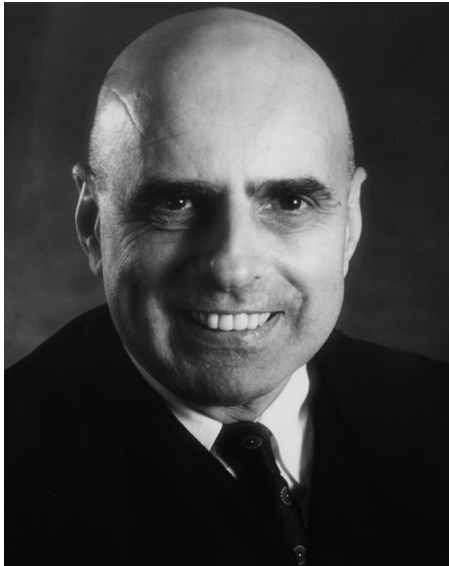


ORAL HISTORY

JUSTICE

ARMAND ARABIAN

ASSOCIATE JUSTICE
CALIFORNIA SUPREME COURT
1990-1996



ARMAND ARABIAN,
ASSOCIATE JUSTICE, CALIFORNIA
SUPREME COURT, 1990–1996

Oral History of
JUSTICE ARMAND ARABIAN

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*Preface to the Oral History of***JUSTICE ARMAND ARABIAN**

LAURA MCCREERY

In the spring of 2005, the idea began to take shape for a possible series of oral history interviews centered on Governor George Deukmejian's appointees to the California Supreme Court. Of his eight appointments in eight years — a great number by any measure — two, Justices Joyce Kennard and Marvin Baxter, were still serving on the court. Another two, Justices Marcus Kaufman and David Eagleson, had died in 2003 without having had the chance to add their spoken recollections to the archival record of California's judicial history.

But four of the justices appointed by Governor Deukmejian had retired from the bench and returned to private law practice in California: Chief Justice Malcolm Lucas and Associate Justices Armand Arabian, John Arguelles, and Edward Panelli. With scholarly guidance from Professor Harry N. Scheiber, Stefan A. Riesenfeld Professor of Law and History at Berkeley Law School, I designed the California Supreme Court Oral History Project with them in mind, reasoning that interviews with several justices who served in overlapping time periods might yield a richer historical record than interviews with one or more justices in isolation.

In addition, such a series of interviews might shed new light on the unusual period before, during, and after California's November 1986

statewide election, in which voters — at odds with the California Supreme Court's handling of death penalty appeals — declined to retain three sitting members: Chief Justice Rose Bird, Associate Justice Joseph Grodin, and Associate Justice Cruz Reynoso. (Although Chief Justice Bird recorded no oral history before her death in 1999, her two colleagues have been interviewed by others,¹ and Justice Grodin also authored a book, *In Pursuit of Justice*, about his experiences.)

The 1986 election and its aftermath changed dramatically the makeup of the court and its leadership. Not only did three new justices join the court in 1987, but all three retired within two to four years, allowing Governor Deukmejian the opportunity to replace them, too, before his second term expired.

Happily, all four of the retired justices did, in time, consent to participate in the California Supreme Court Oral History Project. Scholars, students, and the bench and bar owe a debt of gratitude to each of them, as they have immeasurably enriched the record of California's judiciary. It was an honor and a personal pleasure to explore in detail their lives and careers, a lengthy process that each justice bore with dedication, humor, and kindness.

My discussions with each interviewee naturally varied in scope and style, but I urged them all to recall in some depth their entire judicial careers, not only their time on the California Supreme Court. Without exception the justices revealed a wealth of experience in California's court system over time. All four had been trial judges, and each emphasized the importance of that experience to their work on the state's highest court. I spent substantial time exploring their personal stories as well, so that future researchers may better understand who they were and why they made certain choices in their lives and careers.

Each justice had been retired from the bench for at least ten years at the time of interview. Users of this material should know that, as interviewees, they had the disadvantage of chronological distance from events they discussed. But while the human memory is imperfect, all four justices demonstrated remarkable recall, even across so many years.

¹ Justice Grodin's oral history and a condensed version of Justice Reynoso's oral history were published in the 2008 and 2015 volumes (nos. 3 and 10), respectively, of *California Legal History*.

My third interviewee was Justice Arabian, whose law office in Van Nuys was the setting for our six meetings in the spring of 2007. Although he was much in demand by phone during our proceedings, in between calls Justice Arabian focused like a laser, putting his feet up and giving me a full, straightforward, smart, and savvy take on every subject I raised. We laughed often as he put his indelible stamp on key facets of judicial history. He made few changes to his transcript, generously leaving intact the great majority of our discussions.

This project could not have begun in 2005 or continued thereafter without the financial support of the California Supreme Court Historical Society. The officers and board members have been true partners in a shared historical effort, as have the attorneys statewide whose individual contributions make the Society's programs possible. I thank them all.

I also acknowledge a personal debt of gratitude to Professor Harry N. Scheiber. He alone, through graceful and effective leadership at crucial moments, made it possible to complete the project.

In turn, he and I jointly acknowledge Professors Bruce Cain and Jack Citrin, former director and current director, respectively, of UC Berkeley's Institute of Governmental Studies, the project's administrative home. The staffs of the IGS library and business office helped immensely at every phase of my research.

The justices themselves are, of course, the heart of the California Supreme Court Oral History Project. Any success achieved in the service of history accrues to them, while any errors are mine alone.

Institute of Governmental Studies
University of California, Berkeley
December 2008

Introduction to the Oral History of
JUSTICE ARMAND ARABIAN

ELLIS J. HORVITZ*

I first became acquainted with Armand Arabian in 1979, not in his role as a jurist, but as the author of an op-ed piece in the *Los Angeles Times* remembering the Armenian holocaust of 1915, in which the Turkish government killed more than a million Armenian men, women, and children. It was a powerful article and deeply personal, involving Armand's grandmother and father. Indeed, it is still timely today.

When I finally met Armand years later, he was already on the California Court of Appeal. Our paths crossed regularly in oral arguments, at bar functions, as co-panelists at MCLE programs, guest lecturing his class at Pepperdine Law School, and the like. We got to know each other pretty well.

On the bench, Armand is perhaps best remembered for his early, eloquent and persistent advocacy supporting women's rights, particularly the law relating to the credibility of rape victims and the standard of proof required to convict. In 1980, he conceived and created for the first time in the history of the law an entirely new sexual assault counselor-victim privilege, which protects a confidential communication from entering the courtroom.

* Founder of Horvitz & Levy; formerly a member of the Board of Directors of the California Supreme Court Historical Society.

Less well known is his day-in and day-out productivity — hundreds of opinions in the California Court of Appeal and more than a hundred in his six years as a member of the California Supreme Court. In his twenty-four years on the bench, Armand always delivered full measure. At my firm, we always regarded the panel of the Court of Appeal on which he served as one of the most active in oral argument, well prepared with lots of questions. Counsel were rarely left in the dark about the court's views.

By the same token, in personal and professional matters, Armand is direct and unambiguous. What you see and hear is what you get. He has strong opinions off the bench, and no hesitation in voicing them. Do you want to quarrel with him about politics? Law? Social issues? Public personalities? He enjoys a lively exchange.

When Armand retired from the bench in 1996, he told me he wouldn't have missed his judicial experience for anything in the world. At the same time, he said he had other things he wanted to do, starting immediately.

And indeed he did. Armand hit the ground running. He is into everything, at least those things that interest him. Since leaving the court, he has served as an arbitrator, legal counselor, expert witness, law professor, temporary trustee of The Albert Einstein Correspondence Trust, and more. He is active in politics and has been deeply involved with his church and with the governmental and judicial system in Armenia. To each of these activities, he brings seemingly endless energy and enthusiasm, as well as an openness to new situations and new people.

In a reflective mode, Armand expressed his gratitude and love for this country, which offered him opportunities his immigrant parents could not have imagined. But these opportunities ignited Armand's imagination and became his launching pad into an active, productive and joyous career. At the same time, he has never forgotten his roots. He remains intensely devoted to his family, his heritage, and his church. They are all beneficiaries of his loyalty and enormous energy. He still has much to do.

Encino, California
December 2007

Oral History of

JUSTICE ARMAND ARABIAN

EDITOR'S NOTE:

The oral history of California Supreme Court Associate Justice Armand Arabian (1934–2018) was conducted in 2007 by Laura McCreery of the Institute of Governmental Studies at UC Berkeley,² with funding from the California Supreme Court Historical Society. It is presented here in slightly condensed form, intended to focus on matters directly related to his life and the legal history of California. It has received minor copyediting for publication, including the addition of footnotes.

Justice Arabian directed that his oral history be sealed for two years following his death (which occurred on March 28, 2018). Permission to publish was requested from the Bancroft Library at UC Berkeley on March 18, 2020, and the Library was closed the following day by the statewide coronavirus closure. Preparations for this volume continued throughout the year, but permission was not received until October. As a result, the first portion (through page 564) appears in print, and the full version appears online at <https://www.cschs.org/publications/california-legal-history> and at <https://home.heinonline.org>.

— SELMA MOIDEL SMITH

² “An Imprint at Every Level: Twenty-Four Years of Judicial Service at the California Supreme Court and in California’s Municipal, Superior, and Appeals Courts, 1972–1996,” reprinted by permission of the Regents of the University of California.

MCCREERY: This is Laura McCreery. I'm with Justice Armand Arabian at his office in Van Nuys, California, on behalf of the California Supreme Court Oral History Project. Justice Arabian, could you state your date of birth and say a few words about where you were born?

ARABIAN: I was born on December 12th, 1934, on the East Side of New York City, to an immigrant family. I was the firstborn. They had survived the Turkish genocide, and my grandmother had been placed on a death march. She had two young boys with her, and they were taken out of their town of Chengeller, Turkey, where they were prosperous farmers. My grandfather was firing-squaded, along with some of the leaders in town.

Grandma had to leave one daughter at a roadside, took the two boys with her, and they got to the banks of the Euphrates River. The gendarme told her, "You are only going to swim once," so as I have called it, "Sophie's choice." She had to figure out which son she was going to save. She took the eldest, ten-year-old Ovannes, which means John. They swam across together, and little four-year-old Oskian was left on the other bank. He never saw his folks again, and we never knew whatever happened to him.

After they reached Baghdad, of all places, in safety, they went to Alexandria and then to Paris. In Paris, they had really reached what they would term safety, finally, and my dad entered into an Italian tailoring school. He received his *diplôme de coupeur* in tailoring at the I Napolitano School of Tailors on Rue Bergère, not far from the Folies. I visited that location, and the building is still up. He then came to Ellis Island with his mother and reached the safety of America.

MCCREERY: What year was that, do you know?

ARABIAN: I'm going to say — I can track it back down, but at the moment — 1915 is when the whole thing started, and then they went to Paris, and he went to the school and so forth. But I was born in '34. He was married in '32, and '32 is when he went back to Paris to this school for orphans, where he saw this beautiful young lady, Aghavníe, which means dove. He married her on the steps of the Le Raincy City Hall. I have visited there and met the present mayor. So I would say if that was '32, I'm going to say around '27 or '28, my best recollection, is when they hit Ellis Island. He married her, came to New York, and I was the firstborn on December the 12th, 1934.

MCCREERY: Was all of this family history discussed very much while you were growing up? When and how did you learn it?

ARABIAN: The answer is very much yes. My dad, although he had not had formal education, was an avid reader. He read everything he could lay his hands on, *National Geographic*, any Armenian publication, of which there were a few — extremely well read. The conversation was always in our home — I had two sisters after me, then a brother, and then another sister. Every one of us, as I have put it, was weaned on the mother's milk of genocide.

He had an oil painting that he produced, showing that moment where his little brother is on one side of the river and they're on the other, with his hands outstretched. So the pain of what the Turks did to us is still very much in our souls and in our hearts. Hrant Dink, the journalist, was just assassinated. Last October I had dinner with him, along with a few others, in Philadelphia, where we had the Armenian Bar Association meeting. He knew who I was. I didn't have a chance to sit down and discuss my genocidal history with him, but I think he may have known about it.

Then we brought him out here to the Armenian Collection, and listening to him I wondered how, as he was expressing pain, but in a hopeful way of maybe reconciliation down the line, how he could go back to Istanbul with a wife and three kids — he was fifty-two years old — and survive. Well, my fears proved to be accurate, and they gunned him down.

The other day I picked up a newspaper. It said after his arrest, four Turkish police officers were smiling in his presence, acting as if he were a hero, and they allegedly lost their jobs. This is a major coverup from Turkey, because they know the pain of what they did to us in 1915 and earlier has not gone away. I have appeared in Times Square, New York, a couple of times and told everybody what I thought about what they'd done in the city of my birth, of course. So that tragedy continues on.

We were all raised with the pain of the genocide, me probably more than any, because I was their first, and I had quite an opportunity to be told by my dad what had happened on the roadway. I have credited my interest in rape reform to the treatment that the Armenian women received at the hands of the Turks on that death march and how they unleashed the Kurds, who were like hired mercenaries, to do the dirtiest of the dirty work, and now they can't get along together. What goes around comes around.

So the pain in my heart is ever constant from what happened to my family, and I think it has come out of me on the bench in a nice way. I think that I have cared more for victims than maybe I would have without it. Certainly the rape reform work is tied to it, and I've acknowledged that.

MCCREERY: Thank you for mentioning that connection. Tell me a little bit more about the rest of your father's life and whether he ever returned to Europe.

ARABIAN: My father, who we always called a master tailor, when he landed in New York got into the garment business, which was fairly inundated by Italians and Jews. There were no Irish, to my knowledge, and those Armenians who knew how to get by in the tailoring trade were welcomed into it. So he worked for a firm on the East Side of New York, about three or four floors up in a building. The man's name was Stanley Christiani who owned that place. I would go up there and see the tailors and long rows of sewing machines.

After he got established, he wanted us out of the tenements of New York, because he didn't see that as the greatest place to raise a family. So he was finding a vacation spot forty miles out, towards the east of Long Island, forty miles from the city, right about in the middle there, called Wyandanch. It was named after an Indian chief of the Shinnecock Indian tribe, which still exists further out towards the Hamptons. He was renting a little cottage, and he just loved Wyandanch. It had a railway station which took you to New York in less than an hour.

So we rented, and then he bought a little place, and then he physically moved that first home about a half a mile to a property that he purchased. That was the house that he continued to increase the size of until the original became a rental, and the rest of the place was where he was raising the family. We had about, between the property itself in front and behind, probably about an acre of ground.

That's where we were raised, on Long Island, in a wonderful little town. It had a great grammar school, and once we got through grammar school there was no high school, so they had to bus us — we were early bus people — seven miles to the south to Lindenhurst, where they had a high school. We were just very warmly welcomed by the new crowd. They had grown up

together, and here's this influx of a few people coming from Wyandanch. We had an outstanding four-year experience there and then went on to college.

MCCREERY: Did either of your parents ever return to Europe in their lifetimes?

ARABIAN: My dad went a number of times back. The first time that I told you about is when he met my mother outside Paris. But I would say he probably went back, I'm going to guess, at least six times, because he had some cousins and people back there, and he enjoyed going back to Paris.

He also went to Armenia, brought a few of his family over to America. There are a few folks that are around here from those visits, as he never forgot that part of his life. My mom never went back.

MCCREERY: Tell me a little bit more about her background up until he met her.

ARABIAN: She had a brother named Setrak. I found out about this recently, because one of her classmates of that childish little orphanage is still alive in Connecticut, and she communicates with me. They were like sisters, the two little kids. Mom was orphaned by the Turks in Ordu and picked up by these charitable folks who were scooping up Armenian orphans. They brought her to Istanbul, and from Istanbul they were going to create Turkish citizens out of these young kids, who they knew had no family.

Incredibly, in the middle of night, a young Armenian hero, Arshag — it means Archie around here — shows up, and there were about eight or ten of these kids being housed in a particular location of an Armenian charitable group. He sneaks them out with their toys and their shirt on or dress on their back and puts them into a coal tender out of the harbor in Istanbul.

Because there were so many orphans that were trying to be placed somewhere, the only place he found available was in Corfu, Greece. The British Organization for the Protection of Armenian Orphans was the name of this, and it existed for a number of years, and they had a wonderful facility. Those kids were welcomed there.

The boys were kept separate from the girls, and so my mom never saw her brother after that, I don't think. Then as years went by, they moved them to Marseilles, into French protection, and then into Le Raincy. That

orphanage is now a school run by the Armenian General Benevolent Union, AGBU. It's like the B'nai B'rith.

I visited this school. I had lunch where my mom ate and gave them a donation a few years ago. That's where she was kept until Dad shows up, and the reason he shows up, his uncle was in charge of buying the provisions for these young girl orphans. She's graduating from there, and he takes her to the city hall. He marries her and brings her to America.

She was an absolutely beautiful person, physically and emotionally, was like a big sister in a way, very supportive. She died four years ago on Christmas Day, sang Happy Birthday on the telephone to me and checked out in Ohio. But she lived long enough to see me, and she's in the pictures of Malcolm Lucas swearing me in to the Supreme Court. So coming from where she did, to watch that, was something else.

MCCREERY: You mentioned how much you enjoyed growing up on Long Island, and I wonder if you could just say a bit more about what it was like there at that time. You were in the Depression and then the war years.

ARABIAN: It was a beautiful place to be as a young person. We had a Boy Scout troop there, which took us under their wing at the age of twelve. Summers we'd go to Camp Baiting Hollow on the north shore of Long Island off the Sound, and we'd spend a week there.

Church was the Catholic church, which was right across the street from the grammar school, because the nearest Armenian church was forty miles away in New York. That was Christmas, Easter, and a couple of times a year, although we'd been very close to it when we lived in New York City before the move.

Beautiful weather. You had the snow and all the good stuff. Friendships, it was like a U.N. My best friends were a Black, a Jew, an Italian, and a couple of German boys. It was, you know, if somebody was slandered, we all were slandered. We grew up like that. You called somebody some kind of a dirty name, you were calling it to me.

MCCREERY: In this very diverse community, in the terms we use today.

ARABIAN: In a little tiny town, that's how it was, and it was just beautiful growing up there. The Hamptons were not well known at the time. On rare occasions you might venture out there as we got older. We would take a car and go out to Montauk Point or Orient Point, which is the northern point,

much less known. But Bridgehampton, South Hampton, the Hamptons were just so far out that nobody really paid much attention to them. Today it's chi-chi-ville. [Laughter] So it was a nice place to grow up, very clean living.

MCCREERY: What sort of child were you?

ARABIAN: I was very athletic. I liked to play baseball, soccer, football somewhat, basketball a little bit. I liked to read. So it was this small group of friends, very interested in school activities, sports and so forth, and it was just a collegial atmosphere in which to raise up, and that's really what it was about. We went though the eighth grade together, and then nine, ten, eleven, twelve was in Lindenhurst, where we had a whole additional collection of folks to have some fun with.

Growing up on Long Island was an absolute joy. I can't think of a bad moment, with the exception of a couple of hurricanes that came up and knocked the place around, and they still have those.

MCCREERY: Did your interests change much in high school, or your activities?

ARABIAN: I was captain of my wrestling team, and then I had a varsity letter at Boston University wrestling later on. I just liked sports a lot. Academically, I was probably a B student most of the way and never good in math. I loved history and English, and I was one of the leaders in the creative writing class. I used to love to articulate, and that, I never realized, would come into play later on.

MCCREERY: As I'm sure it did very much indeed, in your legal career.

ARABIAN: Yes. Really, I'm looking back at that and I'm going, isn't that something? In my high school graduation book the teacher writes, "To my best creator," or something like that, because she just spotted something.

We had our fiftieth reunion a couple of years ago, and I was asked to say something to the crowd because I had gone to the Supreme Court. Most of them led more mundane lives, and I praised her for mine. I said, "Louise Samsel lives in my opinions," because she was the one who lit that spark for me and said, "Listen. You've got a talent for this kind of thing." No one had ever said that to me.

MCCREERY: I wonder, which other adults were influential to you as a young man?

ARABIAN: Strange as it sounds, there was an insurance person who had an office in Wyandanch, named Harold Isham, I'll never forget it, sold insurance policies. He would come to your house and go over the policies with your family, and was like a doctor making a house call. But what I liked about him was he always drove a Cadillac, and he was always dressed in a suit and tie. He just looked like somebody that you'd want to emulate. He was a successful — I didn't know any lawyers or any judges.

So when I went to Boston University College of Business Administration, I was an insurance major. Most places don't even have that, but we had one there. And it was Harold Isham who was the spark in my eye at that time. I said, "You know, this is not a bad way to go. This guy has got a great life." In fact, I'll show you a plaque later on some of the women lawyers put together for me as a result of this story. But he was not what I would say a direct influence by speaking to me or anything, but just a role model by way of what he appeared to look like and how he lived a life. That was one of those things.

Then we had a little input from a fellow named Robert Seklemian. He was in charge of real estate for RCA. The head of it now escapes my memory, but whoever the head of RCA was, and he was well known, this fellow was his real-estate guy. He lived on Long Island, not far from us. Being Armenian — he had a non-Armenian wife — they were very close to my father and family.

So when it came time to pick a school to go to, my dad went to him and he said, "Bob, Armand's seventeen, going to go to school, wants to go into business school. Where would you recommend?" He checked it out and he came back and said, "Boston University." It was only a four-hour drive. I'd never been to Boston, and at the age of seventeen I was on a highway heading north, and that's what started the Boston adventure. But we had a lot of trust, and I had a very high regard for him as a role model of the corporate world, so he was one like that.

I think my Boy Scout leaders were wonderful in: "trustworthy, loyal, helpful, friendly, courteous, kind, obedient, cheerful, thrifty, brave, clean, and reverent," okay? When you learn that from somebody who you look up to, you don't forget it. So being a Boy Scout was quite an influence in my life. I'm getting an award for civic contributions. Where would you learn that quicker than in the Boy Scout Handbook, which I still have? It says,

“Do a good turn daily.” See a little old lady and there’s a water puddle there, put something down so she won’t get her feet wet. It came from that sort of thing. So if you had a hero’s book, it was the Boy Scout manual for me.

MCCREERY: Before we leave your childhood, just tell me a little bit more about your life at home. I’m wondering, for example, were you involved in your father’s tailoring business very much?

ARABIAN: Very little; on occasion. He had a little store in Wyandanch for a while, and while he was doing other things, I would come home from school and go there and keep it open till six o’clock or whatever it was, but beyond that, no.

The house was a very lovely home, because it was about a block and a half from the railroad station. It was a mile away from the grammar school, so you’d have to walk to school. I had the two sisters that came up after me. They’re both college graduates and extremely accomplished in things that they did.

My grandma was the matriarch of the family. She ran the place. If Mom was working, and at times she was in the tailoring business also, Grandma fed us and watched over us till everybody got home at night. So it was one of those families, very close-knit, everybody cared for one another. They were all into scholastic or athletic things. It was a very lovely upbringing.

MCCREERY: What language did you speak at home?

ARABIAN: I started out in New York City speaking nothing but Armenian. When I went to kindergarten, I didn’t know ABC or one, two, three, but I knew the equivalent in Armenian. One day my mom was walking me to school, Public School 63, it’s still there. It’s right across the street from the most famous police station maybe in the world, because it’s the one *N.Y.P.D. Blue* would show you. That’s across the street from P.S. 63, and there were police cars all over the place.

So as we’re walking the few blocks to go there, I look up at the side of this big, tall, brick building and I say, “Mom, Twenty Mule Team Borax,” and she almost collapsed. They had this big sign up there with the mules and the soapsuds. That day she knew her son was doing English pretty well. By the third grade in Wyandanch, I was winning every spelling bee. There was nobody who could beat me in spelling, and I don’t care what the words were.

At the end of the line as you got eliminated, I'd be the one standing. It just came to me. I just enjoyed it. So that's what life was like.

MCCREERY: What about your sisters and your brother? Did they also grow up speaking Armenian?

ARABIAN: Every one of them. Every one of them.

MCCREERY: And learning English in school?

ARABIAN: Yes, because Grandma raised everybody, and you were going to learn Armenian, because she didn't speak English. So if you wanted to eat, you'd better know how to ask for it. [Laughter]

MCCREERY: You mentioned the family was close to the Armenian church back in New York City, and then had to go to the Catholic church on Long Island. What was the role of religion, though, in your upbringing?

ARABIAN: Very little. In New York my grandmother was part of the Ladies' Society, as they call it. She would cook cakes and put frosting on them and things like that. That church is still around, on Second Avenue and 27th Street, St. Illuminator's church. It's still there. I was baptized there. They had a downstairs. It looked very much like the setting in one of the *Godfather* movies, "Mama morte!" when he gets the letter. That *Godfather* scene could have been filmed on the stage where he played the mandolin and she did folk dancing. That was part of the entertainment of that inside group, so they were very involved with that church.

But when you go forty miles away, and you've got a family to raise and all, are you going to run down an eighty-mile run to New York on Sundays? That's just not going to happen. So the religious experience really went south. If there was Christmastime and things like that, mostly Christmas, otherwise we'd be at the Catholic church paying our respects to God.

MCCREERY: What did your parents tell you, or communicate, about the idea of a career or what sort of life they wanted for you and your sisters and brother?

ARABIAN: That's a great question. As I'm growing up, I had conversations with my father about that. He would tell me two things that I never forgot. One is, don't cross the line in your personal conduct. In other words, there's a line here and a line here, and don't go above or beyond that line, because you're going to be in trouble. Don't step over that line. It was one of his philosophical expressions.

The second one was, whatever you become, if you're proud of yourself, I will be proud of you. He never said, "You're going to be a lawyer, a doctor, an Indian chief," or anything else. He never said, by a label, never suggested what that was going to be. But the rule was, if you are happy and proud of yourself, I will be, too.

And that line, as I told you in this insurance situation, was in my mind when I got to select my fraternity, Sigma Phi Epsilon. It's one of the larger ones in the country, and I became president of the fraternity as I went along. One of the folks that you see in the tape I showed you is Ernest Tsouros. And what does he tell me? He was my big brother. We were rooming together, just off the Charles River.

He was a year ahead, so I said, "Ernie, what are you going to do?" He says, "You know, I think I'm going to become a lawyer." It's the first time I gave that some kind of thought, because I really admired him, and we're still in contact.

I said, "Ernie, a lawyer?" He said, "Yes." He said, "I've been thinking about it. I think that would be a great way to go." The spark kind of got into my head. Strangely enough, I become a lawyer, and he goes into insurance. [Laughter] He retired after thirty years. That's what happened, a complete flip around. He knew I was going for insurance.

MCCREERY: But he planted the seed in you, didn't he, of a law career?

ARABIAN: He did. He did. Later on, as I'm a lawyer, I went back to Boston for some business, but I was there when they were swearing in a Greek to the Supreme Judicial Court. He was my criminal law professor, Paul Liacos, a bald-headed, thin guy, and smart as could be. As I'm going into the court, down the hallway to where the swearing-in session is going to take place — I had never been there before in my life — I'm going down this long, paneled hallway, and I'm looking at the photographs of the justices, from the early days right up till now, such as we do in California.

As I'm walking down this hallway, I'm by myself, I'm looking at Justice A, B, C, D, whoever it was, and something inside of me said, oh my God, wouldn't it be something if you tried to become a judge. So this is probably around, I'm going to guess '67, '68, somewhere in there, because I became a judge in '72, and I started trying with applications in around 1970, so I know it was slightly before that.

But that's where the spark hit me, when I saw the elegance and the prominence and the tradition that was being created by service like that. I then said to myself there were two kinds of books to be considered. One is a passbook with your money account in it, which will be remembered for about two days after you pass away, because it'll be depleted and they'll go, "Well, gee, that was nice. Armand Arabian left x behind."

Or more importantly, the casebook, where your name will live forever. They'll read back on some opinion you wrote, or some act that you took, and that lives on further than any passbook could ever live. So that was sort of the choice I made, because to become a judge was taking a pay cut in those days, for me. I was driving a Cadillac with a phone in it, and a Municipal Court judge was earning \$32,500 a year, okay? Now, in comparison to what I started out with as a deputy district attorney was \$500 a month, so you got two paychecks of \$200 apiece.

But I was doing rather well as a sole practitioner, and I'm saying to myself, how am I going to do that? I was probably making in excess of \$100,000 in those days, and it's like a two-thirds pay cut. But I thought it over, and I said I think that's the way to go. I think somebody's pointing you in that direction; it's coming from inside.

MCCREERY: Okay. I know you served in the U.S. Army before you went to law school, so maybe we could talk about that for a few minutes.

ARABIAN: I went to summer camp in the senior year of undergrad, and then graduated, as I told you, as a distinguished military graduate. So what happens, the West Point infantry class of 1956 was going to go to Fort Benning, Georgia, for their basic Infantry Officers' School. They needed about twenty or twenty-five other people to fill out the class that they were going to comprise, so they were looking at DMGs, distinguished military graduates, to fill up, because they figured those are the ones that would be able to cope best with the West Point types, and so I became one of those.

You'll see on the wall over there a picture of me and Stormin' Norman Schwarzkopf. He was a classmate for three months with me. We didn't see each other after 20 December '56 until a couple of years ago. That's in Beverly Hills, where that photograph was taken. The first thing he does — my nickname was Army. I introduced my wife Nancy to him. He hasn't laid eyes on me in all those years. The first thing he says, and this is the

band-of-brothers concept, “Nancy, Army was chasing all the single broads at Benning.” [Laughter] We took this picture together, and I put that in the caption of it, “Arabian said to General Schwarzkopf, ‘We are living proof that old soldiers never die, they don’t even fade away.’ ” [Laughter]

MCCREERY: After all those years.

ARABIAN: Funny? I mean, funny! You lined up alphabetically, so I was in the A side of it, he was way down the line. I used to see him. He was a real quiet guy then. Several of them got to be generals out of that class, and unfortunately, a few are on the stone wall up there in Washington who were wonderful people that got hit. But Stormin’ Norman went to the top of the top. He did a heck of a job, so I’m proud of him.

MCCREERY: Talk about for a moment your ROTC preparation and how that fed into this.

ARABIAN: They would pay you. I forget, it was like a thirty-dollar check, I can’t remember now. It was some small amount of money to be a member of ROTC. Then you’d have weekly trainings and classes. It was part of your educational process. Then you’d go to Fort Bragg, North Carolina, for six weeks, which was like going to prison. They really worked you over, and then they tried to talk you into a career in the military. Most people felt like that’s not going to happen to me. So we did the six weeks at summer camp, and then it was graduation time.

It was a learning experience. You had wonderful sergeants and colonels or whoever was in charge of you down there, and you got commissioned. They put the second lieutenant pin on you, and off you went. Well, in my case I went right down to Benning and met up with Stormin’ Norman and his class. So we did that and then came home on leave for Christmastime. Then you got assigned someplace, and I was assigned right back to Fort Benning as part of the cadre there, in the infantry training group at the base. I was executive officer and company commander for a short time. I did my time.

Meanwhile, I had gotten that spark from Ernie about going to law school, and they didn’t have an LSAT in those days. You just applied. About six months after I was in the military I got accepted to the Class of ’58, so I knew where I was going to go. I started defending court martials, people accused, to get some realistic training. I had quite an experience doing that.

MCCREERY: How did that work exactly?

ARABIAN: They appoint officers — you're up against a lawyer, the prosecutor there, but they don't have the other side, like a public defender. You're the public defender, in effect, so you go out, you investigate. They'll assign someone, a sergeant or somebody with you, and then you go in to the hearing and defend.

MCCREERY: How did you like that?

ARABIAN: I loved it. I had some great experiences there, and I've got some letters from mothers of folks that I acquitted, and it was interesting. Then, of course, I went to Airborne School. I went to Jumpmaster School, these are the guys that see you out the door. Then between first and second year in law school, I went back for the elite Pathfinder course, and I took that. Those are the people that jump in, like on D-Day they'd go in first, set up the drop zone, flares, lights, smoke, whatever, and then the aircraft see it and that's where they drop the troopers.

MCCREERY: What started your interest in jumping?

ARABIAN: At times they'd call me the maverick. I didn't know that that was always appropriate, but it's one of those things where it's almost an extension of being a Boy Scout. You're going to do something good, you're going to do something different, and to me the idea of wearing a jump wing was it. I said, if anyone's going to test your mettle, going out that door is going to be one of the first things they're going to think about twice before they mess with you, because everybody won't go out that door. So I just loved Airborne School. I just loved it.

Then I've done, in subsequent years, parachute jumps with Israelis in the Negev. I've done Dominican Republic, Taiwan, and the Commie-Chi in Beijing. I've done about four countries. I just stopped; I think the last one was '93, somewhere in there. But it's exciting, it's really exciting to step up into that door and go out. You talk about getting a charge. That really is one.

MCCREERY: That's a very special preparation, isn't it, when you're in the army?

ARABIAN: It's all volunteer. If you don't volunteer, you don't go to Airborne School, so that's what happened.

MCCREERY: Other than that, it was a fairly low-key time to be serving in the armed services?

ARABIAN: It was. You were in between wars. I wanted to fight someone somewhere, but it never happened on my watch. I did my two years, and it was between A and between B, and my buddies in B went down and got killed in Vietnam. Korea had ended, and we were in between. I don't say I regret it, but I, in a sense, was looking forward to it, I really was. That's part of it. When they took out the World Trade Center, I was ready to get my M1 and go back out again. I was just outraged. So the soldier in me is never going to go away.

MCCREERY: How do you think that army experience changed you, if at all?

ARABIAN: You had to get up and be a leader at different times. As executive officer of advanced officers, you're ordering whoever the men are under your jurisdiction. You have to get along with senior officers, because those are the ones you are in charge of as executive officer, of making sure everything's okay with them. Their wife calls up, they're in the field, someone had a baby, and all the things that go on in their lives. So you were almost in a supervisory capacity over a couple of hundred senior people, which was a real responsibility. If they loved you at the end of the day, then you know you did something good, and they did. They'd give me a desk set, inscribed "With Appreciation." So that was quite an experience.

One of them was Major Louis Millet, who later lost his son in one of these crash-commando acts, and he was a Medal of Honor winner. He was a dear friend of mine. People like that. Where do you get close to a Medal of Honor winner who looks at you and talks to you like you're his young son. I mean, it was just beautiful. It was quite an experience.

But other than that, it was a fun time. We were bachelors living in a BOQ, Bachelor Officer Quarters, and had a bunch of good friends to hang out with. Dining in the officers' club and having a few beers, and going into Columbus, Georgia, which was the hangout down there, dated a few nice gals along the way, and two years came and went.

MCCREERY: So you were discharged as a first lieutenant?

ARABIAN: As a first lieutenant. After eighteen months I was promoted.

MCCREERY: Thank you. So you were all set, then, to go back to Boston U. for law school?

ARABIAN: Ready to go.

MCCREERY: Did you have particular interests in the law at the outset?

ARABIAN: Because of my experience in the military, I thought criminal law was up my alley. I saw myself as a prosecutor kind of guy, going on the right side of the coin. When I went back, back to the same Miles Standish dormitory where I started out my freshman year, I was now a floor counselor, with a half-a-floor jurisdiction over wise guys from New York and anywhere else they came from. They were going to mess with the wrong guy, because they were ready to mess with you, bringing booze in or whatever.

MCCREERY: You had to go to law school, too. What about course work?

ARABIAN: Law school was a blast. You had to take the MTA down to near the statehouse, where the old law school was, 11 Ashburton Place. It was right around the corner from the state capitol. Oliver Wendell Holmes, in the late 1800s, had laid the cornerstone for the school. It was an older building, but it was just really done well.

F. Lee Bailey was a year ahead of me, and Barbara Jordan of Texas was two years ahead of me, just two that came from there. [William] Cohen of Maine, who was secretary of defense, he came a little afterwards, so we had some players there.

You'd go down to the school in the morning, from nine to twelve normally, and then take your books and either go to the library, or in my case, I used to like to come back up to the main campus to the School of Theology. Now, this is the place where Martin Luther King got his diploma. The beautiful thing about it was they had these little carrels to sit in, and because they're going to be reverends, they are extremely quiet. They don't go shooting their mouth off like they would up at the law school library. [Laughter] It was a quiet place to study, so I normally would go there and study, or go to my room if I wanted to do that.

Then I ran for class president. I won that. I ran for permanent class president. I won that. I became the first chair of the medico-legal committee of the American Law Student Association and wrote an article in one of their magazines on one of those subjects.³ I went to one of the national ABA meetings where I took part in one of those sessions. I think it was in St. Louis, Missouri, if I remember right.

³ Armand Arabian, "Some Basic Facts about Medico-Legal Photography," *Student Lawyer Journal* 6, no. 4 (April 1961): 20–24.

So law school was very active. I was studying, I was dating, I was leading, I was having a good time in the city. It was a wonderful three years. After that, in Easter break of senior year I came out here. My aunt, who was the little deserted girl who had been picked up by some people back there in the genocide, she had married in New York, Brooklyn.

MCCREERY: This is your aunt on which side?

ARABIAN: My father's sister. Instead of grandma having the two boys with her, she would have had her girl but she was so small they left her. She was living in Woodland Hills, and she was very close to me before they moved out west. So I came to visit. I'd never been here before. I went up to see Mel Belli's office in San Francisco. It was Belli, Ashe & Gerry, and Ashe was a B.U. law grad. I went up to see the office, and I just fell in love with this place. No one has a lawyer. They don't know anything about having an attorney. It was one of those things. So I decided I'm coming out here, and that was the whole — I would have loved to have stayed in Boston, because I loved Boston. New York, I don't think I would have hung out there, as much as I think it's a great city.

MCCREERY: Before we get you out of law school, let me ask you to talk a little bit about the faculty there.

ARABIAN: The faculty there, as I told you, one went to the Supreme Judicial Court, Paul Liacos. Another one taught contracts. He later became the dean of the school for a number of years. They had some almost starchy, bow-tied, great teachers there along the way.

Dean Elwood Hetrick was the dean of the school at that time. William Schwartz was the contracts professor who later became the dean for a number of years. He's still active, I think, at Yeshiva University in New York. It was like that. We had some terrific people, and they poured it out to you. It was just a great school to go to. It's still a great school.

MCCREERY: Did you maintain your interest in criminal work?

ARABIAN: No. Well, you can't do that. I took criminal law, of course, and evidence and all those good things, but after that, when I came out here the interest was alive, because I asked my aunt, I said, "I'd like to visit with the district attorney's office." She said, "We know this Armenian gal, Lily Balian, who works for Bill McKesson," who was the D.A. As a result of

that, I wind up interviewing, an informal interview, with a fellow named Davey Feldman, who was out of Brooklyn. He and I just hit it off, because we're two eastern types talking about the law. After I left that conversation of about a half an hour, I was convinced that when I got ready to get a job out here I was going to apply for the D.A.'s office, and that's what happened.

MCCREERY: Did you have to do anything else to get that job?

ARABIAN: No. You interviewed for the public defender, the D.A., and the county counsel at the same time. There was a representative of every one of those in a room, and then you would come in. I had no interest in the county counsel's office. The public defender I could have done in a New York second. But I wanted that shiny badge of being a D.A. out there, and Ted Sten, who was the head of the Long Beach office, was a cutthroat kind of a character. This guy was tough. Don't mess with Ted Sten. He ran Long Beach with an iron hand.

Well, my luck, he's in the room that day, so he starts in on me. I guess he saw the spark and he says, "Well, Mr. Arabian, between prosecuting and defending, does one side of the badge seem shinier than the other?" [Laughter] That's one question I remember, so I had to answer that one. In effect, I told him I liked that one side a little better.

So then he starts in on me, and this is before the days of discovery. He says, "Let me ask you this. Suppose you are a D.A. and you have some information that's helpful to the other side, and they don't know about it. What do you do about it? Do you turn it over? Do you volunteer it?" even though there was no responsibility for that.

And so I try to answer it the best way I know under the circumstances at the time, and I'm not a D.A. yet. I don't know exactly how to handle that. He keeps on pushing me, keeps on pushing, turning the screws down tighter. Finally, when he's really got me down, there's nothing left to be said, I looked at him and I said, "Sir, the only way I can additionally answer your question is to tell you from the days of our Anglo-Saxon jurisprudential history, that the crown does not win or lose a case, it merely sees that justice is done." And with that, the gas went out of him, and I was a D.A. in a couple of days. [Laughter]

MCCREERY: My gracious. How did you come up with that in that circumstance?

ARABIAN: He kept pushing it, and I figured, well, there's nothing left to be said. If you don't believe in honesty, truth, and justice, then there's something wrong here, so let me tell it to you the way I know it, okay, from law school. So that's what happened. I was sworn in right away, a group of four of us. But the valley only had, I think, 550,000 people, and right now they're pushing about two million. So four people, of which three were really actually going to court; we could handle it. We had a handful of judges there. So it was a very collegial operation.

The judges couldn't have been nicer to us, and they were lifelong friends. It was a great one year to spend like that, and then I decided, well, I've had enough of this. I think I'll strike out on my own. You heard Frank Brown say he picked me up, took me up to his office.

MCCREERY: What really caused you to leave the D.A.'s office and go into private practice?

ARABIAN: There was this ex-cop named Frank Brown. He was a defense lawyer, and I would run into him at the courthouse, and I just liked something about him. He's a big guy, had a couple of boys, and I guess he was divorced. I don't remember the whole story there. But he and I just hit it off. His office was over here near the fire station, and he was going to move over to Vanowen Street. He said, "We have an extra room over there." He says, "If you want to leave, we'll cut you out a nice deal, and my secretary will do your work if necessary." That's what started it.

So my wife went to work for a law firm downtown, to help support things, and I went into the private practice. And lo and behold, you say, if you hang your shingle out, who's going to come to you? Well, the first people who came were police types who knew about me and who liked me, and if there was a divorce or an accident or whatever —.

MCCREERY: But you did have quite a reputation already, after being only out here for a year or something.

ARABIAN: I know, but they liked me. They knew in that one year, they just liked me and I liked them, and they were good people.

MCCREERY: It was a good match?

ARABIAN: Yes. So that's how it started, and he mentored me. If there were two defendants in a case and you couldn't do both of them, he'd see to it

that I got the second guy, and we'd go down to the courthouse together. As much as I have tried to mentor people, he was my one and only mentor. He really took me under his wing. So we did that for a while, and then I decided I'm going to do for myself, and I moved up to Gilmore Street over here in a little corner office and had my own secretary.

Then from there, this building was available. I was walking by it one day on the way from court and I saw a "For Sale" sign. I said, oh, my gosh. And there was no such thing as a civic center here. We had, way back when, a little two-story court. Through the years, of course, we now have two major Superior Courts, a police station, a library, a federal building, a state building. It's all grown up around here.

So I made an offer on the building. I borrowed some funds from my dad. In terms of what this building cost in those days, you couldn't buy a car for it. Then I put the hallway down the one side of it and cut out this area first. It had double doors where we're seated. The secretary was here, and then I cut out some other offices down the hallway. I had a wonderful practice here until 1972, when the efforts that started in 1970 came through.

William French Smith, who was Governor Reagan's lawyer, called me up, and that was the predicate to getting the final call. After I got that phone call, I called one of the local judges and I said, "I got a call from William French Smith." He says, "You did?" I said, "Yes. What's the big deal?" He says, "You're going to be a judge by tomorrow. Don't go out to lunch." [Laughter]

Sure as can be, at 12:20 I'm sitting over here at the desk. The phone rings, and it's Ned Hutchinson, who was the appointments secretary — passed away playing tennis one morning later on — and said, "Governor Reagan would like to know if you'd like to become a member of the Municipal Court." I said, "I certainly would." He says, "You're on."

But the William French Smith thing was really funny. He sent me a beautiful letter later on. He starts talking to me about one thing or another, and we get chatting and he says, "How do you look at this process of putting in an appointment application?"

I said, "Mr. Smith, recently I got a phone call from George Deukmejian, and I asked him how it looked, and he answered me with two words, 'Cautiously optimistic.' I said, 'What the hell does that mean?' "

He started to roar at the other end. He says, “You’ve got a point there. What does that mean?” Cautiously optimistic. I never used that expression later on in my life. But when we got through — he talked to me for about twenty minutes — and he said, “You sound like a great guy. I’m going to recommend favorably for you. Good luck.” The next day — I didn’t know it, but that’s how it went. He would call you; you got past his phone call, you were in.

MCCREERY: Did you run across any death cases in your private practice?

ARABIAN: Yes, I represented a couple along the way. I didn’t have to go to trial, because I disposed of them short of a death situation. But I was a part of three executions in the Supreme Court.

MCCREERY: I realize that after you became a judge and had a different role in that whole process, your own views may have come into play in a different way. But can I ask, when you were just a practicing attorney coming up against this issue, may I ask how you viewed it at that time?

ARABIAN: I’m a true believer in the death penalty, always have been, and am to this minute. I was the only member of the court in its composition, during the timeframe we’re dealing with, that had, to my knowledge, ever represented a death-penalty defendant.

So before it passed the reasonable evidence test, or beyond a reasonable doubt test, or anything else, they’d have to go through the Arabian test, because I’d have to be a firm believer that this all happened the way it was said to happen, and this was a deserving person. So when I signed off on one of those, from my heart I knew that somebody had to die.

MCCREERY: Did you find that it was useful to have been a trial lawyer, facing that issue at a different level? How important is that to a judge?

ARABIAN: Very, very, very much so. I’ll tell you, when you’re sitting next to a defendant in a case like that, and the prosecutor says to the witness, “Do you see the defendant here in the courtroom?” and that finger comes right by you and lands on the accused, that’s a heavy moment, because you’re in deep soup now. You’ve got a very serious responsibility, and you’re going to go forward.

That’s why a lot of people won’t take death cases, because they don’t want that heat on them, especially at the appellate level. That’s why it’s two

or three years before you see a lawyer on a death case, and the shame of our system is that the death penalty is basically nonexistent in California, even though we have it, and on occasion somebody gets it.

But when you have hundreds of people on death row, they're dying of old age.

They're not dying of representation and going down to the execution room.

One of the reasons is with all this pro bono business that takes place, these lawyers don't want the responsibility of them having, as competent as they may be, to go in and say, "Oh, my gosh. I did my best, and they fried him last night." They don't want that. And that's a personal choice. You can't force anyone.

MCCREERY: A lot of people draw a distinction about the fact that in the death cases, the penalty itself is so serious compared to other penalties.

ARABIAN: Well, it is. But it goes to the Supreme Court directly. We have direct jurisdiction over it, and you've got all kinds of people looking at it. Hopefully you've had good lawyers along the way pointing the way. But it had to go through the Arabian test. It was one of those. I took a special interest in making sure in my own heart and mind, whether it was my case or somebody else's.

MCCREERY: You seem to have a pretty clear view that you developed early and haven't changed. I can guess, but do you know why you felt so strongly that you were a believer in the death penalty?

ARABIAN: Yes. It's a very personal view, and I think it's a realistic view. If I am the anticipated transgressor of someone else's life and liberty. Someplace, if I have half a brain, I ask myself, "If I commit this act of homicide, do I want my own life taken away by the process?" And to me, if there is a chilling answer to that that says yes, that's the one thing. You want to live as long as you can, and you don't want to cut your own throat by cutting somebody else's throat.

That to me is a deterrent, if you have a half a brain. That, in my view, justifies the existence of it. If it will prevent one person from killing somebody else, because they don't want to die at the end of the day, it's worth it. That's how I look at that.

All the defenses — they should all be available to you. But at the end of the day, is it justified for someone who goes down to San Diego, steals a

kid's car, eats his hamburger, and says, "Die like a man." — Robert Alton Harris? I say, "You go." And he went on my watch, the first one in twenty-five years. I'm proud to have been part of the court at that time.

MCCREERY: I wonder, among judges who have not themselves been trial lawyers and run across this, how important is it to have some personal experience with those kinds of trials? Can you generalize or not?

ARABIAN: I think it's an asset, but it's not necessarily a liability. The law is the law, the facts are the facts. You don't have to get emotional about it. You do your job, whether you were there and smelled it up close and personal or you looked at it from the top. It all is the same responsibility.

MCCREERY: Were there any surprises to you about the life of a judge that you didn't anticipate?

ARABIAN: Not really. The one thing you had to be careful of was the certain prohibitions, like don't raise election money from some person that you're not supposed to be involved with, that kind of thing, and shooting off your mouth on pending matters or stuff like that. But it didn't really — I never really had a problem with it.

When it came to rape reform, you're dealing with the change of the law. I think that's your responsibility, so I had no problem in being very out front about that. But other than that, it's a respectable, quiet life. You have a certain ambit of friendship or places that you socialize and do things with. I didn't go to the track and gamble. I didn't have any of those problems, and I wasn't growing marijuana, or charging hookers on credit cards, so that kept me in pretty good shape. [Laughter] I had to put that one in, because those are two cases. Those happened, as you might remember!

MCCREERY: That's right. That's not lost on me. Thinking back to when Governor Reagan first appointed you, and then now let's talk about when he elevated you to the Superior Court, what happened to get you there so quickly?

ARABIAN: George Deukmejian is really the answer to that. I had known him in his political life. I had known him as a fellow Armenian in that life. He helped me get the first one. He wanted to have the "honor," quote, unquote, of having the first Armenian go to the Superior Court, and we hadn't had one down here, so he was interested in doing that. He knew I had good support amongst whoever was around, so when it came time,

rather quickly — in fact, my local line was, “I walk with God, but I ride with the Duke.”

So the next thing you know, I was elevated with another collection of really fine colleagues, and I hit the ground running. And that was the predicate to rape reform, because I hadn’t been on the bench long. I got there, as I recall, on the brink of ’74 when *Rincon-Pineda* was tried, so I hadn’t been up there very long. *Rincon-Pineda* had had a hung jury the first time around. It was the rape of a Tarzana woman, and now it’s back up for seconds and I hear the case, a jury trial.

Two wonderful deputy D.A.’s were involved. One was Harold Lynn. He was the calendar deputy in Department S and a very good friend of mine, and Arnold Gold, who was the deputy putting the *Rincon-Pineda* case on. Sam Gordon was the public defender, and he’s another friend of mine. So there I am. It comes time to instruct the jury. Harold Lynn asks to see me in chambers with the defense counsel, and he says, “Judge, you can’t give 10.22 CALJIC” [California Jury Instruction Code]. That’s the one that says the charge of rape is easily made; once made, difficult or impossible to defend against. Therefore, the law urges that you watch what she says with caution. You wouldn’t give that on a purse snatch or an auto theft, but you’re going to give it in a sex case.

So I hadn’t really thought about it. It was a standard instruction, had been given since 1856 in *People v. Benson*.⁴ The court made it up of its own. They took it from Lord Hale’s commentaries from the 1600s in England. So this wasn’t legislative. Had it been legislative, there might have been a problem in doing this, because you’re not going to usurp a branch, the co-branch. But this was judge-made law; I checked into it.

I’m saying to myself — I went home at night and I’m going, this is outrageous. This is the second time this woman’s come to court. This is an illegal guy who did her in. They caught him promptly. There’s no identification problem. She’s testified twice now under oath as to what the occurrence was. Why am I going to single her out and tell this jury, “Watch what she says with caution?” What for? There’s no reason for this.

So that night I went home and I wrote what was my first written opinion. Little did I know what that was going to lead to. But I put down my

⁴ 6 Cal. 221.

thoughts about it, and I took the bench the next day and I read it into the record. I found it discriminatory, unwarranted by law or reason, outdated, whatever, fattening, and too caloric. I made my first statement on the record about not giving it. I told the public defender, "You're not going to argue it. You can argue what you want, but don't tell them I'm going to instruct them that way, because I'm not."

So he gets convicted. I put him in state prison. That made the papers, of course, along the way. Meanwhile, Bob Kingsley, former dean of USC law school, he's on the Court of Appeal, sitting in his bed with a typewriter, they tell me. He types out a short opinion, conviction reversed. As he put it, "It's not for us to decide whether that's appropriate or not." Well, had it been legislatively done he would have been right. It wasn't. It was judge-made law. Now a judge can unmake it, as far as I was concerned, especially after 150-some-odd years or whatever.

Now it goes up on appeal to the Supreme Court, which grants review. Donald Wright is the chief justice. It's now 1975. I'm in chambers on another rape case, and Paul Geragos, Mark Geragos's father, is one of the defense counsel. He's in there doing his thing. He says, "Do you really think you should serve on a rape case? After all, you've said this and done that."

Just then the telephone rings. God's watching. I have them leave the room, and it's the deputy attorney general on the phone, who's representing the people. He says, "Judge, you did it." I say, "I did what?" He says, "*Rincon-Pineda* was just decided. They said it was harmless error. They affirmed the conviction, and never again will 10.22 be issued in this state."⁵ "Thank you very much."

I called counsel back in. I told them that story and I said, "Now do you think I'm fit to serve?" And they copped out. [Laughter] That was the end of that. So that was the one moment in my life, in my career, that if I deserve to have my nameplate put on the statue of Fernando — we were in the shadow of Fernando when that case went down, and Fernando was standing over where he is right now.

So when that happened, some of the hotshots decided they're going to run against me, they're going to do this, they're going to do that. They all fell by the wayside. But because I was taking heat on behalf of the women, I decided to go forward. I wrote an article, "The Cautionary Instruction in Sex

⁵ *People v. Leonardo Rincon-Pineda*, 14 Cal. 3d. 864 (1975).

Cases: A Lingering Insult,” *Southwestern Law Review*,⁶ and put in who’s in and who’s out. In the passage of time no state dares have an instruction like that. *Rincon-Pineda* broke the back of what was laying around.

Now I’m being asked to speak. The National Association of District Attorneys called me to Kansas City to lecture on, “The Renaissance of Rape.” Kelly Lange has me on *The Sunday Show* out in — I’m trying to think of the little town. I’ve never been there before or since. It might come to me. Yaphet Kotto was on the show with me. I had a nice conversation with him. Maybe El Segundo; it was out that way somewhere.

From the time I showed up and had makeup put on till the time I left, and I was interviewed for one half of that show, four women came up to me, four women that I didn’t know came up to me, one nicer than the next, and said, “Judge, I want to thank you. Let me tell you, I was raped.” None of them had reported it. Four women raped, they didn’t want to go through it. It just touched my heart that day more than other days, because I said, “Oh, my God, this is bigger and worse than I ever thought about.” The only problem that was around at that time that was terrible also was child molestation, which no one stepped up to the plate about. Anyway, so now Robbins Rape Evidence [Law; Chapter 569, Statutes of 1974] comes in, copying the Michigan law.

Then I get a phone call from George Deukmejian. He says, “Armand, we don’t have coverage for what we call artificial rape.” In other words, Spade Cooley was convicted of a broomstick death of his wife, and Fatty Arbuckle, the Coke bottle situation, where Virginia Rappe — she was crushed by his weight, but they had claimed a Coke bottle insertion. So he said, “We need protection for that type of offense. Can you do it?” I said, “I’ll let you know.”

We didn’t have Lexis and Nexis and solar plexus in those days. You had to have student externs look through the states. So mine picked up all the jurisdictions which had coverage. They printed it out for me. I took the best language of everything I could find. “Insertion of foreign object, substance, instrument, or device,” became 289 in the Penal Code. Jerry Brown was happy to sign that into law, so we accomplished coverage.

Then the *pièce de résistance* on all of this — *Rincon-Pineda* will never be topped, but this one is in its league — I’m at a national conference of

⁶ Vol. 10, no. 3 (1978): 585–616.

district attorneys. It was '79 in Kansas City. Two women come up to me, and in those days there was nothing known as the rape-crisis centers such as we understand to be today. It was just a fledgling thing.

These two women were early rape-crisis counselors in Pueblo, Colorado. They said, "A rape victim came in and told us her story in our office. We wrote it down and counseled her. When defense counsel found out that we had interviewed her and had notes, he went to court and got the court to order our turning over those records, which we considered confidential. We took it from her. We refused. He put us in jail. We sat there for three, four days and decided — we had families, so we decided we'd have to turn it over under the court order. What could we do?"

So I said, "Look. The only way you can be protected is with a privileged communication. You're not a doctor, you're not a lawyer, you're not a priest, so you had no protection. You had to turn it over. You had no alternative." I said, "Let me think about this."

I sit down and I draw language up to define what a counselor is, define what a center kind of looks like, and then that any communication received in that relationship be deemed a confidential communication, protected from disclosure.

Now, the other three privileges came to us from common law. We don't know who created those. But it was pursued. Jerry Brown signed it into law around 1980, so we've had it for much more than a quarter of a century now.

At this date there are about twenty-eight states that have the so-called Arabian privilege, which is in the evidence code and protects that kind of a communication. Some are a little different than ours. Ours is called the sexual assault counselor–victim privilege.⁷

At any rate, that was a real feather in my cap, to create a privilege to protect that situation, because if you're a rich woman and you get raped, you go to those other three places. Your conversation doesn't come up into the public light. But you're a poor woman, and you go down to the Reseda Sexual Crisis Center, or wherever it might be, and you don't have that protection. What kind of a situation is that going to be about? The only way out was to elevate that status to a privilege, and that's exactly what happened.

⁷ See Armand Arabian, "The Sexual Assault Counselor-Victim Privilege: Jurisdictional Delay into an Unclaimed Sanctuary," *Pepperdine Law Review* 37 Special Issue (2009): 89–104.

So next to taking *Rincon-Pineda* on, the creation of that, and with God's help more than twenty-eight states, and we've had a bunch of years now to get done with it, but there's a group of states just sleeping on their rights. I don't even know if they know what's going on. I would like, if I have enough time — I have the research done — to contact women's groups in those states and say, "Wake up. Your people need this protection, like your sisters anywhere else." So that's one that's on my deck.

MCCREERY: It's fascinating, too, that on the original case, the *Rincon-Pineda*, where you started working on this issue, that it came up to you, and by comparing it to other kinds of cases you just said, "It doesn't make sense."

ARABIAN: Why would you pick one category? In other words, a witness false in one fact, maybe *Falsus in uno falsus in omnibus*. That applies to everybody and everything. Why, out of all the panoply of criminal conduct, are we picking off this one? Why? Because it's sexist and it came from the 1600s. Is that the rationale? Every judge for 150-some-odd years, or whatever it was, has just been regurgitating this because they were told that that's the law. Finally, somebody had to wake up and say, wait a minute. Where are we today? Are we back there in the 1600s, giving this kind of sexist garbage out? Why are we picking on her? We don't pick on her for any — they take your purse, you don't say, "She identified this guy, watch what she says with caution." I mean, come on. So that's the logic of it.

I received a beautiful letter from Chief Justice Wright, which I have, complimenting me on my courage for having done it. He says, "With his tenacity, he saw it through." I mean, it was a beautiful letter.

MCCREERY: Chief Justice Wright, I think, did author the opinion in that 1975 case.

ARABIAN: Yes, unanimous, a unanimous opinion. He told me, he said, "I wrote that opinion complimenting your courage and your bravery." He said, "But my colleague, Peters, came over to me and said, 'If you pat him on the rump, it's going to be encouraging judicial heresy.'" He said, "I had to take that out, and so I wrote it all as harmless error and got rid of it." [Laughter] It's so funny.

MCCREERY: So that's how it came to be harmless error. Okay.

ARABIAN: Yes. He was just going to flat out destroy the thing and say what a nice guy judge we had down there, he said, but [Justice Raymond] Peters came over, he says, "Look. You're supposed to give the law. This was the law. He didn't give it, and we know the reasons. Let's get done with it." It was so funny.

MCCREERY: Let me ask you as an aside, how well did you know Chief Justice Wright?

ARABIAN: I knew him from the days when he used to be in Department 100, way back when, a long time ago. So we knew each other by face and by name. I had never had a dinner with him or anything like that. I probably shook hands with him twice in my life socially someplace. But when this baby rolled up to him, he knew, and he took it for himself. I mean, this was a major case.

MCCREERY: I wonder, as a practical matter, did it accomplish what it set out to accomplish, this change in the laws? Was it fully effective, as far as you have been able to tell?

ARABIAN: Well, *Rincon* killed off the instruction everywhere. That's done and over with. It changed the impetus of rape reform. This was a major spark. This is where the Gloria Allreds came to light, and the consent issue, and background prohibition, and all these things. They were sparked right around the time of *Rincon-Pineda*. I'm not taking credit for the whole thing, but this was a major spark. And then the Robbins Rape Evidence Law, that was in '75 [1974], Michigan, as I recall, did it first. He [state Senator Alan Robbins] copied it. But to his credit, at least he picked up on it.

The whole thing changed. They got dignity that they had not had for a century plus, and all of a sudden they were seen for what they were, victims of a horrible crime. You cannot right the un-rightable wrong, but you can put the guy who did it in prison.

MCCREERY: But I would imagine that for the general population, seeing them as victims, that took some time. That was a switch in our thinking, wasn't it?

ARABIAN: It evolved, it evolved. Then you had *A Case of Rape*. You had movies being — *Lipstick*. She's on my wall in there. She passed away, Hemingway, Margaux Hemingway. People were making movies now

about it, on television. I think *A Case of Rape* they said about ten times, “A judge is going to tell you to watch what she says with caution.” This was bedrock for knocking off a victim, bedrock. When that little bedrock got taken away, now we’re back down to some common sense here, ladies and gentlemen. Let’s look at this thing. We don’t tag her for being a suspect.

Then one other one, Gloria Allred was in on it with me. They had a law here called the *Ballard* case. It wasn’t as old as other ones, but it was out there, somebody created it. And it said that you could order the claimed victim of a rape to a psychiatric consultation, not to determine if she was telling the truth but whether she was capable of telling the truth. I refused to give it.

Gloria Allred was in on that with me, and with the help of Robbins and others — [state Senator] Diane Watson was up there — that got taken off the books. You cannot do that anymore. So that’s how far it went. You could even send her to a shrink. Who else could you do that to? This is how bad the prejudice was.

MCCREERY: That’s right. This was certainly a different sort of subject matter for the law-and-order folks to consider.

ARABIAN: The law-and-order folks loved it. On their ratings I was right up at the top of the pile or someplace. They’d rate you exceptionally outstanding.

MCCREERY: Here you became a representative for some aspects of the women’s movement, and the idea that there are all kinds of rights that haven’t been recognized. But this was such a tangible one, wasn’t it?

ARABIAN: What happened was there’s this Project Sister out of the Pomona area. They have a Healing the Heart Award in my honor, and they give it to someone who’s done something outstanding in rape reform. The D.A., Steve Cooley, and different people have gotten it. That comes up once a year, the Healing the Heart Award. They got more dignity out of the whole project that they were into, and they can point to something and say, “We have this special award for you, Mr. So-and-So, or Miss So-and-So, because you’ve done something in the spirit of what Arabian did here.”

MCCREERY: You mentioned Gloria Allred, and I wonder how you worked with her throughout this whole time.

ARABIAN: She has been a friend. I got the first award from the Women's Education and Defense Fund — I forget the whole title of that — when they honored me one year. Then she stood up against the *Ballard* rule with me, so we've maintained a friendship through the years, and I'm very respectful of her. I think she's helped victims out in all kinds of situations.

MCCREERY: How long did it take, do you think, for the public thinking to catch up with this idea, that that was a discrimination?

ARABIAN: I would say the critical years were '75 to '80. In those years, not only *Rincon* went down, *Ballard* went down, background stories went down, Robbins Rape Evidence, rape by artificial means. All these things came in about that five-year run. It was actually during Jerry Brown's time around. I'd be surprised to tell you that, but he was signing on, because he knew what was right and what was wrong.

MCCREERY: Before we get too far from the early stages of your career, let me ask you to say a little bit, briefly, about what prompted you to go back to school at the University of Southern California and take the Master of Laws degree in 1970.

ARABIAN: My roots, of course, were on the East Coast in New England. When I got here I truly enjoyed the rooting process, if I can call it that, of becoming a deputy district attorney, and joining a fantastic law firm, having a badge, and belonging to this area. I loved the area so much that I said, you know, Boston University is a Methodist school, not that that all matters, but there's a Methodist school out here that's got a great reputation also, and that's USC.

So I started to check into the programs that were available. I was a sole practitioner at that time. I was over on Vanowen Street, and I found out, lo and behold, that they had a Master of Laws program, which you could do at night. I thought that afforded a tremendous opportunity to become rooted academically on the West Coast. I went for it and made application.

There were a couple of district attorneys. Joe Bush, who later became the district attorney, was taking courses there, and Jim Kolts, who was a Superior Court judge. They were taking classes there at night. There were a number of them. It was a short ride for them from their downtown office over to the 'SC campus. For me, I was coming in from Van Nuys. But I started doing it, and I was very much into it.

I took some medical-legal types of courses. You needed twenty credits, and I got through the first sixteen in very good shape. Then my practice got to be demanding, and it became harder and harder to take that time off to drive all the way downtown and come back at night, with a family. So there was a hiatus there.

Very unfortunately, the two fellows that I mentioned to you, they had the same situation in their case. They got the first sixteen done, and then needed the last four. You had to do a thesis for the four credits at the tail end. They were doing different subjects in the criminal world, because that's what they knew, and some professor just kept torpedoing their efforts. They were not having the documents accepted as a final work. So they were stymied. They weren't finishing up. In fact, to my knowledge neither of them ever did get the LL.M.

I was in the same situation, and a couple of years went by, and I was irritated with myself. I said, you started out this project and you're so close to the end of it. Let's see what can happen. So I called the school up and I explained the hiatus. Dorothy Nelson was the dean at the school at the time. I spoke with her, as I recall, directly, and explained the situation, and she said, "Why don't you file a petition with the school and explain what the circumstances are and see what they'll do?"

So I did, and sure enough, they sent back a notification that said, "Call us up. We grant your request, and we're going to assign you to Professor So-and-So. Meet with him and see what you can work out." So I called Professor So-and-So, whose name I no longer recall, who had clerked for a U.S. Supreme Court justice. He was a very scholarly person.

He said, "Armand, I'm going to drop out to the valley and see you. You don't have to come down here." I said, "Fine. Come on over." So he shows up at my office, and the day he shows up, the phone is going off the wall. One woman calls and says, "My husband just got out of jail. He's supposed to stay away from me. He's been threatening to break the door down. What should I do?" I tell her and hang up.

The phone rings again. "There's a bench warrant out for my arrest. There's no bail on the warrant. What am I going to do?" So I advise him as to perhaps a surrender situation, and we can work it out. Things like that. This professor is sitting there, really not having had a practice of law that dealt with crime and family law and personal injury and all that kind of

thing. He's an academic fellow, and he just sat there absolutely enthralled. At the end of about twenty minutes he looks over at me and he says, "Well, I can see you're a busy man." He said, "I'm not going to make it hard on you. I just want to know what you have in mind."

I said, "Well, professor, I'll tell you, I've been giving it some thought." It was 1969. My son had just been born. I said, "There's very little written about the criminal responsibilities of corporations. They will go after the president and vice president, but they don't go after the corporation as an entity."

So he said, "That sounds very interesting." I had come up with that because I knew of a fellow who was a shady player, who had used the corporate structure to do his "misdeeds," quote, unquote, and the corporation, which should have had a problem, was just standing on the sideline watching the show. I said, there's something wrong here. At any rate, I drew up an outline. He said, "Fine. Let's proceed." So I spent time going through whatever law I could find on it, and there was not much going on at that time, and I wrote it up. I took it to him, he read it. He called me back and he said, "I'm just going to suggest about three minor modifications." I followed the advice, I did it, and he said, "Accepted."

So as you'll look on the wall over there, the University of Southern California Master of Laws. In 1970 I walked across the stage, and I was, to my knowledge, the last person to get a Master of Laws at night, because they had terminated the program. I was just being given the courtesy of finishing up what was no longer available, and to this day they don't have that program. Shirley Hufstедler was the person handing out the diplomas that day at 'SC, and mission accomplished, because I wanted the West Coast credential of academia, and that's how that happened.

MCCREERY: Can I ask why that seemed important to you, to have that West Coast grounding in academics?

ARABIAN: It was just a thought that was important to me. I just thought, you're an East Coast person. You're going to live out here. It would be nice to say that you were also educated out West, and that was the way that I could accomplish that.

MCCREERY: I noted that you had been an instructor at Mid-Valley College of Law in 1975. Say a little bit about how that came up.

ARABIAN: There was a deputy district attorney who was the dean of that nighttime program, and it was for, let's call it disadvantaged students who were not able to go downtown or get admitted to USC, as an example. But they could go over here in the valley and take courses and become lawyers. So I thought that was a very worthwhile thing to do. I went there for a couple of semesters and taught some subjects, and then it disbanded. I lost track of it, or they were absorbed by some other school. But I'm sure there are a few lawyers today around here that went through that situation.

MCCREERY: How did you like teaching?

ARABIAN: I liked teaching. Up until a year or two back, I was teaching appellate advocacy at Pepperdine law school at night. I felt very comfortable teaching appellate advocacy to law students at Pepperdine, because I'd been involved in the process at the Court of Appeal and at the Supreme Court for six years. They had a lot of interest in listening to me.

The hard part was, it took two hours to prepare for it, two hours to drive there and back to the Malibu campus, two hours to teach it. Now, that's six hours each week for about fifteen weeks nonstop. That is a major commitment, because when you're busy it's really tough. So I did it for several semesters, but I found it was just counterproductive to try to keep doing that, so I stopped.

I really enjoyed doing it. They had given me an honorary Doctor of Laws degree. I love the school, and I've been very supportive of it. I hated not to go there and teach some more, and the students, I'm sure, would love to have continued, but I just felt that the stress was a little too much.

MCCREERY: How has that law school developed since you've been affiliated with it?

ARABIAN: They're just doing unbelievably well. They have a tremendous faculty. They get other tremendous people from other academic worlds, and they have no shortage of people wanting to go there. It's the most beautiful law school campus in the United States. They care about their students. They have a moral atmosphere about the school. It's just a beautiful place to be, and I enjoy going there.

MCCREERY: Has Dean Starr wanted to make any particular major changes of direction?

ARABIAN: Absolutely. They are very much involved in putting together funds to attract even greater scholars to come there, to expand the facilities, and all kinds of projects that are underway. He's very active. He's a very dynamic person.

I donated the judges' chambers there in honor of my son, and they have an endowed Armand Arabian Appellate Advocacy Tournament, which happens in the first semester. They get a stipend, winner and loser. He brings in leading people from the law world to sit as a panel of three. I sat with him once. It's done on parents' day, so the place is packed with family looking at show time.

MCCREERY: Since you mentioned your son, it's reminding me that we didn't really talk about your own family, so maybe we can just fill in, going back to your wife's background, and how you met her, and when you married.

ARABIAN: Yes. I was in the tail end of the last year at law school, and I came to visit that aunt that I told you about who was in Woodland Hills. I found out there was an Armenian dance in Hollywood at Assyrian Hall. Armenians didn't really have many facilities at that time, such as we have in abundance today. So I had a rented Ford, a Mustang, and I found my way over to the place. Lo and behold, a fellow that had grown up in New York with me, who I knew had moved out here, was there.

A whole bunch of young folks were present, but I didn't know anyone but him. I walked over, as his family and my family had been very close in New York. We lived not too far from each other, way back in the tenement life. He introduced me to a deputy district attorney who was a friend of his. I'm walking around and having fun, and meeting a few people, and I saw this gal, and she just caught my eye, but I didn't see her again.

The next day my aunt said, "Anything happen?" I said, "Yes. Well, I saw Leo," who was our friend. His last name is Aregian. He moved up to Oregon. He became a member of the bar later in life. So I said, "I had a great time." I went back to school and graduated, came back out.

There was an Armenian picnic, of which there's no shortage today, in Streamland Park in Pico Rivera. I have probably never been back to that place since. My aunt and I get into my little Volkswagen, and we go out to the picnic. Lo and behold, there's Leo and the district attorney again, wandering around looking — neither of them are married. All of a sudden I see

this gal and wow, that's the same gal from that dance months ago. So now I ask Leo, "Do you know who she is?" He says, "Yes, Nancy Megurian." I ask, "What do you know about her?" "Oh, she's a great church girl, ACYO," the Armenian youth organization. I said, "Leo, do you know her well enough to introduce me?" He says, "Sure. Come on over."

She's there with four or five of her best girlfriends. Here I am in shorts, it's a warm day, and I walk over. Leo introduces me to her, and we start chatting. This chat goes on for about a half an hour, and all of her girlfriends are standing on the side here wondering, what in the world has happened to Nancy? Where did this guy come from? We don't know who he is, we have no idea what's going on, and she's really having a chat with this person.

So, long and short of it, I got her name, and she lived in Lynwood, which from Woodland Hills is thirty-five miles or so. That's like going to Worcester from Boston! That's a major haul. So we started dating. She had a wonderful family, a brother and a sister, and her father was in the soap-packaging and bleach-manufacturing business. It wasn't long after I put my fraternity pin, the Sig Ep pin, on her, and not long after that there was an engagement, and not long after that there was a marriage.

So I was a young D.A. We're married. She's working for a law firm downtown to help make ends meet. That was in '62. In '65 we had a beautiful daughter born, Allison Ann Arabian. She wouldn't go to sleep until Daddy got home. I was in private practice. She today is an appellate lawyer with Lewis Brisbois [Lewis, Brisbois, Bisgaard & Smith LLP]. She has three offices, one in L.A., one in Costa Mesa, and one in San Diego, and two beautiful children with David Demurjian, a deputy district attorney in Orange County.

Then in 1969, the same time as I'm going downtown to finish up at 'SC law school, Robert Armand Arabian is born. He graduates from Cal State Northridge and goes to Pepperdine Law School. He meets and marries a lovely young lady, Jennifer, and they have two beautiful children. He becomes a deputy district attorney in Ventura County for about three years. But his law-and-order background, hanging around with me, just drove him back to law enforcement in a more direct way, so he joined the Simi Valley Police Department. There was a sergeant's exam available after he was down the roadway a little bit; he took it, came in first, so he's a sergeant

there now. He practices family law and estate planning out of my office, so he's got a dual mission in life.

MCCREERY: He's still got his foot in the door of the law on that side, too.

ARABIAN: He hangs out here, as you saw this morning, on occasion.

MCCREERY: I had the pleasure of meeting him this morning before we started.

ARABIAN: He's really a fine person. The same Foothill police division which became notorious for the Rodney King beating gave him the Reserve Officer of the Year Award for saving somebody's life. He's very dedicated to the human condition, so I'm very proud of him and my daughter and their families. Both of them are really, really wonderful issue, they really are. That's basically a thumbnail of that.

MCCREERY: Where did you and your wife Nancy settle when you were first married?

ARABIAN: Since I was always a valley type, we had an apartment not far from here, and a second apartment not far from here. Then there was a house in foreclosure in Granada Hills. I knew one of my fraternity brothers who was in the bank that had foreclosed on it. I went over to look at it, and boy, it just looked like a really nice place. It had easy access to the freeway, and shopping centers, and so forth. So I bid on it and got it. I improved it, put up a block wall, and to this day it looks great. I pass by it on occasion. So we lived there for a while.

In 1965 Allison came to that house. But by 1969, I think around '67 we had moved to my present location in Tarzana. I'd been looking for a larger place, and there was this development high on a hill looking over the valley. I just fell in love with this particular house. It was French Regency, which is the style I like. As hard as it was to do, I bought it. We put the pool in and raised everybody up. They'll carry me out of there with a toe tag from the coroner, because I'm not leaving. [Laughter]

MCCREERY: So you've had both your home and your office for many years now.

ARABIAN: Yes, and I expanded that from about 2,800 feet to 6,400. We had two earthquakes and a fire there along the way, so a few things happened.

But I have a beautiful library overlooking the whole valley, and it's a nice place to sit and think and do whatever you're going to do.

MCCREERY: On your bio form you mentioned that your wife was born on the island of Cyprus. Could you say just a few words about her family background and how they got here to California?

ARABIAN: Yes. There was religious clergy in her background in Cyprus. Her mom wound up in Cyprus, being of Armenian background. Her father was from Constantinople, Istanbul, not far from where my folks were. We were at the south end of Marmara; he was at the north end. He somehow had migrated over to Cyprus, and I don't know to this minute all the details of how that happened, but they had relatives there, I believe. So he met Angel Kodjababian and married her, and Nancy was the firstborn of that marriage.

He came to the United States, and he had to leave them there, because the wartime was on. But he went back as an American citizen. She was a little kid. They had a U.S. military escort bring them into New York harbor, and so he wound up in New York, like most people did at that time. But he migrated to California, and with his wife's brother they went into Electro-Bleach Corporation. That's where they were doing the packaging of soap and bleach. So he had established himself nicely in Lynwood.

MCCREERY: Let's turn back to your judging career. We talked about a range of things last time, and I do have some more questions about your time on the Superior Court. We've mentioned the name of George Deukmejian already a number of times, and I think your quip was, "I walk with God, but I ride with the Duke."

ARABIAN: Right.

MCCREERY: But tell me, really, from the beginning, how you got to know him, and how influential he was to your career.

ARABIAN: I see this political person whose name is difficult. "Deukmej" is Turkish for the tinsmith, so i-a-n means the issue of a tinsmith. That's what Deukmejian translates out to. Arabian would be the issue of the Arab. I don't know how we got there, but that's what that is. So he went from Assembly to Senate, and with his name — and he had come from New York, upstate and in the city by way of background and education — his main supporters were going to be, logically, Armenian.

So he had rounded up a few of them who knew him and liked him. Along the way I wound up on the other side of a divorce case with him, just like the story I'm telling you about with Hennessy. So we're talking on the telephone. He didn't do much of that, but he happened to have this one, and we resolved it over the telephone. We got to like each other, so I said, "I'm going to go to the next event that he has at one of the Beverly Hills hotels," and I did.

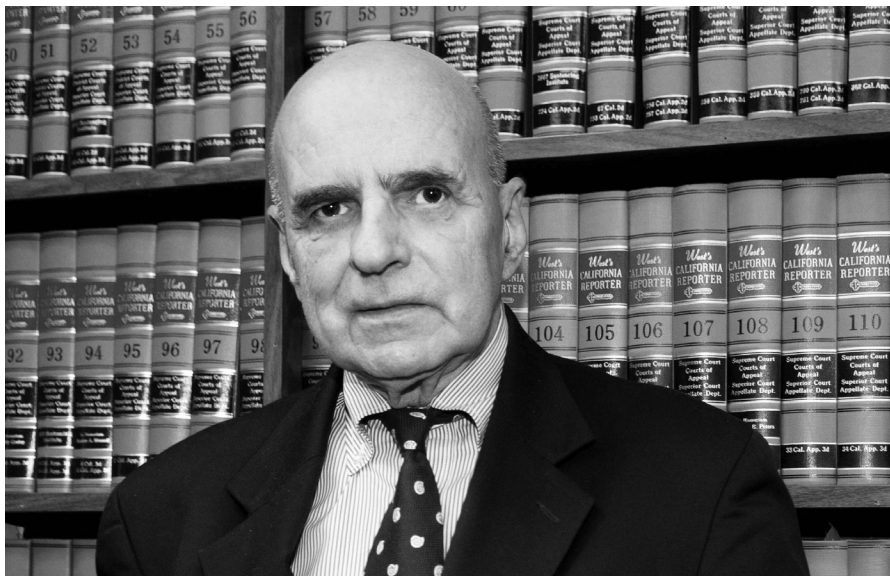
We just hit it off fabulously, and I became part of his kitchen cabinet. There were rubbish folks in there, there were business people, a couple of lawyers, probably about eight men. Once a year they always established a night where we would get together and decide, where was he going, and how was he going to get there, and what could we do about it? That's how that whole thing started.

Now, that was in the late sixties. So around '68 I'm thinking in terms of would it be nice to go on the court? So who am I going to talk to? Him. So I call him up and I said, "George, we have one Armenian on the bench." That had happened — I'm trying to remember for sure. I think Richard Amerian — he's passed away — was on the court in '70, so this conversation is around then, because I know there was one judge, and we didn't have any other one. But the thought process started around '68. But right around the time frame we're talking about, I said, "What are my chances of becoming a judge?"

He says, "Armand, I wouldn't tell you to walk across the street and lick a stamp for someone. I wouldn't tell you to donate a nickel to anybody. You will go into this as who you are and what you are."

I said, "My support people would be the police officers of the valley, and they know me well." So that's how it started. I put together letters of support from five, I think it was, valley divisions of L.A.P.D. Those are the people who knew me best. Art Van Court, who I think is still around, was an L.A.P.D. detective who knew me well, and now he was right among Reagan's bodyguards. He knew who I was very well. So as I understand it, the packet went directly to Art Van Court, and Art Van Court took it in to Reagan's folks up in Sacramento.

So comes 1972, I'm sitting here in my office, and the story of the phone call from William French Smith, and I became a judge. Thereafter, fifteen months later, without any urging on my part, next thing you know my name is in the hopper for Superior Court. So the little nasty deal was, the people who had supported Richard Amerian, who was a friend of mine, decided there was a little political play going on between someone who to



ARMAND ARABIAN IN HIS VAN NUYS OFFICE, JANUARY 10, 2011.

Photo: Thomas Wasper

this day doesn't like Deukmejian and myself, and he was going to try to one-up Deukmejian, now that there were two of us at the Muni Court.

The question being asked was, "Who should go to Superior Court, Amerian or Arabian?" which was a terrible thing to do, put two Armenian young judges against each other. He hadn't served in the military, so he was a couple of years younger than I was. At any rate, long story short, I got the nod and went to Superior Court. He got there later with Jerry Brown, went to the Court of Appeal, and he retired from there. Sadly, he passed away three, four years ago at a young age.

So the friendship with George always remained intact. I was the comic at his swearing-in ceremonies in Long Beach. That shows you the relationship that was in existence. After we swore him in I went over and I hugged him. I said, "In four years, you're going for governor." He looked at me and smiled, and that's exactly what happened. So he runs for governor. I'm still toiling around, and I opened up the San Fernando court. He put me on the Court of Appeal and then up to the Supreme Court.

MCCREERY: In those early days, what kind of a guy was he as you were getting to know him?

ARABIAN: The best. Very, very courteous. If he was passionate, you wouldn't see it by way of external expression, you know, somebody smashing his hand into the tabletop, saying, "I'm going to get even with you." You'd never hear that from George Deukmejian. It's like talking to a preacher, real calm, composed, intelligent, thoughtful.

I have said this publicly: I have never in all my time with him, from the late sixties to today, I have never heard him utter a four-letter word, never, not once. There are people in public office, and I'm not excluding myself, who throw that stuff around pretty good when necessary, when they feel like it. Not George Deukmejian. He's the only person that I have had anything to do with that I could say that about. Not once under any condition, goaded beyond remedy at some times. Not a word. That's the kind of person he was, and he was a steady hand for the eight years of governorship. Everything was thought out and well-intentioned.

MCCREERY: When he was a legislator himself, what were his interests in those days, as you perceived them?

ARABIAN: The interest that I joined up with him was mandatory sentencing for rapists, and things that had to do in my life with rape reform, but he had a panoply of other things that he was into. I was not really that involved with all of that. But everything he did was for the public good, and thought out well.

MCCREERY: I note that while you were on the Superior Court he put you on, I guess they called it a judicial advisory commission on crime victims, and I know that victims' rights, of course, as his career played out, became very important for him.

ARABIAN: Yes. There was a group that I was a member of, and some of those folks wound up on the court benches along the way. But that was his interest. He was very much into protecting the public, and that's how it went. Then probably more importantly, I was part of his what they called JSAB, Judicial Selection Advisory Board. There were about eight or nine folks, all male, that would meet to discuss any particular person who wanted to go on the bench. You could have the blessings of the bar associations,

you could have the clearance from any commission there was. But until you cleared JSAB, you weren't going anywhere, because those were the people he trusted.

Malcolm Lucas was one of them, and I was one of them, Dave Eagleson was one of them, people like that. We would meet about once a month for the time that he was governor, and those names would come through. If necessary they'd say, "Who knows Joe Blow, the D.A. in Torrance?" "I do." "Check him out and report back next month." There would be a check out. The person assigned to that would call up people that they knew and said, "What's this guy all about?" If it came back with a clear "Go for it," that would happen.

Or other times they would ask Marv Baxter, who's now on the court, who was [the governor's] appointments secretary. We were really close, and he would call me and he'd say — I was on the Court of Appeal — "There's Judge So-and-So. We're considering this woman judge for a spot, and we like her paperwork, but we want to know a little bit more about her. Will you check her out?" "Sure." I'd call up the candidate, and we'd go to lunch and get a fix on what that was all about, then report back and I'd say, "Boy, she's something else. She's great!"

MCCREERY: So you would actually interact with the candidates, if need be, and give your thoughts?

ARABIAN: I would personally visit, if it was important enough and they had so little background on a person. I would check it out.

MCCREERY: I take it this JSAB would on occasion dissuade the governor from appointing someone who otherwise looked good up until that point?

ARABIAN: Absolutely. Absolutely. There's no question about that. If you were dinged by this group, that was the end of that.

MCCREERY: How often did that happen?

ARABIAN: The dinging? [Laughter] We're talking about eight years. I can't tell you that one. I just don't remember. Usually if they were intelligent enough to put their application in with a governor who they knew was a conservative — you were not going to have some member of the ACLU coming in there looking to get a judgeship, because they probably figured that wasn't going to wash. So you had people that were coming in

as prosecutors, a lot of them. They flew through, most of them that I recall. You had people from major firms who had terrific backgrounds in civil law. So the ding jobs were there, but I'm not telling you that there was a rash of it. I just don't remember it like that. But there were on occasion — "He's got real problems."

We would have a collective meeting. Everybody would brainstorm. At the end of it, it was yea or nay, and then that yea or nay would go to the appointments secretary, and he would take it in to the governor. The governor was never involved in these things personally. No, it was strictly this committee, JSAB.

MCCREERY: Then likewise, because Governor Reagan appointed you to both of your first judicial posts, when and how did you first meet him?

ARABIAN: There was a person named Richard Gulbranson, who owned North Hollywood Glass, if my memory comes back at this point. He was a real leading Republican conservative political type. He had a beautiful home, I think around Toluca Lake Estates. So I went to the reception in his backyard. He knew who I was, I knew who he was, and Ronald Reagan was in the backyard. That's the first time I got to actually meet him, and I don't remember the date of that. I wasn't a judge at that time.

MCCREERY: First impressions of him?

ARABIAN: Just as you would love him in a movie, you've got to love him walking around a yard. I mean, he just, he'd light up the place. He was one of those guys. Then I got the appointment, both times, through George Deukmejian's sponsorship.

But the time that was really important was when Jerry Brown was running against him for president of the United States, and Mike Curb had this reception at his home. He and Nancy Reagan both showed up, and he, of course, was right up to the minute on what was Armand Arabian doing, fighting Jerry Brown in his absences from the state.

So that day he just made a beeline for me and came right over. He says, "Judge, keep it up. You're doing a great job." And I said, "Thank you." [Laughter] So, what are you going to say? It was just, "I know you love me." It was one of those things. I have letters from him, "I'm so pleased that I appointed you," and so forth. So that was the one time that it was really up close and personal. Other than that, I've seen Nancy Reagan a number of

times, including the commissions twice of the aircraft carrier, but that was the one-on-one Reagan that I'll never forget. It was really something.

MCCREERY: As a judge, as time went on, I wonder if your methods evolved at all, or your approach to things, your views?

ARABIAN: I would say that was fairly consistent. I don't think so. I treated them all with dignity, all meaning all the lawyers, all the defense, and so forth. I was not a fool. They knew not to take too many shortcuts with me. They knew not to abuse one another; that wasn't going to last. And they knew they'd get a fair trial, and if there was a conviction there was going to be a just sentence. That was the make on me. As you heard Bill Littlefield say on the [video] tape, "If somebody deserves a break, he'll give it to him. If he doesn't, look out."

MCCREERY: One of the other things at the state level while you were on the Superior Court was, of course, that Chief Justice Don Wright, whom we talked about last time, retired, and Governor Jerry Brown selected Rose Bird to take his place as chief justice. Can you tell me how you reacted to that at the time?

ARABIAN: I remember going to a reception for her when she just took office, down on Wilshire Boulevard in one of the old hotels. It was on Wilshire not far from where the court was. No one really knew anything about her. She's kind of a tall person, bushy kind of hair. I said, "Hello." Everybody's wondering, my God, where'd she come from? We were maybe hoping that it would be somebody seasoned that had worked their way up through the years, like Chief Justice Ron George. This was a bolt out of the blue. Nobody had ever heard of her. We didn't know anything about her.

But as time passed, when she started to show her colors, which were completely out of the "norm," quote, unquote, when nobody should be liable for a homicide, much less suffer the death penalty, and on and on and on, she just drove the place into total distraction and disgust, is a better word for it. We were pretty upset with what she was up to. She had a person that hung around with her all day long whose name I've long since forgotten and don't want to remember, but it was these two wandering around doing their thing, and it was not a happy time.

She came down and swore me in to the Court of Appeal. I suggested to her that we have a cup of coffee together and maybe talk about how respect

could be restored. She looked at me like I was crazy. That was in '83. In '86 she was gone. You could just see the handwriting on the wall, because the state wasn't going to put up with this too much longer, and she took out two good justices with her.

But on a personal level, the rare times that I got to speak with her, she was always very cordial. As I now recall, she said to me one day, "I really enjoy the way you write opinions." I said, "Oh, Chief, all the good stuff's been done long ago," and started to laugh. [Laughter] But I felt very bad that she passed away at sort of a young age, but her brains were gone. After her ouster she just went into oblivion, led a reclusive life. People didn't even know who she was.

I think Jerry Brown caused a complete tragedy in the life of a human being that probably deserved something different. He should never have done a deed like that, to put someone with very little experience, a total, committed, ideological misfit as far as the rest of California was concerned and make chief justice out of such a person. That was outrageous. It was outrageous. That view is not simply mine. That view is shared by a lot of people who were my contemporaries. It's not an aberrational thought. The people of the State of California agreed. Imagine getting kicked out of office.

MCCREERY: Governor Brown made quite a number of judicial appointments and I think was said to express the view that it was time to bring more diversity into the judgeship and that sort of thing. Did anyone see this coming?

ARABIAN: I can't tell you that one. When you say diversity, diversity's fine. Everybody likes diversity. I'm a diversity person. I have nothing to say about that. But when you go and you pick up somebody and make a chief justice out of that person, with absolutely no credentials that anyone would really look at, and say, "Oh, wow, this is terrific. What a background." There was none of that. That's not promoting diversity. That's promoting your own self-interest and your wacko view of how the court's going to be run. It was terrible.

MCCREERY: It must have been quite a difficult position to be put in, too.

ARABIAN: For her, absolutely. I felt for her because this was way over her head, and she's in there doing her thing like "It doesn't bother me." But I'm sure it did bother her." She knew she was being held in disrepute in many,

many places, and that's why she got voted out. They had a whole case, easy to make, on her. That's what did it. But it shouldn't have ever happened, in my view.

MCCREERY: What about the idea of groups getting together to try to press the electorate to get rid of judges? We've had other occasions of that happening since. It's not a common thing, but it's not unknown, either.

ARABIAN: It's the people's right. It's their privilege. If they have a reason to do it — they didn't have a reason to oust Dzintra Janavs recently. There's nothing wrong with her, but sometimes your name harms you. Arabian? I got the lowest confirmation rate of any of my colleagues for no reason other than we're fighting Desert Storm. So you see Dzintra Janavs, or Abraham Kahn — they voted him out. They both got put back on, fortunately. A name can harm you, even though you can walk on water every other day. So that's out there. But it's a voter's right. They want to be discriminatory; they showed it in my election. I think I got, like, 53, 54 percent of the vote. Why? There was no opposition to me. They just went into the voting booth and, "I don't like that name." Well, that's their choice. Lucky for me they didn't win.

MCCREERY: When the '86 election came around, am I right that Governor Deukmejian himself publicly suggested that he would not vote for her?

ARABIAN: There was no secret as to who her opponents were. It was widely spread that they were outraged by what she was doing and were going to try to get rid of her, and that's what happened.

MCCREERY: Was it viewed as her personal opposition to the death penalty, as opposed to legal reasons for turning back those executions? How did you in the legal community see what was happening?

ARABIAN: I think it was a complete ideological overtaking of her responsibilities to the law. She knew what the law was, and she knew what the evidence was. Now, if you can't conclude that fifty-seven stab wounds of an innocent person constitutes enough in the law and in the evidence to justify the penalty, then there's something wrong with you. There's nothing wrong with the case, and that's where she was. So it was an ideological resistance, that she was going to impose her own philosophy, even if she was going to stand alone on a given case, and that's what she would do.

MCCREERY: As you mentioned, Justices Joseph Grodin and Cruz Reynoso were also voted off at the time. What's your comment about those two?

ARABIAN: There was nothing wrong with those two. There really wasn't, except they were tied in along with her by way of having voted along with her in certain instances. It was Jerry Brown appointments that made them a clique, so to speak, and so they weren't just going to go after her. They were going to go after two of Jerry's other appointments, her colleagues, and that's what happened. There was nothing wrong with those two justices, nothing. They're both fine people.

MCCREERY: In the early stages of all this, Justice Mosk was said to be something of a target, too, and he managed to separate himself, shall we say. Do you have much view of how he accomplished that?

ARABIAN: I loved Stanley. Stanley was a dear friend to me in my six years, and sadly I went to his funeral. God rest him. I loved Stanley Mosk. People would say, "How can you, a conservative, like a liberal like that?" I loved Stanley Mosk, and he loved me back. We were just really good friends.

He wrote a note to me on one of my dissents, and he said — that was *Smith v. Regents*.⁸ I have his note. He says, "I'm pleased to sign it. I wish I'd written it." That's the kind of guy he was.

But he was very adept at defusing anger. He didn't want to get involved with that trio, and he didn't really need to get involved. He was, in my view, not a fan of Rose Bird. In fact, they should have made him chief justice. At the end of the day people were saying that, which a lot of logic to it, and I would say amen to that thought. Stanley would have been a good one, a great one.

So that cut him loose. They weren't going to — they figured, I think, that taking him on was really going to be overdoing that concept. So it was easier to leave him alone. He'd been around a long time, people liked him. He's a great jurist, so we're not going to package him up with those other three, and that's what happened. So he took a clean walk. [Laughter] I loved that guy. Really, I miss him.

MCCREERY: What's the lesson in all this, the '86 election?

⁸ *Smith v. Regents of University of California*, 4 Cal. 4th 843 (1993).

ARABIAN: The lesson is, we are a government of laws, and not of men and women, all right? You take a job like that, you're supposed to, just like my dad said, "Don't cross over the line." Well, they were crossing over the line, not they so much, but her. When you do that, you're going to pay the consequences. You can err, that's human. To forgive is divine. You can do that a number of times, but you can't do it every day. So the lesson here is, if you're an ideologue, don't put a robe on. You don't belong here. And if you do, they'll probably get hold of you, and that's what happened.

MCCREERY: Of course, much was made of the fact that she herself had not been a judge before this time, although, of course, there are many other examples of very prominent people who haven't been judges, such as U.S. Chief Justice Earl Warren. But give me your thoughts on that, the importance of bringing that kind of background to the high court.

ARABIAN: I think it's very important, I really do. You can do it [appoint people without prior judicial experience]. They still do it. Take somebody who's in the loop and say, "Oh, we're going to put you on the Court of Appeal." I don't think it's a good idea, because I think there's something to be learned, especially in the days where we had Municipal Court. Of course, the job is still there. But people's court, you're looking in faces, you're doing a lot of decisions that impact a lot of people. I think that's important.

My answer is very simple: Ron George. There's an example. He was a prosecutor, municipal, superior, appellate, supreme. With that background, you know everything that's moving around. You know what you're supposed to be doing. You know what the codes of conduct are, and how to deal with colleagues, and on and on and on. You get awards from all over the United States, because they like what you're doing. That's the difference.

So it's the preparation. You're not going to be a neurosurgeon unless you work your way through the clinics and the emergency rooms until you finally get to where you're going to go. You can't just take somebody because they have a law degree and make them a chief justice or anybody else. It just helps to have that grounding, and that's how it is in the military, okay? You start out here and you work your way up. You're a lieutenant, second or first lieutenant, captain, major, lieutenant colonel, and general, okay? What does the army do? That's how they do it, with good reason.

MCCREERY: What else is important for getting to that level? What are the important things to bring in the way of experience?

ARABIAN: I think a, quote, unquote, “people person” is important. I think if you’ve lived in a little shelf somewhere, in a sheltered life, you’re not going to more easily understand the plight of someone less fortunate, just because of your background. Maybe you’ll get there, but the person who’s been there knows the pain and suffering of the homeless and the drug addict and a few other things. So I think that’s part of it.

I think you’ve got to have a sense of humor, because that job will kill you. We’ve had public defenders jump out of windows and commit suicide and a few other things, because it just overwhelms them, if you will. You have to have a sense of humor, I think, and I’ve always tried to maintain that.

You have to have a mindset of collegiality. You can’t be a bully, or a smart idiot. We’ve had smart idiots who tried to get elevated, and they can’t get two votes, because everybody knows that they’re smart, but they’re idiots. They want to hold you in contempt because they don’t like how many pages you present in the morning, instead of saying, “Change it.” So there are those kinds of things that are factored in. So your personality counts, I think, substantially, in whether you’re going to be a good one or not a good one.

MCCREERY: We touched upon this idea of diversity, which is kind of an overused word at this point. But how important is it on a body of, let’s say, seven on the Supreme Court, to have a range of backgrounds and views represented?

ARABIAN: I think it’s absolutely essential. You look at seven white men, or nine white men or whatever it is, and you go, “Where’s the rest of me?” as Ronald Reagan said in the movie. “Where’s the rest of me?” So all of a sudden you have a couple of women, you have an Asian or two, you have a Black person, an Armenian, a Basque. You have a mixture that’s important, because they bring a lot of background with them, and it’s diverse, and they don’t always see everything the same way. Someone will have a different view and say, “Wait a minute. If you go over to an abortion clinic and you do this, and you prevent that —” or “How many feet are sufficient to stay away?” and all these things. A woman may have a totally different

view of that than a man. So these are the things that get factored in, and it's important.

I remember the one case that really comes to mind, *Citizens of Goleta Valley v. Santa Barbara*.⁹ This had to do with a proposed — I think it was a Hyatt Hotel — was going to put a big hotel down off the ocean in Santa Barbara. The citizens of Goleta Valley, being NIMBYs, didn't want any of that. You know how difficult it is to get permission from the Coastal Commission.

Well, these folks were determined to put a hotel up there, which would have been very classy. They had a fight. They fought it out. The developers would win, and then it would go to the Court of Appeal and the NIMBYs would come charging out. "There's some blue-spotted turtle out there," that no one's ever seen or heard about, but that's going to have a problem if the swimmers are here. They would come up with all kinds of stories, and it would get knocked down. They'd go back down and fight it out again.

It got to the point where it was so ridiculous they were saying, even though the property is on the water, "Go to the hillsides over here," which are not for sale and are not adequate for the purpose here, "and see for an environmental impact report if those are available as an alternative to the ocean." Now, this is how wacko it got. They went up and down a couple of times. This whole trip took about a decade.

It came up to us in the Supreme Court. The developer had lost again down below. It was assigned to me. It was one of those cases where I wrote one of the typical Arabian opinions, something to the extent that said, "An environmental impact report may not be used as a weapon of oppression in order to delay," and I listed the types of growth — I called it industrial, or whatever I called it; I had a bunch of words that would be common — to advance the community by way of putting something up. So I used that expression "as a weapon of offense, to delay, hinder, or obstruct," something like that.¹⁰

Before it was complete, Stanley Mosk came in and he says, "Armand, you've got this word in here that's giving me a little problem." "Well, what

⁹ *Citizens of Goleta Valley v. Board of Supervisors of Santa Barbara County*, 52 Cal. 3d 55 (1990).

¹⁰ The concluding sentence of the unanimous opinion written by Justice Arabian reads, "Concurrently, we caution that rules regulating the protection of the environment must not be subverted into an instrument for the oppression and delay of social, economic, or recreational development and advancement."

is that word, Stanley?” Allen Broussard, “Armand, how about this paragraph over here? I’ve got a little problem with that.” “Okay, Allen.”

I took those two things out, which didn’t bother me or anybody else. It got to the goal line and was done, and they won a unanimous decision, because I had to cooperate with diverse interests, a Jewish person and a Black person talking to an Armenian person, to get the thing done. That’s diversity, okay? That opinion gets quoted a number of times in these environmental impact fights. But the delay was so long that it made no economic sense, and that hotel never, ever got built.

MCCREERY: Justice Arabian, we were talking over lunch a little more about your time on the Superior Court here in L.A. County, and I was asking about Judge Joseph Wapner, who was the presiding judge of that court. I wanted to ask you to talk a little bit about him.

ARABIAN: He wrote the book *A View From the Bench*, and it’s calling him “. . . of *People’s Court*,” and he did a terrific job with that.

This book was published in 1987, and in chapter three — it’s called “The Heart of the City” — he recounts an actual event. It’s got a different name for the defendant, but he says, “Johnny Archer was by no means a lucky young man when he came before me in 1965.” He tells the story about this young Black fellow who was in Los Angeles and thinks he could become involved in the movie industry, and that doesn’t happen. So he’s thinking about going back home, down South, and that’s going to be in Ozark, Alabama.

So since he doesn’t have much money, and he’s living, I think, with an aunt in L.A. He starts to hitchhike. He’s downtown, and somebody picks him up in a Volkswagen down around Spring Street or right down in the middle of town. There were these parking lots that used to house a lot of cars. A Caucasian fellow says, “Come on, hop in. Where are you going?” He says, “I’m going south.” He says, “Come on in, I’m going south,” and he doesn’t tell him that he’s going south towards Tijuana in a stolen car. So they get down on the freeway heading towards San Diego, and they run out of gas.

This fellow is asleep in the front seat. The thief goes out to siphon some gasoline, or he’s going to try to get a can of gasoline somewhere. Of course, by now the police have been tipped off to a hot car, and they’re looking for it, and there’s this car on the side of the roadway. So they go over and

they arrest this fellow, who we will continue to call Johnny Archer, and the other fellow, who's wandering around looking for gas.

They're incarcerated in the old Hall of Justice jail for about six months, and because of a conflict, the public defender was assigned to the main thief, and they needed another person to defend the passenger, Johnny Archer. In that court as deputies for Judge Wapner was a fellow named Marvin Part, who's one of my dear friends, he's retired now, and Paul Geragos, Mark's father. So between the two of them, they told Judge Wapner, "How about Armand Arabian?" "Oh sure, fine."

I got appointed, and I go up to see the defendant in the old county jail, and he tells me this story. I said, "We're going to go to bat soon," and we did; a jury trial in the old Brunswick Building downtown. The jury was hearing this case, and a person says he parked his car, it was stolen, et cetera, and the police say what they saw. Archer, I didn't even put him on the stand to testify. He's just a shy young guy, and there was really not much to be said. But it's a cold Friday afternoon, it's rainy outside, and I look at the jury and I tell them that his only crime was that of poverty, and that's all he was guilty of. He'd already done six months sitting in a lockup.

I looked at the jury and I said — I could feel the chill in the air. I said, "If Johnny were to die today, his entire estate would consist of that thin white shirt on his back. Send Johnny home." I sit down.

The jury goes out to deliberate. We're all in chambers with Judge Wapner. It's getting towards four or four-thirty on a Friday, and everybody's ready to go home. He says to Rusty, the bailiff, who was his real bailiff in those days and later appeared on television with him, "Rusty, go in the jury room and find out what's going on." Rusty goes into the jury room. We're still all having a good time in chambers. He comes back and says, "Your honor, they have arrived at a verdict." Judge Wapner says, "What's keeping them in there?" He says, "Well, they're taking up a collection of money so Archer can go home."

With that, the judge brings out the jury, they find the thief of the car guilty, and they find my client not guilty. It's a little different in the book, because Judge Wapner did not order him into custody, because he was free to go and he did go, but he ordered him to return on Monday. Now we go to the book. [Laughter]

MCCREERY: You're going to quote here.

ARABIAN: Yes, I'm going to quote it. He says,

The speech worked wonders. Not only was Archer acquitted, but the jury, while deliberating, took up a collection for him. They called the Greyhound terminal to find out how much a bus ticket back to Ozark, Alabama would be, and they collected it among themselves to give to Johnny Archer to get him back to a place where he could cope more easily with real life.

When I saw and heard what the jurors had done, a feeling I had about Archer gelled inside me as well. "What size are you?" I asked him as he stood before the bench.

"Around a forty," he said.

"All right," I said, "the jury has found you not guilty. I have no further legal jurisdiction over you."

And then it says, "I order you to stay in jail." That didn't happen. "I went home confident, and at least hoping that Archer would not get into any further trouble over the weekend." Well, this sounds more consistent with letting him out, because he wasn't going to get into any trouble in jail.

I found a suit that was still serviceable, a shirt, socks, and a tie. I could not give him my shoes, because I wear special orthopedic shoes because of the twenty-millimeter tracer fragment still in my foot.

But on Monday I called Archer before me and gave him my former clothes, the jury's bus ticket, and my contribution of money for shoes.

"As soon as you get your shoes," I said, "I suggest you head back home. I'm sure your friends miss you."

Johnny Archer went back home. I hope he ignores the next man who tells him he's handsome enough to be a movie star.

As for Armand Arabian, to this day he tells our mutual friends that on his first case before Judge Wapner, he not only got his client off, but he got the shirt off the judge's back."¹¹ [Laughter]

Isn't that funny? That's true. So when you asked me earlier, what does it take to be a judge, there's sort of a description of the kind of a heart it takes

¹¹ Joseph A. Wapner, *A View from the Bench* (New York: Simon & Schuster, 1987), 45–46.

to be a good judge. Judge Wapner was truly one of those. And so the kid went back home.

MCCREERY: Tell me a little more about Judge Wapner. He wasn't a household name in those days. How did he run things?

ARABIAN: No, but I didn't know him any better than what I'm telling you, because this was the one case where I got in chambers with him, and got to talk with him, and see what kind of a human being he was. Through the years, he liked me to the point where when his son, Fred, was thinking about going to law school, he called me. I took Freddy around to the court complex over here to show him what the courtrooms looked like. He's now a judge of the Superior Court. So I saw him when he was a young lad. That's the kind of confidence he had in me. Of all the people he was going to send his son out for the day with, he picked me.

Last year we gave him the Justice Armand Arabian Leaders in Public Service Award, one of six, and it was just a thrill to have him back up in front of the crowd, which hadn't seen him in a while. It was just delightful. He's a sweetheart of a person.

MCCREERY: Can you say a few words about *Court TV* and this trend of having courtroom dramas for public consumption like that?

ARABIAN: When Joe Wapner started *People's Court*, he was the first one, to my knowledge, who did that. Then Bill Keene, who was one of his colleagues, was doing *Divorce Court*. Both of these men were savvy people of experience, and they knew about dignity and decorum and demeanor of a judge. So when those shows first started out, I just enjoyed them. I thought it was a pleasure to watch.

But in the ensuing years, I'm totally disgusted at what the circus has turned into. I don't care if they were real judges, or they're lawyers pretending to be judges, or whatever the combination is. It has really gotten out of control. It's show biz. Get up there, and look itchy, and start screaming and hollering and telling people off and acting like a fool. The sad part is that it's an educational process of citizens which is misleading. It does a disservice to the whole place, and I refuse to watch those shows. There's not a single exception to what I said today, none.

MCCREERY: This is a different issue, but it leads me to ask about the whole idea of cameras in the courtroom in regular court settings. What are your views on that?

ARABIAN: There's a situation right now where Judge Larry Fidler is considering cameras in the courtroom in a prominent case, and it's under submission, I guess, at the moment. But generally speaking, I don't think it's a good idea, because it is a distraction, in essence. But in certain cases, where the public has an interest — the Lance Ito situation, where you have a prominent case, I think the public is served by showing on a limited basis certain cases like that. I think there's an educational process, where they get to see the real thing, as opposed to this foolishness that we just got through talking about.

At the Supreme Court in the six years I was there, I think we televised two arguments. Reapportionment and term limits may have been the two, to the best of my memory. So it's not just done because you're out there to perform or entertain. It's done because it's of such widespread impact that everyone wants to see how did it go, what was said. So in limited circumstances, I think it's beneficial.

MCCREERY: As you say, you didn't know Judge Wapner or the downtown people all that well, but talk just a little bit more about your colleagues here in the valley on the Superior Court and how you all worked together.

ARABIAN: When I went up the three floors from the Municipal Court to the Superior Court, I was welcomed onto the top floor by three of the most wonderful, more senior jurists that a young fellow could hope for. I was thirty-eight years old, and in that collection, on the one side of me was Judge William Rosenthal, a former assemblyman. He was the one who sponsored the legislation which established UCLA law school. He was like a father-grandfather figure to me, and there were times when I conferred with him on something that was very stressful by way of punishment, what his sage advice would be.

One time I went in to see him and I said, "Judge, I've got a police officer who was drunk, going up Topanga Canyon at night. He swerved and he hit a vehicle in the oncoming lane. He hit a woman and a couple of kids, and he seriously hurt them. He's never been in trouble before. He's surrendered his badge, and they are asking for a severe punishment." I said, "What's your advice?"

He said, “Son, it could be the brother of the Lord himself. If you do as much damage as he did, you get to do a bullet,” which meant nine months actual time, with a one-year county jail sentence, “as opposed to anything less than that or more than that.” That’s the kind of sage advice he would give, and that’s exactly what I imposed by way of judgment. So that’s the kind of a resource I had on one side of me.

At the other end was Judge Charlie Hughes. Both of them put robes on me at one time or another. Charlie had no son in his real life, had no children at all, and we had just the warmest relationship. I helped him as he was running for Superior Court when he was a municipal judge, and I just, I adored him, and he looked at me like his own. He was up at the other end. As it turned out, if you affidavitted one of us for prejudice, you’d get the other guy, so it wasn’t much use in doing it. They call it Ping and Pong. [Laughter] Then Judge [Harry] Peetris, who was where Judge Rosenthal is at the time of this story, was in the master calendar on the other side of me.

Judge Peetris was the fellow that I think I told you about, had the Greek flag hanging in his chambers. He was in the master calendar court, and just the most gracious, warm person, to this very, very day.

MCCREERY: You were saying the other day, not on tape, but that you all went to lunch together every day. Tell me a little about that.

ARABIAN: We used to. Yes, we used to walk four or five blocks up the street, up to Victory Boulevard, and there was a guy named Max O’Dresan, who had the Patio Restaurant. The main part of it was, obviously, open to the public, and then he had a side room which he would save for private parties and things. That was reserved for the judges every day. He had no real use for it. So we had a table to ourselves, and eight, nine judges would be eating in there every day, five days a week. He had a wide menu, and had a sense of humor that was just incredible, funny as could be.

MCCREERY: But you had a group of peers that you could go to, not only on a personal level, but in connection with your work?

ARABIAN: Absolutely. Not often, but whenever you wanted, whatever you needed. But on my floor I didn’t need to go anywhere else, ever. I didn’t do it often, but they were there. In *Rincon-Pineda*, I didn’t ask anybody. That was mine. But on a few occasions, usually a sentencing situation, where you’re trying to do the right thing and it’s a little tough.

MCCREERY: Let me ask you about a change that was coming down during that period when you were on the Superior Court, and that is the determinate sentencing. How did that change things?

ARABIAN: In the old days you got convicted of robbery first degree or something, and then it was just a wide-open thing, five-to-life or whatever the sentence was. So they would do the minimum five, and then they could come up for parole.

Some people didn't like that, because it left a lot at the other end of it, in case they wanted to keep you there for a while. So the Legislature got involved, and they said, "Okay. Now rape is two, three, and four. Low term two, middle three, high four, plus enhancements, should there be any," and so forth. I think the idea was for uniformity, for one thing, which — that's important. You don't want to go in front of different judges, and as we said, the cream puffs and the law-and-order crowd — they wanted to take that kind of thing out of it. If you got convicted, you were going to do time, and everybody was going to give you a similar kind of a sentence, so that was a beneficial part.

There was some disagreement whether too high or too low, and as time would go by, they could amend it up or down. But my memory of that is that there was no abhorrent reaction to it. In other words, it was thought out, it was discussed. The Legislature had a right to be involved in it, and the judiciary was bound by the rules. So there was no real serious upheaval about that.

MCCREERY: Before we let you off the Superior Court, I want to ask you about being invited to establish the North Valley Courthouse. Tell me that from the beginning.

ARABIAN: Okay. I'm sitting in my chambers over here in Van Nuys, and this is 1983. I've been through the Brown wars and all of that. I'm figuring I'm out to pasture pretty well, and Judge Peetris, he's now presiding judge of the Superior Court downtown. So one day I get a phone call from him in the afternoon, and he says, "Armand? Harry." "Yeah, Harry." He says, "I want you to consider something." I ask, "What?" He says, "I know you've been in Van Nuys forever." But he said, "You know we've got this new courthouse in San Fernando." I said, "Sure I know. That used to be my early beat out there, when I was a D.A." He says, "I need a supervising judge, presiding judge out

there, and so I'd like you to consider going out." I said, "I'll tell you what, Harry. It might be of interest to me, but since I haven't seen it, I'll have a bailiff drive me out and I'll call you back." He says, "Fine."

The sheriff drives me out there that same afternoon. They unlock the place. It's all dusty, but completed. The responsibility is to letter the departments, to bring out a crew and all of that. But the building was beautiful. I called it Fort San Fernando. It really looked like something else. It's got that Spanish look to it.

Anyway, I went out and looked at it, and I just fell in love. I thought, if I'm going to finish out my career, this is probably as good a spot as any. I came back and told Harry, "Fine. But one thing, I want a fighting crew of really good judges. I don't want rejects, leftovers, or has-beens. I want to go out there with a strike force and do business." I called the public defender up, and I called up the D.A., and I said, "I don't want your slackers up here. I want people that are ready to do the right thing."

So we opened it up. The Elks Club had a big reception for me. We had a public ceremony on the grounds, and we hit the ground running. I was in the master-calendar court. I wasn't there three months until I went to the Court of Appeal. A real short time. I barely got the place going.

MCCREERY: Right. So you didn't get too long to be the supervising judge up there? Had you stayed, what did you hope to accomplish, being in that location now, the presence in that community, and all that?

ARABIAN: I felt a connection to the community, because I had been out there all those years ago. I thought that if we put the right players together, that it would serve the function that it was designed for, which was to move cases in an expeditious way. I had the right team. We could accomplish that.

So that all got put together, and I was ready to finish out my career there. I would not have moved out of that courthouse, if I had anything to say about it, until I retired. My eyesight was, until the Deukmejian phone call, I was going to retire out of it. That's why I went out. I said, this is really home. I'm going to enjoy this.

I was out there about a week or two ago for a visit on a case, and it looked great. After the earthquake hit, I went out to see it with a steel pot on my head, because it really took a hit. The side of the building on which my chambers were didn't get hit too hard, but the other side, it's a good

thing nobody was in there. Books were all over the floors, and it was just a mess. So they took a while to fix it, but they fixed it. I donated the Armand Arabian Attorney Resource Centers, and one of them is there on the first floor, on the way to the cafeteria. I just loved the place. I would have loved to have stayed there. I just really liked it, but that wasn't in the cards.

MCCREERY: It sounds as if trial judging was a good match for you.

ARABIAN: I loved the criminal court. It was show time all day long, and you're watching it go down.

MCCREERY: Is there anything else you'd like to say about your time on the Superior Court?

ARABIAN: It's just that a lot of cases went down, and a lot of jurors got to visit with me presiding. To this very day I'll be somewhere and someone will come over, "Judge Arabian, you don't remember, but I was on jury duty in such-and-such." It was a very rewarding time, I would say. The Court of Appeal is isolation-ville. I mean, it's really quiet. You're away from most people. The Supreme Court is isolation-ville, but it's at such a high level that you're charged with your responsibility. So every one of them is a little different.

But Superior Court is where the rubber meets the road. You may win, you may lose, Good-Time Charlie may get the blues, but there's somebody up there with the agony of judgment making sure it's done right. That's the responsibility, and it's a challenge, and you're tired when you get out of there. But my rule was, whatever you do, when you go home at night and put your head on the pillow, you sleep good — that you didn't mess something up so terribly that you were going to lose sleep over it. That was my rule.

MCCREERY: Any regrets from those years?

ARABIAN: None. None whatsoever. Not a day.

MCCREERY: Let's just quickly get you onto the Court of Appeal. But you talked about the phone call from the governor. I guess you ran into him at an event. "Are you going to be home? I'll call you tomorrow, on Saturday."

ARABIAN: Right. It was B'nai B'rith honoring him. He calls me on Saturday, and he tells me he's going to put my name in. Unlike the hatchet job that was done on me after Jerry Brown, this was very smooth sailing, and I had a nice confirmation hearing. I joined a good group. Joan Dempsey Klein, who's still there, was presiding justice, and I had George Danielson,

who's married to an Armenian, former congressperson, former FBI, the best of colleagues, Elwood Lui, and Walt Croskey. He's still there, just a real good guy. People like that. So, again, several of us would have — whether it was from that group or another group — we'd have lunch together up the street on Wilshire Boulevard. A good six and a half years there.

MCCREERY: Let's see. You took that oath November 14th, 1983, so Governor Deukmejian was in his, really, first term, start of his second year there. Knowing that the two of you had already a long history together, what were your interactions with him once you joined the Court of Appeal?

ARABIAN: Just socially from time to time at something or another. I went to the inaugural and stuff like that, but nothing out of the ordinary. He was busy. He was up north. You're busy, you're down here doing your thing, and six years goes by real quick, in a way. It was very interesting work. I had good colleagues. The whole building had really good people in it, 3580 Wilshire Boulevard.

MCCREERY: Tell me something about Justice Klein and how she ran your group.

ARABIAN: She was very easy to live with. I knew her from days in Municipal Court. You have your own little enclave. You have two research lawyers with you, and everybody interacts, and you're in very close quarters. You're just one door apart, two doors apart. You're clustered together, all four justices. We had great collegiality. When I left to go to the Supreme Court, for months she told people, "The joy and laughter has left my life, because Armand's not around anymore." I used to make her laugh all day long. I teased her all the time. So we had a very collegial situation. It was fun to work with the colleagues there.

As Justice Lester Roth once put it to me, he said, "Son, this is the best job in the world." I said, "Lester, why is that?" He says, "Nobody knows who you are, nobody knows what you do. You go, you come, and it's a quiet life." And he was absolutely right.

MCCREERY: What is it about that, that people don't know who you are and what you do? What is it about our system?

ARABIAN: Who knows who's on the Court of Appeal around here? The lawyers, most of them know; maybe not all of them know. You know what

I'm saying. So it's not like saying, "Oh, well, there's Justice Kennard said this the other day at the Supreme Court." You don't have that spotlight on you. It's just a quiet job. It's important, because only a handful go up to the Supreme Court. You're doing a big body of business. It's important, and there are those cases where you're setting some kind of a standard, or a rule that's going to hold up and all that, so it is a really fun job from that side of looking at it. Nobody's going to bother you. They don't run against you. It's just one of those things. You come and you go in peace, and Lester Roth was absolutely right.

MCCREERY: How did you adjust to the quiet life, though? You'd been used to being in front of everyone.

ARABIAN: Yes. I like the action zone, but you mature. Your pace can slow down. You love the dignity of the position. You love the importance of the work. You love going to work. So it's shifting gears. That's all it is. Instead of getting hammered down there with bodies looking at you all day long, you're not. You're in the intellectual side of life.

MCCREERY: Yes, you were in your very early fifties at that time.

ARABIAN: I enjoyed every minute of it. I thought it was a wonderful place. If you don't leave there, and some of them never do, they love every day of it.

MCCREERY: Talk just a little bit more, if you would, about the other judges. We mentioned Justice Klein. Tell me kind of what their styles and personalities were.

ARABIAN: George Danielson, for example, had really been a worldly person in Congress. My only sad memory of him is, with all of his experience and background, he wanted to write a book, and he never got to do it. I was out of town when he passed away, and I couldn't even go to his funeral, which really irritated me. But he was just the warmest colleague. He got up at my confirmation to the Supreme Court and he said, "I guess I've heard about *A Thousand and One Arabian Nights*. I think I've had a thousand and one Arabian lunches." [Laughter] I'll never forget that. It was hysterical. Everybody roared. It probably was true. I just had the best time with him. He was worldly. He had real good common sense, whatever the case might be. So I really enjoyed my time hanging out with him.

MCCREERY: How did his FBI background affect his work, if at all?

ARABIAN: I would say he knew what law and order was about. He could be a social liberal, but when it came to criminal cases, he knew what a bad guy looked like sideways. He was really good. I enjoyed him every day. I had a lot of lunch with him. Thax Hanson, while he was on the court, again, I had taken over Department S from him, and that relationship never, ever changed. It was just the warmest thing.

MCCREERY: But he wasn't on too much longer?

ARABIAN: He was on for a while. I remember the extent of it. Bob Devich was a very close friend, and always a good friend and lunch mate. So basically, you're somewhat detached even lunch-wise. You had a couple of people you'd walk up the street with, but that was about it. Justice Klein and I probably had very few lunches together, maybe at some event. Of course, you'd go to those together, but as far as walking up the sidewalk, she wouldn't do that, and a few others would. That's how it was.

MCCREERY: And Judge Elwood Lui was on?

ARABIAN: Yes, Lui was on. I wasn't very close with him. He was in his own world there, but a very fine jurist and did the right thing. He's in a major firm today.

MCCREERY: Once you got into the work a little ways, was it what you expected, or did you find some surprises there?

ARABIAN: Since you haven't done it, of course there are some surprises. What am I doing here? How do I do it? But there was no shortage of information on how to do it. You had people working up the matter for you, and then you'd put your imprint on it. You had to have one more colleague join with you, of course, and most of the time it was three colleagues in unanimous.

The oral arguments were fun. There was one I remember, early in the morning, first case. This lawyer comes in, and he is absolutely in a dither. He looked like he must have been running. He came in. His jacket, armpits were soaked, which meant his shirt had been soaked before that, and his undershirt prior to that. Now, you're wet. This fellow, he walks in, puts his papers down. The other counsel is there. Justice Klein is presiding. This fellow starts to speak, and it's Martian or gibberish, I couldn't tell you which combination. He's talking, but there's no comprehension of anything he's uttering. I

don't even think he knows what he's saying. So I looked at him and I said, "Counsel," sort of usurping the day. I said, "Counsel, can I ask you to do something?" He says, "What?" I said, "Go back out through that door. You're going to see a water fountain right next to it. Go out there, take a drink of the water, take a breath, and then come on back in." "Oh, thank you, judge."

Turns around and he walks out, does it. He comes back in, now he's talking English. I used to use that example in teaching appellate advocacy. If this isn't your bag, hire somebody to do it, because this person was completely out of his league. How he could sweat that much at nine in the morning, don't even ask me, but that's the kind of stress he was under, or whatever happened to him. But that's one of them that comes to mind about some of the things that were going on by way of interesting experiences. But it was fun to watch it.

MCCREERY: It seems to me that judges really differ in how much weight they put on oral argument, or how important it is to their decision making. Where were you on that scale?

ARABIAN: I'm a very big believer of oral argument. That's why I instructed on it. There are people who pooh-pooh it and put it down, and, oh, well, it's this, it's that, it's the other thing. I think Clarence Thomas, for example, in his first year didn't ask a single question, so I don't know about that. But for me, the art of advocacy is at that moment. This is your show time. You have to step into that pit and answer those things, or you're in trouble. I gave weight to oral argument.

There were certain cases where you could blow it on oral argument, especially in the Court of Appeal. All you need is a vote there. I always called it show time. I'd go, "Let's go, show time." We'd go up the back stairway and take the bench. I just enjoyed the appellate argument. I always loved it. I always got involved with it. I asked questions when I felt like asking questions, and I know in a certain number of cases that it made a difference, either in the total flip, or in parts of the case, where you kicked the tire and the car fell down. That's the analogy I used to use with George Danielson. "George, we kicked the tires. You see what happened?" "Yes."

MCCREERY: How were your colleagues in terms of their relationship with oral argument as part of the process?

ARABIAN: Same thing. They were all very involved with it, every one of them. There was no case where you'd say, or a morning worth, "Where was George this morning?" None of that. Everybody —

MCCREERY: Nobody was hanging back all the time.

ARABIAN: No. They were right there pitching. Supreme Court, everybody asked questions. That's part of it. You want to be sure that if you have some inquiry, or you want to convince somebody up there, maybe it's one vote difference, maybe the answer given might change somebody, and on occasion it could, it does.

MCCREERY: What about the standard that everything should be in the written record beforehand? How could you really augment what was there?

ARABIAN: It is in the written record, but there are areas of that written record that may be causing you a problem, and that's where you're going to ask the question. "Did she consent in the back seat of the car? According to so-and-so, the answer is yes. What do you say?"

MCCREERY: How did you approach the writing of an opinion, if it got that far?

ARABIAN: Oh, well, it gets that far. There's a written opinion in these cases. So you tell the lawyer, the staff person in charge, you say, "Look." Of course, they're there listening to it. We already have a draft opinion by the time we get out there. "These are the facts. These are the questions." I've already gone through all of that. Now I want to maybe augment something, strengthen something, or maybe put some of the Arabian fingerprints on it when I get through with it, and that's what takes place. You've got ninety days to do that. Goodbye. Somebody signs off, and you've got an opinion.

MCCREERY: I can guess, but what would be the Arabian fingerprints?

ARABIAN: The Arabian fingerprint would be some eloquence that was prompted that would be a catchy expression or something a little more flowery than normal. A lot of cases would not get that. They're just mundane and whatever. But there are those where you say, "This needs —," as Emeril would say, "We've got to kick it up a notch," and we want to put something in there. That's what I would do. I did a lot more of that at the Supreme Court than I did at the Court of Appeal, but it was still there.

MCCREERY: How did you use your staff in the writing part of things?

ARABIAN: They write, basically, the whole draft of it. They know what the facts are; that's out there. They know what the issues are. They know what the law has been, or we've developed as we've gone along, so they put the body of it together. They're really the craftspeople of it, but then you get into it. It's got to be your result, that's the main thing. Beyond that, you move things around, or you strike things, or you change words, or you add whatever. But the final product has got your name on it, so you'd better know that you like it.

MCCREERY: Can you give me an idea, in this particular group, Presiding Justice Klein and so on, how did you tinker with each other's opinions when you were in that process?

ARABIAN: If a case is assigned to you, you run a draft of it. You send it to the other two chambers that are on that case. They may just sign off, say, "No problem." Or they may say, "I've got a problem with this thing here." So the two staff people would first try to work that out. If they can't go with you they say, "I'm going to dissent," in which case they'd be my guest. As long as you have one other player, you have an opinion.

From the point of view of schmoozing, it's done in a very informal way. "George, did you see that one on Smith?" "Yes." "They went in there at night, and I think there was a little question about knock notice, but I think they were okay." "Yes, I think it's okay, too. Goodbye."

MCCREERY: All right. But did I hear you correctly earlier to say that many or most of the opinions were unanimous?

ARABIAN: I would say yes. In the Court of Appeal, yes, quite a few were.

MCCREERY: What about the idea that you sometimes hear batted around, that the law clerks, because they're doing the initial writing, have too much power?

ARABIAN: Not with me. They work for me. There's no such thing as too much power. They have an administrative, ministerial function, which they carry out. The decision-making is mine, the fluid aspects are mine, the fingerprints are mine, the gathering of a judgment that's satisfactory is my responsibility. So I don't go with that. You hear those kinds of things,

maybe at the U.S. Supreme Court or other places, but that wasn't a problem with where I was.

MCCREERY: And with the other justices?

ARABIAN: Same thing.

MCCREERY: What about the makeup of the caseload itself? What were you seeing at that level? Like the criminal, civil.

ARABIAN: It's pretty well rationed out on an equal basis. If there's ninety cases, everybody gets one-third or one-quarter of the load, whatever that is, with the exception of, if they knew I had a special interest, for example, in rape reform, that would probably be offered to me as a right of first refusal, because they knew I knew more about it than somebody stepping in cold. Why recreate the wheel?

Of course, in the Supreme Court, you know the chief justices when dealing these things out, they can keep what they want for themselves. But the workload is the workload. You want to get done with it, and you want a competent conclusion that you have a majority with. That's the end of the game. There's no bonus.

MCCREERY: What about the California court system as a whole while you were on the appeals court? Were there many changes coming down to the overall setup?

ARABIAN: The thing of interest is if you have two appellate courts coming up with opposite conclusions. That's an invitation for the Supreme Court to grant review, so you keep an eye out for that, because it obviously happens on occasion. So that's of interest to you. Other than that, if you're in one building and there's four divisions in there, you're all collegial, you all have your work to do, and you all do your work. Everybody's in their own little world.

MCCREERY: We talked about the 1986 election and how that changed the makeup of the Supreme Court. I wonder if you could just say a few words about the three appointees who came in through Governor Deukmejian to replace those who went off the court, as you were sitting on the Court of Appeals and saw this happen. Justices Arguelles, Kaufman, and Eagleson.

ARABIAN: All three, in my view, were outstanding replacements. They were put in there as sort of a bridge between A and B. They knew that.

They were further on in their careers. They were not going to stay there for twenty more. They were solid, savvy, well-experienced. Probably every one of them went through Muni, Superior, if I'm right. They were all superior types, and they were just excellent choices. No one, to my knowledge, had a bad word about any of those guys, especially if you knew them in any way at all. I knew Kaufman the least, because he was down around San Bernardino, but his reputation was a real solid guy. Eagleson I knew pretty well up close, and Arguelles I knew somewhat well, so those two guys I knew would serve the Supreme Court in the same way they'd been serving all along. So those were just excellent people to put in, and that's what Governor Deukmejian did.

MCCREERY: Of course, he chose Malcolm Lucas to be the next chief justice. I just wonder how you and your colleagues saw that move?

ARABIAN: It seemed extremely natural. First of all, they'd been law partners together way back when. They were from the Long Beach area, their wives knew one another, and they knew each other extremely well. He had had federal experience and all the good stuff, so that was like a no-brainer as far as anybody I was around was concerned. That was a great selection.

MCCREERY: Were you acquainted with Chief Justice Lucas?

ARABIAN: Only from the JSAB business. Very collegial, very proper guy, and really I liked him a lot.

MCCREERY: Just in terms, then, of rebuilding the court and kind of re-establishing public confidence, shall we say, what was the talk among you and your fellow judges about what needed to happen and how that was going? Do you recall?

ARABIAN: There was no conversation like that. In other words, what you did, what your acts represented was going to impact what the court looked like, did, or was perceived as doing, so there was no conversation about, "If we're hard on rape, somebody's going to like that." There was nothing like that.

MCCREERY: I guess I didn't mean that. I just wondered how you viewed the changes at the Supreme Court level, what you were looking for.

ARABIAN: There was nobody looking for anything. Everybody was looking to do the best they could, opposite to what they had been in the past,

and let's go from where we are right now. That's it. There was no other thought. You're here to do the job, let's do it.

MCCREERY: When we were talking about your time on the California Court of Appeal, we spent a little bit of time talking about your immediate colleagues in Division Three, but I wonder if you could reflect for a few minutes about some of your colleagues in the other divisions — what is it, seven divisions at that time? — and what that whole second district looked like.

ARABIAN: We were in a rented building at 3580 Wilshire Boulevard, right in the middle of things there. Actually, the clusters are separate law firms. That is the way you've got to look at it. In each cluster you have four, and then down the hall there may be other clusters, or they might be on another floor. So there's not a big social byplay between one and the other unless you go out of your way to have that happen.

So you got to be pretty good friends with those that you were eating lunch with. Other ones, you did your work, they did their work. You'd see each other in the hallway, of course, you're coordinating opinions throughout the day, and then you're in the argument session. That's how six and a half years went by. It's one of those things.

MCCREERY: I note that three of the divisions on this Court of Appeal had women as presiding justices. That strikes me as kind of interesting, as early as the early eighties. Was that something to note particularly?

ARABIAN: Pat Brown, I think, had a hand in that, and Jerry Brown had a hand in that, and they all did a fine job. Joan Klein, you couldn't ask for a better P.J. She was terrific.

MCCREERY: In the video that was made about you, the tribute video that you very kindly donated a copy of, Justice Klein was saying something to the effect that she thought you could take some credit for there being more women on the bench over time. What was she referring to there?

ARABIAN: She was right, because she happened to know about it. What was happening was very qualified women lawyers who wanted to go on the court sought my advice. Three of them happened to be Armenian, but they weren't the only ones.

Candy [Candace] Cooper, who's now a presiding justice of the Court of Appeal, she was on the Muni Court and wanted to get elevated to the

Superior Court. Without me she would have never gotten there, because there was a whole groundswell of people taking shots at her. She'd made a donation of a modest amount of money to Tom Bradley. It was like a hundred dollars, and that was being held against her. I was outraged, and I kept on fighting and fighting. She gave me the honor of swearing her in to Superior Court, and now she's presiding justice of the Court of Appeal, has done a great job at every level. So some folks figured I had a hand in trying to get a little justice done to them.

Another young lady came over one day, just crying, and why? She had a public prosecutor spot, and shots were being taken at her in the Jenny Commission for this and that and the other thing. She came up to chambers and she was crying in the Court of Appeal. I'm hugging her, and I knew her. I said, "Slow down. Tell me what's going on." So she tells me. I said, "I'm looking into that one." She's a judge today, probably getting near retirement.

There was another one who came to me as a law clerk when I was over here in Van Nuys, Maral Injejikian. She was Kirakosian along the way and got divorced. But she started out as a law clerk for me. She became a public defender. I took her to a Deukmejian event, and the rest is history. She was just outstanding, and he put her on the Muni Court. I just hand carried her to the event and said, "This is a person to be considered."

There were others like that. Joyce Kennard. Nobody knew who she was. She was a clerk across the hall. Brought over a cake one day and introduced herself to me, and she went municipal, superior, appellate, and supreme ahead of me. Nobody knew who she was. That was all done right across the hall. So those are the ones that come to mind. I know there are others, but that's why Klein said what she said.

MCCREERY: I wonder, how would your advice to a young woman aspiring to a judgeship differ from your advice to a young man, if at all?

ARABIAN: There's no difference. I would just tell them, let's see your track record. Put the resume together. In those days, because I was involved in the process of clearing candidates for the Deukmejian folks, I was in a position to take a real good look at it. Judge Judy Stein over there in Beverly Hills, I was the one to interview her. I was the one to promote her. She retired not long ago. So I knew what they were looking for, and if you were

smart, and you were dedicated, and you had good character, I was going to support you. They would usually thank me by letting me swear them in. So that's why Justice Klein said what she said, because she knew these things were going on.

MCCREERY: Talking a little bit more about your colleagues throughout the whole of District 2, I wonder if there were any natural leaders or legal stars that you were either drawn to, to learn from, or who stood out, as the appeals business was practiced there.

ARABIAN: I led my own life there. I tried to be the star if I could be one, and I made every effort to be one. As far as anybody that I would look up to, Justice [Thaxton] Hanson was like an older brother to me, not to the point of saying, "Gee, how would you approach this?" on any regular basis, but just our friendship and collegiality and brotherhood was very important to me until he passed away. That's the one person in the entire place that I really had a real bond to.

MCCREERY: Yes. Are there particular cases that stand out to you as — maybe not the details of the cases themselves — but as thematically important during that period?

ARABIAN: Just off the top, nothing really sticks to me. We just ate up a lot of cases. A lot of them weren't published, some of them were. But unless I look at the sheet of it, I can't answer that one.

MCCREERY: That's fine. But let's talk about depublication, since you've alluded to it. Give me your rap on that and where that fits into the whole process.

ARABIAN: Let's say that we've issued an opinion, and let's just say it was unanimous at the Court of Appeal. We'd deliberate on whether it's worthy of publication, because if we don't step out to say that it ought to be published, it's not going to be published. So we would have a roundtable about that and say, "Does this present an interesting, unique case and authority that would be helpful for the law books of California and for the future?" If we determined that it had that going for it, then we would order it published.

Now, that's subject to the Supreme Court ordering it depublished, if they feel like doing that, and on occasion they would do that. So it's not a big, major event for them to step in, but it happens on occasion. We're not

thoughtless about urging a publication of a case unless at least two of the three — normally, all three would agree that it ought to be published. But it's just a small percentage of the work that you're doing each year.

MCCREERY: I think it's perhaps hard for the outside public to grasp, and even for me to grasp, the kind of fine points of why something would be published or not. There are sometimes charges that by not publishing, there's something being hidden, or something like that. It's kind of a unique facet of California's system.

ARABIAN: There's one other important criteria. Let's assume that our opinion is in conflict with another one. Then we're going to publish it. You're looking for that fight to be taken on, so who's right? So in a conflict with another appellate opinion, that's a big boost for doing it, and so one of the first criteria is, does it cause a question of collision someplace? And in that event, it's going to get published.

MCCREERY: But you're saying in other matters, it's just needing to be something of interest to the development of California law to be worthy of publication? Is that how to look at it?

ARABIAN: Yes. In other words, is this going to stand up as time passes and be of help to a similar situation amongst other players in some other setting? If it does that, it's worthy of going into the books.

MCCREERY: That leads me to bring in the factor of the great volume of cases and opinions you're working on. This court deals with the vast majority of all appellate matters in the state.

ARABIAN: A lot of material comes through there. "No, I'm going to appeal that." Okay, well, there you are. It may be totally frivolous from any real look at it, but someone's going to have to look at it and dispose of it. That's what happens. Then of the remaining pile, the Supreme Court only takes a small percentage of what's out there.

MCCREERY: Why do you suppose the appeals court is invisible, more or less, in the total system?

ARABIAN: The spotlight is really on the last court, okay? If the Supreme Court of the United States says, "We're going to set aside the huge multi-million-dollar judgment against Phillip Morris, because it did violate the

corporate rights,” everybody knows about it, because the press is going to carry it. It’s groundbreaking.

In the Court of Appeal, you’re just going through a lot of volume. There are some cases that will catch the public eye, and say, “Oh, my gosh. They said this on that one. You know the Supreme Court’s going to look at that.” That sort of thing. But otherwise, it’s a cog in the machinery. You’re doing a heavy volume of work. Most of it’s not going to jump out, and reporters looking around to see what you’ve said about it. So it’s just, you’re in the middle there. The Superior Court gets a lot more attention, because they’re sentencing someone to death or whatever. There’s plenty of spotlight on, “Let’s televise the trial of this movie type case.” Everybody reads about that one. But who knows what the Court of Appeal did last week? Nobody.

MCCREERY: A few moments ago, you mentioned Justice Joyce Kennard, and the fact that you knew her back from the time she was a senior research attorney, is that right, for Judge Edwin Beach?

ARABIAN: Yes.

MCCREERY: You say she brought a cake over one time? Tell me how you got to know her.

ARABIAN: I had seen her in the hallway. She was on the other side of the floor. Buck Compton, Justice Buck Compton, came over one day, and he’s a little hot under the collar. He comes banging in on my chambers. “Hey, Buck, how you doing?” “Armand, there’s a wonderful research lawyer on the other side, working for Beach. Name is Joyce Kennard. We’re trying to get her a judgeship, and no one’s waving at it. I’ve talked to [Robert] Philibosian. It’s not going anywhere.”

Philibosian was involved in the process of Deukmejian appointments with me, and I said, “I don’t know much about her. Why don’t you ask her to come over and introduce herself?” So the next morning she comes across with a cake in her hand, with white frosting on it, and delivers it to me in my chambers. She sits down and we start to chat, and I said, “Compton was over here yesterday, and he tells me you’re trying to become a judge. Your application and so forth,” I said, “I’d like to see it.” And that’s how it started.

We became very, very good friends. I just had a real soft spot for her, and she did for me. She had a very tragic background. She had lost a leg

above the knee, which was a real debilitating thing. So I went to support her. That's another one that Justice Klein was referring to. The next thing you know, I swore her into the Municipal Court; next thing you know, Superior Court; next thing you know, she's on the floor with me at the Court of Appeal, and then she goes up to the Supreme Court ahead of me. To this day, we are cordial when we see each other. She lost her husband. Her whole life is the life of being a justice, and she dedicates herself to it very, very deeply. That's how that all happened.

MCCREERY: Do you know much about her style when she was a trial judge and how she took to that role?

ARABIAN: I didn't know how — I never heard anything negative about her in the lower courts. Then she came to the Court of Appeal. She was doing a standard job up there. When she got on the Supreme Court, there was a perception that her true liberal colors had finally come to blossom, because she was never perceived as a liberal in all of the other positions that she'd held. Eyebrows were being arched about, "Why is she saying some of this?" and "We've never seen this side of her," and so forth.

So I think she did step out to show the world who she was and how she truly felt, which is something you can do. It's something you're supposed to do. It surprised some people when she did all that. But as time passed, as I look back at it now, she's quite in the mainstream of the activities of the court. I can't point out and say, "Oh, yes, well, Kennard's a liberal on the court." She has her days of being liberal on the court, but I had mine, too. But I think she started out trying to set a little stand for herself in that side of it, probably a little from her background, probably from other things. But as time has passed — and she went on there in '89 — been up there quite a while now, she's quite mainstream from what I can tell you.

MCCREERY: In one of the written things you shared with me, I think at the time when Justice Kennard was being promoted to the Supreme Court, you delivered lovely remarks on her behalf. But in a related article, or perhaps in those remarks themselves, you, I think, referred to her as a waif of destiny.

ARABIAN: The wondrous waif of destiny.

MCCREERY: Was that sort of a phrase that you'd been using, or where did that come from?

ARABIAN: No, that's something I would have put in an opinion if I thought about it. [Laughter]

MCCREERY: Your writing is outstanding, once again.

ARABIAN: That's the kind of writing that you like to do. For example, these catchy lines that you learn, "The risk reasonably to be perceived defines the duty to be obeyed." This is poetry from *Palsgraf* case, I think it was.¹² You just don't forget them. Here she was with all of the things that had happened to her that would have been tragic to anybody. And to rise above it!

MCCREERY: It's a marvelous phrase.

ARABIAN: The women lawyers — or judges, I think it was women lawyers — gave her a big silver tray one day, and they put that on there. "To the wondrous waif of destiny." I thought that was classic. [Laughter] They liked it, too.

MCCREERY: To what extent were you a mentor to her?

ARABIAN: I really wasn't her mentor in the sense of what she was doing by way of work. I was her promoter. I was her advocate for advancement, and I'm proud of having done that, to this minute.

MCCREERY: While she was on the Court of Appeal with you, how close were you on an everyday basis?

ARABIAN: As difficult as it was for her to walk, we'd walk a block or two. She would join the lunch club as often as she could, and we'd go to lunch together. We'd go to bar meetings together. We were very socially close. We enjoyed each other's company. She was a terrific colleague.

MCCREERY: I know you enjoyed very close, happy relationships with a lot of the other judges.

ARABIAN: You're working together, you're living together, you're doing the same job, and it's a lonely life. You want to have a couple of friends in your day, and those are your friends. You want to have some friends you can go eat with and talk with, and share common problems with. So collegiality really is important in the appellate world, to me.

¹² *Palsgraf v. Long Island Railroad Co.*, 248 N.Y. 339, 162 N.E. 99 (1928).

MCCREERY: How did you develop as a judge during that appellate court period? Was there any change or evolution in your thinking that you can spotlight?

ARABIAN: First you have to learn the job, and you go to the classes and schools and whatever else. I went to NYU judges' college a few times. But I think you're born with style or you're not born with style. I think if you love the written word, you're going to spend extra time to make it palatable to somebody as they're reading your opinion. So that comes from within. To me, to be an appellate justice is not like putting car tires on. It's just not. To me, you're creating the drive train. You're super-punching up the engine.

I think that "the music of the night" is an expression that comes to me. When I was in San Francisco for the six years, and I was living by myself most of the week there, especially in Pacifica, which was right there at the oceanside. You could hear the waves coming in, and I'm sitting there all alone three nights, four nights a week. There you're composing the music of the night. You don't have a cat or a dog or a canary. You're there by yourself. You have music on, and you're listening to the ocean crashing around, and you get into the mood of saying, okay, I've got this opinion. Now I want to put on the Arabian fingerprint. I'm going to put some interesting language in the beginning of it, about how I would describe the State of California in a given case, about how many miles of shoreline, and the mountains and the deserts, which went into one of them.

Or a conclusionary paragraph. That's often the place where I would focus for the fingerprint. That's where I would try to come up with the wondrous waif of destiny kind of a thought, and put that in there, because the lawyers and judges love it. If you just author some mundane hundred opinions a year, nobody cares. They say, "Okay, somebody won, somebody lost."

But if you leave them with a line that's quotable, that says, "An environmental impact report is not to be used as a method of oppression and resistance to growth," this pops up from then on. They'll go, "And as Justice Arabian said in *Citizens of Goleta Valley v. Santa Barbara*, an environmental impact —," and they go on from there. So that's what you try to create in the music of the night. It's not going to be in every case. But in those that are serious, in those that you say, this one's going to have a lifespan that's going to run for a while, those are the ones where you put the fingerprint. That's how I did that.

MCCREERY: What kind of music did you like to listen to, may I ask?

ARABIAN: I'm a Sinatra fan. Frank Sinatra kept me alive for two years in the military, and he's kept me alive until this morning. [Laughter] I had the pleasure of meeting him once, and it was the best fifteen minutes I can tell you about, in Vegas one time. I just adored him. He was a New York-New Jersey kind of guy, and came out here. Of all places, he's buried in the Coachella Valley, in Cathedral City. Who would have guessed that? He loved the desert. I read a story about how he found it. He's a legend. He wasn't perfect, he was far from it, but I just loved his appetite for life, and the way he sang, and how that, to this moment, he will impact your life in how you get through the day. "I did it my way." It's [Paul] Anka's words, but it's Sinatra's voice.

MCCREERY: Thank you. Let me return to the subject of Justice Kennard, and ask you, how did you first learn that she would be promoted to the Supreme Court by Governor Deukmejian?

ARABIAN: That's not a secret. At some point, because if there's an opening, numbers of people are going to be bandied about as to who's a potential appointment. So these names will come up, and then it may be three or four names. It's usually not just one. Then people are being asked about, "What do you think about this? What do you think about that?" The Jenny Commission, people are making phone calls. So you know it may happen, and then all of a sudden the announcement is made, and you've got to come up for the confirmation hearings. So it's not a secret. It's out there while they were cooking it, and now it's on the table. Then they're going to vote on it, and that's that.

MCCREERY: It may have been surprising to some that she was promoted before you were.

ARABIAN: I was surprised, to be very honest about it, because she really had no connection with the governor, personally, along the way. I had been in his kitchen cabinet, and my wife had walked precincts for him, promoting him in Long Beach and efforts like that. But no matter what your thought process is, first of all you understand it's the governor's choice, and he can do what he wants to do, number one.

Number two, there are other considerations besides friendship and loyalty and long-time experience. For example, do we need a woman on the court? Do we need a woman minority on the court? These kinds of things. Politically, does it have impact? So there are a lot of considerations that go into an appointment, and that's how you look at it. Everybody has his or her day in the sunshine, and it depends on how the sun is that day. [Laughter] So that's how that went down.

MCCREERY: Who else was being considered at that time?

ARABIAN: Oh, I can't remember that. I just don't remember. It struck a lot of people as out of the blue, honestly, at that time, because she was one [appointment] a year, one a year, one a year. You say, well, it's going to stop after the third one or something. But she hit a grand slam. It was really something.

MCCREERY: That was 1989, and early in the very next year, 1990, you were elevated. Tell me the story of that, please.

ARABIAN: It's a little funny. I'm the only person, I think, that was appointed to the Supreme Court who was not interviewed by Marvin Baxter, who was later my colleague on that court. But he was the judicial appointments secretary, and you'd normally have to fly up there, or he'd see you down here someplace, and go through some questions with him so he'd know who you were and where you were coming from. In my case, the governor knew me extremely well. I had met Marvin along the campaign trail here and there, and we were social friends but didn't really know each other very well. There were a handful, again, being considered, and all of a sudden you get the phone call, "You're it," and that's it. That's what happened.

MCCREERY: So the phone call really was the first direct, serious —

ARABIAN: You're told. Somebody's going to have to tell you. "The governor's announcing he's nominating you tomorrow morning," or whatever it is, and that's what happens.

MCCREERY: As well as you knew the governor by then, I'm still wondering, do you recall what he said in that phone call?

ARABIAN: I didn't get it from him, as I recall. I think Baxter called me. That's my memory of it. He saw me socially just before he put me on the Court of Appeal and told me, "Be by your phone." But for the Supreme

Court, I don't recall a phone call from him. I knew I was being considered, but he never called up and said, "Hey, tomorrow morning I'm doing yours." [Laughter]

MCCREERY: You were replacing, of course, Justice Kaufman, so the second of that early trio of Deukmejian's appointees — meaning Arguelles, Kaufman, and Eagleson — the second of those to step down in a fairly short time. This was February 1990. Presumably, you didn't have to hesitate. What were your thoughts upon being made this offer? Was there any consideration?

ARABIAN: I was happy that it was happening, and I thought I was ready for it. I'd worked my way up through all the steps, and if it didn't happen then I probably was going to guess it wasn't going to happen. So I was thrilled that it was going to take place, and I was looking forward to it. There's a challenge to it. You've got to move up north and leave your wife and two kids behind. But if you're going to go in the judicial world, you're going to go as far as you can go, and this is it.

MCCREERY: You referred a few minutes ago to your apartment in Pacifica, and as you're saying, it's a huge change in your family life. Tell me a little bit more about how you worked all that out.

ARABIAN: What happened was I went up there to look for a place to stay. Arguelles had an apartment at Fox Plaza, Kennard had an apartment at Fox Plaza, and others had lived in there. So the logical place was to go check out an apartment. I think I was on the twenty-second floor. I found a nice place looking down Market Street towards the Ferry Building. It had a balcony, and it had a living room, bathroom, walk-by kitchen, and one bedroom. It was very comfortable, and it was about a two-block walk to the court. That's why people liked that place so much.

So I lived in there for about a year and a half, and then my judicial secretary said — she lived in Pacifica, which is about twelve miles south — "There's a couple of condos for sale. I think you might take a look at it." So I said, "Well, fine, let's go."

She drives me down there, and I looked at a couple up on a hilltop, in just a huge cluster. I didn't want to get into that. Then I see a "For Sale" sign down below. There were only thirteen condos in a cluster, right at the edge of the cliff. I said, "I have to go see this one." The person who had it had three of

them in different parts of California, I think he was a builder, and wanted to sell this one, and that was the end of that. I just fell in love with it.

I moved in, and for the next four and a half or so years, put all granite in, and recessed this and that and the other thing. It was just a showplace, and I was really comfortable. I looked forward to going up north every week, because I knew where I was going to be sleeping at night. It was wonderful, very close, about a quarter mile from a shopping center, so you could either go to a deli or whatever. The laundry was there and all.

It was just wonderful, and I entertained some of my crew there on occasion. We'd go to the ballgame. So I loved it, and I hated to sell it, but when I got off the court in '96, nobody wanted to go up there on a steady basis, and the first couple that came in bought it. That was that. But that part of my existence was just absolutely wonderful. I loved it.

MCCREERY: And your commute wasn't too bad into town?

ARABIAN: You'd have to fly up on Monday morning. I'd have a car at SFO, drive in to the court, and then Thursday, usually, in the afternoon I'd drive it, leave it at SFO. I had my other car, my own car down here at Burbank Airport, and go home. That was my six years of back and forth.

MCCREERY: How about the effect on your family back here? How did they do without you?

ARABIAN: It's a little tough. They were in school and doing what they do. The wife is home taking care of them. She knows you're going to be home probably for sure Thursday night, sometimes Friday, and you've got the weekend together. The Hollywood Bowl and all the social events would go on over the weekend, so it wasn't that you were dropping out of sight completely. And then Monday through Thursday, you're gone again. So that was it. I'm a guy who likes flying, but there's a limit to everything — people kicking your chair and coughing on you. [Laughter]

MCCREERY: All right. Just to get you started on the work of the court itself, the record shows you were confirmed by the Commission on Judicial Appointments March 1st, 1990, and took the oath the same day. What were the matters of getting started, the physical setup and so on, at the court itself? Where were you?

ARABIAN: The first thing is, you have to pick a crew. I get up there and I start interviewing the people Justice Kaufman had. In fact, Justice Kennard has written some remarks in recollection of Justice Kaufman and how pleased he was because I had hired most of his folks. Then I interviewed — I think there was an open spot, or somebody was doing something different, I don't recall. But I picked up a wonderful lead attorney, and he had been the lead attorney for Justice Kaufman, so he knew exactly what was happening.

I hired my own judicial secretary, who was with me the whole time. I had five people, so I had a crew that was ready to roll from day one. We hit the ground running. So that part was really easy. We were in temporary quarters for a while. Then we moved over to another location for the rest of it. The rehab of the court was not done until after I left.

MCCREERY: The Marathon Plaza?

ARABIAN: Yes. We were at Marathon Plaza, but this is when they went back. I went to the original court, and saw the dedication there. So I never really sat in the original courtroom. It was always in temporary ones.

MCCREERY: Where was your chambers in relation to the others?

ARABIAN: I was next door to Justice Mosk, and on the other side of me was first Panelli and then Werdegarr when she replaced him. It was on the side that was looking towards the water. It was a lovely chamber, and I really enjoyed my time there.

But on Wednesday mornings when we had conference, I would take my pile of paperwork and go down and stop in Justice Mosk's doorway. He'd be at his desk surrounded by photos of presidents. I'd say, "Stanley, show time." "Oh, okay, son." He would pack up his papers, and we'd walk in together. That went on for almost all of our time together. I adored him. We had a wonderful, collegial time. We didn't hang out socially too much, but we just liked each other.

MCCREERY: You mentioned that, and, of course, if he was right next to you perhaps that aided getting to know him. But why do you think that connection was so good?

ARABIAN: We wouldn't hang out with each other. I wouldn't go down there and say, "Hey, Stanley, how are you doing?" It wasn't that way. He was busy, working away.

It was always in the connection of, did you appreciate this other person as a human being? Did you respect this person for his humanity and as a jurist? If you did, that was going to be the relationship. We didn't go out drinking together, but he just knew I had a real fond spot for him, and I knew it was the same way. That's how it was. I just admired him as a soldier and a real standup person.

MCCREERY: I take it you hadn't known him before you went on the court?

ARABIAN: Very little.

MCCREERY: He'd been attorney general and all those things, had been on the court since '64.

ARABIAN: No, very little. I think I had a lunch next to him someplace, at a lawyers' event, and chatted with him, but other than that I had really no prior relationship.

MCCREERY: He was, of course, very much the senior person in that group, and then, of course, stayed on the court until his death in 2001.

ARABIAN: Right. I went to his funeral; just a terrific guy.

MCCREERY: Being that he was so senior, what was his role amongst that group, kind of unstated [role]? Was there any particular spot for him in things?

ARABIAN: No. When you're sitting around the conference table, the chief goes last, and the senior person goes first. So Stanley would be the first one to say, "In *Smith v. Smith* I'm of the view that we ought to grant that case," and then what his view was, or his thoughts, and so on. Then it worked around the table. So Wednesday was show time for what are we going to do here, what cases are we going to take, and he would speak first.

In the event that it was three-to-three out of the first six, then the chief would be the tiebreaker, but he would have heard everybody's remarks by the time it came over to him. So from that perspective, you heard from Stanley first. But for that event, weekly, everybody just did whatever they did. If he didn't like yours, he'd write a dissent, and that was fine. If you wanted to join him, wonderful.

MCCREERY: But his tenure on the court didn't mean any particular thing?

ARABIAN: No, very little about that. There's just none of that. Everybody's an equal.

MCCREERY: Let me ask you to talk briefly about your other colleagues when you first went on, starting with Justice Broussard, who also had been there for some little time.

ARABIAN: He was the warmest guy. I didn't know him. I went over one day and I gave him a first-day-of-issue Jackie Robinson stamp. I thought he would like that. I happened to have it, and I thought, I think I want to give that to him. If there's one guy up here would like that, it's him. It was just a sign of such friendship that he just probably never thought I was going to be doing to him.

So he turned around and he gave me a glass paperweight. It was etched with the statue of the lady of justice and, "Supreme Court of California." I don't know where he got it. I'd never seen one before or since, but he was going to give me something, and that's what he gave me. I have it to this day, and I treasure that. That was a moment of gift swapping which was totally unexpected. From then on it was always collegial. Again, not a social situation after work. He was doing whatever he was doing, and I was doing the same. But when it came to the work and the cooperative nature, he was just a perfect gentleman. I just really liked him, and I was very sad when he passed away.

MCCREERY: What sort of presence was he in the group situations?

ARABIAN: Again, everybody minds their own business. You say what you've got to say in writing, and you can orate about it in the meeting, at conference, or if you're going to go visit — on rare occasion would I do that. I was not the gerrymandering ward heeler, "We're going to wander around and get your vote." I didn't believe in that. I didn't do it.

MCCREERY: Were there some of those in that group?

ARABIAN: Yes, but I was not one of them. I didn't believe in it. If you have a question, come ask me, but don't go trying to break my arm and say, "Do this, do that," because I didn't buy into it. I never did, and I didn't ask anybody to do it. So that was about it.

MCCREERY: You said Justice Panelli sat on the other side of you.

ARABIAN: He was on the other side, yes.

MCCREERY: Had you known him before arriving at the court?

ARABIAN: Very little. I think I walked a few blocks with him in San Diego at some conference one time. I really didn't know him. He was a hard worker, put out a lot of cases. Then he left ahead of me, I forget exactly when. I left in '96, so I'm sure it must have been '95, '94.

MCCREERY: Ninety-four, I think.

ARABIAN: Yes, it could have been in there. And then Justice Werdegarr, who used to work for him, got the spot, so that was a transition on the other side of me.

MCCREERY: Did you get to know Justice Panelli very well?

ARABIAN: Not really, no.

MCCREERY: You had a short overlap with Justice Eagleson before he retired and knew him a little bit beforehand?

ARABIAN: I knew him because he was involved with the Judicial Selection Advisory Board, JSAB, for Governor Deukmejian. I knew him from Superior Court days down here, not real well, but we always had a nice relationship. When I got up there, he immediately became a big brother to me and showed me where things were and took me to lunch.

MCCREERY: That's wonderful. I was wondering who kind of helped you get going.

ARABIAN: He was the main one. He really was. Kaufman, because he hung out up there for a while, he had an apartment there, he was very helpful also in answering any questions, or telling me about the staff, and things like that. His wife was very sweet to my wife and all. I unfortunately went to his funeral out in San Bernardino, too, along the way. And Justice Eagleson passed away. I couldn't get to his for some reason. But they were the two who were really very helpful to me, and I really appreciated them.

MCCREERY: Then I suppose once they were gone, you were pretty well established and so on, but I wonder, who were you close to in that group?

ARABIAN: Baxter. Baxter was the one that I was close to. We would probably have lunch, on the average, three times a week. We'd walk somewhere together. We had a similar background, both Armenian, both liked shish kabob, [Laughter] and both Deukmejian people. So as close as I was to anybody, it was him up there.

MCCREERY: We haven't talked yet about Ron George coming on the court a little bit later on, appointed by Governor Pete Wilson. What did he add to the mix?

ARABIAN: Ron and I go way back. We were both put on the Muni Court in '72, went to judges' college together at Berkeley. So this goes way back with him and progressed through the steps. He's probably set a new record for appointments by governors: Brown, Deukmejian, and Reagan, Wilson, twice by Wilson. But he and I, we've always been collegial, always, never had a cross word with one another to this minute. He has a wonderful son who's practicing in Beverly Hills, who I just think the world of.

MCCREERY: Then we spoke briefly about Justice Werdegarr, but, of course, after Justice Panelli retired she came on, and so there was a second woman on the court.

ARABIAN: I didn't have much to do with her. She was next door. She was a nice person, friendly as could be. If you wanted to chat with her, she was there, but it was not a heavy acquaintance with her.

MCCREERY: Then let's talk just a little bit about Chief Justice Lucas. He had by now been chief justice for a little while before you arrived. How did he lead this particular group, in your view?

ARABIAN: First of all, if you went to central casting for a chief justice, you'd pick Malcolm Lucas for that spot. He looked like a chief justice, white haired, tall, stately kind of a guy, and nice sense of humor. I can use the word elegant with him. There was no question who was in charge. If he sat there and ran your Wednesday meeting, he was in charge. He controlled that session. From then on, it's like anybody else. He did his, you did yours, and the opinions were flying around. Basically, everybody liked him. He got along with everybody.

MCCREERY: Can you talk specifically about the Wednesday conferences and how those proceeded under his hand?

ARABIAN: The funny thing was — and I have a photo of this somewhere — but I show up at the first conference in San Francisco, and there are a stack of petitions about two-and-a-half-feet tall in front of every justice, to the point where you look and you can't see somebody across the way from you, because of all this pile of paper.

So I walk into the conference, and this is the A-list, and the B-list, and all the petitions, and I naively say, “Colleagues, is there some way to eliminate this pile? We’re not going into it. It’s here. On a rare occasion somebody might want to look into one of them, but if you did, bring that with you. But why are we here with this mountain of paper? We can’t even see each other.”

The piles disappeared. That was the first thing I did, make that remark, and everybody looked at each other and said, “He’s right. Why is all this stuff in here?” That’s been coming in there since the court was probably created. I walk in there in March, and the first thing I say is, “This is intolerable. They’re not even on the floor. They’re on top of the table. I can’t see — .” If I find the picture I’ll show it to you. It was just ridiculous. So that went away, to their credit. They bought that one real quick.

The second thing was, I said, “Why don’t we have cell phones? Every bookmaker and druggie has one. We’re up here in earthquake country. We have death-penalty cases.” No cell phones. This is 1990, and I’m shaking my head. There’s something wrong. “Oh, well, tell the head clerk. Let him look into it.”

Well, in about three weeks, sure as heck this big Norelco — it looked like when I was a lieutenant in the military, a walkie-talkie that we used to have was three times the size of it. But this was pretty big. So we wind up with these Norelco walkie-talkie sub-jobs. But as time passed, that changed.

But it was so important, because the night of the first execution in twenty-five years, Robert Alton Harris, Justice Baxter and I are sitting at an Italian restaurant in Little Italy in North Beach. If we didn’t have the cell phones, we wouldn’t know what was going on. We were up the whole night, and on again, off again. The cell phone was sure handy that night, and it was always handy.

But I was stunned at those two things. First, the piles of paper that were totally useless in our conference. Why was tradition forcing this to happen for so long? “Because that’s the way it was.” Nobody ever thought about not having that pile in there with them, and no one’s using it. Now you can see across the table. That was a big lift to the process. And then the cell phone. That was from my hand. If I hadn’t done it, I don’t think they still wouldn’t have them, but it was 1990. I couldn’t believe it. So that got put into place.

MCCREERY: What were you bringing to the group, coming in with that fresh eye? Any thoughts on that?

ARABIAN: Stanley Mosk — I don't know if I said this before, but we were coming back from a meeting down in the shady part of town, the red-light district. We all had lunch somewhere down in that area, and we were coming back to court. The bailiff was driving, Justice Mosk and myself were in the back seat, and I'd only been up there about a month. He'd seen my activity so far. From his heart he just said, "Son, I've been here forever. We've had people up here who for the first two years couldn't find where the bathroom was. Boy, you hit the ground running. I'm really proud of you." I said, "Stanley, coming from you, that is a major compliment."

And that's how it started. He didn't have to say that. But he just looked at me like, here's this young, cracker-jack up here, and he's doing it, he's right there with us. He's figured out what this is all about, and he's got no questions, and he's going straight ahead like we want him to be and not wandering around in a state of confusion. Coming from him, he'd seen so many people come and go, I thought that was pretty nice.

MCCREERY: Very nice. I can imagine that for some people it takes a long while to get established. Of course, you were perhaps among the more experienced in terms of your trial and appellate court experience coming into it, but also, you did take to it pretty quickly?

ARABIAN: I loved it. This is the top of the pile. Let's go. Death penalties are here, all the heavy matters are. There's just a handful of you handling the entire state, and it's a heck of a job. I respected what had happened to me, and I was going to live up to it, and that was about it.

MCCREERY: In a group of seven — that's just kind of a nice number. It's a larger group than you had been with, of course, but still manageable in size.

ARABIAN: Very much so.

MCCREERY: How did it hold together as a group?

ARABIAN: At the time I was there, for six years to the very day, whoever was in and whoever was out, it was just a very collegial event. You didn't have to agree with each other all day long and weren't expected to. If you dissented, it was done in a respectful way. It could be forceful, but it was

respectfully done. People liken me to Scalia. He could bite you if he wanted to, but it's done in a scholarly way, and it's not mean.

MCCREERY: Justice Arabian, you just showed me a little memento you got upon the day you were sworn in to the California Supreme Court, March 1st, 1990. Can you talk about that and then read from it, please?

ARABIAN: Yes. This is a special little remembrance. It says, "Supreme Court of California" on the cover, with the state seal on it. It opens up and on one side it says, "I, Armand Arabian, do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the State of California, against all enemies, foreign and domestic, and I will bear true faith and allegiance to the Constitution of the United States and the Constitution of the State of California, that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties upon which I am about to enter."

On the other side of it, where it's a blank page, it's dated March 1, 1990. "Dear Armand, March 1st and you have come in like a lion! I know you will be a great associate justice, and I am delighted to have you aboard." It's signed by the person who gave me the oath, Malcolm M. Lucas, Chief Justice of California. So it's a special remembrance.

MCCREERY: Do you remember much about your swearing-in ceremony?

ARABIAN: Yes. The archbishop of the Western Diocese was up on the platform when I took the oath. My mother was alive and was there. My wife was there. My son and daughter were there, and one of the town leaders, who's passed away, Archie Dickranian, who was very prominent in Beverly Hills and in charity. He had put the robe on my back in Superior Court ceremonies. The chief administered the oath, and quite a few people were there watching, a reception thereafter, and off to work we went.

MCCREERY: We were talking this morning about the kind of force you were upon this court as a new member, and that you were able to take a fresh look at a couple of seemingly minor things that had been in place a long time. What else do you do to get yourself oriented and started as the junior member of this group?

ARABIAN: It was not a situation where you were going to learn something brand new. Obviously, it was very much like being a justice of the Court

of Appeal. You had a larger staff. You had to organize the workload with them and put into place when we would meet, which would be on a Tuesday before the gathering on Wednesday. That was done by most chambers, not all of them.

You would keep an eye on the progress of each of the people working for you, to make sure that if it was a death-penalty case, that it was moving along, because those take a lot of time from each person that's involved with it. Then getting acclimated to the city, which was something new. Sacramento was sort of a pit stop. You went there twice a year, and you were not there very long. But San Francisco was now your home, so to get to kind of know what the city was about, and meeting local lawyer types. I was taken under the wing of about four women lawyers who once a week would take me out and show me the different restaurants and gathering places.

MCCREERY: How did that get started?

ARABIAN: I really don't remember. Somewhere along the way I ran into somebody who was very active up there, and she had a collection of about three others. In fact, I know one of them is a judge today. They would hang out with me about one night a week. We'd go out to some restaurant, and they would introduce me around. They introduced me to the Queen's Bench, which was a leading women-lawyers group, so I'd end up at their events. They were just a real comforting factor. That went on for quite a while. They were wonderful to me.

Things like that. Getting to sustain yourself by way of eating at night, and what events you were going to go to. I loved the city. The city was great. Pacifica was just a nice, quiet, foggy city that I loved a lot. So that's, basically, what was happening. It was not a real big learning situation.

Of course, the change was when I bought the place in Pacifica, having to move over to that part of California, near the water, which was just delightful. The days went by, the years went by. Next thing you know, it was getting right up to the anniversary of six years, and I decided on that very day would be the day I would leave. I put a sign on my door, like Kilroy, "Gone fishing. — Justice A." and I left. [Laughter] That was it.

MCCREERY: That's jumping the gun a little bit, but since we're on the subject, how did you decide the timing of your retirement in 1996?

ARABIAN: That's a good question. Number one, I was going to have two weddings inside of four months coming up in 1996. The joke was, if I hadn't retired then they were going to do a movie about my life, and it was going to be *Two Weddings and a Funeral*. So I knew there were going to be some financial considerations coming down the roadway. That was one thing.

Secondly, the building that we're in, the tenants' lease was running out right about that time, so it was a good time to evict the restaurant that was in here and take over the building again. That just worked out perfectly.

MCCREERY: Here in the Van Nuys office?

ARABIAN: Right here, right in my Van Nuys building. Then, there's that thing about, "Leave when you're hot." You've been there, seen that, done that. I thought I had done in six years pretty much what I felt I would like to have contributed. I could have done it longer, but I thought that twenty-four years of that kind of service, plus one year as a D.A. — twenty-five years of one's life is enough to dedicate to the public interest in that sort of a career. So everything just kind of gelled and said that it was time to leave. Coincidentally, it was the sixth anniversary, and I made my quiet announcement, and then I made a public one and left.

MCCREERY: As it happened, Justice Lucas retired very shortly thereafter. Did you know his plans, and did those have any bearing on your own decision?

ARABIAN: Not whatsoever. As I recall, I thought he was going to leave, but I wasn't sure about it. I never discussed it with him. Justice Panelli had gone to JAMS, and I had heard along the way that they were going to try to talk Chief Justice Lucas into joining up, which he did. That was one place I wasn't going to go, so I really had no interest in any of that.

MCCREERY: Why do you say that?

ARABIAN: When JAMS started out, they wanted half of the pay and all kinds of good little things like that. At my press conference statement I said, "I love my mother, but I wouldn't even give my mother half of what I make," and got a big laugh out of the reporters. But that's about what they were doing at the time, which I thought was off the chart. I'm sure they modified it after that. But I had a good feeling about Triple-A, American Arbitration Association, and that's where I went.

MCCREERY: Let's return, though, to your early time on the court, if you're willing, and just talk a little bit more about court process. We spoke a while ago about the Wednesday conferences. What else can you tell me about how it was decided which cases to take?

ARABIAN: First of all, you had a central staff of professionals who were looking at these petitions that would come in, and they were pretty adept at listing the A-list and the B-list, and the A-list was the hot stuff where you were likely to be interested in the question that was presented to the court. The B-list was mundane business that was processed by the Court of Appeal, and they just thought we'll take one more shot at it, and let's go roll it up to the Supreme Court. So that collection wasn't going to go anywhere; petition denied, denied, denied. So that was the big pile in the B-list. You would look through there and on occasion see something of interest, but that was rare. So with the A-list, we would have a discussion in each of the chambers with the crew as to what they thought about those, and they were numbered one through whatever. That's where the action was.

So first I would meet with my staff, listen to what they said, have my own opinion about what I thought was happening. Obviously, if there's a conflict between two divisions, you're probably going to take that one. But there were other impact situations where the law had to be established. For example, do you have a right to terminate force feeding of an inmate, and things like that. So when you went into the conference, you had a pretty good idea of what you were going to vote to grant on. You'd start out with Justice Mosk, and he'd say, "I like this one. I vote to grant," and we'd go around the table. Then later that day the chief's office would distribute in an even way the cases that had been granted, so everybody had their fair share of work.

MCCREERY: Chief Justice Lucas, then, would decide who got what?

ARABIAN: Yes. He and his staff would spread them out.

MCCREERY: How did he use that power to assign cases? Any views about that?

ARABIAN: The only thought I have about that is, if it was a rape situation, it was common knowledge that I would probably be interested in taking the first shot at that. So that's how several of them wound up with me. But for that, he could obviously keep for himself dramatic things such as

reapportionment or term limits. They could keep that for the chief, and likely they would. The rest of it, I don't know what they did. All I know is we got our supply.

MCCREERY: Was there ever any difficulty about who got assigned what, or the range of subject matters and how they were spread out?

ARABIAN: No. You took what was dealt out to you, and if you had a majority opinion you had a majority opinion. You didn't, you might be a dissenter down the roadway. That depended.

MCCREERY: Talk a little bit more about the role of the central staff.

ARABIAN: There was a collection on criminal and civil, and some of them had been there for quite a while. They were very talented. They had their own process of distribution, and they would go through it with a pretty good-tooth comb. You seldom found a problem with what they were doing. They were very helpful.

MCCREERY: Am I right, though, that it would be their job to prepare those initial conference memos?

ARABIAN: They would go through it, make their recommendations. Then it would go to each chamber, and our own people would look at it and see what they thought about it, and then they would discuss it with me and I would go through it. At the end of the day, when you went into the conference room, you had a pretty good idea what your thought might be, not definite, but you're pretty sure on the grant.

MCCREERY: I was just trying to establish the role of central staff in some of the writing tasks.

ARABIAN: The writing is in the chambers of the court of each judge. They prepare a memo and tell you what's going on.

MCCREERY: You talked about the senior justice speaking first, so Justice Mosk and around the table. Was there any occasion where people could speak in a different order because of the nature of the matter at hand?

ARABIAN: It went around the table in seniority. If Justice Mosk said something, and somebody wanted to say something about it, that was fine. But when he got through, you went to the next person. So it was done that way.

MCCREERY: I guess what I'm asking is, how much discussion was there as you went around?

ARABIAN: As much as you wanted. You were there from, let's call it nine to twelve. That's three hours. There's a lot of time for discussion in three hours, and everybody said what they wanted to say. There was no shortcut in any statement from anyone. You can say what you wanted.

MCCREERY: How about Chief Justice Lucas himself, again in the leadership role in this room with the others. How did he operate?

ARABIAN: He was in charge of the process. He would listen to what everyone had to say, and it came down to him. Most of the time he was not a tie breaker. It was pretty well set forth that they had enough votes to do something or another, and he would cast his own vote and sign off, granted or denied, and go from there.

MCCREERY: The atmosphere in those meetings?

ARABIAN: Very businesslike. There was a little humor here and there, but basically, you're there to get through that list, and that takes a while. It's business. You're dealing with serious matters.

MCCREERY: Yes. When you went back to your own staff after those Wednesday conferences, how did you reveal to them what had gone on? What level of detail would there be about the conference itself?

ARABIAN: I'd probably meet with the head of the five, and I'd say, "Lenny, they granted three, four, and five. They didn't have enough for this other one," and so forth, and it was, see what we get. There was no secret. Inside, everybody knows what was going on.

MCCREERY: And your process, then, with your own staff?

ARABIAN: Between myself and the head of my staff, we would distribute. We'd try to make sure everybody had the fair share of death cases, because those were very time consuming. You can't pile that all on one person, so everybody had one or more on their slate. They really take up a huge chunk of time. Three months go by, and they're still working on something, if it's really a huge matter, so that's a lot of time.

MCCREERY: Even before you arrived on the court there was, of course, a great deal of talk about trying to relieve the backlog of death cases. How was that coming along by the time you got there?

ARABIAN: There was a pile, and there's still a pile. There's a bigger pile today than there was back then. You've got an inventory of death cases that's staggering, several hundred of them. I lost track. They don't get to see a lawyer, some of them, for two or three years after the conviction, because they don't have enough bodies to handle it, and the pro bono people don't want to get involved.

So a death penalty is a hollow promise, as far as I'm concerned, in the State of California. You're only executing, what, one a year? It's just pathetic. So you either have it and you work it, and you carry it out, or they die of old age or something else. The public is in a sad spot with that, because overwhelmingly they are in favor of it and they've always been. Maybe it's dropped a little bit in the passage of time, but it's there. When you do something cruel enough and bad enough, the public wants revenge.

MCCREERY: I wonder how you can characterize the views of your colleagues about the death cases and whatever personal aspect they might have brought to it.

ARABIAN: I was the only one of the collection that had sat next to an accused person who was facing death in my practice. Nobody else had that experience. So I took it a little extra special. But from the point of view of, was there some philosophical resistance to it, such as Rose Bird or somebody like that? Nothing like that. The case was there. If it was tried fairly, and good representation, and due process, that was that. If there was a problem with it, you could reverse it, but it had to be one that was shown up on the law, not about how you felt about it.

MCCREERY: During your tenure there, of course, was when executions resumed after a hiatus, shall we say.

ARABIAN: Twenty-five years.

MCCREERY: I just wonder, how did that look from where you sat? How did that play out?

ARABIAN: In Robert Alton Harris's case, he was the one that went in, I think that was '93, it was a heinous killing, cruel in every aspect. About ten

or twelve years along the roadway afterwards, he's still sitting around here breathing air, and we stay up all night long for that to take place. So at the sunrise of the morning when he checked out — and twenty-five years have passed since the last one experienced death like that — I felt that the public had been finally served. What did I feel about it? I was exhausted, but I was happy to have participated in it, because it made up for somebody's life who was not around anymore.

MCCREERY: Can you tell me more about how you actually spent that night? You described going to dinner early in the evening, because you had the cell phone finally.

ARABIAN: Yes, with the cell phone. Justice Baxter and I went down to North Beach and we were eating, and the phone was with us, and that was on-again, off-again night. We finish up. We go back to chambers. Midnight rolls around. Two o'clock rolls around. Judge [Harry] Pregerson along the way gets a phone call from someone. I don't even know if he could ascertain it was a lawyer. It was a phone call to him. He was on the Ninth Circuit. Halts the execution.

With this, this charade had gone through the whole day. I got in my car and I drove to Pacifica. It's now, I don't know, around five o'clock in the morning. I no sooner hit the kitchen than the phone is ringing. It's Justice Baxter. "Come back, it's on again." I said, "You've got to be kidding." He says, "No. Chief Justice Rehnquist has ordered that no one is to touch this case again until you hear from him."

So I get back in the car and return to the city. Some Highway Patrol guy is following me. He sees E plates on my car at this weird hour of the morning, wondering what's that all about? There are no cars on the road. I get back up there, everybody's reassembled, sitting around the conference table. It's now about five minutes to six in the morning. We've been up the whole day, whole night.

We've got the clerk on the phone with the warden at the state prison, "Are there any further delays or stays?" The answer, "No." Plop, plop, fizz, fizz, oh, what a relief it is. About — I'm going to guess ten after six, he checked out. The sun was coming up over the Bay Bridge there, the Oakland Bay Bridge, and everybody went home. That was that. Everybody went

home to take a nap. I think I got back to court at three in the afternoon. So that's how that went down.

MCCREERY: As you sat there assembled, do you recall the mood or the conversation in the room?

ARABIAN: Everybody's alert. They're waiting for something to come to a conclusion that's taken more than a decade to get there, and when the final word was, "Go," to the warden, that was it. That's what happened.

MCCREERY: There were, I guess, a couple of other instances while you remained on the court —

ARABIAN: There were two others along the way. [William] Bonin was, I think, the third, if I recall right, and there was another one [David Mason], who went rather quietly. Both of those went kind of quietly. In Bonin's situation, I remember that one of the boys that he had picked up at a bus stop was so mutilated, the next day his mother could barely identify her son. He was really vicious, and they don't know how many he was responsible for. He was at large for quite a while. You know, you look back at that and you go, how savage could anybody be? Bonin may have set a new standard for savagery, much more than the other two would ever think about. It was pretty bad.

MCCREERY: I wonder if you ever had occasion to talk with your colleagues about the method of execution, which had changed to lethal injection, of course, by that time.

ARABIAN: No, no.

MCCREERY: And as we know, is now under a process of review, shall we say, to determine whether the patient suffers, and so on. Any thoughts about that?

ARABIAN: Never. There was only one style. It was plop, plop, fizz, fizz. That was it when I was there, so that was not a discussion. I had visited the gas chamber. I'd been to it a long time before, so it was no mystery to me.

MCCREERY: What took you there?

ARABIAN: During one of the judges' colleges they had a field trip, and we saw it.

MCCREERY: In reviewing the death cases and voting on them, what is it in your mind that would set those apart from other cases?

ARABIAN: First of all, the record is quite voluminous. It's boxes and boxes that you could fill a room up with, the transcripts and the record. It just grows huge. Then it's come directly to the Supreme Court, so here one of your research people had to spend who knows how long, several months, going through it, analyzing it. Then you analyze what he's done, and every other chamber analyzes it with their staff and their justice.

At the end of the day, you're dealing with the taking away of a life. There's a religious aspect to that. Thou shalt not kill is one of them. There's also another aspect that says something about God put judges at the gates to take care of business. Well, there you are, and this is part of the business. So those were in my head when I was deliberating on these kinds of things.

But beyond that, it had to pass the Arabian test, as I explained, having sat there when the accusatory finger came by looking for the death of somebody sitting next to me. If I was satisfied that everything had happened correctly, as correct as it could be, and the person deserved to die, then that person was going to have my vote to be put away. It's as simple as that. But it's a weighty mental responsibility that I did not take lightly, ever, because it had better be done right, because there's no coming back. So that's it.

MCCREERY: What about the role of the governor in the process of appealing these cases, right prior to the execution?

ARABIAN: They have the power to intercede and commute and pardon and all these other good expressions, but it wasn't being done when I was around, so we were the final word. That was it.

MCCREERY: I just wonder if you had anything to tell about Governor Wilson, in your time, and the part that he played?

ARABIAN: No. No involvement directly to us. Totally separate. They have a weighty responsibility, too. The buck stops finally with them, and they say yes or no. Most of the time it's no, and that's that.

MCCREERY: Since we've mentioned Governor Wilson, maybe you could just say a few words about him and how and when you got to know him.

ARABIAN: I'd met him along the way at political events here and there. I really didn't know him when he was mayor of San Diego way back when. He always struck me as a pretty nice person. He was sociable. I went to his swearing-in, and he was the person I was going to surrender my job to. I went to make an arrangement to see him in Sacramento. He'd pretty well known why I was going in there, and I told him I had full confidence that he would replace me with someone that was an outstanding jurist, and that I was pleased to turn it over to him. He thanked me profusely on behalf of the citizens of the state, both verbally and in writing, and that was it.

MCCREERY: I take it you didn't get to know him very well?

ARABIAN: No, no. I've seen him a few times since.

MCCREERY: Is there anything to mention about how things might have changed once he became governor and took over from your friend Governor Deukmejian?

ARABIAN: I didn't see any big startling events. He just ran a steady ship, like George Deukmejian ran a steady ship. It was a very smooth transition from one to the other. They did basically the same kind of good appointment process. I found no fault with it. He replaced me with Ming Chin, who's an outstanding jurist. I'm so proud that Ming took over my spot.

MCCREERY: Of course, he'd already appointed Justices George and Werdegard before that time, so you had seen a little of his choices.

ARABIAN: Yes, good appointments. Let's just call it what it is, good appointments, great appointments.

MCCREERY: We said that we might talk just a little bit about a couple of cases today, and I realize these were a long time ago, but they were a couple of medically related cases that really kind of stand out as a bit unusual. One was *Thor v. Superior Court of Solano County*,¹³ and that was a patient's right to refuse medical —

ARABIAN: Hydration.

MCCREERY: — hydration, thank you.

¹³ 5 Cal. 4th 725 (1993).

ARABIAN: He was a quadriplegic. He either jumped or was pushed off one of the tiers in prison and at some point decided he didn't want to live and didn't want any kind of food or water or anything else. Medical people took the view that they were going to force feed him, and so they did. They forced hydration, so he challenged it. It came up to us in the Supreme Court. When he saw that the Supreme Court took his case, he decided to take hydration, to see how the whole thing was going to turn out. I wrote the opinion, giving him self-autonomy so that he could refuse, that he had the right to refuse it. He was competent, and he knew what he was doing. Along the way the good Lord was watching. His catheter got infected and he died.

MCCREERY: And never knew the outcome?

ARABIAN: He died before the outcome. It was quite a bizarre ending. *Arato v. Avedon*,¹⁴ which was sort of a companion — I wrote a law review article about “The Ambivalence of Arato and the Thunder of Thor.”¹⁵ That was quite an interesting situation. This person is dying slowly. Body parts keep going out, and he finally expires. The family sues the head of oncology at Cedars Sinai, claiming that there was not enough informed consent, that had he known when he was going to die, he would have sold the shopping center, or whatever he was going to do by way of disposing of assets.

It didn't take a genius to figure out if your spleen goes here, and your kidney goes there, and something else goes, your days are numbered. So that was a unanimous opinion. Both of them were. We said that sufficient information had been given. At the oral argument I inquired of the counsel, I said, “Since when did the Hippocratic oath become equated with a Merrill Lynch advisory?” Everybody laughed. What's a doctor supposed to do? And the doctors really loved that opinion, because it settled quite an area for them.

MCCREERY: Yes, and say a bit more about what it was the patient was —

ARABIAN: They have what they call a chilling effect. They don't want to be asked the question. In other words, the doctor is giving them as much information as is medically available.

¹⁴ 5 Cal. 4th 1172 (1993).

¹⁵ Armand Arabian, “Informed Consent: From the Ambivalence of Arato to the Thunder of Thor,” *Issues in Law & Medicine* 10, no. 3 (Winter 1994): 261–98.

MCCREERY: Yes, "How long am I going to live, doc?"

ARABIAN: When they say, "How long am I going to live?" the doctors don't like to hear that question, because as they have said to me on other occasions, "We're not God. Only God knows how long you're going to live." And there's a chilling effect, because if you say, "I think you've got ninety days," the person goes into some kind of toxic shock and says, "Oh, my God," and has a heart attack or whatever. So they don't like the question.

MCCREERY: It's interesting when the Supreme Court is asked to decide these areas in medical-related issues, because those issues are changing all the time as technologies change and life expectancy changes.

ARABIAN: It's a challenge. I enjoyed these two cases perhaps more than most, because it is that extra challenge. You're into the world of medicine, which is not your forte, and you're listening, and you're learning, and you're reasoning, and your colleagues are doing it with you.

What's fair, what's appropriate, what's reasonable? All these concepts come in there, and it's a gray area, so you've got to do your best. Is this hospital or this physician going to be held liable because they didn't sit down in greater detail with a person whose body parts are going out the door? I don't think so, and that's what that opinion says. There's a fellow laying in there, and he's competent. He thinks his life is over because he can't walk, he can't do much of anything, he's a quad. Okay, you want to check out? We don't need Dr. Death to come in there and do something like that. You don't want to eat? Okay, they shouldn't be able to force you. That's what we said.

MCCREERY: Some of these must be tough, and I wonder to what extent you might ever feel ill-equipped to address these kinds of issues. They're pretty unusual in their detail.

ARABIAN: Yes, but the medical world is subject to the laws of California, so they're on your plate. If you have a case where it says there are electrical wires, high-tension lines running across your property. Are we electricians or experts in electricity? No, but we've got to decide that case. We did one of those. I think Justice Mosk may have written it. There was no tangible evidence that it was giving you cancer down below. It was one of those areas, so you do your best.

MCCREERY: While we're thinking of medical things, I wonder if you happen to remember the so-called spleen case, *Moore v. U.C. Regents*,¹⁶ which was an opinion by Justice Panelli, as it happens.

ARABIAN: Yes. I wrote a concurring opinion in that case dealing with the moral issue. I joined in the result that he had. But I spoke about the morality question, which he hadn't gone into and the court really wasn't involved with. So I said what I had to say about it.

After I retired, I got a phone call from Chicago, De Paul University, and they were having a national symposium on this question of body-part sales, and they credited me with the *Moore* concurrence in starting the debate. So they had doctors and lawyers and I don't know who else assembled in Chicago, a couple of hundred people. I was the keynote speaker, talking about this question. I later wrote an article which was published in the *Daily Journal*, which again had to do with UCLA and UC Irvine, where body parts were being sold, allegedly without the knowledge of the schools.

I wrote that article while their cases were pending. One suspect died. There were arrests but only recently a prosecution of those cases. So to this minute I can't tell you what those reasons were or weren't. But had they been able to prove the sale of body parts against the will of somebody else, or donors who were unaware, so it would be a very serious criminal matter. Anyway, that's how I got into the world of body parts, and it was that opinion that they really herald. I didn't think it would have that kind of an effect, but it did.

MCCREERY: At the risk of duplicating what you said in your article, I wonder if you can just tell me what prompted you to address the moral side of this case.

ARABIAN: You're dealing with a very unusual commodity, the body. It has great value, or no value. If you dump it into a river and it rots away, it has no value as a component. But if you need a spleen, or a liver, or a heart, or whatever, it has tremendous value. So are we into the commodity side of bodies? How do we evaluate the process? Is it legal, is it moral, is it going to be done out the back doors of morgues? There's a lot of morality questions

¹⁶ *Moore v. Regents of the University of California*, 51 Cal. 3d 120 (1990).

involved here, which no one was thinking about. So I said, "Let's think about it. Let's put that in here." That's why it got in there.

MCCREERY: Then kind of the larger, related question. I wonder in general what would prompt you to write a concurring opinion.

ARABIAN: I didn't write that many of them. This seemed to be an edge-breaking kind of a case, and whenever you have one like that, you want to make sure that everything is discussed that's out there, and if it wasn't done in the majority or a dissent if there was one, then it's my responsibility to put that out on the table. That's it. It helps the public understand the ramifications of what this is.

MCCREERY: And you singled it out as important enough to merit a separate opinion?

ARABIAN: And it turned out exactly that way, to this minute.

MCCREERY: What about writing a dissent? What would bring that on, in your mind?

ARABIAN: The dissent is where you feel so strongly that there's no way you're going to sign on to the majority. It's not something that you can get away with a concurring opinion, because you have to still go with the majority. Now, you're going to stand up and speak to something bigger and greater than what this case is saying on the majority side of it.

So if you say that in a condominium, for example, these are the questions and this is the real issue, and we are better if we tear down walls instead of putting them up between students over at Berkeley on student activities fees, or condominium owners whose cats never go outside, but bring pleasure to someone inside. At the university, freedom of thought is so key that if you take that away in a majority opinion, that's not going to wash by Justice Arabian. So that's when you step up to the plate. I didn't do too many of them, but *Nahrstedt* and *Smith* were two that I really felt very strongly about.

Smith was a difficult situation about students going into the student activities fund to get a certain amount of money to do what they're going to do.¹⁷ They're going to put on a program. We need sixty dollars to rent a projector.

¹⁷ *Smith v. Regents of University of California*, 4 Cal. 4th 843 (1993).

MCCREERY: This comes out of mandatory fees charged to all students?

ARABIAN: Everybody pays into that fund, okay? Now, the question is, who is entitled to the sixty dollars? If the unwed mothers show up, maybe somebody doesn't want their fraction of funds to go into that projector. If it's a person in Tiananmen Square holding a hand up to the turret of a tank, and the Chinese students want to get the funds to show that film, is that a question that the university can ask? Is it political? Oh, my gosh, that may be a problem. Is it social? Oh, gee, maybe we can't cover that. Is it educational? Oh yes, we could do that. Is it — whatever.

So the majority took the view that that was an improper request, because it was political in nature, whatever the reasons they came up with, which was contrary to academic freedom at Berkeley or any other place. No university should be put in the situation of having to make that determination. Who is going to make that determination, some secretary sitting there with a key to the lockbox? Come on. That's outrageous.

I thought it was a pathetic opinion, to be very blunt about it, and Justice Mosk agreed with me. He was happy to sign on my dissent, and a few years later the United States Supreme Court, citing their awareness of *Smith v. Regents* in its holding, kicked that one over. That strikes at the heart of academia, and that's when you don't sit by. Other colleagues went with it.

MCCREERY: As you say, though, you and Justice Mosk ended up together on this one.

ARABIAN: I wrote it, he joined on my opinion.

MCCREERY: Was that a case of strange bedfellows?

ARABIAN: I didn't think so. I think both of us liked the academic world. We think students have a right to share equally in the process of getting funds. It was a simple request. They weren't going out to get ten million dollars from you. Why should anyone be placed in a denial position, either by the person asking for it or the person who has to say no to you? They're not equipped to do that. The person you're going to get that money is not equipped to make that kind of a judgment. They shouldn't be having to make that judgment. That's what the United States Supreme Court said later on. We all eat from the same bowl here, folks. In the world of academia, somebody's going to learn something. You're going to tell them it's

not available because this is political by some label? No way. That's what that was all about.

MCCREERY: But it is an interesting case of you and Justice Mosk joining forces, whereas on many cases — I don't mean to generalize too much, but on many kinds of issues you might have been expected to be on opposite sides.

ARABIAN: The death area on occasion would have been one of those. He was the sole dissenter, as I recall, I think it was on term limits or reapportionment, one of them. But on a case like this, I wouldn't expect Justice Mosk and I to be different. I didn't at all. I was so pleased when he wrote a note to me, and he says, "Armand, I wish I had written it. I'm pleased to sign it. Stanley." I've saved it. I love it. But that was one of those little binding moments where push and shove met up. It was one of my happier moments, to have him aboard.

MCCREERY: Yes. But that strikes at the heart of a big issue that you hear about out in the media and the popular arena all the time, which is the idea that judges are going to predictably respond a certain way or another, or they're going to line up a certain way. Tell me how you see that.

ARABIAN: Again, this is a classic example of that. Am I as big a liberal that day as Stanley Mosk? Yes, I was. In fact, I was a bigger liberal. He signed on to my opinion.

Now, *Nahrstedt*,¹⁸ the property-owner lawyers came into those hearings appalled. Here's this Republican conservative law-and-order guy up there fighting for cats and dogs of some woman who's living by herself, or some person who needs a guide dog who couldn't even get into that place. It's against federal law, et cetera. So if the ACLU happened to be sitting in, they'd say, "Oh, my God, we want to give him a membership." Here's the guy standing up by his lonely against all the "conservatives," quote, unquote." Justice Kennard wrote that one, and here he is fighting for those lives out there. Was that not the quintessential liberal? Yes, I'd say, absolutely.

¹⁸ *Nahrstedt v. Lakeside Village Condominium Assn.*, 8 Cal. 4th 361 (1994), discussed in Armand Arabian, "Condos, cats, and CC&Rs: Invasion of the Castle common," *Pepperdine Law Review* 23, no. 1 (1995): 1–30.

So that's what I tell you about labels. Labels can be applied to anybody on a given day. Don't make book. Over a period of time, oh, well, he voted to affirm ten death penalties, so he's a conservative, or a law-and-order buff, or something like that. It's got very little to do with those decisions, because he either deserves to die or he didn't deserve to die, and if he didn't, he'd have gotten a walk to another day. It's got nothing to do with labels. Labels are pathetic, and I'm reluctant to use them.

MCCREERY: Thank you. As I say, we do hear those all the time, and yet when they're repeated often enough, people start just assuming that there's something to them.

ARABIAN: You have to go through an entire lifetime to see a pattern and then say, "Looking back at a thousand opinions that this person did, unjustifiably he was x." That's a key word. Did you do the right thing?

MCCREERY: To look at this from kind of a different angle, to what extent did you think your colleagues were predictable in how they would respond to certain things?

ARABIAN: When you say predictable, that's tough to put a tag to because, again, I go back to the facts. If the facts are that Robert Alton Harris did what he was accused of doing, I could predict that a majority of my colleagues up there are going to vote to execute him. What is that telling me, or telling you? It's telling whoever looks at that, that if the law and the facts justify a certain conclusion, that's what the conclusion, hopefully, is going to be.

It's got nothing to do with being law-and-order or liberals, or anything else. It has to do with, what does this case demand? End of show. If you have enough cases that demand a certain result, well, that's what you're going to see by way of a vote. If that shows you, oh, my gosh, they're all running loose to hang somebody, I don't think so.

MCCREERY: Another thing we often think about, and for good reason, is, where's the center of a particular court, because that's where the tie break will happen. Where was the center of your court?

ARABIAN: If you had Stanley Mosk and, let's say, Joyce Kennard on one end of it, and you had Malcolm in the middle, which was a good title for the TV show, the rest were basically in the middle. They were with the chief a lot of the time, or the chief was with them a lot of the time.

Janice Brown, who I never served with, has come up with a reputation that she was a hard right when she was on the court. Maybe she was. I don't know, because I wasn't there. I've read some of her opinions. But I think there were a lot of people in the middle. I think I would call myself in the middle. On a given day, I tell you, I'd go whichever way I just explained to you.

MCCREERY: I ask, though, because if there's a regular tie breaker or two, those are considered powerful people.

ARABIAN: I didn't see it that way on our court. I know on the U.S. Supreme Court that that's happened, but I didn't see it that way.

MCCREERY: Justice Lucas, over his ten years or so of being chief justice, he enjoyed a very collegial court, as you've put it, and really a situation where quite a few of the opinions came down, if not unanimous then fairly close to it. Six-one, five-two. Now, is there anything to be said about how much unity is too much?

ARABIAN: No. If the case deserves a unanimous, it's entitled to a unanimous. If somebody wants to dissent, be my guest. Six-to-one. Fine. If he's the one writing it, and he's done it the way it ought to be done, fine. I'm going to sign onto it, which I did a lot, and others with me. So this is no criticism of any of that. He'd call it the way it was supposed to be called.

MCCREERY: I'm just thinking a little bit more about the background and experience that the different judges bring. Of course, that did change a little bit while you were there. I think we even touched earlier on the idea of how useful is it to have a variety of backgrounds on a court, to bring in those bits and pieces that one group of people might not think of, or that sort of thing.

ARABIAN: It's very helpful, I think, to have diversity of background, and minority influence, and majority influence, and all these other things. So the mix is wonderful, as far as I'm concerned. At the end of the day, Stanley Mosk used to say, "All information is useful information," and it is. Wisdom which comes late is still wisdom. No, it's impactful to have somebody step up and say, "Wait a minute. I remember so-and-so," something from their knowledge or background. So all that's pretty valuable.

MCCREERY: Let me ask you, if I might, about oral argument on the Supreme Court. We've talked about it in an earlier context, but I just wonder — that was show time as you put it. What kind of a show was it in

your early years on the court? I'm talking about before Justices Baxter and George and the others came on. But when you were the new guy, what was oral argument like, and how did people approach it?

ARABIAN: Never changed, never changed. You have a question, you ask it. Now, I was quite surprised that Justice Thomas for the whole first term didn't ask a question, because that just couldn't happen in my world. If you didn't ask a question in an entire day, people would be looking at you as if there was something wrong. Everybody asks questions, some more than others. On occasion maybe you don't. On occasion, maybe you're using it to try to tweak someone's attention who may not be on your side of it, and using the lawyer as a pawn out there, in a sense. So there's a different drama to it.

Or sometimes you want to throw one out there to see how well they can handle it. I find oral argument fascinating. That was one of the more enjoyable parts of being a justice. I love oral argument. You see the talent of an attorney on his or her feet, hitting the curve balls and the spitters, and I love a fastball.

So that's it. I look forward to oral argument, and that's why I've lectured on it, the art of oral argument. Some people like to pooh-pooh it and say, "Oh, well, if there's a memo or a draft opinion out there, who cares?" Believe me, you can turn parts of that so-called draft opinion around, in some cases you can change the whole outcome if it's done correctly.

MCCREERY: But is that a legitimate criticism of this particular court, that because of the process and the ninety-day rule and so on, the whole thing's too far along by the time oral argument takes place?

ARABIAN: No. You have the written materials. Everybody knows what the record is telling you, and now, as we used to say, we want to kick the tires to see if the car will still be up there on those four pieces of rubber. If you kick it hard enough and it collapses, somebody's got a problem. So it's our duty to kick it a little bit, and that's it. I just loved the debate out there, just loved it.

MCCREERY: I take it you were a lively participant?

ARABIAN: I was. I enjoyed it. If I had something to ask, I'm going to ask it, and I'd throw you a curve ball quicker than anybody. That was what we were there for.

MCCREERY: How did you treat counsel?

ARABIAN: Very respectfully, very respectfully, because I know how hard that job is.

MCCREERY: I guess you knew it better than practically anyone else there.

ARABIAN: I knew it's a tough road. Some people are not equipped to do it, and they're doing it. Some are absolutely fantastic at it. There's a whole variety of that. But if you've got the guts to stand up there and take the heat, I give you my hello. [Laughter]

MCCREERY: What about your colleagues? Which were the active oral-argument participants?

ARABIAN: Justice Kennard was the most active. She'd get on your tail and hook onto you and wouldn't leave you for a while. Justice Mosk was very circumspect. He'd have a few things to say. The same way with Baxter. I'm just trying to recall. But the person who stands out at the numbers of questions would be, there's nobody in second place with Justice Kennard up there.

MCCREERY: I wonder how she developed that style. Any thoughts?

ARABIAN: I don't know. "Let me ask you this, counsel. Can you help me out?" And it would go on with a long question, and then maybe some follow-ups, three parts to it, and the lawyers would be out there trying to do their best.

MCCREERY: She is rather known for that.

ARABIAN: That's her M.O. She'll explore what's bothering you, and that's what she's there for. If they can answer all those questions, they're probably in pretty good shape.

MCCREERY: How about Chief Justice Lucas in oral argument?

ARABIAN: He wasn't known to really go too far with it. He asked what he wanted to do and was to the point, very scholarly question, and that was it. He wouldn't make a big story out of it.

MCCREERY: You spoke to the isolation on the Court of Appeal. How did that compare on the Supreme Court?

ARABIAN: It's one big law firm with seven partners in it, one head partner. You've got all your subordinates working with you. You see each other in the hallway, you meet on Wednesday, you have oral argument once a month, et cetera. Everybody does their own thing. It's not a hangout special, but just doing the job and getting through the day.

MCCREERY: Were there any occasions where the seven of you, or perhaps with others, could let down your hair and get to know each other on a more personal level?

ARABIAN: We had retreats. We had retreats once in Oakland, another time in Coachella Valley. Those are two that come to mind.

MCCREERY: How long would those events be?

ARABIAN: My memory is one night out.

MCCREERY: A couple of days?

ARABIAN: Yes, it was whoever wants to ask or say something, it was just a collegial time. I don't think we really needed it, but we did it. That was Justice Lucas's idea. So they were fine.

MCCREERY: What about going up to sit in Sacramento? What was that like?

ARABIAN: I loved going up there, because most of us would stay at the Hyatt. Some others stayed at different places. You'd walk across the street, cut through the State Capitol, go by the governor's door, go out the other side, cross the street, and you were in the court. So it was a short couple of blocks' walk.

Then the women lawyers would always take us out, have an evening for the court, which was a lot of fun. We got to know some of them. Usually there was an event or two for the time we were up there. We wouldn't be up there too long, but I loved the ambiance of the Hyatt, and you'd run into people that you know from this place or that, or if you knew the governor or some senator or whatever, you'd have an opportunity to say hello, things like that. I enjoyed especially election night was kind of exciting up there, which happened once.

So it was a lot of fun. I enjoyed going to Sacramento. I'm glad they moved the court out of there to San Francisco as time went by, because I think we'd be really isolated up there. But San Francisco was just perfect.

The pulse of California is right there, and it's a much better atmosphere. So we'd go up there twice a year, and I always enjoyed going to Sacramento.

MCCREERY: Likewise, you'd sit in Los Angeles on occasion.

ARABIAN: Four times.

MCCREERY: Where and how would that happen?

ARABIAN: Again, we have, of course, our court building, and I would stay at the Biltmore Hotel, because I didn't want to drive back and forth. Let's say we were in session for three days or something like that. So they knew when I would come, and there was a lady there in charge of accommodations, and she'd give me a little bit of an extra room and maybe a computer, which is not something I used, but it was a little bigger than a little square room. And then the car would be there, and a five-minute trip to the court, park, and you were in business. So it made it a lot more comfortable, as opposed to driving for an hour each way and getting there wondering what's happening.

MCCREERY: It's an interesting system, to sit in these three places, mostly in San Francisco. How important is that to our court system, do you think, to actually show up in the other parts of the state?

ARABIAN: I think it's very important. On rare occasions they'll have a visit. We did Riverside one time, and another time some other places along the way for some commemorative. I think it's important. First of all, a number of us are located in Long Beach or the valley, or wherever. This is our home. It's just a different flavor in each of these other places, especially Sacramento. You're in the headquarters of everything up there. It's a lot of fun to visit and say hello.

MCCREERY: I wanted to ask you also about some of the administrative aspects of being on the Supreme Court, and other staff involved. These are things behind the scenes that most of us never hear anything about. Was the staff support sufficient for the incredible workload that you had?

ARABIAN: Yes. Five lawyers working for me was fine. The chief had eight, but one was really very much involved with administrative, as opposed to researching.

MCCREERY: I wonder, as you reflect back on your time, what else you might say about Chief Justice Lucas and how he managed to regroup this court over time, after that period of crisis that we talked about before, with the '86 election. How was he doing at putting things back together?

ARABIAN: First of all, he was personally friendly with Justices Arguelles and Eagleson. They go way back. I had a relationship with him because of the JSAB situation. So he wasn't winning friends and making new compacts. These were people that he could rely on, so that was a no-brainer. Once three went out and those three came in, that was a done deal. Then the ones who replaced, same thing, so it was very smooth.

MCCREERY: I'm thinking in terms of the outside public perception and rebuilding the state's confidence in the court system.

ARABIAN: That came to be as a result of the new harmony that was taking place.

MCCREERY: I'd like to talk a little bit more about Chief Justice Lucas as the steward of this organization, and I wonder if you could start us off on that topic by just describing his administrative style.

ARABIAN: Administratively, he had about eight people working for him, five research types, and administrative types and so forth. They were all accomplished people. Some of them had been there for quite a while, and so there was the responsibility of moving back to the original location and how that was going to look, and the changes that would be made and so forth, because we were in temporary quarters. So he had an unusual responsibility of seeing the transition back over there. That didn't take place until after I'd retired, because I went back to the dedication ceremony, and he was there also.

So from the administrative point of view, I thought it was a very smooth-running situation. They had the central staffs that were well organized and saw the work accommodated. Everybody had their own crew which interacted with the other crews, and so forth, so you'd work on getting a majority opinion. So I think he received high marks for his style and level of intelligence in how he handled his responsibility. He got along with everyone, and there was no friction like in the Rose Bird era. Everybody could have a laugh with each other, and we did.

MCCREERY: He accomplished a number of things for the whole state court system while he was chief, trying to increase state funding, and there was the Trial Court Delay Reduction Act, and some specific things that he was working on. What was your sense of his main interests, in terms of running and perhaps reforming the entire state system? Did you get much of a view of that?

ARABIAN: You get some view of it. You read what he has to say, and he gives a State of the Judiciary address, and there are discussions in the meeting as to, "Tomorrow we're doing this," or, "We're having a conference over there." But the rest of us were not that involved with much of that. But every chief justice has those responsibilities, to make the system work better, to get more judicial power on the bench, judges, and courtrooms, and things like that. So that just comes with the territory. It somewhat changes over time, but they're always burdened by it.

MCCREERY: You always hear this line that it's lonely at the top. Do you have much of a sense of Chief Justice Lucas' position in that regard, or who he could talk with?

ARABIAN: I think he was closest to Dave Eagleson, because they had the Long Beach connection from the earlier days. I think if he had a confidante, in my view it would have been Justice Eagleson. After that, everyone was on one level or another level, but I think they were fairly well equally viewed. But I think if I had to pick one off, it would have been Justice Eagleson, because of the background of the two of them and where they came from.

Is it lonely at the top? Yes, it's lonely at the top. His marriage dissolved along the way, and that created extra pressure for him, I'm certain. He remarried and has a happy life ever since, but those are some of the pressures that take place. Unless you're living up there with your family, you're a transient. You're flying up and back every week, in my case for six long years, and without a parrot or a cat to keep you company. I used to hear the ocean waves. Those were my companions at night. And so it is very lonely, if you're a commuter.

MCCREERY: You mentioned a moment ago the fact that Chief Justice Lucas had come from the federal court system, unlike most of you coming from the California Court of Appeal. Did you have much of a sense of

whether that federal experience played into the way he managed as chief justice, being that the two systems are substantially different?

ARABIAN: I didn't see any gear shifting. I think one job was like another job. You're a judge. There's federal law and state law. You always are conscious of federal impact, obviously, the Constitution and things like that, but there was no carryover from his other experience that I ever saw.

MCCREERY: And the rocky parts of the transition from the Bird Court had already passed?

ARABIAN: Three people came in, Arguelles, Kaufman, and Eagleson, and that was a big support group for him. It had to make him feel very comfortable. They were what he could call friends.

MCCREERY: In his own work as a judge, what was his approach, as you think of it?

ARABIAN: Like anybody else. You see the case. He would assign to himself those matters that he felt that he would want to handle, and he did.

MCCREERY: The record shows that he rarely dissented.

ARABIAN: That's probably accurate. I remember one case he dissented separately. I dissented, on a State Bar case, of all things, the famous Rolex opinion, as we later called it. The transgressing lawyer refused to turn a watch over to his client and came all the way up to the Supreme Court to argue with the watch in his pocket. He displayed it to us. I would have disbarred him, and so would Justice Lucas, and we did that in two separate dissents. That's the one that I remember. [Laughter] It was pretty funny. That's the one that comes to mind.

MCCREERY: To look at the flip side, how important was unanimity to his way of thinking?

ARABIAN: You strive for that in every case, if you can get there. Obviously, you speak more strongly if everybody's in on the same side of it. But you can expect disagreement, you can expect concurrence, you can expect sharp-worded dissent on some occasion, and that's just part of the territory. It lends to the growth of the law to have somebody else say, "Hey, I didn't see it that way, and let me tell you why." But you do try to get a unanimous opinion.

MCCREERY: I wonder, though, as leader of the court, would Chief Justice Lucas be trying to get a unanimous decision in certain cases, or were there instances where he would promote the idea of unanimity for the court to speak as one voice?

ARABIAN: Never. No. That's your business. You want to join, you join. You don't want to join, you don't join. They can suggest some things to you through the staff, and so you can buy it or not buy it.

The one case that comes to mind that I'm recalling, I believe was term limits. I think he authored that, if I remember it right, and Justice Mosk was the only dissent. Now, that was a case where I'm sure it was hoped that that would have been one voice, and it was almost one voice and that was the end of the game. But in reapportionment and term limits, cases like that which really strike at the whole system of the political world, you'd like to say, "Gee, I'd like it unanimous." But that's not saying that the author's going to say that to you. It's just more or less understood that this is something powerful.

MCCREERY: We'll return to those subjects. Those are kind of key areas. I was just wondering, just in terms of all of your colleagues, when they were trying to win over others to their point of view. You've said earlier that you were not one to walk the halls in search of votes, but did some of them operate that way?

ARABIAN: On occasion. I didn't believe in that. In the Court of Appeal it's more common, because you're snuggled next to one another. There are only three of you, and so the ability to communicate is easy, and it's almost expected. You go next door to Justice Danielson and say, "George, how about this?" and so forth. In the Supreme Court, I didn't really believe in that.

MCCREERY: Why?

ARABIAN: I respected the individual's right to do what they felt like doing, without me going down there as a ward heeler and talking them into it. I didn't believe that in the Supreme Court. If somebody did that, that was their business. On some occasion, very informally, if you're going to lunch with Justice Baxter, and he says, "Hey, what do you think about that?" That's normal. But to go down into another colleague's office and

say, “Gee, on this one I really need your vote. It’d be good for this or that.” I didn’t do that. That’s my involvement with that subject.

MCCREERY: But is that just a matter of individual style?

ARABIAN: Sure. Sure. If you feel like doing it, it’s your privilege. It’s not one privilege that I wanted to take advantage of. I didn’t believe in it. I said what I’ve got to say; you can join me, don’t join me, that’s your business.

MCCREERY: May I ask which members might be more inclined to operate that way?

ARABIAN: No, you may not. [Laughter] Because that’s speculation beyond a certain point. I wasn’t involved in it.

MCCREERY: Sure. I’m just trying to establish how things were. But fair enough, absolutely. Let’s see. Oh, I know. You touched on the State Bar a couple of minutes ago, and, of course, when you arrived at the court you were still hearing the State Bar cases, and then in ’92 came the advent of the State Bar Court. Just tell me a little bit about how it was before and after and how good a solution that separate court was.

ARABIAN: It couldn’t have been a greater solution than the creation of the State Bar Court. Here you go to the highest court in the State of California, having served municipal, superior, and appellate. And what are we dealing with? We’re dealing with direct jurisdiction over the Public Utilities Commission, which on rare occasion would show up. You have direct jurisdiction over death-penalty cases, which is appropriate. It would be nice if someone else could be involved in that before it got to us, but that’s not the way it’s drawn up.

And then we have bad lawyers. That’s the bulk of the work, okay? “I didn’t give back a Rolex watch, so the Supreme Court has to resolve whether or not I should be punished for this, or absolved.” There was no shortage of State Bar cases, because of fee questions, or failure to communicate. They’re up there, and we have nothing better to do than to sit there and listen to this business.

So to take that kind of a load — because the PUC was not a load, the death penalty’s a huge load — and then to get rid of this area of the law, subject only to review in rare cases where it was something important, that’s the situation. So it was a blessing to have that body of cases taken

away and have somebody else look at that first, and then we could review it at the end of the day. So that was a major improvement. I don't want to use the word, "It established greater dignity of the court," but let me tell you, that job was not one that we should have had the first shot at, and that's what finally took place.

MCCREERY: Of course, it allowed you to increase productivity in a lot of other areas.

ARABIAN: Absolutely. If you get a death-penalty case, somebody's tied up for four months, five months on a room full of documents. Here comes this case up here because somebody didn't do something that somebody didn't like, and the Supreme Court's got to get into the fight. These are street brawls. We're supposed to be doing championship matches. [Laughter]

MCCREERY: I wonder how you viewed the State Bar on the whole, as an institution.

ARABIAN: I thought they were great. I thought they did a fine job. It was new and it was challenging. They had the hearing office, and they had an appellate level, then it would come to us if necessary. But I thought they did a fabulous — they're still doing a good job.

MCCREERY: What about other aspects of the State Bar and how well it served its membership? Did that change much over the years?

ARABIAN: I don't think so. I think that's been pretty consistent. I think we have an outstanding state bar organization, myself. I think they stand up for what they think is right. You may not agree with them all the time, but if a group of lawyers thinks marijuana ought to be legalized, or prostitution ought to be okay, that's their business. I have my own view, but they're entitled to it. But outside of that, they have a huge administrative world to — mandatory continuing instruction and all those things. They have a fairly big job out there, over 200,000 or so lawyers? I mean, come on. That's a big body of work. I wouldn't want the job of president of that outfit, ever.

MCCREERY: Let's go to the topic of the Commission on Judicial Nominees Evaluation, the Jenny Commission. You've gone on record with some strong views of it, developed over the years, and so perhaps you could share those, keeping in mind that this was a body that had once found you

unqualified, because of an unusual circumstance, and had also occasionally found one of your colleagues unqualified.

MCCREERY: Then, of course, Janice Rogers Brown, later on —

ARABIAN: I know. They showed their ugly head more than two times, but that was outrageous.

MCCREERY: Tell me your rap on that.

ARABIAN: Okay. My view of that was, here you are, you haven't done anything wrong, knock on wood, and the governor's out of town. The lieutenant governor wants to get into the political war game and put your name in for elevation. That Jenny Commission was a political tool unlike anything that I can tell you. It was a star chamber set up for the governor's protection. That is all this whole thing was. Most states don't have a Jenny Commission.

The governor is supposed to have authority to appoint, if they feel somebody is qualified for it. Then you go up before the confirmation process and whoever wants to say something — when Chief Justice Lucas was having his hearing, one of these loud-mouthed lawyers got up in an open forum and just tore him upside down and sideways. He wanted to embarrass him in public, he got his day in court, and then Lucas was confirmed. Taking a shot is the American way.

But when you set up an organization, hand picked with what I will call unpaid stooges, which is what that Jenny Commission was in this early formation, then you are disrespecting the entire process. And so when the governor's judicial appointments secretary, who was out to protect the governor, has the ability to walk into the hearing where they are trying to resolve your qualifications, and they are in a position to disregard the mountain of favorable responses with the two inches of unfavorable and find you not qualified, the system pukes.

That's why I wrote about "Time to Jettison Jenny," because they were nothing but unpaid whores. Unpaid whores is all they were. And when the appointments secretary to the governor can go in there, that's like the commanding general, in my experience, going into a court martial hearing to infect the hearing officers, who may be majors and colonels under his jurisdiction, so that they have, quote, unquote, "done the right thing." That's called command influence, and it's prohibited in the military.

Now, that's how pukey it was. So here I am, an alleged champion of women's rights. I've done what I'm supposed to do. I go to work every single day. I show up in front of this pack of coyotes, and they have the nerve to call me unqualified, to simply pander to the whore masters who put them in office, then I have something to say. I hate to get back into that, but you've asked me, and they deserve everything that I've just said to you, and I put it down in writing at the head of this. "Time to Jettison Jenny." I did a review of all the states, and this is one of the few that set this little gimmick up so they could whack somebody.

And much later than me, Janice Brown. "Oh, we don't like her because she's a Black conservative, and she's got a smart mouth on her, and she can put acid into her pen," which is her privilege. I went to that hearing. I was disgusted. To see what the idiots of the State Bar had to say about her; it was pathetic.

Yes. And then, of course, they were famous for leaks, the so-called quiet commission. The minute they got out of that room, the phones were buzzing. "Oh, we just found Arabian unqualified. We just dinged Janice Brown." This is what they were good for.

Now, I will say as time has passed that I haven't seen that bad an odor in recent times, but from Arabian to Brown, that's a pretty good span of time. That's what was going on, and you can calculate the years. Now, to their further discredit, how is it that this unqualified Superior Court judge then gets approved when life has changed and times have evolved and some of the whores are gone, that now he's well qualified? And she goes clear over to the federal system, and she's qualified. There's something wrong, not with the candidates. There's something wrong with the whores in the system, and I have no shyness about calling them what they have been in those instances, because that's the name they deserve.

MCCREERY: In the case of Justice Janice Rogers Brown, she had, of course, been Governor Wilson's legal affairs person.

ARABIAN: Yes.

MCCREERY: Did you know her? I know you didn't serve with her on the court itself, but did you know her at any prior time to all this?

ARABIAN: No. I'm sure I've met her someplace, said, "Hello, how are you doing?" and that was it. I never had a cup of coffee with her; I wouldn't know her from the next person. I just knew of her.

MCCREERY: But your view of this review of her qualifications was that it had no basis?

ARABIAN: It was pathetic. I mean, forget basis. It was a pathetic set up, just like mine was, okay? And to their discredit, knock on wood, we're still standing. She's still sitting. [Laughter]

MCCREERY: Exactly. Governor Wilson chose to ignore this rating and appoint her anyway.

ARABIAN: Absolutely. That rating is worthless, totally done by a pack of fools that have a mission in life, and that's to keep somebody like her off the higher places, and they did the same to me. In my case, it's to protect Jerry Brown, because next time he left town to run against Reagan, maybe Mike Curb would put my name in again. This was their fear. So we're going to cut his throat right here and now, and the governor can say, "Oh, well, he's not qualified. Forget him." That's what this was all about. It was a political game.

MCCREERY: What about the governor's power to appoint judges? To what extent is that getting in the way of this, aside from other matters of this controversy?

ARABIAN: The governor can appoint anyone the governor wants to appoint. They don't have to listen to this stuff. But it's a little insurance policy for them. That's all it is. It's a little guillotine in front, if they want to get rid of somebody. The governor appoints anybody. They have the power to appoint. The Jenny Commission doesn't have power to appoint, and nobody else does. That's it. You want to appoint somebody that everybody said is not qualified? You can still put that person in. That's the governor's power. This is just a political scheme that they created, a number of states, to do what we just said.

MCCREERY: Would you still favor abolishing the Jenny Commission?

ARABIAN: Yes. I think it has absolutely no place in the system. The governor had fifty-eight places to find out who is running and what people

think of them and what the ups and downs are without this little hit squad. Believe me, the State Bar, everybody's got something to say.

MCCREERY: It does, though, kind of lead into this whole question of the independence of the judiciary, in a way, because there's always so much speculation in the popular press, for example, about appointees that are being considered, and what's the latest litmus test, and all of that. What's your view of how this system can work the best, for the good of the judiciary?

ARABIAN: Look at the present governor [Arnold Schwarzenegger], who I have to this day not met. He's appointing from both sides of the aisle. You can be 50 percent Republican, 50 percent whatever. He's picking people based upon not their political persuasion but their qualifications, which is what you're supposed to be doing. Again, I haven't smelled any smoke lately from this inside operation, because maybe they've learned their lesson a little bit. I doubt it, but they may have.

So the idea is, who is this person? There is no litmus test. Do I expect them to perform in an admirable way? If the answer is yes, I can appoint. Simple as that. The governor's duty and responsibility. George Deukmejian when he was governor said, "One of the most important reasons why I ran was to appoint judges." They consider that their legacy. So when you go into a legacy, that's yours. If somebody gets in trouble under your legacy's aegis, you're the one that they're looking at, "How did that ever happen?" Well, they don't want that.

MCCREERY: All right. But now what about retention elections? This is where we differ so much from the federal system, and at times those have been very controversial.

ARABIAN: It's an outstanding attribute to have the retention system, because I have had seminar sessions with judges from other jurisdictions, especially Texas, where in order to keep your office, you've got to go out and raise funds, because there's somebody else out there raising funds against you. So you've got to go to the trial lawyers, the defense lawyers, the insurance companies, and so forth. That lends itself to a problem. When you don't have that problem, by the retention system, it's very difficult, unless somebody's asking for trouble, to get kicked out. Rose Bird and company were an exception to that whole thing. But they were running against themselves.

In a situation where you're in a lower court, and people can run directly on you, that's where the money problem gets to be very bad. It's rotten in some states, to be very frank with you. So we are blessed.

MCCREERY: Another facet of our system that exists in other states, but certainly not all of them, is the provision for ballot measures to be voted on by the citizens of California. Oftentimes the ones that pass make their way up in challenge to the Supreme Court. We'll talk about a couple of those in particular, but I just wonder, what are your views of the initiative process?

ARABIAN: I think it's the American way of life. If you have enough people to sign signatures, and you want to put something on a ballot, be my guest. If it's constitutional and it's challenged and is upheld, wonderful. That's how you change the law. You don't have to sit down and look to an assemblyman or a senator all day long. You can take matters into your own hands. If you want to do property-tax restrictions, well, okay. Thank you, Howard Jarvis. That's the beauty of the system. Now, if you do something real crazy and it passes, and then it goes up and gets challenged, well, there's a protection for that. It's called knocking it out. [Laughter]

MCCREERY: But it makes it fairly easy for the ordinary citizens to change the Constitution, and it happens frequently.

ARABIAN: I don't think so. Unless you can give me statistics on that, I don't think you change the Constitution too quickly around here. Some things — I was surprised recently here in the city. They extended the term-limit provision, which I thought was going to die, because most people hate the forever politician, but they got a few more years added on. When it came up to the statewide situation, you saw what happened. Get Willie Brown out of office is all that was about. But down here, they seem to be happy with their city council, so they let that one slide by. I was personally surprised at that.

MCCREERY: But having constitutional amendments, when they happen, come up by ballot measure. One of the things that does is deprive the Legislature of its traditional role of bringing issues forward to act upon. Of course, a lot of our themes today have to do with this tension between the Legislature and the judiciary, vis-à-vis the will of the people.

ARABIAN: I don't find that a bad idea, to have an initiative process, because the people are the ones who are being served. Whether the Legislature wants to take care of it or not, that's another story. But if on those rare occasions they feel strongly enough about something, the death-penalty this or something that, that's their right. I love it.

MCCREERY: Or if the people feel the Legislature is not acting in an area where it should —

ARABIAN: Then they have an opportunity to go "take the law into their own hands," quote, unquote. That's fine with me.

MCCREERY: Oftentimes we see these measures pass, but then we find that the language itself becomes subject to a lot of scrutiny, because it's poorly drafted, or —

ARABIAN: That's where the problem comes. And if it's violative, then it's going to get knocked out. That's part of the flaws of the process.

MCCREERY: You can appreciate that, because you've made a career of paying careful attention to language, haven't you?

ARABIAN: That's what it is. If you put the wrong word in there and it's going to violate some other provision, it's not going to stand up, and that's that. You have to be smart enough to do it right. [Laughter]

MCCREERY: Let's talk about a couple of those things that originated as ballot measures and eventually came to your Supreme Court. One of them had been passed back in the late eighties, and that was Proposition 103 on auto insurance. It came up to the Supreme Court in a series of cases, and you were not there for the first of those, but you were there to vote on some of the later ones.

Basically we can summarize by saying that the California Supreme Court upheld the will of the voters in that case and really didn't show itself to be a particularly strong supporter of the insurance industry. Was that a surprise in any way?

ARABIAN: No. My memory of all that is you call them like you see them. If it was proper, fair, and for the will or the health of the people, fine. Who it hurts or harms is on the side of it. What is for the best interests, and was

it done properly? If it was, it's going to be — and the following cases would fall into it. So that was not a big deal for me.

MCCREERY: It's often the case, though, that people are trying to look for patterns within the Lucas Court or whichever court it is, and it was often said that this court was pro-business, in general, a so-called friendly climate for business.

ARABIAN: What's wrong with that?

MCCREERY: No, nothing. I'm just saying that the —

ARABIAN: I'm part of that cabal, okay? I think if business is good and they need protection, then they get it, okay?

MCCREERY: I was simply noting that this was a little bit of an exception to that, where the auto insurance cases came up and really the court stood next to the regulators in those instances.

ARABIAN: Again, you call them like you see them, and the chips fall where they fall. That's it, and hopefully, it's for the betterment of the community and society. That's the bottom line. I didn't go up there and say, "Who's going to win, who's going to lose? Good-time Charlie's got the blues." Charlie could be anybody. [Laughter]

MCCREERY: We touched on the subject of terms limits, Proposition 140, passed in 1990. Let's return to that one for a moment, because it's an interesting set of circumstances, isn't it? This came up to you in the form of *Legislature v. Eu*, Secretary of State March Fong Eu,¹⁹ and the court voted 6–1 to uphold it, with Justice Mosk dissenting. Talk a little bit about how you viewed that issue, if you would.

ARABIAN: The words that appeared in the opinion, if my memory serves me right, were "an entrenched dynasty." This was a Chief Justice Lucas opinion. And I have to say, looking back at that later on, I don't remember seeing that expression along the way. I think my eyes would have caught it, because I'm remembering the words as best I can now. But in the final opinion the words "entrenched dynasty," as I recall it, appeared, which was taken as a real personal affront by the Legislature, who, of course, was

¹⁹ 54 Cal. 3d 492 (1991).

hoping that this would never be upheld. There was a lot of bitterness, as you might imagine.

I remember [Senator John] Vasconcellos from up north told people, “You broke my heart. You took me out of my life,” and this and that and the other guy. I was at an event where Senator Ken Maddy from Fresno — who passed away — he used to hug and kiss me; he didn’t want to shake my hand after that went down. It was really — it was bitter. Until the passage of some time, like the State of the Judiciary address, it was really cold.

There were other scenarios that were floating about as to how deep this whole thing went, because if somebody had a girlfriend up in Sacramento and was leading a separate life and had some wife and family down in the south, that was going to break that whole thing up, unless he got to be a lobbyist. There was a lot of chatter going on about the impact, outside of the legal side of it. But I think it was a fair conclusion that they wanted to stop Willie Brown, “the ayatollah of the Assembly,” continuing on for more time.

It only passed by three or four percentage points. A lot of people liked it the way it was. They didn’t want to go out and have to start new relationships and raise money for somebody else out there. So it was a major-impact case, obviously. But the words “entrenched dynasty,” that was like putting a knife in there and twisting it, later on. And as I say to you, I don’t recall them until later on. It’s just two words that I think would have jumped up at me, but who knows?

Anyway, it wasn’t that it wasn’t true. They were an entrenched dynasty. That’s why this whole thing came to pass. I mean, how long is long? So if you’ve been up there for twenty or thirty years, and you’re looking for some more, well, maybe it’s time to say, “Take a hike.” And that’s what that whole thing stood for. But the relationship between the judiciary and the Legislature was really sore.

I may have told you the story about seeing Willie Brown at an event after that, and I said, “Willie, don’t fret. There’s life after the Legislature.” He says, “How’s that, Armand?” I said, “You can run for mayor of San Francisco.” He says, “You really don’t like me.” [Laughter] A couple of weeks later he was running. As we know, he did a couple of terms. [Laughter]

MCCREERY: Yes, and he sidestepped the act of actually being termed out by getting out and becoming mayor. But he saw the writing on the wall, of course.

ARABIAN: Yes. Well, that was it. But he did another eight years hanging out. Jerry Brown, I notice he's still not termed out. He's still going at it. Some people are addicts. They've got to have the whiff of the voters' election ballot.

MCCREERY: How well has it worked, in your opinion, if people do cycle into other similar jobs, or other jobs in state government?

ARABIAN: I can't say that it's bad, because if they're talented and that's their desire in life — if you're a poet, you want to keep writing poetry. I don't have a problem with that. But I think there is a time when enough is enough is enough. I think that people had a right to say, eight years is enough, or twelve years is enough, whatever that is. So I voted for it, and I was happy to vote for it. It had nothing to do with Willie Brown, it had to do with the system.

MCCREERY: Should there be term limits for judges?

ARABIAN: Well, there are, like in New York State. At, I think it's seventy-six, you're out.

MCCREERY: Oh, an age limit.

ARABIAN: Age limit, yes. That's your term limit, age limit. If you hit seventy-six, the chief justice of New York is going to have to step down in a couple of years, because when you hit seventy-six, you're history. That's the way that they built that thing. They don't leave you up there till you're ninety-six years old on the Supreme Court of the United States. They say, "That's long enough." I think it's a great idea. I like that idea. I have no problem with that idea.

MCCREERY: But nothing like a limit of six years, eight years, twelve years, like the Legislature has?

ARABIAN: We have terms. But in New York they have a year-age term. They don't care where you are in the middle of your period of years. When you hit that seventy-sixth birthday, you're gone. I like that. That gives a person enough running time to do him — the chief judge, there's a wonderful woman in charge, I think Judith Kaye, if I remember right, a terrific chief for the State of New York, where I'm from originally. But I like that

idea. I'm seventy-two now. If somebody tells me, "You've got four years left," I have no problem with that. I don't.

MCCREERY: What about the system of the federal judiciary, where they do all have lifetime appointments. What's your view of that?

ARABIAN: I think generally speaking, it's worked well. I think it can lend itself to abuse. I think the power factor there can be somewhat of a problem in certain cases, but generally speaking, I don't see that as a problem. I think they're dedicated. They go there, and if they want to go to senior status at a certain point, they do that. If they want to return, they still get paid, so it's a lucrative situation, actually, financially. But that's fine with me. I have no problem with that. If they want to change that they can change it, but I think it's working well.

MCCREERY: But you say that a system of lifetime appointments is fine for the federal system, but you like having the retention elections —

ARABIAN: I do. They could make it life here, but I think it lends itself, in a court of this size, to problems, and I think those problems can be alleviated — with the system that we have — better. If somebody gets out of line, they can run on them and say, "This is what this judge did." Okay, well, there's term limits for you. It works out.

MCCREERY: I'd like to touch briefly on the matter of reapportionment and redistricting as it came up to you while you were on the Supreme Court. This is something that comes up every so often in California, and it certainly had before with the same kind of solution. The Legislature in this case had a reapportionment plan, Governor Wilson vetoed, and then the recommendation was for a panel of judges to sit as special masters, and so on, so the California Supreme Court did adopt that.

ARABIAN: We appointed some masters, yes, and they did a wonderful job. They worked real hard at it. There were problems. Whenever the political structure is in charge of taking U-turns around certain areas to get more votes of support and so forth, that's what reapportionment fights are all about. So they're not an easy thing to resolve, because it's out there.

MCCREERY: Yes. I didn't know if you were particularly interested in this issue, but we have a system now with very well-protected, safe seats, and

that's part of what this was trying to address, and that's still a very hot topic today, isn't it?

ARABIAN: Exactly. I think the only solution is not to face the battles that are the ones that we see. I think there's got to be a situation where it's done by boundaries that are established without your involvement. The City of Pacoima has "from this street to that street, and that's involved in District X," okay? You don't carve pieces of Pacoima up because they help you and hurt somebody else. That to me is the fairest system. Do it on a geographical outline, and stop the chicanery, because I think chicanery stinks.

I think it's a disgrace how they carve up little snake tails and things, when you see how these jurisdictions run. I think it's outrageous. The simple answer is, this is Van Nuys, and the votes are in a unified area here. You want to run in there, be my guest. That's it. It makes it simple and fair for everybody, and you take the human element of chicanery out.

MCCREERY: May I ask how you think Pete Wilson did as our governor in the nineties?

ARABIAN: I thought he did a fine job. I thought Deukmejian did a fine job. These are quiet rulers of a government. They do what they think is right, and they have a clear sense of what is right, et cetera.

When you get to Gray Davis, who I like personally, and you say, "Illegals ought to have driver's licenses," that kind of a thing falls out of the mainstream of California thought, and you're looking for trouble. Those two other governors never did anything, to my memory, that was remotely that controversial. And all of a sudden you're [Governor Davis is] out of office. Well, what did you expect? Okay?

This is what I call a turnip-truck situation. You've got to know a little bit more than falling off one of those, and if you're hysterical, you don't deserve to be there. I love him personally. I think he's a wonderful person. But whatever was going on that allowed him to get booted out of office was off the charts, as far as I was concerned, because he's a good person, a fine person.

MCCREERY: It was very tied in with the energy crisis, of course, too.

ARABIAN: Yes, that was in the middle of it, too. But there are certain things the public will not buy into very quickly, and he was working that end. It doesn't work.

MCCREERY: What are your thoughts about electing Arnold Schwarzenegger to take his place? Another unusual move from the citizens of California.

ARABIAN: I thought that Ronald Reagan had set the stage for the actor type to come in and do it, and he was, to me, just the best. I just thought he was great. I think part of that legacy helped Governor Schwarzenegger, because somebody said, “We had Ronald Reagan. Look what a job he did. This guy’s got a brain. He’s been around business,” and so forth. The star power was there, and the non-star power was his opponent in the office, and bango, that’s what happened.

To his credit, I think he’s taken gutsy stands. He got whacked at the polls on a couple of them, because he alienated a lot of entrenched folks, and he learned from it. Then he admits his mistakes, and he goes on. And judicial appointments, I think he’s done a great job, from the ones that I’m familiar with.

MCCREERY: He’s had his first appointment to the Supreme Court in Justice Carol Corrigan. Do you know her, by any chance?

ARABIAN: I’ve met her. She seems like a very nice — I’ve met her at the Italian lawyers’ annual gathering, a very, very nice person. I’ve never sat with her to speak on anything, but she seems to be very accepted by the colleagues. That says something.

MCCREERY: I wonder, while I’m thinking of it, do you know Governor Davis’s appointee, Justice Carlos Moreno?

ARABIAN: I have met him a number of times. He’s just a very social, nice person, and we respect each other just on the record, because we really don’t know each other personally. I’ve met him maybe three or four times. He seems to be doing a good job. He speaks his mind, which is what he’s supposed to be doing.

MCCREERY: I wanted to spend just a few minutes, if you’re willing, on a case that the Supreme Court ruled on while you were there, or actually just right after you left, but you were a return appointee by the Judicial Council. That had to do with upholding California’s parental consent law of 1987 — that had never actually gone into effect — but saying that minors needed to have parental consent to obtain an abortion.

ARABIAN: As I recall, that was the one that was flipped over.

MCCREERY: After you and Justice Lucas left.

ARABIAN: Judge Lucas and I were on one side, and then when we both left it went the other way.

MCCREERY: That's part of what makes it so interesting, and it's a very hot topic always, generally speaking.

ARABIAN: I don't remember all the minutiae of it now, but as a parent I think there's a duty of control and an obligation to safeguard a child. If you think that the child ought to be able to run down to somebody to create an abortion on their whim without a parent knowing about it, that's not the way I call that shot.

The hard side of that is, if they don't get the consent, or they don't want to go through the agony of the parental confrontation, they go down to some abortionist butcher shop someplace, and they may lose their life. That's the other side. But it's just a matter of how you look at the parental responsibility in life, and I think that a parent is, by definition, someone in charge of a child until they become emancipated. So that's the way I look at that. Is that conservative? Well, I guess it is.

MCCREERY: This is a topic that any of us can view on a number of levels, and it is always controversial. Clearly, the court was split on it, voting 4–3 both times, first one way and then, as we said, after you and Justice Lucas retired, hearing it again and voting also 4–3 the other way.

ARABIAN: Well, reasonable minds can differ on one of those. If you're a civil libertarian you say, "Oh, no, one's right to control one's body is absolute." If you're an adult, I don't have a problem with that. In fact, I upheld that in another case. But when it's a minor it's another story.

MCCREERY: When the court heard that case again and decided it the other way after you left, this was, of course, based upon a right to privacy, which is a very strong aspect of our constitution in California, stronger than in the federal constitution, as I understand it. That leads me to ask you to reflect on those areas where the two constitutions differ, and as a justice of the Supreme Court, when do you look where?

ARABIAN: I think the general answer is, if the state constitution has more protection than the federal constitution, I think we have a duty to uphold the state constitution. When the feds outdo the state, then that's

a no-brainer. They are the highest in the land, so that's basically where I would draw the line.

MCCREERY: Privacy is one example where California has for a long time had a different standard and perhaps a stronger protection.

ARABIAN: Privacy is privacy, but a minor is a minor, okay?

MCCREERY: Okay. The related larger area of independent and adequate state grounds, when to look to the state constitution versus the federal — that was an idea, as I understand it, that had kind of a resurgence, and I read that Justice Mosk was very interested in this matter. I wonder if you recall him ever talking with your colleagues about that matter.

ARABIAN: No, but he was well known for it, and he'd articulate it on his own terms. He wouldn't have to come — if it was in the conference room, he could certainly say, "I think this overrides that," or whatever, but we didn't get into a debate about that. That was again how you viewed whatever the question was, and he didn't impose his will on anybody. If he didn't like it the way you had it, he'd do it his way, which is what we expected.

MCCREERY: He wrote an essay about state constitutionalism back in '85, I think it was, and took the position that both liberals and conservatives should support stronger devotion to the state constitution, maybe for different reasons, but he felt it was an area where both sides could get together.²⁰

ARABIAN: He was strong on this topic, and I was proud of him for having a deeper interest than most people in the topic, and he argued his argument. Not a problem.

MCCREERY: I wonder if I could ask you to talk just a little bit, to whatever extent you wish to, about the U.S. Supreme Court. We've touched on it a little bit, and one or two members that you may have known and so on, but I just wonder how you viewed it while you were sitting on the California Supreme Court, what was going on there, and how much it was a reference point for all of you?

²⁰ Stanley Mosk, "Whither Thou Goest — The State Constitution and Election Returns," *Whittier Law Review* 7 (1985): 753–63.

ARABIAN: In what you're doing, they were not on my scope of vision, okay? We have a job to do on the problem in front of us. If it has some federal impact, it's going to work its way up, so be it. Was I comfortable with certain members of the court being at the high court? Yes, I was. Was I uncomfortable with others? Yes, I was.

On the whole, however, the Rehnquist Court was doing things my way, so I didn't have a problem with the [U.S.] Supreme Court at all. I'd met him a couple of times. I have a photograph with him. Justice Scalia, he just turned seventy-one the other day. Justice Scalia and I, I think, have a lot in common, by both of our agreements about that, and, of course, I went to Armenia with him for a week, so I got to know him pretty well. Sandra Day O'Connor I've met. She seemed to be a wonderful lady. I met one or two along the way, just in passing. That's basically it.

MCCREERY: How did Chief Justice Rehnquist do in his leadership, in your opinion?

ARABIAN: I thought once he got the votes that would uphold his side of life, I think he had a wonderful term of office. I understand near the end he had some physical problems, in some recent writing. But I thought he ran a great court, and they did the thing the right way. They weren't going to give the country's rights away just on somebody's whim of an appeal someplace. They would take that appeal and do it right.

MCCREERY: Now we have Chief Justice John Roberts, and Samuel Alito as a new member. What does that change portend?

ARABIAN: I think that those are outstanding appointments, that if this president is known for nothing else he will be known for those appointments. I've met Justice Alito. I've heard Justice Roberts up at Pepperdine Law School. They're my kind of guys. I think they're outstanding choices, and they're going to do a great job.

MCCREERY: How much of a power shift is it, in your opinion?

ARABIAN: It's certainly strengthens the "law-and-order," quote, unquote, side of life, I'll tell you that. And law and order is important to this country and to me.

MCCREERY: Anything else about the U.S. Supreme Court, its trends?

ARABIAN: No. I just wonder how somebody like Justice Souter got to be on that high court, but that was kind of — he was the 105th up there, and I'm the 105th down here, so we have that in common. That's about it.

MCCREERY: But what makes you say that?

ARABIAN: He had no track record known to anyone. He just physically came out of the woods up there. Unusual. Clarence Thomas, Justice, they beat him up real good, and Souter didn't have that kind of a beating. I was surprised.

MCCREERY: The court during your time was noted for overturning some rulings of the earlier Bird Court in areas related to breach of contract and some of these kinds of things. To what extent was that discussed as a goal to be met?

ARABIAN: It was never discussed as a goal to be met. But if in the prior regime — I use that word gently — death-penalty cases were being overturned for the personal whim of the chief justice and a couple of her colleagues who thought that was the way to go, that was not probably going to be tolerated. It wasn't. We were known as a pro-death-penalty court because these cases had been fairly tried, and that was that.

If they had a definition of great bodily injury in a rape case that didn't fit with common standards, well, that was going to get overturned. So it wasn't a conscious goal. For example, they sometimes say the [U.S.] Supreme Court salivates when they see some of the Ninth Circuit cases come up there, written by certain people. We didn't have that.

But if the cases came to us that had a result back a few years before or whenever it was that just was out of tune with reality — if you stab a person fifteen times and you can't find enough evidence in there to have a death penalty, there's probably something wrong with you, not with the case. That's one of those things. But that didn't happen all that often. There was no conscious agenda to say, "Oh, well, this was the Rose Bird Court. Let's take care of business." That was never out there.

MCCREERY: Let's reflect for just a few minutes on managing the workload over the time that you were there. I wonder how you viewed the productivity of this court over the six years you were there.

ARABIAN: I thought it was excellent. It was a steady flow in and a steady flow out. At the end of the year somebody would do a review of the year's work and who did this and who did that. I think I was always rated as

a high producer, not that many dissents. There would obviously be some variance between the high producer and the low producer, but it wasn't really vast. Somebody might have a lot more dissents than others and that sort of thing, but the work was steady and you had to get your share done, and we did. It was not considered an onerous load. It was considered a responsible production, is the way I would term it.

MCCREERY: How about talking about areas where California law was developing? Again, I know all your work is case-driven, but I'm just kind of thinking of the notion that California had historically been a leader in certain legal areas.

ARABIAN: For example, what comes to mind are the informed-consent situation, and the force feeding, personal autonomy. Those were cutting-edge questions, and so if you resolved them — I think they were both unanimous opinions of mine — that would set the standards for other places. They'd say, "Here, California did this. They said you don't have to force feed a prisoner. We don't have a law like that, but it makes sense." And so we would be cutting edge in certain things. Those are the ones that come to mind in my own desk.

MCCREERY: Yes, there are a lot of new areas, genetic research, and stem-cell research.

ARABIAN: Oh, yes. *Moore v. Regents*. What are we doing with body parts, that sort of thing. So I thought we were right there.

MCCREERY: Let me ask you — and this is a good segue into your retirement from the court — but let me ask you about the role of alternative dispute resolution, as it was evolving.

ARABIAN: In '96 when I left, it was, of course, blossoming along. In earlier times I think there was a lot of skepticism about whether this would all work out, and the groups started to form up. I think once it caught on, it was like a snowball going downhill. It just started to really pick up weight and speed, to the point where today I don't think the courthouse could survive without it, honestly. Even with it, they're backed up. Certain courthouses don't have the funds with which to complete the courtroom.

So it was a blessing to society that this whole thing developed, because you have the experience of retired judges and justices. You have the

experience of lawyers who have expertise in certain areas, all helping to resolve conflict. So it was really due, and it came at the right time, let's put it that way. It was a meeting of different forces.

MCCREERY: What did cause it to catch on when it did and have this snowball effect?

ARABIAN: As I said, there was a shortage of judicial resources. If a judge is sitting down there and he's got fifteen lawyers that are on some case, and they're going to be bashing it out, he hasn't got the time or the resources with which to do it. So they say, "Okay. This is going to go out, I'm ordering it out to mediation," and if the mediator can solve that case with fifteen of those lawyers, or a discovery referee is going to take testimony for a year and a half, how else is the court going to survive without that asset? They can't. It's impossible. I've had two discovery fights that went on for a year and a half each, with all these lawyers.

MCCREERY: Here in your private practice?

ARABIAN: Right here in this office, going around the country taking depositions. Without that, the cases can't get resolved. They finally settle out, because all of this went into it. The courthouse can't do it. Then the arbitration is a whole separate judicial system of getting rid of cases, and you've got extra judges all of a sudden, because they're working and not sitting home or going fly fishing. So that's made a huge difference in the ability of the court to stay afloat.

MCCREERY: We had talked earlier, perhaps when you were a trial judge, just about the fact that in reality only a few percent of cases go to trial, and there may be any number of measures taken in between. But I wonder how you saw this developing, given that you had been a trial judge for so long. Where did ADR fit in?

ARABIAN: First of all, you have different sides of the cases. Criminal cases are going to get resolved by a trial or somebody's going to plead out, so that's a whole different side of life. Now, in the civil side a lot of them are going to get resolved without going to trial. Some are obviously going to go. But if you can assist the process of resolution by having a discovery referee taking all these pieces of information so they can get to a point of an agreement, or as a mediator sometimes you settle one and you've settled three cases, so they're

no longer up at the courthouse, okay? You've eliminated the appearance of eighteen lawyers coming in from all over the United States. It's such a blessing to the situation that — some escape hatch had to come up, and they were smart enough to come up with this escape hatch. Otherwise it was going to crumble. You would see court delays that — it would be terrible.

MCCREERY: Is there any downside to this development?

ARABIAN: No, none. There are those who'll say, "It's discriminating against the poor, because they can't afford to do this or that." Well, they can argue all they want. In other words, the private resolution, as opposed to someone who can't afford that, is the only criticism.

MCCREERY: How do you answer that criticism?

ARABIAN: Hey, everybody's wife doesn't wear a fifteen-carat diamond ring. Everyone doesn't drive a Rolls Royce. In life, you afford what you can afford, and if you can't afford it you don't afford it, and you stay in the public system. So if someone has a way to resolve their problem, it's none of your business how they resolve it. That's their business. You resolve yours your way on the public tax dollar; they'll do it privately on theirs. The bottom line is, you get rid of a case. That's the answer to that.

MCCREERY: That's for individual private clients, individuals. What about for business interests?

ARABIAN: It's more so for the business. Those are the ones that are utilizing this. They can afford to utilize it. They're the ones that utilize it. Why shouldn't an insurance company hire an arbitrator or several arbitrators, with the consent of the other party, splitting the cost whatever it is and getting rid of their problem? Is something wrong with that? I don't think so.

MCCREERY: How much did that change things?

ARABIAN: I can't tell you from inside the court, except to tell you the courthouses are still over there, packed up. But I can also tell you the judges are retiring left and right. Lawyers are specializing as arbitrators and mediators, because they see the need for their services outside the traditional role of a lawyer.

So supply and demand. There's plenty of supply, and the demand is there, and if you've got the talent to be fair and administer things just as if you were wearing a robe, so be it. That's what's going to happen, and that's what is happening.

MCCREERY: As you say, these are experienced judges who bring —

ARABIAN: I'll only speak for the judges, but I know the lawyers are branching out into the alternative dispute resolution. It's getting to be a specialty. I made Super Lawyers for Southern California, 2007. They have me under the category, arbitrator–mediator.

MCCREERY: Maybe that is a good segue into your own retirement. We talked in an earlier interview about how you decided the timing of your retirement and what some of those factors were. But let's talk a little bit about your private practice since you left the Supreme Court in 1996.

ARABIAN: I outlined all of this for an issue of *The Bench*, which went to 2,500 judges in the State of California.

MCCREERY: Yes, I have that here. Thank you.

ARABIAN: It's been an exciting decade, to put it mildly, a number of honors, a number of interesting assignments, some major criminal defense cases, including Suge Knight of Death Row Records, and Jesse James Hollywood at the present time, and the LSAT Test Theft, and things like that, which are prominent and they're notorious. So it's been very fun-filled in a way. It's been very rewarding, and going into the eleventh year, if others can match what's happened to me in my last ten, I'd like to know about it.

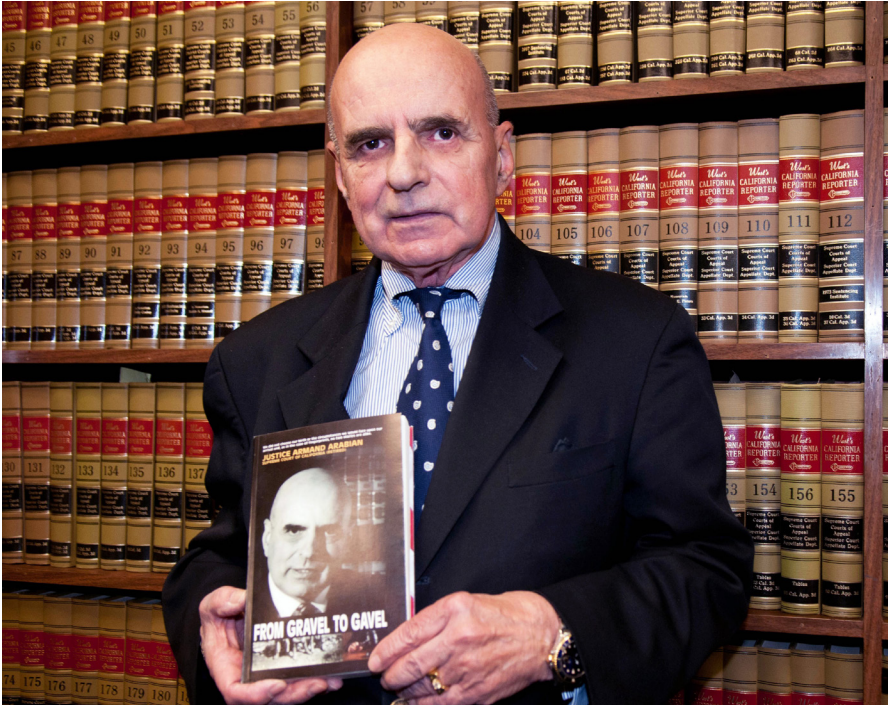
MCCREERY: You told me that when you were getting ready to retire, you thought about it and decided to affiliate with American Arbitration Association.

ARABIAN: They sort of introduced themselves to me. I interviewed with them. They interviewed with me, and it seemed like a pleasant fit. I'm AA, they were AAA. That seemed to be good. [Laughter] So it was pleasant.

MCCREERY: But do you actually get business from them, or how does that work?

ARABIAN: I'm on their roster and I get business from them. Law firms contact me directly. Sometimes judges suggest that I look into the situation for them. So it's from a variety of places. I'm not beholden to one place. Plus, unlike many of the retired judges, I am a practicing lawyer, so there's a whole different side to that, expert witnessing and things like this.

MCCREERY: Tell me about some of your other things that you're doing.



ARMAND ARABIAN HOLDS A COPY OF HIS BOOK IN HIS VAN NUYS OFFICE, JANUARY 10, 2011.

Photo: Thomas Wasper

ARABIAN: I was teaching appellate advocacy at Pepperdine, but that got to be a little strenuous, about fifteen weeks at a time, the preparation, the driving and all that. I loved doing it. The students loved it, but it just got to be real tiring. I enjoy the criminal defense, because it keeps my blood pressure up to a nice level and it's challenging. Criminal law has always been my first love, and most of my time was as a criminal-court judge in Superior Court. So I do enough of that, as much as I feel like doing.

Discovery referee — as I said, two cases took up about three years of my time here, but that's really trickled down. There's not much of that going on at the moment, for me. Expert witnessing — I've done a few of those, sometimes on indemnification, sometimes on whether the lawyer performed, and so on. But that's not that often.

Mediation is the most prevalent conduct or activity, and, of course, you've got to have both sides agree to a resolution; otherwise, you don't

have a completion. So that is a bit of a task. I am writing a book, which I hope to have out one of these days.²¹

MCCREERY: Can you talk about that just a little?

ARABIAN: Basically, it's just, I hope, an inspiration to any immigrant person, or anybody, but especially to the issue of an immigrant family, who will ask, "My family came here, let's say from Mexico, and here I am trying to be somebody." I want that person to be able to look at this book and say, "Here's a kid who was born on the sidewalks of New York, and he went all the way to the California Supreme Court. He did these kinds of things. If he can do that from the ashes of a genocide, why can't I do that?" That's what that's all about.

The honors accumulated and piled up. The Fernando Award, which is for me a major thing. The Ellis Island Award was huge. I want that to be lined up so that reader can say, "Oh, my gosh. Look at the targets and goals I can set for myself. Somebody did this ahead of me, and if he can do it I have a shot at it." I always shoot my arrow up high. It may not hit the star, but it could land on the moon. So that's really the reason I'm putting that scenario together, with basically a pretty good outline of what went on between the beginning and before the end. That's the reason. I'd like it to be a diary outline to inspire someone to say, "Gosh, I can do it. Somebody did that. I can do it, too." That's what — I want it to inspire somebody.

MCCREERY: You've done a lot of writing, but I wonder, how does it compare to work on a memoir?

ARABIAN: The memoir's fun, because I have a lot of resource information. I've kept volumes of scrapbooks on anything that was written or said, lots of photographs, so in this summary that I did for the [California] Judges Association, it forced me to go back through all those things and kind of pick off the highlights, and that's what was kind of fun to do. It took a little time to do it. But that will ease the task of finishing up what's left, from the time of retirement to present time. But as I look back on it, I was fascinated by myself. Holy mackerel, that was a pretty good run! And if God gives you strength, you keep on trucking, but that's for another day. That's why I'm doing it.

²¹ Armand Arabian, *From Gravel to Gavel* (Los Angeles: Flagship Books, 2011).

MCCREERY: What's the timing of your memoir? Do you have a deadline for yourself?

ARABIAN: I'd love to have it done by the end of the year. If I can get enough time set aside, now that I have the outline, I think I can finish it up. I've got a couple of publishers who keep calling and want to know what's going on. But it's basically, from now till the end of the year I'd like to get that finished. I'm going to take a couple of cruises and take a little breathing time off, too, just enjoy life a little bit.

MCCREERY: Yes. You are still working quite a bit. You mentioned all these different things. Do you envision cutting back at this point?

ARABIAN: No. It's at a nice flow right now. It's not like — the discovery referee times were five days a week about eight hours a day. That wore on for three years. But now, it gives you time to breathe. It gives you time to think. It gives you time to create that book. It gives you time to vacation and spend time doing what you want to do. So it takes some of that pressure out of here.

I once asked Governor Deukmejian when he retired, why did he retire when he did. He says, "When the time comes, you'll know." [Laughter] So you've got to pace it that way. I thought that was good advice.

MCCREERY: Are you staying in close touch with him?

ARABIAN: I see him. I saw him about a week ago. I usually run into him about once every four months at one place or another. He looks great.

MCCREERY: You mentioned that in terms of the work you are still doing, mediation takes up quite a bit of that. Is that your favorite of all these forms? What do you like about it?

ARABIAN: It is my favorite, because you get an agreement that is hopefully satisfactory to everybody, as opposed to dropping a gavel at the arbitration table. They know what finality is. They know to the last dotted line what the situation is. When they walk out it's in a signed form. Then they can go up and enforce it at the courthouse, dismiss the case, and so on. But the strain of that is to get warring parties to come to a marriage at the end of the day.

That's a lot different than sitting back and listening to a case such as you would do at the courthouse. Arbitration is a totally different run. So the art

of mediation to me is totally different from the art of arbitration, and that's the difference. The wonderful part of it is if at the end of the day everybody is happy and goes home contented as much as they can be, and you've eliminated some more stress of the courthouse itself. You feel pretty good.

MCCREERY: When they are far apart, just generally speaking, what do you do to bring them together?

ARABIAN: Everybody has their own little way of trying to resolve the difference. One is, you try to keep everybody civil. Another is, you try to take a neutral view but then get forceful when you see that they've slipped from the post, and when they're just totally unreasonable, or there's something wrong with them, or they're so wound up in their emotional situation that no one can talk to them, including their own lawyers.

Show compassion when necessary. There's a whole lot of range to it. If they don't respect you, you're not going to get anything done to start with, so there's just a little of that. They know what your background is, and they usually do, or I'll introduce myself with a little background, and they'll say, "This fellow's been around. I'm going to listen to him. It's better to listen here than across the street at the courthouse." I call that the crap table. I call this one "the granite table of surety."

MCCREERY: It is an actual granite table we're sitting at, I note.

ARABIAN: Very much so. So I tell them, and the other analogy I use is holding the world up on your shoulders, or how long do you want to hold that weight up? Do you want to put the thing down one day? Go up to Fifth Avenue over there by Rockefeller Center, you'll see somebody holding the world up. Put it down. That's enough. So that's sort of a way.

MCCREERY: Do you limit your mediations to certain subject areas?

ARABIAN: No, everything. You name the scenario, I've probably seen it in the last decade.

MCCREERY: We didn't talk about the three strikes law in California and, of course, by the time that was voted on by the court, you had left, if I'm not mistaken. But I wonder, what's been the effect of that on the whole legal arena, and perhaps it's even affected the business that's come to you in private practice?

ARABIAN: The three strikes law had every well and good intention behind it, and if properly exercised it's good, because at some point you've forfeited your right to life as you think you should be running it, by robbing and stealing and raping and plundering from other people. But there is a movement afoot to make some modifications. I think District Attorney Steve Cooley is behind that movement, so that Jean Valjean when he steals a loaf of bread shouldn't have to go to state prison for the rest of his days. I think that that's a salutary movement.

The other thing is, there are so many people in the state prison system it's completely out of control. The governor's thinking about moving inmates out of state, which is a pathetic idea. This is California. You commit your crime, you do your time here, as far as I'm concerned. But you can't build prisons fast enough or big enough to keep up with the inflow, so there have to be some modifications made about the return parole violators, the more aggravated types, and so on. There's a whole world of remedy that has not yet been concocted. I've done about five parole hearings. I know how bad it is. So we have a monstrous situation on our hands as far as the incarceration part of our lives are concerned.

MCCREERY: Any suggestions for things that the state should seriously look at?

ARABIAN: I think that the power that was given to the governor to set aside parole decisions is a pathetic response from the community, because even if they're lawyers, as Gray Davis was, some underling usually writes up the review. If it's anything in a serious range, they don't want it on their conscience that they let Joe Blow out and he went out and committed another robbery or murder. Now you're up for reelection, and they're going to use it against you. There's a whole political measure to this veto power, which I think is out of control.

So that's a rule that should never have been enacted, and it upsets the millions of dollars we spend on parole hearings and on the lawyers that go up there. Now, I'm not saying that you shouldn't do your time for doing a crime, but for those who get a successful review by a parole board, for that to be set aside on the signature of a governor, I think, is contrary to justice as I know it. That's one part of it. The parole violators, that's another whole show. There should be something done about that. There are

different considerations that I've read about recently, but we can't keep piling them in to the same old stone storage house, because there's just no more room there.

MCCREERY: What about building prisons, which was such an emphasis for a while there, when you were still a judge?

ARABIAN: There's nothing wrong with building more prisons. I'm for that if you have a need for them, which we do. The NIMBYs, of course, raise up against any new prisons coming in anywhere, because they don't want that in their backyard or front yard, which is their right to complain. Then they shouldn't complain if there's no resolution for where they go. So there's a whole huge problem out there that's really, in my view, not being seriously addressed. Where do you house that collection?

MCCREERY: You touched a moment ago on serving as an expert witness as one of your activities. That strikes me as a very interesting area of endeavor that's really becoming more and more widely used, is it not?

ARABIAN: The thing is, they have a dispute and they're at a loggerhead over some part of that case. Let's say that it has to do with whether there's a proper indemnification clause. Let's say the attorney charged too much money for what he did. Let's say he didn't do his job. There are all kinds of disputes. They'll come to someone who has served on the court, who has had experience in a particular area, or whose opinion they would respect in the forum, and so that leads you to the expert witness consultation situation. It doesn't happen all that much, but it happens. There are lawyer types who are professional experts in some given area. So there's a whole world out there for that, the scientific people of every stripe.

MCCREERY: It's an interesting development in our system, isn't it, to use that so frequently?

ARABIAN: They figure if Justice Arabian says, "This lawyer competently did all he was supposed to do," and that goes in front of a jury, they're probably going to pay some attention to it. That's where you get called in, and that's an area that's not all that hard to figure out. You either screwed it up or you did the right thing, and that's it, either way.

MCCREERY: Which of your awards and honors, of which there are a great many, shall we talk about? I'd like to just get a little of this. I know that

you've, as you said, summarized these in your article for *The Bench*. But could we just start with the Fernando Award, since that so recently resulted in the wonderful dinner earlier this month?

ARABIAN: For forty-eight years they've been giving this Fernando Award in the name of a mythical Indian early settler of the San Fernando Valley. They put a statue of Fernando over by the courthouse, which is about fifty yards away from where I used to serve on the court at the civic center in Van Nuys. I used to pass by it, because they have a nameplate each year for the recipient, and I knew some of them along the way who were business types and so forth.

A few years ago when Mayor Riordan was around, they put a second one up, not in the form of Fernando, but in a marble form, and it's over at the Warner Center by Woodland Hills. Obviously, you're up against a lot of contenders, and oftentimes your name is submitted and nothing ever happens. So I was quite surprised that my name was put in last year, and on the first pass it was granted.

So to be honored in the valley, the place where I really — the old song, "I'm going to make the San Fernando Valley my home, you can send my mail care of RFD, and you're going to settle down and nevermore roam, make San Fernando Valley my home," I heard that song, I must have been around twelve years old. Anyway, to be honored by the valley for being a valley-ite I considered was quite nice, and we just had a tremendous party. About 250 people came, and they give you the statue of Fernando in small form. It was a very heartwarming event.

The other one that I thought really very impressive was in 2004, the Ellis Island Gold Medal of Honor, to go back to where my parents landed and visit the ground. I had been there before once. That was a very moving ceremony, because that's what America is about, and all the people who came through that place who were the debris, the ashes of somebody else's foreign shore, which I made remarks about in the Fernando acceptance speech, "the wretched refuse," as Emma Lazarus put it. I thought that was a tremendous accolade to somebody's life, because they only give about a hundred or so a year out of the whole nation. It's a major ceremony, with military bands and all kinds of flags flying about. I really hold that one pretty close.

And then Project Sister, which is the anti-rape group, when they put the Healing the Heart Award in my honor, which they now give yearly for someone who's helped victims of a violent crime like rape, I would put that right up near the top.

So there have been lots of other ones, a lifetime achievement award, which has only been given to me since the [San Fernando] Valley Bar [Association] was formed, I think, in 1928. That was quite a beautiful award. The Armenian church, I've gotten about four or five awards from different religious leaders for doing different things. Those are very important to me because, again, it sets forth the standard that I spoke to you about, about someone looking back up and saying, "What happened here?" Things like that.

MCCREERY: When I was here last month you very kindly took me out to the Chatsworth Courthouse. Tell me about the naming of the Arabian Reception Hall there.

ARABIAN: That courthouse was opened in 2002, and I had already retired, but I was busy. I didn't get to the opening of it, but I had driven by it. It's a hundred-million-dollar building. Along the way there were some supporters who said, "We ought to name something after the justice." So they went to the supervisor over here in Van Nuys, and his view was, you have to be dead before we name something for anyone. I said, "That could be arranged. Who do you have in mind?" [Laughter]

And then they went to Supervisor Antonovich, Mike Antonovich, who's a long-time friend, and he has jurisdiction from San Fernando over to the West Valley. The Chatsworth Courthouse fell under his jurisdiction. So under the outline that — actually, he's not a lawyer, and there is a courthouse named after him in the Antelope Valley, the Michael Antonovich Superior Court, the difference obviously being that I was both a lawyer and a retired justice.

They settled for the view that instead of trying to name the building after me, that they would name the entire first floor of about 75,000 feet, as the Justice Armand Arabian Reception Hall. So one day before my birthday in 2004, we had a big ceremony. There is a showcase up at the far end with memorabilia in it, and whoever wants to walk over and see what it contains is welcome to do so.

Then it's like a ballroom entrance, different from every other court I've ever seen, before you get over to the metal detector and go into the main part of the building. It's quite elegant and very difficult to have done while you are still alive and kicking around a little bit. But that was really an unprecedented honor, and I don't think of it in terms of medals, obviously, because it's something way beyond that.

MCCREERY: Thank you for showing it to me, because it is big and open and light and an extraordinary architectural design, isn't it?

ARABIAN: There's no second place for that one. They'd drawn it up, and someone apparently said, "If you're going to build a building, make it beautiful," and they really did. It's just a showplace. I especially like the fact that when you walk in, you don't run right into the metal detector. You can have a cocktail party out there in that first entry area, before you start in with the rest of it, so that's quite different. And they did it in curved glass, marble, everything. Whoever designed that did a real job on it.

MCCREERY: We can include with your oral history manuscript this list that you compiled for *The Bench* that lists the many other things that you've been doing since you left the Supreme Court, I guess eleven years ago as we speak. What else from this list would you like to mention? Anything in particular?

ARABIAN: I like the idea that I donated the funds for the Justice Armand Arabian Attorneys Communication Resource Centers in Van Nuys and San Fernando courthouses, because I felt that with a Bar card you could go in there and Xerox or compute, an office away from an office, so I was happy to do that. Then we have the Advocacy Tournament at Pepperdine, which is an endowed scholarship. That's pretty nice. Then the Law and Media Award by the Valley Bar, Erin Brockovich and Ed Mazry, who passed away, were some of the recipients of that. And the list goes on, different honors and awards.

Outside of all the details that are in that — *Who's Who in the World*, being named to that was quite nice. And that's basically tiptoeing through the tulips of a lot of it, a lot of different things. But I'm looking forward to this year, as we spoke about, hopefully finishing up the memoir, which I want to do.

MCCREERY: I wish you very well with that. Let me ask you to return to the Supreme Court just very briefly, and just reflect on your time there. How do you evaluate that whole experience, looking back now, eleven years later?

ARABIAN: First of all, it's a dream come true, because out of the history of the court to that day, I was only the 105th person to serve in that capacity. Secondly, I didn't get there at a real old age. I got there when I was young enough and feisty enough to punch the clock out for six years. I enjoyed my colleagues. They were a dedicated, good group that you could hang out with if you felt like it, so there wasn't animosity on the court amongst the players, which really lends to a creative atmosphere.

I had to spend those years alone, because my family was down south, so I had the experience of living off the coastline of the great Pacific and enjoying the nighttimes when I would sit down and do some of the work of writing, which was a wonderful time for me. I had time for reflection, and it has come out in some of the opinions along the way. The challenge of having to face the problems of an entire state and, in effect, impacting the country, is an unusual experience and one that's weighty.

You've got to take it in your heart and your soul when you do that job. I sat in three executions. Everybody doesn't look forward to doing one of those, but that happened, and you endure what I call the agony of judgment, because someday somebody's going to judge you, and you don't know where that's going to fall. So that's a consideration.

To be able to assist victims of rape, in furtherance of what I had in my heart — I had the opportunity to do that in a couple of situations. To create sexual assault counselor-victim privilege along the way — that was unheard of.

So when you say what are the things you remember about some of the things that happened, it was an adventure, different, of course, from the other levels of public service, magnificent in what it allowed you to do, humbling in the power that you had and the way that you should exercise that power, because you could overdo it in a New York second, and you must not fall prey to that temptation, ever. To be respected by your colleagues and by the bar, after you've done twenty-four years and six up there, speaks volumes without you having to utter a sound, and it makes you feel pretty good.

Sometimes you get a little depressed, and you say I spent all those years of my life, and what's out there? We've got some of the worst trash you could ever imagine wearing the garb of a human being, kidnapping little children, and doing the most horrible things. Was my investment of my life worthwhile?

And the answer always comes out, yes, you're damn right it was worthwhile. Without that it would have been worse, if you hadn't put your imprimatur out there. So as you reflect back you say, there was this calling. The bell rang. I was on the horse at the merry-go-round. I grabbed the ring right at the right moment, and I rode the ride. Was that an Arabian horse? It was. Amen. [Laughter] I couldn't resist that!

MCCREERY: I was going to say. [Laughter] Arabs are beautiful horses, aren't they?

ARABIAN: The best.

MCCREERY: Was there anything about your time on the California Supreme Court that took you by surprise, once you were behind those doors and working on the top of the heap on the most important cases?

ARABIAN: Nothing like that. If you've been that prepared to get to that spot — I wasn't Rose Bird being thrown into the chief justice spot when I didn't know a damn thing about judging. I knew a lot about judging, so as I told you, Justice Mosk said, "You really hit the ground running." And I said, "Thank you." I figured that was a compliment, but I thought it was a correct statement, because I didn't just wander into the place.

I loved it. I loved being there, every moment of it, from one place to the other place, whatever it was. I would have really loved to have stayed on, but I just, as I told you, there's a time that comes and you say, my term limits are self-imposed. I don't need the community to do that to me. Let someone else also contribute.

But when you can look back and smile on yourself and say, I played all nine innings every damn day I was out there. I may not have hit a home run every day, but I sure as hell was out there hitting doubles and singles and stealing bases.

And that's it. That's how I played baseball as a second baseman, and that's how I wrestled when I was on the varsity team at Boston University and high school before that. You just give it all you've got.

As I tell colleagues, “Whatever you do on that bench, at the end of the day if you can go home and put your head on the pillow and say, ‘I did the best damn day’s work I could do, and I’m going to sleep good tonight, because I didn’t do anything knowingly wrong,’ you’ve done your day’s work.”

MCCREERY: No regrets?

ARABIAN: You have no regrets if you can pass the Arabian test. When I put my head on my pillow, do I fall asleep soundly with a clean heart and soul? You didn’t show any favoritism that was undeserved to somebody, you played it fair and square, equal justice and due process? That’s all you can do. The rest of it is up to fate and in God’s hands, not yours.

MCCREERY: Of course, Chief Justice George took over after you left, but he’s been there now eleven years also, almost, and has instituted quite a few changes, continuing the path to unifying the trial courts, and increasing funding, and all kinds of things. How has he fared in that role?

ARABIAN: In my view, he wanted to rise as high up in the state system as one could, and he obviously achieved that by becoming chief justice. He has totally dedicated his life to it. His heart has always been in the right place. His mind has always been sharp and in the right place. His detractors are few and to be disregarded. He’s done a fabulous job. He’s at the helm every day and has earned high praise from his contemporaries in other courts across the country. So California is lucky that they have somebody of that talent, dedication, and perseverance who wants to do the job right and is doing the job right. He’s doing a fabulous job as the chief.

MCCREERY: Is there anything that you’ve thought about and want to say little more on, perhaps about the most meaningful parts of your career?

ARABIAN: I think that everyone should have in the back of his or her mind the simple statement, “Make a difference.” I used to autograph my court photos with that. “Dear so-and-so, always remember to make a difference.” As simple as that slogan is, it’s a lifetime of challenge.

So if you want to be a judge and, as I call it, the peace-and-payday type, and not make a difference, just make your paycheck and go home after twenty years and retire, you can do that. It doesn’t only have to be on the court. You can be one as a lawyer. What are you doing?

So everyone has some appetite for something. It may not show up at the first breakfast, but along the way you're going to develop a taste. In my case it happened to be rape reform. For someone else it could be child molestation. For somebody else it can be DNA evidence improvement, whatever it is. Pick your path with care and make a difference.

Everybody can make a difference to some extent in some project or some process. Without that, you're just a useless wanderer of the desert. Don't go wandering in the desert. Have a goal. If you want to get to Morocco, get to Morocco. So that to me is a direction that I've told on other occasions to people, "Make a difference."

If you put it in your mind that you're going to do something like that, and you create and you put your energy to it — how else would I come up with the Sexual Assault Counselor–Victim Privilege? It's got to be in your heart and soul, and in your head, and then onto a pen and into some legislative program, and the governor's signature, and adoption by other places. If you don't think about it, so what? She went to jail because she didn't turn her records over. Just go home and have a beer. This is the other way to do it.

So there are many challenges out there, and my word is, find one. Do it. If you don't succeed, keep on trucking, because if you lay the groundwork, maybe somebody else will pick up on it if you didn't hit the goal line. But it's out there.

At the end of the day, put your head down on a pillow and rest. The Boy Scout, "Do a good turn a day," is, I swear, one of the sparks of my life. If it means stopping at a crosswalk and letting somebody go across, that's your good deed for the day. It didn't take much effort to do that instead of running them over, or making them wait until you went through.

There's a lot of good turns to be done out there, so do one good turn a day, and then have something in your heart and your soul that you're going to make a difference. When they put you down in Forest Lawn over there, somebody'll say, "Oh, boy, do you remember what they did for such — do you know what this person did for the Red Cross?" Whatever it be. There are so many things out there. So that's the guiding post for me in somebody's life.

MCCREERY: You talked about your memoir, which will recount many of these things that have meant so much to you. Besides writing that, what else do you want to do in your life?

ARABIAN: That's the most immediate target, because to me it's leaving the headstone behind. Before you check out, you want to make sure the engraving is in place. I want that to happen. I want that to be done in a nice way. As far as other awards to come, I just can't conceive of any more. I think I'm awarded out, and let that be in a showcase someplace for someone to look at, because that's what's going to ultimately happen.

So from the point of view of what are my goals, I'd like to continue to do what I'm doing, to settle disputes amongst the players. I'm scheduled for two speeches coming up in the next few months, to get up and share some thoughts with audiences who seem to like to hear it. And then God gives you the next one.

We don't know what happens after that. But try to make life interesting and fun. The days are ticking on everybody, and my colleagues are gone. Justices Kaufman, Eagleson, Broussard, Mosk — they're checking out. Everybody's clock is ticking, so you want to make the most of each day. That's the goal.

MCCREERY: Unless you have anything to add, I've come to the end of what I will ask you. Any second thoughts?

ARABIAN: I'll say amen to your wonderful efforts. I just feel terrible that you missed out on a couple of great colleagues, Justices Eagleson and Kaufman. You would have really enjoyed talking to them as you have with me.

I have left [videotaped] remarks with the Superior Court, which you have a copy of, and I'll give you a few more things along the way for your file. Other than that, I think that I have provided you with all the oral remarks that I can think of giving, and I think you've covered just about everything I had thought about, and about fifty more.

MCCREERY: Thank you for telling me about your career. You've done a marvelous job, and it's been great.

ARABIAN: Thank you for your dedication to your efforts, and to the group behind you.

MCCREERY: I'll pass that on. Thanks again.

ARABIAN: Thank you.