lots of big cases with really good jury lawyers, and we got to sit there and watch. And besides that, you feel like you're doing something; you're moving the lumber, you're getting things done.

Being on the Court of Appeal, I felt at times it was like being a member of a committee, and you deciding how things should come out doesn't get anything accomplished; you've got to get other votes. The other part of it was that you had to answer every issue that was raised in the appeal, regardless of the merits of it, and that seemed like a waste of time in a lot of cases; that really didn't justify it.

So it wasn't anywhere near as much fun, and it was a big workload. I mean it was like being at the end. . . . I don't want to put this in your mind, but it was like being at Ford Motor plant, and there's an engine coming down the conveyor belt every five yards, and if you don't get the screws put on this one before it falls off the end of the belt, the next one is going to come along and fall on the floor.

So if there were 27 cases coming along every month, and if you didn't grind these things out, they were going to start falling on the floor. So it was a lot of work.

Judith Haller: Indeed. All right. Some pretty wonderful opportunities were presenting themselves to you at that point, true?

Gerald Lewis: Well, that's true. I had two things on my mind. One was that I had some friends who were going to give me the opportunity to be on some corporate boards, which would have only existed for a period of about 10 or 15 years; it was time sensitive. The other thing was I had the opportunity to go back to doing settlements, which I really liked doing. So I decided to get off

the court and go back to being . . . Well, Judge Yale had started the private-judge business settling cases in San Diego, and I was the second one behind him.

Then besides that, I ended up in a parallel career, over the course of time being on the board of five different New York Stock Exchange companies and two mutual funds, which was a whole different world, where I'm still involved. And I've learned things I never dreamed of, and getting involved in things that were really quite remarkable.

Judith Haller: Before we take you into your very long and distinguished career off the bench, which I was amazed you've been doing this for almost 20 years, and as an attorney and a judge you were there for about 26 years, so you're coming up almost on your halfway mark.

But let me talk a little bit about your thoughts and reflections on the practice of law in San Diego in 1987, when you left the bench, as compared to when you had arrived here, when you were in the Navy, and then in private practice, in terms of size of the community, the national firms in San Diego, the way lawyers practice—any thoughts on any of those?

(01:19:51)

Gerald Lewis: Well, it was very different. There were probably 10 times as many lawyers here in 1987 as there had been in 1963. I'm not sure about the numbers, but something like that. Just huge numbers of lawyers, big firms that used to send cases to San Diego were now here taking those cases and competing for the San Diego clients. The big firms have lots of young people that they need to send to court and get experience fighting about depositions and things of that sort.

With the huge numbers, the feeling of the idea that we were all part of a fraternity, where we all tried cases against each other and then went out for a drink as soon as the clients went home, didn't exist anymore to my observation, because the odds that you were ever going to see that lawyer again were diminished by the fact that that lawyer was 1 out of 7,000 or 8,000, not 1 out of 400 or 500 in downtown San Diego.

So it was a very different, I think, a very different atmosphere. And of course, confirming letters were standard practice, and not only confirming letters, but confirming letters that didn't quite say what the other . . . what you had just agreed to. Somebody would write a letter saying, "Dear Miss Haller, this will confirm that you have just agreed that you dismissed your case and I am going to win." You would have to write back and saying, "No, that's not what I said." The whole tone had change dramatically.

Judith Haller: By that time the professional rules had changed and advertising was permitted. Did that change anything?

Gerald Lewis: Oh, I think if there's one thing I could do in the whole course of the legal history of the United States: if I could change that outcome so that we'd stayed with the idea that lawyers didn't advertise, that lawyers were a profession, not used car salesmen . . .

I think it has changed enormously. We have created the most litigious society in the world, because there are so many lawyers running around looking for cases and advertising in a way that does not make one proud to go to a cocktail party and announce that you're a lawyer. I certainly don't tell anybody I'm a lawyer. If they find out, I tell them I'm a recovering lawyer.

But when I was young, it was a proud thing to be a lawyer. And I think advertising is one of the major factors that has created that.

Judith Haller: 220 West Broadway was the address of the superior court, and you said to me one time you thought the world revolved around that.

Gerald Lewis: I did. I truly believed with every fiber of my being that the center of the universe was 220 West Broadway, the superior court in San Diego, and that everything that truly mattered in the world happened there, and that everything we did there really mattered in the world. When I got involved in the corporate world, I came to question some of those notions about whether a lot of what we were doing was helping or hindering society in general.

Judith Haller: Is that you think because you saw things from various perspectives once you went onto these corporate boards, for example? Or what was it that, what changed your view?

Gerald Lewis: Well, you get a completely different perspective about what 99 percent of the world is really trying to do, which is to get on with making products that help people's lives better, make better. And of course what they're really trying to do is make money. You go through a cycle where you think that that's really a good thing, and then you find out some people will do some things that you wouldn't even believe, as we've seen over the last 5 or 10 years, in the process of making money, that you could never imagine anybody would even dream they could get away with.

So you kind of come around a cycle in terms of how you think about things like that, but you kind of come back to the idea that the rule of law is really important. But we can still get

carried away with how important we really are in the scheme of things.

Judith Haller: I want to talk both about your work on the boards, but also the private judging. Let's start with the private judging. At that time when you left our court in 1987, it was basically you and former Presiding Judge Yale of San Diego Superior Court, correct?

Gerald Lewis: That's right.

Judith Haller: So there you were, and later joined a few years later by Larry Irving. What was it like back then when you first started? And I know you were really busy, so tell me a little bit about those days.

(01:24:56)

Gerald Lewis: Well, it was very busy. I never understood the difference between a settlement conference and a mediation. If there's supposed to be a difference, I never understood what it was.

Judith Haller: And that's your view till this day?

Gerald Lewis: To this day. I got a lot of activity right away from various sources. Some judges would send cases; judges that I knew on the superior court would have a case that was going to go to trial and they would say, why don't you go try to settle this, and they might suggest my name or something.

I got some trials by reference, where the judge would be too busy and would get the lawyers to agree that they would try the case in front of me, as though it were a bench trial in the superior court, and they would still retain their rights to appeal and all that sort of thing—all kinds of business of that sort, to the point that it was a full-time job.

Judith Haller: So you were doing settlement conference mediations—whatever you want to call it—you were doing some bench trials, some references. Any arbitrations at that point?

Gerald Lewis: Not at first, no.

Judith Haller: All right. Back then also it was . . . You left just before we instituted fast track, so for many people it was three to four years to five years to trial.

Gerald Lewis: Yeah, right.

Judith Haller: Today is it similar to that? Or is it enormously different, what you're doing 20 years later?

Gerald Lewis: Well, it's very different in the sense that I've been gone from the Court of Appeal for 20 years. I've been gone from the superior court for 23 years. There's a whole generation of lawyers that never tried a case in front of me, and there are now scores of retired judges out there doing the same thing that these lawyers have tried cases in front of. I wouldn't expect that I would see that many cases anymore for mediation. And I see very few; I see a few a month.

I'm doing more arbitrations than I ever thought I would, but still, I'm trying to limit how many of those I do because I don't want to interfere with duck season or opportunities to take my Labrador hunting.

Judith Haller: Yes, and we'll get to the ducks and your beloved Labrador. Do you think . . . And also, there are an awful lot of attorneys who are hanging out their shingle to do mediation.

Gerald Lewis: Indeed.

Judith Haller: Any thoughts about that?

Gerald Lewis: Well, I find it very understandable. Practicing law is a very tough way to make a living, and some of the smarter ones have figured out that that's a lousy way to make a living compared to . . . They look at me sitting behind my desk settling a case, and they think that's pretty easy, I could do this, all he does is sit there and tell sea stories, and eventually we get so bored we settle the case.

But of the guys who have tried lots of cases . . . And I'll use Tom Sharkey as an example; you can understand why lawyers would take cases in front of Tom Sharkey to get an evaluation to settle the case.

There are people who hold themselves out now as mediators who have literally never tried a case to verdict as a lawyer, and yet they seem to be doing some mediation. Why any other lawyer would take a case in front of somebody who's never tried a case to have them mediate the case is hard for me to understand. What do they tell their client about why they should listen to this person? I don't know.

Judith Haller: Obviously, if you just look at any of the statistics, the development of private judging and mediation, et cetera, has dramatically impacted the practice of law, and the kinds of cases that are coming to what I'll call the public courts. Is it a good thing what we have done, not so good? Any thoughts or observations on where this is taking us?

Gerald Lewis: Well, I don't know. From an arbitration point of view, obviously the only way a case gets to arbitration is there has to be a

contract that calls for arbitration, which occurs at the time of the contract. That's been going on for years.

When Jerry Brown was Governor he helped that along. I've told him . . . I bought him a drink and told him that he was responsible for my career, both as a superior court judge and as a private judge, which he I'm not sure was thoroughly flattered by.

(01:29:50)

But anyway, that arbitration situation is following the pattern of litigation in general in the sense that it was supposed to be faster, cheaper, quicker, easier, and it's gotten a lot more expensive and a lot longer than it was 20 years ago, but so has litigation. So whether arbitration is now faster or cheaper or quicker, I don't know.

In terms of the private judging in the sense of mediation, what that is doing to the . . . and the whole development of an industry of alternative dispute resolution is going to create a situation that's going to cause changes.

The State Bar is going to . . . So many lawyers now hold themselves out as mediators, that before very long the State Bar is going to start treating that as practicing law. I have no interest in being any part of that.

I think that they realize that they better not cross the line in terms of trying to define being an arbitrator as practicing law, because there are plenty of arbitrators who have never been lawyers in the first place and never would want to be. So the State Bar is trying to walk both sides of that street.

I don't intend to do this very much longer, but the State Bar is going to start doing something to regulate the whole ADR business and that's the point at which they will have seen the last of me.

Judith Haller: Some have opined, from just a jurisprudence standpoint, that the private judging has changed things because very many people will take their disputes directly to private judging, and therefore some issues, cutting-edge issues that may have been taken to the courts before, we're just missing kind of a generation of those. Do you think that opinion is correct? Any thoughts about that?

Gerald Lewis: Well, I don't really have a way of evaluating what it takes to create those nice points of appellate law that would otherwise work their way up here and how many of those show up in cases that get arbitrated. But I don't have any way to assess that.

Judith Haller: Any other thoughts about your work? You must have enjoyed the settlement part of it because you were so good at that. And it's very nice to get people resolved and take your advice and send them on their way.

Gerald Lewis: Well, you learn . . . if there are any general rules about it, the bigger cases are easier to settle than the smaller cases. If two lawyers come in and say, "This is a really tough one, there's millions of dollars involved, and we're millions of dollars apart, and there's really no chance of settling," I think to myself, I'm probably going to get this one settled.

If they come in and say, "This should only take 20 minutes, we're only 10,000 apart," the odds are we will never settle that. People are more comfortable fighting about amounts of money that they are comfortable talking about than they are multimillions of dollars, and they can keep that discussion going on forever. So that's one general rule.

The other idea that I think is still true is that every time I've tried to take a shortcut, it's counterproductive; you have to let the lawyers dance the dance. Time is part of the process. They have to go through the whole day or two days or whatever it is, and change positions very gradually, even though it may be perfectly clear where this is probably going to end up at the end of the whole thing. If you try to take a shortcut and go there early on, it's counterproductive and it'll ruin it, and it'll never happen.

Judith Haller: Interesting. All right, let's talk a little bit more about the boards. Have you been on five boards simultaneously? Or over the 20-year time period you've been on five different boards, some simultaneously?

Gerald Lewis: Some simultaneously. I have been on as many as three at the same time: Fisher Scientific, Wheelabrator Technologies, and Henley Manufacturing.

Judith Haller: All right. Then what were the other two?

Gerald J Lewis: Well, then I've been on the board of what became California Coastal Communities, which at one point was Henley Properties. And I've been on the board of General Chemical Company.

(01:35:01)

I'm a retired director of all of those companies now. I don't know if you know the difference between a retired director and a director. It's exactly the same as the difference between being a drunk and an alcoholic; the drunk doesn't have to go to the meetings. *[laughing]* So the best thing you can be is a retired director.

But I've also been a director of the Invesco Mutual Funds, which became the AIM Mutual Funds. I'm currently a director of the Tennenbaum Opportunities Fund, which is a private equity fund that gets regulated as though it were a mutual fund. I'm a director of kind of a startup public medical device company here in San Diego called Cardium Therapeutics. So I've never been on less than two or three boards at the same time, I guess.

Judith Haller: What's the nature of the work that you've done for them? Is it simply bringing clear thinking to the process? Is it bringing legal advice? Is it a combination? What is it?

Gerald Lewis: There's no legal advice. They all have very good counsel, both inside and outside counsel, and I've tried to scrupulously stay away from having any legal opinions about anything.

On the other hand, you do learn parallel issues from one board to the other, one industry to the other, where you get good information from your outside counsel about what the issues are in terms of corporate governance. Your primary responsibility as an independent director is to represent the interests of the shareholders if there are any situations where the shareholders and management are on different sides of a particular issue. Hopefully, there won't be too many of those. Everybody's interest is in having the company make money and succeed, having the stock price go up and pay dividends.

But in those areas where there are differences between management, like pay in options for the management versus the shareholders, that's where the independent directors have to look out for the interests of the shareholders. And in that process we serve on the audit committee.

Now, Sarbanes-Oxley has changed a lot of this stuff in ways that has caused me to lose enthusiasm about some of these situations, because I thought we used to do a pretty conscientious job to the extent that you can. You have to understand, an audit committee are not auditors. You hire auditors. That's what you do. So you're really dependent upon the auditors and the accountants for that, although you have to have financial literacy.

Judith Haller: Has the work become harder, more complex? How has it changed over the past 50 years? Not 50, 20 years. *[laughing]*

Gerald Lewis: It has become more complex, and there's more public focus on what goes on, and you I think are held to a higher standard now as an outside director than maybe 20 years ago—people thought all outside directors were just friends of the chairman and that's the way it was. That's for the typical industrial corporation.

The mutual fund industry is an animal that is unique, and until you get involved in it, you have no idea what the rules are. They're very complex and very complicated, and it's been a great education for me. Since I was on two of those boards, and that I'm now on the Tennenbaum board, I bring with me all the background, everything that I learned from the lawyers and the corporate governance experts dealing with the SEC.

Judith Haller: Was it a matter . . . did you self-teach yourself in these positions, just a matter of reading everything you could get your hands on, or being very careful about the information given to you? How did you do that?

Gerald Lewis: Well, I think it's mainly reading the things that you get from your outside counsel. There are some very good people that summarize everything that's going on in terms of regulatory developments and legislation and tell you what's changing and what you have to look out for. And there are industry publications within the mutual fund industry, for instance; and within the corporate world, you get these newsletters. You try to read those and stay generally aware of what the directions of things are.

(01:40:02)

Judith Haller: So any thoughts about what you're going to do in your next career?

Gerald Lewis: Well, I haven't really thought about that, although it's time. Judge Ashworth claims that I have always one more move that surprises people, like when I gave up being a lawyer to become a judge, and then when I gave up being a judge to become a private judge and corporate director. I haven't yet figured out whether there is yet another move.

I'm trying to cut down, although it's hard. You're either in business or you're not. It's hard to have one foot on the dock and the other in the boat, so where that's going to lead me, I'm not really sure.

Judith Haller: One thing that we have not covered, you did quite a little bit of both formal and informal teaching; you were a lecturer, you were a frequent speaker at seminars and such. Is that in the cards?

Gerald Lewis: Well, I think I'm too old for that, but I thought about that 10 years ago or so. I thought about teaching at one of the local law schools. I found it very much fun to teach evidence and to lecture to the Inn of Court and things like that on evidence. I was very fond of that subject, but I think I'm probably past my prime in terms of doing that.

One of the things that I have in mind is . . . one of the guys that I've always admired in this community is Judge Enright, the federal district judge. I've known him for years and I have always looked up to him and admired him, and he has now stopped taking cases altogether. As you know, federal judges can go into a senior status where they take some cases, and Judge Enright doesn't do that. He doesn't take any cases, and I asked him why. He said, "I don't want to be sitting there on the bench when some older lawyer in the back of the courtroom is whispering to some young associate, 'You should have seen this guy when he still had his fastball.' " *[laughing]*

Judith Haller: *[Laughing]* One thing that's kind of funny about Judge Enright, and that sounds like Judge Enright, is the fact that he's now I guess taking classes at UCSD Extension. Can you imagine the poor professor who has to . . . because I know he's doing all the reading, the poor professor who has to answer Judge Enright's questions about the nuances of 19th-century romantic literature or something.

Gerald Lewis: Well, from what Bill tells me, he just sits there and takes notes; he doesn't say anything. He doesn't want to take time away from the people that are really in the course.

Judith Haller: That sounds like Judge Enright as well. Anything that if you could go back in time, something you'd like to do—a type of case, just something in the law or as a judge or even in your days of private judging and on the corporate boards, that you would like to do that you hadn't had a chance to do yet?

Gerald Lewis: Wow, I've never thought about that. I don't even know how to start to answer that. There's nothing that's burning on my mind that I think, boy, I really wish I had done that.

The nearest thing that comes to that is that when I was in the Navy, going through Navy OCS, they really tried to make me a fighter pilot. They really put the pressure on me to go be a fighter pilot, to the extent of making me stay after class and watch *Victory at Sea* movies. I have seen every *Victory at Sea* movie that's ever been made.

I never thought that that was the right thing for me to do at the time. It's hard for people now to understand how old I felt. What was I, 25 years old maybe, and I still had three years to do in the Navy. I didn't have a job, I wasn't married. All of my friends from college were married and had jobs. I felt so old, and then to go to flight school you had to sign up for an extra two years or two and a half years. It would have been five and a half years, and I felt so old at 25 that I felt like I didn't have time to do that.

I never thought much about it for a long time. In the last few years, I've started thinking, you know, I could have done that.

I probably would have been a pretty decent pilot, because I took up flying later. I probably would have been a pretty decent pilot, and who knows where that . . . I would have been probably the only graduate of Harvard Law School in the Navy fighter squadrons, and where that would have led me in life would have been a totally different direction.

(01:45:07)

If I would have lived through it, it would have been a whole different thing that I would have done. And I'm not sure that I regret that I didn't do it, because everything worked out just great for me. I never had any regrets about leaving New Jersey and coming back here. Judge Nugent and I hit this place just at the right time. We had the best time you could possibly have, and had a lot of fun, and had a great practice, and we have both become judges in the long run. So I've never had any regrets about that, nothing that I did in the law; but there's always that thought, well, gee, I wonder if I would have let them send me to Pensacola, where that would have led.

Judith Haller: Well, you probably would have ended up as Secretary of the Navy or Secretary of Defense or something like that. *[laughing]*

All right. A couple of personal things; I know you have two grown children, and neither of them went into the law, correct?

Gerald Lewis: That's true.

Judith Haller: Tell me a little bit about your beloved hunting dog.

Gerald Lewis: Well, I have a Labrador retriever, the Rose of Tralee, who is the most spoiled dog on the face of the earth. At least nine of my hunting friends have told me that in their next life they want to come back as my dog. I really enjoy being with her and taking her hunting.

Judith Haller: Every now and then, again, when I see you I know you go hunting. Is that a couple of times a year or—

Gerald Lewis: Well, the season is from . . . dove season is in September, and duck season is like October 15th to the end of January, and that's when I go. I will go at least one day a week during duck season. I have to take Rosie at least one day a week hunting. So pretty much from September through January, it's about at least one day a week, sometimes two days a week.

Judith Haller: I know that you're a wine connoisseur and you belong to a . . . you're a, what is it that you're called?

Gerald Lewis: Well, I was a Chevaliers du Tastevin.

Judith Haller: Whatever that means.

Gerald Lewis: Whatever that is, yeah.

Judith Haller: All right. The one thing I didn't know, is it true you like golfing? I didn't know that.

Gerald Lewis: I play golf, yeah. I belong to the Pauma Valley Country Club and La Jolla Country Club; and I play, when it's not hunting season, I probably play every weekend.

Judith Haller: See, I should have realized you were a golfer, because at one point in your life you were what, the president of the country club or on the board of directors?

Gerald Lewis: I was on the board at La Jolla Country Club, yeah.

Judith Haller: Here's one other thing I found out about you, that you were the Irishman of the Year in 2000. Now, what about that?

Gerald Lewis: Well, in 2000, let's see, in 2000 I was the Irishman of the Year, given that award by The Friendly Sons of St. Patrick. In 2003 I was given the Heritage Award by the American Ireland Fund here in San Diego. I have had a lot of contacts with Ireland. I've been going to Ireland every year for the last 20 years, to Galway, and then to County Kildare; and we shoot down in County Wicklow.

Judith Haller: Gerry, anything else—any final thoughts, observation, something that I should have asked you that I didn't?

Gerald Lewis: Well, I'll tell you something that I would have done differently when I was here. The system was that if you had 9 cases for the month, you as a judge took 3 and wrote 3 opinions, and you had two clerks and they each wrote 3, and then you had these 18 others that you looked at for a couple of days or whatever.

In looking back on it, I would have approached it differently, I think. It seems to me the most important thing that you folks do is think, and that you need to think about all the cases, and that you should assign five to this clerk and four to that clerk, unless you've got one yourself that you really want to be . . . you've got some special reason that you just want to write this one yourself. And the rest of the time you should be thinking and improving on the language and counseling them about how you want them to write something, and spend the rest of your time thinking about all 27 cases. I wish I had done that.

Judith Haller: Well, I know how highly regarded you were, so maybe next time around you will do it that way. All right, well, thank you very much.

Gerald Lewis: Well, thanks for talking to me.

Judith Haller: All right.

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