

ORAL HISTORY

JUSTICE

CARLOS R. MORENO

ASSOCIATE JUSTICE
CALIFORNIA SUPREME COURT
2001-2011



CARLOS R. MORENO
ASSOCIATE JUSTICE, CALIFORNIA SUPREME COURT
2001–2011

Oral History of
CARLOS R. MORENO

LAURA MCCREERY

EDITOR'S NOTE:

The oral history of California Supreme Court Associate Justice Carlos R. Moreno was conducted in 2019 by Laura McCreery of the Institute of Governmental Studies at UC Berkeley,¹ with funding from the California Supreme Court Historical Society.

Justice Moreno's oral history is presented here in 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 additional footnotes.

— SELMA MOIDEL SMITH

¹ Carlos R. Moreno, "In the mix: forty-five years of advancing legal rights, from the Los Angeles City Attorney's Office and private practice to the California and Federal trial courts and the California Supreme Court / Carlos R. Moreno; interviews conducted in 2019 by Laura McCreery," BANC MSS 2019/217. The oral history is reprinted by courtesy of the copyright holder, the Regents of the University of California, and may not be reproduced without written permission.

MCCREERY: This is Laura McCreery speaking. I'm here in Los Angeles with Justice Carlos R. Moreno, formerly of the California Supreme Court and now of JAMS, and we're embarking today on a series of oral history interviews. Good morning, Justice Moreno.

MORENO: Good morning, Laura. It's a pleasure and a delight for you to be here and for us to get together regarding this project.

MCCREERY: Likewise. Let me ask you to start us off by stating your date of birth and then talking about where you were born.

MORENO: All right. I was born November 4, 1948, so I just turned seventy. I'm part of that postwar baby boom that is now reaching the age of seventy and above. I never thought that this time in my life would arrive, but here we are.

I was born here in Los Angeles and lived at the time in an area known as Solano Canyon, which is directly adjacent to an area known as Chavez Ravine, where the Los Angeles Dodgers built their stadium and now play Major League Baseball there. I'm very much a central Los Angeles person. I was born in the Boyle Heights community in what was then called General Hospital, now County & USC Medical Center, and spent virtually all of my early life in these environs, the same zip code, 90012.

What's interesting is that a number of my professional jobs have been in the same zip code, whether as a deputy city attorney for the City of Los Angeles or as a Los Angeles Superior Court judge or as a federal district court judge and even my time working with a couple of law firms, literally in the same zip code, or if not the same then one digit removed, 90013.

There are times that I can look out the window — not from this window, which is looking west, but if we were at one of the windows looking north and east I could literally point out where I was born, where I lived, where I went to school and, in large part, where I've worked. So in some ways, I like to tell people, I have not gone very far. [Laughter]

MCCREERY: What were the circumstances that had your family living here in central Los Angeles when you were born?

MORENO: It's a long story, but essentially on my mother's side, she followed her oldest brothers to Los Angeles in May of 1925. I've been able to document that through the immigration records of the time.

What precipitated the family moving out from Mexico, a small port city of Guaymas, were two things. One, the Mexican Revolution, which really gained fervor from 1910 into the 1920s; and also the death of her father on Christmas Eve of 1924. Within five months of his death, my mother, her younger sister, and her mother — my grandmother — migrated to Los Angeles, where her oldest siblings had already relocated beginning in around 1918, 1919, and so forth. Those were the last of my mother's side of the family that left Mexico.

On the other hand, on my father's side, which was a large family, they came from an area in Mexico known as Michoacán, which is a state that delivers the largest number of Mexican migrants to California. They left in 1913, when my father was thirteen years old. Family lore has it that they came, again, as a result of the Mexican Revolution, although in their case they were on the side of the government, President Porfirio Diaz, against whom the rebels were challenging. That's family lore, but they came in a boat, I'm told, up the Pacific coast to California and settled in the Anaheim area, Orange County, which was largely agricultural.

On my father's side they were largely farmers and cattle-raising people, tenant farmers. Moving from Anaheim they eventually settled in San Bernardino County near Chino and Norco, these towns that were all dairy towns back then. But they were very fortunate in somehow being able to enter a lease for about 2,300 acres of farmland alongside the Santa Ana River and maintained quite a sprawling community there. The community was known as the Prado.

There's now a dam that was constructed in 1938 as a result of very large floods in Southern California in 1938, reminiscent of climate change now. But that dam is still there at the intersection of Highways 71 and 91. Behind the dam is where the Prado, which is now submerged, was and what was known as Rancho Moreno, where a group of maybe ninety family members lived. My father was one of nine. He was the eldest of the children, and his father, Don Pedro Moreno, was the patriarch of the family.

I did not have any real contact with the historical part of the family. I've only learned that in the last twenty or thirty years because somehow during the 1940s my father met my mother in Los Angeles. My father was what is known as a jobber; that is, the Moreno family in Chino, in response to the flood of milk, excess milk, started producing a Mexican-type

farmer's cheese or hoop cheese, fresh cheese that was used by local Mexican restaurants, bakeries, markets, and mom and pop stores.

They carried on that business for at least forty years, so my brothers later became involved in the distribution aspect of that business, taking it over from my father before he died. So it's interesting that you have this on my father's side, the rural, agricultural side.

As a side note I should also mention the family was involved in the foundation of quarterhorse racing in the state of California. My grandfather, my father, and my uncles were all involved in breeding quarterhorse horses that became quite competitive and really was the foundation of quarterhorse racing at various tracks: Los Alamitos here, Hollywood Park, Santa Anita, Del Mar. So the Moreno label, so to speak, I'm told, was quite well known, and up until, I would say, the early 2000s, one of my half-siblings, Henry Moreno, who is now in his eighties, carried on that tradition and was quite a well-known professional horse trainer in California.

Even there there's a side note in terms of my judicial appointments. I can go into that now if you wish or not.

MCCREERY: Why don't you give us a hint?

MORENO: Okay. The hint is that when I became interested in submitting my name for judicial appointment in early 1986, my brother Henry had a very good contact with the then-president of the state Senate, a guy known as Ken Maddy, who was a very moderate Republican married to a chicken dynasty. I'm not sure if it was Perdue or — one of the big chicken producers. But Ken Maddy was a warm-up — I don't know what you would call it — a warm-up, an apprentice, at one of the racetracks, Hollywood Park, and a good friend of my brother's.

When my brother informed Senator Maddy that I was applying, Senator Maddy called me and said, "Any friend or relative of Henry's is a friend of mine. I'll go downstairs and talk to Marvin Baxter," who was then Governor Deukmejian's appointments secretary, to get me a quick look-at if nothing else.

Years later, when I served on the Supreme Court with Marvin Baxter, he actually related to me that personal contact of Senator Maddy, who I've never met. When he came down to talk to him, he said, "Hey, this is

someone you should look at.” You just never know where your support is going to come from. That was for the municipal court.

When I applied for the superior court several years later, 1993, 1994, I reached out to his office. I’m not sure if he was still alive then, actually, but I kept the name of his assistant, chief of staff, and she followed up with a nice letter and got that over to — I guess Wilson was the governor then — yes, to Governor Wilson.

Those two appointments from Governor Deukmejian and from Governor Wilson have served me quite well because it shows exactly who I am, and that is a very balanced, reasonable, and non-ideological judge. I know my later mentor, Senator Feinstein, when she advocated for me before the Senate Judiciary Committee in 1997 and I had my Senate confirmation hearing — I remember this distinctly because she told me — she’s sitting next to Senator Hatch, who I think was the chair of the committee, and she said that he said, “This looks like one of the good ones.”

I think all along it’s been very helpful, that those two Republican appointments for a lifelong Democrat have been very helpful. I learned later that Governor Deukmejian also — he wrote me a nice letter when I got the California Supreme Court appointment. He was happy that someone he appointed to the municipal court in Compton was now going to be sitting on the California Supreme Court. So though I didn’t know Governor Deukmejian well, or at all, he’s also been, before his death, very supportive of my career.

I guess the point of all this is that one never knows — and this is the credo of my life — one never knows where support might come from. If you’ve been around long enough and you maintain those contacts — you don’t burn any bridges — all this will assist in some way when you’re going through your address books or your six degrees or less of relationships. For me it’s been very helpful.

MCCREERY: Thank you. Let me return to some of your background and ask you how much exposure you had yourself to the quarterhorse racing aspect of your family?

MORENO: None, really. Subsequently, 1958, my father — and that’s another story — he had opened a business in the produce market area here called Rancho Moreno Cheese and Produce. I started working there at age

nine or ten, usually on Saturdays, for two dollars a day, basically assisting in delivering and carrying boxes of produce to customers.

My brothers took over that business sometime after 1958, and they were much closer to following the ponies, so to speak, and stayed in contact with our half-brother Henry, just generally being on the ground, whereas I think I had my head more on studies and focusing on going away to college and things like that.

I've been to the racetrack with my brother or with my dad probably less than a handful of times, so I don't have much knowledge or connection with the horseracing business. But I know that when I meet someone who has a connection to the business, it becomes a conversation starter.

MCCREERY: You mentioned earlier that when your father's family came from Michoacán in 1913 — or when your father himself came — that they had been on the side of the government in the Mexican Revolution. I take it that your mother's family, perhaps, not so? Can you talk more about — ?

MORENO: That's also very interesting on my mother's side. Again, this is also a long thread that's going to go back, actually, to San Francisco. My mother and her siblings all had a German father, Carl Brücklmaier, who we've discovered resided in San Francisco as early as 1883. One of my nephews found a directory — I don't think it would be a telephone directory, but some kind of business directory — where he was located at O'Farrell Street in 1883, so this was long before the San Francisco fire and earthquake.

Later, after my mother died in 1975, I found some papers reflecting that while in San Francisco he was actually a married man, to a woman named Lena Weigle, and obtained a divorce — or Weigle obtained a divorce — in the San Francisco Superior Court. I still have those documents. The divorce was granted on grounds of abandonment, and I'm not sure it says adultery, but abandonment because he went to Mexico.

Sometime after 1891, he met and married his second wife, who would be my grandmother, a woman by the name of Maria Luisa Larrinaga, and produced my first uncle, Joseph or José Brücklmaier, who was born in 1897. He was the first one to come to California, as the oldest son. My mother was born in 1909, also in Guaymas, Mexico.

I've asked people, what would precipitate a — I won't say young — German divorced male to go to Mexico? But the later 1880s, 1890s, was

also a time of great industrial development in Mexico, really in large part at the expense of the Mexicans and to the enrichment of foreign interests. Porfirio Diaz was known for developing the country but also for selling out those interests to the French, the Germans, the English, and so forth.

My grandfather was born in the 1850s. Somewhere when he was in his forties or close to fifty, he decided to move to Mexico. It turns out his profession was as a watch repairman or jeweler. In fact, his business in San Francisco, it indicates just that. My mother always related that in Guaymas that's what he had, a jewelry repair, watchmaker repair-type business.

So this divorced German married a woman maybe in excess of twenty years younger than him and had six kids. What's interesting, though, is that he had the — I don't know if you want to call it foresight or what — but to send his oldest son, José, my uncle, to boarding school in Oakland and to college in Oakland, which was where St. Mary's College was then located.

He also, in the year 1914 — and I verified this by getting documents from St. Mary's College — attended St. Mary's for one year, kind of as a foreign student, but paying \$200 tuition and \$5 athletic fee. I've got the ledger for that. He was always very proud of the Christian Brothers' ethics, credo, and how they really were strong disciplinarians of young men. Ironically, my son later goes to a Christian Brothers school here in Los Angeles. I'm telling you, it's just fascinating.

My uncle came back to Mexico, I would surmise, somewhere around 1915 at age eighteen, and he worked for an agency then called the Railway Express Agency, which was the UPS of its day. This was before planes and everything else. I actually have a picture of him with his crew in Guaymas working for the Railway Express Agency.

Later, when he came to the United States in around 1919, he applied for and was accepted for a job with the Railway Express Agency, where he later worked for forty-three years here at the train station. [Laughter] So from a job that he had in Mexico as a young man and then transferring to the same agency in Los Angeles, he made that his career during the Depression, the 1930s, during World War II and so on, when train travel and freight and all that was really at its peak.

MCCREERY: How much did your mother talk with you about her own growing up in Guaymas, Mexico?

MORENO: Very little. Only that, as with many Mexican immigrants, their life was well-to-do. They had servants, a cook, and I imagine were pretty well off, given the circumstances.

My uncles — this is all apocryphal also — when they decided to leave Mexico it was because of fear of the rebels, Emiliano Zapata and Pancho Villa — because they would come into towns and conscript people, young men in particular. I've seen photographs of their occupation of Guaymas, so I can only imagine that my grandfather said, "You guys have got to get out of here, and one by one you leave to the United States. You don't want to get caught up in this mess that is going on in Mexico."

Later I heard — again, this is all apocryphal but understandable — anyone with a German name during World War I was immediately suspect, so that when they came to the United States — they were fairly light skinned and green eyes, although they spoke perfect Spanish and very little English — they did not really have an easy time because they were suspect.

Anyway, in researching some of this, when my mother came in 1925, the immigration papers show that she was met by my uncle, and it indicated where they were going to live. They were going to live with an aunt who lived somewhere in Boyle Heights. But as with many typical immigrant families, you had nine, ten, eleven people living in a two-bedroom house — and all that can be confirmed — until they got married or left the house.

Luckily my uncle, who actually raised us — that's another sidelight — was always the main provider. He always had a job, actually always had a car, was a staunch union supporter. So I think a lot of the ethics that he had were instilled in me, to be steady and to work hard, the American sort of values that we have. He was exactly that.

He spoke perfect Spanish, perfect English, actually had great penmanship in Spanish and in English. He was actually an educated man for his day, with one year of college in 1914. I don't know how many Americans actually had any college or high school back then, but he did.

MCCREERY: You've filled in nicely about this one brother of your mother's and how much he helped your own family. What about education, formal education, for the other brothers and for your mother herself? What were they allowed?

MORENO: My mother came in 1925, when she was sixteen. I don't know how much English she spoke, but she certainly could play the piano quite well. The number two son, Charles or Carlos Brücklmaier, also could play the piano quite well and during the 1920s and 1930s actually had an orchestra, the Charles Brücklmaier Orchestra. So they played at honkytonks and places around Los Angeles.

My parents were never married to each other. My father was married to someone else on the ranch side of the family — that's why I refer to Henry as a half-brother. But we were known on that side of the family as the city people, like city slickers. I went to a family reunion in 1991 out at the ranch. We call it "the ranch," where they produce cheese and other things. A number of the people were not aware of our side of the family. I was a municipal court judge at the time. "Oh, really? We have a judge in the family. Add him to the family tree," and all this stuff, so it's an interesting relationship.

MCCREERY: What do you know of your mother's earlier marriage?

MORENO: Actually, quite a bit because one of my sisters is actually still alive. She's in her eighties. But all I remember, or was told, was that she married a guy named José Hidalgo, who was kind of a — how shall I describe — I don't want to say anything too bad, but more show than real, kind of a salesman type. Of course, it was the Depression, you have to remember. A good dresser, smooth, but who abandoned my mother and her two daughters sometime during the Depression. That's what caused my mother to go live with her brother José for, really, the rest of her life, bringing her two daughters, the kids, and everything else.

MCCREERY: How well did you know her brother, your uncle?

MORENO: Oh, quite well. We lived with him, and he taught us about baseball, took us to — we went to the first game ever played at Dodger Stadium, when the Angels first came. Actually, when the Los Angeles Angels were here as a minor league club, we would go to the Wrigley Field, then in existence in South Central L.A. So he was a company baseball player, intramural-type player. I've got pictures of that. So he loved baseball. He played catch with us, would take us to events and stuff, so we were his kids in one sense.

He always at least gave me very positive reinforcement, things like, “You’re going to be president of the United States,” or that I was famous if I did something. It was very supportive. And in terms of college applications and actually helping me buy my first motorcycle to get to college here locally, he did the things that the father would normally do.

But on the other hand, he was very non-communicative. He drank twice a day — very steady, though. On his days off, on Fridays and Saturdays, he’d have lunch, a cigarette, have a couple of beers, take a nap, get up, repeat the same thing. They say he was an alcoholic. He was not a raging alcoholic, but I would say moody. Moody. So I’m told that people who are raised in that sort of circumstance always walk on eggshells because they don’t want to really upset someone. That’s one side of him, but on the other hand, very supportive in terms of what we were doing, driving me to school in high school, after he got retired.

MCCREERY: He was so wonderful with your mother and all of her family, certainly. Talk a little bit more about your very early years. What kind of kid were you?

MORENO: I like to think that I was well rounded. Growing up in the Solano Canyon/Elysian Park area, it’s probably a trope now to say that times were different. Your kids could go out and play for hours on end, into the sunset, in the park and outdoors, riding bikes and hiking and having clubs and forts and all that. I did all of that.

We were very fortunate, before the construction of Dodger Stadium, to live in a canyon that basically ended in a cul-de-sac and ended into the park. We could quite commonly just tell our mothers, “We’re going to go riding our bikes,” this might be at ten o’clock, and then not come back for several hours because we would just go all over the park. We might take some snacks, go dirt-bike riding and all that stuff.

To me, I think I had a very idyllic childhood in that sense, in terms of the freedom of movement and so forth that all of us had. We stayed out of trouble. We committed some minor infractions, but nothing too serious. I’m talking about playing with the sprinklers at the parks and all that.

But I think I always responded to positive reinforcement. Even as early as elementary school, I would do whatever little homework there was before the end of the day and the teacher would point that out. “Why can’t

all of you be like Carlos? This work is not hard.” He had me teach fractions to the kids.

One of my older brothers taught me how to do multiple division, three digits. I don’t know how we had them in the house, but we had fifth- and sixth-grade math books. I found that stuff to be fun, to see how far I could go and in a sense be self-taught — with his assistance, in some cases.

So I did very well in elementary school. I was the emcee for the graduation. I think they always spotted me as someone who wasn’t shy and who could carry the mantle and, if they wanted a student to be on the program, to be able to do that.

I think between a combination of good grades, good at sports in the playground activities — recess, as they call it — and then after-school things that I would do with my friends, and a very nurturing home which was just right there — we lived half a block from the school, and we would play softball at the playground, climbing over the fence. A bunch of kids would get together, and we’d play softball until you couldn’t see the ball. In that sense it was, I think, very idyllic.

Then junior high school. I went to a school called Nightingale, which was in a close community but had a terrible reputation. We called it Night-in-jail because there were gangs. No gangs in elementary school. I don’t know if this makes any sense to you, but gangs like the Avenues, Clover, Jokers, Alpine. These were all the stuff of the day. Obviously, I stayed away from that. I had two older brothers who could make sure that I didn’t get involved, and the community had its own network of people.

MCCREERY: What language did you speak at home?

MORENO: English and Spanish. I’m told that up until, let’s say, I was four, I spoke really good Spanish. But as my brothers went to school — and you associate with them and with others, and with them you speak English. With my mother, she always spoke to us in Spanish, although she could speak English quite well. We would respond in English. That’s what I remember.

Hence I’m actually bilingual. I can speak Spanish fairly well in terms of basic conversation, more than just ordering food and stuff like that, and my accent is quite good. There are limitations, obviously, but growing up it was, I’d say, bilingual, a mix of English and Spanish.

MCCREERY: What sorts of things were important to that community in terms of the larger scene in Los Angeles?

MORENO: It's hard to say because in a lot of ways — and I wasn't an adult then, but the community has always been a hidden gem, isolated even though it's two miles from where we are now.

Before, when you looked over the hill, the communities that later became Dodger Stadium were really isolated in terms of infrastructure and resources. I've seen commentary and pictures that — here you have these three communities, known as Chavez Ravine overall, a stone's throw literally from city hall but decades of years apart in terms of development. That's why there's a lot of controversy even to this day about how the Dodgers were able to acquire over 300 acres as a gift, really, from the city. Some people resent that.

MCCREERY: I gather it was quite controversial around the city at the time?

MORENO: Yes and no, because I always defend the Dodgers, and this has been documented. All of that area was slated for redevelopment in the late forties and early fifties. By virtue of eminent domain and so forth, the homes were bought and taken away from the owners and pretty much demolished. So the existing communities by the time the Dodgers came in 1958 — there were just a few residences left, maybe ten.

I always say it's not the Dodgers that are responsible for what happened to these communities. I think it's still debatable whether or not those communities were worth saving, at least in the condition that they were. The plan looks terrible now, but they were going to build tenant housing, like thirteen-story buildings, I don't know how many, and some low-rises and everything to house, I don't know, maybe thirty or forty thousand people in this area that was so close to downtown.

That's a proposal that is still gaining some traction by the former owner of the Dodgers, Frank McCourt, who still owns property surrounding Dodger Stadium. So there's a lot of history there. I guess the final point is that, yes, we felt like what was going on in the city did not really impact us. We were just really happy the way things were.

When the city did come in to do these building inspections, some of which resulted in condemnations, our neighborhood — fortunately, my uncle was able to do the repairs, to pay for the retaining walls and foundation

repairs and everything else. But for a while I think we felt threatened because across the canyon you could see bulldozers knocking down foundations. It was, “What’s going on? It’s like World War II or something. What’s going to happen to us?” But it never really affected us directly.

Now the neighborhood is quite thriving. What’s interesting is that certain areas of the neighborhood are now known as an artist’s colony. There have been outsiders who have come in, but these “outsiders” have been there for over thirty years now so you can’t really call them outsiders anymore.

MCCREERY: A hidden gem, certainly. Tell me about, as you got into high school, what was going on in your life at that time.

MORENO: Okay. When I look back at my student days, so to speak, there must have been something in me that inspired me to do more. Some early recollections are, in the eighth grade I remember meeting with my — we had a college counselor or somebody — Mr. C. I’m trying to remember his name, Caswell or something.

As early as the eighth grade I remember talking to him and saying I wanted to go to the best school. I wanted to be a physicist, so I wanted to go to Caltech. For somebody in my circumstance to say you want to go to Caltech and get a PhD — and that might have been just because we had a field trip to Caltech and I liked it. He said, “That’s the best school.” I said, “Okay.” I set my sights high.

In the ninth grade I ran and won for student body president, got various awards for sportsmanship, American Legion, so I think I was maybe an outgoing person.

For being a Latino, where we had tracking — I don’t know if you remember tracking? I would be maybe one of two students in the so-called top classes, English and social studies and all that. The rest were Chinese or Caucasian. The Chinese came from Chinatown, which fed into our school, and they were just perceived as being more industrious and so forth. I don’t think they were any smarter, now that I look back. They just worked a lot harder to get where they were.

I had those awards, so by the time I went to the tenth grade, which would have been 1960, I got inspired — I think my mother did, too — by John F. Kennedy because in 1960 the Democratic convention was held here

in Los Angeles. I got interested in that convention and Kennedy. Then my mother — the two icons in most Mexican families at that time were a picture of the pope and a picture of John F. Kennedy. I distinctly remember that. I have to say — it's hard to say, and I don't know with what degree of certainty I can say this, but John F. Kennedy was my model, that I wanted to do well.

So I really did have a real transformation when I went to high school. I said, "I'm just really going to do well." I set a high standard for myself. It wasn't very hard at my high school to do that. I also signed up for speech and drama and extracurricular activities, and track — although I had a groin injury and I quickly stopped that. Football I found too hard, to know the plays. Then you had to train over the summer. I actually worked at the produce market. So I would say I was ambitious.

MCCREERY: You've mentioned a few counselors or teachers or other adults, but to what extent were you self-directed?

MORENO: I think a combination. I was really curious about actually going away to a prep school for the summer, but I just didn't have anybody guiding me to do that. I really had a sense of adventure. I wanted to go away.

There weren't the programs then that there are now. Those were self-motivated things. I really wanted to be more challenged and get away and meet other people, so in terms of applying to college and doing the research and all that, totally self-directed. And in those days to get a college catalog and application, there was no online stuff. You had to write, and eventually you'd get something in the mail.

I remember thinking that when I — I did get into nine schools, and I got scholarships. I had already left high school, and I went to see my college counselor and I said, "Look. I got into Yale," and this and that. "Oh, that's marvelous. Blah, blah, blah."

But I can't say that they really assisted with the financial aid application. There wasn't any structure. You basically had to do it all on your own. That's why I tell students now that they have it so easy in terms of accessing information, accessing programs, seeking fee waivers, all these things that really weren't at the top of anyone's mind back in those days. Obviously, I was a very good high school student, active in student government. I was class president for a year and active in the activities that we did.

MCCREERY: Talk about running for class president. I'm just curious about the whole aspect of that, being elected by your peers. What was your approach?

MORENO: I never really gave that much thought. It's like, "Hey, I could win. I could get these people to vote for me." It wasn't a very sophisticated campaign. The same thing in junior high school for president. I think I might have been a representative first and then said, "Okay, I'll run for president."

MCCREERY: But you had no fear of running for office and participating as much as possible?

MORENO: No. Right. None at all. It was just, throw my name in the hat. People knew who I was. But I can't say that I was ever really a very aggressive campaigner, or slapping people on the back, or, "Vote for me." I don't remember any of that stuff.

I will say, though, that when I talk about teachers, I did have some very good mentors who encouraged me, even beginning in elementary school. A teacher named Mr. Leathers, James Leathers, who — after I was at Yale, I went back to see him. He was very proud to see me. There was a Mrs. Jefferson. When she saw me in the third grade and I already knew fractions and whatever and could read, she said, "We're going to kick you up to the fourth grade right away," like after two days.

I don't feel that I was ever ignored in that sense — and not that my mother was there pushing me or them or anything like that, although she later was the president of the PTA and played the piano and all this stuff. But she was not really an aggressive person — a very sweet, nice person who was known to everybody. But I don't know. The teachers recognized me.

The same thing in high school. I had a teacher, Mr. Talley, who was very strict and demanding in terms of your written product and all that. I learned a lot. A lot of that was also just self-imposed. I had self-created my own novel reading list for summers, maybe ten or twelve books.

MCCREERY: What was on that list?

MORENO: Classics. I would make a list of American classics. I'd say, "Okay, I'm going to do American classics." Here in the tenth grade you had American literature, so I would make a list of things that I would have to

read, whether it was *Arrowsmith* or *The Great Gatsby*, the must-reads of American literature.

The same thing for English literature, the Shakespearean plays. We might read *Julius Caesar* and *Romeo and Juliet*, but I would want to read more and include that in my summer reading. I would actually have a list.

My friend who I still see says, “I remember you were kind of a nerd. On the bus you would be studying twenty words a day.” I had these little cards, a thousand words, and I’d get twenty of them that I didn’t know and while on the bus go over them. [Laughter] Yet I don’t think I was compulsive, but that sheds some light into what I was thinking, making good use of my time.

MCCREERY: This was Lincoln High School. Say more about the school itself, the makeup of the student body, and what the scene was in that very interesting period.

MORENO: Yes, in the sixties. I was there from, what, 1963 to 1966? The Vietnam War was just kicking up. It was regarded as a low-performing school, I would say 90 percent Mexican-American, 5 percent Asian, and 5 percent African-American and “other,” so by far predominantly Mexican-American, mostly lower working class coming from a working-class neighborhood.

But as I look back, teachers were ver!t. [Laughter]

MCCREERY: You said you were accepted at multiple schools. How did you choose Yale, and what was the financial arrangement?

MORENO: They actually approached me. There was a program — I don’t know if it’s called ABC or something like that. I had applied to Harvard, Columbia, Dartmouth. I’m not sure about U Penn, but Pomona and Occidental out here. I don’t think I applied to Berkeley or UCLA. Oberlin. Why Oberlin was in there I have no idea. Reed College. One of my teachers, Florence Ogawa: “You’re a good writer. You should apply to Reed.”

Anyway, they all accepted me. They gave me some financial aid, not always. I was not admitted to Harvard, which was a disappointment, although I later went to the business school there so I’m acknowledged as a Harvard alumnus because I went there for six weeks. I was a Harvard Business School dropout.

In the process of applying to these schools, I got a letter from Yale saying, “We see you’re applying to various schools. Why don’t you consider applying to Yale? And we’ll waive the fee.” So I applied, and I got in. Later I found out that — that would have been late 1965, early 1966 — Yale was going through a process, as other Ivy League schools were, of reviewing their admissions processes. As you may know, these Ivy League schools were basically the beneficiaries of feeder schools, mostly prep schools. So Yale and other schools were experiencing a transformation of accepting pretty much prep school boys — all this was before co-ed — and taking a few isolated public school people. My friend was a public school person.

So they were opening up the doors. There are studies now. My class of 1970 at Yale, accepted in 1966, was an experimental class that was directed by President Kingman Brewster to his director of admissions, Inslee Clark, to say Yale could no longer be “a finishing school on Long Island Sound.” That’s a direct quote. We want to become an “international” national university.

There are a couple of books written about this and how the admissions process over the years had become so skewed in favor of these prep schools, where the director of admissions for Yale would go to Andover or Phillips Exeter and say, “Okay, give me your top twenty. Who do you want accepted?” And that person would say, “These are the people we want.” “Okay. They’re in.”

When you look at the performance and SAT scores of Bush ’43, even Al Gore at Harvard — their SAT scores were in the 500s. So privilege really trumped merit in those days, and what Yale was trying to do was, “Let’s get a more diverse student body. Let’s look at merit.” Ideas that are now widely accepted.

I acknowledge that — all of us in the Class of 1970 acknowledge that we were part of an experimental class, where the percentage of public school admittees overcame the prep school admittees. But still, when I was at Yale it was still a coat-and-tie rule for every meal, very much old-school prep-pies, so I saw that transformation between 1966 and 1968. But I’m very glad, obviously, that I went there. It’s been instrumental in my career and opening doors and so forth. I became very active in Yale admissions.

A lot of my peers, if they didn’t enroll in the Army — because the draft was active — I got a student deferment, even though I was I-A when

I turned eighteen. I wanted to postpone that as long as I could. And good for that, because when you look at the roster of young men from my high school who died in the war — I've seen exhibits where they have, I don't know, a couple dozen or thirty portraits of people who died in the war. In fact, my friend, who I still see, was wounded quite severely, and he was drafted right after that time.

So it was a time when you were drafted, you got married at nineteen or twenty, you went to a junior college or you went to a state college, which was Cal State L.A., which was not that far from the high school. Looking back, many of the teachers that we had had gone to Cal State L.A., and they thought that that was the pinnacle for what their students could achieve. I'm sure the teachers would reluctantly admit it, but their limitations of what they thought students could do was certainly part of the deterrence to people being encouraged, "Shoot for the best. Learn about these programs." That infrastructure just wasn't there. To the contrary, it was more the implicit or actual explicit bias as to what these Mexican kids could do.

I fortunately never had anybody tell me — although I've heard from others — I never had anybody say, "Oh, you can't do that." Or laugh. "You want to be a lawyer?" I didn't want to be a lawyer but, "You want to do *that*? You can't do that." But I know people to this day who are lawyers who had their teachers laugh at their stated goals. I don't think that happens too much anymore, I hope. But I believe these people, that they were told that.

On the other hand, I always had positive reinforcement either at home or from teachers saying to me, "You can do it. You can do it."

MCCREERY: Before we leave your high school experience, to what extent was the activism among the Mexican-American community taking shape while you were still there?

MORENO: Good point. Okay. I'm going to talk about an icon in the Mexican-American educational community called Sal Castro. That will take us to — actually, in terms of the movement, it's 1965 but I've known him since before 1960.

In the — it might have been the spring of 1965, I along with a few other students from Lincoln High School were invited by Sal Castro, who was then a government teacher at Lincoln High School and who had founded an organization called the Chicano Youth Leadership Program — a

program that was, I think, largely self-funded but also received some kind of assistance from LAUSD and also from the Jewish community. I'm not sure which organization in the Jewish community.

But we were invited to attend a camp retreat at a facility in Malibu called Camp Hess Kramer which, ironically, just burned down in these recent fires here in California, which brought to mind my experiences at the camp. But the purpose of the camp — and this is something that continued for several years, up until almost the present, through the auspices of Sal Castro before he died — was to arouse the level of social and ethnic consciousness among Latinos.

I remember very little about our experiences there, other than that it was nice to get away with your group of friends in a camp setting. But what I'm told is, from Sal Castro and others, it was to say that we as an ethnic group should really strive to do much better than we were doing; first and foremost, that we should go to college; that we should make our voices known about the conditions of our schools, which at the time were considered to be inferior to other schools even within the LAUSD school system.

I say it was more of a consciousness-raising experience so that we would have those aspirations to do better overall and not fall victim to ignorance and indifference. He was very inspirational in that sense. I think 1965 was the first but it may have been the second congregation of the student leaders in certain northeast and East Los Angeles high schools.

But I've learned since that there are many others who are alumni of those programs. Our former mayor, Villaraigosa; former supervisor Gloria Molina; city councilman Cedillo, who currently sits; and many others. I'm sure a roster would show that, in some degree, those programs actually did either pick the right people or help transform those people into doing better. So I was part of one of those early groups.

The second bit of evidence is I know that once I was accepted at Yale and went away to school in 1966, that UCLA had instituted a program — I think it was called Upward Bound — I'm not positive — but they also started to admit as part of the summer program a number of Latino students. Many of the student leaders now, if you would talk to them, also had that experience of meeting and going to a similar-type program at UCLA. For whatever reason in our nation's thinking, people realized that



CARLOS R. MORENO, MEMBER OF
LOS ANGELES CITY ATTORNEY
MIKE FEUER'S COMMISSION
ON SCHOOL SAFETY, 2018,
ADDRESSING THE COMMISSION.
LOS ANGELES CITY ATTORNEY'S
OFFICE.

we've got to do something about improving the opportunities for these Latino kids.

This all culminated, if you know your California or L.A. history, in March of 1968. There were walkouts here in Los Angeles, LAUSD system, and featured prominently among those schools was my high school and Sal Castro and one of my classmates, Class of 1967, Moctesuma Esparza, and others who were part of both the leadership youth conference but also organized around protesting the conditions at certain East L.A. schools. So that led to massive walkouts in March of 1968.

In fact, they were just celebrating the fiftieth anniversary of those walkouts. There was a movie made about that by Moctesuma Esparza,² from Lincoln Class of 1967, and there's currently an exhibit at the Gene Autry Western Museum in Griffith Park that features photographs from that era.

But this also ties in to the greater national antiwar demonstrations, the pro-civil rights demonstrations, the disparity among minorities who were in the military and not going to college versus other groups who were doing much better in those areas.

I've always thought that 1968 was a seminal year for the country, not only the two assassinations of Kennedy and Martin Luther King, but the Democratic convention. People have, if you've paid any attention, really looked at 1968 as kind of a watershed year. It's also the year that Yale abandoned its coat-and-tie rule for all meals. [Laughter] So these Yale young men, young gentlemen, no longer had to put up with the farce of just putting on anything that looked like a coat and tie.

² *Walkout* (2006).

So the whole nation was in a transformative mood. I was not here in L.A. to experience some of these things, but certainly a lot of my peers were. To a certain degree, some were very involved with protests at Santa Barbara, UCLA, and so forth. But it's a movement that really has carried on for these many decades. And people did refer to this as a movement, kind of a change in philosophy where universities had to start paying attention to this growing student body.

MCCREERY: What are your own memories of Sal Castro, and how he presented himself and his themes?

MORENO: They're good memories because I first met Castro when he was a playground director at my elementary school. Now, in those days schools had after-school programs and summer programs, where idle kids could go and do arts and crafts, participate in field trips and, in his case, founded a Little League team. I was part of that. We played at Echo Park.

So he, too, was also one who always said, "You've got to go to college. You've got to go straight and narrow." I actually had a small tattoo on my wrist somewhere. My brothers and I had found some India ink, and we made little dots. When I was batting, he said, "What is that?" I said, "Oh, it's just a mark." He could tell that it was ink. He made me take it off on the spot by washing it out and putting a little pin and erasing it. So he was concerned that, at least I, didn't fall into a culture of starting to make tattoos or whatever. I must have been, what, ten years old? [Laughter]

But anyway, he was a friend of the family. I mentioned that, growing up, my aunt lived there, and she had kids. We all suspected that he was dating one of my older cousins. So he was well known, even as a playground director. He was a Korean War veteran, and he went to Cathedral High School, which was right near Solano Canyon.

He was always one who said, "You should be proud to be Mexican. Don't let anybody tell you that you can't do something. Go to college." That was his constant message.

It was only later, when he had trouble at one of the local high schools, Belmont High School, as kind of a rabble-rouser, that they moved him to Lincoln High School, where again he went into his leadership mode and organized or revived an organization called The Knights. We wore black sweaters.

It was a group for seniors only, and we were to maintain order at all the assemblies. We would sit in the front two rows — sort of militaristic when you think about it now. But it was to encourage us to be visible leaders in the high school. So we'd wear these black sweaters. I don't know what you would want to call it, but I think he did that with the ladies' or the girls' groups as well because I've seen pictures of them having similar sweaters, where it's called The Ladies.

At Lincoln he was implicated in these walkouts and was indicted by the D.A.'s office. So was Moctesuma Esparza, who was in the class below me but a good friend.

Moctesuma later became a well-known movie director — a producer, I would say. He's done some well-known movies like *Price of Glory*, *The Milagro Beanfield War*, *Selena* with J-Lo before she was J-Lo. Now he has a movie-house construction company. He builds Cineplexes in places like Oxnard and other underserved communities, nice theaters, so he's always been very committed to that. In fact, I was just invited to a presentation he's making on Sunday at the Autry Museum to talk about the walkouts and all that.

MCCREERY: What became of the charges against him and Mr. Castro?

MORENO: Interesting. They were all dismissed. It was either the L.A. 13 — that's a whole other area of people charged with conspiracy to commit a misdemeanor, that is, to lead the walkouts and be involved. The truth of the matter is that they were involved in getting students organized and walking out. He was blamed for that.

There was also the Biltmore 5 or the Biltmore 6 when — I think it was Governor Reagan — it was probably Governor Reagan — was speaking at the Biltmore here across the street, that there were some explosive devices that went off or were detected in the elevator shafts. So Moctesuma and others were also indicted.

Eventually all those charges were dismissed for one reason or another, but it was in the days when the city attorney or the D.A. would file charges for unlawful assembly and so forth. So the sixties and the seventies, as you know, were just a time of great social ferment, particularly here in Los Angeles in the Latino community, but also the Southwest, I think.

I was kind of a stranger to that because I was either away at Yale — although I did follow the stuff in the newspaper. Then when I came home, I worked for a couple of years and I went to law school.

But at Yale I became the vice chair of our student organization called MEChA. It never came up in any of my Senate hearings. It has come up in other peoples' hearings. And in law school I was also the vice chair of our SLLSA, the Stanford Latino Law Students Association. Again, basically, in both places our mission was to increase student diversity, faculty diversity, and curriculum. At Yale we were very instrumental in securing funds to work on each of those things.

By 1972 Stanford was pretty much almost up to speed. Our class at Stanford probably had 15 percent or maybe 10 percent Latinos out of a class of 175, which is pretty remarkable for 1972. Women, I think, made even better strides. My class at Stanford was probably around 25 percent women. Now, of course, it's around 50 or 51 percent. But we were seeing the beginning of the waves of diversity of all types in the universities at the time, so I was very happy to be a part of that, to experience that change.

MCCREERY: As an aside, what did your family say upon your decision to attend Yale?

MORENO: Oh, they loved it. They loved it. Yes. Like I said, I've never had any kind of negative reaction. They didn't quite understand — particularly my mother didn't quite understand how long it would take. [Laughter] "When are you going to come home and help your brothers at the produce market?" I said, "No, this is a four-year deal." The same thing when I was in law school. Like, "When are you going to start growing up?"

But my uncle, my mother, and my brothers were very supportive of me at Yale, to the tune of sending me — I don't know if it was every week, or every two weeks, I think — twenty dollars, if you remember money orders. Those twenty dollars came really in handy.

I had a student job — they were called bursars' jobs — in the dining halls, basically a busboy or serving on the hash lines and getting this supplemental money from home — which was nothing compared to what some of the other students had. I had a very generous scholarship and a loan, but still, just in terms of the creature comforts, you wanted a little money in your pocket to be able to spend.

Again, these are issues that I never recall ever being any kind of crisis. Somehow at home there was always rice and beans. At Yale I never really felt that there was more that I needed. We would go out for pizza or what were called tuna grinders, like hero sandwiches.

But I had a full package, basically, of a meal plan and tuition, believe it or not, at Yale was only \$2,000. The residential meals and dorm was a thousand, so it was a \$3,000 deal and then extras. I could fly home standby for seventy-five dollars, and I think my family did help with that, to come home and go back.

They thought it was a treat, a great thing. When I left on my first trip from home, I took a redeye. There must have been, I don't know, a dozen family members at the airport waving goodbye to me. They're sending me off to war or something, so it was great. Then when I'd come home someone would meet me at the airport — when you could do things like that. I came home every Christmas and spring break, most of the time.

In that sense I didn't really feel any kind of disadvantage. But going to a place like that, where there is a history of — not only just a history, plain and simple, but a history of privilege, and mostly white males, because Yale was all-male then. When you look at the numbers of diversity there, out of a class of one thousand, all males, there are only three Mexican Americans, one of whom became a well-known civil rights attorney. The other became a Supreme Court justice. How well did they do? [Laughter]

There were about twenty-four African Americans out of a class of a thousand. That's only 2.4 percent. Even Asians were underrepresented. So even though Yale purported to get rid of quotas that had been around since the Depression because they didn't want to admit too many Jews, the Jewish population increased during my year. I remember my Jewish roommate said that. "Hey, Yale got rid of its quotas," and starting admitting public-school Jewish graduates, like from the Brooklyn High School of Science, which was a well-regarded magnet-type school, but largely Jewish. I've heard that the counselors at that school largely said, "We're not going to recommend anybody to Yale. No one ever gets in." They knew that there was this unwritten quota, which obviously has been removed since.

Even though I did identify as a Latino, I really thought more of myself as a scholar, English major, and just totally into it, as far as getting to a place like that. I could see these preppy-looking guys. They were obviously

upperclassmen, kibitzing and kidding around and wearing their letterman-type things. I said, “Boy, how am I going to fit in here? This is completely different.”

But it had that kind of intimidating quality about it — all this history. Bush ’43 was in the Class of ’68. He probably was one of those guys down there. And it had this mystique of a lot of famous people, presidents, Supreme Court justices had gone there, and here I was.

I never really sensed any discrimination in that sense, but I thought that I just had to really represent myself as someone who was prepared, who was good with the academics, and so forth. It wasn’t until later that when you’d hear an occasional ethnic slur that you’d respond in kind and you’d stick to your guns about something.

For the first two years it was just keeping my head above water, trying to do well, hanging out with my roommates. Yale had what they call a college system, where you lived in and ate your meals at your residential college, kind of like a dorm but much more than that. So I just hung out with people in my little group. The other Mexican American, Joaquin Avila, who just passed away last year — I remember we were in our English class, and we introduced ourselves.

He says, “I’m from Compton, California.” So we just met, and we became friends from that very beginning. He later went on to Harvard Law School, became president of MALDEF, and a leading voting rights attorney. He argued before the U.S. Supreme Court, got some really good voting rights legislation in California, and was one of these MacArthur genius awardees. Sadly, he died last year.

Together, I think in our junior year, we decided to discover, “Who else like us is around here?” We knew that there were only three of us in our class. In the next class I think there was only one or two, but in the third year there were maybe seven or eight. So we decided — I guess it would have been our junior year — “Let’s see who we all are. Let’s knock on doors.”

We formed a group called Los Hermanos. The Brothers. Very apolitical. We also found out that there was a Latino sociology professor, Rudy Alvarez, who helped become our sponsor. He was from San Antonio, had been drafted into the Marines, and later got his PhD from, I think, University of Washington and met his wife there. They actually were resident

advisers on one of these residential colleges, so he took our group under its wing.

We formed this group. We later evolved that into a group called UMAS, United Mexican American Students. That was the pervasive group out here in California. We were basically mimicking what was going on, or trying to mimic what was going on, out here. Later, when those groups changed their names to a more militant-sounding name, MEChA, *Movimiento Estudiantil Chicano de Aztlán*, we did that as well.

So by the time we graduated we had fifteen members. One woman, who — we lobbied with the admissions office to admit this one woman from Sacred Heart High School here in Los Angeles, so we were actively recruiting.

MCCREERY: How did you know of her candidacy?

MORENO: We worked very closely with one of the admissions officers, who was assigned to California. I can't remember his first name, Mr. Kim. They shared that information on who was admitted, and they actually wanted us to contact people to accept. They wanted a higher yield rate. That previous winter, in December, they had actually given us funds to fly home and visit local schools. We tried to develop our own support system to help students who were admitted to get to Yale, what courses to take, and things like that.

MCCREERY: Let's turn to your academic experience at Yale. At what point did you declare a major, and how did you choose it?

MORENO: It's interesting because initially I thought of myself as an English major, so I took some English. English was mandatory, obviously, and I took American literature and French literature, in English. I tried to focus on literature.

But, and here's what I ascribe my change to, was that the Vietnam War was becoming increasingly in the news, and I didn't quite understand why there was — I didn't know anything about international relations.

One of the great professors at Yale was a guy named Professor Westfield, who was a great lecturer, and I took another international relations course. And so I gradually migrated to being interested in that, to migrating to becoming interested in political voting behavior. I actually wrote

what's known as a senior essay, like a senior thesis — it's like a master's thesis — on Mexican-American political voting behavior. It's this thick, maybe about an inch thick.

So I got a grant to do some research in the summer of 1969, and I got an adviser, Rudy Alvarez, and I got full course credit for one year to write this paper. I have it somewhere. I've sent it to a couple of people. But it predicted the rise of Mexican-American ethnic voting and being crucial to politics, really, across the nation.

Then I also became interested in sociology. I wrote a paper — oh, my God. Oh, it might have been the precursor to the voting behavior. It might have been more about the Mexican-American movement. That was in my junior year, so that would have been 1968. I wrote a term paper where I did some research on the emerging Mexican-American situation in California. I still have a picture of my girlfriend typing it up for me, and I'm writing and dictating, finishing it up during one of my vacations.

My first year at Yale, I guess I had enough money to subscribe to two theater programs, the Yale Repertory and the Yale Drama School.

MCCREERY: Where did that interest come from, do you know?

MORENO: From high school. I had a teacher, Tom Talley. I took drama. I read Shakespeare, the plays and the sonnets, and I thought, "Here I am at this great school with a great theater tradition." I bought these Saturday matinee subscriptions. What else are you going to do in New Haven on a gloomy Saturday afternoon but go see some great theater? So that's an interest that to this day still is with me. That's the kind of kid I was. I had this artistic cultural side at the same time I was interested in what was going on with me and what was going on with the world.

MCCREERY: Did you pursue any other interest in student government, having done that in high school?

MORENO: Not really. I think about that sometimes. Even intramural sports, which I could have done — I just didn't pursue that. I got caught up in what my friends were doing. Anyway, I was more involved in the Mexican-American little group we had.

MCCREERY: And you were still small numbers.

MORENO: Oh, we were very small, maybe a dozen at most. So I'm sure there's no recording or recollection of this other than in my own mind. We were trying to highlight awareness, basically, on that and other issues.

I, along with another student, a guy named Don Nakanishi, who was Japanese-American but from Boyle Heights but knew as much about the Boyle Heights and East L.A. community as anybody else. We considered him kind of an honorary Mexican American. He later got his PhD in political science from Harvard, taught at UCLA, and became the director of the Asian-American Studies Center at UCLA for twenty-five years, so in the Asian community he's an icon, big-time. He just died two years ago.

He designed, and then I decided to design, a curriculum. His was in Asian-American studies. Mine was in Mexican-American studies. Yale was trying to diversify its curriculum and came up with what are called Hall Seminars — that still exist — where a student can propose a class, a seminar limited to fifteen people. Get someone to teach it, but you design it. You design the curriculum.

This would have been in probably the spring of 1970, I have to think. We applied. We got a grant. We got Professor Alvarez to sponsor it. We got a room, where to teach it. I provided the syllabus, a list of books to buy. I wish I had all that also, because it was quite comprehensive. And at the end we had a paper to write, so it was quite academic actually.

MCCREERY: How did the course turn out?

MORENO: It was good. We had, I don't know, a dozen people, not all Mexican Americans. There were Caucasians in there, too. I think it was a success. No grade, but you had to write a paper or make a presentation or something to get through the class.

MCCREERY: And your interests were focusing in those areas mainly?

MORENO: Yes. I'd say politics and sociology and why this huge group of people, Mexican Americans, were so depressed economically and in everything else. Sometimes I think — this is just me thinking — that the timing would have been right for me, let's say, twenty years ago, if I had stayed in that field, to become a tenured professor somewhere because all those things came to the fore. The timing would have been exquisite in terms of becoming a professor somewhere.

I'm glad that didn't happen. I say the same thing — I went not to law school but to business school. Again, I didn't know what I wanted to do. But most of the people in my class at Yale either went to business school, law school, or medical school. I'm serious. The academic stuff was just the outliers. I remember going to one of my reunions. Maybe it was the ten-year reunion. "Stand up if you are not a doctor, a lawyer, or a business school graduate." A handful.

I graduated June of 1970. I got into Harvard and to Stanford. I didn't apply to law school. I guess I was motivated by a two-year curriculum. I really wanted to come home, and to this day I think that, had I gone to Stanford Business School I would have stayed in business school. But I think Stanford, which was much smaller — Harvard had 750 per class in the business school, 500 per class in the law school. The Stanford Business School only had, I want to say, under 200 per class, so it was much more nourishing and supportive and so forth.

I remember talking to someone who went to the business school there. He said, "Oh, God, if you had come here you would have been happy." One, it was in California, not that far from home, and not as intimidating as Harvard. So I decided to apply to the law school there some time after I left Harvard Business School.

MCCREERY: But your intent in going to business school at all was what?

MORENO: To make money. [Laughter] I felt that I had a business background in my family. Here's one of the things that's ironic, and that is that I always wanted to live abroad for a couple of years. And if you look at my college yearbook, it says something about wanting to go into international business. So I thought that, by speaking Spanish, I could work for Ford or one of the big corporations and be the representative in Latin America. That was really my goal, besides just the two-year curriculum.

But when I went to the business school at Harvard — and I'm not sure if you know the layout there, but the business school is across the Charles River so you don't really feel a part of the university. I made that walk by Soldiers Field, across the river to Baker Hall or whatever it's called. The Baker Library is this big library illuminated at night. I said, "The halls of capitalism. Oh, my God. This is overwhelming for me."

My friend Joaquin, who was my Yale classmate, was at the law school, and he met other Latinos from the Southwest. So I would meet them almost every night and have a fifteen-cent beer at Harvard Square and hang out, went to their dances and everything else. They seemed to have a cadre of supporters, and I didn't have that at all at the business school. I said, "Oh, my God. I'm with all these intense people."

My — the guy wasn't a roommate, but he was maybe in the same suite, a nice guy. But I really felt like a fish out of water. So I said, "You know, I don't really need this too much." After about a number of weeks, I said, "I'm just going to take a leave. I'm going to go home and figure out what I want to do."

I remember I met with one of the deans, and he said, "Anytime you want to come back. We want you to stay." So I came home, in a sense feeling that — I had graduated from Yale. My mother was very happy to see me home. Now I could help my brothers.

But I worked for the county. The funny thing is that Joaquin, who was my Yale classmate and now at Harvard, said, "Contact my supervisor. I worked at the Department of Social Services. Maybe my job is still open." So I went back, talked to a supervisor. She said, "Yes, as a matter of fact. Just take this test." Obviously, I did well on the test and got hired right away, his old job.

MCCREERY: Let me ask you to just wrap up your experience at Yale and what effect you think that had on you.

MORENO: Okay. I've always said that my Yale experience opened my mind to, as trite as it may be, that anything is possible. I remember at one of these seminars, in fact the Hall Seminar for Asian-American studies, I remember this lawyer — now a lawyer — Lowell Chun-Hoon, who's in Hawaii, a very prominent civil rights guy there — saying — this is what he said — why would I remember something from fifty years ago? I remember we were talking about Yale and the Asian-American experience.

He said, "Yale is not an experience. It's a way of life." [Laughter] How you interpret that, I guess, is how you want to interpret it. But in a lot of ways it's true. It wasn't just an experience. It really was life-transforming. It would make you think bigger.

I can tell you that, in my career, it has been a nice door opener, whether it's with contacts, or getting your resume read beyond the first-level read, or getting an introduction. I really believe that. I can't prove that empirically, but when people see Yale, Stanford — this is what I tell my son — it's going to create an image in their mind, just of who you are, even if you were a so-so student or whatever.

Leaving Yale, like I said, I didn't know what I was going to do. The next step was to go to business school, but that didn't pan out. But I definitely knew that I was going to go somewhere else. And fortunately for me, I did get involved in Yale activities after that and after law school and so forth. We can talk about that, too. That's Yale-related stuff, but it happened later because I've been for a number of years very involved in Yale-related alumni activities.

MCCREERY: t's still a way of life? [Laughter]

MORENO: A way of life. Believe it or not, since I'm one of the first Latinos, if not the first — certainly of the modern era, let's say — I'm still viewed as the dean, at least in Southern California, of the guy who opened the doors. "Oh, you're our Yale person that we're proud of."

It's a heavy burden, I can tell you. [Laughter] You're not going to believe it, but there is a Yale mafia. We do help each other. So I've always believed in alumni connections, whether it's high school, college, or law school. One of the ways to develop a successful law practice is to develop those relationships. I think it's "Relationships 101." I think Yale has been key, I think Stanford has been key in a lot of this stuff.

MCCREERY: Let me ask you to reflect also on how the Los Angeles area and the current issues might have changed or come along while you had been away at Yale.

MORENO: I think the primary, or a significant, change that I observed in coming back to Los Angeles was to see the rise of the so-called Chicano Movement. I remember that August 29, 1970 was a threshold date for a large antiwar demonstration in East Los Angeles, the primary theme of those protests being that Latinos were disproportionately being drafted and serving in Vietnam and consequently suffering heavy casualties in Vietnam.

I had experienced some of those antiwar sentiments at Yale and, in fact, in May of 1970 had participated in the May Day demonstrations at Yale, which are the subject of various books these days. So coming home in 1970 I was now on the front lines, as opposed to being an observer, and also seeing and reacquainting myself with a number of the people who I knew were involved at protests at UCLA, East Los Angeles, and so forth.

I guess, to get to the basis of your question, in the time that I had left Los Angeles in 1966 to now, 1970, things had changed remarkably in terms of ethnic identity consciousness and so forth. Although I had fostered those notions when I was at Yale by helping to form these groups and classes and so forth, I felt now that at home that there was a lot to do here. I felt more a part of what was happening in Los Angeles.

That, on reflection, may have been part of why I was not a willing member of the Harvard Business School class of 1972. I missed home, and I missed what was going on here. I distinctly remember the night before I was going to fly back, that my heart was not in it, in going back.

I decided nonetheless to go back and made the usual adjustments and so forth. But as I met more of the Latino students who were at the law school, I felt a certain camaraderie that I wasn't getting at the business school. I missed being home, given my experience that previous summer. So I was glad to take advantage of Joaquin Avila's offer to contact his former supervisor, and that went very well.

So in my mind, then, I said, "I'm not ready to apply to graduate school or law school or anywhere," until a one-year cycle had passed. Because if I was going to apply to law school to be admitted in 1971, I'd have to get my paperwork and all my ducks in a row right when I came home, and I just didn't feel like doing that.

I said, "What I'll do is I'll take at least a year off, prepare for possibly going to law school, take the test, prepare, and all that." But I wanted to give myself the leeway of just having some fun time, time off. I remember thinking — this is going to sound funny — three goals: get a car, get an apartment, get a girlfriend, all of which I was able to do by January. [Laughter]

I don't think the girlfriend part was so programmed, but certainly the car and getting the apartment were. By November I bought my first car, and certainly by January, I think, I had the lease for an apartment not that

far from here, right outside of Chinatown. It must have been during that time that I figured I would think about going to law school, definitely on the West Coast. I didn't want to go back to the East Coast anymore.

What was interesting about the job, which started off as an administrative assistant for the department of public social services, which is the welfare department but which had something like fifteen or sixteen thousand employees, a huge department covering maybe thirty districts in L.A. County.

But very quickly I was given different assignments. One was an ethnic survey. The other was administering something called a "bilingual bonus," where employees who used a foreign language on a substantial regular basis were entitled to fifteen dollars a month extra. I had to administer that for the department.

I guess then the department was in the frame of mind that — the personnel department within the department — of trying to administer its services to its districts on a decentralized basis. So they came up with a plan to divide all the work of the personnel section into five districts. They needed someone for the east district, which covered at least 3,000 employees, so they picked me.

I had a staff — an assistant, maybe three or four clerks dealing with paperwork and stuff, payroll and all that, so that the local district directors — and I must have had close to ten that I serviced — they could just call me directly to resolve any kind of paperwork issue. Since I was already doing that with the bilingual bonus, it became just part of my work.

But the good thing about that particular assignment, in terms of my future career as a lawyer, was that one of the functions was to act as a first-level hearing officer for appeals of appraisals of promotions, disciplinary action, and annual reviews. Very quickly I became used to assembling a file and conducting hearings, as the hearing officer, involving employees who were questioning one thing or another about their reviews.

Many times they would have, not necessarily a lawyer, but someone from the union who was skilled in these appeals because these were obviously things of great importance. They'd go in their file and would affect future issues of promotability, so I would either sustain or deny the appeal, and then it would go to another level.

That other level was someone in our department, not necessarily in our section but working for the director of the whole department, who was in charge of making the final determination on discipline. I still remember his name, Lee Rainwater, a crotchety old guy, very disciplined. Any time I had to take certain action, particularly recommending sustaining a dismissal or a suspension or something, I'd have to go through him, and he would question me at length about the basis for my recommendation.

He also introduced me to the legal newspaper, which was the *Daily Journal*. I don't think he was a lawyer, but he certainly was schooled in issues relating to personnel and decisions relating to discipline and so forth. The job, actually, not only did it involve a raise, but it involved some kind of legal training and deciding issues and so forth, so at some point I said, "I'm going to go to law school." That was already in my mind.

So I decided to apply just to two schools, Berkeley and Stanford. I think it was much easier to get into law school in those days, although I had been admitted to the Stanford business school and I believe the UCLA business school. I guess I was quite overconfident because I was what I would call a gentleman B-student at Yale. I did well in my major.

But I'm sure getting into law school became much more competitive later on. I sometimes wonder — and I've shared this with other people of my generation — do you think we would have gotten into law school now, or would anyone hire us based on what we did or what our standing was? Questionable.

I later learned that the Stanford assistant dean of admissions or student affairs, who later became a judge himself, Dean Thelton Henderson — I remember talking to him, perhaps when I was already on the Supreme Court. But when my application went through, the finite number of Latino students at Stanford Law School — and there weren't many, less than a handful — had some say to advocate for students who maybe didn't quite make the mark of getting in. I remember he told me that he told them, "Moreno is in. He doesn't need your assistance." [Laughter] He told me, "You didn't need to benefit from their input. You were going to get in anyway." My LSAT scores were high. My grades were decent. So I was happy that he confided in me with that observation.

One of the things I'm most happy about was that, before going to law school, sometime in June, I took a six-week driving tour of Mexico. To this

day I'm amazed at how I managed to do that, with no reservations and just a general plan to drive in my new Volkswagen all the way down to the Yucatán, which is probably about 3,500 miles away — but visiting where my mother was born in Guaymas and going to the main colonial cities and Mexico City, and just continuing to drive.

My girlfriend accompanied me, and she — let me just think — 1975 — she was a nursing student. Actually, she worked with me. I met her at the job. She didn't work under me, but she worked for another one of the sections. Somehow we were able. I quit my job. I'm not sure if she did. Maybe she did too, but we took six weeks off to go down to Mexico.

My mother joined us at some point for two weeks, and it was a fabulous trip. I've realized since then that I probably would never have the opportunity to have six weeks off to do whatever I wanted to do. So for me it was my version of, what do they call it? My trip to the continent before starting your career.

Later we got married, in 1975, when I got my degree from Stanford and she got her — I guess an M.S. degree in nursing from Cal State L.A.

So law school. It's remarkable to think that I felt like an older student, even though in 1972 when I was going to turn twenty-four, but a lot of the students there were just direct graduates. One of my classmates, who later became a judge, was Fern Smith, and we thought, boy, she's really old. She was in her thirties or something and had two kids.

Mary Cranston, a well-known — maybe the first — female managing partner at Pillsbury, was in my class. There were a number of others who went on to form Silicon Valley law firms because Silicon Valley was just in its beginning then, in the early and mid-seventies. You sensed that there was really just a lot of opportunity and ferment going on.

Law school. I have to say that I enjoyed the freedom. I had a car, so one of the things I really wanted to experience was the Bay Area and Northern California and Napa. When I think about law school and the classes, I don't know if I had any great plan about preparing for what I wanted to do. I took the basic courses. Some I enjoyed more than others. I hated tax, but I felt I had to take tax. Corporations. I didn't think that I was ever going to have to deal with any of that. But I took the basic classes. One of my regrets is I never took a course in advanced civil procedure or federal jurisdiction.

I did take intellectual property or communications, I think it was called, from a great, great professor of evidence.

But my whole idea once I graduated was really to go out on my own. I don't know if you — well, you do remember Ralph Nader. Nader's Raiders. I think he had just come out with his letter or indictment of the president of GM. I forget what that was all about, but I think I had it in my heart to be a consumer lawyer, so I took a course in consumer law from none other than Rose Bird, a wonderful, wonderful woman.

I took a course in poverty law from Marty Glick. He was a very close friend of Governor Brown and of Public Advocates, another consumer advocate law firm in the Bay Area. So my mind was to really go on my own, start a legal practice that would focus on anything that came in the door but I think ultimately would have resulted in me doing a lot of personal injury work, more at a higher level than just auto accidents. At least that's what I imagined.

Rose Bird co-taught a course with — I think his name was Professor Williams, who later became dean of the law school at UCLA. The class was one in which we — it was a clinical program where we would be videotaped in, let's say, negotiating a personal injury case with a lawyer that Rose Bird had brought in, a real lawyer and facts. I remember that about one of the exercises. There must have been others.

She was also well known for baking cookies. I don't know if you know that. But just a very nurturing, almost motherly sort of person who took great interest in her students. I think all of us really loved her. She lived in Palo Alto, I think with her mother. This was all before getting appointed as secretary of the Department of Agriculture and helping to found the ALRB and before her appointment to the California Supreme Court. My thoughts about her were always very pleasant.

I remember she came to Los Angeles to speak to one of the bar associations, and I was in the audience. She remarked that it's always good to see former students. She pointed to me. "It's always interesting when your students begin to have more white hair than you do." I started to have pretty much early gray.

But she was always very friendly and, even while under attack, still maintained a great level of friendliness and care for her former students.

I later saw the other side of Rose Bird, after she was recalled in 1986, when I got on the Court and I learned the backstory there about the difficulties she had in being accepted as the chief justice — not even an associate justice — of the Court, a position that Stanley Mosk felt belonged to him. So he was never a supporter. He was more of an antagonist.

Then I heard stories about her being authoritarian and abrupt in many of her decisions or policy decisions in administering the Court. Then, of course, she was adamantly opposed to the death penalty, so that every one of her opinions took the position that the death penalty was — I don't know if she blatantly said it was unconstitutional, but she found a way around administering the death penalty.

So the view I got when I was on the Court was that it wasn't all hunky-dory, and a lot of the staff attorneys and staff did not welcome her and also did not like the way she administered the Court. That was hard to hear for me because I had this very positive image of her as my law professor.

MCCREERY: Thank you. Just to reflect a bit more on law school, I wonder how you went about getting established as a student and studying the law and what kind of study habits you had. Tell me about your daily life when you were first a student.

MORENO: Okay. I've always been one to over-study and to believe in certain study techniques that I have that probably go a bit far. [Laughter] Since I had saved money in those two years, for each textbook that I bought there was usually an accompanying guide that you could buy. There was also Gilbert's outlines.

Between those three things, I would learn about the key cases and the principles, and I would brief each case so that when I had to put everything together for a final exam I basically went from A to Z, from the beginning to the end of what we had covered. So I had an understanding of all the cases and the principles that were covered in the book. Then I would match those to my notes.

MCCREERY: You studied alone?

MORENO: Yes. I never really believed in studying in a group. I know some people find that valuable, but even in studying for the bar, since I had my own technique, I often saw that people who were in groups — either they

would do all the work or they were relying on others. To me they just didn't seem as committed to getting it right.

I'm very organized, even to this day, and I study in segments as I go along to make sure I understand the basics. Then I move on and I review the whole, so that in studying for the bar — and I've told this many times to people — I have notes, and then I synthesize the notes.

I gave myself exams from memory so that I knew the time — and I don't know how I got this technique down — but the whole idea of mnemonics and memorization has always been one of my strengths, so that by the end of my study of a particular course I can regurgitate for about forty-five minutes everything I know about that subject. Since time is of the essence, it's really more a matter of regurgitation. I look at the facts and then just start writing. That was my attitude in law school as well. So although I did have fun, my study was quite disciplined.

The thing I liked about law school was the friendships I made. Again, a lot of it was focused on the Latino students. Not only did we have a group, but we played intramural sports. I played football and softball, worked out at the track after class. Sometime during my second year, maybe, in my dorm, which was Crothers Hall — it was my dorm for three years — we formed a singing group, singing Mexican ballads. We had a couple of guitar players, three guitar players. I don't know if we had a drummer or not. But anyway, I was the lead singer, believe it or not.

One of our guitarists was Fred Alvarez, who for sure became the bar president of the San Francisco Bar. I'm not sure if he became state bar president, but he's become a very prominent labor attorney. He was in the Reagan administration, I think, as assistant secretary of labor or something like that; a partner at, what was it, Jones Day; a longtime partner at Wilson Sonsini; a very prominent person in California. But he was part of our singing group, and he generally hosts our five-year class reunions at his house in Atherton.

MCCREERY: You made a brief mention of SLLSA. Talk a little bit about that.

MORENO: I was involved in that. I was the vice chair. That also just focused on recruitment of students, recruitment of faculty, and getting the administration to hire Latino faculty. Miguel Méndez, who recently passed

away. Of course, Tino Cuéllar came later. I'm sure I'm missing others who we felt we prompted Stanford to start reaching out to prospective faculty.

We got funds for probably the first Cinco de Mayo celebration, maybe sometime in, I don't know, 1973 or 1974. Now it's a big deal at the law school. I attended one when my son was a student there. What else did we — oh, one of my first jobs in law school, summer of 1973, was a work-study job that — we got funding for a few positions to work at legal aid offices.

I came to Los Angeles and I worked kind of like for a startup law firm that was called *Abogados de Aztlán*. The idea of these revolutionary Chicano lawyers was to provide low-cost or free legal services to the community. The idea was that about ten lawyers would contribute their time and some money to fund this office. I and another law student from UC Davis really helped open the office in the summer of 1973 here in Los Angeles.

That lawyer, Richard Cruz, who is now deceased, was very prominent in some local demonstrations here against the Catholic Church in 1971 or so. He was part of a group that were either indicted or charged criminally against *Católicos por la Raza*. Basically, these were Loyola Law School grads, Catholics, who felt that the church was ignoring the Latino congregations. So even to this day there's that sense that the Catholic diocese here is not really responding to its members. This guy had just been, maybe, cleared. In the state bar proceedings against him he had emerged victorious, so he had gotten certified by a well-known radical lawyer here named Art Goldberg.

So it was exciting to be in the midst of that, and if you recall the summer of 1973 was also the beginning of the Watergate hearings. I remember being just fascinated by that, what was going on nationwide, and then in Los Angeles with people I knew. So to this day I know some of the veterans of those early beginnings of the first cadre of Latino lawyers getting out into the community and doing what they were always set out to do.

MCCREERY: What became of that firm or that attempt, do you know?

MORENO: It was not successful, and eventually it simply became his law firm. But I remember working on some cases with him, challenging police brutality and so forth. It was just a time when Latino lawyers were now beginning to take on L.A.P.D. and the sheriff's department and federal agents and all this stuff, so I felt like I was where I wanted to be in a lot of ways.

When we came back in September of 1973, we decided to provide services at a local service center in Mountain View. We would staff that office, I think every Tuesday and Thursday afternoon, for anybody who had legal questions and so forth. That was at a time when Mountain View was not the Mountain View that it is today. We're talking over forty years ago.

I really enjoyed the clinical aspects of the courses I took at Stanford in that regard. Clinical courses were still a new thing. They were very expensive, and very few students could be served. So we were able to benefit from Stanford's commitment to that and, looking back, to give us substantial leeway.

The other thing I did at Stanford was I took a semester off as an extern, for credit, at the Santa Clara County public defender's office. I had to write a paper at the end of the semester, but there I basically carried the briefcases of different lawyers. I acted as a messenger in conveying offers, hanging with the lawyers and going to the judges' chambers, arguing a couple of motions in court. I really could see my future in a lot of ways.

I remember winning a motion. I don't know if it was a motion to suppress? Maybe a motion to suppress a confession of some sort. Because I was supervised by the appellate head of the public defender's office, a guy named Richard Such, who later became a career appellate lawyer for Justice Racanelli, who just died a couple of years ago, maybe. Such took me under his wing and offered my assistance to others in the office, so I saw a number of trials.

MCCREERY: You had talked a few minutes ago about how you had some interaction with Thelton Henderson, who was there as an assistant dean at the time. Indeed, I think that Stanford had brought him in to work on minority-related admissions. That leads me to ask, what was the makeup of the student body itself by the time you were there? There certainly were some Latino students and others, but how did the whole thing look, as you recall it now?

MORENO: I think Stanford was quite advanced because in our class of, what, 170 or so, slightly less than 10 percent were Latinos. I think we felt that we were recognized by the law school. We of course wanted more input into the process of admission, but I think that was denied. There were a couple of people in classes ahead of me who were involved in those early

stages of recruitment who felt that that level of participation had been taken away from the group.

I forget what the admissions numbers were in subsequent classes, but I don't think we really had much to complain about. In terms of numbers it wasn't something that took much of our time. We were more concerned about having the school support us in some of the things we wanted to do. I think overall the group felt pretty good about the way Stanford was treating us. Others may feel differently, but at least that's the way I felt.

MCCREERY: May I ask about your financial picture?

MORENO: It was great. [Laughter] I left Stanford with \$6,000 in debt. Can you imagine? And I didn't have to work. I forget how much money I saved in the two years, but I saved enough to buy a car, pay off the car.

One of the things I really wanted was to not be in need. When I was at Yale, I did feel somewhat constrained in things I could do on account of lack of money. But evidently I saved enough to not be concerned about having to take a job or to take on more loans than I needed.

So I got pretty much of a full ride, which included the dorm. I forget what that amount was. I had to pay a certain amount, maybe with the loan. But when I look back, it's oh, my God. This could never happen again. My son went to Stanford for eight years. Believe it or not, he doesn't have a lick of a loan. I think he appreciates it, but I told him I wanted him to not be forced into a certain kind of job because he had loans to pay. I'm sure he's one of the few exceptions to law students who have this overburdening debt.

I actually had enough money by the end of my time there to help my brother in 1974 make a down payment on a house in my old neighborhood, where my girlfriend, soon-to-be wife, would rent. I probably put down a thousand dollars. They put in the balance, and after we got married we paid back the \$5,000 or so to complete the down payment. To think that then I had at least a thousand dollars. I could say, "I want to buy this place." Pretty good.

MCCREERY: And you were good at thinking ahead about what your needs might be.

MORENO: Oh, yes. Let me tell you about the summer of 1974. I was never really in the — let's see, summer of 1973, 1974 — I never really saw myself

as working for a big firm. Of course, that later changes. But again, in law school I thought that I'd be a solo practitioner doing my thing.

But the opportunity came about — well, sometime in the spring of 1974, the federal public defender sent out a notice that they were looking for externs, paid positions, in Los Angeles. I remember applying. John van de Kamp was the federal public defender, a former — was he the former D.A. then? No, I think he was not yet the D.A., but a very prominent person. I got the job.

You know, van de Kamp became a friend later, and there's a horse connection there, by the way. He was a Stanford Law graduate, so he gets this application from a Latino from L.A., Stanford Law, named Moreno. The only Moreno he knew was the well-known horse trainer Henry Moreno. He says, "Are you related?" I said, "Yes."

"All right." Because van de Kamp himself had a few horses. He later became general counsel of the Santa Anita racetrack, so he knew my brother probably better than I did. And my brother knew van de Kamp for many years. I'm telling you, I really believe in this karma of all these connections being interwoven. You just never know how and when those connections are going to be made. I think it's just so important to have some understanding of that.

MCCREERY: How did the summer of 1974 play out in this paid job?

MORENO: Again, I wrote memos. But basically I carried lawyers' briefcases. I interviewed witnesses. The defense is always understaffed, so I have an understanding of that. And worked on a few motions, and a trial with an insanity defense where the defendant was found to be insane and then committed.

That lawyer, Nick Allis, later became a very prominent aviation plaintiffs' lawyer, so I still see him occasionally. I see other people from that office, Gail Title, Tom Pollock, Danilo Becerra. Again, I've always just believed in those contacts because, in my view, the legal community is actually fairly small. You make an impression, you continue to — you don't just disappear. So that was a really good experience.

Then later John van de Kamp became the D.A. I remember seeing him at the Criminal Courts Building. I may have been a lawyer already. He handled the Hillside Strangler cases, who — he said there was insufficient evidence and turned the case over to the A.G.

Ron George was the head of criminal here in L.A. and denied the motion to dismiss, appointed the A.G. He had worked at the A.G.'s office early in his career, and the rest is history. That became a black mark on van de Kamp's legacy. Of course, he went on to be state bar president and just a mentor of mine who helped me become a municipal court judge and so forth, a friend.

MCCREERY: Talk about the judges you saw in action in that job.

MORENO: Okay. The federal judiciary in 1974 here in the Central District was quite different than how judges appear now. I'm not sure how many federal judges there were in those days. It was much, much smaller. I think the big changes came with President Carter in 1976, so they really expanded the judiciary.

Literally and figuratively the judges there were kings — or queens, one queen — who ran their courtrooms like — what's the term I want to use? — like dictators. They could basically get their way. These were old-school judges and could say intemperate things, could demean counsel. It was a different time. This was a time of judges like Andy Hauk, Kelleher, Waters, some of whom were still there as old men when I got onto the bench.

But you heard these stories about how it was then, so you always entered those courtrooms with trepidation, never knowing — not that I was ever going to be yelled at because I wasn't standing at the podium. But it was a different world.

MCCREERY: What an education. Did you have any attraction to judging in itself?

MORENO: Not then, no. I can honestly say that I didn't think about becoming a judge until after I was in practice for a few years, and I never thought of becoming a federal judge.

MCCREERY: You mentioned the influence of Mr. van de Kamp, and I wonder, of all these people you've mentioned or others, who were mentors or were particularly influential to you at the P.D.'s office?

MORENO: Hmmm. I can't think of anyone who I would say, "I want to be like you. I want to do what you're doing," and who took me under their wing. We were just — there were three of us, Mark Beck, who I still see all these many years later, and I forget the name of the woman, Ellen

somebody — Bradford. But I think we were just doing it for the experience and trying to soak in as much as we could.

But I can't say that anybody there took me under their wing. There was one guy, Danilo Becerra, who himself was just a young up-and-coming lawyer. He was the only Latino in the office, and the office had sixteen deputies and then an assistant and then van de Kamp himself. So we were just looked at, I think, as externs. "Help us out on certain cases," and so forth. But no one ever said, "This is what you've got to do."

MCCREERY: What did you take away from that summer?

MORENO: That, to me, a lawyer is someone who goes to court. I never thought of being a transactional lawyer or a civil lawyer. I was one who just felt that a lawyer should be in the courtroom arguing cases before judges and juries, so I have never been intimidated by that. Some people are, I guess.

I felt that in law school — we had different sections. I remember we had a moot court session in contracts, and we had to argue an administrative law exhaustion-of-remedies case in a moot court setting. I remember feeling enthused when I argued the case, and I was able to pivot when hostile questions were being asked of me. [Laughter]

I watched my classmates and they were nervous, and they just froze. They told me, "You did a good job."

I said, "You just have to listen and say something."

It may not be the right answer. [Laughter] But I guess people got anxious about, "Am I saying the right thing?" and stuff like that. Not that I was playing fast and loose with the law or the facts, but as I said you just do your best and you argue, and they're going to decide the case. I had that kind of sense.

This carried on to my training as a city attorney, by the way. I just felt that a lawyer's role was to be in the courtroom and argue cases. I had seen that at the federal P.D.'s office. To some extent I had seen that in the first summer job with Richard Cruz because I went to court with him and interviewed witnesses and stuff like that.

I guess the next stage was sometime in October of 1974. There was an ad from the L.A. city attorney's office for hiring a new class of lawyers for that office starting in the fall of 1975, when I would be graduating. So

I think I interviewed with one firm, Kadison Pfaelzer, because there was another Latino lawyer there, Dennis de Leon, who encouraged me to apply. He was a Stanford Law grad.

Kadison Pfaelzer was not a very big firm, but it was a very reputable litigation firm. I think Stuart Kadison had been, again, president of the county bar, maybe state bar president. Pfaelzer was the Pfaelzer of the Central District Court. And John Quinn, a prominent lawyer. So I guess then you would say it was a boutique firm. But I just didn't really feel part of it. They gave me a fly-down, but I don't think they gave me an offer.

Maybe we didn't reach that stage because, with this L.A. city attorney offer I got a fly-down, and that's when I met Burt Pines, who later became a mentor, a supporter, and everything else. I think working for him at that office really opened up a lot of doors for me down the road, including an appointment to the California Supreme Court.

MCCREERY: But he was conducting these interviews himself?

MORENO: Yes. We went around the office meeting people, but I think the final interview was with him.

MCCREERY: What were your impressions of him and of the office?

MORENO: At that time he was a reformed — believe it or not, the office had had the same city attorney, Roger Arnebergh, who had been reelected, I don't know, seven or eight times. He had been the city attorney for in excess of thirty years, kind of a reserved, retiring man who was totally apolitical. And maybe that's the way city attorneys should be.

But Burt Pines was more in the mode of a new A.G. in New York. I'm trying to remember that A.G.'s name. But it's when consumer protection started to gain a foothold in the law, so we're talking about unfair business practices, unfair competition, 17.200 misrepresentations, prosecuting markets and delis for weights and measures violations, and just the whole gamut of consumer violations that no one had really ever taken seriously that were on the books. So he was viewed as very progressive.

On the issue of criminal law, there was debate about whether or not prostitution was a victimless crime; whether or not the prescribed fixed punishments for multiple offenders — second and third offenses being forty-five and ninety days — was something that was just; taking a stronger

hand in terms of defending the city on police misconduct cases and so forth. So he came in with a whole agenda. I'm not familiar with everything.

I think probably most importantly, that I was the beneficiary of — and others — was that he wanted to establish if not a national then a statewide reputation for the office in terms of recruitment. He was a bit of an elitist in that sense, so he had a national recruitment program to go to the Ivy League schools, Stanford, et cetera. Some of us refer to it as the golden age of the city attorney's office.

He obviously got some grants from somewhere to provide for training, and the most attractive thing about the office was that, even before we passed the bar, we would take a twelve-week — it was about a twelve-week, maybe ten-week — clinical training in actual empty courtrooms, where we were videotaped on voir dire, opening statement, cross-examination, closing argument, and a lot of other exercises to build trust.

Some of it was hokey. We used to call it touchy-feely, new age kind of stuff. The director of the program — I remember his name, and I can picture him — was a civil rights lawyer, a rabbi, Stan Levy, still with one of the big firms, kind of a reformed hippie. [Laughter]

But Burt Pines hired the first openly gay lawyer, Randy — I forget Randy's last name, but he became a judge. I think he became the first openly gay judge, decorated his chambers in pink or purple or something — kind of out there. A great guy. He hired women, hired minorities. Talk about looking into the future of L.A. This is in 1974 or 1975.

MCCREERY: That was very early. How large was the office, and was it expanding?

MORENO: Three hundred lawyers. Now it must have about 600 lawyers. It was a big office. We had two classes, A and B, and maybe sixteen, seventeen per class. You still remember which class you were in and where people have gone, et cetera. But all of us were really very good people, strong credentials, and they threw us into the courtroom right away.

MCCREERY: Did others from Stanford join you there?

MORENO: The following year, yes. Judge Jim Otero on the federal court was a member. Vicky McBeth. She's UCLA, I think. She's a judge now. A guy named Bernard Shepard, a judge in Sacramento, was part of our class. A number of us became judges.

But the nice thing about that was you got third-party independent analysis of how you were performing. You'd spend two weeks in the mock courtroom doing exercises and then two weeks shadowing one of the regular deputies and doing a trial under supervision. In my first case I was nonsuited by this crotchety old judge who later was, I think, removed from the bench or forced to retire.

It was a default in child support payments, and proof of paternity had to be established. What did I know about bringing in a doctor and so forth? She was living with the guy. Her gestation period was *x*.

"What were you doing a certain number of months before that?"

"Living with him. He's the only person I had sex with. He's the father of the baby. The baby looks like him."

"Insufficient. You need expert testimony. Case dismissed."

"Just like that?"

Yes. It's funny how you remember those early disappointments.

MCCREERY: At the conclusion of the training course, what kind of assignment did you have?

MORENO: You were thrown into the bath, basically, into the pool. I think we got our bar results the Friday before Thanksgiving, something like that. So I think our training probably started late August or September 1 — September, October, late November we get our bar results. The city attorney was able to get those in advance, and I think two-thirds of us passed the first time. They arranged for a swearing-in for our group from some judge.

But as soon as we were certified and paid our dues, you were assigned to a courtroom. If you were lucky, you got someone to come with you. But otherwise, the way they worked was — it was a master calendar system in the Criminal Courts Building, so cases that would come out of, I guess it was Division 40 would be sent to one of the many municipal courtrooms, where people like Ron George, Art Gilbert, Elwood Lui, Frances Rothschild, Diane Wayne — who's here.

Again, not only was it the golden age of the city attorney's office, it was the golden age of the L.A. Municipal Court: young Governor Brown appointees who were out, really, changing the guard, so to speak. It was also a time when the old-school judges were facing retirement, and you had all

these new people come in. I think there was a real sea change in the composition of even just the municipal court then.

The best thing that ever happened to me was to be assigned to different judges. A file would be sent to you and, “The People have announced ready in Division 40. Here are your witnesses. They’re on call.” You’d call the witnesses. Yes, they were on call. “We’re ready to proceed.” Anything that came in, you would work on settling the case in a hurry. Otherwise, you were going to just bring in the jury right away.

There was one judge who many of us are eternally grateful to, and that is — I don’t even know if she’s still alive — Judge Marion Obera, a former D.A., very low-key but very stern, no nonsense, and a hard worker. Unless you settled the case as soon as it came in, “We’re calling the jury.”

Anybody who went to trial — any defendant who went to trial — knew that if they were convicted they were going to get what we call a bullet. They were going to get the maximum one year in county jail. So that was an incentive.

I remember having two juries deliberating and beginning to pick a third jury, all in one week. You learned to do trial by fire, and you learned her system because she would have the instructions already ready to go when you rested your case.

“Here are the instructions, counsel. See if you have any amendments to make.” There were never any amendments. “All right. We’ll have closing argument.”

You’d do your thing, and the jury goes out to deliberate. It was not unusual to do two trials in a week. These were two- or three-day trials. In L.A. downtown, all the DUIs were handled at what they call now Metro and we called Traffic.

So it was just domestic violence, batteries, a lot of petty thefts, believe it or not a lot of nonsufficient funds. I tried actually one of those, hard to believe, prosecuting someone for issuing a series of insufficient funds checks. So we were basically doing the collection work for some of the banks.

MCCREERY: The volume must have been tremendous. How do you recall the amount of the things the office had?

MORENO: I think the real work was done in the master calendar, Division 40. They were really the masters of settling the cases that were there, maybe

twenty or thirty cases every day. But once both sides announced ready it would come to your courtroom, so you were basically just a trial court. You could just do one case at a time.

As I said, you could work on trying to settle whatever came in before you brought the jury in, but it was basically, “Let’s put twelve in the box. This is the offer.” We’re not going to undercut the offer that was made down below unless there was some compelling reason. So a lot of us got experienced very, very quickly.

I did that for at least, I would say, a year and a half or so. Then I was spotted by a guy named Max Factor III, who was related to the Max Factor cosmetics company. He’s now a mediator. Again, they were expanding their consumer protection unit, and they needed someone who spoke Spanish, who would work with a special unit of the police department dealing with Spanish-speaking fraud cases in Boyle Heights and three who could also work on other kinds of misrepresentation cases, so they hired me.

People thought — I learned later — “How did you get that job so quickly?” It’s not a good thing to get some expertise and then move on to something else. I’ve always wondered about that. Did I move too quickly from one to another? But in retrospect I’ve spent enough time in the various positions I’ve had.

MCCREERY: How attractive was consumer protection for you?

MORENO: It was fantastic because then I got a lot of press. We would get press on our filings. We would get press on our stipulated settlements. We also had the power to file criminal complaints, so I worked both with the L.A.P.D. special unit and with the city Department of Consumer Affairs. They would get complaints from consumers against plumbing contractors, movers, so I got a chance to be interviewed on TV, particularly about immigration.

Believe it or not, immigration concerns were then in the news with respect to immigration consultants who would make promises that, “Oh, no. You’re eligible. We’ll get you in,” and then take your money. People had no chance of being legally immigrated. We had a couple of very high-profile trials on that, so that was fun.

What else did we do in that office? Oh, by virtue of working the Spanish-language cases, I became the go-to person for the two principal

Spanish-language newspapers in Los Angeles. I would be interviewed, and my picture would be on the front page, and all this stuff.

MCCREERY: Describe those papers and their editorial leadership.

MORENO: *La Opinion*, which is still around — a different ownership, but established, I would think, probably a hundred years ago. It's the leading Spanish-language newspaper in L.A. So I worked with their city beat person, a guy named Nick Avila.

Later I become friends with the daughter of the former owner of that newspaper. Her name is Monica Lozano. She was chair of the UC Regents and actually hired me to do the UC Regents investigation. Small world.

The other paper, I forget what it was called, something *Express*. It wasn't around very long, but it was more tabloid style, big on pictures and everything, but very good about promoting the work of our office. So I think that's exactly what our consumer people wanted, was to have that kind of exposure.

And in fact, I organized, I think, two days of hearings at the Mexican consulate office at Olvera Street on immigration-related complaints that made Channel 7, Channel 4 news. They came down.

They interviewed Burt Pines. They interviewed me. Burt had just finished an investigation of nursing homes, so he wanted the same kind of exposure and report from us. So that's what we were able to provide, and some proposed legislation and all that.

But that whole issue of immigration consultants engaging in unauthorized practice of law is still an issue. I think there have been some recent initiatives to address that. The state bar has no jurisdiction, but I think the A.G. and D.A.s have some say as to who can make those representations.

MCCREERY: What a fascinating assignment.

MORENO: Yes, I thought so. I did that for, I don't know, a year and a half or so, again. Then Burt Pines wanted me to be one of his special counsel. He had, let's see, there were four of us, really to work more on policy issues.

Judy Ashmann was the head of the unit. She's now on the Court of Appeal. She always says, "I was Carlos' boss at one time." [Laughter]

Vicky was African American. Me. I don't think we had an Asian. I'm trying to think if we had a third person. But we would handle things like — I know I followed up on someone who worked on, what do they call it,

regulation of newspaper vending machines based on time, manner, location, maybe, of where you can put those and what are the free press rights attached to those.

We worked on L.A.P.D. issuance of press passes, and when there were challenges — if they didn't issue a press pass to a new up-and-coming newspaper or reporter — who is to say, even now, in the era of blogs and everything, who represents the media?

MCCREERY: You were having a lot of media-related work and interaction. How did you take to that?

MORENO: I just learned as I went along. Fortunately, there were more experienced people around me.

We also worked on — back in the seventies, and this is now in the news again — the city had authorized the destruction of police personnel records. I forget what it was called, something-gate. But Burt Pines got in a lot of trouble for authorizing that. The claim was that these reports are taking up a lot of space and they're old. There was legislation — I don't know if it was just passed then — but just to retain that sort of stuff for five years, not to keep them on forever.

That's an issue I faced on the Supreme Court. Now the Court has upheld the transparency of those kinds of complaints, and now the police departments are destroying a bunch of them. They don't want to comply. I think I just saw something this morning. What is it they say, the more things change the more they remain the same? [Laughter]

It's interesting. Here, forty years later, you're seeing the same issue. That's because the police have always had a very strong legislative lobby to protect these disciplinary records. They don't want them out there. They don't trust judges or the parties to maintain their confidentiality. That was another issue I've worked on.

MCCREERY: How did you understand the intent of Burt Pines in establishing this unit and having it staffed by such a diverse array of attorneys?

MORENO: I don't know, but I think he wanted some good talent around him. He also wanted people who could go out into the community and speak on these issues, someone who represented that community in a broader sense. So both as a consumer attorney I would make public

presentations on the law to different groups in the community, and even as a special counsel I would make similar types of presentations.

I remember the deputy mayor of L.A. I think her name was Grace Davis. I prepared a paper for her on immigration issues, what I thought were the main issues, and reasonable resolution or reasonable positions on each of those issues. Again, I don't have that memo, but it would mimic much of the same things we're talking about now. I felt very much in the mix with him.

MCCREERY: I wonder how you reflect on your entire time in the city attorney's office and what changes it brought to you and your goals?

MORENO: I think that it — well, a couple of things. One, it really made me feel very confident about being in a courtroom, feeling that I could do a good job in the courtroom. And it was around that time that I thought that — appearing in front of so many judges over the years — that I could do just as good if not a better job than they could.

So that's really the first time I ever thought of myself as being a judge, and the idea of being a judge in downtown L.A., whether it's the municipal court or the superior court, I said, "Gee, this is great. You're a judge, a respectable position, usually held in esteem — not always." Convenient to where I was living. And the feeling I have about being close to where I grew up.

And to make decisions based on what I thought was correct under the law, as opposed to being an advocate. It was told to me when I was at a law firm that I was too reasonable, which I think can be a good thing or a bad thing, again, depending.

I think I was a good advocate, and I certainly would go to trial, but I wasn't the kind of person who would take unreasonable positions or take positions just to annoy the other side and be kind of a hard-ass just for the sake of being a hard-ass. Some lawyers think you have to do that. You see that.

I was always more of a moderate advocate, even — without giving up the store, but saying, "Why can't you see it my way?" Or the client's way.

MCCREERY: What comes to mind is the word "balance" that you used yesterday. Surely you had had exposure to all levels of not only the city attorney's office but levels of county government, the D.A.'s office, the P.D.'s office, various areas of the judiciary. You had a larger view, in a sense.

MORENO: Yes. One case I should tell you about that I'm very proud of, and that I worked on, and that our office prevailed on, dealing with jury selection — you're probably familiar with the *Batson* case and *Wheeler*. I think *Wheeler* came out first, a California Supreme Court case. It prohibited systematic discrimination in jury selection against certain protected groups. I think in that case it was Blacks.

I was in court shortly after that case had come down, and I usually made a practice of trying to review cases. In the case — I'm trying to remember who the judge was, but I remember who the appellate judge was, Judge John Cole. I'm pretty sure the trial judge was Judge James Nelson, because I was his courtroom deputy city attorney for a while. He's now deceased, but he was married to Dorothy Nelson on the Ninth Circuit.

In this case, I'm picking a jury involving a Latino defendant charged with battery against an African-American victim. The African-American victim was no shrinking violet by any stretch of the imagination, but the defense proceeded to exclude every African American who was coming up for jury selection, so I made what was known as a reverse *Wheeler* motion, basically saying that what is good for the goose is good for the gander, that just as the prosecution cannot engage in systematic exclusion of certain protected classes, well, that should apply to the defense.

It was just so obvious what was going on. The guy practically admitted it. He said, "The victim is black." He had no idea what was coming out of his mouth. [Laughter] He felt that black jurors would unilaterally agree with the victim, and he didn't want them on the jury. The judge said, "I'm familiar with the case, but that seems to only apply to the prosecution." And at that time, it did.

Over lunch, I talked to my appellate people. I forget the guy's name. I can still picture him. He said, "This is a good thing. You made a good record."

"Yes. These are the facts. This is the record I made. Reverse *Wheeler*." Over lunch they got a stay of the trial and later a ruling from the appellate department of the municipal court, finding that counsel had engaged in a prohibited practice and to set the matter again for trial. [Laughter]

Of course, later cases from the U.S. Supreme Court on *Batson* said that it applies not only to both sides, but it also applies in civil cases. I've later raised that. When I was on the municipal court I had a case and, again,

it was obvious what was going on. I told counsel, I said, “Counsel, I’m inclined to make my own motion to find your strikes to be in violation of *Batson* — ” and by that time the Edmonson³ — there was a case that says it applies to civil cases. I said, “So I’m admonishing you.”

They had no idea. They thought that was proper to do that. I’m still amazed that I would raise that in the middle of trial — and to get a stay of the trial over lunch. And the judge who we got the stay with was a Judge Cole, a respected judge, one of the old-timers, a Stanford Law graduate who saw the thing for what it was and basically concluded, “What’s said in *Wheeler* obviously applied to both sides. It can’t be just one-sided.” So I was known for raising that issue.

What I did as my first — actually, I did this as a prosecutor, but I later did it as a judge — I developed specific questions, voir dire questions, related to particular types of cases. You could give me a case. I had my general questions, applied to just about anything, and then I had my case-specific ones that I kept for many, many years.

MCCREERY: What’s an example of those questions, if you can think of one?

MORENO: Let’s say domestic violence, another very sensitive issue:

“Do you know anyone who has ever been charged or convicted of domestic violence? I know this is sensitive. Anyone in your family, direct or indirect or personal where you’ve had some kind of exposure to that kind of offense, either as a victim or as a perpetrator?”

“Anything about how long ago, and anything about those incidents that will affect your ability to be a fair and impartial juror in this case?”

“Do you have strong feelings, one way or the other, about the type of case that you’re going to be sitting on? There will be photographs, et cetera, testimony where a witness may recant their testimony.”

“Do you feel that a case shouldn’t proceed if a victim no longer wishes to proceed with the case?”

“Do you feel that, in your opinion, you might be wasting your time? Do you understand how important it is for us to have a rule of law, decide the case on the basis of the facts, as you decide, and on the law that applies?”

Things like that. I had these for hit-and-run cases; later, child molestation cases; everything. I could just pull out my voir dire. Later, obviously,

³ Edmonson v. Leesville Concrete Co., Inc., 500 U.S. 614 (1991).

I did that for civil cases as well. I found that in most instances I was better prepared than the attorneys to ask those questions that will draw out whatever implicit biases there were in jurors.

But I think I learned all that at the city attorney's office, and to really focus on the eye contact, focus on the listening to the answer and not so much on what your next question is going to be. Just be in the moment and develop that relationship with the juror, at least for that moment.

Overall, I think my experience at the city attorney's office — I tried, through jury, maybe seventy cases — that's a lot of cases — and resolved hundreds if not thousands of cases. Talk about being familiar with the court, the court operations, and how to move a calendar along —

I learned also then that the quickest way to resolution was by denying continuances and going to trial. I became a firm believer in "no continuances," even to this day, unless there's a really good cause. Because generally a delay will favor one side or the other, and you want them to understand that once you set a trial, it's a firm trial date.

I think I learned how to be a hands-on sort of prosecutor in terms of preparing my cases and being ready to try them. I followed the techniques of judges who I respected, who would adhere to rules that they had established.

MCCREERY: You were putting a lot of systems in place that you found worked. I wonder how your methods compared to your colleagues in the city attorney's office. Was that part of the training in some sense?

MORENO: Certainly the no-continuance thing was because we all, I think — I don't know when trial-delay reduction came in. I'm sure I was a judge when that came in. But I think it was no secret that the key to maintaining control of your calendar was to try cases on the date set for trial. Later I learned things about no sidebars, no motions *in limine*, just to keep them moving along.

MCCREERY: You certainly had developed an interest in judging by this time. And yet after four years you made a transition into private practice. That's quite a change. I wonder what your thinking was and how it all came about?

MORENO: All right. In those days, you needed only five years of law practice to get on the municipal court. One of my colleagues, Vicky McBeth,

got appointed to the bench right after five years, and I know other people who got appointed to the muni court bench after five years. I never really felt seasoned enough to do that. I didn't believe in being on the bench when you're only thirty-two or thirty-three, even if you're just trying limited-jurisdiction or misdemeanor cases.

I think my main reason for wanting to leave and go out on my own was that I wanted to give that a try. So I did some research about how much that would cost and how long I would have to sustain myself without any income, again through savings. I was married at that time, so my wife was very supportive of doing that.

I remember going on a vacation to Baja California, where I read this book and I actually prepared a budget for what I would need to get started. I looked at a lease on some law office building called the Bradbury Building on Third and Broadway, which is a historic building, an L.A. institution. I said, "I could see myself here." And who knows? Things could have gone another way.

But I ended up in a courtroom of then-municipal court judge Elwood Lui — again, one of the star roster of judges who were on the municipal court then. I said, "I'm thinking of leaving the office. I'm going to go out on my own, and I want to do *x*, *y*, and *z* and hang my shingle," basically.

He said, "Yes, that's a good idea. But before you do that, let me introduce you to my old firm." I said, "Okay." He set up the appointment. So he takes me to meet his old firm, which was in the One Wilshire Building. This is 1979. We go to lunch, and I stay to meet more people. They wine and dine me into dinner and get me a little buzzed on whatever they were giving me.

It was a firm called Mori & Ota that represented Japanese companies based in California like Honda, Sumitomo Bank, another bank, just a good roster of clients. The firm had been around for a number of years and was doing quite well. It had what is now termed to be a Pacific Rim practice.

At the end of the day they liked me and I liked them, and even though this was going to be a deferral of what I wanted to do, they were giving me more money, free parking, and everything else, so I said why not? They wanted someone who could go to court, basically, who felt comfortable about doing that.

It was a general practice, banking clients, corporate clients who ran franchises or distributed their products all around the United States. I'm talking about big stereo companies, Nissin Foods, a noodle company that is still around, Sumitomo Bank, which morphed into something else, some real estate companies. I had an anti-union case there, Nissin Foods.

MCCREERY: What happened on that one?

MORENO: I got yelled at by the employees' attorney, who said, "How could you do this? These are your people."

"I'm just arguing the case."

I don't think they ever unionized. I may be biased, but I think the company overall was — maybe they were paternalistic, but they were in the Japanese style, trying to take care of their employees in a certain way.

I had some trademark cases, bankruptcy cases, antitrust cases. Franchise-termination cases where, let's say, NCR, National Cash Register, which sold many of its products through one of our clients, Tec America — Tec America would have different franchises.

I actually did a jury trial on my own involving a dealer termination. I tried it up in San Jose as an associate. Lost it, but didn't lose big — later reversed on appeal. Now that I look back, I say, "Oh, my God. Did I know what I was doing?" You know? Was I overconfident in thinking how to present a case, a civil case? But I just felt, civil or criminal, you organize it and put it before the jury.

MCCREERY: Commercial litigation is a different world, I would think, from where you had come.

MORENO: Yes. But I quickly learned it. Employment cases. I did one arbitration case, actually, the arbitration agreement on termination of an executive, an American executive who was basically cheating the company. Defeated on demurrer a claim by another American executive who was taking advantage of our Japanese client in terms of the benefits he thought he was entitled to, like a house, car, a number of other things — and not performing, to boot.

Then I had a termination case out of federal court in San Diego, where the plaintiff had not exhausted the remedies of going through the union grievance process. I got that case dismissed.

It was just a little bit of everything. I never really specialized in much. We were more like general counsel but actually litigating for our clients. So in that sense it was a very diverse experience, and I had a nice caseload.

In terms of banking, not only collections and foreclosures, but also banking operations, where the bank might have screwed up on issuing a credit or how they denied credit or some banking-operation snafu. It was all retail banking. It wasn't the big high-level stuff.

It was during that time also that, carrying on from my city attorney days, I thought, "I'm appearing in court quite a bit," maybe at least once a week, law-and-motion departments and stuff. I thought, "I could be the one up there deciding the case."

MCCREERY: What contact did you maintain with Judge Lui?

MORENO: To this day. He called me twice this week on something else. But he's always been a big supporter, and it all goes back to when he met me back in the mid-seventies when I tried cases in his courtroom. Again, you just never know where people you meet, where they're going to go — and he certainly has gone very far — and how in some way they might be of assistance to you in your own career.

MCCREERY: But to recruit you into his own old firm — say something about the principals. Were they around much at that point?

MORENO: At the firm? Oh, sure. These were all pretty much survivors of the Japanese internment camps during World War II.

The lead was a guy named Jun Mori. He was the oldest and, really, the rainmaker. During World War II he was in Japan at an elite school, so he actually survived World War II in Japan but spoke perfect English and perfect Japanese. Through his contacts he was able to get these big clients, Honda and Nissan, big clients, so we always had that.

Very easily I could have stayed, but I guess a decision I made when I turned thirty-six, which would have been in 1984 or 1985, was — I also tell this to younger associates — where do you want to be when you're forty? Do you want to still be doing this? Or is there something else that you want to be doing? At that time I started to explore how to become a judge and what contacts I needed. I also had the opportunity to meet many, many judges who went on to really wonderful careers, like Chief Justice Ron George, Presiding Justice Elwood Lui, Art Gilbert — any number of

luminaries who were really stars on the Los Angeles Municipal Court who went on to the appellate courts.

I have to say that, for one who never really aspired to be a judge, it really planted the seed in me to become a judge. One reason for that was that I felt that judges occupied a position of fairness and justice and so forth, and I felt that, although I was an advocate, I would feel much more comfortable deciding issues on the basis of the merits. So I was able to see many judges in action, and that inspired me to, maybe at some point in my career, to do that.

MCCREERY: We talked a lot about the time that you spent in private practice and also, before that, in the city attorney's office early in your career. But I want to ask you talk a little bit about your extracurricular activities in that time span, some of the bar associations and other professional things that you were doing as well as your practice.

MORENO: I had been a member of the Mexican American Bar Association from the time I became a lawyer in 1975. But I decided to run for a board seat and was eventually elected president of the Mexican American Bar Association, I think in 1981. In that position, although many of our functions were strictly social in nature, we did work on different issues related to immigration, workers' compensation, putting on seminars — the MCLE-type programs.

But it allowed me also to network with other entities, both government and non-governmental: radio programs, talking to the press on issues of current interest as a spokesperson for the organization; supporting individuals who were interested in getting appointed to the bench. We had a judicial evaluation committee. So although it was a long time ago, I think it did put me in a leadership position, and I was able to gain more visibility, if you will, among my peers.

MCCREERY: To what extent were you breaking new ground in doing these various outreach activities?

MORENO: I think with the radio programs. I think we were probably at the forefront in doing that. The organization is now much more out there as time has developed, so I really don't know to what extent we broke new territory. Maybe in terms of endorsements of candidates for state and even federal office. I remember getting a telegram again to post-haste send a

telegram to the White House for the appointment of a member, one of our members, to be on the NLRB board. It was things like that we were called into action to move quickly.

I have some difficulty remembering exactly what we did, but it was just a very — basically getting notices out, getting speakers. For one of our dinners we had the United States ambassador to Mexico, Julian Nava, come up and speak to us. So, as with any organization, it was always something to do with getting something on the program for the next meeting. [Laughter] And planning the gala and installation dinner, and getting judges to come for a judges' night. Pretty routine stuff, but stuff that just a small cadre of people do, like the president and the vice president or president-elect.

We didn't do any fundraising at the time. We didn't have, what is it, a 501(c) adjunct to us. It was just basically a professional association that was first created in 1958, so we're talking about maybe twenty-five years later moving the organization forward.

MCCREERY: How large was the Mexican American bar at the time, vis-à-vis the larger landscape of lawyers in California?

MORENO: I really don't know. I think our membership was about 300, at best. Now it's over a thousand, a much bigger organization. But we certainly were recognized by the L.A. County Bar, and I believe we had a seat on the Board of Trustees as a minority organization, and that seat still exists to this day.

One notable thing that I think was a sign of the times was that an affiliated organization was formed called the Multicultural Bar Alliance. I'm not sure if it still exists, but the heads of all of the minority bar associations would get together and plan things.

Now there's a plethora of organizations, but then it was basically the Japanese American Bar, the Southern California Chinese Bar, the Langston Bar, the Mexican American Bar. There was no Korean Bar or Filipino Bar or Arab American Bar or Iranian Bar or Cuban American Bar. All these other bars came later, so it was really a nascent time when we felt that we had a common interest in judicial appointments and working together because we all had very similar issues we wanted to raise with the bar.

MCCREERY: What about the county bar association itself and your interactions there?

MORENO: As I said, we had a seat on the Board of Trustees. We negotiated a fee reduction that provided that, if you were a member of the Mexican American Bar Association, you paid less of a membership fee to the county bar.

My recollection is that the county bar was still a very strong, vibrant organization and now, forty years later, I know they're having trouble with membership and attendance, as all organizations are having that kind of issue. But then it was the premier bar association, and leadership came from the prominent big law firms in the county. Now that's not so much the case.

There's one other thing I wanted to mention. One thing that was ongoing at that time, and the county bar took the lead, was on helping to integrate a lot of the private clubs in Los Angeles. This is in the mid-seventies, where women were not permitted to be members. Women had to enter through separate doors — things that are unimaginable now. But that issue was definitely percolating in L.A. County in the mid-to-late seventies. So clubs — where I'm having lunch today — like the California Club — would not admit women. The Jonathan Club. The University Club, I think, was open, and so was the L.A. Athletic Club.

But the argument was made then, and it's true, that all of these were social-professional clubs. But this is where deals were made and referrals were made and stuff like that. I remember going to several meetings where our support, the Mexican American Bar Association, was asked to join in on fighting some of those blatant acts of discrimination. So that was something that we worked on back then.

MCCREERY: You certainly had experience running for office, going back to your student days, and taking on leadership roles. What did that bring to you at that stage of your career?

MORENO: I've often asked myself that question. Why have I taken leadership positions? Because believe me, I don't think I'm really terrific at it. [Laughter] Many times I've taken positions only because no one else wants to do it, and I feel I can do a fair-to-middling job at it. So I really admire people who go in with a burst of energy and wanting to — what did Schwarzenegger say? — throw boxes around and mix things up.

I've always been more of a person who, "Let's set the course and let's go forward. Let's do what we're doing, but let's do it better. And let's explore

other things that are feasible.” So in that sense, I think, as a leader I’ve never really been a visionary, but somehow, from junior high into high school and even college and law school, I’ve always percolated to spots almost by default, I have to say. [Laughter] So I don’t know what that says about me. It’s like sort of a reluctant leader, perhaps, or one who says, “Okay, let’s do this. Let’s get things back on track.”

One activity that I was involved in, and this came a little bit later, was as president of the Yale Club of Southern California for a couple of years. Again, I was a member of the board and the club had old leadership that got tired and no longer was connecting with younger alums.

I was approached by someone, a lawyer who said, “Look, the club is in dire straits. We don’t know how much money we have. The treasurer is not coming to meetings and not filing reports. The club is just going to disintegrate, really.” He said, “We need someone like you to be president.” I said, “Wait a minute. I do know who the treasurer is. I can probably use my persuasive power to get the records. I’ll do it, and I’ll do it for two years. But I want a succession plan. I want two other people to commit to two years each so that we have a six-year plan.” I don’t know how I came up with that idea.

And I said, “I want this person as my treasurer,” someone who actually works in this building, “if I can persuade him to do the numbers and get the records, the bank accounts and everything.” So I said yes. We did it. We moved the club forward. We, typically, continued some of the programs that the club had traditionally been involved in. We expanded it to include — what did we call them — monthly lunches for anybody who wanted to come at the Jonathan Club, besides having regular meetings and activities and so forth. And it turns out the club was very financially solvent.

So I will take credit for saving the club from oblivion, setting it on course, and now the club is doing just a lot of things. It has expanded in Hollywood, with writers and actors, and it’s very, very diverse.

Also at that time — in fact, even when I was at the city attorney’s office — I was very involved in alumni interviews of young people, usually from the central area, who were applying to Yale. So that’s always — I did that for maybe twenty or twenty-five years, just counseling people on options that they had if they really didn’t have a realistic chance of getting into Yale because of grades or some other thing. I did that as a deputy city attorney,

as well as when I was with the law firm. It just occurred to me that I was doing that as well.

MCCREERY: You've made quite a theme of establishing connections with people and, "You never know where they'll lead," and you told a charming story of how there was a connection between horse racing and your becoming a municipal court judge. Let's get you into that role and your decision, really, to leave private practice at the time you did.

MORENO: Yes. Okay. I've always been a — how would I say? — unintentional non-manipulative networker. People might differ with that, but I don't feel that I enter relationships for the purpose of getting something out of it, although I do believe that things will happen as a result of connections. Even to this day, I believe that.

Starting with the city attorney's office, where I met dozens of lawyers, it was a good start to beginning the networking in the legal community in Los Angeles. So even to this day I'll see people who I know from back in those days. I think people who have not had that experience are really at a disadvantage. It's hard. People come from all different stripes, but I feel that that gave me a good start.

Second, because I am a native Angeleno and have pretty much stayed in the same area geographically, it's allowed me to have long-term connections going back even to junior high school and being a known quantity. I often tell individuals that that's something that you should work with. Stay in touch with people because you never know how those contacts might at some point come to the front.

It doesn't mean that you have to network the way people do these days on Facebook or LinkedIn, and all for a business purpose. I think just being around, being interested in what people are doing, I think, is really the key to a successful practice of any kind. Being involved to a certain extent in activities, but just being a known quantity — obviously establishing a good reputation and everything else. Hopefully you do that as well. [Laughter]

So I think that's been a strength that really has helped me all along in my career. I think that's very important. The good thing about it is that I feel that I am in one sense part of this community. I can look around — and I think we talked about this — I can look around and see various landmarks that I can connect with in one way or another.

You mentioned the horse racing connection. There are probably many others that stand out that in some way played a part in terms of, as I aspired to move from private practice after about eleven years to apply for a judgeship. I know that I drew upon a lot of these contacts. I was actually quite systematic about it because in the judicial application you have to list something like ninety references. How many people know ninety lawyers? They don't all have to be lawyers, but most of them are.

One of the things I initiated at MABA was to draw in Latino lawyers who were at the bigger firms in Los Angeles, particularly downtown. We formed kind of a sub-organization to draw them in because MABA historically has been, at least in those days and maybe even to this day, mostly sole practitioners who practice in East Los Angeles and who practiced immigration law, maybe downtown.

So since I was working at a downtown law firm, I drew in about maybe a dozen lawyers who I knew in law firms. And believe me, in around 1980 there were very few minorities in the law firms. I felt that they had a lot to contribute, a new perspective.

I recall a conference I organized in 1974. I was president of the California Chicano Law Students Association, again by default. [Laughter] No one else wanted it. We put on a conference, and you're going to like this title. We called it "Algo Más que Legal Aid." "Something More than Legal Aid."

My perspective was that Latino lawyers — and these were all Mexican-American lawyers — had to do more than the traditional criminal defense and legal aid. I don't know why we called it "Something More Than Legal Aid," but we had something — we put on panels: in-house counsel; we did public service, legal aid; a public defender; a law firm; and I think it was law clerk or judicial-related stuff. We said, "Look, the practice of law is more than what we perceive Mexican-American lawyers are doing. Here are the different options. Here are the different advantages."

Even something like putting on a prosecutor because among minority law students being a prosecutor was like going against your people. So we had someone speak on that and how, as a prosecutor — this is an old trope — you can do more for justice as a prosecutor than you can as a defense lawyer. So something like that.

My thought always was — I guess that's having a vision — later as MABA president to say, "Hey, you guys out there," and I don't think there

were any women in the big law firms, “we have to bring you into the organization. We can use your resources and the things that you’re interested in in bringing your perspective to MABA.”

MCCREERY: I’m sure you’ve watched with interest over the years to observe how much the effects of that beginning have been felt. Have people branched out much more beyond solo practice?

MORENO: To the point now where there now is an affiliated charitable foundation that provides scholarships to Latino students to the major law schools in the L.A. area. It’s called the Mexican American Bar Foundation, and I think I’m on an advisory board or something like that. But they get huge contributions from the law firms and from the corporation sponsors, and so forth. I think they’ve given out over a million dollars in the years that it’s been around. So now that’s really just part — that’s how the organization has evolved.

There’s also now a Latina lawyers association that focuses on Latinas in the profession. I wasn’t really involved when that — I don’t really want to call it a split, but there was a feeling that the women lawyers wanted their own organization. I don’t know what spurred that on, but that’s what has happened. They’ve been around at least twenty or twenty-five years.

MCCREERY: Even if you weren’t overly political, it was a very interesting time politically for these groups that you’re speaking of.

MORENO: Yes, very interesting. Yes, and again, I’ve been the beneficiary of being around, knowing people in the early beginnings of their political career to where they are now. Any number of them, even our current attorney general, Xavier Becerra. I supported him when he was running for Assembly. And we go way back. Both of us have moved on, of course. But it’s things like that that you can say you’ve known someone for thirty years when they were just getting started in their careers.

MCCREERY: It was so interesting to hear your own thoughts about becoming a judge, and you somewhat waxed and waned on the idea a bit from when you first began to be exposed to judges in court. But at some point at Mori & Ota, you began to decide you were ready. How did that come about?

MORENO: I hate to say this about judges, but having appeared in front of dozens of judges I often left the courtroom thinking, “I could do that.” I wasn’t in awe of the judges. I’m sure they were fine judges, but I said, “This is something I could do, and it’s obviously a position of respect.”

Although I was made a partner at the firm, not in equity it turns out — they had a policy that if you had been with the firm two years and a total practice of six years you were eligible to become a partner. So I became a partner at the firm. I said, “What is my future? Is this something I want to do and continue?”

Thinking about becoming a judge, I just decided, well, let me put my hat in. There was a partner at the firm, Henry Ota, who was politically involved with Mayor Tom Bradley here in the city of Los Angeles. He knew a number of key people in the Assembly. I think one of his roles was to — I think this was legal [Laughter] — to support different politicians and organizations with money. He would get his clients to contribute money to different causes, so he was very well connected politically, as was the main partner, Jun Mori.

I ran it by them, and they said, “Sure. We’ll help you.” They had one former lawyer — in fact it was Elwood Lui — who was a judge. I don’t know how much they helped him to get appointed, but at least they knew what it took. So I remember flying to Sacramento with Henry Ota to meet with a couple of conservative assemblymen — one very conservative, Nolan — I forget Nolan’s first name — a very conservative guy out of Glendale — and talking to him and getting his support.

I’m trying to think who else I met with on that trip, but we had a Republican governor, George Deukmejian, who was very law-and-order. This was during the Rose Bird era, 1986. She was removed from the bench a month after I got appointed.

But I applied in January of 1986, was interviewed by Marvin Baxter, who was the appointments secretary to George Deukmejian, in June and got appointed in October, which by most standards was actually pretty quick. I thought it was a long time waiting to get appointed. I remember Justice Baxter asked me, had I been active in the Democratic Party? Had I contributed? I said, “No, I’m almost a lifelong Democrat by default. I just grew up in that kind of environment.”

I worked for a law firm that represented defendants. This was around the time when Rose Bird expanded or merged contract law with tort law into the “breach of the covenant of good faith and fair dealing.” So in defending those cases, I obviously said that it was not a tort, it was just a contract.

The death penalty I really had no issues with personally. I had a good interview with him. In fact, I think Marv told me that, well, at one time he was a Democrat and, “They didn’t hold that against me.”

But what really helped — I may have said something about Senator Ken Maddy. Somehow I mentioned to my brother that I was applying. He says, “I know Senator Maddy.” And I think Senator Maddy was the president of the Senate. So he vouched for me, never having met him, and talked to Justice Baxter about me. I had a good interview with Justice Baxter, and since I had been a prosecutor, I was defending employers and companies in a firm, and good educational pedigree, Yale and Stanford — they had to appoint a few Democrats — this is what I was told [Laughter] — so I fit the bill.

Then with the support from a couple of conservative Assembly people; a letter of support from John van de Kamp, who was then attorney general; support from the local Latino police organization, LALEY.⁴ I think I got support from — I’m not sure if Sheriff Baca was in office then. I don’t think he was — and support from MABA; support from other minority bar associations. It all worked, so I was very fortunate in —

Oh, here’s what I was going to say. I was very systematic. I still have my files on this. When you need the ninety references, I said, “Here are the people I know from the city attorney’s office. Here are the people I know in private practice, the people I was trying to bring into MABA. And here are the people who I know just generally. I had three lists of people and let them know what I was doing. And then I had a list of a few judges, too. But at least the judges I contacted to remind them that years before I did this trial in their court, in case they didn’t remember me.

So I had no trouble coming up with eighty or ninety names and then researching the ten most significant cases, both criminal and civil. That was the other advantage I had. They look for candidates who have a breadth

⁴ Latin American Law Enforcement Association.

of experience. So that really was the foundation for all my subsequent applications to the bench.

MCCREERY: I don't know what the salary of a muni court judge was at the time, but what was the personal and financial calculation for you?

MORENO: Let me think. Here's what I did. It was a slight decrease in pay. I think I was making somewhere around \$80,000 a year in 1979, and I think judges were making about that, close to that. But since I wasn't going to get any bonuses or anything like that and really good raises, I figured — I remember doing this — I remember paying off all my loans. I think I had a car loan, and I paid it off to set the stage so that I would have no loans, just a mortgage.

So I think I made some calculus in my mind that I was going to take — I think it was just a very slight decrease in pay, not that much, a few thousand, but planning for the future that I was going to have to be more scrupulous or judicious about — I knew I wasn't going to get any bonuses, which — in firms there are always quite nice bonuses. I remember I bought a truck for my wife with one of the bonuses. It was nice.

So anyway, that worked out fine. As one of my partners at the firm, Joe Muto, said, "This is good. You're going to have cash flow."

I still remember this. I would always have a paycheck and be steady. It wasn't like in a firm. You just never knew if you were going to be laid off or what the economy would do. In a law firm the bonuses could vary. So you would have security, and I remember his phrase was "cash flow."

With that you could really plan and make investments or whatever. When people would see that you were a judge it would be easy to get credit because you had that kind of stability. I never really thought about that until he pointed it out. So there's some advantage to getting a regular paycheck.

MCCREERY: Finance is only one piece, but it was a change of lifestyle.

MORENO: Yes, exactly. And to this day it is regular hours, really no home-work — although I was telling someone just the other day that I'm an early riser, and sometimes I go back to sleep after early rising. But getting into a criminal assignment, which I hadn't had since 1979, so for seven years, and the law had changed — that Prop. 8 then changed the law.

So I would get up in the middle of the night and just read the advance sheets on the kinds of cases I was doing, DUIs and preliminary hearings, and very quickly got up to speed. But it was really just by going through the advance sheets and seeing what was being written about issues that I was facing in court every day.

I've recommended that to new judges all along. I say, "If you just educate yourself. It's like teaching yourself. Because here you see the cutting-edge issues and what's troubling the trial courts and how the appellate courts are doing. So it doesn't matter what kind of assignment you have, if it's dependency or delinquency or preliminary hearings, just look for those cases that are being reported. You'll understand the context because you're doing those cases, and you'll see what errors judges are making and how those errors are being ruled upon." I did that for a good part of, I'd say, my first year on the municipal court bench.

MCCREERY: How did you find out you'd been selected?

MORENO: You get a phone call from the appointments secretary. It wasn't the governor who called me. It was Justice Baxter who called me. I remember I said, because I hadn't heard from him [Laughter] — and it looked good. He basically said at my interview, "I see you've applied for the Los Angeles Municipal Court and East L.A. Municipal Court. What do you think about Long Beach and Compton?"

I said, very diplomatically, "Wherever I can assist the governor." Smart. [Laughter] "That's fine. My preferences are those because they're close to home and I know the communities and so forth. But wherever I can assist the governor."

I don't know if he told me then or I learned later — I think I learned later that the impetus for appointing a Latino judge in Compton — and they appointed two of us at the same time, a guy named Albert Garcia — was that the Compton judges saw that the constituency in the Compton Judicial District, which included Lynwood, Paramount, and Carson, was changing. There were more Hispanics moving in.

Right before that, a Latino lawyer, probably the only Latino lawyer in Compton, challenged an African-American judge. She had to raise money and so forth. One of his claims was, "Hey, there are no Latino judges." The city might have been 30 percent Latino.

So they wanted to forestall that. There was a guy, a kingmaker down there, called Celeste King, who was a Republican. He was a bail bondsman, and he was the one who, I think, had the connection to the governor's office and said, "You've got to appoint a Latino down here." That's how I got Compton, to fill that need that the judges felt was needed to forestall these challenges. Isn't that interesting? [Laughter]

So yes. I had appeared in Compton once or twice, and I said, "I can do that." So I got the call: Compton Judicial District. I said, "That's fine. I'm happy to serve." I said something to the effect — this was in October, so it's only four months later. I said, "I thought you had forgotten about me. What took you so long?" [Laughter]

Now people wait for years, sometimes. I mean, it's terrible. They don't know what to do with their lives, and they put it on hold. Do they do more lobbying? I didn't do any more lobbying after that. I think I had Henry Ota call the appointments secretary to find out the status, and they responded, "He's still being considered." It's not like they said, "He's not going to get it." So they get around to it when they get around to it.

I learned from that, that's the way it happens. I get so many calls now from people who ask me what should they do? They haven't heard anything. Should they get another letter? Should they update their file? They get so wrapped up in wanting to do something. All I've been able to ascertain is basically the response that I got. "No, they're still being considered." There's nothing more you can do. So it's very, very frustrating to be in that position because you don't know. The uncertainty.

MCCREERY: Tell me about starting at Compton, I guess with Mr. Garcia, and being sworn in and all the ceremonials at the outset.

MORENO: Yes, okay. It's interesting. At the firm we had a little investiture, at the firm. I asked my friend, Judge Richard Paez, who was on the municipal court — he might even have been the presiding judge at the time — to come on down. I had a friend who was a police officer who went to my high school, and he was working downtown doing traffic things. He came in. My firm actually bought my robe for me. That's a tradition for a lot of firms, to do that.

So we had a swearing in at the law firm with maybe forty people or so. Judge Paez swore me in. The police officer, in uniform, was the bailiff.

I think he's the one who put the robe on me. My wife was there. This was October of 1986. I was going to turn thirty-eight in November. In fact, I started at Compton on my birthday, and I didn't tell anybody.

They said, "We're going to give you this courtroom." As the newcomer, it meant I would do felony arraignments, which don't start until three o'clock. Compton would have fifty or sixty arraignments a day of people who had come in in the morning, were interviewed by the public defender. They would either plead guilty or, most of the time, just enter a not-guilty plea to give them time to study the case.

In the mornings, I did small claims, and at one-thirty I did the unlawful detainers, the hearings. Later I learned that these are assignments that nobody else wanted. [Laughter]

MCCREERY: "You. The new guy."

MORENO: They gave it to the new guy, which is a typical protocol in the judicial system. I remember doing small claims, and I asked my clerk, "What do I do?" She says, "Just listen and make a ruling, like *People's Court*." [Laughter] She said, "I'll take care of everything. You just listen, and you make the ruling," in terms of the paperwork, the language. I said, "I can do that."

I remember being nervous a few times in the beginning, going out there and calling the cases. There were defaults at first. I'd do all the defaults and, "Okay, you get the judgment, blah, blah, blah." Then some contested matters. Since I had been in court, I knew some of the language, the lingo. You hear both sides, and you make a ruling.

Then I was told — this is before I went to any kind of orientation, but somehow I knew that where people are irate, take it under submission. Don't make a ruling. "I'll take it under submission." You go back and you make the ruling, so that they don't start a fight in the elevator. I remember that.

Then the unlawful detainers. I had done a couple as a lawyer, so I knew that territory. But that's also very interesting. People bring in the habitability defenses. They bring in the little mice and cockroaches, and going back and forth. I had studied some primers on unlawful detainers and stuff like that. So you listen to the case and you make a ruling.

Then at three o'clock I would do the custodies, which would keep me there until four-thirty or five. That's why people didn't want to do those.

But I had the custody courtroom, big, and a huge holding tank in the back, and a huge glass — I don't know what you call that part of the courtroom — what you see on TV, where the arraignees are behind this glass.

I remember thinking, the first time I saw someone who was charged with a murder — I looked at them and I said, gee, you could see this person on the street and you wouldn't know if they were charged with manslaughter or murder or whatever. Not a gang member. It could be like a forty-five-year-old guy who was charged with murder. I said, well, interesting.

So in Compton you got very serious cases at the time. This was during the crack epidemic, so a lot of crack cocaine cases, a lot of gang cases between — the Bloods were started in Compton, on the street called Grape Street, and the Crips started in South Central L.A., but there were any number of sets of both organizations. There were shootings in parks and drive-bys and everything like that.

MCCREERY: What sense did you develop of that surrounding community? You mentioned the crack epidemic and the gang presence. What was Compton, as you experienced it?

MORENO: It was in transition, really. I saw that. So the leadership was still probably exclusively African-American. I met with the Latino leaders, mostly business people, and they arranged for me and for Judge Garcia to be in their Christmas — they had a Christmas parade.

The other thing I remember is someone arranged for Justice Arguelles, who was just appointed to the California Supreme Court, after the ouster of Rose Bird and company. He was on the Court of Appeal, and he told me later he didn't aspire to go to the California Supreme Court. I'm sure he probably says this in his memoirs, but he did it as a favor to George Deukmejian. They were in a bind to get people appointed right away.

He was a law-and-order guy. He had practiced in Long Beach as a superior court judge for many years, and then East L.A. for many years. In fact, he's the one who told me, when I was applying for the municipal court and Elwood Lui introduced me to him —

When I told him I was interested in East L.A., he said, "The branch courts are often ignored, but it's a good place to start from and get known in the community to move on up. A lot of times if you're appointed to a big court, like the L.A. muni court, you get lost in the shuffle. But at least in a

small court,” like the East L.A. court, where he came from, “you’re able to really get to know people and be more visible.” That’s advice he gave me.

So a lawyer from East L.A. arranged for him to come down to do the ceremonial swearing in. We had a nice dinner organized by the Latino community, actually, \$25 a head, I remember. Then we spoke, and he swore us in, and he spoke. Arguelles had an interesting story. He went to UCLA from East Los Angeles. He went by bus. Can you imagine? He took a bus out to UCLA back in, probably, the late fifties or so. Yes.

So we were very honored. I didn’t realize how much of an honor it was to have a California Supreme Court justice come down on a Friday to swear us in and make some very nice remarks about us in the little community of Compton. It really was a pretty amazing thing for him to do that for us. And of course, later I would serve on the same court. So you just never know.

MCCREERY: You made passing mention of your presiding judge. Say a bit more about the leadership and your colleagues on the Compton court.

MORENO: An interesting group. They all knew each other from practice. They were all, except for one, African-American. There was one Caucasian judge, Tommy Thompson, but he had also practiced in the community. He was a commissioner. He had practiced in the community.

The practice in Compton was to engage the private practitioners to do small claims and traffic court to pay their dues as a pro tem, then to hire them as commissioners, get them visibility, and then get them appointed to the bench. So a number of them had been commissioners, so it was kind of a “clubby” bench.

MCCREERY: How were you received by your colleagues?

MORENO: Pretty well. Pretty well. Yes, I think for both us — and we were both very approachable new judges — I don’t remember any kind of reluctance to welcome us to the bench. I think they wanted us to defuse this election-challenge issue. And they could give us the kinds of cases they didn’t want to do. [Laughter] So yes, it was friendly, but I didn’t have that long-standing relationship with the community.

MCCREERY: How did the election-challenge issue play out?

MORENO: In order to forestall this, a number of muni court judges, not only in Compton but in other areas, formed a political action committee, I guess, where it was all for one, one for all. We each contributed a certain amount of money, I think, and we got the bar to support us, so we had a defense fund. It wasn't a lot of money, just a few thousand dollars. But we let people know that if anyone challenged one of us, there was this unity, that the other judges would support the incumbent, and we had this money to forestall that.

So it never happened. None of us were ever challenged. I think I went through that cycle twice, maybe in 1988 and maybe in 1990. So now, unlike in 1986 where judges really weren't prepared to mount a defense, everything changed after 1986. You can't just sit idly by and assume that you were either going to be retained or not challenged. But I remember talking to a judge in the South Bay, Sandy Thompson, who just passed away. They did the same thing in the South Bay to form a coalition of unity and getting bar endorsements and all that.

MCCREERY: How much was that message of unity carried to the public as well?

MORENO: I don't remember. We never really got to that stage because no one ever really challenged us. You don't really get into that stage until you have an active challenge. No one decided to challenge us, and I think we just returned the money to the donors.

MCCREERY: Would you reflect on the 1986 election and what happened in our Supreme Court that year?

MORENO: Yes. I think I mentioned that Rose Bird was one of my instructors at Stanford. I really liked her. She remembered me at a bar association meeting. She was happy to see me and I think said something about me having more white hair than she had — a former student.

I forget when she was appointed, but she had withstood one challenge before and was retained. But George Deukmejian, who appointed me, really kept at it. So I felt personally very sad that she was removed, and not only that but Cruz Reynoso also was removed. I had spoken on his behalf — that's what I also did when I was at MABA. When he was appointed one of his court of appeal colleagues who was on the Sacramento — Puglia,

called him the Mexican judge who was deciding cases on the basis of race and stuff.

We went up there. I went up on behalf of MABA and submitted a statement. I don't know if I was able to read the statement. There were dozens of people wanting to testify on his behalf, and they couldn't do all of them so I just said, "I'm a representative of the Mexican American Bar Association," and I submitted my statement to the record. It was accepted and on we went. So I was sorry to see him leave, even though I really didn't know him personally. But I felt that the whole thing was just very reactionary.

I didn't quite really appreciate that — I think she voted to reverse every death penalty case that came before her, which I don't get. There were some, the felony murder issue, intent. I could see that. But it seemed that she was very doctrinaire, but I never really — for me, it was just more personal. She was a nice lady, very energetic.

It was very political, just on the death penalty, it seemed. We know now that it was the private commercial interests that funded that campaign. There was a lot of grandstanding by Deukmejian. It was a very political time.

It was not only that. There were other appointments that were held up that Deukmejian got very involved in. I can't remember now the exact ones, but there were people who didn't get appointed because you had the chief justice, the attorney general, and the senior presiding justice. I think there were others that were held up from being confirmed, which is a pro forma process. So I didn't like that part of judges being challenged for political reasons.

Of course, later I heard, I think I mentioned, from people on the Court that the Chief was a divisive figure on the Court and among court staff, particularly with Justice Mosk, who assumed that he was entitled to be the next chief justice. And maybe he should have been.

MCCREERY: As you pointed out, Governor Jerry Brown was the one to make her chief justice, not only bypassing Justice Mosk but bringing in the very first woman and a woman who had not been a judge and who was just a different sort of figure. That's a difficult position.

MORENO: Yes. And of course now, as I said, my feelings for her were personal, and I questioned whether it was the right thing to do. I'm sure Jerry Brown — not appointing the first woman. That should have been done. But

to create that kind of — and to make her chief justice? I think he learned his lesson from that. The position of chief justice is more than just leading the Court. It's leading the judiciary. And it's administering the Judicial Council, and it's maintaining a professional relationship with the legislature. So I think in those aspects she probably was lacking, not the best choice.

MCCREERY: Coming back to your time as a judge in Compton, say a little bit about the staff available to you. You talked about your fellow judges. What kind of help did you have dealing with these very large caseloads, essentially?

MORENO: There was a real advantage, as Justice Arguelles said, to being on a small court. We had fifteen or sixteen judicial officers, and we had a court administrator, Tim Aguilar, who really took care of his judges. In those days, the municipal courts were better funded than the superior courts. They were like little fiefdoms, and they had their own revenue sources.

You were known. You were like a big fish in a little pond. If you needed something you went to the court administrator, and they would do it. If you needed to go to a seminar; you needed new furniture. I don't know how well Compton was funded. It wasn't Beverly Hills municipal court, which had a lot of traffic-ticket revenue. But let me just put it this way: they took care of us.

We also had at that time — I'm not sure if it was statewide, but in L.A. County — the court marshals. We had a marshal service, not the sheriff's department, as bailiffs. The marshal was hired by the judges, by the municipal court judges. They, too, took care of us. They knew that we were their boss, so it was a different mentality. I saw this when I went to the superior court, where it was the sheriff who would bailiff the court. So that was nice.

The court staff was very, very competent. They also knew the community. They were local. So I never had any real complaints about the court staff. I kept my courtroom deputy for seven years in Compton and then for four years on the superior court. I brought her over. She had to make — this is before, I think, court consolidation — so she had to get credit because it was basically a different department, so she went through the necessary steps to come with me to downtown. She had been a Compton resident but then lived farther away.

I really enjoyed my time in Compton. I did, I don't know, hundreds of trials. I was the supervising judge of civil.

MCCREERY: How did that come about?

MORENO: Again, because I was the only one with extensive civil experience. Again, no one wanted to do it. Our court commissioner, again, was assigned to civil, but the civil trailing calendar was in disarray, where he would continue things or they would not stipulate to a commissioner. Then what do you do? "We'll have to find someone who can do the trial."

He's probably retired now, but he was not very decisive. His morning motion calendar, I think which was on Fridays, would take forever. He'd have both sides talk and talk and talk and talk. [Laughter]

So I would get the cases the day before, when he was on vacation, and I'd say, "I'm going to do the calendar. I'm going to go up there and do it." I'd be done in an hour, and the clerk said, "Boy, we wish you were here all the time," because this other guy, Tommy Townsend, would just take forever. I said, "What's the big deal?" I forget what they called it. It was at the time when the municipal court converted into form interrogatories, a certain number. Anyway, it was pretty straightforward.

Then I found no one was doing trials. So I said, "Look, the next trial you get, I'm there. Send them to me." So I did about thirty trials, civil. I told my preliminary hearing colleagues, "Look, I will do all the civil. I have a civil background. But on those days I will send you my preliminary hearing cases." They said fine.

Then I took hold of the trial setting. I don't know what it's called now, but when a case was "at issue," you could set a case for trial after forty-five days. So when we got an at-issue case, I took control. I talked to the civil person. "Let's get in action. Just set a trial on the forty-fifth day." [Laughter] The lawyers were shocked. I said, "It can't continue. It's at issue. You're ready." They would have to have a really good reason. I would say, "Okay, we're going to trial."

I remember taking two verdicts in one day because they had a jury deliberate. I think it was only one- or two-day cases, three days at most. It was like what I used to do in the city attorney's office. On simple batteries or stuff, you could do two trials in a week. Just crank them out.

MCCREERY: You had also mentioned that there you became a firm believer in no continuances.

MORENO: Yes. Oh, yes, because they're used to coming in. "Oh, your honor. We're not ready," and this and that. I said no.

My standard thing was, "The court is devoting its resources to try this case. If I don't try this case today, this courtroom and what it costs to maintain every day is going to sit idle." I'd say, "We can't. We have resources, and we have to use them." I don't know where I learned that from, but it was like, "This is a resource. If we don't use it, it goes to waste." I'd force them to trial. I did a lot of trials with new lawyers, their first trials. I was patient, but I said, "We're going right into this case."

MCCREERY: What was it like for you to sit on the other side of the bench?

MORENO: It was fun. Civil lawyers in particular are very deferential to the trial judge because they never — they're terrified, even if you're a municipal court judge.

In the criminal law practice you know the judge. You staff his court or her court. You might be there for three weeks. You know the judge. You know the staff. Then you go to another court. The same thing. People know you. You're in the same building, and you're a known quantity. You know the judge, and you know their practice and stuff.

The civil lawyers don't get into court that often. You don't know them. They don't know you. They think you're going to yell at them or whatever. I would just say, "It's time. Do you have an offer? Because we're going to bring in the jury. We're going to bring them up right now."

Then they would, in most instances really, settle the case because this judge meant his business. You're going, "Now's the time." So I did a lot of slip-and-falls, fender benders, breach of contract, some minor real estate matters. It was good experience, and of course by then I knew I could pick a jury in half an hour.

MCCREERY: What did you look for?

MORENO: In terms of picking a jury? I did all the voir dire myself. The lawyers really didn't know how to do it. I would do a pretty good voir dire, so they would know what their predispositions were in a case. There were fewer peremptories in civil cases. I think it's six or something like that. I

think it's six, so you could do it quite quickly. I'd put eighteen up there, and I remember having a very small courtroom because I was doing preliminary hearings.

In fact, I was talking to a judge the other day who is in my courtroom. She says, "I'm in your old courtroom, Division 6, and the clerks told me, 'Do you know this is where Justice Moreno had his courtroom?'" [Laughter] I told her, "Do a good job. This is a courtroom where you could really move up."

But it was a courtroom that we built while I was there just for preliminary hearings. We had a small jury box where the officers would sit and the witnesses and watch everything. But it was very small. But I'd still put twelve there and six chairs in front.

"What's going on?" I said, "Don't worry. We're going to go right through this." Voir dire the eighteen. Peremptories. *Boom*.

That's something I kept when I was on the federal bench. I'm very hands-on when it comes to doing trials. In fact, even now I tell the lawyers in these arbitrations. One of the most frustrating parts is they don't know just how to get down to business. They nitpick and they do this and that. They really don't see the big picture in terms of their case. They just want to make it difficult for the other side.

Whereas I'm more of a, "Let's just — okay. You think you have a good case? Let's do it." So they're not used to being pushed and being prepared and doing the trial.

I think I learned that not only from my city attorney experience but on the municipal bench and doing the civil cases, which in some sense is a lot easier than doing the criminal cases, less controversial. DUI juries are hard to pick because people have strong feelings one way or the other about drunk drivers. They know someone, a family member who's been charged with that, et cetera, whereas a civil case — it's pretty easy to ferret out any biases through your peremptories. Fewer witnesses, in a lot of cases. Smaller cases.

I kept track of all my cases that were set for trial on a certain day, so I'd have, let's say, three or four cases set for trial when I would do the arraignments and pre-trial conference and trial. I'd set all those dates, so I knew. I kept separate track of all my trial dates, and I wouldn't set more than four or five per day.

I wouldn't say nine times out of ten, but most of the time they would settle. They'd finally talk to their client. This was during the time when the court system was urging no continuances. In fact, they had buttons made with a slash, "No continuances." [Laughter] It's when the court started to get into court management. So I bought into that, and I found that as long as you control your calendar, you can really make less work for yourself.

I remember defense lawyers being startled. "Oh, we're going to trial?"

"Okay, I'll give you one day. I have no other matters. You're set for trial." They'd huddle with their client. Maybe they were talking about a money arrangement. Who knows? But it worked.

I did the same thing when I was on the federal bench. No continuances unless you had a really good — if you made your motion ahead of time, and you stated a good reason for it, and it was in conformity with what I wanted to do. The judge has to take control of the calendar. It's not their calendar. I also say that. "It's not what you two stipulate to. It's how I'm managing this calendar. I have things I have to manage, too, and today is your day."

MCCREERY: To what extent did that reputation get out ahead of you and people knew that's what they would encounter when they entered your court?

MORENO: I know for sure. Here's what happened, though. [Laughter] The best-laid plans go awry. I think we had five or six misdemeanor trial courts and five or six preliminary hearing courts. The fact that I took care of business — no rest for the weary because others would have last-day cases. They had two or three, and they'd have to send the case out.

"Oh, you're open. We need an open court."

Just because I did a good job — and other judges who run efficient courts — I know a guy. He said, "Why? I'm doing a good job and taking care of my calendar. This judge doesn't. I'm going to do his cases?"

I was trying other people's cases. Frankly, people were happy to come into my courtroom. They didn't like their judge anyway. So I met a lot of lawyers who weren't assigned to my courtroom, but they got to know me. I really enjoyed trials, and I didn't hammer defendants. They knew that. These are misdemeanors, and you could give someone a year but I gave them the sentence that I thought was appropriate.

Even on a DUI, you could give them — you could punish them for going to trial, which is improper, but that's standard. "Okay, you didn't admit guilt. You contested. No remorse." That was the down side.

There were a couple of judges who were just terrible. Terrible. Terrible. Then I was leadership by default. It went by seniority, okay? My time came up. That's for one year.

And then Al Garcia, my "twin," so to speak, didn't want to do it. He said, "I don't want to do that. It's a pain," blah, blah, blah. He just said, "I'm not going to do it." So the other judges looked to me. "Would you do it another year?"

I said, "Oh, God. Come on." So I did it for two years, again by default. It's a headache because judges call in sick and you have to cover their cases. You have to go down there and call their calendar. The thing that got me upset was a judge goes on vacation and, when you know when you're going on vacation, you shouldn't set any matters. Some judges didn't give a damn. You'd go in, and it would be a regular calendar. They knew they were going to be on vacation, but they have thirty matters on calendar.

Some judges were good. They didn't set matters. But others didn't care. They would just do their regular stuff. How do you manage two courtrooms, two calendars? That's the part I didn't like about being a P.J. Then when judges called in sick, it was ooohhh. All the little problems come to you. So it's mostly that that was the pain about being a presiding judge.

MCCREERY: Let me ask you to summarize your time as a judge on the Compton municipal court.

MORENO: It was a great foundation for everything I was going to do later as a judge in terms of the seriousness of some of the criminal cases, in terms of developing a system of case management, working with other municipal court districts, having a very hands-on court administrator, and meeting a lot of new lawyers.

Compton at the time was the training court for both prosecutors and public defenders, so we dealt with a lot of new lawyers. But it gave me the opportunity to meet them and to see them as they developed their own careers down the line.

It made the transition from municipal to superior court very easy because when I got that appointment from Governor Wilson, I was assigned

to the Criminal Courts Building downtown. I was able to there try felony cases — again, being in downtown Los Angeles, some very serious felony cases. I was well prepared to do that, given my exposure in Compton to serious preliminary hearing cases.

So overall I really, to this day, feel that serving on the municipal court is a valuable experience for any judge. It certainly was for me. It used to be said that the governor — I think Marvin Baxter mentioned this to me, that this gave the governor an opportunity to see how someone performed in a limited jurisdiction court. He assured me, and he has probably assured others, that, “You’re qualified to be on the superior court as well, but we just want to test you out.”

I think that’s a valuable check on making sure that the people who are elevated to the superior court can do the job. There’s a distinction now, even to this day, between those who were elevated by virtue of appointment versus those who were elevated by virtue of court consolidation. That little schism, I’ve heard, still exists. It’s not to say that limited jurisdiction — or former municipal court judges who are still doing that — are not qualified, but it’s an observation that I think many people hold.

MCCREERY: What was the timing, in your case, for moving up and how you thought about that?

MORENO: Yes, an interesting story because I was actually approached by the D.A. deputy in charge in Compton, Steve Sowder, who said, “You should consider applying for superior court. I’m often asked by — ” He gets requests for evaluation of potential candidates. I don’t know exactly what kind of input he had, but he said, “You should apply.” I said, “You know, that’s a good idea.”

I didn’t think I would get an appointment from Pete Wilson. I just felt that he was a little bit more reluctant to appoint a Democrat. But I think with getting the support from the deputy in charge — because he wrote a nice letter for me — and then, of course, I mounted my campaign to get appointed, got more endorsements.

Timing, again. The governor’s office was under fire for not appointing enough minorities, particularly Hispanics. The day of my interview with Chuck Poochigian, who is now on the Court of Appeal in the Fifth District, was the day that NPR and maybe other news outlets were airing these

complaints — I don't know if they were protests or not — but, “not enough minority judges on the bench.”

[Laughter] I remember sitting with him. I think it was in Sacramento. If you know him, he's a very personable, easygoing guy who was the appointments secretary then. We had a really great interview. I had been appointed by Governor Deukmejian, the fellow Armenian, and I think in some way he took to heart this criticism.

So here he had this guy, me, who had done a good job; supported by the D.A.'s office; appointed by Deukmejian; good educational pedigree. Here's one who could help him rebut this criticism. I think it might have been at the next American Bar Association where they said, “You're not appointing any Hispanics.”

Again, timing came into play, and I was the right person at the right time. I later saw Pete Wilson at a couple of events. I remember his wife was with him, and I wanted to thank him for the appointment, notwithstanding that I was a Democrat. He says, “Oh, you must have been one of the good ones.” [Laughter]

But I think both Wilson and Deukmejian, I think one out of six or so of their appointees were either Democratic or independent, refused to state or something like that. So I don't know what Jerry Brown's record is on that, but I think the doors weren't completely closed, although people felt that if you weren't a Republican, and a very conservative one at that, you were not going to get appointed.

To this day, when I'm introduced, particularly to a minority group and they say, “Appointed by Pete Wilson,” people say, “How did that happen?” I have to say, “He had to appoint a few, so I got in.”

But I frankly was a bit surprised. I don't think I had thought of it. I was in Compton for longer than I anticipated. Seven years went by very quickly. But I thought at some point I wanted to be on the superior court and to be on the superior court downtown, just because of the commute and the community and so forth.

When I got that call — here's another interesting thing when you talk to judges — working late, doing a preliminary hearing I get off the bench at four-thirty, and my clerk hands me a slip. “Oh, someone named Poochigian called you.” [Laughter]

So I knew it was *the* call. Judges can all tell you about *the* calls that they get. She knew that I was applying. I said, “This is the guy. This is why he’s calling me.” I called right back. Maybe it was forty-five minutes later, and he still was there and gave me the news. But I said to my clerk, “If this ever happens with me or anybody else, interrupt me. This is the call you don’t want to put off.”

“Oh, okay.” [Laughter] Anyway, that’s my superior court appointment call story, not being interrupted.

MCCREERY: Assigned to felony trials downtown, moving up to superior court. Talk about the transition and how you entered into that, in 1993, right?

MORENO: Okay, right. Interesting because I moved all my stuff from Compton. I had a pickup truck then, put all the boxes in, went to work on Monday. I talked to Bob Mallano, who was the presiding judge. He called me and congratulated me.

He said, “Do you have any preference about where you want to be assigned?” I said, “I want to be assigned downtown. I live close to downtown.” He said, “Fine. I’m putting you in the Criminal Courts Building.”

“Great.” I knew Mallano because he’s Yale ’60, I’m Yale ’70. [Laughter] We had that connection, and we knew some people in common so he was happy to assign me to a place where I wanted to be.

I move in that Monday morning, get all the paperwork done. Maybe I did the paperwork before then, I think, the superior court stuff. I move in on a Monday in my jeans, just casually dressed. I’ve got boxes in my chambers, Department 131. Since it’s a Monday, the master calendar has a lot of last-day cases. There was a guy. I forget his name now. He was the aide to Department 100. He comes up to my courtroom before noon and says, “Oh, I see you’re not engaged in trial.”

I said, “I’m just moving in.” He says, “We’d like to send you a case. We’ll send you a case. Just swear the jury in. You can start tomorrow.” I said, “Uh huh.” And that’s the way it is.

It was a child molestation, not one of — not to say these aren’t serious cases, but it was one of an older man, an adult, giving beer to underage minors and getting them to do different things. I gave him eight years. I remember the defense lawyer — I didn’t hammer the guy, maybe gave him mid-term or something and concurrent time, whatever. After that the

defense lawyer really liked me, Steve Schoenfeld. I forget who the prosecutor was. It didn't take very long, maybe three days. I had never done an actual child molestation trial, but it was very uneventful in terms of doing the trial. So it was trial by fire the first week in the courtroom, jury verdict, move on.

MCCREERY: Any surprises in that first case?

MORENO: None at all. None. Then I started again to manage my calendar from my Compton experience. Eventually my clerk was able to join me, and we just — it's all direct calendar, but the same thing would happen. I'd get last-day cases from other courts because I was open. They knew, Department 100 knew, almost the moment you sent the jury out to deliberate. They'd say, "Oh, you're open."

I'd say, "What if they have questions? What if there's read-back? Give me a break here."

I didn't complain very much, but the other thing that they initiated you with: they would send pro pers to the newer judges. I had done pro pers before in Compton, but I did a number — I don't know, maybe half a dozen pro pers. You would get those. You know that the trial judge where the case was assigned — because it was all what we called direct calendar. Then when they couldn't do the trial, they would send it to 100, that would then find an available court.

So I got a number of those that I had not worked up. They come to you. You don't know the lawyers, and they try to assess what you're like, et cetera. You make a last effort at trying to settle the case, and then, "Okay, we're going to trial. That's why I'm here."

MCCREERY: How did that compare with what you saw other judges doing?

MORENO: Different judges have different techniques. Some present very intimidating facades. There was one judge who had the most jury trials — or, let me say the most trials. Because I later learned that, although his numbers were very high, like maybe mid-thirties for a year, that as soon as you swore in a jury it counted as a jury trial completed. But he would be so mean talking to the defendant on what was going to happen that they would then take the deal. He got credit for doing a trial. I remember that specific technique.

I did twenty-plus trials. I was in high-medium range in terms of trials. But I remember a more experienced judge said, “This is what’s happening. They’re not really doing the trials. They’re settling them after they swear in the jury.” [Laughter]

My philosophy was I liked the trials. I told my courtroom clerk, “You’re a reflection of me. Don’t give the lawyers a hard time. If we get a case, we’re going to do the trial.”

We tried to get along with everyone, and as I said, the criminal bar was much more collegial than the civil bar because you had to work with them every day. And you meet other public defenders. It’s a big courthouse, but the way they had these teams set up — and there must have been eight courtrooms per floor — you’d know the other lawyers who regularly practiced on that floor.

MCCREERY: What was the quality of the advocacy you saw on both sides?

MORENO: I’d say it was very good, for the most part. Some personalities that you got used to handling, but overall they’re in court all the time and they know the numbers, the codes and all that. A few that you didn’t really want to have in your courtroom to deal with, but you’d get over it. It was nice. I really enjoyed doing criminal cases on the fifteenth floor.

MCCREERY: You had done a fair number before in other settings, but perhaps you were seeing more, certainly, serious felonies and other kinds of cases?

MORENO: Oh, yes. A lot of homicides, yes. Gang cases going to trial. But one notable thing, and I think this is in the *Daily Journal* profile, is I did a lot of court trials. Court trials happen when — it’s like a slow plea. A lawyer does not have complete control over the client. They know that their client is going to lose.

They talk to the D.A., saying, “Let’s do a court trial this time, go through the whole thing. We’ll do it in front of Moreno.” The defense knew that I was not going to hammer them, and the D.A. pretty much knew that I’d find him guilty. They’re pleading guilty, but I’m getting all the facts, and they make a record.

MCCREERY: But this started fairly early on for you?

MORENO: Fairly early. Oh, yes. Because my reputation preceded me on this. I had good calendar-management skills. I remember telling the *Daily Journal* this, and that's what I said. But I did, I don't know — I don't have a number at hand, but quite a few. In fact, when I was going to leave the superior court to go to the federal court, I had a lineup of court trials to do. That delayed me a little bit. I was very proud of that, that they would feel comfortable.

Part of it is, as I explained, the rationale is they can't control their client. The client wants a trial, so they get their trial. Almost always, the conclusion is pre-ordained, but I did find a number — I don't know how many — a small number not guilty or I found them guilty of lesser included offenses.

I remember the D.A. looked at me when I found someone not guilty. This was on receiving stolen property. I said, "It's not there. I just don't — if the burden is beyond a reasonable doubt, there is something — this is a weak case. Not guilty. Hey. I call it as I see it." [Laughter]

Then you never know what the advocates are — are they just advocating, being advocates and shooting for the result they think they want? But I think they know, most of the time, it's kind of hinky case.

I remember one case, again, a murder case. I remember the D.A. — she's also now a judge — and I forget the defense lawyer. But someone was killed in a bizarre kind of shootout of some sort, and the facts were all over the place. Then the victim's family were in the audience. So I hear the case. It's maybe a two-day case, and I said, "What's your theory? Where did the bullet come from? Who done it?" kind of thing.

They looked at me. "This is the case." Again, they were doing it for the family. But when I said, "I just don't think there's enough evidence here. There's no theory. No proof that this guy was the shooter. It could have been any number of people." The family was very upset, but you have to do that.

Another case I had, *Vega*. It turns out — he was a third-striker, possession of drugs for sale. Supposedly he threw a bag up on a roof, a low-lying roof, when the cops were approaching. The whole neighborhood comes in to urge that, "He's changed. He's not a gang member. Blah, blah, blah." He had a couple of robberies, maybe some others. He wasn't one that —

We had a number of factors we would look at in term of striking a strike. We did have that discretion. I forget the name of the case that Justice

Werdegarr wrote,⁵ but we had that discretion. I said, “I can’t, in principle, reduce it. It’s unfortunate. He may have changed.” So I give the twenty-five to life, maybe plus something. Later it turns out that the officers involved were part of what later became known as the Rampart scandal here in Los Angeles P.D., planting drugs. It was one of the principals in that. Then his conviction was later set aside or he was commuted or something, but you just don’t know those things.

I remember another case where the officer said *x* but contemporaneous reports said *y* in terms of advising Miranda rights and so forth, some important step in the process. You look at the witness. You look at what they wrote. So I excluded the confession. That’s all they had, and, snap, out you go. So I did the right thing, but they did find whatever it was that he admitted to doing. But without that the prosecution was unable to proceed.

Some of those — I often say — people say, “Isn’t it difficult to hear a case and decide which way it should go?”

I always say, “You know, I don’t stress over that because if I see a weak case or I’m having difficulty — if it’s proof beyond a reasonable doubt, maybe they did it, maybe they didn’t — ” So I really believed in that. I had a high standard or a low standard of reasonable doubt, however you want to look at it. The D.A. knew that. I’d say, “I’m not convinced beyond a reasonable doubt.” I always hung my hat on that. “There’s something not there that satisfies me to that level of certitude that a person is guilty.”

MCCREERY: Even though you’re making a solo decision, you’re objectifying it in a way that follows the law?

MORENO: Yes, right. The other thing that I would do is I always explained the rationale for my ruling. I remember — here’s another one — they stipulated to me on an attempted murder case. I think the defense thought I would give him an ADW, assault with a deadly weapon. But I looked at the instructions for attempted murder and intent and all that, and I just went down through the instructions, and I explained.

In these cases, you might take a short recess, gather your thoughts and come right out. It’s not like you do it the next day. I said, “I’m going to go through the elements of attempted murder and how what I conclude the facts show in this case. Circumstantial evidence to prove intent. But you’re

⁵ *People v. Superior Court (Romero)*, 13 Cal. 4th 497 (1996).

firing five or six times at a person who's within range. There's some enmity between you, some kind of motive."

Right down the line. The defense probably said, "Oh, my God. What did I agree to?" He probably thought he had a better chance with a jury. But I said, "They've proven each of these elements to me beyond a reasonable doubt."

So you get some really interesting cases, some pro pers as I mentioned earlier, some crazy cases, where you have to be patient and not get into the fray of giving too much advice to the pro per. You have to be very careful.

I'd say, "You pro pers, you know how to file every conceivable motion. You know how to exercise your rights, and that results in a significant delay. But you don't know how to do a trial. What do you know about how to pick a jury, about cross-examination, about preparing jury instructions?" I'd say the whole thing. "You're going to be at sea, and I can't help you."

When it gets to the defense, they rest. They don't know what to do. One of the reasons why they would do it was to get special privileges at the jail. They get a cell by themselves. They get library privileges. They get a runner that they can hire to check the docket, do whatever, subpoena witnesses. But it's all kind of a sham. I hate to say that, but —

So anyway, the diet of cases on the superior court was just pretty amazing. You just never knew who was going to walk into your courtroom.

MCCREERY: Say a bit more about your approach to sentencing and how much judicial discretion you had.

MORENO: I guess I'm a rule follower, and I was always good about making a record so that it would be airtight. Of course, if you went midterm you didn't have to really say anything. But if you were going to aggravate or mitigate the sentence, you had to look at the rules and cite those.

I don't know in how many instances I actually aggravated a sentence, maybe a few times. But whatever I was doing, I would always have the rules in front of me and tie the facts to the rule. It's pretty simple to do. But I always tried to — in federal court they had acceptance of responsibility, minus three points on the scale. We might have had something similar on mitigation, acceptance of responsibility. I don't know. They didn't assign any numerical significance to it, but it was something you could take into account. Early disposition.

I would say 90 or 95 percent of the criminal cases are settled by way of the plea. As long as the plea arrangement was within the bounds of conscientiousness, I'd go along with it. I think most judges would. So they would come up with a sentence, a recommendation, and I'd say, "That sounds fine. Move the case out."

So there was a focus on clearing your calendar in that sense. I never really questioned why a D.A. might be more lenient in one case versus the other. Usually they were more adamant about a stiffer sentence, certainly after trial. But I always felt that they both knew their case better than I did, so as long as they told me about — I could read in the probation report or something, get some facts, then I'd go along with the deal.

One other notable case I should mention. I did a trial involving a shooting at an inhabited dwelling, a third-striker. I gave him, I think, twenty-five to life. A motion for a new trial. The D.A. had not disclosed a prior incident involving the victim making false accusations against the defendant, so that was material.

I still remember the D.A. She was incompetent. She never did any kind of investigation. I remember telling the clerk, "Call this number. Give them this D.R. number⁶ and see if you can get the report of the earlier incident." She calls and she gets the information. They present the information, and we get a report that shows there was that enmity between these two people. I said, "That might have made a difference because it was more like a she-said, he-said kind of deal."

That's the only time I've ever granted a new trial. A new trial. They disposed of it somehow. That public defender is now a superior court judge, and he always says, "You got me a new trial." I say, "I remember the case."

Then I also believe that criminality had a strong correlation with age. I would always point that out to them. Especially as they got to be around thirty, I'd give a little standard speech. "You're too old for this. You're no longer eighteen, nineteen, or twenty, hanging out with these guys. You've got to think about how you want to spend the rest of your life because these things, these predicate strikes, are going to really send you to prison for the rest of your life." I'd try to talk to them. "It's not worth it."

⁶ Department Reference number.

There was one other thing. I was one of the few if not the only department that would do in-custody weddings. Hey, I'm just saying. And I would get them from other courts.

MCCREERY: How did it start?

MORENO: I had no objection to it. I felt that it was actually remedial, that, one, they already had a relationship with the spouse. They sometimes already had kids. There's always the prospect, although very slim, of conjugal visits. But this was the only family they had. People had given up on them.

I would get them from other courts. I remember one. This guy Luis Carrillo came to me. He said, "Would you do it?" I said, "Yes, I'll do it. Bring them in."

So they arranged to get the "body" up, the family in the audience. My bailiff was pretty cool about it because I said, "They're ordinary people. I mean, they did something bad, but this is the family." I'd say, "Let them hug, if it's okay with you." My bailiff says, "Okay, that's fine." Let the kids come up, you know? So he was very good. Some bailiffs are by-the-rules. No touching. He was fine.

My little speech to them I gave several times. I said, "Look, everybody has a good side and a bad side. You've done some bad things. You've been to prison, whatever. But here's your family. They see you as a dad, as a husband or partner or whatever, and hopefully they'll be waiting for you when you come out. For them, make the best of this time. Get an education, study, learn a craft, whatever you can do. And stay in touch with them because they're here today supporting you, and I'm willing to put my faith in her and in you that this will show you still have something to look forward to. Your life is not over."

Nice speech. Yes! Yes! You humanize them. I tried to do that, and they always bought into it, because in reality I really did believe that they did have a good side to them, and this was it.

I would do it, and everybody is very happy. I remember my clerk would take pictures of them. I don't know what they'd do with the pictures. They'd bring a camera, take a picture. The guy is in his jail blues, and the kids and everything. That's touching, isn't it? Yes. [Laughter]

MCCREERY: You mentioned the assignment of cases on the superior court, and I wonder what was your own experience of that?

MORENO: It was what we call a direct calendar system, so from the arraignment court — the arraignments were done in the municipal court, or the court of limited jurisdiction — I would have, I think, just pre-trials. If there was no time waiver the cases had to be heard within thirty days or forty-five days, depending if the defendant was in custody. So I think I got cases with both dates assigned already when they came to me for a pre-trial.

So I had no control over that. They would just come from the arraignment court to me, and as far as I could tell it was entirely random. I just did what I had to do in terms of resolving the cases in pre-trial or a trial. But as I mentioned, if I was able to resolve my cases and have fewer cases on my docket, then I'd end up doing trials for other departments if I was open. So it was called direct calendar. I really managed all my cases from pre-trial to trial that were assigned to me and then handled some overflow from other courts.

I remember also during that time there was an initiative statewide to manage our calendars more efficiently and not to grant continuances. The secret to good case management was to not let cases drag on, and I certainly bought on to that. There must have been other initiatives that I can't recall. Three strikes came into effect, I think, in 1994, perhaps?

MCCREERY: That's when the voters passed it.

MORENO: Yes. We all wondered how that was going to impact our dockets, more trials and so forth. I remember all of us being concerned about that, and how were we going to handle what we expected to be a heavier caseload?

But we circulated factors that could be used to reduce or "strike" a strike, so to speak. I think we were doing that even before Justice Werdegar's decision, exercising discretion to do that. The D.A. in Los Angeles, who I think was Steve Cooley at the time, had a very practical approach to that that foreshadowed the reforms that were later made, that the third felony had to be a serious or violent felony, not a — the case that was very famous was the pizza case, where someone got twenty-five to life.

MCCREERY: You said that the California Supreme Court decision then, in 1996 I guess it was, was welcome?

MORENO: It legitimized what we were sort of already doing, with the consent of the D.A., actually.

So anyway, I enjoyed my time on the superior court, even though it was all criminal. But as I mentioned, we got along. My staff was good. The defense lawyers were good. We resolved cases expeditiously, and I think justice was done overall. So it was a very pleasant experience.

One thing that I drew from that that later had an impact on my tenure on the Supreme Court was that I learned a lot about how to handle difficult defendants. I mentioned pro pers. I learned a lot about restraints, and that later came into play on the Supreme Court, where I decided on a case — I can't remember the case, but — that dealt with a sheriff's deputy standing next to the defendant as he was testifying on the witness stand and what impact that would have on the jury [*People v. Hernandez*]. Maybe one person joined me on that, maybe Kennard.

But there were things like that that I was very conscious of on the Supreme Court that — I know my colleagues, with a couple of exceptions, didn't have that kind of experience. Of course, we decided that case right after a judge, I think in Fresno, had been attacked and stabbed by a defendant who was sitting in the witness stand. He reached over and *boom*!

Another case I had on the superior court involved a recalcitrant defendant, represented by counsel, who didn't want to come out of lockup. You can say, "Do it the hard way? Do it the easy way?" Do you have the bailiff communicate with him and then transmit that to the court? Or his lawyer say why he doesn't want to come out? What do you do? Are you just going to put the case over?

What I did in real time was I just walked back to the lockup, brought the reporter with me, and said, "I'm not going to mess around. We're just going to take care of business. We're going to put this on the record." We took the record to him. [Laughter]

When I was on the Supreme Court we had a case very similar. I actually wrote a memo — and I can go into more detail when we talk about the Supreme Court — about granting review. How do you handle that situation? One of the recommendations was, "This doesn't happen that often. We don't have to opine for that."

I said, "No, no. This does happen a lot and particularly in the L.A. Superior Court, where 25 to 30 percent of the people in custody had mental

issues, even if they're pro pers and also represented by counsel. The judge has to be able to make a quick decision on the spot as to what to do."

So many of the cases we handled had a mental health component. Sheriff Baca, at the time, often said that he operates the largest mental facility in the state, if not the country. So I became acutely aware of those kind-of-unique circumstances where people have some real issues in appearing in court.

I think what I took mostly — the thing that I remember now — are more the unique, difficult cases that would come before us on a routine basis. And how do you deal with those unique situations? What kind of guidance do the trial judges need in order to deal with those situations?

The factual basis for a plea. Another case where I wrote an opinion, I think in *People v. Holmes*, the law was unclear as to what kinds of admissions you need from a defendant to accept his plea. He has to admit that he did certain things, committing the elements of an offense.

In federal court it's much more detailed, an extensive taking of a plea. You see that right now in what's going on in the Manafort and Cohen pleas. The feds are very detailed.

California's guidelines are kind of loose. I said, "I want to know whether I was doing it right," and I thought the trial judges should have some guidance from the Supreme Court so when I was on the Court, I said, "It's like, is this a good enough factual basis for the plea? What are our guidelines?"

One of the reasons why I think trial court experience is recommended — I won't say it's essential, but it's recommended for the appellate courts — is that you see these everyday problems, and sometimes it's not quite clear what trial judges should do.

MCCREERY: Yes, it's a fascinating arc of real-world experience and how it's of use to the appellate process later on. I wonder, as you think back on your superior court years, which other judges — whether in positions of responsibility or not administratively — which other judges there were influential to you in any way?

MORENO: Yes. One judge from Compton, Morris Jones — we both served in the municipal court — he was a very prominent criminal defense lawyer before he got appointed. But he had a nice calm demeanor and handled

death penalty cases as a lawyer and as a judge, so it was nice just to chat with him. Another judge, Ed Ferns, was much more experienced in criminal law than I was. He was a former D.A. He also had a very practical way about him. It was nice to talk to him.

I trained a number of judges who came directly from civil practice. Elihu Berle, who is now in the complex courts. A couple of my colleagues here. We were just talking the other day. Judge McCoy, who later became presiding judge in L.A., and Carl West, who is also at JAMS. They remember me — hard to believe — as one who knew a lot about criminal law and who had a good practical sense about sentencing and managing a criminal courtroom, one who had the answers to some problems.

The nice thing about that court — and I was talking to someone just the other day about the setup in the civil court here — in the Criminal Courts Building we had — maybe there were, one, two, three, four — six courtrooms and a hallway behind the courtrooms that were shared. So you had a buddy court, by assignment, and Morris Jones was one of my buddy courts and later Elihu Berle in the department next to me. McCoy was down the hall. So it was easy to really just walk into someone else's chambers and chat. I think it's very important for judges to have that facility — have coffee, just chat about what's going on.

But I found out just the other day that in the civil courthouse there isn't that chance for interplay. There's maybe one court, one judge's chambers adjoining, that you can walk over. If you don't like that person or they don't like you [Laughter], you have no one to talk to. Then, to get to see other judges, you have to go through the courtroom, out into the public hallways, and go somewhere. I think whoever designs courtrooms should keep that in mind, that you need that ability just to chat and have that back-door ability to just meet with other judges.

As I look back, I really liked that setup, where I met the other judges. You could just go over there. They could come and ask you a question. I remember a new civil judge, who is now a very prominent judge, ran some kind of criminal procedural issue by me, as to what he did. He said, "Let me ask you about this."

So he ran it by me, and I said, "That's fine. You didn't do anything that was — but next time come to me first." [Laughter] Then I concluded by saying — and I still use this term — I use it with my clerks, my courtroom

deputies. I said, “There’s a term we use in the law to correct clerical errors like this one. It’s called *nunc pro tunc*.”

“So never feel like I’m going to get mad. Maybe your supervisor will get mad at you. I’m not going to get mad at you because, believe me, most of the things that we do are correctable. It’s not like somebody is going to be executed or something dire is going to happen. We’ve done something. We’ve made an order. But if for some reason it’s the wrong order or the language is wrong, don’t sweat it. We can always correct it *nunc pro tunc*.”

I still use that to this day. It should apply only to minor errors, but what’s minor or major is subject to interpretation. So my feeling is you can always correct something, as long as it hasn’t been implemented or executed. [Laughter]

MCCREERY: I appreciate very much your thoughts about how interaction among judges is important in a job where, really, they’re fairly autonomous on a day-to-day basis.

MORENO: Yes. A lot of people say, “Oh, judges. It’s an isolating or isolated experience.”

I’ve never really felt that, principally because of that observation, but also because a lot of the interaction that a judge chooses to have or not have is really self-imposed. My sense is that, within limitations, you can associate with lawyers and go to bar associations. They’re happy to have you there, and you don’t have to be this remote Solomon-like figure, an oracle or whatever, that people have to pay homage to or that they feel intimidated by. I’ve always felt, both with lawyers and other judges, that there’s no reason to be isolated.

I even feel that way about being on the Supreme Court. You can be approachable, and it’s all a matter of how you present yourself.

MCCREERY: How common was it to have media interaction in connection with your superior court judging?

MORENO: I know that was also a subject of discussion, maybe because of the Simpson case, with — I forget the rule, 974 or whatever it is, when they seek permission. I was one who always fostered the media in the courtroom, as long as they adhered to certain reasonable restrictions, like not showing faces of the jurors — being unobtrusive, basically. I don’t think I

ever closed the courtroom for anything, and I was very open to having the media in the courtroom.

Of course, I never really got burned by a mistake in an account of what I did or said or anything like that. I don't remember how many times I had the media in my court, but they were always welcome to come in.

MCCREERY: Let me ask you to summarize your superior court years and lead us into the inklings that you were starting to get that there might be a federal appointment.

MORENO: Yes. My recollection is that when I was prompted by Judge Paez to look into a federal appointment, that I moved forward on that. I don't know how public that became. At some point it did become public. But I remember having a lineup of court trials, bench trials, to finish up.

I had sensed that, although I enjoyed my overall experience, just in terms of the people and the cases and so forth, that I wanted to go over to civil. I knew I wanted to end up in civil, for various reasons. Having done seven years of criminal in Compton and two or three years in superior court downtown, I felt, well, now I've got to move to civil. And I had a civil background, seven years of practice. I guess I thought, although I was happy, I thought that I was going to move on in some way over to superior court civil.

But then the opportunity to go to the federal court came up. I was encouraged to submit an application, both through Senator Feinstein and Senator Boxer. The way that works is there are vetting committees that each appoints, and you fill out a form. Yes, you do apply, in a sense. At that time, we had two Democratic senators and a Democratic president. I think that changed in terms of — well, no. That didn't change, but the control of the Senate, I think, was in the Republican hands.

So I went forward with that. One comment I remember from a very prominent criminal defense lawyer — it became public that — maybe I had been nominated, I think, and waiting to go through the process. He said one thing that I still quote about being a federal judge.

He approached the bench and said, "We hear you're going over there, and that's great if you become a federal judge. Do you realize that you're the only type of judge, a federal trial court judge, who can order the president to do or not do something?" [Laughter]

It all starts there, and you have the power of issuing an injunction. Again, it all starts there. You make the record, and you move on. So I always tell that to the federal judges, the enormous power that they have to be able to tell the executive what they can do.

MCCREERY: What a prospect to be wooed to the federal court, shall we say? What was the view that you took of this opportunity? Any hesitation whatsoever?

MORENO: Oh, none at all. None at all. I think a move from state court to federal court is still seen as an elevation. It's a lifetime appointment, Senate confirmed. The nice thing, though, and here's a little anecdote that you'll appreciate, knowing that I'm kind of an L.A. homeboy, and that is that the federal courthouse was literally diagonally across the street from where I was.

The first floor, when I was growing up, up until about 1965 or so, was the headquarters for the region for the post office, so 90012 always symbolized civic center-downtown L.A. I grew up in 90012, and I practiced most of my life in 90012. We're sitting in 90013 right now, so just a stone's throw away.

So in many ways I felt I'm really coming home here to a lifetime position, beautiful courtrooms. I had practiced there somewhat. Maybe 10 or 20 percent of my civil practice had been in federal court. So to me it was like really achieving a real milestone, for me — someone who had grown up literally within eyesight of where I was born, where I went to high school, where I lived, where I worked at city hall and downtown — to be in the esteemed federal court. So I was excited about that.

Going through the vetting process, having done it twice before — it was very similar but more intense. I remember as soon as my name was released, I got a call from the Department of Justice. "Can we have all the numbers and contact information for all the judges in your building?" I gave them the *Daily Journal* directory, and I said, "Call anybody you want."

I heard from my friend Ed Ferns that a local organization — it was called the California Narcotics Officers' Association — they knew him, and they said, "Who is this Moreno? Senator Feinstein has asked us to look into his background." Because Senator Feinstein is conservative on criminal issues, and so forth. So she had this group vetting me.

Then, of course, I went through the ABA process, and so forth, FBI background search, and all that — a very intense, very intrusive process. I

remember being interviewed by Senator Feinstein's committee. Judge Arthur Alarcón was the chair. I think I did well. In fact, at the conclusion of my interview, her district director approached me and said, "Look, we're going to recommend that you and two others be interviewed by Senator Feinstein."

So I remember — this is kind of [Laughter] — I don't know why I remember this. But I am an opera fan, by the way. I remember driving home from Feinstein's office in West L.A. on the 10 freeway, going east, singing part of the aria from — the "Nessun dorma" aria from Turandot.

MCCREERY: "No one sleeps."

MORENO: Yes, no one sleeps, and victory! Because I felt I had aced the interview, so to speak, so I felt very good about it.

I remember Judge Alarcón — what did he say? Somebody brought up that I had gone to Yale and Stanford. They might have asked something to the effect of, "Were you a beneficiary of affirmative action?" I said, "Sure I was." I knew that Yale had opened its doors to public high school students, Jews, and minorities. Before, there were restrictions, quotas, on Jews in particular.

Then I remember Judge Alarcón saying, "Yes, but what kind of grades did you get? And how were your test scores to get into Yale?" I said, "I had an A average, and I was in the 98th percentile on my SAT score." He said, "So you think that had an impact on you getting in?" I said, "I assume so." [Laughter] Besides being a class officer and all these other things. So he just wanted to point out that I just didn't get in because of minority status.

My interview with Senator Feinstein went quite well.

MCCREERY: Yes. Tell me about what you remember.

MORENO: I'm going to tell you about the cookie judge. I had an appointment with her, along with two others, to see her in her house next to the Presidio in San Francisco, a really nice area of town. I was going to go up there on a Saturday morning, and my wife said, "You should take her something." I said, "I'm going for a job interview, in a sense. I can't really be obsequious." [Laughter] She said, "No. Anytime you're invited to someone's house —"

"I'm not going to take her flowers."

“Take her something local.” Eagle Rock, where we lived. Okay. We had a really good Italian bakery, so the day before I bought some cookies and made sure they didn’t get stale overnight and everything else and took them. I was the first interview.

She was so delighted to get the cookies! She tells her maid, “Oh, let’s bring out the coffee. Isn’t that wonderful that Judge Moreno brought some cookies? Now we have something to offer the other people.” [Laughter]

Months later, she agrees to swear me in at the federal courthouse, which is rare. I’ve seen it a couple times. I saw Senator Boxer come down once. She proceeds to say what a wonderful person I am.

When she interviewed me, she wanted to know about, could I handle a direct calendar or the flow of a heavy caseload? I said, “Yes, I’ve managed calendars when I was on the municipal court so I know how to handle my own calendar. I have no problem with that. I have the civil background. I can do both.” I don’t think she asked me about the death penalty, but she did say, “I had the California Narcotics Officers’ Association check you out, and you were okay with that.” I didn’t say that I knew that they were asking about me.

She was very enthusiastic. My interview was, I think, on a Saturday, right? The next day is Sunday, and we go out to breakfast. My daughter, who gets up late — we come back from breakfast, and at some point she comes down and says, “Oh, Dad. Senator Feinstein called.” [Laughter] Ohhhh, it’s like the Chuck Poochigian call. I said, “You know, that could be important.”

So I called her back. It was Mother’s Day. I remember that. I called her back, and she was having Mother’s Day. She said, “I’m going to recommend” — it’s a recommendation — “to the president that you be appointed.”

I said, “Oh, Senator Feinstein.” We had been home a half an hour already, and come on! It’s funny, isn’t it? Yes.

Anyway, at my swearing in she proceeds to tell the cookie story. She said, “I’ll always remember how kind Judge Moreno was. He brought these wonderful cookies from Eagle Rock, and now I had something to serve to the other people who were coming in.” [Laughter]

MCCREERY: What about the Senate confirmation process?

MORENO: After you're vetted and they set a date for your confirmation hearing, it's just amazing. You get a couple of days' notice that it *may* happen, not that it's *going* to happen. It's a nerve-wracking experience because you don't know whether it's a go or no-go.

I happened to be — was I at the office? Anyway, it was November 11. Maybe I went in to the office on Veterans Day or something, or maybe I got the call at home to say, "You're on for tomorrow." [Laughter] This was, what, 1997. And I think I got some calls in the morning: "Maybe you're on." Finally at eleven o'clock, "You *are* on. Senator Hatch's investigator is completing — and you're going to be on."

I drive down to the office. I call Cheap Tickets or whatever in the Valley. In those days you had to go pick up tickets. There was no internet kind of thing where you could just — at least I didn't have that capability of just getting tickets printed at home, et cetera. We got tickets for everybody in the family. My wife and my two kids were going to the whole thing. We're literally just throwing things in the suitcases to get a three o'clock flight. I've never been in such a hurry. We rushed to the airport, rented a room, and so forth.

Then the next day, you meet with the other people who are on calendar for that afternoon. They go over some of the questions that may be asked. You've already been prepped, by the way. Before that they send you a binder of issues and cases and what's likely to come up in a Senate confirmation. They almost over-prepare you. So you go over that once again, and then you go before the Senate Judiciary Committee, and there are maybe five or six senators up there. Fortunately, Senator Feinstein was up there. Orrin Hatch was up there. This is where I told you that Senator Hatch said, "This is one of the good ones," something to that effect.

But the funny thing about the confirmation hearing itself was I was on the end. Judge Silverman, who was nominated to the Ninth Circuit; someone to the Court of International Trade; and a couple of other district court judges. There were five of us up there, but I was on the end.

The senators would ask these questions, just general things about, "Should federal courts be supervising prisons, in terms of constitutional concerns?" Questions about independence of the judiciary and — anyway, for the first three or four questions, they always started on my end. Then the others would comment and say, "I agree with Judge Moreno. Dah, dah,

dah, dah, dah.” Finally, one of the senators said, “I think we ought to start at the other end,” because they were always starting with me. I said, okay!

Then, they asked me about three strikes, because I was a three-strike — and I said, “We’re moving along, and we’re working out the judges’ discretion and so forth.” The answers were all routine, and the senators don’t really — they’re not really that prepared, to begin with.

Orrin Hatch says something. “We’re going to try to get you — ” I forget what they called it, the term, but, “ — on calendar for tomorrow.” That’s unheard of usually. They were going to vote right then and there, send us to the Senate, because I think they were going to go into recess — maybe come back for a little — but otherwise they were going on holiday, so they were going to try to rush us through. I remember calling the administrator in the superior court and saying, “Hey look, I may come back as a federal judge.” [Laughter]

It turns out only Silverman — he’s now on the Ninth Circuit out of Arizona — and maybe one other person — they squeezed them in, and they actually got a full vote in the Senate the next day. Incredible. The typical thing is you have your hearing. They then have a business meeting, where they actually vote, and then you go to the floor. They accelerated the process for two people.

One of things that held me up was, at the end of the day — I think we were planning on spending the next couple of days in D.C. as a family. At the end of the day, Senator Ashcroft — he of the attorney general fame — who had it for federal judge nominees because he was nominated for a federal district court and was blocked by the Senate Judiciary Committee so he wanted to make it difficult. So he submitted ten or twelve questions that he wanted me to answer, and to answer them by the next day. So I told my handler from the Department of Justice, “Okay.” And I told my family, “I’ve got to answer these questions.”

I didn’t have a laptop. I said, “I’m going to write out all the answers, and I’ll submit them to you. Would you do me the favor of typing them out and sending them in?” And they said okay. I spent that evening, at least a couple of hours, answering those questions. One was about three strikes, but one of them that I still remember to this day was, “What is the worst decision?” “What is your favorite Supreme Court decision?” and, “Who is your favorite justice?”

I think I said something to the effect of *Dred Scott* or *Plessy v. Ferguson*, one of those. *Brown v. Topeka*. I said, “A landmark case.” Even though it was a Republican-controlled Senate and this was a Republican asking me the question, “Oh, I’ll just tell him the truth.”

But the one question that I thought that, in retrospect, might have been looked on with disfavor was, “Who’s your favorite justice?” I said, “David Souter,” who was kind of a Republican turncoat. But I said because he had been an attorney general; he had been on the New Hampshire state supreme court; and he was non-ideological. He didn’t come predisposed to any case. Now, of course, conservatives see him as a turncoat. [Laughter]

But I thought it was a good answer. I said I liked that you can’t really predict what these judges are necessarily going to do. But the fact that he had come from the state system I really liked as well. He wasn’t an academic, per se. He was someone who worked his way up. Anyway, the questions went through, and then I don’t think we got through the business meeting part until January.

MCCREERY: Were Senator Ashcroft’s extra questions directed only at you — or were the other candidates — ?

MORENO: I don’t know. They were probably directed to all of them, but I know one of them was tailored to me because it dealt with three strikes. But that was the only one that — yes. So I’ve never really felt good about that because I had a chance of being confirmed the next day without any hassle.

So everything was deferred until January and voted on. Then it was a matter of when am I actually going to get confirmed? That happened pretty quickly, though, then, I think because Hatch was cooperating with Senator Feinstein. I had had the experience of Judge Paez waiting — it was for the Ninth Circuit he waited four years to get confirmed. I don’t think he had much trouble for the district court.

But the nice thing that Senator Feinstein did for me — in fact, when she swore me in in April — I had already been sworn in by Judge Terry Hatter, who said, “Isn’t it remarkable that — ” I think he was the first African-American chief judge swearing in — not the first Latino, but swearing in someone like me, “ — who was a sea change in the court,” or something to that effect.

But Senator Feinstein — I wonder where this thing is — she had the manual tally of all the votes on the floor. Actually it's in pencil, and it's a sheet like this, and it was ninety-six to nothing. So I can say I was unanimously confirmed, and the reason the other four — they were absent. So there was an actual vote. It wasn't a voice vote, like it was for the ambassadorship, a voice vote. But here they actually recorded their votes in pencil. That's pretty nice.

MCCREERY: Congratulations.

MORENO: Thank you. Hey, so I can say I was unanimously confirmed for the district court and confirmed for the ambassadorship by a voice vote.

MCCREERY: Justice Moreno, you've just described being brought into the federal trial court system. I wonder, what was the transition part of the process? You mentioned you had some cases to finish up and see through.

MORENO: Yes. The transition was quite smooth. Again, I was just moving across the street, essentially. I had my pick of chambers, which had a full fireplace so it was nice. I just remember doing the basic things: setting up my chambers and arranging my cases.

The way that the federal court distributed cases for a new judge was there was a formula, where the current judges could give a certain number of cases to the new judges, something to the effect of — they were categorized by patent cases, other intellectual property — this is all the civil cases — but it was always rumored that — well, one, you couldn't send a case over that you had completed substantial work on. But it was rumored that the judges would send you their dogs. [Laughter] By "dogs" I mean the difficult cases they didn't want to handle. What was I to know?

So I get boxes of cases that come over, and most of them were fairly routine, not anything difficult. But there were a couple of cases I got that I should not have received. I think they took advantage of me. [Laughter] One case, which eventually became my first trial — I don't know, it had some five or six boxes. The trial judge, who I will not mention, had decided several motions for summary judgment, and the case was very active, big firms, involving six patents, patent infringement and patent invalidity issues, about which — I had never really done any patent loss.

I got another case, another big case — again, many boxes — involving defense contracts and so forth that, again, the judge had done substantial

work on. So I felt this was just part of the initiation ritual, just like on the superior court. And I didn't get a lot of patent cases because you were limited. There's some control over that, but in terms of the discretion as to what cases to send over, I think there was some abuse there. [Laughter]

But I began calling cases. Oh, here's one thing I did, one thing that I did and I've always recommended to new judges in federal court. "Do not continue any case you send to me because you think I need time to get up to speed." In other words, don't put a case over so that I can review it. Just keep your dates. I would rather do the up-front rush of cases and handle them myself rather than deferring the judgment day, so to speak.

I think I sent — maybe I told my clerk, "Do not continue any case." Because that was also routinely done. "The case is being transferred to Judge Moreno. We'll give you a new date." I said "No. Just send them over." So we had a lot of cases in the beginning.

MCCREERY: How did you come to that decision, though, not knowing what all was coming?

MORENO: Just faith. And I'd rather deal with it now rather than later because, again, my philosophy was no continuances. My calendar-management brain said the continuance just leads to something else.

The other thing was that I wouldn't have anything to do if they put it over. I sat around. I think I was sworn in in February. I didn't have my first trial until June. So I said, "When do you work around here? I'm here. I'm reading files." I was used to being in trial and just moving cases along. So that was probably the principal motivation, that I just wanted to start handling cases right away.

I remember bringing the lawyers on this big case, and I said, "Are you going to settle this case?"

"No. No. We're really going to trial." I said, "Really? Okay, here's your date." I gave them a June trial date. I said, "I'm not going to continue this case." [Laughter] They said they were ready. They had a few motions. We decided the motions, and then we just went forward. This was when I learned that there had been other summary judgment motions filed and decided by the trial judge, and I wondered why he sent this case over. [Laughter]

So anyway, I was anxious to get into the mix of things. Then the criminal cases would just come fresh. They would come from the arraignment

court, they were assigned to me, and I would just deal with them. I shadowed a number of judges for a couple of hours to find out how they handled their calendars, and I handled my calendar accordingly.

My sense always was give the lawyers a lot of time to try cases; have a fixed time when you do things; be on time; very structured so that everyone is happy. My staff is happy. They know what to expect, and the lawyers know what to expect.

Because I always feel that predictability of what the judge is going to do should not be an issue. The judge should be very predictable in terms of his schedule, how he treats people, how he treats his staff. Because I learned early on that people have other lives other than being in court, so break at noon, start at one-thirty, and quit at four-thirty. And you start on time at nine o'clock.

I had my civil motions on Mondays at nine o'clock, and those would be done by eleven. I would do all my criminal sentencings at one-thirty, and then I had trial time from Tuesday to Friday. So if you came into my court, you were going to get full days — and lawyers were shocked that they were going to be moving along quite expeditiously.

MCCREERY: I wonder how this compared to what other judges there were doing?

MORENO: There are all kinds. [Laughter] We also shared statistics there and also aging. Some judges did not manage their calendars very well. Some did — some really, by hook or by crook or by just being stern or mean or rocket docket — they were able to move their cases quite fast.

I learned quite quickly that I had to resolve thirty cases a month to stay afloat. Because we were getting thirty cases in, I had to get thirty cases out. So it was always my target to settle cases, issue orders to show cause for a dismissal. What's going on in this case? A lot of time the case will be settled, and they don't let you know. It's still on your docket.

I had externs, and I had them manually go through every single case on my docket, along with the assistance of the court deputy. I recommend this to federal judges. It's probably all electronic now, but I like to see the file, and the file had to be up to date. There had to be a future date. If there wasn't a future date, what's the status? I'd send out orders to show cause.

One month — maybe the first month or second month — we resolved fifty cases, which is a lot.

They would come back, and we'd find out it's been dismissed. "Okay. Thank you for not letting us know." Off the docket, off the docket, off the docket.

I also trained my courtroom deputy, who was new but a hard worker. I said, "Don't ever accept anything that a lawyer tells you verbally on the status of a case. Like, 'Oh, we're in the process of settling it.'"

"You're still on for next week." [Laughter] She'd say, "Send me a stipulation that it's been dismissed. And no stipulation to continue. The judge doesn't accept those." [Laughter]

So you put their feet to the fire. "You have a firm trial date." There has to be something extraordinary. That's the attitude I had — in a nice way. I'm not being mean or anything. But I was very hands-on.

Again, I implemented the same system that I had in Compton and in superior court. I knew exactly how many cases I had set for trial. I would have my clerk call — we'd have pre-trial conferences, very extensive — where I deliberately — and this is maybe ten days or a week before trial. They had to put in a lot of work to show me they were ready to go. Instructions, statement to the jury, motions *in limine*, anything that — I can't remember the litany of things I required to have — jury instructions — to make them work to really get ready for trial. Because they were going to trial.

Again, lawyers facing that prospect would then start to see the light with their opposing counsel and say, "We're going to trial. We've got to get ready for trial."

There's a phrase that I use here, actually, about encouraging people to settle and that the best time to settle a case is early in the process. I mean, do some discovery. Ninety-eight percent of the cases settle anyway. The lawyers have to do their thing. But in mediation I say, "Litigation is like Medicare. Ninety percent of the expense is incurred in the last two months of life." [Laughter]

Everybody looks like this! I've seen teams of lawyers work on a case. They're spending a lot of money to get ready for a trial, and they'll even settle at that point. So in order to avoid that — I say that, but I knew, practically speaking, as a district court judge I made them work to be ready at the pre-trial conference to go to trial the following week. I think lawyers,

the real trial lawyers, like that, especially if a case just had to be tried. I had no hesitation about going to trial.

I remember talking to Judge Rafeedie, who is a very stern, no sidebars, no motions *in limine*-type judge, very intimidating. You either loved him or you hated him. But his clerk used to call me “Little Rafeedie,” not because — I was more personable than he was by a long shot — but because I had my hands on my cases.

I found that civil lawyers are not used to that, and many of them, I learned then — this is over twenty years ago — they don’t get much civil trial experience, even partners in big firms. They just don’t have that comfort level of walking around — well, you don’t walk around in federal court, but of just being able to lay a foundation for an exhibit. They don’t get that kind of experience anymore.

So coming, as I did, from the city attorney’s office and from the criminal courts, this was the way I expected lawyers to be prepared and to conduct themselves in court. I was surprised that even the U.S. attorneys did not have that comfort level because they didn’t get enough trial experience. One lawyer walked into the well, and I learned that as a city attorney. You don’t do that.

I would say, “All right, counsel. You know that you’re not supposed to walk into the well.” They didn’t know. Then I would explain that the reason for that is, in the days of medieval times you couldn’t get that close to the judge. You couldn’t get within sword’s length of the judge. [Laughter] You had to stay back. Things like that.

The other thing is that at the pre-trial conference they would say, “Your honor, in terms of the witnesses do you think we’ll get to testimony in the first day?” I said, “Counsel, you’re going to be making your opening statement at ten-thirty. I’m going to voir dire the jury.”

They would submit questions to me. There is no voir dire by lawyers, and I really did a good job, I think, of covering it. I did the six-pack, the way I used to do it. And within civil cases, I forget how many peremptories, six and three? I mean, hardly any. And you didn’t have to have twelve on the jury. You could have less than twelve. I was in heaven, really, that I could have a jury of less than twelve — in a civil case — and be able to pick a jury out of the first eighteen.

I said, "Jury selection will take, at most, forty-five minutes or so. You'll be making your opening statement." Then I remember one lawyer asked my clerk, on another case. We're just moving along, and he says, "Doesn't the judge have anything else to do?" [Laughter] She really picked up on my attitude. She goes, "Counsel, the judge is focusing only on your case. There's nothing else on his mind." [Laughter]

I mean, if they had a good reason and the case was going long and they wanted to finish at three, I said, "Just let me know in advance. But be prepared. We're going to go until four-thirty."

Similarly, if at noon — and this may sound too strict, but I did it for my staff — they would say, "Your honor, we know it's the noon hour, but I just have a few more questions." I'd say, "Counsel, you can take all the time you want — at one-thirty. Because if you ask a question, they're going to want to redirect. Then you're going to want to re-cross, et cetera. Your two minutes is going to be twenty minutes." I said, "My staff has things to do."

The same thing at four-twenty-five or so. And maybe if it was an out-of-state witness. Maybe. But, "Your honor, I just have a few more questions. Can we go beyond four-thirty?"

The same thing with jurors. I'd say, "I know you've been in other courts where you don't start on time." I said, "We start on time." And I would bring the jurors in at nine o'clock, whether they were all there or not, and we'd just wait for the late juror. They were never late again.

All they want — it's almost like managing kids, in a sense. You just want them to know what to expect and to know that the rules are the rules — in a nice way. You don't chew anybody out. But people want to be good jurors. They want to be good lawyers. They want to be on time, generally. So they'll comply as soon as they realize that the trains are starting on time. That was my philosophy. I think that's why I enjoyed the trial court so much.

People ask, "What did you enjoy most?" I say I enjoyed the district court probably the most, just in terms of contact with people, having cases before me where there was some suspense, a little juror misconduct here and there that you had to deal with. [Laughter] So it was fun, and it's like being a director of a play.

But on the Supreme Court I obviously had more impact. But you are just reviewing the record. You're deciding important cases, but in terms of

enjoyment it's the trial court, where in a sense I felt more engaged, in one way, just because everything is happening and you're hands-on in managing your calendar, whereas on the Supreme Court your calendar is managed for you, basically.

MCCREERY: Yes, precisely. What did you look for in selecting members of your staff?

MORENO: First and foremost, one, ability just to get along with me and with lawyers. I told my courtroom deputy, who was new — she was a trainee, and this was her first courtroom position — I told her, and most judges will tell their staff this, “You are a reflection of me. Courtroom deputies have a bad reputation for being — ” I don't know if I used the word “Nazis,” because she was German. [Laughter] — I said, “ — of having bad reputations. I don't want you to project that.”

I said — this is my quote — I said, “We are a user-friendly court. So don't be standoffish if a lawyer asks a question, unless they're very rude or something. But you try to help them.” I said, “They're afraid of you and even more afraid of me. So from that standpoint, you help them and ease them along. They're confused, or they want to know how we do things.”

The same thing with the court reporter. We got along great. She was very friendly and didn't need any type of coaching in that respect. I remember one instance — she was very outgoing, and she really bought in to my system. We had a witness on the stand in a trial who couldn't read a document. She said, “Oh, I'm sorry. I didn't bring my glasses.” [Laughter]

So my courtroom deputy literally gets up, walks over, takes off her glasses, hands her glasses to the witness. I guess they were reading glasses. The witness says, “Oh, that's much better.” As my deputy was walking back to her seat, which was right in front of me, she looks at the jury and says, “We are a user-friendly courtroom.” [Laughter]

It was a lot of fun, yes. No, I enjoyed it. I was prepared on the motions. I was not a “chatty” court, although I always made sure I was making a record. I know some judges, believe it or not, cannot make a decision. They need to hem and haw and go back and forth. They go back and talk to their law clerks. They come back out. They hear some more, and they go back and chat some more. They come back.

I would issue a tentative — not a written tentative — and I would always let the losing side know. I would say, “I’m inclined — my tentative is such-and-such. I’ll hear from you first,” the losing party, and they would try to persuade me otherwise. Then I’d hear from the other side, and I almost always would stick with my tentative, probably 99 percent of the time. I would say, “Let me give it some more thought. You’ve raised some good issues.” But I would try to take care of it right away.

MCCREERY: Say a bit more about the range of cases. You mentioned trademark, patents, and other things that you maybe hadn’t worked on so much.

MORENO: Yes. You know, the nice thing about the Central District of California caseload is it’s very diverse, unlike some other courts like the Southern District, San Diego, which is just overloaded with immigration and criminal cases, very little civil.

We had here a lot of IP cases, patent cases — for which now there’s a special — I think two or three federal judges are part of a — it was a pilot program originally. I think it’s no longer a pilot program, but they specialize in handling patent cases, along with other cases. They get some credit for doing that.

But patent, trademark, trade secrets, copyright, big defense contract cases, entertainment cases out of Hollywood, the entertainment business, big drug cases, a small diet of immigration cases, but not so it overloads your docket. From my perspective it had a good diversity of cases, really, to make the work more interesting.

When I was there the cases came in pretty fast, and you really had to work on resolving cases and set a target for moving cases along so that you wouldn’t be overwhelmed. My caseload always hovered around 300, which was pretty much manageable. But there were some judges who had 500, even 600 cases. These are just civil cases. So you wondered about that. [Laughter]

And there’s no ninety-day rule like there is in state court, where once a matter is submitted the court has to decide the case. Federal judges can take whatever time they feel they need to decide a case. That part — I really wanted to know why I had aging cases if I had any and, again, would review those and find out why this was taking — why it’s not settling. There had to be a good reason why the case was sitting around.

MCCREERY: You mentioned a few minutes ago the U.S. attorney's office, and I wonder if you could talk a little bit about the representation that you were seeing in court.

MORENO: Yes. It varied, the newer lawyers, obviously, were a bit green, and they didn't have that, what I call comfort level, in the courtroom. And also, I think overall the training is to be very formal and deferential to the court. That's just a tradition. It's probably true across the country. Generally, in terms of intellectual capacity, I would say, and knowledge of the law, I think it's better even than the D.A.'s office. It's kind of a higher level of practice.

But in terms of the actual courtroom experience, they just don't get it so they don't have the comfort level that a D.A. would have. And the cases are much more complex, generally, and they take fewer cases to trial. So I tell non-lawyers that anytime the feds get involved and there's an investigation or an indictment, it *really* is being investigated. There's none of this slipshod or inadequate investigation of the case. They go forward with the strongest cases. Very formal.

The federal agents, FBI and others, are just in their fields more skilled. You're not dealing with an ordinary patrolman. You're dealing with someone who has been trained quite extensively in their practice and level of investigation, and so forth, so it has that quality to it.

MCCREERY: And I assume the federal resources were such that these longer and more in-depth cases could be supported?

MORENO: Yes, right. Yes. One thing where I think that the state courts have a better system is in terms of judicial education. There is a Federal Judicial Center for education and the opportunity to take refresher courses throughout the country. But overall, the — I think it's called CJER [Center for Judicial Education and Research] — I felt that it was superior. We had judges teaching judges and, at least back when I was on the state court, a very extensive training program.

So I know that, as a state court judge, we never felt any need to go to, what was it? The national judges' college in Reno, Nevada. California, really, I think, took care of the judges in terms of education and programs. I went to a few federal programs, and I just felt the state system was better.

MCCREERY: What about your fellow judges in the federal court? Where did they tend to come from, and what kind of careers had they had, for the most part?

MORENO: I think that has changed, but when I was there it was, I think, in a transition period from what I would call old-school judges and senior judges, many of whom had been assistant U.S. attorneys or U.S. attorneys themselves. They were schooled when the federal bench was very small. Caseloads were smaller, so they were much more formal and demanded much more deference and respect. Some had been superior court judges, but not many.

I came in when there were more superior court judges being elevated to the federal system and who brought a fresh perspective to being a federal judge. So I would say, on the whole, maybe a little bit less formal, more willing to tolerate or change some of the traditions. Collegiality was — it all depended. In some cases there was a vast age difference. So that, like it or not, proved to be an impediment. We had monthly meetings, I think.

Oh, here's a funny story. I went to my first judges' meeting, and it was literally just down the hall. There were maybe fifteen of us, a dozen of us. We'd bring in the U.S. attorney or someone to talk to us or just get an update on what was going on.

I just walked down, out of my chambers, and after we finished lunch one of the senior judges, a nice guy, Bill Rea said, "Oh, I see you forgot to bring your coat." [Laughter] I said, "Oh, yes. Yes, I just walked down the hall and I didn't think about it." But then I knew, even if you're just walking down the hall and you're just having an informal brown-bag lunch, you bring your coat. And you always wore a tie, of course.

MCCREERY: An important detail.

MORENO: A good detail, and it reminds me of my old firm. When it merged with Kelley, Drye & Warren out of New York, I was told that the outside of each office had "Mr. Booker" or "Mr. Smith." If you left your office to go down the hall, you put on a coat. The L.A. office was not that way, but I'm told the New York office was like that. So it just reminded me of some of the formalities in some of the old established firms and, evidently, in federal court.

I doubt now, if I went to a judges' meal — I'm going to ask: "Do you still have judges' meetings," where not everybody attends, "and if you go, do you have to wear a coat?" Now, of course, there are more women on the bench.

MCCREERY: I just wanted to ask about women colleagues and how prevalent that was becoming in the federal court?

MORENO: Becoming more prevalent, certainly. Judge Marshall had been on for a while. Judge Phillips. Judge Manella came on board. Margaret Morrow came on board. Judge — I'm skipping her name right now, but others. There weren't that many. There were more men than women on the bench. I don't know what it is now, but it's certainly progressing in that respect.

MCCREERY: And then the presence of Latino members, African-American members? How did you see it in your time?

MORENO: Again, very few. I think it was me and Judge Paez. Lourdes Baird, who's Latina, from Ecuador. Then Judge Marshall. Why am I forgetting the chief judge? Terry Hatter. I don't know if there were other African-American judges. Again, I think that has changed somewhat, but still there aren't that many positions, so not that many minorities.

MCCREERY: I wonder to what extent constitutional issues would arise for you in the course of this work?

MORENO: I can't remember any right now. But my two notable cases that I remember when people say, "What kind of cases did you decide?" One was an emergency case where L.A. County was going to deport a victim of a sexual molestation by her father, who was in prison, and who had been abandoned by her mother, who was now in Russia. The department of dependency, child welfare, was going to deport her with a social worker back to Russia without any kind of placement in effect.

I remember either the public counsel or a children's rights organization came in, and I issued an injunction that they could not deport her. She was going to be deported the next day on a plane. They had tickets and everything. I said, "No. You have to make an effort to place her."

She had been here I don't know how many years, was the victim of a crime, so maybe under the Violence Against Women Act, she could benefit from that and a number of other things. But I still remember that case.

The other big case I remember was one that made the *L.A. Times*, and the *L.A. Times* called it an astounding decision. The NLRB came in to seek an injunction against a jewelry manufacturer here that employed 200 Latino women. They were organizing, and the owner of the company said, "If you vote for the union, I'm going to close this shop and we're going to move to Mexico," to Tijuana.

Trucks had already started moving their inventory and maybe some of the equipment to Mexico. I issued an injunction: "Stop. Those trucks are ordered back." That made the paper, but it was a clear violation of the NLRA, and it was clearly done as an unfair labor practice to interfere with organizing activities by the union. That's when I really felt the power of a federal judge, that you could stop someone from getting on a plane, you could stop trucks from leaving the country if those actions were either illegal or not in the best interests of the child.

MCCREERY: I think you mentioned some differences in the sentencing in the federal courts, and I wonder if you could just talk about that a bit.

MORENO: On the state side, felonies, you have these sentencing rules and you're having to make a choice among three options. In federal court it's a bit more structured, like everything else, and there are sentencing guidelines that take into account, on one axis, the criminal history, and on the other various factors, like the amount involved in terms of drugs or money; breaching trust of the victim; acceptance of responsibility. There are more malleable factors, and it's really just a grid. You have criminal history, there, these factors and mitigation or aggravation, and you end up here. It's pretty straightforward.

There are guidelines, so then you can depart. Acceptance of responsibility was minus three points. Then you come up with a sentencing range, and then within that range you can pick: sixteen months or twenty-four months or whatever little box. [Laughter]

I just found, and I pretty much feel this way, and I tell trial judges this all the time: "Just make a record. Explain why you're doing something. If you have a good reason, they won't reverse you and the prosecution won't appeal you if it's not a real abuse of discretion."

Sentencing is a little more difficult in federal court because of these guidelines, but also because you're dealing, generally, with white-collar

crimes, people who have families, no prior criminal record, mitigating factors that might appeal to your sensibilities. Or you might say, “You more than anyone else should know that you shouldn’t have done this.” So you had some leeway there.

I think overall I was a pretty moderate to easy sentencer. I did give some life sentences. I didn’t believe in mandatory sentences, but I think I did probably give a few of those in the big drug cases. It’s like, this is a long time, and in federal court you serve 85 percent. None of this “good time work time” stuff. So anyway, I adapted very well to the federal guidelines.

The other thing that I would do — and there are different practices on this — is a lot of the judges now waive oral argument. They don’t have hearings, and that’s kind of unfair. My practice was, if I’m going to grant a motion with leave to amend — what’s called a 12(b)(6) motion — like a demurrer, a motion to dismiss — I would just take those under submission and not have them come in.

But on any significant or certainly on any dispositive motion, like a summary judgment motion, I would not waive oral argument. I’d say, “I want oral argument.” So I would always err on the side of having a hearing — which I think, if you check now, probably more and more judges do not even have hearings on motions, and I think that’s essential. I still do. I liked oral argument.

MCCREERY: Talk about, in more detail, why it is important, in your view.

MORENO: You want to clarify in your mind that your ruling is correct. The lawyers are often better in explaining something that they haven’t explained enough in writing. My law clerks would recommend, “Hey, let’s hear from this guy. What does he mean by that?” and would prepare some questions for me on a point that was not entirely clear from the papers. Maybe there was something in the record I don’t know.

But I would say maybe 80 percent of the time I would have oral argument. I would have the hearing. I felt it was fair to them and to their clients to actually come in to court.

So it was the Wizard of Oz deciding the case, and, “Here’s my ruling.” I mean, you would explain the ruling. The rulings in the federal court are very detailed. That’s the tradition here, too, several pages in deciding a demurrer or something.

So anyway, at nine o'clock — this was the word from Judge Lew, my colleague — nine o'clock motions, ten o'clock status conferences, pre-trial conferences, where I would say — maybe that's when I would give them — and I would give them a trial date and a pre-trial conference date. They would submit joint statements on time estimate and what motions they anticipated, and just the whole thing. It could be anywhere from a three- to a six-page document.

I would work on those, usually, on a Sunday, the day before. I did all that myself. I didn't have the law clerks do any of that stuff. Just to get a feel for the case and how much time. And I always set a presumptive trial date of within one year of everything.

So that was at ten o'clock. This was on Mondays. Then at one-thirty I'd have my sentencing. I did all the sentencing preparations myself, just like I did the pre-trial stuff.

And then actually, to this day, I still manage my calendar that way. [Laughter] A few days — maybe like on a Wednesday, I look at my next week to make sure. Sometimes I miss things, but overall I want to know what I'm going to be doing next week.

MCCREERY: A while ago you mentioned in passing Proposition 187 and the fact that that was tried in your court — at an earlier time, of course. I wonder if you'd be willing to just reflect on the passage of that proposition and how it played out and how that resonated with you personally?

MORENO: Personally I thought it was overbroad, going too far. I knew the lawyers who were arguing that, from MALDEF, but I would say from a personal standpoint my sympathies were with the petitioners in that case, to set it aside. They drew a very stern liberal judge, Mariana Pfaelzer, who just passed away a couple of years ago. But I can't remember much direct impact on my court. I don't remember any personal thoughts about it other than thinking that it's a good decision that she made and an unfair proposition.

I had just some concern about the propositions generally, particularly on the Supreme Court. I just thought that — whether you're talking about gay marriage or how easy it to amend the state constitution to letting a simple majority decide things like housing issues, immigration issues — it's

not something that I think that the whole reformist-proposition structure was designed, really, to affect or to be involved in these issues.

So I'm very skeptical about propositions generally and particularly how easily the public is manipulated, how misrepresentations are made in getting those signatures, getting the votes to pass those. So there's a whole thing. Issues are not vetted before any kind of legislative committee. No studies.

I think that Hiram Johnson and his followers would be probably rolling over in their graves if they saw how easily our constitution is amended and how the process has been abused. I can decide a proposition question, I think, fairly, but I just don't like the way we do it. And it's too bad because when you submit things to the voters, there's a lot of mud thrown out there and statements and a lot of misinformation, and the public doesn't really know what they're voting on.

MCCREERY: Thank you. I appreciate you reflecting on that. What else would you like to say about the Central District Court before we wrap up?

MORENO: I think that's really about it. One, I was very happy to be there. I thought that was going to be my last stop on the train, and I really saw myself growing old and going senior on that court. But I did learn, kind of a year before my actual nomination by Governor Davis, that I was being vetted for the Supreme Court when Justice Mosk — when and if he decided to retire.

I was at an Inns of Court function, and someone introduced me and concluded by saying something to the effect, "possibly our next member of the California Supreme Court." [Laughter] It was a shock to me. Where did they hear that?

Then I started following Justice Mosk and his plans — that he wanted to have — I'm sure he had the most opinions, twelve hundred and something — maybe he wanted to be the longest-serving justice. I think he served thirty-seven years, and he just wanted to eclipse that. There was something that he was waiting for, so it was kind of known that he was going to retire. I found that out.

I later learned, in having lunch with the appointments secretary, Burt Pines, who I had worked for — we would go to lunch occasionally, and he would ask me about different people who were applying for the bench. Later, when I was being considered for the Supreme Court, when he called me

about if I was interested, he said, “You know, when we had those lunches you were talking about other people but I was really checking up to see how you were doing.” [Laughter]

“Nice of you to tell me that now. Checking me out.” Then I learned from a couple of other people that he had called them. He had called the U.S. attorney, Mayorkas — Ali Mayorkas, Alejandro, yes — called him and asked about me. Because then Mayorkas told me, “Oh, I got a call from Burt Pines. Is that something you’re interested in doing?” I said, “Maybe. I don’t know.”

Then when Mosk died in June of 2001 on a Wednesday — maybe he died on a Tuesday, and I found out in the paper on Wednesday — I said, we’ll see now if these rumors are true. I had heard there were rumors that I might be considered, along with others.

So I got prepared and thought, gee, do I really want this or not? Do I want to be one of seven? How am I going to handle commuting to San Francisco? What do I have to do? What about the 1986 prospect of being on the retention ballot?

MCCREERY: “Do I want to give up a lifetime appointment?”

MORENO: Yes. I remember talking to someone at the — it was the U.S. attorney. He says, “That’s not a difficult decision. Either way, you’re fine.”

“But I have to decide.” Then, I remember, Burt Pines called me two days later, on a Friday, like around five o’clock. He reaches me and says, “I’m glad to hear there are some federal judges who are still on the bench at five o’clock on a Friday.” [Laughter] I said something like, “I’m working on my Monday calendar, and I don’t want to come in on Sunday, as I usually do.” He says, “Oh, okay, good. Well, the governor wants to consider you.”

There had been an article in the paper, maybe that Thursday, and they listed a number of people. I was the last one, like a dark horse. I forget who the names were. Maybe it was Perluss and Mosk and a few others. I said, “Yes, well, Burt, I thought when I saw that my name was mentioned — ” He said, “Don’t pay attention to any of that stuff. Those are the usual suspects and people who are promoting themselves.” He says, “You’re where you want to be,” like, way at the bottom. “Do you want to be considered or not?”

“Okay.”

“Can you get your application in by Monday or Tuesday?” So I had an extern work on it from my previous judicial applications and updated it and got it in. Then I think he called me again and said, “We’re going to add a couple more names. I’m just giving you the heads-up.” I think Perluss, Perren, and Cornell. He says, “The governor just wants to have some choices.”

I said, “Fine.” Then I studied that. [Richard] Mosk was going to be a direct appointment, from being a lawyer to the Supreme Court. Perluss was on the superior court, so he would skip the appellate court. But a brilliant guy, a lot of support, but had been a judge only two years and had done barely any felonies.

Then this other judge, kind of an unknown but had been a trial court judge, I think, and was on the appellate court. So ultimately there were four of us who were screened and everything. We went through JNE⁷ right away, and the rest is history. [Laughter]

MCCREERY: But you had to think about it a little bit, did you?

MORENO: Oh, yes. Oh, yes. I thought about all those factors, about whether I wanted to be one of seven. But then I said — and also leaving the federal bench to the state bench. Judge Lucas had done that, but probably in every state in the country you would move from the state supreme court to the district court or maybe the circuit court, just because it’s a lifetime position.

The pay generally was better for federal judges than it was in most state courts. But the pay here, actually — the state Supreme Court was better than the district court at that time. They’ve since been adjusted. I know the state court system. I confirmed that I would be able to go into the JRS I retirement program, be able to reenter that because that was a very good program and it had changed. I think it was JRS II then. In fact, one of the judges here, George King, I talked to him.

He said, “Carlos,” and he’s a numbers guy. He says, “If you go back to the state court system, you have eleven years in — seven plus four — you can have your twenty years and be sixty. You can retire at sixty-one from the state Supreme Court. If you stay here, you have to stay here until you’re sixty-five. You’ll get your federal pension plus your eleven years on JRS I. But if you’re able to retire at sixty-one from the Supreme Court, you’ll have

⁷ Commission on Judicial Nominees Evaluation (JNE) of the State Bar of California.

your twenty years in. You get — ” a 75 percent retirement was equal to what a federal judge’s retirement was.

He says, “You’ll be so marketable. You’re still fairly young at sixty-one, and you won’t be grouchy waiting until you’re sixty-five, like a lot of federal judges. And you can do anything you want.” I always tell him, “You’re the one who convinced me. From an economic standpoint it was not a loser, or a money loser, to go back to the state system.”

Of course, I didn’t, at age — what was I, fifty-one or so — I didn’t have to stay fourteen more years in federal court. I gained four years of marketability — and to be on what I think is the most prestigious state court in the country.

Then I was very fortunate to be able to serve on that court at a time when, even though I was the only Democrat by party affiliation, we got all these really interesting issues and where the Court was pretty much very moderate, and you could be a swing vote, as played out in the gay marriage cases and some of the arbitration and class-action waiver cases that were 4–3.

MCCREERY: And indeed, you emerged as a swing vote fairly early on, did you not?

MORENO: Yes, right. Yes. Me and the Chief. I usually sided with the Chief, so I was part of that coalition, so to speak, of four votes. I guess as, maybe it was Ron George or one of the chief justices said, “No, the swing vote can be anybody as long as you’re part of the four.” It’s not necessarily the Chief. He’s got to have someone join him. Yes, so overall, I said, okay. I took the leap. People wondered, “Why would you leave the federal court?” and so forth.

MCCREERY: As an aside you mentioned that this vacancy on the state Supreme Court was a result of the death of Justice Stanley Mosk. Did you ever know Justice Mosk?

MORENO: I did not know him personally. I remember seeing him at a CJA conference and the awe and reverence my colleagues had for him. I really had not known much about him or the fact that he was the only Democrat on the Court. I really didn’t know much about him.

As I learned more about him later, because his judicial assistant became my judicial assistant, she filled me in on a lot of his history and so forth. And of course I learned, when I was on the Supreme Court, how

incisive and well-written his opinions were and what an icon he was on the Court. But all that came later.

So I have to say that when I was on the Court I was influenced by his decisions. I always looked to them for guidance. One of my staff members had been on his staff, so I got more insight about Justice Mosk that way. And of course I learned a lot about the Rose Bird era and how Mosk felt about that, and so forth. But a remarkable career. He started here in the L.A. Superior Court, to attorney general, to the Supreme Court. Yes.

MCCREERY: He was said to have quite a political savvy, too, including at the time of the 1986 election.

MORENO: Yes. In fact, Pat Sheehan, who was his assistant and mine — the way he campaigned was he just said, “I spent some money on a few postage stamps and, in my spare time, visiting newspaper editorial staffs throughout the state.” So low budget, but face-to-face contact. That’s the way he ran the campaign.

MCCREERY: You’ve spoken a little bit about the vetting process that led you to be a candidate and ultimately selected by Governor Davis. What interaction did you have with the governor himself in all this?

MORENO: Okay, good question, because I did meet with him for about three hours, a pretty extensive interview, with Burt Pines present. He did ask me about the death penalty, so that litmus test was asked. I said I had no philosophical reservation about affirming a jury’s decision to impose it in appropriate circumstances. In that sense, I was not going to be a Rose Bird.

We just had a broad-range discussion: personal history, schooling, where I grew up. Just everything, wide-ranging. I think he had interviews with the other candidates as well. I’ve never talked with him about what was asked of them, but Burt Pines always said I was his choice, his number-one choice.

I don’t remember much about the interview, other than I remember the death penalty. Gay marriage was in nobody’s mind at that time — civil rights or affirmative action. Maybe he asked me about affirmative action. I don’t remember. But he was very happy that I’d been appointed by two Republicans, just like Senator Feinstein, that I had been a prosecutor.

Burt Pines later explained to me that Governor Davis was not a practicing lawyer, so he did rely a lot on Burt Pines for that kind of background,

and that he was just a very law-and-order kind of guy. He was very cautious, and he didn't want to repeat — he was chief of staff to Governor Brown the first term, so he didn't want to repeat — and I think I was his first and only appointment to the Supreme Court.

He told me later that, of all the things he did — maybe he was just telling me — he was most proud that he appointed me and that I had “pitched a perfect game” in the sense that, not only did I get the highest “exceptionally well-qualified” rating, but that it was unanimous. I've seen him a couple of other times, and he's very happy with what I did on the Court in terms of gay marriage and other things.

Oh, I think all appointments secretaries, and maybe him more than others, had a great influence in making recommendations. Justice Baxter told me that he didn't make the recommendation. He would just give Governor Deukmejian three names for all appointments. I questioned that. It would just take too much time. [Laughter]

And with Governor Davis, I think he was cautious in these things, and Burt Pines was a very cautious person himself so I think the vetting process that Burt went through was very thorough, very thorough. I think when he made a recommendation, I think pretty much Davis would go with it.

MCCREERY: I wonder if you could talk a little bit more about the actual confirmation and oath and the official start of your career as a Supreme Court justice?

MORENO: Some of my concerns about saying yes, though, were being a federal judge and being the master of my own courtroom and having that kind of — not completely unilateral power, but it's different when you're a trial court judge, especially a federal judge with a lifetime position, the power to issue injunctive relief, and so forth. I was really entirely happy doing what I was doing, serving in a courthouse within a mile or two from where I spent most of my life and where I was born. I can't emphasize how comfortable I was. [Laughter]

So it was a big decision to decide to be considered for the California Supreme Court, which would involve some commuting to San Francisco, and I really didn't have that all worked out. But primarily serving on a court with six other individuals who I really did not have a personal relationship with.

I knew the chief justice a bit. We had taken a government-sponsored trip to Mexico to explore their judicial system and also to learn more about their concern about Mexican immigrants in the United States. I had a high regard for him. I can't recall if I ever appeared — I think I appeared in front of him once when he was on the municipal court in Los Angeles and I was a deputy city attorney back in the seventies. But I had a high regard for him.

As far as the others, I really didn't know them. So my thinking was, "I'm in a courtroom where I'm basically the boss, and I'm going to be working with six other people trying to forge a majority."

I was a little bit cognizant of what had happened a little over a decade before that, in 1986, when the three justices were removed, and even Justice Mosk was on the ballot that year. So the question was, do I want to sacrifice the security of a lifetime appointment for basically a twelve-year appointment? — which initially, I think, is a two-year appointment in terms of facing the electorate.

I felt fairly good, though, about surviving any kind of retention challenge if one might come about. But I felt that my record — that might be looked at in terms of my superior court and municipal court service, and even my federal service — that I would be fairly secure, having been appointed by two Republicans. I had a strong background in criminal law as a result of my previous state court appointments. I had good civil law experience based on my work with Mori & Ota for seven years doing business litigation and then having a strong record in terms of civil matters in the federal court.

The only thing I lacked was really significant appellate experience, so I thought, well, I might be challenged on that, not by the electorate but by the Commission on Judicial Appointments and the vetting that would be done through JNE. In fact, that was the only criticism that I received, that I didn't have any appellate experience as an advocate.

But I did have some appellate experience in terms of reviewing trial records on federal habeas petitions, particularly death penalty cases, and some bankruptcy appellate experience — both very limited, but still I could say I've done appellate work. I reviewed what trial courts have done and either affirmed, reversed, or remanded those. Looking back on it now, I say I overcame that deficiency.

I said yes. I have not looked back, and I never really looked back. It would be a tremendous honor to serve on the highest court in a state like California, which is the largest state, really, in terms of population and whose opinions I had studied when I was in law school, opinions of Justices Mosk, Traynor, Tobriner, Gibson. I felt, gee, I'm going to be in the role that those justices were, on a leading court in the country. I really didn't have to think very long.

There was a concern that, after Justice Arguelles left in 1988, I believe — following the removal of Justice Cruz Reynoso in 1986 — that there was this void in terms of, particularly, Latino representation on the Court, so I think I had an edge with respect to that.

I was the first call, and then just to round it out these other names were submitted, just so that he had a full vetting of candidates. I've learned this since, that it's always good to be considered, always good to be nominated. I think that was a feather in those other justices' caps, that even if they didn't get the appointment they could always say they were on the short list. I say the same thing about the short list for the U.S. Supreme Court when it comes up. [Laughter]

The vetting process was very intense. I know I was told by my vetting commissioners from JNE — and it was the chair and the vice chair who handled the vetting process — they said that the distribution of the questionnaires was the largest they'd ever done. I'm sure that's been surpassed. But I'm thinking 2,000 or so sent out, and they got a high return, something like 500 returns, which is really unusual. Basically what they did is every place that I had worked, every court that I had appeared in — they sent out thousands of requests and they got back hundreds of responses.

The interview went fairly well. There were no negatives. I think maybe a couple mentioned the lack of appellate experience. I was asked about that. But otherwise, it was very strong.

What I was also lacking — I mentioned appellate experience — was also everyone on the Court at that time had served on the Court of Appeal. But that did not seem to be an overriding concern by the JNE Commission. I was very fortunate, once again, to get an "exceptionally well qualified" rating. I had both EWQs in my municipal court and superior court position. For the federal court, I think their highest is well qualified — almost

unanimous. I think there were two, not dissenting but concurring, saying I'd be "qualified."

Again, they basically looked at my civil experience as a lawyer, not having done — I had done two trials, but nothing of a major situation. I don't really know the reasons, but I did get a "well qualified" almost unanimous for that, so I was very pleased to get that rating.

I think he announced my nomination in late September — I think September 26 stands out. The media was there. I made a statement both in English and in Spanish. The Spanish-language media was there, and I was profiled and questioned by the media after that. So it was definitely one that interested the media, both because I was Latino and from Southern California, I think.

MCCREERY: What reception did you get — the announcement, I should say, of your appointment get — in the larger legal community?

MORENO: The media featured my picture in the paper. I still have some of those articles somewhere. I guess it was fairly typical. It wasn't overwhelming or anything like that, just an announcement, and my picture, that I'd been nominated.

In California the actual confirmation process is pretty pro forma. [Laughter] I knew that with Chief Justice Ron George — and if I'm not mistaken I think it was Bill Lockyer who was the attorney general — and with Joan Dempsey Klein as the senior-most administrative presiding — it's not administrative — I think it's just the senior associate justice — I knew that it was going to be very favorable. The questions were all fairly easy to answer.

I do remember Joan Dempsey Klein asking me — that when she was appointed and people made a big deal — maybe they made a big deal about, in terms of diversity, "What does a woman add?" that she went through, and, "What does a Latino add?" I said the stuff about it's good to have a Latino to enhance the credibility of the Court and its acceptance by the public, to have a diverse court. The Court did have an Asian, an African-American, so it was diverse. It's even more diverse now, of course.

But I highlighted my experience with my adopted daughter, who is both African-American and severely disabled, and she was in the audience. We had a caretaker with her because she — at that point we had had

her just for a year, so she was still having different therapies and so forth to treat her disabilities. She did act up in the hearing. She would make a loud sound, like a scream.

So I highlighted that to that question. I said, “We are constantly evolving.” Of course, I had my life experience, growing up in Los Angeles in a working-class neighborhood; the experience of going to Yale being life-changing.

But I said, “In the last year I’ve been introduced to this whole field of disabilities and dealing with how to obtain the best educational and health and medical services for a niece,” and I remember saying, “who you already met.” [Laughter] I said, “It’s constantly evolving, so I’m very sensitive to having that particular experience, which is very draining on parents. When you have someone as disabled as that, it’s not a field day. It’s just very stressful for everybody in the family.”

Then they voted, and I was very happy that Governor Davis, who specifically requested he wanted to be there, swore me in. I acknowledged people in the audience, and so forth. Then I remember talking to Mrs. Mosk, who was in the audience. I remember saying that I hoped to mirror — I remember using that word — the best qualities that Justice Mosk had and brought to the Court in his long service on the Court.

That was in October, and I started service virtually the next week, I think. I know that there was a 3-to-3 case on Fourth Amendment law that I was quickly introduced to. The Chief had written the draft opinion, and initially I had some concerns about the search.

It dealt with whether or not an unlicensed driver who was subject to arrest, whether as an incident to that arrest the police could search the entire car as part of an inventory search, including the glove compartment. I think some contraband was found there or under the seat, and so the question was, is that search appropriate or were they going to just let this guy go? But they decided to arrest him, which was entirely proper.

After some discussion — approached by the Chief, by his law clerks approaching my law clerks — I really was the swing vote there on my first argument session on that case. I forget the name of the case, but you could find out, the November calendar of 2001. So I said, “This is fun. There will be some lobbying by the justices.”

I remember at oral argument the public defender was arguing it. One of my concerns was that the record was not very clear as to how the police decided or what findings the trial judge made. So I did have some questions to counsel, just factually, as to how the police came about to finding the contraband because that was not really very clear. I forget what the trial judge did or what the Court of Appeal did, but it was one that was of concern to the Chief and one that they were holding on for the appointment of a new justice.

I've thought about that in terms of other appointments that have come along. Sometimes the Court will hold back on a decision. This wasn't a case that had been deferred. The vacancy, my nomination, and the confirmation were very quick, unlike the appointments of other justices by Governor Brown, who waited forever.

I arranged to have an apartment in San Francisco, which I kept for three months and determined that it wasn't really necessary. I decided to do the commuting part. For maybe the first two years I didn't miss any Wednesday conferences. I wanted to meet with my staff on Tuesdays to go over the petitions for review — any issues they had, any issues I had — to vote on all the matters on Wednesday and to stay either through Wednesday night or until Thursday. That was my arrangement.

I know now that Justice Groban is doing the same thing and probably even spending more time down here. With internet and email and all that, it's much easier to access the confidential filings that the Court has and the memos and so forth. It can be done from here.

But I felt that it was very important to have face time with my San Francisco staff and with the justices and so forth because I know that Justice Brown had the same arrangement from Sacramento, but she was not always at the Wednesday conferences. And her personality was one that was distant from the other justices. It was a strange dynamic.

As Justice Werdegar once said, she had a poison pen in her dissents. If you look at the *Hi-Voltage* case — I don't know if you've seen that, but it's —. I tried. I met with all the justices and particularly her. I wanted to know her situation and how she handled her travel arrangements and so forth. But we never went out to lunch or dinner. I think I saw her at dinner a couple times at a place that I would go to.

MCCREERY: Say more about your approach of getting to know your new colleagues. You say you met with them?

MORENO: Oh, yes, each of them, just to see how they handled it and introduce myself. I know I had met, during the period when there were rumors — it probably was when I was being considered — let's see. I went to the September State Bar Convention in 2001, which was in Anaheim, and I had been contacted by Justices Chin and Baxter to meet them for lunch.

MCCREERY: What happened at that lunch?

MORENO: They just wanted to meet me. I think people around us who were lawyers — they're looking at why am I — I hadn't been nominated yet. I had been nominated, but maybe I was one of the five being considered. People would probably speculate that I was going to get the nomination. That's maybe what happened because I think it was known that I was being considered. It had to be.

The lunch went fine. It was very cordial. We didn't get into any cases. One thing I remember Justice Baxter saying, and Justice Chin: "Hire Pat Sheehan. She's the best judicial assistant," and, but for the ill feelings it would create with their own judicial assistants, they would hire her. She was topnotch.

I remember I went up to San Francisco even before I got sworn in — again, I'd have to look at my flight records and whatever — to talk about staff. Would that be strange? Yes. I went up because the Chief said I couldn't look at any of the confidential records yet, the cases for the November calendar. But I could start talking to staff. I think it was after my nomination, which was September 26, and before I was sworn in in October.

I flew up at the invitation of Fritz Ohlrich, who wanted me to — he said, "Come on up. Sign some paperwork. Meet everyone. Let's talk about lodging." Preliminary stuff and for people to meet me. I'm not sure if I went around and met all the justices then, but I did interview staff, and the staff who were interested in serving: Dennis Maio, who was brilliant and had served on Justice Mosk's staff for over ten years; a guy named Peter [Belton]; he had been with Justice Mosk for twenty-five years, a long time. Both really great attorneys. He had a great staff, but for one person.

Rob Katz, who the Chief told me — he must have told me when I met with him that time — of the chambers' staffs, he would put him in the top five. Not 5 percent, but top five. I really liked him.

I was approached by Greg Wolff, who was on the Chief's staff, both on the Court of Appeal here in Los Angeles and in San Francisco, and who I knew from the city attorney's office. We were both contemporaries at the city attorney's office, and he was head of the appellate division section of the city attorney's office. He had written me a letter and wanted to be considered for chief of staff position. And I think Michael Nava, who was also a former city attorney, who also approached me.

My dilemma was that in August I had had two federal law clerks who had just started with me, Tal Clement and Alison Markovitz, both Yale Law graduates, really good, strong attorneys. But they were annual clerks with me, and I said "Look, do you want to come up to San Francisco, and I'll extend your clerkship another year so it will be a two-year deal?"

Then I was approached by someone I knew in the D.A.'s office, a twelve-year lawyer, strong criminal background and an excellent writer, who also approached me about a position there. So I was bringing three people with me. That created a little stir because since the seventies, I think, or maybe even early eighties, the Court had switched to all career attorneys at the urging of Bernie Witkin, to have that continuity, institutional memory, and so forth.

I remember talking to a couple of justices, and they said, "What are you going to do about your death penalty cases?" Huge records. One case could really consume a law clerk for a year. That may not be true, but there are also the habeas proceedings that follow that. It turns out they follow it many years later, and it's nice to have the same career lawyer work on the case.

Gerald Uelmen really liked the fact that I was bringing in new blood, so to speak. I went to an appellate conference, the California Academy of Appellate Lawyers, and I think they meet in January. So I went up to Ojai in January of 2002. I was a guest, and I spoke. All the appellate lawyers wanted to meet the new justice. I really said, "I think this is good for the Court, to have younger people, fresh blood, mix it up a little."

MCCREERY: Not only did you have individuals in mind to bring in, in that shorter term, but also you believed in the idea?

MORENO: Oh, yes. Yes, because coming from the city attorney's office — and not so much the federal court because only a few judges had career attorneys there — I bought into the annual system. And I liked to have young people around me and so forth.

The ones I kept — those were three, and I hired Greg Wolff, who was a career from the Chief. He said he had the Chief's permission to come over, and I wanted someone with his — he taught legal writing at Hastings, which was nearby. So he was good. Then Rob Katz, at the Chief's recommendation. Particularly Rob Katz was the best decision I made. He was just brilliant on insurance coverage matters and on arbitration matters. Both very liberal. Greg was a bit more moderate. Then I had my three, so it was a wonderful chambers, a good mix. I still believe that you should have a good mix.

What's interesting is that the newer justices — I'm not sure about Kruger, but Cuéllar and Liu really bought into this term clerk. I'm not sure. I think it's one year, which to me is too short. My plan was to have two-year law clerks and stagger them so that every year you'd get someone. I did that for a number of years, up until you find a term clerk that you really like, and that happened with — I think my first one was Victor Rodriguez, who is now a judge in Alameda County. He was just great.

I know Pat Sheehan really liked him. When he started looking for a job, she said, "Gee, it would be nice to keep him. He really likes it here." He was made for that position, so I converted him to a career. After I left he went to Central Staff, I think criminal. Then he went with Justice Corrigan. Then he went with Tino Cuéllar. Wherever he went — he was chief of staff for Cuéllar, so he was really a star.

Who else? Rob Katz, when I left, stayed with my chambers, Justice Liu, and became chief of staff there and supervised the so-called annuals. There might have been another career person in there. And he just retired.

Then Greg Wolff. He stayed with Goodwin Liu for a little while. Then he went with Justice Kruger and became chief of staff there. So I'm proud to say three of my law clerks all became chiefs of staff for the three Brown appointees. They were good people. I think they worked out really well. I liked the mix of having the annuals, or term clerks more accurately. I also believed in externs, not too many, two or three. I believe it was a good experience for them as well.

A couple of my law clerks became law professors, one at the Georgia State University law school, and Sonia Katyal, who was at Santa Clara and now she's at Berkeley. She's the sister of Neal Katyal, who you always see on CNN. [Laughter] But she had clerked for me on the district court, and the law professor, Nirej Sekhon, clerked for me on the district court as well. One of my externs is now a congresswoman. I've sworn her in, and I'm speaking on her behalf on March 9.

So what I've always felt is that — I felt this as a trial judge as well — that the judge has an obligation, really, to train lawyers in how to be good lawyers in the courtroom but also to mentor your law clerks and your externs because when they move on in their career they like having you as a reference, but they also get into cool positions themselves.

Even on my district court position or the ambassador position, my externs worked in the Senate as staff people, and they were able to speak on my behalf, get me information as to where I was in the process, and so forth. So it's nice to have those kinds of contacts. I can't see how judges or justices think that they do it all themselves and they don't believe in creating this network of people out there. What I'm trying to say is it's mutually beneficial, very rewarding, but they also get into positions of influence themselves, so that's really a nice thing to do.

I believe — and I've told Josh Groban this — that it's one thing to be remote and have some staff here, but it's important to have face time with the other justices, the other chambers' court staffs — do they know you? — and meet with them, especially the ones that are down the hall from you. And especially with your own staff. You can do things remotely, but I don't really think that's the way to do it.

I would meet with my staff — and I don't know if the others judges did this — here's the way I would handle the petitions for review. You would get them on Wednesday for the following week, so I would take those home with me, essentially the A list. Actually, I took the B list home too, but usually I could go through the B list very quickly before I left. You know the difference between A list and B list? Okay.

The B list is pro forma and “no worthy issue.” But my staff would analyze everything, A and B. I said, “If there's a B-list case you want me to take a look at, let me know. Write a memo on it if you think I should present it to the justices. The A list: again, if you think you disagree with the

recommendation — ” and the different recommendations were “grant,” “grant with reservations,” “deny with reservations,” “deny,” something on that kind of spectrum. “Anything you’re concerned about, let me know and I’ll take an extra look at it.” But I found both the civil and the criminal memos from Central Staff to be pretty much right on.

I would really go over the A list. I’d go over both lists, but I’d really read all the memos on the A list, take those home with me, and if I saw something I would write to the law clerks, saying, “Hey, what do you think of this? Is this something we should really look at? Should we put it over to write a memo to circulate?”

They would do the same thing. They’d say, “I think we should write a memo, put it over for a week or two weeks and argue in behalf of granting,” or rarely denying. If someone is saying, “Grant,” I would vote to grant.

MCCREERY: In practice, how often did it happen, if at all, that a B-list case would earn your attention enough to move up?

MORENO: Good question. A handful of times. Not very often. But there’s one extern, who I can picture but I forget her name, who wrote a memo — I remember one case — wrote a memo — by a “memo,” I mean a supplemental memo to the Central Staff memo — to grant. She wrote two of them, and both of them I submitted, and we changed the minds of the judges to grant. So I said, “You’re the one who has written two B-list memos that we voted to grant.”

One had to do with, I think, 5150 of the Welfare and Institutions Code. This is how you handle someone who’s mentally — can’t take care of themselves and are sort of out to lunch. This was based on my experience, actually, as a trial court judge. These things can go on forever, and there needs to be some kind of guidance to the trial court. What do you do with these cases that could go on forever? So it was granted, and I think maybe I wrote the opinion. I’m not sure.

But also the practice was if you expressed interest in a case, the Chief, not always, but might grant you that case to be assigned, if ultimately there was a vote to grant, if you got the four votes to grant.

MCCREERY: So here you were drawing upon your trial court experience.

MORENO: Right. Yes. Justice Baxter really respected me for that. We were at odds on a lot of the civil matters. On the criminal matters he really — I

was a Deukmejian appointee. I wasn't too far to the left on death penalty cases. I dissented when it was appropriate. Then, in terms of my trial experience, I remember he looked at me a couple times and said, "I agree with Justice Moreno that we should really look at this." He had trial experience as a D.A. but not as a judge, so I can remember really one instance where he was looking at me and nodding when I was saying, "This happens enough so that we need to give trial judges some guidance on it."

One other practice in our conferences — and I don't know if you know how that worked. The Chief would go over pending cases where there was a calendar memo, a draft opinion, already written, and where we were in terms of setting that for oral argument.

The Chief, to put it mildly — I don't know if he says this in his book — was very production-oriented. He was a taskmaster, where he wanted, in his mind, to get at least a hundred opinions out every term. I think our high was, maybe, close to 120. He was so happy to really get them out.

The Court, before I got there, the term would end at the end of the year during the holiday season. Later they switched to a September to August calendar, sometime before — I remember I was told this works much better because you don't want to be suffering through getting opinions out during the holiday period.

So we would have to get opinions from the June calendar out by the end of August and the new term. There was always a push in the May and June calendars, and in May there are two calendars, to where sometimes, literally, we would do thirty cases, almost — a little less than a third of our production was in those two months, if we could get thirty cases, so really pushing them out. So particularly during that time you'd have to look back to March, then, because we would have to give notice.

I think the cutoff to circulate might have been March 31. You'd have to get your draft opinion out by March 31 to be considered for that term because you want to give everyone a chance to read the draft opinions and to submit stuff and then to set them for oral argument. You'd give the lawyers, I don't know, there was maybe a rule of thirty days of notice, something to that effect. So to set for the early May calendar, which would be the first week in May, you'd have to have notices out in April, which means that if the deadline — maybe it was March 15 or so — and get everybody working.

The criminal cases were pretty straightforward overall. There was a very low reversal rate. That's true in the Court of Appeal, low on the Supreme Court. And the death penalty cases we really didn't handle — we might handle three issues, but most were not precedential decisions. We didn't like to create a new rule in a death penalty case, so the predominant issues were penalty phase and jury selection.

MCCREERY: Specific to that case?

MORENO: Yes. Rarely did we make new law in a death penalty case.

I would meet with my staff on Tuesday. I don't think the other judges do that. I encouraged Groban, and I'm sure I told Goodwin Liu and Cuéllar what my process was. I did it because I wanted them to have skin in the game, so to speak, and to have face time with me and, really, to go around the room — and I've got a picture somewhere of me with my staff — and that includes externs and even my judicial assistant — to go around where we were on the petitions.

I'd say okay, and then I'd go in knowing that I had talked to my staff and I would make notes on my list of cases as to where we would go or how I should vote. Then on Wednesday, after conference in the morning, I'd assemble my staff again.

I should say that on Tuesday I would get there around ten or so, try to meet with them, and then we'd all go to lunch. Go to lunch and talk about the cases, and just to socialize. Wednesday I would vote, and then after the petitions conference we would meet at ten-thirty or eleven o'clock.

The conferences didn't last that long, and we'd go over administrative matters, too. So it was where we stand on cases where we had already argued; where we stand on cases to set for argument; going over our petitions; and then also administrative matters. We'd probably go over administrative matters first because Fritz Ohlrich would be there — where we had to decide as a court what we were going to do.

The Chief was very good about bringing us in on administrative matters. I heard that Justice Bird was quite the opposite. She would do things without consulting with the Court. So we felt very much a part of it. He'd bring us up to date on legislation and who he met with, and so forth, a lot of gossip just going on. [Laughter]

It was a very enjoyable experience, I think, as a group. Although we didn't socialize a lot outside other than at functions, official functions, it was great to get along, but for Justice Brown, who was very terse in her comments. I don't know what you've heard from other justices, but very terse and not friendly and would just leave. There were some instances where right after conference she would just leave. "Okay. There she goes." And no contact with other people.

MCCREERY: Overall, what sort of collegiality existed in the building?

MORENO: With the Chief, very good. We were both from Los Angeles. We knew a lot of the trial judges. We shared a lot of the stories about certain attorneys and cases and so forth.

Justice Kennard also was from Los Angeles. We had a couple mutual friends. But she had moved up to Marin County when she got on the Court. She also was very — hard to say, also. She could have her moments when — very principled, and she took very strong positions when she felt strongly about a case, and not always the — very compassionate — with me, always very nice. But I think with Justice Brown and some of the others, just on policy grounds, I think she really felt strongly.

I've read a couple of opinions recently in connection with work I've done, and once she made up her mind it was *boom*. She had a certain flair for taking very strong positions on how she thought things should go.

I remember the Chief asked me — I think it was on the same-sex marriage cases — if I could approach her to see if she was with that first opinion and on whether or not we should validate those marriages that had been performed during that interim period, that 150-day period.

On that initial part the Chief was very — and the Court was very — certain that the action was not authorized. But the question was, during that period. I think ultimately we said they were valid, and I think he wanted to know — we didn't invalidate any of them, my recollection is — to see where Justice Kennard was on that.

MCCREERY: How did you approach that task?

MORENO: I just went over there and told her what the Chief was saying. For some reason the Chief wanted me to be the messenger, and it was okay. My recollection is that — again, I have to look it up because I don't

remember what — maybe the other justices, like Baxter and Chin, Corrigan, thought they shouldn't be validated? I don't remember. You can check.

But that was the issue, that he wanted me to approach her. I was his messenger because he felt I had a better relationship with her, or he didn't want to deal with her.

MCCREERY: Say more about Chief Justice George and how he ran the Wednesday conferences.

MORENO: It was very organized. He was a good, I'd say an excellent, administrator, both with the Court, with the Judicial Council, with the legislature, and with his staff. I don't think, from what I can tell, he was warm and fuzzy with his staff because I knew some people on his staff. He had some very experienced people, Hal [Cohen], who was a career guy. Brilliant. And Jake Dear. He had very strong, strong people. But I know there were a couple of people he got rid of, so he didn't really show any mercy for a couple that weren't performing.

I know he had very strong feelings about his vision for the Court in terms of unification, consolidation, and there was a third part to his vision. I think he achieved all of them ultimately, but not without taking a lot of his time and energy, and I'm sure it created a lot of stress. So I think by the time he decided to leave the Court, I think he was exhausted, dealing with all that.

But he was a great administrator and our conferences, both petition conferences and our post-argument conferences, were just run efficiently, not in any kind of dictatorial way. He was very funny and very gentlemanly, courteous, and never an ill word spoken, at least at the meetings. [Laughter] We took care of business, and then we chatted afterwards, too. But some people would stay, and others wouldn't. Then if he wanted to talk to particular people, we'd stay and chat about something.

MCCREERY: How did he use his power to assign opinions?

MORENO: My thinking is that on major cases — propositions, same-sex marriage — he kept for himself. He was very concerned about his legacy, and he had a good staff to really write very thorough — I think somewhat exhaustive — opinions on the big cases. But again, these are cases where he might have been the swing vote. I don't think that was his motivating factor, because I don't think some of those cases really ended up being 4-to-3. But I think he had a legacy in mind. I've looked at other cases from Chief

Justice Lucas and Bird and even Gibson, big cases where they kept them. Maybe it's entirely appropriate to do that. Certainly it's their prerogative.

Otherwise, he looked at workload, whether or not you had expressed an interest or had written on that line of cases; whether he thought you could get a majority opinion. He didn't want to give it, say, to Justice Brown on a case where she was going to take a position that wouldn't garner a majority. That would be a waste of time. Other than these few select cases that he decided the Court should speak with the imprimatur of the chief justice — hopefully a majority — he would take these other factors into consideration.

I never really approached him: "I want a case." I certainly didn't talk to him about it, but I did write memos on cases, that we should grant. But I felt I had confidence. In looking at the cases that I got, I got some good cases and some 4-to-3 cases. I seem to have gotten a number of cases on arbitration, and it may have been because his staff and the Chief knew that my arbitration cases were — the initial draft was done by Rob Katz, who had an expertise in that and in insurance coverage cases.

It's entirely speculative. Maybe Hal Cohen or Jake Dear knew that on those types of cases we were going to go along with *Armendariz* on arbitrations that the Chief wrote, basically very consumer-oriented. So if I got it, I was going to write a consumer-oriented decision, as opposed to giving it to Justice Baxter or Chin, who were very pro-arbitration, whereas he knew that both myself and Rob Katz were very concerned about unconscionability and jury trial waivers.

I've never asked. I've never probed the reasoning why I got so many cases, but I was happy to get those cases. In my own way when I talk about my legacy, there are a lot of arbitration cases I got. I've never looked at all the arbitration cases, whether I got more than my fair share, but in looking at the list I did get a lot of cases.

MCCREERY: But you had enough of a diet of other things, I take it?

MORENO: Oh, yes. I never felt shortchanged on cases. Yes.

I guess I should tell you about the yellow memos. These were on calendars that were circulating. If you had points you wanted to make that you couldn't resolve informally, you'd write a yellow memo. A yellow memo could be, "Hey, I'm doubtful. I think this is the way to go." The yellow

memo might look like a tentative dissent. Or it could be just a one- or two-pager saying, “Hey, if you can change this, I think I can accommodate you.” Usually the staff would work out those finer details.

So there was that kind of communication going on between staff. Rarely before conference would there be any kind of — judge goes to the other chambers and says, “Hey, we’re going to do this.” It was more all in writing between the law clerks and then, perhaps, at conference.

MCCREERY: Judge-to-judge communication? And thereafter?

MORENO: Right. “I read the yellow memo.” The presumptive author would say, “I’ve seen the yellow memo, and I think we can accommodate your concerns, write it this way,” and so forth.

MCCREERY: How important was it to this panel, as individuals and as a group, to try to accommodate one another and come to a more clear outcome? It was a rather stable period just in terms of the membership of the Court itself.

MORENO: Right, yes, with six Republican-appointed associate justices and me, appointed by the same Republican governors at the trial court. Then, as a successor to Mosk, I think I was not as liberal as Mosk and, I like to say, not as liberal as Kennard and more aligned with Justice Werdegarr. Even on some issues she’s probably a little bit more liberal, although I think I really always looked at — if I didn’t agree with her, I always looked very closely at her preliminary responses and yellow memos and certainly at her dissents.

MCCREERY: Say more about why you looked so closely.

MORENO: Because I thought, in a lot of ways — I remember, she said, “Hey, I’m a Republican. I’m fiscally conservative, but I’m very progressive on issues, social issues. That’s me.” I think, I’d look more closely at where she stood. But if you looked at our agreement rates, I’m sure they’re very high. My agreement rates were highest with her and with the Chief. We’re talking mid-nineties. Rarely were we much different. That might have been a function of just how we got along and how our staffs got along.

MCCREERY: Those have a lot of subtle effects, don’t they, those factors?

MORENO: Oh, yes. Yes. Plus I liked her and she liked me, and she knew that she could approach me about anything. Anyway, in terms of the composition

of the Court and the stability and so forth, yes, we had a lot in common. Let me put it that way. In terms of trial experience, me, the Chief, Corrigan, and Ming Chin and Kennard — we had been on the trial court, so we each had that kind of background, which is not the same now on the Court.

MCCREERY: There were certainly groupings of people who might tend to vote together more often on criminal matters, let's say, or whatever. How did you think about that?

MORENO: I knew that Chin and Baxter were almost like twins on everything. They were very close. They socialized. They vacationed together. They're both very conservative on criminal matters, Baxter more so than Chin, I would say. But basically, again, a function of their relationship and their staffs and so forth. You could always, almost, predict.

MCCREERY: And Justice Brown in that grouping?

MORENO: Conservative. But also, she had the little libertarian streak sometimes, a little skepticism about the police, and so forth. In terms of her minority status, being African-American, I'm sure there are some opinions out there where she's like, "Hey." She knew what was going on in this stop or something. I'm sure you could find some language to that effect. So she wasn't slam-dunk conservative on criminal matters.

And then Corrigan, also a trial judge, a lot of experience, a former D.A., a colleague of Justice Chin. I think they overlapped, probably, in the D.A.'s office for a little while, but they had friends in common from the D.A.'s office. She also had, I think, a healthy skepticism. I remember a search-and-seizure case, or two cases, dealing with passenger searches, where I was on the same side as her. It was whether or not you could really search and detain a passenger in a car. To what level, for officer safety, could you intrude on the privacy of a passenger? So I was pretty close to her on criminal matters.

Then, we got along really well personally. She sat next to me and would hit me every so often when I — in fact I still, when I see her, I say, "Don't hit me! Don't hit me!" [Laughter] But very, if you know her — she's just very engaging, very friendly, very funny, and never would take things personally if you disagreed with her.

MCCREERY: What about in the conferences this practice of speaking in order of seniority. What effect did that have on things, if any?

MORENO: The only effect it would have is that if you're at the end of the scale, of the spectrum, you knew that — if there was going to be a grant or deny, you already knew that however you went it didn't make a bit of difference. So if you felt strongly about your position which differed from where the votes were going, you could say, "I want to be noted." Or just that you were going to not grant. But most of us would say, "Just put me down as a grant."

Justice Kennard and Justice Baxter were most principled about that. So if Justice Kennard was a denial and it was going to be granted, she'd say, "I want to be noted." Justice Baxter would do the same thing. "I want to be noted," so that the litigants would know, "Hey, I got two votes to grant." I think this applied more in grants where they wanted to be noted as denials. I think it's more common now that, where it's a grant most people accede to being a grant. But on the denials, I know the Chief just signs off. You might see Kennard or somebody would want to be noted, "I voted to grant."

I know I've talked to lawyers, and they'll say, "Hey, at least I got two to grant." They're very happy that it wasn't just that they were slam-dunked.

MCCREERY: It's an important detail to them?

MORENO: Very important, because that might indicate if you're going to do research on the next case and maybe it's a better case or the composition of the Court has changed to a certain extent but those two are still on, you know you have two allies, at least. The ones who watch the Court would probably take notice of that.

MCCREERY: Talk a bit about oral argument and how you experienced it at this level and how important it was in your process.

MORENO: To me it was very important, even if I didn't really have much concern or doubts about our tentative opinion. I think it's important for the lawyers and their clients that the judges show an interest in the case and they pay attention, because I think it affects the quality of justice and credibility of the Court, as opposed to just deciding something on the paper, so to speak. This happens in the federal court all the time now, where

the judges take things under submission and you don't know how the decision process is being made.

I think even more so at the Supreme Court. This is their chance, and it's a feather in a lawyer's cap to say, "I argued before the California Supreme Court." We should give them that opportunity. After all, these are cases where we're trying to resolve a conflict or decide a substantial question of law. I'm really in favor of even airing these things, streaming them to the public. I'm glad the Court is doing that now.

But in terms of it making a change in our decision, very rarely. I can remember two instances where it did, where there was an argument or an urging that the factual record really indicated something other than what we believed it said. So we would go back and say, "Hey, if that's the record, let's check that. Then they've got a point." We actually reversed the outcome of the case.

And I think it's important, at least for the justices also — I often would use oral argument, really, to clarify something and make a better argument than I could to a judge down on the bench. "Why do you think this is such-and-such?" Basically, either supporting or countering what someone on the Court was saying in our conferences or in our memo.

And they would elaborate. "Okay. We addressed this in our brief, but dah, dah, dah." Sometimes they do a better job at oral argument. And you can ask a follow-up question.

The other thing is, it gives the other judge an opportunity to say, "But isn't this the case? Dah, dah, dah." So it brings to the surface an issue that really needs to be addressed in one way or another, and maybe we weren't doing a good enough job. So to have that dialog, back and forth, I think, is important.

What I liked about it was that my preparation for oral argument — I had a certain protocol or way I went about it from reading the briefs. But I paid more attention to the Court of Appeal decision because they would go into the facts in much more detail. We're concerned about a rule of law, so the facts themselves were, okay, a page or two.

But I'm the kind of person who — I like to get the whole story, and I don't care if it's not that relevant to the issue we're deciding. I like to frame things in a narrative, so I like to know what went on in the trial court, and personalities, whatever happened. Sometimes I knew the trial judge or I

knew the appellate court. I felt like I would just dig into those things, and then I would look at our opinion, our responses, and so forth, my memo that my staff — to get the big picture so I knew everything.

So I felt very good about actually preparing, whereas before I might have just signed off on things. “Oh, this looks good.” Here I felt very conscientious about getting into the details and then preparing my own list of questions and asking my staff, “Give me some questions. What do you think I should be asking?”

MCCREERY: This is the centerpiece of the appellate role, too. I wonder how this change fit you, once you were well into it, from the trial court to the appellate level? In other words, how did you like the new role once you — ?

MORENO: Oh, I liked it. I liked it because I had been there. [Laughter] I had seen the issue or I had been in the position of the trial judge — the evidentiary issue, I would say. That’s why I always emphasize to trial judges, “For God’s sake, make a record. Just say what you’re seeing, the basis for your ruling.” A lot of times that’s not done.

I also told lawyers. “Make your record.” I tell them, “Paint a picture,” particularly in *Batson* jury challenges. “Paint a record.” Both the judge and the attorney should do that.

By the time oral argument came around, I felt prepared. I had the big picture. Not all cases are complex. I found that I’d spend, I don’t know, two or three days going over cases before oral argument. Because, one, you want to look good. You want to look like you know the cases. And I would also highlight if there was a conflict in how the appellate case we’re reviewing compares to another case that presents a conflict, and so forth.

MCCREERY: You’ve described how you might use the oral argument to draw out certain issues and get more detail from the counsel, and so on. How do you characterize your style in oral argument?

MORENO: I didn’t feel like I had to — I wanted to appear neutral, whereas I think some judges just state right out how they’re going to go.

I’m sure people could predict how I might go, but I wanted to ask an open-ended question so that they could give — they were free not to be too defensive. They’re going to be an advocate, of course, but I wanted to say, “I have an open mind about that.” I didn’t say that. But, “How would you deal

with this concern and face the trial judge?” And, “What should the trial court have done?” “What is the right perspective on this issue?”

Or I’d say, “How often does this come up? How clear is the record?” Particularly on *Batson* things. “How — ?” That’s just my nature, I think, not to show my cards too much. So I tried to, I guess, be fair and not — I think that came from being a — one thing I liked about being a judge was that you don’t have to be an advocate. [Laughter] You know that there are two sides to a story, and you know that a case wouldn’t be in the Supreme Court unless there was a threshold other side that required us to act.

So I always felt very open to that. “Hey, either someone got it wrong, or the law needs to be clarified.” I really saw our role as, “Let’s clarify the law. Let’s clarify the record so that we can speak to the litigants and the trial judges out there as to what we think.”

MCCREERY: Provide them some guidance.

MORENO: Right. Yes. Other people — I know Corrigan takes a very strong position sometimes. Baxter, you could always tell his questions were going to be favoring the prosecution, kind of a conservative spot. Werdegar would be more open. So would the Chief.

MCCREERY: Say a few words about the advocacy that you witnessed in that setting.

MORENO: Overall? I think it was very good overall. There were some people who — one generalization I’d make is that the trial lawyer, unless the record is really essential, should not do the argument. They argue like a trial attorney. They’re arguing to a jury or they’re talking about the unfairness of the result or the substance of the evidence, and so forth. That’s not why we’re here. Some people just get it wrong as to why we granted review and what we’re looking at.

MCCREERY: Let me turn again to your staff of research attorneys and externs and so on. How did you divide up the workload, and what instruction did you give them?

MORENO: Okay. My chief of staff, Greg Wolff, would run the assignments by me, how he felt, who on the staff could do the best job. On complicated sentencing statutes or criminal statutes, we would give those to Steve Levine, who was my term clerk — he actually stayed for three years

— because he had extensive criminal law experience, and he could parse a complicated statute. He had ground experience. He would get those cases.

Rob Katz would get my arbitration and insurance coverage cases, although not always, but he was the expert. Victor Rodriguez, later, would get some of my more affirmative action, racial disparity–type voting cases. Then it was just sort of a mix we gave everybody — oh, the death penalty cases we tried to be fair and give them to everybody. Again, it was on their workload, how quick they could get out the draft opinion, and so forth.

MCCREERY: Yes, we will talk about the death cases more. How would you tell them, or how did they work with your chief of staff and with you to know what exactly you wanted? What process did you want them to follow?

MORENO: The direction? I would give them the first crack. If they had any questions, they would come to me. I would look at the Central Staff memo, and if they had questions they would come to me. But they would really just write the first draft. I think that's true for just about everybody there on the Court, so you become more of an editor.

I'd look at it, and I'd say, "This doesn't sound right." And just talk about some of the issues in the case. But I was very confident that they had looked at everything, at least at that stage. We'd throw it out there and get responses from the other chambers, and most of the time it was fine, with some nuances. If there were concerns we'd talk about, can we accommodate those concerns or not? How strongly do we feel about this or that? And so forth. But I really didn't do the total immersion until close to oral argument.

The *Daily Journal* recently published a series of articles on agreement rates between and among the justices on the Court. The article, written by — the author is named Jacobs. I can't remember his first name, but he does appellate law. He's compared the agreement rates I had with my colleagues, how my agreement rates on civil and criminal cases compare with Justice Liu, who is my successor, and how his agreement rates are with his colleagues.

It's kind of interesting, actually, and I did not realize — I knew that my agreement rates were high with Chief Justice George and with Justice Werdegard, lowest with Justice Baxter and Chin. But anyway, all these percentage points, and I don't know how statistically significant these are when

you're talking about a limited population of cases. But anyway, it's very interesting to see how little I differ from Justice Liu. But there are differences that are notable, both on criminal and civil cases. But it also highlights my agreement rates with my colleagues at the time that I was on the Court. So if that's of interest to whoever is reading this, they can have access to those studies because the work has been done.

MCCREERY: Let's say a few more words about these special assignments you had. One was on the foster care system — of special interest to you, perhaps?

MORENO: Right, and that's why I think the Chief gave it to me, because I had some personal experience in dealing with issues relating to foster care and guardianships, conservatorships, special ed. and all that.

MCCREERY: If you don't mind, would you say a little bit about how you did happen to enter into that foster care arrangement and interest personally?

MORENO: Okay, yes. In 2000, my wife and I intervened in a case in New Jersey involving her brother's daughter — her name was Heather — who was four years old at the time and was in the custody of the mother, who was not married to my brother-in-law. We had met the mom and Heather once, and we could easily see that the mother had some psychiatric issues. We did not know the severity of that with respect to her tending to the needs of the child, and we really couldn't determine if the child was not thriving as a child, I think maybe from age two or so.

But by the time she was four — and my wife had maintained some contact with the department of children's services there, saying, "We're willing to help. We're a resource," et cetera. But when the child was removed by the authorities there from the mother because of severe neglect and malnutrition and everything else, we were ultimately contacted. The mother's immediate relatives were not in a position to do anything and in fact had refused.

My wife's brother, who was also physically — and had suffered traumatic brain injury in an accident — was incapable of doing anything. So we were ultimately called, and we flew out to New Jersey.

Maybe somewhat optimistically we said — we met Heather, and she was literally in a crib that was more like a cage because she could be very self-injurious and violent to herself and was being fed through a — I forget

what kind of tube it is — it has a name — because she never learned how to chew food. Here she was, four, and weighed thirty-three pounds, almost five, and had behavioral issues where — loud screaming and temper tantrums and everything else, rotten teeth from being bottle-fed all her life.

We met with the social worker, with the child's attorney, and went to a hearing. We were approved to take temporary custody, and we flew back from New Jersey with her in August of 2000, with a social worker and two nurse attendants on the plane. The travel back was quite without incident, fortunately.

Oh, and Heather had no voice either. She couldn't — and to this day has never learned how to speak. She mutters and lets you know what she wants. So we took that on as a challenge.

In 2001 when I was nominated, we had experienced just a lot of attempting to secure services for her, including major dental surgery, root canals. We thought she might be deaf or hearing-impaired, so under sedation some kind of hearing tests at Kaiser; physical and occupational therapy so she would not injure herself in her temper tantrums or otherwise slap herself. I mean, just everything. The eating disorder. We had to get her involved in a program at Children's Hospital to learn how to chew food. That took about four months. So intensive therapy.

Fortunately, both my wife and I were able to — she was a college professor, and I was on the federal bench — we could both together take care of a lot of her appointments and stuff. We used a lot of our connections, with a pediatrician who was a personal friend and just using other contacts, and then being very motivated foster parents to get her enrolled in the special ed. program through the school system here. We actually got her into a private facility-type school that catered more to children with her disabilities, and ultimately we were able to continue with that.

We had many reviews of the special ed. programs and her entitlement to them, even hearings with — in California we have something called regional centers that deal with services that are not provided by their Medical or school district. So we did, I think, a fabulous job in getting all those in place.

I didn't talk a lot about the work we had done, were doing, but the Chief knew that I had that interest. I'm not sure how the project came about, but I was tapped to be the chair of that foster care commission,

which drew upon child welfare workers, judges, and NGOs, people who had direct experience in providing those services and in which the court system was involved but not exclusively.

So we had a series of regional meetings throughout the state, and ultimately we issued a report with, I don't know, something like thirty, thirty-five recommendations that applied mostly to the courts but also to the other agencies involved. Later, through some legislation that was passed with the efforts of — I think she was an Assembly member, Karen Bass — she's now a congresswoman — a partner commission was formed, headed by the secretary of health and human services.

So together we co-chaired it, and again, we did the same thing but we incorporated more of the work of the agencies in getting legislators to support our efforts. Then we also came up with recommendations.

MCCREERY: I gather some of these changes came out of your recommendations, but speaking broadly, what were the results of your commission's report?

MORENO: I think they were good. We had follow-up meetings. I'm trying to think offhand. Some of them were aspirational: more resources; no continuances; one child, one attorney. Things like that. More funding. I'd have to go back and review them, but overall it was well received, and my recollection is that a number of the recommendations were actually implemented. The state commission may still exist for all I know. I doubt that, but I don't recall whether or not they issued a report ultimately.

But a few of the things, like I remember one big issue was medical. It was drugs provided to foster care kids and how judges were routinely approving that. One measure that did pass was support for foster kids when they aged out of the system. I think we extended that. Before they aged out at eighteen, but now we said we provided support and services until twenty-one. We got the buy-in by the community colleges to provide some kind of assistance, maybe free tuition and support services. I'm sure there are other issues where the legislature actually enacted stuff.

I can't recall right now what the courts did in terms of more resources and keeping tabs on how the courts were handling cases and stuff. One of the recommendations was more time, no continuances. One issue was how open the hearings should be, and maybe give judges more discretion to

open those up. Because I think the *L.A. Times* had a series of articles about closed courtrooms and the reasons, pros and cons, for that. So I'd really have to look at and get an update on what resulted, but overall it was very good, well received. Our recommendations were not so aspirational they were far-fetched.

MCCREERY: I have the passing impression that you did become something of a more public face of this matter, too.

MORENO: For sure.

MCCREERY: I ran across one op-ed piece that you wrote for the *L.A. Times*, I think in 2008, focusing I think on the juvenile dependency courts and the things that you had unearthed there that needed work. But how did your role play out?

MORENO: I definitely, every opportunity I had, spoke on the issues relating to foster care and how we treated juveniles and minors in the system. As a result I got awards from different organizations, children's rights organizations throughout the state, from CASA, the court advocates, and so forth.

Then I always spoke about my own personal experiences and spoke about how hard these services were to obtain for the ordinary citizen. If I, as a federal judge, felt I had a hard time and was still having a hard time, really throughout her life — that was my main message, access to justice. I always incorporate that in law school graduation speeches or other speeches where I was honored by a children's rights organization, that this was something where we had to make it easier, not harder, for these parents to be able to get answers.

Because everywhere I went — even to this day you see stuff on TV about getting services for disabled kids, and it's hard, very hard. You have to jump through hoops, and everyone says no. I challenged Medi-Cal. I challenged the school district. I challenged the regional center. I have boxes and boxes of things, and files and files. In one of my speeches I alluded to the fact that I approached these things as a litigator. [Laughter] I had files.⁸

We had to fight with New Jersey to increase the support we were getting from them, and we prevailed. We had to threaten to say, "Hey, we're

⁸ See "Ten Unpublished Speeches by Justice Carlos R. MORENO; II. Access to Justice" *California Legal History* 14 (2019): 83–87.

done with this.” They finally agreed to provide us with more support and money, like childcare even. It’s very difficult to get respite services and just time off and things. It’s really a full-time job for a parent. Both my wife and I were professionals. We worked. Our schedules were more flexible than the ordinary parent, but still it cost a lot, both emotionally and just in terms of having someone help with taking care of her.

MCCREERY: How did her situation evolve?

MORENO: In terms of her own personal situation, she eventually — I say, she plateaued. She did learn to eat. She did learn rudimentary sign language. Her teeth were all fixed, braces and everything, ultimately. A beautiful child. Temper tantrums subsided almost, like 95 percent. We were very conservative about medication and dealing with that because a lot of those drugs are psychotropic. We experimented, ultimately, with non-active marijuana, but in a spray form. We’ve been doing that, I don’t know, for over ten years. [Laughter] So you learn.

We tried all the different therapies, and eventually you say, “Okay, we’ve done our best, and this is who she is.” She has plateaued. But now she lives, as of November of 2017, in a ranch-setting facility for disabled adults in San Diego. I had to fight social security and SSI. [Laughter]

Whenever I see a friend of mine who has kept track of this, I say, “I’m still fighting.” But I think for the last year it has been good. It still costs a lot out of our own pocket, but believe me it’s a lifetime experience to go through all that. You talk to anybody who has a severely autistic, disabled child. It’s rough. It’s rough. But we were able to get pretty much the best for her at all stages.

MCCREERY: Yes. You and your wife made an incredible commitment to this young person.

MORENO: Oh, yes. It changed our lives. Yes, besides my wife being the conservator of her brother, the dad, who died three years ago, and her mom, who is ninety-three and lives with us. So it’s like you’re taking care of somebody besides your own typical kids. It’s like there are three extra people there. [Laughter]

MCCREERY: What an effect on the family. Thank you. I appreciate you being willing to talk about that. It casts some real context to your assignment

to this foster care commission and the broad look statewide on how to improve access to justice, as you say.

MORENO: Definitely. Yes. And since everything has settled down, I really haven't been that involved in that other than last year's social security.

MCCREERY: What was the overall situation, as you saw it, in terms of interpretive services for the courts?

MORENO: I think that's been implemented, some of the recommendations in terms of — it was, do you provide interpreters in civil cases? I think there may be a law now or policy of providing interpreters, maybe in unlawful detainer and dependencies — they have them there. I think it was really where you're depriving somebody of — maybe foreclosures. I'd have to check, but there are at least two or three areas now where it's mandated that you provide an interpreter.

MCCREERY: How did your trial experience inform your view on this?

MORENO: Very much so because in Los Angeles a good percentage of our cases required the use of an interpreter. In L.A. we were pretty much sufficiently staffed, I think, particularly with Spanish-language interpreters. And Korean interpreters we could get. So because we were a large metropolis, we were able to get those interpreters.

I've heard other stories — and I think maybe they were thinking about this — I think we talked about it — getting an interpreter by phone. If you're off in some county, no interpreters in other than Spanish, there's a clearinghouse. "We need a Tagalog interpreter." Or a more obscure language. There's someone somewhere who speaks that. You just go on the phone, and you have some kind of proceeding before you can maybe get the interpreter to be in court.

My experience was good. I spoke Spanish. This is just an anecdote. There were times when the interpreters who did not speak street Spanish might confuse a trunk with a hood. I would say, "Wait a minute. My understanding was the drugs were under the hood. Can you ask the witness again?"

Then the witness would go, "Yes, they were under the hood, not in the trunk," because the words are very similar. The other one was guns and firecrackers and the sounds they make. One said, "Oh, firecrackers were going off," or something. I said, "Ask him again." The term is *cuete*, which

is slang for gun. I heard the witness say that, but then the interpreter said it was fireworks going off. I said, “Can you ask him, was it a gun, like a *pistola* or something?” He clarifies that yes, it was that.

So there were things like that. My ability to speak and understand Spanish, I think, made me more serviceable, in a way. Then, with respect to defendants — and this was probably improper but I never impacted anybody’s substantive rights — was if sometimes the interpreter’s not there. You’ve got a Spanish-speaking person that’s going to be a continuance, and you need a time waiver. I would do time waivers but not pleas in Spanish.

I would say, “Have you had time to talk to your attorney? My understanding is your attorney wants to put things over so you can do *x, y, z*.” I’d say all this in Spanish. “Are you agreeing? You have a right to have a trial in a certain number of days, and you agree to the case will go over to this date and go to trial within ten days of that day?”

“Yes.” It wasn’t something that was going to create error, just as far as I could tell. [Laughter] That would move things along, and again, it showed — this is why diversity is so important — it showed that at least as far as that defendant, that I knew what I was doing and that they saw me, I spoke Spanish, and more credibility in terms of them feeling they had a fair appearance in the courtroom.

Some of the lawyers would tell me, “Go ahead and say something. Do this in Spanish.” [Laughter] But only simple things like that.

MCCREERY: Talk about your own retention elections for the Supreme Court, the first in 2002.

MORENO: Yes. And then in 2010, I think. Yes. Then I resigned with a twelve-year term. [Laughter] Yes. Those were pretty pro forma. We did what we had to do. There was a public TV channel, a cable channel, California Channel. Those of us who were going to be on the ballot were interviewed and made a statement, but otherwise I didn’t really do anything. I don’t recall that I did anything.

MCCREERY: You hadn’t attracted a lot of opposition for any particular reason.

MORENO: Yes, right. And I suppose in 2010 there could have been some opposition based on the same-sex marriage cases. But I don’t even remember

anything like that. I didn't form a committee. I think Justice Werdegard did raise some money.

Justice Chin and the Chief, when they were up — I think I was on the district court — whenever they were up a group had indicated they were going to challenge them based on the abortion rights of minors. There's a whole history to that where, when Justice Chin came on the matter [*American Academy of Pediatrics*] was resubmitted, and so of all people he got criticized for that. [Laughter] But that went nowhere. I think he used to joke about it.

So I didn't feel that I really faced any exposure with either of those two retention elections. And I should tell you that, in that 2010 election, running for governor were Jerry Brown and Meg Whitman. I was keeping track of my retirement benefits and when I could retire with the full benefits. It turns out that I met my twenty years to be eligible, I think, sometime in 2008, maybe 2009, where I could retire at age sixty-one-and-a-half, something to that effect, if I wanted to.

So I was thinking of, well, is that something I should think about — and doing something else? I was happy on the Court, but my thinking was that if Jerry Brown won I would have the option of leaving the Court. But if Meg Whitman won, as a party — not that I'm that politically involved, but I would stay on the Court.

When he won — and I've told him this — that gave me the option of analyzing what I want to do. If I continued to want to be on the Court, really being compensated at the 17 percent — if I just stayed home I would be getting paid the same, less 17 percent. I talked it over with my wife, and she said, "Whatever you want to do."

That motivated me to at least have that option to consider. The point is, I really didn't start seriously thinking about leaving the Court until after he was elected. Then the coincidence was I was on the bench, and I got another twelve-year term. I would still be on the Court right now. I remember when I told — and Tani [Cantil-Sakauye] had just got appointed as well, right? Because the Chief was leaving the Court. So there were going to be two vacancies on the Court, really voluntary vacancies.

I remember once I made the decision going — and we had a little swearing-in thing at the Court, and she was sworn in and I was sworn in

and pictures taken. Just a couple of days later, I said, “I want to talk to you. I have to just tell you I’ve decided I’m going to leave the Court.”

She was shocked. Because she wanted to work with me. We would have gotten along great, I know. That was really my biggest regret, not staying on the Court with her as the Chief, because I felt like she would need my support. I would be an ally.

But I was very fond of her. Her speaking ability is phenomenal. I think she is evenly balanced and could really work with my replacement, whoever that was going to be, and so forth.

MCCREERY: What chance did you have to know her at all before she joined the Court?

MORENO: We were on a couple of panels together. I was very impressed with her. Just appellate panels. At one I remember speaking with her in the elevator once, and I actually said, “If there’s ever a vacancy on the Court, you’d be a great candidate.” I don’t know if she remembers that or not, but I was very impressed with how she carried herself. I thought it would be good to have her on the Court. My prediction turned out to be correct.

MCCREERY: Nicely done. To return to this matter of independence of the judiciary for the moment, you brought up some examples of things that have happened more recently in different counties here in California. What do you think is the public’s understanding of the judicial role and this power to vote people in and out?

MORENO: They have no understanding, almost literally. One, when someone is challenged or is up for retention, the public knows nothing. I’ve been approached so many times about, “Who should I vote for?” All the judges are asked about that.

Then there’s nothing, really, to look for. You really need to do a lot of independent research. You can go by the *L.A. Times* or the legal newspapers and stuff. But people just do not have any information about judges, and frankly they would just decide not to vote or vote by “for or against” based on the perceived ethnic identity, the last name. That carries — it so happens that now having a Hispanic name helps a lot, whereas before it was like the death knell. Now it’s a positive.

I’ve even been urged to run for D.A. because of the Trump effect. [Laughter] I said, “You’ve got to be kidding.” You know?

Anyway, I wish there were a different system, like maybe almost like the superior court judges should be just retained and not have any opposition. Because lawyers use that, one, to get their own — do a little publicity stunt for themselves and then to create issues that, for the most part, are not meritorious. But they run against someone because they had a bad experience with them.

Or recently, here, they ran against Malcolm Mackey because of his age. He's in his early eighties, but overall he's not reversed or anything like that. He's just doing his job.

So anyway, there are too many extraneous factors where the public can be manipulated, and it makes the judges look who's behind them when they make decisions, especially that Persky case. One decision cost him his career. He had to spend a lot of money, raise money. That system I don't like.

So maybe retention elections, maybe longer terms, like twelve-year terms. For some, they're moving from a public agency to a judgeship. That's fine. But if you want to encourage people in private practice to really take a significant pay cut or to really just take a chance of — they may not know what it's like being a judge. It's like the next step. But you don't want to add to that the insecurity of being challenged.

I think we have a pretty good vetting process that the people who the governor appoints, by and large, are not going to get in trouble. They're going to be pretty good choices. I have certain concerns, also, about people who run for office, for judgeships. I understand that if you challenge a judge on not so — unless there's good reason, some kind of basis, but not just because of that judge's last name, or you had a bad ruling from them, a vindictive thing.

There were a couple of judges here recently — one of them was a friend of mine — who just a few months after they were appointed, because they're in this certain period, they get challenged by someone, and nobody has a basis to really know what kind of judge they're going to be. But they figure, "Hey, this person is vulnerable."

Anyway, I wish there were more job security for judges and maybe more resources devoted to nonpartisan media groups or other groups giving ratings. The L.A. County Bar does a good job. The L.A. County Bar takes a position on elections, and so does the *L.A. Times*. I don't think the *Daily Journal* endorses, but there's a guy here — the *Met News* is a

secondary paper, and they actually give endorsements. But they don't have a wide circulation.

But if you get the *L.A. Times* endorsement you're in pretty good shape, because people just look at that. "Okay." But otherwise the public is really ill-informed, and there's not enough objective critiquing of judges.

MCCREERY: We thought we might take a look at some of your jurisprudence while you were on the California Supreme Court, perhaps starting in the broad area of gender equality and some of the cases that stood out to you there.

You had mentioned in our very first phone conversation a case called *In re Marriage of LaMusga*, which you authored in 2004, a family law move-away case that had a longer life, perhaps, than you had imagined or came back to your attention later on. Would you mind starting off talking about that one for a few minutes?

MORENO: Okay. First of all, the correct pronunciation of LaMusga is "La Moo-shay." Every time I see a family court judge here in Los Angeles, they are proud of the fact that they know the correct pronunciation. But it's easy to mispronounce it based on how it looks.

But it's a case that really evens the playing field when there's a move-away issue. Previously the cases were stacked in favor of the custody mother, but this adds a balancing of factors really amounting to what is in the best interests of the child. The move-away can consist of moving away to another town, across the country, or out of the country.

The thing that the decision gives to the trial court is something that I'm a strong advocate for, and that is discretion, eliminating presumptions, particularly in a situation as sensitive as custody in family law matters. So this really puts that kind of decision — gives the trial judges a structured setting in which to make decisions.

I remember that after our case was filed, there was a movement by a group that supported mothers' rights, who — the presumption was in their favor. They thought that it was a father-friendly decision, but in fact it does no such thing. It really gives the trial court factors to consider. Every single trial judge I've spoken to really likes the case, and many of them don't realize that I wrote the case. I tell them, "What do you think of the *LaMusga* case?"

“Oh, that’s great. It really focuses in on the right thing to do in these move-away cases.” So even though I didn’t have a family law background, it did build upon a case called *Burgess* and extended the discretion of the trial court judge in that field.

The other cases that I’ve had more experience with in terms of my legacy, perhaps, are the same-sex marriage cases. You’ve listed here one of those cases, *Elisa B. v. Superior Court*. That actually was one of three cases, what I call a trilogy of cases, that really promoted the idea of gender equality among same-sex couples. I can go into that in a second.

But I think in my scheme of thinking, there were a number of cases earlier than *Koebke* here that you have in 2005. There was a case before that that dealt with the ratification of same-sex adoptions here in L.A. County. As a result of a breakup between one of those same-sex couples, who had been allowed by the — I think it’s Department of Adoptions, it’s called — to petition for and be approved for an adoption.

When difficulties broke out between the pair, one of them challenged. The whole process was tainted and unlawful. There was no basis for having — it was “harmful for the child,” et cetera, to be raised by a same-sex couple. My recollection, as a result of that challenge there were in excess of 20,000 same-sex adoptions that were basically being challenged here in L.A. County.

I don’t think I wrote that opinion. It was one of the other justices. But I certainly concurred in it. We accepted and could find no basis for rejecting or challenging the same-sex — what they called second-parent adoptions, where one parent is actually the biological parent, and then there’s another spouse who then — I don’t know if they even have to be the spouse, actually — but a second parent is approved, but the second parent is of the same sex. So that kind of showed you how the Court was thinking about these same-sex family relationships.

Then along came *Koebke* in 2005, which dealt with — I believe they were domestic partners. It involved family memberships in a golf club, and the golf club gave certain privileges to spouses but to no one else to eat at the clubhouse restaurant and to have free golfing days on the golf course.

This couple were domestic partners, and we had to look at the co-equal rights of domestic partners to heterosexual husband and wife. We took the language literally from — I think this was the Unruh Act challenge,

discrimination — and we said, “The law says they should have the same rights as — ” And this was one of the early iterations of domestic partnership law that later became even more inclusive and clear.

It was an interesting case, and ultimately we found that the club privilege rules for spouses and, it turns out, domestic partners, were one and the same. This was a majority opinion. Let’s see. I had George, Kennard, Baxter, and Chin. And Werdegar had a spin on it. Maybe she — I don’t recall. Maybe she objected to some of the reasoning or maybe thought we should go further in what we did.

I later had the privilege of meeting the two individuals. They came up to me and thanked me. This was years later. They were a couple of really athletic tennis players and golfers and all this stuff, and it was nice to see the fruits of my labor in real life. That, again, was progress.

Then we got these three cases. One dealt with support payments when one of the spouses had gone onto county aid. Another, the *K.M.* case, was one where you had a birth mother and an egg mother, and there was a non-involved male, a sperm donor, basically. Again, the couple were — I’m not sure if they were domestic partners or married, but anyway, they were in a committed relationship.

The sperm donor provision, I think of the Civil Code or the Family Code, said that you could have these anonymous donors and spoke to them having no liability. Here we had an egg donor that was implanted in the birth mother by her partner, and maybe fertilized by the uninvolved male.

When a dispute arose, the birth mother said, “I am the mother.” But the kid that was born was genetically related to the other woman in this partnership. There was another complication. I think the kid was born with some kind of disability. But anyway, there was a half-sibling involved as well. The birth mother challenging the custody issue said, “This sperm donor thinks it’s anonymous, and they have no rights.” They tried to tack onto that.

We said, “Wait a minute. This is not anonymous.” And, more importantly, the relationship had continued for a number of years. It acted as a family unit. The child was put on the egg donor’s emergency contact, medical insurance, the whole nine yards. So we basically said, “Look, if you look like a family, you walk like a family, guess what? You are a family, and this person, the egg donor, has rights.”

We reversed I think both the — we reversed the Court of Appeal for sure because they thought that the waiver was effective. And there *was* a waiver giving up rights. We said, “That’s ineffective.” What we said was that it would be against public policy for a couple, male and female, to say, “Let’s have sex. Let’s have a baby. Don’t worry. You’re not responsible.” But that really could not be the case where they acted — a male could not absolve himself of responsibility so easily, and here less so where the couple acted like a family and called “Mama” and all this stuff.

There was a third case. I’m trying to remember. It might have been a little more complicated. But there was a third case with, again, the same result, that we recognized the rights of these same-sex couples, whether it’s an obligation like child support or custody or whatever it was. They were bound by their relationship.

So by the time the, in my view anyway — and I had the Chief and Werdegar, for the most part, and Kennard — so by the time that the same-sex marriage cases came about, I think the die had been cast pretty much in terms of at least several of us, in terms of expanding the rights of these gender-based family relationships.

What’s interesting, though, is that when our current governor, Gavin Newsom, was mayor of San Francisco, he instructed his city clerk to start issuing same-sex marriage licenses. I think it was on Valentine’s Day. From the Supreme Court, sitting across the plaza from city hall, we could see all these people who were getting married, and it was quite a spectacle. This happened for days on end until injunctive relief was sought from the Court, and we issued an injunction.

I remember my thinking was that we should really take up the whole issue of not only the relationship of the City of San Francisco vis-à-vis — I think they’re state laws, the Family Code and so forth, dealing with marriage, Section 22, I think, and whether or not Gavin Newsom was acting *ultra vires* to state law. My initial thinking was, well, if the law is patently wrong, then a government official has the right to not follow it.

But I remember talking to the Chief, and he said, “I think it’s best if we just proceed issue by issue and first just deal with this rather straightforward issue of whether or not the clerk of San Francisco,” who was issuing these licenses, “is authorized to do so in contravention of state law.”

I ultimately said okay, although I wanted to take the big bite right away. But he was right because we proceeded incrementally. I think the only issue that really arose out of there, when we found that Mayor Newsom acted unilaterally without state authority in contravention of state law, that we had to stop that, issued an injunction.

Also, there was an issue concerning the validity of the marriages that were performed in the interim, I think several thousand that had been issued. I think that's where Justice Kennard and maybe Justice Werdegarr thought that those marriages — oh, it was the marriages that occurred after the injunction. That's what it was. I think all of us agreed, up until we issued the injunction, that they were valid. But then there was a secondary window period, and we said, "After that, no dice." But I think Kennard and maybe Werdegarr wanted to say all of them until we issue our decision may be valid. I think I got that right.

So the next case — let's see. That was *Lockyer*. The next case was actually the seminal case of recognizing and overturning the Family Code section saying that marriage is between a man and a woman exclusively. I remember Ken Starr actually argued that case. There was an issue as to "only marriage between a man and a woman is valid," something like that.

I remember asking him, "What is the meaning of *is*?" [Laughter] Because I think Bill Clinton had something, "What is the meaning of — ?" Do you remember what? Bill Clinton had raised the same thing in the earlier investigation.⁹

MCCREERY: Into his own activities, yes.

MORENO: Yes. It wasn't, "What is sex?" But it was something. "What is the meaning of this?" I remember Ken Starr chuckled. He was very good-natured about it, but an excellent advocate for his position.

On that case, that's another one where the Chief asked me to approach Justice Kennard. I'm sure the Chief talks about this in his book. It was basically 3–3, and I think he wrote it both ways, he said, the conclusion. I think he was really torn, but I think, from a personal standpoint, I think he wanted to rule in favor of finding that provision of the Family Code to be unconstitutional.

⁹ President Clinton's words in 1998 were reported as: "It depends on what the meaning of the word 'is' is."

He was concerned about Corrigan, I know. I haven't read the sections on if he goes into this detail or not. Probably not. But I know he asked me to get assurances from Kennard that — he, probably like Earl Warren, wanted a solid decision, but it turned out to be 4–3.

MCCREERY: What did you say to Justice Kennard?

MORENO: I said, "This is what the Chief is thinking." I said, "I think that we should go with Plan — " I called it Plan A.

I remember talking to the Chief, too — before, when he asked me to speak with Kennard — about how I felt. He said, "I could go either way." But then I said, "We can all get on the bus and get a ride, but if some of them have to sit in the back of the bus — they get on at the same time, they get off at the same time, but there's a quality about that that is not fair."

That was the thing about the domestic partnership law. Okay, they're equal in all other respects. But hey, you know what? We can't call it marriage? I said, "That's rendering them a second-class citizenship, just like the people having to sit in the back of the bus." I don't think he mentions this in his book.

I said, "That's my position. Equal is equal. And domestic partnership is not enough, especially if you believe in all these other things about right to privacy, right to freedom of association, non-discrimination between the sexes, and all that."

But that decision — I remember — I think my son was at Stanford, and he was living in San Francisco. I remember walking out that night because I was staying in San Francisco, and in order to go to dinner we had to walk by this rally and people celebrating and being ecstatic. I told my son, "No one here really knows me, [Laughter] and that I'm from the Supreme Court that just ruled in their favor." It was an interesting moment to be anonymous in a crowd like that.

MCCREERY: But to be on the street and see the actual reaction.

MORENO: Right. We had seen it from a distance before, but to be out there at this nighttime rally, and music, and people very happy — it was really a great experience.

Then later, we watched the signature gathering for Prop. 8. They got the signatures. I think the Chief had informally said, "While the matter is

pending, we should not participate in any same-sex marriage ceremonies because it might predispose us.”

But I went ahead and did about eight of them. I think at least about eight of them. One of my law clerks, Michael Nava, got married. Another law clerk from another chambers. I think Kennard did one or two. The Chief decided not to do any, even though he was asked to do them.

So that was really the only thing that came up in the Court in terms of that interim period. But my feeling was that right now it’s legal, and why would I take a position of saying that it’s not? That I won’t do it because there’s a question as to whether or not it’s legal? Maybe the Chief was a little bit more restrained, thinking that, “If I had done them I started predicting what my decision would be ultimately.”

When November 4, actually, 2008 — yes, that November when Prop. 8 passed by a bare majority — I actually had some gay friends who called me a week before, and they wanted to have a wedding before the Fourth. So I did one, even though we were having a Halloween party. I did a really quick wedding that Saturday night before the Tuesday of the election.

MCCREERY: The election, Proposition 8. What about the message that was carried to the electorate about that? What observations can you make there?

MORENO: Oh, God. It was another abuse of the proposition system, although I guess this was really an issue that people can get informed about. But they have really strong emotional feelings about it. I’m trying to remember. I think the African-American community did not buy in to it based on the, generally, religious beliefs. Heavily financed by out-of-state interests. The money was coming from outside of California and, again, showing you how these things can be affected.

I don’t think any of us really thought that — we knew it was going to be close, but we thought the Court’s decision would prevail. Then the public has to be confused over this. “The Court just overturned this statute — ” I don’t even think they thought that. They said, “ — a law. And then to have the Constitution amended? How does that — ?” And the Constitution in California reads like a statute book. [Laughter]

MCCREERY: It’s so easy to amend.

MORENO: Yes, and only by a bare majority unless you write in there that it has to be by a supermajority or something. So I don't think the public was well informed. It was just basically decided on the basis of — and I don't know how Hispanics fared. Even to this day, people thought that it was going to be Armageddon.

Then came how we reconcile a judge's obligation to follow the Constitution. That was a thorny issue. I'm trying to think of my dissent. I know it dealt with — because I was bound by the Constitution, too. The chief wrote the opinion. I think he wrote it reluctantly, but everyone said this has to go about it a different way.

I remember talking to my law clerk, Greg Wolff, and saying, "This is what I want to do. You can't deprive — " I read the *Marriage Cases* opinion again and again, and the rationale was that it implicated so many constitutional rights, again privacy, association, discrimination, gender rights, et cetera.

What we came up with — and by the way, usually — we talked about how I assigned cases. But I remember telling my chief of staff, Greg, I said, "I want everybody involved." Michael Nava, who I had done his marriage, and he was on staff. Rob Katz. We had meetings about how best to go about this. [Laughter]

Another area where I had commented on related to the single-subject rule was how to amend the Constitution, and where there is more than just an amendment but a real modification of the Constitution, you actually have to have a constitutional convention, which California has not had, I don't know, probably since the dawn of time. I said, "When you're dealing with each of these constitutional issues, there are too many. It's too embedded. How can you say that's a mere amendment to a provision in the Constitution?"

If you look at my dissent, it really draws upon — I think I called it a "constellation of rights," constitutional rights. "This is really a revision." That's the word I'm looking for, a revision of important constitutional — it implicates too many rights in the Constitution. I considered it a revision.

It was kind of a Hail Mary. I didn't think I was going to get any votes, but I had to really stand out there and say, "This is what should be done." My colleagues were all very respectful. No one said — and I didn't really

try to lobby because I knew that — you see the concurs coming in without much comment. So that was that.

Then, of course, the federal challenges came up. They limited their challenges to the state Constitution because they felt that federal law at the time did not provide — or they thought the Supreme Court would never agree with them. So it just shows you how persistence on an issue — you just keep at it, and people's attitudes evolve.

My sense has always been that there's a generational change of attitude, and there's also an acceptance as people acknowledge that they have gay relatives, and they see that families that have same-sex parents are pretty normal. [Laughter] And that the kids are fine. So it has really been interesting to live in this time and to see how quickly the country has evolved and then different states have joined the bandwagon until the Supreme Court decided in the — is it called *Hodges*? I'm forgetting the name of the case¹⁰ — and how that came about.

MCCREERY: When you think about it, the change of public view and the coming forward of all these different cases, it didn't take quite that long, really, once it started rolling.

MORENO: Yes. Really fast. Light speed. Yes. For a generational change to happen, yes, from the earlier — I'm sure it was before 2005, the same-sex adoption cases, and moving up very, very fast. That's really the highlight of my tenure on the Court, to be there during those times. And it turns out there were a number of 4–3 cases on that issue.

I think that it made a difference that I was on the Court because if it were otherwise — and it was 6–1 on the last case, by the way — but you could see how you could feel that all you were was a lonely voice in the universe. But here, when you have 4–3 cases and you are the swing vote or the Chief is the swing vote — any of the four can be the swing vote.

I'm very happy to say that I had great respect for my colleagues who didn't agree with me. They were not radicals. They were not misogynistic or homophobic in any way, so their positions, I think, were very principled and based on how they interpreted the law. Their feeling was, the people should decide, or the legislature should decide. But if there's going to be

¹⁰ *Obergefell v. Hodges*, 576 U.S. 644 (2015).

this major change, it shouldn't come from the seven of us. It should come from the legislative process.

MCCREERY: What chances have you had personally to observe or even evaluate the judicial systems in other countries?

MORENO: Mostly in Mexico, maybe exclusively in Mexico. And I saw it in Belize, of course. I was telling someone the other day, who is Mexican, that the Mexican judges I met — and these were federal judges and state judges, because they have a similar system — all seemed above-board and honest and well paid, relatively to other professions, and seemed to be corruption-free.

But the stereotype is that police and judges are on the take. You just have to watch a series on Netflix called "Narcos: Mexico" to say, "Oh, my God. Government officials — " and this is based on a true story, " — are paid off, and judges are paid off."

I'm sure that does happen, but my impression is that, although their systems are underfunded and cases move very excruciatingly slow, the people I've met are very diligent and want to do the right thing. But I would bet you dollars to donuts the public doesn't believe that, maybe because of a history of corruption and they don't feel that anything has changed. But usually you're talking to people who have lost maybe a case or two.

So I think our system is respected throughout the world. While on the Supreme Court and on the district court, I had delegations coming from Chile, Peru, Mexico, China, Japan, Thailand, and maybe an eastern European country — coming to look at our ways of doing things.

I remember speaking with a delegation, or maybe it was just a couple of researchers, from China, mainland China, on how we handle the death penalty cases. They did implement one reform. The provinces there, the appeal on a death penalty, which — the trial was very quick — they don't have the resources, investigation — it was pretty slam-dunk — there was an appeal just to, let's say, a province or state appellate court.

But they decided, once they saw how we treated it, the appeal would go to their national supreme court, which was controlled by the Communist Party so I doubt that many death penalty judgments were reversed. But at least they would get a national perspective on how these things were being implemented.

I went to China twice, and one time we met with the president of the national Chinese supreme court and had a session with him. I also judged a couple of moot courts on international law with students in a competition in China. It was very, very impressive.

So we're highly regarded in that respect. What concerns me now — this is getting off the track a little bit — is our public's perception of the U.S. Supreme Court since it's so evenly divided, conservative and liberal. But so many of the cases that go up are these cases that are emotionally driven, and they're issues that really attract heavy public attention. Those are the ones that are publicized. Not every case we decided or the U.S. Supreme Court decides is a monumental case.

There was a case just yesterday, or this week. I was just reading this morning that — because my old firm was on it — whether or not a trial court deadline, I think to file an appeal, was timely or not. The trial court here said, "It's not timely. Sorry." The Ninth Circuit reversed and said, "Oh, no. They were diligent, even after they blew the date."

The U.S. Supreme Court, I think unanimous, Sotomayor writing the opinion — and it was a case that, hey, it had some equities. But hey, a deadline is a deadline. So I was glad to see a routine case like that, noncontroversial, draws everybody in. I know Chief Justice Roberts is inclined to have narrower decisions just to get more of a supermajority and proceed incrementally. I think that's a good thing.

But anyway, the public doesn't know that, especially the way the president spoke the other day about the national emergency, kind of in a joking fashion. "Well, we go here, and then we go to the Ninth Circuit, and then there will be another appeal, and finally it will go to the Supreme Court and we'll win there."

It's like he's already certain of the outcome, without even having any idea as to what the debatable issues are. He's just assuming that the courts do not like what he's doing, for whatever reason, and that now the Supreme Court is in his pocket. What impression does that give to the separation of powers and the judiciary being the ultimate decider of what the law is? It's bad, very bad.

Fortunately, we don't have that in California. I just worked on a matter that's going to be argued in the California Supreme Court. The briefs are good. There are two different views of what the law is. Studying the past

decisions of the Court and how they might approach this case, litigants don't think, "Oh, it's going to go this way." There's an openness and a feeling that, "Hey, we don't know how they're going to call this, but they could go this way, they could go that way." No one thinks that it's predisposed.

MCCREERY: We were talking about some other civil rights-type cases. Maybe I'll just ask you while we're on that theme to say a word or two about this 2010 case, *International Society for Krishna Consciousness v. City of Los Angeles*, on soliciting monetary donations at LAX.

MORENO: Yes. I don't remember much about that case, only that I think I got that case because I wrote a case called *Fashion Valley*, building upon the seminal case, another mall case, that was written by Mosk. It's on the tip of my tongue. The *Pruneyard* case.¹¹

There are different factual settings, but *Fashion Valley* built upon the concept that, in today's society, the malls are like the civic centers or a post office, old-fashioned Main Street.

MCCREERY: Public spaces?

MORENO: Public spaces. And now we shop in malls. So my *Fashion Valley* case advanced that. I think it dealt with a boycott and whether students could have space there. We said yes. That was a 4–3 case, as was the earlier case out of San Jose written by Mosk where we said, "That's a public space and therefore there are some First Amendment issues there."

So this case, as I recall, was an easier case. I don't know if you remember the days, and I don't know where you grew up, but when you went to the airport you saw all these Hare Krishnas annoying you or giving you something. You touched it, and they said, "Oh, you owe me a dollar," and getting kind of upset. [Laughter]

In this case we said basically time, place, manner. We said there is crowd control and people's right to be left alone. So I think this one said they have a right to be there, but if they're going to solicit, the airport could designate certain areas where they could be coned off, in a sense, to stay there, which basically defeated their purpose because who's going to go over there?

¹¹ *Robins v. Pruneyard Shopping Center*, 23 Cal. 3d 899 (1979).

We said, in terms of a reasonable restriction on their right to solicit money — yes, limiting solicitation of donations. That was a Ninth Circuit certification, from the Ninth Circuit. That’s another issue that came up a number of times.

MCCREERY: Yes, let’s talk about that.

MORENO: It happens even more now. Back in the day before I was on the Court, Justice Mosk, I’m told, my predecessor, often voted against Ninth Circuit certification questions because, he said, “The Ninth Circuit can figure out what California law is. We are not their law clerks.” [Laughter]

So to me, coming from the federal court and knowing that California law was not crystal clear, and that there were so many diversity cases in the federal court that implicated California law — we are full service. If there’s really an issue where these cases are being litigated in California — although I think we can take a certification from any circuit court, but it’s always the Ninth Circuit — we should take those cases.

It’s one way of getting additional cases, and they have to present the question to us in a very narrow, focused manner, and we have to have an assurance that our ruling is not just advisory, that they have to abide by it, that they’re giving it to us, we’re telling them what the law is, they have to follow it, and — not that it has to be dispositive of the case, but it has to be dispositive of that issue. So I was very open to it.

My other colleagues generally did not have the same feelings that Justice Mosk did. But I’m sensing — I don’t know. I haven’t done a study of how many cases we would get, but when I was on the Court we’d get maybe three cases out of the hundred or so that we would ultimately decide.

I think now that it would be interesting to see if they’re getting more, because I know I’ve seen a number of them that were Ninth Circuit certifications. Just my subjective belief is that with the academics on the Court, who clerked for federal courts and stuff, that they probably have more deference to these Ninth Circuit questions coming in.

MCCREERY: Let’s do turn to arbitration, broadly speaking, and have you talk about meeting that topic again at this level.

MORENO: Yes, right, where I’m actually in the business, so to speak. [Laughter]

MCCREERY: But looking at your court cases —

MORENO: They are kind of consumer-friendly, a lot of my decisions, and I think that stems from the fact that — well, there are a number of issues. I think that the right to a jury trial is close to being inviolate.

I think that arbitration — and my thoughts on this have developed over the years, and I've said this to people here — that there are so many cases in arbitration that the original Federal Arbitration Act, from 1926 or something, never contemplated, that these consumer-related cases would be going to arbitration. Arbitration was designed to really deal with commercial disputes between equal partners, companies. Once it grew — and I don't know when the sea change started — maybe in the eighties or nineties — that it became a convenient way of eliminating the right to a jury trial, expediting the process, and I think in many cases being one-sided.

The irony, I've learned, is that my colleagues on the Court who took more of a business perspective — and that would be Baxter, Chin, and Corrigan — thought that arbitration was quicker, simpler, less expensive, and the results would be pretty much the same, decisions by a retired judge or justice, and that it was basically less expensive and more convenient for everybody, less formal, as opposed to court litigation.

But I think everybody here who does arbitrations would agree that what's happened is that smaller cases, employment cases in particular, now come here. They're sort of one-sided. Class-actions are waived, where in fact, with some of my cases, you'll see that they're class-action friendly to resolve smaller amounts at issue that aren't otherwise really — you can't really litigate them in a reasonable fashion.

But it turns out that lawyers now are getting their court experience in arbitration, which is different, but they're employing the same procedural tactics — discovery and depositions and objections to evidence — and it becomes, just, the litigation has basically transferred from the courts to here.

So as a result, cases take longer. The expense, I'm sure, is the same. In fact, it could be even more because they're paying the arbitrators a daily rate. [Laughter] And the decisions, although they're reviewed if one of the parties chooses to have the decisions confirmed by the superior court or the federal court — so there's some review, but it's less review. There's no appeal, really. And the standard for review is more — I forget, but it's, "Was there an

abuse?” You don’t even have to apply the law fairly and squarely. It’s a pretty hard standard to upset an arbitration, to vacate an arbitration award.

Then there are all these little procedural devices that we discuss in some of these cases that demonstrate the unfairness, like the right to appeal or the amount at issue and so forth and so on, that make the agreements one-sided. A lot of that has been eliminated in California because of the *Armendariz* case that the chief justice wrote. So that’s the way I approached cases from the beginning, as skeptical of shuffling a lot of these cases into the arbitration system, where they affected consumer rights.

MCCREERY: We should get into the recording that when you talk about “here,” that’s your current role here.

MORENO: JAMS, where I’m a mediator-arbitrator, and where a lot of cases come. I could see how mediation works, or helping the parties to avoid further litigation. And arbitration in certain circumstances does work. Confidentiality is preserved and so forth. So that’s a legitimate concern. But my main concern on the Supreme Court was how small individual consumer cases simply could not be resolved unless you had a broader mechanism like class actions to make those workable and to attract lawyers to represent a bigger class.

That was my *Discover Bank* case. That dealt with, I think, a thirty-dollar late fee, and there was a challenge about how that was implemented to the detriment of the consumer. No consumer is going to take a thirty-dollar claim to court or even to arbitration. But if we allowed a class action to proceed, then you can get a lawyer interested. You get hundreds if not thousands to join as a class to make it more equitable. Of course, one issue there is the attorneys’ fees, and oftentimes we’ve split up the pie and the consumer gets very little too, so there are some criticisms there.

I don’t know how all this started, but I do know in terms of the court jurisprudence it started with *Armendariz*, that really looked at a number of factors about — if you’re going to have a legitimate or valid arbitration provision it had to cover certain factors and, particularly on the appeal part, that it not be just one-sided. I followed *Armendariz* in a number of these cases. *Gentry* dealt with a bigger claim, maybe that involved several hundred dollars, not a really small claim.

I guess the upshot of this has been, particularly with the *Discover Bank* and *Gentry*, I learned — I guess when I was on the Court — there has been a tension between the California Supreme Court and federal law and the U.S. Supreme Court. The U.S. Supreme Court takes a much more pro-arbitration position, and they vacated my decision in *Discover Bank*. I found that out just by reading it in the newspaper. I didn't realize that it was up for being vacated. [Laughter] I said, they can't reverse me, but they can vacate my decision on a petition for certiorari.

And basically they found class-action waivers were valid as long as everything else comported with the law. We had said — not to get into too much detail, but as long as one of our principles of contract interpretation did not focus on arbitration specifically — so it was anti-arbitration if it's just a general provision of contract law — that's a loophole for California law to be valid, even in the arbitration context because it's not directed specifically to arbitration.

But the Supreme Court has taken a very strict view on that by saying, if the provision "frustrates" the arbitration process, then that's contrary to the Federal Arbitration Act, and that's a case called *AT&T v. Concepcion*.

Since then, it's really gone downhill for consumers. The only type of claim that has survived — in fact, there was an opinion two days ago out of San Diego, the Court of Appeal¹² — there's something called PAGA, the Private Attorneys General Act, that basically says that a — and these are what they call representative actions, like class actions. But you get a group of people to be authorized by, say, the labor commissioner to bring an action on wage-and-hour violations. But the money that you recover for restitution, 75 percent goes to the state. So you're like a private attorney general saying, "Hey, they violated the law."

So there's not that much incentive for the individual class members. If they prevail they'll get what they're entitled to, but the attorneys' fees — the judge decides how much the attorneys' fees are for the lawyers, and it's usually a significant amount, maybe not as much as in a strict class action because 75 percent is going to the state to begin with. So what's left, the 25 percent, out of that has to come attorneys' fees and the recovery by the class representatives.

¹² *Correia v. NB Baker Electric, Inc.*, 32 Cal. App, 5th 602 (2019).

Our courts have said — and I don't think this has gone to the U.S. Supreme Court yet — have said that kind of action cannot be waived — we've said that in a case called *Iskanian* — that that's not a class-action waiver, and you cannot waive the rights of the state by this individual agreement.

So if you're an employee, and it says you waive class action and you can only bring an action on your own behalf, that doesn't exclude you bringing an action on behalf of the State of California. That's probably up for grabs still, but it's not unconscionable. The state cannot waive something that you have agreed to waive, and you're not acting as an individual, you're acting on behalf of the state. An interesting issue that's still percolating right now, so we see a lot of those claims here that survive. The plaintiffs are hanging on by a thread on those claims.

So I've seen, in my experience, the arbitration universe swing from California being a leader in terms of consumer rights to being squashed by the U.S. Supreme Court and now, in my current iteration, seeing that arbitration is not the simple inexpensive thing that my colleagues on the Court thought.

In fact, I was telling Justice Chin this at Justice Groban's confirmation hearing. I said, "You know, I'm doing arbitration now and making a lot of money when I do these, and the lawyers are doing all these shenanigans, just like they're in trial. And it's not cheaper." It's not cheaper. They have to pay for the neutrals, where at least if you're in court you're not paying the judge, you're not paying for the courtroom.

MCCREERY: It might not be quicker or simpler, either, at this point?

MORENO: Right. Yes. He smiled. "Yes, I know. I know."

Then the judges — one judge told me this. I said, "Why are you sending us so much?" He said, "Our cases are heavy, and if there's any way we can send this to arbitration, we do." It goes back to them, but their work is much less because the lawyers have done all the discovery and they have a preliminary ruling, and so forth.

I just had a big case. I wrote a twenty-six-page ruling, you know? That will go back to the judge. There was an arbitration provision, so it came here. Now it will go back to a court in San Diego. "Look at that. Hey, that looks pretty good. Moreno wrote this. We're going to abide by this." [Laughter]

And it's not an irrational decision. It really goes into everything. So I'm the trier of fact, and this is what I found on this complicated real estate deal. It saves him time. He says, "What's wrong with this?" Given the very lax standard of review, they would have to find that I went beyond the scope of what was tendered to me or that I was biased or whatever to knock it out. And no appeal other than that slight review.

MCCREERY: Perhaps we'll look for just a few minutes at some insurance cases. I know you had a number of those and had a good specialist on your staff.

MORENO: I've been on a couple of insurance panels here, one with Rex Heeseman here, Judge Heeseman, who is one of the authors of the Rutter book on coverage.¹³ He said that — this was years ago — that my reputation was one that was actually fairly neutral but that I was the one who advocated the "reasonable expectations of the insured, viewed from an objective perspective." So that puts me pro-consumer, in a sense, but it has to be objective and taking into account who the consumers are, whether they're well-informed or not and so forth.

MCCREERY: What did you think of that characterization?

MORENO: I thought it was great. I spoke to an insurance panel, and he says the insurance industry didn't feel that I was biased in one direction or another, even though I have certain personal feelings about insurance companies, how they amend their contract policies.

There are two cases here, one is *MacKinnon*, that — again, the standard rule is that exclusions are to be strictly construed, and inclusions are to be broadly construed. That's the basic principle, so if the insurance company is trying to limit coverage, saying it's excluded, you have to look at that very narrowly because the consumer expects coverage, overall, for liability. So if there's a provision that implies that it's covered, unless it's excluded it's covered.

That's my view, and this *MacKinnon* case is a prime example of that. That's a tragic case, as I recall, where an elderly woman was, for whatever reason, still in the house when the termite company came in. How does that happen? I have no idea. Maybe they thought they moved everyone out.

¹³ *California Practice Guide, Insurance Litigation*, published by the Rutter Group.

They didn't want to cover it because, "Oh, we're not responsible for a pollution exclusion." I said, "This really isn't a pollutant. This is a negligent act, and the gas was emitted."

It's not your typical pollutant. It's more of a poison in a very confined space, not a pollutant that's drifting through the air and damages a car, okay? That's a little different. Even there, there might be coverage, but probably not. But here it was confined. How do you ignore that type of negligence? To say, "That's not a pollutant." There's a real distinction between a poison in that setting and a pollutant. Is that the way that is typically construed?

MCCREERY: You had unanimity on that one.

MORENO: Judgment affirming. Yes. So they reversed *Truck Insurance*.

The other case, *Julian*, dealt with something called concurrent causes, and that deals in mudslides. There I ruled in favor of — yes, I affirmed the judgment for the insurer because I think it excluded mudslides. Whereas water damage would be covered, mudslides were not. As close as those two are connected, you would think they're inseparable. But water is just water, and mud is slamming against a house. That was excluded. That's not water damage. That was one where the insurance company won.

Then this *TRB Investments* is just common sense. I do recall that case. What is construction? Is it new construction or is it a rehab? Does it include everything? There we all agreed that it should be broadly construed.

So in one sense at this level it's pretty easy to define the rule and come up with a reasonable expectation of what that rule means. To me, even looking at it now, construction — I was just talking to someone here about remodeling their kitchen. That's construction. It doesn't mean you're building a whole new wing of your house or anything like that. So it would be covered.

The thing I liked about insurance cases was that they're really just based on, almost like statutory construction, just interpreting the policy. Sometimes it's gets a little nuanced, like this *EMMI* case. I do remember that. Who joined me on that? Reversing judgment.

That involved what they call a jeweler's policy. You were covered by insurance if you were in the immediate presence of the thing that was stolen. So here's a person, maybe they're getting gas or they're talking to

someone, and the jeweler's bag is in the back seat of the car. He's talking to someone, say, at the trunk, talking and someone runs by, grabs it, and runs. The question was, is that the immediate presence? It's like a robbery case, almost, and I said, "Immediate presence doesn't mean you have to be standing right next to it or having it in your hand."

The insurance company thought, "We'll cover it if you've got it in your hand or it's right next to you, but not if you're a certain distance away." I forget what the language was, "atop" and something. That was a close case. We probably should not have taken it because it doesn't happen that often.

But I was just offended [Laughter] by the fact that your bag is right there, and I'm talking to you. Well, let's say you're the insured, and you're talking, a little bit distracted, and someone runs by and takes it. Wouldn't you think you'd be covered by it? Because maybe you realize and maybe you chase after the person. But to me, that was sufficient to be in your immediate presence.

I think sometimes — getting back to petitions for review — although the Court, I was fond of saying, and maybe I heard it from somewhere, "The Court is not a court of justice, but it's a court of precedent." So it's not so much whether or not the Court of Appeal got it wrong, but whether the law needs to be clarified and/or there's a substantial question of law for Californians that needs to be resolved. Otherwise, folks, the Court of Appeal, like the Ninth Circuit or the circuit courts, are the final arbiter of these cases. We don't have the time or the resources to be deciding or reversing every unjust result.

This was an unjust result, and somehow I persuaded my colleagues. "Look, I'll write the memo." And of course they give it to me.

MCCREERY: Let's turn to see what else there is in the way of civil procedure or other civil cases. There was one that you wrote fairly early on that was a local government case, *Great Western Shows, Inc. v. County of L.A.*

MORENO: That was one of my first cases, and what's interesting about that case is that it's a Ninth Circuit certification, and I think Judge Paez, who's a friend of mine, was the district court judge. This question was whether or not the county could place restrictions on gun shows, and we said yes, they can.

I've followed this issue. In fact, I talked to one of the lawyers on this case not that long ago, and basically when it comes to regulating the sale of firearms, for various safety reasons, the county could basically decide if they could have gun shows in their facilities.

On this *Vargas* case, I'm actually working on a consulting matter on this right now. This is a live issue, and I was retained by the county — I guess I can say this — to consult with them on their role in providing information to the electorate, taxpayer funds to provide information on a proposition.

If you read this opinion, *Vargas*, it affirms an earlier case called *Stanson* that places great limits on any kind of express advocacy. And was it style, tenor, and manner? — of their advocacy is really outdated. It talks about, believe it or not, bumper stickers, prohibiting radio and television messages to inform the public.

My concurring opinion, written in 2009, says, "We may be following precedent, but that precedent probably should no longer apply. Because the way people communicate and advocate in elections now is much more significant. Perhaps we should take another look at how those things are run, particularly in a county as big as — " I guess Salinas is in Monterey County.

But in bigger counties like Los Angeles, a public entity like the county cannot really — and politicians can't — inform the electorate on issues. We get our information now from emails and TV and so forth. It should be fitting and proper that those campaign efforts should not be so restricted as in *Vargas* and in *Stanson*.

But the thing I remember about this opinion: Chief Justice Ron George was very committed to *stare decisis* and very reluctant to make a big change in the law. I don't know how this got by him. He wanted to affirm *Stanson*. Maybe the Court of Appeal opinion was sound, but it's one where I said, "Times have changed, and maybe we ought to re-look at this." So anyway, I was retained by the county to help them espouse that view.

MCCREERY: We've been talking about some of the opinions you wrote while sitting on the California Supreme Court. I wonder if I could ask you to just reflect a bit on your philosophy of writing opinions. A majority opinion is one thing, but what would it take, for example, for you to write a dissent?

MORENO: In order to write a dissent I would have to really be compelled or feel strongly about making my position known. It would have to be a principled reason. My general inclination was, if it was just a small point I would not spend the time to write a dissent or even a concurring opinion.

Sometimes my point was, maybe, to pick up on an issue raised in one of the briefs that I thought was meritorious. Maybe it was not essential or dispositive of the majority ruling, but I just wanted to acknowledge that I thought maybe at some future date in another case this issue might be worthy of further consideration.

One was *Martinez v. Combs*, that dealt with a farm labor situation of non-payment and who was responsible for ultimately paying the farm-workers, who were probably fourth down the line in terms of: the actual



CARLOS R. MORENO, CALIFORNIA RURAL LEGAL ASSISTANCE,
LOS ANGELES RECEPTION, JUNE 8, 2011.

MAURY PHILLIPS, GETTY IMAGES.

property owner, who leased it to a grower, who subcontracted the actual harvesting to another company, who then hired the farmworker.

There were indications or suggestions of alter ego in that case, and from my own general knowledge I knew that the non-payment of actual laborers was an issue and that somewhere some line of responsibility should be connected, if you could show alter ego or some other theory of agency.

I wanted to point that out, even though I concurred in the majority, which was that they were without remedy as to the more solvent parties — I think maybe the lessor or the owner, something like that — the point there was to focus on that issue and have the legislature take a look at it. I know I got some comments, or there were comments made, about my perspective.

So a dissent had to have a purpose, and I wouldn't dissent on a minor point that was not going to go anywhere but on something where I thought the legislature might benefit from taking a look at one of the nuances in the case.

Also, I think I would write a dissent if I directly disagreed with the majority. I would write a dissent and maybe try to get a few votes to join me. But I was not really a big fan of writing dissents or even concurring opinions. It had to be something significant for me to devote the time and resources to that.

MCCREERY: How does a justice strategize, not only about the majority or dissent in question but about the longevity of the issue in the future?

MORENO: Right. I should also add that in the *Strauss v. Horton* case, where I was the lone dissenter, there was no question about that I wanted to dissent from the very beginning, and I let my colleagues know, and I gave my reasons for it. So really, from the very beginning when the draft opinion came out, I noted that I would dissent and indicated basically the general reasons but then had to write that up and put it into a dissent.

Again, I was vindicated ultimately, maybe not on the same grounds of my dissent but my position was vindicated. So I think it's a good feeling when you do speak out as a lone voice, and ultimately your position is vindicated.

MCCREERY: And because you are alone on that or any other solo dissent, it's communicated to the outside world pretty clearly.

MORENO: Right. Yes. There's a photograph I have at home, and I don't think it's "Photoshopped." It's a demonstration outside of the courthouse when the opinion was issued. One of the posters says, "6-1. We love Justice Moreno." [Laughter] So yes, it's something you're proud of. Again, you want to just send a big signal that you don't think that there's sufficient legal basis for the majority ruling.

Oh, the other thing is that you always ask — at least I asked myself — "Is there something wrong with how I see this?" If you've got six rational votes against you, you have to question yourself. "Am I out to lunch? What am I trying to say here? Why?"

That's why in that dissent, the *Strauss v. Horton* dissent, I basically agree with the principle of the majority opinion. Judges have to follow the Constitution. I came up with a procedural reason as to why that could not be the case, and that was that this really was not an amendment to the Constitution but, really, a revision that called for a different way of making those changes.

MCCREERY: But that's a good point. When you're on one side and everyone else is on the other, you might ask yourself, am I wrong? How could your research staff assist you in that part of the phase, if at all?

MORENO: There, I mentioned, I had virtually my whole staff kicking ideas back and forth. I had addressed this revision-versus-amendment issue in other cases, in maybe two or three cases, so it was on my mind. I think we came up with this particular attack, if you will, on the majority quite early. It was the only way, really, to challenge Proposition 8. I had written on that issue before.

MCCREERY: To what extent would you welcome new ideas or approaches, even rather late in the game, from your excellent staff?

MORENO: All the time. All the time because there were some — I can't recall cases, but there were some situations where I would say, "We've got to find a way to rationalize this."

Then one of my staff attorneys would go into his office and hide and come out hours later, and he'd say, "I think I have a way." [Laughter] But that, for sure, happened in more than one case where we had to just think of a way of — because you want to sound rational and not — like some

opinions are just scathing, and I'm not that way. You want to have a principled way of attacking a majority opinion.

MCCREERY: Say more about your own style, as you think about it, or about what you were trying to achieve in the way of style.

MORENO: Legal writing. I don't think I'm a gifted writer like some justices who just write with a flourish and have catchy phrases and so forth. I think my writing was fairly standard stock, if you will. What is the case about in a real summary form? Getting into the facts and then analyzing the law, particularly looking at cases and applying them, distinguishing them, and trying to come out with a result.

Always in my mind, though, was to give clear guidance to the trial court. I wanted my opinions to be clear and succinct so that they would be easy to read and easy to apply by the trial courts. I would think that would be the number one objective.

I never really wanted to use inflammatory words or anything like that. The only time I deliberately did the opposite is where I knew the trial judge. This was in the Richard Ramirez "Night Stalker" appeal, death penalty appeal. I knew the trial judge on the L.A. Superior Court, Michael Tynan. I know that he had a difficult time with the Hernandez brothers' lawyers, who were inexperienced and just were giving him a hard time.

At one point in this lengthy case, he made a ruling — it may have been an evidentiary ruling — and I said something to effect that, "The experienced trial judge made a well-reasoned ruling," on whatever the issue was. So I gave him some props. [Laughter]

Then later, maybe a year or two later, I said, "Mike, take a look at that opinion. I know how difficult that case was for you for however long it lasted," months if not years. I said, "I gave you a prop that's in there because I really wanted to show at least my appreciation for the hard work you did. If anyone could do a really good job on that case as a trial judge, you did."

The same thing happened where I didn't give a prop to the judge, but there was a case that Judge James Otero, who is now on the federal bench — he had a high-profile case in Pomona, a death penalty case involving three defendants, and one was a juvenile. After the special circumstances and death penalty were found by the jury, he reversed the death penalty

judgment against the juvenile. Maybe he was, I don't know, seventeen, eighteen — young.

We affirmed his discretion to do that, and because I knew him — not that I had to recuse myself or anything — but later I told him, “That was a good thing to do. You exercised discretion.” He was a conservative guy, but to reverse the death penalty punishment for good reasons stood him well, I think.

Later when he was up for a federal appointment — and I was routinely called as a character reference on some of these background investigations — I said, “This is the kind of guy he is. He calls the shots as he sees them, and even in a high-profile case he'll do what's right.”

MCCREERY: Which of your opinions overall, but thinking particularly of dissents — we've mentioned some of them — which of those seem most important to you looking back?

MORENO: I think the *Strauss* case is probably the most important dissent. I think *Vargas*, now in retrospect, was prescient, let's say, in terms of how things have changed since — was it 1976? But they were really few and far between. I didn't dissent just to dissent.

MCCREERY: What other things come to mind, if any, from your trial court years that you saw again as a Supreme Court justice?

MORENO: I mentioned the gang enhancements. Certainly that. The unruly defendants. One other issue that would come — and I'm not sure if I actually wrote about it in an opinion — but actually a fairly common situation dealt with incompetency of counsel, particularly on habeas proceedings. Incompetency or conflict of interest of counsel. That recurred a number of times in my trial experience.

Again there — and another issue too — you would inquire of counsel at sidebar, “Are you doing this for tactical reasons? And there's a point here? Because you are verging on the grounds of, I wouldn't say incompetence but a ‘best interests of your client’ situation.”

MCCREERY: That's a delicate conversation.

MORENO: Yes, but if there was a tactical reason, then I might run that by the defendant. I know that issue of running things by the defendant would come up on habeas matters in particular. One issue that would come up

would be a defendant who on habeas said, “I wanted to testify, and I didn’t know I had the right to testify.”

So in every criminal case I had — and maybe I learned this somewhere from one of my colleagues — and I just had a discussion with someone recently about this — I would get a waiver from the defendant. If the defense rests with one witness and the defendant doesn’t testify, I would excuse the jury and advise the defendant, “We’ve now come to the end of the trial. Your counsel says he’s going to rest. I’d just like to get a waiver from you. You have a right to testify.”

Without getting into his discussions with counsel, I’d say, “Have you had an opportunity to talk about your rights, not only against self-incrimination but also your right to put on a defense and to testify in front of a jury to present whatever you want to say?”

MCCREERY: You put that right in the record?

MORENO: Oh, yes. To protect my record so it doesn’t come up on habeas. I know that that was something I was acutely aware of when those claims would come up on habeas or, “My lawyer never advised me of that right,” or, “never advised me of an offer” that the D.A. had made to him. So that’s another thing I would do before bringing in the jury or at some point before trial, making sure that the defendant — just covering for myself and, in a sense, for the lawyer.

It’s not uncommon for the lawyer — whether it’s true or not, who knows? — if the lawyer didn’t communicate the last offer extended by the D.A. and they’re going to trial. But that’s a recurring issue, and I’m sure we saw that on habeas, that, “I would have pled guilty to a lesser offer extended by the D.A.” That would come up.

The other area where I had experience in the trial court and it would often come up on appeal was on something called a Marsden motion. That’s where, again, a defendant is complaining about the status of communications with his lawyer has broken down, and the lawyer is not acting in his best interests or not communicating offers, a breakdown such that it leads to not having effective, or what the client thinks is effective, counsel.

That came up numerous times on our death penalty appeals. The law is well settled, and it’s such a common motion that all criminal trial judges

know the drill as to laying a foundation for that and then either granting or denying the Marsden motion.

Another issue, again, we're getting on defendants, who want to represent themselves, are Faretta advisements. It comes up in every pro per case that would come before the Supreme Court. As surprising as it may seem, they go forward as pro per with advisory counsel, and I had experience with that, in the Faretta admonition, advisory counsel admonition, and so forth.

Those issues that would come up in automatic appeals I had a lot of experience, and I think my colleagues who had been in the criminal courts knew that. The law, again, is very well settled. Not a big issue, but something where you could really relate to that and it's not an abstraction.

MCCREERY: Let's move a bit more into the capital cases. Let me start by asking you to talk about the caseload for Supreme Court justices and how you assigned that work to your staff and what effect it had on your overall caseload.

MORENO: Yes. The death penalty cases consumed about 25 percent of the caseload, and by that I mean the absolute number of cases. Whether they required more intensive work — were they weighted more heavily than others? It depends. After the staff attorneys had worked on a few of them I think it became easier. But still, the records are substantial in those cases.

And as you know, these cases take many years before they get up to the Supreme Court, the record and so forth gets up to the Supreme Court and counsel is appointed. That's a whole other area that we were not involved in directly. But in terms of caseload, it really drew on the resources of the Court.

How I would assign those cases: I would just distribute them, not necessarily on a wheel but on a random basis to my staff so that everyone had to do them. I don't think anyone really relished doing a death penalty because it was just a lot of work.

The issues overall were fairly routine. It's obviously important and critical, but in the number of issues that were raised there might be two dozen or thirty issues that were raised. Most of them involved settled law. We had an unwritten rule that we were not to make new law on these routine issues.

There was only one case that I was involved in where we did expound on the “receiving stolen property versus burglary” issue. Again, I forget what we found, but we did create a new issue there as to whether or not someone who was involved in a burglary could be charged with receiving stolen property. They’re distinct defenses, and they’re not lesser- related or anything like that.

Again, I forget the nuance we did, but one of the objections was, “We don’t create new law.” [Laughter] We really focus on the penalty phase and the guilt phase and so forth.

MCCREERY: Why was this unwritten rule in place? I could guess, but why do you think?

MORENO: It’s because it would get lost in all the many issues in a death penalty case. We could always address it in a case that focused on that particular issue. I think that was the reason. This is an unwritten rule. I think I’m right. And we really focused on the gist of the death penalty, really the penalty phase, and that’s where we were developing law or at least following law most of the time.

There were distinct areas where it was strictly death-penalty related, so we tried to do that, more so than dealing with underlying substantive offenses and addressing that, because usually it didn’t affect “the murder” or the penalty. That might have been the reason.

I did have one lawyer — and so did Justice Mosk, for that matter — who could really crank out a death penalty appeal. One of my concerns and, I know, a concern of the Court is if you have a term lawyer who is not up to speed on death penalty law generally, it could really consume a new lawyer’s time. That lawyer might just work on that exclusively, apart from some petitions for review and so forth, the other part of the assignment, and also commenting on other justices’ preliminary responses.

But as far as having to review the record and draft an opinion that would be credited to me, it could take a long time, whereas if I would give that to a more experienced career lawyer, and I have one in mind, they could do it pretty quickly.

I think there were a couple of instances where I did have a term clerk, who shall go unmentioned, who was doing a habeas. And a habeas matter is even more difficult because there you’re getting into collateral issues

like competence of counsel and the investigation, what that turned up, and very creative theories coming up.

I remember I had one term clerk who just was taking forever, and finally I think he may have come out with a rough draft, and I said, "Not good enough." So I gave it to my more experienced lawyer, and he cleaned it up and came out with the habeas opinion.

There are two aspects. The chambers only worked on stuff that was going to be published. Some of the habeas work was unpublished and done by — while I was there we created a death penalty habeas unit. Then they also started to work on some appeals to lessen the workload of the chambers' staff.

MCCREERY: A central staff?

MORENO: Yes. If it was a routine death penalty case, it would just go to anybody on my staff, but maybe a more difficult one would go to someone on my staff who could really crank those out.

MCCREERY: How long *would* those take, roughly speaking?

MORENO: From assignment it could take about a year, close to a year, whereas someone more experienced could maybe do it in four months. It depends. If everything is ready to go and the record is not boxes and boxes and boxes. There are some death penalty cases — a felony murder with a prior record merited the death penalty — it can be fairly straightforward.

MCCREERY: Maybe we could touch just briefly on some of the opinions that you authored in death cases and how you might have approached that. What do you recall about your first one? I think it's 2003, and the defendant is Larry Roberts.

MORENO: I don't recall. I do recall my first case, though, and it was a habeas matter, unpublished. This is interesting. When I say unpublished, one of the concerns, I know, of the Ninth Circuit is that the Supreme Court only shares published cases. There's a lot of habeas work that is routine, including some of the death penalty cases, and I'm not sure of the distinction right now as to why some are published and others are not.

But one case I had — I think it's *People v. Collins* or something to that effect — this is unpublished — we got a draft memorandum from Justice Kennard, a lengthy memo, recommending that the penalty be reversed,

maybe even the conviction, where this guy murdered two women in Northern California. The referee, who was a superior court judge, maybe retired, issued a 1,200-page report. The hearing went on forever, and I think he concluded that the penalty should be upheld, denied the habeas.

Justice Kennard reviewed it and proposed to reverse it. So I wrote — this is one of the first things I did, with the help of one of my staff attorneys who had been a D.A. for twelve years. I looked at it, and I said, “There’s nothing wrong with this conviction.”

The evidence was fairly overwhelming that he had killed these girls and had a prior record and so forth. Again, right now I forget why Justice Kennard thought it should be reversed. I wrote a lengthy memo, submitted it — and this is very unusual, now that I think about it — what did I know? [Laughter] I think I got everybody to agree with me. I would think that Baxter and Brown and Chin would go along, but I got everybody else to say, “Hey, no.”

The Chief was very fond of telling — there was a state and federal committee that would work on common issues, and one of them was, “Why doesn’t the Supreme Court publish its memorandums when you summarily deny a habeas matter?”

This was a lengthy — I don’t know, fifty- or sixty-page memorandum. We wrote one, maybe not as long, but said, “No. We’ve looked at the 1,200-page findings and so forth, and we think it should be upheld.”

So Justice Kennard had to give it up. And what did I know? I got the case, so I had to review, write my own memorandum, to be unpublished and to deny the habeas. I’m sure the matter has gone to the Ninth Circuit. That involved a lot of work on my staff, and I know my lawyer spent a lot of time on finishing up and revising the initial memo after having reviewed all 1,200 pages by the referee.

That probably endeared me to Justice Baxter, that I took a position that, “There’s enough here.” Because Justice Kennard usually was more on the liberal side in terms of a lot of criminal matters.

But your question was, were there other death penalty cases that come to mind that I wrote? I wrote *People v. Davis*, that dealt with the Santa Rosa killing that led to, was it “Polly’s Law”? What was her name?

MCCREERY: Yes. Polly Klaas.

MORENO: Polly Klaas. That led to three strikes, right, or something like that. Yes. I wrote that, and that was a high-profile case but in terms of legal issues not significant.

I wrote *People v. Richard Ramirez*. Again, evidence was fairly overwhelming, and I wrote the habeas on that. I think the habeas was published, but I'm not sure.

People v. Sturm — I don't think I've mentioned this case — was a young man about age twenty. He had been fired and, as you see so often now, returned to his place of employment and killed three people. Sentenced to death by Judge McCartin in Orange County Superior Court. This is an opinion worth looking at because I reversed the penalty phase, not so much based on the defendant's age, because the guilt phase was clear, but on judicial misconduct.

If you read that opinion, the trial judge was very demeaning to the lawyers and particularly the defense counsel and to defense experts and did all this in the presence of the jury. Things that come to mind are, "Ladies and gentlemen," — he files his own *sua sponte* objection, tells the jury that, "It looks like the D.A. is asleep, but I'll make the objection on his behalf."

He denies an objection, maybe made by defense counsel. "Ladies and gentlemen, I apologize for the attorneys. They go to law school, but they don't always remember their evidentiary objections. But I'll make them for them." He demeaned defense counsel any number of times. I thought it could raise a sufficient doubt in anybody's mind. Did the defendant get a fair trial, given the attitude?

There are two things that I mentioned about the trial judge. I cited a Spanish aphorism about, "He who enters the bull ring is likely to get gored." [Laughter] Because this was something I was very conscious of, again, as a trial judge. You get someone who's being incompetent, as I referred to earlier, or you have a pro per. To what point do you help them?

I think I was accused once of helping the prosecution by saying something to the effect, "Counsel, do you mean — ?"

The defense counsel objects. "Your honor, you're helping him." A totally incompetent D.A. But I wanted to understand. I wasn't trying to help him. I just wanted to understand what the question was. [Laughter]

The other thing I said about the trial judge was, I cited another aphorism that, "He throws the rock and then turns away and says, 'Oh, what?

I didn't do anything.” [Laughter] He would deny that he was helping or whatever, but he obviously had done something, made a comment. “Oh, I didn't do that.” Or, “I didn't mean that.” Something to that effect. I think that was a 4–3 case, very close. Baxter, Chin, and maybe Corrigan, whoever was on the Court, thought — given that the evidence was fairly strong. But I said this was over the top.

A case that I cited that, again, was close to me — I don't know if you're familiar with the Sleepy Lagoon and the Zoot Suit trial here in Los Angeles?

MCCREERY: From many years ago. Only vaguely, but please —

MORENO: Yes, from during the war. Maybe it was 1946 when the opinion came out. Judge Charles Fricke was the supervising judge of criminal when he wrote a book on criminal law and, again, demeaned defense counsel, demeaned the defendants. This was the largest prosecution, mass trial, and nineteen or twenty defendants, involving alleged Mexican-American gang members. There's a play called *Zoot Suit* and a movie that's very true to form to the opinion.

I was familiar with not only the play, but I had read the opinion. The trial judge was very demeaning to defense counsel. So I relied on that case. It wasn't reversed on the basis of judicial misconduct, that case, but it was a denial of due process and attorney-client communication because they were kept separate from the lawyers, and everything else.

I was happy to cite *People v. Zamora* — that's the name of the case — in *People v. Sturm*. Later I read commentary by the judge himself, who recently passed away. He seems like a nice guy. He retired. He was known as “Mr. Death Penalty” in Orange County. He was very proud of the fact that he had presided over about a dozen death penalty cases in Orange County, which is a lot.

But he commented on the opinion and said, “That sounds like me,” like he would say those things. He was a very plain-spoken guy. I thought that was cool. He took no offense. He said, “You know, it's probably right. That sounds like me.” [Laughter]

Afterwards, from thinking that this judge was, “Oh, my God. I can't believe that he would say these things and not think that he was being one-sided and demeaning.” To say, “Yes, sounds like me. It's probably right.” He had no, really, vested stake in getting this death penalty affirmed.

But I had other reasons. The man was twenty years old, maybe even no prior record. So he shouldn't have gotten the death penalty. When you kill three people, though, in cold blood it's hard to say you don't get the death penalty for that.

I remember the D.A. spokesperson was very upset. "We're going to retry the case," et cetera. I doubt that they did, given everything it takes to do a trial from, I don't know, fifteen years ago or so. The guy's in there for life without parole. That's probably the one death penalty case that really stands out, for me anyway.

I should say that when the death penalty issue was on the ballot, was it 2016, 2014?

MCCREERY: 2012, I think. Yes, about whether or not to repeal it?¹⁴

MORENO: Yes. I was actually asked to take a position on the reform to abolish it, and I agreed. I thought about it, but I was asked by Gil Garcetti, who used to be the D.A. here, whether or not I'd be able to write or sign on to opposing the death penalty. And I did sign on to it, and the reason was not so much — I said, "I'll do it. I'm not against it so much for moral reasons or that people don't deserve it, religious grounds, whatever. But I think it just takes too long, and it consumes too many resources."

The figure that I had in mind was \$1 million, really, to go through the process and to handle everything through habeas, and ultimately the execution. If you have 700 people on death row — and since here we have so few executions to begin with — and the leading cause of death is old age and suicide, and we've executed thirteen people since the late seventies? We really don't have a death penalty.

I signed on to that, and no one ever really commented on that. But I was someone who had firsthand experience with the inherent delay and the cost to the Court and society, so that — I can't say I feel very strongly about the death penalty, and if you asked me to vote one way or the other, I'd say, "Get rid of it." Life without parole, I think, in many situations is worse than the death penalty.

I have an opinion somewhere that says, "Virtually any first-degree murder can qualify for a special circumstance, whether it's in the premeditation, or the heinousness of the offense, or killing a police officer, or for

¹⁴ Proposition 34 of 2012.

money, for financial gain.” If you look at the 190-whatever-it-is in the Penal Code, really there are over a dozen things that qualify for the death penalty, and any creative — you didn’t have to be that creative. You can say, “Hey, this is a special circumstance.”

So you get a D.A. like in San Mateo County or in the Central Valley or Riverside and even Orange County, they can allege a special circumstance or you get the death penalty. Whereas Los Angeles, I was very happy to see, there’s a death penalty review committee. Even at the federal level they’re going to say it’s got to go all the way to Washington. There’s review, and lawyers can make a pitch for arguing against filing special circumstances.

Here Cooley and Garcetti, our D.A.s here, they had a senior lawyer’s review on whether or not you want the worst of the worst. But that’s not true in every other county. So I felt that there’s a lot of overcharging in terms of adding that as an enhancement, a special circumstance. I know I wrote about how any first-degree murder, how almost any murder, you can allege premeditation and deliberation when the definition of those elements are just a brief moment to consider and weigh the consequences. That instruction gives the jury a lot of leeway in saying it’s premeditated.

I would argue still that the special circumstances should be limited to maybe four or five, maybe financial gain, actual shooter, killing a police officer, just very, very — for the worst of the worst — torture, and leave it at that.

MCCREERY: Just thinking about your experience as a whole on the Court, once you had been on for a while, what was it like to be one of seven, which was one of your questions at the outset? That’s a big change from where you were.

MORENO: Right, yes. I actually enjoyed it. My initial concern about not liking my colleagues or feeling that I was going to have to duke it out with them and being more contentious — none of that proved to be true. We were a fairly collegial court, almost unanimous in our decisions. I think they were all well reasoned.

I think there was sufficient debate and sufficient assertion of principled positions that nobody was a pushover and no one was a sure vote on anything. Even if it was one of your closer colleagues, it wasn’t like that. I think it was a very good experience and, as I also said, for me it was just a good

time to be on the Court, dealing with the gender-equality cases and arbitration and some of the employment cases.

I'm sure it's the same way now. If you talk to someone now they probably say, "Boy, this is interesting. We're getting some good cases." But to be on a Court where we decided the same-sex marriage case was really a big deal, a very big deal. So I enjoyed thoroughly my experience on the Court.

MCCREERY: Let's not forget to talk for a few minutes about 2009, when you were a possible candidate for the U.S. Supreme Court. We've touched on the idea a little bit going along, but let me ask you to talk about how you first got wind of your name being under consideration.

MORENO: The first thing I remember — and there might have been a prelude to that that I don't recall [Laughter] — I remember driving, or being driven, from Sacramento to San Francisco one afternoon, and one of my law clerks, Victor Rodriguez, calling me — he's now a judge in Alameda County — saying, "Hey Judge, *Politico* is reporting that you're being considered for the U.S. Supreme Court."

I thought, "Oh, that's nice. There's no Latino on the Court." I had been a federal judge, and I was on the California Supreme Court, a prominent court. That was the first instance that I got a hint. Hey, what's going on?

Later I found out — I'm pretty sure I found out later, but it was an incident that happened earlier, and that was that the Congressional Hispanic Caucus had met with the White House counsel, Greg Craig, to President Obama.

I had had an extern, a summer extern, who was on some kind of fellowship with the Congressional Hispanic Caucus. This is — remember I said the other day? — you just never know where these people are going to end up. She reports to me that, yes, she was in a meeting with some Hispanic congressional people and that my name was, in fact, being submitted. I said, "Fantastic." Senator Feinstein had vouched for me. She's always been a great supporter.

That was fine and dandy. I said, "Okay, maybe something is happening." I got kind of excited. Then I got a few phone calls from friends. I remember a guy was in the airport in Philadelphia, and on CNN they had potential candidates. He called and said, "Hey, I just saw you on TV." I said, "What?"

"You're being considered." These are all rumors and all that, and I don't know how that information gets out. Maybe there's a leak or something.

But Sotomayor was up there as well, and right away I thought — and there were some other really good — all women, by the way — candidates.

So I knew that they wanted to appoint another woman and a Hispanic, mostly a Hispanic but also a woman, so I thought my chances were decent but not very strong. But then, I had gone to lunch with my staff, as we do on Tuesdays. We come back, and I'm working in my office, and my secretary is checking her voicemail. She runs into my office and says, "We got a call from the White House."

"Oh, my God." I call back, and I talk to Valerie Jarrett, who was Obama's close friend. She says, "Your name is being considered. Is this something that you'd be willing to make the sacrifice to do that?"

"Yes, sure. I'm honored." Blah, blah, blah. But I remember that, "Are you willing to make the sacrifice?" And it would have been a sacrifice to move out there with the whole family or most of the family. She said, "Okay. Someone is going to call you." Maybe she gave me a name. It was a partner in a firm because what they do is they outsource the interviews to law firms.

Then someone called me, and I had to cancel my flight going back home so it must have been a Wednesday. I had been through the federal judge vetting process, but they asked everything. "Nannygate? Marital affairs? Old girlfriends?" I was familiar with some of those questions, but it was a very thorough interview. "How's your health? Any decisions?"

At that time, let's see, I think the nomination of Sotomayor was over Memorial Day if I'm not mistaken, so this might have been a month earlier.

I think gradually I learned that if there was going to be a Hispanic, the Hispanic National Bar Association — which is East Coast-focused and also Puerto Rican-focused, not Mexican-American. Mexican-Americans are 80 percent of Latinos in the United States.

MCCREERY: But they're all in the West, for the most part?

MORENO: Right. I learned from another source that the Hispanic congressional delegation had agreed that they were going to support Sotomayor. She was a circuit judge already, so that's the natural evolution — progression. And they only wanted to support one candidate because I think previously they weren't unified, and what they wanted to do, they felt, for this — one, they really wanted a woman and a Latina, and it didn't matter where. And her bona fides are perfect. She has a great story, a great

narrative, Princeton and Yale and an award from Princeton. I think she's even Phi Beta Kappa from Princeton, and Yale Law School, so she had a lot of support, East Coast.

In a way it turned out to be a blessing in disguise, but I was willing to make the sacrifice — and take a cut in pay, by the way. At that time our Supreme Court justices were making more than the chief justice of the United States. I'm sure their pay has gone up.

It was exciting. I had some emails that are in the archives at Stanford. They interviewed me and wanted my papers and some of that related to that, like the phone call. But anyway, it was a great honor, and I can have a feather in my cap saying I was on the short list because, genuinely, I was interviewed, and it was reported in the papers.

Just to wrap it up, I got a call from Greg Craig to tell me that I wasn't going to get it. He told me Sotomayor was going to be nominated later that day. He called me twice, once at night, saying that I didn't get it, and I talked to him in the morning. He said, "Yes, we really admire your work, what you're doing in California."

I said, "You know, I would have had a tough road because of my decision in 2008 to be part of the Marriage Cases here. Actually, we're issuing our Prop. 8 decision the same day, today." I said, "I'm going to be a lone dissenter, saying that this measure to abolish same-sex marriage is unconstitutional." He says, "Yes, that would have been an issue." [Laughter]

At that time, one, the majority opinion would have been not — but being a dissent, being one out of seven? So I knew.

People often comment, when they talk about my dissent. They say, "What courage he had. He must have known before the dissent was issued that he would be standing alone while he was being considered for the U.S. Supreme Court." Chemerinsky said this. I think Chemerinsky said, "He could very easily have just joined the majority and not attracted any attention." But I wasn't about to change my dissent, which was in the works. It was going to be released — I have to check on that. That would be easy to do, when she was nominated and when the dissent — sometime in May. I think it was right around Memorial Day.¹⁵

¹⁵ Memorial Day was May 25, 2009. On May 26, 2009, the California Supreme Court announced its Proposition 8 decision and President Obama nominated Judge Sonia Sotomayor to the United States Supreme Court.

MCCREERY: You've mentioned the effects on your family had that come to pass. Already you had made some sacrifice to sit on our state Supreme Court, in terms of commuting and all that. How was that working out, the couple of days a week, so that you were in San Francisco every week but not living there?

MORENO: It worked out fine. Given advances in technology I was able, obviously, to stay in close contact with my staff at all times. I don't feel that my role was diminished in any way with my staff or with my colleagues. I was always reachable, and I was always present at least every week and in every petitions conference, when we did meet. My colleagues missed more of those than I did. But at least I was always there.

The advantage also, I know, for the Chief was that I was very visible in L.A. circles. People even joke, the Latino groups, that I'm on a — what do they call it when these musicians go on the road? My tour. The Justice Moreno Tour. They actually made a T-shirt or something. I had been to twenty places in less than a year speaking to groups all over the state. So that's what I tell new justices. "If you want, you're going to be asked to speak everywhere. People will want to meet you and invite you to places and things."

So I did a lot of that. I know the Chief often asked me to do an event down here because he got more invitations than I did, I'm sure. Since he had a place in Northern California but also here in Southern California but started to spend more time up there, frankly — his family, his kids, were down here, but he and his wife Barbara had a place up there. I know I did a couple of weddings for him down here and things like that. Or he was asked to speak, and he said, "I can't do it," but he would get me to do it. I was happy to do it.

It worked out fine. I don't think that would true for everybody. They might want to just have their own time. But he felt, and I agreed, that being a member of the Court also included being accessible to the bar groups and so forth, just so that they learn more about the Court. They see you as a person and not this distant figure in San Francisco.

For me it worked out. Occasionally if the planes were delayed or something, that would be a pain. But otherwise I would be picked up at home by a CHP, an unmarked car, and taken to the airport, and they would meet

me in Oakland. I could make it door to door in three hours, which was, for some, a decent commute if you're going to travel that far.

MCCREERY: You would come back the next day, so it wasn't all on one day?

MORENO: Yes, right. I stayed in a hotel there for a government rate, and that was out of my own pocket so I took a cut in one sense. It cost me maybe a thousand dollars a month or something. But that was okay.

MCCREERY: You also spoke to the fact that being accessible to the larger legal community and the community in general was an antidote to the isolation of being an appellate justice working on cases.

MORENO: Exactly, right. Yes, and of course the stereotype, for judges but more so for appellate judges, is that they're in their ivory tower. That can easily happen, but I've always found, like I just said, that I'm more social and it's important to be out there. I know the Chief really was very glad about it.

Governor Davis was ecstatic about that. He told me a couple of times after he was removed from office, recalled, when he was introduced, he said, "Justice Moreno was the finest thing I did as governor, and I'm so proud." Maybe it was just because I'm there, but he really liked the fact, as I said, that I "pitched a perfect game." But my position on same-sex marriage and all that, he thought, "Yes, that's what I wanted."

I also learned later from Burt Pines that at least Burt and maybe the governor wanted someone in terms of views similar to the chief justice. He liked the chief justice, his views and so forth. That was his measure, and he was very pleased that the Chief and I had a high agreement rate.

Who knew? Because I certainly didn't go in knowing. I didn't know how the Chief voted on things, really. I don't think it was because of his persuasive powers or anything else, but in terms of a position on the law, I think that if you looked at where we disagreed it was in very limited instances. In other words, I came through for him, not knowing that — that certainly was not my objective.

MCCREERY: And as a Southern California person himself, Governor Davis was happy that you could represent Southern California itself?

MORENO: Yes.

MCCREERY: Since the Court itself is in San Francisco, there may be an interest on the part of some to have a Southern California representation?

MORENO: I have advocated that in this last appointment, the last several appointments. One, a trial judge. Someone from Southern California because we're one-third of all the judges in the state, and we generate probably one-third of the litigation that goes up to the Court. It's nice to have someone from down here.

MCCREERY: Good morning, Justice Moreno. We discussed at some length in our last meeting, on the first of March, the laws in California regarding the death penalty and the California Supreme Court's role in carrying out those laws. Then, as we know, our new governor, Gavin Newsom, declared a moratorium on the death penalty in California since last we met. I wonder if I could ask you to give your thoughts on that development, please?

MORENO: Indeed, it's an extraordinary move by Governor Newsom, who even during the campaign expressed his opposition to the death penalty. I think what is quite surprising, however, as the top executive in the state, is that he would take this measure in contravention of the existing law, which provides for the death penalty. The whole issue of the death penalty and constitutionality has been reviewed by the Supreme Court hundreds if not thousands of times and has been routinely affirmed.

So I don't question his authority as a chief executive to delay or to stall the — as I think he calls it — the machinery of death, referring to the Department of Corrections as the implementing authority to carry out the executions. But it seems to me that that is an odd way of stopping or putting a halt to the death penalty.

The problem that arises is that the appeals and the habeas matters that are pending before the Court — and they're at all stages, from the beginning to — the Court is still calendaring death penalty oral arguments. So I think it presents a real dilemma for the Court and the attorney general. What do you do with the cases that are in process? Because this only impacts cases in which the final judgment on appeal has been affirmed.

I've always had mixed feelings about the death penalty myself, based upon the disproportionality of how defendants are selected. It depends on the color of the — whether there's a mix of races in terms of the victim and the defendant.

The location in California, which county, because there are certain counties that have more of a propensity to seek the death penalty and to have juries convict, whereas in Los Angeles, and other counties, I'm sure, there's an intensive review by a select team of prosecutors. They confer with defense lawyers to go over mitigating circumstances.

And then juries, it seems, are less inclined to find death as the ultimate punishment. I've seen the support for the death penalty gradually diminish over the past decade, for sure. That trend here is really evidenced in many states throughout the country.

I don't think the death penalty is long for "here to stay," and maybe Governor Newsom's extraordinary action is merely the first step, although he's starting at the very end of the process, which seems — that's the part that I just don't really get. It seems like it's *ultra vires* to attack something way on the end where he does have authority.

I think he also believes he has, and he does have, the authority to commute sentences, just to say — and I think other governors have done that statewide — just to commute the sentence and say, in individual circumstances, say that life without parole is the commuted sentence.

I don't know how the justices on the Court feel. They've tried to implement new provisions to speed up the process, and I think they've rejected any kind of mandate to do so. They're just going to do the best they can. But I think some Court of Appeal and trial judges are now doing habeas relief. They're having the initial habeas filed at the superior court. I believe appellate courts are reviewing that. That also helps.

I have to think that there's a good number of judges, though, on the Supreme Court who are probably relieved that the outcome here may be not having to deal with so many death penalty cases because it consumes — and I think the numbers vary, but it's at least a quarter of the resources of the Court. That doesn't mean that the cases are terribly complex in terms of legal issues. But in terms of the factual issues and the attention to detail you have to give to all the issues that are raised, that takes time.

There's also a death penalty unit on the Court that assists the chambers. The chambers are ultimately responsible for issuing the opinions. I don't know what's going to happen with that unit. And there's a habeas unit as well that assists the chambers in writing up the habeas opinions. So

there are some significant resources that are devoted to the death penalty on the Court.

I know I thought the day after Newsom issued his edict, “What’s going to happen? Are they just going to stop in mid-field and wait to see?” I imagine there are some memos circulating inside the Court as to, “Do we keep on going full speed, or do we slow down?” Realizing that, at least for the next eight years, and maybe longer — maybe longer — that their work will be for naught.

Although I think they are entitled to have an appellate review. These are judgments coming directly from the trial court, an automatic appeal to the Supreme Court, so at least to that extent. On the guilt-phase issues, the Court has to really review those and have a hearing and an opinion and so forth.

Time will tell what impact it has. The last time that the death penalty issue was before the voters — I think it was 2012, I’m not positive — when I was asked by the former D.A. of L.A. County, Gil Garcetti, to join in an opposition — I think it was a rebuttal position — to those supporting the death penalty.

I signed on to it principally on economic grounds and that it just wasn’t worth all the resources that the state was devoting to the death penalty appeals and maintaining housing and this whole bureaucracy, let’s say, to handle death penalty appeals. On balance I would have favored some kind of expediting on the process without diminishing constitutional rights. But it’s hard to come to a reasonable solution, and that’s the difficulty.

MCCREERY: It does leave the judiciary in a tricky position, though, on how to cope in the meantime, and it is the executive branch moving over into the area that’s under the constitutional and statutory authority of the judiciary.

MORENO: Yes, and also the legislature. The people, as the legislature. So it’s an extraordinary move, but from all accounts it is constitutional. He has that authority. I’m sure it’s being challenged, and we’ll see.

But anyway, my personal feelings on the death penalty are that we would, as Justice Mosk once said when the death penalty, I think, was reinstated — he asked his judicial assistant, who became my judicial assistant, “Pat, do you feel any safer now?” [Laughter] She always answers no.

So I don't think in terms of safety, crime statistics, or anything else, murders and so forth — it's clear the death penalty is not a deterrent, so it's more of a political and for a lot of people just a moral issue to have retribution against those who do heinous acts.

I think I mentioned once before, also, that I think that the number of special circumstances, which is, I don't know, between two dozen and thirty, is just way too many, too many special circumstances where just about any kind of premeditated murder can be a special circumstance. I think they really have to narrow it down to just a half dozen at most.

MCCREERY: It will be interesting to see what becomes of the death penalty as time goes on. As you pointed out, the public appetite for it does seem to diminish. The *L.A. Times* is just reporting on that again, that the public attitudes are shifting over time.¹⁶

MORENO: Yes. I don't see a public outcry as to what Newsom has done. Maybe they're saying, "He's at it again, fulfilling his vision." But again, I just don't think they really care because they know there haven't been any executions since 2006, and while the death penalty was back in effect only thirteen were executed. It's not something that people have a thirst for.

MCCREERY: Just as an aside, what were your media experiences while sitting on the California Supreme Court, with that delicate balance of needing to protect a lot of information but to inform the public when given the opportunity?

MORENO: I'll go back even a little further. When I was on the trial court here — and this is before and after the O. J. Simpson trial — I was very open to the media in terms of having them present in the court, taking appropriate measures to protect the jury and witnesses, and so forth. But I never had any problem with being on display, so to speak, whereas some judges, particularly after the Simpson trial, had very strong reservations about having the media in court.

I know some judges said, "You've never been burned by the media." Well, okay. Maybe sometimes they don't have the full picture. But I never had a bad experience, and I don't deny that maybe some judges did. The same thing with meeting with the print media. I was more than happy to

¹⁶ "Assessing the death penalty," *Los Angeles Times*, March 28, 2019, B1.

talk to them about things that I could talk. I wouldn't seek them out, and I think you can go too far.

I think, just one example, Judge Lance Ito, when he agreed to meet with a newscaster, Tritia Toyota, in the course of the O. J. Simpson trial proceedings, that was a real mistake, like, "Get to know the judge." That was the angle.

My recollection is that he thought it was just going to be one interview. It was one interview, but it was played out over five days here in Los Angeles, so it was whatever footage they had they stretched out over five days. After the second day, I think Judge Ito was embarrassed. "Oh, my God. This is what they did?"

He did it for a friend, Tritia Toyota, a very responsible reporter. I've never talked to her about how that worked, but I have to think that once the local management saw the appeal of this, say, half-hour interview, they milked it for all they could. It became a topic of discussion. "Oh, my God. They've learned too much about the judge." It became just part of the whole spectacle.

I was in the building then, and Judge Ito would come down to the lunchroom and tell us what was happening. That's how I learned that he said, "I thought this was just going to be a personal interview," and maybe they would have some footage but not going into his whole approach and, I think, even personal life. A mistake. I think he was caught unawares of what the media would do.

That's the problem I think many judges have is that things are taken out of context. You say something, and they don't get the full story. You can't really respond because then you have to give out more details on an issue.

Every time I see a judge go before the media on a case like this — Judge Ellis, who sentenced Manafort. I think he was interviewed or made a public statement about himself. I think that's a mistake. I think a lot of caution should be exercised by judges in talking to the media.

Then in terms of the Court, obviously Chief Justice Ron George had written *NBC Subsidiary* versus I don't know who the other party was, the real party in interest. But he was very conscious of, on the one hand, preserving the openness of public records and public proceedings in the courtroom and, at the same time, requiring a substantial showing for issuing gag orders, opening public files, the sealing of records, and closing the

courtroom to others. I think he was a very strong proponent of transparency and media access to court matters.

I take that position as well because many judges would just sign off on a request to seal files, close courtrooms. Where judges get in trouble is if they just willy-nilly sign those orders or close courtrooms.

Thank God for lawyers like Kelli Sager — she works for Davis Wright Tremaine — First Amendment lawyers who represent the *L.A. Times* — for exercising the rights of the media to excessive measures taken by the courts in certain types of cases.

It's very hard. I've never had to manage a high-profile case, so I've never been inundated with media. But I know the court, at least in the L.A. Superior Court, they've done it so many times that they can really guide a judge in how to handle those cases and how to respond to media requests and so forth. I think it works in L.A. County, and it's the biggest court and they get a lot of high-profile cases, so they do a good job of handling that.

I don't recall any particular media-type cases that we had on the Supreme Court while I was on it.

MCCREERY: What about such details as cameras in the courtroom, let's say at the appellate level? How do your views line up there?

MORENO: When I was on the Court we had an arrangement with a public service channel called the California Channel. So on certain kinds of requests to air the oral argument, we would do it live, unlike the U.S. Supreme Court. My understanding now is that the Court now records everything, and it's available to the public just a few weeks later, a video, so to speak, of the oral argument.

I'm in favor of that, and I'm in favor of contemporaneous — well, they do that now. I think it's also open to the public. The public has access. I know the research attorneys can watch oral argument from their offices, and if memory serves me I was able to watch an argument while it was being given. In terms of archiving it, that's what I'm talking about. It's available later. I think there's a lot to be gained and nothing to lose by having that open.

I think the concern had been at the trial level, where as we saw in the Simpson trial the lawyers are playing to the cameras, literally. This was "the trial of the century," and every news station in the country was covering

this trial. So it was tried every day in the press. That has to have an impact on the jurors, to be the focus of attention on what they're being involved in, and so forth.

But I'm in favor of cameras in the courtroom.

MCCREERY: I want to give you a chance to reflect a bit more on your nearly ten years on the California Supreme Court and describe the process for deciding, for certain, that you would retire and the timing of it. But how do you sum up the whole experience?

MORENO: The whole experience was, I think, really fantastic. I think I was very fortunate to be on the Court at a time when my colleagues were all — to say this — were within the mainstream.

The only justice who was more ideologically rigid was Justice Brown. But even on certain types of cases, she — she had a certain view, maybe you'd call it a libertarian view. I think if you look at her cases, she was very rule-driven, but many times I think a certain ideology played into it.

Once she was replaced by Justice Corrigan, I really have to say we were all pretty much non-ideological and committed to following the law as we saw it. But still there was a certain predictable bloc of voting. Justices Chin, Baxter, and Corrigan were viewed as more conservative on criminal and on some social issues. Myself, Justice Kennard, and Justice Werdegar were viewed as more plaintiff-oriented and I wouldn't say more criminal-defendant oriented but more conscious of preserving a defendant's rights.

Then you have the chief justice, who really was the swing vote in a sense because he, I think more often than not, sided with the more progressive or liberal side, if you will, but not always, so a very middle-of-the-road guy. We all had high esteem for him because he had served so many years on the trial court and was the leader of the judiciary, had been on the Court of Appeal, excellent relationships with the legislature, and ran the Judicial Council very adeptly.

And his manner. I don't know if you know him, but he's just very tactful. He gave the impression that he really considered your views and was not a bulldozer in any way. At least I never saw him that way. I think I've explained, and he's explained in his book, that particularly on the same-sex marriage case he actually had it written two ways.

Again, I don't know if I said this, but on that case when I talked to him and I was very clear that I was for overruling the Family Code statute limiting marriage to only between a man and a woman and comparing it to the domestic partnership law, he basically said, "They're co-equal. What's the difference?"

I said, "There is a big difference in the name. The name has significance. Second, to me it's like in the 1950s and Rosa Parks. Sure, blacks and whites get on the bus and you do get to the same destination, so in that sense you're equal. But you're telling a certain class of people to sit in the back of the bus." I don't know where I got that metaphor. I'm sure it's not my own. But he took that to heart, that we're making this distinction without any kind of principled reason. I'm glad that he came to join the three that I was with.

I have to say that, particularly on that case and in others, my colleagues were not ideologically driven. They really were sincere about their beliefs, and they had a rational basis. We didn't get any opinions that were just sort of result-oriented. At least it didn't seem that way. They could get to that ultimate decision by following the law, so great colleagues in that sense.

That made it, for me — I always felt that my vote counted because I could be the swing vote, too. On certain criminal issues, having been around the block, I didn't have a knee-jerk reaction on criminal issues, and Justice Baxter knew that. I had been in the state trial court for eleven years, and I had seen some really bad cases and some really bad dudes, so I had a feel for that.

I know that he, who was probably the most conservative on the Court next to Justice Brown, really gave me a lot of credibility. So when I spoke about something in the trial courts, he could see that I had a basis for it and pretty much agreed with what I had to say about that.

I guess my point is that, whereas if you're in a court where your vote is not going to count, if you're overwhelmed by the majority, I could see that that could be very frustrating. And maybe it was frustrating for Justice Brown in some sense. But I felt that my vote counted. I don't know what percentage of our cases were 4–3, but a good number, maybe 10 percent, 12 percent. So at least in those cases, my vote counted.

The second thing is that during that time on the Court there were a lot of cases that came before us on what I call gender-equality issues, whether

it's same-sex adoptions, the rights to attorneys' fees in those cases in the public interest — I think the *Hughes* case — the in vitro fertilization cases, my three cases dealing with that, my case in *LaMusga* giving courts more discretion.

Then also in the field of arbitration and class-action waivers, the tension between the federal courts, particularly the U.S. Supreme Court, and the California court, which was very protective of employee rights in terms of unconscionability, contracts of adhesion, limitation on claims like class-actions waivers, the imbalance in the way arbitration agreements are written and the rights that they bestow on the employer versus the employee.

Those were all really big issues that were just coming through the courts at that time. So I think in those two particular areas I felt that we were at the forefront of a lot of these issues, both on gender equality and on employee-employer rights. So it was a good time to be on the Court.

Maybe the current justices are saying the same thing because they're getting other issues, you know? But I think it was really — a lot of that is attributable to the leadership of Chief Justice Ron George, that we took on these cases, we worked through them, we came out with some really definitive opinions at that time.

He left and I left, so the George Court came to an end. History will tell how they looked at this era, and I was very happy to be part of it. I'm sure people look at the Bird Court and the Lucas Court, the Gibson Court going even farther back, to see.

My sense was that, when I got on the Court, for various reasons California had lost the luster that it had from back in the seventies. When I was in law school, we used to read the Traynor decisions — in law school. It was, wow, California is — and maybe I went to a California law school, but — and the Mosk opinions. These guys had national reputations.

I remember someone — or maybe I was just sensing that, well, maybe the California Supreme Court in the early 2000s was not the same as it was, say, twenty-five years before. But I think by the end of the day — I think we were, what, the second court to affirm gay marriage after — Hawaii did that first, and then the people reversed it. But then the *Goodridge* case in Massachusetts? I think we were the second, and we're certainly the largest state, so I think we were setting a standard, so to speak, taking a leading position on certain key issues.

Certainly in arbitration that was the case, too. A number of my cases that were pro-employee were vacated by the U.S. Supreme Court, *Gentry* and *Discover Bank* and *Little v. Auto Stiegler* — or the reverse. That tension still exists now, with the feds gaining more ground.

But I see that after the *Iskanian* case — I wasn't on that — but subsequent cases you really see California asserting its sovereignty over these arbitration-related and class-action-related cases. The battle goes on, but it was good to be there when it was really on. Now that so many issues have been decided, it's, ah! Are they just howling against the wind?

MCCREERY: Any regrets?

MORENO: You know, I don't think so. Occasionally I think of the fact that when I was retained, beginning in January of 2011 — retained in 2010 — sometimes I think that I had a twelve-year term. I'd be on until January of 2023.

There's something about job security and a way of life. It gets very comfortable. You become a senior person. I would be the second-most senior justice after Justice Chin who, as you know, if you're the chief justice, Chin would be seated there, and I would be right there. You speak in order of your seniority. In one sense that's kind of scary, that I'd move across the table and move down this way.

Sometimes I think about that, what that would be like. But I don't have any real regrets. As you can tell it was an enjoyable time. I felt I made a difference. But I guess I felt I just didn't want to, at this age, seventy and beyond, still be on the Court.

When Jerry Brown defeated Meg Whitman, that opened the door for me to leave in good conscience. So I did, and I didn't know what I would do, but I think I just wanted to establish myself back in L.A. I don't know how this is going to sound, but my thinking then was to emulate one of my mentors, Justice Elwood Lui, who I considered to be a power broker.

I probably haven't told you this. I wanted to be in the mix. I wanted to be an elder statesman: a former Supreme Court justice, a leader of the bar, a leader in the Latino legal community, involved in judicial appointments, maybe being on corporate boards, maybe being asked to serve on commissions, as I did locally. I wanted to be back in Los Angeles and reestablish myself — I never left, but to be more engaged in civic and private society. A new role. That's what I envisioned.

As a base, I wanted to use a law firm. So I did think of that, that I wanted to be engaged with a law firm that would allow me to do those things, which is what Elwood Lui did at Jones Day. That's how I saw myself, not running for office but being — and in a certain way that has come true in a number of ways, maybe not as broad as I would have liked because I'm always trying to figure out, what is my role post-Supreme Court?

I've joked with people that there's life after the Supreme Court. [Laughter] You can be an ambassador. You can do this. You can serve on this commission. So I'm still doing that, still trying to do that.

MCCREERY: And the timing itself? As you've mentioned just now, you left right after Chief Justice George did, although he announced quite early on that he was going to do so. What was the timing for you?

MORENO: The timing for me was November of 2010, when Brown got elected. I had thought about it, but as I said I would have stayed on the Court had he not gotten elected. So during that time, in November and December, I started thinking, well, when am I going to cut it off, make the decision?

The other thing that affected the timing was that I had reached my twenty years of service under the retirement plan, JRS I, so that I would get the full benefit of the retirement system by leaving. Technically I could have left maybe a year before that, but I wanted to wait just a little longer. If I left early I would have given the appointment to Schwarzenegger, who did a great job of appointing trial court judges, but who knows who he would have put on the Supreme Court? That probably precluded me from leaving as soon as I reached the twenty-year limit.

MCCREERY: What was the immediate transition, then, in February of 2011 when you did step down?

MORENO: I got a lot of inquiries and a few offers from law firms once it got out. I was very reserved about revealing those contacts, but I talked to a number of firms, all very positive. I selected the firm that offered me the best deal and the best opportunities — the firms that had really good standing in the community.

MCCREERY: You took a position then with Irell & Manella. Tell me precisely how that came about, if you would.

MORENO: Like so many things, I did not know the powers that be there. I knew, obviously, Nora Manella. But I got a call from the main partner there, Morgan Chu, on a weekend, actually, [Laughter] who got my number from a long-term friend, Don Nakanishi.

MCCREERY: That goes way back.

MORENO: Yes, because he was at Yale with me, and we were lifelong friends. We talked, and once I found out that the firm was in Century City, I said, "I don't know."

I went to lunch, just thinking, "I'm just going to lunch." But then they pursued me and wanted me to meet more people, and so forth, made a really good offer, as did a couple of other firms. But working in Century City was not my ideal situation, but I went with them anyway.

MCCREERY: What sort of a role did you hammer out for yourself in that firm?

MORENO: It was flexible. I was "of counsel," so I worked as a consultant on a number of cases. I worked on some appeals with them, moot courts, giving my knowledge about the process and some of the justices. I analyzed royalty agreements, contracts basically, that were going to be in arbitration.

I brought in a few cases. One was an investigation at UCLA on faculty discrimination, called "The Moreno Report." Right now I'm doing something else for UCLA.

MCCREERY: Say a bit more about that effort, if you would.

MORENO: The report? Yes, well, it's online, and it is called "The Moreno Report." I brought in members of the firm. We did an investigation of complaints by minority faculty, particularly in the med. school, over tenure decisions, assignments, derogatory statements, a general climate of malaise among minority faculty, and how those grievances were handled.

We did a very thorough report that was adopted by the university. As a result, they created new positions to handle and to simplify a Byzantine process of handling these types of grievances. You're talking about faculty. Like so many inbred institutions, it's really difficult for a faculty member to get any kind of relief when they have a certain type of complaint. Some of it dealt with sexual harassment and racist statements and so forth. We

made a series of recommendations at the end of our report that were implemented, to this day.

MCCREERY: What did you learn from going through that process?

MORENO: You mean doing that kind of investigation? It was something I enjoyed doing, first of all. I felt that they had selected me as the team leader because obviously they wanted my imprimatur on whatever report. My reputation was one of being very neutral, irreproachable, not taking sides, and so forth. I really saw that as an opening towards doing more work of that type.

Since then you see so many other investigations going on. It has become a lucrative niche practice of so many law firms, whether you're talking about sexual harassment, or now it's college admissions. Whenever a firm gets in trouble — or an institution gets in trouble — they appoint a so-called independent investigatory team to analyze it. Years later, while here at JAMS, I did the same thing for the UC Regents in connection with a state audit, where it was alleged that the Office of the President interfered with a state audit that was being conducted concerning expenditures within that office.

I'd like to do more of that. I'm also now currently on another team that you'll probably read about in the next few weeks. But I like that kind of work, so that opening with that initial UCLA investigation was, I think, something that, given my stature and reputation, lends itself easily to bringing me in on most things.

MCCREERY: What was the experience of coming back into private practice after so long on the bench?

MORENO: Unlike a lot of my colleagues on the bench — they had never really worked for a large firm — I had, so I had a really good experience in a law firm setting. Coming back as a senior counsel and being respected and so forth, I could mentor young lawyers and talk about my experiences in the Court. What is the path to success? How can they grow in the law firm or outside the law firm?

For me it was a very smooth transition. I liked it. What can I say? I probably would have stayed there or somewhere else if I didn't get the opportunity to be appointed as an ambassador. It gave me that freedom to do yet another thing.

MCCREERY: Concurrently, early on in your return to the private sector, you were already being asked to do other kinds of roles. I'm thinking of Jerry Brown appointing you to the State Bar Commission on Access to Justice the very first year you were retired from the Court. Say a little bit about that, if you would.

MORENO: Okay. That was a statewide commission. Honestly, I can't recall the kinds of things we talked about. But there was more about the ideas that the commission had on how we can make access to the Court a little easier. That was something that, based on my experience with my disabled daughter, I felt that if I had such a hard time accessing services that she was entitled to, that it was very difficult for the ordinary citizen. I recall that we talked about making it easier for people to access court services.

The commission that I really had more of a part of — I don't know if it's anywhere in my resume — it's resurfacing right now in Los Angeles County, and that is our commission investigating incidents of violence at the county jail here. There we had a very strong team. We brought in different law firms to investigate different areas of inquiry in management of the jail system.

It was just fascinating. I never thought that it would ultimately lead to the U.S. attorney filing criminal charges against, I don't know, a dozen deputies and then including the assistant sheriff and the sheriff himself. I was at Irell at that time, and I brought in an associate. I said, "Look, this might be something you might be interested in."

We were able to question the sheriff and assistant sheriff. There were, I think, six of us, three former federal judges. That is exactly the kind of thing I wanted to do, to be involved in commission-type work — voluntary, of course — to investigate something that I knew everyone recognized as a real problem. That's also a very lengthy report on our work and, again, our recommendations.

I've been asked to be, lately, on the civilian oversight commission on the sheriff. That was one of our recommendations, to have a civilian oversight board. But it has no teeth. So currently we have a new sheriff in town who is at odds with the Board of Supervisors and the Civil Service Commission on reinstating deputies who have been fired for past infractions. That's in the news yesterday. So I'm looking at that with extreme curiosity. I was asked to serve on that commission, and I said no last year to Sheriff

McDonnell here. I said, “I just don’t want to get in that mix. I don’t need that in my life.”

That commission is being criticized by the African-American community for not taking a stronger position against the sheriff’s department on these shootings and stuff, to where they’ve had to curtail meetings because they felt threatened. I said, “Now is not the time for me on that commission.”

Now with this new thing, with the conflict between the sheriff and the commission and the Board of Supervisors, I just don’t have time for that right now. I can pick and choose things I want to be involved in. When I came back from Belize, I was very careful not to join boards again. I’ve been saying, “No, no, no.” I wasn’t sure what I wanted to do, but I didn’t want to spend my time doing that.

MCCREERY: But you did a fair amount of it, I gather, when you first returned to private practice from the Court?

MORENO: Yes.

MCCREERY: Speaking of being in the mix.

MORENO: Yes, right. That was the role, and maybe at some point I’ll do more of that. But I’ve been on a lot of boards, and I’m basically a person who doesn’t like meetings, board meetings. I want to just — tell me what’s the issue and do it.

Right now I’m serving on the Kaiser Arbitration Oversight Board. That’s an interesting board. We had a meeting last week to go over the process by which Kaiser administers all of its arbitrations, which mostly involve medical malpractice but other issues as well. That’s on a smaller scale, but it only meets four times a year and they do pay me a modest stipend. So I do that.

I don’t know what else. I’m very careful about what I get involved in now because I get asked to do a lot of things. I do mentoring at one of the legal magnets, Wilson High School, which is near my old high school. I’ll do that maybe two, maybe three times a year. But I don’t want to be responsible for mentoring four kids. I’d rather be a featured speaker, talk about my background and do something else. Tuesday I went to Riverside to talk to barristers about — so I enjoy that, trying to inspire people,

showing them one path to how they can enhance their practice in the profession and so forth.

MCCREERY: All right. I don't know if there's more that you'd like to add about your time at the Irell firm? It sounds like it was a good fit for you and allowed you to try out a lot of different things. But in terms of the firm itself and your colleagues, might you have stayed on?

MORENO: I think so, yes. That was my plan. But at the same time, when you have — I was there for, what, two-and-a-half years? I really did not like the commute. I have to tell you that. Going from Eagle Rock to Century City was a bear of a commute, and I would go in just about every day so I'd have to leave very early to get there in forty-five minutes. Coming home was always an hour and fifteen minutes, so it was a drag. I didn't like that.

Had it been downtown I would have been much happier because I can walk around here or in the civic center and usually see someone I know. But out there I felt like a fish out of water in many ways. I didn't like the whole West Side/Century City ambience. That's just me. I'm more of a downtown L.A. person.

MCCREERY: And this whole period, the first couple of years after you left the Court, what a huge transition for you and for your family. Maybe you could talk a moment about the effects on your family?

MORENO: Yes. The money was good, so I don't think it really affected them that much. [Laughter] I think my son — I think he was in law school. Yes, so it helped me pay his tuition.

MCCREERY: As I think about it, I haven't given you a chance to really talk about your family, so maybe we can do that. Would you say a few words about your wife and how you met?

MORENO: We met in 1982. I was an associate at the firm Kelley, Drye & Warren, and I was assigned a wrongful termination case of the company president. Our firm represented a lot of California corporations that were subsidiaries of Japanese corporations, so they were basically Japanese corporations here.

They had an American president, Oldenkirke, something like that. He took advantage of the company, basically, as an American, saying, "Oh, it's very typical for American companies to provide a house for the president,"

and a car, and a club membership, and all this stuff. I forget exactly what he was doing that upset them, but anyway, they fired him and then he filed a number of claims and I had to handle those claims.

My wife, who is Caucasian but she had a bent towards Japanese culture, so she was working there. She, as one of the few English-speaking people there — it's like the office manager — was the client connection, in one sense, at least the English-speaking. The way these things work in firms is there's a lawyer who's the client contact, the corporate contact. They spoke Japanese, and the litigators — we were not fluent in Japanese, so you had dual tracks there.

So that's how we met. I handled the case and I got the case dismissed, so I guess she was very impressed with that. One thing led to another, and we got married in 1984, about two years later.

MCCREERY: I gather she's an artist?

MORENO: An artist and a retired college professor. She was teaching at East L.A. Community College for about fifteen years, a graduate of CalArts, which is called the Disney School for animation, and they have other art schools there. She was a graduate of that program.

MCCREERY: What kind of work does she do, in her artistic pursuits?

MORENO: She taught, and she makes short films and she paints and keeps herself busy doing odds and ends. She's responsible for her elderly mother, who is ninety-two, and working with Heather for the last, about, eighteen years has been a real challenge. She was a conservator for her brother, who is disabled, and the person most responsible for another brother who had some issues.

She's been the problem-solver of her family, which in a lot of ways is dysfunctional. In between two brothers, a niece, her mother, and another relative, she's the go-to person, besides taking care of us.

MCCREERY: That includes a couple of kids as well?

MORENO: Right, and then the kids. Nick is a graduate of Stanford Law School and an undergrad. He now works at the Court of Appeal — someone who as a music major at Stanford never really seemed inclined towards the law. I never pushed him towards being a lawyer, although he met many lawyers and judges in the course of growing up.

It was fascinating when he decided to go to law school, principally because he couldn't find a job in his field. It was during the recession so he was competing, as he says, with people who had master's degrees for employment.

But he really took a liking to the law and has worked at a couple of law firms for brief periods of time and then is more research oriented and writing and so forth. Since last, maybe, October or November he's been at the Court of Appeal for one of the new judges, Halim Dhanidina, who was one of Governor Brown's last appointments.

Our daughter Keiko is also a graduate of CalArts, so she also is artistically inclined, as is my son, actually, in terms of music. She just recently got married, about a year and a half ago. She's also artistically inclined, started off in stage, a sort of stage crew/stage manager-type person, local theater companies, has always had that inclination since high school.

Now she and her husband have a small company that contracts with other providers for different entities, from theme parks like Universal Studios or Magic Mountain, out here, making props, rides, working on aspects of rides and exhibits. They've done things for commercials, ads — again, prop-making.

They've done things for various state national guards — this is very interesting — setting up villages where the soldiers train, setting off IEDs, rocket-propeller grenades, just fascinating stuff, and just making, fabricating custom-made costumes, like for *Game of Thrones*, those sorts of outfits.

They have good contacts in, I don't know what you'd call it, the arts and crafts industry for entertainment. They're very busy. It's a very competitive field, but they have a very good reputation. They're independent. They have a warehouse where they keep a lot of stuff. They hire people as they get jobs, contracts.

MCCREERY: What a creative family you have.

MORENO: Yes. What happened to me? I've always wanted to sing. I did sing in four operas here, not the L.A. Opera but for local community opera theater.

MCCREERY: I'm glad you mentioned that because we've touched in passing on your lifelong interest in theater and in opera but haven't really talked about how you got so close to that and your own musical talent.

MORENO: So to speak. In high school I was in a number of theater productions, and we had a singing group. I still see a friend who — we sang together, and we still sing in the car, basically. In college I didn't do much except sing with my roommate who played the piano. We would go to one of the music rooms and sing.

But later I hooked up with a small opera company. In fact, I was at this place called Casa Italiano last night for an Italian-American bar thing, and I said, "I sang on that stage."

"Really?" I still have the four programs on the operas that I sang, kind of bit parts, a couple of speaking lines or singing lines, very short but also mainly in the chorus. I wasn't in the main function. I did that for a little over a year, a year and a half or so. A lot of fun. I still love opera and do as much as I can.

MCCREERY: Favorites?

MORENO: I like Puccini, like everybody does. *La Bohème*, of course, and other Puccini operas that I like. Verdi. I like *Aida*, *Otello*. I try to go to at least two or three operas every year. In San Francisco I really took advantage of San Francisco Opera, because I could get in there pretty easily.

MCCREERY: What is it about the opera that draws you?

MORENO: One, I think it's the music and the voices, in particular, and the passion, and the whole theatrical aspect. I've always felt that opera combines instruments, music, voices, and a lot of times dance and acting. The sets are just out of this world. I've always had that theater bug, even in — I saw my first operas in high school through mentorship of one of our teachers. It's, I would say, a lifelong interest.

I like seeing plays and musicals. I like all the, obviously, the old Rogers and Hammerstein musicals and so forth. I've always said that if I had a disposable \$100,000 and I could go back in time, I would pay that much to have a great tenor singing voice.

I sang recently in Veracruz. I traveled there with a group. I know a few Mexican *bolero* songs. This guy who is really an opera *aficionado*, who sings really well and he has all the moves down, he says, "Carlos, you've got a great voice. But when you're asked to sing, you should develop a repertoire of three songs. Practice. Look at yourself on video.

“Really hone those three songs,” he says, “because nobody is going to ask you to sing more than that. But they’re going to think that if you can sustain it for three songs — okay, sit down — I’m talking about at a dinner or a little function, and you have musical accompaniment,” which we had — we did a duet and so forth — he says, “That’s all you need, and then people will say, ‘Oh, my God. This guy’s a star.’”

I said, “You know? You’ve got a good point there.” I have a couple of signature songs. I’m at sea in terms of knowing the lyrics for a lot of them. I know the melodies but forget — unless I have the lyrics in front of me, I get lost.

MCCREERY: In the year 2013, when you were at the private firm Irell & Manella, you became a candidate for nomination — or the choice of President Obama to be nominated as the U.S. Ambassador to Belize. May I ask you to start off by saying how you first learned of that possibility, which I gather was somewhere around the month of May in 2013 or even earlier?

MORENO: Right. It was earlier. It was actually in March of 2013 when I got the call from the White House. To pinpoint the date, it was the same date that Pope Francis’s anointment was announced¹⁷ because I was doing an arbitration, a big case, and we took a recess around three o’clock.

I checked my voicemail, and the White House was calling, saying to give this — I forget his name, Ian somebody — a call. I called back during this break, and he told me that the president wanted to appoint me as an ambassador and in particular to the country of Belize. He said, “You’ll be getting some forms and paperwork, and we’ll be in touch.” Et cetera.

I remember just saying at the end of the conversation, I said, “That’s great. I’m very pleased to serve the president in Belize.” I said, “I’ve thought about this, and I gladly accept it. I had thought I might be getting assigned to a country like Argentina or to UNESCO.” Very abruptly he said, “The president wants you in Belize.” [Laughter]

My thinking was, and I said to myself, some people say if you don’t ask you don’t really get it. But they did a lot of thought, obviously. But I said, I’m going to tell him that I had my eye set on another country. But I didn’t have that option. I remember getting advice that, “No matter what country they

¹⁷ March 13, 2013.

appoint you to, just say yes because just being an ambassador in any country is an honor. It's truly a unique experience," and so forth. So, very good.

After the November election, which I think was November 4th because it was my birthday, November 4 of 2012, I had done some research before that because I had been approached in late 2011. Probably in September of 2011, I was at an HNBA conference in Dallas, and a superior court judge had said that her niece by marriage was working in the White House presidential appointments and vetting people and putting candidates together and that I should call her.

So I did call, and I said, "I am interested possibly in serving," I said, "but not now." I had just started at Irell in March of that year, but I would be interested in an appointment after he was reelected in 2012, which I assumed he would. I was willing to take that chance.

This contact also said — I mentioned that I wanted a position abroad. I didn't want a commission. I remember her saying, "You can still keep your job, but this would be a part-time thing." I said, "No, I'd rather have my eye set on something more substantial and serving abroad." I don't to this day recall if I said "an ambassadorship." I wanted to be more general because maybe it would have been a court of international justice or something like that. Just something where I could serve abroad because I had never really lived abroad.

I had that idea from a trip earlier I had taken to Panama and observing Panama. In the old Panama City section there's an old observation tower there, about four or five stories. I said to a friend who was with me, "It would be nice to live in a country like this," I think I said, "and be an ambassador, be a representative."

After that time he started always calling me El Embajador. [Laughter] Truth be told. That's a true story. So I said, "I'll wait." But during that time, between September of 2011 and into March, I researched who was getting appointed to these political positions, and there are only about thirty or so. They're not career appointments. You serve during the term of the president and for that term. Even if there's a second term, you don't serve a second term unless it's really exceptional.

I talked to different people, former ambassadors. I visited Argentina, Vilma Martínez, before she got there, but she arranged for me and my small group to visit the residence. I said, "This is a nice opportunity."

So I did look at the background of different — most were heavy donors. I wasn't going to be in that position, but I was told, "You should at least get known, contribute to the campaign." So I contributed to the Obama-Biden campaign, to a function here, and I met Vice President Biden.

I had a number of people I knew in the administration. I talked with them, and they all encouraged me. I talked to the Hispanic National Bar people. I know how to go about contacting the right people to let them know. But everything was under the radar as I was gathering information.

Then after he was elected, I was free to go forward. Two days later, on the sixth, I was at a MALDEF function and I saw a guy who I knew, maybe from my district court appointment. He's a Washington scene player. I said, "Hey, I'm launching. I'm letting people know." I had sent him something earlier, and he loved it.

He said, "I'm going to talk to Valerie Jarrett and Cecilia Muñoz." He had already talked to them that day, and I'm sure I just sent it to him that morning.

MCCREERY: What did you send?

MORENO: I sent him my resume and my interest in seeking an appointment. He got really excited, and he said, "I've already talked to them, and Valerie is going to be handling the appointments," he said, "and she knows who you are," because of being on the short list.

I got so enthused. Then I was at a meeting on a board I'm on the Friday before Thanksgiving. I got a call from my earlier contact who handles — the niece of a friend of mine. She said, "We've looked at your materials. You're a very impressive candidate. I'm going to refer you to this other person. They will be contacting you."

I said, "Oh, my God, this is like, too fast, too easy!" But then nothing happened, and I figured, well, it's the holidays and they're not paying attention.

In January I'm thinking, "I haven't gotten that call." I didn't really want to do anything else. It wasn't until, I think it's March 13, that I got this call. I had been forewarned by one of my former law clerks who knew that person, who told me, "This is what they're going to ask you." She had vetted ambassador appointments, one of my former law clerks.

It was exactly that, but this call was not to provide me with questions or anything. It was more, “We’re going to nominate you.” So it’s not public. You can’t say anything. It took from March until May for the president to get around to making a series of nominations. Maybe they wanted to do it as a group or something? I’m not sure.

But I knew as of March, and I was thinking, gee, I’ll probably be in Belize by September of 2013. So I let the firm know in March. “Hey, I’m going to get this appointment. I don’t know when.” I thought I would be done by, certainly, by the summer.

Then the State Department also contacted me right after my — it must have been before the actual nomination because they knew. They set me up for a training course in July for nominees. I planned a trip to Peru, and so I told the firm, “I’m leaving June 30th.” I gave my two months’ notice.

There must have been some contact between me and the State Department while my — I hadn’t even been nominated yet, but I was going to be nominated. They do the background. That’s what happened. Between March and May they do the background, and subject to filling out all the paperwork. They don’t want to be embarrassed. That’s what it is. Literally the day that I got the call they had investigators talking to all my contacts that night.

Then later I found out that they had eight investigators assigned. “This is President Obama’s — ” Dah, dah, dah. They talked to people in San Diego and Pasadena, all over. This is very similar to what they do for federal judge nominations.

MCCREERY: You had been through it before.

MORENO: Right, so I knew. I was interviewed sometime later in much stronger detail. That’s what was going on between March and May.

MCCREERY: Why Belize?

MORENO: That’s what they decided. But I remember saying, “I’ve been there. It’s great for scuba diving. My wife’s a scuba diver, a very accomplished master diver. And they speak English,” I said, “but they also speak Spanish, and I do both.”

They usually send political appointees to countries that really don’t have a lot of problems, unless it’s a very high-level thing. They appointed, I forget the senator’s name from Montana [Max Baucus]. They appointed

him to China. High profile. They appointed Caroline Kennedy to Japan. Those are important missions, but those embassies really run themselves so you're more like a figurehead. But you do have a contact with the president and the high-level State Department.

But for the other ones, when I researched this, the political appointees went to Western Europe or the Caribbean, and Belize is more of a Caribbean/Central American country. It was within the realm of political appointees. So was Costa Rica. Mexico sometimes.

Most of the Caribbean countries are all political appointees and the high-profile Western European countries, France, Italy, Spain, England, for sure, Denmark, Finland. Those were all easy. They're allies, so they don't need the heavy career people who really know their stuff. [Laughter] I knew I was going to get one of those.

Why Belize? Low profile. If they had done any kind of work, and maybe they did, they knew that Belize was in the so-called Northern Triangle or Quadrangle of Honduras, El Salvador, and Guatemala that had really extreme gang violence and criminal justice problems. The idea of putting a judge there with criminal law experience may have played a part in that.

A small country, easily managed, but still important. They didn't want it to fall within the likes of those other three countries. That's known as the bubble effect. If you put pressure on these other countries, those problems are going to migrate to another country.

That, in one sense — I don't know if that was the reasoning, but certainly I played into it. I worked a lot on criminal justice issues and supporting their judiciary, their police, prosecution, and worked on a lot of humanitarian aid-type cases or projects with the military, that has a very significant presence in these smaller countries, not so much to support the military per se — because we don't provide weapons or anything like that.

But they have what they call INL money, international narcotics and law enforcement money. But also the military has disaster-relief components. The military had three-year plans to build disaster-relief centers. A hospital ship will visit, a Navy ship will visit, the *USNS Comfort*, like the *USNS Mercy*, and provide medical attention. It sets up clinics in a period of a week, big, big, massive operations.

So I was very proud of the military engagement down there, very coordinated. My Western hemispheric commander was actually John Kelly,



CARLOS R. MORENO, UNITED STATES AMBASSADOR TO BELIZE,
2014-2017.

who became President Trump's chief of staff, a great guy. I met him a couple of times on these projects.

I worked on helping to redraft the rules of criminal procedure, which included interrogation, speedy trial techniques, video arraignments, a whole panoply of things I had done. Training police prosecutors on non-indictable offenses.

MCCREERY: How usual is this for an ambassador?

MORENO: Very unusual. I was the only judge in my cohort of Western Hemisphere ambassadors. What's interesting is that President Trump has sent a Fifth Circuit retired judge to Argentina, Eduardo Prado.

People were surprised. "You're a judge? What is a judge doing as an ambassador?" I said, "We have very similar skills to bring, especially with respect to helping enhance a judicial system." One of their courtrooms had a significant fire. Under this program we got money to restore it.

We worked with UNICEF on, at least when I was there, getting the plans and getting funding to build a juvenile justice center. I should follow up on that to see what became of that. We were trying to get Belize to contribute some money between us and UNICEF. It was going to cost something like three or four hundred thousand dollars.

MCCREERY: Let's back up and have you talk about actually moving down there and getting set up and the environment, and so on. Then I'd like to get into a little more detail on some of these assignments.

MORENO: They make that very easy. They fly you down business class. I remember being on this red-eye with my wife and her two cats. No one knew who I was, obviously, on this flight. But we get off, and then there are these two big SUVs and a staff waiting for me. [Laughter] I'm sure the passengers on the plane said, "Who is this?"

They cleared us and the cats through customs, and you get the A-1 first-class treatment from the get-go. I decided to get down on a Saturday morning so I'd have the weekend to get used to the residence and partially unpacked and all that. That worked out very well, and I really started on Monday.

Actually, you can start but you're not official until you present your credentials. So I had my credentials, which are the presidential appointment that you deliver to the head of state, which in Belize, because it's a

commonwealth country, is the governor-general and not the prime minister. There was a very formal ceremony. You present your credentials, you make a little speech, and he makes a little speech, and you shake hands. You take pictures. [Laughter]

MCCREERY: This whole British commonwealth history. How much had you learned about that in advance?

MORENO: Quite a bit because in terms of the confirmation hearing — I'm nominated in May, had my confirmation hearing in October — they send you binders, five or six binders detailing our policies down there. There are articles about Belize and Central America. So you're fully informed about the U.S. mission down there.

Then you go pretty much pro forma for most people. We had a Senate confirmation hearing, Senate Foreign Relations Committee. John McCain was there, and he was very upset with Obama because — was it at my hearing? I think it was afterwards.

He was giving the appointments a hard time. We were political appointees, so for some reason he had it out for us. There was one guy who went to Argentina who didn't speak Spanish. He never had visited there. He picked on him, and he was in my lineup of four ambassadors.

The country in my case, Belize, is split on gender equality. They were going through that, on whether or to what extent are you going to give homosexuals more, recognize them as an oppressed group and protect them and so forth? I remember when I went down, or already before I got down, there were some saying, "Great." Others were saying, "Oh, he's here to foster the Obama agenda of gay liberation," and so forth.

There was actually a protest when I presented my credentials, a protest of about six religious ministers. A couple of them were Americans funded by religious groups in the United States who have a foothold in Central America. That made the paper, too. "Protest as ambassador presents his credentials." Along the roadway going to the governor-general's residence.

The reporters questioned me. I had a very open attitude talking to the reporters. We were schooled at the training course about how to handle interviews. I said, "I'm fine with reporters." I talked to them right away and was very open about what my sense was and advocating for gender equality and gay rights and so forth.

That was an issue in some quarters, but overall Belize has a *laissez-faire* attitude. They just didn't like gays being "out there," being vociferous. We actually fostered, we supported, a couple of gay organizations down there, giving them opportunities to come to conferences in the U.S. and signaled our support for these people who were, some of them were, being assaulted and cursed at and so forth.

MCCREERY: How did those interactions begin? Were you contacted in your role as ambassador?

MORENO: I'm not sure how they began. They probably worked up through my assistant or something. We had a program on education and cultural affairs that would reach out to them, Caleb Orozco and I forget the other person's name.

There are different State Department programs that bring people out, opportunities to go to the United States to go to training programs and so forth.

Anyway, we got involved. Ultimately, in my last year, we raised the rainbow flag. We brought a rainbow flag from Miami or Atlanta, and we had a little ceremony. We assembled a lot of people in the evening and raised the flag. Meanwhile, there were demonstrators on the other side of the fence, again the same religious cohorts, against us.

MCCREERY: But you say they had been stirred, at least on the earlier occasion, by funding from groups in the U.S.?

MORENO: Oh, yes. Yes. They really thought we were there — also, going through the judicial system, there were a couple of cases. One was in the Caribbean Court of Justice on whether or not under the immigration rules being gay was an excludable offense to keep you out of the country when you're applying for a visa to come in. They ruled, while I was there, that no, that's unconstitutional or whatever.

Then in Belize — gee, I'm forgetting the exact facts, but a similar case on basically whether or not homosexuals are a protected class. They had, I forget, a report that was issued, and there was language in this report — maybe it was about social justice? — again, about whether or not gays were a protected class. Somehow that got to the courts, and they ruled in favor. This was towards the end of my tenure there. They ruled in favor of finding that gays are a protected class. They went very far.

And during this time, the U.S. Supreme Court was coming out with its decisions as well. So it was just part of the huge movement, as we've seen. Belize was right in line. At least the judges in Belize were with that, but still it was controversial because the church is very strong.

We also met with the archbishop of Belize, who I think said something that really wasn't acknowledging gays as a protected class or as an oppressed class. We met with him, but he was senile and he was being manipulated by a couple of people, lay people. We actually should get credit for having him replaced. He was subordinate to what's called a *nuncio*, I think in Guatemala or El Salvador. In Belize he had an assistant bishop who was much more progressive but had to adhere to the bishop. We somehow let the *nuncio* know, and he came down.

Again, I'm forgetting how all this happened, but through the good offices of the assistant bishop we said he's not — and they knew this. At one time, I guess, he was very erudite and articulate, but he just really had lost it. It was really sad. When we talked to him, we said, "Can you even condemn violence?" — that had been committed against a couple of gay people.

"We pray for everyone who suffers." One of these general things like Trump might say. "There are good [people] on both sides." We said, "Can't you acknowledge that they're victims of this violence and humiliation, bullying, and condemn that?" And they wouldn't do it.

MCCREERY: What is the relationship of church and state there?

MORENO: Very close. The state ceded the running of the schools, for the most part, to the Catholic Church, so over half the schools are run by the Catholic Church. It's a very heavily Catholic country, and if not Catholic they're very evangelical, so we had a big hill to overcome.

We actually got some former ambassadors to write a letter in support of this. I'm forgetting the issue now, but to urge the supreme court of Belize to rule in favor of gender equality, to recognize the rights of gays. We succeeded in that. That's probably one of my main accomplishments. Besides all the criminal justice reforms and helping with the infrastructure and training, that was also very important.

MCCREERY: Some of these gay-rights advances might have happened anyway. They may have been underway, but certainly you were able to play a real role in that.

MORENO: Right. And I could be, call it, the figurehead of the United States. You have to play that very carefully. You don't want to tell them what's the right thing to do. But if there are groups supporting that, you want to foster that.

Then the chief justice, Kenneth Benjamin, a very progressive guy, respected. In Belize, since they don't have a law school they have to go to the — I think the school is in Jamaica. He was actually from Trinidad or something.

Some of the judges are native to Belize, but not all of them. The chief justice wasn't but had been in Belize, I don't know, ten or twelve years, a very respected figure.

MCCREERY: How well did you get to know him?

MORENO: Very well. Very well, and he appreciated the assistance we would give. He appreciated the fact that I was a justice, too, and we could talk about these things, and I would always support him in whatever he was doing.

I got along well with the prime minister [Dean Barrow] as well, who was a very prominent lawyer before rising into politics, so we could talk. Even the foreign minister [Wilfred "Sedi" Elrington]. I met with him the first few days, and we talked about legal stuff. I think they really liked the fact that I brought more to the table than other ambassadors — not that the other ambassadors weren't fantastic, but I could focus on certain issues really well and talk to them as lawyer to lawyer or judge to judge.

MCCREERY: You were more than just the title?

MORENO: Right, and I always acted that. That way I could offer more.

MCCREERY: What access did you have to the prime minister?

MORENO: Whatever I wanted. It wasn't like I just called him up and said, "We've got to meet today." If it was an emergency, we could so we would do that. But we would meet with him regularly to chat and go over issues that we were concerned about. It could have been U.N. issues or Venezuela-related issues. He was with us on gay rights but, as in any place, very cautious.

What's interesting is, we got along better with his wife. I actually danced in the streets with his wife. We had two things we did, one on

gender equality. We did a flash mob. You know, a flash mob where you dance? The press was there. We closed down a street, and we all wore — maybe this was domestic violence. We did two things on domestic violence. We were wearing orange T-shirts, which is, I think, a symbol. Maybe it's the color of "against domestic violence."

We did another one at the market, and maybe that's a flash mob where you freeze. I forget what that's called. You moved and then you stopped. We did a skit like that of someone committing an act of domestic violence, and all of us going like this, acting horror.

MCCREERY: When you say "we," who was behind the effort?

MORENO: My staff and volunteers. We organized it. But the prime minister's wife was very helpful. She was outspoken, too, and really liked the support that the embassy was giving to some of her causes.

MCCREERY: What had they experienced from other ambassadors before you, as you learned about it? In other words, your predecessor, for example?

MORENO: My predecessors. On the gay marriage issue and domestic violence, I don't think they did anything. All this was still being developed.

On aid, I'm sure they did a lot of that through this INL money and also with the military money. There had already been a series of things that they had done in constructing disaster-relief centers, and so forth.

I was very lucky in that a lot of the programs that were — like so many things, you inherit their good planning because these things go in three-year cycles. I did a lot of ribbon cutting and speeches and different things. I didn't start those, but I benefited because I'm there.

MCCREERY: What interaction did you have with your predecessor, if any?

MORENO: Here's an interesting story. My predecessor, Vinai Thummala-pally, is an Indian American, the first Indian American appointed as an ambassador. His wife went to school with President Obama at Occidental College here, which is in Eagle Rock.

MCCREERY: Ah, old Oxy buddies.

MORENO: Right, and Obama lived with them one summer. I remember one guy, someone, asking me, "Did you room with President Obama or what was your relationship?" I said, "I've never met the guy."

The ambassador before Vinai was George Bush's roommate at Yale. He was now a law school professor at Colorado. People assume, one, that you know the president. You get this plum appointment. The previous one, Carolyn Curiel, was a Clinton appointee, but she was a speechwriter for Clinton, so there's always a — people want to know, "What's *your* deal?" The previous one to that was the campaign chair for, I think, Clinton in New Hampshire. So it's very political.

Why me? I said, maybe because I lived in Eagle Rock, and maybe Eagle Rock is a feeder neighborhood for ambassadors since the last two ambassadors have been from Eagle Rock.

MCCREERY: Did you meet and interact with him at all?

MORENO: Oh, yes. Before I had talked to him, and I don't think I met him. I had talked to him a few times. I bought his private car from him, so they had it waiting for me.

I talked to Carolyn Curiel, and she happens to be the cousin of someone I know who is a federal judge in San Diego, the so-called "Mexican judge." They were cousins.

I also met the law professor, who was a Yale grad so we had that in common, too. I talked to all three of my predecessors. They told me the cast of characters, who to believe, not to believe, and so forth.

We worked on some political corruption cases, and there was not much you could do in terms of interfering in their political scheme, but we investigated a couple of ministers who were corrupt, probably on the take, and by the time I left we had revoked a couple of visas for them to travel to the U.S. on personal business. But we couldn't do it in terms of their diplomatic status.

It's a fine line. The State Department really separates the ambassador involvement in issuance of visas. Visas are the things that Belizeans and politicians want the most. They want to come to the U.S. to visit and perhaps to stay. In embassies everywhere, they would tell ambassadors, "Don't get involved because it always leads to favoritism, and you shouldn't be involved in that. That's a separate function." They made that very clear.

MCCREERY: In general, what kind of a rein was the State Department keeping on you and your staff?

MORENO: The only thing they wanted to know was really, “What’s going on?” They wanted us to send them what are called cables, which is a formal type of email. But it’s a report on something. “Give a status report,” but it’s to memorialize what we’re doing there, our mission there.

That goes into the official record in perpetuity because my predecessor — and there was a gap there when he was gone and there was an interim assistant, is what they call it — she was the deputy chief of mission, and she became a *chargé d’affaires*. You’ve probably heard that term, and it’s a provisional ambassador. She said, “We’re too busy to be writing stuff.”

But I told my people, “This is what they want. We’re going to do it.” I had two great people, political and economic. “Okay, that’s the thing that interests them the most? Let’s do it. Just get them out.”

MCCREERY: Say more about your staff.

MORENO: They were all career people who had been with the State Department for a number of years. They move up, so by the time they get to their section head positions they’ve already been to three or four countries. These are three-year terms all over the world. My deputy chief of mission had been around even longer. They had all this great experience. They would protect me and tell me what to do.

We had weekly meetings, for sure. I forget what we called them, staff meetings, just to report around. Our whole section, the whole area of the building, was classified.

Then we had something called a SCIF.¹⁸ It’s like what that secretary of the interior had in his office, a secure phone. We had a room, a steel-lined room, very cold, like a refrigerator. We’d have our meetings there.

Nothing big would go on, but we’d talk about some classified things, investigating drug movements, immigration smuggling, suspected — not al-Qaeda but the group before al-Qaeda — it will come to me. There had been different names, but this was before I came. We had some investigations there, some drug things that were going down, the kinds of things you want contained.

MCCREERY: You inherited a whole menu of things that were standard things and then would report to the State Department in these cables?

¹⁸ Sensitive Compartmented Information Facility.

MORENO: Yes. There's stuff going on. Right. We had a DEA component, a CIA component, one officer, a military component, outside agencies who have staff in Belize but are based at the embassy. I was in charge of all of them, so I'd get to hear all the stuff that was going on.

I went on a marijuana-eradication mission in a helicopter with the military. Military exercises. It's really a lot of fun.

There was a big border dispute for the last 200 years between Belize and Guatemala because Guatemala still claims two-thirds of Belize going way back. I won't go into all the detail, but there was an agreement back in the day between England and Guatemala about ceding control of that area, and Guatemala claims the British didn't keep their end of the bargain and therefore Belize is still part of Guatemala.

They hate each other. There are border incursions, marijuana growing on the border. If you look at a map — in fact, my son just showed me — you can look at a Google Earth perspective of Belize. Along the border you see one side totally denuded, the forests. On the other side, Belize has forests, national parks. Seventy percent of Belize is protected status. It is so dramatic when you see it from a satellite. Even when you're at a high point in Belize and you look across, "That's Guatemala," because they use the wood for burning and all that.

Besides the border incursions, there were a couple of shootings by the military. In fact, when I was there, there was a very controversial shooting where a young man, a Guatemalan, was killed on the Belize side, so we got involved in that. A couple of Americans were killed, and we'd have to get involved. We'd get the FBI involved.

I was involved in an FBI investigation of an American-on-American murder in Belize. I met with the FBI, actually the U.S. attorney's office. The guy knew me.

He said, "Are you Judge Moreno?" I said, "Yes." [Laughter]

"Tell me what you're doing here." He had a team of investigators. I don't know if it was their honeymoon, but this very attractive Filipina-American had married an older guy. She ends up dead, drowned under suspicious circumstances, so they were investigating that crime.

I met with the FBI on that and on other issues. Belize was a center, or one of the centers, of money-laundering, so the Belizeans conducted a raid on some offices, but it was spearheaded by our Treasury Department and

the FBI, so I had to get involved in that, and the fallout when things went sour because everything ends up with the ambassador. [Laughter]

Health issues with Zika and Ebola. “Never a dull day,” I’d say to people. What was it like? It was like being a mayor of a city or a college president where everything is going to end up on your lap, and especially if it involves Americans. A military guy on assignment there, a drunk driving accident, people are hurt? It comes to us.

MCCREERY: To what extent could you pursue your own interests and talents in that role? You talked about all the judicial interactions. How much space was there for you to — ?

MORENO: Oh, it was a lot because I always made a point of saying that I was interested in Mayan archeology and had studied that in college — just a class, but I had continued in traveling to Mexico and visiting Mayan and Aztec sites. I said, “I’m looking forward to that.” I got very involved with the Department of Anthropology and Cultural Affairs. I visited almost every main archeological site in Belize. We provided funds for them as well, grants.

MCCREERY: How many are there?

MORENO: There are 900 total, but maybe a dozen that are open to the public and so forth. I’d go there. The two heads of that department, I got along very well with them. They appreciated my assistance.

There was a UC Santa Barbara professor. I got involved with her on some of her sites, and she discovered another city, a Mayan city next to a site she was working. So I was glad. I did a lot of that stuff. They knew that I was interested in this stuff because we would provide grants to help them resurrect some of these sites, a number of them.

MCCREERY: What kind of funding did you have control over that you could provide?

MORENO: A lot. We would urge them and instruct them in how to apply, and we wouldn’t always get the project approved but we certainly advocated for it.

One we lost was on domestic violence. My assistant actually wrote it up. She did a great job. We heard that it was the best one submitted. I heard from someone here who knew the people in the State Department. But for

some reason, it was denied. They didn't think we had the capacity to monitor it because while I was there another project to help small businesses — not the whole project but one of our awardees screwed up, and they blamed us for not monitoring it. They had misused the money, but in a good way.

So we had a discussion and I really advocated, "Go easy on this person. This is a good person." They didn't like my position. I remember they thought that I was too soft. I think as a result of that — and we really didn't have a real capacity to do the kind of intensive monitoring of how people spent their money. So that part was legitimate.

I think, we think, that because of that one incident and then dealing with the same section of the State Department — they said, "We don't know if you should do this."

It wasn't a ton of money, but still we didn't get it and that was a big disappointment because we did get involved in domestic violence issues there, a women's organization that we helped. We did outreach. But it was small country. We didn't have huge budgets, so we did what we could with what we had.

MCCREERY: What was the existing social service-type infrastructure?

MORENO: Very minimal, aspirational but not a lot of support. It's a poor country so always underfunded, and they had higher priorities, basically, than some of these things. But we were always a stalwart promoter of certain issues like domestic violence, gender equality, education, and fighting the church to do more.

There was a great program by PWC, Price Waterhouse. I have to hand it to other groups, American groups that went down there. I'd always meet with them to thank them because they really supplemented what we did as government and what Belize couldn't do or wouldn't do. But Price Waterhouse would send down 200 associates every summer to put on a program for elementary and middle school, maybe even high school, on financial literacy and put on competitions on how to start a business and entrepreneurship. I met with them twice, and the third summer was either Zika or Ebola, and they really limited their program because a lot of the young associates, particularly women who were in their thirties, child-bearing age, just said, "We can't take that risk."

Then we had university support in archeology. They would send down teens every summer. Educator groups would come down and adopt a school, provide books and construction funds and everything. And religious groups would come down there and bring fifty or sixty young people to help build housing in Mayan villages, and so forth. So if I heard they were in town I'd always go see them and speak at their luncheon and their medical clinics they would set up.

The volunteer efforts were really outstanding. You were actually really proud to be an American when you'd see what our whole effort was doing there. So many good deeds are happening. So Belizeans love Americans. And the government likes us. They just don't want us to push them around.

One case in point is that in the Obama administration, to fend off some of the criticism of the high-level deportations — Obama deported a lot of people. [Laughter] People don't remember that. But to fend off that criticism and to deal with the migration of children, unaccompanied minors, "Let's find a way of dealing with this asylum issue, but pre-screening people in El Salvador and then having them come to Belize as a waystation for six months." Then asylum is granted, and then they're brought to the United States and sponsored by some NGO.

We asked Belize if they'd be willing to allow a hundred people to come in, pre-screened in El Salvador, and while they're doing all the background and further interviews in Belize. Initially Belize said, "That sounds good." Hesitant, though, and we were getting mixed signals from the minister in charge of that. Ultimately they said, "We can't do it. We won't do it."

We working with the United Nations High Commission for Refugees, UNHCR — they had a posting there — working with that office. They found out that this asylum-review committee in Belize had been defunct, but then they saw the office open and people lining up outside their building, their office.

They said, "Wait a minute. There are already 2,000 petitions pending for years, and we're going to admit a hundred more? How do we know they're not going to stay?" Then they said, in a prescient manner, "What if Trump wins? What's going to happen?"

Australia had the same program going. They had some refugees from Southeast Asia or something. Then he reneged. He said, "We're not going

to admit them.” But it was the same concept. I guess they were doing this in different countries.

Ultimately Costa Rica decided to step in. Some kind of deal was cut with Costa Rica. We were willing to give Belize more attention, but they said no. They just didn’t want to be in that position anymore because there’s a concern, I think, that the country is becoming heavily Hispanicized over the last thirty or forty years.

MCCREERY: I’m interested in this point you just made that there was concern in the country that it was becoming too Hispanicized. Say more about that.

MORENO: That started, I think, in the, maybe, early nineties, which was when El Salvador was going through its civil war. Belize agreed to take on probably several thousand Salvadoran refugees. A town was created outside of the capital. I forget. It has a very curious name, something valley, basically a town that was created by Salvadoran refugees.¹⁹ Between that and Guatemalans just crossing the border and saying, “We like it here.” “It’s easy to find work.” And some Hondurans as well, but these are people who spoke Spanish primarily. Even though this has been going on for years, you’ll meet Belizeans who have Lopez or Hernandez surnames but don’t speak a word of Spanish. But there’s more of an influx of that. It’s right on the border, so how can you avoid that?

The powers, really, were from the old colonial bureaucracy. The British colonials were the ones in power, and just a few, just a handful, of assimilated Hispanics had made it in there.

But overall it’s — you like to say that there’s no prejudice, and in terms of skin color Belizeans come in all different — and African, Caribbean. It has more of a Caribbean flavor to it. So to the extent you’re losing that Caribbean model and particularly Jamaica, it’s, “Yes, we’re a big tent, but there are some traditions we must maintain.” So there is that tension.

Happily, you don’t really see a lot of racial gangs, but there was a fear that Salvadoran — in fact, we monitored graffiti, like 18th Street or MS 13. There was concern that — as I said, the bubble effect — some of those heavier tactics might intrude on Belizean society. But otherwise, it’s very *laissez-faire*. It’s when you get people riled up about things.

¹⁹ Valley of Peace.

MCCREERY: You mentioned the chief justice and a few of the legal issues that you could be involved in. Say more about the country's legal system.

MORENO: It's British based, which was a nice thing because on the criminal side, it's proof beyond a reasonable doubt, presumption of innocence, right to a jury trial, right to counsel but not paid. It's more like volunteer stuff. The chief justice calls you and says, "We need counsel." And among the lawyers, there are some very successful lawyers who saw it as their duty. It's a small country, 375,000 people.

But things move along slowly, particularly on the civil side. There's always an air of, is it moving along so slowly because of corruption or someone being paid off? Although I didn't see any of that.

Then in terms of jury trials, it's such a small country. One of the problems was people did not have faith in the judicial system. One of the big problems was people taking the law into their own hands. Even, God forbid, if you were involved in an accident and a family member was killed, your life would be threatened. You'd have to pay some kind of restitution if you could come up with the money. Then the juries would not convict because they always knew somebody who knew somebody. It was, "If it's not going to convict, you may as well take the law into your own hands."

There was some, I'd call it minor, corruption among the police. Some complaints about excessive force or bribes, but compared to other countries fairly mild. But overall, a mistrust of the judicial system, I'd say. Under-resourced. I think it had 1 percent of the budget, which should be 4 percent. Underpaid, and so forth.

MCCREERY: Realizing you were there at the diplomatic level, to what extent were you able to get out and see the justice system in action?

MORENO: Quite a bit. They always had, every year, the opening session of the court, very formal. You'd all assemble at a mass, sort of like the Red Mass. The governor-general is there, the prime minister, and the judges are all there in their robes, very formal, as you can imagine. I always went to those.

Then you parade down the street a few blocks to the courthouse, and all the lawyers are there. There are eighty lawyers in the country. The chief justice gives a state of the state, and someone speaks on behalf of the bar.

Someone speaks on behalf of some other entity, and then the chief justice announces the beginning of the term.

He actually reviews — they have the presenting of the colors and the flag — it's very military — and a band, and the national anthem, and the chief justice presiding. I'm up on this balcony with other dignitaries watching all this. The same thing for Independence Day. It's declared at midnight, and you have to be outside. It might be raining or steamy, and there's a party. Very ceremonial.

As the U.S. ambassador, I had to go to all these things, with other ambassadors. Other non-resident ambassadors would come from Central America. There are a lot of ambassadors, say, from Germany and Switzerland and others. They would have ambassadors in Mexico, but they would also cover Belize.

MCCREERY: I see. I wondered how many other foreign ambassadors were there in the country?

MORENO: We had eleven, and of course the U.S. was the big cheese, and of course the U.K. I got along very well with Peter Hughes. We were the two big ones, but Cuba was there, Venezuela was there, Costa Rica was there, Taiwan was there, a couple of others. Honduras was there, Guatemala was there. And Mexico was there. Mexico was another big one. I got along really well with them. So in terms of the diplomats, basically Mexico, the U.K. and us were all really good friends.

MCCREERY: To what extent did you have joint interests that you worked on together?

MORENO: Quite a bit. With us and the U.K., for sure. Mexico, their program, their mission, was mostly cultural because it borders Belize. They did a lot. I still follow them. They do a lot of cultural things. They bring in music groups and educational groups. They sponsor a school in northern Belize. A lot of trade issues, commerce, transportation, buses and trains and stuff, flights. They do a lot of that.

Great guy. His name was also Carlos.²⁰ I should go back and see him. We cooperated on a number of things. We were always present anyway, but in terms of formal stuff probably not so much. We'd coordinate, for sure.

²⁰ Carlos Quesnel Melendez, Mexican ambassador to Belize.

Road-building by the U.K. Joint exercises. I think the military did some joint exercises. We tried to help the military.

The Brits had a facility on the military base that was going unused, and I saw the medical clinic for the Belizean military was so small. I said, “The British are not using the space there.” I got them to give that to Belize, that space. Because the British were training down there, too. You’d see British soldiers. And they weren’t using this; they built a new clinic. So, “Let’s have a clinic.”

I worked with the University of Belize. They had an environmental program on the terrestrial and marine environments, so we helped both of them in terms of some kinds of assistance, and grants, and fostering protection of the reef, which is one of their greatest assets.

In terrestrial, we were working with their terrestrial person on issuing of licenses, just protecting the forest because there was a lot of poaching. We worked with the Belize Zoo. Their zoo basically consisted of rescued animals, jaguars and other animals that had been injured. We helped them.

A professor from, was it SUNY? Northern New York. Not Cornell but CUNY? Not City College but Stony Brook, up there in New York. He was interested in resurrecting Mayan ceramics. There was a village of Mayan women. We had supported them in terms of starting a business, and that migrated into, “Let’s help these women,” who were very entrepreneurial and working with this professor on doing Mayan ceramics. We helped sponsor a show or an exhibit in northern New York state. We flew up four or five Mayan women to present their work at this ceramics show. That was nice.

I was telling people last night about bringing in — the State Department has various musical groups, cultural groups, that they will sponsor all around the world. We had, I think it was the Howard University Gospel Choir, come down, a jazz group come down, a — what’s the New Orleans music? What’s the dance music? I’m forgetting what the type of music is —
MCCREERY: Cajun?

MORENO: Cajun music come down. These women who — a social justice choir, African-American women come down. They travel. The State Department will say, “Okay. You go to Belize and the Caribbean.”

We would always put in a bid and have them come. We had to come up with some money, write a proposal. Very detailed-oriented. I never got

involved in the details. I would just welcome, attend their functions. “Fantastic. The ambassador is here!” It was fun. Who could complain? Like I said, you’re involved in everything, and you just have to be aggressive in learning what types of programs are available, and apply. It’s very competitive to get approved.

That was one of the things I always pushed. “Let’s just do it.” Fortunately, I had good people, who were pushing things.

MCCREERY: We spent quite a bit of time talking about your work as U.S. ambassador to Belize, ending in January 2017. I wonder if you could talk a little bit about the transition, when you knew that appointment would be ending with the Obama administration and you’d be coming back to Los Angeles.

MORENO: Okay. That was foreordained. I knew that I would have to submit my resignation, and I planned to be back in the United States the next day, January 21st.

Obviously, before that time arrived I considered different options as to what I might be doing, and among those was what I actually ended up doing, and that is alternative dispute resolution with one of the organizations that engage in that activity.

But I also was intrigued, perhaps, by going back to one of the larger firms or putting my name forth to serve on a corporate board. I had been encouraged several years ago by my mentor, Elwood Lui, to pursue that avenue. I tried that, and with respect to corporate boards I didn’t get any good results or feedback. That may have been because I was venturing out on my own and contacting a few people, but I was advised that most boards already have a lawyer or legal-type person.

I probably gave up too early on that because I think, coming back with my credentials, I would think that they might want someone with my background. But that’s still in the back of my mind. I am on a number of non-profit boards and commissions and things like that, but I wanted something that I could really devote more time to and also be compensated.

In looking at the firms, I approached about three firms. We had nice discussions, but they had some difficulty trying to conceptualize how I might fit in. I wanted an “of counsel” role. I wanted a reduced billable-hour requirement, half time, so to speak. Some of them were intrigued, but

ultimately it didn't go anywhere. Again, I think that — in retrospect I was told we should have used some kind of headhunter who could really do a search and advocate for you. I was told it's hard to advocate for oneself. I agree with that.

ADR work was my default. I had been approached by a number of ADR organizations, even before, when I left the Court, because many judges, as you know, do that. They don't transition to a law firm usually. That's the exception.

I talked to three firms, ADR firms, and JAMS suited my personality and could offer me more of what I wanted than the others. Just as an aside, JAMS is a national institution. It's written into many contracts, whereas other ADR firms are not. The cases it has in its wheelhouse are generally the larger cases, commercial cases.

I was told, "It's very corporate. You want something that's smaller and more informal." I said, "I think I like the corporate type of a situation." It has worked out quite well. I was welcomed here. My portfolio here has been a bit diverse, whereas a number of the neutrals here do 90 percent mediations, which are basically one day or one day plus follow-up. That can be very lucrative. You get cases and then there's basically not much homework after that. You either settle or they move on to the court. I do a number, maybe, I don't know, 15 percent of my time is with mediations.

It takes a while, in the first place, really, to be back on the scene as a known quantity. When I came here, I noted that I had not been in a trial court job since 2001. With a difference of sixteen years outside of the trial court mainstream, yes, I knew some of the prominent lawyers in the big firms. But the ones who were actually in court and litigating, I had never had that opportunity. I never served on the civil department in L.A. Superior Court, where the bulk of the cases here come from. But on the other hand, I did have the reputation of being on the Supreme Court and have a sterling reputation for fairness.

So I have developed a niche practice in consulting on appellate matters, being recognized as a go-to person on investigations, leading teams, so to speak, on major matters and being in demand, by stipulation, actually, for a few mediations and some arbitrations where the issue is not so much on the actual merits, that is, at a hearing, but on threshold issues like contract interpretation on insurance coverage or class-action eligibility, and a

couple of other what I call threshold issues that are really just legal issues, where it would be nice for them to have basically an appellate opinion on the viability of going forward on a particular claim.

I've also done quite a number of moot courts and consulting on appellate briefs and arguments. We call that "true neutral analysis." Not being hired as an expert witness, but more vetting some of the arguments as if we're having an actual court session. That's been not only lucrative but very enjoyable for me.

I've handled a couple of matters on behalf of one party before the California Supreme Court, one matter before the Ninth Circuit, I think at least two matters before the Courts of Appeal, where I can work with the lawyers in structuring the best approach to their oral arguments.

MCCREERY: How prominent is that tool becoming in the kit?

MORENO: Quite a bit. I think JAMS has promoted that niche practice for the appellate neutrals who are here. We have at least three, maybe four. Justice Panelli has been here for a couple of decades. He does mostly mediations, but I worked with him on an appellate matter.

Where the stakes are quite high, the lawyers have no problem retaining three neutrals to review an appellate brief or to have a moot court on the very large cases. The nice thing about JAMS is we do get these big multi-million-dollar cases. I think more and more now, lawyers are seeking that kind of advice to hone their arguments. A number of us who have decades of experience can, I think, really offer them some pretty good advice.

I've worked on one matter from the petition for review, or the answer to a petition for review, to the opposition brief on the merits, or to a reply brief, and so forth.

MCCREERY: What examples can you give of the subject areas of some of these?

MORENO: Some I really can't get into, because one is pending. But one involved an obscure issue in the Central Valley with respect to mineral rights and accommodations by the actual landowners, that is, a conflict between surface owners and mineral owners and county regulations. That was one.

Another matter that I'm working on deals with, actually, a local issue on a homelessness-directed proposition. I'm working with the County of Los Angeles on that matter.

I'm awaiting one case right now because my view, apparently, is contrary to the team's view after oral argument. [Laughter] We'll see if I'm the bearer of bad news or how my analysis comes out as a result of my listening to the oral argument.

MCCREERY: I'm wondering if your views of the dispute resolution tools have changed while you're in this setting?

MORENO: Yes. Yes, quite a bit. I don't know if I've mentioned this before, but in my discussion and opinions regarding arbitration when I was on the Supreme Court, generally I think you would characterize my views as, "Giving up the right to a jury trial is quite drastic." But I think it's legitimate in certain circumstances, in most circumstances, actually.

But I remember discussions, and it's in the opinions, but my colleagues, Justice Chin, Baxter, Brown, Corrigan, the more conservative bloc, all viewed arbitration as quick, inexpensive, and not complicated. You talk to any neutral now who does arbitrations, and it's just like they've judicialized the process.

I have a couple of cases now where there's back and forth on discovery disputes and on procedural issues, dispositive motion practice, demurrers. All that has happened is the lawyers, who are not getting trial court time or experience, all that is being shifted to the arbitration forum.

So it's none of the things that my colleagues thought it was, and it's expensive. I think I've had two cases where I've made rulings, and all of a sudden they said, "Let's go back to court because this thing moving too fast," or they didn't like my rulings or maybe I charged too much. I don't quite know.

I don't blame them for going back to court, but I want to move things along. Most cases here settle anyway, so that part is very much like the trial court. But I'm amazed at, as I said, how judicialized the process has become.

Most of us were very experienced trial judges, and there were a number of us who were federal judges. Depending on your personality, you can *be* a federal judge. Maybe one side likes that, and the other side doesn't like it. But in the back of your mind is, well, they're paying for my services. I say, "You're getting concierge service. You can call anytime. We can resolve things over the phone before you file a motion."

I had one case where, after giving them my view on — I think it was a discovery matter — “Your honor, what are your views on — ” two or three other issues that were down the road a piece. “What is your philosophy?”

I had both sides on the phone, and I just gave them my thoughts. “Look, give me a call when you get to that point, and we’ll just talk about it.”

I’m trying to have them not go through the whole formality of filing a letter brief or something more detailed. I’m in favor of that part. It’s almost as if they just want to feel out the arbitrator, the neutral, to see how far they can push on something.

My philosophy is, “Look. I’m going to be the trier of fact. Let’s bring all these issues to the hearing, as opposed to a dispositive motion.”

I had a motion — today’s Friday — on Monday, four days ago, probably an inch thick. The other side had not had a chance to respond. I read that, and I said, “Do you want to be heard?” I said, “Unless you have already come up with a resolution, which I think you should [Laughter] — ” and it turns out they were working things out. But that takes my time to read something, talk to them. I find that the bane of all the neutrals, every neutral I’ve talked to, is this pre-trial stuff, that they still go back and forth.

I almost feel like, “Look, I’m willing to have a hearing and decide a case on the merits, but all these other things, just work it out.” But you have to put pressure on them, to say, “Work this out. If you don’t work it out by Friday, then I want something in writing. I’ll have a decision for you on the following Monday.” So of course they figure it out by Friday. That’s a technique that works.

The other technique I’ve used is — this is on minor discovery disputes — I say, “You know, I was on the trial court for fifteen years. I did a couple of hundred, three hundred, trials. Never in my experience has an answer to an interrogatory or an answer to a question on a deposition really made much of a difference in terms of the actual trial and the disposition of the trial.” I say, “Just keep that in mind.”

I’m the trier of fact in the case. I’m basically almost saying, “Don’t annoy me with these little petty differences. Figure it out.” Of course, I’m acutely aware that one of the principal bases for an arbitration ruling decision being vacated is that you improperly excluded evidence. You didn’t give a full hearing.

Another thing arbitrators say is, “In terms of the standard objections, don’t make them. They’re going to be overruled. Relevance, yes, but most things are going to be found relevant if there’s some kind of basis for it.”

It’s all going to come in, because I don’t want a claim to be made that I didn’t let something in that someone, the superior court looking at my decision, is going to say, “The arbitrator should have done this or allowed this in.”

I don’t know what the experience of other neutrals are here. I’ve heard from others, and lawyers too, that more mediations are not settling. They’re either ordered to go to mediation or they use mediation as a discovery tool, feelers to find out where people are, maybe get some offers on the table to see if the other side is really interested in settling the case or not. So it’s more sparring. But in terms of a genuine settlement, that’s happening less.

In arbitrations, as I said, a lot of these preliminaries happen. But when push comes to shove, they will settle. I tell them, “Look, now is the best time to get certainty, finality, at a good rate basically, a good settlement before you go through all the trauma and expense of litigation.” And especially in those last two months. If these lawyers are indeed going to take it to a hearing, they’re going to try to be super-prepared, and it’s going to cost people a lot of money, and you’re not going to be sure if you’re going to win.

MCCREERY: What other mistakes do you see the parties make?

MORENO: This is more broadly, and it has to do with the game-playing. But it’s more the civility and incivility. You still see that. Or people just not being open in terms of trying to reach a settlement.

Posturing, among all types of lawyers but particularly among the younger lawyers, just whether they’re doing it for their client or to intimidate the other side. It’s stuff like that that I don’t think anybody really likes.

In terms of mistakes, I don’t think — you hate to say this, but many times they don’t have a realistic approach to the value of the case and what’s in the best interests of the client. You’re just trying to get the best result as early as possible, and then move on to another case.

MCCREERY: I’m interested to hear you say fewer things are settling.

MORENO: Yes. I’ve taken an informal survey of experienced lawyers and neutrals, and they concur. That may be just my outreach in getting opinions, but my first mediation here I settled. “Okay, this is great.”

But then my next three were very frustrating. You do get vested in a case, so when you do settle or you learn that it settled later, with or without your input, you feel gratified. It's like a case off your calendar.

We do have a practice here of having a pre-mediation telephone conference separately with each side. The main question I ask is, "How are you getting along with the other side?" [Laughter] "What's the relationship?" Because that, to me, as a trial judge and now, that's the most important thing. Are things civil on that side?

As a trial judge, I know when I would get a case from another judge, another department — and a lot of us thought the same thing — we would say, "Who are the lawyers?" Because in the criminal courts, you knew who the lawyers were, and you'd say, "Okay." Or are they going to send you someone that nobody wants to deal with?

Here, I just want to find out, are these lawyers talking to each other, or does one have a ridiculous demand? Either side. Like, "No money." Or they want the world. Is there something to work on? I'm actually trying to work on my technique. There are as many techniques as there are neutrals, so I'm still developing mine.

I firmly believe that, in all things, whether you're a neutral or a lawyer, you should be yourself. I don't have the overly aggressive personality, more one of reason. I look at the law. I try to find out what is really motivating. What do these people want? More of a softer touch, as opposed to brow-beating. But very quickly, I do — and I question whether I should do this — I will not hesitate to tell a side, "Your case is weak."

If I sense that the person, the lawyer, is not a trial lawyer, I'll say, "Put on your case for me. Call your first witness." And this is with the client there. "How is this going to work? How are you going to prove this?" Just put them to the test.

On the other side, I say the same thing, probably less so because they're defending. I try to just pinpoint how much the case is worth to them from a nuisance standpoint or cost, if it's going to cost them.

I know in one case, if new law has just come out, if their exposure is going to be greater or less than what they've advocated for, I try to create uncertainty. [Laughter] Nothing is certain to begin with, but if the law — I see a recent case or something is before the U.S. Supreme Court where it's almost a foregone conclusion in an arbitration/class action setting how it's

going to go, I say, “That case is going to come down.” I try to stay abreast of cases from an appellate standpoint.

That’s my style. I know at least a couple of settlement judges at the superior court, and a couple of them here. They don’t really look at the law. They just say, “Give me the numbers,” and they create doubt, but not on the basis of the law. I just can’t do that. I’m sure they’ll look at the letter briefs, but it’s more, “Let’s talk turkey,” and they approach it that way.

I’m not at that point yet. I get there in a roundabout way, but I try to be more intellectual and practical in terms of what’s going to happen at trial. “If you don’t settle here, you’re going to go back to a certain judge.” I find that these lawyers don’t really know the judges or how much time they’re going to get.

MCCREERY: I wonder what approximate percentage of the JAMS cases here overall are appellate cases?

MORENO: I think it’s a small percentage but one that’s increasing. We’re certainly trying to increase the number of neutral-analysis-type cases on appeal.

There are two types of appeals. One would just be more of a consulting-type situation, I guess if they want to do a moot court or they want us to review briefs, talk to the lawyers. That’s one type, but another type is where, under this case — there’s a California Supreme Court case — I don’t know if it’s *Coral Construction* maybe?

MCCREERY: That was an affirmative-action related — ?

MORENO: Yes. No, there was another one. *Cable Connections* — it’s probably in here somewhere — where, ironically, they provide for appellate review of an alternative dispute resolution case. I think Justice Corrigan wrote the opinion, and I was surprised that — they can provide for anything they want.

I’ve had two of those. I’ve got one that’s pending right now, and we had one before. The one I just mentioned provided for appellate review in the agreement. I’ve seen that in maybe two other cases, one of them that’s pending right now.

One interesting case that’s pending right now is the lawyers for two Japanese companies, an automobile manufacturer and an insurance company, have tendered, I think, eight or nine issues to us, to a panel of three.

To me it's very Japanese. They want to go back to their clients and say, "Look, we have three respected appellate justices on these coverage issues."

Very detailed questions. That's in the process of being briefed right now. We're supposed to give them an opinion that's non-binding, a non-binding opinion, so that as they go forth —. Maybe the lawyers have been arguing over what's covered and what's not, et cetera, and they say, "Let's take this to court, but not a real court. Let's take it to some appellate justices and get a non-binding advisory opinion."

We do that. That's very curious. I think certainly JAMS is trying to do more of that. So there are different ways of doing dispute resolution. It's not a lot about mediation or arbitration on the merits. We have one, two, three, four, five appellate justices here, so we offer that as a service, and in various talks that some of us make, we promote that. Some of us have written articles on the utility of having that kind of appellate perspective.

It's good. It fits into my wheelhouse, for sure. Yes. And you normally don't think of appellate review when you're thinking about alternative dispute resolution, but it comes in all forms and stripes.

MCCREERY: How good a fit is it for you here at JAMS?

MORENO: It's a good fit. I really like the people. I like the flexibility. I could be a little bit busier, I think, whether it's doing mediations or — the tendency here for new neutrals and former judges is to really get loaded with arbitrations. They want that judicial-type experience, both the lawyers want it and it's actually easier for us in the sense that it's a skill set that we already have.

Writing the opinions or the rulings involves more work. In two cases I've retained a law clerk, with the consent of the parties and paying for it myself out of my take, and that seems to work out fine. Because writing, putting pen to paper, can be very time consuming.

MCCREERY: But typically you don't have that sort of assistance here?

MORENO: Right. Yes. But you have to let the lawyers know that that's what you're going to do.

But handling the trial, or the hearing, as we call it, is pretty straightforward. My personality, as I did say earlier, is I let everything in, but in terms of my style it's still very formal. Friendly, but formal. I'll rule on objections

if they make it, but I really do think we have a teaching function, even at this level.

I actually tell — in this last case I did in San Diego, at the final status conference, I said, “Look, if you have an associate who’s really done all the work on a witness, on a particular issue, let them have a go at it. I’m not going to be mean to them or curt.”

I know there’s a movement, among federal judges at least, to encourage that so that the associates get a chance to say, hey, they argued a case in front of a judge or they handled a witness. I think that’s important, to give them experience, as long as their client agrees. At least in that case, they did.

MCCREERY: I suppose you can provide feedback on their performance, if that is sought?

MORENO: If they ask for it, yes.

Oh, the other thing that I’m interested in doing here, and one of the case managers has sought me out, I have done three emergency-relief matters. Since my calendar is not booked like some of the others, I can issue injunctive relief or expedited relief. I might get a case on, let’s say, a Wednesday, have a conference the next day, set a briefing schedule, very tight, and have a hearing within a week. Or if it’s not really, truly an emergency, say, in two or three weeks.

MCCREERY: We’ve been talking about your time here at JAMS the last couple of years. How do you summarize the experience?

MORENO: I think overall it’s been a very good experience for me. I like the flexibility. I like the variety of cases I get. I have an opportunity also to do different types of outreach, whether it’s talking to young lawyers or speaking on diversity or just speaking on good mediation and arbitration techniques to different groups.

I like the aspect of promoting myself as a mediator and arbitrator. I still go to a lot of, and am still invited to a lot of, bar functions, and I feel very confident about meeting people and being able to attract business. I think one of the obstacles I had to overcome, as I mentioned earlier, was to let people know that I’m back and that my services are available to be retained. I think that has worked out pretty good.

As long as things keep up their pace and grow — I'm patient — I think I'm still interested in doing things outside of JAMS in terms of being named to commissions and being a consultant to the governor on judicial appointments, serving, as I said, on commissions related to things of concern to, say, local government: homelessness, oversight of our law enforcement agencies.

I've been approached. I've turned down one of those offers. But I like being asked to do things like that.

I was also asked to be a monitor over some of the immigration detention sites along the border for children. I was asked by Judge Dolly Gee to do that, but on reflection I decided not to accept that appointment. Again, it was going to be time consuming, and I wasn't sure how difficult that assignment would be, to be traveling to south Texas along the border to see where minors were being detained for up to twenty-four hours before being moved to a different site.

MCCREERY: What a timely issue.

MORENO: Very timely, and I thought it would have been important. In fact, that one I was recommended by the immigrant rights groups. Then she came to me, but I thought about it over the weekend, and I didn't think it was something I wanted to do. It would have been important to do, but it wasn't something I felt I had the time to do.

I was also asked recently to be the — I may have mentioned this — to be in the leadership line ladder for the Chancery Club here in Los Angeles. That's a position of some esteem. Let's put it that way. I liked that.

This past weekend I went to Stanford to participate in a Latino summit, a reunion of Latinos. I was on a panel on how Latinos can better use their numbers to effectuate the political process. I spoke about at-large voting challenges. Our panel was quite unique. We had a politician, a judge, a social activist, and a legislator — well, the legislator was the politician. So it was good.

Then in two weeks I'm going to Yale for the fiftieth anniversary of the founding of a Latino student group there. In fact, I just got an email during the break about that.

Ever since I came back from Belize I've been trying to figure out what makes me happy, how to best, as I say, maximize my utility, both financially

but also in terms of my interests, so it's gradually evolving after two years back. I think I'm very optimistic that opportunities will come my way, but I feel I just have to be very selective about what I do or don't do and how long some of these projects last, because some of them can go on and on. I mentioned that I'm on the Kaiser Arbitration Oversight Board, and I'm on a special committee to work out some language on a rule. I think very gradually I'm busier and busier on things like that that I'm enjoying.

MCCREERY: You have a variety of volunteering and mentoring-type roles, I think, that continue as well?

MORENO: Right. Yes. People do still seek me out for things like that.

MCCREERY: What else is ahead for you, Justice Moreno?

MORENO: That's a good question. I was telling someone over the weekend, because I'm a mentor to one of my former law clerks who is always exploring with me new options. He's with a firm for the last seven years, and he has a political bug. He ran for Assembly and placed, I think, third.

He's a policy wonk, so he's always thinking outside the box, outside of what he's doing — even though he's happy with what he's doing — but always wonders if there's more. He's actually, at age forty-eight, becoming too settled.

I said, "Look, I'm seventy, and I'm still looking for other things," other opportunities, other ventures, and so forth. It's not going to be just more leisure time and travel, which so many people often see as what they're going to be doing. I said, "The fact that you're at this stage is perfectly normal, and you're going to be this way the rest of your life, I hope."

For me, I don't quite know. I thought that 2019 would be — after being here all of 2018 and most of 2017 — that by 2019, being in this position now, that I'd figure it out. But I still don't know what it's going to be.

As I said yesterday, I want to be in the mix, even more so. So we'll see how things play out. I really like the recognition of being in a position of leading investigations or teams or commissions, something like that.

It may be the time when, at least for the next five or six years, I'll still have the energy and interest of being in the public domain still. That's what I actually see. I don't know what form it's going to take, honestly, but I'm always looking for that sort of opportunity.

MCCREERY: Thank you. We've touched briefly on your two alma mater institutions the last few minutes, Stanford and Yale. Of course, you've been showered with awards and honors, I think a whole handful just from Yale, over the years. Talk a little bit about what that kind of recognition means to you, and if there are particular things that stand out.

MORENO: Okay. With respect to Yale, one always has, I think, a stronger affinity for your undergraduate college. At least that's my view. I'm just really gratified that, being one of the Latino pioneers there and seeing the tremendous growth of the Latino community and the minority community there at Yale, it's very just gratifying to see how things have improved over the years. I'm completely fascinated by what these young people are doing, their aspirations and goals and their attitudes towards change. It is really inspirational for me, so I'm looking forward to going back there.

MCCREERY: They've created the Carlos R. Moreno Prize, I understand?

MORENO: Yes, that's funded by me, with the help of the dean's office. About that, that is a prize for the best senior essay, which is like a thesis, on the immigrant experience. It might even be just the Latino immigrant experience in the United States. We've had that for almost ten years, maybe a little less than ten years.

Yes, bringing that up, it was very gratifying to me to meet a couple of the awardees a couple of years ago. They write nice letters, and I get to meet them and all that.

I think I've had some measure of recognition certainly — being an instrument of change, in part. It's hard for me, going back, to imagine that all this change would have happened, so it's good to go back after, now, fifty years really and to explain or to relate to them the experiences I had then and what I've done since.

MCCREERY: But if asked, what sort of advice would you offer those young people?

MORENO: Here's my philosophy about Yale. I think at bottom, Yale wants to produce or graduate leaders in their fields: scholars, politicians, leaders in their profession, and so forth. I think that's what distinguishes Yale from other colleges. They really instill that in you, or they did instill it when I was there.

There was a saying that's outdated now. "Yale creates one thousand —" I think they said, *men* — "leaders of the future." We certainly viewed ourselves as that.

I'm sure that has changed and the sense that it's elitist, especially with respect to young men, but I still feel that quality is very important. When you leave there, you should feel that you're going to accomplish something and do something with that degree and that education and the opportunities that open up as a result.

Some of that may be a process of selection by Yale of who gets in. They look for that quality. Or it may be something that's imbued in you when you're there. It may be a combination.

For me, I think it was a combination. But it certainly instills in you a feeling that, hey, you could — because I felt this way in high school. I felt that I could do anything and become anything that I wanted to be, which I think —

When I hear these sad stories about people, minorities, who are discouraged in high school. "Oh, you can't be a lawyer." Particularly among women of my generation, who were told that in high school. "You can never be a lawyer. Ha ha ha," you know?

Times have changed. But I think I'd like to tell them that I'm aware of how things were, how I perceived my experience at Yale and thereafter, and how happy it is that things have really changed, really across the board, not only at Yale but across the board. I would try to inspire them to —

And a place like Yale for minorities is still a difficult place, in terms of being accepted and assimilation and being exposed to broader cultures and people. I'm sure that part is still the same, but with time I think those barriers do melt away. That's what I would tell them.

For law school, my message to them is to develop an expertise, develop a practice. It doesn't have to be in law, but don't be satisfied just being a worker bee, being an associate in a firm and just accepting work that's handed down from the firm.

To think bigger, to think about bringing in your own clients. Developing an expertise, developing a practice, a reputation of excellence, and being self-sustaining in the firm, which looks at the bottom dollar, or starting your own firm and looking at your own bottom dollar and being successful.

But also to participate in the greater community, civically, because as a lawyer you really to bring a lot to the table. Believe it or not, the general public still respects lawyers. As much as they're "dissed" by their own professionals, by their own people, and by some elements of society, the average person really says, "Oh, you're a lawyer." They put you in a different category and expect different things from you.

I think anyone going to law school should not be satisfied with just, "I'm doing law school, and I'm going to be a lawyer."

They have to think bigger because, as a profession, it is a so-called noble profession. We do have a lot of civic responsibilities in society. Being a lawyer and being a family member are all-consuming, but there are bigger things to do out there. That's what I generally tell lawyers.

Stanford, I think, has helped, at least in my career. I think it has opened doors. No one has ever questioned me about my educational pedigree. They shouldn't. [Laughter] So it's really been helpful in intangible ways. You just don't really know. I told my son, "You probably should think about staying at Stanford."

With respect to Harvard, Yale, Stanford, whenever they mention someone they say, "Yale educated," or "Stanford educated," and more so Yale and Harvard, by the way. [Laughter] They don't say that for many schools.

I don't think it's necessarily merited. Don't get me wrong. There are a lot of great schools. But for some reason it still has a certain cache among the general public. Journalists will always insert that in. I'm just saying. [Laughter] It's been very helpful, very, very helpful.

I'm very proud of those awards I've gotten, mostly from Yale. I'm trying to think if I've gotten anything from Stanford. I've spoken there a number of times to the law school. I'm invited to go up there by the end of April. I'm not sure if I'm going to go. I've got to see if my schedule will work out for that. If not this year, I can do it next year.

MCCREERY: And then legion awards and honors from local and state bar associations.

MORENO: Yes, right. The state bar. I'm very pleased to have gotten awards for child advocacy and disability rights, gender equality rights from Equality California — a lot of it based upon my work on the Court but also my activism with respect to children's rights and disability rights. I think

those are the three I'm probably most proud of. I'm sure there are others from bar associations, but those really stand out.

I got an award recently from the L.A. County Bar, the Trailblazer. When I get these lifetime or trailblazer awards, I often say, "Is there something I don't know? Have you spoken to my doctor?" When you get a lifetime award, "Is my time coming to an end?" But believe me, it hasn't come to an end yet. And those are very nice awards to get.

MCCREERY: Is there anything about your time on the Supreme Court or any other stage of your career that we've talked about that you'd like to say more about? Let me also ask, what else should I have asked you but didn't?

MORENO: I really think we've covered it all, Laura. I've often digressed to get into something, but this has been very informative. I've learned a lot about myself because some of these issues I haven't really explored — just figuring out what I enjoyed, what I didn't enjoy. As I begin my next journey, this has been very helpful in deciding, "What makes Carlos happy?"

I think everybody should be happy, and this has really put a focus on the things that I like to do, so it's been helpful.

MCCREERY: It's good to hear it's so timely on your part. It certainly is an enormous gift to the archival record, and I thank you very much for that.

MORENO: Thank you. It's been a pleasure.

★ ★ ★