David Knight: Spell your last names and give me your titles. We'll start with Justice Nott.

Michael Nott: Justice Michael Nott, N-O-T-T, retired from the Court of Appeal.

Judith Ashmann-Gerst: I am Justice Judith Ashmann-Gerst, A-S-H-M-A-N-N G-E-R-S-T, and this is an interview being conducted by me of Retired Justice Mike Nott. The date is October 24, 2007, and this is part of the Legacy Project of the California Court of Appeal.

David Knight: And we're ready to go.

Judith Ashmann-Gerst: It is my pleasure to have this opportunity today, as I was privileged to work with Justice Nott from December 2001 until your retirement in 2005.

Michael Nott: My pleasure, equally, to have you.

Judith Ashmann-Gerst: Working with you was such a wonderful experience. Your knowledge of the law, your practical experience as a lawyer, and your understanding of human nature made you just an absolutely outstanding appellate justice. It was a great honor to have been able to work with you and to learn from you.

So today is an opportunity to share that wisdom with many others.

Michael Nott: Thank you for those kind comments. I am really glad my wife gets to hear this.

Judith Ashmann-Gerst: *[Laughing]* And she didn't know I was going to say any of this.

Michael Nott: She's going to be shocked.

Judith Ashmann-Gerst: Let's go back and let's start with your childhood, because you told me you had a terrific childhood. So tell us about it.

Michael Nott: I did. I grew up in an area called Keystone, which was just outside the city of Wilmington, California, Harbor Town. The site now has been developed into Carson High School. I had two siblings, a younger sister Kathy who is six years younger than me, and Steve, my younger brother who is eight years younger.

Steve is my little brother; he's six-foot-five and about 250, and so we look like Mutt and Jeff. He went by me when he turned 12 as far as height. I went to Carson Elementary School and then Wilmington Junior High School—at that time a very integrated school. We had quite a mixture of races: Japanese, Chinese, Hispanics, Blacks, White. It was all just one big hodgepodge all through there and through Wilmington Junior High School too. Then the same thing held through; I went to Wilmington Banning High School. When I look back on it now and see what is going on

in the melting pot, I was in the midst of the melting pot at that time.

My dad was in the fishing industry. He had been a polio victim at age 19, preventing him from accepting a scholarship at Annapolis. But he always loved boats, and despite the fact that he had a very serious limp and it was hard for him to be on his feet a lot, still he loved the ocean so much that he developed several sport-fishing boats and then got into the administrative end of it. The main part of, while I was growing up, he was President of Pierpoint Landing in Long Beach, which was a very large sport-fishing operation right out at Pier J. That's all now tankers and container cargo ships. I had a great time.

Judith Ashmann-Gerst: You spent your time actually out on the fishing boat?

Michael Nott: I spent a lot of time fishing with my dad on weekends. He'd take me when he was running boats as the skipper. Then from the time I was about 12 on, I started working as a second deckhand on some of the sport boats during the summertime and vacations.

It was a terrific experience. Every day was a brand-new adventure, and actually, the pay was really good for a kid. At that age I made pretty good money.

Judith Ashmann-Gerst: Did you meet a lot of people, different people, on the boat?

Michael Nott: Yes. Oh, god, from every walk of life, yes. That was the great experience.

Judith Ashmann-Gerst: Some celebrities?

Michael Nott: Some celebrities, yes. We had . . . not huge celebrity. We had Maury Wills when Maury Wills was playing for the Dodgers and was the hot property. I mean, he was setting records, stealing bases; and he was with us several times. There was an actor named John Smith; James Coburn; a starlet named and became a movie star who made a couple of good movies, Luana Patten.

I'm probably forgetting a few. Oh, the Nelson brothers, Rick and Dave Nelson. And you never knew from day to day who was going to come out on the boat; and all of a sudden they try and stay incognito. It took a little figuring sometimes.

Judith Ashmann-Gerst: Until what age did you do that?

Michael Nott: I did it actually all the away through law school as far as working on the boats, because I got my ocean operator's license when I was 21. You had to have so many years on the water and practical experience; I had that. And at that time, my father developed some 85-footers; most of the sports-fishing boats were, the maximum length was about 65 feet.

(00:05:09)

My dad worked with the Coast Guard to develop, to be able to license, boats up to 85 feet, which meant we could carry 60 to 70 passengers. The problem was that for that size vessel, the Coast Guard required two license-holders to be on the vessel at any one time.

So the first thing when I was 21, my dad made me go get a license. And that was a two-day ordeal; and I'll tell you, having taken tests all my life, in law school, in college, and whatever, that was one of the hardest tests I've ever taken.

Judith Ashmann-Gerst: Harder than the bar?

Michael Nott: There were navigation problems that were really sophisticated. If you lost radio contact and had to figure out where you are and allow for drift, wind, whatever, how would you get from Point A to Point B, then Point B to Point C? And that was really hard.

Judith Ashmann-Gerst: Have you kept up any of those skills or any of that activity?

Michael Nott: Not too much. My wife reminds me that I need to do that for my grandson, who is living with us. I haven't taken him on a boat yet, and I've been remiss in that regard. I really need to sort of get back to my roots. I haven't done it. Golf has interrupted it. *[laughing]*

Judith Ashmann-Gerst: You acquired an interesting skill when you were working on the boats that may have helped you as a trial judge. You learned to play poker?

Michael Nott: I did. *[laughing]* One of the fellows that I worked with, a skipper, he was a larger-than-life type. The character's name is Dick Shaver, and I don't mean "character" in the bad sense; I mean it in a good sense.

Dick was sort of a Renaissance man. He was interested in lots of things and very well read. One of the things he was really good at was playing cards, whether it was cribbage—and everybody on the ocean has to learn how to play cribbage—gin, or poker. And so we spent lots of time. We had lots of time together and we spent lots of time talking about theory and how to play. And I watched these card games that were going on before I got into them.

Afterwards, on the way home or something, I would ask him, "Why did you do this, why did you do that, and why did you make this bet, why did you fold?" He was a great teacher in a lot of respects, not only poker but a lot of respects. He was a very important man in my life and passed away too soon.

Judith Ashmann-Gerst: How do you think that working with your dad influenced your legal career, your life?

Michael Nott: One of the things that I always admired about my dad is that with the bad break he got with the polio. he was never a complainer. He got polio a second time at age . . . he was 80 when he died . . . at age I think 76 he got polio. You can get it a second time, and we didn't know that.

What had happened was, he had a heart attack while he was out on his own boat. He did have his own boat and was out every weekend. He would take my kids or me or my brother every chance he got. When he was out with my mom and another person he knew he was having a heart attack, so he turned the boat around and ran it back into Long Beach and immediately went into Queen Mary, and he had a triple bypass surgery.

As he recovered from that, he was in the hospital and just ready to be released and all of a sudden he virtually collapsed in the bed. My sister-in-law was there and the alarm was going off, and so she screamed for a crash cart and they came.

What had happened was, the frenetic nerve evidently gets shut off in the polio situation and you can't breathe. So they hooked him up to a respirator and everything was fine, but then the problem was diagnosing what was happening. It took them weeks, and they finally narrowed it down to what they call post-polio syndrome.

He had to go through that whole thing again on learning how to breathe, to speak, to go through everything. He was in the hospital for like four months. When he came out his goal was to go back on a boat and get back into fishing, and he did it. He was never out of a wheelchair after that point in his life, but he was able to at least get out on the boat. They'd take him on his wheelchair, put the wheelchair on, and strap the wheelchair in place.

Judith Ashmann-Gerst: Talk about overcoming adversity.

Michael Nott: Yes, that's one of the things I learned from him—not give up, and make lemonade out of lemons. He was great at that.

Judith Ashmann-Gerst: So then you went off to college, to Occidental? Tell us about the experience in Occi.

(00:10:00)

Michael Nott: Occi was a terrific school for me. I played basketball and baseball in high school. I wanted to go somewhere to a school that I thought I could maybe play ball. I was not going to be a Division I player—I knew that—but I thought I might be good enough to play at a lower level and went to Occidental. They were kind enough to give me a scholarship for baseball and basketball.

I had a pretty decent career there, but the best thing was it was a perfect school for me. It's a small school, as you know, with only 1,600 students. Good competition for grades. I mean, everybody there had really excellent high-school grades. It was just a terrific experience.

If I had it to do all over again, then I'd go back to the very same place and do it all over again. I might study a little bit harder and not do some of the things that I did that I don't want to discuss on tape, but I would absolutely do it again. I loved Occi.

Judith Ashmann-Gerst: Then you went to SC Law School?

Michael Nott: I went to SC Law School. That was sort of a fluke.

Judith Ashmann-Gerst: How did that happen? How did you decide to become a lawyer?

Michael Nott: I had absolutely no idea about being a lawyer. In my junior year I took one of the electives, business law, and I did pretty well on that and I sort of enjoyed it. They did a lot of stuff on contracts, which I really enjoyed. You can sort of see it and understand the philosophy on how you make certain rules.

My senior year, I took constitutional law from Dr. Richard Reath, a very nice man. As we approached the end of the first semester from September to December, he asked me one day what I was going to do after I graduated and I said, "I don't have a clue. I'll probably go in the Army," because at that time everybody had to go in the Army; you had a two-year obligation.

I said, "I will probably just go in the Army and maybe come out and go to work with my dad in business or something." And he asked me if I had ever thought about law school and I said I hadn't. And he said, "I think you would be good at it, and there's an LSAT coming up at USC on such and such a date. Why don't you just think about signing up for it?"

So I did and took it and did okay on the LSAT. And I ended up at USC and it was great. That's another thing I might do . . . what I did earlier as far as coming on the bench. I enjoyed the practice of law, but I really, after about almost 20 years, I sort of got burned out on that.

Judith Ashmann-Gerst: Tell us about your practice; what was it like?

Michael Nott: I got back from basic training. I went into the Army Reserve and the reason for that was, you have the exemption through law school; well, the day after I graduated from law school I got my notice to report, right even before I took the bar.

Judith Ashmann-Gerst: This was during the Vietnam War era?

Michael Nott: Yes, the start of the buildup. It was coming at that point in 1965. There were no extensions anymore. They wanted me like the next week. So, I jumped into it. You weren't frozen at that point, so I went into an Army Reserve Unit, Psychological Warfare Operation. It's housed in Fort MacArthur in San Pedro.

So I was able to get in there with the help of a friend, then be able to take the bar, so I could continue on to practice. So I served six years in the military. I went to basic training and actually really enjoyed it. If I hadn't been married at that point, with a baby on the way, I might have thought of JAG as a career, because I did enjoy the military. I really had a good time there.

So I came back and was interviewed with a gentleman named Roy Brown, who is also a very important part of my life. He was an outstanding attorney in Long Beach, very well known, and after several interviews with him, I was hired to go in—just a small law firm with five attorneys. About four months after I got there, Roy was appointed to the bench by Governor Reagan. So off he went, and here I am as a rookie attorney and they've got several large clients—the City of Signal Hill and several large contracting firms, a variety of business firms.

Judith Ashmann-Gerst: Was it business, or litigation, or was it—

Michael Nott: Mostly business, and here I am six months in practice and looking down the throat of this. So I got lots of help. We had other attorneys that shared office space with us. An interesting sidelight was, we were in what was called the Jergin's Trust Building, and that at one time had housed the courts in Long Beach.

(00:15:00)

I think the eighth and ninth floors were the courts in Long Beach. Then they moved to the present location at Ocean and Magnolia. The county built a new structure there that's now a horrible structure. It needs to be burned to the ground.

Judith Ashmann-Gerst: I think they're talking about a new courthouse at Long Beach?

Michael Nott: They need it; it's just awful. Anyway, at that time it was fairly new. So we were in the top floor of that building, on the 10th floor, and it had a beautiful outside balcony that was the size of the footprint of the entire building, with a view over the harbor. And one of the great things that happened was when the Grand Prix came to Long Beach they ran it right around the building—because they would come up Magnolia North, go down Ocean East, around a hairpin, and then back down on the track out to Shoreline Drive.

Anyway, it was phenomenal, because they gave us tickets because we were sort of landlocked when they started the races. And it was a very exciting event. We hosted big parties up there.

It was a great PR thing for us to have, a really wonderful old building.

Judith Ashmann-Gerst: So you practiced law with this firm for 20 years?

Michael Nott: Yeah, it evolved as people would come and go and pass away.

Judith Ashmann-Gerst: How big did it ever get?

Michael Nott: At one time, when we were heavy into asbestos litigations, we were up to like 20 attorneys, and we did that for several times during that. We probably had 700 or 800 asbestos cases from the plaintiff's work. So everybody was pulled off what they're doing to share, and then we hired a lot of new attorneys for that, and that went on for five or six years. It was quite a situation; it was amazing litigation, absolute killer litigation.

They wound up splitting up a lot of law firms. A lot of firms had problems over it, including us, and we wound up splitting it. Two of our attorneys went one way and four of us went the other way, the main partners.

Judith Ashmann-Gerst: What kinds of problems were created?

Michael Nott: I guess the typical things—the allocation of workload and allocation of money for doing the work. It was going to go like, how far are we going to go with this? Some of us wanted to move. The Jergin's Building was going to be torn down, and it eventually was, and 25 years later it's still a big hole in the ground. They haven't done anything with it, which is amazing. It's in a prime area in Long Beach.

So four of us went to a new building called Harbor Bank Building, that was down just to the west of us. It was a brand-new facility and very nice, and the others went another way. We didn't have any litigation, and we were able to work it out. A little bit of rancor initially, but that all healed over after a few years; so it wound up being a very happy event for both sides and both sides got what they wanted.

Judith Ashmann-Gerst: At what point did you start thinking about going on the bench?

Michael Nott: That's another fluke. People say things to you that change your life. It happened to me several times. I belonged to the Long Beach Yacht Club, and one of the other members was Fred Woods, who was appointed by Governor Deukmejian to the superior court. Fred and I had known each other forever and ever.

So one night there was a meeting of the Long Beach Yacht Club, and I remember clearly to this day; I can remember that meeting. And we were walking outside in the fog and he asked me how I was doing, was I going to keep going and keep practicing; and I

said, "I don't know; I've thought about doing some other things." And so he talked to me about the advantages of being a judge.

I had always thought of being a judge as being very confining. You know, having to be at a certain place at a certain time. He convinced me that it was not that way at all, for the reason that you could actually take a vacation and not come back and wish you had never gone because your desk was six feet high with problems.

When you took a vacation as a judge, somebody fills in for you and you return to a clean desk and you didn't have to work weekends and you didn't have to work nights necessarily, most of the time, unless you're doing law and motion.

We had quite a talk, and so I went home and thought about it. I talked to my wife and I said, "You know, I'm thinking about it pretty seriously." She said, "Whatever you want is fine with me. It will be a pay cut, but if that will make you happy that's fine."

So the next day we had a partners meeting and we started going through all these problems associated with running a law firm, the administration of a law firm—malpractice insurance, employees hiring and firing and raises, and this person isn't happy with working next to this person, and so on.

(00:20:15)

Judith Ashmann-Gerst: Signing leases for new office space.

Michael Nott: I got out of that meeting and I went to the phone and I called Fred; he was on the bench. And he said, "You wait right there; don't leave your firm, because I'm going to have an application rushed over to you because there's an opening in Long Beach on the muni court and you'll be perfect for it, and it's going to happen right away."

The next thing I know there's a messenger at the door with a PDQ, and I spent the next, what . . . things are forever to fill out, right? It took me six or seven days of concentrated working to do it, but I did and was accepted. And Governor Deukmejian appointed me, another important man in my life obviously, and I never looked back. I'll tell you, it was the best decision I ever made. I loved every day of being a judge, every day.

Judith Ashmann-Gerst: You were on the municipal court for a couple of years, then the superior court? What stands out about those experiences?

Michael Nott: I thought one of the hardest things that I've done as being a judge is small claims. I thought those were really hard cases. *[laughing]* I was always ready to go visit a scene and see for myself. When somebody would say, "You know, the woodworking that this guy did on a new floor is all warped; he didn't do this and

he didn't do that," and the guy is, "Oh no, it was a beautiful job," and I'd want to go out and see.

In those days, we had the marshals, the marshals doing municipal court; and we had sheriffs at superior court. The head marshal was elected by the municipal court judges, and so they were very protective of judges, and they wouldn't let me go anywhere unless there was at least one deputy with me.

In fact, when you'd walk up and down the hallway sometimes there was a marshal trailing you to make sure nothing happened to you in the hallways. Anyway, my bailiff, who was terrific, would take me out to all these places, and I would look at them or I'd go downstairs and look at cars that had been damaged and so forth, trying to get an idea myself.

The difference I noticed when I was elevated to the superior court, the sheriffs—who was elected by the populus at large—when you'd do a small claims appeal, where you start all over from scratch from the municipal court . . . So I would have one of these difficult cases at the superior court level and I'd announce that I was going to go out and visit the site. The bailiff, he'd put his feet up on the desk and say, "Have a good trip, Judge, see you when you get back." *[laughing]* So that was a major difference right there.

But municipal court was a great training ground. I was very fortunate at that time that Art Jean was appointed at the same time as me. Art is a very bright guy, and he had been a career district attorney and was phenomenal in criminal law. Our courtrooms were right next to each other. I was in Division Nine and he was in Division Ten, and so we were right next to each other. We became very good friends.

Judith Ashmann-Gerst: You hadn't done any criminal law as a lawyer?

Michael Nott: Zip. No criminal law. Art was a great instructor, because most of the things you get in there, absent unlawful detainers and things, are criminal cases. Most of the trials were DUIs or something along that nature. So Art was a terrific teacher and a terrific mentor in that area, and then I would reciprocate with the unlawful detainers and the civil stuff.

Then I also did law and motion for the municipal court, which wasn't a very heavy calendar, but it was a great training ground. Then we did a ton of preliminary hearings at municipal court.

Judith Ashmann-Gerst: So you got a wide variety of cases in the municipal court?

Michael Nott: Yeah, pretty good. Except the trials got to be boring because it was DUI after DUI after DUI, it seemed like, and . . . but there was a mass of cases to try and dispo, so it was a good training ground to have. Long Beach has a city prosecutor instead of a

district attorney doing misdemeanors, so the city prosecutor staff was always very helpful—very talented people.

Then I got to meet a lot of the defense attorneys in town who wound up doing not only misdemeanors but did felony work. They were very helpful and, I thought, very professional, and I really enjoyed the experience. But after a couple of years I was ready to move.

Judith Ashmann-Gerst: And so you did?

Michael Nott: I did.

Judith Ashmann-Gerst: You applied for elevation?

(00:25:00)

Michael Nott: Governor Deukmejian to the rescue again, and put me on the superior court.

Judith Ashmann-Gerst: Again, in Long Beach you stayed?

Michael Nott: In Long Beach, pretty much. I had to move. There was a crash, what they called a crash—it was an acronym for something, because of the giant volume of criminal cases. And they were virtually suspending civil cases at that time to get this big bubble of criminal cases done. And Jack Goertzen, I think, was the PJ at that time, and he promised me he'd get me back to Long Beach as soon as he could, but he asked me to go to Compton for a while. And so I did; I went to Compton for about two months.

Judith Ashmann-Gerst: What year was it that you were elevated?

Michael Nott: Let's see, in the middle of 1987—so I think in like September or October of 1987 I went to Compton. I did four murder cases in about five or six weeks. It was really something. But the murder cases, these weren't death penalty cases, and they would only take three to five days; but it was just one after the other, it seemed like.

Judith Ashmann-Gerst: Of course, on those cases you'd have experienced lawyers?

Michael Nott: Yeah, good lawyers, but I got some heavy-duty cases right off the bat there. Then I think in the end of October a spot opened up in Norwalk, and Judge Goertzen asked me if I would like to go there pending going back to Long Beach. And I said, "Sure."

Norwalk was a very unique court at that time because it didn't have any municipal courts; It was all superior court in the building. Then Southgate and Huntington Park and Los Cerritos and others had the municipal courts. The Norwalk building was a very quiet building because you didn't have a thousand people

coming in to pay parking tickets and go through traffic school or whatever.

As a consequence, I really enjoyed that experience. We had a big earthquake then at that time. I remember the Norwalk, the Whittier . . . I guess it was the Whittier earthquake at that time that ruined the library. Nobody could go into the library the entire time I was there, which was only for a couple more months, because Judge Goertzen called me I think in about February and said, a spot opened up in Long Beach, would I like it? I said, since it's seven or eight minutes from my house, "absolutely."

So I went to Long Beach and spent the rest of the time there until the Court of Appeal.

Judith Ashmann-Gerst: And you were on the superior court just a couple of years before you applied for elevation?

Michael Nott: I think about three and a half, something like that.

Judith Ashmann-Gerst: What made you think you wanted to go on the Court of Appeal?

Michael Nott: Well, working backwards, first of all, I want to say that I really enjoyed the superior court. I had three death penalty cases; I had probably another 10 LWOPs, life without possibility of parole cases. I didn't do any real big civil cases there, because what had happened was, I was sharing law and motion duties with Jim Sutton, who later went to Norwalk but at that time was in Long Beach.

He would do law and motion for six months and I would do criminal; then the next six months we'd flip-flop, because the law and motion was sort of a grind. I mean, it was only two days a week, but there were like 45 to 50 cases on each calendar, plus we did probate and would have 90 to 100 cases, plus doing all the writs and everything. So it was sort of a chore, and you get burned out on that real quickly. And so Jim and I, by flip-flopping, would sort of keep things fresh.

On the other end, then you go back into a criminal court on a direct calendar criminal court. Like I said, I had some big cases, again with great attorneys: oh, my gosh—Johnny Yzurdiaga stands out as one of the . . . Ed George, Hank Salcido, just absolutely top-notch attorneys.

And DAs the same way: Bill Hodgman, one of the great attorneys around; had some good lessons there. The criminal cases were very exciting. It was like working in Las Vegas, especially on the burglaries and robberies or something like that. You can do one of those cases in a day. If you get lucky you can pick the jury in a couple of hours or an hour and put them in the box, and you have two or three witnesses and get over and done, put that jury out, take another jury in.

First jury's not done yet, so you find another jury room that's vacant, to put the second jury in. Start a third jury. And like I said, it was like working the dice table in Las Vegas, and it was really a lot of fun.

But after about three years what happened was, there were, I think, like four openings all at once on the Court of Appeal.

(00:30:00)

I had always thought that I might like it if I had a new other career other than law, which I started to say before. I thought that I might like to be a writer, because I enjoyed writing. So I thought, you know, that'll be the best of both worlds—you know, to have that and be able to write.

The downside was that I loved what I was doing. I loved the fact that the judges at Long Beach were back behind a hallway and the attorneys could come up and down, drop in and visit. I'd do settlement conferences every once in a while of civil cases. I really enjoyed that part of it, and the contact I had with the attorneys. I was warned that that wasn't going to happen on the Court of Appeal, which our contact with the attorneys is in for oral argument and that's about it.

So I put in my application but with some hesitancy. I was scheduled to be supervising judge in Long Beach, and I watched all the spots go one by one. I thought I was toast anyway. But all of a sudden, right before Christmas, I got a call and my clerk looks up and says, "It's the Governor's Office." I love that quote.

Judith Ashmann-Gerst: *[Laughing]* It's always such a shocking call.

Michael Nott: Yeah. So anyway, it was the Governor, and he was serious, and he offered me the spot. I asked him if I could think about it over the weekend and he said yes. So I talked it over with my wife and decided to go. She asked one of the best questions of all; she said, "If you decided and you didn't like it, could you give it back and go on the court?" and I said, "I'm willing to bet that the Governor's Office would probably do something like that, so I suppose I could."

She said, "Have you ever known anybody to give it back?" I said no. She said, "Well, what do you think?" So I went for it, and that was a happy time too. My time on the Court of Appeal was absolutely sensational. I couldn't have wound up in a better place.

Judith Ashmann-Gerst: You were appointed to Division Two. Who was here at the time?

Michael Nott: Lester Roth was the PJ; he was in his mid-90s at that point and having some problems not only with his hearing, with his vision . . . and he was a great man. He had been a great, great jurist but

was nearing the end of the road and was having problems at oral argument and various other physical problems.

I caught him at the down end of the spiral; I'm sorry for that. Don Gates was the other; one of the smartest guys I've ever met. Morio Fukuto was the third and one of the great gentlemen I have ever met; Morio was just terrific. So I was in a good spot. Presiding Justice Roth didn't last too long. He retired within a year that I was here. So I put in an application to be, the others asked me to; Justice Fukuto and Justice Gates asked me to. So I put in my application to be presiding justice, but Roger put his in too; and probably it's just as well for me and for everybody that Roger got it.

You know Roger—you've been with him for umpteen years, and he is just one of the great people.

Judith Ashmann-Gerst: Yeah, he is terrific, and apparently he talked to you about it before he actually applied or accepted; that he wanted to make sure that everything was right and that it would be comfortable.

Michael Nott: Yes.

Judith Ashmann-Gerst: One of the *Daily Journal* profiles of you quotes some of the lawyers as saying you moved the old boys' Division Two to a more centrist, reasonable position. Do you remember that?

Michael Nott: Yes, I think they're giving me too much credit. When I first got here it was, no question, very conservative, and sometimes oral argument was very quiet. Justice Fukuto was a quiet person himself anyway and tended not to ask too many questions. Justice Roth did not at that time. At the end of the road, sometimes he was confused as to even what case we were hearing at that moment.

Justice Gates, though, was sort of hard-nosed, but he was a very fair person—not that the others weren't, but they were a pretty conservative group. When Roger came on as an AG, Roger's sort of, I would say, a little to the right, but not much though. We were a centrist court, and it wasn't just all me. I mean, John Zebrowski was a centrist and Morio Fukuto went with whatever was fair, and he didn't go by philosophy; he went with whatever was fair in the case, as do most judges, in my experience.

I don't know that you can get on and say that I got a bad deal because that was a Republican instead of a Democrat. I mean, we just don't look at cases like that.

(00:35:05)

Judith Ashmann-Gerst: But then it really changed with Candace Cooper, Kathryn Doi Todd.

Michael Nott: Yes, the ladies came on; a breath of fresh air.

Judith Ashmann-Gerst: *[Laughing]* No more old boys.

Michael Nott: Yes, no more old boys' network. I didn't see the change, and the attorneys would be more sensitive to that than me because the same way, I didn't regard any of the ladies . . . regard as being to the left or anything like that.

I regard you and everybody as being down the middle, and what do we do with this case or these people? Then sometimes philosophically we would have to decide, how are we going to interpret this statute and how do we come down? And sometimes it would come down, I suppose if you looked at it hard, it could come down on a left or right-center position, but not that often.

We didn't have that many problems as far as our decisions. I mean, it wasn't like everybody was dissenting all the time. We just tended to work things out, and that was my style. That's why I think in the book that you've kindly given me on my cases that I've had very few dissents and very few concurrences—because I would jointly go in and work out my differences with whoever was drafting the opinion.

Judith Ashmann-Gerst: How would you do that?

Michael Nott: You know how. *[laughing]*

Judith Ashmann-Gerst: *[Laughing]* I know how, but everyone else watching this may not.

Michael Nott: If I had a particular problem with either the result or the language, I would draft out a memo so it was clear in my mind what I was doing, and then I would generally ask the justice if they would mind talking to me about this particular thing—that I was having some problems in a particular area. And we would go through it and I would give my side, they'd give their side, and we would generally almost always work out something that at least made me happy, so that I was satisfied that we were coming to the right conclusion as to either the issue or the overall result on the case. It just always seemed to. I mean, you were always very receptive to that, and you did the same thing for me. If you had something either stylistically or something more substantial, you would come in and discuss it with me.

That was the way I think it worked on our division from the time I was there. And we did it on face-to-face situations rather than by memo, which I think is a little impersonal; and I like the contact with the other justice to try and work it out.

The best thing was we had such nice people. When I was on here I don't recall anybody that was such an egotistical person that it was their way or the highway. It just didn't happen here, and that's why I was so lucky to be on Division Two.

Judith Ashmann-Gerst: No one was rigid; but you certainly made it easy, because you came in, you would come into chambers, and you're coming in advance of conference, in advance of oral argument, which really made a difference. I don't know if you were aware of that.

Michael Nott: I did that on purpose. I think it's easier to do that when everything is in the draft stage than when things have hardened a little bit. You know, you want me to redo everything now, as opposed to doing it earlier on? Yeah.

So as soon as the conference memos came out—and I tried to make it a habit of reading those things just as soon as they hit the desk, so that I could do that and find out first of all what problems anybody was having with my work—if they had any problems, what we needed to work out, and did I come to a right result.

So I appreciated the same thing with you and Justice Todd and Justice Boren doing the same thing for me if they were having any problems.

Judith Ashmann-Gerst: There were some significant cases that you handled while you were on the Court of Appeal—a couple of important criminal cases and notable civil that you did write a dissent on. Why don't you tell us about your criminal cases?

Michael Nott: Yes, one of the big things that I've always been sensitive about is the independence of the judiciary. I think that all of us in the legal field need to be constantly on guard.

I don't say that there is any particular ill intent with the executive branch or the legislative branch, but sometimes I think they overreact to anecdotal situations instead of looking at the overall big picture. A case will make headlines about how some judge did something on it, and all of a sudden the hackles go up on the Legislature or the executive branch and all of a sudden bam, you've got a new law out that in some fashion tries to limit the discretionary power of the judiciary.

I don't like that at all. My belief is we are put here as an independent branch; we are not going to rubber stamp whatever the legislature does, we're not going to rubber-stamp either what a President or the Governor does. I have seen several attempts at that, mainly when the three-strikes law came out.

(00:40:13)

And the legislation was drafted to only give discretion to strike a strike to the district attorney's office and not to the judiciary; and the DAs took that right off the bat to mean that that was it, that unless they agreed to dismiss a strike in the interest of justice, that the law was going to apply.

As you know, on the third strike, no matter what the felony was, whether it was a serious felony or not, you're looking at 25 to life. The question is, who are you going to allow to guard the henhouse—the fox or the farmer? I didn't like the idea that the discretion was solely supposed to be that of the district attorney, because some district attorneys don't have the sense of balance and proportion, in my view, that a judge does.

Most of them do. Most are hardworking, honest, fair-minded people; but there are some who are not, and I was really bothered about that. I wrote that in an opinion called People versus, I think it was *Glaster*. I concurred at that time because the result, I thought, was appropriate, and I knew there was going to be a better case coming along to take a stand on it.

Finally the Supreme Court did, in *Romero,* which was amazing because Romero had, like, about 20 convictions. *[laughing]* I mean, he was arrested for everything—most of them might be misdemeanors or low-grade felonies, but I thought that that was really a unique case. But at the same time we had the statute that was, like, about two pages long and single print, to interpret all these areas. How are we going to interpret these particular sections? One of them came to us on a case called *People v. Vessell*, and that was whether on the third strike, if the third strike was a wobbler that could be either sentenced as a misdemeanor or as a felony, did the trial court have the discretion to sentence as a misdemeanor and thus save the person from a three-strikes conviction and 25 to life?

The DA took the position that no, the court did not have the discretion; it was solely in the executive branch with the district attorney. So I wrote yes, we did; it's the judge who gets to make the call. And that stood up in front of the California Supreme Court.

Judith Ashmann-Gerst: Did the Supreme Court take the case?

Michael Nott: Maybe they denied hearing on it; I can't remember. Well, they must have, because it's still published; otherwise it could have been off here. So by not taking it, yeah, it was affirmed. I remember those were really some hard days at that time, because the volume of work really went up with the three-strikes law. We had cases coming up. It was really a lot of work up here. I remember one month I did something like 22 opinions in one month.

Judith Ashmann-Gerst: That's like an opinion a day.

Michael Nott: It's an opinion a day; it's way too much. You can't do that and do good work. I mean, I was hardly paying attention to anybody else's cases because I was having enough just trying to get my own out. Division Two always had—talking about the good old boys—always had the macho deal, no backlog. We will fight our

way through anything. You give us as many cases you want; they're all getting out on time. We're not continuing anything. We were at a point after about six months that the attorneys were exhausted. They were doing about six opinions a month apiece, at least. I was doing around five myself, plus reviewing all of their work and reviewing the work of the other justices, and it was getting to be very exhausting.

A lot of these cases were really serious, too, because they were all interpretations of the three-strikes law. So finally, just at that time that we said "Okay, we're all going to take and put X amount of cases on calendar this month and 15, 14, or whatever, and that's all we're going to do," just at the time we did that the bubble went away and we were able to keep up with a no-backlog mentality. But it was a hectic time doing that. And the big thing, of course, is when the Supreme Court came out with *Romero* and said there was discretion with the trial court; it's just that you've got to be careful how you use it. And that's what happened.

I know that the Legislature was concerned that if the judges start dismissing cases or strikes on their own that they will just use that as a calendar-clearing technique; the impact of the three strikes will be lost. But it hasn't turned out that way. I knew it wouldn't if they just let us be judges.

(00:45:00)

So that was, I thought, a really important time for me. And then also there was a case . . . I had a domestic case, called, I think, *In re Fogarty and Rasbeary*, and that involved the family law code—one of the few cases we ever had that I can remember from family law that actually went into print.

The idea there was whether or not laches could apply to a spouse who was suing another spouse for past due support. I think this was child support. There was already a case on spousal, I think. I may have it flip-flopped; I can't remember. Anyway, the trial court had found laches on the part of one spouse, who happened to be the woman who had custody of the child. And for various reasons—I don't want to get into all the facts, but basically he wasn't abusive, he wasn't hiding out, he was working—he didn't give all the money, but he did a lot of things for the equivalent value, and she waited like 17 years trying to collect all the child support.

The trial court said no, laches applies; it was too long. You knew where he was and you could have easily gotten the money, so goodbye. So we affirmed that. In response to that, the Legislature came out with an amendment to the particular family law code, which section I can't remember right now, that said that laches no longer applied to child support.

I have a real problem with that. It's my understanding that family law courts are essentially a court of equity, and laches is a judge-made rule, not a legislative-made rule. It was developed by the judges to be fair in certain circumstances where there was no particular statute of limitations or some reason not to follow the statute or whatever.

I'm not sure that the Legislature has the power to abrogate a judge-made rule. It's not their rule, it's our rule. I just think that anecdotally, the Legislature got carried away hearing of a particular case where some woman, the reason that she didn't challenge or try and collect spousal support was because the person had hid out for 20 years or whether he had threatened to kill her.

And most of these cases involve, obviously, a woman being the one seeking the support and the man avoiding it. It just seemed to me that "always" and "never" are two words that should be very carefully used in law, because you can't predict the certain situations, and there could be easily fact patterns where it just isn't fair to allow somebody to go on where they've sat on their hands for 30 or 40 years and wait until the person dies and then try and sue for support.

Then the state has no way of knowing whether it was paid, it wasn't paid, or whether there was another deal worked out, or why they didn't go to court. I just thought that that was a wrong thing for the Legislature to do, because I just didn't see that judges were abusing their discretion in that regard all that much. I feel like I'm on a soapbox. *[laughing]*

Judith Ashmann-Gerst: *[Laughing]* But that's one of the challenges that you feel faces the judicial . . . independence and having confidence in the judiciary.

Michael Nott: If there is a problem with a judge then fix that; if the judge doesn't belong as a judge, then do that. But don't try and revamp the whole system. I know that on the federal side there is always sentencing where they try in each year to take away, it seems like take away, more discretion of the judges on sentencing in the federal scene.

It really bothers me if they do that. And thank god my buddy Dick Tevrizian stood up to them and finally said, "I'm not doing that."

Judith Ashmann-Gerst: Everyone think judges are so liberal, we're going to let everybody out on the streets.I don't know; I don't get that problem. *[laughing]*

Michael Nott: It's just absolutely not the case. It just doesn't happen that way. There was a cute story about that.

[Break in tape]

David Knight: We're all ready to go anytime.

Michael Nott: The rumor, urban myth or whatever it was, that when there was a position open on the California Supreme Court, Governor Jerry Brown was talking to Lester Roth about filling the position. And Roth was one of the . . . I think at that time he was the senior person, so he had to vote on the three-person commission.

(00:50:08)

So Governor Brown said to him, "It would really be wonderful if we had a Hispanic on the Supreme Court." And Justice Roth is supposed to have said, "Yes, it would be also wonderful if my research attorney Donald Gates was appointed to an opening on the Court of Appeal." *[laughing]*

The Governor said, "Yes, that would be." So both things happened.

Judith Ashmann-Gerst: Both things occurred.

Michael Nott: Roth voted for Reynoso, and all of a sudden Don Gates was a direct appointment to the Court of Appeal. But like I mentioned, it was probably good both ways, because Cruz Reynoso was a gentleman, despite what happened to him, and a great lawyer.

And Don Gates, as I mentioned, is one of the smartest guys I have ever come across and had one of the most interesting lives and I've heard is not doing this interview. And Donald, if you ever look at this, you need to do this and have everybody share what your life has been, because he has had some life.

Judith Ashmann-Gerst: I think I've met him just once or twice but didn't know him.

So we had talked about some criminal cases, and there is a very interesting civil case, an arbitration case, that you were involved in. just as I got here, actually; I wasn't on the panel, but we talked about it, so—

Michael Nott: It was Justice Boren, Justice Todd, and me on *Crowell v. Downey*, I think it was. It was an interesting factual scenario because the parties agreed after litigation had come up—and was ripping the clinic apart—had agreed to arbitrate, and also agreed that if either side didn't like the result they could appeal it to the Court of Appeal.

So, the question was whether you can do that—whether you can start as an arbitration and then go to the regular appellate process. And Justice Todd and Justice Boren said no, you can't; the statute just doesn't provide for it. You take your pick; you either go in the court system or not.

I felt . . . and that is a reasonable position; I respect that. It just seems to me, though, there are a lot of attorneys I've talked to who don't go into arbitration because they don't want to be dependent on one voice. They want to have a backup for it. They don't necessarily want to have to pay for three retired appellate court justices to do that. It just seems to me that if we're going to encourage arbitration as a process . . . and that's the policy of the law, to encourage people to arbitrate and stay out of the court system.

We had parties here of equal bargaining strength. If they started in the trial system and the court system, the Court of Appeal was going to have to do the work anyway. So it's not going be any extra work, because if they stayed there, that's what is what we would have to do. So why not let them do that? The odds of either side appealing were probably not that great anyway. I just felt that it was the right thing to do, was to allow them to do that; and instead the majority opinion struck down the entire agreement, including the arbitration part.

So they went back in the court system. I haven't researched today to just find out if anybody has come up and done anything with that, but I know that Art Gilbert uses that case at the Retired Judges Conference. He has used it for the last two or three years that I've been there and has brought it up on new developments in the law.

I was really upset that the parties didn't take it up to the California Supreme Court.

Judith Ashmann-Gerst: They didn't?

Michael Nott: They didn't, and probably what happened is the case settled or something. So I don't even know what happened with it. But that was an interesting case, and everybody got their say in, and I enjoyed . . . It was a pretty long dissent. I think it was probably about a 20-page dissent. I spent a long time with it.

Judith Ashmann-Gerst: When I use the term "heated," I don't mean that there was any dissension, because I know that there wasn't; but was that the most heated dissent that you were involved in probably?

Michael Nott: I think so, yes.

Judith Ashmann-Gerst: That's amazing, because you were here 15 years?

Michael Nott: Yes, and there was no rancor at all.

Judith Ashmann-Gerst: No, there wasn't. It was all a very intelligent, intellectual discussion of the law.

Michael Nott: It was one of the few times that I didn't get my way. *[laughing]* Which happens at home all the time.

Judith Ashmann-Gerst: *[Laughing]* That's why we come here. People are nice to us here.

Michael Nott: That's right. Sharon says, "Oh, the prince is home."

Judith Ashmann-Gerst: Any other cases that really stand out in your mind that you would like to talk about today?

(00:55:02)

Michael Nott: Are we talking about cases I authored? Well, I liked your case, that *R J Reynolds* case.

Judith Ashmann-Gerst: The tobacco case. The federal preemption case.

Michael Nott: Yes, that was a super case, and vindicated at the end, right?

Judith Ashmann-Gerst: Vindicated by the California Supreme Court, but I think after that there was another U.S. Supreme Court case, and I think that more recently the California Supreme Court has kind of backed away and said there is federal preemption. But that was a very interesting case that wound up settling.

Michael Nott: Right, they did settle it. I had a case called *DiLoreto v. Downey*. It was sort of interesting; it was under the theory that no good deed goes unpunished. Downey High School decided to have their baseball fence . . . they were selling space on the baseball fence, on the outfield; and I think it was like a $500 donation and you could put your business aim up, and it was visible to the people in the stands and a fundraiser for the baseball team. So Mr. DiLoreto, who had been a big booster of the high school, wanted to put up the Ten Commandments. And when the school saw that, they said, "No, you can't do that because somebody is going to get upset that we're favoring the Judeo-Christian religions and excluding theirs, and we will probably get sued over it, so we can't do it."

And he was adamant that they should, and so he filed suit against them to do that. So as a result of that, the high school took down all the signs that they had rented out and gave all the money back to the other boosters and then were involved in this litigation, and it wound up being a tremendous expense to the school.

We upheld the trial court decision that Mr. DiLoreto was wrong—that the school had the absolute right, and the school district, to prohibit anything that looked like religious sponsorship of some sort.

So that case went all the way up. It went to the California Supreme Court and clear up to the U.S. Supreme Court, and it cost the school district an absolute fortune to do that. So this one little idea to raise $4,000, $5,000 got turned right on its head and cost them a lot of money.

That was an interesting case.

Judith Ashmann-Gerst: Sounds like that, right.

Michael Nott: There was another one we did. I don't know if you remember it, but the issue was whether . . . it came up as a class action, I think, and it was for overtime on wages. The question was whether or not supervisors, owners, or the board of directors could be individually liable for overtime that was unpaid, for corporate overtime.

We held "no" in that case in the petition. I think it was just affirmed. I can't remember if they took it over or not, but we were affirmed in the end on that. I thought that was a big-deal case. That's about all I remember.

Judith Ashmann-Gerst: I don't have any other specific ones other than those. So it's obvious from talking to you that you loved your work as a trial judge and loved your work on the Court of Appeal. But then you decided to retire and go into private judging. Can you talk about that decision a little bit?

Michael Nott: It was sort of a tough decision. Let's see here, how can I start this? I had a situation arise in my life in about 1993 where my daughter, my youngest child, was having some very serious problems being a student and being a good daughter and was involved with the wrong people, and we went through a very difficult series of things with her. And as a result, I just got her out of the area, and I moved her and her mother, my wife Ann at that time, to Idaho. I went up there and actually commuted back about every other week. I would be in Idaho a week and back here a week. It worked out okay for me; I was able to do that schedule. But my daughter never did really . . . it didn't benefit. She just found a better class of bad people to run around with.

And my wife passed away in 1994 suddenly. I woke up one morning and she'd passed away during the night. So at that point I couldn't make the commute because there was nobody there to watch my daughter, who was yet to be 18. So I moved back to California on a full-time basis and she wound up having a child and not able to care for the child.

(01:00:06)

So we've taken him and raised him, and it was something I wasn't really counting on when I made the decision to be a judge, because I'd provided for my other son's education and thought I was able to handle all that. So having a new child to raise sort of put a different spin on things. And at the same time I remarried; I married my college sweetheart, who lost her husband. And we were pinned at one time at Occidental, and she told me to go away and grow up. So 33 years later I show up and she said,

"Well, you're still not grown up, but better." And she has been a very good sport on this, in taking our grandchild in.

And I knew that I was going to have to do something to create some more income for his college education. So I made the difficult decision to leave in 2005 and go do some private judging and play a little golf when I had a chance.

Judith Ashmann-Gerst: What are the pros and cons in private judging, for you, anyway?

Michael Nott: I enjoy it because I always enjoyed working with attorneys. I like attorneys. Most attorneys, I think, are really interesting people to be around. I have been doing arbitrations, mediations, discovery disputes. Discovery disputes are where you see the worst of it, when the attorneys are like oil and water and for some reason they just can't get along. It may be one fault or may be both their faults; or it may be just that their personalities clash and they just can't do it. But on the others, the arbitrations and the mediations, the attorneys are generally very cooperative, I found.

Like I say, I enjoyed working with them. I think that mediations are truly an art form. I mean, everyone is so different; the personalities are different. But what I found is that the parties have to be able to tell their stories, and you've got to be very careful. As a judge you're trained to make decisions. Sometimes the trial judge has to make them on the spot, as you know. You've got to make calls during a major trial on evidentiary rulings or objections right on the spot, and rarely do you have time to say, "Time out; I'll go take 30 minutes and look that up." You've just got too much pressure to get done to do that.

So for better or for worse, you have to make your decision. One of the things I have learned is you can't show the parties that you're favoring one side or the other. Their position right off the back, you have to listen all the way through and then gently work into things and think of "Have you considered . . ." rather than saying, "Well, this is the way I see it."

At the end of the day, sometimes when you're a long ways away, the attorneys are generally going to want to hear from you on how you feel the case is going to come out, or how the particular issue is going to come out. If they ask that, then I give it; but I have learned not to just blurt it out or do that.

I have learned also—not that I've ever done this, but I knew going in—I never wanted to embarrass an attorney in front of a client. So I do something to get the attorney outside and talk tough or talk turkey outside the range of the client, so the client couldn't hear that. It's definitely an art form. It's hard work, I think. I appreciate these guys that are top mediators. I appreciate their skills; it's really something.

But I still enjoy doing it, and I love doing the arbitrations because I can make a decision. That's one of the first things . . . all the groups that I interviewed with: "Are you going to do arbitrations?" Because a lot of mediators don't want to do that; they don't want to offend anybody. They don't want to have to make a decision on their own at the end, and they're concerned that the person might possibly never come back again.

My view is if I give you a reasoned decision and you don't like it, and you don't ever use me again, that's up to you; but I'm not going to worry about it, because I have faith that I can make enough good decisions that it's okay. I tend to do a lot of arbitrations now in the work, and I still enjoy it.

Judith Ashmann-Gerst: Any negatives?

Michael Nott: Yes, not being here with you. That's the negative. I mean, I would have done this job but had it not been for taking Aaron in, I would have just done this the rest of my life, until I couldn't practice anymore.

Judith Ashmann-Gerst: Your time is not your own as a mediator. Here at work we can leave at 4:00, 4:30, take whatever with us we need to do and you do it at home or whenever; but your time is your own, you have your own schedule. As a mediator you're in the middle of a mediation and it's six at night and they're getting close; you can't leave. So whatever plans you had, that's it.

(01:05:00)

Michael Nott: You're right, and one of the key features that I have heard of for the great mediators is that they are bulldogs; they will not let go until that case is . . . the people leave to the elevator dragging the mediator behind them, trying to keep everybody in the room and keep talking.

Yes, you're right. I had two last week before I went back to the SC and Notre Dame game where I saw your husband. And it was scheduled to be three hours, from six in the evening until nine, and we finished at 1:00.

And the day before that I had one that started at 10; it was supposed to go until 2 and went until 7. So it does happen that way. Either an arbitration or a mediation can all of a sudden blow up and stretch out—and that's par, that goes with the territory. That's okay. But you're right. I had the perfect job and let it go away. I gave it up.

Judith Ashmann-Gerst: As a mediator, though, I'm sure you have a lot of credibility, because not only did you have 20 years on the bench, you had 20 years in private practice; so you must have a lot of credibility.

Michael Nott: It's a good pedigree to have. One of the bad things, though, is that nobody knows . . . except for the law firms that do a lot of appellate work, the rest of the planet doesn't know who you are. One of the things that's sort of amazing in the newspaper articles is when they talk about an appellate court decision, they say "An appellate court in Los Angeles did such," and they never mention names.

So we're like Teflon in front of the public, but from the attorneys' and a knowledge standpoint it's not like I'm doing high-visibility civil cases one after the other with all the major firms in town. And those attorneys—I mean, I've been up here for two generations of attorneys now and so they go, "Who?" *[laughing]* And they look me up on the website and they say, "Oh, that's a nice pedigree, but we really don't know him yet."

So that's one of the things to overcome, the pros and cons there, whereas these people that are on the trial court—and they come off after planning and doing two years of civil stuff at the end, or however many years—they have a little more leisurely time, I think.

Judith Ashmann-Gerst: Well, they have a couple years of longevity, but then the generation does change, and the young lawyers come up.

Michael Nott: And hopefully there's good word of mouth as I do cases. And I've had a lot of repeats, and so it seems to be working out. And I hope I get to the point where I could work five days a week if I wanted. I don't want to do that; I mean, I'm really happy doing what I'm doing, this in two and three days now. It's just fine, and a little time to do other things.

Judith Ashmann-Gerst: From when you started as a judge up until the time you retired, did you see a change in the attorneys—their conduct in the courtroom? Everyone talks about the lack of civility now.

Michael Nott: I didn't notice it from the bench as far as being deferential or anything. I hadn't noticed that when I was on the Court of Appeal. No, I wouldn't say that. Now, it's been my experience that the attorneys that come before me in the mediations or arbitrations are about the same as the others. I've had very few instances of rancor, and the ones I have had have been from attorneys that were old enough to know better. So it hasn't been the new ones in particular. Like I said, I've really enjoyed being able to meet with attorneys and do this again. I do enjoy it.

Judith Ashmann-Gerst: The fun part about being a trial judge was dealing with the lawyers on a day-to-day basis and really on a one-to-one basis. You could always take them in chambers and sit them down and talk to them. On the Court of Appeal you don't have that ability; you only see the lawyers once a month, unless you go to a bar function.

Michael Nott: Exactly.

Judith Ashmann-Gerst: From the trial court to the Court of Appeal did you see any difference in the quality of lawyering, or now back into the private sector?

Michael Nott: One thing I noticed on the Court of Appeal was when you read a brief you knew without even looking at the front page—because a lot of times I didn't look at the front page and even see who the law firm was or pay attention to that until after I'd actually read it—I could tell who the appellate specialists were from reading the briefs as opposed to the trial lawyer just doing it himself or herself without any assistance. I mean, that was easy to spot.

One of the things I've always given as advice at various bar meetings and things is if you have a big case, consider hiring an appellate specialist to help you do it. And if not to do the whole thing, at least to review your work and tell you what you're doing—whether you have weak points or strong points and organize it stylistically, because you need that help on a major case in particular, and not be greedy and just try and do it on your own.

(01:10:18)

Judith Ashmann-Gerst: Don't forget the standard of review and setting your brief up in accordance with the standard of review, right?

Michael Nott: Exactly. All those things. And we know who the specialists are, and like I say, you could rip all the covers off the title pages and you would still know who's doing the work. At the mediation level on some of the smaller cases I've had, I've seen what I think is not very good lawyering, even at the mediation level.

The quality of the brief that I got or didn't get that I should have gotten, or the quality of drafting of complaints, summary judgment motions, and things like that that I might have had to review left something to be desired; but it seemed like that happened mostly on the smaller end and smaller scale.

The bigger cases that I've had, the multimillion-dollar cases, it seems like there has always been good lawyering. On the mediations, we get more than one lawyer in there. There may be two to three from one law firm and one or more adjusters from defense counsel on one side. I may wind up with two or three rooms of different people around—maybe 15, 20 people involved in a case.

Judith Ashmann-Gerst: Are adjusters digging their heels in more than they did in the past?

Michael Nott: Seems to right now, yeah, I would say so. Some of the offers I've seen I thought were extremely low, and they know how to grind.

The adjusters have done more cases than me. They're doing one or two every day. They're just bang, bang, from one to the other. So they get a read on people and they get an idea on what they're really going to come down to, and sometimes they really do try and lowball.

I've also seen the other, that in the real serious cases—we've got a death or a spinal injury or something like that—their evaluation of the case sometimes is not all that far off from what I think. And as I mentioned, sometimes I get an idea on value within the first two hours; I sort of get an idea where the parties are going to wind up and what's a reasonable offer and reasonable demand. And if you can get that, if you can get a reasonable offer and a reasonable demand, then you get in settlement range and the odds are you're going to settle it.

The other thing I've learned is not to go to bed at night staring at the ceiling if I didn't settle a case, wondering what I could have done better. Because what I've learned is, a lot of times those cases just simply aren't ready at that particular moment. But you know, over 90 percent of the cases settle, so they're going to settle at some point.

So sometimes the process in mediation is to get the parties from a million dollars and zero to some reasonable range and get them talking; and you may need a second mediation or it may happen within two or three days. I do a lot of follow-up, as do just practically every other mediator I know.

The next day I'll e-mail everybody and I'll keep on the phone and say, "What about this, what about that, do you want a mediator's proposal?," in which I might actually outline the case and give a range or a number based on various criteria so that they can actually explain to their carrier why I'm doing this and what dangers I see in the case.

So sometimes I'll settle a case, and it might be three or fours days later; but if you keep at it, sometimes that happens. So it's hard work.

Judith Ashmann-Gerst: Sounds like it. You just mentioned that you don't stay awake at night wondering about why you couldn't settle a case. As a trial judge or a Court of Appeal judge, did you stay awake at night ever, or are there even cases now that bother you?

Michael Nott: Yes, there are several. I wasn't the author on either one; they're both criminal cases. And there was one that I think it was Justice Fukuto had. It involved a young man who was driving a car with a friend and the friend asked to stop at this hardware store and wait for him.

The friend goes in the store and comes back out and says, "Let's go and get out of here; I just shot a guy." What he's done is he's

committed robbery and killed the clerk. The driver on hearing this drives the guy to where he wants, and then later he goes and turns himself into the police, gets charged with first-degree murder as an aider and abettor, and is sentenced. It came up to us, and all of this was in front of the jury, and the jury bound against him. And it bothered me to this day that we affirmed it, but it bothered to no end because it just seemed to me like he wouldn't have turned himself in had he not been telling the truth.

(01:15:23)

I'm still not clear as to why they charged him with first degree in that situation under the felony murder law, aiding and abetting. So that case really bothered me.

Then there was a second murder case. I think it had happened in Torrance, and this was like my first year here. The defendant worked in the construction industry and made very good money. The victim in this case was a homosexual drug seller, high end though. Not on the street; I'm talking about a nice home and everything, and he had lots of nice friends. And he was found dead; I believe he was shot to death. I can't remember how he got there, but I think he was shot to death, and there was a glass on the counter that had a fingerprint on it and it matched up with the construction worker.

He had made some comment, I forget about . . . "I had to kill that guy" or do something. He'd made some comment at work, and he got convicted on that, first-degree murder. And he had plenty of money, so robbery wasn't the motive for him, although money was missing evidently at this time. It just sort of bothered me. I didn't see where I was convinced that he had the motive to kill the person even though he might have been there. It was like that movie; there was a movie like that with Harrison Ford, I think where Harrison Ford was a district attorney and another female DA was found dead and his fingerprint was there. I forgot the name of it. It'll come to me.

Anyway, that case bothered me to the end that I wasn't sure we had the right person. There is always that danger. The other thing that bothers me and I'm having sort of a difficult time thinking about: the death penalty in this state. I have always been a big proponent in the death penalty, but not the way we're doing it. I just don't see—

Judith Ashmann-Gerst: Not when it takes 20, 25 years—

Michael Nott: Or more. The three people that I have that are on death row are still there, and it's been over 20 years for each one of them. It seems to me for the death penalty to be effective it has to be administered within three or four years of the event. I know you have to make sure you have the right person—that's a key—but you can do that within three or four years. It doesn't take 20-plus

years. So the system is broken for us to have over 600 people on death row, and execute somebody once every two or three years is not doing the trick. I mean, Florida and Texas seem to do it very quickly down there; maybe they're making some mistakes or maybe not, but they aren't as laborious about it as we are in California.

I just think the way the system is, it's a joke. I mean, why we are bothering doing this and going through this exercise in futility. We would be better off just putting them in life without possibility of parole and be done with it, it seems like. I'm having a tough time with that issue.

Judith Ashmann-Gerst: Going back a little bit, you mentioned just briefly you and Sharon, and that you were pinned in college and you broke up and went your separate ways. How did you wind up getting back together?

Michael Nott: It was just a fluke.

Judith Ashmann-Gerst: You've got a lot of fluky things. *[laughing]*

Michael Nott: *[Laughing]* Yeah, somebody says something, I do it; sometimes it works out and sometimes it doesn't. Patti Kitching was on the Court of Appeal, and still is, as you know; a delightful lady, and we went out to lunch one day and we were talking about something. She looked at me and said, "You really don't remember me, do you?" And I said, "What do you mean I don't remember you? I know that you're one of my best friend's wife's cousins."

And she says, "No, that's not the relationship." She says, "When you were in college you were dating Sharon; she was my best friend, and she set me up with one of your fraternity brothers and we double-dated."

I said, "I have no memory of that." So she said, "Have you talked to Sharon?" and I said, "I haven't talked to her in 25 years probably, but she called me when I was appointed to the municipal court and congratulated me. That telephone conversation lasted about four or five minutes and that was it, and that was in 1985, I guess."

And she said, "Well, it sounds like you owe her a call." And so I called—and I thought that she gave me the number—and I did call just to see how she was doing and found out that her husband had passed away. So we got together and met for coffee, and that was about it. It was a ballgame. Prequalified.

(01:20:13)

Judith Ashmann-Gerst: *[Laughing]* How long after that did you get married?

Michael Nott: I'm trying to remember how long that was.

Judith Ashmann-Gerst: I know she'd remember if I asked her.

Michael Nott: I think it was a little over a year.

Judith Ashmann-Gerst: You knew each other from college, right?

Michael Nott: We waited for other reasons beyond that. I mean, my wife had passed away, and so it was some time after that, but not very long. I knew the first night. She didn't but she claims she didn't. I did.

Judith Ashmann-Gerst: She was a teacher?

Michael Nott: She's a kindergarten teacher.

Judith Ashmann-Gerst: For many years and just retired recently?

Michael Nott: Just recently retired. I really admired what she did. I admire all teachers, but in particular somebody who can handle 35 five- and six-year-olds, a third of whom can't speak English, has got to be some kind of person in life.

Judith Ashmann-Gerst: She was working really hard. She would work at home every night putting together projects?

Michael Nott: Incredible hours. She was driven. She was Teacher of the Year in their district, and I can see why. If you went into her room it looked like an explosion of colors. I mean, there was almost visual overload in that room. I mean, she just did wonderful work, but she paid the price. She was up until all hours of the night doing it, and she didn't get home until a lot of times 6:00 or 6:30 and maybe sometimes later. She worked really hard. I was really glad for her to be able to retire.

Judith Ashmann-Gerst: But then she started serving as the contractor on the remodel of your home? *[laughing]*

Michael Nott: Yeah, *The Money Pit*—the movie with Tom Hanks and Shelley Long. Yeah, we had the money pit; we had our own version of it. We've remodeled for like a year and a half, it seemed like, and she did a great job though. It came out well. If I could just pay for it I'd be happy.

Judith Ashmann-Gerst: That's what the private judging is for. *[laughing]* I know you're a huge sports fan, and when you were still on this division, we often went to lunch as a group—you, me, Justice Mallano, and Justice Boren. And I had to make a point of reading the sports pages every morning if I wanted to be included in the conversation. *[laughing]*

Michael Nott: True, yes.

Judith Ashmann-Gerst: And also you and Justice Boren were absolute experts on movie trivia.

Michael Nott: And that's something we had a lot of fun doing together, is trying to remember some piece of minutiae. I know I'd sort of go into a shell and avoid all conversations until I could come up with it. My dad taught me a trick on that. He said, "You just put the face in your mind and start going through the alphabet."

Judith Ashmann-Gerst: Very good!

Michael Nott: And pretty soon he said, "You'll start excluding letters and you'll be down to a certain few letter, then it'll come to you."

Judith Ashmann-Gerst: *[Laughing]* That was good advice.

Michael Nott: Yes, Justice Boren I had a lot of fun with. He had that big trivia book in his chambers, and so at the end of the lunch hour if we hadn't figured it out we would run and get it.

Judith Ashmann-Gerst: You never told us that. *[laughing]* You guys cheated.

And you love SC football?

Michael Nott: USC football is in sort of this renaissance. I went through some lean years where they were just mediocre, and now Pete has done a great job on putting the program on track. And they're a lot of fun to watch.

Judith Ashmann-Gerst: You just got back from Notre Dame?

Michael Nott: Got back from Notre Dame, where I mentioned I saw your son Michael and your husband Bob, which was amazing. I had their cell-phone numbers, as I told you, and I called and Michael's didn't get service and Bob's wasn't answered. Then we were sort of standing at the north end of the stadium, and Chris and I drinking a Coke, and guess who walks right up? They were just headed our direction; would have run right over us if they hadn't seen us.

Judith Ashmann-Gerst: That's amazing, with all those people there.

Michael Nott: With 100,000 people.

Judith Ashmann-Gerst: You go to pretty much all the games, the home games? You travel sometimes?

Michael Nott: I don't travel too much. I've gone to some of the Arizona games. I really want to go up and see Cal. The new Stanford stadium I understand is nice too. One of these days I'll do that, but it's just sort of hard. My mom is in an assisted-care facility, but I hate to be gone too far away all the time from her. She does have some

needs sometimes. And then Aaron has sporting events and things on the weekends, basketball games and things.

Judith Ashmann-Gerst: Pretty soon you'll start taking him with you.

Michael Nott: He's been going now. I'm telling you, he likes it. He's a fan; he'll tell you the whole schedule for the rest of the year. And he's paying a lot of attention to it; he really likes it.

Judith Ashmann-Gerst: Now, let's talk about golf, your real passion. And you're an outstanding golfer too. I know; I've played with you.

(01:35:00)

Michael Nott: Not that outstanding, but I enjoy it. I've come to appreciate the game more and the event more instead of just worrying about scores all the time. As we get older, we lose friends by the wayside that are sometimes our age or even younger, and just all of a sudden, like dear Paul Boland just recently. I mean, what a shock and what a huge blow to the court to lose him; I mean, just virtually overnight. So with that in mind I've come out in the last years I think with a different attitude; instead of trying to be so competitive all the time I'm on the back nine somewhere, just to enjoy the ride, enjoy the flowers, enjoy the God-given beautiful day. And if you hit a bad shot, you hit a bad shot. You know, regroup and go on to the next and not slam a club down or do something like that.

Judith Ashmann-Gerst: You have taken some great trips and played golf and seen some wonderful places. You played when you went back to Notre Dame?

Michael Nott: Yes, we did. We played at Butler National, which is a world-class golf course, and two others. I made a trip to Scotland with Justice David Eagleson. Malcolm Lucas, the Chief Justice, was supposed to go with us and then he had a medical problem—a little cancer scare some time ago—and he couldn't go. But I went with Justice Eagleson and my former law partner, Jack Grisham.

We had just an incredible time. It was one of those trips, too, where you see how bad the weather is in Europe, in European golf sometimes. Every time we put it on the tee something good happened with the weather. If it was raining and the wind was blowing, the rain stopped. If it was just blowing, the wind stopped, and there was brilliant sunshine. We did that for 16 days, and it was just a trip I will never forget; it was just wonderful. And I've had some others like that too. You haven't been to Bandon Dunes yet?

Judith Ashmann-Gerst: I haven't, no.

Michael Nott: That's something . . . you have to carry your clubs or have a caddy, but it's like the courses in Ireland and in Scotland. You'd

love it. I mean, that was a thrilling place to play too. I really enjoyed that.

Judith Ashmann-Gerst: Well, I'm going up to Pebble Beach next week for the first time.

Michael Nott: You're going to play Spyglass and what else, Poppy Hill; boy, tough duty.

Judith Ashmann-Gerst: Someone's got to do it. *[laughing]* Okay, are there any other thoughts that come to mind that you want to share with anyone who might be watching this?

Michael Nott: I think, as I mentioned, I'm so happy that I decided to become a judge. I did a little prep for it, not realizing I was going to be a judge, when I did work on the State Bar Disciplinary Committee and was a primary hearing officer in a few disputes and/or disciplinary action.

From that, not only was it worthwhile to do from the standpoint of putting something back into the system, I found I could make a decision and stick with it and not worry myself to death that the next day, "Oh my god, did I do the right thing?"

So I found I could make a decision. So when the time came for this, it was sort of an easy transition, because I was still doing State Bar things way up to the point where I was appointed to the bench. So I would encourage people, if they have any idea, to get on some sort of a panel that has some form of hearing capacity where you have to make a decision that involves people's lives somehow. See if you can do that. Because I had several friends that were appointed and just hated it—because when they passed away or when they left the court, found stacks of cases and files that have never been decided simply because the people could not make a decision.

So I think it's important to know that you have the ability to do that and be happy about it and not give yourself an ulcer or a heart attack worrying over it; because that's what you have to do. Generally I didn't make—unless I was right in the midst of trial—I didn't make a decision that involved some horrendous amount of money or somebody's life or something unless I ran it by somebody else. I mentioned Art Jean is one, but there are a lot of other judges I respected. And sometimes I'd do that until I had a comfort level that what decision I made was going to stick. And I did that up here; as you know, sometimes there were cases when I would say, "I'm not exactly sure how this case could come out. Here is A and here is B, and tell me what you think."

And I still listen to a lot of opinions. I do that now in the private judging. Sometimes I will run a sticky point by some of the other neutrals that I know and trust, and I want to be comfortable when I make a decision I can live with it.

01:30:00

Judith Ashmann-Gerst: So, words of advice to someone who just became a judge would be, be open-minded and talk to your colleagues?

Michael Nott: Yes, and before going back to the other, on becoming a judge—you know, you can do a lot of pro tem work and in the small claims arena, a lot of temporary judging is available. Mediations are available to do mediations through the court, which will help skills and help you decide how to deal with people and how to make decisions, even though you're not ordering them to do something. I think it's something that people who are interested in being a judge should do. And as far as being a judge, absolutely is . . . I don't have that big an ego; I don't think I'm all that smart.

Judith Ashmann-Gerst: Check your ego at the door; don't get judge-itis. *[laughing]*

Michael Nott: Yes, run things by other people who have been through the mill before. So that's what I've done and what I continue to do.

Judith Ashmann-Gerst: Well, all I can tell you is that it was so enjoyable working with you. Thank you for all your years as a trial judge and on the Court of Appeal, and thank you for letting me interview you today.

Michael Nott: I feel the same way about you. You were a delight to work with, and one of my great regrets is that we still are not doing it.

Judith Ashmann-Gerst: Well, but we're going to stay friends.

Michael Nott: Sure, absolutely! Thank you.

Duration: 91 minutes
October 24, 2007