

- David Knight: If you could give me your name and spell your last name.
- Patricia Bamattre-Manoukian: Patricia Bamattre-Manoukian, B-A-M-A-T-T-R-E hyphen M-A-N-O-U-K-I-A-N.
- David Knight: And your title?
- Patricia Bamattre-Manoukian: Associate Justice of the Court of Appeal.
- David Knight: Justice Cottle, your turn.
- Christopher Cottle: I am Justice Christopher C. Cottle, retired. I was the presiding Justice of the Court of Appeal 6th District.
- David Knight: All right, and we're ready to go.
- Patricia Bamattre-Manoukian: Good morning. My name is Patricia Bamattre-Manoukian, and I serve as an Associate Justice on the Sixth District, Court of Appeal. Today it is my great pleasure to interview my friend and colleague, Justice Christopher C. Cottle, for the Appellate Legacy Oral History Project. Good morning, Justice Cottle.
- Christopher Cottle: Good morning.
- Patricia Bamattre-Manoukian: We will start with your childhood. If you could give us a little background on where you grew up and where you went to school, and those activities that you participated in when you were young.
- Christopher Cottle: I grew up in Los Angeles. I was born in Los Angeles; I grew up there. Actually, until I was eight years old I lived about two blocks from the Los Angeles Coliseum, so it was really downtown Los Angeles. We moved out to what my parents said was the country in I guess my eighth year, and that was Inglewood, California, which was a bunch of fields in those days. It is now the Los Angeles Airport, as everybody knows.
- I went to grade school in Andrew Bennett School, which was in a place called Imperial Village, which is now sort of a rundown area, a poor area of Los Angeles; but at that time it was all brand new with tract houses. I went to Morningside High School, which is in Inglewood there, very close to the Hollywood Park Racetrack. That's what I remember most about my childhood, was [*inaudible*] in junior high school, which was right next to the high school, in high school.
- Patricia Bamattre-Manoukian: At Morningside High School I know you participated in a number of sports. Can you tell us a little bit about your sports involvement? Because I understand that carried through your lifetime.
- Christopher Cottle: Yes, I was a good athlete; I mean, I say that with humility, but at least that's what they told me, and it turned out to be true. I

was a basketball, football, and baseball player, and very motivated. When I was 14 years of age, my family broke up; my parents were alcoholics and had some very serious problems and I ended up in a foster home. My foster parents were very close to the coaching staff at the high school. So that combination got me extremely involved in sports of all kinds, and the coaches were all motivated to make sure I did well.

Patricia Bamattre-Manoukian: Do you think sports had an impact on your life? Do you think it helped you?

Christopher Cottle: Definitely. I think back to my role models and most of them were the coaches, and to the people I remember very much when I was in my 14, 15, 16 years of age.

Patricia Bamattre-Manoukian: And I'll be asking you a lot as we go through, who were your heroes? Who were your role models as you were growing up and as you went to law school and began practicing and so forth? Morningside High School, you developed your sports abilities, obviously your academic capabilities; and from Morningside High School you went on to Stanford. Can you tell us a little bit about that?

Christopher Cottle: Actually, that was a very strange thing, because I had always been on my way to the University of California. They got me a job during the summer. I thought I was going to be going there. In fact I went there for one day, and my girlfriend, who was going to SC, had not started school yet, and Cal started a month earlier in Stanford.

I'm just giving an idea of how unsophisticated I was at that time; I didn't make these great plans. But we did not have letters of intent in those days, but you did make a commitment, and I'd committed to Cal. I got there and it just did not feel right. I was actually in a line and I decided, you know, I'm going to change my mind. And I started calling around.

I had talked to the Stanford coaching staff a number of times; I talked to other schools throughout the country and I decided to call the coach at Stanford, and I did. And they said, "Well, if that's the way you feel, tell them and we'll come get you."

That's the story. I still have the *Chronicle* article, since I was highly recruited, indicating that I had left and gone over to Stanford. School did not start for a month, and that was nice, so I had a chance to work for a month on the new Stanford Hospital with a construction company and make some money.

(00:05:12)

Patricia Bamattre-Manoukian: So you almost went to Cal, changed your mind, your direction changed, and you went to Stanford; and at Stanford, what sports and activities did you participate in?

Christopher Cottle: I went there on a football scholarship, so I was exclusively a football player.

Patricia Bamattre-Manoukian: And rumor has it you played both ways—you played offense and defense. And what positions did you play?

Christopher Cottle: I was a center on offense, and a linebacker. My forte, if you will, was as a linebacker. So center was in those days what linebackers played unless they were fullbacks, and I was not a fullback.

Patricia Bamattre-Manoukian: And what adjectives do you think they would have used to describe you as a football player?

Christopher Cottle: I would say hard-nosed, I think, is probably the one I heard the most. I was a very good tackler, a very hard hitter, the perfect defensive player, if you will.

Patricia Bamattre-Manoukian: When you were a senior, you were the team captain; is that correct information?

Christopher Cottle: Yes.

Patricia Bamattre-Manoukian: Okay. What did you take with you from being team captain as you traveled through life?

Christopher Cottle: Well, I think I was always pretty much a natural leader. When I had been in high school I was student body president. I was also the president of what at that time was called the California Association of Student Body Presidents. So I tended to fall into that, not so much because I sought it, but I think it was my personality more than anything else. People would look around and I was the one that probably appeared to want things the least, even though that really wasn't true internally. For that reason, I was sometimes drafted for these positions.

I remember when I ran for student body president, I didn't have to run against anybody. When I ran for this other position with the California Association of Student Councils, same thing. Actually when I ran for district attorney in Santa Cruz County years later, which we will talk about, I didn't run against anybody either. So I was always very fortunate in that regard.
[laughing]

Patricia Bamattre-Manoukian: How would you describe your leadership qualities—like what kind of a leadership style did you have then and did you carry with you through the years?

Christopher Cottle: I think more than anything else trying to find out what people wanted, trying to develop agreement on things, trying to minimize conflict. I grew up in a family that involved great conflict; and for that reason, I did everything I could . . . as I look back on it, I did everything I could to avoid it.

Patricia Bamattre-Manoukian: Minimize conflict and build consensus really were the two aspects you sought.

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: What did you major in at Stanford?

Christopher Cottle: I was premed; I wanted to be a doctor at that time. And also if you did want to take a premed curriculum, you had to major in something else, so I was a history major. But I took a lot of lab courses and a lot of science courses.

And then in my senior year, when I started to get very serious, I changed my mind and decided that was not what I wanted to do. I wasn't sure on what I wanted to do, but by then I had not applied to any other graduate schools. And I worked for Stanford for a year, and then during that period of time decided I wanted to go to law school.

Patricia Bamattre-Manoukian: And what type of work did you do for Stanford?

Christopher Cottle: I was involved in fundraising and I was coaching the freshman football team. So it gave me an opportunity to . . . what I would do is travel around, talk to alumni. It was a program called the PACE program, which was one of the first big fundraising programs. I can't remember what the figure was, but nothing compared to what it is now.

And that's what I did. I worked out of an office in San Francisco but traveled around. But they have a very limited freshman football schedule at Stanford, did in those days, a period of about five weeks; and I was down here in Palo Alto for five weeks for that.

Patricia Bamattre-Manoukian: So you took a year to work, figure out what you wanted to do, and you decided you wanted to go to law school?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: And where did you go to law school?

Christopher Cottle: I went to Hastings in the city. *[Off-camera discussion re: tape]*

Patricia Bamattre-Manoukian: So, Chris, you attended Hastings Law School; can you tell us a little bit about that?

(00:10:00)

Christopher Cottle: Yes, I was living in San Francisco and I moved to San Francisco to go to Hastings. Hastings at that time was one of these schools where you go in on the first day and they tell you it was easy to get in; and it was easy. Although I was a fairly good student at that time, I hadn't even applied myself because I didn't even figure out that I wanted to be a lawyer until the end. But Hastings was one of those schools where they tell you on the first day that you're sitting next to somebody who's going to flunk out and it's either going to be you or them, that kind of thing; so it was very competitive.

It was very interesting; they were all retired professors from various fields. And it was a great place to be; I loved it. After school, we would go and watch a lot of the Hallinans and people like that who were trying cases every day.

Patricia Bamattre-Manoukian: Hastings is right in downtown San Francisco, so you had access to all the courtrooms?

Christopher Cottle: Right. I was newly married. My wife was a graduate student at Berkeley and we had no children, so I look at those four years—we both look at those four years—as great years; we really had a good time. She was very bright and was on one of these Regents Scholarships which gave her cash, tax-free cash, every month. I was a janitor at Hastings Law School. And between the two of us, we were doing pretty well.

I remember our rent was \$110 a month for a great flat out in the avenues, and our income was about \$1,500 a month, so you can see the relationship there.

Patricia Bamattre-Manoukian: That was great back in those days.

Christopher Cottle: You could have a real good meal with wine and the whole deal for about \$10 in San Francisco, at some real nice restaurants.

Patricia Bamattre-Manoukian: So you have very fond memories of law school and living up in San Francisco?

Christopher Cottle: Yeah, and we made a lot of friends, lifelong friends. It was a great place.

Patricia Bamattre-Manoukian: Did you have any particular classes that you really enjoyed in law school?

Christopher Cottle: I think back, and I would say probably some of the tax; I took several tax courses. I really liked those real property courses, the kinds of the things that I ended up not being involved with later on.

Patricia Bamattre-Manoukian: Did you have any idea what you wanted to do when you graduated from law school?

Christopher Cottle: I had no idea. I was one of these people who chose law school, I think the primary reason was simply to go somewhere and do something that constituted a good education. It wasn't that I could see the end of what I was going to be doing; I had no idea, really. I had grown up . . . my foster parents were dentists, both of them. I knew I didn't want to be a dentist. I'd had enough of that.

Patricia Bamattre-Manoukian: So you graduated from Hastings, you took the bar, you passed the bar, and what was your first job?

Christopher Cottle: My first job was here in San Jose. I worked with a small firm, Berns & Steinberg, great guys. I was there for about a year and a half doing what new lawyers do, which is pleadings and some negotiating on the phone, a lot of personal injury, a lot of document drafting, things of that kind. I learned very quickly that unless you had some power as an attorney, it was difficult. So I decided that I needed some trial experience because I'd had none at that point.

We were living in Los Gatos and I was going over to Santa Cruz on the weekends. It looked like a nice place and there was a job opening that came up. I had decided after talking to people that it would be good to get some experience as a deputy public defender or district attorney. And there was a job in the district attorney's that opened, and that got me into district attorney work.

Patricia Bamattre-Manoukian: So you started trying cases?

Christopher Cottle: I started trying cases. My career trying cases was incredible in the sense that it was a small office—probably 12, 13 attorneys—and I started trying very serious cases right away. I began specializing in sexual assault, rape cases. I tried a lot of those kinds of cases over a period of about two years; and then from that point on, I probably tried a string of about 25 murder cases. It seemed strange that in a county of that kind you'd have that many murder cases, but we did.

(00:15:02)

Now, I said murder; I'm talking about homicide, but also quite a few murder cases. There began in 1970 a string of mass murders in Santa Cruz, committed over time by three different defendants, and much of my DA career was spent prosecuting those cases and others as well.

Patricia Bamattre-Manoukian: In the book of *Legal History of Santa Cruz County*, it is indicated that Santa Cruz was the murder capital of the world during the 1970s. And it does document your involvement in a number of these very serious and very high-publicity cases. Would you talk a little bit about some of these cases that you

tried—any ones that you want, but perhaps including the *Frazier* and *Mullin* cases or any others that come to mind?

Christopher Cottle:

The first one was a murder that occurred in 1970, and that was really the big case in the sense that it was a family, a physician and his family, who were murdered in their home by, I guess you'd call it, somebody, kind of a hippie, who lived in the hills. And there was a lot of adverse publicity. After he was arrested, the case ended up being transferred to San Mateo County on a change of venue.

So Peter Chang . . . I was the chief deputy at that time and Peter Chang and I tried the case up in San Mateo. He was the lead attorney on the case and a great trial lawyer, and we tried the case all the way through to the death penalty. What made the case difficult was the defendant was nuts, but it was also a very circumstantial case. All we had was a theory that he had done this and had committed burglary before and the weapons were the weapons that he used in this crime.

Anyway, he was convicted of first-degree murder and got the death penalty. And it was later that the death penalty was reversed by the United States Supreme Court, not because of this case but the statute in general; so that was the end of it, and he's still incarcerated.

Thereafter, there were two serial murders and one of which was Herbert Mullin that you talked about. And I tried that case myself; Art Danner helped me with it. And that was a case involving 13 murders—3 over here and 10 in Santa Cruz County. This guy was also mentally ill. He had decided to go back and kill a number of people who he had some relationship with when he was in high school and so on and so forth, in addition to a few that he just ran into, because he was hearing voices, "kill them." And that was also a very difficult case from a standpoint of the death penalty and all the difficult issues involved.

So as time was going on, I was really exposed to all the issues involving trying cases, rules of evidence, and so on and so forth. I had a great opportunity to learn as I was going along.

Patricia Bamattre-Manoukian: And you handled many, many high-publicity cases in terms of not just the nature of the cases but you had changes of venue, you had news reporters constantly in the courtroom and outside the courtroom. What did you bring with you from those experiences dealing with the media, dealing with the victims and the surviving members of the victims' families?

Christopher Cottle:

Well, I learned a lot; I mean, I have to say I learned a lot. I also had great empathy for the people—not only the victims but their families and so on and so forth. As I look back upon it, I was pretty good at handling those kinds of people.

Sometimes it was difficult because they were very emotional and upset and so on.

But from all of that I learned—because I did, after six years in the district attorney’s office, I was elected district attorney when Pete Chang, who was the district attorney, decided to run for a judgeship—I would say by then I had been so exposed that I had a pretty good sense of . . . I had a pretty good value system as far as the kinds of things that I thought were important, what a district attorney ought to be focusing on, what a district attorney ought to be emphasizing, and so on.

(00:20:10)

It wasn’t just prosecuting to get the greatest sentence you can obtain. It was more trying to evaluate cases based on a lot of human aspects. We had an office that I think in some respects was quite reasonable when it came to the way in which we handled cases and the bar; and people in general really respected it. They were good times, because they knew that I was a district attorney that, at least when it came to the more serious cases, would do everything I possibly could do to obtain a conviction.

Patricia Bamattre-Manoukian: You gained experience trying cases, you developed a reputation, and you developed credibility in the community. You ran for district attorney, if I’m correct, and were elected in 1975?

Christopher Cottle: 1974.

Patricia Bamattre-Manoukian: Nineteen seventy-four. And you ran unopposed and you served as the district attorney until your appointment to the bench in 1977?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: How were those years as the district attorney in Santa Cruz as you look back?

Christopher Cottle: Well, those were also years when I was trying, not only was I running an office and doing a lot of work with police . . . I mean, the police were always . . . The sheriff’s department and the police departments—there were four or five in Santa Cruz County—were always behind in the sense that it was a small community which had to grow up very quickly.

So there were a lot of issues, and I poured myself into the job. I mean I was just working 16 hours a day, and I think I did go through a divorce right around that time. And I think my first wife and I are good friends, but I’m sure that she would say more than anything else it was because of that I was consumed by the job; and in some respects, she hated the job because of

that. She did not like all this publicity and every time there was a homicide I would be gone in the middle of the night to go out. I just insisted that when they found any bodies I would be there, and so on and so forth.

Patricia Bamattre-Manoukian: During that time period, as you were working as a district attorney, I believe you and your wife had a son?

Christopher Cottle: Yes. His name is Chris. He is now 37 years old.

Patricia Bamattre-Manoukian: What is he doing now?

Christopher Cottle: He is a firefighter in Redwood City and got there in a sort of a circuitous way. He went to school down in San Diego, college down in San Diego, thought he wanted to be a teacher. Taught for a while, didn't like it, went skiing; we had always skied together. He is a very good skier and he just decided to go do that for a few years, and that got him involved in lifesaving; that got him involved in wanting to be a firefighter. He is very happy with it; it's a great job.

Patricia Bamattre-Manoukian: He is actually a paramedic firefighter?

Christopher Cottle: Yes.

Patricia Bamattre-Manoukian: And he is bilingual. He speaks Spanish. Has a lovely wife and a new son named?

Christopher Cottle: Named Nathan.

Patricia Bamattre-Manoukian: So you are a grandfather?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: Congratulations. So as you were working as a district attorney, you were also raising your son, and there was a lot going on during that time; and then in 1977, it appears that Governor Jerry Brown appointed you to the Santa Cruz court?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: Can you tell us a little bit about that? What caused you to put in your application and decide that you might want to transition from the district attorney's office to the bench?

Christopher Cottle: Well, to be honest, I really had not thought about it. I had never aspired to be a judge. I must have thought about it, but I had a good friend, Rollie Hall, who was also a judge in Santa Cruz County, had been appointed. One of the reasons that he was appointed, to be very frank, was he was a good friend of one of Jerry Brown's—Jerry Brown was the Governor at that time—one of his strong supporters and I think also very close to the appointments secretary.

So Rollie had been appointed and Rollie said to me, “You know, Governor Brown really would like to appoint—I keep hearing this—he would like to appoint some DAs because the public has the impression that he’s soft on crime.” *[laughing]* So on one day three of us were appointed; and a lot of that had to do with my connection with knowing Rollie, because he knew this person who was kind of a rainmaker for the Governor and so on.

(00:25:06)

So it wasn’t something that I really put a lot of energy into; I wanted to do it. I was at that point I think the youngest judge in the state because I had . . . the youngest superior court judge in the state. You had to have 10 years and I had just finished my 10th year of practice, or maybe it was 11th; I’m not sure.

Patricia Bamattre-Manoukian: So how old were you when you were appointed to the superior court?

Christopher Cottle: I was 37.

Patricia Bamattre-Manoukian: And that was before court unification. So that was really quite a major appointment, to be appointed directly to superior court as opposed to being appointed to municipal court first and then applying again for superior court.

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: You were a young superior court judge, and you served on the Santa Cruz Superior Court bench from 1977 to 1988. Can you tell us a little bit about those years, what assignments you had?

Christopher Cottle: Well, those were very great years for me. I right away handled criminal cases as well as civil cases. Most people who are DAs I think tend to do a long period of civil just because they had been so involved in the criminal justice system; but I think I started right away doing both criminal and civil. On the bench is where I learned most of the civil law that I know. And it was, as far as assignments, just a process of rotation; I did juvenile court, I did family law court, I did probate.

I did sometimes an aspect of everything in a week, and then other times I would be on a full-year calendar, doing just one thing; but I did get a chance to do a lot of family law, a lot of juvenile law, and a lot of just straight law-and-motion civil calendar kind of work, which is really the guts of a civil practice—so that was a great opportunity.

Patricia Bamattre-Manoukian: What was your favorite assignment? What did you enjoy most?

Christopher Cottle: I think I enjoyed, even though I could only do it for a year at a time, I enjoyed family law. I thought that had a little bit of everything. The best family law judges I think are those that have a sense of how people get into the situations they do. I didn't mention it; by then I had gone through a divorce. That helped me no end. And I went through a divorce that ended up as a very friendly divorce. My first wife and I are good friends, and really other than maybe a few months of tension, have always been very close.

So that helped me to not only understand these people that were in front of me, but also understand what might be possible for them if they could hang on for a while, because dissolutions are pretty horrible things for the people involved.

Patricia Bamattre-Manoukian: In handling your family law assignment, did you bring with you those qualities that you felt were very important as a leader in your younger days—and those qualities would be trying to minimize conflict and build consensus in family law court?

Christopher Cottle: I think so. I mean, I had the ability to recognize that mental illness, for one thing—there are a lot of people who are mentally ill—in that whole process, to try to seek some kind of intervention for these people. Programs were beginning. The family law calendar was nothing like it is now; if a judge recognizes that somebody has a serious problem there's somebody down the hall to refer them to and so on. It wasn't like that in those days. So you had to be pretty creative and to develop community resources to take care of areas where there really were not people in place paid for by county money to take care of some of these problems.

Patricia Bamattre-Manoukian: As a trial court judge, based on your experience, what advice would you give trial lawyers? Like what direction and advice and what words of wisdom do you have for lawyers who are practicing in any court, but especially Santa Cruz courts?

Christopher Cottle: I think more than anything else probably to be prepared, but prepared in the sense that you really understand what your case is about; and if you're going to take it to court, how it will play in the court process.

(00:30:03)

For example, even when I was on the bench as a trial judge—I know it was that way for you as well—people would often try a case and until the moment came when the instructions that the judge was going to be asked to give would be produced, they hadn't even thought about those instructions.

It was preparation in the sense of trying to anticipate the entire scene that was going to play out that I think is so important.

And I would give advice to attorneys in that way by simply saying, "Figure out not only what the law is, but what the instructions were going to be; try to get a sense of how jurors, if it's a jury trial, are going to react. If it's a judge who's going to decide the case, what the best way is to present that judge with what they're going to need to decide the case."

I think a lot of lawyers don't realize that judges and the people who decide these things are human beings and their humanity comes into play to a great extent. Instead of thinking that "Well, this is just some robot that's going to make the right decision for me," you really have to work on things that will influence a jury or a judge.

Patricia Bamattre-Manoukian: As you look back at your trial court days, are there any cases that come to your mind, any interesting or prominent or significant cases that you remember?

Christopher Cottle: I'll give you an example of one. I don't want to make it too lengthy, but it was a very, very serious gang rape case. It involved some motorcyclists that ended up fortuitously meeting a woman who was staying with a friend and then raping her. After the fact, and days later—not just right away—she reported the crime. And the reasons she did not report the crime were the same reasons that a lot of women don't report crimes of that kind: the humiliation and so on.

When she did report it, we were faced with the problem of identification. She described the car that one of them had, and she wasn't certain. She thought it was a—if I remember correctly—a green Camaro. It turned out to be a red Mustang, and that created great difficulty. We finally had somebody arrested based on some information and so on, but tying this whole thing together was difficult.

And in those days you had the time to do these kinds of things. We had some tests run. This occurred up by the university. What had happened is afterwards he had taken her from the scene somewhere else in this car. We had some tests done to see what cars look like under lights that are on the street that goes up to the university. It turns out that green looked red, and red looked green; and that's something that never would have been known.

We also went and talked to some of his friends and his family. I remember going and interviewing—he was in jail—going and interviewing his family with a couple of police officers, and they were talking about how innocent he was and what a wonderful man he was and so on. When we started talking we knew that he had identified himself to this woman as Pederico Mecca, which is kind of a strange name—a graduate student from UCLA. *[laughing; voice overlap]* It turned out he was not a graduate student from UCLA.

We talked to the parents about this and so on and we asked them, “Has he ever used any other names? Does he have a nickname or anything?” Because his position was he wasn’t even there; he wasn’t one of the people that was involved in this thing. It was then that they mentioned that his nickname was Mecca. So that pretty much made the case.

But also when he was arrested, he was arrested back in Philadelphia. He refused extradition, and we took her back there to Philadelphia because he had a lot of money and there was no way that . . . I think it was a grandfather who lived back there. There was no way in the world that they were going to consent to him just coming out here. So we had to go back there, take her back there for identification purposes.

(00:35:05)

The judge back there didn’t think—I don’t know why—but he just didn’t think that this was the person in a courtroom of a bunch of people in striped suits. She went into the courtroom and the judge asked her to look around. He said, “Is the person that was involved in this here in the courtroom?” She looked around and she said, “Well, it’s that guy right over there, but it doesn’t look like him right now because the man who raped me, the one of these men that raped me, was bald.”

So the judge . . . I’m sitting there watching this whole thing and the judge was starting to catch on. He said, “Well, let me ask the bailiff to go over and pull on his hair a little bit to see if he’s bald.” And that’s exactly what happened in this courtroom of people. They pulled on it and he had a wig on. *[laughing]*

Patricia Bamattre-Manoukian: Oh, my gosh.

Christopher Cottle: Long story, but the whole point is we spent a lot of energy, money, resources to try to get convictions, and we felt we were right and the evidence was there.

Patricia Bamattre-Manoukian: To make sure that justice was done.

Christopher Cottle: Yes. But on the other hand, at the same time, I was a stickler on the exclusionary rule . . . as you know had come into play. Law enforcement officers who violated people’s rights were subject to all of the rules that were developing. If the officer messes up, then the case cannot be successfully prosecuted. We were reasonable in applying those rules when it came to *Miranda* and search and seizure issues.

Patricia Bamattre-Manoukian: As a trial judge, are there any cases that come to your mind that you presided over?

Christopher Cottle: Yeah. I mean, their number—

Patricia Bamattre-Manoukian: Any that stand out that you would like to share with us?

Christopher Cottle: There was a case of *Bandler*, a fellow by the name of Bandler who was . . . it's probably written up in that book. It's a very interesting case, because he was accused of killing a woman who had been kind of a former prostitute and a drug addict. He was involved in all that kind of activity himself. But it was a case where two people could have done it, and the police had talked early on to one of them and had become convinced that that person was the one who was innocent and the guy we were prosecuting was the one who was guilty.

The case was defended based on the opposite proposition. There was a lot of evidence that convinced me that Bandler was the one that was guilty and the police were right, but as it turned out both of them ended up being prosecuted at different times and both of them were acquitted. So that was interesting to see all that play out. But I was the trial judge in that *Bandler* case, and I remember it all happening before my eyes. And even though I was convinced that he was guilty, he was found not guilty.

Patricia Bamattre-Manoukian: In the book here, too, it does say that Bandler walked away a free man; but as the *Santa Cruz Sentinel* put it, "Somebody has gotten away with murder."

Christopher Cottle: Yes. Actually, a play was written. I'm reminded of that because I saw the woman who wrote the script based on that up at UCSC; they actually had the play, and I went up and talked to them about it and helped them to produce it.

Patricia Bamattre-Manoukian: So you've tried many interesting cases; you presided over many interesting cases. And at some point you decided to put in your application for the Sixth District Court of Appeal. Now how did that all come about?

Christopher Cottle: I had done that early on; I had actually done it, applied. I was interested in the Court of Appeal and it seemed to me to be a natural progression, and I had applied when Justice Brauer applied. At that point it looked like I was probably going to get the appointment; you kind of hear different things. But Brauer had some strong supporters too, and Brauer was a terrific judge and a very bright man, as we know.

(00:40:01)

He ended up being appointed; and that was like, I think about, maybe five or six years before I was appointed. It was 1988 when I was appointed, but I had been interested for some time.

Patricia Bamattre-Manoukian: And when the court officially opened its doors in late 1984, there were three justices; Justice Panelli, Justice Brauer, and Justice Agliano. So you had expressed an early interest in that position and then Justice Brauer was appointed.

And then the court added three additional judicial positions in 1988. Did you reapply for those positions, or was your application still pending?

Christopher Cottle: I think I reapplied. But actually it was a little different than you said it. When the court first began there were three new justices, and those were Panelli and Agliano and Brauer. Then when Panelli left—Panelli left before I came on board—when Panelli left, he was replaced by Agliano, and Justice Capaccioli came in. So then there were three.

The court was expanded to six, and it was at that time that I was appointed—the same time that Justice Premo and Justice Elia. And I say that because I think that was really a very good experience for the three of us to be appointed together. It's nice. As you know, when you were appointed you came in here all alone and there were people already here. It's kind of nice when you have other people appointed at the same time. So I had the benefit of experiencing that. We drew straws for who was senior and so on and so forth.

Patricia Bamattre-Manoukian: Where did you end up in drawing the straws?

Christopher Cottle: I ended up in the middle. Justice Premo had the longest or the shortest straw and I had the one in between and Justice Elia had the other one.

Patricia Bamattre-Manoukian: So that's how seniority was determined in the Court of Appeal?

Christopher Cottle: And it turned out that was seniority based on age too, which is probably very fair. *[laughing]*

Patricia Bamattre-Manoukian: *[Laughing]* Things always work out the way they're supposed to work out. So when you came to the court, Justice Brauer was still here?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: So you had two justices who had previously served in Santa Cruz?

Christopher Cottle: Right. And, that was great, because Justice Brauer, who was then a judge when I first started practicing, was one of the people I tried most of my cases in front of. We knew each other well. We had a great relationship, so it was nice. It was kind of like coming home to get a chance to work with him again.

Patricia Bamattre-Manoukian: But you didn't work with him for very long? He only remained here—

Christopher Cottle: I think it was a year or two.

Patricia Bamattre-Manoukian: Before he left?

Christopher Cottle: That's just my memory.

Patricia Bamattre-Manoukian: When you were appointed in 1977 by Governor Jerry Brown, he was a Democratic Governor and you were a registered Democrat at that time?

Christopher Cottle: I've always been a registered Democrat.

Patricia Bamattre-Manoukian: In 1988 you were appointed by a Republican Governor, Governor George Deukmejian.

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: In our legal history of Santa Cruz here, it is pointed out that this was an indication of your work as a steady jurist, that you could be appointed both by a Republican Governor and a Democratic Governor; and it is also pointed out that as a jurist you commanded tremendous respect for being evenhanded, civil, and hardworking. What reflections do you have on the fact that you were appointed by two Governors from different parties?

Christopher Cottle: I would say . . . I mean, if politics make any difference, I certainly am a moderate Democrat. And if I was a Republican—and I have voted a Republican a number of times—I would be a moderate Republican. So I guess I'm somewhere in the middle politically. I never was active in politics. I never was a member of a central committee or anything like that; it's just never interested me.

And I think more than anything else, being a registered Democrat in Santa Cruz is probably closer to the norm than being a registered Republican, if you want to be viewed as somebody who is nonpartisan; just simply because Republicans in Santa Cruz are a very small minority, as it turns out.
[laughing]

Patricia Bamattre-Manoukian: So you left Santa Cruz, you came to the Sixth District Court of Appeal, you're commuting over the hill to San Jose, the court has doubled from three to six. Tell us about the court when the three of you joined the court.

(00:45:05)

Christopher Cottle: Well, it was very nice. Everybody got along. It was very friendly and so on. And then, as time went on, there became issues

that cropped up. I would say that Justice Brauer had a way of wanting to do things and felt very strongly about some of the decisions that he had made.

So there developed a bit of a conflict between Justice Brauer and some of the others, because Justice Brauer's personality is very, very strong. I knew and grew up with him. I had been chewed out by him in court a number of times until I finally got to the point where I could talk back to him.

Well, the attitude of some of the new justices was not to listen to Brauer in the same way that I had to put up with him. So there developed some conflicts, but those got worked out over time. And there were mainly disagreements about process and occasionally disagreements about the kinds of repetitive issues that had come before the court, which now were looked at somewhat differently than the court had looked at them before.

So everybody was making adjustments, but it was a great time for me. I enjoyed working with everybody; I can go through the list. I really didn't get to know Capaccioli very well. Agliano, I spent a lot of time on cases with, working with. We actually did some things socially. He's just a wonderful person, as you know—one of the honest people I have ever met.

Justice Premo and Justice Elia, the ones I joined the court with, had always been cordial and easy people to work with. I would say that there developed . . . I think the court changed at that time. One of the reasons it changed is because Panelli and Brauer and Agliano, the three of them, could disagree very easily on things and still manage to maintain a working relationship. I think that was the early history. They just said it like it was and they didn't care whether they were hurting each other's feelings. But because there were only three of them and they could work things out.

That changed, I think, when the three of us came on, because I would say Premo and Elia are not people who liked to argue with each other about things. They tend to be more, want to be more, "I'll do it in my office." It's that kind of an attitude. And I think they would admit it. I'm not speaking out of turn; it's just the way it is.

As a result, there I think came to be more . . . less conflict between the judges on issues and more "I'll do it my way, in my office, and if we can't agree I'll dissent." I think there became less of what existed before, which is Brauer running down to Agliano's office or Agliano running down to Panelli's office and saying, "You know, you don't know what you're talking about," that kind of thing.

It became more, "We're just going to work it out and we'll not talk to each other," that kind of thing. And then you came on

and you had to suffer through a lot of that. *[laughing]* But I think it's that way at every court; that's what I understand. At least there's some of that. People have different dispositions; people have different attitudes as far as conflict is concerned, as far as how much you should struggle over cases to try to agree if you can. Sometimes people just give up and just disagree in writing.

Patricia Bamattre-Manoukian: You know, I joined the court in 1989, and I replaced Justice Brauer, and I started working pretty much with you and with Justice Agliano to begin with. When you leave the trial bench and you join the Court of Appeal you go from a situation where you are the decision maker to having to make decisions with two other people; it's a completely different process. Can you talk a little bit about that process? What advice would you give new appellate justices? How do you work on this process of making a decision with two other people when you've been used to making your own decisions as a trial judge and sometimes for many years?

Christopher Cottle: Well, I think more than anything else, I think the best way is to engage each other and to engage . . . to have meetings and to have conferences as early as possible once people have a sense of what the issues are in the case. And when I say "a sense of what the issues are in the case," there's no way you can re-brief these two opposing briefs.

(00:50:19)

Sometimes you can do it, but because the case is so clearly, the result is so clear . . . But much of the time there is no way in which you can decide at that stage what the end result is always going to be. So it's nice to have a talk in the beginning and to be willing to have an open mind, to be willing to change your position, but at the same time be willing to hold your position and to stand fast if that's what it requires.

But the primary ingredient, I think, for healthy work on the Court of Appeal is the ability to disagree and to keep trying. And then if you can't convince the other person, to do whatever you need to do—to dissent, to concur, what have you—but to do it in a way that's respectful and doesn't cause anger and hard feelings so the next time around people just don't want to talk, they just want to decide things without talking.

Patricia Bamattre-Manoukian: What is the value of a dissent? I mean, do you encourage dissent writing, or under what circumstances? I mean, is the dissent really valuable since you already have two votes the other way and it's not going to really make any impact?

Christopher Cottle: Well, I think dissent is important if you feel so strong—if you're a dissenter and you feel so strong—that you feel you want to educate the bar and you also feel that there may be an

opportunity to influence the higher court that's going to be perhaps taking this case.

I dissented very rarely, and I think a lot of that has to do with my personality more than anything else. I would try to either convince myself that the other person was right, or the other two were right, or else I would try to convince them that they were wrong—and that was more often my approach. If it didn't work, I would say that certainly as many times as not I folded my tent and went with the others. It might be changing some language, changing discussion about a particular issue, and so on.

One of the things about written opinions is they can stay with you for a long, long time. An opinion that you sign off on can be written about some issues in exactly the way you want those issues addressed; but they can make some side comments about another issue that you feel uncomfortable living with in terms of the future. It's a difficult process.

Patricia Bamattre-Manoukian: You wrote very few dissents. Did you separately concur or write many concurring opinions during your years on the Court of Appeal?

Christopher Cottle: Some, but not too many—mainly for the same reasons. First of all, the Court of Appeal here, the Sixth District, is the only court that I'm familiar with and experienced. But I did have the opportunity . . . I don't know if you've done this; I think you have on at least a couple of occasions. But it was interesting sitting with the Supreme Court. Because on a rotational basis, when people have conflicts that are on the court we would sit with the court; and I did that three or four times.

And I can remember that there was a lot more discussion; there was a lot more of what I'm talking about, the give and take. Now, I realize that that may not always be the case, but in the cases I was involved with, people often had not even made up their minds even though there had been a draft. And one thing about sitting in that way, you're not involved in that first conference that develops a tentative position.

But I remember that even in the cases that I sat with the Supreme Court on, there seemed to be a little more conflict, healthy conflict, than I had experienced here at the Sixth District. So that was nice. I realized they have less cases and more energy to put into these individual cases, but I think that's a better way of doing things. And it's not that we didn't do that here, but we didn't do it as much and as consistently as it ought to be done, in my view.

(00:55:00)

Patricia Bamattre-Manoukian: What did you enjoy about your years at the Court of Appeal?

Christopher Cottle: I enjoyed the cases; I think the most exciting part of the Court of Appeal is just picking up the cases. Cases are distributed to us on a monthly basis, on a random basis, as you know. Just picking those up and seeing what they're about—what's new, what's old. Some of them . . . you could take three or four that are often routine and maybe a *Wende*, but a case that really isn't going to require a written opinion. But then there is usually something that's pretty juicy in that sack of 9 or 10 cases.

Patricia Bamattre-Manoukian: Are there any cases that come to your mind that are cases you really enjoyed or you felt were particularly significant or particularly challenging?

Christopher Cottle: Well, let's see. There is one criminal case I think I will always remember; I've talked about it a few times to classes when I've been teaching. It was *Mark and Otto*. It was two co-defendants, a man and a woman, who were tried for murder. And the primary witness was the person they killed, was the husband of the woman, and he had surreptitiously tape-recorded their conversations planning to kill him before the night when they did kill him.

But what he had done prior to the homicide is go next door and play this tape to the police officer that lived next door, which consisted of a conversation in which they were conspiring to kill him. Now he and the police officer had no idea that it was going to be, it was going to be coming up, as soon as it came up.

But the police officer, the next-door neighbor, had heard this tape and I think he had the tape; he actually had the tape recording itself. And so when she shows up with alleged rope burns on her arms and naked one night claiming that she had been assaulted and he had been beaten to death, this officer was very suspicious. That led to what ended up as a prosecution.

The tape was used and he was convicted. The issue was whether that tape was admissible. We had a California statute that said it was clearly not admissible. But there had recently been a referendum passed by the people of the State of California; and one of the provisions in it was that—I'm trying to remember what the wording was—it was basically that no evidence in a case of this kind should be considered inadmissible, so on and so forth.

We relied on that, and we also relied on the theory that there was an exception in the home. You have one spouse taping the other spouse. There had been some cases that provided for an exception for inter-spousal communications.

Anyway, they went up to the California Supreme Court and they disagreed. And we had affirmed the conviction and they disagreed and the conviction was reversed and the case had to be tried again. And they didn't use the tape the second time around, and fortunately the two people were still convicted.

That was an interesting case. We struggle; I think that's a classic struggle. You know in a case like that that the people are guilty, and we chose to decide that in a close case that the evidence was admissible; the California Supreme Court felt otherwise.

There have been a number of civil cases that I can think back on—probably, oh, one would be . . . There was a hate-crime statute, which is now in all of the cases and has been upheld over and over again; but at that time there had been a couple of jurisdictions that were deciding that these hate-crime statutes were unconstitutional as a violation of freedom of speech and so on and so forth. We decided that our statute was valid. And I look at that as a significant case.

One case that because I do arbitration and mediation work I think about often is the *AMD-Intel* case. I don't know whether you were involved in that one, but what had happened in that case, there was an arbitration, there was a contract providing for arbitration.

(01:00:02)

The arbitrator spent at least—he was a retired judge, a Palo Alto judge, I believe—and he spent maybe two years as an arbitrator trying to work out a decision, resolve the case with the attorneys, and then to make a decision in the case. And the decision he made involved remedies that were not provided for in the contract between AMD and Intel when they signed their contract for arbitration.

The question was whether the decision, the award that he made with this remedy that was sort of created by him, was enforceable. We decided that it was not—that it went beyond the contract provisions and therefore the award should be reversed. I talked to Panelli, who was on the court at that time—he loves to talk about this—and tell me that when they took the case they granted review, but their intention was to simply expand upon our decision and decide this case in the same way that we had decided it. That is, that the decision by the arbitrator was outside the scope of his authority.

The California Supreme Court decided otherwise; I think it was a 4-3 decision in the battle. Panelli was still on the court, I think, but he may have left the court; I don't really remember.

So the end result is that the California Supreme Court decided the other way—that is, that it did not make an award infirm simply because an arbitrator had exceeded the scope of his or her authority. And now we have a statute and it gives very limited grounds—fraud, nondisclosure, and so on—as a basis for reversing arbitration awards.

Just in dealing with arbitration the way I do now, it makes me wonder sometimes why people would agree to arbitration if an arbitrator doesn't even have to follow the law. But they do, and there is as much arbitration if not more going on now than there was before, and I guess because it's an expeditious process.

I would say that it's a way of getting things done, getting business done. But I was reminded recently of really what the end result of the California Supreme Court's decision was and what the law is when an attorney—he was back in Arkansas, I believe—we were having a conference call and we were arguing this very involved motion, kind of a summary judgment motion, which summary judgment can occur in arbitrations.

At the end, when he was giving me some rebuttal argument on the phone, he said, "You know, Judge, you have to realize you don't really need to listen to any of this argument. You can decide anything you want. You don't even have to follow the law." *[laughing]* I thought that was interesting, and it certainly was true. But I said I was going to try to follow it anyway. And I did.

Patricia Bamattre-Manoukian: What about reversal by the California Supreme Court or the United States Supreme Court? How did you feel about your decisions being reversed?

Christopher Cottle: I never felt that in any way. Once in a while, as you know, sometimes they compile results and things and there were things published, and there may be something that appears that shows that our district or some other district has been reversed more than others. I don't see that as bad. It's interesting here that the cases I have chosen to talk about, at least the three I have chosen to talk about, are all cases where the California Supreme Court reversed the decisions we made.

That did not make these any less interesting or earthshaking as far as the legal community is concerned. And I think of other cases, a number of other cases, as well the same kinds of things. One that we haven't talked about, the *Hill v. NCAA*, the testing . . . We had decided that it was all right for schools to require that athletes test for drugs; the California Supreme Court decided otherwise. And some of these cases are very close.

(01:05:12)

Patricia Bamattre-Manoukian: They're close, they're all significant cases, and they certainly all contribute to the development of the law. Often it has been said that in the Court of Appeal, the Supreme Court likes us to discuss and examine and analyze these issues and sort of set the table for them. So I think all of these cases are most significant cases in your particular judicial history.

Now, Chris, when you were on the court there was a lot of change going on. Justice Agliano was the presiding justice when you arrived, and Justice Capaccioli was still serving. While you were here they both made the decision to retire, and Justice Capaccioli retired in 1992 and Justice Agliano retired also in 1992. And you became first the acting presiding justice, and then you were nominated to serve as the presiding justice. What Governor appointed you?

Christopher Cottle: That was Governor Wilson.

Patricia Bamattre-Manoukian: So you were appointed by three different Governors?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: And you moved into where you became the acting and then actually officially took over in 1993 and served as our presiding justice until your retirement in 2001. Reflecting back on those years as the presiding justice, what memories do you have?

Christopher Cottle: I think it was a great opportunity, once again, to try to use my skills as someone who wants to have people operate on the basis of consensus. We were not justices who agreed on everything. It's not as if we all came to work and decided, this is the way we ought to do things.

We had very differing opinions, and I assume some of that still lingers. I remember putting a lot of energy into trying to have meetings together where we could decide things and live with things. I think to a certain extent I was successful, and in some respects I wasn't successful. But I've always enjoyed being an administrator, even though it takes a lot of energy and a lot of time away from other things.

I remember when I was presiding justice I wished I had never done it when I was doing it. I was just sitting in my office reading briefs; I did all those things too, but it was just that I put a lot of energy into administration. I did enjoy the APJ meetings and working with other justices. It gave me a chance to see how they were doing things in other jurisdictions and so on.

One of the really interesting things that—I don't know that anybody has even commented on it, but I probably wouldn't have even realized this had I not gone through the entire

process—but there are three districts that have no elected presiding justice. There are three that do. Those that don't the Chief Justice of the California Supreme Court is the one who picks that person on a temporary basis, year after year, to be the presiding justice.

I always thought it was funny that they call the committee the "Acting Presiding Justices," because three of us were elected and we weren't "acting" at all. And nobody . . . we were elected by the people. It's interesting that they do it in different ways, but I guess it's because it's the three largest districts that have the appointed acting PJ each year. It's the three smaller that have the elected presiding justice.

Patricia Bamattre-Manoukian: So you had an opportunity to work with the Chief Justice and the other presiding justices throughout the state to preside as the justice in the Sixth District Court of Appeal. But what was your workload? Were your cases, was any of that reduced in light of the many administrative responsibilities you had?

Christopher Cottle: No. In truth, probably the amount of time that I spent on administration . . . we had a very good clerk who did a lot of it, as you know—Mike Yerly. The amount of time I spent was probably not that great; it's just that I spent a lot of time thinking about it and trying to figure out ways to get people to go down a road that was relatively unanimous.

(01:10:00)

Patricia Bamattre-Manoukian: You spent a lot of time trying to build consensus, trying to bring people together, and trying to really minimize conflict amongst the justices and also the members of our court staff. Now, you developed very strong relationships with all the court employees here, research attorneys and court staff. Can you talk a little bit about your experience with our court personnel here?

Christopher Cottle: Yes, that was always very important to me. I feel like, particularly in a court situation, you have judges and then you have everybody else. If you view the courts as exactly that, judges and everybody else, I don't think it's healthy. I think the way in which the Court of Appeal operates—and actually the superior courts as well—in my experience you need everybody. Everybody is an important part. And some may not have to stand for election, and some make less money than others, but I think it's important that everybody realize that they're an important cog in this entire wheel.

So I spent a lot of energy trying to do . . . to help people feel good instead of bad, to have them feel respected and wanted and an integral part of the entire operation. I think that is extremely important at the Court of Appeal, because many, many of the employees at the Court of Appeal are . . . if you

decided things based on test taking alone, brilliance . . . But ones that are sometimes paid the least are the ones that are the most valuable. That's true with any court, including the United States Supreme Court, and I hope the justices even of that court understand it, because it's probably even more true there.

It's an unusual situation to have people so bright working—I'm referring to the research attorneys, but I'm also referring to some of the others at the court—it's an unusual situation to have people who are being supervised who are as bright as the people who work for these courts.

Patricia Bamattre-Manoukian: So you spent a lot of time both as an associate justice and as our presiding justice—really working with justices, research attorneys, our court staff, ensuring that their work was respected and that they were valued. As you look back at what we'll call the "Cottle court," which was comprised of Justice Elia, Justice Premo, Justice Mihara, Justice Wunderlich, and you and me, how do you want people to remember your court? How do you remember your court?

Christopher Cottle: I think more than anything else, bottom line is that we were determined to try to reach the right result. We were all somewhat different, but I think we were true to ourselves in the sense that we did our best and really wanted to—no matter what the case was—to within the framework of what we were doing and what we had to decide, to do our best and to apply the law correctly. I say that . . . I mean, that was certainly what motivated me. I know that's what motivates you, and I think more than anything else it's what motivated the others as well. And that's why it's the most important aspect of this job.

I remember that I used to laugh sometimes when I'd hear things like Witkin talking at cocktail parties, talking about how when he went to the California Supreme Court, he was a law clerk there writing opinions. He wrote his first opinion and it ended up on the desk—I think he ended up putting it himself on the desk—of the justice. And it ended up being signed. He went to that justice and said, "You know, you never said anything to me about that opinion; was it okay?"

He said, "It was very good. From now on you don't even need to talk to me about these cases." He said, "The only time I even want to talk to you about it is if it involves Standard Oil." *[laughing]* That was it. Something like that. We didn't have any justices like that at this court, and I'm glad for that.

(01:15:01)

So I would say more than anything else what I feel the legacy of the group that I worked with ought to be, and was, is just to get things done and to get them done correctly. When I say

“get things done,” I often think about all the time pressures too. We haven’t talked about that, but there are time pressures. There is . . . you don’t have enough time to be perfect, even though you have a lot more time to be as close to perfect than you do in the trial court, that’s for sure.

Patricia Bamattre-Manoukian: Let’s talk a little bit about oral argument. We have the conferencing process, the assignment of cases, and the excitement of the new cases and the conferencing process and the brief-reading process and the draft-writing process. What about oral argument? Did you enjoy oral argument in the Court of Appeal?

Christopher Cottle: I did. There were the routine cases where an attorney didn’t realize they were so routine and realized that we had seen these issues before, that were sometimes difficult; but most of it was very interesting, particularly in some of these civil cases. You’d get some outstanding attorneys who orally can clarify things that you might not have really understood completely.

It gives you a great opportunity as a justice to have a sense of whether your take of the case is the right take or whether there’s something more that ought to be explored. I would say that probably 50 percent of the time you get people who are really good, good at arguing and good speakers; and it was fun.

It’s also fun to be out of your office once in a while when you operate in an environment like we did. So I would say, yes, I enjoyed it, and I think that some real skills go into giving good oral argument. We saw many of those people that were excellent.

Patricia Bamattre-Manoukian: Now, what tips or what advice would you give to appellate lawyers in terms of brief writing and oral-argument advocacy?

Christopher Cottle: I think the number one thing more than anything else is to understand that there is a component in every case of justice of doing the right thing. And when I say that, I mean that if every case can be viewed as having a victim and having an oppressor—if you want to put it that way; most civil cases are that way—and even if it’s two companies that are equal in terms, if there is some basis on which you can present on fairness and appeal to the sense of a judge or justice’s fairness, you’re halfway there. If the law is not with you, the law is not with you and you’re not going to be successful; but even if it’s not with you, you can make a pretty good argument.

I think that is the number one thing, to understand the fairness of the case that you’re involved with. Now, if your client is . . . I have a friend who likes to say that, an attorney who likes to say, “I don’t build the airplanes, I just fly them,” which means that his clients are not always the best clients. If you know

that, then you can create an argument that focuses on things other than fairness. But at least you have to understand that you have either got to appeal to a justice's or a judge's sense of fairness or make it crystal clear that the case has to be cited based on the law, because judges are not robots and justices are not robots.

Patricia Bamattre-Manoukian: What about appellate justices? What are the qualities of an excellent appellate justice? You have worked with a number of justices and you have a lot of statewide experience as our presiding justice. What are the qualities of an excellent appellate jurist?

Christopher Cottle: I think all of the same qualities that a trial judge has, but somebody who is really willing to dig in and to understand the case and do their very best to be fully informed on the law and then to decide. I mean, in appellate argument you need patience just like you need to be patient as a trial judge; but I think the most important ingredient is that there is a lot of free time, and you can try to master the issues that are involved in the case or you can just spend very little time doing it and leave it to your research attorneys.

(01:20:10)

So it takes discipline, and I think it takes more discipline on the Court of Appeal than it does as a trial judge. As a trial judge you're just trying to survive. I mean, you have to do what you have to do. On the appellate court, you can do very little or you can do a whole lot, and I think that more than anything else the measure of a good appellate justice is somebody who is willing to be disciplined.

I have a sense of . . . for example, looking at the Supreme Court, not naming any names or anything, but I have a sense that in the period that I was on the appellate court, I have a sense that some of those Supreme Court justices were the kinds that were in their offices all the time, just digging and digging and digging.

They may have had a bit of an agenda or kind of a sense of how they felt about things even before they . . . once they knew what the name of the case was, before they picked it up. But they were dedicated. One who I feel was that way is Mosk; I mean, he always seemed to know the details of his cases. And I would not attribute just the fact that he had a good staff to that.

Whereas there are others that I do not think probably were spending as much time. And that doesn't mean that they were not good justices, but I just see that as a way of guaranteeing that you're going to create the best results, if you're willing to work.

Patricia Bamattre-Manoukian: Work hard, be disciplined, and really be dedicated to the work of the court; and you know, Chris, under your leadership we continued doing outreach programs to Monterey, to Santa Cruz, to Santa Clara Law School. What is the value, as you see it, of public education and public outreach?

Christopher Cottle: Well, it's certainly important as far as the community is concerned to see, to have them feel, that these courts belong to them and they're doing their best and they're doing what is needed; but it's also good for attorneys. We cannot assume that attorneys understand what we do here at this court without communication and without showing them. They need to know that to . . . I mean, we don't want them to think that the Court of Appeal is just some court out there to be afraid of. We want them to feel that it is a court which in a pinch can be the place to have something corrected and rectified; and you can't have that unless you're visible. I think that kind of visibility was something that we were always very concerned about. Of course, you have done so much of that in various ways.

I think young attorneys need to be fully informed on the entire process. I'm going to guess that there are some attorneys that probably do not pay much attention, do not even know what the Court of Appeal does. For example, we have to operate and make decisions with standards of review; we don't just decide things.

Now, we spend a lot of time trying to inform the public of this, but we also need to spend time informing the attorneys of this because sometimes they haven't even thought about the standard of review before they decide, "I'm going to appeal." They have to have some understanding of the path that it is going to take to get where they want to be if that is what they want to do.

Patricia Bamattre-Manoukian: I think we all enjoyed these public outreach programs and meeting members of the local bar and the students that we dealt with. One issue that always comes up in terms of lawyers, both in the trial court and in the Court of Appeal, is the issue of civility. Over the years, as you look back during your trial days and days on the bench, is civility declining, is there a problem with a lack of civility?

Christopher Cottle: I know there's a lot of emphasis on it, there's a lot of talk that goes on. But it seems to me that personality is involved more than anything else. I still see attorneys leading an arbitration where you would think that because it's supposed to be an expedited procedure, attorneys would tend to just lighten up a little bit and focus on getting to the end result.

(01:25:04)

But I see a lot of bickering and fighting back and forth, personality problems with attorneys, not dishonesty but borderline misrepresentations, and so on, from the perspective of where I am now.

So I think it still goes on. But I think it's good to have these programs; I think they help. I think they're an opportunity to entice people to take a look at their behavior, but I still see it going on quite a bit. I have these conference calls frequently where one attorney is saying this and this. It's an indication that hours have been spent on the personal bickering that they just seem unwilling to let go.

Patricia Bamattre-Manoukian: Is there anything judicial officers can do to increase professionalism and civility? Is there any hope?

Christopher Cottle: Oh, yes. I think there's a lot of hope, and I think these committees are good. And I think that good judges will call people aside—not embarrass them necessarily in court, but talk to them about it, just say, "You need to do this." It doesn't help them anyway; it just goes in one ear and out the other. I mean, these kinds of thing do not really make a difference in deciding cases in my experience, but they cost clients a lot of money.

Patricia Bamattre-Manoukian: What about the impact of technology throughout your career, all of the changes in technology that have been going on?

Christopher Cottle: They're tremendous. There is rarely a case that I have now when attorneys are not sitting there with their Blackberrys and multitasking and accomplishing things. And I haven't stayed up with all of this. Sometimes I think I'm going to get myself one of those, but my first thought is, what if it doesn't work or what if it breaks down or something? Everything will be in this little item. I like my calendar that I can physically hold and open and shut and so on.

But yes, there is a lot going on; certainly when it comes to research, things of that kind, it's tremendous. The fact that I'm a little familiar with the opportunity now for lawyers, just members of the bar, to have this update every day on cases that have come down . . . I use that all the time. It's great. I think there are so many opportunities for attorneys to be more fully informed now on the law than they ever were before.

Patricia Bamattre-Manoukian: Going back to your comment about being prepared, certainly with the technological advances, there is the opportunity to be as prepared as possible too.

While you were serving on the trial court and transitioning to the Court of Appeal, you had several significant personal and

family events going on; can you tell us a little bit about your wife and your second son?

Christopher Cottle: Yes. I was married to my second wife, Marta, when I was on the superior court just before I went on the Court of Appeal. We have a son, Brandon. He is 20 years younger than his older brother. He is a great kid and he is now in high school, a junior. If I'm going to have somebody to follow on the athletic fields, in their studies, I'm going to have to look to my one-year-old grandson, because Brandon is going to be off away in college pretty soon.

Patricia Bamattre-Manoukian: What sports does Brandon play?

Christopher Cottle: He is a football player and a basketball player. He's a very good basketball player and plays lacrosse now—that's his new sport—but he likes all the things. He attends Stevenson High School down in Monterey, where he boards; that's something that he always wanted to do, and it's turned out to be a good opportunity for him.

Patricia Bamattre-Manoukian: So he's 17 and he's a junior, and so as he heads off to college, you have your one-year-old grandson who will be starting his sports career pretty soon, so you'll always have sports to follow?

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: In 2001 you decided to retire, and we begged you and we begged you not to retire, and we pleaded with you to stay with us a little bit longer, and we were so sad when you left. We had just a great opportunity to work with you and wished you the very best, but we were so sad to see you go.

Now, tell us what you've been doing since you retired in 2001.

Christopher Cottle: I started my own mediation-arbitration business, and that's what I've been doing.

(01:30:00)

I do about, probably 75 percent mediation, about 25 percent arbitration. I do it all over the Bay Area, primarily in the San Jose, Santa Cruz, and Monterey area. And I really enjoy it. I can control it; if I don't want to work I don't have to work, but I tend to work almost as much as I can. I probably work about four days a week. I have a Wednesday golf game that I like to participate in pretty consistently, although some weeks I just can't do it.

Patricia Bamattre-Manoukian: So are you completely on your own?

- Christopher Cottle: I'm completely on my own.
- Patricia Bamattre-Manoukian: And you do 75 percent mediation and 25 percent arbitration. Which do you enjoy the most?
- Christopher Cottle: Well, I really like the mediation; I prefer the mediation. Mediation is an opportunity to sort of get into a case and then help people. I think people who come out of mediation feel better about it. They either feel good about it or not so good about it, but at least it's over and they've done it and they've decided and they've been in control of the decision. Arbitrations tend to be fairly close cases. I don't think people are willing to waste their money and time, if they're good lawyers, with arbitration, so I find the arbitration cases difficult and usually worth the time and energy that the attorneys have put into them.
- Patricia Bamattre-Manoukian: Are there particular issues or particular areas of the law that you tend to specialize in?
- Christopher Cottle: Well, most of what I do is business litigation; particularly in arbitrations it's one company versus another company. Sometimes they're employment cases, where you have an individual and a company, that kind of thing. I never thought I would be doing family law, but I have actually gotten involved in family law, where I serve as an appointed judge. There is a statute that provides for appointments of private judges in family law cases. And I'll take a family law case from beginning to end in that capacity sometimes. Rarely do they involve issues related to children, but the same kinds of issues that are frequent issues in regular court docket cases.
- But they're usually about money. They're usually about the division of property. Sometimes they involve companies, and not only family law issues, but other issues that are much like issues in partnership dissolution cases, things of that kind. So I do that. I have had some very interesting cases. I mean, they're all over the place from different kinds of personal injury cases I've had.
- I had a case recently that was a case involving not only family law but criminal issues and all kinds of things coming together: a man who had molested his daughter years ago, then married her, then divorced her, and all the statute of limitations issues and things that come up. This man ended up quite wealthy, so that made things interesting, because otherwise some of these issues would never have surfaced. So it's different and it's pretty exciting. I would say that there's not a lot of law; it's more handling people in the kind of work I'm doing now. There is always some law, but the law is usually fairly clear.

Patricia Bamattre-Manoukian: Handling people and again trying to build consensus, minimize conflict, and resolve issues, so people can carry on in their lives—it sounds like what you’re doing.

Christopher Cottle: Right.

Patricia Bamattre-Manoukian: And are you enjoying it?

Christopher Cottle: I am. I really like it.

Patricia Bamattre-Manoukian: Now, did you ever consider sitting back on assignment or being—

Christopher Cottle: Well, I was actually doing some of that. I was doing both for a while, and then the Chief Justice made his decision about the fact you could not do both, that there was a conflict, an inherent conflict in his view. I think what was happening is the retired judges and justices were supposed to be on a day-to-day basis handling nothing but what they were involved with and there should not be crossover.

I will say that one of the things about private practice in mediation and arbitration is it’s like a business. When I leave here, the first thing I will do is call my office phone and figure out how many people have tried to call me today—perhaps new clients, people who have continuing problems, so on and so forth.

(01:35:06)

The rule was—and I think it was a good rule, and I followed it when I was doing both—was that on a given day when you’re down at the courthouse you should not be doing things that are private. And I have a sense that there were abuses in that regard. They came to the attention of the Chief—I think he said as much—and that led to the decision to bifurcate them and separate them, and it’s worked out very well.

I know a number of judges who are sitting on assignment love it, and I know others that are glad they’re just doing the private work. I will say once in a while I go down to the courthouse for a week at a time, and I never felt any conflicts; I just set that week aside. But I enjoyed being back with attorneys I knew and dealing with the calendar and so on. I miss that, but I can’t, I really can’t, quarrel with the Chief’s decision to separate it.

Patricia Bamattre-Manoukian: It has . . . there’s sound policy behind that decision.

Christopher Cottle: Yes, I think so.

Patricia Bamattre-Manoukian: So what do you think are the greatest challenges facing our courts today—maybe the courts and the legal profession?

Christopher Cottle: Well, I think probably more than anything else, remaining visible, remaining being a part of the entire process and having people feel like they have some ownership as far as what is going on; it's hard to maintain that. I think it's probably we're better off right now than we've probably ever been in that regard. And I think that has to do with the fact that a lot of energy is going into accomplishing that.

I think it's important that people understand what judges do, who they are, how they decide things, and why they decide things, so people don't think they're just a bunch of robots and so on. I think there is a tendency on the part of people to think that judges just decide whatever they want to decide when they want to decide it and they decide it based on political reasons or reasons that don't have anything to do with the general welfare of people.

So we have to keep people informed and make them understand that this is a whole part of what makes our system so great.

Patricia Bamattre-Manoukian: Have you remained active in sports over the years?

Christopher Cottle: Yes.

Patricia Bamattre-Manoukian: And what types of activities do you participate in?

Christopher Cottle: Well, I'm a skier; I would probably always be a skier. I keep waiting for the day when I can ski free, but what they do is they keep raising the level. It used to be 65; now it's 70. When I get to 70 I'm afraid it's going to be 75. But anyway, I can't complain. I do like skiing; it's a great thing. But I do it very carefully now. I used to play tennis; I'm no longer playing tennis. I play golf, but I'm horrible but I still like it. I think most of these golf courses are beautiful.

One thing I do on a regular basis is I lift weights. I have a regular regimen that I do about three times a week. I would like to be able to do it every day where I really do work out pretty hard and get to the point of what a trainer I work with once in a while calls "failure," where you're almost dead but not quite. And then you recover and the next day you feel really good. *[laughing]*

Patricia Bamattre-Manoukian: And, for purposes of our interview, I should ask you how old you are now?

Christopher Cottle: I am 67.

Patricia Bamattre-Manoukian: You look about 50. Do you have any other personal interests or activities unrelated to the law that you would like to share for purposes of your oral history today?

Christopher Cottle: Well, let's see. I'm very active in my church; it's a church that is building a new church. I'm the head of the architecture committee, and you can imagine what that entails. I'm kind of in the role that we were talking about where I'm sort of trying to get people not to kill each other over various issues and to develop consensus. We've been doing pretty well, but that is a big, practical project.

I'm also on a foundation down in Monterey that's the Diocesan Foundation that deals a lot with financial issues and fundraising and so on. What else? I'm a family person, so I spend a lot of time with my family.

(01:40:00)

My new house is a great place to just kick back. I have not had the chance to really do that yet, but it's in the mountains above Aptos, and you can't hear freeway and you can't hear any noise. The only thing you hear is a plane once in a while, and that's a new experience. Very nice, I enjoy that.

I am active in my new neighborhood. I am an officer in the On-the-Road Association; probably should have not taken that position. There's already conflict there. I have some good friends, I enjoy life, and I enjoy chasing my 17-year-old around with all of his activities.

Patricia Bamattre-Manoukian: As you look back at your career, what would you characterize as the rewards and advantages, the positive aspects of your career?

Christopher Cottle: I've always been in public service until recently, when I started this, my little private business; and that is somewhat unusual, I think, that whole time. And in a way, when you have that you're somewhat spoiled; you always have a paycheck. In that sense you're spoiled. I feel like it's been so rewarding to be able to do all these things, to have had the opportunity to do these things.

When I look back on my career, what I had the opportunity to do in the DA's office was incredible. I mean I got so much more out of it than I gave, but I feel like I did give a great deal. I get feedback from people indicating and confirming that, and so that makes me feel good.

In the same way, I feel being a judge in this country is such a great opportunity. I mean, it's not maybe as good as being a professional baseball player, but in the sense that I think it has some of the same aspects. Those people go to work every day and they must enjoy it. I can't imagine a professional baseball player getting up and saying, "I don't want to go to work today; it won't be any fun."

Being a judge, if you're not having fun, you're pretty strange, because it's privileged kind of work, where you're doing things in which you have the opportunity to feel rewards on a daily basis. So I feel very good about that.

Patricia Bamattre-Manoukian: As you look back, in addition to the rewards and the opportunity to serve others in your various career positions, are there any challenges that stand out in your mind, any great challenges that you look back at?

Christopher Cottle: Well, I think that when you take the kinds of positions that I have had and you have had, you give up something too. That is, you're a public person and you live your life in a way that reflects that. You live it more carefully. Before I go out—not always but most of the time—before I go out in neighborhoods, I usually look a little better than I might otherwise, just in case somebody recognizes me. *[laughing]* That does not mean I dress up, but it means I don't walk around with tank tops, even though I might walk around with a tank top at my house, that kind of thing.

So you do give up some things, but beyond that I don't think there have really been any negatives. And of course the family life, I mentioned it; I think my first divorce had in part something to do with the fact that I was working so hard. But on the other hand, if I had been doing something else, I probably would have been working just as hard as well.

Patricia Bamattre-Manoukian: Is there anything you would have done differently as you look back?

Christopher Cottle: There really are not. As far as my career, I would not do anything differently. There are things that I probably would have done differently when I was in school. I might have pursued something I did not pursue. For example, I might have gone overseas for a couple of semesters when I did not do that. Some of those kinds of things I look back upon.

But no, I just feel that it's been a great life so far.

Patricia Bamattre-Manoukian: And many more great years to come, I know.

(01:45:01)

Christopher Cottle: Occasionally I tell people in church, "I feel like I'm already in heaven, so why should I worry?" *[laughing]*

Patricia Bamattre-Manoukian: Those of us that have worked with you, Chris, we have seen you and your dedication to your family, to your faith, and to your friends. We have known you in various leadership roles, going back to your service as student body president, team captain, the DA in Santa Cruz, a presiding judge in Santa Cruz,

our presiding judge here at the Court of Appeal, and now on to private judging.

We have always admired your leadership, valued your consensus-building skills, and truly valued your respect for our employees and our justices at the court.

In closing this interview today, I would like to invite you to make some closing comments—either words of advice to generations to come, or words of guidance to our lawyers and justices, or simply closing comments as you reflect back on your life, both personal and professional, and on your career.

Christopher Cottle:

I think I will touch perhaps—since I’ve said so many other things—I will touch on something that I haven’t touched on that I think is important to all of us as judges and justices. I recently read my great-grandfather was a judge back in Illinois, and he wrote something at the end when he retired. I read that recently; I was very impressed with it.

Basically what he focused on more than anything else was how important it was to our system to maintain the independence of the courts, to do everything we possibly can to get good people on the courts who are independent of however the wind is blowing at a particular time; who are willing to work hard and be in a situation where they’re motivated to work hard because they know they’re independent, they know they’re going to get paid, they know they’re not going to be criticized for whatever decisions they make, but instead be referred to once in a while as “easy” or “hard” or whatever; but nevertheless respected for the fact that they have to do what they’re doing.

That to me is really important. That’s one of the things about the fact that I’m so lucky to have been a judge is, I was a judge in a time when all of that was in play for me. And I think I did my part in trying to gain respect for the courts, and at the same time people gave me the benefit of the doubt over and over again in my decisionmaking.

I told members of the bar often in talks I’ve given and so on that it’s incredible to me that people are willing to let me have and take responsibility for decisions that they’ve given me the opportunity to make. And I think part of it is that we have such a great process for doing that. It’s nice to have been here as a judge than perhaps—I don’t know, Iran, Iraq, whatever—have somebody breathing down my back. *[laughing]* There just isn’t that kind of thing going on in our system.

Patricia Bamattre-Manoukian: It has been my great pleasure to interview you today and to have worked with you for so many years—even though you went to Stanford and I went to UCLA. And I want to thank you very much for participating in the Appellate Legacy Oral History Project. This concludes our conversation.

Christopher Cottle: Well, thank you.

Duration: 109 minutes
October 15, 2007