Sandie Margulies: This is Justice Sandie Margulies of the First District Court of Appeal Division 1, and I'm about to conduct a legacy interview with my friend, Justice Robert Dondero, retired Associate Justice of the First District Court of Appeal Division One. We are conducting this interview for historical purposes and a copy of the interview will be kept in the law library in this building. [The interview and transcript will be posted on the Appellate Legacy Project website.]

So, Justice Dondero, I'd like to start out maybe elicit some background information about you. So, I know you were born in San Francisco. Are you first generation?

Robert Dondero: Second generation, born in San Francisco.

Sandie Margulies: Why don't you tell me about your parents and grandparents, and where they came from and how they got here?

Robert Dondero: Well, all the grandparents of my family came from an area in Italy, outside of the area of Genoa.

Sandie Margulies: So Northern Italy.

Robert Dondero: Northern Italy, Liguria Province, and basically, both my grandfathers came to the United States first, even though they had their wives remaining in Italy. They came to the United States, started getting involved in business, and then their respective wives came to the United States and started their families. So, both my parents were born in San Francisco and they lived about six to ten blocks from each other in San Francisco. That's basically what they were and what they did.

Sandie Margulies: What was your father and mother's occupation?

Robert Dondero: My father was a member of the Sunset Scavenger Company, which is a business that was really founded by the people from Genoa and another town called Lucca, which basically all came to the Bay Area, found this company which is basically the garbage collection services for the City and County of San Francisco. It was a private company that operated exclusively in the City of San Francisco. His father was one of the founders of the company and my dad went into that during the depression and stayed there until he retired. My mom was basically a housewife almost all of her life, except when I went off to college, she wanted something to do, so she started working in Saks Fifth Avenue department store as a salesperson.

Sandie Margulies: Now you were an only child.

Robert Dondero: Only child, right.

Sandie Margulies: Do you have cousins?

Robert Dondero: I have tons of cousins. We all lived in sort of a communal existence. We had several pieces of property and the cousins lived in some of

those properties, and five or six of us were all about the same age group. So basically, we were very socially active as almost like brothers and sisters, but we were still cousins, and had family dinners and get-togethers and all that throughout the year on a regular basis. I'm still very close to most of my cousins even though they don't live in San Francisco; they live in other parts of the State of California.

Sandie Margulies: So, in what part of San Francisco were you raised?

Robert Dondero: Mission District. I was born and raised in the Mission District, the great neighborhood, a lot of Irish-Italians primarily living there, I went to grammar school, a local parochial school in the district. I went to high school in San Francisco in Riordan High School, and then the first time we really went off was when I went off to Santa Clara to go to college.

Sandie Margulies: So, let's talk about your elementary school. What was the name of it?

Robert Dondero: St. Peters was the name of the school. It was about five blocks from my house. On a regular basis, I would come home for lunch because of my dad, because he worked in the early hours. We'd have our major meal of the day for lunch, and that was the way it was. So, I would come home often, and we'd have lunch and then I go back to school, in grammar school, because you could come and go from the campus, there was no regulation against that. Then dinner was a much smaller meal in the family.

It was a very large Catholic grammar school. It had two classes for every grade and all neighborhood kids, and it was a good school. The nuns were mainly our instructors. I only had one layperson the entire time I was in grammar school. The rest of times were nuns.

Sandie Margulies: So, did elementary school go all the way through --

Robert Dondero: Eighth grade.

Sandie Margulies: Oh, eighth grade, okay.

Robert Dondero: Yeah, it went from first grade to eighth grade at St. Peters, then I went to Riordan.

Sandie Margulies: Now why did you choose Riordan High School?

Robert Dondero: I chose it because several of my best friends from grammar school were going there, so we continued our friendships. It was closer to my neighborhood where I was raised. It was a couple of bus stops away, changing buses, and it was a newer school, and I was very happy with my choice.

Sandie Margulies: If I remember correctly, Riordan was and still all-male.

Robert Dondero: All boys, yeah. It was all-male school. I got involved in speech and debate activities at the high school from my freshman year on. In my

junior and senior year, we had a very good team of competitors and we were state champion in our junior and senior year for the forensic programs of the State of California. One of my best friends from that speech and debate program ended up becoming a professor of evidence at UC Davis and another one became the Chief Justice on the Alaska Supreme Court. Three or four others were very active lawyers in the bar in the Bay Area. So, it was a very good competitive group of people.

Sandie Margulies: Before you went to college, was there any particular person, relative, individual, teacher that was influential?

Robert Dondero: There were a couple of teachers I had in high school that were influential. One was an English teacher, Bob Ferrara, and he was also the head of the speech program at the high school. Not too many others that I would say would be inspirational type persons, but he would be one I would single out.

Sandie Margulies: So why did you decide to go to the University of Santa Clara?

Robert Dondero: Well, I felt comfortable enough that I can get away from home. I know my parents wanted me to go to USF because they felt it would be nice be a day student. I felt it was time to grow up and go off to college and board somewhere. Santa Clara was ideal because it was close enough, it had a really good reputation as a university, and I was very pleased with the choice.

Sandie Margulies: Now did you live on campus all four years.

Robert Dondero: Yes, all four years. Santa Clara had a strong policy in favor of you living in the dormitories. They had created enough dormitory space to have the students live on campus. They had a cafeteria service. Everything was with convenient. The campus isn't that large. We had to travel to get to the school from the dormitories. So, it was it was convenient for me and most of the friends that I met at the University were also boarders to, so it was a convenient deal.

Sandie Margulies: Do you still have any friends from university?

Robert Dondero: Oh yeah, a lot. I keep in touch with about 25, 26 of us, most males, some women, Linda Jamel is a person I see on a regular basis. She was on this court at one time, and we get together about three or four times a year socially at luncheons. Of course, Santa Clara has reunions on a regular basis. My wife and I go to those and see most of my colleagues. It's a strong union.

Sandie Margulies: So, what were your interests at Santa Clara?

Robert Dondero: At Santa Clara, I was a history major. I really enjoyed history and then I was involved in that almost exclusively. I was involved in some forms of student government, and of course just social activities of being on a four-year college campus, male/female, it was a very comfortable place.

Sandie Margulies: So, what form student governments you were a part of?

Robert Dondero: I was on the student council that would govern the school. I was on the student court for one or two years in my last couple of years at the school, which was the disciplinary kind of process at the school. It was a very comfortable place. It wasn't that big of a campus, but it was large enough have a diversity of students. It was a good place.

Sandie Margulies: So, you eventually married Liz Heffernan Dondero.

Robert Dondero: Liz Heffernan Dondero was the woman I am now married to.

Sandie Margulies: Yes, for many years.

Robert Dondero: Yeah, 47.

Sandie Margulies: Where did you meet her?

Robert Dondero: I met her first at my law school graduation. It was sort of a passing experience that she remembers probably better than I do.

Sandie Margulies: She does.

Robert Dondero: She does, yes.

Sandie Margulies: And I know why, because she told me, she spotted you.

Robert Dondero: Yeah, she did. I was more involved in the graduation ceremony and not meeting anybody socially, but she was there for a lot of things. Anyway, so I met her, and then I was studying for the bar that summer and happened to attend a party, one of my roommates at Santa Clara was having a cocktail party on the Fourth of July, and his wife was a college friend of Liz, then my girlfriend, and basically, she invited her, Rusty invited me, and we saw each other again. She reminded me of the episode at the parking lot at Boalt Hall.

Sandie Margulies: You have two daughters together.

Robert Dondero: Two daughters, yes.

Sandie Margulies: And they're both involved in the law.

Robert Dondero: Yes. Alison is head of paralegals at Littler Mendelson, a law firm in San Francisco and elsewhere, and Chrissy Edwards is a homemaker now. She was with a couple of law firms. She may be going back to the law, but she just had her second child, and she's involved in taking care of an infant as well as a young girl who just started grammar school.

Sandie Margulies: So, both daughters are married, and you have several grandchildren.

Robert Dondero: Yes. Alison Anderson is married. Her husband is an attorney with a firm in the East Bay. She has one daughter, Mackenzie, who is about close to four now, and Chrissy, who's the second child has two children, one Eloise who's five just started kindergarten and then Harrison who's eight months old I guess now and he's a very demanding infant.

Sandie Margulies: I think you told me he's going to be tall.

Robert Dondero: He's tall. He's on the 99 percentile on height, weight and head size.

Sandie Margulies: Now where do you think he gets the height from?

Robert Dondero: Height, I'm sure, it skipped a generation. Neither of my daughters are that tall, but certainly with the grandkids, they're getting taller manifestation, yeah.

Sandie Margulies: How tall are you?

Robert Dondero: I'm 6'7".

Sandie Margulies: So, I can't move away from hearing about your background without asking about the amazing Monica, who I'd been hearing about for a number of years from you.

Robert Dondero: Yeah, she was remarkable. She passed away a couple of years ago at the age of 104.

Sandie Margulies: She was your mother's mother.

Robert Dondero: Correct.

Sandie Margulies: I mean not your mother, your wife's mother.

Robert Dondero: Yeah, my wife's mother. Basically, she was a rather remarkable woman. I mean she was born when women couldn't vote in Nebraska and she was fatherless at a very, very early age. She was raised by her grandmother and then she met her husband-to-be, he was a medical student at Creighton that came out to California. She set up a home boarder house, started raising children while her husband was in World War II as a medical doctor, but she set up her own domain, got a loan from a bank, which was unusual for a woman to get in those days, goes to be 104, very active in charity work. Interesting thing was in 2008 when Obama and Hillary Clinton were running for the presidency to get the democratic nomination, she was a strong Democrat, Monica.

She decided to vote for Hillary as opposed to Obama because she wanted to vote for a woman, because when she was raised in Nebraska, women couldn't vote and she wanted to make sure that her first woman candidate for president, she could vote for, so she did.

Sandie Margulies: So, I want to switch over to law school. And you went to.

Robert Dondero: Boalt Hall, now it's called University of California Berkeley Law School. I went there during the late 60s, so 67 to 70. It was a time when the campus was in, shall we say, great tumult. But it was a great experience, totally different than what I was exposed to in Santa Clara as far as size, activities, et cetera.

Sandie Margulies: Well, there was a lot of turmoil on the campus.

Robert Dondero: Considerable, I mean the University was in constant conflict with the governor, who was then Ronald Reagan. In every quarter, there was a tension spot that happened on the campus. The law school was probably the most conservative part of the University campus, but it got involved in the issues of the day.

Sandie Margulies: Are you still in contact with any of your classmates?

Robert Dondero: I see a few, not too many. They were diverse group. They went to different parts of the nation and elsewhere I'm assuming. A lot of them didn't practice law in the Bay Area, or if they did, they were in commercial and not in litigation work. There are a couple of people that I do see that were classmates of mine that are active litigators, and so I used to see them all the time, still see them on occasion.

Sandie Margulies: Why Boalt?

Robert Dondero: It was really a great school, highly recommended by all my teachers at Santa Clara. I applied there because I figured I had a shot to get in. My backup would have been USF. Those are the two schools I applied to, and I got accepted. A couple of my classmate friends from Santa Clara were going there, so we decided to go there.

Sandie Margulies: How would you describe your experience at Boalt?

Robert Dondero: It was a great school. I mean, there's no doubt about it. It was it was very reasonable place to go to at that time, tuition was probably about $200.00 a year, nothing like now.

Sandie Margulies: Yeah, the good old days.

Robert Dondero: Good old days. And the faculty of course was outstanding. I mean I really developed an appreciation of the law by the teachers that I had because they were, on the whole, outstanding.

Sandie Margulies: Any one or two professors that really stand out?

Robert Dondero: Yeah, there's two I can think of right off, I mean they were all good, but Professor Choper was a common law professor that we had. Fortunately, I had him for a full year. They've unfortunately cut down constitutional law to a semester course I think in many places now, but I had Professor Choper for the full year, and he was nothing short of outstanding. He was really good. Then another professor I had was Professor Kadish who was a criminal law professor, former dean of the

law school, and he was -- I had him on a couple of seminar classes where we go to his house and sit around once a week and discuss some very esoteric topics for credit. He was instrumental in getting me interested in the criminal law, because he was a criminal law professor. I took criminal law procedure class from him that was probably the best course I had it at Cal. He was quite good.

Sandie Margulies: So, you took the bar exam. You passed it. And then you joined --

Robert Dondero: The DA's office, in San Francisco. I wanted to go into litigation and be a trial lawyer. I felt the best way to learn that was to be in the DA's office.

Sandie Margulies: So, you were focused. You didn't fall into it. You were focused on becoming a deputy DA.

Robert Dondero: Yes. I didn't apply for other jobs during the interview process at Cal, because I felt I was going to go to the DA's office, develop an experience in litigation and see where that took me. So, I went to the DA's office and it was a great place to work. We had a very good group of lawyers. I think one time we counted out, there were probably 30% of the attorneys that I worked with in the DA's office from time I started to the time I left, became judges on the state and federal bench.

Sandie Margulies: It's pretty impressive.

Robert Dondero: Really impressive group of people.

Sandie Margulies: Who was the DA?

Robert Dondero: First DA that I worked under was John Ferdon, the DA is always an elected official right. So, he was the boss. He hired a very outstanding chief assistant who kind of ran the office, Walter Jubini (ph). Walter Jubini was a mentor to a lot of men and women who worked in the office. Then just before I left the office, a man named Joe Freitas became the DA having defeated John Ferdon and he became the DA, I left when he was the district attorney.

Sandie Margulies: So how long were you with San Francisco DA's office.

Robert Dondero: 71 to 78.

Sandie Margulies: Why did you decide to leave the San Francisco DA's office?

Robert Dondero: Well, I'd done quite a bit of work in State Court practice in the DA's office. They had some trials that were -- one particular was over a year long. Basically, I kind of churned that field pretty well. Bill Hunter was a deputy DA in San Francisco, and he and I became friends, and Bill was eventually appointed the US Attorney for the Northern District of California when Cranston was the senator. Bill was appointed by the President through the intervention of Alan Cranston. Bill asked me if I wanted to join him in the US Attorney's office, and I

was interested to see what federal practice was like and I took him up on it.

Sandie Margulies: So, going back to your experiences in the San Francisco DA's office. You said you had a year-long trial.

Robert Dondero: Yeah.

Sandie Margulies: And what was that about?

Robert Dondero: It was a case, which is called the zebra case, and it was a case in which four men, African-Americans, were accused of engaging in a series of criminal acts, murders and assaults of white people in San Francisco. The episode covered from 1973 to 1974. The trial began in 1975 in front of Judge Karesh, Joe Karesh, and it lasted for over a year. We tried the case, and the defendants were convicted by a jury of all the criminal acts they were accused of.

Sandie Margulies: Now did you have to rely on any informants?

Robert Dondero: At least we had two major informants. One of them was Anthony Harris who was an insider in the so-called conspiracy that these men engaged in, and he testified, interestingly enough, he testified for almost I think over nine days, he was on the stand being cross-examined by really good lawyers like Clinton White and people like that. Then another witness was named Anthony Seymour and he -- one of the key pieces of evidence was the gun that was used to shoot these victims, because they used one or two guns to do the murders. Anthony Seymour was the witness who basically obtained the gun from an individual and sold it to members of the conspiracy. It was a critical link in the chain of evidence of the crime.

Sandie Margulies: So now you're in the US Attorney's office. What kinds of cases were you handling there?

Robert Dondero: I handled a wide range. I did a couple of racketeering cases that lasted a while and I also did a lot of white-collar fraud cases. I became focused on white collar for the last several years that I was in the US Attorney's office and found them very interesting cases to put together.

Sandie Margulies: Are there one or two cases that you thought were fairly significant or interesting?

Robert Dondero: Well, there's a couple of cases that were lengthy. I mean, the Hells Angels Motorcycle Club was a RICO case that I had. The case lasted nine months in federal court trial. There were over 19 defendants that were tried in the first round that I was one of the lead attorneys on. There was a mixed verdict. The jury convicted some of the defendants of substantive offenses and two defendants of racketeering.

But I have a view that the case was probably too large for a jury to handle in its totality, and there became an issue of prosecuting a

motorcycle club. There was a certain underlying First Amendment issue about associational prosecutions, and I think that the jury couldn't agree on some of the racketeering counts and several of the defendants. Case was retried. It was modified. I was involved in the second case, same result, the jury hung couldn't convict.

Sandie Margulies: Now was it all 19 defendants at the same time?

Robert Dondero: All 19 at the same time and then the second case involved different defendants, plus the few of the original defendants but the same mixed result.

Sandie Margulies: How would you -- well, first of all, would you say there were differences between being a state DA and a federal prosecutor?

Robert Dondero: Major differences. I mean with all due respect; the federal court system is a much more regulated process. The federal rules are I think written in an understandable fashion. There's not as many rules of procedure and evidence in the federal system as there is in the state court system. The judges maintain a stronger control over the process. In State Court, lawyers tend to go, visit the judge in chambers and all that. In federal court, that just doesn't happen. The doors to the judges' chambers are locked and you don't go back and see them unless you're with co-counsel to discuss an issue of the day. There is a lot more writing involved in federal practice than in state practice, and your stuff is being reviewed by pretty substantially qualified law clerks who can find issues and analyze them pretty well.

Sandie Margulies: Did you have a preference between the San Francisco DA's office and the federal prosecutor's office?

Robert Dondero: I just enjoyed the federal practice because it was much more organized and structured, and I like that. You would generally get a result. It was a written opinion by the judge explaining why she or he was doing what they were doing. There was a lot more certainty. Lawyers didn't cut corners in federal court, like they sometimes can do in state court, and I think that there's a level of professionalism that some state court systems could probably try to strive for.

Sandie Margulies: Did you have a mentor in the federal prosecutor's office?

Robert Dondero: No, I was pretty far along myself. I had a lot of good colleagues and we discussed things. One of my colleagues was Bob Mueller who became the US Attorney eventually in San Francisco and then became head of the FBI and the author of the Mueller Report. Bob and I sort of came to the US Attorney's office at the same time. There were a number of members of that office that became judges. Ben Burch who was a judge in Contra Costa County. John Kennedy who was a judge in Contra Costa County. There are a lot of good friends that I had over there.

Sandie Margulies: So, at some point, you decided to apply for San Francisco Superior Court to be a judge. What precipitated that?

Robert Dondero: Well, I always wanted to be a judge. I mean, I acknowledged when I was in law school that my eventual goal was to be on the bench. I found it interesting and I liked the law, but it deferred for a while. I got involved in the vetting process that you have to do to become a judge.

Sandie Margulies: Let's talk about that process. What did that process involve for you?

Robert Dondero: Well, for me it involved the influence of several men who were involved in advising the governors who to pick. I mean, basically, Paul Harley who was a member of this court years ago, passed away unfortunately, he became a supporter, and another man named Dick Wall who was an attorney in San Francisco who was active in Republican Affairs.

Both those men were very instrumental in advancing my candidacy. They liked me. They thought I would make a good addition. I had good experiences in litigation and trial work, and they liked that. At time criminal law was the focus of the Governor's office, and because of my experience both federal and state, they thought I'd be a good choice. So those two men got me before Governor Wilson and John Davies.

Sandie Margulies: Who was the Judicial Appointment Secretary.

Robert Dondero: Judicial Appointment Secretary under Wilson, and everything went after that.

Sandie Margulies: So, Governor Wilson appoints you to San Francisco Superior Court.

Robert Dondero: Initially municipal court.

Sandie Margulies: Oh, muni court. Oh, I didn't know that.

Robert Dondero: I was in muni court for about six months.

Sandie Margulies: Oh, I didn't know that.

Robert Dondero: Yeah, Chuck Poochigian was another person that I interviewed with in the Governor's office. He was Wilson's appointment secretary. Chuck Poochigian basically interviewed me. I think we got along really well. I was on the muni court because that's where the vacancy was. I was there for about six to seven months, and then I got a phone call essentially saying, are you tired trying misdemeanors. You want to do felonies. And I said, sure, and he said, okay, you're going to get appointed to the felony court and Superior Court. So basically, I was elevated to the Superior Court and did a variety of things in the Superior Court.

Sandie Margulies: So, you were Presiding Judge of juvenile.

Robert Dondero: I was Presiding Judge of juvenile, I was Presiding Judge of the criminal court, and I was Presiding Judge of the Superior Court entirety, yes.

Sandie Margulies: So, before we get into that, how would you describe your adjustment? Was there an adjustment from being a prosecutor to becoming a judge?

Robert Dondero: There's an adjustment certainly. You're not an advocate anymore, you're certainly obligated to listen to everybody. I had a rule of thumb which is you don't speak unless both sides have told you that the matter is submitted. I try to make sure everything's in front of me beforehand. Criminal law was not something that was difficult for me to understand and appreciate.

Sandie Margulies: Pretty intuitive.

Robert Dondero: When I was appointed to the municipal court and then the superior court, I was mainly doing criminal assignments and that was pretty straightforward. I knew the lawyers personally that were coming in front of me. There were no secrets, and basically, we were able to work comfortably together.

Sandie Margulies: Now you had a civil assignment, didn't you?

Robert Dondero: I had civil assignment after I got appointed to the Superior Court, because it was a view, I think that you've done enough criminal, get your feet wet somewhere else. So basically, I was doing civil cases at the City Hall Courthouse, which is where the Superior Court civil cases were tried. We didn't have the building on McAllister.

Sandie Margulies: It's there now.

Robert Dondero: We have civil courts, we were trying cases in the City Hall, which was kind of interesting place to try cases, but it was a good spot. I did civil for about a year, maybe close to a year and a half, and then I was assigned to juvenile because I volunteered to go there, because I thought it was best to get a difficult not popular assignment out of the way, so you could basically tell your bosses that look I spent so many years at juvenile and now I can kind of have a little more say in what I want to do next.

Sandie Margulies: So how long were you in juvenile?

Robert Dondero: Two years. I was there for two years.

Sandie Margulies: How was the experience?

Robert Dondero: It was it was a very difficult experience for anybody. You're seeing situations that are social as well as criminal problems, but social problems on the family, structures of the family. Most of the times it was the grandmother who was in the courtroom as the witness or the observer for the boy or the girl that was being charged with serious offenses. Parents just weren't that involved, and it was very stressful

to see these young people not having much of a structure to deal with on the outside.

Recidivism was high. They would come back again and again because they just didn't have the guidance that they needed. One case I tried in the juvenile court, it was a murder case involving ten juveniles who broke into a home and during the course of a robbery one of the victims tried to escape by going out on a ledge of the window and he slipped and fell to his death during the home invasion, burglary, robbery, so it became a felony murder case. We had to take over the cafeteria of the Youth Guidance Center because each of the young men charged, they were all part of a group, had to have their own attorney. So, we had to put counsel and the juvenile at a separate table and the cafeteria was the biggest place to have it. So, I would do the trial. After I did the morning calendar, I would go upstairs to the cafeteria, do the trial, the DA had several attorneys trying the case, and it was rather difficult situation to work through.

Sandie Margulies: Now just so it's clear in juvenile, there's no juries.

Robert Dondero: Right.

Sandie Margulies: You're the trier of fact.

Robert Dondero: Yes, and I had to decide the sustaining of the petitions of these ten kids and that's something you do all the time in juvenile hall, whether they've proven it or not difficult. It's difficult.

Sandie Margulies: So, you were Presiding Judge of the entire San Francisco Superior Court in --

Robert Dondero: Shortly before I got appointed to the Court of Appeal. So, I'd say it was probably 2006, 2005 around that time.

Sandie Margulies: What was that like?

Robert Dondero: Somebody described it I think accurately, it's like herding cats. Basically, we had about 50 judges on the trial court in San Francisco. Everybody has their wants and you're dealing with people who really are interested in their own future sometimes, not always, and so you basically have to try to make everybody happy. Some people are willing to work. Some people have to be coaxed. It's an assignment you take but it's not easy dealing with personalities big-time.

Sandie Margulies: Was that the most challenging aspect?

Robert Dondero: Oh, without question. I mean people they wanted their vacation time; they wanted their time through this clerk or that reporter, and you're dealing with preferences more than anything else.

Sandie Margulies: So, what are the responsibilities that you have as Presiding Judge?

Robert Dondero: Well, you have to make sure that trial and the courts are busy, and you don't want to do it in an offensive way. I had seen other judges who antagonized their staff and got the opposition of their colleagues, because they were rather authoritarian, and you don't want to be that, but you have to be able to coax people into doing what's going on. It was a two-year assignment, and it worked out fine in the long run.

Sandie Margulies: Did you consider being a Presiding Judge the most challenging of your assignments on Superior Court?

Robert Dondero: I think it is because you're basically dealing with the personalities of judges. I mean you're not just dealing with lawyers who will be in the end deferential to your position, because you are the judge and they're the attorneys, the advocates. Judges tend to be more individualized and they see things from their perspective. You've got to convince them that it's the right thing to do.

Sandie Margulies: When you first got on Superior Court, did you have a mentor, anyone you talked to?

Robert Dondero: I knew many of the people on the Superior Court, because I had worked with them as a lawyer beforehand. Many of them had been in the DA's office with me. So, I had them as people to talk to. There was a mentor program in process, in setup. I would say I didn't use it at all. My named mentor was a person I didn't have much in common with and didn't really talk to that much.

Sandie Margulies: So, are there any particular cases that you handled as a trial judge on San Francisco Superior Court that you thought were fairly significant or interesting?

Robert Dondero: There were some cases. There was a couple of products liability cases. There was a cigarette smoking case which was a retrial of a reversal, and among the problems that I experienced in the case was years after cigarette smoking was considered bad and people shouldn't do it, and I remember distinctly, picking a jury. It was a retrial of it a case that had been reversed. It was $25 million verdict that was reversed by Division 2 of this court. Basically, we had to retry it, and picking a jury years after the case was first tried was difficult, because some jurors felt it's your fault for smoking, others felt it was corporations and how bad they are, and we had this dynamic going at each other in the jury selection process. What I finally decided to do was after having a day of voir dire and having all this consternation from various individuals in voir dire. I made a decision to exclude the whole panel, bringing in a whole new panel, and do one-on-one jury selection, because the only way to purge the comments of other jurors was to just have one juror come in answer questions from both sides and have the lawyers then proceed to strike people that they wanted, or they thought were bad.

Sandie Margulies: It's like a holding a voir dire in civil.

Robert Dondero: Yeah, and basically it worked. We got a jury. The jury decided the case. They came back with a much lower verdict on damages and that's the way it went.

Sandie Margulies: Let's move on to the Court of Appeal.

Robert Dondero: Sure.

Sandie Margulies: Why did you decide to apply to the First District Court of Appeal?

Robert Dondero: Well, I was anxious to try it out. I was told by people that you've got a good chance of getting an appointment. Your record was good as a trial judge. You've got a good resume, the lawyers were satisfied with your performances and handling cases, you should put your name in. So, I did, and there was a process of a year or two before I got appointed. There was a movement towards diversity obviously as there should be. Interesting thing though was my name was out there, I knew I was being considered. I had interviewed with John Davies early in the application for the District Court of Appeal and it went very well. He said we'll see what happens as there's a couple people out there too that are being considered. Then John stepped down as the appointment secretary and a woman whose name escapes me at the moment became his appointment secretary, took over the job.

Sandie Margulies: Sharon Majors.

Robert Dondero: Sharon Majors, who became a judge in San Diego, that's it. The funny thing was I was in my chambers at the trial court and I got a phone call from her and she said, are you still interested in being on the Court of Appeals, I said, sure, and I thought she wanted me to go to Sacramento and be interviewed. She says, well, I've decided to appoint you to have the governor appoint you. I'm not going to interview you because John Davies spoke so highly about you and his resume that we'll just put you on. So, I got appointed without being interviewed by Sharon Majors. Sharon Majors-Lewis I think was her name.

Sandie Margulies: It is Sharon Majors-Lewis. But you pro temmed in Division 5.

Robert Dondero: I did. I sat and I was asked by Barbara Jones to sit in her division while I was on the trial court, and basically, we worked it out, that I was able to sit in Division 5 for several months while I think Linda Gemello had just retired.

Sandie Margulies: I believe that's correct.

Robert Dondero: There was a vacancy in her spot, and I sat there.

Sandie Margulies: So that's how you and I met.

Robert Dondero: That's right.

Sandie Margulies: Then I liked you so much. I said we need him in our division.

Robert Dondero: Yeah, I was glad I came. I mean there was vacancies in a couple of divisions at the time I think, but Kathy Banke and I were confirmed on the same day I believe.

Sandie Margulies: Yes. We were very glad you were --

Robert Dondero: Yeah, I was glad to come. It was a great place to work.

Sandie Margulies: So which Governor nominated you?

Robert Dondero: Governor Schwarzenegger nominated me to the DCA and I had the hearing before the Commission on Judicial Appointments.

Sandie Margulies: Now when you came to the Court of Appeals, you had pro temmed so you knew what the job was like. Did you find -- there were any adjustment issues, or did you just slide right in?

Robert Dondero: I think after having pro temming for three or four months, just about less than a year before, I felt comfortable with the process. Certainly, there's an adjustment of picking the right staff, and sort of being an observant as to the temperament of the colleagues you're sitting with, because that's a key point of the job on the DCA is having an appreciation of who your colleagues are in the particular division you're sitting on. So, I was attentive to personalities of everybody, and it was a favorable response. Also, I picked really good staff, which is essential, because the job is only a success if you have the right people working with you.

Sandie Margulies: So, let's talk a little bit about the difference between being a trial court judge and on the Appellate Court and you've touched on it with being cognizant of the personalities of your colleagues, because it's three justices per opinion, whereas I guess on the trial court --

Robert Dondero: It's you, unless you're on the Appellate Division of the trial court, which is an assignment I may have done on occasion. But no, you're your own boss in the trial court most of the time, but on the DCA, you have to work with your colleagues. There's a desire that the decisions be as unanimous as possible, and we were lucky that almost all the time there was unanimity amongst us in the results which is good, and you have to go back and forth on tinkering with decisions to make sure that you can satisfy the most people.

Sandie Margulies: Any cases that you authored what you would describe as notable?

Robert Dondero: Sure, there's a few. One set of cases that I remember especially were the -- it was a class action case called Duran v. U.S. Bank.

Sandie Margulies: I was on that panel.

Robert Dondero: You were, you were on both times. We had it twice. The first time we had it was we were reviewing a unique set of circumstances in

California civil practice. It was the trial; we were reviewing the trial of a class action lawsuit involving employees who were categorized by the bank in a particular fashion. We had a record by the trial judge who was a good trial judge, basically identifying why he ruled in favor of the class and awarded a very substantial damage award to this class. We were reviewing for sufficiency of the evidence, the burden being in the Court of Appeals. Generally, the facts were there. You sort of differed with what the trial court found. But we decided in the first opinion, the first go-around, that there were serious due process issues with the trial court's decision and how he set up the class and how he created the representatives of the class, and also there was a big issue on the expert testimony on representative of the group whether it was a fair class or not.

We reversed. The record in that case was I think at least 15 bankers boxes of information. It was huge and Lynn, my JA or my research attorney was really helpful in working on this case with me. The case went to the Supreme Court on a review and the Supreme Court unanimously affirmed our reversal of the trial court. It was a substantial decision by the Supreme Court on what is due process in class action litigation and on the representative group and statistical evidence in such cases.

The case went back to the trial court in Alameda County and basically the new judge decided the class was not a fair representation of all the factual issues of the case. So, he did not affirm a class status. The case came back to us reviewing that decision. We affirmed the trial court in another lengthy opinion. The record obviously wasn't as long but it was a lengthy opinion anyway. The case was not appealed to the Supreme Court after that. That was a substantial case, and it reflects major changes in the law of class actions in California.

Another case I thought was important was a case called People v. Hall, which was a case I had towards the end of my time on this court. It was a murder case, a very serious murder case out of Alameda County where the defendant was convicted of first-degree murder in a burglary of a house. The problem with the case was that the trial judge made several rulings both before trial and again at the end of the government's case, the prosecution's case about the admissibility of certain prior conduct by the defendant and it was significant because the defendant then took the stand after the judge made his rulings in pre-trial motions and reaffirmed his rulings that the evidence was inadmissible.

After the defendants started testifying and gave his testimony, the judge reversed himself. He says I'm going to allow you to impeach with these prior misdemeanor acts of the defendant and the defense attorney objected of course. We had this case on appeal and the defendant was convicted of first-degree murder, and we reversed the conviction because we believe that when the judge had made his rulings and the defendant in exercising his right to take the stand and testify on his own behalf relied on those rulings, when the judge switched and didn't really articulate the proper reasons why he was

making that decision, that was a violation of the defendant's right to a fair trial. He had a right to rely on the ruling of the trial judge in several alimony motions. So, we felt that was violation of his rights. Those are some of the cases I would say that.

Sandie Margulies: Now are there any particular achievements during your judicial career of which you're most proud?

Robert Dondero: Well, I think just the fact that I maintained -- I was on the bench for a period of total of 26 years and enjoyed it all the time and didn't have any issues involving review by neutral parties. That was important enough. I just think it was just taking the cases doing them, seeing them through. I think that was just a personal satisfaction. Some cases were harder than others, but you have to basically take what you get, and you can't back away from everything. During the time, I was on the Court of Appeal and before that even I was involved in judicial education programs in the State of California, and I felt that was a really interesting thing to be involved in. I was eventually the head of CJER and served at that position for several years. That was important. I think that judicial education was an important part of why our state bench is so highly thought of nationwide, because the judges have the opportunity to learn and improve their skills as judges. It's a ready resource that's available to them throughout their career. Many use it very effectively. I think it's one of the consequences that may be happen lately is that the money has cut down on the availability of CJER and its role in the judicial education process but it's still a very important thing to have and I hope you can go back to the day when it's as strong and thriving as it used to be.

Sandie Margulies: Besides being chair of CJER, what other community or legal activities have you been involved in?

Robert Dondero: Well, I've always been involved in charity work. My wife and I have both been involved in a lot of those activities. My wife is on a board of a high school, has been for several years. It's a school for young women mainly in the Mission District. It's a Hispanic based school and it takes kids in, pays their tuition and scholarships and all that. I'm involved in Riordan High School and their Board of Trustees and been on that for several years now. We're also involved in other charities both at St. Ignatius Church, we're involved in charities with other organizations, mostly nonprofit organizations.

Sandie Margulies: What would you like the legal community and the public to remember about you and your work as a judge?

Robert Dondero: I think the most important thing is they would say that I took on assignments that were given to me with conscientiousness of the importance of the assignment, that I completed the assignment, that I did it fairly and completely.

Sandie Margulies: Did you find there were any negative aspects to being a judge?

Robert Dondero: Well, I think that judges have to do a lot of work on their own. They don't have the luxury that you see in the private sector where they can assign things out to lawyers who are fresh out of Ivy League law schools or big state university law schools. They basically have to do most of the work on their own. I was fortunate enough to have good staff people here on the Court of Appeal. We got things done efficiently and we got our work taken care of. The problem is especially serious though in the trial court, because the trial courts don't have the luxury of full-time research assistants assigned to a particular chamber, and you have to sort of wait your turn for access to legal research people. Budgets are cutting back on a regular basis on the availability of such. So much of the work has to be done by the trial judge on his or her own time, and it's hard.

Sandie Margulies: Well, on the trial court, of course, you're under these time constraints.

Robert Dondero: Without question. You've got time constraints. There's no pace limitation in the briefing that's filed. I remember one very successful civil trial lawyer that I know. I was in a seminar and he described a motion for summary judgment when he first started practicing law, and he said it was maybe -- the pleadings were about an inch thick maybe. He said now they come over to your office in boxes and that's what happens now on the trial judge and the law and motion departments, but also these single assignment cases that are dealing with, very complex issues in the civil realm. They're very demanding. When I was on the trial court in a criminal case, I had a DNA hearing with really good lawyers on both sides, and I think we got boxes of filings on recent science of DNA and whether it was good or bad. These are all submitted by lawyers who are, some of them very interested in the topic, and they'd done all this extra work, and you're a judge that's got other cases to worry about and you have to prepare for this hearing, and it can be overwhelming.

Sandie Margulies: So, let's move on to retirement. So, you retired how long ago?

Robert Dondero: I retired, my last day on DCA was October 30 of last year.

Sandie Margulies: Why did you decide to desert me and retire?

Robert Dondero: I did it because, a couple of things. First of all, I'd been a judge for 26 years and on the DCA for almost approximately 10 years, and I was anxious to get back to the give and take with lawyers.

The District Court of Appeals is a great job, but it could be sometimes monastic and essentially you are talking with great friends, you go to lunch with really interesting people, but you rarely have opportunity to have give and take with lawyers. I want to get back to that. I felt I was able to do it and decided that by going into private judging, I would be able to do that a little more than I've been doing it on the Court of Appeal.

Sandie Margulies: Now you're primarily doing arbitrations. Is that correct?

Robert Dondero: Primarily arbitration. That seems to be the types of matters that I'm seeing lately yes.

Sandie Margulies: So, we know what you're doing professionally. What are you doing personally?

Robert Dondero: Personally, being grandparent, a lot of fun, three now, and so we're basically having them come to our house or seeing them grow up, doing traveling, more traveling than I used to.

Sandie Margulies: Yes, you just got back from Italy.

Robert Dondero: Just got back from Italy, and if we want to go back to New York for a long weekend, we do it, and it's fun that way. Getting up at 8:30 or 9 o'clock is not a bad idea once in a while in your lifetime. So, spending time reading more interesting books rather than just decisions, People v. Jones and Smith v. Lucas or something like that, I don't do that anymore as much.

Sandie Margulies: Well, I knew you even when you were on the court, because we used to talk about that you do a lot of outside reading.

Robert Dondero: Oh yeah, I do. I like that. It's a relaxing time, just about every day I have to spend some time doing that.

Sandie Margulies: Now what are you reading right now?

Robert Dondero: Right now, I'm reading a book called the Ninth Hour, which is a novel by Alice McDermott. It's about an Irish Catholic Family growing up in New York City in roughly the 1920s - 1930s. I'm also reading a book about our current president and I sort of go between books. I don't read one thing at a time.

Sandie Margulies: Oh, that's interesting. So, you've been on the bench a total of 26 years. So, have you seen any changes?

Robert Dondero: Yes, I mean I see the effect of finances on the operation of the courts. I think that the courts were a little, I should say, a little more able to get what they wanted in the past than they get now. I think that the demands of salaries and budget cuts has affected the bench and the ability to do the work as many people thought they'd be able to. I think that the quality is still there. I think probably one thing is there used to be more litigators that were going to the bench. I think there's a lot of people now that are going on the bench that don't have any experience in litigation. I think that it's essential to have that experience, especially on the trial court because you're dealing with people who are coming in, many of them pro pers, and they wanted to have somebody that appreciates the stresses they're going through at the time they come in the courtroom, and I think a lot of people who are being elevated to the bench may not have litigation experience and they don't know what it's like to try a case or be in the shoes of a party and having to worry about the cost of the trial and jury uncertainty and all these kinds of things.

Sandie Margulies: Have you noticed or found that there's a trend in the courts, particularly trial courts to be more socially active, and I'm using like veterans' courts, drug courts, specialty courts?

Robert Dondero: Yeah. I'm not certain that that's a positive. I believe that there are people that are coming from major careers either as state attorneys, AGs, people like that, or large downtown law firms. I'm not always sure that they are equipped to handle some of the responsibilities of these specialty courts, like drug court or the veterans' court that are being created, the homeless court that exists on Polk Street and things like that in San Francisco.

I think these are kind of social worker type dynamics that are probably best suited to people that want to involve themselves in that, and they can probably involve in long-term programs effectively. The training that it takes to be in some of these special courts only to leave them after a period of a year or two or get burned out because of the demands of those types of responsibilities. I don't know if it's a good thing to have people who want to be judges involved in that. I know juvenile court was a very high-level stress factor for me, and I think that having a variety of these kinds of courts, I'm not sure all that a positive thing for people who want to be judges and possibly then justices on the appellate level.

Sandie Margulies: To sort of finish up, has being involved in the judiciary been a rewarding experience for you?

Robert Dondero: Without question. I mean, I've done this for longer than anything else I've done, and I don't regret for a minute what I chose to do. I was in public service from the time I became a District Attorney and only recently became a private person. I think that it's been very, very rewarding. I mean certainly defer salary features of by not going into private practice, but I've enjoyed what I've done immensely. I've been able to raise a family comfortably and I think it's certainly the most rewarding thing I could have done. I don't regret a minute of being on the bench.

Sandie Margulies: Any hardships or pitfalls?

Robert Dondero: Sure. I'd probably a wealthier person if I had chosen private sector, but I didn't, and I'm not complaining about it.

Sandie Margulies: So, anything else you'd like to cover.

Robert Dondero: No, it's been great. I think this is a great idea to have this kind of history of individuals who sat on the District Court of Appeal, because their input and why they like the job, what they thought about the job is important historical information for future generations.

Sandie Margulies: Are there any aspects of your life that we haven't covered that you feel need to be covered that you'd like to talk about?

Robert Dondero: Totally thorough. I've been probably more public about my life than I normally am, and I think at this point I've got nothing more to talk about.

Sandie Margulies: Well, thank you very much. It's been a pleasure. I miss you, as I always tell you in Division 1, but it sounds like you're having a very fulfilling retirement.

Robert Dondero: Yeah, I mean I'm enjoying it. It's one thing about friendships, you don't end them because you changed your job.

Sandie Margulies: That's true. All right thank you.

Robert Dondero: Good, thanks.

Sandie Margulies: That ends the interview.