Patricia Benke: Okay, it's Associate Justice Patricia Benke, and the last name is spelled B as in "boy," E-N-K-E.

David Knight: And Justice Kremer.

Daniel Kremer: Daniel Kremer, spelled K-R-E-M-E-R, no a's and no c's. And I am Presiding Justice of the Court of Appeal, retired.

David Knight: Wonderful. All right, Justice, thank you. When you're ready just introduce yourself; we're off and running.

Patricia Benke: Okay. We're here today as part of the Legacy Project oral histories of all of our retired justices from the Court of Appeal statewide. And this afternoon I am here with Justice Daniel Kremer; and we are going to begin our discussion and we'll just go until we don't want to talk anymore. *[laughing]*

Daniel Kremer: *[Laughing]* That could be a while.

Patricia Benke: That could be a while. I suppose that we should begin at the beginning, in the words of Charles Dickens's David Copperfield: "I was born . . ." You were born, Justice Kremer, in Washington.

Daniel Kremer: Olympia, Washington, right; in 1937.

Patricia Benke: '37; and how long did you live in Washington?

Daniel Kremer: Till I went away to college. Grew up in the little town of—well, Mt. Vernon. And the really working class, blue-collar town of Everett, Washington—most famous for being the home of Senator Henry "Scoop" Jackson. You couldn't grow up in that town without being influenced by him. And then graduated from high school in 1956 and went away to college in faraway California.

Patricia Benke: Now, there's a lot that happened though; but there's a lot that happened in those high school years, and I think it would be interesting to talk with you about those formative years. For example, you were named the best high school debater in the state, I understand.

Daniel Kremer: That is true, in Washington state in my senior year in high school. See, I went to two—in fact this last summer, I went to two 50th high school anniversaries. So I guess that makes me a 100-year graduate.

Patricia Benke: One-hundred-year graduate. You had two in one year; that's pretty good.

Daniel Kremer: But in formative matters, I think probably the most formative was falling victim to polio in 1951 when I was a freshman in high school. I remember being in hospital in Bellingham,

Washington, in a large ward with kids who were far worse off than I was—iron lungs and the whole thing. This was three years before the invention of the Salk vaccine.

And that, for a 13-year-old, has a definite effect on your life; your life changes. I was out of school a year, then went back. And that's when I got involved in theater, in the high school, both in directing and acting and in debate and public speaking; and did that when I transferred to the larger high school, Everett High School, and found out that it was something that I not only enjoyed, but was reasonably successful at.

Patricia Benke: That year that you were off of school, were you homeschooled during that time?

Daniel Kremer: No, no, I was in the hospital for, gosh, a good four months of it. They kept you a while, and then it was largely taken up after that with trips for physical therapy. And they used lots of—I don't want to go into the details—but lots of heat and big tubs full of roiling water.

Patricia Benke: But that's interesting that during that time . . . it would be interesting to know what you did in your spare time; if you had spare time, were you reading? These wonderful lifelong interests that suddenly emerged after that period of time—did they take hold then, or were they really kind of soaking in?

Daniel Kremer: I think that they developed later. There certainly was reading. I think one of my favorite activities was just ensconcing myself either in my bedroom, or at that time my dad was quite a boater and we would travel into the Canadian and U.S. San Juans and I would find a cozy corner with a book and call it fishing. *[laughing]*

Patricia Benke: Wonderful; that's great. That's very interesting, because these interests carried over into your undergraduate days at Stanford, and the debate especially.

Daniel Kremer: It did; I was captain of the Stanford debate team and we debated four years quite successfully. We used to like to say that we traveled more than the football team did. We had eastern swings that were great experiences, just great experiences.

(00:04:54)

And I think intercollegiate debate was a fine preparation both for school and scholarship and for what eventually became my life's work, because it was all analysis and expression.

Patricia Benke: Do we use the debate process the same way? I don't know.

Daniel Kremer: Now?

Patricia Benke: Yes, in undergraduate.

Daniel Kremer: Now, interestingly, it is an entirely new ball game. When I was doing it, we were actually taught by a professor of rhetoric, and the manner of presentation and the form of the arguments was stressed just as much as making good arguments and having the data.

Now it's all data. If you watch an intercollegiate debate, they speak five times faster, literally, than I am now, just as fast; almost in a computer stream-of-data consciousness, to be able to respond to what the opponents have thrown out to them. There is no attempt at all to be persuasive or to communicate. It's simply laying out data. So I think the kids who are in it now have lost a good bit. They might as well do it on computers or on paper, because the communicative part of it is just gone.

Patricia Benke: Do you think that's a function of our computer age, or is it simply that—

Daniel Kremer: I really don't know. It would be interesting to find out how that changed, because it is certainly a different animal than it was when I was doing it. And I feel lucky to have had the experience I did.

Patricia Benke: Yeah; and in fact, it is my understanding, at least from the notes that I received, that while you were the captain of the Stanford debate team, Stanford won the oldest intercollegiate debate in the nation.

Daniel Kremer: Well, yours truly did that. *[laughing]*

Patricia Benke: That's wonderful; I mean, it's terrific.

Daniel Kremer: That was the debate with the University of California that still exists. It was fun. It was done in tuxedo, black tie, on the stage, with an audience of several hundred people. And you would get the topic that afternoon, and then you would be sequestered and within a space of five or six hours have to come up with your presentation and then do it before a large audience.

Patricia Benke: That is great. Do you remember what the topic was?

Daniel Kremer: Whether France is a democracy. *[laughing]*

Patricia Benke: They're still debating that. *[laughing]*

Daniel Kremer: I had the negative, but we won.

Patricia Benke: You won. Somewhere along the way, you decided that you were going to attend law school. When was that?

Daniel Kremer: I've thought about that, what was the . . . when one gets . . . you've gone four years to school and your major is political science and you want to think what to do with it. Teaching was something else that I was very interested in, and I did student-teach; I was a teaching assistant in the speech and drama department. Actually that was while I was in law school. But that was appealing to me as well. But I think what really was the catalyst was a constitutional law class that I had undergraduate.

The other classes I had had in the philosophy department I thought were very appealing, and this was a practical application of political philosophy to action and to the way we live. And I thought that both fascinating and worthwhile, so that was a real motivating factor into going into law school.

Patricia Benke: And somewhere in there was theater, this lifelong love of theater and Shakespeare. And was that part of what you were doing as an undergraduate before you made the decision to go to law school?

Daniel Kremer: Theater was pretty much in high school. We did lots of student plays.

Patricia Benke: Were you in any of those plays?

Daniel Kremer: Oh, yes.

Patricia Benke: What was your favorite role?

Daniel Kremer: Oh, my goodness! I played—what was his name?—Scrubby, the bartender in *Outward Bound*.

Patricia Benke: Oh, yeah. Any of the classics, Shakespeare?

Daniel Kremer: We did not do Shakespeare. We did *Our Town* and the other plays that Samuel French would let us do in high school.

Patricia Benke: Yeah, wonderful. And that certainly is part of the presentation of ideas and the writing of ideas, and so that fit in very nicely with law school.

Daniel Kremer: It did, it did. And it also, you're right, it sparked a lifelong love of theater that has never gone away.

Patricia Benke: Well, you received your law degree from Stanford in 1963 and you were admitted to the bar in 1964.

(00:10:01)

Daniel Kremer: Right, in January, right.

Patricia Benke: And then right after that where did you go? You went to the Attorney General's Office?

Daniel Kremer: I did. At that time, the California State Attorney General's Office had a marvelous program. I don't know if it exists anymore. They interviewed on campus. I was torn between the Department of Labor in Washington and the California Attorney General's Office here in the state.

It was pretty much a materialistic choice because the Office of the Attorney General had a program that you would come to work for them immediately along (*sic*) graduation and your job would be to study for the bar. So it was a nice way to get the summer subsidized and the bar review course taken and passed; and I think it was one of the better life decisions that I ever made.

I started out in the office of AG in San Francisco and was assigned to the criminal division; that was just for the summer. I think they picked four or five of us from Stanford in the program at that time. And we got little carrels in the library and would walk down the street to the German-American Hall for the bar review course and then drive back home to Palo Alto.

But in the fall of 1963, after the bar exam, I transferred to the Sacramento office of the Attorney General and stayed there for some nine years.

Patricia Benke: Right, you were in Sacramento; and then about 1972, beginning of that decade, you were named the head of the State Attorney General's San Diego criminal division.

Daniel Kremer: That's right. The experience in Sacramento was great for a young lawyer. I think I was arguing before the Traynor California Supreme Court within a year and a half, and that's an experience that I don't think is available to people anymore; and that could not have been better.

I also was named the advisor to the Governor in extradition matters, which opened up a whole new field of law to me that I of course had had no contact with at all. I was able to meet people all over the country and travel all over the country on extradition matters.

I was also first counsel to what is now called—well, what then was called—CLETS, the California Law Enforcement Telecommunication System. And I recall when we started that I would go into a room about the size of this conference room we're in now, and on one side was a grid with little pieces of tape looking through them, some secretaries and clerks in the middle, and another grid on the other side for outgoing messages. They would grab the message, look at it, and put it in the right slot on the other side; and that was our Law

Enforcement Telecommunication System. And we were the first group to lay the groundwork for the computers in cars and the whole automated system that exists now; that's what it's become.

In 1972 I got the chance to come to Sacramento to be the head of really the fledgling office of Attorney General. We may have had six people in the criminal division at that time, and I'm proud to say that a good half of them are now on the bench here in San Diego. And I went on to be the head of that office for, gosh, '72 to '83, some 11 years; and among my activities there was the hiring of one Patricia Benke, now an associate justice.

Patricia Benke: I'm very proud of that fact. In fact, I wanted to talk about this very exciting time. And I think that people sometimes can look back in their lives and see that there were moments, there were eras, that were just filled with excitement and expansion and working with a group of people that you really love working with. And what was it like to be in the San Diego office? You really took the helm of that office. I think there was somebody down here, maybe Elaine Alexander at the time?

Daniel Kremer: Elaine had left by then. It was Mark Christiansen; he was the head and he transferred out.

Patricia Benke: And when you came down, there were only six deputies in San Diego?

Daniel Kremer: No more than that, no more than that.

Patricia Benke: Because the big expansion, or a big expansion, happened in 1974 when a big group was hired. And what did you do before that big group, with the six of you? What exactly did you have to do? I have always wanted to ask that question of you. *[laughing]*

(00:15:02)

Daniel Kremer: Well, we worked very hard and laid the groundwork, really, for the expansion in showing that we had both the caseload and the need to expand. But you're right; it was an exciting time because of the camaraderie and just the devotion. Well, the feeling that we were building something just permeated the office. I think every person in that office had the knowledge that they were developing something that was going to be around for a long time and be a good bit bigger than we had at the time.

Patricia Benke: We didn't tell you, but we used to go down to have coffee and the entire office would pull—

Daniel Kremer: Wouldn't fit at the table.

Patricia Benke: We did; we pulled three tables together, and everybody from civil and criminal would sit and talk about current issues and what was happening in the office. Was there a civil division when you were working down . . .

Daniel Kremer: There was—not any larger, not any larger at all. Neil Gobar was . . . Neil Gobar, and at that time I'm not sure if Michael Robkin was there or may have come later; a number of people transferred from Los Angeles in the civil division.

Patricia Benke: I wanted to touch on the expansion and the composition of the expansion, because as I recall, when the group was hired that I was a part of, there was only one other woman in the office at the time. And I think you expanded the office to include at least three or four of us, and I've always wondered, was there a conscious decision? Because at that time the large law firms in San Diego were really going toe-to-toe with the women who were going to be hired on as potential partners. Was there any thought given . . .

Daniel Kremer: Toe-to-toe in the sense of adversarial?

Patricia Benke: In the sense that women were having a very difficult time being hired at the large law firms—not so with the Attorney General's Office.

Daniel Kremer: Well, it was intentional in one sense in that my objective . . . And I was so fortunate in being given a free hand at hiring. Later on the assistant and chief assistants and such got much more involved in the hiring process; but at that time the Attorney General's Office under Evelle Younger, he said, "You go down there and build the office."

So I was given a free hand in doing that, and my aim was to get the very best people, the very best attorneys we could. And I was very fortunate that the civil firms had left a lot on the table in the sense of talented women. So if I wanted the very best people, some of those very best were the women who in other days, now perhaps, would have started at two and three times the salary that a state agency is able to give.

So I counted ourselves very fortunate in that regard. So it was intentional, but just picked the best, and some of the best happened to be women because the doors weren't open in other places.

Patricia Benke: They were not. It was still very much a closed—

Daniel Kremer: The same was true later on with minorities, with Hispanics. We did and had very good success with hiring minorities that were having a difficult time getting in elsewhere.

Patricia Benke: This person, this interviewer, recalls the asking or discussing the question of having a child and how much time I would have. And I recall, the response was, "Well, what do you need?" *[laughing]* And then gee, yes, "We would love to have you back and you can bring Michael along with you," which lasted for a day. But that was quite progressive for the time, and it truly was. And I wonder if there is any recognition of that—because that was nonexistent, that attitude about women.

Daniel Kremer: Again, it was just the idea of being given a free hand in organizing and operating the office in the way that worked best for keeping a good, happy equanimity among the deputies in the office. I think it was a natural thing to do.

Patricia Benke: I think that communication goes on today. I think that the group as you know that came in is still a very close group.

Daniel Kremer: I think they are, and I think even though the practice of law and what goes on now in the practice of law is very different in the demands, in the caseloads, and all the rest.

(00:20:00)

I think much of the same spirit still exists in that office. It's still considered an excellent place to work, and I still think there is a recognition that very important work is going on there.

Patricia Benke: Yes, indeed; and related to that, one of the other topics that I wanted to touch on is that during this period of time the law was very volatile. The things that were happening and—

Daniel Kremer: Oh, yes.

Patricia Benke: What are your observations about that period of time, the California Supreme Court, the issues that were—

Daniel Kremer: *Miranda* was brand new; *Escobedo* was the California version of it. I remember one watershed event was the enactment of the DSL, the determinate sentencing law, which revolutionized sentencing in California. Of course before that time they did the sentence prescribed by law and the parole board would set it and there were really no sentencing issues at all.

And we took that along with another, a number of other, events that came up, as an opportunity. The office wasn't, the criminal division part of the office wasn't, simply grinding out briefs—although we did that at a prodigious rate that I don't think the deputies there knew what an extension of time was.

But there were other matters that came up, like the DSL, for example; and I recall Mike Wellington, who is now on the bench here in San Diego, a very distinguished superior court judge,

took the lead in essentially writing the first DSL manual for the office to walk around the law and analyze just what the changes were, what the issues were likely to be, and what the resolution of those issues were going to be.

We took on the legal matters attending the opening of the Diablo Canyon nuclear power plant, advising and assisting the district attorney and the National Guard because there were protests that wouldn't stop about that.

When there was labor strife in Imperial County and cases were just rife, which had to be handled with firmness with a good bit of sensitivity . . . and our deputies were very much involved in that. And when for a number of causes the district attorney's office and Imperial County was refused from handling the bulk of their cases we essentially took over that office—I remember that was in the early '70s—and sent deputies there to be deputy DAs on a rotating basis for quite a period of time. So the breadth of what we did and the reputation for being willing to take on new challenges I think made it a very exciting and rewarding place to work.

Patricia Benke: Yes. And the whole subject of the exclusionary rule and the changes in the exclusionary rule very quickly because of the issues with the federal versus state laws . . . And I can recall the exclusionary rule changing almost overnight when the personnel of the California Supreme Court changed. That was a very traumatic period of time to watch as a law enforcement deputy, to see the public step in and remove justices from our highest court. That was a little bit later.

Daniel Kremer: Yes, it was. That wasn't so much the exclusionary rule, but capital punishment. It definitely sent waves through the whole legal and judicial establishment when that happened. But that I'm sure we'll talk about that later; that is an artifact, a function of the system we have. And the judges aren't appointed for life as they are in the federal system, but we do stand for election. We can reap the wrath of the voters, often unfairly, but definitely; and in a way, I think that's looking ahead. But I think that's helpful because it legitimizes the courts. And we indeed are elected; and while you don't let elections control the decisions, it's important to be reminded of that. Ultimately one is responsible to the people of the state.

Patricia Benke: Looking at this period of time that was so exciting up to the point where you moved to the superior court, that period of time in the Attorney General's Office, would you point to any particular activities or accomplishments, I would say accomplishments, at that office? Or have you just gone through those for us?

(00:25:05)

Daniel Kremer: I think I've gone through a number of them. One of the other activities, one of the things that went on for being involved in national issues, I did that in extraditions. When I was in Sacramento and in San Diego, the office and especially Evelle Younger was very active in federal habeas corpus reform. And I can recall going to testify twice before Congress working with a committee of the National Association of Attorneys General on revisions of federal habeas corpus along with a young—I don't know if he was a U.S. attorney; he was in the Department of Justice—a young fellow named William Rehnquist at that time. He was also interested in federal habeas corpus reform.

Then there was also an investigation of the influence of the Mexican mafia within the state prison system, which was given to us in the San Diego office. So those didn't translate into awards and recognitions, but every one of those—from the DSL manual, the Imperial County assistants, both in the labor strife and later the habeas corpus project, the Mexican mafia investigations—every one of those was something significant. And Diablo Canyon . . . something significant to accomplish, and we did.

Patricia Benke: Your time at the Attorney General's Office spanned more than one Attorney General?

Daniel Kremer: Five.

Patricia Benke: Five Attorney Generals.

Daniel Kremer: Stanley Mosk hired me.

Patricia Benke: Is that right? So you were hired by Stanley Mosk. And who was it that followed Mosk?

Daniel Kremer: Tom Lynch.

Patricia Benke: Tom Lynch did, and then there was George Deukmejian, Jerry Brown.

Daniel Kremer: Jerry Brown, no; Evelle Younger and George Deukmejian and then John Van de Kamp.

Patricia Benke: And Van de Kamp. And you left in—

Daniel Kremer: John Van de Kamp's administration.

Patricia Benke: Yes, in 1983; and that's when George Deukmejian became Governor and then raided you right out of the Attorney General's Office. You were, if I recall, the first appointment statewide to the superior court by Governor Deukmejian?

Daniel Kremer: I think I was; and before that time was something I think was a recognition to the San Diego office: I had been made John Van

de Kamp's chief assistant attorney general statewide, which is the first, and I think probably to this day the only, time that a chief assistant has been based in San Diego operating a statewide section of the Attorney General's Office.

Patricia Benke: I think that's correct. But you were in that first group that was appointed by George Deukmejian. And was it an easy transition for you to the superior court?

Daniel Kremer: It was an interesting transition. In those days there were judicial colleges, but judges are expected to immediately transition into being a judge. I think in the municipal court there is a whole training track that one goes through that certainly didn't exist in the superior court at that time.

I was . . . I remember being sworn in. It was July of 1983 and I had a week, I think, to watch procedures—given a few scripts and then given a jury trial. And my 20 years experience had been in criminal writs and trials and appeals. So naturally my first trial court is a wills contest *[laughing]*, which kept me up late at night several days in a row just learning the ins and outs.

But I've always thought that the chief talent of a good attorney is being a quick study—certainly a good appellate attorney, and it is very definitely the talent of a good judge, is to be a quick study. And so I tried to achieve that by going to the sources, learning what you have to learn, and learning from the lawyers who are in front of you.

Patricia Benke: Right. You didn't stay there very long because two years, maybe a little less than two years, later you were elevated directly to the position of presiding justice of the Fourth District?

Daniel Kremer: Yeah, exactly two years, because it was in July of 1985 when I came in as presiding justice. But I did have some good, varied experience in those two years. I did some family law. I did six months in juvenile court.

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And the balance of the time in what we called the Supreme Court of Vista. There were nine of us up there at that time in general trials. And I think the experience there was wonderful, especially working with juries, in preparing me for a later career on the court—which is, you're right, it happened in July of 1985.

Patricia Benke: Right. Did you do much criminal law work as a trial judge?

Daniel Kremer: Oh, yes.

Patricia Benke: You did.

Daniel Kremer: Yes, but mixed. I did Gion-Dietz. *[laughing]* Those are condemnation cases and the will cases and family cases and juvenile cases. Probably the most rewarding in a way, most interesting, was juvenile court, because one has the most flexibility there and the most opportunity to really make a difference and follow a case through, doing what you think is right.

It gave me the feeling that it would be a very interesting thing to be the sole judge in one of our little northern counties and really get to see people from the time of juvenile court and adoptions and all the rest, all the way through, and say, "Charlie, I knew you when, and so let's talk."

Patricia Benke: You did some family law?

Daniel Kremer: Yes, a little bit.

Patricia Benke: That's a tough assignment.

Daniel Kremer: Very. I have a great deal of respect and admiration for people who are able to do that week in and week out.

Patricia Benke: Right. And then you transferred to the *[inaudible; coughing]* and a whole new era began in your career. The size of the court was very different then.

Daniel Kremer: It was; there were six.

Patricia Benke: Six. We now have 10. That's significant; that is a big jump. But you went directly to presiding justice?

Daniel Kremer: That true. Gerald Brown was my predecessor, and of course one gets appointed to the position that one gets appointed to.

Patricia Benke: And while you were serving as the presiding justice you also served on the Judicial Council; you were a Judicial Council member?

Daniel Kremer: I did; I did for three years.

Patricia Benke: And then you took on . . . well, you took on several projects during that period of time—the trial delay reduction?

Daniel Kremer: Yes.

Patricia Benke: With the Judicial Council, that was a committee, one of the committees?

Daniel Kremer: There were several committees at the Judicial Council. First one was something we called library technology, which took me

back to my CLETS law enforcement telecommunication days because it was really much more than library. It was the whole question of automating the courts. This was in the day . . . When I started there were not computers on every desk at all, and that committee laid some of the groundwork for the research technology that we use today and also for the word processing and communication technology that exists.

If I look around this conference room you see the flat screens and the cable televisions and all the rest have continued apace; so that was one, the trial court delay, which was setting out procedures and expectations for cutting the considerable backlog that existed in trials at that time.

Patricia Benke: The project that you took on that was massive was the inventorying and evaluating of every courthouse in the state of California.

Daniel Kremer: This was somewhat later. That was the chairmanship. Let's see. . . .

Patricia Benke: The Task Force on Court Facilities?

Daniel Kremer: Yes, Task Force on Court Facilities. I was thinking there was a co-chairmanship of another committee that was a precursor to that. But the trial court facilities task force was charged with looking at the condition of every one of the court facilities—not just courthouses, but court facilities—and every one of California's counties coming up with a list of criteria for what a good court facility ought to look like. How big is a courtroom? What facility does one need for the jury? What does the judge's bench look like? How many spectators does one need? What room do you need in the well? Every little architectural detail one can think of. But coming up with a set of court facility standards and then assessing the court facilities that we physically looked at.

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We traveled with our teams to every one of the counties in the state to assess them against the standards that we'd developed and assess their considerable inadequacies; and then oh, by the way, design assistance to rectify that, including the financing mechanism. So it was inventing the wheel every time we turned around.

Patricia Benke: Did you go to every county yourself?

Daniel Kremer: No, we had teams that did that, but I went to a good many of them. This was in 1987, a four-year project.

Patricia Benke: Yes, '87 to—

Daniel Kremer: 2001, 1997 to 2001.

Patricia Benke: 1997 to 2001. Any interesting stories that you recall in your travels?

Daniel Kremer: *[Laughing]* The Chief Justice, when he ascended to that position, did visit every one of the counties of the state. And later we replicated many of those journeys and we were told more than once, "Well, the Chief Justice came in here and told us ours was the worst courthouse he had ever seen."

So we had to balance a number of pedigrees that were spread around the court, around the state; but I think what I was impressed with is seeing the flexibility and dogged determination of trial court judges faced with some of the physical conditions that we saw. I recall one courthouse where one judge had literally handcrafted his own bench. I remember another courthouse where their idea of security from firearms was to put up large billet steel plates in front of the witness stands and bench, which if one had ever actually shot a gun at would have been the most perilous thing in the world because of the ricochets. *[laughing]*

Patricia Benke: Ron George . . . I am assuming that there was legislation that resulted, ultimately, for all of this.

Daniel Kremer: They did, they did. In fact, our final product was a report that we wrote to be translatable into a bill; and that was done after the task force terminated its work. And it was adopted by the Legislature in the next session, and it's the model now for the process of negotiating the turnover of court facilities through the state.

It's really the last of a three-cornered process that's existed. The state is now responsible for the judges, for the personnel, and now for the facilities. And the counties traditionally had undertaken all three roles and had gradually, I think to their great relief, moved out of those areas. And with a uniform umbrella of management over all three of those, it leads to a great deal of rationalizing and making more efficient the process of running the courts—because if those aren't under one administration, they are definitely at loggerheads.

Patricia Benke: It was significant work. And indeed, Chief Justice Ron George called your work and the end product one of the most important judicial reforms in the last 100 years.

Daniel Kremer: I am proud to agree with it.

Patricia Benke: Yes, indeed. And we still have lots of discussion, as you have indicated, about the needs of California—most recently in Riverside and San Bernardino, which were part of your jurisdiction.

Daniel Kremer: They are. And the San Bernardino courthouse was one of those that is literally seismically unsafe. So it is, I'm sure, high on the list of retrofitting, if not replacing.

Patricia Benke: Completely, right. All of this work earned you in 2002 the Judicial Council's Jurist of the Year award. Was there a big dinner?

Daniel Kremer: There was a very nice dinner in San Francisco.

Patricia Benke: But it is quite an award. It's the top award that a jurist can receive in the state of California. Congratulations. I went through your opinions for those periods of time.

Daniel Kremer: Did you?

Patricia Benke: Well, I found that there were about 272 reported decisions and—

Daniel Kremer: And of course many times they're unrecorded, as we know.

Patricia Benke: Oh, yes. It's in the thousands. It's in the thousands—of unreported decisions, unpublished decisions. Are there any of those that stand out in your mind?

(00:39:55)

Daniel Kremer: I remember . . . I talked to our colleague now gone, Don Work, about that—who was just really the conscience of the court; he was a wonderful justice—and asked him what decisions he thought were important.

And he said, "It was important to remember that those decisions were supremely important to the people involved with them." It was very likely, very likely—and this was a big corporate case—that that was one of the most significant events of their lives, of the people who were involved in those cases; and that any justice worth his or her salt had to keep that in mind. And I tried to do that, remembering that the smallest property or family—certainly criminal—case was vitally important to the people handling it; so all of them were important in that sense.

Beyond that, in another sense when you're on the Court of Appeal you really don't get to take the real flagship cases—because if they're that important, you can write all you like, but they're very likely to be taken out of your hands by those folks who are upstairs.

Patricia Benke: That's interesting because it sort of dovetails my next question, which is, what do you consider to be the best qualities of a justice on an intermediary Court of Appeal?

Daniel Kremer: I'll get to that too. I did want to mention a couple of cases, because knowing that it's the California Supreme Court that has the last word within the state, it makes dissents more important, as Justice Benke well knows, I think. You're famous for writing dissents that turned in magically to majority opinions by the California Supreme Court.

Patricia Benke: It can happen.

Daniel Kremer: It can happen. And I remember one case and it was *Sharon*—I don't recall. *Sharon S.*, I think.

Patricia Benke: The adoption case.

Daniel Kremer: The adoption case, the second-party adoption case. It was a gay couple who had adopted a child; and the question, and really quite a technical one, was whether California statutes permitted that. And dovetailing that with your second question, I think a quality of a judge intermediate and Supreme Court is to pay attention to the law as it has been lived and applied and not simply and solely—although they're primarily important—not simply and solely the raw words and logic of a statute.

Because the logic of the statute has a life after it leaves the Legislature's hands; and that's what had happened in that case. While the majority's reading was quite a reasonable one if it had been the very first out of the box, my point in my dissent—because the majority ruled against the couple's adoption, was not valid—was that there had been a good bit of lived judicial history after that time that had to be taken into account, including precedents of the California Supreme Court. And that's one of the cases that was turned into a majority opinion by the California Supreme Court.

So I think a good quality of an intermediate judge is to be aware of the whole life of the law. One has to know statutes, but one has to be sensitive to the arc of experience that the law has entailed. It's also the quality of a good intermediate judge, I think, to be and to be satisfied being a technician sometimes.

Sometimes one simply has to dig in and mine the nuts and bolts of a statutory system. And more often than in other situations, those are situations in which your words can have an extended life because they're not the type of case . . . If you've done your job well, if the technical work of analyzing and laying out the law is done well, the California Supreme Court is going to leave that alone, saying, I think to an intermediate judge's great credit, "well done."

We would do the same thing. And they're not great policy matters as such—but again, they're important not only to the people involved but to broader communities. I can recall a

series of cases that I had on details of condemnation matters, whether the Polanco Act applies in that particular situation. And I recall working very, very hard on those cases to get the details right. And people involved in practice since then have said that those are real, real milestones in what the law has been.

(00:45:19)

Another characteristic of a good appellate judge, intermediate appellate judge, I think, is to be interested in the philosophy of the law in the sense of laying out the future in a consistent way. I recall one case—I think it was *People v. Johnson*—that has stayed on the books that allowed a good bit of investigative thinking.

The situation was a criminal defendant wanted to take the stand; and in the view of defense counsel, he was going to take the stand and perjure himself. So the question is, what is the defense counsel's responsibility in that situation?

In that particular case, the defense counsel said, "No, I'm not going to let you take the stand if that's what you're going to do." So in the case we laid out, really went into the history of, the problem and laid out all the possible solutions that had been proposed that this dilemma—it really is a dilemma for criminal defense counsel—and then laid out what we believe to be the best solution, which in that case would be put him on the stand because he has the right. You're balancing rights in that situation.

Put him on the stand but don't ask questions; simply allow a narrative by the defendant and then cut it off and move on. And I think that a case like that, which is really a philosophical investigation, is both great fun to do and has value. And if an appellate judge recognizes that that's part of one's function as well, it can be important.

Patricia Benke: Did you enjoy working on the opinions?

Daniel Kremer: Oh, yes; oh, yes. That took me back to my con-law days and also as a teaching function . . . I think a good appellate judge, when the opportunity comes along, enjoys being a teacher.

Patricia Benke: In the sense of—

Daniel Kremer: In the sense of laying out a process and a road map for the future, not just resolving the case that's there.

Patricia Benke: Being of assistance to the bar.

Daniel Kremer: Right. Recognizing that this is not . . . this is important in resolving this particular case, but here is a situation that is

going to come up in the lives of counsel; how do you handle it? Well, let's investigate all the possible ways and lay out the best solution that we can think of. Leave it to the Supreme Court to see if they want to take it. They didn't, and it's still on the books.

Patricia Benke: As the chief justice here in San Diego, you had occasion twice a year to address the new bar admittees.

Daniel Kremer: Indeed.

Patricia Benke: And your speeches are still famous; nobody's come close. But some of the teachings that you presented during those discussions, in those speeches to the new lawyers, had to do with the role of attorneys in our society. And those words were quite . . . obviously they came from your heart, and you meant them as being the mortar, if you will, that keeps us a free society.

Daniel Kremer: That's right.

Patricia Benke: And I think it bears repeating those words here for us because they are so—

Daniel Kremer: I don't recall being tactically . . . but I certainly remember the concept, what I wanted to leave, and these are almost as much fun as adoptions. These are great events held twice a year. And I hope the court still continues it, in having the new admittees and their family members, 800 or 900 of them sometimes, all together for this ceremonial occasion that's much like a graduation in some ways. And I took it as an opportunity to reflect on the simple fact that look, there are a lot of you out there; why is it that people as bright, and you obviously are, why you have chosen this particular profession.

(00:50:00)

And my message to them was because it was . . . there are other things that they could have done. We need engineers, we need plumbers, we need teachers. These are the best and brightest that we have; why is it that they have gone into the practice of law?

My message to them was that they did it because it's important; that this is a society, ours, that's held together certainly not by race—we are incredibly diverse—not by religion, not even by language anymore. It's held together by the uncommon boast that we are a people; and it's a boast and a claim laid out in our constitutive law, the Constitution. It's a republic of a concept of ideas. And the job of attorneys is to work out that boast in very broad terms, very broad sweep sometimes, but equally important in the day-to-day matters of contracting, marrying, divorcing, adopting, forming and

dissolving businesses. Those are the matters that one needs a lawyer in, because we are a nation of laws.

Patricia Benke: And we exist by agreement.

Daniel Kremer: Exactly.

Patricia Benke: And that's that agreement, and that's directly from your speech; I've heard it many times. We are a country of agreement, and our government by agreement; and the function of attorneys, and particularly new attorneys recognizing perhaps for the first time . . .

Daniel Kremer: And lay out the terms and work out the terms of that agreement.

Patricia Benke: No matter what you're practicing, no matter whether you're practicing marital law or a big constitutional . . .

Daniel Kremer: You were listening. *[laughing]*

Patricia Benke: *[Laughing]* I have borrowed some of those ideas, Dan. But the audiences would be speechless, and they were just wonderful speeches. And I know that attorneys will be seeing this; new attorneys will be seeing our archives and the concepts that we as justices set forth. And that's very good advice, and no one has come close to it.

You retired.

Daniel Kremer: I did.

Patricia Benke: Before we get to your retirement, is there anything else about the Court of Appeal and your experiences here that you feel you would like to set out?

Daniel Kremer: I think we've covered it well. But I talked about my experiences at the Attorney General's Office and how challenging and rewarding those were; and I had the great, good fortune to simply continue that arc into the Court of Appeal. I can recall one of the things—I don't think it's done anymore—but one of the things that we did during my tenure was every couple of years hold a daylong appellate seminar for the attorneys in the county, where the judges of the court would individually and in a group address the attorneys on the details of practicing appellate law and the nuts and bolts of brief writing and broader questions about where the court was going. And I can recall enjoying those greatly because I would never fail to be impressed by the talents and abilities of the people I was surrounded by. I thought, my goodness, this is a wonderful collection of people, and I'm very proud to be able to show them off in this venue.

Patricia Benke: It was enjoyable, and we have continued them.

Daniel Kremer: Oh, good.

Patricia Benke: We do them biannually now—very large groups—and we still have the same response, which is always a magnificent response numerically.

Daniel Kremer: It's great from the audience and from the attorneys, but I felt really gratified myself by being able to put individuals of the quality that we've got on the court before the bar; I was very proud of that.

Patricia Benke: Yes, and it's still a wonderful place to be.

You retired on July 31st of 2002 --

Daniel Kremer: 2003.

Patricia Benke: 2003, I'm sorry. Reflecting back and looking at the way the court is now, we're still faced with tremendous challenges, and I know you must feel strongly about it. We touched on the election issue. That's a very big issue right now with judges: retention of appellate justices and what may be perceived as threats to judicial independence because of those elections. What are your feelings about independence, elections?

(00:55:02)

Daniel Kremer: Independence—I've read several articles on this recently—is maybe an unfortunate word to use. But what judges want . . . they are not independent in the sense of being irresponsible; they are independent in the sense of being free of inappropriate political influence. And it is troublesome in a real sense to see some of the campaigns that have been mounted against the judiciary and individual judges. And I think the answer has to be education and responses by the judges informing the public just what it is the judges do—because the press, the media, and the schools frankly aren't doing the job that they should do in explaining what it is about the judiciary that makes it important and separate from the legislative and executive branches.

We all talked many times to groups of very intelligent people who have not a clue about what it is that a court does, and I think in a lot of ways it's our fault for not being more open, for being insular and going about doing our job and thinking that's all we have to do.

Well, it isn't. The elections are here. I don't think we should go to a lifetime appointment system. I think it's a good thing that there's a connection between the court and the people, but it makes it a responsibility of the courts to reach out and make

available information about what it is that courts do that make them different from the Legislature.

Why is it that we don't horse-trade favors as one would do in a Legislature? That we're really not concerned with who wins a case or the policy behind a decision or a statute—insofar and as much as we're interested in the process, whether it was fair and appropriate for the event to have occurred in the way it did?

People simply don't understand that. And I think to the credit of the court—it certainly happened while I was here, and from what I've seen it's gone on in an accelerated manner since—of reaching out, even going out into schools and local courthouses and holding court sessions along with briefings to students outside the court. Outreach, I think, is the key.

Indeed, I came into this conference room, and as I mentioned we've got a little flat screen television up there; and I noticed that after a court session was held this afternoon, two judges stayed on the bench to talk to students who were there in the courtroom. That's the kind of thing we need to do much, much more of; and if that's done I don't think judges have to be worried about retention elections at all.

Patricia Benke: Okay. We haven't talked much about your personal life and your wonderful wife.

Daniel Kremer: Kathryn.

Patricia Benke: Kathryn. And your grandchildren by the count I had was two.

Daniel Kremer: Two, just two, but they are marvelous.

Patricia Benke: Yes, and how you're keeping busy?

Daniel Kremer: I retired in 2003. And everyone who retires says they can't imagine how one found time to work—and it is exactly that way. You'll find that out. Travel, we've done a good bit of that. And I work with canon law with the Roman Catholic Church—canon law being the oldest existing system, continuously existing system, of law in the world; so studying it and helping the parish in its application has been rewarding and interesting.

Patricia Benke: Your hobbies keep you busy. Theater—

Daniel Kremer: Theater, opera, and auto racing. *[laughing]*

Patricia Benke: And of course auto racing. *[laughing]*

Daniel Kremer: Never miss the Long Beach Grand Prix.

Patricia Benke: That's wonderful; anything else that I've missed?

Daniel Kremer: You have not; it's been a marvelous interview.

(00:59:51)

Patricia Benke: Well, I appreciate it. And I want to step outside my official interview capacity to thank you. You are a brilliant—and I'm sure that when one looks back at those who've served on this court—brilliant legal mind. And I have been personally privileged, Dan, to have been hired by you at the Attorney General's Office. That one event altered my entire life. It was a wonderful group, and it's a wonderful group here. And I want to thank you very much both for this interview and for your personal friendship.

Daniel Kremer: You're most welcome. Isn't it amazing how watersheds like that come along?

Patricia Benke: Don't you love it?

Daniel Kremer: Yes, and I think I alluded to before. It is . . . I am just in awe of the talent, abilities, and goodwill of those I have had the privilege to work with, both in the Attorney General's Office and in the Court of Appeal. And I'm most pleased that you've been one of those people in both venues.

Patricia Benke: I've enjoyed it tremendously and there are many of us out there. Thank you very much, Dan.

Daniel Kremer: Thank you. How did we do?

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