

ORAL HISTORY

JUSTICE

EDWARD A. PANELLI

ASSOCIATE JUSTICE
CALIFORNIA SUPREME COURT
1985-1994



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ASSOCIATE JUSTICE, CALIFORNIA SUPREME
COURT, 1985-1994

Oral History of
JUSTICE EDWARD A. PANELLI

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Preface to the Oral History of

JUSTICE EDWARD A. PANELLI

LAURA MCCREERY

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

But four of the justices appointed by Governor Deukmejian had retired from the bench and returned to private law practice in California: Chief Justice Malcolm Lucas and Associate Justices Armand Arabian,¹ John Arguelles, and Edward Panelli. With scholarly guidance from Professor Harry N. Scheiber, Stefan A. Riesenfeld Professor of Law and History at Berkeley Law School, I designed the California Supreme Court Oral History Project with them in mind, reasoning that interviews with several

¹ A condensed version of Justice Arabian's oral history was published in the 2020 volume (no. 15) of *California Legal History*.

justices who served in overlapping time periods might yield a richer historical record than interviews with one or more justices in isolation.

In addition, such a series of interviews might shed new light on the unusual period before, during, and after California's November 1986 statewide election, in which voters — at odds with the California Supreme Court's handling of death penalty appeals — declined to retain three sitting members: Chief Justice Rose Bird, Associate Justice Joseph Grodin, and Associate Justice Cruz Reynoso. (Although Chief Justice Bird recorded no oral history before her death in 1999, her two colleagues have been interviewed by others,² and Justice Grodin also authored a book, *In Pursuit of Justice*, about his experiences.)

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

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

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

Each justice had been retired from the bench for at least ten years at the time of interview. Users of this material should know that, as interviewees,

² Justice Grodin's oral history and a condensed version of Justice Reynoso's oral history were published in the 2008 and 2015 volumes (nos. 3 and 10), respectively, of *California Legal History*.

they had the disadvantage of chronological distance from events they discussed. But while the human memory is imperfect, all four justices demonstrated remarkable recall, even across so many years.

Justice Panelli was the first of the four to record an oral history. All but one of our seven interview sessions (December 2005 through May 2006) took place at his office in San Jose in the late afternoon. He had an extraordinary ability to conclude a day of mediation and then take up our discussions with barely a pause. Razor sharp and always delightful, he traversed both the big picture and the fine points with ease. He later edited his draft transcript only lightly, preserving the informal, conversational quality that is so highly prized by historians, revealing as it does the small but telling details that exist nowhere else.

This project could not have begun in 2005 or continued thereafter without the financial support of the California Supreme Court Historical Society. The officers and board members have been true partners in a shared historical effort, as have the attorneys statewide whose individual contributions make the Society's programs possible. I thank them all. Justice Panelli's oral history also was supported in large part by the Santa Clara University Law School through the efforts of its dean, Donald Polden, and associate dean, Mary Emery.

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

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

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

Institute of Governmental Studies
University of California, Berkeley
December 2008

Oral History of

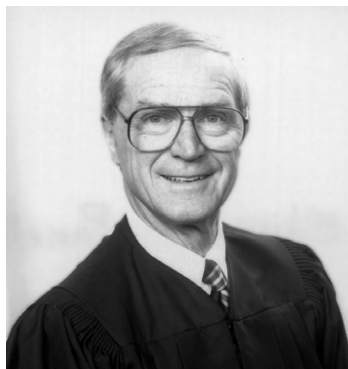
JUSTICE EDWARD A. PANELLI

EDITOR'S NOTE:

The oral history of California Supreme Court Associate Justice Edward A. Panelli (served 1985–1994) was conducted in 2005–2006 by Laura McCreery of the Institute of Governmental Studies at UC Berkeley,³ with funding from the California Supreme Court Historical Society and Santa Clara University.

Justice Panelli's oral history is presented here in slightly condensed form, and it has received minor copyediting for publication.

— SELMA MOIDEL SMITH



EDWARD A. PANELLI

³ Edward A. Panelli, "From the Bottom to the Top: An Immigrant Son's Rise to the California Supreme Court, Capping Twenty-Two Years of Judicial Service on California's Superior and Appeals Courts, 1972–1994," an oral history conducted in 2005–2006 by Laura McCreery, Institute of Governmental Studies, University of California, Berkeley, 2009. 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: Justice Panelli, we like to start at the beginning, so I'll ask you to state your date of birth and then say a few words about where you were born.

PANELLI: I was born on November 23rd, 1931, in Santa Clara, California. I was born at home. My mother [Natalina Della Maggiora Panelli] was concerned that if she went to the hospital they might switch babies on her, so I was born in a house.

MCCREERY: Were you the first?

PANELLI: I was the fourth, but it was very interesting because the home that I was born in is now part of the Santa Clara University student center. When the university expanded southward, they acquired the property that I had been born in, and it presently has a plaque sitting there, saying that the hundredth justice of the California Supreme Court was born on this site.

MCCREERY: That's lovely. Where were your older siblings born, may I ask?

PANELLI: My oldest sister was born in Italy, and she passed away when she was six, in Italy. My parents then returned to the U.S., and my older brother [Aldo] and my sister [Angela] and I were all born in California. My brother and sister were born in San Jose, and I was born in Santa Clara.

MCCREERY: Tell me what you know of the family history in Italy.

PANELLI: I don't know much about my father's side of the family, but my mother's side, my mother was literally a feudal serf in Italy. She lived under the authority of a count. He kind of controlled their lives. My mother wanted to go to school, she wanted to be a schoolteacher, but the count says that, no, she needed to be working in the fields. So after the third grade, which I guess was a mandatory level of education, she had to go and work in his olive groves.

But as a young girl she made flax into yarn and then had a loom and did her own clothing and sheets. She was ninety years old when I went on the supreme court, and so she indicated she could not believe in the course of one lifetime that there'd be such a change.

But as I say, my dad's side, I just don't know much about it. He [Pilade Panelli] came to the U.S., I think, around the turn of the century and

worked in the California logging camps and then returned to Italy and married my mom, and then they came back.

MCCREERY: Something I read about you indicated that the family went back to Italy when you were quite young.

PANELLI: Right. At nine months old we went back to Italy. It was during the height of the Depression. My father and mother both were unskilled laborers, and so there wasn't much work here. But they had been pretty frugal, and they had saved some money, and they thought that with the money that they had that we could live better in Italy.

So we went to Italy and were there for about three and a half, four years, and then Mussolini was coming into power. My older brother, who was four years older than I was, had to join the *Balilla* they were called, which was the Mussolini youth group. My father didn't think that that was a very good idea, and so we left before any of the activities with Mussolini and Hitler came together.

We returned to Santa Clara to a place that was probably three blocks away from where I was born, which also, incidentally, is now owned by the university, so that when we returned to this country, obviously, I didn't speak English.

My brother and sister, who were two and four years older than I was, had a problem in school with the language. I was either in the kindergarten or first grade, so it really didn't mean too much, the language part. But they had to stay back for a year, and then when they became proficient in the language they moved up to their regular grade levels.

But I was freckle-faced, blond-haired, and the three people who really kind of taught me English and took care of me were a couple of Irish sisters and their brother, and they used to pass me off as this little Irish boy.

MCCREERY: What did the family think of that?

PANELLI: Even before I spoke English the Grahams would invite me over when they had some family gatherings, and they'd say, "This little Irish boy's going to sing you some songs." Of course, the only songs I knew were Italian, so it was kind of a joke, but my parents appreciated the fact that they looked after me.

MCCREERY: What sort of work were your parents able to get upon returning from Italy?

PANELLI: My father and mother both worked in the dried-fruit industry. Across the street from where we lived when we came back from Italy was a dried-fruit packing plant, and my dad worked there as well as my mother. My dad worked in the receiving of the fruit, and my mother worked with the women who sorted and packed the fruit. It was prunes, apricots, nuts, and that kind of stuff.

Also, my mother during the war — she was really quite a woman — worked in the packing house during the day, came home and cooked dinner, and then would go back and work in the cannery for eight hours. Yes, and it was difficult for her, because we didn't have hot water in the house. She washed our clothes by hand. We had an outdoor oven like an igloo where she baked bread. This she would do on Saturday afternoons, because she'd work half a day on Saturday and on Sunday she would catch up with the housework, so it was really — she had a real tough life.

MCCREERY: I see where you learned your work ethic, from your mom among others.

PANELLI: Yes.

MCCREERY: How common was that to have such things as an outdoor oven?

PANELLI: The area that we came back to in Santa Clara was an area of about six square blocks, and it happened that all the people who lived there all were Italians from generally the same part of Italy that we were from, but I think we were the only ones that had this oven. My mother would bake this bread, and you could smell it throughout the neighborhood, and so all the neighborhood kids would come over and ask for some of this bread. It got to the point where my mother says, "I'm baking all this bread. By the time everybody comes over, there isn't anything left." So she said, "Maybe we ought to decide to do something differently." So we finally at some point in time knocked it down.

MCCREERY: How long did she continue to work nights like that, as well as days?

PANELLI: This was during the war years, so I'd say probably three or four years she'd work the double shifts, eight hours here and then eight hours in the evening. As I say, for washing we'd have to heat the water. We had a wood stove, so when she did the washing and stuff, she'd have to heat the water on the stove, and so it was a tough deal.

MCCREERY: But that shows how your parents had to work as the Depression went on, and then the war, as you say.

PANELLI: Right. Then, as things improved, then the work was steadier, and so there wasn't that problem. There was always a concern they'd lose their jobs until the unions came in and they became unionized, where they had some sort of seniority rights. It was always, kind of, you were at the will of your supervisor. In fact, I was named after my father's boss, because my father thought that the fact that they'd named me after this fellow, he would be reluctant to lay him off.

They were tough deals, especially since my father was considerably older than my mother. He was fifty-four years old when I was born. So it was kind of tough for someone at his age even to learn English, whereas my mother went to night school, learned English, so she could get by okay. My dad's English was not very good.

MCCREERY: You described living in this little Italian-American enclave in Santa Clara. What about at your school? What was the student body like?

PANELLI: In Santa Clara in those days there were a lot of immigrants, Spanish, Portuguese, Mexican. Everybody else we called Irish, so that if you were German or English or Irish, or what we called Americans, you were Irish. I went to the public schools and it was a mix of people, because Santa Clara in those days, I think, only had six or seven thousand people. It's well over a hundred thousand now. When I graduated from Santa Clara High, I think there were 150 in our class, which was one of the biggest classes that they had had.

MCCREERY: Did your parents talk to you much about when the unions came in and their workplaces began to change?

PANELLI: Yes. One of the things you have to understand is that because they lacked education they really stressed education. They always viewed that education was the key to getting around the type of work that they

had to do. As a result, I tell people that if I ever had a problem in school I would never, ever tell my parents that I'd had a problem at school. Because if I thought things were tough in school, they would really have been tough at home, because their view was that these people are trying to teach you, and you'd better pay attention, and you'd better understand what it is that they want you to do.

So they were very supportive of that. My father said, "You don't want to have to work like a jackass like we're working," and so there was always this push for education. From the time I was probably seven or eight years old they said, "We want you to be a lawyer," so there was never any choice. Once I came home and I said I thought maybe I would become a doctor. They said, "No, you're not going to be a doctor. You're going to be a lawyer."

MCCREERY: Why a lawyer, do you know?

PANELLI: I had a cousin, Louis Pasquinelli, who was twenty-one years older than I was, a first cousin, who was a lawyer. There were others in the neighborhood who were older who had become lawyers, and so it was kind of one of those things that they just expected you to do. My sister they pushed to become a teacher, which she did. She taught school for thirty or forty years.

MCCREERY: And your older brother?

PANELLI: My older brother, being the oldest, he got drafted just as World War II was ending, and then, of course, when he got out of the service he was expected to help the family, so that he went to work. He worked for the Bank of America for maybe twenty years, and later became the director of personnel at Santa Clara University.

MCCREERY: So the family ties to that university are very strong and broad.

PANELLI: I've been on their board of trustees since 1964, and I was chairman of the board of trustees from 1984 to 2003, so it's a long time.

MCCREERY: Yes, it really is. I wanted to ask something else about your parents. Knowing that they had fled Mussolini's Italy, what were their own political views and interests here?

PANELLI: They were anti-Roosevelt. I think they probably registered — my dad didn't become a citizen until much later, but my mother — I think

she registered as a Democrat, but we never really talked politics much. I think part of it probably came from a concern that in Italy with Mussolini, you probably had to be careful what you said.

But they were not royalists. In those days Italy had a king and, of course, from my folks' socioeconomic level they did not particularly care for the king, who did little to better their lives. There was some sense that maybe Mussolini could turn it around, but they could see soon enough that things were not the way things should be.

But they never really talked much about politics at home. The resentment towards Roosevelt stems from their very strong dislike for the English. As a result, I think the issue was that because Roosevelt and Churchill were as close as they were, that had something to do with it. I don't remember who my mom voted for in the national elections, nor in the state elections. We really didn't discuss that very often.

MCCREERY: That's pretty common. Now, you said if you had a problem at school you wouldn't bring it to your parents. Who would you bring it to?

PANELLI: I wouldn't bring it to anybody. I'd just keep my mouth shut.

MCCREERY: The self-sufficient type?

PANELLI: If I talked back to the teacher, let's say, which I never did, but if I got in any kind of difficulty — like one day when walking to school. On the way to school there was this old Victorian house. It looked like a haunted house, and it had a wrought-iron fence. As kids, when we'd go to school, we'd get on this fence and walk on the top of it. The woman, who was about — I thought she was a hundred years old, she might have been forty — she reported us to the school. So we had to go to the principal's office, and we were disciplined for that.

I never went home and told my parents that Mr. Moore had me in his office and disciplined me for this, because my father would say, "You're disrespecting these people." Corporal punishment was not unknown, and as a result I'd keep my mouth shut.

I was fortunate that where we lived near the railroad tracks there were Mexican kids whose folks worked on the railroads and who were similarly situated. Then where we lived with most of the Italians, some worked where my mom worked, some were in the produce business, some had a restaurant, so you had that kind of mix.

Then as you moved further towards town there were other types of people. There was a friend of mine that I grew up with. He later became a professor at UC Riverside. He had a doctorate in chemistry and got a Fulbright scholarship. So I got a chance to meet all kinds of people at different levels both of interest and education. Some of the kids weren't interested in going on beyond high school. I guess in my high school class probably we had 150. Maybe only twenty or so went on to school, but the ones that did well — we had professors, we had school teachers, principals. So it was a very great experience, really.

MCCREERY: What sort of child were you?

PANELLI: Very self-sufficient. I started working when I was six years old.

MCCREERY: What was your first job?

PANELLI: I worked in a dried-fruit yard. When they cut apricots, they put them on a tray, and they then put them out in the sun to dry. I was a spreader of the cut apricots and placed them on the tray.

Then I conned my way into being a pit boy. The pits from the cut apricots went into boxes, which would later be cracked and the kernels used for lotions and that kind of stuff. As a pit boy, when the pit boxes were full you'd replace them with empty boxes, and you would get extra compensation for that.

Because I was small, I had other jobs. They would stack the dried-fruit trays after the apricots had been dried. Because the trays had been sitting in fields for drying, you'd get dirt on the bottom of them, and you didn't want the dirt to get on the fruit as they stacked them. So they would lift them, and I'd go under there with a broom and sweep the clinging dirt away. Because I was short I could do that. For that job you'd get paid by the hour.

I sold magazines, I sold newspapers, and later I shined shoes. I worked in a pear-packing plant where, when they packed the pears in boxes. I would stamp the boxes with the variety of pear and how many were in the box.

So I did anything. I probably shouldn't make an admission, but I forged my birth certificate so that I could get a work permit, because I wasn't old enough. One year the child labor people came out, and we had a place where we would hide. When they came on scene the boss would

blow a whistle, and so we'd know to go hide. My sons have told me, "Dad, they were trying to protect you." I said, "No, they were trying to take my job away." So it depends on one's perspective.

When I was about twelve, thirteen years old, one summer I made more than my dad did, because of working longer hours. But you never got paid time and a half. I worked in the fields. As I got older I worked in farms. We had a lot of truck farms. In fact, one was where the San Jose airport is now. There were farms all over there, and I worked on them. They raised celery, onions, and cabbage and that kind of stuff, so I did all of that kind of work. So when they start talking about working with a short hoe, I worked with a short hoe.

MCCREERY: Oh, yes. That became a big thing later on, didn't it?

PANELLI: Yes, yes, it did.

MCCREERY: It doesn't sound like you had much free time, but what were your other interests as a youngster?

PANELLI: I didn't have much free time. When I was real young, when we first came from Italy, we lived next to a blacksmith shop, and I used to spend my time there in the summer when my folks worked, with my brother and sister. We just kind of hung out and looked out for each other. You didn't have babysitters or that kind of stuff. Then around the corner there was this Irish family that really kind of took care of me.

As I got older and went to grade school I was involved in operettas, and when I went to high school I participated in all sports. I lettered in all sports for four years. I was the freshman class president, sophomore class president, junior class president, and senior class president, and I was the head of the student council. Then I had the lead in the senior play.

So as I got older I got an opportunity to do more, but then I wasn't doing the physical labor as I had in the past. I got a job in a shoe store, because that was a job that I could work year-round on Saturdays and in the summer and during vacations. I kept that job through college, but when I went to law school I recognized that in the summer I had to make money, since I couldn't work during the weekends. At least I didn't think I could.

So it was important for me in the summer to get a job that paid a lot more, so then I started working in the canneries. So while I was in law school I worked in the canneries, which have now disappeared in San Jose.

There were a lot of students working there. Some turned out to be lawyers who later appeared in my court, and others went on to dental and medical school. It was a place for college kids to make money in the summer.

MCCREERY: And support themselves, sure. Before we get you out of high school, how did you like high school? You had all these extracurricular —

PANELLI: I loved high school.

MCCREERY: Academically as well?

PANELLI: Yes. I was probably in the top five of my class. I tell people high school was the best time of my life. Oh, we just had such a great time. I never got to do the spring breaks, because I was selling shoes, and in those days that was a very busy time. Everybody used to go to Santa Cruz. But I enjoyed high school. I wouldn't take that back, because I was involved in everything. We had a cadre of friends that — we did everything. The fact is, we just had our fifty-fifth class reunion of high school.

My parents never really could participate in many of the school activities, because they worked during the day. I remember when I was in grade school they used to have whist parties to raise money. My folks couldn't go to them. Later, of course, if the event was in the evening they could come. In middle school — they now call it middle school, we called it the intermediate school — we had plays and operettas. The operettas were at night, and they could come to them.

But my folks never knew that I played football, because they were concerned about injury, so I always told them that I was playing basketball. They didn't have any idea of sport seasons and that kind of stuff. Of course, you'd get bruises on your face in football, and they'd wonder. "I fell," or stuff is what I'd tell them. They were secrets I kept.

MCCREERY: Were your siblings the same way, limiting what they would bring home to the family?

PANELLI: No, no. It was an entirely different situation with them. My sister was also very active at school, but they were a little more up front than I was.

MCCREERY: Tell me just a little bit more about your family life. With your parents working so many hours, what were things like at home?

PANELLI: It was good. We didn't have a lot of money. We probably raised most of what we ate. We had chickens and rabbits, and we had vegetables. My uncle, my mom's sister's husband, had a truck farm in San Jose, so we'd get vegetables there. What we would buy is milk, and maybe meat once in a while. But my mom baked, and she was a great cook. We would have a lot of pasta and that kind of stuff.

But it was neat. We never had a vacation, and we never ate out in a restaurant, because my father says, "First of all, it isn't as good as we can do at home," and it was costly. The first time I remember that we went out as a family to a restaurant was on my folks' twenty-fifth wedding anniversary. But we were close. My brother and sister and I were very close.

The social life of the family revolved around your relatives, and when we lived in this area in Santa Clara, maybe on a Saturday night you would just go visit. You would drop in, and in what we called *viglia*, where you just come and visit. You'd have coffee and cookies.

I was telling someone the other night — we had some people for dinner and we were passing something around, and people were a little reluctant to help themselves. I said, "No, no, please, help yourself." I said, "I remember as a kid we'd go to visit and they'd pass these cookies, and my mother would give me this look like, 'Don't you dare take them.' I'd come home and I said, 'Mama, they wanted me to take —.' 'No, they didn't want you to take the cookie. They were just being polite.'" [Laughter]

MCCREERY: I was wondering how much extended family you had nearby?

PANELLI: In the same area in Santa Clara we had two of my father's sisters, and in San Jose we had two of my mother's sisters. So with the cousins, especially the ones in San Jose, on the holidays we got together all the time, and we would rotate the holidays. So we'd have big groups, and it was really kind of neat.

With Santa Clara, on my father's side — my father was not as close to his sisters, so while we visited and all, there wasn't the same feeling. This cousin, who I said was a lawyer, was the son of one of my father's sisters. He's one of the fellows that I practiced law with when I started practicing law.

But it was all kind of community based. We didn't have a car. On Memorial Day relatives would come and visit the family grave sites. On the

Fourth of July we'd have some relatives from San Francisco. We'd get together and we'd go to a park in San Jose and have a barbecue. No one had much money, so everybody was in the same boat.

MCCREERY: What about religion in the family?

PANELLI: Obviously, I was raised as a Catholic. My father was not a churchgoer, coming from Italy. An Italian male never went to church. But my mother was religious, and I remember saying, "Papa, how come you're not going to church, and you make me?" He says, "You go with your mother, and you be quiet." So we went to church every Sunday, my mom and then my brothers and sisters.

We didn't have much discussion about religion, because I guess things in Italy — the clerics were maybe not as celibate as they should have been, and so my father was very cynical about it. Because we used to go to church on Sunday at the university, which was just two blocks away from where we lived.

But my father made sure that I went to church, and my mother made sure that I went to church, as well as my brother and sister. So we went through all that stuff. Whatever religious training we did, we did on what was called release time. They'd allow you to cut school on one day maybe an hour early, and you would leave and go — at one point in time you could do it at the school, but then because of the separation of church and state you had to go off site. So that was the extent of religious training. They had some nuns that would come around to teach you.

Because some of my friends went to Catholic schools. It was fifty cents, I think, a week or something, which we couldn't afford. They had to go to school in uniforms. In fact, my best clothes were the castoffs which came from my father's sister. The mother of the lawyer cousin worked as a housekeeper for this one family — it was very well-to-do — and they had a son that was about a year or two older than me. So when he outgrew his stuff she would bring the stuff home to me. They had salt-and-pepper corduroys that they used as part of the uniform in the school. These kids would say, "You can't wear those pants. You didn't go to St. Clare's."

MCCREERY: But here you were at the public high school, student body president. Did you have political aspirations, or what drew you to leadership?

PANELLI: I wasn't student body president, I was senior class president.

MCCREERY: Senior class, pardon me.

PANELLI: The interesting thing is that I would have been student body president. As I told you, I was freshman, sophomore, junior class president. But the fellow who was vice president in all those years was my best friend, Gene Pasquinelli (no relation). When we had to run for student body president at the end of the junior year, someone says, "Gene, why do you let Ed get all the glory?" Of course, in those days I was known as Eddie, "— why do you let Eddie be the president and you the vice president? You ought to also run for student body president."

So there were three of us in the race, myself, my best friend, and the principal's son. Now, there wasn't any way that the principal's son was going to win. But my best friend and I split the vote. We together got about 60 percent of the vote. But they didn't have runoff elections, so the principal's son became the student body president, and then I was elected the senior class president.

But I was always doing things in high school. I participated, and I won, the Native Sons of the Golden West speech contest, where I did a talk about the Gold Rush something-or-other, I forget now. But I don't know, I just always liked doing things. Maybe I was pretty aggressive about it.

MCCREERY: You practically grew up at Santa Clara University and went to church there and so on. How much of a decision was it to go to college there?

PANELLI: Oh, no, it was very easy, and I got a scholarship, so the economics of it made a lot of sense. You know, I could walk over there. I lived at home, and Santa Clara was largely a boarding school in those days. They had day students, they called them "day dogs," so I missed part of what you would get in college.

But my going to school was encouraged by my parents. "You've got to get through school, and then you're going to go out and work and help the family." The expectation was to help the family. There was one pot, and whatever you earned went in that pot. I never was able to keep any money I earned. My father would say, "The money's here. If you need it, you know where it is, whereas if you have it you'll probably spend." And he's probably right.

So I went to Santa Clara, and I did a combined program. At the end of my third year, I started law school. I did my last year of undergrad and my first year of law school at the same time, so that at the end of my first year of law school I got my bachelor's degree, and then two years later I got my degree. Then it was LL.B., now J.D. So I went through in six years. One of my professors, who taught me political science — I was a political science major — then became president of the university.

MCCREERY: Who was that?

PANELLI: Patrick Donahoe, Father [Patrick A.] Donahoe. When he became president of the university, I had been practicing law for maybe three or four years, and then I became general counsel to the university.

He appointed me as general counsel, and I came on the board of trustees, because in those days the members of the board of trustees were all Jesuits, except for the university attorney. So here I was counseling people who had been my professors, which was kind of interesting, and I was very young. Then later, of course, when we went to a lay board, I stayed on.

As I say, I've been there ever since, although I just got a message today from the president. I told the president, "I think it's about time for me to leave." I finally got out as chair of the board after nineteen years. Now I think it's time for me to move on. But that's how I got involved in that.

I had toyed with the idea, after Santa Clara, to go to maybe Stanford Law School. It didn't really make any sense to do that, and I felt kind of disloyal after they had given me this scholarship, and of course I got a scholarship to law school as well.

MCCREERY: But that was an existing program where you could finish your bachelor's and start law school at the same time?

PANELLI: Right, right. Yes, you had to take, I forget, a certain number of courses, but they still, I believe, have what they call a combined program.

MCCREERY: I wonder who was influential to you in those years, either faculty, students, or others?

PANELLI: Growing up I would say this Irish family. The fact is, I named my first son after Tom Graham, and my sister named her first daughter after the sister. The sister, Katherine Graham, was an English teacher, taught at the high school. When I went to high school she was still teaching there,

and we decided best that I not take English in her class. I always called her “Teach,” in the broken English, for “teacher,” and so for the rest of my life she was always Teach. When I became a judge she was there. She was then in her eighties, and I introduced her as Teach. But they were very influential when I was young.

In fact, this Tom Graham ran the state office for unemployment, whatever office that was. He hung out in a saloon on Saturdays, and I’d go and mooch a dime to go to the movies. This one day I told his sisters that I’d been there, and they just raised hell with him, because they said, “How could you take this little boy in that den of iniquity?” So Tom got me aside, and he says, “You’re not supposed to tell them what we’re doing here.” They were influential in my life.

In high school I had fantastic teachers. They were really good, dedicated people. In fact, it was the principal who was also the superintendent of the district, Emil Buchser. His son and I were very, very good friends, the one who became student body president. Mr. Buchser was a strict disciplinarian, and he stressed the importance of education. “Do well in school,” and the teachers also did. The coaches that I had were all very, very helpful. The football coach, the baseball coach, and the basketball coach were all really good people, and they were very helpful keeping me on the straight and narrow. Plus my folks. There wasn’t any expectation that you would do other than what they expected you to do.

MCCREERY: So you were all primed already to go to law school all along.

PANELLI: Oh yes, yes. I knew what I was going to do.

MCCREERY: What about as an undergraduate? Why did you choose political science?

PANELLI: I really didn’t know what you did as a pre-law, if you will, and someone said you can do English or you could do accounting. But I don’t know, maybe political science because someone told me that’s what you ought to do. It really didn’t make any difference, because the base courses were about the same, except that I had more political science courses, and the fellow who later became president, Father Donahoe, taught political science. He was a great teacher. I learned more constitutional law from him in undergraduate school than I did when I was in law school.

MCCREERY: That's quite a statement.

PANELLI: Yes, well, he was a frustrated lawyer. He would have loved to be a lawyer. He was the brightest man I've ever met. He was just very, very good, had a fantastic memory. He was so sharp. So he was probably my mentor at that point in time.

Then, of course, when I went out and practiced law, my cousin was there, although we had different views about the practice of law. He was a nice guy. He was a very, very quiet, humble fellow, a little different than when I got in there. I was a little more aggressive. I was a little more street smart. I had had to find my way around things growing up, getting these jobs, doing this stuff.

During the war when the soldiers were garrisoned at Santa Clara, that's when I decided I could make some money shining shoes. So I'd go there, and then I found out that on Sundays I could sell the *San Francisco Examiner* there as well, so I staked out a location, and you could make a nickel for each paper you sold. But it was money, and I figured if I made a dollar a day, it was good. That was always my goal, to make a dollar a day.

MCCREERY: I wonder, since you majored in political science, what were your own political interests, if any?

PANELLI: I had none. I was not interested. I never got involved in a political campaign until — first of all, I registered as a Republican, and all the people that I worked with in the law were all Democrats. All the people in our law office were Democrats, and other people that were in the same suite of offices that had — one fellow owned newspapers and a radio station. He was a big Democrat. I don't know how that came about, but I registered as a Republican.

But the only political campaign I ever got involved with — I take it back now. I'd forgotten about — the first one was for a Democratic assembly candidate, Marc [Marcel B.] Poche, who is a judge now, went to the [California] Court of Appeal, and he was in Jerry Brown's [Edmund G. Brown Jr.'s] cabinet. Another one was a Republican assemblyman, Jim Sanders, in Saratoga. Both of those candidates lost, by the way. That was my only foray into politics. I never contributed to political candidates. My partners contributed bigtime. One of them may have been on the county central committee for the Democrats.

So I never really got involved in politics. It wasn't something that really interested me. I first got involved myself in politics when I ran for the West Valley Community College board. That was when the district was formed, so I'm a charter member of the board of trustees of the West Valley Community College District. So that was my first public foray. I got elected, and I was on that board until I became a judge, because you couldn't have both. So I was on that board for nine years.

I was first elected from a trustee area of the Campbell Union High School District, and when we moved from where we were to another location, while we were both in Saratoga, one was in the Campbell Union High School District. The other was in the Los Gatos-Saratoga Union High School District. They were different trustee areas, so when we moved I had to resign. Then there was a vacancy in the Los Gatos district, and since I had been elected twice they appointed me to fill this vacancy. So all together I was there for nine years.

MCCREERY: So that was all through the sixties, it sounds like.

PANELLI: Right, right, '63 is when that happened. Frankly, I did it because I started to have in mind maybe I would like to be a judge, by virtue of the fact that it would be quite a — I think part of it was because of my folks, that it would be nice if I became a judge. Although some relative said, "The only people who become judges are lawyers who can't make a living at it," which I didn't think much of. So I thought this would be kind of nice to go through an election, to kind of see what you have to do. I really didn't like it, because it was a very contentious election.

MCCREERY: Why?

PANELLI: Because everybody suspected that we would build a campus in Saratoga, and they were very, very opposed to building a campus in Saratoga, which is where we built the campus finally, after many bond elections that were defeated. The fact is, I don't think they've ever passed a bond election, but we were able to raise the taxes so we could build it. So people would come to these forums, raise hell with you, and people would ask you all these questions and stuff, and I figured, gee, do I really need this?

MCCREERY: And you were successful?

PANELLI: Yes, I got elected every year.

MCCREERY: It was annual, then, or pretty often anyway?

PANELLI: No, I think it was four years. I think I went through either three or four elections. I went through the first one, and then we may have had staggered terms. I think I drew one of the shorter terms, so I think I was up a little more often than others. Then you kind of learned where, what groups you talk to, what groups you don't talk to.

On one occasion I ran with this woman who was also on our board. We decided we would run together, kind of as a slate, and we both got elected. But I was always involved in something. Just like in our church I was elected to the first parish council that we ever had. I was always involved with something like that.

Then when we were practicing law, I decided that I thought being a judge would be something that would be very, very nice, that my parents would be proud of, and that I wanted to do. I had previously had an opportunity when Pat Brown [Edmund G. Brown, Sr.] was governor, maybe to get a municipal court position. But it didn't pay anything, and I was making more money than that and had young kids. The timing wasn't right.

MCCREERY: We didn't actually talk about law school. I was just wondering a little bit about your experience there, and how you decided to go into private practice to begin with.

PANELLI: When I went to Santa Clara Law School it was very small. My class started out with thirty-five, we ended up with ten. I was a student bar officer every year, and in my third year I was student bar president. I almost didn't go there, because Santa Clara was not passing many people on the bar.

I remember the dean, who later became a judge, Judge [Edwin J.] Owens, when I went to talk to him, he said, "Look. The problem why we're not passing as many on the bar as Stanford is because I can tell you that this group of students at the top part of the class, they're going to pass 90 percent. The problem is, we don't have as many of those students, because we're taking students that fall below that level." He says, "You're going to pass the bar whether you go to Stanford, Santa Clara, or somewhere else."

Plus, I felt a certain loyalty by virtue of the fact that I'd gotten the scholarship, and so we stayed there. But the first year of law school was a drag. I remember I didn't know what I was doing until after Thanksgiving.

But then it got on, and I had a very, very good friend of mine, Bob Blake, that I would study with. They called us the Bobbsey Twins. But law school — there wasn't much time for a lot of fooling around.

I met my wife-to-be [Lorna C. Mondora] just before I graduated from law school, like a month before, and even then, I'd study. She says, "It was the craziest dating that I'd ever seen. He'd come at ten, we'd go out and have a hot cup of chocolate, and then he'd go home."

But, yes, law school wasn't a lot of fun. Plus there was a lot of transition going on in the law school. I'm convinced that we taught ourselves. The fellow who had been dean for years, Judge Edwin J. Owens, when we were freshman decided to become a judge, so he left. So his courses — he taught contracts and he had taught contracts for a hundred years — we'd have to do that on Saturday. Then they got another dean who was a problem, so we had a lot of adjuncts teaching us. So it wasn't a very good experience.

As I say, I think we kind of taught ourselves. Things have progressed, obviously, since then. It's a huge school now, and I'm not sure that I could pass it. But I did fine. I was happy to get through, and I'm happy I passed the bar.

The fact is, the other day I swore in some new admittees from Santa Clara, because I have, obviously, a continuing involvement with the law school there. They have the Panelli Moot Court Room. I volunteered to take some students to lunch. They bid on it, I guess, or something. I took them to lunch and so I told them, "When you pass the bar, I will swear you in privately in the Sixth District [of the California Court of Appeal]."

So here, the other day I get a call from these kids — they're not kids. They said, "Do you remember that?" I said, "I do." He said, "We passed the bar." I said, "Oh, great."

So we did it December seventh, and that happened to be — fifty years ago December seventh is when I found out I passed the bar. It's kind of a sad thing for me, because I passed the bar on the seventh, my dad died on the seventeenth, we buried him on the twentieth, and I was sworn in on the twenty-first. So I told these people, "Fifty years ago today is when I passed the bar."

But it was kind of strange in a way, because my dad had taken grief from friends. They had said, "How could you have a child at fifty-four? You're unemployed. It's the Depression." I kind of figured that he got to

see me through to the finish, so from that point it was good. But, yes, law school was a bear.

MCCREERY: Luckily, you were a pretty self-starting young man, and perhaps could handle that sort of situation. But I can see why they weren't having a lot of top graduates in those days.

PANELLI: No. Part of it, I didn't — growing up, when you talk about family things. My sister and I and my brother used to go to the city library and get books, and we'd read books. But it wasn't literature and that kind of stuff. My best friend in law school, his family — his dad was a lawyer — and his mother, too, they had all of the great authors that they had read, and that kind of stuff, whereas you know, the stuff that I was reading, like the Rover Boys, the Motor Boys and that, but I wouldn't be reading Poe or that kind of stuff.

So it was a much different environment then. The language was not easy for me, because at home we always spoke Italian. Outside the home, never. When we were with kids we spoke English, unlike my neighbors, the Mexican kids. Unfortunately, they always spoke Spanish even in school, which I thought was a mistake. But that's a different issue. So that made it a little tough, but we got through it.

MCCREERY: How did you like the law once you started learning it officially?

PANELLI: I liked the law, and I liked the practice of law. It was a lot of work, because we were a small firm, and so we didn't bill by the hour. We had big ethnic clientele, a lot of Italian farmers, a lot of Hispanics. I'd say a third of what I did was pro bono, so it was a tough deal. We did well, but you had to work long hours. I worked weekends, and it got to be kind of a drag.

Although I did other things as well. When my kids were growing up, I coached Little League for them. We did that kind of stuff. But when I decided to become a judge, I had envisioned myself somewhat of a legal scholar, and I saw that in the practice of the law, we were just too busy. A lot of the stuff you did by the seat of your pants. You couldn't have done some of the things that I did in the practice of law today, because you'd never get malpractice insurance. You have to specialize. We didn't. As I say, I did everything.

When I became a judge, I found there wasn't much difference in the workload. The first day I arrived on the job, they assigned me seven jury trials. . . . Then when I went to the court of appeal, I thought now here I can really spend some time and think about the law. I got to the First District and the first thing they told me is that, "They're coming in at fourteen a month per justice, and you have to do ten of the backlog, so you've got to do twenty-four opinions a month," which was kind of a difficult deal.

MCCREERY: Yes, the numbers are a bit daunting. But when you were in private practice did you develop special interests? I assume you did general business practice and —

PANELLI: Yes, right. We did whatever came in the door.

MCCREERY: It was you and your cousin?

PANELLI: And two other fellows. Actually, we'd first started out with three other fellows. When we split up, we ended up with four.

MCCREERY: Where was your law office in San Jose?

PANELLI: In San Jose it was right downtown. We were one block from the courthouse, and then we moved out to The Alameda. We bought an old house. The Alameda had been where all the grand homes were. We bought this big home that had been the home of Judge Marshall Hall's family, and they had these old intercom phones. They had on there, "Mrs. Hall," and then, "the maid." Judge Hall wanted to know which of the rooms we used as offices, because we might be where his room was. I said I took what was the dining room, which is a big room, and my partner took what had been the living room, and we had these three bedrooms upstairs. The maid's place was down below, and downstairs we put our law library.

MCCREERY: Did you end up in court quite a bit?

PANELLI: Yes, I did.

MCCREERY: Was it mostly trial work?

PANELLI: When I started practicing law in Santa Clara County, we did not have a public defender's office. So what happened is the judges would be advised that we have these new admittees, and then they would assign you to represent these people pro bono. So you started out trying these cases.

The first felony trial that I had, the fellow who was the defendant happened to be in the office talking to one of our lawyers on the day that the governor called to appoint me to the superior court. He came into my office and said, "It's appropriate that I should be here, because after all I gave you your start."

MCCREERY: I'd like to set the stage, if I may, for the further discussion of your career by just returning briefly to the subject of your family and your personal life as it evolved while you were still in private practice. You mentioned meeting your wife towards the end of law school. May I ask how you met?

PANELLI: We met at a wedding of a mutual friend. It's kind of ironic because my wife's family had these friends that they had come over from Italy with, and they had a son who was a year ahead of me at Santa Clara, but he was in the same army reserve unit that I was in. So I knew him by virtue of the reserve contact, as well as I kind of knew him in school. His family kept saying that they knew this family that had a daughter that lived close to where I lived, but we had never met.

At his wedding, which was on April 30th of 1955, I was just getting ready to graduate from law school, and my wife was just getting ready to graduate from undergraduate school at San Jose State. It's kind of a funny story, because she went to the wedding over her objection, because she had been out the night before at a senior prom, and had gotten in very, very late. Her mother said, "No, no, these are very close friends. You're going to come to the wedding."

So she went to the wedding and met my mother and my older brother, who was also unmarried, and, of course, the typical Italian mother, my mother says, "Here I have a son, and he's single." But my wife knew that my brother wasn't interested in her, so my mother said, "But I have another son, and he is studying because he's in law school, but he is coming to the reception."

Sure enough I was going to the reception, which was in Atherton. I'm on a little country road, Selby Lane in Atherton, and there's this car in front of me driving very slowly, and I'm blowing the horn on my car and suggesting to the woman driving this car that if she didn't know how to

drive she ought to park the car. That was my first encounter with my future mother-in-law.

Later in the day, at the outdoor reception, it started to rain. They had this canopy outside, and so the crowd kind of compressed itself to avoid the rain. All of a sudden my wife said she saw this woman dragging this other son behind her, and she told her mother, she says, "My God, it's the person that was tooting at you when we were driving in." [Laughter] So we met and we talked. We didn't make any arrangements for any future meeting, but on her way home she told her mother, "That young man I just met, I think I'm going to marry," which was news to me.

So the next couple of days, to one my best friends I said, "I met this young woman. She's a very nice gal. I think I'd like to ask her out, but I don't want to seem too anxious, so I'm going to wait a while."

I did call her, and she said fine. We were going to go out. We went out and then about a week later she called my home, and unfortunately I wasn't in. My father was there. My father didn't speak English very well, but he got the message that she invited me to dinner. So I go to her house and, as I say, as the crow flies it was just right over one block, and she had this fantastic dinner.

I came home and I told my parents, I said, "You should see this girl cook. It was just a fantastic dinner," and this, that, and the other thing. Okay. Then we started dating, and, of course, then I graduated, and then she graduated, so we were a little closer. Then on the 25th of August we got engaged. Then she went to Boston to do her dietetic internship in the first week of September, so we really didn't know each other very well.

She went back to Boston for a year, and she came back in late September, and we were married on October 27th of 1956, so it was kind of an interesting situation. [Laughter] Of course, after we were married my wife told me the story that she had told her mother, that she was going to marry me that day, because, had I known that, maybe I wouldn't have had to do all the fancy courting footwork that I thought I was doing.

But when we were married and I was practicing law with my cousin, I said, "We need to invite them for dinner." She panicked because she said — well, she didn't tell me this — but she hadn't cooked very much. I said, "Just do the dinner that you did for me when you first invited me." It turns out that her father, who was a chef, had cooked that dinner.

So she called her dad and said, “Daddy, you need to do this for me.” He said, “Look, I’ll come over and I’ll prepare everything, and you only have to do very little.” My partner’s wife was the world’s best cook, and so my wife was very, very nervous about their coming over for this dinner. So she had had a couple of Manhattans, and we had a small kitchen, we had an apartment about the size of this room. The kitchen got very, very warm, and she just couldn’t complete the dinner, so she had to call Mary, my partner’s wife, in to help her with the dinner.

So then I found out the true story about the dinner. But it’s almost been fifty years, so it all worked out.

MCCREERY: Whereabouts did you live in those early years?

PANELLI: When we came back from Italy we lived in Santa Clara. I think I described this area where there were many Italian families in kind of this four-block area. So that would have been probably 1935, ’36, until 1952. Then in 1952 we moved to San Jose, in this home that was a block from where my wife’s family lived. My dad wanted to build this home, and so we bought this lot and we built the house there, and so from 1952 I was in San Jose.

MCCREERY: And in due time you had three sons?

PANELLI: Right. I had a son, Tom, in 1958, Jeff in 1960, and Michael in 1963. In 1959 we moved from San Jose to Saratoga, and we built this house in November of 1959. So it was from ’52 to ’59 that we were here in San Jose, and then in 1966 we moved from the first home we built in Saratoga up into the hills, where we built a much nicer and very large home overlooking the valley, and we were there until the boys left for college.

MCCREERY: I’ll bet you saw a lot of changes in this Santa Clara Valley.

PANELLI: Oh, sure. In fact, these lawyers that I had here today flew in from Los Angeles. I mentioned to them that those runways that you can see out the window are where we worked when I was a teenager. They were agricultural fields. They were in row crops, and that’s where we worked. Similarly, here, just a block from where we are was the main business area of Santa Clara County. San Jose was its commercial center, but everything else around here was orchard and farmland, and of course now that’s all built over and it’s all gone.

So there have been enormous changes, from probably just before the war until after the war, when the veterans returned, things really started to develop because during the war there were soldiers stationed in Santa Clara as part of the Western Defense Command. One of the units had been the Michigan National Guard, so a lot of those people came, had their taste of the Santa Clara Valley and when they came back either stayed or while they were here met people and married.

Then some of the industry changed from agricultural to light industrial. Owens Corning Fiberglas built a big plant in Santa Clara, and so then we started to get some industries. Food Machinery, of course, then became a military contractor, and it was much larger. So we started to develop a different base of industry. Then housing took off and farms disappeared.

MCCREERY: What happened in the Italian-American community around here during those years of change?

PANELLI: Until after the war it was a pretty homogeneous group. But as the generation ahead of me either went off to war or married, then they just kind of went and did their own thing. So the only people left in what I'd call this old quad area were the older folks.

Frankly, what happened — as they got older and died, the university would buy their properties. So the university moved not only southward towards the house where I was born, but it also moved to the west and took all of those homes that had been this Italian community. It has also moved north, so that most of that part of Santa Clara now is part of the university.

MCCREERY: Tell me just a little about your own family life, as your boys were growing up. I know you had a long history of being involved in many things in your community. How did you balance that with work?

PANELLI: It was tough, because we worked at the law practice five and a half days. I was in the army reserve, so that took a weeknight per week, and two weeks in the summer, which made it a little tough because I only had two weeks' vacation, so it was kind of tough to plan family vacations.

But I was very involved in our church, and when my kids were in school there, we kind of ran the athletic program. We put on a bunch of pancake breakfasts, spaghetti feeds and stuff to raise funds to convert what had been the church hall into a gym for basketball. I coached my sons in Little League every year. But there wasn't a lot of time to fool around with.

But we did have — which is, I guess, today not as common — most of our meals we ate together, the evening meal, breakfast, kind of, more or less. It all depends what the kids were doing in school. But we were always together on the evening meal. Then on Saturday and/or Sunday we would have dinner either with my mom or with my in-laws.

Then when we built the big house in Saratoga, my wife's folks bought a lot down below us, and so they were close by. So the boys spent a lot of time running up and down the hill back to their place. I said it was the only appellate court that was actually lower than our home, because whenever there was a problem they'd go down to the grandparents to argue their case.

MCCREERY: Did your kids learn Italian?

PANELLI: No. No, they never learned Italian. When my mom would baby-sit them and some of my sons' friends would come over, they'd say, "Your grandma sure talks funny," because it was in kind of broken English. No, but they weren't interested in speaking Italian. Of course, while I was active in Italian-American affairs, even when I was practicing law, it wasn't until I got on a court that really I had the exposure more to statewide Italian organizations, and then national and then international. Then there was a program where I was honored in Florence by the Italian government. But no, the boys spoke Spanish, and they didn't want to contaminate their Spanish with Italian.

MCCREERY: It sounds like you had a busy life. We touched on the fact that for a good deal of this time you were also serving as Santa Clara University's general counsel. You mentioned that Father Patrick Donahoe became president and appointed you to that position. You were quite young.

PANELLI: I was.

MCCREERY: I wonder, how were you received by the board of trustees at the time?

PANELLI: It was funny because most of those people were people who had taught me, because, let's see, I was born in '31. That was '63, so I wasn't very old. The fact is, I went to prepare a will for Father Donahoe's mother, and she said, "Pat, are you sure he's old enough to be a lawyer?"

But I had no problems with that. They seemed to follow the advice that I gave. Then, of course, I stayed on in that role until I went on the bench. But it was different, and I looked very young, so it was kind of a combination. Not only was I young, but I looked younger than I was.

MCCREERY: I can guess, but what did you actually do as general counsel? What kinds of things came up?

PANELLI: We had the typical problems that you have with students, issues with faculty, off-campus problems with students, the relationship between the city and the university, because we had become coeducational at that time, so it was a problem with student housing. I remember when we went into parietal hours, oh, that was a big issue. Then when we went to unisex dorms, there were problems with respect to dealing with parents and all this kind of stuff.

But it was the general run of corporate issues, as well as the educational problems. I belonged to the National Association of College and University Attorneys, and so issues that affected higher education nationwide, either by virtue of laws passed in the Congress or other things, were the kind of things that we dealt with. Litigation, we had some litigation. People sued the university, had issues with respect to gifts that had been made or were contemplated, all that kind of stuff.

MCCREERY: I did want to ask you about when the school started admitting women, because that was, I think, when Father Donahoe was president. What actually led to that happening? Do you remember how it got started?

PANELLI: No, I don't. We always would have permitted women in the law school, but none had applied. O'Connor Hospital, which was a Sisters of Charity hospital here in San Jose — probably one of the oldest hospitals, if not the oldest hospital in San Jose — had a nursing school, and some of the nurses then came to Santa Clara for their chemistry classes and those kinds of courses. So they technically were the first women to be admitted, but they were only part-time students.

Then I think the realization was that you needed to bring women on campus because of the way things were changing. It was not a change that came easily, because here it had been an all-boys school since 1851, and there were a lot of people that felt that's the way it should be. Of course, the

first few classes of women, they were really pioneers, because they probably had to put up with a lot more stuff than they needed to.

But the transition, really, after the beginning, wasn't all that difficult. It really changed the whole character of the university. First of all, the males dressed a lot better than they had before, although I can tell you that has now reverted. I see them on campus, and both the men and women look like they're going to the beach, or they're semi-dressed, undressed. I think the competition in the classroom, the decorum in the classroom, improved a bit.

In 1952 I was a senior basketball manager, and that's the year we went to the Final Four in basketball. We won the western regionals in Corvallis, Oregon, and then the following week was the Final Four in Seattle. But in those days Santa Clara would not permit the teams to travel by air, so you had to travel by rail. So to come back to Santa Clara and then go back didn't make a lot of sense. Seattle University was a Jesuit university, so they said, "We will have you go take classes at Seattle U."

Seattle U. was a coeducational school, and some of the people on our team had gone to grammar school that was coeducational — but since then it was the first time since grammar school they had been in a classroom with women. They acted like they had never seen a woman in the classroom. It was really kind of funny, because I remember we were in this political science class at Seattle, and these guys were just acting up to impress the girls. [Laughter] It was unreal.

MCCREERY: I wonder how this change of admitting women played with the board?

PANELLI: I think it was a function of a recognition that you needed to expand your base, and you needed to be competitive. I don't know how much later St. Mary's also went coeducational, and, of course, later USF [University of San Francisco] joined, with Lone Mountain, a women's college, and then they became coeducational. But I just think it was maybe a question of a felt need.

My wife would have probably have gone to Santa Clara, although the courses that she needed to take in dietetics we probably didn't have at Santa Clara. But it wasn't an option for women. If you wanted to go to a Catholic college and you were a woman, you went to Lone Mountain, or

Dominican, or Holy Names, or Belmont, which were all-girls schools. So I think that was part of it, and the other is that you needed to increase your base of potential students.

During this whole time there's another transition, too, not so much early on, but later. When I went to Santa Clara, most of the professors were Jesuits, and while they had a substantial number of lay professors, there weren't that many, and of course you didn't have to pay the Jesuits. As things progressed and priests got older, and you had to be more competitive, then you had to go out in the market for professors. You had to pay people salaries that became competitive with what other schools were doing, and that necessarily meant that you had to raise not only the tuition, but the student base that you had. So I think it progressed over time.

MCCREERY: How much was the board of trustees a force in the larger community?

PANELLI: Not at all at the beginning. At the beginning the board of trustees was entirely composed of Jesuits. I was the only layperson, as the university attorney. At one point there was concern about the effect of church-state relationships and the government benefits, because of federal grants to education and all of that stuff there was a need to expand the trustees to include lay members. There was a case called the Maryland case, which was a big topic in higher education because of its effect on non-profit religious-affiliated schools.

So the determination was made to go to a lay-controlled board. Most of the church-related schools decided that they would go to lay boards, some with some sort of a kicker that you couldn't really change the role of the school or its purpose without having the religious component of the board with some sort of veto.

Others decided that they weren't going to do that. There was some concern about lay control because schools like Harvard, USC [University of Southern California], had been church related and then drifted away from their church sponsors.

So we went to a board the majority of which were lay members, but there were thirteen Jesuits, which formed one-more-than-a-third of the board. To change the basic articles of incorporation and/or the bylaws required a two-thirds vote, and you could not do that if the Jesuits didn't go

along with you. As someone told me later, if you ever thought that the Jesuits voted as a bloc, you were sorely mistaken, because they wouldn't have, though we never had that problem.

MCCREERY: But by the numbers they could have veto power.

PANELLI: By the numbers they could have, because there were thirteen, and I think twelve was one-third, so they had one-third plus one. Just at about that time then, Father Donahoe was — well, it's the other way around — Ben Swig was impressed with Father Donahoe, and they became very, very close friends. So he said, "If I give you half a million dollars, can I have a voice in this university?" We had never had anybody give us anything like half a million dollars.

So Ben came on the board and became its chair, and I became the vice chair. Running meetings, Ben was used to telling people what to do. Roberts Rules [of Order] didn't have much to do with the way he ran meetings. He changed the whole attitude of fundraising. We had been afraid to ask for more money from our donors, because they had maybe given us a hundred thousand dollars a year. Ben would come out and say, "We need five million from these people." We were all concerned that all the people were going to scatter, but they didn't. So he really changed the fundraising culture of the university.

As a result of his presence on the board we also got other people of that stature on the board. So the board really developed to where today I think it is a very, very effective board, much more sophisticated. There are many more rules, and the subcommittees of the board do a lot more work, so most of what takes place at the actual board meetings is merely reacting to the committees and their reports, because most of the work is done in the committees.

Now we're not concerned about the two-thirds, one-third rule. The fact is we're probably operating with fewer Jesuits because there are fewer Jesuits available. A big issue now is what to do about the university president. Do we change the bylaws that provide that the president of the university has to be a Jesuit?

We don't think that Santa Clara needs to face that issue at this point in time, because we have the reputation which attracts the young, bright Jesuits to come to Santa Clara, even from other provinces. So as long as

we have that attraction, we feel we will always be able, at least in the near future, to have a Jesuit president, although we've talked about whether it would be a woman or a laywoman or a layperson. I don't think there's any problem with that, but we don't think we need to face it yet. Some of the other Jesuit schools are in that situation. But some of our key administrators are women. In fact, there's a provost who is a woman, and the heads of a lot of the departments are women. The faculty is probably, I'd say, fifty-fifty women.

The whole complexion of the university has changed. In the religious studies program there are Buddhists, Hindus, Jews, all of that kind of stuff, so that it is, while I'd say not a majority — the largest single group are Catholic — there are all kinds of other groups there, which, of course, was wholly unknown at the time I went to school. You talk about homogeneity, they were all homogeneous. Now the diversity is rather significant.

Still not as many African Americans as we'd like, because the competition for them is difficult by virtue of our admissions standards. That's one of the reasons I don't think our athletic teams have been as strong as we'd like. We've done much better with the women in the athletic area than the men, because we can recruit really good women. But the men! We're talking women's basketball or women's soccer, women's softball, women's volleyball. But when you start talking baseball, and, of course, we don't have football any longer, but basketball — it's really tough, because if you're that good a student then you can go to Stanford or some other top school, so it's become a problem to compete for scholar athletes who can qualify for admission.

MCCREERY: You've certainly seen it all now, being on the board yourself so long. We started off with the subject of how much the board had power in the greater community. Mr. Swig was quite a figure in business, in politics. How else did he change Santa Clara?

PANELLI: Because of his influence he was able to bring people to assist the university in the fundraising capacity, but in addition, also he brought speakers — he was Mr. Democrat. He also was very helpful in our relationship with the City of Santa Clara, because they respected what he did. I just think he made us less provincial, and that helped. But I think part of it was, by having him here, it gave us a certain recognition and status that we may

not have had, and so I think we were able to maybe get people on our board that otherwise we would not have had.

He was a very interesting character. He would call people and say, “Okay. I will give \$50,000 to your charity, but you’ve got to give \$50,000 to Santa Clara.” I remember one day we were up in his apartment with Father Donahoe and my wife. We were up there for dinner. Bing Crosby called, or Cathy Crosby called for some money for some project, and he said, “No, I’m not going to give you any money. Your husband pledged \$50,000 to Santa Clara, and he never paid it.” So he says, “You pay his pledge and I’ll give you the money.” So I think that all came about.

MCCREERY: You were his vice chair on the board, so worked fairly closely with him?

PANELLI: Right. The fact is, we had a key to his penthouse apartment at the Fairmont [Hotel], so whenever we were in the city it was really kind of neat to go there. If my wife was there, he’d always give her flowers. That apartment is renting now, I think someone told me, for \$7,500 a night.

It’s a very interesting apartment, and the memorabilia in there was unreal. He was a big Democrat. He had stuff there from every big Democrat, Kennedy and others. He was a big buddy to Hubert Humphrey, had him at Santa Clara on more than one occasion. He had a billiard room, and this huge dining room, and this library that was circular. It was two stories, and it looked like the library in *My Fair Lady*, where Rex Harrison was on the ladder going up to the library. It was really an interesting deal.

MCCREERY: On a personal level, what kind of guy was Mr. Swig?

PANELLI: He was a great guy, really. He didn’t tolerate fools very much, and he was used to making decisions alone. That’s why it was kind of difficult. My role, really, as a vice chair was maybe to suggest that you can’t do this, because it was all kind of — he was used to telling people what to do. He wasn’t big on having a lot of consensus, necessarily.

But he was effective, and people respected him, because he had no axe to grind. He was there because he thought the Jesuits were doing a very good job of education, and they were all principled, and he wanted to help them. Of course, he was also a big benefactor of Brandeis University, so he never forgot those things. But he just made an enormous change. He was

the difference, I think, he and Father Donahoe, in transformation to where we are today.

MCCREERY: Just quickly, what sort of leader was Father Donahoe?

PANELLI: He was very well liked. He was a brilliant man. I mean, he was a Ph.D. in political science, would have been a great lawyer, and I think he would have loved to have been a lawyer. People would do things for him. But he and Ben got along fabulously, because they were the same way. Father Donahoe didn't want to talk to vice presidents about different stuff. If he had an idea, this is what he was going to do, and everybody went along with him. By force of personality he was able to get things done that other people might not have been able to get done. He was just a brilliant man.

He gave me his Ph.D. thesis, which I have, the original, and it's clear to see that he was very, very bright. It had to do with the Constitution. As I think I may have mentioned, I learned more constitutional law from him in my political science class than I did in constitutional law in law school. But yes, he was very, very instrumental, he and Ben, in getting things done.

MCCREERY: Thank you for telling me that. That does set us up to move into your judging career, because I think you talked briefly about the fact that there were maybe a couple of occasions, or at least one, where you might have been considered for a municipal court position. Didn't Mr. Swig have some role in that, can you tell me?

PANELLI: Right. Pat Brown was governor, and he and Pat Brown were very, very close. In fact, on more than one occasion when we would go up to the apartment, Pat Brown would be there. So I got a call from one of the local attorneys asking if I would be interested, because Ben had talked to Pat Brown about a municipal spot. But my kids were young, and it didn't pay all that much, and you had to live in the judicial district, and we lived in Saratoga. So I said no, I wasn't interested.

I really wasn't interested again until, oh, let's see, I was probably just not quite forty, when things were changing in our law office. My partner's son — I mentioned my partner was my cousin, who was twenty-one years older than I was — his son was going to come in. He just graduated from law school and was going to come in, and I could see that the dynamics in the office were going to probably change, and as a result I thought this might be an opportunity for me to explore the judiciary again. I read

that there was a potential judicial vacancy on the superior court, and I mentioned to this friend of mine that had been my commanding officer in ROTC at Santa Clara.

MCCREERY: Who was that?

PANELLI: Gene Ravizza was his name. He's the founder of Cupertino Electric, which is now probably one of the largest electrical contracting firms in the State of California for sure, if not one of the largest in the nation. He's now retired.

I knew that he had been very instrumental in Reagan's first gubernatorial campaign, so I asked him about judging and this kind of stuff, and he didn't say much about that. But as I say, one day I'm driving down Saratoga Avenue and he's driving down. He toots his horn and pulls me off to the side of the road and says, "The other day when you mentioned that you were interested in maybe exploring the judiciary, were you serious about that?" I said, "Yes, I think that I am." He said, "Let me see how things are."

Then he called me and said that there was this vacancy, but that most likely it was going to go to Bill Ingram. Judge Ingram was a muni judge in Palo Alto who later became a federal court judge here in San Jose, very well respected. So he says, "That isn't going to happen, because Bill Ingram's going to get that. But there's a possibility of some other appointments coming through. In the meantime, I will see how things are," this, that, and the other thing.

Then it turned out that he and the fellow who started the young Republicans — it was called YROC [Young Republicans of California] — turned out to be the appointments secretary for Governor Reagan.

MCCREERY: That was Mr. Hutchinson?

PANELLI: Ned Hutchinson. I never had any contact with him and, of course, I never had talked to the governor.

MCCREERY: I was wondering if you'd met him at all.

PANELLI: No. The first time I got a call is when he called the law firm and appointed me. He said, "I'm going to make these other appointments," and so it was one of those things he was obviously just going down a list.

The next thing is I get a call from the newspaper. He says, "Congratulations on your appointment." I said, "How'd you find out? You weren't

supposed to know.” He said, “We didn’t, until you just told us.” So they had tricked me, so I learned about how you need to deal with the press.

MCCREERY: Yes. I’ve heard the same story from other people, needless to say. What did Ned Hutchinson want to talk with you about, upon checking you out?

PANELLI: He wanted to know something about me. He knew what my academic record had been, what I did in the practice of law, because we had a very broad range of practice. I represented some people who would pay me in chickens and vegetables. When their kids would get into trouble, they came to me for help. This one Puerto Rican family, poor guy, had about twelve kids. “Oh, we have a problem.” He’d come to you, “Mr. Panelli, you’ve got to help me with this problem.” It had nothing to do with the law. So I got some of that.

I represented someone in a proxy fight for a New York Stock Exchange company, which we won, so I became a member of the board of this company. It was on the New York Stock Exchange. As a result of that, I was on the board of another company that was on the American Stock Exchange and met Ron [Ronald M.] George’s father. He would tell me, “I’ve got this son who’s going to Stanford Law School,” all this kind of stuff. I knew his dad before I knew Ron. But as a result of that — and having done domestic work, contract stuff, represented criminal defendants, all that kind of stuff — I had a real broad experience that I think they felt would really be good in the superior court. I’m sure they checked up on me, but I think he had a lot of confidence in my friend, that they could rely on him. But there weren’t these questions about a litmus test or any of that kind of stuff. They didn’t ask me any of those kinds of questions.

MCCREERY: No, not in those days. This was your friend from school?

PANELLI: From Santa Clara, right. What happened was that there was this proposal for new judgeships in Santa Clara County. Santa Clara County had thirty superior court judges, and they were seeking three more. So I was advised that if they only authorized two, that the governor would probably elevate two municipal court positions, because they always like to get the double appointments. But if there were three there was a possibility that they would look to the practice for the third position.

Was I interested in that [being considered for municipal court vacancies]? I said, not really, because — I think it was okay, I don't think the district issue was a problem anymore. I think I could still live in Saratoga. But I don't think I was interested in doing that.

MCCREERY: Why?

PANELLI: What you were doing in municipal court in those days, you were doing nothing but DUIs, 1538 suppression motions, traffic stuff. I don't mean to demean what they were doing, because they were doing a good job. I just didn't think it was going to be intellectually challenging. I had done some pro tem work on the traffic calendars, and that didn't interest me very much.

So when they passed the three positions, then I was told by my friend that I should meet with Ned Hutchinson. So one day he invited me to his home, and Ned Hutchinson was there and says, "We've investigated your background. You have a very good reputation. You're respected in the community by the judges and the lawyers," and all that stuff, "so we think that you are a viable candidate. But there are other people we need to look at." This, that, and the other thing. Okay.

So then I had a very good friend of mine who was the controller of the Ford plant out here in Milpitas. I used to have lunch with him maybe every other week, and I told him of my interest. What's his name? Smith, who was the solicitor general for Reagan —

MCCREERY: William French Smith, the attorney general?

PANELLI: William French Smith, yes. Wasn't he the solicitor general for him?

MCCREERY: I think he was attorney general.

PANELLI: Okay. William French Smith had represented Ford, and so my friend says, "I will contact him and put in a good word for you." The other person was a person by the name of Holmes Tuttle. Holmes Tuttle was the largest Ford dealer in California, a big supporter of Governor Reagan.

So my friend contacted him, and he got a very nice letter back from Holmes Tuttle that said, "That's all right. If people aren't qualified, we don't do anything. But I'll look into it." Then about a month later he got a letter back that says, "Your candidate is very well qualified and is well suited to

be a superior court judge. I'll do what I can, but you know there are no guarantees." Okay. So we left it at that. Then I got a call from my friend and I said, "Gene, this is what I'm doing." He says, "Don't do anything else. Just wait."

Then I got a call from someone who said, "There are going to be some muni appointments coming up, and would you be interested?" Of course, they didn't know about this parallel thing that was going on. I said, "No, I'm not interested. If I don't get a superior court judge position, I'm not interested." He said, "They don't like to do that." I said, "I understand all of that." Then, as I say, it came out I got the appointment.

MCCREERY: That's a fascinating story, though, because of what goes on behind the scenes, and the kinds of people that are involved, and major local businesses.

PANELLI: See, I was not politically involved, and so most of the appointments, especially in Santa Clara County, because Pat Brown had been the governor, were all people who'd been pretty active in the Democratic Party in Santa Clara County. As I say, my partner and his former partner, who died the weekend that I came, they were very involved in those kinds of things, fundraising, doing stuff.

It was by happenstance that I found out that my friend Gene Ravizza had been involved with Governor Reagan. I had always been a registered Republican, but as I say, the only campaign that I'd been involved with was Marc Poche's assembly candidacy as a Democrat. So I wasn't that much into it, and so what I was trying to do is to get people that might know people, at least to look at your name.

That's what's ironic with respect to this Deukmejian relationship, because I didn't know George Deukmejian at all. I'm convinced but for the fact that when I was nominated by Jerry Brown, they did some research on me, that they probably hadn't thought about me. I'm sure I was not on their radar screen for those positions, because I knew other people who were very active Republicans, who were on the trial courts, who wanted to go to the court of appeal.

When I was on the superior court one of my running buddies that we'd run every morning with was Tony Ridder, who was the CEO of the Knight-Ridder newspaper chain. At that time he was not the CEO. He was

the publisher at the time. He talked to Gray Davis about my possibility of going to the court of appeal, because I had told Tony that I'd always hoped to get to the court of appeal. I never had any expectations that if I got to the court of appeal I would go any higher than that.

But Tony one morning told me that Gray Davis, who was then the chief of staff for Jerry Brown, said there's no way that he will appoint a Reagan Republican to the court of appeal. "If he was a muni judge and wanted to go to the superior court," he says, "we could probably do something." So Tony told me, "Don't expect anything." I said, "I understand that."

Ben Swig was trying to get Jerry Brown to do something for me regarding a court of appeal appointment, but Jerry Brown did not listen to Ben Swig. So Ben put a lot of pressure on Pat Brown. One day I'm on the bench and I get a call from Pat Brown, telling me, "Would you please ask Ben to back off?" He says, "He's putting all this pressure on me, but Jerry doesn't listen to me." I said, "I understand the story." He says, "But Swig's really on my case about this."

It was funny. I was on the bench and someone says, "Governor Pat Brown is calling." So I said, "Hey, I understand the drill. That's fine. I have no problem with that."

MCCREERY: [Laughter] As an aside, how well did you know Governor Pat Brown through Mr. Swig?

PANELLI: Not except through Ben, but not well.

When Joe Alioto was running for governor, Ben had me host here in Santa Clara County a dinner where I invited all these folks to hear Joe Alioto with respect to his candidacy, which Ben, of course, paid for, because I could never afford to pay for it all. The expectation, hopefully, was that if he became governor, then that would have been an entrée. Now, I must have been on the bench at the time. I'm not sure about the timing, because I don't remember when Joe Alioto ran.

The funny part or the ironic part of it was that later I was going to be a nominee from Jerry Brown for the Sixth District [of the California Court of Appeal]. Of course, the timing of that was when Jerry Brown was running for the U.S. Senate, and there was a lot of concern about some of his judicial appointments.

The feeling was that in San Jose, by virtue of my reputation — I think I was rather popular with the bar; I always rated either one or two in those judicial polls that they had — it would be a good idea to maybe squeeze me in with Marc [Poche] and Jerry Smith. So that's how that all turned out.

I don't think — I may have had conversations with Jerry Brown before I was to be named, but I sure had a lot of them after I was named. He'd call the house because he wanted to see if I could talk to Deukmejian about approving these other folks, and what I would do if I was nominated as the P.J. [presiding justice], and all that kind of stuff.

MCCREERY: He was thinking ahead, even, wasn't he?

PANELLI: He was thinking ahead. I said, "I can't — how can I commit myself to something if I don't know what the hell it's all about?"

MCCREERY: Yes. What was your view of how he operated, Governor Jerry Brown?

PANELLI: He's obviously, again, very bright, but very mercurial. I remember he came down to Santa Clara County for the investiture of one of the judges. He looked around, and he said, "There aren't enough brown or black faces here." So he immediately went out and appointed someone, and I think that person never got reelected, at the next election he was defeated, which was kind of unfortunate. The guy was a very nice fellow, but it wasn't going to work because he was a weak candidate.

So he was kind of a shoot-from-the-hip person, and "I'll show you what I can do," and "I can change things." I understand the necessity — having been on the outs years before as a little Italian kid, I understand that you want to maybe boost people. But I think you've got to do it with a little more finesse. Just, as I say, with Rose [Elizabeth Bird]. If he had appointed Rose as an associate, and [Stanley] Mosk as the C.J. [chief justice], Lucas and I would have been the two people [representing an opposing view from the majority] on that court for a long time.

But he was about to show people that that's what he was going to do. He was going to put a woman there. Similarly, with the Sixth District, I think if he'd stuck with Poche and Smith, my sense is that Deukmejian would have approved them, because Poche had good rapport with Deukmejian when he was in the Senate, and [Deukmejian] also respected Smith, who had been in the Senate with him. So you would have had a

situation with Brown getting two of the three appointments on the Sixth District, as opposed to none, and then [instead] Deukmejian getting all three appointments.

MCCREERY: Yes, the timing is everything on some of these things. We'll come back to some of that, but thank you for filling me in. We wanted to talk about your career as a superior court judge. Just to set the stage again, after you were nominated by Governor Reagan to that post in 1972, by what process were you confirmed?

PANELLI: There wasn't any confirmation process.

MCCREERY: Nothing whatsoever.

PANELLI: No. I don't even think "Jenny" [Commission on Judicial Nominees Evaluation] was in existence then. I don't think I had to go through the Jenny Commission for that. What you did is you just had a swearing-in ceremony. On the 17th of March, 1972, two of the people who were elevated, Judge [J. Barton] Bart Phelps and Judge [James] Jim Duvaras [Jr.] had been muni judges in Sunnyvale and Palo Alto. They wanted to get on the superior court bench now. I didn't want to be left behind, so we had our swearing-in ceremony on March 17th of 1972, which for me was kind of a tough turnaround, because — I forget the date of my nomination.

MCCREERY: The record says you were nominated on the second of March.

PANELLI: Okay, so it's only fifteen days later that we're sworn in, and so the three of us were sworn in at the same time. Unfortunately for me, we then had to draw lots for relative seniority, and I drew the last lot, so I became the junior person.

MCCREERY: Where did the drawing of straws take place, where and when?

PANELLI: The 17th, as I recall, was a Friday, and Judge Marshall Hall was the presiding judge. I think we did it that very day, because when I reported on Monday I knew that I was junior, which meant that I had the last choice of the assignments. As a result, I also had no chambers. So my chambers was my briefcase. If someone was ill or someone was out, I'd go use their chambers, or I'd use a jury room as my chambers.

Now that was March, so the assignment selections for '72 had already been made. So from March of '72 through the end of that year I did civil jury trials. In fact, as I reported on Monday, on whatever that was, 18th,

19th, 20th, I report and I'm using this judge's chambers. I met my crew. My bailiff comes in, and he says, "We've been assigned a jury trial." I said, "Oh, that's fine." A few minutes later he comes back with another file. He says, "Judge, we've been assigned another jury trial." I said, "Oh, that's interesting." A few minutes later he comes back, another. I get eight jury trials assigned to me.

So I get on the phone to Judge Hall. I said, "Judge Hall, I'm sorry, I think you made a mistake. You assigned eight jury trials to me today. There's no way I can try eight jury trials today." He says, "Of course not." He says, "You're supposed to settle seven and try one." And so I did.

I told all the lawyers, "Look, this is my first day on the job. You've got to make me look good." I was pretty good at negotiations, so we did settle seven. The one case that I did not settle was one that was a goofy case, and there weren't any jury instructions, so I was up all night, not knowing that the lawyers were supposed to prepare these instructions, because they did it kind of lax in Santa Clara County. And we tried that case.

But as a result of settling the other seven, then Judge Hall kept sending cases to me for settlement purposes, and so that's kind of how I got in the settlement business. But anyway, that's what we did from March until the end of the year. Okay, then in December what they did is they sent around a yellow pad, and it showed, let's say, twelve civil departments, twelve criminal departments, three criminal-legal departments. Then they had domestic-relations departments and juvenile.

When it came to me the only thing left was the presiding judge of the juvenile court, and so that was my assignment. The good part of it was that I was the P.J. of the juvenile department, so I had a very nice chamber set up. The problem was that it was probably the most difficult assignment that I ever had, because, I went out there with the expectation that I was going to save all these kids. After six months I thought maybe I'd save half of them. At the end of the first year I said, gee, maybe one. So it was very, very difficult.

I stayed on for an extra year in juvenile, so '73, '74 I was in juvenile. Then the following year — because what they did is the top two names came to the bottom and you moved up, and I think then what I did is I got — I'm not sure. I may have had the family law, because I did some family law calendars, but I'm not sure whether I did that as part of my regular civil

trial. But it could have been family law. Then I became a civil department and also the probate department, which was merely handled by a judge before the trial calendar was called.

MCCREERY: Kind of an aside, almost?

PANELLI: Yes, because you wouldn't start your jury trials until nine-thirty, and you'd call the probate calendar at eight-thirty. Because I'd had a lot of experience in probate, I became the probate judge.

So what I would do is I would hear a probate calendar from eight-thirty to nine-thirty. If there were contested matters, then I would either send them to the trial department for assignment, or I would hear them if the case that I had wasn't going to go forward.

But what that involved was that I reviewed all the cases — it was almost like a consent calendar. I'd meet with the probate examiner the night before, and I had gone through all the cases, usually through my noon hour, and I'd say, "These are the problems I have with these. These are okay."

When I took the bench at eight-thirty I'd say — and we'd have the approved list out there — "Is there any objection to any of the matters on the approved list?" If anyone said no, I said, "I've signed the orders." We'd dump them on the clerks, and the attorneys would come up and pick up the orders. Then I would hear the matters that weren't on the approved list, and then at nine-thirty I would hear my regular trials. So I think I did that probate calendar for about eight years.

MCCREERY: What was the volume of those cases?

PANELLI: I think we said we wouldn't put more than fifty a day on. But I'd say thirty to thirty-five of them were consent issues, which means I'd look through the file, I saw that the file was in order, there weren't any problems. But it took a lot of extra time.

MCCREERY: How did you like that assignment?

PANELLI: I liked it, because first of all, most of the lawyers who were doing probate were people who had been around a long time, so I knew them. It was kind of a way for people to keep contact with you, because most of these people weren't doing trials. This is a different breed of cat that did the probate work, as opposed to the trials. But at the end I said — it got to be

a little much, and then I think Judge Allen, Bruce [F.] Allen took over the calendar and he did the same.

MCCREERY: I want to return to the juvenile court for just a minute. How did those cases come up?

PANELLI: In those days there were two departments, the presiding judge and there was a second department in the juvenile. It was physically located at the Juvenile Hall, the juvenile center. There was no distinction in assignment between 600, now 300, and 602 cases. The 602 are the crime cases, the violations of what would be penal law. The 600s, now 300s, were dependent children. They now split them up so they have a dependency court and the juvenile court.

They were both in the juvenile court, and I would hear both. Then you had all the administration, see, because as a presiding judge in juvenile court, the juvenile probation department is responsible to you. It's now been changed. It was a political issue. The social services people wanted to get it away from the juvenile probation department. The county board of supervisors wanted it under their control rather than under the control of the courts. They had a big fight here recently, within the last three or four years. The courts lost, and now the juvenile probation department is responsible to the board of supervisors.

MCCREERY: What did you think should be the setup?

PANELLI: I thought the court needed the tools to take care of these people, and to do what they needed to do. I thought that by getting these other people in it would be a political nightmare, and I think it's proven to be that. But it became a question of economics, because the board of supervisors, if they held the purse strings, could do things that — maybe as a judge you'd order people to do things that they didn't want to do.

Placements became very contentious. Do you put them in a costly placement, which was best, or do you put them in a less-costly placement? Some of these kids needed some placements that were costly, and the board, they'd get unhappy that they had to pay \$3,000 a month for some placement. You're supposed to have the parents reimburse the county for the placement. Most of these people were on AFDC [Aid to Families with Dependent Children] anyway. It didn't really make any difference.

But that was the hard part, too. You'd take kids out of their home and tell the parents, "Okay, now you've got to pay." Those were some of the hairiest moments I've had as a judge. But it was a very difficult experience, and at the end of eighteen months my kids could see the big change, because I'd get tougher on them. Because you'd see the signs, you'd say, oh, this is a bad deal, and so after two years I had enough.

I used to visit some of the kids in placement. I'd go out to the ranch at least probably once a month, maybe twice a month. There was a program called Campus Life. It was some Christian church had this — Youth for Christ, I think it was. They had a fellow who was very, very active in that, and he was really a good person, and he would counsel these kids. They've had these programs down at the ranch, and so once or twice a month when they had one of these things I'd go down and meet with the kids and talk to them.

MCCREERY: What kind of a model were they using?

PANELLI: It was a behavioral modification program. You did not sentence them for x number of days or months. Depending on how you performed, you could run through the program in, I think the shortest period of time was two months, the average was four-and-a-half months. But you could go there for about nine months or ten months, because it was a behavioral modification program, and if you didn't shape up you didn't get promoted. You start in, I think it was D class, then you go C, B, A, and then home.

During the latter part of my tenure there they changed the rules. I don't know if it was a federal court or a state court that says, "No, you cannot confine a minor for more than the maximum period of physical confinement," so that you have to make a finding that for this particular crime you could not have been confined for more than such-and-such a period of time.

So it changed the whole dynamics of how you were working things, because you'd have to say, for this crime maybe the maximum period of physical confinement is four years. You obviously wouldn't keep anybody for four years, unless you sent them to Y.A. [California Youth Authority]. We usually tried the least-confining type of placement first. But we used to tell juveniles that if — my predecessor said, "If you ever run away from the ranch, it's Y.A."

I thought that was a little harsh, because I knew if I sent somebody to Y.A. they were not going to come out better. I visited the Y.A. facilities, so I kind of knew what was going on there. So I tried to keep them on the ranch as long as I could, even if they ran away. The people who came from south county — that's where the ranches were, down in Morgan Hill — because it was so close to home, they were the ones that we'd have problems with keeping them there. It's kind of an isolated area, although it wouldn't take much to get away. It's not restricted by fences at all. It's open. But I felt that we ought to try that before we sent them away to Y.A. So we did.

But I thought it was a good program. For a lot of kids, they picked up their reading abilities, their math abilities. They were much more wholesome. The problem was after they completed the program they'd go home. Then they'd go out again and they wouldn't go to school. Then they'd start getting into trouble, and then they'd start — burglary was a big thing, breaking into houses, and then they'd be back.

We also had a facility for the girls, called the Muriel K. Wright Ranch for Girls. She had been the juvenile probation officer for hundreds of years. It wasn't really a ranch. It was really more like a school, but the girls were more difficult. The boys were more transparent. They'd try to con you when you'd go out and talk to them. When I went out to the girls' facility, they're coming at you differently, and they're flirting with you. It was really an experience. They'd say things that boys would never tell you, for fear that maybe you'd get upset. They'd tell you the way it is.

MCCREERY: That surprised you?

PANELLI: It surprised me, for sure. Unfortunately, the uniforms for the girls were these miniskirts that were mid-thigh or higher, and so these young gals would sit back in their chairs and lean back, very provocative, just to rattle your cage a little bit by some of the things they'd say and their language.

It kind of also changed my attitude about a lot of stuff. I was pretty conservative about certain things, that people should go to school, what they should do, and how they should conduct themselves. We had a program called the Foundry School, and that's where kids who would not go to school were sent. It was beyond a continuation school. They wouldn't even go to continuation school. I went out and visited this Foundry School,

and I said, “What’s going on here?” The girls are putting on fingernail polish and combing their hair, and the boys are sitting there talking, or reading a magazine. I said, “What kind of a school is this?” I said, “This is ridiculous.”

Then the instructors got me aside and they said, “Judge, do you realize for some of these people to come to the same place for two days in a row is a major accomplishment? The fact that they’re coming here and they’re learning how to groom themselves might not seem important, but they come back every day. That is the first step for them to get back to school.” I said, “You’ve got a very, very good point about that.” So I became very supportive of the Foundry School. I made sure that we tried to encourage them to come, and then hopefully at some point in time they would be amenable to going to the continuation school. They would never be able to get back in the mainstream school, because they’d start messing up again.

At about the same time when all of this was going on, we were starting to have problems with the dependent kids, the 600s or the 300s. They have to be segregated from the 602s, so we had what they called the Children’s Shelter. So if you busted the mother and father for drugs, and they’re in the county jail, well, the kids would go to the Children’s Shelter. So everybody — not everybody — some of the people, the supervisors, one in particular, may he rest in peace, thought that these were like a bunch of Mickey Roonneys, you know, in the Father Flanagan *Boys Town* stuff.

These kids were pretty tough and worldly. They may not have been busted for anything, but they kind of knew the real world. So things were going on in the Children’s Shelter that caused this alarm in the community. These are supposed to be neglected and abused children, and here there are kids who’ve had these other problems. It’s because they’ve come out of households and families where things went on, so if there was violence or sexual misconduct it was very, very difficult. Plus we were overcrowded, and so they had this big drive — this is after I left — for a new children’s shelter, and it was supposed to be much better.

But I see in reading the paper, they’ve had problems with respect to behavior at the shelter, because kids now are much more violent than they were when I was there. Most of the crimes were property crimes. You would have some violent crimes, but not many. Some of them are very young. I had an eight-year-old kill someone, and they’d want to send them to Y.A. I

said, "I can't send an eight-year-old to Y.A., for goodness sakes. They'll eat him up." Even though he was a tough kid.

But those were some of the problems that you had to face. My concern with the Children's Shelter was the kids would go to a regular public school, and then, of course, they were taunted. "Oh, you're one of those juvy kids." So that would cause a problem in the school. It was a difficult experience.

MCCREERY: You mentioned being aware of what went on at the Youth Authority. What was the book on that?

PANELLI: It's tough. It looks beautiful. You go there, I went to the ones in — I forget, I used to know the names of them. One was for older kids, one was for younger kids, out of Stockton. You walk in, gee, it's a nice facility. You see a track with an athletic field, and classroom buildings. But the kids are tough, man. If you weren't a very good criminal before you went in, you certainly were going to be a much better one when you came out.

So I was very disappointed in the rehabilitation, and I'm sure there was a lot of victimization of younger kids, sexually. As I say, it's an open area. Sure, they've got the high fences around it, but it was this big campus. It looked like fifteen acres, twenty acres. There was plenty of room for mischief. Not a great deal of control, at least at the time that I visited, and they've had their problems.

MCCREERY: How much was it a threat to say to the kids you were seeing, "You might be sent to the Youth Authority?" Did that mean anything to them?

PANELLI: No. Some of them thought it was a status. "I want to go Y.A.," you know, the big deal, tough things. I said, "You'll go there when I tell you you can go there."

MCCREERY: It's interesting to hear how your own ideas about juvenile work evolved over this. Functioning as part of your larger court, did you have any battles to fight there, or did you make any particular changes?

PANELLI: No. You were by yourself out there. The other judges were downtown and you were out there, and they'd see you at the Thursday meetings. They did support my predecessor, Judge Ingram, on this social services/juvenile probation issue, i.e., who was going to have control, and

we won it then. When I was at juvenile we won it again, but here, as I say, recently they lost it. You had the courts' support, but no one really got too involved. It was your responsibility. You were the presiding judge. It's a statutory position, presiding judge of the juvenile court. We had a — what do they call them? — Juvenile Justice Commission, where you get to appoint people, and they're supposed to oversee the operations of the court and the juvenile facility.

MCCREERY: How well did that work?

PANELLI: That worked very well. We had some very good people, very dedicated people, been there a long time. But the problem even for those folks is that we had changed. The type of kid that you saw had changed, the violence, the idea that some kids would attack counselors in the juvenile facility. It would happen, but it was pretty rare.

Then it got so that it would be not a daily occurrence, but a weekly occurrence that you'd have some problems. Then you had problems with kids escaping. They'd come to the court, and they'd take off out the front door. I remember sometimes I'd come by on a Sunday night. I think that's when parents' visiting nights were, for kids that were in the [Juvenile] Hall, in case somebody wanted to talk about stuff. But you were pretty isolated out there.

MCCREERY: Let's talk a little bit more about the superior court as a whole at that time. You mentioned Marshall Hall was the presiding judge when you came in. What kind of a leader was he?

PANELLI: Marshall Hall was the old, Republican establishment. He came from probably the most prominent Republican political firm in San Jose, old-line, Rankin, O'Neal, Luckhardt, Center & Hall was the name of the firm, and they go back to the days of Governor [James] Rolph and all this. They were very, very, very powerful, the O'Neal office. In fact, there are still two of the sons in the law practice, but they're not active in the firm any longer.

So he was kind of happy when we came on, because we were three appointees by the Republican governor. He was, I thought, a pretty good administrator, kind of a crusty guy. There was a very notorious kidnapping in San Jose in the early thirties, late twenties. The son of the owner of the biggest department store in San Jose, called Hart's, was kidnapped and was

murdered. The murderers, kidnappers, were apprehended and were held in the county jail, and a lynch mob came in, knocked down the door to the county jail, and took them across the street from the courthouse and hung them up, hung them in the park.

Judge Hall helped in the search. He'd always been into boating and had a boat. He was out in the bay in Alviso and found the body. The police figured that Hart was killed and thrown off the Dumbarton Bridge. So I didn't know this at the time that [Judge Hall] was alive and I was on the court. But this fellow who just died here two days ago, Harry Farrell, who was the political writer for the [San Jose] *Mercury News*, wrote a book, a very interesting book [*Justice: Murder and Vengeance in a California Town*], and in that book he talks about Marshall Hall. I said, gee, I wish I had known all that stuff. I could have asked him some questions about that.

He was a good administrator, but it wasn't technically an elected position. It was, again, by seniority. You rotated to the top. So he happened to be the P.J. when I came on. Then I forgot who followed him, and then my turn came on in 1980, so it didn't take long to get to the top of the list.

One of the interesting things also was that most of these things happened just by rotation, not necessarily merit. The superior court also had what was called an appellate department — it still does — that hears appeals from the municipal court. What happened was that you knew when it was going to be your next turn. So when it came time for my turn, Rose Bird was the chief justice, and she decided that she wasn't going to follow any rotational deal, that she would appoint whomever.

So she appointed some of the new judges — that had just been appointed by Jerry Brown and were new to the superior court — to the appellate department. Some of us who felt our appointment was just a matter of, almost a right, were a little chagrined that this would happen. But about two years later, two or three years later, then I did get a stint on the appellate department. I don't know if I was the chair there, or whatever they called it, but I remember I was on for at least one year, maybe two.

But there again it was one of the situations where Rose wasn't going to go along with the old boys' network kind of thing. Similarly, with the election of P.J.s and assistant P.J.s, she wanted to have an actual election, rather than just doing it by rotation. As you got larger, now, I can see that you can

maybe do it by election. But the concern was the court was small enough that they didn't want dissension, you're politicking for this, whatever.

MCCREERY: Were you in a position to compare much with other counties on these matters, of changes in court administration?

PANELLI: Not much. We did cover for San Benito County, because they only had one judge. If there was a disqualification then someone would go down, and Judge Ed Brady, who was the judge in San Benito County, would come to Santa Clara County. I did that three or four times, but I think that was just, you'd get a call from the P.J. I don't think it came from the Judicial Council, it might have, where you were told to go down there and try this case.

MCCREERY: But on matters of, for example, Chief Justice Bird's changes to your appellate division, were things like that going on in the other counties? This was across the board?

PANELLI: Oh yes, oh yes. It was across the board. It wasn't just in our county.

MCCREERY: Was there any opportunity to compare how that was working?

PANELLI: I think everybody had the same view. If it was your turn and you kind of liked what had been tradition, you weren't too happy with it. If you were new you'd kind of like it, because number one, it goes on your résumé, and if you had ambitions for higher things it's always nice to say you were on the appellate department.

MCCREERY: As a practical matter, how well did this change work in terms of getting appellate work done?

PANELLI: I think it was okay, because I think the people that she appointed that were junior, much junior to me, were people that I'm working with now, Judge [John A.] Flaherty and some of these others. They were good judges, smart, they knew how to do it. We just felt that, at the time, you put in your time and then it's your turn and you do it. But it wasn't a question that they were a bunch of hacks. They were good judges, smart people, good lawyers. One of the responsibilities that I had while I was on the court, and unfortunately I don't remember the timing, is I was elected by the court to the Santa Clara County Law Library board of trustees. It was at a time that the library had to move, and so we had to locate a site and build a facility.

I don't know how long my tenure was on that, but it was while I was P.J. Supervisors appoint someone, and the court appoints someone, and there are some public members. I don't know exactly the composition.

Frankly, I had almost forgotten about that, but they're doing a history of the library, and they wanted me to look at the draft to see whether what they have to say about my participation in there is what happened. The problem is I've only gotten to about 1950 [Laughter], so I haven't gotten to the time that I was on. But that was something that was kind of an interesting thing because we had to issue bonds. The law library had always been part of the superior court building. Now it was going to be a stand-alone facility far from the courthouse, and now it is at some distance from the courthouse.

MCCREERY: What were you looking for in a site?

PANELLI: We were looking for a place that was close to the courthouse that we could afford. We figured how much we could finance. I think we issued bonds, and it was a question of how much we could do, how much we could raise. We found this property out on Fourth Street and built the library there. I haven't visited there since I went on the court. There's a portrait that my court staff had done for my tenth anniversary as a judge, and it's hanging on the wall in this library. When I went there — I forget what I was looking for. I was doing some research, and the librarian wanted to know if I had a library card. I said, "No, but I'm in that picture over there."

MCCREERY: You've mentioned your staff a couple of times. Tell me about who worked with you.

PANELLI: My bailiff that I started out with was Leo Howard, a retired lieutenant commander from the navy. Leo was a Kansas farm boy who got drafted into the navy and became the commander of a destroyer, a really nice guy, but he was like Barney Fife. In those days, see, the bailiffs were not deputy sheriffs. I said, "Leo, whatever you do, don't you ever pull your weapon." I says, "Lock it up in the drawer."

Joe Molina was my clerk, and what was the name of my court reporter? I've got her picture in my mind, but I can't think of her name.

MCCREERY: We can fill it in later. Did these folks stay with you?

PANELLI: They were assigned to you. Later Joe left, and I picked up Ann Greco, and then my court reporter became Barbara Ives. Then my bailiff became, oh, what was her name? Louise Ondi. She's a great gal. She was a deputy sheriff. By this time we had decided we wanted patrol deputies in the courtroom for security.

MCCREERY: Was that being done quite a lot elsewhere?

PANELLI: What happened, see, when you first started they had bailiffs who were retired police officers, retired military people. Then they decided that — when the killing of the judge [happened] up in Marin County, then everybody got a little nervous, maybe we'd better do something. On the criminal side they wanted to put deputy sheriffs in there. But on the civil side, in order to save money they came up with what they wanted to call court attendants. So you would have someone with a blue blazer, either a man or woman.

Then, because sometimes you were trying criminal cases, we said, "No, every judge should have a patrol deputy who knows what they're doing in the courtroom." Again, it's funding. The sheriff says, "Gee, I can't do this. It's going to cost a lot of money. I've got to pull them off the patrols." The judges said it became a question of whether you had the authority to order them to do it. The board of supervisors said, "You can't do it." We said, "We're going to do it."

Just like our clerks. They did not work for the court, they worked for the county clerk, who was an elected official, later appointed official, and so you really had no control. All you can say is, "I'm not too happy with this person. Will you do something?" The only person that really you had control over appointing and firing was your court reporter.

I was very fortunate that I had two very good court reporters. The first one that I had, she was about this tall. I can't think of her name — it just escapes me now. She left because she needed to make more money, and she could do it if she went to the criminal courts, because then they have the transcripts. And then Barbara Ives came. Barbara is a very, very good court reporter, and she was with me until I left. Gee, I can't think of the gal who was the bailiff for me, but it'll come to me.

MCCREERY: How did you use your clerk?

PANELLI: The clerk just took care of the ministerial things. They were not your secretary. They didn't do letters for you or do any of that. There were

maybe two secretaries for the whole court. The P.J. kind of got first dibs on the secretarial staff, but that was a big deal. We wanted some control over the people that worked with us, because first of all, the record is very important on appeal, and that's why, I guess, maybe they let you have your court reporter, because it's what's in the record that's going to kind of run the show. But the clerks merely kept the exhibits, did the minutes, and all that kind of stuff, but all the ministerial stuff.

MCCREERY: Yes. Between them and then these two shared people, was that the extent of your staff help? That was it?

PANELLI: Oh, yes, that was it. The court later got one research assistant that was to work with the appellate department and later also did law and motion. Then when they developed the regular law and motion department, then I think they had more than one or two. But that's it. You had no research help. You had to do your own research, or you'd have externs from the law school. I'd have externs from the law school that would help me with the research.

MCCREERY: You could pick your own externs?

PANELLI: Yes.

MCCREERY: What did you look for?

PANELLI: They had to be a Santa Clara student, because I had felt that for years we were overlooked because we weren't one of the name law schools for appellate positions, plus they were close by. When Judge Owens, who had been the dean of the law school — when I started to law school Judge Owens got appointed to the superior court bench. Judge Owens hadn't ever practiced law in California. He went to Harvard, he was a Boston lawyer, came out to kind of turn the law school around, I think in the mid-thirties. He was the law school. He was its dean.

As luck would have it, when I started my first year of law school, probably into the first month, he got appointed to the superior court, so that he felt that he needed some help in research, so he took a second-year student. He paid for him to do the research for him. Now, the second year, when I became a second-year student, he hired me to do that. But thereafter, he was hoping that the county — and the county may have paid part of my

salary, I'm not sure, because I think I may have gotten something from the county, but otherwise he paid you.

Then years later they had this [extern] program. But you had to do your own research, and I'd have these law students and I would look for, typically, the students that were good writers, researchers. I'd go to, I forget what her name is now, Barbara Weatherholt. She was the only female faculty member when I was in the law school, but she taught research and writing, and she'd say, "Yes, I think these people are good." So they'd come and maybe do it for three months, four months. Some of these people I see now that are lawyers. In fact, I was with one on Tuesday that was one of the research people.

MCCREERY: Yes, I wondered if you kept in touch with each other in this community.

PANELLI: Not so much. For a while my supreme court clerks would have a reunion, but then, it kind of loses some stuff. I've got pictures of the last one with all that stuff.

MCCREERY: On the superior court we talked about Marshall Hall. Say a little bit about some of the other judges you worked with, and what the atmosphere was like there.

PANELLI: I thought it was pretty collegial, bearing in mind that it wasn't too political. I'd say the mix was probably half had been appointed by Republicans and half by Democrats. It wasn't until the Jerry Brown era that you started to feel a little tension between those appointees and some of the older judges.

MCCREERY: Why was there tension?

PANELLI: I don't know. Maybe they were a little more activist. They'd been a little more involved maybe in politics. That's not to suggest that some of the other judges that we had hadn't been involved in politics.

Bruce Allen had been an assemblyman, and Bruce Allen had also served as president of the West Valley board when we first got elected to the West Valley board. But you would never —. As political as he was, he was probably the least political on the bench. It was really amazing. In fact, it amazed the Jerry Brown appointees that that's the way he would be, because everybody figured that this guy was Attila the Hun.

MCCREERY: Yes. What's the lesson there for the public? People have this concept of how judges' own beliefs and experiences feed into their judging.

PANELLI: Obviously, you bring to bear on the issue your own experiences.

MCCREERY: That's inevitable.

PANELLI: Yes. You are what you are, and that's what I tell people. I've been around, I've seen a lot, and so sometimes I react differently to things than someone else who doesn't have the same experience as I do. But that doesn't direct you. If the law says you go straight ahead, even though you would like to veer to the right or to the left, if the law directs you that way, then you're going to go straight.

On the other hand, if the issue isn't that clear, and you have to bring your own judgment to bear on this particular issue, your own experience is necessarily going to temper how you approach that problem. Clearly, on the trial courts you don't have much opportunity for that. It's pretty easy. It's not until you get to the appellate courts, and that's why I guess Jerry Brown said he wasn't going to have a Reagan Republican on the court of appeal, and clearly, more so on the supreme court.

But I thought we had a very good bench. I thought we had a hardworking bench. We had some people who worked harder than others. You had some that you could count on if you had a problem and you needed to get a case out. They would work with you. You had some that would say, "Hey. You sent me a case. I got rid of it. I'm not available until tomorrow."

When I was P.J., I told my colleagues, "Hey, we're all in this together, and if you get rid of the case in the morning, I want to send you something in the afternoon." When I had a case, I might stay late. That led to some problems with the staff. They'd say, "Judge, our hours are eight to five, and if you're staying late you're cutting into our own time."

I said, "We're in a service business, and we're here to serve these people. I understand, but that door swings both ways," because we'd go, sometimes I'd go five, six, and we might start early. We might take a half-hour for lunch, because I wanted to get through these cases, because you knew there was a calendar backlog. We had a master calendar system, so as P.J. you not only assign cases in the morning, but then you become a trial court.

Or if I was a trial department, I'd want to finish the case I had if I knew that the P.J. would say, "We need this case done. We're going to send you

this case on Monday, but we've got a bunch of other cases coming out on Wednesday. This is a case that should be able to be tried in two, two-and-a-half days. We'd like you to be available Wednesday afternoon." Then you would do what you could do, and there are a lot of times you're picking a jury when you've got one out deliberating.

Some of the staff would say, "It's our hours." When I first became a lawyer, ten to four were the judge's hours, ten to twelve, two to four. When I went on it was just the opposite, man, you went on. But there were some judges who would tell the P.J., "No, I'm not going to do it, and you have no authority to tell me what to do." They'd tell you, "I was elected by the same people who elected you." So a lot of it's just based on collegiality, that they would do things you asked them to do.

But I thought we had a very good court. We had Judge Ingram, who went to the federal court. Judge Jim [James B.] Scott went to the court of appeal. Poche, of course, went to the court of appeal. He was with us. So we had a few future justices on the court. Poche came after me. But I thought it was very good. Judge Homer Thompson was a P.J., I think, after Marshall Hall. He was a very, very good settlement judge, one of the guru judges on settlement, also came to JAMS. Judge [Peter] Anello, very respected judge, was a very good trial lawyer, Judge [George H.] Barnett. Both Barnett and Anello had been appointed by Pat Brown.

MCCREERY: In your early years, who of these could you go to? Did you have any kind of mentor, or how did you get your start here?

PANELLI: No. I became a mentor judge for most of these Brown judges. But no, there wasn't any particular one. I'd kind of talk to Marshall Hall, because he was older and I kind of respected him. He had been a judge that I had tried cases before. Judge Owens I would talk to, although I'm not sure Judge Owens was on the bench when I went on. I talked to Judge Anello a lot, because he was one of the graduates of our Santa Clara Italian community. He had married one of the Giannini girls that lived down the street from us, so I talked to Peter. But there wasn't any special confidante. Of course, I went to the trial judges' college in Berkeley.

MCCREERY: How was that?

PANELLI: That was good. I also went, my first deal was I went to a program that the superior court in L.A. County did for its new judges, because

in that same batch of new judges they got something like thirty-five new judges. They had a very sophisticated program, and they invited all the other newly appointed judges.

In fact, Justice [Nat A.] Agliano, who's here today, who later sat with me on the court of appeal, the Sixth District, he went down there as well. That's the first time I ever met him. He practiced with a fellow by the name of Panelli, Mike Panelli. I had heard of him but I had never met him. So they went through a weekend program for judges, and then, but see, we were appointed in March, they probably did this in April, and you didn't go to the trial judges' college until July, so you had this period of time without much training.

But I'd ask around with the judges that I felt comfortable with. There was a judge that I really liked. His father had been a professor at Stanford Law School, and we would talk a lot. I can't think of his name now. He died. I remember he had a problem with a raspy throat. I kept saying, "Jack —," Brenner, Jack Brenner, John Brenner, "you've got to go see about that." "Oh, no, I'm okay." He had cancer of the esophagus and died. But he was a good guy. He was very helpful as well.

MCCREERY: What about outside the court, knowing that your business had to stay within, but was there anyone you could talk to?

PANELLI: No, no, I never talked to — sure, I'd talk to the people I'd been in the practice of law with. We'd have lunch, we'd talk about stuff, but we wouldn't talk about the court business. No, but I had a lot of friends on the court, and some I got along with much better than others, and I'd say I got along with all but maybe two.

MCCREERY: It was a pretty big court.

PANELLI: By then it was probably in the forties, and part of it is just that we got over some crazy stuff, because I was admitted on the 17th, which is St. Patrick's Day, so every year my crew would have a party. Because one of the other judges had a St. Patrick's Day party because he was Irish, there was a concern of whether we were conflicting, and would we maybe do something together.

I said, "Hey, I have nothing to do with this party that my people put on." Every year they had signs, "Year two, year three, year four," and at the end, "four more to go," or whatever it was. So I said, "If you want to talk to

them about doing it some other time, or doing something, that's fine, but I won't even get involved in that."

Then I had another judge that I suggested that maybe before — because this particular judge was going to be the assistant presiding judge, and this judge sat in criminal — that maybe it would be worthwhile to come to civil to see what happened, just to kind of get a feel for it. The judge says, "If you don't think I'm qualified, then don't appoint me." I said, "That wasn't the point."

I'll never forget, Judge Flaherty was sitting on the other side and he says, "What the hell was that all about? You were just trying to give some helpful advice. You weren't suggesting a lack of qualifications."

But on the most part I think I got along with them. I think they respected me, and I respected them. We had differences of opinion. As I say, Judge Flaherty, Judge [Read] Ambler, Judge [David] Leahy, all those people, I sat with them on the bench when they first came on, helped them pick a jury, told them what to do, that kind of stuff.



FIRST REUNION OF RETIRED JUSTICE EDWARD A. PANELLI (CENTER REAR) AND HIS JUDICIAL STAFF, SEPTEMBER 6, 1995, HOLDING T-SHIRTS PRINTED, "EAP'S SWIFT JUSTICE TEAM." JUSTICE PANELLI'S SUCCESSOR, JUSTICE KATHRYN MICKLE WERDEGAR, FORMERLY OF HIS JUDICIAL STAFF, IS SEATED AT FRONT RIGHT.

MCCREERY: In your own early years, I wonder how your expectations of judging compared with the realities.

PANELLI: I tell this story because it's true. I really thought that it would be kind of nice to be a legal scholar. Of course, I practiced law in a situation where you were doing everything off the seat of your pants, because you had so much to do. But I thought when I got a chance to go to the court, obviously these judges are going to sit there and contemplate the law and all that kind of stuff.

As I say, the first day I got eight cases, and it was just the same old rat race. You just do the best you can, hope that you're right most of the time, and hope that the lawyers are good enough that the information they give you, that you rely upon, is good information. So from that perspective I found out that it wasn't much different than the practice of law. It's go, go, go. Sometimes you're making decisions based on your view of the law, without being 100 percent sure that that's the way it is, with a recognition that if you are wrong some court of appeal could correct you.

In the old days when I first started practicing law, people went on the bench to retire. By the time my classes got on [the bench], it was a career, a new career, and you were expected to do the same thing as you did in the practice of law. There wasn't any taking days off, going out and playing golf in the afternoon, shutting down, being dark on Fridays. You started early and you went late, and sometimes you would go late into the night. Sometimes on these settlement conferences, when I was doing them on Thursdays, we wouldn't get through until ten o'clock.

So that I found that it was a lot more work than I had anticipated, and I was resentful of the fact that some people thought that, oh, well, people who can't make it in the practice of law and want to take it easy go on the bench, because that wasn't the way it was. It may have been years before, when they were working ten to twelve and two to four, but I'll tell you, everybody on that court, for the most part — now, there were some, as I say, that — they were dark and you couldn't get them to open up. So I was surprised at the workload.

Of course, when I got to the court of appeal I was even more surprised, and the supreme court topped it all, because it was the same everywhere, except you had more help on the various levels, on the court of appeal and on the supreme court, with respect to research. But the work was the same.

But it's like anything else. It depends how much do you want to rely on others, and how much do you want to do your own work? And my view — when I put my name on something I wanted to make sure that I was comfortable that that was the way it should be. Unfortunately, you run into, on all levels, where there's a great reliance on staff. You wonder how much input the decision maker really had before that name went on, and that can be disappointing, because I think it happens more often than it should, and more often than people believe it happens.

MCCREERY: Talk a little, if you would, about the trial work you did on the superior court.

PANELLI: When I was doing civil trials, of course, most of them were personal-injury cases, medical malpractice cases, not so much then legal malpractice cases as they have today, but I think I tried eighteen medical malpractice cases. We had sixteen defense verdicts and two plaintiffs' verdicts. I tried some significant personal-injury cases, but not too many non-jury cases. But it was a whole potpourri of cases that came to the superior court.

Now, what happened is, because of backlogs — and probably Judge Homer Thompson was responsible for this — there was a recognition early on that most cases are going to settle, and that only about 5 percent are tried. So here you have these hundreds of cases that are on the docket until they get a department, and then when you say, "You're going to go to trial tomorrow, or this morning," the case settles. So everybody recognized that what had to be done is you had to get the cases out of the system earlier. So the question then became, when in this process do you put the pressure on the case to settle, because we know it's going to settle at the time you're assigned to trial.

The first method was not to grant continuances, because lawyers thought they'd come in and get a continuance. So then I guess Thompson was the first on our court who said, "Uh uh, you've got a trial date, you're going to go to trial that day." That took care of some cases.

But then we realized that you had to give them a firm trial date. It had to be firm, but if you said, "Okay, you're going to trial on Monday," and it didn't go to trial on Monday and you had to kick it over, then you're going to lose a little credibility. So then it became a question of, we ought to get

these cases early on, and have a settlement conference to try to resolve the 95 percent of the cases that we know are going to resolve before they get to the trial.

So then the question became, when in the process? And that was very difficult. If you do it too early, the parties haven't done enough discovery. Various counties did it in various ways. What we did, and it later developed that while it was good, it didn't cut the cases out of the system soon enough — the week before the case was scheduled for trial all of the cases would be scheduled for mandatory settlement conferences. Myself, Judge Thompson, and Marshall Hall, too, was a good settlement judge. We would take these cases and probably resolve two-thirds of them, so that the following week there would be enough judges on line to try those cases, and so those cases would go to trial, or they might even settle in a week's time.

Now what they've done is they figure they're in the system too long when you get to that point, so early on, after the at-issue memos are filed, they have these new status conferences, and you don't get a trial date at a status conference until you've been to some form of ADR, usually mediation, so that they're trying to get them out of the system early.

Myself and two other judges went to Hawaii and had the whole Hawaiian judiciary at a meeting where we tried to suggest to them case administration with respect to getting cases settled, and getting them out of the system, because they just clog up the system and you know that you're only going to try 5 percent of these cases. So now it's much more efficient, and as a result, there isn't as much backlog.

The problem that you have in Riverside now, Riverside County, and San Bernardino County is going to have the same problem, they have so many criminal cases that they have to shut down the civil departments, and so that's going to back up all the civil cases. Now, I saw in this morning's *Daily Journal* that four judges from San Bernardino are retiring. They're going to be in the same problem. Riverside now has shut down — no civil cases for, I think, the first three weeks, because usually criminal defendants do not want to get to speedy trial. They'll waive their time.

As soon as they know that you've got this hangup, no one waives time, because they know that they're going to have to deal the case. So the only way you get around that, you have to put more judges on the criminal side, and criminal cases get priority. So you back yourself into a situation where

in Riverside County I am sure that the judges down there that do what I do in private mediation are going to be very, very busy, because the lawyers will want to get the cases out, because especially if you're a plaintiff's lawyer, you don't get any money until the case resolves. Or they'll agree to forgo the trial and go to binding arbitration, or reference, and hire a judge.

MCCREERY: You said you yourself didn't do too many non-jury trials.

PANELLI: Right, because there weren't that many around. I got my share.

MCCREERY: I was going to say, what was the ratio, approximately, of jury to non-jury?

PANELLI: Most of the non-jury trials were the domestic cases, the family law cases, which you would get — if they were going to be long cases, they would assign them to you. But you'd get some contract cases.

But the bulk of the litigation in those days was personal injury, and that's all kind of dried up now because of various processes. But a lot of the defense firms in San Jose that used to do insurance defense have disappeared. You'd always say, you never get rich being an insurance defense lawyer, but it was like a good annuity. That's all changed, and two of the biggest firms are gone in San Jose that used to do insurance defense. But those are the kind of things that we tried. There weren't any spectacular cases that I can think of that we tried.

MCCREERY: Yes, anything memorable in the civil area?

PANELLI: No, not really. Then we did some criminal work. I tried some murder trials.

MCCREERY: Yes, I gather you didn't do too much of that, but say a few words about the criminal side.

PANELLI: It was good that I'd had the juvenile experience, because the laws were the same. The evidentiary problems were a little different, but the search-and-seizure issues, the Fifth Amendment issues, and the trials themselves were very similar. You had to be a little more careful with jury selection because of discrimination, bouncing jurors of a certain ethnic mix, et cetera.

Unfortunately, most of the time you had public defenders that probably didn't have as much time to prepare for the cases. The prosecutors usually were a little better prepared and their cases were much better, because

if the prosecutor thought he had a weak case he'd deal it. If it was a case that the public defender really wanted to plead, and the guy didn't want to do it, you had no choice, you've got to try it. So you'd get usually the bad cases, the tough cases.

I remember one criminal case we had involved two African-American students charged with armed robbery. It involved something out of Cumberly High School, which was up the peninsula, and for some reason it had drawn a lot of media attention for the racial aspects of it. So we had to close the courtroom. When we tried it, no one could come in or go out, because by then we had metal detectors. The same with my bailiff. He was unarmed. The courtroom was packed, very tense. The witnesses were really concerned, because there had been some intimidation. In fact, there was one attempted burning of a witness' home.

But that one I remember, and I remember this woman who killed her boyfriend, first degree murder. She had two young kids, and it was a first-degree murder charge, but we were trying her case downtown in the civil courts. There wasn't a holding cell, so she would sit out in the anteroom with my bailiff. I'd go out there in the morning and have a cup of coffee with her.

It was kind of a sad thing. She shot this guy seven times. She had been married to a police officer, so she thought that she could get by with claiming self-defense. She said she thought that he had a gun under the pillow, and when he reached under the pillow she shot him. But if she had kept her mouth shut she would have walked. But as she was being interrogated the officers had people at the scene to see if her actions conformed to the scene. When she said, "I was here, he was there." "What did you do then?" The officers at the scene determined that what she said was just physically impossible. They just had her tied up in an improbable situation.

But I had to sentence her, take her kids — well, I didn't take her kids away. They went to foster care. But I remember those two cases. There were a lot of others. I had a guy who raped a ninety-one-year-old woman, and the other woman next to her in bed died of a heart attack. It was gross, a gross case. But they were the harder cases, because as I said, they wouldn't deal them out. But I'd say probably only 10 percent of my superior court experience was in criminal cases. But as a lawyer I tried criminal cases.

MCCREERY: During that time you were on the superior court, on the national scene there was all this change in the death penalty laws, and I was just curious about your view of that, even though it was somewhat at a remove.

PANELLI: We represented a death-row inmate [Earl Sears]. In fact, we represented him at the trial. He was convicted, got the death penalty, we got it reversed, tried again, convicted, got the death penalty [People v. Sears], and then *Anderson* came along, *People v. Anderson*, which changed it to life with possibility of parole, and, in fact, he was paroled, and he used to hang around our office.

MCCREERY: Yes. But you got to see this from all these different viewpoints, didn't you, over time?

PANELLI: Yes. At the time I was on the superior court I think there was this moratorium on the death penalty. I don't think there were any death penalty cases tried.

MCCREERY: As California, though, reinstituted its own death penalty law, later on —

PANELLI: By then I was gone, on the superior court. As a law student, whenever there was a death penalty trial it was a big deal, and you'd go down and watch it. I remember Margaret Morton was the chief trial deputy for the D.A.'s office. She couldn't have been five-foot-one, and she tried all of the death penalty cases. Tough, tough. We called her the Reverend Morton's daughter.

Then when she left, Jack Schatz tried the death penalty cases very successfully. In fact, I think he may have tried Earl's case, Earl Sears. Schatz later became a muni court judge, and later became a superior court judge.

MCCREERY: Is there anything else to say about when you were presiding over the appellate department?

PANELLI: No. You'd get the search-and-seizure cases, the 1538.5, some business cases, but the calendar was not heavy. You'd only do maybe three cases. I think we only had the calendar one half-day a month maybe. It wasn't that time consuming, and the briefs, unfortunately, generally were not of the quality that you got later in the court of appeal, because if they were civil cases they had to be \$15,000 — or \$25,000 or less, so they weren't

that significant. A lot of them were people who just felt on principle they ought to appeal the thing.

But at the time I was on the superior court there was this big change in the way the courts were administered. Whereas originally lawyers controlled what happened with the calendar, the courts took over control of calendars and cases, and no longer would they succumb to the lawyers' wishes necessarily. They realized that in order to get any kind of calendar management, the courts had to do it, which required, as I say, the judges to be much more attentive, to work harder.

Of course, as the criminal laws toughened, then there was more pressure on judges with respect to sentencing. Then they came out with the determinant sentence. Just at about the time I was ready to leave, the determinant sentence came out, and you had to go through all of those steps, and find the maximum, the minimum, and why you did things.

MCCREERY: What did you think of that?

PANELLI: To be honest with you, I wasn't with it long enough to have any lasting impression. At the time I thought it was an exercise that you didn't need to go through. The problem was they didn't trust the judges, the discretion of the judges. That's what it was, it was a way to control judges from going crazy one way or the other.

MCCREERY: You're saying they didn't trust the judges? They?

PANELLI: The public, or whoever's responsible for leading to the change, because they thought that some judges were too lenient, and this would be a way to make them accountable, because you'd have to give your reasons why you did what you did. But my view always was that you didn't necessarily need to have that, and it just was another step that you could trip on and make some error, because you didn't use the magic words as to why you used the median as opposed to some of the other stuff.

I remember I had some problems just trying to work through it. But fortunately for me it was near the end, and it wasn't on many cases. Whenever I had a problem with that I talked to the probation officer, or I talked to some of the judges that did it every day, and got through it. But it was a way to make judges somewhat accountable, or more transparent in what they did.

Similarly, at or about that same time they were getting into the family law, where they computerized what the child-support payments or alimony payments would be, based on earnings.

MCCREERY: So suddenly there was a record.

PANELLI: Yes. My view always was, hey, if you need a computer to do this, you don't need me. I understood I was supposed to exercise judgment, and the judgment was based on what I heard, what I saw, what I felt was appropriate, not some mechanical method of doing it.

MCCREERY: Talk to me just very briefly, if you would, about your elections, 1974, and then reelection in 1980. What was involved there, if anything?

PANELLI: Nothing. I'll tell you the truth. The first time after I was sworn in, I was lying in bed and I said, "My God, I've got to come up for election. Suppose I don't get elected?"

MCCREERY: Yes, because you talked about doing the community college district to get the ropes.

PANELLI: Just to get a feel, yes, get a feel of it. I kind of panicked, because in the old days there were very few judicial contests, but they had started to come up. But as I say, I had very good rapport with the lawyers, because they knew I was hard working, they knew I was conscientious, they knew that I was paying attention to what they were presenting, and so I felt very comfortable with the bar.

I tried not to go crazy on the bench, even sometimes where some lawyer was doing something that normally you'd jump up and down and maybe lose your cool on. So once I got through the first election, then it was a no-brainer, and I never had anybody even suggest that I had a problem, because every time they came out with these questionnaires and evaluations, I was always in good shape.

I think the worst I ever got I had five negative votes and all the rest were positive votes. It was obviously a popularity contest, because you were supposed to have appeared before the judge, and like I had, let's say, 350 affirmative votes and 5 negative votes. I hadn't had 350 trials in that period of time [Laughter], which was okay. That's why it's kind of hard for the public to really evaluate judges.

MCCREERY: You can see why it is hard. There's a distance between them.

PANELLI: People call me all the time now at election time, and they'll ask, "What do you think?" I say, "First of all I don't know most of these people now." I said, "I can't help you. I don't know. I would need to talk to the people. I would need to talk to their colleagues." But it was really a non-factor.

The fact is, I think you had to pay a filing fee, a certain percentage of your salary, but then you could get people to sign petitions in lieu of the fee. The idea was if you would get people to sign the petition, so many signatures were worth so much, but it would show someone that you had the support. I may have done it once, and then I figured I'm not going to go to the trouble again.

MCCREERY: But you didn't have to sweat it here.

PANELLI: No, I had no problem.

MCCREERY: How well known were you in this community by then?

PANELLI: Very well known. Very well known through Santa Clara [University]. I was well known in the bar association. I had a very good reputation. I was involved in various charitable organizations. I was elected Trial Judge of the Year I think in '80, '82, and I think part of that was because when I was P.J. we got things so that the court was in great shape.

No, I always got along fine. It sounds kind of trite, but I think I was very popular, and had lots of support from all sides. As I say, not being a political animal, there wasn't anything that people could point to about that. So, no, I felt very comfortable.

MCCREERY: I note you had a brief amount of experience as a pro tem justice on the court of appeal from your time on the Santa Clara Superior Court. Can you tell me a little about that?

PANELLI: I served in Division Three of the First District, with Justice James Scott, and I took the place of Justice Sidney Feinberg for a two-month period when I believe he was either on vacation or an illness situation, I'm not sure which. Unfortunately, I don't remember who the other — oh, Clinton [W.] White was the presiding justice of Division Three, so I did have a stint there and kind of convinced me that I liked it and I could do it.

MCCREERY: You knew what you were getting into.

PANELLI: Yes, I knew what I was getting into, for sure. As a pro tem you didn't have any research help, so that you had to do everything on your own, which was challenging. Justice Feinberg had a full caseload. I don't remember if I just took a whole bunch of new cases. I don't think I worked on his cases, but I know I worked on the cases assigned to that division.

MCCREERY: What did you get out of that brief experience?

PANELLI: First of all, it told me that I kind of liked it, and I convinced myself that it was something I could do. You often wonder. You think about it, but you're outside looking in, and once I got inside I said, I really like it. So that kind of really whetted my appetite to try to see if I couldn't get a court of appeal appointment.

MCCREERY: So by the next year, 1982, when the first opportunity came up, you were actively seeking?

PANELLI: Right.

MCCREERY: How did you go about making your wishes known, do you recall?

PANELLI: I think I probably talked to Justice Poche, who was on the court of appeal, and Justice [Jerome A.] Jerry Smith, who was also on the court of appeal.

It was during this period of time that there was discussion about the creation of fifteen new positions in the courts of appeal. Actually, it was eighteen. It turned out to be eighteen new court of appeal judgeships, but initially it was fifteen. Of the fifteen, three were to be designated for San Francisco.

At that point in time there was a suggestion that instead of sitting those three in San Francisco, they ought to sit in San Jose. The promoters of that move were Justice Poche and Justice Smith, who were residents of Santa Clara County, and they persuaded Senator Al Alquist to make that suggestion. I was present before the Assembly Judiciary Committee when this proposal was presented. It was opposed by Chief Justice Rose Bird, by Dr. Ralph [J.] Gampell, who was the head of the Administrative Office of the Courts (AOC), and by Clinton White, Justice White, who was a senior presiding justice in the First District.

MCCREERY: The one you had worked with before.

PANELLI: The one I had worked with in Division Three. That was on one side of the aisle. On the other side of the aisle was Justices Smith and Poche and Senator Alquist. Chief Justice Bird was opposed to splintering off a division for administrative purposes. There had been a similar split off in the Second District, with a division sitting in Santa Barbara or Ventura, but I think it was Santa Barbara, and there was a question of how you could manage the administration of that, so Chief Justice Bird was opposed to it.

So Senator Alquist suggested that if that were the case, then he would propose a new appellate district for the four southern counties of the First District, that is, Santa Clara County, San Benito, Monterey, and Santa Cruz. During this hearing, as I say, there was this discussion, and each side presented its view, and it appeared as if Senator Alquist's view was not going to be accepted. So in kind of a — I don't want to say a fit of rage, but obviously he was agitated — Senator Alquist suggested to the Assembly judiciary panel that their house had 500 bills in his committee, which was the Senate Finance Committee, and that possibly before the end of the session they might be able to get only one of those bills through.

So with that announcement you could see that the votes were going to shift. The chairman of the Assembly Finance Committee was Elihu Harris, and Elihu Harris was very upset, and so he relinquished the gavel and left. The position advocated by Senator Alquist was passed out of the Assembly Judiciary Committee. At that point there were these fifteen positions, three of which were to go to San Jose, and then this issue with the Sixth District.

In the confusion that occurs on the last day of the session, apparently, the legislature chaptered both, so there was the fifteen created, three of the fifteen for San Francisco, and a new Sixth District Court of Appeal with three. So instead of having fifteen, they ended up with eighteen, and that was obviously a mistake. So what happened was the confirmation hearings for those positions occurred late in December, I think it was December 28th of 1982, at a time when Attorney General George Deukmejian was now the governor-elect.

MCCREERY: Oh, the election had happened.

PANELLI: The election had happened in November. So when, with respect to the fifteen appointments — well, with respect to any of the appointments — to the extent that they were not filled when he took over as governor, he

would be able to fill those positions. The confirmation panel for the courts of appeal consists of the attorney general, the chief justice, and the senior presiding justice of the district.

In all of the other districts, obviously, there were senior presiding justices, so the panel consisted of Attorney General Deukmejian, Chief Justice Rose Bird, and whoever the senior presiding justice was in that district. So to the extent that Deukmejian wanted to block any of those appointments, he'd have to convince somebody else to go along with him, and he was unsuccessful.

MCCREERY: One of those other two?

PANELLI: One of those other two, and he was unsuccessful. So all of those fifteen to existing districts were confirmed. When it came to the Sixth District positions there wasn't any presiding justice because it was a new district. So the two people on the panel were the attorney general and the chief justice. So when Justice Feinberg, who was nominated by Governor Brown to be the presiding justice, proceeded with his confirmation hearing, Rose Bird voted yes. George Deukmejian voted no, which caused quite a stir.

My confirmation hearing came up next. At the hearing Chief Justice Bird voted yes, George Deukmejian said, "I can't vote against you, because I think you are qualified, and the research that we've done indicates that you would make a fine appellate justice. But you can't have an appellate court with one person, and I voted against the person who preceded you as a presiding justice, and I'm going to vote against the person who's coming after you," who was Jerry Cohen, who was the lawyer for the United Farm Workers, and, of course, Deukmejian and the United Farm Workers had a long history together.

So he said, "I'm going to abstain on your vote." Chief Justice Bird suggested that they anticipated that, and they did some research and said you needed two affirmative votes to be confirmed, and therefore I lacked the necessary confirmation. So I was not confirmed, and following my hearing Jerry Cohen's hearing was heard, and he was voted down as well, one to one. So the Sixth District didn't come into being. The fact is, as Governor Deukmejian said, "You know that this was a mistake, the creation of these three positions, and we really don't need those. We don't need eighteen, we only need fifteen."

But the whole history of even the fifteen was very, very interesting, because when the bill was passed for the fifteen there was an objection, a taxpayer suit filed by an attorney in San Francisco by the name of Richard J. Wall, who took the position that they were improperly created by virtue of, there wasn't any appropriation for the positions in the bill.

The lawsuit was filed. Somehow or other it got transferred from the superior court of Sacramento to a judge in Placer County. I think his name was Judge [Charles F.] Fogerty. He held that it was unconstitutional. So it went to the court of appeal, and the court of appeal ruled — my recollection is that they ruled that it was constitutional. There was then a petition for a review by the [California] Supreme Court. Now, I'm not sure that it didn't go to the supreme court directly. I'm a little unsure of that.

But the supreme court had a lot of recusals, by virtue of the fact that this was really a challenge against Governor Jerry Brown, and they were trying to prevent him from making these appointments, because obviously he was the governor when this was passed. The supreme court took the case, heard the case, and as I say there were maybe three or four pro tems that were appointed to the supreme court to hear it, and in the four-to-three opinion they ruled that it was constitutional. But this was near, I think, the end of Governor Brown's term.

The interesting part that I found out about later was that — I wondered how it was that the entire superior court of Sacramento recused itself, and apparently there was a process whereby what they did is they passed around a sheet that you signed off if you wanted to recuse yourself. Years later I found out from one of the judges that that sheet never got passed around. So how it was that they were all recused and it got into this particular judge's courtroom in Placer County is kind of a mystery. But anyway, that happened.

MCCREERY: Have you solved the mystery?

PANELLI: No. No, it's just that I asked one of the judges who was sitting in Sacramento, who is now with JAMS. I was always curious about that. He says, "Join the club, because we still don't know how that happened, by virtue of the fact that that is how we handled recusal requests."

MCCREERY: So it may be just some kind of procedural misstep or mystery in that regard.

PANELLI: Right. Or maybe just the presiding judge says, “Our court’s not going to hear this, so I’m recusing the whole court.” That’s not normally how it’s done, but that could have been how it was done.

MCCREERY: How common is that to have an entire superior court recuse itself?

PANELLI: Oh, it happens frequently. I think the Santa Clara County Superior Court here just recently recused itself because I think one of the judges — there was some issue with one of the judges, and so they decided that the whole court would recuse itself. That just happened recently. So I don’t think it’s that uncommon. Maybe there was a basis for it. As I say, it was only within the last three or four years that I found out there was some concern amongst some of the judges as to how that happened. However, they didn’t raise the issue at the time, apparently.

MCCREERY: In 1982 it had been a while since the State of California had established a new district, but it’s surprising to learn that because it was just the chief justice and the attorney general left to vote on individual nominations, there was no accommodation for a tie breaker in the Constitution.

PANELLI: What happened was — and this is kind of what was going on behind the scenes — originally the proposal was for Marc Poche, Justice Poche, to be the new presiding justice, and the other nominees were to be Justice Smith and myself. This was occurring during the time when Jerry Brown was running for the U.S. Senate.

There had been some criticism of Governor Brown’s judicial appointments, and so they suggested that this kind of a panel, and especially having a Republican as one of these — and as I say, I think I was respected. The suggestion that I heard from Poche and some of the Democrats was that this would be someone who would be well accepted, and you could point and say, “See? My judicial appointments are fine, they represent a cross section of the community,” et cetera. But apparently what happened was that there was an indication that Chief Justice Bird would vote against Justice Poche’s nomination.

MCCREERY: Why?

PANELLI: I don’t know, other than the fact that apparently when they were in Brown’s cabinet there may have been some friction between them.

My understanding was that Governor Brown did not want to have something like that surface during the course of his campaign for the Senate, so the sense was, “Then I will remove him, and I will nominate Jerry Smith to be the presiding justice.” Then it would be myself and apparently some other nominee.

When Justice Smith heard what had happened to Justice Poche, that his name was being withdrawn — now mind you, these weren’t actually submitted to the committee or something. This was just proposed. So that when Smith heard that he says, “I’m not interested,” and so I get the call from Smith saying, “I guess you’re going to be the P.J.” Well, I never got that call [from the governor], but I did get a call from the governor asking whether Justice Poche was kind of upset by what had happened, and I said, “As a matter of fact, he was.” He said, “That’s unfortunate, but he’s still on the court of appeal, so nothing’s really changed,” and all of this. There was kind of a suggestion of, if I were nominated as the presiding justice, how would I vote on the other two nominees?

I said, “How can I suggest what I would do in advance of hearing anything, or who the people are?” So that may not have come directly from the governor, but I kind of obliquely was asked that kind of question, so they never went that far. The next thing, when formally the nominations were made, it was Justice Feinberg, myself, and Jerry Cohen. So it was very interesting how that all worked out.

I did get calls asking if there was some way that I could approach George Deukmejian to see whether he would be acceptable to these other folks, but I didn’t know George Deukmejian at all. I had never met him, and the people in the Republican Party that I knew who were active had all supported Mike Curb in the gubernatorial election, so there wasn’t any way that that would happen.

But apparently what happened was, as a result of my being nominated — now, whether it was because I was nominated by Jerry Brown — the Deukmejian camp did a lot of investigation and knew probably more about me than I knew about them, so that they were comfortable with me. But as Governor Deukmejian said, “This is a mistake creating this new district,” because it was supposed to have taken those three from the fifteen positions. So San Francisco ended up with three more people, and yet lost a

third of its business to the Sixth District. So they were in great shape; we were going to be in trouble.

So that's what happened at the confirmation hearings, and I remember that all the other nominees for the other fifteen positions who were confirmed were kind of conciliatory towards me. They said, "Didn't you hear what he said? When he becomes governor, you know he's going to appoint you to the court of appeal." I said, "All I heard is that I wasn't confirmed." So I kind of left with my tail between my legs.

MCCREERY: Attorney General Deukmejian did announce to you, though, that he had just vetoed the nominee before you, and would also veto the nominee after you. Did he openly say why?

PANELLI: I think part of it is because — of course with Jerry Cohen, he represented the UFW [United Farm Workers], and George Deukmejian's political career was made fighting the UFW. He wasn't about to have one of those people on the court of appeal.

Justice Feinberg was a little different. Obviously, he was a liberal Democrat. He was a big friend of Rose Bird. What happened, and to this day I'm not sure that it was happenstance — when you have these confirmation hearings, they call you up and then people testify on your behalf, and they ask you questions. Then the nominee comes up and usually they may ask questions. Then they usually say, "Is there anything you want to say to the commission?" Normally, most of the time people say, "No, there's nothing." You don't want to rock the boat. But what happened with Justice Feinberg is that question was not asked: "Is there anything that you want to address to the panel?"

He then went and took his seat, and then Chief Justice Bird says, "Oh, my goodness. We forgot to ask you if there was anything that you wanted to address to the panel." Now you have the situation where this person has been rejected. Now he gets an opportunity for, in effect, a rebuttal. It was very, very heated, to say the least.

I happened to run into Justice Feinberg's son here by accident, standing in line waiting for a plane to Los Angeles about three or four months ago, and he introduced himself and told me who it was. I said, "I thought your father's rebuttal was the most articulate argument that I had heard."

I said, “Your dad, I wondered if it he had it all prepared.” He says, “No, he didn’t have it prepared, but he kind of had it in mind.”

Justice Feinberg talked about the fact that he had been on the court of appeal, that this was an affront, and all this kind of stuff. I don’t remember all the words, but he was able to have some kind of a discussion, if you will, a dialogue — well, hardly a dialogue, but he was making his closing argument on this thing. I don’t remember what Deukmejian said in response, or what the reasons were. He may have said, “This court isn’t needed,” or something, but I think it went beyond that.

I was waiting my turn, so I wasn’t paying too much attention to what was going on there. But that wasn’t a pleasant situation. After my hearing the Cohen hearing came on, I left, and I heard that that was really heated, because the people who were going to testify knew, based on what had been said, and the fact that there wasn’t going to be any court, they might as well unload, and so they did.

MCCREERY: I was wondering about testimony on behalf — in favor or against any and all of you?

PANELLI: Most of it wasn’t against. Most of it was in favor. But it’s almost perfunctory when you get to that stage. I wonder, I think in the history of appellate confirmation hearings, I may have been the only one who’s never been confirmed, because usually, I’m told, they never used to even convene a hearing. Even for the supreme court they would just get on the phone and they’d approve it. It may have been Chief Justice Bird who decided that, no, no, this is supposed to be a regular public confirmation process. So that there wasn’t much history. Of course, by the time I got involved, you had to go through “Jenny,” so there was some screening. But in any event, that’s what happened with that first experience.

Then I would say about a week later George Deukmejian was sworn in as governor, and I’d say probably in July, mid-June or July, I got a call from the governor’s office, asking if I was interested in any position that might become due in the First District. I said, “Certainly.” That was fine. When I was pro tem I was, of course, in San Francisco. So at or about that time, Justice Winslow Christian resigned, and so I was nominated for that position. So I became Governor Deukmejian’s first appellate nominee.

MCCREERY: Let me stop you. I apologize, but may I just go back to the earlier attempt by Governor Brown to put you on the appellate court? You said that some of these maneuverings after his initial idea of having you and Judges Poche and Smith be the three — after that sort of fell apart and didn't even get to the confirmation stage — and then he substituted Feinberg and Cohen, you said that perhaps all of this didn't come directly from him. It may have been others on his staff. Now, are you aware, for example, of [Anthony J.] Tony Kline's role in all this, as his judicial appointments guy?

PANELLI: No, no. I know Tony Kline because I had met him, but maybe I'd heard what happened about the fact that they weren't nominated, maybe from the nominees themselves. The governor never told me, "I was concerned that Rose was going to vote against them." I never heard that from him.

The only communication or conversation I had with respect to that — he wanted to know whether Marc Poche was disappointed that he wasn't one of the nominees, and I said that he was. He didn't say, "This is why I didn't nominate him." What he said, "He's already sitting on the court of appeal." I kind of got the impression this gave him the opportunity to give someone else an opportunity, although Justice Feinberg was already on the court of appeal.

But you needed someone to be a P.J., although he could have picked anybody. He didn't have to be on the court of appeal. I could have been nominated as the P.J., and then there would have been a panel of three. But no, and I don't know that I ever had any conversations with Tony Kline at that time at all. Later I got to know him.

MCCREERY: Or anyone else on Governor Brown's staff?

PANELLI: No, no. It's all kind of fuzzy, because these calls took place at home, usually at dinnertime. It was a very kind of unsettling time for me, because I didn't know what was going to happen. The irony of it is, I am convinced that had the original panel been nominated, we would have all been confirmed.

MCCREERY: That is, you, Poche, and Smith?

PANELLI: Yes, because my understanding is that Deukmejian respected Poche in his dealings when he was, I guess, the legislative secretary for Brown. He also, with Smith, they were in the Senate together. So I've never asked, obviously, Governor Deukmejian, "Would you have approved of those?" but I kind of got the sense, and again, it may have been from the nominees themselves, that that would have happened.

MCCREERY: It was interesting that those were the two that you consulted when you first began considering going onto the appeals court.

PANELLI: Because I knew that they were interested in getting a court in San Jose. I am convinced that they were the ones who approached Alquist, although one of the other persons who was interested, who's now the P.J. of the Sixth District, was Conrad Rushing. I think Conrad Rushing may have been president of the bar association. I don't think he was on the bench then, but he was on the Alquist side of the aisle on this thing. I don't know if he testified before the Assembly Judiciary Committee or not, but I know he was — my recollection is that he was there. As I say, it's kind of interesting now, because now he has the spot that I had as the P.J. of the Sixth District.

MCCREERY: It's interesting about Alquist's role in pushing this in the legislature by threatening to withhold people's bills in another committee.

PANELLI: I came home and told my kids, "If you want to see the political process in action, I saw it in action." Senator Alquist felt that we contributed one-third of the caseload to the First District, and we ought to have local people who were part of the community on the bench. So I think that was part of his feeling on it. I don't think initially he was interested in creating a whole new district.

MCCREERY: You started to go on and say how within a very short time of becoming governor, Mr. Deukmejian returned to you and brought you in to replace Judge Christian.

PANELLI: Right. So I sat on the Division Four of the First District, and the judges were Presiding Justice [Thomas W.] Caldecott, Justice [Joseph A.] Rattigan, and Justice Poche. As it turned out, when I got there Justice Rattigan was closing out, because he was going to retire, and not much later

Presiding Justice Caldecott also retired. But I don't know that he retired necessarily when I was there. I was only there for a year.

I was there from '83 to '84, and one day when I'm in San Francisco I got a call from the governor's office to say that the governor is going to start the Sixth District, and he's going to nominate me as the presiding justice. We had no conversation about that. It just came out of the blue, so I didn't know that that was going to happen. I probably figured at some point in time it was going to happen, but I didn't think it was going to happen within a year.

MCCREERY: Had you gotten to know the governor by then?

PANELLI: No. I had, I take it back. I think I had — I'm not sure that I had an interview with him for the First District. I may have only talked to the appointments secretary. I'm not sure about that, and, in fact, I'm not sure that I had a conversation with him, or interview with him for the presiding justice of the Sixth District. As I say, there was no — I don't think I followed up on it. My recollection is I'm sitting there, I get this call and they say, "We want you to know," and it may not have been from the governor, it may have been from someone in his office, "that we're going to do this. You're to be nominated."

So then, of course, you have to go through the "Jenny" process again, and then, of course, that all came down in '84. So for a while I was the only person on the Sixth District. So I came down and my first task was to find a spot to have a court. So with the Administrative Office of the Courts folks, we went and looked at different sites, and then we kind of decided to locate in what is now the Comerica Bank building. I forget the name of the building at that point in time.

I liked the location because it was near the freeways, so that people from Monterey, Santa Cruz, and San Benito could get there. It was close enough to the courthouse where people could walk over, and what we did is we took the major portion of one floor in this building, initially. So then I got to sit down and try to do the layout of the court and the courtroom, and at about that time, there was the nomination of the two associate justices, Justice Agliano and Justice [Harry F.] Brauer. They came on before the court was built out, because I remember the three of us going with this woman who was a designer to get furniture and stuff.

We had a confirmation hearing, and, of course, I was P.J. The attorney general was John van de Kamp, and Rose Bird was still the chief justice. The confirmation hearing with Justice Agliano was easy. He was very well respected, from Monterey County, very well liked. Justice Brauer, on the other hand, was a little more controversial. He was from Santa Cruz County, and apparently in his personal data questionnaire that you fill out, that you send to the governor's office, he had as part of the comments — it said that if he were selected, his opinions would be “pithy denunciations of the Rose Bird Court.” So, of course, that created some stir.

Also, there was some issue whether or not he was tougher on women lawyers, and whether he had ever said something about when a woman lawyer loses a case, she blames it on the judge rather than the fact that she wasn't making a good argument or whatever. So that was kind of a touchy subject.

So when his confirmation hearing came, it was all the same day, Rose Bird said — usually you just vote out in front — “We may have to confer.” [Laughter] I had previously told Justice Brauer, I said, “At the end they're going to ask you, is there anything you want to say, and what you should say is that, ‘I have nothing to add, but if you have any questions I'd be more than happy to answer them.’” They asked him this question, and rather than saying what I told him he should say, he said, “Well, there's been this issue.” And so he got into this issue, and I said, “Oh, my God.”

MCCREERY: Which one, the one about Chief Justice Bird or about women lawyers?

PANELLI: No, about women lawyers. He said that he was misquoted — this, that, and the other thing. So there was this dialogue going back and forth, and Rose kind of got after him, and van de Kamp got after him. But in any event, they decided they'd vote to confirm him. Harry Brauer was a curmudgeon. But he was very bright, and unlike the confirmation hearings going on in Washington, the issue was, do you have integrity, do you have intellectual capacity, judicial knowledge, integrity, judicial temperament. Maybe there was a little deal because of what he said, but he was smart, hard working, and I respected him.

We didn't always agree on things. At oral arguments if he figured he'd heard enough he'd say, “I've heard enough.” [Laughter] But he was a very,

very bright man, and so that was helpful, because Justice Agliano and I were more practical, as far as certain things. Harry was more of a precision — he's more of a surgeon than we were.

MCCREERY: But as presiding justice, you were supporting both of these nominations.

PANELLI: Oh, yes, because I knew them. I didn't know Brauer as well as I knew Agliano. But anyway, we waltzed through the hearings.

For our workload I decided to use a system that I had learned in Division Three when I was a pro tem on how you would look at cases. What they did in Division Three is the judges would divide the caseload, whoever was on the panel, they'd say, "Okay, you have four cases, you have four cases, you have four cases." We all read the four, and then we will, in effect, talk about the cases, and you tell me whether my tentative views are agreeable, or if not tell me why not, and if what I've said doesn't have at least preliminary concurrence, then we'll shift them around.

So we had all read these cases before we assigned them to law clerks. Now, many of the divisions, what they do is the law clerks see them first, but as I say, Justice Scott started this system in the Third District and I liked it, because it meant that the judges were really making the initial decision, not first seeing some first cut of views on the case from a law clerk. So that's what we did every Thursday, the three of us would get together.

At or about the summer of '85, I'm in New York at NYU at a seminar for court of appeal justices, and there was this vacancy [on the California Supreme Court] created by the retirement of Justice Otto [M.] Kaus. I get a call from my assistant saying this is happening. I said I'd heard it. One of the other justices from California who was more politically involved than I was said — you know, you hear this. She says, "One of the rumors has it that you are one of the judges that may be considered." And I said, "They're probably talking about anybody George Deukmejian appointed would be a possibility." Then I got another call that said, "There are six names that are being submitted, and you are one of the six names."

MCCREERY: Called by whom?

PANELLI: By, again, my assistant. I'm in New York, and this is all happening out here in California. Apparently the San Jose *Mercury News* ran

a story that these are the six names, or I guess maybe all the California papers.

MCCREERY: The rumors were in print and the whole bit.

PANELLI: Right, right, but I said, "That doesn't mean anything," because all the people who were nominated were all — not all people had been Deukmejian appointments, but they were all Republicans, and Jim Scott was one of them. I said, "That's very nice, but I'm not counting on it." Then I had heard that some of these other people had had interviews with the governor, and I hadn't had an interview. When I got back to California, this one fellow who was on the court of appeal down in Southern California says, "I can tell. You're going to be the person."

I said, "No, it's not going to be me." Frankly, I felt it would be Jim Scott, but Jim Scott was older than I was, and there had been some question about health. But he said, "No, no." He said, "I know it's going to be you." I said, "We'll see."

Then I hear that these other people are getting these interviews. I don't have an interview. Then I get a call from Marvin [R.] Baxter, and he said, "We would like to have an interview with you. Could you be in Sacramento on such-and-such a date?" And I said, "I certainly can." About a day later I get a call and he says, "The interview's been cancelled."

I said, "Has it been cancelled, or has it been postponed?" If you know Marvin Baxter, you'd hate to play poker with him because you could never tell what he's thinking. He's got this poker face. Of course, I'm talking to him on the phone. He says, "It has been cancelled." That's all he said. I said, "Has it been postponed or cancelled?" He says, "It's been cancelled." Okay, thank you.

MCCREERY: Did you know him before this?

PANELLI: No. No, I had never met him. I may have — I shouldn't say that. I may have talked to him with respect to the Sixth District, I'm not sure. I didn't know him very well. Then the next day I get a call and he said, "Could you meet to have an interview with the governor in San Francisco at his office tomorrow, because he's going to be in San Francisco?"

I don't know what the event was in San Francisco, whether he was giving a speech. It was something, because I appeared in the San Francisco governor's office, which is a very small office. The receptionist is there, this

fellow that I knew because in the First District we're all in the same location. My wife is with me and we're having this conversation, and he didn't know anything about that I was going to be there. I said, "I was told that I was supposed to meet the governor here at twelve." He says he's giving this talk or something. Twelve, twelve-thirty.

At about one-thirty in walks the governor, Marvin Baxter, and his chief of staff, Steve Merksamer. They all walk in, they all walk by me, and I'm sitting there. They said, "We're sorry we're a little late, but the governor got hung up, and we'll talk to you in a minute."

So a few minutes go by and I'm called in. The governor is sitting at his desk, and Marvin Baxter and Steve Merksamer are there, and there may have been someone else, and we have this conversation. The governor is talking, and I'm talking about my background. There weren't so many questions, necessarily, as much as there was my responding to inquiries, how I liked being a judge and all this. It was kind of an interesting conversation.

MCCREERY: But more general than you expected?

PANELLI: Oh, yes, more general. When people said, "Did they ask you about the death penalty?" they didn't get into any of that kind of stuff, "What is your view about this?" or any of that kind of stuff.

But I thought things were going pretty well, and I guess I expected that he was going to stand up and say, "Congratulations, you're appointed." What happened is when I was through he stood up and he said, "I want you to know, whether you get this appointment or not, you're very well respected. Our research has indicated that people have had nothing but good things to say about you, and I'm sure that whether you get this appointment or not, you should be pleased with the reputation and the esteem in which you're held." I said, "Thank you very much," and that was it.

So I walk out. I tell my wife, "It ain't going to be me." She says, "How did it go?" I said, "I thought it was going well, and all of a sudden he stands up, and he gives me this talk." So I go back; that was on a Wednesday. The next day was a Thursday when the three of us at the Sixth District get together to go over these cases. So I tell my colleagues, I said, "You'll have to put up with me, because it certainly isn't going to be me."

In the course of that [meeting] I see my assistant. She comes to the door and her eyes are all large. She whispers, "The governor's on the line." So I said, "What?" I go to my office and it was Governor Deukmejian. He says, "I want you to know that I'm going to nominate you for the vacancy on the supreme court." Of course, I said, "Gee, thank you very much." I said, "It's an honor, and I hope that I live up to your expectations," and all that.

So he said, "I want you to know that your background is very similar to mine, with respect to your parents coming over and all this stuff, what you did. I feel very comfortable that you will do a fine job, and I'd be proud of what you do." But he said, "We don't want you to say anything, because I want to announce it on my Saturday radio program." I guess it was Saturday morning. I had never listened to the program. [Laughter]

So all of a sudden, having been burned by the press when I got the appointment from Reagan, I called my sister and I said, "If anybody calls you, I want you to know you don't know anything." I called my kids, and one of them had already gotten a call, and [the reporter] said, "We want to congratulate you on your father's appointment." He says, "What are you talking about?" "He's been appointed to the supreme court." He says, "If it is, it's news to me. I've never heard of that." He says, "Are you sure?"

Well, they weren't sure, they were fishing. They did the same with my wife, one of the reporters from the *Mercury*. She went on and she said the same thing. "Congratulations," all of this. My wife said, "What are you talking about?" And she says, "You know, about this." And she says, "I've never heard of it. I'm sure my husband would have told me if that's the case." They even called my sister, and fortunately I'd thought to call my sister, so that was okay.

Then on Saturday morning when he makes the announcement, this reporter, this woman calls my wife and says, "Boy, you really can keep a secret." So we had a very fine interview, and then, of course, we had to go through the confirmation hearing.

It was interesting at the confirmation hearing, because there was some indication that there may be some opposition. It wasn't really necessarily opposition against me. There was some general opposition with respect to the appointment process, as I recall, but no one really got up and said much. They had filed a letter saying, "We propose to object." But it was

more of a functional objection with respect to the process and the procedure, rather than me, and I don't remember exactly now specifically what it was.

But there was another person who said that he was going to oppose me, and it was a fellow that I knew as a student. I had been on the board at West Valley Community College for nine years, and this was a fellow who used to come to the board meetings, and before the board meetings would set up a tape-recording thing and go up to the podium and have all this. He was at the Veterans Hospital, and he used to wear his identification band from the hospital. He was kind of unusual.

He got more and more involved in these meetings, and on one occasion he tried to grab papers from the superintendent, and so he was arrested for disrupting a public meeting. Much later I used to see him all the time at the superior court, because he spent all his time in the law library there, and he was fighting his conviction from the meeting incident. In fact, he went all the way to the Ninth Circuit [Court of Appeals] and won. [Laughter] But I'd see him all the time, and I'd say, "Hi, Steve." We never had any real problems with each other. Steve Stevens was his name.

When he indicated he was going to appear, I suggested that maybe there was, knowing — I don't know why he was at the V.A. Hospital, although — he was unusual. So they said, "Okay. We will have security at the hearing." He appears at the confirmation hearing with two briefcases full of books. It was funny because he had a jacket and a tie, and I'd never seen him with a jacket and a tie. And he had these tennis shoes on.

When it got time to get up he says, "I want you to know that I didn't object to him when he went to the court of appeal, because I figured on the court of appeal that he couldn't do too much damage. But the supreme court, I feel I must object to his appointment." He starts to go through some of my opinions. He said, "Look at this opinion. I'm really surprised that Justice Poche went along with him, but he probably conned Justice Poche into signing this opinion." And so he went on.

Finally Chief Justice Bird says, "Mr. Stevens, we're not going to go through —." He wanted to go through every opinion that I had written on the court of appeal. She said, "We're not going to do that. Do you want to say something?" So he's kind of summarizing.

Then when I came up I said I was really hurt that Stevens had taken this position. I said I was always very courteous to him. I kind of supported him on some of this stuff. With that he jumps up and starts to get agitated. Behind him the security people had seated themselves, because they were anticipating something, they just shoved him down in the chair and ushered him out of the hearing.

Anyway, Van de Kamp and Chief Justice Bird and Presiding Justice Lester Roth voted for me. I was confirmed. As I say, my mother was there. She was ninety years old at the time. It was quite a deal. At the confirmation hearing, the president of the university, Father [William J.] Rewak testified on my behalf. He knew Rose Bird and was a friend of hers. Others also testified. I had many letters from lawyers who had written in support as well.

After the hearing, we go to what is going to be my chambers, and this office, chambers, was the oldest, shopworn-looking thing I'd ever seen. The drapes had been exposed to sun and rain, were all kind of shredded by the elements. The carpet was old. I'll never forget, Father Rewak told Chief Justice Bird, "This can't be it. He had much better quarters where he was." I think they advised me that I could have some window coverings, but it was a historical building, and so there wasn't a great deal that you could do. But I'll never forget, it wasn't anything like what I had on the court of appeal.

MCCREERY: And probably not like what Justice Kaus had had before you?

PANELLI: It was the same place. It was the same place.

MCCREERY: It was. Oh, my gracious.

PANELLI: It surprised me. All of them were about the same. They were just — nothing had been done for years. They did allow some painting, but the drapes were brocaded kind of things, but they faced the southwest, so you can imagine the sun and stuff, and it looked out over the park. The bathroom was not much, I'll tell you.

After the earthquake, we built out the quarters at Marathon Plaza, and then we had really nice ones. Now what they've done in our old building because of the historical nature — we used to always kid about, "We have historical toilets." They have taken what were two chambers and made them one, so now they're long and narrow, but you have more room. But they still haven't moved the walls out into the hallway area.

But okay, that was on the eighteenth of December, and I got my case materials for the calendar that was going to be in the first week in January. By the way, at my confirmation I had asked Presiding Justice Caldecott, who was now retired, to swear me in, because I respected him, and he'd always been very nice to me for the year that I was on Division Four.

On Christmas Eve I get a call from the chief justice's office, saying, "You've got to come to San Francisco and be re-sworn, because Chief Justice Bird has determined that your swearing-in by Justice Caldecott was ineffective. We're concerned that we gave you all of these files for these January arguments, and you're not correctly sworn." So I hustle on up to San Francisco, she swears me in, I'm now official.

What they did was they used to have the January calendar the first day after the new year. I had a very interesting experience on my way to the court in Los Angeles. I was going down on a Sunday. I think it might have been New Year's Day, I don't know for sure. I go to the airport, and I'm ready to take the flight, and I see that they're working on this engine. They said, "There's been a slight delay, because there's a problem. We don't know if it's just a dial that shows something's wrong or whether there's something actually wrong."

After about an hour and a half they said, "It's all taken care of." Get on the plane, we're out of San Jose maybe twenty-five minutes, all of a sudden you hear this grinding noise. The flight attendants were ready to come and serve things, and all of a sudden they go back and they come out with a cart with these huge books on it. Shortly thereafter the captain comes out, and he's looking around.

So he goes back to the cockpit and says, "As you may have suspected, there's a problem." He says, "We have good news and bad news. I'll give you the bad news first. We lost an engine. The good news is this plane can fly on one engine. What we're going to do is we're going to go through all the safety procedures and all of that kind of stuff." So we go through that. They took all the young kids and put them in the back of the plane and moved everybody else up front, took all our sharp objects, put them in a big black plastic bag, went through the drill for an emergency landing.

I'm thinking to myself, I was not confirmed to the court of appeal, which was a first. Now I'm going to have the shortest tenure on the supreme

court. I'm going to go down in history as having been on the supreme court for eight days. [Laughter] Oh, dear.

Anyway, the plane lands safely. We roll and roll and roll, because the pilot couldn't reverse the engine, and, of course, all the emergency equipment is out there with the red lights flashing, all that kind of stuff. It wasn't till everybody got off that people started to cry.

In the course of it, I'll never forget this woman sitting next to me saying, "We're going to crash, we're going to crash." I said, "No, no." This was at the time of the space shuttle. I said, "The space shuttle doesn't have any engines, and it lands." I didn't tell her that you needed Edwards Air Force Base, and you had to come down at the speed that it did.

But anyway, it all worked out, and so I went through my first calendar. But it was a kind of interesting introduction to the supreme court.

MCCREERY: We've been talking about your process of getting nominated and confirmed on these three courts. I'd like to go back, if I may, to talk a little bit more about the substance of what happened when you had the two assignments on the appellate courts. First of all, I'm just wondering if you could reflect a little bit on the adjustments that you faced as a longtime trial judge going into appellate work.

PANELLI: I've been asked that question, especially by lawyers who had appeared before me, because they said, "Judge, you are a people person. How are you going to get along without people contact?" I never was one to stay cloistered. I'd get out and I'd talk to the clerks and all that kind of stuff.

It is obviously a little different, because you don't have contact with other than the people that you're working with, generally, because oral arguments are going to occur once a month. Most of your daily activities are with not so much even the other judges, as much as with your staff and central staff, because in each of these courts a central staff worked on some of these cases that were assigned to you, so that you had some contact with them.

There is what they call the principal attorney that was kind of in charge of the central staff, but some of those people were working on cases that were assigned to you, in effect preparing drafts for you to approve or not approve. When I was in the First District with Justice Poche, it was somewhat unusual in that Justice Rattigan was not participating in any new

cases, and Presiding Justice Caldecott shortly thereafter was also not taking new cases. So there were only two justices, Justice Poche and myself. We survived by the use of pro tems being assigned to us for two-month periods.

So it was kind of tough because, first of all, you didn't have a long working relationship with these folks. You may have known some of them, although some of them I didn't know at all. It was kind of hard because they were only there for two months, and you couldn't get a sense of what you'd like to do on this kind of a case. In the court of appeal the rules are, "no harm, no foul," so even if there's error, if it's not prejudicial then, of course, you don't reverse, because it's only prejudicial error that requires reversal.

So the standard of what is prejudicial error can be variable, depending on the standard of who's deciding it. So it was kind of difficult because we had a situation where one month there was a pro tem on this particular issue that saw it the way I saw it; Justice Poche dissented. Three or four months later the same issue presents itself, and there was a different pro tem. This pro tem saw it the way Justice Poche had decided in his dissent and disagreed with what I had said, so now it was two-to-one going the other way. So there was that kind of potential inconsistency. So it was a little different.

However, the First District had a lot of judges, so there was a certain collegiality, even with people not in your division. We generally would go out to lunch together. I especially spent a lot of time with the Fifth Division, the people who took the three spots that were destined for San Jose, in part because my chambers were close to them. We were kind of spread out, and the divisions weren't necessarily all quartered in the same area, so that I happened to be over with what was part of the Fifth Division.

That was another problem, a space problem, because originally these divisions all had three people, and then they went to four people. So there weren't many offices, and the one that I had in the First District was really not much. But it was fine, because I was happy to be there, and that was more important to me than where I was working.

I don't remember any kind of significant cases that I heard at the First District. It was really a production, because I remember I wasn't on the court very long when we had — we may have had weekly meetings or monthly meetings of the whole court, and Justice Scott, who was a

take-charge guy, stated that the cases are coming in at fourteen per judge per month, so we've got to do fourteen cases, and we've got this huge backlog, so in order to cut the backlog we ought to all do an additional ten cases a month each. So all of a sudden it was ratcheted up to cut into the backlog, because there was some embarrassment that it had taken so long for some of these cases to get decided.

MCCREERY: This is throughout the First District?

PANELLI: This is throughout the First District.

MCCREERY: What was the workload in terms of the civil cases versus criminal?

PANELLI: More criminal than civil, because every criminal case went up there. Then they came out with the *Wende* decision [People v. Wende] that says that you as the judge have to review the case, whereas in the past most of those types of cases were done by the central staff. So that even though the clerks may have written a memo, you had to personally go through them. A lot of these cases were of little merit. You might as well take a shot at the appeal, so predominantly the work was criminal. I don't recall many cases that we had, at least in the First District, that I was involved with that may have made it to the supreme court. I could be mistaken, but my sense — I don't recall any grants of review of any of the decisions that we rendered.

MCCREERY: I'm sure other divisions had central staffs as well, but how did your division —

PANELLI: No, the central staff was for the whole court, but they would assign maybe two or three people that would work with you. I'm not sure the point in time when it started. They used to only have one research attorney, one law clerk, if you will. They then went to two law clerks, and what they did in order to maintain some ability to rotate the second one, they called them Attorney A, Attorney B. Attorney A had a different salary range. Attorney B, however, was a salary range that you maxed out at two years. The theory was then that person would go and you'd get a new person. That's why the central staff was helpful, because you didn't have that much research help on your own.

Thereafter what they did is the judges put the pressure on to remove the two-year limitation on the second clerk, and so, in effect, both positions became permanent positions. The point was that people with more experience could do more work, as opposed to training someone new. It might take three or four months to train a clerk, and then before long they're gone again. So you had staff that was yours, plus you had a divisional writ clerk that handled the writs, and then you had this help from central staff.

When we got to San Jose we had the same setup with two lawyers, with a writ clerk, but my recollection is that we had very few people in central staff. I don't remember the number, but it wasn't — we thought we were shorted with respect to the numbers, because as I say, we ended up with a third of the business [from the First District], with less than one-fifth of the judges, because they had seventeen, we had three, but we had 30 percent of the business. So when they moved one-third of their caseload they were happy, and all of the cases were old cases. The First District looked great in terms of caseload after the transfer.

MCCREERY: Starting with the First District and moving forward, talk a little bit about your own staff. Did you, that early, inherit or take over the work with Kathryn Mickle Werdegarr, for example?

PANELLI: No. I don't know who I had at first, but Kay Werdegarr was in central staff. I asked for her to be one of the central staff people working for me. Then whether she actually became one of my clerks, or whether our relationship was just by virtue of the central staff I don't recall now. My sense is she probably became one of my two clerks.

One of them was a young woman who was a new lawyer, a Santa Clara graduate, Melanie Gold. She may have been the other one, because when I went to the Supreme — no, I take it back. I had her in the Sixth District, and she came with me to the supreme court, so I'm not sure, that may be wrong. But I don't remember now what the relationship was, but Kay Werdegarr was one of the lawyers working with me that I relied on.

MCCREERY: What led you to single her out as someone you wanted to work with more closely?

PANELLI: Justice Poche had a close working relationship with her. He said she was probably the best lawyer in the central staff. The principal attorney was not too happy to give her up, but I said, "If she's willing to do this, this

is what I want.” You have certain perks by being on the judicial side, as opposed to the administrative side.

So I did that, and there was some other — mostly in the First District I relied on Justice Poche, because I knew him. He had practiced law in our office. We weren’t partners or anything. We weren’t formally associated, but he rented space from us, so there was some cover for us on some of his cases.

He worked also in our office building. He also was the legislative representative for Don Edwards, so the congressional regional office was in our office building. We were there every day, so we knew him. In fact, when he went to the court of appeal some of his clients stayed with us. So I knew him and I kind of relied on him with respect to some of that stuff. But that’s how I came to know Kay Werdegarr.

MCCREERY: And built up your staff. How did you use them? What distinguished your way of working with them from other judges?

PANELLI: I think the same. As I say, I would read the briefs, I’d tell them this is the way I think I would want to decide this case. This is how I think we ought to do it. You tell me whether or not you think we can write it that way. Let me see what kind of a draft — I’m doing my stuff and they’re doing their stuff — what kind of a draft you can give me. Then you just become an editor. If they come back and say, “Judge, it won’t write the way you want it to come out. The law doesn’t support that.” Then we’d have a discussion and we’d say, “Okay, let’s see what we can do. This is what I’d like to do. Let’s see how far we can go this way.” So that’s what happened.

MCCREERY: Did they ever try to change your mind about your actual position, or was that kind of exchange welcome? [Laughter]

PANELLI: No, that kind of exchange was welcome. I told them — not so much on the court of appeal, that wasn’t a problem, a little more on the supreme court. On the court of appeal that wasn’t a problem, because I always told people, “I understand that if you’re unhappy and you feel this is something that you’re uncomfortable with, then I appreciate that. You’re free to go back to central staff.”

That’s what used to happen, when judges came on and they weren’t really too happy with their clerks, because maybe temperamentally, or the working relationship wasn’t very good, they would go to central staff.

Sometimes that was a weakness of the central staff in that you would get people who maybe weren't as strong going to central staff, as opposed to those who were very strong, whom the judges would select.

There was a committee that selected the lawyers for central staff. You would hire the principal attorney. He would make a recommendation and would sit in during the interview process. It's the judges committee that decided who they would hire. In the First District the quarters were very limited, because the court had grown. They hadn't expanded their space. They were always looking for more room to house the central staff. I don't know that they ever got up to where the attorney general's offices were located. We were all in the same building, but we were all over the place.

I don't even remember now where the central staff lawyers worked. I don't have as many memories of that, about the workload, other than the fact that Poche and I would get together and talk about cases. Because obviously when you'd get something and you'd pass it on, and you'd sign off. We'd sit down and say, "I don't agree. What about doing this?" Or maybe we might have even done that before, but I had a good working relationship. We didn't agree on everything. We had different views on some stuff. On the criminal law we kind of differed a bit.

MCCREERY: How so, do you recall?

PANELLI: I remember one case — when we say there was a difference of opinion — it was a question of whether there was a properly imposed five-year enhancement. On one case I wrote an opinion, and the pro tem went along with it, and five-year enhancement was affirmed. I had the same issue about three or four months later, and Justice Poche, who had dissented on the prior case, got the new pro tem to go along with him, and they struck the five-year enhancement. So we had an opinion affirming a five-year enhancement and another striking a five-year enhancement in the same division.

But when I got to the supreme court there was a writ of habeas corpus raising that issue. The court then resolved the matter. They decided to strike the five-year enhancement. But it was just a difference of opinion on the law. I was a little more conservative on the criminal law issues than Marc was. On the civil stuff I don't think we had many differences. We might have had some.

I had had much broader trial experience and practice experience than Marc. Marc was teaching. In fact, when we were in the same law office he was teaching, practicing law, and was the rep for Edwards, so he had lots of things going for him. But we had a good relationship, and I never had any problems with him. He had a good staff. I got along with his people.

MCCREERY: He really was your closest colleague, given the turnover in the third position, and the instability.

PANELLI: Right. And I knew him also when he — for the short period of time he was a superior court judge in Santa Clara County when I was. As I say, the only political campaign that I ever got involved with was when he was running for the Assembly as a Democratic candidate. So I knew him, and I felt comfortable with him. It was a good relationship. It would have been nice to have a permanent third judge, because lack of stability could be a problem in the supreme court.

When you're an institutional court like the supreme court, to get people who come in for a one-shot deal isn't good. You don't know whether that person is trying to impress someone or they don't want to make waves because for some reason there could be the possibility they could be appointed permanently to that position. You don't want someone saying — suppose you're close to the appointing agency — “We had this person on as a pro tem, and they're terrible.” But I never had any problems with any of those folks.

MCCREERY: You mentioned that you and Justice Poche had quite different backgrounds and brought different experience to it. As a general matter, again, trying to recall as you thought about it then, at the appellate level, what was your view on what kinds of experiences judges should bring? Should there be a broad variety of judges, or what are the requirements, in your view?

PANELLI: My sense is that, especially on the appellate level, the appellate court, not the supreme court, the appellate level, I think to have experience with respect to being a trial lawyer and a trial judge is very, very helpful, because of “no harm, no foul.” Because a lot of things, especially trial judges don't have a great deal of time to study a lot of stuff, so a lot of stuff is almost done on feel. So while a decision may be wrong, “Is it more probable

than not that the result would have been different but for the error?" which is the constitutional standard for prejudice.

If you've seen how juries react, both as a lawyer and as a judge, some of the things that on their face clearly were not right, you *know* had absolutely no effect on the result. So, can you apply the constitutional standard that it's more probable than not the result would have been changed? In most of these cases the answer is no, and if that's the case you affirm.

The other thing is, most of the opinions that you wrote were not published opinions. I'll never forget, I was on a panel with Justice Joan Dempsey Klein, who may be the senior presiding justice now. I think she may have been on the Corrigan confirmation panel, I'm not sure. We were on a panel and people were talking about our published opinions, the quality of the published opinions. She said, "If you think our published opinions are bad, you ought to read the unpublished opinions!" Because in the unpublished opinions, obviously, you're not setting any kind of a precedent. You're just deciding this particular dispute, and so you don't have time to finely hone language and all that kind of stuff. It's are you comfortable with the result?

In a lot of cases you don't even have oral argument. In the First District with Justice Poche we had a lot of oral argument, because as a former professor, just like Justice [Joseph R.] Grodin, they loved to get out there and have this Socratic method employed.

MCCREERY: Yes, tell about his style.

PANELLI: He loved oral argument. Oral argument to me — I figured I'd read it all and it was all supposed to be in the briefs. If it wasn't in the briefs, why isn't it in the briefs? Now, if there's something that you'd like to clarify, or something that's happened in the interim, that's fine, I'd like to hear it. Whereas Justice Poche was like the law professor. He'd ask these questions and he'd prod and probe. It may not have made any difference in the outcome, because I'm not sure that there were that many cases that we really disagreed on. I could be wrong, but nothing stands out in my mind.

MCCREERY: But for you the process of oral argument wasn't that important to your decision?

PANELLI: It wasn't that important to my decision, because — on the series of lectures that I just gave, I said, if it isn't in the record, it didn't happen. If it isn't in what's before the court of appeal, then the court of appeal doesn't

go and retry the issue. It isn't really a second trial. It's more of a contemplative exercise, as opposed to the oral exercise that occurs in the trial courts. So you're supposed to put all of that stuff in the briefs.

Sometimes if the briefs aren't clear, and I'd hate to tell you that some briefs were unintelligible — I cited the example of, there was one brief that one sentence ran a page and a half. A page and a half, one sentence, and they just kept putting commas. It was obviously just a stream-of-consciousness brief, and someone got behind a dictating machine and dictated it. You get that kind of a brief and you're not certain what people are saying. Many times you say, if I don't know what they're saying, they didn't raise the issue properly, and then it's waived and we're going to deny it.

But sometimes even with the poorly drafted brief you say, "There's a kernel of some problem here we need to deal with." Then you can explore that in oral argument. Clearly, if you disagree with — if you're in the minority, you may want an opportunity to have oral argument to try to get the side that you think should win the appeal to convince these other two people that one of them is wrong, so that you could change the result.

So that was part of oral argument. But what we used to do is we'd ask people — now most of the times they will ask people, "Do you want to waive oral argument?" My suggestion is don't ever waive oral argument, even though it may not have a great deal of impact, because sometimes it's construed as a weakness. But whenever we would have oral argument we'd ask people, how much time do you want? I don't know that we ever set maximums. The supreme court obviously did.

So if someone says, "I want ten minutes," we'd take the ten-minute case first, and then take longer cases last. But the other thing, it was an opportunity to have some discussion with someone that you don't see all the time. It's like getting outside.

But it was more — I don't want to say drudgery, but it was a lot of the same: a lot of reading, a lot of writing, a lot of editing, directing, because the bulk of what you did, especially as you were trying to pump out all those cases, was really kind of to direct the people who were working with you to make sure that what they were doing is what you wanted done.

I never had an experience where someone tried to run something by me, because they'd know that that would only happen once. But I had a very good relationship with my folks. I think we got along, and when we

start talking about my supreme court staff and how that started, I'll talk a little more about that.

MCCREERY: But you've just alluded to the fact that you were more isolated in your work as an appellate court justice.

PANELLI: Yes, oh, much more. Especially up in San Francisco, because I had practiced out here in San Jose, and most of the lawyers that I knew were in San Jose. But most of the appellate judges I knew, not some as well as others, but I knew Harry Low, [Donald B.] Don King. I came to know Zerme [P.] Haning very well, because as I said, I was in their location. I knew Scott and I knew a fellow who just died, what's his name. He was from San Mateo County, just died within the last month.

The other thing — and I wasn't on that First District all that long. I went from August or October for about a year. As a result I didn't get involved so much in a lot of the committees that they had. As I say, the person who really kind of drove First District was Jim Scott, because he was a forceful person, very, very conservative. That's why I always thought that he would be the appointee to the supreme court.

MCCREERY: Did you ever talk about that with him later on or anything?

PANELLI: Yes, I think that became a sore subject between us, because I really, I think, in conversations I probably said, "If there's an appointment you probably deserve it," because he had been on the appeals court. If there was someone who was always trying to resist — if there's an ideological difference, he was the one who was always pushing the conservative views, when most of the other people were not conservative at all.

So I think maybe he may have felt somehow or other that my getting the supreme court appointment was by virtue of what I may have done with respect to his consideration, which was not true. I think what happened was that I was younger, and there was a concern that he was not in good health. He had had some heart problems, and I think part of it — this was 1985 — part of it was you didn't know whether during this governor's administration he'd ever get another appointment.

I don't think it's by accident that you see [John] Roberts and [Samuel] Alito [appointed to the U.S. Supreme Court], who are relatively young for those positions. In the old days, you didn't get to those positions till you were in your mid-sixties.

So I think that was part of it, but I respected him. I thought he was very good. But in my judgment, he ran the First District.

MCCREERY: And the others accepted his leadership?

PANELLI: Oh yes, yes, because he was looking out for the court. He said, "It's embarrassing that we have the worst backlog, and we ought to do something about it. We need to work harder." The First District had some very interesting characters before I got there, [Paul N.] Halvonik. They talk about the fact that there was pot smoking in chambers. Then, of course, he opened the door, or his wife opened the door, and they had the marijuana plants growing in their apartment. That's what cost him his job. But he was a free spirit. So I heard those stories.

There was this other fellow from Oakland who apparently only appeared on the days that oral argument was there, and was never there otherwise. So there were some very interesting stories. Fortunately, I wasn't involved. I don't know if any of that is true. The people when I was there, I thought they were all trying to do what they were supposed to be doing. Part of it, see, the whole idea of the judiciary had changed. When I first became a lawyer, a lawyer became a judge to retire.

MCCREERY: Yes, we touched on that before, that it was considered an end-of-career thing.

PANELLI: Right. See, now everybody's started thinking that this is a career, and you started earlier, and so a lot of the people on the court of appeal were younger judges.

MCCREERY: And probably working a lot harder, too.

PANELLI: Working a lot. You had to have been younger, because it took a lot of energy to do all that kind of work. But there were people up there like Judge [John T.] Racanelli, who was very influential. He was very close to Chief Justice Bird. They used to commute together with Justice Feinberg, and, of course, I knew both of them from Santa Clara County. They commuted from Palo Alto, and I would commute with Justice Scott from Palo Alto, but we never commuted together. [Laughter]

So there were those people that I felt comfortable with, and they were always very helpful. But there was a certain cliquishness to it. It was the

Brown appointees and there weren't too many other — there were some Reagan appointees. Allison Rouse was the one that I was thinking of earlier.

MCCREERY: Yes, of course. He just died.

PANELLI: He was a Reagan appointee, Scott was a Reagan appointee, Caldecott was, Rattigan wasn't. But there was some of that, but not in a divisive sense. We all went out to lunch together. The First Division had a historical tradition of having lunch on a particular day with Justice — he was on the supreme court, had been in the First District. Justice Grodin was his protégé. What was his name? I never knew him that well.

MCCREERY: Oh, you mean Justice [Mathew O.] Tobriner? I think that's who Justice Grodin worked so closely with.

PANELLI: Okay, then that's who it was, that's who it was. So we'd go to lunch. It was a nice experience. It was a little difficult. The commute and stuff had some problems. But you know, I haven't really ever thought much about the First District, because it was almost transitional, as it turned out.

MCCREERY: Kind of a blur.

PANELLI: Yes, really. I have more vivid recollection of the Sixth District, because obviously I started it, built it, had much more of an ownership interest in that.

MCCREERY: Let's talk about the Sixth a little bit more. You've described locating where the court was going to be, and the very early things about getting it set up. What was your approach to actually serving as presiding justice?

PANELLI: I wanted to make sure that it was a collegial situation. I told them, "I'm the head of the court administratively, so I have administrative responsibilities, but I want you to know that we're all in this together. If you have some views with respect to any of this I will be more than happy to talk to you about it." I think I made very few decisions without their input. I'm not sure that I always accepted all their input, because ultimately I had the responsibility for it.

All the people that we hired, we hired together, except for their own clerks. But as far as acquisition of stuff, the selection of the clerk [of the court], which was very important, where I had that responsibility. But we

all did it together, so it was a very fine experience. The three of us still socially get together.

Justice Brauer is now in Phoenix. When I was in the hospital he called my wife because he'd heard about my hospitalization. Justice Agliano came to visit me at the hospital, came to visit me at home, called to follow up. Harry Brauer did the same. So it was a very, very nice experience. Being together the way we were, and having started all together, it was an entirely different feeling than the First District.

First of all, it was much smaller, and we had all started out the same. We were all appointed by the same person, which maybe avoided some of the problems that I could see in the First District. We had some personnel problems at the beginning, with respect to some of the central-staff lawyers, because some of them were coming from Santa Cruz, and that's a tough commute over Highway 17.

What I decided to do is, because we were a new court, we held a session of the court in each of the counties, so that we went to Santa Cruz and held court there, and had a big bar association kind of a deal. We did the same in Monterey. I'm not sure about San Benito, because San Benito was a one-judge county. It didn't produce very much. But we got plenty up out of Santa Cruz and Monterey.

Of course, Santa Clara County was the biggest deal. We tried to become known in the community. One of the things that struck me, I really thought that we would be higher profile in San Jose, by virtue of the fact that we were the court of appeal, it was a big thing. It didn't make that much of an impression. Rarely — not rarely, but not as often as I thought it would be — would there be reporting in the press of what we did.

MCCREERY: Are you talking about in the newspapers?

PANELLI: In the newspaper, yes. Obviously, the lawyers who were involved knew what we were doing, but I would have thought that they would have been more — like they might have someone whose courthouse beat was to cover the court of appeal. In San Francisco the *Daily Journal* had a beat person who kind of followed what was happening, both, I think, for the First District and the supreme court, whereas down here they might call you every now and then. But the San Jose *Mercury* didn't do that, which surprised me.

We were totally understaffed with the volume of cases that we took in. Fortunately, they did not come in as fast as they had in the First District, because San Francisco, Oakland, and some of the larger counties would pump in a lot of cases. But I think we made some strides. I think we were respected. We had good people, and the clerk had been the assistant clerk — the clerk in the court of appeal is very important, because just to move the paper, there's a lot of paper — he had been the assistant clerk in San Francisco. So we brought him down, and when the court had the twentieth anniversary, [Richard J.] Dick Eyman came to the event.

MCCREERY: Oh, yes, Mr. Eyman was there the whole time.

PANELLI: Right, when I was there. They passed out twenty-year pins at the event. He's now up in Redding. Mike [Michael J.] Yerly, who's the clerk now, of course, does a very, very good job. He came over from the superior court. Most of our clerks we have here came from the superior court, because it was a step up in pay, and we got good people.

MCCREERY: Yes, I was wondering where you got your staff. Did you bring any with you from the First District?

PANELLI: No. There again, you mentioned Kay Werdegarr. She wouldn't come, because her husband was at UCSF. So while I asked whether she would come, she said, "I really can't do it."

So I hired this young woman. The fact is, I keep getting Christmas cards from her with pictures of her kids now. She was just married when I hired her. Rosalie Kennedy is her name. Now I get these Christmas cards and her kids are grown. They might even be in college now.

Then I had another, Clerk B, which was Melanie Gold, and Melanie Gold came with me to the supreme court. That's the one I thought had been with me in the First District, but she was here. What I had tried to do was hire people with appellate experience. Kennedy had been working for a justice in the Fourth District. That's the other thing you found. People sometimes moved, they'd gotten married, and had been with one of the courts, and this helped.

Rosalie. Rosalie Kennedy. She had been, I think, with the Fourth District. But then her husband had moved, and so she had to move. But I had decided, because it had been very, very difficult to get Santa Clara graduates into these positions, that I was going to hire my law clerks from Santa

Clara. Melanie Gold was the first one, and I don't remember who I got afterwards. When I went up to the supreme court, I really kept just about everybody that was there. I think I brought on two, and one was from Santa Clara and the other was either from Stanford or from Davis.

MCCREERY: Did you do anything special to try to raise the profile of the Sixth here in the community? You just noted that it wasn't quite what you'd hoped.

PANELLI: No, it's not something that you really like to have. The interesting thing was that there was some concern that — one of the reasons I wanted us to get out is we were all going to face confirmation elections. It's a small community, so that it isn't like running for a confirmation election statewide or in the First District that covered all these counties. It wouldn't be very difficult to mount any kind of a campaign with these four counties.

So the thought was it would be kind of nice for people to know what we were doing. But as I say, it just wasn't something — we didn't have a press officer that would come out and say, "We're doing such and such." Every now and then there might be a case that was important that they would want to report on, but they didn't report it as they would in the *Daily Journal*. They didn't say who wrote the opinion. It used to say, "The court of appeal upheld this." It usually had to do more at the time with criminal cases that may have had some notoriety.

But we held oral argument in — the facility that we had for the court was not the best, because the lawyers were very close to us, because we had to make a court in what was essentially the space of the floor of an office building, and it was kind of narrow. They made us put a ramp to the bench to accommodate disabled persons (of which we had none), and so we didn't have much room. So when we first set it up I said, "My God, the lawyers, we're going to be able to read their notes." It's kind of disconcerting when you're eyeball to eyeball. But we worked that out. It wasn't that bad. Now that they've made the new changes, they've made the courtroom much smaller. I think they raised the ceiling a little bit.

MCCREERY: Other than that, how did oral argument differ on the Sixth from the First?

PANELLI: It was a little different, there was a little different style. Brauer was more of the Poche style. Agliano and I were more like trial-court

judges. We might ask some questions, we might prod them if we thought they were misstating or overstating their position.

I remember once we jumped all over this young lawyer on a case. There was a situation where there was a lawsuit involving an auto accident, and the insurance company referred the case to the panel counsel, and the panel counsel called this plaintiff's lawyer and said, "I haven't got the file yet from the insurance company, but I want you to know that we're going to file an answer." And he says, "You'd better file an answer within the thirty days." He said, "I don't have the file, but please, give me the courtesy of not filing a default." On the thirty-first day they file a default. Then, clearly, the other side made a motion to set aside the default, which you grant as a matter of course. In those situations you'd always just get a phone call from the opposing attorney. "Okay, just make sure to file an answer when you get the file."

Then the lawyer who had filed the default which was set aside took an appeal alleging an abuse of discretion on the part of the trial judge. I remember we just jumped all over this person. I said, "There's a certain thing as courtesy, and he told you that he was going to file an answer. You know that the file is going to come. They're going to file an answer. You take a default and then you make them set it aside, you don't stipulate to set it aside. You have a hearing. You take the judge's time, and now you take our time." I said, "That's absurd. You've got to learn early in life that you've got to get along with these people."

"The law says my client had the right to an answer in thirty days."

I said, "There are certain things of client's rights which must be tempered by fairness." So the three of us just jumped all over him, so I remember that one was just kind of a learning experience.

MCCREERY: Yes. But you wouldn't hesitate to do that if it were called for?

PANELLI: Oh no, no. There are some lawyers that really misstate the facts. And that's one thing. We were pretty — as they call it, a hot court. We pretty well knew the facts, knew the case, so if someone tried to suggest something that wasn't really in the record, or wasn't the way it was in the briefs, we didn't hesitate to go after them. But that didn't happen very often.

I remember we had some big-name lawyers come up from Los Angeles on some cases, and I guess they thought that they were in the cow counties

here, because they used to have what they called the cow counties association, and I guess they thought we were one of them.

MCCREERY: Do you have an example of that, of the big-name lawyers coming up?

PANELLI: No, I'm not going to say his name, because he's a lawyer now that I've done a lot of work with. [Laughter]

MCCREERY: Okay, that's fine.

PANELLI: But I knew him by reputation.

MCCREERY: But just your point that they thought this was the hick town here?

PANELLI: Right. Just to digress for a minute. One of the lawyers that was in our office when he retired from practice with a big firm in San Francisco had done all of the defense work for the San Francisco Muni. But he was the defense lawyer in Bronson's office, which was a big defense firm [Bronson, Bronson & McKinnon]. He used to come to Santa Clara County to try cases, and they had a booklet on what they called "trying cases before the cow-county judges." Three of our superior court judges that I sat with were mentioned in this thing.

So he gave the booklet to me, and I made the mistake one day, just in jest, talking about what was written about this one judge. The judge wasn't too happy with it. But it said who you talk to in their office, you give this guy a pint of whiskey, he'll tell you where the jurors are drawn from, watch out for this kind of juror, watch out for this judge with these lawyers, because there's a special relationship.

So my sense was that they may have thought that this was the case up here. I think it was in the Sixth District we did have a major case involving — which was argued by Shirley Hufstedler, who had been the Secretary of Health, Education, and Welfare. I don't remember the case, but I remember that she did appear before us. She was obviously very impressive, because we didn't get — at that point in time we didn't get a lot of the Academy of Appellate Lawyers arguing cases before us in the court of appeal, even in San Francisco not too much.

What you usually saw were the trial lawyers arguing the cases, although for some of the major insurance cases you would get the Ellis Horvitz firm,

maybe not necessarily Ellis Horvitz, but some of his people. But most of the time you saw the lawyers who typically were the trial lawyers, and so the problem was that a lot of times you'd get jury arguments. Just as I say on this seminar that I just put on, I said, "That doesn't sell. The oral part of it isn't as important as the written part and the record part, because that's all that the court of appeal knows about. They don't know what happened, except what's in the record and what was said."

I remember, as I think I've mentioned, Justice Mosk would go ballistic when someone would make a jury argument. He'd jump down on them. But yes, we had some good lawyers on some major cases.

We did the same thing that we did on the court of appeal in the First District. Following oral argument we would meet again and talk about whether there was anything that we heard that would change our opinion. We really didn't have a final opinion, but you were pretty close, your memos were pretty close to an opinion, so it wouldn't take long to turn out an opinion.

What we used to do is, as we did in the First District, your lawyers, the lawyers who were responsible for the cases, would sit in on oral argument. Then when we'd have these critiques they would say, "We think that maybe they overstated this issue," or maybe, "The point that they made might be a pretty good point. We need to do some more work on it," that kind of discussion. But the court of appeal, since you're correcting for an error, is an entirely different process than the issue situation that you ran into on the supreme court.

MCCREERY: I wonder, how was your own judicial philosophy evolving, since your time on the superior court? Any major changes in your thinking at the appellate level?

PANELLI: I remember as one major plaintiff's lawyer said, "Whatever happened to Ed Panelli between here and San Francisco?" So I thought the thinking was that I had become more conservative.

MCCREERY: The thinking out there in the world?

PANELLI: At least for these plaintiffs' lawyers that was the case. I don't think that that necessarily was the view of the district attorney's office. But I don't think that my views really changed. It's that you got to see more of them. Obviously, you try a case, let's say you try a case or two a week. With

me, I was looking at something like twenty-five appeals a month, reviewing that number of cases. So you may start to see stuff where you figured that really didn't warrant even maybe the expenditure of the trial time, let alone appellate time, and you would say so.

But I forget what the filing fee was. You might as well file an appeal. I think sometimes lawyers told their clients, "We're going to get like a second trial." They didn't know that our role was very limited in what we could do. That's not to suggest that, as I say, the prejudicial error rule is — we took a lot of flak in the supreme court when we found a lot of stuff to be non-prejudicial, and people would say it was grossly prejudicial. That's a judgment call, and you have to rely on the integrity of the judges, that you're comfortable that that's the situation.

If you were to make those kinds of decisions based on some other extrinsic determination, either because you didn't like the people, or you felt that things shouldn't go this way, well, then I think you're in trouble. As I say, that's why a letter that I got recently from the D.A. — about what he said in the newspaper — I felt pretty good about. He was saying he knew that this person — I think I told you the story, that he had stated he killed this person, but that the statement didn't pass legal standards for admission, and so I didn't consider it and I didn't revoke this person's probation. The occasion of that was here within this twenty-year-old murder case, they finally were able to get the evidence and they convicted the guy. So the D.A. had written this press release to the newspaper, and in part of it, it says that as an example of judicial integrity was the fact that Justice Panelli, having read this, knew that that was the case, but under the law he couldn't permit it.

So I kind of felt good about that, because I used to tell people, the example I used to use was of a wide receiver who goes over the center of the line and knows that some cornerback is just going to smash him as soon as he catches the ball. If you start to hear those footsteps and look for him, you're going to drop the ball. I said it's the same way with judges. If you start to be concerned about how people respond to what you've done and what you think you've done fairly, then you ought to get out of the business.

But I always felt very comfortable in the decisions that I made. I never felt that I was leaning one way or another because of some bias or prejudice or predilection to do a certain thing, so I never had any problems with that.

People say judging is hard. I don't think it's hard at all, because when you're a trial judge it's: "Was it shown beyond a preponderance of the evidence?" If you're not sure, then it hasn't been shown beyond the preponderance of the evidence. On the court of appeal and the supreme court the prejudicial standard is: "Is it more probable than not that the result would have changed?" In a lot of cases you could say yes, and in other cases you felt very comfortable that you couldn't, so I never had any problem with that.

MCCREERY: But as you say, different judges will have a different answer.

PANELLI: They'll have a different answer, sure, and that's why I tell people that there's a human aspect to it. Otherwise we'd just be computers. You would punch the stuff in and it'd come out. That's why I was never totally in favor of this mandatory sentence kind of thing, because it removes the discretion of the judges.

MCCREERY: Right. We touched on that. That had come up when you were still on the superior court. How did that change the system?

PANELLI: Just like now with the family court with the [alimony] support. They punch these numbers in and you get a reading, and they tell you what the support should be. It doesn't take into account the human factor, and I said, judging involves discretion. The problem is they don't trust the discretion of the judges, and so they come at ways to, in effect, restrain what judges can do, and I'm not in favor of that. The problem, they say, "You can't get rid of the judges." That's not necessarily true. I was on the court that lost three supreme court justices, so you can do it. Now, whether that's good or bad, that's not for me to decide.

But I know that there was even some issue with respect to the Sixth District, just recently, maybe two or three years ago. They were concerned that there might be some backlash, and there might be some retention-election contests by virtue of some decisions that they had written. So I remember there was a little nervousness, because the district is so small as far as the electorate is concerned. It wouldn't take a hell of a lot of votes. But most of the people don't know who the trial judges are. They clearly don't know who the appellate judges are.

We made it a point, I think, to be involved with the local bar associations. See, part of it was just to let them know who we are, who we were. You got to know — generally on the criminal side they had somewhat

appellate specialists, so you wouldn't necessarily get the trial lawyers on those sides, because they had so many appeals, both the public defender and the D.A. They had people that you would see.

Then we had people like Jerry Maher, who was probably one of our leading appellate lawyers from Palo Alto, who recently just died. We'd see him often, and we'd also use him as a resource, because we respected him. But I remember they later had, I guess, on the criminal cases the attorney general would appear — and it later became the Sixth District Appellate Project — and would represent the public defender on the appeals.

One of the fellows that is the head of it worked for Rose Bird, and we'd see him all the time. I can't think of his name offhand. But so they did a little better job. They had a lot of canned arguments, because a lot of the issues were the same.

MCCREERY: Was the public defender's office evolving much over these years, since you had first begun working with it?

PANELLI: Yes, yes, because as I told you, when I started to practice law we didn't have a public defender. The judges would appoint lawyers, not pro bono technically, but what they paid you almost made it pro bono.

There were a certain group of lawyers who did a lot of those cases, so they were almost de facto the public defender's office, and they also opposed the creation of the public defender's office because they thought that they could do a better job at lower cost, et cetera, so there was some political stuff. But I knew all those folks. We got along fine, because I used to see them, obviously, when I was in juvenile.

MCCREERY: Is there anything else you'd like to say about the Sixth District?

PANELLI: Not really, other than the fact that it's now grown to seven. That's the other thing, we decided against breaking into divisions. So it's now, they just pick three and rotate the panels from all seven, which I think is good. Although even with that situation they did have a situation where two panels came up with opposite conclusions on the same issue, and there was some resentment because apparently there was some — I don't know this for a fact — there was some pressure to try to get them to be uniform. There was a resistance, and, in fact, there was some — I don't know that it got to the level of formal complaint, but I know there was some anxiety

over the fact that someone would approach one side and say, “Gee, this doesn’t look good.”

MCCREERY: But those districts that had divisions, that had been somewhat controversial now and again, going back at least to 1980 and maybe farther — the consistency within the district, and those issues of which groups of judges worked together.

PANELLI: Right, right.

MCCREERY: What did you think was best here?

PANELLI: I suggested that we sit as a court, as opposed to various divisions. First of all, you then start to get — it’s another little fiefdom. You have an administrative assistant to the P.J. of that division. There’s more bureaucracy. I think it’s better to have writ clerks that work for the whole court, as opposed to a particular division.

MCCREERY: What about the process of facing elections? Of course, you didn’t do that, because you weren’t here long enough, or on the First District long enough. But the whole question of should those elections be contested, and how often should they be?

PANELLI: No, I don’t think they should be contested. See, the problem is the electorate really doesn’t know what you’re doing. That’s why I think the long terms, the twelve-year terms, are important, because it gives a person an opportunity to establish some sort of a track record with respect to what kind of a judge you are, and it doesn’t lend itself to some emotional response to a particular decision, which would then generate some sort of a contested election.

The problem with a contested election is it’s hard for the sitting judge if some lawyer — let’s say you have an open election, some lawyer can make some crazy accusations about you, and it’s hard for the judge to defend. What can you tell the electorate, “I am going to be fairer than I’ve been?” This case in Washington where this fellow had never tried a case, but his name was similar to someone else who was well known, and he got elected. He only lasted, I think, one term, until people found out that he was really a fraud, but I mean it’s very, very difficult.

On the other hand, I understand you have to have a check. There’s a federal court judge sitting, a district court judge that — I’ve seen the

transcript, that he tells the lawyers, “This is what we’re going to do. I don’t care what you say, what they say. I’m here for life. I’ve been reversed more by the Ninth Circuit than any other judge, but I don’t care what the Ninth Circuit says.”

That kind of arrogance is — I told these lawyers that showed me this, I said, “In California you’d be before the Commission on Judicial Performance [snaps fingers], and you’d be out in a nanosecond.” But this guy is well known. I don’t remember his name. When I’ve explained this the lawyers tell me his name; they know it. It’s kind of sad, because there’s got to be some system on the federal side where these kinds of things are taken care of. I don’t know.

But I think it’s very difficult and kind of unfair for judges to defend themselves. Look at when my three colleagues [on the California Supreme Court] were removed. Everybody took this, “They’re against the death penalty.” What are they going to say? “That’s the way we saw it.” From a statistical point of view it was kind of hard, because in my judgment you can’t hear sixty-four cases and reverse sixty. I mean, maybe fifty-fifty, but they reversed better than 75 percent.

Then you can make an argument, that, oh, wait a minute, there’s an agenda out here. Whether there was or not I don’t know. I wasn’t there long enough. I know I didn’t agree with them on a lot of these cases, because a lot of the issues that they were reversing on, in my judgment, really make no difference in the case. Like the *Carlos* error, which was whether you had an intent to kill, which was the basis of a lot of reversals. I really had a problem with that.

Of course, we overruled *Carlos*, and then everybody started raising hell about what we were doing. But it’s a difficult deal. I think what you’ve got to ask of judges is that they be honest, that they are industrious, and that they have a knowledge of the law. As I say, we’re not all fungible. That’s the beauty of the system, I think, is that you get different views, and you arrive at a collegial resolution, and most times I think it’s generally fair.

It’s just like certain cases that just stick with you. Clarence Ray Allen. I’ll never forget Clarence Ray Allen’s case. I thought in reading the record, in reading what happened, and how it happened, and that the guy was in prison and contracted to get these other people killed, it was, of all — I mean, I heard a lot of cases. He’s one I remember. Billy Ray Hamilton, who

was the guy who did the killing on the other three, he also has another horrible case involving an eighteen-month-old little baby girl. It's horrible. I started to tell my wife that story. She said, "I can't hear it. It's just terrible."

So that on some of these things we just had different views. But fortunately, we didn't have a problem in the court of appeal. As I say, no one knew what you were doing. The trial judges, obviously, they'd kind of give you the needle if you overturned them, but you know, my view is similar to a judge, that the trial judge says, "I've never been reversed." Then you've never really sometimes done your job, because there are ways that trial judges can cover their mistakes.

A lawyer told me the other day, when I was giving a lecture on protecting the record, that if it's not in the record it didn't happen, but in that case the judge said, "I think this lawyer, she's the best lawyer I've ever had, and I think she does a fantastic job, and I've yet to find that she's misstated something." That didn't appear in the record. When the lawyer goes to see the court reporter to confirm the statement, it's not there. That's not right either.

What these lawyers asked me — because I said, "As part of this process you've got to get it in the record. If you have a sidebar conference you've got to make sure that at some point you get it on the record." "Suppose the judge doesn't let you do it?" I said, "You don't want to be thrown in jail for contempt, but you've got to in some way make a record of it. You say, 'I'd like to put on the record what happened in the sidebar conference,' and if the judge doesn't do it just say, 'I think I need to do it to preserve the record.'" If the judge is a real jerk, he or she could say, "I'm not going to let you do it." I think that's a rare occurrence. The problem is you don't know how it gets sanitized, because what I did tell them is that the reporter is the only person who works directly for the judge. Everybody else is assigned. So there's this relationship. "Hey, you'd better clean it up."

But anyway, with respect to retention elections, I think twelve years is not a bad term, and I think that the problem is that in a small district you could be subject to attack by a small fringe group. So far it hasn't happened. Statewide it's a little more difficult, and in big districts it's more difficult.

MCCREERY: I wonder if you could just for the moment talk very generally about that early transition of arriving at the [supreme] court, and getting yourself physically set up, and meeting people. What did you do about hiring a staff to work with you?

PANELLI: That was the first issue, because the people who had worked for Justice Kaus, one of them had indicated that he wished to move on and work with Justice Grodin. I knew I was going to bring Kay Werdegarr with me, because I had asked her right after I got the call from the governor if she was willing to come, so I knew I'd have her. I had a young woman, Melanie Gold, who had been with me in the Sixth District, and I wanted her to come.

There had been three. One of them left, so I had two left, Alice Shore and Barbara Spencer, who had been with Justice Kaus. I had talked to the chief justice about them, because Alice Shore had been there for many, many years. She had worked, I think, at one time for Chief Justice Bird. The chief suggested that maybe those weren't people who would be compatible with me, which surprised me.

So I interviewed them and I said, "What I'm going to do is see if we can get along for a period of time." I suggested maybe ninety days, and maybe they wouldn't be happy with me and I wouldn't be happy with them. But after about a month or two, they were obviously very professional, very experienced, so I went and told the chief that I had decided to keep both Alice Shore and Barbara Spencer. She was very surprised. I don't think she necessarily encouraged it, but it was very, very important to me, and Alice Shore became my chief of staff.

She was very helpful, and Barbara had been there a while, and they had both worked with Otto Kaus. So then I had Alice Shore, Barbara Spencer, Kay Werdegarr, Melanie Gold. That left me with one other position, and I think I took another first-year. The idea had been to have some sort of rotation. Usually you had the one-year people that stayed on maybe for an extra year.

But I found out that first year that that really wasn't very good, because — like Melanie Gold, at the end of her year, she had been working on a death-penalty case, but it wasn't ready yet to be put on the calendar. When I assigned it to someone else they said, "With all due respect, we want to start all over again." So it became clear to me that you needed people who were going to stay, and so the trend began that you would get people who were going to do it for a period of time.

MCCREERY: That was happening across the court, I gather?

PANELLI: Yes, yes. The only one who had some sort of an outside limit was the chief. She felt, I think, that it was five years — after five years you had to leave. But most, like Justice Mosk had Peter Belton, who had been there for a hundred years, and similarly with Jane Brady, who had been there for a long, long time.

The reinstitution of the death penalty changed the character of the court, because those were the only appellate cases that you received, and when they were coming in the quantities that they came in after the reinstatement of the death penalty, it just required people with more experience. It slowed down the process because it took so long. Then, even when some of the cases got affirmed, you had to go through the habeas, and so the habeas was redoing everything all over again. Whoever was assigned to work on that particular death penalty case had not only that case, but ultimately the writ as well, so you needed people who kind of knew the process. But I can't remember offhand who the fifth person was. It might have been Louis Moro, who was from McGeorge [law school].

I was a judge on the California finals of the Traynor Moot Court competition, and Judge (now Justice) Anthony Kennedy was on that panel, and when I saw who one of the oralists was, it was this fellow that I had selected to be my next year's law clerk. I said, "Gee, I'd better recuse myself from this." I said, "I'm not going to tell you anything about who he is." But I'm not sure, I'd have to go back.

But that was the first thing that we did is to try to get a staff. Similarly, very important then was to get a secretary. I was very, very fortunate, because we had a woman who had been kind of a backup secretary, kind of a floating secretary, but more of a backup for Justice Reynoso, Anna Helsley. She was from El Salvador. So she was very, very helpful, because she knew what we needed to do and what the process was.

And so we started. I'll never forget the first week I was there I got this huge — not the first week, because the first week was oral argument in Los Angeles. But while I was there, I got the first batch of petitions for review that we had to work through, and there was a certain learning process. While I had sat as a pro tem on one case previously, I didn't really understand the inner workings of the court. What we called the secretary, which was kind of the internal clerk, [was the position] where all the confidential

briefs, the work in progress, the assignments, all of those things took place. I had been unaware of that, so I had to find out what they did.

Then I had to learn what the civil and criminal central staffs did, how that functioned, and who had the responsibility for oversight, because I found out that that's a rotating assignment — and I forget how long you had it for, two months or three months — where you met with them to in effect be the liaison between the court and these attorneys, suggesting to them that what you may have heard in conference, that the memos are too long, that there are things that need to be done that aren't being done, those kinds of things. So I was introduced to that.

Of course, I was introduced to the fact that the way they operated with respect to circulation of opinions was the way they had done it, I think, from time immemorial, because they literally had a box that they passed from justice to justice, and all the materials were in the box. So after a while you start to get acclimated and you start to know what you do, and you found out that most of the negotiation was done with staffs, which I didn't like.

MCCREERY: As opposed to justice-to-justice? Give me an example.

PANELLI: You'd get someone's draft and you'd read it and you'd tell the lawyer, "I really have a problem with this. I could be persuaded maybe if some of these things are changed this way."

So that law clerk would go to the other law clerk and say, "My judge thinks that we're having some problems with this, and maybe if this could be modified maybe we could go along with you," or something like that. I found that a little disturbing, because sometimes it gave the impression that the law clerks had more power than I thought they should have. I'd like to go talk to the judge myself. I shouldn't say this, because I'm not that fresh! But I knew that I could always go talk to Justice Grodin. We could sit and have a talk, and I knew that he was on top of the case.

That was part of the problem. You don't know what they were working on, so you might come in and say, "Gee, I'd like to talk about *A vs. B*." Sometimes [the response is], "*A vs. B*, tell me what it's about," because he's working on *X vs. Z*. Whereas the lawyer who was working on *A vs. B* could go to the other lawyer who was working on *A vs. B*, because you're assigned responsibility for these cases. That may have been part of it. But I

could always go talk to Justice Grodin, always to Justice [Malcolm] Lucas, somewhat less with Broussard and Mosk, because Peter Belton was kind of the keeper of the gate with Justice Mosk.

Plus, I'd be less than candid if I didn't suggest that there was some hesitation, because now all of a sudden you had two appointees from a Republican governor, whereas all the others had been appointed by either Jerry Brown or his father, so that there was some issue with that.

MCCREERY: When you say you knew you could always talk to Justice Grodin, you knew him from his days on the court of appeal? How much were you acquainted?

PANELLI: Not very well, because he was in a different division, and he may have gone to the supreme court before I got to the First District. But I knew him because — I forget which division that he was in, I think it may have been the First. Tobriner had a lunch, I don't know if it was once a week or once a month, and they would invite people to join them. I had been invited there at least once, and so I kind of knew them. But I was still kind of awed by all of these people, because here I had been a trial judge, and sure, I'd gone to the court of appeal for a year, and then I'd been the P.J. on the court of appeal for a year, but that had only been two years.

So I was like a kid in a candy store in a way, and so it takes a while to really — I'd call them "Judge," rather than calling by — it wasn't for a while I said "Stanley" or "Joe" or "Malcolm." It was always "Judge." But after you start to feel comfortable with what you're doing — because at the beginning, frankly, I wasn't sure what was expected of you. One of the first calendars that I came on I voted to rehear a bunch of cases that had been decided just before I was sworn in.

MCCREERY: Were those the death-penalty cases?

PANELLI: I don't think so, I don't recall. But I know there were some that there was some feeling that maybe they were rushed to judgment by virtue of the fact that there was going to be a new voter, and there may have been some four-to-three votes. I don't recall the details of it. But I did vote to rehear some cases.

C: As the deciding vote, it sounds like?

PANELLI: Right. Yes, well, because it had switched. It must have been four-three one way, now it was three to three, and so what were you going to do. I remember there was a certain issue about that, and my view was that if these are precedents that I'm going to have to live with, I would like to at least have some say in how they're decided. I'm not sure that ultimately we changed some. Some may have been death-penalty cases that we granted rehearing on, and then I don't know how they ultimately were decided. But others I just thought I'd like to participate in.

MCCREERY: That was your thinking.

PANELLI: Yes, that was my thinking. I couldn't really tell at the end of the day how I'd come out on them, because you didn't have all the information, but they were issues that I was concerned enough that I thought that I should participate. So that's kind of how I started.

But after, I'd say, the first few months I felt — it was a little difficult, because I only had two people who had worked on the court, so as far as the weekly conferences — what you do, what was expected — was new to three of my people. So you had to kind of go along with what they suggested. Later I could start to see that there was a sense of some, I won't say dissension, but there were some differences of opinion by virtue of who had been there for a while, and who you brought on who were yours, like Kay Werdegarr.

But they were all professionals, just like Alice Shore and Barbara when I had those interviews and there was a question of, "Can you work with them?" They said, "Look, we're professionals. You tell us how you want to decide this case, and we'll try to help you make sure that we can write it that way, and if we can't, we'll tell you." That's all you can ask for. But I soon learned that the work on the court was like a traffic cop, and an editor, I used to tell people, because you have to keep the work flowing, but on the other hand you have to know when to stop doing some of this stuff.

Since I was new, I was asked to speak, and I used to always start my talk with a little story to kind of explain my work. I said there was this fellow who was driving a panel truck, and every so often, maybe every quarter of a mile he'd get out of the truck and get out a baseball bat and beat the side of the truck. Then he'd get back in the truck, drive another quarter of a mile, get out, repeat the process.

After a while it caught the eye of a highway patrolman, and he was pulled over. He said, "Officer, what have I done wrong?" He says, "I don't know that you've done anything wrong, but I've seen this behavior where you stop, get out and beat the side of the truck, and go, and then repeat it." He says, "Oh, that's very simple." He says, "What I am carrying is one ton of canaries, and this is only a half-ton truck, so I have to keep half of them flying at all times."

So I said that's how my work is on the court. I have to keep half of the things going at all times, because you'd get two, three hundred petitions for review that you'd have to do, plus you were working on opinions, plus all the other stuff that you were doing, and it was trying to keep things in the air all the time.

I gave a talk to Law Day in some Central Valley bar association. [Laughter] They gave me a bat with a little plaque on it that says, "To keep the birds flying at all times." But I soon found out that what the justices used to do for the Wednesday conferences was to get together with their staff on the Tuesday before the Wednesdays and go over all these petitions for review, which I did for probably a couple, three years, maybe even longer.

Then it became obvious to me that we were five people spending two hours. That's ten hours. That's like an extra day and a half, and we probably needed to spend more time on what we have decided to do, rather than what we decide [about] whether we're going to do it. So then what I did is I would — because on Saturdays and Sundays I read all the petitions for review. But Alice Shore would allocate those among the staff people, who were responsible. They might have had ten, fifteen, twenty apiece, I'm not sure — what I then decided to do is I would read them, and then I'd come in on Tuesday and say, "With any of them that you've read, is there anything that you think is special that I should look at in greater detail?" Those conferences then would take maybe a half hour, as opposed to two hours.

MCCREERY: [You met with them] individually.

PANELLI: Yes, individually. That would work, because most of the petitions for review after they'd been screened by the central staffs — the central staffs prepare memos, usually five to fifteen pages kind of summarizing, with a recommendation as to what you should do with it. When I was there the central staffs weren't fully staffed, so the justices other than

the chief had the responsibility for the preparation of 17 percent of the petitions for review.

But what happens is they segregate them into two categories, the A list and the B list. The B list are cases that have been screened in a manner that whoever made the recommendation suggested it isn't worthy of discussion. So you'd get the big stack of B lists. The A lists are those, whoever screened it, whether it was one of the justice's staff or the central staffs, felt that it was important enough that it should go on the calendar for discussion by the judges. Any judge could put a B-list case on the A list.

So what I found is what I would do with the B lists is I would just look through to see what the issues were, and that might only take you three or four hours to go through maybe even a hundred, a hundred fifty, because you're looking for issues. You're not deciding whether it was decided correctly.

I always felt a little uncomfortable about that until one of my law clerks — after he left me, he clerked for Justice [William] Brennan [on the U.S. Supreme Court]. He said Justice Brennan told him that on certain petitions he could tell in forty-five seconds what the story was, because, see, you're an institutional court, and so you're not supposed to be correcting for error. You're supposed to be deciding issues, in the U.S. Supreme Court, of national interest, whereas with us we're: "Are they of statewide importance, or are there conflicts?" So that you kind of know what issues are important.

So when you see that this B-list case talks about something that maybe you have a particular interest in, or that you have started to see it four or five times, and you think maybe this is something that we ought to now take an interest in, you could always put it on the A list. But the A list were the ones where on Wednesday you're going to go and talk about it.

One of the first things I found, and probably it didn't take me long to find this out, is that everything they were doing, they'd do it by seniority, so that it was Justice Mosk, Justice Broussard, Justice Reynoso, Justice Grodin, Justice Lucas, and myself. So when a case came up on the conference, first the chief would go to Justice Mosk. It would go around. When it comes to you, the votes were all cast.

MCCREERY: It's the opposite of the U.S. Supreme Court, isn't it, where the junior justice speaks first.

PANELLI: Yes, right. No, here you spoke last. So you'd have to really be a great persuader after they had four votes, that anybody's even going to pay much attention to what you have to say, after they've already decided either to deny it or to grant it. Then I learned that if you prepare a supplemental memo to the memo that you wanted to discuss, you got to be the second person to speak. So when I'd see things that I really thought were of interest to me, I would prepare a supplemental memo. Then when Justice Mosk had something to say, I'd have an opportunity to respond before everybody else got to vote on it.

MCCREERY: How did you learn this, from someone else?

PANELLI: One of my staff people told me that, probably Alice, because she'd been there for, as I say, a hundred years. Because they were strictly by the book. You didn't talk out of turn. Chief Justice Bird, she was pretty stickler-ish of that.

MCCREERY: Talk a little bit about how she ran those Wednesday conferences.

PANELLI: She had trail mix, a big jar of trail mix in the center of the room, and she was pretty formal. There wasn't much joking around. She was pretty rigid. As I said, there wasn't a lot of discussion with her. She'd go around. She was pretty firm. It wasn't a very happy occasion.

Plus, see, I guess part of it, there may have been remnants of the fact that here is Justice Mosk, who had been there for years and years, and he had been passed over for the chief. There must have been some, I don't know, some tension, because Justice Mosk was the absolute perfect gentleman at all times, and you would never know it. But sometimes I could see a little resistance, maybe.

But there were people that she could always count on with respect to certain issues, like Broussard and Reynoso, to a lesser extent Grodin. But I always felt Grodin was always a lot more independent than Broussard and Reynoso.

MCCREERY: Where did Justice Mosk tend to fit in, being that he was so senior?

PANELLI: He tended to be on the liberal side, as well as Broussard and Reynoso and Grodin. But he was independent. He could be a maverick if he wanted to.

MCCREERY: And did sometimes.

PANELLI: Even in that election of '86. He would have been a target except he would never say whether he was going to seek reelection. He said, "I've been here a long time. I don't know." So they weren't about to mount a campaign against him, and then figure that he's going to quit anyway. So he got under the radar. He was politically astute. But obviously everybody respected him, because as I say, even though you disagreed with him, he was always very respectful.

Some of the nicest things that I have in my scrapbook when I left were written by Justice Mosk. He wrote me a very nice letter. I forget, I wrote him something and he came back with — this was after I was gone, I don't know if it had to do with an opinion or whatever. But no, no, I always got along with him. Sometimes I'd go over and ask him for advice on some of the stuff, but it soon became clear to me that my ally was Justice Lucas.

MCCREERY: Yes. How well did you know Justice Lucas?

PANELLI: I didn't know Lucas at all.

MCCREERY: Not at all?

PANELLI: Not at all. I think I may have met him at some reception when I was in San Francisco. Maybe it was the supreme court reception that they had for the court. Every year the lawyers have something up at the Mark Hopkins [Hotel], and I think I may have met him there. But Broussard used to always tease me, because the lineup of the chambers were: the chief's chambers, Lucas, Broussard, Panelli. Broussard says, "Oh, you're going to wear out a path between your chambers and Lucas' chambers."

MCCREERY: Going right past his door each time?

PANELLI: Yes. I said, "Allen, who knows? Maybe some day I'll stop in and see you." But I think there was a concern that if you were seen coming out of Broussard's chambers, if the chief saw it there'd be some concern of whether there's some conspiracy. I think she had some issues that — I heard a story about once Justice Racanelli was talking to somebody, and as a result she felt — I don't know whether she felt they were conspiring or something, and so they had a falling out. They used to commute together. So no, you had to be careful with respect to that.

MCCREERY: Kind of a watchful atmosphere, perhaps?

PANELLI: Right.

MCCREERY: Then you say you learned that Justice Lucas would be something of, I don't know what word, an ally?

PANELLI: Because you could see that on some of the issues where they were going one way, and, of course, he always spoke before me, because he was senior to me. He was on my right. I'd come in and I'd say sometimes, "Gee, Malcolm, it seems so clear to me. I can't understand what's happening." His view was, "Hey, I agree with you. We've got it right, and they've got it wrong." Of course, I wrote a lot of dissenting opinions that first year, because you don't get to write the opinion if you haven't got four votes. [Laughter]

MCCREERY: Talk about Chief Justice Bird's assignments of opinions a little bit, to the extent that you were privy to it.

PANELLI: I don't remember that very much, how they did it. But because you had to have been on the grant side of the case — if you were on the grant side of the case then, of course, that probably meant that you had a view on the case that was agreeable to three other people. Because unlike the Supreme Court of the United States, it takes four votes. It takes a majority to grant review. So you could kind of see where you were, and so if you voted to deny, you weren't going to get that. It would be kind of curious for me to go back and see how many cases I wrote in '86.

MCCREERY: That first year.

PANELLI: That first year. I knew I wrote some death-penalty cases, because I remember one, Bloyd, was one of my first ones, *People v. Bloyd*. There was another death-penalty case, *People v. Boyde*, and I think on Bloyd, Alice Shore worked on it, and, of course, she had been with Justice Kaus. I told her, "No, Alice, this is a case that we're going to affirm, because I don't see any problems with what happened on here." So we worked it, and then I saw some draft opinions and then I reworked them.

The suggestion that you could sit down at your desk and write an opinion from beginning to end is a myth, because there's just too much to do. So that's part of where the editor's job comes in. I would read the briefs. I'd call in the particular lawyer or clerk that I wanted to work with on this

case. I'd say, "I've read the briefs." I would outline the issues, and I would say, "This is how I tentatively want to decide this case." I might have maybe three or four sentences of a summary of how I thought I would address this issue.

Then what they would do is they would go do a draft of something, a memo, and then they'd present it to you. Then you would work with it, send it back with whatever corrections or whatever, maybe additional research you wanted to do on your own with respect to maybe some of the cases that they cited. You would do that, and then that's how the things got turned out. Of course, you're doing this with five people at the same time you're doing all this work with respect to petitions for review. So that's what I did.

MCCREERY: You gave this example of the dissent in the death-penalty case, *People v. Boyde*, on which Alice Shore worked. Were you saying that it presented some kind of —

PANELLI: What I was trying to say was that this was coming from a different point of view than she was accustomed to. It took, I think, a little adjustment, because I don't know how Justice Kaus would have decided it, but I know where he was on some of the death-penalty cases. At that point in time we — no, I guess that didn't happen until after the '86 election, where a lot of these cases were being reversed on the basis of what was called *Carlos* error. Following the reconstituted court, if you will, we overturned the *Carlos* case. It had to do with intent to kill, so with that a lot of the basis for the reversals of the death-penalty cases no longer existed.

The other issue that, again, was prominent in the election of '86, had to do with harmless error. I had written a letter to the editor, which I never do, but the San Jose paper here probably two months ago ran a weeklong series on the criminal justice system in Santa Clara County. They first examined the district attorney's office and found fault with overzealous prosecution, et cetera.

Then they examined the defense. Then they examined the trial courts, and then they examined the court of appeal, and they were unhappy with all segments. One of the big things that they had is how many of these cases the court affirmed on the basis that the error was harmless. So I wrote a letter, and I said the constitutional basis for reversing for error has to be

that it's more probable than not that the result would have been different but for the error, because if it's "no harm, no foul" the courts of appeal have to respect the jurisdiction of the trial courts. The trial courts make certain decisions, and the court of appeal has to determine as best they can whether they think that "but for the error" the result would have been different.

So what it is, is a respect for the various responsibilities. They had made a comment that, "The problem with the appellate judges is they look at these cases like lawyers, rather than how the general public looks at it." And I said, "But the appellate judges are supposed to look at the issues like lawyers. They do represent the community in a larger sense, but ultimately the decisions have to be made on the basis of the law." You can't have appellate court nullification, if you will.

MCCREERY: Right. You're looking at legal issues, not deciding the facts of a case itself.

PANELLI: Right, right. And see, the other thing I said, you have to understand that the appellate court only looks at what's in the record, because if it's not in the record, from an appellate judge's point of view, it didn't happen. So those were some changes that some of the staff people had to accommodate themselves to.

MCCREERY: In working with you, as opposed to Justice Kaus.

PANELLI: Yes, in working with me. We never had any — there might have been one case where we had a very substantial disagreement. I don't know what it was, but I remember telling this particular lawyer, I said, "I appreciate your position and I respect it, but as long as I'm sitting on this side of the desk and I'm wearing the robe, we're going to do it my way." I always took the position I respected what they had to do, but I told them many times — not many times, because it didn't come up many times — that if they were really unhappy with the way things were going, they were free to leave. No one ever left.

MCCREERY: The other justices had been at this a little bit longer than you had, some quite a long time, but some of them only a couple of years. But to what extent, really, was the court as a whole still grappling with the changes and the reinstitution of the death penalty with the 1978 statute?

That statute was said to contain some problems that had to come up in the form of individual cases.

PANELLI: Most of those had been addressed before I got there, because the whole campaign in '86 was over the fact that they had reversed sixty of sixty-four cases that they had decided, so that they had obviously set the ground rules for what was expected. As I say, *Carlos*, this intent-to-kill requirement, was one of the big issues. Then there weren't any affirmances on the basis of harmless error, or if there were a few, there were only four out of sixty-four.

But honestly — people may not believe this — I really didn't pay that much attention to it, because first of all, when I was on the trial courts I never had a death-penalty case, and when I went to the court of appeal we didn't get the death-penalty cases. So you have — this may sound a little cavalier — you have a tendency not to pay attention to what you're not getting involved with.

If I had had a lot of criminal trials, and I had had trials that involved the death penalty, then I might have been a little more in tune with what people were saying. Our [law] office did represent a death-penalty inmate who got the death penalty twice, and then when *Anderson* came out, of course, it was commuted to straight life, and Earl Sears died a free man. So I kind of knew it from that point of view, and we would talk about it in the office when I was a lawyer.

But I really, frankly, didn't pay a great deal of attention to it, not until I got on the court, obviously. Then the rules, most of the rules, were already established, so that was kind of the frustration that I had, because I thought some of the cases should have been affirmed.

MCCREERY: But this matter of a harmless error versus a prejudicial one, what room is there to consider the seriousness of the penalty in a death case? Where does that enter in, as opposed to other penalties?

PANELLI: The thing is that people don't really appreciate how heinous the crimes are. It may have been at one time, like when [Caryl] Chessman got the death penalty — it wasn't even a murder case, it was a rape case. It may have been someone who killed an individual. It wasn't good, but it wasn't like the special circumstances that you had to show.

When you got into the special circumstances, multiple murders, and some of these guys, they'd been out on the street for two months and they'd commit another murder, so they're charged with multiple murder, and you look at it: This jury's going to convict them every time he's tried. It doesn't make any difference. Then, of course, as things developed, then the big issue became whether the aggravated circumstances outweighed the mitigating circumstances, and so that became the battleground: they could have put this on, they could have shown this. Part of it, you have to make a judgment call.

MCCREERY: I wonder, to what extent did you discuss this directly with your colleagues, and again, we're talking about that first year before the election changed the makeup of the court. Do you recall?

PANELLI: You would discuss it, and they would tell you why they viewed it differently. That's why I say on occasions I'd ask Malcolm Lucas, I said, "Gee, Malcolm, it seems so clear to me. I just can't understand where they're coming from on some of this issue."

But anyway, we got along. I wrote — see, one of the issues was that we didn't, because we weren't voting to — I shouldn't say we, because I don't remember what Lucas was doing. But I was dissenting on some of these cases. So then the concern was that you're not doing your share of the work, because five people, and it usually would be five, were going one way, and you're not writing those cases. You're dissenting to those cases.

So there were certain cases that I wrote as an affirmance by the court, where I would then dissent. I would write them the way five votes wanted them, and then I would write my dissent the way I really think it should have been decided.

MCCREERY: What would prompt you to do that?

PANELLI: Just out of concern that people were thinking that I wasn't doing my fair share of the court's workload. There was criticism, "You're not getting out a lot of opinions."

MCCREERY: That's kind of an odd angle to it, isn't it, separate from subject matter itself.

PANELLI: Yes, because there are only seven of you there, and you don't want people to go back to their chambers, grumble, grumble, grumble,

“Gee, he’s got it made. He didn’t have to do anything.” And so we’d tell people, “Okay, this one here you have to do it the way these other folks will do it,” and it was kind of easy, especially for those people who had been there. “Then I’ll decide whether I want to write something in addition to it.” There were some that I felt should have been reversed, and I wrote them that way. At one point I knew what they were, because there were certain cases that people dissented to my reversal.

MCCREERY: Not thinking only of death-penalty matters, but in general, what was the usual thing on that court in terms of any attempt to have the court speak with one voice?

PANELLI: Oh, I don’t think that that was — the fact is, I think the view of some was that that’s not good that you all agree, you’re kind of in lockstep. That was a criticism after the ’86 election.

MCCREERY: Later on, yes.

PANELLI: Yes, later on. In the civil area the difference wasn’t as pronounced, but there was clearly, I think, a view that was favorable to plaintiffs, and clearly disadvantageous to insurance companies. There was always a willingness to extend remedies, in torts especially, and especially when it was involving insurance companies, businesses. One case I remember, *Seaman’s*. That was a case where they, in effect, tortified contract damages. That was always a sore spot, and that later got reversed after I left the court, but I knew it was an issue that people were concerned about.

MCCREERY: But at the time, the early time that we’re talking about, there was no unwritten or unspoken routine about when and how one would dissent or speak separately.

PANELLI: No, no. I’ve got to say that I think Chief Justice Bird wanted people to say what they felt they needed to say. I don’t think she was ever one to try to stifle dissent or disagreement. I don’t think she was happy if you disagreed with her, but as far as suggesting — let’s face it, I wasn’t in her inner circle, so I don’t know what conversations she may have had with some of the others.

But she was always nice to me. She was always pleasant and courteous. We had some differences at times in the cloister of the conference, but we always, as far as our relationship, she was very nice to me. She’d ask me

about my mom, because my mother had been there when I was sworn in, and all of that kind of stuff. That part of it she was — you know, I knew her when she was a pig-tailed public defender in Santa Clara County.

MCCREERY: That's right, you went way back, didn't you?

PANELLI: Yes, so I knew her.

MCCREERY: Who was in her inner circle, both among her colleagues and staff?

PANELLI: Broussard. Broussard and Reynoso, very close. She named Broussard the assistant chief justice, or the acting chief justice, skipped over Mosk. So no, he would be the point person for her, and Reynoso also was very close to her. Her staff people, I can't think of some of them now. But one of the things that was different. You'd have to make an appointment to see her.

MCCREERY: I wondered about how accessible she was.

PANELLI: No, you'd have to make an appointment to see her, and you never spoke with her in the absence of Steve [Buell], who was her administrative assistant.

MCCREERY: Why was that?

PANELLI: I have my ideas, but it's not something that I want to express publicly. [Laughter] I think she was concerned. Maybe she had been burned, so she wanted to make sure there was a record of what went on.

MCCREERY: Really, by the time you came, the lead up to the '86 election was already very much in the public eye.

PANELLI: That was in my confirmation. Everybody wanted to know how you were going to vote on the death penalty, because obviously Deukmejian, I guess — I don't remember on what platform he ran, because as I say, all the people that I knew had supported Mike Curb. But I knew that the death penalty was one of them, and so that was all the big thing, "How do you stand on the death penalty? Did you talk to him in your interview about the death penalty?"

I always kept saying, "When you get to this stage they don't have to ask you those questions." That's why I found it kind of amusing with these U.S. Supreme Court confirmation hearings. Whoever did the groundwork on

these people knew enough about them that you don't ask those questions. So my views when I was on the court here, I was viewed as a moderate, especially on social issues. With respect to taking responsibility for your own actions I was very conservative, because that's the way I was brought up. "You did the crime, you does the time" kind of thing.

But having had my folks, my mom working in unions and the sometimes the lack of support she got from the unions with respect to those kind of issues, and issues with respect to disrespect because you didn't speak the language and that kind of stuff. On those issues I kind of had my own views. I would think probably fiscally I was pretty conservative, but other than that I always viewed myself as kind of a middle-of-the-road person.

But then after a while you start to see, especially — there were these death-penalty cases. I couldn't even talk to my wife about them, some of them were so heinous. One case, this guy takes an eighteen-month-old little girl and tries to rape her. There was no way that guy — the jurors — they finally caught up with him in Texas and some mob was trying to string him up, and had they caught him they would have.

But those are the kind of things. We had one, these two poor women who worked on Labor Day go to their office at an insurance company in Sacramento, and the next thing is one of the janitors rapes them and cuts their throat. In another case the assailant took two women out and bludgeoned them to death with a rock. She's crawling, this woman, she's barely alive with no clothes on. She comes out and gets saved, that's how they caught the guy.

But those kinds of things. After a while you start — it isn't some guy in the heat of passion kills his lover, or somebody else. They were tough, tough cases, and so I think you tend to change your attitude towards them.

MCCREERY: I wondered how your own attitude might have evolved.

PANELLI: Because I had represented criminals when I first started. My first case, Don Signorelli, ten counts of armed robbery. But you start to change. In the civil area, of course, you start to change because you start to see things getting stretched way beyond where you think they should have been.

So then people start to categorize you, and, of course, let's be honest. Most of the people who teach in law schools are very liberal, and most of the papers are very liberal, so when you start — and they're all opposed to the death penalty — so when you start to affirm those kinds of cases, then you get categorized like you're some sort of a devil. Then people start to characterize you as this conservative, and I'm thinking to myself, gee, how could I have changed from San Jose to San Francisco?

So that first year was very stressful, because there was all this stuff going on. You knew that these three people who were on the firing line were trying to keep their jobs, yet trying to do their work on the court, wanted to maintain their integrity with respect to their views with certain issues. So there was a lot of pressure. Suppose all of a sudden you started to change what you felt was right that you had been doing. Then people say, "They're hypocritical. They're only doing it —," it would only be worse. So it was a tough situation for them.

As a result, it was tough for the rest of us who knew we weren't in danger, because no one was shooting at us. In a way they're asking you for your support, but you don't want to get in the line of fire. I remember I told them, I said, "My mother told me if they're not shooting at you, don't get in the war." That's been the Italian way. [Laughter]

So I didn't do much, and I think there was a certain resentment. As I say, if people asked me I told them they ought to vote for Joe Grodin. The only thing I did publicly for him is I brought him down to the San Jose Rotary Club that I'd been a member of while I was down here, which is a big club, and I had Joe give a talk to them. But that's all I did. But I think some of the folks resented that you didn't really get out and do more, and publicly support them, because all the people wanted you to publicly support them, and I said I'm not going to do that. So that probably didn't bode well for the collegiality.

MCCREERY: As you say, wanting to keep the spotlight off yourself. But you felt that you could actively speak in favor of Justice Grodin, as opposed to the others?

PANELLI: I would do it privately. I didn't get out and say, "Yes, you can put my name on a newspaper ad." But if friends say, "What do you think of this?" They'd call you. I'd say, "I think he's" — because as I said, he was

a loss to the court, because he's a scholar, he's a bright guy. We probably wouldn't agree on much, but part of the job is to have people who may point out to you that you're wrong, and he wasn't afraid to do that. Even our last thing here, we had some issue over how I phrased something, and he said, "Instead of burden of proof, would you say burden of persuasion?" I said, "That's okay with me."

So that was kind of the first year, and I had these new people coming in. But after the election, of course, then things kind of changed, because number one, I jumped way up in seniority, because then I was junior only to Justice Mosk and Justice Broussard.

MCCREERY: Quite a change.

PANELLI: Quite a change. And while I knew the people who had been appointed, I didn't know them well. I knew Justice [David N.] Eagleson somewhat, I knew Justice [Marcus] Kaufman not at all, I knew Justice [John A.] Arguelles a little bit, but not really very well. They were all from down south. Justice Kaufman was from San Bernardino and that area, but for me it was all south.

One of the things that was difficult is that I came on the court on the eve of when all of this was going to happen, so it wasn't as if I had been there for a year, or a year and a half, and then it all happened. But here you're the new kid on the block, and all of a sudden the people that you're working with, three of them were being challenged, and how to conduct yourself in those circumstances was a challenge.

On the one hand, there's a certain collegiality that exists on the court, obviously, when you have seven people. On the other hand, there's a thing that you don't want to jeopardize your own position when you know that you're not really known, statewide especially. As it turned out I think I got 80 percent of the vote, or something, the "yes" vote. So how people differentiated between you and the people who didn't get confirmed, it was a difficult decision as to how to conduct yourself.

MCCREERY: You and Justice Lucas were in the same boat in that regard.

PANELLI: He had been there a little longer.

MCCREERY: He'd been there a year and a half or something when you came, so he did have more time.

PANELLI: He kind of knew a little better how things went than I did. My first calendar is we're in the year that they're going to have the election. I was hoping, see, from my own point of view, that I wouldn't have to stand election for a couple of years, because I said, I could get caught in this "throw all the rascals out," especially when — Chief Justice Lucas came from Los Angeles, he was well known. He had, I think, probably a base of support in a much larger area. Down here, of course, or in San Jose and around here I was well known and that was no concern. I knew I was going to do okay here. But in Los Angeles and that area, I wasn't a lawyer who had ever gotten down to Los Angeles to try a case, so you didn't know what was going to happen. I don't remember if there was any polling on how we were going to do. All I knew is I wanted to stay out of the fray if I could and keep my nose to the grindstone and hope that I didn't do something stupid.

MCCREERY: Yes. The media reported that you were a very cool customer, just along the lines that you're saying, stepping back. In fact, didn't you go off and run a marathon just before the election?

PANELLI: I ran the New York Marathon just the weekend of the election.

MCCREERY: Tell me about that. That's an interesting hobby.

PANELLI: Someone from the *Daily Journal* took a picture of me in my running outfit on the lawn there in front of the state building. It was on the front page of the *Daily Journal*, saying he wasn't going to pay any attention to the election — "His only preparation for the election was to go to New York to run the New York Marathon."

MCCREERY: That put some distance between you and the election quite literally, didn't it?

PANELLI: It did.

MCCREERY: How did you do, by the way?

PANELLI: I did pretty well. I don't know, my certificate with my time is at home. I did it in a little over three and a half hours.

MCCREERY: Sounds great.

PANELLI: Before the race, where we gathered in this park, Fort something or other near the Verrazano Bridge, where you start the marathon — I think they call it Fort something [Wadsworth], but it isn't a military base.

There was a gym where the seeded women runners were preparing. They were in there on these mats being psyched up by their coaches, and they were all just little things. It was raining, and Tony Ridder, the CEO of Knight Ridder, was one of my running buddies. He said, "We've got to get in there, because it's cold and rainy outside." So I said, "We're not supposed to be in there."

We got in there and we're walking around, and then Lynn Swann is coming with someone on the TV thing, and so Tony Ridder says to him, "This is Justice Panelli. He's on the California Supreme Court. He's running for retention the next day." He was doing it kind of as a joke. I said, "And he's the CEO of the Knight Ridder newspapers."

He said, "Oh, that's great. We'd like to interview you about your running. You've got this election," and all this kind of stuff. So he says, "At the nine-mile mark is where we've set up our booth." Just about then some guard comes over and he says, "You people aren't supposed to be in here," not to them, to us. So he says, "We'll see you at the nine-mile mark." Okay.

So when we run the race and we get to the nine-mile marker, he's saying, "Sorry, the race at the end is close. They're at the eighteen-mile mark or something." He said, "We haven't got time to do that." I had my people videotape the thing, and they show myself and Tony going behind the booth and on our way again.

But yes, so it was fine and we came back and found out that I won, and I don't think that on election day that — I must have had somebody check it out or do something, because I know I must have followed it. I don't remember. I remember the only election that I really followed was the first time I ran for anything, when I ran for this West Valley Community College board.

MCCREERY: Before we leave the subject of the election, you talked a few minutes ago about how Justice Mosk managed to separate himself in the minds of the public from the others who were being targeted. Indeed, I think some of the organizations that were set up eventually dropped him as a target, so perhaps that had something to do with it. But just talk a little

bit more about what you saw happening there. As you say, he was very politically astute.

PANELLI: Yes, they kept asking him whether he was going to seek reelection ahead. He'd taken the position that yes, he was seeking reelection. I think the fate that befell the other three could have happened to him, because he had been on the majority on most of those cases, but he was smart enough to say, "I'm not sure that I'm going to do it. I haven't made up my mind." So I don't think they wanted to waste their resources on someone who may not be a candidate and who politically probably had more clout than any of the other three, because he was very close to Governor Pat Brown. Here he'd been the attorney general of State of California, so he had run on a statewide ballot, so he had a lot of name recognition. So I think that probably also figured into it.

MCCREERY: I wonder what you thought in principle about these groups being formed for the express purpose of ousting judges. Was that something that we had experienced much before then?

PANELLI: No. I hadn't really thought about it. I was surprised later to find out who some of those groups were. After the election when you're going out and speaking to bar associations or other groups, and people would come up and say, "We had this view of those folks." I think Cardinal [Roger] Mahony, who had sat with Rose on the farm labor board [Agricultural Labor Relations Board], I found out that he was opposed to her, which surprised me. I don't know if that was public, or whether he told me this later or something.

There was this fellow who's a well-known — he's deceased now, a well-known television actor, also told me that he contributed to groups to remove these folks, which really surprised me. I don't know how active that was here in Santa Clara County, but I'm sure that there were groups that were opposed.

MCCREERY: They started way in advance of the election, a couple of years even. Of course, some of them had been working on it since earlier retention elections.

PANELLI: That's why I told you that clearly it wasn't something just done then, because that was the big issue about the appointments that

Deukmejian was making. These groups wanted to know what you were going to do, because they understood that this was a big issue, although I was never approached.

MCCREERY: One of these groups was put together by someone who had close ties with Governor Deukmejian.

PANELLI: I'm sure that he was all in favor of it. I'm sure that he probably led the charge.

MCCREERY: Indeed, he had come out, again quite a bit ahead of the election, and stated that he would not vote himself to retain Chief Justice Bird.

PANELLI: That was probably a campaign thing. He felt — that's one thing I've got to say about — I didn't know the governor before I got appointed. But whether you liked his views on things, I found him to be a man of great integrity, and I found him to be very, very honest. He felt strongly in his position, and he felt that if you were going to seek the office that he was seeking when he ran for governor, I guess, part of his platform, I think, was to get the supreme court straightened out.

They viewed it as that the majority was disregarding the law, and they were injecting their own personal views in how they interpreted the law, and that isn't what they were supposed to do. I have that view with some of the folks that I see on the Ninth Circuit [Court of Appeals]. I think there's at least two of them that they don't care what the law is. If they don't like this particular thing, they're there for life and they're going to do what they want to do.

MCCREERY: That's, of course, one of the great controversies about judging in general, isn't it, at every level?

PANELLI: Yes, well, except that at the state court level you have the electorate that has something to say, whereas on the federal side, once you're there, you're there. I'll bet you they remove more judges in California in elections than have ever been removed by impeachment in the federal side.

MCCREERY: There's a move afoot now, I think, to at least make a change in California, so that the retention election, or the first retention election is always for an additional twelve years, rather than this four years, eight years, twelve years. Everybody has something different.

PANELLI: I had to stand for election within a year of my appointment. Because of the year, it was the next general election, and then that was only to fill out Otto Kaus' term. Then I had to run again four years later for a twelve-year term. Because my term ran to 2002, and I was elected until 2002, it's my view that I was precluded from obtaining any other public office until my term expired because I had been elected to a term that still hadn't expired.

There had been a situation recently where someone was reappointed to the superior court after a retirement, and there was a question in my mind whether you could do that, because Justice Racanelli, when he was a judge here, had been elected for a six-year term, and Jerry Brown wanted to appoint him to another state position. There was a rumor that he couldn't do that because he had been elected as a judge for a term that was still in place. Maybe if you resign, maybe that was it. I don't know, I didn't follow it.

But it would have been nicer not to have to go through it again four years later. After four years on the job I still got confirmed by a large percentage in the seventies, but I didn't have as much of an affirmative vote as I did when I was brand new.

MCCREERY: Of course, it wasn't that kind of polarized election either.

PANELLI: I always was concerned about when I came down and formed the Sixth District, that that was a risky maneuver, because only the people in the district vote on those retention elections, and it's a small district. It wouldn't take a lot to get a group together [in opposition] if the issue was hot enough.

That's why it's kind of interesting with this article that I had mentioned that the San Jose paper ran. They had one judge who was the most reversed, or affirmed more cases or something. It was a very interesting statistic, and if someone wanted to take that issue up, I could see that they could make a problem. But no, I think they picked on the wrong issue. The public isn't concerned that people are affirming too many convictions.

MCCREERY: Right. Just finishing up about the election, as you point out Governor Deukmejian was running for reelection, of course, at the same time in November '86, and he had really made a prominent issue of victims' rights.

PANELLI: Yes, it was a platform.

MCCREERY: Indeed, he had had his Victims Bill of Rights Act passed as a proposition in the '82 election, I guess.

PANELLI: That's when he was elected the first time.

MCCREERY: Yes, the first time. And, of course, that had made its way through the courts and been declared constitutional, and so on. I just wonder what your view was of the changes coming to California law as a result of that act. Did you have much of a view of it by that time?

PANELLI: No. I don't think — you mention it. I don't remember what its provisions were.

MCCREERY: It changed some of the search and seizure — it was actually kind of a variety of different things, held together under one act.

PANELLI: I knew one was that, I think, victims had the right to appear at sentencing, that you had to take into account the victim's position with respect to the sentencing, but I don't remember it all. There's a lot of those issues that I — just like when I mentioned *Carlos*, I remember that. I hadn't thought about that for a long, long time.

MCCREERY: I just was wondering to what extent it seemed to be prominent in the minds of the public at that time.

PANELLI: During that period of time everybody was concerned that maybe we were coddling criminals, and so the public wasn't being protected. You've got to be tougher. The tough on crime, the law-and-order thing, that was a very, very strong political issue. Whether that was really as bad as people portrayed it to be, it's hard for me to know, but I know there were some goofy decisions, in my view some goofy decisions.

MCCREERY: What did you think about victims' rights? Was that an appropriate thing to emphasize?

PANELLI: I think it's a balance. I used to tell people, if the Constitution says you can't do it, you can't do it. The problem is, there's a lot of discretion in some of these things. What is probable cause? That's the other thing that we dealt with. We started to have inevitable discovery. That started to come down, so that these were all things that probably worked to the disadvantage of criminals, but to the advantage of the public. It still was within the sanctions permissible by the Constitution.

But that's one issue that I remember. When all is said, was it inevitable, would they have been able to get that evidence? That was always — you had to make sure that you really paid attention to those issues, because the probable cause when you knew that they were the fruits of a crime and you couldn't get it, you couldn't use it. It's not a question that the person didn't do it. It's a question that under the Constitution could you prove that he did it?

I just cited an example this Saturday at a mediation. We were talking about juvenile. I said, I remember the one time that this kid is selling marijuana out of the trunk of his car in a high school parking lot. He gets arrested, but the officer didn't have probable cause in my judgment, so I said, "No, you've got to throw out — you can't say that you found this in the trunk."

The parents then turned on the cop and said, "See? You arrested my son improperly," and all this. I said, "Wait a minute, wait a minute. Time out. The law says he can't use [the evidence], but you should be on your son saying, 'What's the idea that you're selling marijuana out of the trunk of your car to other high school kids.' You put the accent on the wrong syl-LA-ble."

MCCREERY: [Laughter] Yes, very well put.

PANELLI: So those are kinds of things that you needed to think about. But the problem was, I remember poor Justice Grodin when I brought him down here to San Jose. He was trying to suggest why some of these things are constitutional rights, and this and that. I remember he answered this one question. He said, "It isn't a question of guilt, because they probably were guilty, but there's a question of their constitutional rights." Then, you can imagine, someone says, "They're guilty? Then, come on now."

MCCREERY: But that's the public's lack of understanding of the appellate process, or what?

PANELLI: It's lack of understanding by the public of the court system. I got a call from Justice [Marvin R.] Baxter here about a month ago, asking if I would be willing to participate in a conversation about the courts, and the perception of the courts, and how ADR may or may not affect it. I said sure. So I got a letter here recently from the Administrative Office of the Courts saying that they're going to have this conference call with a bunch

of different people, to talk about some of these things. Part of what I think they're trying to show is people don't really understand the court system, and that is so true. I think people get their impression of the courts by watching *Law and Order* and those kinds of programs.

It was kind of discouraging to me, just the other day, a week ago Friday. I'm in line waiting to get on the cattle car on Southwest [Airlines]. I get on the A list [for boarding], and so I get there early, maybe an hour and ten minutes early, so we've got plenty of time before the plane leaves. This guy's behind me and we start talking, "What do you do?" and I told him, and then we start talking about, "What did you do before?" and I tell him.

I'm trying to explain to him the appellate process. Here's a guy who's got his own business in marketing. He had no idea of what I was saying. Then he was asking about Barry Bonds and the indictment process, and I said, "But you understand the indictment process is just to determine whether there's probable cause. They can do it in the indictment process, or they can do a preliminary hearing." I said, "The D.A. prefers to do it in the indictment process, because the defendant isn't there. He tells them what he wants to tell them. But as a result it is supposed to be private. It's supposed to be confidential until they file the thing, because it's a fact-finding thing."

So then he still didn't understand. Then we were talking about the appellate court. "What do the jurors do?" I said, "No, there isn't [any jury]." I'm trying to explain the story. It's very frustrating that people just don't have any conception. Or when people say, "What did you do?" "When I retired I was on the California Supreme Court." "Oh." They think it's a trial court. Part of the confusion — for most of these people that isn't the basis, but in New York the general jurisdiction trial court is the supreme court.

MCCREERY: They call it the "supreme court."

PANELLI: And the higher court is the court of appeal. So the people who sit on the supreme court in New York are the justices, the guys who sit on the court of appeal are judges. So there's some of that. So my point is, if I get to do [the conference call] — because when they want to schedule it, it's times that may be inconvenient for me — is I think people don't spend enough time talking about it in school.

I think one of the good things is that they have these mock trials in some of the schools, and they do that. So those kids know it. But I think it's a hopeless task. If you go on the street and ask someone, "Who's the vice president of the United States?" they don't know. People don't know. Lawyers don't know who the justices are on the California Supreme Court, or where they sit.

MCCREERY: Yet the public is voting on whether to retain judges. It's an interesting system, isn't it?

PANELLI: It is. It's crazy.

MCCREERY: I wonder what else you have to say about the tenure of Chief Justice Bird and her colleagues, knowing you were with them only a short time. How do you deconstruct that?

PANELLI: She either was very well liked, or she was disliked. You had very strong opinions one way or the other. There wasn't anyone who was neutral with respect to her, and part of it, I think, unfortunately, was her personality. I think she was distrustful of people, and I think that hurt her. But she could be charming, she could be warm. It was interesting to see how she would react, depending on how she perceived you viewed her.

MCCREERY: She had the aspect of needing to lead the entire court, which everyone does in a different way.

PANELLI: Plus, in a way I felt sorry for her. Here she's a woman at a time where women — it isn't like today, for goodness' sakes. I don't think people would think twice if you had a woman president. But years ago — was it Justice [Sandra Day] O'Connor who said she was [asked if she] was going to be a legal secretary, as opposed to a lawyer? So I think that was part of it.

Part of it was that people felt that this was a Jerry Brown stick-it-in-your-face kind of deal, because everybody figured it would be Justice Mosk [elevated to be chief justice]. But he wasn't going to do it that way. So I think she started out with a difficult deal. She had no judicial experience, not that you need to have judicial experience to be a good judge on the court. Especially on the supreme court it may not be as necessary.

I think it is necessary, personally, but if you have enough people who have had judicial experience, then it doesn't matter if you have one or two who don't come that way, because I think once you sit on the bench you

get a perspective that you may not get when you're just a lawyer. But on the supreme court, since most of it is reviewing records and doing legal stuff, it isn't as important.

But I think those were all kinds of things, and then immediately, they took this position with respect to the death penalty. So that automatically turned half of the people who had voted for the death penalty against her. So it was a tough deal for her, and I just think that she felt that what she was doing was right and she wasn't about to change, and so you've got to give her credit for that. She went down with her beliefs, as opposed to being like many people who are in politics, not that I suggest the judicial branch is a political branch.

But when you're running for election, obviously it has those [aspects], that a lot of these politicians will say whatever they think is necessary to get themselves elected or reelected. I can guarantee you that Rose Bird would have never done that. She felt perfectly secure in what she was doing. She thought she was right and that the law supported her. It's just unfortunate that the public didn't.

MCCREERY: What was the atmosphere at the court after the election?

PANELLI: I never saw her again. The fact is, I made a special effort to come back from — I was supposed to watch the Rose Bowl, but they were going to have a party for her so I had to get back for the lunch, and she never showed. So I don't think I ever saw her again in the court. Apparently there was something about the fact that they came and removed a lot of the administrative files from her office. I never got involved with that. No, I didn't see her.

MCCREERY: Just talk then a little bit, if you would, about the transition period, and then learning of Governor Deukmejian's elevation of Malcolm Lucas to the chief's chair. How did you learn about that process?

PANELLI: There was a fellow who was a writer for the Sunday news magazine for the San Jose *Mercury*. I forget what the name of it was. They ran a caricature of me on the front page that says, "Will he be the chief justice?"

MCCREERY: Yes, you were up for consideration, by some accounts.

PANELLI: Yes, yes. But, I knew that — here Malcolm Lucas had practiced law with Deukmejian. He had been his first appointment. There wasn't any

question in my mind. I am satisfied had I stayed I'd have been the chief justice, because I'm sure that Pete Wilson would have appointed me. But I wasn't interested in that. I never, ever suspected that I'd be on the Supreme Court of California. When I decided to go into the judging business I always had expectations that I'd get to the court of appeal, but I never thought beyond that. So the idea of being the chief justice was not something that I liked. I didn't like the high profile. I don't like the schmoozing that you have to do, to go to all of these things, smile all the time, have your wife on the dais, "And his lovely wife."

My wife, she was fantastic. When I left they had kind of a roast, and she was one of the speakers. She said, "If I ever have to go to one of these where he says, 'And Justice Panelli and his lovely wife.'" They don't say even "his lovely wife Lorna." "And his lovely wife." And so she had this whole shtick. She was really funny about that.

But some people are very good at — Ron George is. He loves it and he's very good at it, and he likes to do that. Lucas, of course, had the persona of a chief justice. Everybody used to always say if you ever went to central casting and you were looking for someone he'd fit the perfect image of that.

MCCREERY: Why was that? What was it about him?

PANELLI: He's a tall man, handsome, got the gray hair and all. He's more senatorial. I was the kid from Santa Clara, and that never was — I obviously got along with people. I got elected. We were talking about that today, some of the staff were talking about high school. I said, "I was class president each of my four years." "Oh, you were?" I said, "I had the lead in the senior play," and all this kind of stuff.

In a small environment I was popular and all that kind of stuff, but I never was high profile. We had a small-time law firm. When people used to always ask — even when I was on the bench — "Who's your firm?" We really didn't have a firm. So it's just a different deal, and so that wasn't anything that I was interested in.

In this article I told the reporter, "I'm not interested. It isn't going to be me." It was nice of him to write this thing. I have it in my scrapbook.

MCCREERY: I'd love to see it. But it's flattering to be thought of as a serious candidate.

PANELLI: Yes, it was something. It was okay. But I was just happy to be on the court.

MCCREERY: You mentioned briefly a few minutes ago that you had a slight acquaintance with some of the others who then joined the court the following year.

PANELLI: Right. Probably of those I knew somewhat better John Arguelles. But see, all of these people were longtime friends of the governor. Maybe not Kaufman, but Kaufman was a very outspoken conservative, and he was one of the names that was considered when I got the appointment. He was one of the six, also a very, very bright fellow, but really outspoken.

Sometimes he'd ask these questions, he'd get red. I was concerned he'd have an apoplectic fit, because he was so intense, and his voice — he'd raise his voice. So he may not have been the most popular, but personally and in private he was a pussycat, a very, very nice fellow. I came to really like him.

We agreed mostly, but if you didn't agree, he disagreed passionately with you, and he had some strong views on certain things. But there again, if he felt he was right, he was going to stick by his guns. You could go and say, "Gee, maybe it would look better if you didn't do what you're going to do."

MCCREERY: Just talking about your other new colleagues. How did you know Justice Arguelles?

PANELLI: I think I might have met him at some of the judges' conferences. They called him "the Cardinal," because he was always very proper — his presence. I knew Dave Eagleson somewhat because he had been the presiding judge of the L.A. Superior Court, and I ran into him at some of the judges' things. As I say, I didn't know Marcus Kaufman at all.

MCCREERY: As you pointed out, here it was all of a sudden early '87, and these three began coming on the court fairly quickly. You were suddenly much more senior than you had been, and Malcolm Lucas was the chief justice. Talk just a little bit about getting reconstituted and getting going again in this new environment.

PANELLI: There was a certain amount of hesitancy on the part of, now, the two who really were, as far as the appointing authority, outnumbered.

Where it had been five to two one way before the election, it was now five to two the other way.

MCCREERY: Just instantly.

PANELLI: Yes, and so it required some adjustment, and there was some vehemence with some of the dissents. I think you would find if you went back and read some of those opinions afterwards that some of the language was a little harsher maybe than some people would have preferred, because even though you disagree you'd like to at least project the image of collegiality, as far as the public is concerned.

It's almost like what they say, "What happens in Vegas stays in Vegas." You'd hope that what happens in the court, especially in the conferences, stays within the court. Clearly, when you write an opinion it's a public opinion, and at times there were efforts to maybe tone down some of the rhetoric in some of the dissenting opinions. I think over time that changed, but at the beginning it was — cases that had been assigned one way now were being reassigned differently, and what had been a tentative [majority] view now was a minority view, especially on the death-penalty cases. Clearly it had changed overnight. I may be wrong, but I think the opinion that was written reversing the *Carlos* issue was written by Justice Mosk. I could be wrong, but in my recollection it was.

MCCREERY: How did the conferences themselves change, in general?

PANELLI: If there was a lot of sameness before the election with one view, there was a lot of sameness with respect to one view now, but it may have been the other view, because you're all appointed by the same person, who probably was looking for the same type of person to appoint. So the views were pretty much the same. Clearly in the death-penalty cases they were.

We had some differences of opinions with respect to some of the civil issues. I'm not sure that we necessarily dissented. But I think that other than the death-penalty cases, Justice Broussard and Justice Mosk got to write majority opinions on some cases. Justice Broussard did the Prop. 103 affirmance, and I know Justice Mosk had some, but in the criminal side they were definitely in the minority on most of the issues. I'd have to go back and look. Like some people keep a journal of what we did. I didn't keep any of that stuff.

MCCREERY: How about Chief Justice Lucas' style? Yes, talk about that for a moment.

PANELLI: Entirely different. You'd just walk down and walk in, and he was out in the hall. It was just a lot different. We went from the trail mix to muffins. We took turns bringing these muffins in, and the muffins got bigger and bigger. First you had these little small muffins, then they had these things that looked like the atomic bomb, with this great big head on them. Then people started to think, gee — people were concerned about getting fat, so that kind of all died down. But it was a much, much different atmosphere. I think people felt a little more comfortable in approaching him, and one thing that was interesting is the dress code changed. All the justices wore coats and ties to work.

MCCREERY: That was brand new? What did you wear before?

PANELLI: I always wore a coat and tie, but some of them would wear a sweater, an open shirt. That's not uncommon on the court of appeal, because you don't see people when you're working. It's a little more comfortable. But it doesn't look as professional. I'm not sure that Lucas ever said anything.

MCCREERY: I wondered if it was explicit.

PANELLI: No, I don't think he ever said anything. It's just that's the way it was. As a result you could see, even, a change in the staff. There was never a dress code promulgated, but even the judges from L.A. I think were a little less inclined to wear coats and ties. But even when they came up, they all did.

MCCREERY: How about his style as chief in the Wednesday conferences, just generally?

PANELLI: I think it was just a lot more relaxed. It was a lot more relaxed for a portion of the time, until we acquired one member, and even then with that member it was okay for a while, and then it became a different experience. I'm not going to tell you who that was.

MCCREERY: For the moment, we'll just stick with that early time after the change and so on. What about assigning opinions? You talked generally about the criminal cases and the switch in the majority, typically.

PANELLI: It was the same way. He tried to balance. He would make sure that everybody had the same load. If you had five cases and someone else had two, you'd get the next case. What he did do that was different was with respect to the assignment of pro tems. It was a blind draw from the presiding justices of the courts of appeal, whereas under the previous system the chief would select who she was going to assign. See, there was some criticism of that because you could pick and choose, depending on how you wanted things to go.

MCCREERY: Yes. What was your view of that?

PANELLI: I was one who only got appointed once, and it was a situation that I think [Chief Justice Bird] felt that there wasn't any way that it was going to make any difference. It turned out that there were two pro tems, and Justice [Frank] Richardson had a dissenting opinion. He persuaded one of his colleagues and the two of us, and it went four to three the other way. I don't think she was a happy camper. It wasn't an important issue, either. It was some criminal law issue. I don't even remember what it was.

MCCREERY: But in general, when Chief Justice Lucas made this change, did you think this was a big deal?

PANELLI: Yes, it was a big deal, because there was a lot of criticism that people were being appointed by virtue of a recognition of how that person would vote, whereas when you do it the other way, you may pick someone who disagrees with what the chief may wish the case to look like. Now, I think, it's all of the justices on the courts of appeal are in the pot, and only the inside secretary knows who's the next name up.

MCCREERY: So they can't be matched with the cases or anything?

PANELLI: Right, right. I think that's important, because it's like judge shopping.

MCCREERY: Once Malcolm Lucas became chief justice, did you have any view of his ongoing relationship with the governor?

PANELLI: No, but they'd been old, old friends. I don't think he socialized with him at all. I think we may have had dinner once, maybe once in Los Angeles, and part of it was to reminisce. But he may have been retired then.

I don't know that we ever had a social event with him when he was governor, other than a public event.

But I know that they had this thing in L.A. where I asked Malcolm, "It would be kind of nice to see the governor. I never really had a chance to spend any time with the governor and personally thank him." So we had a dinner in Los Angeles, just four or five of us. Then one other time he was in San Francisco on some sort of a speaking thing, and after that we got together for dinner. It was mostly arranged by Martin Baxter.

MCCREERY: Okay. But in terms of the chief justice and the governor —

PANELLI: I don't know. They may have had communications, and they may have seen each other. Lucas' son, Greg Lucas, is the Sacramento beat reporter for the [San Francisco] *Chronicle*, and so there may have been some contact by virtue of if he went up to visit Greg when the governor was there, but I don't know that.

MCCREERY: We talked about these new colleagues, Justice Arguelles, Justice Eagleson, and Justice Kaufman, and you can't help noticing, looking at their service, that none of them stayed very long.

PANELLI: My view was that that was probably a plan, that they were friends of the governor, had been very loyal — very loyal judges — had particular views, and this was an opportunity for them. I don't know that for a fact. I never discussed it. Everybody talks, especially with respect to the presidency, that appointing supreme court justices is the most important thing you do, because people are there for a long time. So you want to put people that stay a long time, and these people obviously didn't stay long.

It may have been that, okay, I'm sure there wasn't any understanding or that, but knowing those three people, you wouldn't have had to have an understanding that, "If I'm not going to be here, and if there's going to be a Democrat who's elected as governor, I sure as hell don't want to give my seat to that person, so I will leave before that and I'll let you put someone who you think is going to be here for a long time."

MCCREERY: But it was never discussed, in your presence anyway.

PANELLI: No, no, and I don't think — see, those are the kind of things that you don't have to talk about. They knew each other. Not so much Kaufman, but Kaufman had the same problem as Kaus. They're from

Southern California, and while his wife came up to San Francisco, she really wanted him to be back down south. Plus, I'm not sure that he was in the best of health, so his was a little different thing.

It really was kind of tough for the Southern California judges, because unless like Lucas, who unfortunately, at or about — I guess he had an apartment up here. Then, I don't know how many years into his tenure, he got a divorce, or split up from his wife, or was living separate, so it wasn't too bad. But for people like Eagleson and Arguelles, whose families were down there, and you're going to come up here, it's tough. One of the reasons they say that Kaus retired was that his wife was very upset that he was up in Northern California all this time.

So I could see that it might have gotten — I know with Eagleson it got so he hated living in this apartment that he had rented down off of Market Street. It's a bed and something. It wasn't very fancy. Whereas the people from Southern California who were much younger and didn't have the time in grade, if you will, they all came up and bought residences, like Baxter bought a place, Kennard bought a place, George bought a place.

Even what's his name, [Armand] Arabian, bought a place in Pacifica, and I was surprised that he left when he did. But I think part of it was that he had more than enough time [to be eligible to retire], and he saw the opportunity to go out into the ADR, where he could make a lot more money. But it is tough. I found the last two weeks, I'm in Los Angeles, my wife's up here. She's by herself. My kids are saying, "Mom's by herself." It's a tough deal, and so I can see some of that. Plus they were much older. They were older than I was.

MCCREERY: Yes, on a personal level there are some compromises, certainly. But what is the —

PANELLI: Plus, if you don't have other things that you want to do, then you could stay until you're a hundred, like these people on the U.S. Supreme Court, and as Justice Mosk did. But Eagleson, I think, wanted to be able to say that he was on the California Supreme Court, because he was proud of that, as well he should have been.

Arguelles, I think, wanted to get back into somewhat the practice of law, because he went of counsel with [Gibson, Dunn & Crutcher], I think, and he was doing mediations. Kaufman, I just think he felt that he had

been a judge a long time, and as I say, I kind of think that he wasn't well. In the end, I think he wasn't well.

MCCREERY: Yes, the health issue was certainly a separate thing. But what is the downside for the court itself, and for the public system of law?

PANELLI: You get new views! You get new views, so you're not as predictable.

MCCREERY: That's certainly true.

PANELLI: But I don't think — I could be wrong. Ron George will probably stay because he enjoys it, and he'll stay as long as he wants to. But a lot of people want to get on and do something else, especially if you've done it for a long time. After a while it's a lot of work, and you're in a high-profile public position. A lot of people figure, man, I've got my twenty years, I'm gone, and I could see that happening.

MCCREERY: Wasn't the retirement program for the justices sweetened sometime in this period, do you know?

PANELLI: No. The fact is, recently it has changed. You have to stay longer, and you get less money. There was an automatic pay increase, a cost-of-living thing that Tony Kline got killed when he was with the governor's office, but no, there's no automatic stuff.

The thing is, of course, your retirement-based pay is based on what the incumbent in your position gets, so to the extent you're a supreme court justice, as opposed to an appellate court justice, there's a differential there.

But I never even thought about that part of it, because I tell people, if you're going to go on the bench and expect that you're going to make money, then you're fooling yourself, because lawyers, first-year associates, are making more than the supreme court justices are making. So you have to understand it's a sacrifice. For some people, if they have wealth, it's a lot easier, because then the salary doesn't make much difference.

When I went on the bench I thought I was enough financially secure by virtue of the investments that I'd made, but inflation killed it. If it wasn't for my in-laws helping, putting the kids through school, I would have never been able to do it. Had I known that I could earn what I'm earning now, I'd have probably left earlier, because it's sure given me the opportunity to do things for my kids that I wouldn't have been able to do otherwise.

So there's a lot of considerations that go in, but my sense is that those three came on with some view that they weren't going to stay as long. On the other hand, I wasn't really — I knew I was going to do my twenty [years in the court system], and I stayed for twenty-two, so I stayed two years longer than I had anticipated. I think one of the reasons I got the appointment over some of these others is because I was younger.

MCCREERY: Yes, you were fifty-four when you came in. You certainly have had a lot of productive years even since leaving the court.

PANELLI: Yes, I've been working for twelve years now. It doesn't seem possible.

MCCREERY: I wonder, politically, what did this accomplish for Governor Deukmejian? He got to make this great number of appointments in a short time and brought in a lot of his known quantities from Southern California.

PANELLI: I think what it was is that it was a reward for these people who for years weren't going to ever have an opportunity to either go to the court of appeal or the supreme court. As I think I've told you earlier in our discussion, when I tried to get to the court of appeal, and Tony Ridder told me he talked to Gray Davis, who was the chief of staff. He said, "If Ed Panelli wanted to go to the superior court, that's fine, but there's no way they're going to put a Reagan Republican on the court of appeal." I understood that.

So I think that's part of it. Some of these people had been laboring for a long time and never had the opportunities, and so this was an opportunity to do that. Plus they were all capable. It wasn't like he put on some hack. They were all very capable, smart people.

MCCREERY: How well did you get to know them? Did you develop any closeness to those three?

PANELLI: Not really. Probably of the three I had a semi-close relationship with Justice Kaufman, as I say, We'd socialize. My wife and I would socialize with him. Not as much with Eagleson. Eagleson was a little more reserved. I remember he told my wife Lorna that — he said, "You ought to tell Ed he ought to be a little more circumspect in what he says." My wife said, "But that's not Ed." And Arguelles probably to a lesser degree.

MCCREERY: He was only there two years, of course.

PANELLI: Yes. See, part of it was, I'm not sure at that point in time that we had our place in San Francisco, so I was going back and forth daily. When we got our place in San Francisco then I spent a lot more time with Lucas, because he was there by himself. If my wife didn't come up, then he and I would probably have dinner every night together. There was a little Italian restaurant down in North Beach called U.S. Restaurant that we'd go to.

MCCREERY: Yes. You've made some reference earlier, I think not on tape, to attempts to loosen up Chief Justice Lucas a little bit, and I think you mentioned U.S. Restaurant.

PANELLI: Yes, the U.S. Restaurant, we went there.

MCCREERY: What was that about?

PANELLI: The U.S. Restaurant was an oilcloth table thing, and it was not very expensive. People would have been surprised if the chief justice of California was in there having dinner. But he's a very, very well-read person and stuff. It's kind of just — he was a little stiffer than what I was used to.

But he's developed into one of my dearest friends, because he's been very, very gracious and I just enjoy him. We used to play golf together and kid around. I just haven't seen him as much now as I would have liked. But he was a federal judge.

MCCREERY: Yes. He didn't follow the usual path to the California Supreme Court.

PANELLI: No. No, but I'll bet you a federal judge is a little tighter than the state court judges. But no, I think he's a wonderful man. I thought he did a great job. He's very bright. He could clearly articulate his point of view with respect to issues when you talked about them, and it was interesting to me. He'd have the pages folded over, dog-eared, on the things that he wanted to talk about. I think he made a good presence as the chief, as I think Ron George does.

I got to know Ron very well. We vacationed with them, and socialized with them for a while, and as I say, I knew his dad before I knew Ron. But I thought it was a good choice.

I'd like to be a fly on the wall in some of the conferences, though, with the different characters that they have, especially now. They've got a

new person [Carol A. Corrigan]. It will be kind of interesting to see what happens.

MCCREERY: Yes, a brand-new appointment early this year.

PANELLI: Yes. I've just wondered how long Justice Kennard's going to stay. But you know, there again, she's by herself. She hasn't got family. What is there to do? I don't think she has any other interests. That's the other thing. For some people the court's their whole life.

MCCREERY: Was that true of anyone in your time?

PANELLI: No, I don't think so, not even Justice Mosk. I think he had other interests. Maybe not, because he stayed until he died there.

MCCREERY: The longest service ever, from what I understand.

PANELLI: Yes. But I always felt I had other things to do. As I said, I tell people it was a great experience, it's one I wouldn't trade for anything. I never thought I'd have the opportunity or the good fortune. But eight years was enough.

MCCREERY: We want to talk about some of the opinions you authored while serving on the California Supreme Court. Perhaps before getting into the specifics of that process, we'll talk about the supreme court's process leading into that. We've touched on that, but I'd like to just flesh out a little bit about how you would run things in your chambers. We know that the process of setting up the court's docket begins with the petitions for review, and that the supreme court selects to hear a small percentage of those. Talk just a bit about the volume of those petitions coming in.

PANELLI: The only true appellate jurisdiction that the supreme court has are the death-penalty cases, because those automatically are appealed to us, and the court when I was there had the exclusive jurisdiction with respect to Public Utility Commission cases. We also had oversight of the state bar. But everything else came to us by discretionary review and petitions for review, and we would hold weekly conferences every Wednesday, except the week that the court had set for oral argument and the first week in July and the first week in August. My sense is we would probably average about 400 petitions for review a week.

MCCREERY: Did that volume change much over the course of your eight years?

PANELLI: Or maybe that was a month. It was a lot. In fact, we were earlier looking through my scrapbook, and there was some comment that they took a picture of the judges at the conference, and it looked like they had skyscrapers standing in front of them, because we had stacked all the stuff up. In talking to other supreme court judges, to the effect that — I'll never forget, I think it was someone in New Hampshire or one of those smaller states said, "The biggest year we ever had, we had 600 petitions."

MCCREERY: For the whole year?

PANELLI: For the whole year. I said, "That's interesting. That would probably take us through the first week of February." So there was a heavy case-load. The problem is that first of all, it doesn't cost much. I think the filing fee was \$200, so there wasn't any point if you lost in the court of appeal to let it end there. You might as well file a petition for review. The fear is that if you don't and something happens, you might be sued for malpractice.

So we got a lot of petitions for review. But as I indicated, the bulk of them went onto the B list, so that it didn't take a great deal of time to review those. But the A-list cases required some considerable work.

MCCREERY: Just to sidetrack for a moment, for those that never made it to the A list and were not heard, let's talk about the options for disposal of those cases. The supreme court could either outright deny —

PANELLI: What they would do is — all of the B lists were denial cases, so any justice who in reviewing the B list felt that the case deserved further consideration could put it on the A list. But what would happen would be — the chief, when he'd start the conference, would ask, "Is there anyone who wants to put a B-list case on the A list?" If there were they'd say, "Yes, number whatever, *People v. Jones*, or *A v. B*. I'd like that." So then that went over to a different conference so that you could look at it differently.

If there were none, the chief would say, "All right. If there aren't any comments with respect to the B list, they're denied." So all the recommendations on those cases were denial, so he would merely — the orders denying it had already really been signed, and he would just hand those over

to the clerk before we started our discussion, so that they could get those orders out.

MCCREERY: So in those cases the court of appeal decision stands, period. Now, what about sending a case back to the court of appeal for reconsideration?

PANELLI: Okay. The dispositions were grant, or grant and hold, or deny, or deny and depublish. Those were the categories. If you granted the case, of course, that meant that you were going to address the issues addressed in the case. A grant and hold was a situation where the issue presented is similar or may be impacted by the case that you had already previously granted, but you were waiting to decide what disposition to make on those cases, dependent on how the lead case was decided.

Once the lead case was decided you could, and probably in most cases would, send it back to the court of appeal to reconsider in light of the lead case. Sometimes you could send it back with directions, or you could maybe deny it because the issue that you thought might be impacted in that case really wasn't affected by the lead case.

One of the controversial issues always addressed by the court was the depublication situation.

MCCREERY: Yes, I'm very eager to get your views on that.

PANELLI: Yes. Everybody suggested this was a problem, why you did that. You have to understand that in California the Constitution requires that you have a reasoned opinion. You can't have a memorandum opinion. So every case that you grant, you're going to have to write a full-scale opinion on. So there are many cases that you feel maybe the result isn't correct, or you feel that some of the reasoning might be a little loose, and it could lead to mischief but you don't have enough votes, either, to absolutely grant it. So you would take the position, if I can't get the necessary grant votes I'll vote to deny and depublish, because at least the issue, in your mind, can be raised again later.

A lot of times when there were not enough votes to deny. You might say, "I'll join three others to depublish," if you felt that there wasn't a majority who would go one way or the other with respect to the case. So as I tell people, you would live to fight that war another day, maybe when the issue was presented more clearly, the issue that you wanted to address,

because as I tell people, everybody thinks that the supreme court is some sort of court of last resort. It really isn't. It doesn't correct for error. That's not the role of the supreme court.

The supreme court is an institutional court. Its role is to clarify the law for the state, and doing that either by resolving conflicts of the courts of appeal, or it's an issue that you feel has statewide importance. So you don't take cases where the court of appeal may have erred, because that's really not your role.

Now, to suggest that we wouldn't do what we used to call a rescue mission every now wouldn't be correct, because sometimes you saw the error was so egregious that you just felt you really can't live with it. So you would grant a case that really didn't meet the Rule 29A standards.

So the depublication was a tool that allowed the court to handle its caseload, because there were a lot of cases that you may not have been too happy with, and so you could convince other people to join you to depublish. The idea that suggested, oh, you're hiding something, you want to hide the case, it kind of seems to me misses the point, because all these cases, you can get them. You can get them on the Internet even though they're depublished. You just can't cite them as authority. They're not precedent for anything. So the idea that you would somehow try to censor the courts, I think that's not the purpose.

I don't mean to be flip, but sometimes — I remember one particular instance, and I'm not going to mention the name of the justice who didn't like the analogies that were made. All the analogies were to baseball, and I thought it was very well done by this particular justice. There was a view that a case with that type of language didn't belong in the annals of California published authority, so there were four votes to depublish that case. It had nothing to do with the case itself, it had to do with the language.

So there were many, many reasons that you would depublish a case. My sense is if you could decide cases in one paragraph, or *per curiam*, on a one-paragraph deal, you probably would do away with the depublication. But it's a way to handle the volume of cases.

Even in the denial process, sometimes where you couldn't muster four votes to grant, when you voted to deny, the chief would ask you whether you wanted to be noted, because you could vote to deny anonymously. Sometimes people would say — even on the B list — sometimes someone

would say, “I don’t want to grant, but I’d like to be noted.” So you send out a signal that at least you had one or maybe two people who might be interested, and when the next case came up, if you did your homework you could in your petition for review say, “The court addressed this issue before, and there were two votes to grant.” You might pick up another two votes. But many times you would be noted even on the denials, because you wanted to signal how you felt with respect to that particular issue.

MCCREERY: So your strategy would be to somehow set the stage for future actions?

PANELLI: Right. Especially if you ever got three votes to deny, that’s a pretty strong signal that there were three people who weren’t going to be happy with the result in that case, even though it wasn’t — well, no. If it was granted, obviously, it would just say it was granted. It would tell you who voted to grant.

That’s the other thing, sometimes, that you wanted to signal to people where you were with respect to the case, so that they’d know who their audience was. Because, clearly, when you dissent it’s a disagreement that you have with respect to the direction that the court has gone on that case, and so you feel strongly about your position. So you’re hoping to encourage other cases that maybe will come along and either argue the issue more persuasively, or maybe there had been a change in the composition of the court, and it might appeal to someone.

MCCREERY: How well did that work? Is it possible to follow it through in an example or something?

PANELLI: I don’t know that — maybe today with — everything’s on electronic, computerized, that you might be able to do it, but I never followed it. It was just, you have your own view of what you think the law should be, or where the law should go, and always it’s a process of trying to convince three or more others to agree with you. If they don’t, then the idea is to try to make a persuasive argument in the dissent, when you’re dissenting, that others might pick up on what you said, and it might encourage — maybe on the courts of appeal they said, “We think this is the direction that the law may go into,” and so they may write it that way.

MCCREERY: Going back to depublication, what did you think of that option, in principle?

PANELLI: I don't think anybody was totally happy with it, because it generated so much criticism. But it was a fact of life. It was the only survival tool that you had — if you had to write opinions every time you weren't sure whether the courts of appeal were right in what they said, it's better to wait for another day. Of course, a lot of times you'd see an issue that you depublished because you weren't sure it was right, and then you'd see other people writing the same way. Then you may have to step in and get it clarified.

There was one division at the court of appeal that on a particular issue it was clear what the court had said. This particular division I don't think was too happy with what the supreme court had said, and under *Auto Equity* they're obligated to follow the rulings of the supreme court. So they would write this opinion, you would depublish it because it was clearly not in accord with your view of where the law was. Then they would write on the same issue in unpublished opinions, so then you'd almost have to grant review, and then write it this time. So you couldn't just keep depublishing them when they were wrong and their opinion was not published.

MCCREERY: What about the option of partial publication?

PANELLI: That was not used very often, and I'm not sure — my recollection, you only had that option on the court of appeal. I don't think that with the supreme court you can do that. You can grant review only on particular issues, so you don't have to grant review on the whole case. But I think the option of just partial publication is only in the courts of appeal.

MCCREERY: With respect to how well this worked or didn't work in practice, did you have any suggestions or improvements that you could see for the process as you worked with it?

PANELLI: We just hoped that there was some way, and it would probably require a constitutional amendment, that there would be some way that you could have summary dispositions.

MCCREERY: Of course, the Constitution had only recently been amended when you came on, to allow for some of these new options.

PANELLI: Right. The thing is that if you had summary dispositions, then people would probably complain, “We don’t have the reasons why they denied or why they granted,” so you’d get some criticism. It all depends. My view is you can’t make all the people happy all of the time, or even half of the time. That’s why you really kind of have to be true to your own ideals and your own sense of the law, because for every person you satisfy there’s at least one other person that isn’t satisfied.

MCCREERY: Noting that many of these details are specific to the California Constitution, were you in a position to compare what other states were doing in any way?

PANELLI: Not in any meaningful way. New York University used to have a program where they had a two-week symposium for selected court of appeal justices, and they had the same program for the supreme court. I was fortunate enough to get invited both to the court of appeal two-week program and to the supreme court two-week program. So you would have some dialogue with how other people did things. But there was no question that California was the leading state, both in what we did, how we did it, and we had by far the greatest volume of cases. So a lot of the attitudes of these other states: “We don’t care how they did it in California.” They thought we were kind of crazy out here.

So there wasn’t a great deal of cross-pollination with respect to those types of deals. It was just an awful lot of work because, as noted, we have been talking recently about the work that you do deciding what cases you’re going to decide. Then, of course, you have the processes we discussed of the decision process, which also took a great deal of time, because it’s hard sometimes to maintain the votes that you need and yet write the opinion in a way that will satisfy what it is that you’re trying to say and not give away too much to get the votes. Because sometimes you’d get in a situation where you would say, “Really, if that’s the way you want it written in order to get a majority, then maybe you ought to reassign it to somebody, because I can’t write it that way.”

MCCREERY: All right. Let’s return to the process in your chambers then, and work up to that opinion stage. A conference memo is prepared. We touched on that a little bit, and I read that there was for some years —

PANELLI: Excuse me. Are we talking about now the decision process as opposed to the review process, the petitions for review? We're beyond that?

MCCREERY: We're beyond that, unless you have anything to add?

PANELLI: No, so we've granted review. Okay. Then the chief would decide who to assign the case to, so you would get all the materials. You would get the record, you would get the briefs when it was fully briefed. When I first went on the court they had a process that it would go to the senior person first, and then when that person was finished with it, it would go to the next senior person. If that person decided to make some changes, the box would go back to whomever had already worked on it. So that's why I say there was this issue that when I first went on the court, part of the Wednesday conference not only was to act on petitions for review. It was also to discuss cases that had been granted and argued, and where the process was in the decision making.

They had what they called the salmon sheet, and it was called the salmon sheet because that happened to be the color of the paper that it was printed on. It would have when the cases were argued, where, who had voted, where the people were. Then the chief would say, "The box is with x. How long do you think you're going to be?" and all this kind of stuff. So the process took years, could take years.

I'll never forget, and I may have mentioned this early on, when I saw this when I first went on the court. I recognized that some of those cases had been argued more than a year before and still hadn't been decided. I was interested in determining how you could get paid if the case hadn't been decided within ninety days, because as a trial judge and a court of appeal judge you knew that before you got your paycheck you had to sign this declaration that said everything that had been submitted to you within ninety days had been decided, or you didn't get paid.

When I saw this I asked Chief Justice Bird, "How do you folks get paid? These cases were argued — there's one, two, years before." She said, "We don't submit the case for decision until the day before you file it." Of course, that made it easy, because you'd never run afoul of the ninety-day rule. But the intent was when the case was submitted, which usually meant after oral argument, that started the clock running. But that was the way the court operated.

It so happened that one of those cases — apparently it was authored by Justice Broussard. The person who argued the case years before — and as I say, I wasn't there — thought that Justice Broussard was with their view, and here he writes an opinion going the other way. So there was a lawsuit filed against the court naming all of the justices for having violated the ninety-day rule and requesting that all of the salaries that had been paid while these cases had not been decided be returned with interest, which was a problem for me. I hadn't been involved in it, but I was named as a defendant.

So we turned all our lawyers loose, all thirty-five staff lawyers, and I don't think we hired outside counsel, but we concluded that, in fact, they were right, that the Constitution, the ninety-day requirement was really directed to the supreme court, because in the early days of the state there were companies like Southern Pacific and some of these big land-holding companies that they were concerned they were so powerful that there would be an opportunity to somehow approach the judges. So that's what it was directed at.

So we said, "You're right." So we confessed judgment that we would decide cases within ninety days of the order of submission, and we paid them a private attorney general's fee, and they forgot about paying back the salaries with interest.

So that changed the whole dynamic of how the court can operate, because unless you know where the votes are, it's hard for you to get a case out in ninety days. So that they may assign the case to me. I have a view of it which is written, although after oral argument you do have a conference where people say how they felt about the case, so you would have maybe a general idea of where people were. But you might write a proposed opinion and then find that you don't have a majority, and then to either modify your opinion or to turn it over to somebody else to do the opinion was very difficult within ninety days.

MCCREERY: How often did that come up, that need to reassign the case elsewhere?

PANELLI: Not often. But under the old system you wouldn't know where the votes were until you saw everything. So we came up with what we call the front-loading system. What would happen is a case would be assigned

to whomever was the author, and the author would then put out what they proposed. Then everybody else had fifteen days to do a preliminary response, so that you would know where people stood with respect to that issue. This is before oral argument now, you would know whether you had to reassign it, or you would know whether you could make the accommodations that were necessary. It wasn't until all of this was done that we would then say at the weekly conference, okay, this case is now ready to be put on the calendar for oral argument, because you knew where the votes were. So therefore, that's why since that time every case is decided within ninety days.

That's not to suggest that you couldn't set aside the order of submission, because of various things happening. But everybody tried to do that infrequently, because then it looked like you were trying to get around the rule. It had been known for trial judges sometimes to set aside the order of submission because it starts another ninety-day clock. So that kind of changed the dynamics, and what happened was that the preliminary responses got very detailed. You'd get back paragraphs of how they wanted to rewrite what it was that you said.

So it got to be pretty cumbersome, but my understanding is that's still the way they operate, because they get these cases turned out in ninety days. As I told people, even with that process that's not to suggest that you don't get situations where after oral argument you may lose a vote or two, and things get turned around, and so then you have to really chug to get it out. It isn't too bad if you lost it if you were in the majority, because then it's very easy to write your dissent, but if you were a dissenter and you had to put it into a majority opinion it's an entirely different approach, so you really have to work hard at it.

I had two instances, one where I picked up a case at oral argument, and one that I lost at oral argument, which was kind of unusual, but it happens. But I bet you that happens less than 5 percent of the time.

MCCREERY: I'm interested in the role of oral argument, and it may vary among the different justices in terms of its importance, but can you tell the story of those, too, or the importance of oral argument to your process?

PANELLI: Oral argument after we went to the front-loading system obviously had a different role, because then it was if you had the majority, oral

argument was you were trying to, in effect, use the attorneys as foils for your particular position, so you would ask questions which were directed to solidify what it was that you were saying, or to get some confirmation that what you were saying was right, or questions which were to point out the fact that the other view really didn't have a great deal of merit. So you had these surrogates for the various positions.

It wouldn't take a rocket scientist sometimes to know who had the majority and who had the minority, just by virtue of who was asking the questions. Although we did have justices on the court that sometimes, I think, were asking the questions just to give the impression that they were hot on the case and were prepared. But the questions really weren't directed to shed any light on the particular issue. But that's how oral argument was.

Some of the justices liked oral argument because it gave you an opportunity to get into a dialogue with somebody. It was a way to be able to express yourself in a public forum. However, it's kind of an interesting situation, because they were supposed to have all of their arguments and all of their case authority in their briefs, because you'd say, "If it was important why isn't it in your brief?" That was always a criticism. Someone would raise an issue and they'd say, "Is it in your brief?" "No." "Why isn't it? It's supposed to be in your brief."

So that there isn't a great deal of new information, and the fact that you've had this case and you've discussed it with your colleagues, you've discussed it with your staff. Generally there isn't much more that can be said other than maybe clarify some of the arguments, clarify some of the questions that the judge may have with respect to some of these issues, because it was unclear in the briefs, or one of your staff attorneys raised an issue, so you would probe, maybe, that particular point.

But as far as really persuading you otherwise, after you've spent all that time reading and you have a half-hour to make your point, it doesn't — I never found it was all that helpful. You got to test your views, but as far as getting new information, rarely did you get much. You'd jump all over them if there was new information, because it should have been either in a supplemental brief or they should ask permission of the court to cite new authority. On the other hand, there are some people . . . Justice Grodin liked oral arguments. Justice Mosk every now and then would get on it. Justice Broussard was a pretty intent questioner. I asked a lot of questions. I

shouldn't say a lot, but especially if I thought someone was arguing a position that I didn't really appreciate, I might jump on him a little bit.

The other thing that we would do, what you'd have at oral argument is that the staff attorney who was your liaison on that case, and similarly the staff attorney for the other judges who were on that case, would listen to oral argument. We had special seating for them. What would happen is after oral argument, before you went into the post-argument conference, you might meet with your lawyer or your law clerk and say, "Did you hear anything there that you think we missed, and maybe something we need to clarify?" Or you might say, "I heard something that I'm not sure we're as clear on this point as we should be. Now we need to make a note of that."

Of course, the other folks would be doing the same, because especially if there was someone who didn't agree with you, they wanted to kind of find out what the story was. After oral argument you would meet, immediately after oral argument, and go over the cases that had been argued that day. So you would go around. If it was my case I got to present. I said, "I didn't hear anything today that is different than what I've written, so I'm still with my position." And then people would go around, and people might say, "Yes, I'm still with your position." Or someone would say, "I heard something. I think I'd need to see how you write it on this particular issue," or, "I'd like you to do something more on this particular issue," so that you would kind of know before you left that day where people were.

Sometimes people would say, "I need to think about it. I hadn't thought about what this person said, so I'll get back to you." But generally you knew where the people were. Clearly, with the front-loading system you'd say, "I'm still with my memo," and people would say, "I'm still with the memo," or whatever the deal was.

But I tell people each side gets thirty minutes, except the death-penalty cases you get forty-five minutes for oral argument. If you're the petitioner and you save ten minutes for rebuttal, and we generally wouldn't allow less than ten minutes to be reserved. At one point they used to, but then we said, you can't even say your name in ten minutes. So that gives you twenty minutes.

It's hard to develop any kind of argument in twenty minutes. Generally, you would just respond to questions. Then sometimes they would say, "We've deferred some of our oral argument time to amicus." There again,

you get five minutes. Five minutes, so you'd ask one question and it would be gone.

If I ever consult with people who are going to do arguments, I say, "Whatever you do, don't give away your time." I think now they have a rule you can't do it, and you can't do less than five. But sometimes we gave him two and we'd give someone else one. You'd get up there and your minute was gone.

MCCREERY: But were there instances when your own views were somehow changed by what transpired in oral argument?

PANELLI: Yes, sometimes, sometimes. But if you really did all the work, there shouldn't have been many occasions, because hopefully, unless you really missed the point, and that's not to suggest that sometimes the way the briefs were written left you uncertain. Most of the briefs were pretty well done, but some briefs were not as good as others, and so you weren't sure. The fact is, sometimes you'd have to wait for the amicus briefs to see what the issues really were, because they were presented so poorly.

MCCREERY: But as you say, it's generally not a time of presenting a lot of new information.

PANELLI: No. It's just a question of trying to hit your strongest argument to convince that what you said has merit for some basic reasons.

MCCREERY: This conference of the justices right after oral argument strikes me as interesting, not only because you're really in the heat of your discussion with one another, but that's where you're cloistered in the room and the personalities enter into it, too.

PANELLI: Yes, but those post-oral-argument discussions aren't as intense or as extensive as you would think. It's just a question of, has anybody really changed their position. The negotiation, if you will, and the discussion takes place on the Wednesday conferences when you go through the salmon sheet, where people talk about what it is, why they haven't signed, what they're doing, and you get into that.

But even there it isn't that extensive, because most of it is done one-on-one. You'll go talk to someone and say, "Gee, I saw this memo. I think this is why you're wrong," and so you negotiate that way.

There wasn't a great deal of discussion on the cases themselves while you were together. Most of that kind of discussion took place on the petitions for review, when people were deciding what they were going to decide, because that was where, if you will, your advocacy was needed, because it was very important as whether you were going to grant or not grant the case.

MCCREERY: Thank you for clarifying.

PANELLI: But these post-argument conferences wouldn't take very long.

MCCREERY: When it came time to write actual opinions, there's a lot of work already done, as you say, and a lot of views clearly established, and so on. What would be your approach at that stage, and how would you use your staff to aid you?

PANELLI: As I mentioned, when the case was assigned to me I would read all the briefs, and I would have had my staff attorney read all the briefs, and then we'd have a discussion. I would outline how I thought the case should be decided in kind of a template for the approach to how to address the issues. They would be taking notes on this, plus I probably had some notes. I'm sure I had some notes.

Then I'd say, "When do you think you can get something back to me?" It depended. Some people were faster than others. Justice Mosk had a law clerk, not Peter Belton, that he could get something out in a week. I wasn't always sure that it was right. Sometimes I thought maybe it was a stream of consciousness, but anyway, he got stuff out.

So then you'd have some sort of a deadline, and say, "Do you think you can get something?" "Maybe it'll take me a month, two weeks." Depends on how many problems there were. So then you'd start getting drafts. Maybe you might get drafts with respect to a particular argument, before they went on to the next argument, to see if what was written was something you could agree with, or you agreed with, or that's how you'd like to say it. So you would edit that and then you'd send it back. That's how the process went. You just kept refining it.

Sometimes you'd say, "We're saying too much. It's too long." We had a tendency to write too long. But you feel that you don't write enough. I think Jerry Uelmen has written some critiques about the opinions being too long. Some of them were really too long. But it's hard sometimes, if

you want to say everything that you think you need to say. But that's what you did.

But, of course, you probably were working on five cases at a time, because every one of the clerks always had some project that they were on. Then sometimes once you circulated something you'd get feedback from probably the law clerk, because what would happen is the law clerk from the other chambers would come. They wouldn't come to you, they'd come to your chief, because she would know who had the cases, and then they'd try to set up an opportunity to go and talk with them about it.

Then your person would come back and say, "I talked to Justice Broussard's clerk, and they said that Justice Broussard was having a problem with this," or they don't agree, they're not going to go along with this, and these are their reasons. So then you'd talk to them more, so they could go back. Every now and then you would go talk to them directly.

MCCREERY: What would prompt you to do that?

PANELLI: Because sometimes I didn't think maybe that they were getting what I wanted to tell them, because there was this filter.

MCCREERY: Yes, you expressed some surprise that the law clerks talked to one another so much, when you first arrived.

PANELLI: Yes, there was a lot of that. The problem is, and I can understand it, is that some people work differently, and so you couldn't go talk to them about the case, because they weren't up to speed on it. They might have been working on something else, or their chambers operated differently.

Maybe there wasn't the weekly discussion about, "How are you doing on this case? Where are you?" They may have waited until the end before they did that, and so it was kind of tough.

But as I mentioned, I always felt I could go and talk to Justice Grodin, Justice Lucas. Who else was there after — oh, Justice George. Part of that was also because I was close personally with them, so it made it a little easier. Even when you were maybe together socially you could talk about some of this stuff.

MCCREERY: Yes. Actually, this might be a good time. We spoke about several of the justices who came after you did, but didn't stay on the court very long, and so then they were in turn replaced by others. So, for example,

when Justice Arguelles left Justice Kennard came on. Maybe you could just talk a little bit about getting to know her and how she changed the mix.

PANELLI: When Justice Kennard came on I was kind of her mentor judge.

MCCREERY: Someone asked you to do that, do you recall?

PANELLI: I don't know if someone asked me, or whether I did it, or whether I felt comfortable doing that. I remember she was concerned about getting things out, and I said, "Don't worry about it."

MCCREERY: What kind of advice could you offer her as a new justice?

PANELLI: How things work, how you meet with your staff, how important the petitions for review are, what you need to do, how much you need to do, the timetables of things. I'd spend quite a bit of time talking with her about different things, issues on the cases. She was obviously a good, smart lawyer. But over time our relationship changed.

MCCREERY: Can you say why?

PANELLI: I don't know why. I was very hurt by it at the time. We had a cool period, but that's the way it goes. And then, of course, didn't Arabian come on?

MCCREERY: He came next, yes, replacing Justice Kaufman.

PANELLI: Right. So now he was ostensibly very close to Justice Kennard, because it was his view that he was responsible for her being on the court of appeal. He called her his "child of destiny." I think that's what he used to say.

MCCREERY: What was that about, do you know? I know they'd served together on the L.A. court of appeal.

PANELLI: I don't know. That relationship changed as well. Then Justice Baxter came.

MCCREERY: Justice Baxter replaced Justice Eagleson.

PANELLI: Then it was Ron George came last. I think as that came around, Justice Kennard was more isolated. I wouldn't want to convey the impression that because of that, what I'm about to say is what we did. I had noted that we only see each other in a difficult, hard-working, driven environment, and so I said, "It would be kind of nice if we had maybe once a

month, if we could get together socially, just the seven of us, and we would take turns as to where we would select to go.”

We did that. I don’t think we did it maybe more than two rounds. This was in the Lucas Court. I remember Justice Mosk got the first choice and we went to Tommy Toy’s. It’s interesting, the selection, where people went. Then I think with Justice Broussard we went to the University Club or something, in one of the buildings overlooking Lake Merritt. I don’t remember if I went to Albona or where.

But anyway, so it was an opportunity. You’d have a drink or two, some wine, and you could kind of let your hair down and talk about things. We did that and I think it was helpful, but things got a little strained. Of course, you had different characters. Justice Arabian was pretty aggressive, Justice Baxter pretty quiet. I used to tell Justice Baxter — of course when I met him he was appointments secretary. I said I would never want to play cards with him, because he was expressionless.

MCCREERY: Poker faced.

PANELLI: Oh, very poker faced. But, we got along, ate those muffins, and then at the end as I say, the muffins got so large that people said, time out. But you’ve got seven people with seven different views, and sometimes — it’s hard to discuss those, because I think you get probably into stuff that is confidential or privileged. But there were times where it wasn’t fun.

MCCREERY: Yes. And these, of course, presented new issues to Chief Justice Lucas as the head of the court.

PANELLI: Yes, yes, for sure, for sure. But he was a gentleman about it all. Sometimes people misread motives and stuff. It was really kind of strange. It’s a mystery to me why the relationship with Justice Kennard changed. I never quite figured out what happened. She became very close to Justice Broussard, and I don’t know what the voting patterns were, but I wouldn’t be surprised if she voted a lot with or joined Broussard’s dissents a lot. I’m not sure. Those are not things that I paid any attention to in the aggregate. At times you would think that.

I remember once both Justice Broussard and I needed her on a vote, and Justice Broussard says, “You’re not going to get the vote.” I said, “Oh, yes, I think I’m going to get the vote.” He said, “No, because I’m fixing my gumbo, and my gumbo will get the vote.” [Laughter] He used to cook

gumbo in his chambers. He was from New Orleans. It was an interesting time. Then, of course, things changed somewhat when we moved to Marathon Plaza.

MCCREERY: Yes, talk about that for just a moment.

PANELLI: Of course, we got out of those antiquated historical courtrooms with their historical bathrooms, and we were able to lay out chambers in accordance to the way you wanted to do them, so it was really much, much nicer. You had more room, but as a result you were also spread out further, so you weren't as close physically. Sometimes unless you really went looking for people, you wouldn't see them.

MCCREERY: It's amazing what a difference that makes, isn't it, the physical setup?

PANELLI: Oh, yes. It makes a big difference, because like the folks that were on the east side of the building overlooking the bay, you'd have to make an effort to get over on that side, and the chief's chambers were over there. Justice Mosk was over there. I forget where it was. I came on this side, and then Justice Kennard was next door to me, and Justice George was down near the corner.

But the floors were rather, I don't know, thousands of square feet, so you were really spread out. But the ambiance was much better, because as I recall, we did it so all of your lawyers were kind of in clusters around you, whereas before in the old building you might have one at the far end of the building, another one somewhere else. So even as far as the staff was concerned, they weren't together. So that was really kind of nice. That made a big difference in how they worked, so you kind of felt like you had your own little nest of family, if you will.

MCCREERY: Yes, I'm sure that facilitated your own work with your staff.

PANELLI: Oh yes, it was much easier. Plus, I had a little more room, so I had a little alcove with a sofa and a couple of chairs, so if you wanted to bring one of the lawyers in, or someone in to sit down, you could sit down and talk about it, as opposed to across the desk, which psychologically removed the barrier between you and whoever you were talking to.

Of course, then you got to also put your own feel in your chamber, so it was really kind of nice. I've only been back to the reinstituted state building

I think when they dedicated the new courtroom, and maybe twice or so. So even there, apparently they had to maintain the same perimeter walls, so that the chambers — I think what they did is they knocked out some walls between two and made them one, because as I recall they were long and narrow. But as I say, I think I've only been back twice.

MCCREERY: Let's talk about some of the cases that you worked on, and also keep in mind the various themes that were prominent during that time. You mentioned to me a couple that stand out in your mind. In no particular order, I do want to ask you about Moore versus UC Regents [Moore v. The Regents of the University of California, 793 P.2d 479 (Cal 1990), known informally as "the spleen case"], decided in 1990, how you approached that and why you thought it was important.

PANELLI: I learned a lesson in Moore versus the Board of Regents, and that is never grant review where there has been a demurrer sustained without leave to amend, because when there's a demurrer to the complaint you have to assume as true all the facts, all the matters alleged in the complaint. Here was, I think it was a 150-page complaint with the result that there were a lot of things that are said that probably you would never be able to prove, but you have to assume that they're true.

It was a very interesting case. That case has become very well known to law students. It's in most of the property casebooks now. The issue dealt with the removal of Moore's cancerous spleen. Did the patient retain some sort of property rights in the spleen? So that when a later cell line was developed as a result of some of the tissue that was removed, whether that constituted a conversion, because later the scientist at the University of California developed a cell line which apparently had substantial economic value.

I think it was called Mo cell. They kept bringing this fellow back when they had removed this cancerous spleen to do further tests. They alleged that they brought him back not to treat him but to get further information about this research that they were doing that was going to have this great economic development. So it was kind of hard to apply property principles. The theory sought to apply property principles to this, and it really didn't fit.

MCCREERY: You were charting some new ground here.

PANELLI: Very much so. So we didn't really address the property issues directly, and what we said was that the health and safety codes provided that once you had removed tissue surgically and it goes into the surgical tray, then you have to dispose of it in approved methods. One is you send it down to pathology. When they're through with it they're supposed to do whatever they're supposed to do under these codes.

So we took the view that once it was removed and it's in that surgical tray, you no longer, as a patient, retained any rights to it. So we then said, but however, if they knew at the time that there was some economic benefits that could be derived from this, then maybe under informed consent you should have advised the patient of this, and so that's where we took off on that.

Later they did go to trial and there was a defense verdict, so they didn't get anything. He died, but they didn't get anything. Last August was the fifteenth anniversary of the *Moore* case, and I got a call from DePaul University, a letter. They were having a symposium. They were dealing with current problems with the sale of body parts and all that kind of stuff, and they wanted to know if I'd be the keynote speaker.

Before that I'd gotten an e-mail from someone in France, wanting to know if I would talk to them about *Moore*, which I wasn't interested in doing. I told DePaul, "What I had to say is in that opinion, and I'm not about to come out and give some talk with respect to that." So that was last August.

I was asked to speak to the property class at Santa Clara's law school. What they decided to do is they would have it as an event. While I was talking to the property class it was piped into all the other rooms, and the people could ask questions. There weren't too many people there, too many students, who were happy with what I had to say, so I decided I don't think I need to talk about this case anymore.

But that was an important case. As an interesting sideline, Chief Justice Lucas is in Russia with a delegation of American judges, including, I think, Justice O'Connor, Justice Scalia, and there were some American professors there and they said, "After lunch we would like you to drop in to this class that we are teaching." They went there and they were talking about *Moore* versus UC Regents, so that was an important case.

Most of the cases that I see frequently now in what I'm doing are the insurance cases that I wrote, the *Montrose I* case that had to do with the duty to defend, the *Horace Mann* case, which was a further refinement of the duty to defend, and *Bank of the West*, which was, again, how you interpret insurance contracts. So I see those cases cited all the time.

We talked about how some of these justices left early. I see here there's a quote, it says — this is Justice Arguelles, "Considering that I am eligible after all of twenty-five years as a judge to retire at 75 percent of my salary for life at any time, it ironically actually costs me money to continue working rather than to retire." So that might have been part of the reason.

MCCREERY: I'll just mention for the tape that Justice Panelli is looking through a scrapbook that was put together when he retired from the court. It has many articles of interest to his service there.

PANELLI: Some also are articles when I was appointed.

MCCREERY: Yes. It goes all the way back to some very early things as well.

PANELLI: Just going through something [in the scrapbook]. We were talking about *Horace Mann*. It says, "During its seven years under Chief Justice Lucas the supreme court has gained a reputation as a friendly forum for insurance companies, but 1993 will not be remembered as one of those years." Then they talk about my *Horace Mann* case, the *Montrose Chemical* case, and then one of these other cases that I wrote was *Mirkin v. Wasserman*, that held that California courts do not recognize a fraud-on-the-market theory of securities law. I think there have been some modifications to that opinion.

Then I wrote *Ann M. v. Pacific Plaza*, which had to do with — [Laughter] I'm just laughing because I'm reading — this person says, "Justice Panelli's opinion in *Ann M.* strained to avoid overruling *Isaacs* outright," which was a case by Chief Justice Bird. "Instead he suggested that in determining a landlord's duty the courts balanced the foreseeability of crime against the burden of implementing security measures." This was a case where a woman was assaulted in a shopping center. Then I wrote another case that had to do with the Fair Employment Housing Commission, as I recall.

MCCREERY: *Dyna-Med*? [*Dyna-Med Inc. v. Fair Employment & Housing Commission*]

PANELLI: *Dyna-Med*, with respect to the damages, and then, of course, a lot of criminal cases.

MCCREERY: Let's take a look at some of those insurance cases. I wonder, do you agree with that statement that up to that point the Lucas Court was a friendly forum for insurance companies?

PANELLI: I think so, because I think the feeling was that the Bird court had gone too far the other way, and so there was a question of maybe trying to level the playing field. But as far as the case itself, it was just a question of how do you expand coverages.

There was an issue I remember I had with Chief Justice Bird, where we had a disagreement with respect to certain coverages. I remember telling her, I said, the problem is as we expand coverages that maybe the carrier didn't believe they had, they're going to raise the premium, and to the extent that they raise the premium to a point where maybe low-income people can't afford it, we're going to deny them the opportunity to get automobile insurance. If they don't have automobile insurance, they can't drive, and if they can't drive they can't go to work. Although we know that some of them will have to drive without insurance, and if they get stopped and don't have insurance, they're going to get their license suspended, and they're going to continue to drive because they need to drive to go to work.

So the next thing is they're going to be incarcerated for driving without a license, and the next thing is we're going to have all the kids on AFDC [Aid to Families with Dependent Children]. I said, this insurance money doesn't fall from the sky. These insurance companies all want to make a profit, so we have to bear in mind that when we expand coverages. This particular case had to do with whether we were going to extend *Dillon Legg* to an unmarried or unrelated bystander. The rules would probably be different today, because things have changed with respect to gay couples and all that kind of stuff, whereas, although at that time there wasn't a couple, I don't believe. But that was the kind of discussion that we got into.

But *Montrose* was merely, maybe, a clarification of *Gray v. Zurich*, maybe an expansion somewhat, because I said, if there's any possibility of coverage then you have a duty to defend until it's determined that there wasn't any coverage. So I protected insureds, or potential, putative insureds from

not having a defense paid for by the insurer when they were being sued. So insurance companies I don't think were too happy with that.

Similarly with *Horace Mann*, because in *Horace Mann*, of course, it was an educators' policy, so the issue was, can schoolteachers be sued for scurrilous claims and have no ability to defend themselves, when here they have this insurance policy? Ultimately, if it's determined that what they did is uncovered, in *Horace Mann*, the question of whether he was sexually harassing this young woman, or whether there was some sexual contact. They determined that that's what he did, and therefore there wasn't any obligation to indemnify, but he was at least entitled to a defense.

But the feeling was, some kid could be upset with a teacher because of a grade and say okay, he did, or she did this to me, and you wouldn't have the opportunity to defend yourself if the duty to defend wasn't there. So again, carriers weren't too happy with that opinion.

MCCREERY: You were reading something out of your scrapbook before we started taping, in which someone gave the view that you didn't write dissents very often, and that it was too bad because they were strong, ringing documents. Talk about what would prompt you to write a dissent.

PANELLI: That case I felt strongly about, because I just thought it was nonsense. I look back on my own high school graduation, and we had some Methodist minister or something came up, and I'm thinking, gee, how long are we going to be here, because in those days we all would go up to San Francisco. You'd have a date. It was a big deal to go up to San Francisco to the Fairmont or the Venetian Room or something like that. So to suggest that whatever it was that he said was going to, in effect, be a violation of the separation of church and state, I just thought it was too far. So anyway, I went at it.

Similarly, this one that I was reading about the juvenile thing, because I had been a juvenile court judge for two years, so I just felt that they were way off base on what they did. On the other hand, you really have to be temperate, I think, in what you say. I remember one that I ended up writing the majority opinion, although I started out with a dissenting opinion, was *Smith v. UC Regents*. That was the student activity fee case.

This was at or about the time — I think it was after the state bar case, where you couldn't be forced to pay dues that supported programs that you

didn't approve of. So this was the same thing with student activity fees at Berkeley. They were mandatory, but it could support clubs that you didn't approve of.

I'll never forget at oral argument, I asked this person, "Is it your view that if there's a Ku Klux Klan chapter on campus, that the black students have to pay fees to support that club?" She said, "Yes." I said, "Thank you," and that's all. I picked up two votes.

So I'd gone in on that case as a dissenter, and I think it was five to two finally. Smith was the son of Arlo Smith, who I think was the city attorney in San Francisco, or the public defender, one of those things [district attorney].

The National Association of College and University Attorneys had its annual meeting in San Francisco, and they wanted me to talk about that. But about a year or two ago someone said there was a similar case coming out from the University of Michigan that was before the court, and I haven't followed it. I haven't found out whatever happened, whether they overturned that or not.

MCCREERY: In this case, though, you had the state bar matter as a precedent. That just leads me to ask, how strong a follower were you of precedent in general? Can you address that?

PANELLI: I think you try to follow it, I mean because stare decisis, certainty in the law. You can't just on a whim overturn something. But on the other hand, if you think it was really wrongly decided and it's leading to a lot of mischief, I think you have an obligation to reexamine it. Similarly, as I say with this *Carlos* case, and I think Mosk may have written *Carlos*, because as I was reading in the scrapbook it said recently — this is about the time of the election — it says, "Justice Mosk and Justice Grodin are reexamining *Carlos*." They may have joined *Carlos*. I think Mosk did, because we were going to take a lot of flak on overturning this decision on the intent to kill.

Another case that I wasn't there to overturn — it was the *Seaman's* case that in effect had tortified contract breaches. That was recently overturned. There was another case where this person shot and killed this individual, and this was a question of intent. The insurance company said it wasn't a covered occurrence, but the court held otherwise. The name slips my mind

now, but it's a case that I had just last week in a mediation. But anyway, that later got overturned. It really was a maverick case.

But there were a lot of goofy cases that, in my judgment, were wrongfully decided. *Moradi-Shalal*. That was a case that, when I left the court and started doing mediation, there was a question of whether California Trial Lawyers' Association lawyers would ever agree to me as a mediator because of *Moradi-Shalal*. I'll never forget, one of the first cases I did, this person said, "I figured the insurance company wanted Justice Panelli. They'll probably listen to him, so it's okay with me." He figured coming in that I would be some sort of shill for the insurance company and found out that that wasn't the way it was at all. I've done probably a hundred cases with that fellow now, and through that I've done work for all of the big plaintiffs' lawyers.

MCCREERY: Let's return to the subject of the insurance cases, though, while you were on the court. This was an area that was really developing in the law, it seems to me, and our notions of liability and personal liability and so on.

PANELLI: California, though, had a reputation. They all viewed the California Supreme Court as the leader in expanding the liability. I'll never forget when I was on the court — and I don't know if it was the Bird Court or the Lucas Court — we had a delegation of judges from around the world. There was someone who must have been from India, because I think he was a Sikh. He had a turban. When we were through I said, "Does anybody have any questions?" He says, "Yes, I have a question." He was kind of agitated. He says, "What about the case that someone is in the phone booth making a phone call, and a car runs into the booth, and they held the telephone company responsible?"

That was a case that had been decided by the California Supreme Court before I went there. Here's this guy from India, and this is what he wanted to talk about. I was talking about what we do in the death-penalty cases and how our system of justice works, and this guy is kind of ranting about this telephone-booth case that he felt was ridiculous.

MCCREERY: But here he had an actual example from your court.

PANELLI: Right. So there was some of that, and I know that people always kind of ridiculed what the California court was doing. You have to

understand that all of these things depend on your perspective, because while some people would say that was very progressive, and that's what the California court was known for, such as Justice Traynor on the automobile liability cases, strict liability, et cetera, and that what we were doing was not progressive and had taken away the luster that the California Supreme Court had had in the past, that we were becoming something less than what the court had been.

But, of course, there were a lot of people thought that we were saviors, that the court had gone too far one way, and that hopefully the court would at least try to swing back, maybe, towards the center more. I tell people it's like a pendulum. There's no question of things swaying one way or another. The problem is, you never, ever get back to dead center, because you may swing one way and you only come back a partial way.

But we were criticized for not being as illustrious as the previous court. But my view was that we weren't supposed to be legislators. We weren't supposed to be making the law, although everybody accuses judges, especially at that level, that you're a super-legislature. Sometimes you're forced to take positions on these initiatives. It was very, very difficult to act on initiatives, because you didn't have legislative history. You look at the ballot pamphlets and they were just propaganda pieces for the respective positions, and so it was very, very difficult.

Then the single-subject rule — you couldn't say, "This part seems okay, but the other part isn't." Whereas the legislature, they can always hook something onto some bill and get it passed. So it was difficult.

Prop. 103, whereas the insurance companies were critical of it, my view was that they should have been very positive with respect to that, because we said that you are entitled to a reasonable rate of return on your automobile insurance. Of course, part of the initiative requires that they pay Harvey Rosenfield to oppose any increases, so I mean there was part of that. But, interesting, Justice Broussard wrote that case.

MCCREERY: The very fact that there were so many [auto insurance] measures on the ballot simultaneously that year shows you what a state we've gotten into.

PANELLI: Yes, it's a terrible thing to legislate, it seems to me, by initiative, because you don't have the discourse that you can look at when you're

looking at legislative history, what went on in the committee hearings, what people had to say. Not that it's necessarily conclusive, but it sure gives you an aid to interpretation.

MCCREERY: You're presented with measures that may be drafted by any number of people from different walks of life. So what are the sort of pros and cons of that system? Do you see anything positive in the initiative process?

PANELLI: I think what happens, maybe this is my prejudiced view, is it's because the legislature isn't responsive to what segments of the population believe might be necessary, so they feel that they, if you will, almost take the law into their own hands by getting these crazy initiatives out there. A lot of people don't know what the devil they're signing. They'll sign a petition saying yes for this, and another petition signing no for the same proposition, depending on how it's presented to them. Someone standing outside of the supermarket says, "Do you want your taxes to go down?" "Oh, sure." So you'll sign. Someone else says, "Do you want big companies to get a tax break?" "No." It's very, very difficult.

But I think the problem is that the legislature sometimes doesn't respond to what, obviously, in some cases at least 50 percent of the electorate wants, because they get these things passed that haven't been passed in the legislature. I never was too happy with the initiative process, because it was very difficult to steer your way in interpreting those things.

Everybody said, "You ought to decide those things before the election." The theory was, you hate to deny the electorate the right to express their views, and on some of them you'd hope that they were unsuccessful and mooted the issue, but if they passed, as some did, then, of course, you're charged with the obligation to try to see whether they're constitutional.

MCCREERY: As you say, that happened frequently, though, because of our system.

PANELLI: It happened frequently. I'm thinking, I wasn't on the court at the time, but I'm thinking of the first Indian gaming initiative, where they said no, you couldn't do that, because the Constitution didn't provide for it. That was an initiative, I believe. So then they went out and amended the Constitution so that they could have Indian gaming. I understand that the Indians had probably a right, had a legitimate beef with the way they were

treated, or mistreated, but I'm not sure that all of this gambling money really helped them out much. It's helped some, but a lot of them are still having the problems that they had. It's unfortunate that, I guess, now with some of these compacts, the state is getting money, but a lot of it is being spent to help them. They're an independent nation, so you don't have the same control. The rules aren't as applicable to them.

MCCREERY: They've also gained tremendous political clout.

PANELLI: Because they had so much money. On one I saw that I think the whole beneficiary, the group is only like about 150 people, and that there were another 30,000 that might have been benefited, but it depended on these 150 people to make that decision.

MCCREERY: Returning to the initiative process, from your seat on the court could you see any improvements to that system? Do you think it should be changed in any way, and if so, how?

PANELLI: I don't know how you can change it. You get people who are getting paid a dollar a signature to go out and get signatures, so it's almost a cottage industry now. I just think the problem is, and it's maybe something that I know that we touched upon, it's the electorate really has very little idea of what goes on, whether it's disinterest or what it is. Most of what they know is what they see on television, and it isn't in the in-depth television programs, news programs or those types of programs. It's *Seinfeld* and those kinds of things, and so I think people are easily persuaded by rhetoric that may not really be tethered to actual facts.

That's the problem I see with the initiative process. As I say, I've had people approach me on things that I know, that may have had something to do with a case that I was responsible for. They're out there trying to get my signature to either overturn it or to somehow modify it.

I remember once I started to get into some dialogue with this person who was getting signatures. He didn't know anything. No way, he was getting a buck a signature and he was telling people what they told them they ought to say that would appeal to someone to sign the petition. That's the problem. Then they spend this inordinate amount of money to sell either the pro or the con.

I've got to tell you, it really bothers me because I think of all that money, the only people who are benefiting from it are the people at TV stations,

the newspapers. They could give it to education. They would improve the whole educational process. People would probably be in a much better position to act responsibly, because of the fact that they may be better educated.

It troubles me to see how many high school-age people don't know how our system of justice works. They haven't any idea of the structure of the courts. They've never been to a court. The only people that are there are those who want to go to law school. Even the fact that they have moot court programs and all. But reading the experiences of the young people who have done that, they all talk about, "I'm thinking of becoming a lawyer," or, "I want to be a judge," or something like that.

But I think we need to spend more time in civics classes, so that people know how the laws are made, why they're made. Sometimes I get the impression just with respect to legislators that they're more interested in getting reelected than they are in doing what maybe I think they should be doing.

That was another issue. When we had the term limits, that initiative [Proposition 140]. We upheld the initiative, and as a result of that there was retaliation. Part of the initiative was not only that it [instituted] the term limits, but it cut the legislative budget by a certain percentage. So what happened when the judicial budget got up before the legislature? They cut our budget by the precise [same] percentage. We had nothing to do with passing the initiative, but we had an obligation to pass on whether it was constitutional, and we were satisfied that it was.

So there was this retribution, which denied the judicial branch the opportunity to do some of the programs that we would normally do, that the Administrative Office of the Courts used to do. That required us then to form this Amicus Foundation. We were advised by the attorney general that it's something we ought to do. So we get the legislature to pass this bill. It's created, and Lucas is the president and I'm the secretary-treasurer. It then seeks contributions to fund these programs, and funding was necessary. Of course, we didn't know who was doing that.

Then people started to say, "You're going to have a conflict of interest." Conflict, I'm thinking to myself? Some of the programs that we sponsored I didn't even get invited to or get a free lunch. But we were forced to form the foundation to raise money by virtue of what the legislature had done to us in retaliation for upholding that initiative. Since then, fortunately, we've had no need for the foundation and it's been terminated. The problem was I

think people were anxious to see some turnover in the legislature, because they were unhappy with what they saw there. We didn't put the damned thing on the ballot.

MCCREERY: Yes, or cut the budget.

PANELLI: Yes. We understood that — see, there's that situation. People just thought, hey, fine, we'll take whatever, 35 percent we're going to cut, not recognizing what that may do.

MCCREERY: It's an interesting question, though, about limiting the terms of the legislature, and I realize you were there to decide the constitutionality of the measure. But in light of our discussions of the tenure of judges, can I ask your own views of term limits and what that does to our three-branch system of government?

PANELLI: I was in favor of term limits. I wasn't sure that two terms or three terms was right, what the limit should be. But I thought it would be good to have turnover, because you're supposed to be a representative body. It isn't like judges. People think that judges are representatives of the people. They're really not, they shouldn't be. Obviously, they come from the community, but they should be following the law, and sometimes what the community thinks the law should be is not what the judges should say the law should be. Hitler proved that.

If you get judges that are going along with a majority view with respect to something that you as a judge know isn't proper under the law, then I think you've got a real problem. That's why I kind of feel sorry for what happened to Chief Justice Bird, and Grodin and Reynoso, because in their view they were following the law as they saw it, and the electorate believed that they weren't. So that's the tension between those two things.

On the other hand, my view is the legislature does represent the will of the people in the laws that they pass, so I think it's kind of helpful, maybe, to get some turnover. When you get people that their whole career has been where they haven't ever had to go out and meet a payroll, I think sometimes you get pretty myopic in your view of things. But whether that's twelve years or ten years or twenty years, I don't have any firm views on it. I think it's pretty good to turn things over. Maybe it sounds kind of a self-protection measure by saying judges don't need to do that, but I just think their functions are different.

MCCREERY: Yes, it's a tradeoff, isn't it? The value of experience in any job, versus, as you say, the clearly stated desire on behalf of the electorate to have some kind of turnover. But that whole movement towards term limits, nationwide. It's been an interesting phenomenon, hasn't it?

PANELLI: I find it interesting locally. There was one of my friends who lived across the street from my wife's folks. He was on the board of supervisors here. He'd been on the board of supervisors for quite a while. Then someone came up and said that he was going to run against him, because you need to have turnover in this thing. He'd been there a long time, and you need this. Well, he won. Then, now, when he was on board of supervisors, they're talking about term limits, he says, "You can't have term limits. Then you'd lose all this experience," and stuff. I've wished I would have gone back and gotten some of the quotes that he had said before, because now it depends whose ox is being gored.

MCCREERY: Isn't that true? Yes. But clearly, you've articulated the difference in your mind between the role of judges and the role of legislators in our system.

PANELLI: Right. The problem is that you do have, other than the retention election, you do have a way to kind of monitor what judges are doing.

Maybe I'm naïve, but I think we've been very, very fortunate in California that I really don't think that the judiciary is politicized in that it's a nonpartisan position. I recognize a Republican governor is going to probably appoint judges who are Republicans, and Democrats are going to do the same.

But I think it's different than having in every election, "This is the Democrat slate for judges, and this is the Republican slate for judges." Because I've talked to people who are judges, were judges in those states, and you owe your loyalty and allegiance to the party, because they're the ones that are funding your election. So as I say, it's a lot more highly politicized than I see in California.

Plus, again, maybe I'm naïve, but I see, when you see the small number of judges who are disciplined by a very aggressive Commission on Judicial Performance, my sense is by and large the judges do a pretty good job. That's not to suggest that they all do, and that's not to suggest that some of them shouldn't be removed and haven't been removed. But there is some

oversight. I think we have a culture — I just hope it doesn't change — in California, where people are really nonpartisan and impartial.

As I said, maybe I'm naïve about that. It's just like corruption, where you see that in some of the states, especially where you're elected by a party designation, that there may be corruption. I'll bet you, other than what happened in San Diego, and I'm not sure that they were active. Maybe they were sitting judges, Judge Gregg and those others. There isn't much of that. In twenty-two years that I was on the bench no one even intimidated, "Would you, could you do something?"

I guess maybe, I'm just thinking here in San Jose, Judge Danzer did that. He was removed here recently from the bench, because he was convicted of apparently trying to fix some traffic tickets or something. But those are isolated cases.

Whereas I found in many of the programs we did as judicial exchange programs with these countries for the U.S. State Department that there's a culture of corruption in the judges. Even when you talk to the judge, you're talking to them about corruption. They acknowledge that's part of the system. If you've got money you can buy your way out. If you don't, forget it. It's different.

MCCREERY: Since you mentioned the political parties, am I correct that you were officially designated nonpartisan?

PANELLI: Yes. No, I've always been a registered Republican. . . . As I say in this article that they had, whether I was going to be the chief justice, they talked about that and I said something about, you would think by virtue of my background I would be a liberal, but my folks told me that whatever you get you've got to earn it. No one's going to give you anything for nothing.

MCCREERY: But were you interested in being known to the public as nonpartisan? Am I correct about that?

PANELLI: Right. Yes, that's right.

MCCREERY: Just tell me your thinking behind that.

PANELLI: Because I just wanted to be, in effect, neutral with respect to political issues. It wasn't until later that someone said, "You really are a conservative." I had never thought about it, what it meant, what it was,

because I felt the way I felt. I'll never forget, someone gave me this tag, and this woman, she said, "You know, you are a conservative." I said, "Yes. I am? I didn't know that." [Laughter] They were very conservative. This particular woman and her family. They worked for Goldwater. I never voted for Goldwater!

MCCREERY: You talked earlier about how, I guess around '93, your decisions in those insurance cases surprised people, because they clearly expected you to respond, quote, unquote, "as a conservative" of this particular court.

PANELLI: There wasn't any knee-jerk — this sounds so self-serving that I'm almost embarrassed to say it. You call them the way you see them, and sometimes that's how you happen to see them, and other people happen to see it the same way. As I mentioned, when I went to Lucas and I said, "Malcolm, gee, it seems so clear to me that they're wrong. Am I wrong?" He'd say, "No, no. You've got it right. They've got it wrong."

People are so quick to judge what you've done by virtue of the fact that you start at the end, the conclusion, and somehow want to work towards that conclusion. That isn't the way it is, because you need to look in that mirror every day, and if you really think that you've sold out, then it's a difficult deal.

That one quote that you picked out, "If someone says I've started acting like a judge, I hope that they kick me in the butt." It's the same thing. I don't think that you can do something because somebody would be unhappy with what you did.

I remember we did something that — oh, when George Deukmejian nominated, who was it, was it Jones for some position, and we said he didn't have the authority to do it. We were all in the anteroom waiting to come in for the State of the State [address], and the governor was there. I think we said something like, "I guess you're not too happy with us." He says, "That's right." But he clearly didn't have the authority to do what he did.

MCCREERY: So you called it as you saw it?

PANELLI: We said, "Sorry, you can't —." I forget what position it was that there was some issue with respect to that, and we decided that he couldn't do it.

MCCREERY: This is Bill Jones that you're speaking of, attorney general?

PANELLI: I think so. I think it was, he wanted to appoint him — oh, I think it had to do that he needed the concurrence of both houses, and I think he had of one and didn't have of the other, and he said, "I can go ahead," because he interpreted it. We said, "No, no, you can't do it. You need both." I don't remember what the position was, but I remember his comment. He says, "Yes, that's true." So it would have been easy — you really couldn't justify doing that, even though you knew that obviously that's what he wanted done.

MCCREERY: Why do you think the public is perhaps so poorly informed about how the judiciary views its role? I don't know if I'm putting that very well, but the idea that you start with a certain result in mind.

PANELLI: I think the media has a lot to do with it. When we did things, the Lucas Court rendered certain decisions, they would be perceived by the pundits as some conservative agenda, whereas when our predecessor court did things that went the other way, no one ever said, "Gee, there's this liberal agenda." Everything was okay. That's the way things were supposed to be. I just think it was the people who were reporting on you had agendas.

Clearly, the death penalty was a very divisive factor as far as how our court was perceived. There wasn't one law professor that would ever say a positive thing about us. I mean, Steve Barnett, Jerry Uelmen, all the people who watched the court, there wasn't anything that we could do that was right as far as they're concerned. It's interesting now. I see how they write about the George Court. They're much more accepting of what they're doing, or they're not reporting them in a pejorative way as they did with our court, and that gets out to the public.

I've got an example. This morning's paper — I read the *Mercury*, which raises my blood pressure. On the second page it says, "Republicans do something with the oil companies," agree or support the oil companies, or something about the tax on the oil companies. My wife says, "Look at this headline. People aren't going to read the article." She says, "If you read the article it does not conform with this headline, but people see this headline." Similarly with the story that they did here recently, as I mentioned, on the courts. There is no question that some of what they said was very necessary to be said, but the slant of the article was that the D.A. was

hiding all this stuff, and they were trying to convict all these people with all these improper means.

The public defender — they weren't doing what they needed to do, and they needed to be more aggressive. The judges — they were too close to the prosecutors, which is kind of interesting because I'd say maybe a third of them are former public defenders. But they conveyed this impression, not necessarily in the story, because my view is that not a great percentage of people who take that paper read the whole paper, or read these stories, so they're reading the bold part of it and forming opinions. Because you will talk to people and you ask them something and they have this opinion. I'd say, "Where'd you get it?" "I read this thing." I said, "Did you read the whole story?" "Well, no."

I had a talk that I used to give. It was a graduation talk about how people learn everything in snaps, snippets of time, the headlines, the evening news, it's two minutes or thirty seconds of this. You never really get beyond what this little snippet of news is, and it's a fast-food way to get this stuff. A lot of stuff you need to think about it.

MCCREERY: Yes. And people are probably just as poorly informed about the other branches of government. There's no question that we do the "thirty-second" everything.

PANELLI: Every now and then I'll flip on what's his name [on television] — I don't particularly like him, because I think he's too aggressive, Sean Hannity. He has on Friday a feature. They send this woman out on the street and they ask these questions. They'll ask, "Who's the vice president? Who's the secretary of state?" These people have no clue who they're talking about.

Whether the interviewer on the street goes out and asks someone who she knows wouldn't know the answer, or whether she goes to someone who's got a suit and tie and probably would have it, I don't know. I'm not naïve enough to believe that they don't maybe select the people to whom they ask the question, because they have an agenda. They want to show that these people really don't know what the hell is going on. So that's why a lot of times I'd be curious to see how they selected these people to whom they're asking these questions.

Similarly, when I see these surveys, they talk to these people. "What do you think about it?" You ought to first kind of screen them into saying,

“Have you read the newspapers? Do you know what’s happening?” as opposed to asking the question.

It’s like, as you know now, this whole issue with respect to free preschool. If you say, “It’s not going to cost you anything, and it’s not going to cost you any taxes, because we’re only going to raise the taxes of the people who make over \$250,000.” I’d say probably 80 percent of the people in the State of California make less than \$250,000, so heck yes, we’re for that. I don’t know, it’s very discouraging at times. But I’m probably getting afield from what I should be talking about.

But those are kinds of things that I think, what I’ve said many times. You bring to the court what your experiences were, how sometimes when it’s the subliminal message of what isn’t really articulated in the transcript that you see, that you know it’s going on. I think I may have mentioned that with law clerks that hadn’t had any real courtroom experience, which most of them hadn’t, when I’d read the transcript, I said, “Don’t you know what’s happening here?” “No. What’s happening?” I said, “This is a setup.” And they’d say, “Oh, no.” “Oh, no, believe me, this is the setup. This is being set up in a certain way.” They’d say, “Gee, we didn’t see that.”

So you bring those kinds of experiences. But on the other hand, the law is pretty flexible. You know what they say about equity, it depends on the size of the chancellor’s foot. That’s part of why people have differences of opinion.

MCCREERY: I’d like to talk just a little more, if we could, about the court’s work vis-à-vis the legislature. You were called on many times to decide the constitutionality of things that originated there.

PANELLI: In 1990 we had to do the reapportionment.

MCCREERY: That’s a good one. Talk about how you approached that.

PANELLI: There again it went by default, because the legislature didn’t do what they were supposed to do. So here we had to use the various criteria. You can’t gerrymander, you try to get balance with respect to ethnicity, so that you want to make sure that you didn’t try to structure it in such a way that, let’s say, the Hispanic population was segmented in a way that they may not have a voice. On the other hand, you can’t say, “We’re going to do it all so we know we can assure that this is going to be a Democrat district or a Republican district,” which is, of course, what the legislature wanted.

The reason that they couldn't get it done is because this was how it was being driven.

MCCREERY: Yes, the partisan part of it.

PANELLI: So here we were trying to create districts that met the requirements that the U.S. Supreme Court had set, and yet be apolitical, which was kind of difficult. Fortunately we hired — his name escapes me now, who had been, I think, the dean at USF. So we had to come up with computer models, and then we had to look at what impact those had. They did all of that work, and so that was work that we could — we probably were, I don't remember now whether we were criticized by virtue of how some of the districts were created. But we attempted to do it — whether people believed it — as antiseptically as we could, so that it didn't favor one party or the other. I don't know, ultimately, whether we accomplished that or not. But that's why I got a kick out of it recently when there was this question about, you're going to have retired judges [work on redistricting]. Some reporter called me, and I said, "I did it once, there's no way I'm going to do it again. My name is not going to be one that's going to be submitted."

MCCREERY: Who should decide? Is a panel of retired judges appropriate?

PANELLI: I didn't see a problem with that. Then people say, "Because you were appointed by a Republican, or you were appointed by a Democrat, then you had these problems." But you're hoping that people you select are people of integrity that aren't going to do that. But it's an arduous process. That's why it's very, very difficult. I remember we spent hours, hours, doing what I didn't think was a judicial function. It was a legislative function.

But by default we had to do it, because everybody in the legislature — it was a question of self-interest. Whether judges, or some agency, some commission should do it, you're always going to run into this same argument. "They come from a certain political persuasion, and so we've got to be careful of how we select them." Unless you get someone from outer space, everyone's going to have some views. But you're hoping that when they take the oath, or whatever they take, that they will do what they're supposed to do under the law. That's no assurance that they won't let their own political persuasion interfere with what they're supposed to do.

MCCREERY: That particular subject matter is quite an entrenched problem. Now we find ourselves with this great number of so-called safe seats, and very little chances in any given election for real competition.

PANELLI: Yes, that's a real problem. But anyway, we went through that, so that was an issue with the legislature. We had always an issue with respect to judicial salaries. At one point there was the law that says that you got the automatic cost-of-living increase, so that it wouldn't require the judges to go to the legislature each year.

Then, as I say, Tony Kline was opposed to that and lobbied — I remember he lobbied with a fervor to get that overturned. So that went away, so then there wasn't any increase in salaries. Then, fortunately, I think they finally got it tied into whatever they did for — we're tied into some group, as I recall, now. I'm not sure.

Although I see that Chief Justice George was before the legislature trying to get additional funding, and funding is always a problem. There's only so much money to go around. There's a reluctance to raise taxes. You can't raise the filing fees, because it prevents people from access to justice, although I always felt that you could always file *in forma pauperis* and get granted. Someone says, "That's demeaning."

I always thought we should have raised the filing fees for petitions to review, because I said that would be a source of funding, and secondly, you probably would not have the frivolous — what I sometimes thought were grossly frivolous filings.

One of the things that we haven't talked about that was a change that took place not early on, but near the end of the Lucas Court, had to do with review of state bar matters. We used to have to hear all of the state bar matters, whether it was a private reproof or a public reproof. That changed. What happened was — it was kind of ironic that you could get life without the possibility of parole and have no right to have the supreme court review your case. But you could get a public reproof or private reproof in the state bar, and we were going to give you oral argument and file a written opinion.

MCCREERY: That was that exclusive jurisdiction over the state bar that you talked about at the outset?

PANELLI: Right. Then they created the state bar court, and then they decided they would do it the same, similarly, by discretionary review: matters that were more important, and these matters that could be delegated. So that's when the state bar court came up, and they had their whole administrative system that was created. But the thing was that the critics of the court said, "When you wrote ninety opinions, forty of them were state bar opinions, so they were just done just to give the semblance that you people were really pumping out a lot of opinions."

MCCREERY: How well had that state bar court worked out, in your opinion?

PANELLI: I think it's worked out okay. I was there when we picked the first set of judges and we went through the interview process. I think that the supreme court should only address the more serious — the disbarment cases, the serious breach of fiduciary duty cases. So I think it's working now. They just take the more serious cases, and state bar court handles most of it. But that was a change that evolved as a measure of trying to give more time to the judges to do the work that really needed to be done. Some of the other suggestions were made to increase staff. You can only supervise so many people. The issue of splitting the court into a civil supreme court, criminal supreme court — Justice Mosk maybe favored that. I was always opposed to it, because evidentiary rules cross the line, so that you can't say, "The civil supreme court says you can do this, the criminal supreme court says you can't." So I guess maybe you could have some sort of an en banc procedure to take care of it.

My experience, what I've been told — I have no experience, obviously, but what I've been told by people that have operated that way, I think it's either Texas or Oklahoma, that it really doesn't work well. This way here you get — you don't want to get specialized judges. I was always opposed to one judge doing all of this type of case, because then he becomes the law on this kind of case. I think it's good to have people across the spectrum, different judges handling all of these things. Similarly, I felt the same way — if all you did was criminal, you'd probably get kind of biased one way because you'd start to see all this stuff. Whereas when you get it every now and then, I think you're a little more open minded about it.

MCCREERY: Which of your own opinions are you most proud of?

PANELLI: That's an interesting question, because I've never thought of it in those terms. I'd have to probably think about that. I'm proud of *Bank of the West* and *Montrose*, because those I see all the time, and people know when they submit briefs to me that those cases are always in there.

MCCREERY: The identification is strong to this day?

PANELLI: Oh, yes. When someone says, "Oh, you didn't really mean that, did you, when you said that?"

MCCREERY: Why do you single those out?

PANELLI: Because they probably had more impact on the state as a whole. On the other hand, there are other cases that — I never thought that *Moore* was a big a case, as I say, it defined [the issue]. It's probably one of the very few cases of mine that found itself into the casebooks. I didn't think it was that big a deal. I'd have to — let me just quickly — *Mirkin v. Wasserman* I've talked about. That had to do with the fraud on the market.

This case *Title Insurance Co. v. State Board of Equalization* was not one of my — I didn't think it was an important case, but it was the one that generated this criticism about how we had this conflict of interest, because of the Amicus Foundation, which was the foundation that I talked about. Of course, *Horace Mann*.

MCCREERY: I realize you don't think in terms of favorites or anything.

PANELLI: No, no. *Moore* is here. One that I kind of — it was an interesting case that I enjoyed; it was criticized in Napa — was the Napa wine train [Napa Valley Wine Train, Inc. v. Public Utilities Commission]. I had a view that there's so much congestion up there that people would get on — I viewed it as like the train that you get on in Kanapali, in Maui, and you ride up the way. So you park your car and you take this train, and I thought that that's what this Napa wine train would be, that people could park at the southern end of the valley and then go up and stop along the way at these various places.

MCCREERY: Which of those, or perhaps more than one, caused you the most satisfaction looking back, and why? Have you had a chance to give that any thought?

PANELLI: Yes, I've thought about it. The ones that were interesting, I don't know necessarily that they were the most satisfying, were because the challenges were a little unusual. One had to do with the surrogate mother [Johnson v. Calvert], because it was a situation where the statutory provisions really didn't cover the determination of maternity, because obviously, a woman delivers a child and everybody believes she's the mother, whereas with the paternity rules there's blood tests and things such as that, that generate how you determine paternity.

So we had this situation where it was really a contractual situation. This husband and wife decided that the wife could not carry a fetus, and so they had, as I recall it, a zygote, where they fertilize the egg and then implant it in this woman. The contract provided that they would pay her \$15,000 for carrying this fetus for nine months and they would take care of her medical bills and things such as that.

After the child was delivered the woman took the position that she wanted to keep the child, and so here we had an issue where she was genetically not related at all. So under the paternity rules there wasn't any genetic relationship, so she was really a stranger to this child. So what I tried to suggest is the legislature needed to address these issues, because — now it's even gotten a little more complex, because sometimes the male, it may be his sperm, but it may be the surrogate mother's egg that gets fertilized, so that there is a genetic relationship, and contract rules are really a little more difficult to apply. Especially now when you have same-sex parents that have a child, and if they're two women and one of the women bears the child, and the other partner — what is the legal relationship?

So it's a complex situation. We worked through and we decided that we would try to apply as best we could the paternity rules to a maternity situation. I suggested at the time, it's like a round peg in a square hole, and we just found out that yes, the fact that there is no genetic connection to the child apart from the contract — these other folks were the natural parents of this child. So that was an interesting case.

The other one I think we talked about was Moore versus the board of regents of the University of California, where there again we were trying to apply property law to a situation where we address ownership of your organs, are they property, and how long do you retain property rights in them? Again, the legislature needs to address these kinds of issues.

As I mentioned, it happened to be that last August was the fifteenth anniversary of *Moore*, and so they were doing this symposium at DePaul University, dealing, however, more with the sale of body parts, the ethics of it and all, and people buying livers, buying hearts, buying lungs and kidneys.

So those were interesting from a point of view that they were unusual for a court to have to make those kinds of [decisions], really, which were kind of moral and ethical decisions. But the day-to-day cases that really drive a lot of what happens in trial courts today are more *Montrose I*, which deals with the duty to defend, *Bank of the West*, which had to do with the 17200 unfair competition laws and how you interpret insurance contracts.

Then there's *Bay Cities*, which was also a case dealing with insurance coverage and related acts — whether they give rise to more than one occurrence, which therefore gives rise to more than maybe one limit of liability. Those cases I see in the work that I do today, because they drive a lot of what happens in the insurance industry.

MCCREERY: Thank you for summarizing some of the ones that are meaningful to you and why. It's interesting you mention the surrogate mother case, and also *Moore*, and the crossover with the legislative arena, because I wanted to explore that a little bit, the judiciary's role vis-à-vis the legislature. When you're dealing with a statutory matter, or perhaps going to the statutes in your thinking, as you did in the surrogate mother case, even though it doesn't fit exactly, how do you approach that task?

PANELLI: If there is an act that is applicable, or the law that may be applicable to this area, you have the benefit at least of the statutory history, so that you get information concerning the debates, the positions. There are services that provide this for you, so that at least you have some sense of what the legislature has done, if you are interpreting legislation.

The challenge becomes when you are forced to go into an area that the legislature has not addressed, and it really is an area that they're probably better able to address, because they can take into account — they can have public hearings, hear input from the public, and make policy decisions that really are outside the arena of what we as judges do. So you have to be guided by some structure, whether it's existing precedent or where you extrapolate from some existing legislation, and that's what becomes difficult.

So we always would say, “This is an area that the legislature needs to address.” But you can’t duck the issue. Once the litigants present the issue to you, you’ve got to decide it. You can’t say, “Sorry. We’re not going to address this, because we don’t know what the legislature might do.” You have to decide it and you address to the legislature this hope that they will address this. These are some of the things that you need to think about. Of course, they could always legislate to overturn a decision that you’ve passed. One of the opinions that I wrote, they did that. I can’t think of it offhand, but I remember that they passed legislation which, in effect, disapproved it.

MCCREERY: I wonder if that arena in which the judges operate is evolving or changing at all? It’s one thing to look at legislative intent, but as you say, it’s quite another to start getting into policy considerations and that sort of thing. Did you see any changes in that over time that you served?

PANELLI: If the public wasn’t happy with your decision, they’ll say, “See, these judges are legislating, and they’re supposed to merely interpret the law, not make the law.” Those are broad statements that in some cases may be true, because you’re writing on a clean slate, and so necessarily you’re going to make some policy decisions.

I think there were times where we may have had to do that a little more because there was a vacuum in certain areas. The problem, as I think I touched upon, had to do with the initiatives, because there isn’t any legislative history. You don’t have the benefits of the hearings, so that you know what’s going on. You look at the ballot arguments, and whether they’re based in fact you wonder sometimes. It’s just the way you can get people to vote for this, and so it made it very, very difficult.

I always felt it was a terrible way to legislate, to have these initiatives. Of course, the rules with respect to how you interpreted initiatives, the single-subject rule, people say, “Why can’t you knock out part of it and keep what you like?” But you can’t do that.

There was some criticism where we, I remember, affirmed some of the initiatives, and someone said, “Why did you affirm them when they violated the single-subject rule, and then in another case you rejected the initiative on the basis that it violated the single-subject rule.” It’s a matter of judgment.

I was never a legislator, so I may be off the mark, but I think to the extent that in some of these areas that have generated disputes in courts result from the fact that there may not be any legislation to cover those issues, and so whoever may feel aggrieved decided, "If I'm going to get any redress, I have to do it through the courts." So to the extent that legislatures don't address certain issues, people file these lawsuits and then the court is required to resolve this particular dispute. It becomes really a policy decision, because it's an area that the law hasn't acted on, the legislature hasn't acted in.

Just even like with this *Johnson* case, which was the surrogate mother case. I think had the legislature anticipated that these kinds of things would happen then you could suggest that this is what needs to be done. Maybe it's the type of contract that whoever is going to carry the child is entitled to some sort of psychiatric counseling or something before you do it, so that there would be certain rules, or those types of contracts could only be enforced if they had been presented to someone [for review beforehand]. I don't know all of the things that you might have done, but it seemed to me that that was an area that needed some sort of direction, and obviously they could see it coming. I would think the legislature could see it coming.

It's just the same area with same-sex marriages, or same-sex relationships. The acquisition of property can't be community property, yet the property may have been acquired during this relationship. How do you address property division? So when someone files a lawsuit against one partner and takes the position, "I want to have some property rights." You're applying property law that is applicable to the rights between strangers when this is not that kind of a situation, so do you apply partnership law or joint-venture law? These are the kinds of things that judges have to address, and it would be kind of nice if the legislature would say, "In these kind of situations we're going to apply these kinds of rules, so we're going to call it quasi-community property." Those are the kinds of things.

MCCREERY: When things did originate in the legislature and you were called upon to determine their constitutionality, how did you approach that?

PANELLI: I think what we tried to do — if there was a basis to support its constitutionality, the presumption was that we would go along with it. I don't know that we ever overturned anything as being unconstitutional. We may have, but offhand I don't remember that.

MCCREERY: My impression is that it was mainly approving, affirming the constitutionality of both the things originating in the legislature, and also the initiatives that came before you.

PANELLI: There were some issues that had to do with separation of powers. Like I remember one case was whether the governor's appointment book was available to the press, and the question is whether, no, that was part of the executive privilege, that some of those things weren't available. I don't know that we decided necessarily on the separation of powers, but I think we may have said for security reasons maybe that you shouldn't be able to get that information.

Of course, they wanted to see who the governor was talking to, who he was making appointments with. I wasn't sure that it had to do with judicial appointments or whatever, but those are some of the things where it got a little tricky — when was the legislature stepping into our realm, and were we stepping on their toes, as it were?

That's always been an issue with respect to judicial compensation and judicial budgets, where fortunately they never had a showdown, but there was always some fear that we might have to at some point say, "We're a separate branch of government, and we're entitled to be properly funded." Then do you order them to do something, and then if they don't do you hold them in contempt? Fortunately, we never had to go that route, but that was always a possibility.

MCCREERY: How were relations with the legislature during your time? You had both houses led by these longstanding leaders, Willie Brown in the Assembly, David Roberti in the Senate.

PANELLI: I don't think that we were all that well received by the legislators.

MCCREERY: What do you mean?

PANELLI: I think especially because after 1986 we were mostly all Deukmejian appointments and, of course, both houses were controlled by Democrats. They were always very cordial to us, but I'm not sure that they viewed us other than having maybe horns [Laughter], by virtue of who they perceived to be conservatives.

Some of the people that were leaders in the legislature, like John Vasconcellos — I knew John since student days, and we had very significant

differences of opinion with respect to some issues. I don't think they were totally in favor of these affirmances that we were doing on the death-penalty cases, and there were some issues that they viewed as probably more conservative in our approach than they would have preferred. That's just my own sense. I know John — we disagreed on many things. A lot had to do with where they put their dollars, and where maybe we thought they should have put their dollars, but obviously that's their task, not ours.

MCCREERY: Other than the matter of the legislative budget and the court's budget that we talked about before, were there any direct confrontations of any kind?

PANELLI: No, no. We would sit as a court; I shouldn't say sit as a court. We would go as a court to listen to the State of the State address. I don't know that there was much communication, if any, between legislators and the justices. Of course, some of them had friends that were serving in the legislature, and so I'm sure there was some socialization. But no, I think the relationship was pretty respectful of one another's responsibilities.

MCCREERY: I'd also like to talk a bit about the matter of interpreting the California Constitution, and in working on cases, when do you go to the constitutional issues, versus other methods of resolving? What are your thoughts generally about that?

PANELLI: The conflict was more, when do you apply the California Constitution when the federal Constitution permits you to do so?

MCCREERY: State constitutionalism.

PANELLI: Right. Can you be more restrictive in interpreting the California Constitution than the federal Constitution has been interpreted by the U.S. Supreme Court? So even if they say that something is permissible under the Fourteenth Amendment, in interpreting the California Constitution can we say, "But under the California Constitution that's unconstitutional?"

The biggest proponent of that was Justice Mosk. Justice Mosk felt that we should not defer to the feds in interpreting some of the clauses in our Constitution, which may have read verbatim like the federal Constitution, but that we had the authority to be more restrictive or expansive with respect to how we interpreted the Constitution.

I don't think that we ever took a position, as a court, that we did that. There may have been dissents by Justice Mosk when he believed we should not have deferred to this issue and based our decision on the federal Constitution. He would have expanded the rights under the California Constitution. But I don't think we ever said, "Yes, we're going to take a position that while you may not have this right under the U.S. Constitution, we're going to grant you the right under the California Constitution," nor do I think what we said was where we would become more restrictive.

MCCREERY: Was that something that was discussed among the justices, though, as a separate matter from the details of an individual case? The whole question of "state power really is at stake."

PANELLI: Oh, sure. Oh, yes. Justice Mosk felt we shouldn't defer to them, and he was very restrictive on federal preemption. He believed that on occasions — one of the cases that I wrote, where I deferred to the U.S. Supreme Court on *Pilot Life* [*Pilot Life Insurance Co. v. Dedeaux*, 481 U.S. 41 (1987)], which had to do with ERISA preemption. I said, "The Supreme Court of the United States says that this is preempted," and therefore — I think it was *Commercial Credit* or something was the name of the case [*Commercial Life Insurance Co. v. Superior Court* (1988) 47 Cal. 3d 473, 253 Cal. Rptr. 682].

He wrote a stinging dissent saying that we shouldn't defer to the U.S. Supreme Court's decision in *Pilot Life*, because it involved some rights that affected California citizens in a way — there was a savings clause that if it dealt with insurance, somehow or other it wasn't preempted. So there have been many attempts since that day to try to narrow *Pilot Life* and try to get claims outside of ERISA, on the basis — like bad faith. They say, "Bad faith really deals with how insurance companies treat their insured." So if some HMO or Blue Cross or one of those denies benefits to someone, that may be covered by ERISA. Since bad faith is applicable to how insurance companies deal with their insureds, bad faith should be under the safe harbor, and therefore you could have a state court action. They've tried that. There have been three or four cases and the federal courts have all said, no, it's preempted.

Just as an interesting aside: One day I was going to be a speaker at the California Trial Lawyers' Association on appellate practice or something.

I was a little early, so I walked into this meeting room, and there was some speaker up there. He was going on and on about — I didn't know it was this case that I had written, and how they had "succumbed to the U.S. Supreme Court's determination in *Pilot Life*, and only Justice Mosk had the guts to file a dissent." [Laughter]

When I heard this, I started to realize they were talking about my case, so I decided to better quietly leave through the back of the room. But there again, it's the supreme court of the land, and while you may not be too happy to suggest that it's covered by federal preemption, in my judgment it was pretty clear. So far, every state that's tried to make an end run around *Pilot Life* has been unsuccessful.

MCCREERY: In principle, in areas where there are independent and adequate state grounds, and one would not need to turn to the federal —

PANELLI: We may have done that. We may have done that, where we say, okay, we can decide this on state constitutional grounds. We may have done that when there hasn't been a conflict, we just decided we could apply the California Constitution.

I'm thinking in one case — I had the lawyer who argued that case before me last week in a mediation, *Rojo [v. Kliger]*. I think it was sexual discrimination, or maybe sexual harassment, and we went under, we found a hook in — I shouldn't say we. The appellate court found a hook in the California Constitution, and we went along and more or less did the same thing, which was kind of an unusual step for us. It was really out of character for what we normally did.

That's why the mediation was kind of interesting, because this young woman — she's not so young anymore — that argued the case, she says, "Do you remember *Rojo*?" I said, "I remember it very well," because the judge who wrote the opinion in the appellate court was sitting in the front row, as was the trial judge. The trial judge kept making some comments during the course of the argument, and Justice Mosk got very upset and told him to be quiet or he had to leave. But it was a little stretch for us to find the predicate for the relief in the California Constitution.

MCCREERY: What in general is the importance of preserving state supreme court independence?

PANELLI: To Justice Mosk it was very important, because it gave you more power, obviously. If you say that you're bound by everything that the federal courts say, by virtue of how they interpret the federal Constitution, then necessarily your jurisdiction, if you will, or your authority is somewhat limited.

If you think that you, as the highest court in the state, should be able to do something that isn't prohibited by the federal Constitution, then you ought to do it. Normally, it was to expand things. It was give greater rights to criminal defendants on search and seizure and things such as that.

MCCREERY: I'm just wondering if you think there's an ethical or moral dimension to relying on the state law whenever you can.

PANELLI: Let's be honest. If you wanted to reach a result, because for whatever reason you felt it was right to do it, and you needed a basis for what you did, and you could find it in the Constitution of California, even though maybe the federal Constitution didn't grant that right, then, of course, you could go there.

I would think like in the abortion situation — suppose the federal supreme court says that there wasn't a right of privacy, and therefore *Roe v. Wade* wouldn't have happened. We could have if we wanted to in California interpreted the California Constitution and said, "Yes, the California Constitution does grant you a right of privacy, and therefore we're going to do this." Those were the types of situations, and we may have done it. I just don't have a recollection.

Just thinking of *Rojo* now, when we're through I'm going to go back and look at it, but I think it was one of those situations where we did that.

MCCREERY: Among other things, Justice Mosk wrote an essay in the *Texas Law Review* at one point — this was probably in the mid-eighties — I think trying to resurrect interest in this idea of emphasizing the state Constitutions. He suggested it was an area where so-called liberal and so-called conservative judges could work together, that they would each perhaps have different reasons for pursuing that doctrine, but that they could agree it was best for the citizens, or that sort of thing.

PANELLI: Justice Mosk was very politic when he said that, because let's face it, the only reason that people were talking about that is they either thought that the court — the federal court or whatever court that you

disagreed with — was either too liberal or conservative, and therefore you wanted an opportunity in your state to do what you felt was appropriate in your state. So if the federal court, if the U.S. Supreme Court was being very restrictive with respect to the rights of criminal defendants in search and seizure, then you'd say, "We ought to see under state law if we could give them more rights."

On the other hand, if the U.S. Supreme Court was being extremely liberal with respect to some of these, you might try to say, "We're going to restrict it somehow." I can only think in terms of the search-and-seizure area, because that was always an issue. When it got into inevitable discovery and all of those kinds of things, there were all ways to find — you knew that there was some law that had been broken, and if you felt that you were hamstrung by some of these rulings, maybe you'd want to do something else.

I always thought an issue that — and, of course, it's been addressed now by the court — had to do with parental consent for underage girls for abortions. I always thought that that would probably be an issue that would have been addressed under the state Constitution. Then they tried to pass an initiative. It didn't pass, but they're circulating petitions now again to put it back on the ballot. Justice Mosk may have voted on it, because I think the court did have that issue, and I think Justice Werdegarr wrote the opinion that said you didn't need parental consent. I think that's what the initiative is, maybe to overturn that. I'm not sure.

MCCREERY: But, of course, on these hot-button issues like abortion, people who are taking one side or the other are always coming back, aren't they, to whatever they're trying to accomplish? It never ends.

PANELLI: My own personal view is that this whole issue is not an issue that should be a legal issue. I think it's a moral issue, that people need to make their own decisions. I think the worst thing that the U.S. Supreme Court could do, and they'd be absolutely stupid if they did it, was to mess with *Roe v. Wade*. People are living with it. They understand what the deal is. I think to go back and reopen all of that would be a huge mistake.

Those aren't the kind of issues that should predominate in judicial confirmations. It should be, "How do these people view the law? What kind of lawyers are they? How are they going to look at the Constitution

with respect to legal issues?” Now, I recognize they said that you have the right of privacy, and that’s how they came out of *Roe v. Wade*. Leave that alone, then. Forget about it. Those aren’t the kinds of things that I think you should be asking people. But that’s become the litmus test. My own view is that, I tell people, when they were having these confirmation hearings, I said I think they’d be absolutely stupid to do anything [to change abortion law]. It would be kind of nice if one of these judges came out and said, “Yes, we’re not going to mess with it.” Because this idea that it’s *stare decisis*. *Stare decisis* is fine until you get five votes that someone wants to do something different.

There were cases on the California Supreme Court where I thought it had been terribly wrongfully decided, and if I ever had an opportunity to overturn them I would. And we did. *Carlos* was one, that intent-to-kill issue that we talked about.

There was another one, had to do with tortifying contract breaches, the *Seaman’s* case. As Bernie Witkin would say, “Have opinion, looking for case.” That was one, and it never came up while I was on the court, but it has since been overturned. Because I just thought that was really opening up Pandora’s box, when you get breach of contract and you make it into a tort claim, because all the remedies can be so different. Someone could say, “Yes, I’ll breach the contract, because I understand if I perform the contract it’ll cost me a million dollars, and if I breach it it’s going to cost me only five hundred thousand under the damage rules. I’ll just breach it and pay you the five hundred thousand and go away.”

But there were things such as that. So when people say, “You’re overturning the precedent,” well, that happens. When we were being criticized for some of that, if they had really done any kind of research they could have seen that some of our predecessors had done the same. So a lot of these things, it’s just a question of the perspective of the person who’s reporting what you’re doing.

MCCREERY: Just as an aside, talk for a moment about the media role in things, and how that might have evolved while you were on the court.

PANELLI: I thought that the media was very unfair with us, because unfortunately, all of this was driven by the death penalty and the fact that most of the media was not in favor of the death penalty. I always used to

say, “Hey, if the people want to say that that’s no longer the law, that’s fine with me. It would have made my job a lot easier.” But unfortunately, as I say, I tell people, “I took an oath to uphold the laws of the State of California, and that was one of them.”

But I thought that the press was not fair with us, and I similarly didn’t think — like Professor Barnett at Cal, and Jerry Uelmen and some of the so-called court watchers were really fair. But you understand that’s part of when you’re a public figure. They have a right to make the comments. The problem is you can’t sometimes get into a real dialogue with them and talk about it, because then you’d be breaching your judicial ethics about what you can and can’t talk about.

That’s why I used to, whenever I’d get out and speak to groups, I’d say, “You can ask me any questions you want. I’ll decide which ones I’ll answer.” Because on a lot of that stuff — and, of course, I’m talking at a time when the court — it was a controversial period.

This was a court that came into being after three people were removed, and it was clear they were removed on one issue. It wasn’t a question that they were incompetent or that they had committed moral turpitude. It’s just that they were doing what they thought the law required, and the public disagreed with them.

MCCREERY: Before we finish talking about independent and adequate state grounds, am I correct that some of the appellate lawyers were advocating for that in support of death-penalty defendants? In other words, [interpreting the] state Constitution?

PANELLI: They may have. I can’t recall but I would think that they would, because I guess you could find that — maybe Anderson came along and found that it was a violation of, I guess they said it was — I’m not sure whether it was the California Constitution or the federal Constitution. But when the feds said it was okay and then they brought it back, assuming you went through the mitigation, and did all the things, dotted all the i’s and crossed all the t’s, you could have it again.

But I’m sure that they raised it. They raised everything else. [Laughter] As I say, they’re very aggressive, as well they should be — they’re trying to protect their client, save his life. They raised a lot of issues that you’d even have addressed before, but who was to know that maybe one day one of

those would catch the attention of four people. The Ninth Circuit, on some of this, have changed their position, depending on what panel you get.

MCCREERY: As you just reminded us, the environment was so politically charged after that '86 retention election. I did want to talk just a bit about Chief Justice Lucas and his leadership during his whole tenure as chief. Just returning to that early time after he took over, what did he do to remove the court from the media spotlight, and to get the whole operation back on track? Three new justices coming in — how did he handle that?

PANELLI: I think that he's a very intelligent person, and he has a nice presence about him. As a result, I think he's very calm about how he approaches things. Someone could say something to me and the Italian in me rises to the bait. [Laughter] He would never do that. He's very measured, and I think as a result he was very respectful to others. I think that generated respect for what he was trying to do. Like his appointment of pro tem [justices], where he said, "I'm not going to even be involved in the process. The presiding judges will be those of the courts of appeal, the six districts. They will be in a pool, and the secretary will know who they are."

He tried to convey the fact that if there had been some suggestion that there was some politics in how people were appointed, he was going to separate himself from that, and make sure that it was just going to be a random selection. I think in the appointments that he made with respect to committees, I think he was very aware of the impression of being impartial. So there were people who were appointed on committees that probably he didn't agree with, but that he wanted representation by all. There was some sense that that may not have been the case before. There was even the appointment, as I think I've mentioned, of people to the appellate departments of the superior court. There was kind of a protocol, so that you just did it by seniority.

Of course, people criticized that because if you're just there long enough you got it. But everybody then got a chance, whereas under Chief Justice Bird, she would select these people, and some of them were new to the bench. It seems to me that you'd be better to have some people with some experience.

He tried to make sure that everybody understood that everybody was going to get a fair shot, and that there weren't going to be any preferences

or any priorities given to certain people by virtue of where they came from, who they were, because it was obvious he could have — his appointments to the Judicial Council, his appointments to these other committees, like when we had the [Vision] 2020 commission, and gender bias in the courts, I thought he included everybody.

Even on the court committee, Justice Mosk, Justice Broussard, they weren't treated any differently than the others who were more in tune with the chief. We were all appointed by the same person that appointed him, which hadn't always been the case. So I think the press respected him, and the people that he dealt with even in the legislature, you knew where he stood. He was not duplicitous. If he said something, that this is what it was, that's the way it was. I don't think he had any kind of hidden agendas.

As a result, I think he was liked and respected. Of course, the people he was working with, he knew. David Eagleson, when he came on, he had practiced law with him. Justice Arguelles, they were from down there, so there was a certain camaraderie that existed. I don't think he knew Justice Kaufman very well, and, of course, he didn't know me at all. But like with the assistant presiding justice, he decided to rotate that position so that if he was gone and you needed orders signed and stuff, there would be — I think we did it on a two-month rotation, maybe three-month rotation, so everybody got a shot at it.

When it was my turn, it was when the American Bar Association came out to California. He was ill, and so I had to welcome them. In the same way, when the American Law Institute — which was the first time they'd ever come west of the Mississippi — I was the acting P.J. so I had to do stuff, because he was unavailable. But everybody had a shot at it, even the newest people, but it was done — first it was Mosk, then Broussard, then myself.

MCCREERY: You mentioned the Vision 2020. What kinds of things was Chief Justice Lucas trying to accomplish in the court system with that?

PANELLI: Part of the problem was that as a result of the legislature cutting our salary, there weren't funds to do a lot of this stuff. I don't know if we covered the fact that we created this Amicus Foundation.

MCCREERY: I don't think in much detail, no.

PANELLI: What happened was we didn't have monies to do those kinds of things like 2020, discrimination and gender bias in the courts, et cetera.

So we were advised that what we should do is we should create a nonprofit foundation, and so the legislature passed a law authorizing this and it was formed. It was called the Amicus Foundation. Chief Justice Lucas was the president, and I was the secretary-treasurer.

Then what they did is the Administrative Office of the Courts got contributions to this foundation, and then that became the funding source for some of these programs. But I think 2020, the vision of the court was one that was funded by Amicus, and there were some others.

But then when the climate changed we shut it down and terminated it. I think that final termination — I don't think occurred, maybe two or three years ago, because I remember getting stuff at home where I had to sign that we had finally gotten rid of it, because it became a real headache for everybody to try to account for all of this money.

MCCREERY: Yes, I think we had touched on this but not in much detail, so I appreciate that. When you say the climate changed, though, what do you mean?

PANELLI: I think then the legislature — we started getting funding and things got back to normal, and everybody became more rational in their relationship with one another. So then the AOC started to get the funding that they needed to do this stuff. The fact is, just the other night I spent two hours on the phone with some survey that the AOC is doing on, I think, the public perception of the court system, and how ADR may have impacted it, or has it impacted the courts, and that kind of stuff.

MCCREERY: I actually want to ask you about that, but before I do, what about the Administrative Office of the Courts during Chief Justice Lucas' time. What was going on there?

PANELLI: We hired a new director, Bill Vickrey, who is still there, because — what's his name, Davis, I forget what his first name was [Bill Davis] — he left. So I was chair of that committee to hire the new AOC director. He and Lucas got along fine, although he had gotten along fine with Davis as well.

I forget who was there before Davis. Ralph Gampell was there for a while when Chief Justice Bird was chief, but I don't know if Davis succeeded to Gampell. But it's a very close relationship with the Judicial Council.

There again, when the chief got to appoint someone from the court, I thought it was going to be me, [Laughter] and it was Justice Eagleson. I remember telling him I was a little surprised and a little disappointed, because I had been there longer. His view was, "Don't worry. You'll get your chance." I think Eagleson did two years. I think it may be a two-year term. Then I went on, so I was the vice chair of the Judicial Council.

MCCREERY: Yes. You did that from '92 to '94, I think my notes say. Tell me a little about that role.

PANELLI: We had some very interesting people on the Judicial Council. We had Senator [Bill] Lockyer, and Assemblyman [Phil] Isenberg. Of course, they had much different views, because they were much more liberal than what we were doing.

But Isenberg was rational. In those days Lockyer was just off the wall. Really, he was embarrassing at times the way he'd conduct himself in the meetings. He'd lose his temper and rant. It was really kind of embarrassing. I haven't seen him in that mode [lately]. He's calmed quite a bit. But it was very interesting to see the differences.

But even there, Lucas may have put Isenberg at the head of some committee on the Judicial Council, which would have never happened before. So I think he was trying to have us function in the role that we were supposed to function in, and that was a separate and equal branch of government, but the playing field was leveled for everybody. I think as a result of that, things were really kind of calm. I can't think of many problems that we had.

MCCREERY: To what extent was Chief Justice Lucas showing some political savvy here, too?

PANELLI: I think he's a good politician. I think he was sensitive to the needs of minorities and women on these committees in the things that he did. His staff, he had at least two or three women that were there. Beth Jay, who worked for him, had a responsible position.

MCCREERY: And is still there.

PANELLI: Yes, she's still there. But I think he was a good administrator. I think people liked him. They were comfortable with the way he managed. He had a comfortable management style, delegated, but you knew who was

responsible. I think as a result everybody was kind of comfortable. I don't really think there were any cliques.

Socially, everybody's staffs — I remember Jane Brady would have her monthly event — whatever party it was. She worked for Eagleson, but Lucas and I and whoever else wanted to go would come to her house. It was just a much different atmosphere.

MCCREERY: How did you operate as chair of the Judicial Council?

PANELLI: I was vice chair.

MCCREERY: Excuse me, vice chair.

PANELLI: It was when Lucas wasn't there I was in charge, and I think I may have headed some committee. I had very little insight into what the Judicial Council does. I always, when I was a trial judge, just thought they were a pain, because they had all of these rules that you had to do. I remember when we came to the new sentencing guidelines, and they came down and tried to instruct us. I never really understood what you had to do if you were going to do the minimum or the maximum, so you did the median, all that kind of stuff.

But I got a lot more involved when Bill Vickrey became the chair, because as I say, having interviewed him —. In fact, he brought this up when the supreme court was here recently. I think it's been a year or two now that they came down, sat in San Jose when it was the anniversary of the Sixth District. He said, "Justice Panelli interviewed me, and I was coming from Utah. So he ordered a bottle of wine. He wanted to see what I would do with it." [Laughter] So he says, "He found out that I liked it." So he's done a good job.

MCCREERY: You mentioned these colorful characters from the legislature who were involved and so on. How well did this group work together on the real nuts and bolts?

PANELLI: I think it worked well, I really do. It was a pretty good cross section. I remember — no, I guess she wasn't on the Judicial Council, she was on the board of governors, the woman who was murdered by her son. I forget what her name is now. But she was a Deukmejian appointment to the board of governors. I was thinking that she was on the Judicial Council, but she wasn't.

I think it functioned well. The leadership — Lucas definitely had things in mind that he wanted to do, like clearing the trial calendars, speeding up the process. I'm trying to think if the speedy trial thing was under his watch, or whether that was under [Chief Justice] George. My recollection is that it was under Lucas, because in L.A. the civil cases were all up against the five-year statute, and I think that he was the one that got this stuff going with the new rules and all that, that really cleared up a lot of the court congestion.

He was into management of the courts coming from the federal side, which I thought was a lot different then. It was almost — on the state side it was kind of *laissez faire* a little bit. I know that he was instrumental in trying to get summary judgment to have a greater impact in the trial courts, so that a lot of the cases that didn't belong in the system would get out of the system early, which again was something that happened with regularity in the federal courts. It was irregular in the state courts.

MCCREERY: How much of an influence was his federal experience?

PANELLI: I think it was a big influence. I think it was a big influence because maybe part of it came from the fact that he came from life tenure. As a result maybe some of the things — although I don't think that would have affected him. If he thought this was what you ought to do, he would have done it. But sometimes, it's interesting, just on this issue of summary judgment.

I was recently on a panel and we were talking about it, a judge from West Virginia, Pennsylvania, and myself, and there was Judge [Alex] Kozinski from the Ninth Circuit. We were talking about why state court judges don't grant summary judgment very often, and federal judges do.

We took the view that maybe it was because state court judges were elected, and as a result to throw out a case without having it go to jury trial, lawyers might — if you had a contest it may have impacted you. Kozinski said that wasn't it at all, it was that the federal judges were smarter than the state court judges, and that's why they did it. [Laughter]

But I remember, Lucas wanted us whenever we talked to judges to suggest that there were a lot of cases that needed to be pared down by summary adjudication, summary judgment. Part of it was that the law in California was different than the federal system, and then maybe four or five years

ago, maybe it's longer than that now, where the legislature did bring the summary judgment rules more in line with what the feds were doing.

MCCREERY: Was that a positive change?

PANELLI: It all depends. Justice Mosk was against summary judgment. He figured that every case should go to jury trial, and then if the jury screwed up, the trial judge had the tools to make the thing right, either by JNOV [acronym for the Latin phrase "judgment notwithstanding the verdict"], new trial, those kinds of things. But he was a firm believer that everybody had a right to at least have their case exposed to a jury.

MCCREERY: What did you think?

PANELLI: Yes, I thought that — I never granted summary judgment when I was a trial judge, and that's why — it's a funny incident. One day when I was out talking to these judges at the judges' conference, and I was talking about the need for summary judgments grants, and some judge raised his hand and he said, "You were a trial judge, weren't you?" I said, "Yes, for twelve years." He said, "How many summary judgment motions did you grant?" I said, "None." He said, "You were on the court of appeal, weren't you?" "Yes." He said, "How many grants of summary judgment did you affirm?" I said, "None." He said, "Then I rest my case." [Laughter]

That was true, because it wasn't — my sense always was, first of all, you're much safer to let it go to trial, and if you think you might have a sense of how it's going to turn out, let it run its course. The result is going to be what you think it's going to be. Now, granted you've taken some judicial resources, because you're going to have a trial. But then you're probably going to prevent an appeal, which saves everybody everything. If at the end of the day it turns out that a jury screwed up, you can fix it. I always felt that I'm not going to, in effect, give them a spare tire on an appeal.

That's like a lot of times when you've made evidentiary rulings that you might have been reaching over backwards, because you knew that this person wasn't going to win anyway, and you might as well maintain a clean record with respect to that.

MCCREERY: You're suggesting, though, that Chief Justice Lucas took a different view?

PANELLI: He took the federal view. To this day if you're in federal court — I know some of these cases I mediate I tell the litigants, "They're going to grant summary judgment in this case, and the lawyers all know that," whereas in the state court it isn't going to happen.

I'm thinking of all these bad-faith insurance cases. When we had the bad-faith stuff on the Northridge earthquake and I was doing those mediations, I'd say 50 percent of the time the bad-faith stuff was knocked out in the federal courts, rarely in the state courts.

So the trial lawyers were trying to do whatever they could to keep it in state court. They might throw in some defendant who prevented it from going to the federal court, and then just before it went to trial they would dismiss that person. Then what they started to do is the defendant says, "Okay, now the diversity situation's gone, we'll go back to federal court." So that's part of the games that lawyers play.

MCCREERY: We've been talking about the various interests and reforms of Chief Justice Malcolm Lucas while he headed the California Supreme Court. You were talking about his efforts to speed resolution of cases, and so I wanted to explore some of the ways that he did that. I have the impression that there was an increasing role for alternative dispute resolution during this time.

PANELLI: I think what they required is earlier status conferences. To be absolutely honest with you, I didn't follow it very much because I wasn't involved, but it was that you had to get everything done within a year. If the case came — I forget what they called it. They had some name for this thing, that if your case came within the parameters of these rules, then you had to do everything within a year. As a result, it got the judges involved in setting up these status conferences sooner in the process, and got up to speed sooner with their cases. So I think they either settled as part of the court system, or — I don't think that ADR had started as a big factor then. It may have been starting to turn around.

MCCREERY: But that came later, in your recollection?

PANELLI: Yes, because I've been out twelve years, and this occurred — I may have been off the court when that happened. I'm not sure. But in any event, it was the pressure to get on top of these cases and manage the cases sooner, because under the system that we'd operated under for years and

years, the judges did not really control their calendars. It was more or less the lawyers, and the lawyers would decide when they're going to take certain steps, as opposed to the court saying, "We're going to do this, and in the first ninety days after you file a lawsuit you've got to do this, and then in the next sixty days you've got to do these other things. Discovery has got to be all completed by a certain date, and then we're going to go to trial."

Under the old system you would set the motions when you wanted to set the motions, and you didn't have a timetable within which these things had to be done, and so lawyers would tend to drag things along. I think those are the types of measures that got lawyers focused in a case sooner, recognized when they had to do things, and therefore as soon as they knew the case they were in a position to try to resolve it. That's why cases in the old days resolved on the courthouse steps. That's because people never really did anything until they knew they were going to go to trial.

In those days you could also, by stipulation, continue a case for trial, which, of course, now never happens. A judge decides. I never continued a case. You'd have to die before I'd continue a case, because you know, as I've mentioned — no, maybe it was on this interview that I had with this AOC thing. We knew that 95 percent of the cases were going to settle, so you're only going to try 5 percent of the cases. So the task was to find out which of those hundred cases, which of this 100 percent, that is, 5 percent, are going to be tried, and get the rest of them out of the system and try those 5 percent.

I think this process did that, so you'd get to trial in only those 5 percent of the cases that were going to be tried, and you got those done early. As a result, these court calendars become clear. I think part of that was — I'm not sure that Lucas was the one who did it.

My sense that it was, because part of the federal system was that you did these kinds of things. There was more regimentation, more control by the trial judge, because most of the federal system went to direct calendar-ing systems. So you became responsible for your cases, whereas under the master calendar system, you picked up the case when it was ready to go to trial. Someone else did the law and motion and did those kinds of things. So I think the federal influence that Lucas had, I think, spilled over into the state side.

MCCREERY: What kinds of resistance was there to this change?

PANELLI: I think that, while I didn't see it or feel it, I'm convinced that there was resistance, because they were used to always doing it their own way. Whatever anyone else did, Los Angeles says they did it different. So the mantra was, "We don't care what they do in Los Angeles." That's why they had these civil cases that were all up against the five-year statutes.

They were in horrible shape calendar-wise, and now there's a question about, "We didn't have all the judges." They don't have that many more cases, percentage-wise. It's just that they're managing their cases, and as soon as the judges start managing the cases, the cases started to disappear, because people would settle.

MCCREERY: May I clarify, when you say you know you're only going to try 5 percent of the cases, and settle 95 percent of them —

PANELLI: Statistically we know that you'll be able to resolve short of trial 95 percent of the cases.

MCCREERY: But so the change, though, was in promoting settlement?

PANELLI: That was part of it. But the idea was to get rid of the 95 percent that you knew were going to settle early, get them out of the system early in the process, and then the residual 5 percent you could then try. But if you had half of those 95 percent cases that you knew were going to [settle] still in the system, then, of course, that jammed the calendars, it jammed the courts, and they were in the system too long. So the idea was to get those cases out of the system early on. Part of it was to have early settlement conferences, early mediation, early status conferences, so that the judges could decide, "Is this going to be a settled case, or is this going to be a tried case?" You could find that out pretty soon.

MCCREERY: Am I right that there were some sealed settlements that were never reported?

PANELLI: Oh, sure. There were a lot of them that'd you'd stipulate where the parties said, "We'll agree, but it's got to be sealed." That's all changed. Now it's very different. But it was just a tool for settlement judges to get people who were concerned that, "If they saw we paid this amount of money, it'll generate a lot of lawsuits."

You'd get the institutional litigants. Ford Company would say, "Gee, if we'd paid a million dollars on this Pinto case and people find out about it,

all the other Pinto cases we have now, a million dollars is going to be the floor.” So that was kind of what you did. I am sure that there were some that were sealed because they wanted to hide something.

But there were also cases where the plaintiff wanted it sealed. If all of a sudden you’ve come into a lot of money, and you’re not accustomed to handling money, and the paper says you’ve just recovered \$500,000, you’re going to find out you have a lot of relatives that you didn’t know about. Because a lot of these people would never have been able to handle that kind of money. So if someone would come up and say, “I have a hard-luck story. My kid needs this thing.” It could have been a con. They’ll write a check and away they go. So a lot of people said, “I don’t want anybody to know that I recovered this money.” That wasn’t the usual reason, but to this day, confidentiality is a standard term in any settlement.

This case that I said yesterday, they said that they wanted it confidential. I said, “To me that’s a given in any settlement it’s going to be confidential.” There are certain cases that you obviously can’t — if it’s a minor’s compromise, unless the court will seal it, when you go to court, or a governmental agency, it’s a matter of public record, so those issues. But there were cases that were sealed for a variety of reasons.

MCCREERY: Did you and the other justices — I don’t know that you held the same views, but did you see any problem with that happening so frequently?

PANELLI: No. I think that the bad reason didn’t happen that often, that is, that you really did something that was despicable, and you wanted to hide it by sealing it. More of them were pragmatic reasons. They’ve had other cases and they don’t want — just like I had a case on Monday involving a school district. I found out something I didn’t even know, that if you’re a handicapped student they have to have an individualized educational plan for you. If you’re unhappy with it you’re entitled to a due process hearing where an administrative law judge hears this thing.

In this case, I think we’ve come to some resolution, which would be good because they’ve been fighting each other for four or five years. But they said, “We can’t really settle this case yet, because we’ve got two other cases out here. If they say this is what you paid here, all of a sudden, which

we don't think these other cases would warrant as much, we're going to start at this number."

But because it's a governmental agency and it wouldn't be private they said, "So we're going to back off for sixty days, until we resolve these two cases, and then we'll come back and talk with you." So there are those kinds of reasons.

I think the important thing was — and this was still while I was on the superior court — the important thing was to get cases settled early. As I say, Judge Cohn, Judge Joe Campbell and myself went up and down the state holding symposia for trial judges on how to settle cases.

MCCREERY: Yes. That's exactly why I wanted to ask you, knowing you had such history as a settlement judge and had a really long view of this whole matter. As you say, it's changed now in terms of the sealed settlements.

PANELLI: It's changed, right. Now it's very rare that — because judges are very concerned about being criticized for sealing the records. But I'm sure that a lot of cases that aren't — if you settle them outside the system and you dismiss the lawsuit, you can still get the Michael Jackson thing. You'd get those. His settlement, that first settlement, was sealed.

I had an opportunity to get involved with what would have been a very, very interesting mediation involving a movie actor, who wasn't named. They had to do it on a Saturday and Sunday, because they were filming somewhere. It must be some sort of a sexual something or other.

MCCREERY: It wasn't named to you even? You don't know who it was?

PANELLI: No. No, it wasn't. But I couldn't do it because I'm doing a wedding that weekend, which is too bad. I would have loved to have done it, just to find out who it was.

MCCREERY: I know you brought a lot of background in this area to the court, and I was just curious kind of how it played out during Chief Justice Lucas' tenure.

PANELLI: One of the other issues that came up was what they call stipulated reversals, which probably had more impact than even the sealed settlements. It's where you would agree to settle the case after trial, and you would enter into a stipulation — this is when it's on the court of appeal — and you'd stipulate to reverse the trial judge's ruling. Justice Tony

Kline took serious umbrage to that, and there was legislation that resulted from that. I guess maybe it was even the court of appeal judgment — it was stipulated they'd reverse what the court of appeal did.

I'm not too sure of my facts on this, but there was now statutory authority for when you can do this and what has to be determined in order to do it. I think it has to be that it's not a matter of public interest. There are various rules so it's hard — it is almost like this sealing thing. There is authorization for it, but in practice you're rarely going to be able to get the benefit of it.

MCCREERY: I wonder how these stipulated reversals originated. Where did that practice come from?

PANELLI: They just decided that we will pay you a certain amount of money for this case if you agree that we can — you won it below, we'll pay you this money, maybe a little kicker, but we need to get rid of the precedent.

MCCREERY: A new twist on how to do that?

PANELLI: Right. And let's face it. For judges, if they thought they were going to get rid of this case, they said, "Fine. I'll go along with it."

MCCREERY: We spoke at length about the Constitution of California, for example, and the circumstances under which the justices would go to the U.S. Constitution. I wonder if you can characterize Chief Justice Lucas' views of these matters. Is that an easy thing to do?

PANELLI: To be quite honest with you, I don't think we ever discussed it. I'm sure he had a view, but I couldn't tell you what it was, because as I say, I don't think it was a big thing with him. The only recollection I had of any member of the court who really had that on their agenda was Justice Mosk, as we've discussed. I think he, as I think you had indicated, had gone around, suggested in some of the talks that he'd given, that state supreme court justices should look more to their own constitution where they could, as opposed to the federal Constitution.

But as we discussed, I don't think that that was really a major topic of discussion for the court, probably because he may have felt that there wasn't a great deal of support for that view, because it was somewhat — I don't want to say radical, but it was kind of a new view, because everybody

kind of operated under the fact of the supremacy of the U.S. Constitution, so you kind of deferred to it.

MCCREERY: You had mentioned the influence on Chief Justice Lucas of his federal appointment, in other matters, and I just got to wondering if you felt that extended to his approach to judging in any way?

PANELLI: I think that the federal rules were in certain areas much more restrictive. I'm thinking in terms of the rules on summary judgment. He clearly had views that the federal system of summary judgment rules were something that were superior to the state rules.

I think that with respect to — I think he enjoyed his federal service. But it's much more regimented, it seemed to me. I have never had a federal practice, so I can't speak from experience, but I think a lot of what guided him was his experience on the federal court, although he had been a state court judge as well, before he went to the federal court, to my recollection.

MCCREERY: Yes, he had a few years in Southern California.

PANELLI: Yes, Southern California, Los Angeles Superior Court. But it's hard to say. He keeps things pretty close to the vest. If you were to ask him about things, I'm sure he would answer you, but as far as going out and espousing a particular view, I don't think that he did much of that. I think he did with respect to court administration. I think he was very much interested in getting the process so that it would operate more smoothly, efficiently, and quickly. But other than that, I can't think of anything that was a major topic for him. But I think he was an excellent administrator, as far as getting things done, because he was on top of a lot of things. He could delegate, but yet he felt the pulse of what was happening.

MCCREERY: Just to bring up once again this matter of judicial philosophy, how would you characterize the Chief Justice's approach?

PANELLI: I think he was conservative. Under today's standards he would be termed a conservative. I think he believed in strict law enforcement, was probably what they want to call a law-and-order type, but I think he was fair. He was very intelligent. He would be able to read a case, some precedential case, understand it, and apply it, and he wasn't afraid to say he was wrong if his initial understanding of what he thought he would like to do wasn't possible. When you review cases you obviously have some view

of what the law is, or what you think the law is. Maybe the law isn't there where you'd like it to be, and I think he knew what you could and couldn't do. Someone said — who was it? Justice Mosk or someone said, "With four votes you could do anything."

MCCREERY: Yes, that's a good reminder, isn't it? The chief's views, generally, how did those compare with your own? We talked about how these labels of conservative or whatever can only take you so far, but how did you two line up?

PANELLI: We were pretty much in agreement on most things, not all things, but on most things I think we saw things the same way. That's not surprising. We were both appointed by the same governor. It's not to suggest that everybody is a clone of the other, but more or less your views with respect to certain issues, you have — as I say, a lot of how you come to some of these things is based on, obviously, your environment, your background. I was a firm believer, as we've discussed, early on, is that you had to earn everything, and you had to take responsibility. So the idea on some of these issues that it was everybody else's fault in the tort area, as opposed to assuming responsibility for it — those kinds of things obviously have some impact on how you decide issues.

But I think more or less we agreed on most things. I don't know that we had many dissents to one another's opinions. On most things I think we probably saw eye to eye on them.

MCCREERY: And no great change in that over the years that you served together?

PANELLI: No, no. But the one case that stands out in my mind was a dissent, the Morongo Valley School [District] case that had to do with an invocation at a high school graduation. The majority ruled that it was a violation of the First Amendment on the separation of church and state, which I disagreed with. I know that he didn't agree with me, which disappointed me. Not long thereafter, the U.S. Supreme Court ruled in an eighth-grade graduation case that the invocation was a violation of the First Amendment, and I disagreed with that as well. I viewed the one-minute invocation at a high school graduation — where the kids are eighteen or close to eighteen — that the invocation is nothing more than a gaveling to order. These kids are not about to be proselytized by someone by a minute

invocation. They're anxious to go out and have a party, and so this is just a way to get them quiet, to start with the ceremony.

I can see in the eighth-grade graduation where the kids are still immature that maybe there's some problem. But the irony of the Morongo school case is I had read thereafter, a year or two thereafter, that the young woman who was giving the valedictory address started to get up, came to the podium and sneezed, and the class all stood up and said, "God bless you." [Laughter] So they got around that issue.

I still think I'm right. I think it's a big difference between the [school] levels. Even if someone gave an invocation at a university graduation, I guess some would say that's still in violation of the First Amendment. But I have my own view of the First Amendment establishment clause. I disagree with the way the U.S. Supreme Court has come down on that. I think that the whole jurisprudence with church and state has been greatly expanded.

In Los Angeles you can't have a cross on the shield of the city, the coat of arms of the city. Somehow it crosses the barrier, or the violation of church and state. I don't think that that's what it was all about. I don't think our founding fathers had that in mind when they talked in terms of the First Amendment.

I have a talk that I gave where I'd talk in terms of what I think was really meant by establishment of religion, but it's obviously a minority view. [Laughter] I haven't been able to muster even five votes for that.

MCCREERY: But just in brief, what do you mean, or what do you think was meant by establishment of religion?

PANELLI: I just think that you couldn't have a state-established religion, nor could you force people to belong to a particular religion. When these people left England to come to this country it was because they wanted the freedom to exercise their religion. As you see the way, early on, many of the functions that are now taken care of by social agencies were really church-related agencies, hospitals, orphanages, those types of things. I think that the idea that religion was supposed to be totally outside of government — the fact that the coins say "in God we trust," the [U.S.] Supreme Court has some God reference over the court — I just think that they've taken it to ridiculous extremes, but I'm in the minority on that.

MCCREERY: Let's talk about the U.S. Supreme Court for just a moment. I was noticing that during the time you were serving here in California, the U.S. Supreme Court was having a lot of turnover of justices, too, say from the mid-eighties to the mid-nineties. William Rehnquist was promoted to chief while you were serving on the court. What were your views of how some of the areas of law were developing at the federal level?

PANELLI: I kind of liked what they were doing. Over the years I've, frankly, become a little disappointed in Justice Kennedy. I think that he has moved from the center, or even if he was maybe right of center to somewhat on the left. As I say, I've chided him a little bit about — he wrote the [U.S.] Supreme Court opinion dealing with the grammar school graduation prayer. I know him socially, because one of my best friends is his first cousin. So there are occasions when he visits, both in Saratoga and in the desert, where we will have dinner together. We've been on many panels together. But I'm disappointed in some of his positions, but he may have felt the same about some of mine.

I've met and had some social contact with Justice Scalia. We have been honored by some of the same Italian-American organizations and have been on the dais with some of these Italian organizations. One of his children went to Santa Clara [University], and as a result, when we had the graduation, he may have been the speaker there, and so we were together. We've had some luncheons at Santa Clara where we were together. He's a firebrand southern Italian. [Laughter]

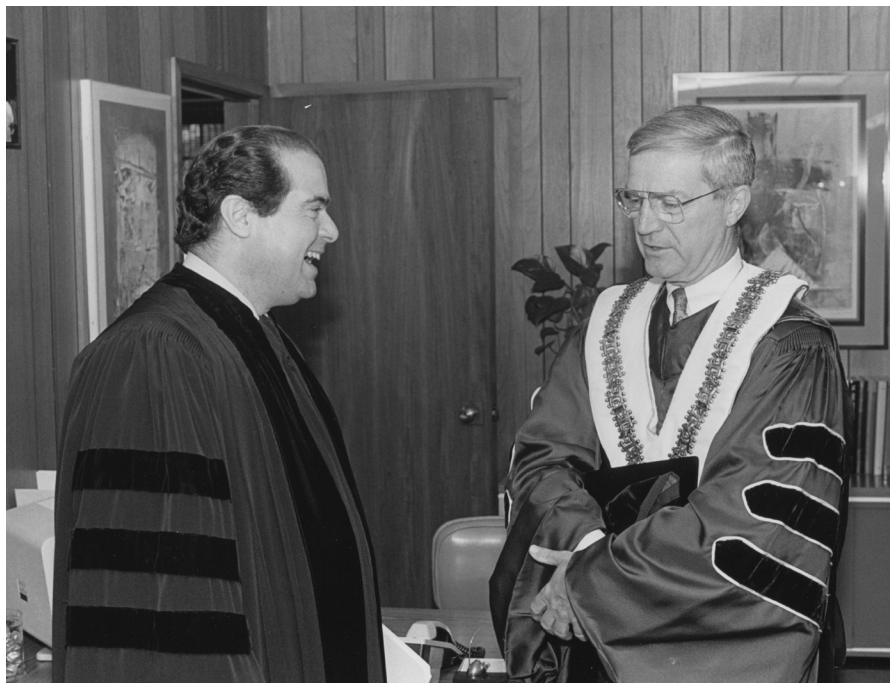
MCCREERY: You can relate?

PANELLI: Not to the southern Italians.

MCCREERY: Oh, that's right.

PANELLI: Right. I used to say we're northern Italians, but my wife's relative says, "You're not a northern Italian at all. You're from the central part of Italy." So I've had some contact with him. I've met Justice Breyer socially. But other than that I really haven't had a great deal of contact with, nor had any discussions with any of the others.

Some of my law clerks — Mark Epstein clerked for Justice Brennan, and another one of my law clerks clerked for Justice White. I went when I



JUSTICE EDWARD A. PANELLI (RIGHT) WITH
U.S. SUPREME COURT JUSTICE ANTONIN SCALIA, EARLY 1990S.

was in Washington to visit them, and they introduced me to these folks, but that's about it.

MCCREERY: How closely were you and the other justices here following some of the developments, particularly in areas relating to state powers, as this court went on?

PANELLI: I don't think we paid that much attention to it. I think we'd paid more attention to what they were doing in the criminal area, because it impacted a lot of what we were doing, especially with narcotics and search and seizure and those areas. And, of course, clearly with the death-penalty cases, because as I'm sure you appreciate, a big part of our caseload was the number of death-penalty cases we had. Someone said now there's six hundred and some-odd inmates on death row, and I think when we were on the court they were at least into the three and four hundreds, so a lot of what they were doing with the criminal jurisprudence obviously impacted what we were doing, or what we couldn't do based on some of their rulings.

So you would [take note] more in those areas, I think, than in others, although on free-speech areas, clearly we were interested in what they were doing, because of the anti-abortion rallies and what you could or couldn't do, the rights of individuals to picket and those kinds of things, as protected or not protected by the First Amendment.

MCCREERY: You mentioned the criminal area, and, of course, there were several different times in California these victims' rights propositions that came forward under the wing of Governor Deukmejian, starting the year he was first elected that, in fact, as I understand it, required California law to look more frequently to federal law in those matters.

PANELLI: Because they were concerned that the California Supreme Court was going its own way. As we discussed, you can be more restrictive or more expansive, but you can't do anything that's already in contravention of what the court has said is prohibited by the Fourteenth Amendment or the Fifth Amendment. But even though the federal courts might say this was permitted you could, in interpreting your own constitution, say it's not permitted. I think that was the concern, that the court was veering away from some of the [U.S.] Supreme Court decisions, by virtue of the fact that the court wanted to be more restrictive, or more protective.

MCCREERY: It was a pretty long history, so I'm wondering how big a change was this?

PANELLI: You had a history because the California Supreme Court for a long time was pretty liberal. Again, we're talking labels — was pretty liberal. For a while the only conservative on the court was Justice Richardson, and you can't do too much with one vote. But Justice Tobriner and some of those others, they had a much different view than I know Justice Richardson did.

So I think the feeling was, and, of course, again, we get back to the whole death-penalty issue and how the public reacted to what they perceived the supreme court was doing, that is, thumbing its nose at the law that was in place at the time.

MCCREERY: Coming back to the California court in the time of Chief Justice Lucas, you're describing a pretty harmonious relationship not

only between you and him, but among this group of justices that was coming along.

PANELLI: The views were pretty homogeneous. Again, part of it is because the person who is appointing them is looking for people he believes will interpret the law in accordance with what the appointing agency thinks the law should be. But again when people say, “Do they ask you these questions?” No, they don’t ask you those questions. They look at your track record, they look at what you’ve done, how you’ve conducted yourself around these issues, and so they already know. They don’t have to ask you.

If they have to ask you those questions, you’re never going to get appointed, because they don’t have any confidence in you. I’m sure that in my case — here I was nominated by Jerry Brown on one occasion, so they may have some questions. How does he really view some of these issues?

MCCREERY: You were just saying you can’t do much with one vote, or even two votes. I wonder, is there a downside to a court with so much harmony, so that many of the decisions turn out six–one and five–two?

PANELLI: Yes, I think that’s a legitimate criticism, because then if you tend to maybe rubber stamp what somebody says, if the chief especially, if you’re all — like when we were, all but two, people who had been appointed by Deukmejian, if you just went along by virtue of that factor alone, I don’t think that’s good. But you find that people become very independent.

There were lots of — not lots, but there was some disagreement on some of these issues. Especially even if you agreed on the result, how you got to the result was important, because how you got to the result could be the predicate for another case later on, by virtue of the reasoning that you’ve used. So sometimes people would say, “I think you got the right result, but I don’t like the way you got there.” So there would be some disagreement. But I think to suggest that if people don’t view the other’s work critically, then I think that would be a downside, because I think it’s important. You get sloppy, first of all, if people aren’t being analytical about what it is that you’re saying, if they just go along with you.

My own view is that there was a lot of that in the previous court, because there was some question in my mind — how much time was being spent on some of these cases by some of these folks? But again, you never know what goes on in the mind of people. But there were occasions

sometimes where I'd see people on the grants for review, you'd kind of wait for the signal. The touching of the ear, is that a grant, or the touching the nose a denial? You know.

MCCREERY: You wondered if there were some setups?

PANELLI: Yes. I remember on one case we went around, and it had to do with a question of the identity of informants in the prisons, because the process was that the informant could talk to a correctional officer, and then the correctional officer could testify at the disciplinary hearings without disclosing the identity of the informant. Then the question was, no, this person has a right to face and hear the informant. My view of prison was that if that were the case, if some officer, if there was some danger to some correctional officer and someone says, "They're going to get you," and the person who supposedly is going to get you finds out that this person was the one who ratted on him, then someone's going to find himself with a shiv in the back.

My view was that you have to rely on the integrity that the correctional officer is going to be honest in the recalling of what was being told. There was a difference of opinion on that. I don't think that my view prevailed, but I don't recall. But this was one where I think we had gone around the table for the votes, there was some hesitation, and I was wondering if someone was waiting for the signal. What do we do here?

It was only a question of granting [review]. I don't think — it may have been a writ, I don't really recall. You have to remember, all of this stuff occurred twelve years ago now.

MCCREERY: I know. You're being asked to recall things from a long time ago. Later on, though, when Governor Deukmejian's appointees were all in place, to what extent did you find the other justices predictable in their views? I don't know if that's the right word.

PANELLI: No, but you kind of, again, knew just in discussion, and when you start to see the pattern of votes, you knew where the people were. But a lot of the work that's being done to assist you is being done by staff, and there could be people on the staff that don't necessarily agree with everything you do. So there's a certain amount of keeping you honest by these folks as well, so that there'd be discussions, minor debates sometimes, among people on your own staff who may not have agreed with the way

you were going to go, and gave you reasons why they believed that maybe you ought to reconsider or think about it.

But ultimately, you have to make the decision. What would bother me would be, and it's been known to happen, where someone said, "I'd like to do it, but my staff doesn't like it." My view always was that when they wear the robe then I guess they can do that.

But we talked about it, I think, earlier, that that was one of the things that Chief Justice Bird felt was a drawback to having permanent people on staff, is they start to have a belief or a sense that they're as important as the person that they're working for. That's why she had a turnover. I think it was a five-year rule, and I can see some merit in that. On the other hand, it takes a couple of years or so to really know what you're doing.

MCCREERY: Yes, and as we've said repeatedly, there were so many new justices during this time, so it's kind of hard to look at trends, isn't it?

PANELLI: Yes. But the interesting part of that was that the staff did not change much, so the staffs that were there for Justice Grodin stayed on. Some of the staffs that were with Justice Reynoso stayed on. Not many of Chief Justice Bird's people stayed, but the others, I don't know that there was much change.

MCCREERY: You've described how you inherited some people who worked for a different sort of person before you.

PANELLI: Two of my people had worked for Chief Justice Bird early on, and then she had put them into central staff. Then both of them worked for Justice Kaus, so I kept them on. I forget who Justice Lucas kept from Richardson's staff, which wasn't as surprising as when Eagleson came on and took on some of the people, because then, of course, obviously they replaced people who had been removed.

MCCREERY: That's a different sort of thing. Recognizing that the new justices coming in had an effect, let's look a little bit, though, at the kind of work trends of the court. We've pointed out that the death-penalty backlog was a huge burden, as were the attorney-discipline cases in those early years before the state bar court, and so on.

PANELLI: Right.

MCCREERY: But the court watchers, as we know, were sitting on the side saying, this court now is granting fewer new hearings, publishing fewer opinions. Dissent is much less frequent. How do you think about those matters, looking back at that period of time?

PANELLI: One of the things that I think is overlooked often is that by virtue of the fact that you are affirming death-penalty cases, it then gives rise to a parallel habeas corpus petition, so you have to, in effect, go through the whole process all over again, so that there's a review of the record, there's all of this kind of stuff. So it isn't as if once you wrote an opinion on this case it's gone and you can now turn to something else. You know you're going to get a writ of habeas corpus with respect to that particular case, so there's no question that the death-penalty cases were clogging the court, taking a lot of its resources.

But again, there wasn't much you can do, because that is your only appellate jurisdiction — other than PUC. You have to take those cases. When the Bird Court was reversing sixty of sixty-four cases, they never saw those sixty cases again, unless they went back and got retried and came back up again, but that'd be years later. Whereas, once you start affirming them and you start coming back, the same lawyer who worked on the opinion had to get back and work on the habeas.

With respect to the number of petitions for review, they tell a story about Justice Newman saying that when they'd granted three petitions for review, or four, at a conference he'd say, "That's the quota. We're not going to grant any more." Whether that was true or not, I don't know.

So there was never any suggestion that you were granting too many or we ought to grant more. It's just that sometimes maybe we looked at — the standards for review were different, or may have been a little more restrictive. Not to suggest that at times, as I mentioned, we'd do what we called a rescue mission, but that didn't happen very often. We really tried to adhere — "Is it an issue of statewide importance? Is there a conflict in the court of appeal?" Even if there was a conflict in the court of appeal, is this an isolated instance on this issue, so that we depublish it and let it percolate, see what happens? Then, of course, if you start to see the issue reoccurring, then you may have to grant review.

But when you're writing all these opinions, unfortunately, as I say, and these people would properly mention that they're pretty long, and it's hard

to know how to cut them down. Everybody wants to look scholarly, and it's hard sometimes to really shave them.

MCCREERY: We talked also before about some of the pros and cons of the depublication process, which is kind of a vagary of the California system, if you will. What role would that volume of depublications have on the overall picture, in your view? Some years there were a greater number of depublications than there were published opinions. What's the effect on the development of California law?

PANELLI: I tell people the standards for publications in the courts of appeal are very loosely followed by the courts of appeal. They don't have to publish all these opinions. But everybody likes to see their name in print, and especially when you get — it was always kind of a joke. If you were a pro tem you had to have a published opinion during your term, so that you could point out to your grandchildren later that, "See this case here? You see, I'm in the law books."

So sometimes there are more cases published by the courts of appeal that really need not have been published. So my standard response was, "At least you're having the same seven people reviewing all of these cases," as opposed to, what are there now, 104 court of appeal justices or whatever the number is. There used to be 88 when I was there. Hopefully the standards by which you're depublishing the case will be the same, as opposed to one division is granting publication on this issue, and another division in the same district on the same issue decides it's not important enough to publish. Because everybody has different views of what is significant.

As I mentioned in this letter to the editor that we talked about, when the San Jose *Mercury* ran the story on the criminal justice system in Santa Clara County, I said the only people who make money with the published opinions are the law book publishers. So when you have as many panels writing opinions, if there wasn't some way to control them it would be very, very difficult.

I tell lawyers all the time, "If you think that this unpublished opinion and the reasoning is pretty good, you could use it in your briefs." You can't cite it as authority, but you could see what this particular court of appeal said, and you could almost plagiarize it.

MCCREERY: Thank you for illuminating that a little bit. Why do you think the standards for publication at the courts of appeal are so loose?

PANELLI: Because it says — I forget how they read, but — “If you think this is an issue of importance,” or I forget what the standards are, “you can publish your opinion.”

MCCREERY: Just stated pretty broadly in the language?

PANELLI: Or sometimes they don’t publish an opinion that would meet the standards, because they’re not sure about their position, but they like the result. So you figure that the risks of being granted — there’s some myth that if it’s an unpublished opinion it’s not likely to be reviewed, and to some extent that’s true, just as there’s a myth that if there’s a dissent you will probably get a petition for review granted, which again isn’t true. It depends on what the issues are, the basis for the dissent, the reasoning, how it may impact how you view the law on that particular issue, what the state of the law is on that particular issue.

But there have been cases where it was an unpublished opinion and there were seven votes to grant review, so that happens. Yes, it’s not often, but it does happen, because the court of appeal’s opinion may be so far out of whack that — and they may have known it when they wrote it, but they liked the result and they hoped that it could avoid review and scrutiny by making it unpublished. That may be a disservice to some of these folks.

There was one particular division that figured they could get by with writing some of this stuff, as long as it was unpublished. Then you’d have to grant review to, on that particular issue, write an opinion that disagreed with this. Then they were bound by that result. If they were to file another unpublished opinion in violation of what you’ve said, then, of course, you’d run into serious problems. But that would rarely if ever happen, because they’re bound under *Auto Equity* [*Auto Equity Sales v. Superior Court* (1962)] to follow the precedents of the [California] Supreme Court, whether they liked them or not.

That’s another criticism, that this is a way to stifle people who are critical of the position of the court, and in dissents you can get their attention by pointing out how the court — why the precedent should be changed. But you read that anyway, whether it’s an unpublished opinion. If it’s a significant enough issue it comes to your attention. I just think a lot of it

is people — maybe it's because when you're there and you know that the motives that are ascribed to you aren't really true. That isn't why you did it, but they would hope that maybe that's why you did it, because it makes you look bad.

MCCREERY: And you have no direct way to answer that at the time.

PANELLI: No. But sometimes I just would kind of chuckle to myself when they'd say, "It was obvious the court had this in mind," when we never even gave it a thought. [Laughter] It wasn't on the radar at all. Sometimes with public opinion, when people say this is why they did it, really, rarely did you bring into the discussion, "How is this going to sell?"

The problem with all of this stuff is, we're just a huge state with so many lawsuits. We have more lawyers than some countries, oh, than most countries, and as a result you have to find a way to function. So the alternatives, as we've discussed — do you add more judges? That doesn't help much. Do you add more staff? That really doesn't help a great deal. You can't really split up the courts, contrary to Justice Mosk's view, for the reasons that we discussed.

But it's almost come to the point where on the civil side — you almost get 100 percent appeal on the criminal side, but on the civil side lawyers, if they don't at least try to file a petition, there's a concern that they may be sued for malpractice, because who knows, there may be another case that's in the pipeline that raises the same issue that you've raised and may be of some help to your position. If you haven't kept your case alive you don't get an advantage. You can't come back and say, "Hey, wait now." You've decided this case; your case is final.

I had that happen in one of my own cases. I really was very, very disappointed at the court of appeal, because they shot me down. This is when I was a lawyer. They shot me down on an issue, and then about four or five months later the court of appeal decided it the way that I thought they should have decided it. But my case was dead, in that we had filed a petition for review, which was denied.

MCCREERY: You mentioned the civil cases, and I got to wondering with all of the great volume of death-penalty matters, and other criminal matters, how much time was left to work on the civil side of things? Was that discussed in any way?

PANELLI: First of all, with a lot of it you have to wait until the case is briefed. With a lot of the death-penalty cases there weren't that many cases that were fully briefed. So while you had to pay attention to them and it took a certain amount of work, the civil cases would get briefed a lot sooner, and so you would have time to work on them. Sometimes you might say, "I'm only going to devote two of my people to the criminal side, and three are going to do the civil cases." A lot depends on how complex the cases were as well. Some of the civil cases were cases that took a lot of time to analyze, research, and write, where some of them weren't too difficult.

MCCREERY: I was wondering about the court's responsibility to develop case law over time, and how well this court was holding that up.

PANELLI: I don't think that we were — that is, the Lucas Court — was all that interested in being frontrunners. We would many times see what other states were doing, whereas I think in the past the California Supreme Court prided itself in being at the forefront of all of these issues. Again, it's on your perspective. Some people thought that's great. Other people thought that was not so good, because they were doing things — what those who disagreed with the court perceived to be legislation by the court, where the judges are doing things that the legislature hasn't done or won't do. So they thought that was the luster of the California Supreme Court.

My own feeling was that I'm not so sure that that is lustrous. I think the more restrained you are, and to see what the rest of the country is doing — you don't have to follow what the rest of the country is doing, but if we're swimming one way and the rest of the country is swimming a different way, then you've got to look at it differently.

I knew that business and insurance companies hated what was happening in California, because they perceived it as the state being anti-business, anti-insurance. That has some impact, obviously, on the economy in the state. I know that now if I'm retained to give some advice with respect to, "What are the issues that you think the court is interested in?" or how you approach a petition for review, I stress what impact it will have on the state as a whole, both on its economy and on its citizens. Because some of these issues, as I say, if that's the case, then all of our industry is going to go to some other place, not in California, which will have some significant impact on the state's economy.

If the state's economy goes into the tank, then you don't have the taxes, you don't have the ability to do things that government is supposed to do. I'm sure that we considered that when we looked at issues, but I always suggest to people, at least in petitions for review, those are the kinds of things you ought to point out, because you want to point out what the impact of these decisions may have on the state as a whole.

But I remember many, many times when I was a trial judge and I was doing settlement conferences, insurance companies would just — and you'd have representatives from the East and Midwest. They just thought that we were crazy out here.

MCCREERY: You mentioned looking to some other state courts on occasion. Which states did you tend to look to, or can you generalize?

PANELLI: No, I don't think it was any specific — obviously you would look to the more populous states. You'd get to Vermont and New Hampshire, and they didn't do much. But New York was obviously influential, Michigan, some of those. I don't think we looked much to Washington or Oregon, even though they were out where we were. But I'd say Michigan, New York, not too much Texas, but it depended. When you did the research you'd find, or you kind of knew, what the trend is. You read about it. Things are happening in the tort area or products liability area.

Again, there were some people that felt, why do you care what the — or when we talked about what the majority of the states were doing, and we'd go along with the majority, there would be criticism even among some of my colleagues. "Oh, no, we shouldn't worry what the majority opinion is, or what the majority view is. We ought to say what we think our view is." Obviously, you have a right to do that, and in certain cases you do, but the fact that everybody or many people see it differently than you is something that should give you reason to pause and think about it, not to be different just for the sake of being different.

MCCREERY: We wanted to talk also about some of the evolving new areas of law, and perhaps that will dovetail with the question of whether or not California is a leader in certain areas. One could talk, for example, about the emerging area of environmental law, which was really still in development in your time, and where California was a leader really in all environmental matters.

PANELLI: Yes, but I think most of it had to do with environmental clean-up and the questions of who was to pay for it. Usually it interpreted whether these particular insurance contracts that may have predated when this whole issue of pollution and the environmental issues came up. So again it was a question of saying does this policy cover, or provide a means whereby the state or whoever else is claiming damages can seek recovery from?

Now most of the insurance policies all have pollution exclusions, and it's very difficult. So I think this whole environmental issue is different than when we were there, because *Montrose II* had to do with the continuous loss, which was very, very important, because if you had a policy during a period in which any of the loss occurred, then you were on the hook to the extent of your coverage. So I think those things were important.

The issue of whether you needed to have a suit, or whether a claim was sufficient to trigger the duty to either defend or to indemnify — those kinds of issues I think we were involved with. I get a kick out of when people say we were beholden to the insurance companies. They weren't too happy with my opinion in *Montrose*, because we said if there's any possibility of coverage, then you have a duty to defend, even if at the end of the day there wasn't any duty to indemnify.

In many cases, the defense exposure is more costly than the indemnity exposure, because you probably spend — if you have a \$500,000 policy limit, but you could easily spend two million dollars on defense, protecting the \$500,000 policy limits. Presently a lot of the carriers are now including defense costs within the indemnity limits, so that we have now many, many policies that are eroding limits policies to the extent if you have a million dollar policy and you spend \$300,000 in defense, you only have \$700,000 left for indemnity. Whereas usually the defense costs were outside the indemnity limits. So by virtue of the fact that the defense of these cases has become so expensive, and sometimes so many times greater than the indemnity exposure, it's why these carriers are making these changes.

MCCREERY: I wonder what you think were some of the evolving areas of law that the court faced?

PANELLI: I think in the tort area we tried not to expand the law. Obviously *Moradi-Shalal*, the bad-faith case.

MCCREERY: That was a big change as well, wasn't it?

PANELLI: It was a huge change. It didn't make the California trial lawyers very happy, but it was a terrible case to challenge that ruling. I'm not sure if I was on the court when we granted review on that case. I'm not sure. But you had another case which involved a non-delegable duty issue, where we placed a limitation on the liability of a homeowner for the negligence of a subcontractor that was hired.

MCCREERY: Oh, yes, we mentioned that.

PANELLI: Then there was the barefoot skier skiing backwards, Jewett? I forget the name of the case [Knight v. Jewett, 3 Cal. 4th 296, 318 (1992)]. We heard that case twice. My best friend, not my best friend but a very close friend of mine represented the plaintiff, and we shot him down twice.

But those are kind of the things that I think — there wasn't an agenda to say, "Okay, now this is an area of law that we're going to change." But as I think we did mention, there was this tortification of contract damages that we were interested in looking at, because again, you were moving ahead of the field. But in my view you can't look at a contract and say, we're going to give them the tort remedies for it, because people can breach a contract. They know what the ramifications are.

MCCREERY: When you talk about no agendas for change, I'm just thinking, too, of the fact that California society was changing so greatly. It still is, but there was a great change in the demographics of the state, the ethnic representation. I don't know how much those kinds of issues worked their way up to the supreme court —

PANELLI: Not many.

MCCREERY: Not many? Okay. I was just wondering how you see the court's role as societies do change. Should you only respond to those changes, or should you lead them in any way?

PANELLI: You have to have a case in order to do anything. So if people don't present a problem to you, then there's no way that you can address whatever it is that they're suggesting is now a problem. So it doesn't start from the top down, it starts out in the community. As people have problems, either caused by virtue of the demographic change or whatever's happening in the state, it will impact someone in a way that will give rise to a lawsuit. Then, of course, the court will address it, and dependent on how

the case is presented, in what area, they will decide that issue and that issue will have some impact, obviously, on the state and that particular area that is, if you will, under attack or that's being questioned.

Again, I don't want to repeat myself — what they put in these voter pamphlets may not be very close to the actual facts of what's actually occurring. But it's really kind of hard to know. Look what happened with respect to desegregation of the schools. The court didn't come out and say, yes, gee, this is really unfair that black kids have to go to one school and white kids go to another school. Someone filed a lawsuit saying, "Hey, this is a violation of my rights under the Constitution," and the court addresses it. I think that's what you have to do.

This whole immigration issue, it'll be very interesting to see what some of the cases or the issues that arise out of this whole immigration process. I know that based on my own experience with my family and immigration, it would probably have some impact on how you view the problem. But all of these societal issues, sometimes — they all believe that the courts can solve them, and my view is that you really can't, because you're deciding on the basis of this particular case that's before you, that obviously will have impact.

Roe v. Wade, for goodness sakes, was one woman with the issue, but the issue impacted a lot of people. But even there again, the court didn't say, "Yes, this is what we want to do." Someone said, "Hey, I believe I have a right of privacy, and this impacts that right," and you address it. But clearly the fact that the demographics of the state have changed, it'll bring new problems. I can see in the schools, maybe they're saying — certain school districts have already done that. "We're not getting the funding that we need. Our kids are being undereducated by virtue of the fact that our tax revenues aren't sufficient," So you'll get someone challenging whether that's equal protection and all those kinds of things, and then the court is forced to address them. Those are the tough questions, because they're really policy questions.

MCCREERY: As we talked about before, sometimes you were in a position of having to look at them when there wasn't much to go on.

PANELLI: You're forced. Right, right. It makes it tough. But maybe because I've been away now for twelve years, the issues don't seem as critical

to me. I always felt very comfortable. People would say, "Those are hard decisions." I never felt that they were hard decisions. I felt very comfortable with what I was doing. Maybe that's a kind of a naïve simplistic way to look at things, but I never said there was a case that I'm really worried about and said, "Gee, is this the right thing?" Because once you decide what you're going to do, you have to be comfortable that that's the right thing to do. I always felt comfortable about that.

MCCREERY: What about occasions where you had to reconcile your own personal views with your responsibilities as a judge?

PANELLI: My view always was that if your personal views interfered with your being objective, then you'd better just say, "I'm going to recuse myself." Because whenever you start to think about that, then you're going to make a mistake one way or the other. It came home to me very early on, when I first went on the superior court. Someone, one of my former associates, had a domestic case, and it was just a preliminary, temporary child support payment. "Oh, gee, it only runs for about three or four months." I said, "No, I want to recuse myself." They said, "No, no." The other side said, "We want you to hear it. We have no objection to that."

I heard it, and I was so concerned as to, if I made this order, will they think that I was being favorable to my friend, or am I going to do more for the other side just to be sure that I haven't favored him. When I start to get into that kind of a discussion with myself, that's very, very bad, because now I'm having extraneous outside influences that are bearing upon my opinion. From then on, I said if I have a question at all that, gee, is this something that maybe I have some questions about personally, then I won't participate.

When I went on Italian television people said, "How you could vote for the death penalty?" I said, "Because it's the law in the State of California, and when I became a judge I swore, took an oath, that I would follow the laws of the State of California." Someone said, "Then you should have resigned." I said, "I guess you could have," but I didn't feel that morally offended by it.

I remember when I took my ethics class at Santa Clara, Father [Austin J.] Fagothey, who was a great ethics person, we talked about the death penalty, and his view was that it was moral so long as you can say that it

somehow related back to society's right to defend itself. You have the right of self-defense, and if society says that this is, in effect, kind of an offshoot of self-defense, then it's okay. If not, if it's retribution and that kind of stuff, then you may have some moral problems. So I said, "If it was good enough for Father Fagothey, it was good enough for me."

MCCREERY: So as your own view of it evolved, though, you were able to —

PANELLI: Oh, yes, I had no problem with it, especially with — the cases we saw were horrible. They were horrible. There weren't many whodunits, and the question just always became, not always, but 90 percent of the time it was just, what impact do you think the mitigation had? It all became, was he abused as a kid, would the parents do this or that, the other thing? That just became a judgment call.

MCCREERY: It is interesting, though, when you go to a country that views such matters differently. Governor Schwarzenegger had that problem, upon facing his first death penalty last-minute appeal, with his home country of Austria.

PANELLI: Yes. The Italians are obviously very much opposed to the death penalty, and I understand why, because, clearly, if you have money and position you're never going to get the death penalty, whereas you're some lesser person, it's easy. You watch. When they start to have problems with the immigrants that they're having now, like the Albanians that were coming in and some of these other folks, they're going to start to rethink how they approach that issue.

It was easy for Italy when it was a homogeneous society. But the last time I was in Italy they were talking about, "We have to send these people back. We have the Coast Guard cutters that are stopping these ships and taking these people and sending them back to their own country," because they were starting to have some impact on the Italians.

It's much like our problem with Mexico. These people were coming in and doing the jobs that the Italians wouldn't do, and then the numbers got kind of large and they had some of the same social problems. The people weren't getting the education and they weren't getting the help that they needed. They turned to crime, and then all of a sudden it became this thing, "These people are all a bunch of criminals. We've got to get rid of

them.” I don’t know that I’ll live long enough to see it, but I can see that there will be some changes.

But a lot of it is cultural, just with respect to the judges. Maybe this is a gross overstatement, but we are very fortunate here because overall, people really, I think, generally have confidence in our judicial system, in our justice system. They may talk about, “The rich get better treatment than the poor,” and that may happen sometimes, but on balance that really doesn’t happen here all that often. I’m not naïve enough to think it doesn’t happen sometimes, but generally, overall, you’re going to be treated fairly.

I can tell you in the countries that I visited where we did these programs, that isn’t going to happen. It’s who you know. I know growing up, because of our own background, if you knew the people in power they would take care of you. It may have been that early on, but I just didn’t see that. In fact now I think it’s even worse. If you know somebody, everybody goes out of their way to make sure that they treat you differently, but more stringently.

Like Justice Kennard, when they stopped her for that drunk driving thing — come on now. They should have just — the poor woman. She wasn’t under the influence. They should have just taken her home and forgotten about it. No, now everybody gets afraid.

I think I’ve told you this. I always told my kids, “Don’t you ever tell any officer who stops you who your dad is. You just keep your mouth shut and say, ‘Yes, sir,’ and sign the ticket, because they may want to give you a break, give you a warning, but as soon as they find out who you are it’s not going to happen.”

Just like jury duty. I got summoned for jury duty and I said, come on. No one’s going to really want me to sit on a jury, because they’ll think they’ll have a jury of one, because everybody’ll look to you and say, “What do you think?” because of who you were. If you say, “I’m not going to tell you,” then you’re not participating.

But there isn’t a judge that will excuse you, because they’re afraid that someone will come up and say, “These other poor yokels have to come down for jury duty, but Justice Panelli, because he knows these folks, doesn’t have to.” So I go down, and then they kick you off. I’ve never gotten to sit in a seat. I would like to have done that. I’ve said many times, I could be a fly on the wall in the jury’s room, because first of all it gives you some

sense of how jurors deliberate. I've seen enough of mock juries. It kind of scares you because there you see what they do. You hear the conversation. They talk about everything but what they were supposed to be talking about. But again, it isn't the real thing, and maybe that doesn't tell you how they really do their job.

What I think could be a problem is that you become isolated, and you are cloistered. There's this criticism that the U.S. Supreme Court, they're bound up in Washington. All they know is what's happening in Washington, and so they get a distorted view of what the country is thinking about different things. I think it's important that you not become cloistered, and that you are not isolated so that you don't know what's going on in the world around you. That's why I always found it helpful to get out and talk to groups.

I think it's helpful for judges to belong to organizations like Rotary or Kiwanis. Trial judges do, appellate judges do. I don't know why supreme court judges don't do it. As long as you don't talk about what it is that you're doing and why you're doing what you're doing, but I think it's good to know, to listen to speakers that talk to these kinds of groups, so that you have some pulse of what's happening other than just reading the newspaper, or reading some *Time* or *Newsweek* or whatever.

MCCREERY: Yet they're being asked to resolve problems originating all over the country.

PANELLI: Right. As I say, it's just to know — some of the questions you've asked. What is the impact of the changing demographics, all of this kind of stuff. I think you need to know that, just so that you're in context when you're deciding the case, that you're not in a sterile laboratory where you're looking at it through a prism that doesn't reflect what's going on in the world about you. But that may be a view that isn't shared by many.

But I always felt that it was important for me to have contact with the outside world, and so I maintained social relationships with people other than the folks that I worked with. Even with the folks that I worked with I'd have some social contact with them, some more than others, because like anything else, some people you do more things with than others.

But as I say, a collegial court is different than when you're an individual judge making decisions. That's why, as I mentioned, we would try, I think it

was once a month, to do something socially, so people could feel comfortable with one another. It wasn't necessarily to curry favor or anything, but it was kind of nice not to have the pressure of what you were doing, to talk about family and this kind of stuff.

MCCREERY: We did want to talk just a little bit, though, about the changes there since you left, just to the extent that you can comment. I know that the current Chief Justice, Ron George, came on before you left, briefly.

PANELLI: He was a very good friend of mine, and we've socialized. I've stayed at his house. When we would go to L.A. I'd live with them, so no, I spent a lot of time with him.

MCCREERY: When he first came on, what did he add to the mix of the court?

PANELLI: I know very well because I did all that I could to see that he got the appointment. He's obviously very bright. He reads everything. He's amazing to me. He had a system. He had a big basket, and he'd throw all these newspapers in these baskets that he wanted to read, and then through the night or whatever he'd read these things. It's amazing to me.

So he brought an energetic view, and there was no question in my mind that he had ambitions to do — when he first went on the court of appeal I knew that he had ambitions to get on the supreme court. I did what I could to help in that regard, because I thought he was a very good addition, by virtue of both his scholarship, his intelligence, his writing ability. It proved to be right. So I thought that was something that was — we needed a younger person, because I think he was the youngest person that came on. Yes, I'm sure he was younger than I was. I don't know when he was born.

MCCREERY: Let's see. Born 1940, came on the court in '91.

PANELLI: Yes, so he was a lot younger than everybody else. But I think that was a good addition. After the first wave went off, Kaufman, Eagleson, Arguelles, and then you got Kennard, Baxter, and Arabian. You got a much different mix. But now, I don't know. I've met Justice Moreno twice socially. I don't know Justice Corrigan. I've read about her, but I've never met her personally. She went on the court of appeal, I believe, after I had left the supreme court. Justice Werdegard, of course, I know. As we talked about, she was one of my staff people.

MCCREERY: What was your role in her appointment, if any?

PANELLI: I didn't have to do much for Justice Werdegär. She had gone to school with Pete Wilson, and [Laughter] I don't know if this is true or not. Rumor has it that she kind of helped him get through, so I think that was almost a foregone conclusion, because she was also a very bright woman. The only concern I have about the court now is I'm not sure how much trial experience they've had, and so whether there is a recognition of the impact of their decisions on how trial courts function.

Of course, Justice Werdegär is one of those that had no trial court experience. Some of these others had limited trial court experience, but I think that's important that you do that, because you see some of the issues that are facing trial judges, and so when you have to address some of these issues you can see why things happen sometimes.

But there are a lot of decisions that the court has issued that I don't necessarily agree with, and there are a lot of decisions that Justice Werdegär has made that I don't necessarily agree with, but she's calling them the way she sees them, and when I was there I called them the way I saw them.

MCCREERY: As new members have come on, some of the existing members seem to have shifted a little bit on the continuum.

PANELLI: They have. That has been a concern of mine, because I think that — I can understand your views change with respect to certain issues. But anyway, it's my own prejudices. I'd like them to decide cases certain ways. Some of the issues, to me, were rather simple, and some of them — just like on the question of same-sex marriage. I predicted that they would look at it right after the City of San Francisco took it on. I don't know what they'll do with it.

But I remember a local newspaper fellow called me and said, "Do you think the court will take it?" I said, "I think they will." Justice Grodin was asked, and he didn't think so. So it's just how you view — certain issues you have to take, it seemed to me. Just like the Gore-Bush issue in the Florida Supreme Court. My sense is we would have never touched that. We would have said, "That's the issue for the secretary of state." In Florida's case it was her decision. "We're not going to go there." Of course, the Florida Supreme Court went there, and then the U.S. Supreme Court went there.

MCCREERY: Yes. By extension, do you think the U.S. Supreme Court should not have gone there?

PANELLI: I think what they did there is they did a rescue mission. I don't think they should have gone there, but I think they felt in view of what the Florida court did that they needed to get it straightened out. But I'm satisfied that we would have let it fall, whatever it was, because it's a no-win situation for you. Then they say, "That's all a political decision." The U.S. Supreme Court got that criticism.

We would have said, hey, it didn't matter, even though we might have preferred one candidate over another. Why go there? We'd duck — maybe that's an improper term, duck. We chose not to exercise questionable jurisdiction, because clearly that was an administrative decision. That wasn't a judicial one. She said, "We said this was the date. This was the date." She runs the elections. That's when you get into trouble, I think, when you get caught up in some of that.

MCCREERY: You mentioned here in California the same-sex marriage, and so I just wanted to make sure I understood you on that. You feel the California Supreme Court will, as a matter of course, need to take that on.

PANELLI: They have to address that issue.

MCCREERY: And better to go ahead and do it now, kind of thing?

PANELLI: This had to do with, remember when they were doing these weddings in San Francisco?

MCCREERY: Right, the weddings themselves.

PANELLI: Then they took that, I guess it was a writ, and the court said, "Yes, you can't do it," but they hadn't decided the merits, and I think that may have sent it back to the court of appeal. But see, that's an issue that they're going to have to decide.

But it would have been an issue, I thought, that would have been better addressed by the legislature, to define what the rights of same-sex partners are. Because as we talked, this whole issue of property rights, how do you decide that? Because the statutes, community property is a husband and wife. Okay, what's a husband and wife? I guess you can have two of the same sex. One says, "I'm a wife," and the other one says, "I'm a husband,"

or two guys say, “I’m the husband, he’s the wife.” It doesn’t make a lot of sense to me that you can decide that.

MCCREERY: In a court?

PANELLI: Yes, in a court. I guess they’re going to try to decide it on constitutional principles, but I’m sure that was never intended by any of the framers that those kinds of issues would — a definition of what is marriage. That’s why when this whole issue of the original intent, that’s a touchstone, but I don’t know that it’s necessarily a total guiding principle that you follow.

MCCREERY: You mentioned that when Pete Wilson was in the governor’s office you thought that had you stayed on, you might have had a shot at the chief justice seat.

PANELLI: Oh, yes.

MCCREERY: Was that explicit even?

PANELLI: No, but I felt comfortable that’s what the case was. I had a good relationship with Governor Wilson. I think he respected me. I was the senior person. I don’t think it would have been a situation where there would have probably been an expectation that you would stay long. It would have probably been more or less of an honorary thing. Maybe you’d stay a couple of years, with a wink, and you’d go. But as I told you, I wasn’t ever interested in that.

I just think the administrative part of it, I did it when I was in the Sixth District, but that wasn’t really what I liked to do. There’s a lot of politicking that you have to do in that position, and I don’t really like to do that. But I never asked him and he never told me, but I always felt that had I decided to stay — and I think maybe Lucas felt that.

MCCREERY: How early did you know Governor Wilson?

PANELLI: I don’t know how I met him or when. But I know that we appeared at a bunch of events together, we talked. I have been to a bunch of social stuff with him. One of the fellows who’s on the board of trustees at Santa Clara with me is a good friend of his and used to do stuff for him. But I always felt comfortable with him. But that’s an interesting question. I don’t know how I came in contact with him.

MCCREERY: In due time he had the chance to promote Ron George.

PANELLI: And he's been good. There wouldn't have been anybody else I'd have picked. I think that he's done a fine job. It's a job that I think he always wanted, and I think he'll stay on. He doesn't have any economic pressures. He's in good shape financially.

Sometimes that is a reason for people not staying too long. It used to be you'd stay at least to vest your pension, which is twenty years. But now people are leaving early because they can do so much better financially in ADR. But I think, again, if you leave for that reason and you knew what you were going to get paid when you opted for this — I always looked at it as a career.

Like I say, I became a judge at forty, and the maximum retirement was forty and twenty. I stayed for twenty-two years, at sixty-two, so the last two years, because my pension was 75 percent, but I was paying — while I was still on the bench you still contributed 8 percent to retirement, so for all practical purposes I was working for 17 percent of my salary. That's fine, but I felt I needed to get out and try to earn some money. I tell people that I had twenty-two years that I had to amortize it over, so I've done twelve, I've got ten more to go.

MCCREERY: You stayed a long time by today's standards.

PANELLI: Yes, but see, you've got a different breed of cat now on there. Ron George, as I say, he's very, very comfortable financially, especially now since his dad passed away. His dad was in good shape financially. Marvin Baxter, I think he likes it. I don't know, he'll probably stay. Same with probably Justice Kennard and Justice —

MCCREERY: Ming Chin?

PANELLI: No, Ming Chin I think the rumor has it that he may be leaving. Werdegar, I think she'll stay. My sense is Moreno, he'll stay until he vests, and I don't know enough about Justice Corrigan. My sense is there's another life out there. But a lot of people like it [on the bench]. You get this security, and people bow and scrape to you. You can get recognition, and that's nice, too.

Like I tell my wife, I got more than I ever suspected when I was a little kid that any of this would have ever happen, and so I'm very grateful for it.

It was a fantastic opportunity, but I was happy to move on. People ask me all the time, “Do you miss it?”

I say, “I don’t miss it. I enjoyed it, I really liked it when I was there, but I like what I’m doing now.” I don’t go back, because once you’re gone, you’re gone. You’re not part of the team, and as a result I always feel like I’m a fifth wheel. And similarly, they just renewed my term on the board of trustees at Santa Clara, and I said, “I’ve been there forty-some-odd years. That’s enough.” “No, we want you to stay.” But I can tell. New people are in, and they don’t know that you were there as long as you were, and what you’ve done, and so you’re kind of — in certain things it’s time to move on.

MCCREERY: Yes, we all outlive our usefulness in certain roles, even if we can continue.

PANELLI: But you don’t know what the inside stuff is going on. Even if you go back to the court, you can’t talk about what the work is that they’re doing. They have their own thing. They have their own relationships. The influence that you may have had is no longer there. I don’t want to say that they humor you, but it’s just a different deal. And so my sense is, forget it.

Plus now, when I tried to go back the last time, and they’ve got all this security now, and someone was wondering who I was, because I wanted to get in to see my former secretary. I said, “Why don’t you go down the hall and look at the pictures on the wall, and you count to a hundred. The hundredth picture, it’ll be me.” [Laughter]

Because, see, now they have the highway patrol that does the security for them. We used to have our own folks. Then they went to the state police, and then when the state police became part of the highway patrol — so none of the same people are there.

MCCREERY: Let me just ask you one other question about the court’s makeup. Some of the appointments in recent years have either for the first time, or restored representation of non-Anglo male members. I wonder, how important is it for the judiciary in general to reflect the population of the state it’s representing?

PANELLI: I don’t think you should have quotas. I don’t think that you should say, “Okay, we have 5 percent blacks, so we need that kind of representation, so many women.” I’m not in favor of that. But I think it is very helpful to get people of different backgrounds, and by that I mean both

ethnically and racially, or gender-wise, because I think people have different views —

MCCREERY: You mentioned that before, actually, that you thought that was important.

PANELLI: Yes, and you need to do that. So I think it's too bad that there isn't a black member on the court, because people are looking at these people, and they don't see any of their kind of people. And so the view is sometimes that you do something by virtue of who you are. If you have an Italian sitting there, and the litigant is an Italian, somehow you think you're going to get some extra advantage.

That isn't it. But I knew from my own point of view growing up, it was very, very important to have a role model, and there weren't that many. I remember the big thing going with my dad was, Primo Carnera was the heavyweight champion of the world for a little bit of time. But it would have been kind of nice — and then Giannini comes along. Those kinds of things when you are, I don't want to say in a down class, but those are kind of important to say, "Gee, these people did it. You can do it."

While that was important in my case, it wasn't totally necessary, because I was getting so much motivation from my parents, by virtue of the fact that they viewed education as the key to getting beyond what they were doing, where they were working with their backs. That whole thing was a big factor, plus it's helpful when they say, "If you work hard enough, then you can do it. Look at these people," and they could name some.

So I think that's important, and that's why I think it's good to have representation of various groups, because their parents can say, "See? If you work hard enough and do it, you can do it. Look at X up here."

MCCREERY: In a state like California, there's such a cross-section.

PANELLI: Such a cross-section. I was just telling these lawyers that I had here today, who are in Saratoga now. Saratoga used to be all-Anglo white, probably WASP. Now all my neighbors are Asian and Indian. It's amazing. I gave a talk to Saratoga High School, to their leaders' club, and they were all Asian kids. I asked the principal, I said, "Gee, I'm really surprised." He said, "Why?" He said, "Sixty percent of our school is Asian." In Saratoga.

MCCREERY: That's a change, all right.

PANELLI: It really is.

MCCREERY: I wanted to ask you about Justice Janice Rogers Brown, the most recent African-American member, who, of course, left last year to go to the federal appointment in Washington, and faced quite a bit of controversy in regards to that appointment. May I ask your view of that situation and why it was so volatile?

PANELLI: She was one of my favorites. I got on Rush Limbaugh's show, talking about Janice Brown.

MCCREERY: Did you?

PANELLI: We were at our home in the desert, and my wife had tuned in to listen to the program. It was about eleven o'clock in the morning, and they were talking — this was before her confirmation. They were talking about the problems that she was having. My wife was saying all this stuff, and I said, "It's really unfortunate, because here's a gal who is very bright, had to ride in the back of the bus, knew all the problems that they had. You would think that this is a woman who could really bring to bear on these issues the understanding of some of the underclass. I cannot believe why they're attacking her," calling her an Aunt Jemima and that kind of stuff. So my wife said, "Why don't you get up and call him?" I said, "I'm not going to call him." She said, "No, they should hear what you have to say." I said, "No, I'm not going to do it."

So she starts to dial, and she dials and dials and dials and dials. You never get through. So we had to leave. I said, "No, we've got to leave," because we were going to the airport there, which is about fifteen minutes from our house. Our place is in Rancho Mirage. This is our second home, and Palm Springs airport is about fifteen minutes away. So while we're driving she says, "Why don't you try on your cell phone?" So she dials the number, and sure enough it goes through. So I said, "This is Justice Panelli. I was formerly on the California Supreme Court, and I was calling about Janice Brown."

Then everybody, "Oh, wait a minute, wait a minute. Judge, we want to talk to you." Of course, I'm driving to the airport, and they put you on hold. They had to go through the commercials, so I had to pull off to the side of the road into this parking lot to try to talk. I talked about this, and I said that I found it very unfortunate that they were attacking



RETIREMENT PARTY FOR JUSTICE EDWARD A. PANELLI (CENTER),
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this woman. She's qualified, she's a woman of integrity, she obviously has views, but in my experience she would listen to people. I encouraged her to become a judge.

When we used to go to Sacramento, we used to stop by to talk to the appointments secretary. Either it was when it was Marvin Baxter, and later when it was Chuck Poochigian, and some of those people. We would just come and — because we were almost in the same building. Janice Brown was there, because she was the legislative secretary for the governor.

MCCREERY: The legal affairs secretary.

PANELLI: Yes, right. I'd always say, "Janice, how's it going? You ought to be a judge." Oh, she wasn't interested in that. I said, "No, no, come on. You'd do a good job," and all this. So when I talked to [Rush Limbaugh] I said the things that I just said. I thought it was unfair, here's a woman who's seen these problems, sharecropper's daughter. What more of a role model could she be for a lot of these kids? It went on, and he called me by name, because normally they don't tell who you are.

That afternoon — it's amazing to me — that afternoon I got a call from a woman that used to be my wife's roommate when they did their dietetic internship in Boston, who lived in Pittsburgh. She said she heard it on the program. A friend of mine, one of the fellows who's one of my best friends was in Charlotte, and they were driving and they were listening. They heard it. I got a bunch of calls from people.

I said, gee, I wanted this to be low profile. I didn't want to hear — so the *Daily Journal* runs a story. It says, "Janice Rogers Brown gets support from unexpected sources," and they talked about the fact that I had appeared on this Rush Limbaugh program, supporting her. Of course, Jerry Uelmen, with whom I had very little agreement on anything, he also supported her, because he said she was qualified.

That was my point. Here was a woman who was qualified, but they didn't like some of the stuff that she did. But I'm impressed with her. I think she's a smart, smart woman, and obviously had to go through a lot to be where she is. I think that's very important for people to know that. I'm sure as a little girl riding in the back of the bus, she never thought that she was going to be sitting on the California Supreme Court, a little black girl. But they ran a cartoon of her as an Aunt Jemima in some magazine, which was terrible.

So that's a long way of saying, yes, I think it's very important. I think Allen Broussard — well, before him, Wiley Manuel. Wiley Manuel was really, I really had a lot of respect for him. I got to know him because they assigned him to Santa Clara County for a month or something. I forget the reason. I was kind of his person that he had contact with while he was with us, and so we had lunch and stuff. He was a very bright, intelligent person.

Of course, I knew Allen Broussard, who succeeded him, by virtue of the fact I think that he was president of the California Judges Association, and so I used to see him. But I think it's unfortunate that there isn't — but there will be, I'm sure, if there's another vacancy.

MCCREERY: Similarly, with Hispanic members of the court?

PANELLI: You've got Moreno.

MCCREERY: Women?

PANELLI: You've got three now, you've got three women. It would have been — I think Janice, she's on the D.C. circuit. I doubt seriously if she'd

— I was really surprised that she didn't just say, "Forget it. I don't need all of this stuff." Withdraw. But I think she's a tough lady.

MCCREERY: How's she doing back there? Are you in touch with her at all?

PANELLI: No, no. The fact is, I never heard from her at all, even after my Rush Limbaugh appearance. Maybe she thought that my association might not help her. But no, I think this whole process, as we've talked about, it's become much more politicized than I thought it should be, but anyway.

MCCREERY: You retired at the end of '94, as you've pointed out, twelve years ago. Just talk for a moment about the mediation work you've done since then.

PANELLI: I've done, probably, I figure close to 3,000 mediations, maybe a hundred or so arbitrations, and it's been very interesting. Every day is different.

MCCREERY: What do you like about it?

PANELLI: The people. I get a chance to tell stories. A lot of it is getting people to relax, to feel comfortable with you, because when you then start to suggest maybe this is what they ought to do — because it's all consensual. As I tell people when I start out, sometimes it's not in this configuration. Today we're sitting around a round table, but if we're at a regular rectangular table and I'm sitting at the end, I say, "Usually when you see a judge sitting where I'm sitting, the expectation is, this guy's going to decide something." I say, "That's really not my role. As a mediator I'm going to try to get the people sitting across from one another to try to come to some sort of resolution, because I have no power to force you to do anything. It's all consensual."

So you get to talk with folks, and then you might tell some stories about — something will come up, and then they feel comfortable, and so when you start talking you say, "This case, you ought to evaluate these issues. I think you have a problem here, and you have this problem. This is an opportunity for you to get it resolved, get it behind you." All this kind of stuff.

But it depends. That's when you're talking to certain kind of people. When you're talking to executives — the other day I had people here from a wireless phone company. Obviously, you talk differently with them. You get different cases.

Last week on Monday I had a case involving a student's individual education plan that they're entitled to under the State of California. They

claimed that this kid who has cerebral palsy can't communicate except through a DynaVox [device], and so part of the plan for him was that he was supposed to have a teacher who understood this, and they didn't, so that was a problem.

The next day I had this issue with respect to the cellular phones. Then the next day I had — I forget what kind of a case I had, and the next day was a big case involving the healthcare providers. Oh, on Wednesday it was a question of bank employees not getting paid for meal breaks or rest breaks, and then on Friday I had a breach of contract from someone who had an exclusive distributorship agreement with respect to some tiles, roof tile stuff. So every one is different, and it's just a lot of fun.

MCCREERY: You've always had a lot of interests, I notice, even talking about your very early life, so this sounds like a good fit.

PANELLI: As I tell people, when I was in high school I played every sport. I was class president every year. I had the lead in the senior play, so I always did everything. I always tried everything.

I was thinking about it today because I got the Santa Clara alumni magazine. I saw one of the fellows that I played freshman basketball with died. I said, gee, and I kind of thought back. I said, he was a good basketball player. He was there on a scholarship. I wasn't all that good, but I lived at Santa Clara. It didn't cost them anything to keep me on the team. On all this stuff I was able to participate in all this. I was good in some stuff, not as good in other things, but I always did the stuff.

My wife was telling someone, she was talking the other day about, "When is Ed going to retire?" She said, "He started working when he was six years old. He's not about to quit now." But yes, I enjoy it. Plus, let's be honest, it's very remunerative, and it has enabled me to do things for my kids that I wouldn't otherwise be able to do. We started a foundation called the Heritage Education, where we fund things for public education in the elementary schools, generally the ones that my son teaches in. We provide for kids who can't afford to go to science camp; we pay for them. We'll pay for a bus to do field trips.

Every year he does an Olympics, and we fund that, where each of the grades has a country. It's kind of a geography thing. They have to study about it. Then they have the opening ceremony. They light the torch, and then they have relays and that kind of stuff, and then they have an awards

ceremony. They all march in with their flags from their country, different colors. So we do that kind of stuff. That's kind of neat.

I was able to help him buy a house. On a schoolteacher's salary, in San Jose you can't even buy a tent. One of my sons was a counselor at a drug-rehab facility. He now does the administrative work. But they needed a walk-in freezer or something, and we funded it. Then they had a big stove that broke down and we funded a new stove, so we're doing that kind of stuff, which is kind of nice. I couldn't have done that before.

MCCREERY: Really all throughout you've been engaged in giving back to your communities, the various ones. I've really noticed that.

PANELLI: The West Valley Community College District that I was on, they're still having some of the same issues that we had years ago. [Laughter] Now it's been thirty-five years, because that started in '63, and they're still talking about whether they can have lights on the football field, as well as loudspeakers. The City of Saratoga has been dealing with that for as long as the college has been there.

I've had a very interesting life. I have been very fortunate. My cousin's son just graduated from law school Saturday, and they had a reception for him and a dinner. My brother and sister were there and we were talking, and it's the first time we've really kind of talked about our time in Italy. My brother, of course, who was older, was telling me things that I didn't know, or hadn't remembered about when we were there.

He was telling me about that — apparently when we went to Italy my dad bought some property over there. My brother said that now, that the property — they've built a lot of houses on it. I said, "Gee, I didn't know that Papa had the money to do any of that." He says, "Yes, but when we came over there it was the Depression, and he had saved some money, and over there he was able to do something."

MCCREERY: That's why he went back, isn't it?

PANELLI: That's right, that's why he went back. And he talked about — this I remembered, when we'd gone over, on the train. It was a long train ride, and my mother was nursing me, and I got sick.

Then, of course, we started talking about when I lost all my teeth when the kids jumped me when I had this little trumpet, and we talked about

where always they'd lose me when we went to Via Reggio, which is the seashore there. But they'd find me trailing the ice-cream vendor. But I had remembered that. But it was a nice deal.

MCCREERY: You learned something new from a long time ago. It makes you realize how far you've come.

PANELLI: Yes. Really, I'm very, very fortunate. I've had opportunities that it's just hard to believe, because when you look back — it's really hard to believe.

When I think about when I was just a child, the best clothes I had were the ones that my aunt, who worked as a maid — I think we talked about this — for this family, they had a son who was about a year or two older, and so when he'd outgrow his clothes she'd bring them home to me. Like I remember I had a Mickey Mouse sweatshirt. There's no way I would ever have had a Mickey Mouse sweatshirt. He had gone to parochial school, so he had the salt-and-pepper cords, so I ended up in salt-and-pepper cords.

But it was really great, and that's why I say this country has been just fabulous for me, because the opportunities would not have presented themselves. But I worked hard. It didn't just happen. That's like my kids always give me, "Okay, Dad, don't tell us about the onion story, please." They don't want to hear the onion story.

MCCREERY: You did a little bit of law teaching, too.

PANELLI: I did.

MCCREERY: How did you approach that idea of being in a classroom and facing the students?

PANELLI: I kind of liked it, but what I found is if you don't do it often enough the preparation — once you prepare the course it's okay. But man, I spent innumerable hours preparing the course. Then if you only did it for a while — and I was teaching custody and support. It was a family law course. That was tough. Then I've taught appellate advocacy programs. We just did one on a MCLE [Minimum Continuing Legal Education] cruise, and one of the lawyers that was on the cruise, I bumped into her on Saturday and she said, "We've got to do that again."

MCCREERY: What do you like to emphasize with the students?

PANELLI: I like to emphasize integrity, honesty, and ethics, that those are the things that are going to follow you. I used to give an orientation talk to

the new law students when they'd first come in, and those are the kind of things we talked about, because I said, "Even though, wherever you practice, unless you're practicing in New York or Los Angeles, most places the judges will certainly find out about you, so it's very important that you be honest, ethical, and have the integrity of when you say something it means something." So [I lecture] around those kind of virtues. That's kind of what I talk about.

I think when I get tired of doing this, if I ever get tired of doing it, what I'd like to do is hang out in the law school and be like a mentor, kind of like a father-confessor, where people come up and say, "I'm having this problem with this thing. What do you think?" Or, "I'm having these problems at home. What do you think?" beyond just the educational stuff.

MCCREERY: I know your ties to Santa Clara continue. Maybe that'll happen.

PANELLI: They gave me another three-year term.

MCCREERY: On the board?

PANELLI: Yes.

MCCREERY: Tell about the Panelli Golf Classic.

PANELLI: Yes. I started on a scholarship, and the money that we raise in the golf tournament is to fund, in part, the scholarship. The other part of the funding is for a student emergency loan fund. If you get sick — because some of the students are working — and you can't pay your rent because you're sick, we will make you a loan to take care of you until you get back on your feet. So part of the money that we raise in the golf thing goes to that.

We started that about six or seven years ago. We do a lot of work for a little money. But what it does, it does get people together, and hopefully in the long term the school will benefit from it, because as you know, fundraising is everpresent and you just have to keep at it. Hopefully when people do that, then some other people will start to do stuff.

We have this one woman who comes every year. She's not a Santa Clara graduate, but I did a mediation for them years ago, maybe eight, nine years ago, and she comes every year. Not only does she bring a foursome, but then she'll write a check for \$1,500, which is really kind of nice. She's been really faithful. But we do that.

MCCREERY: There's the Panelli Moot Court Room.

PANELLI: There's the Panelli Moot Court Room. I had these lawyers from Phoenix the other day, and he says, "I don't know if you remember, but my partner's daughter was going to Santa Clara and she lives at Panelli Place. There is a cul de sac that's maybe two blocks south of the university. It has about five or six town homes on it. It's called Panelli Place."

MCCREERY: Is that named after you?

PANELLI: I don't know. The city never asked me, but it's there.

MCCREERY: I'll have to have a look sometime.

PANELLI: Yes, if you're ever down at the campus.

MCCREERY: How are things at Santa Clara?

PANELLI: Good, good. They had their graduation on Saturday. I did not attend, because I figured I've been to probably — I used to have to go to the undergraduate, the law school, and the graduate graduations for nineteen years when I was chair. I used to always go when I was the assistant chair, because Ben Swig would only go to the undergraduate graduation, so I had to do the other two, as the assistant presiding chairman, vice chairman. So then I said, I don't need to listen to another commencement speech.

But things are going fine. They put up my plaque, as I told you. I checked it. No one has stolen it or defaced it yet.

MCCREERY: Congratulations. And the law school made lots and lots of progress over the years?

PANELLI: Right. Dean Polden is doing a very good job. Yes, the law school, of course, is so different from when I went there. First of all, the classes are so much larger, and the students are so much better. The profs are — this whole ABA supervision has gotten a lot more stringent than it used to be. I was on an ABA committee for clinical education, because they wanted to get them on the tenure track rather than having adjunct professors. Was it called clinical training? I remember one of the big issues was that they wanted to do away with externs, because you take them out of the classroom, and so the class — this almost felt like a union issue, because the professors, to the extent that you have someone away for a semester, if you had enough of them, then they wouldn't need this clinical instructor.

Of course, some of the extern programs were being abused, because sometimes some son or daughter would work in their father's law office, and that was the clinical training. But I was really a supporter of clinical training, externships, because I said for many people, that's the only exposure they got to working for a justice.

There's a young woman here, she introduced herself. She says, "You may not remember me, but I was an extern for you." I used to take so many externs. The face looked familiar to me, but I didn't really remember her. She introduced herself to me, and last week I had another one come up.

The fact is, one of the lawyers I had here today, he said, "Did you remember this person?" I've already forgotten her name. I said, "Yes, I remember." She said, "She was an extern for you." I said, "I know that, but I also did her wedding," at Berkeley at some, I don't know if it's a Jewish garden, or there's some sort of a garden out there and I did her wedding. I said, "I remember that." So my view was that it was an opportunity for people to get to work in the court they probably would not be able to do, especially when we're not doing annual clerkships. So I said, I think there has to be some supervision over these externship programs. A lot of people don't want to do it, because you have to supervise these kids.

MCCREERY: There are a lot of lawyers in California now. I wanted to ask you how you think the state bar is faring these days.

PANELLI: I'll be absolutely candid with you. I've never been a big supporter of the state bar. I obviously have belonged. I had a very interesting issue recently. The big issue now is they want — when you retire from the bench, most of us went inactive, because if you wanted to go on assignment you couldn't be an active member of the bar. If you had a certificate of good standing, which they give you, then you can do things.

But the state bar needed the money, so they suggested that all the retired judges who were doing ADR should pay the active bar duties. No one wanted to do that. No one wanted to become an active member. Then there was a question, if you did ADR whether that's the practice of law. There's a big dispute going on with the retired judges and the state bar over this.

I got someone who filed a complaint with the state bar suggesting that I was practicing law and I was an inactive member, which really bothered me, because this person never appeared before me, so he couldn't have said

I was giving legal advice, which, of course, you don't do in mediation. But they were going to use me as this test case, because all these other people here were inactive judges, and no one — but because here I was on the supreme court. The retired judges, the California Judges Association, had been negotiating with the state bar about this issue.

They were talking about, well, they may have some special deal. Anybody can do mediation. You don't have to be a lawyer. An engineer can do mediation. So it was just a way to get people to pay the dues. I said, if they want to say if you're in ADR, if you work for an ADR provider, even though you're inactive we want you to pay the dues, we've got to pay the dues. So rather than go through all that hassle, JAMS suggested that those of us who were inactive go active, so I'm now an active member of the state bar, requiring that I do the MCLE and all that kind of stuff. But I gave these lectures, so I don't have to worry about MCLE until 2008.

Meanwhile, the California Judges Association and the state bar are trying to come to some agreement. They may have had some tentative agreement what they can do, but the supreme court has to approve whatever these rules are. But I never was an active — I guess I was an officer of the county bar association in Santa Clara County, but I never was a delegate. I never got involved too much in that kind of thing. It was the politics of it, and I wasn't interested in it. Plus, I thought that a lot of the stuff they were doing, like legalizing marijuana and some of those crazy issues, they were not issues that I was interested in. I always thought they were much more to the left of where I was. But I paid my dues, and they did what they did, and that was fine with me.

MCCREERY: Thank you. I wonder if there are any topics we've talked about that you would like to say more about, because it's an awful lot of material to cover.

PANELLI: No, no, I don't think so, other than that I really appreciate this opportunity more than I can tell you, because of my background, and where I came from, and what I was able to do. To me that is very, very important, and so the fact that it is going to be memorialized historically to me is very, very significant.

I hope that my time on this earth was doing something more than taking up space. I always said that I wanted to make sure that there was something I did — people may not have always viewed it as what they would

want, but that the world might be a little better off in certain cases because I was here for a while. So that's why this was very important.

When I told my family — not my kids, my kids aren't interested — but my brother and sister, they thought that was a big deal. I mentioned yesterday — I was with this fellow who was responsible for me starting on the judicial track — and I told him we're doing this. He said, "That's appropriate." He said, "I'm glad that they're doing it, because they should recognize what you've done."

MCCREERY: You have given us a tremendous gift, and it'll be of great value for many years to come, so I thank you for that.

PANELLI: I hope so. I want to thank you, and I'm glad that the [Santa Clara] law school did something [in support of the oral history]. My wife hasn't been too fond of the law school, but when I told her that Dean Pol-den did this, she said, "I'm glad to hear that."

MCCREERY: Yes, their support was very important, very important. You'll get a chance to review this oral history in draft, and let me know if there's anything you want to add later on, but let me thank you so much, Justice Panelli.

PANELLI: Thank you. You have been just a pleasure.

MCCREERY: Thank you.

PANELLI: I think I may have asked you this. Are you a lawyer?

MCCREERY: I'm not a lawyer, so that's important to have in this record, I suppose.

PANELLI: Oh, I'm surprised. No, no, but the reason — I thought that by virtue of some of the questions you asked that you probably were.

MCCREERY: Thank you, but there's plenty about the law I don't know, so that's why I counted on you to illuminate things.

PANELLI: Thank you.