John Racanelli: My name is John Racanelli, R-A-C-A-N-E-L-L-I. My last position on the court was as presiding judge of Division One.

David Knight: Superb. Now, I have it on your level and I'm ready to go into the interview.

Timothy Reardon: All right. Good morning. Today's date is November 28, 2006, and this interview is being conducted as a part of the Appellate Court Legacy Project, the purpose of which is to create an oral history of the appellate courts in California through a series of interviews of justices who have served on our court.

I'm Tim Reardon, an Associate Justice of the First District Court of Appeal. We are honored to have with us this morning the Honorable John T. Racanelli, retired, who served in the First District from 1977 to 1991.

Welcome, John, and thank you for participating in this project.

John Racanelli: Thank you, Justice Reardon.

Timothy Reardon: John, I know you're currently residing in New York, and again we appreciate your arranging your schedule to accommodate this interview.

John, you were born in Pennsylvania. When did you come to California, and what brought you here?

John Racanelli: The family moved to San Francisco in 1943, shortly after the outbreak of World War II and largely because of my dad's health. He couldn't tolerate the extreme winters of the East Coast, where I spent my early childhood. We lived in White Plains, New York, at that time, Westchester County; and at the urging of family friends who were in San Francisco, we packed up and went from the East Coast to the West Coast, one of the best moves that the family ever made.

And where I went to school for a relatively short period of time before I went into the service . . . I enlisted in the Army Air Corps, I guess it was. You had to remember in those days before 18, when you became drafted.

Timothy Reardon: Right.

John Racanelli: I didn't want to be drafted particularly, so I enlisted. And I was called to active duty during the end of the first semester of my senior year in high school, and off I went.

Timothy Reardon: You were pretty young, obviously, at that time.

John Racanelli: I had just turned 18.

Timothy Reardon: Right. John, the Polytechnic High School you attended in San Francisco, that's located in the Haight-Ashbury district.

John Racanelli: Was. It's gone.

Timothy Reardon: Was. You're absolutely right. It's Kezar Stadium, which is across the street. It's been remodeled, so to speak—

John Racanelli: Right.

Timothy Reardon: Downsized. But how was it like growing up in the Haight-Ashbury?

John Racanelli: It was interesting, it was an interesting time. But actually the neighborhood then was a mix, an ethnic mix. There were a lot of Italian Americans, a lot of German Americans, Irish; not so much a minority of African Americans or Hispanic at that time. And it was—I guess you'd call it the typical working-class neighborhood of San Francisco at that time. Later, it achieved notoriety for other reasons during the crazy '60s. People said, "Well, when you lived there, how was it different?" I said, "Well, for one thing, in those days everyone wore shoes." *[laughing]* That changed shortly afterwards.

So that's true, and I went to Polytechnic High, and I was there for one semester.

Timothy Reardon: All right. Whereabouts in the Haight were you located? I ask this question that probably has no particular relevance to anyone but maybe you and me, but I was born and raised in the Haight myself.

John Racanelli: Were you?

Timothy Reardon: And, yeah, as you've indicated, it's changed over the years. I lived there, and I continue to live there—I'm living there now—but the change you saw, this would have been, what—

John Racanelli: 1943, the summer of '43, and we lived there all the way through the time I went to and graduated from law school, college and law school. So we left . . . I guess the family stayed there longer. I was recalled during the Korean War, so I was gone from the home; I never returned there after I was discharged from the military in 1953—yeah, the middle of '53. And my folks still lived there until they moved. They moved out to near the San Francisco State University. We lived on Cole Street near Waller.

Timothy Reardon: Sure. It was a good neighborhood, yeah.

John Racanelli: It was a great neighborhood, great places to go. Do you remember that great German baker on the corner of Haight and Cole?

(00:05:08)

Timothy Reardon: I sure do, but I can't think of the name right now.

John Racanelli: I can't either; but they made those great, big, juicy doughnuts.

Timothy Reardon: My grandfather used to call them sinkers. *[laughing]*

John Racanelli: Sinkers. *[laughing]*

Timothy Reardon: He was right.

John Racanelli: They were sinkers, indeed.

Timothy Reardon: John, you touched a little bit on your military career. But you entered the service as a very young man, and you served in both World War II and the Korean War.

John Racanelli: Yes.

Timothy Reardon: Did that have any effect on your legal career? I guess this all happened before you entered law school.

John Racanelli: Oh, yes, yes; high school, actually, straight from high school. Well, you know, I had more positive experiences than negative during my term in the service, because, one, I didn't see actual combat. I was grateful for that; I didn't have to engage in any armed conflict. I was a navigator, and I went through training and became an aerial navigator, and I served with what was then called the Air Transport Command—I think it's called Military Air Transport Service now. And our function was—at that time, at least—was to fly over to the Pacific to Japan and the Philippines and bring wounded veterans back, supplies out, wounded people back. So for a kid 19 years old, that was a . . . for me a very heavy responsibility, but a real eye opener. I saw parts of the world that probably I never would have seen but for that. So I was able to visit the Philippines, Guam, Okinawa, Japan, and points east—well, Hawaii, of course, from San Francisco. At that time, they flew out of . . . we flew out of Fairfield-Suisun, which is now called Travis Air Force Base.

Timothy Reardon: Right.

John Racanelli: And then when I was discharged from the service after the war, I went to law school—no, I went to Cal, I'm sorry.

Timothy Reardon: Right.

John Racanelli: Put that in there. *[laughing]* I went to UC Berkeley first and graduated from there and then went to Cal. But I departed from your question—the thrust of it as to what motivated. What was the question you actually put there?

Timothy Reardon: I just wondered whether military had any bearing or effect on your legal—

John Racanelli: Only indirectly, in this sense, Tim. When I was recalled, I then had already graduated and actually became admitted to the bar and tried to get into the Judge Advocate General's department. In that sense, the military didn't cooperate. They wouldn't release me from my old specialty. They said, "You have to stay there; that's what we need you for." And that was really an intimidating circumstance I reflect back on. Because now I'm about, what, I'm about 25 or 26 years of age, and all these young guys are flying these fancy, fast airplanes while I'm going with them and scared to death every time I got in the plane. *[laughing]* Things change. I wasn't that young, intrepid soul any longer.

So I couldn't do that, and ultimately myself and a friend of mine who was also a lawyer, our terms were up. Under the old Army Air Corps commission—those were commissions at the President's discretion, extended at his pleasure, and it was just before they converted from the Army Air Corps to the separate United States Air Force. And in order to remain continuously on active duty, you had to accept one of the new commissions. Well, we didn't choose to accept the new commissions, and so we were discharged about 30 days before the hostilities ended in Korea. And then I started practicing the next day after I returned from being discharged from South Carolina; I had my first case the following morning, an uncontested divorce case.

Timothy Reardon: Right in court. *[laughing]*

John Racanelli: Right in court. I didn't know what to do. I had to call a friend of mine who was a lawyer, and I said, "What do you do?" *[laughing]* He explained it to me. And I'll tell you one anecdote, if I may.

Timothy Reardon: Sure.

John Racanelli: I'll leave the judge's name unmentioned. I didn't really know quite what the procedure was, and I was standing there and there was a screen. There was obviously a trial going on at 10:00, and this was an uncontested, default divorce. We had those earlier, as you know.

(00:10:02)

And so I called the case and the witness went on the stand; and I was standing behind the screen, so I couldn't see the witness and the witness couldn't see me. I didn't know where you were supposed to stand. *[laughing]* And the judge looked down and says, "Well, are you going to stand there all day behind that screen, or are you going to ask a question?" *[laughing]* That was my inauguration.

Timothy Reardon: I think we've all had those types of early experiences in court. *[laughing]*

John Racanelli: I think so; I think so. *[laughing]*

Timothy Reardon: John, I think you mentioned Hastings College of the Law.

John Racanelli: Yes.

Timothy Reardon: You graduated in 1952, and you passed the bar in the same year. Was there any event or was there any person that kind of caused you to be interested in obtaining a law degree?

John Racanelli: I think there probably was, Tim; but I'm a little bit hazy as to which of two people really were very strongly supportive in that endeavor. I do remember, though, I was taking a graduate course at the time in accounting. That was the field; in those days they said the thing to do is to take a business background to go to law school. Excuse me. *[coughing]*

So I did that, and I took a lot of accounting courses. And I was sitting there on a hot summer day in Berkeley taking my second graduate course, and it was dull; the TA was droning on, it was hot. I turned to him and I said, "Bill, are you going to go through this entire course?" I said, "Are we doing the right thing?" He said, "I'm going to law school." I said, "Well, now, that's an interesting proposition." He was going to Boalt, and it was now the middle of summer, pretty late in the day, and I thought, well, that sounds interesting. I think that's something I'd like to do—just from having read about lawyers in novels. And so I applied for it and very fortunately I got in really just before they closed admissions at Hastings. In those days, you could apply as late as six weeks before. So I got in.

And so there was no galvanizing event that pointed me in that direction except that I decided the career track I was on was not what I was interested in. You know, when one thinks about what they do in their life, you find the things that you're not interested in before you really find something that you're comfortable with.

Timothy Reardon: That's very true. I had a similar experience. Someone told me when I was entering law school that you should really take an accounting course; like you, I signed up to audit an accounting course. I think I spent one day in that class, and that was it. It was very dull, boring, and so I dropped out. But it sounds like it was good for you to be in this accounting course to meet this person, who indirectly may have inspired your career as an attorney.

John Racanelli: He did, he did. I'm grateful to him to this day. *[laughing]*

Timothy Reardon: *[Laughing]* Now, the same year you graduated from Hastings you passed the bar, and eventually you commenced your career after military service with the practice of the law, and that was in Santa Clara County.

John Racanelli: It actually started here. I practiced law in San Francisco for about almost two years before Jim Duvaras and I went to Santa Clara County in Sunnyvale, which was then a very sleepy suburb. I think the bar . . . I think there was about 13 or 14 lawyers in town. In fact, Sunnyvale, unlike what it is today, was basically an agricultural community on the fringes of San Jose—which was *the* big city and still is in Santa Clara County—and I think the population was probably about 25,000 people. It was orchards, known for its 'cots, principally 'cots, but cherries and strawberries; and now, of course, it's not recognizable as an agricultural community at all. *[laughing]*

Timothy Reardon: No, that's true. I know I was going to ask you what type of practice you had. I understand now from your prior reference that you at least did one uncontested divorce matter. *[laughing]* But were there other areas of law that you were practicing in?

(00:15:02)

John Racanelli: That was pretty much a general practice, and in those days, as I'm sure you appreciate, you pretty much became a sort of professional jack-of-all-trades. The opportunities to specialize were there, but they were very limited, and when you're in a small town you're really in the role of a general practitioner.

So reflecting back on it, I think in my experience I probably spent two-thirds of my professional time on civil matters—probate, domestic relations, corporate, some corporate work—and then criminal cases, largely misdemeanors and occasionally a felony or two. We eventually expanded the law firm. It went from two up to . . . I think we got as big as five lawyers at one time: Jim Duvaras, myself, Tony Trepel, Joe Gingrich, and Peter Stone. And then each of them went off in different directions.

I guess Jim Duvaras went on the bench first. He was appointed to the municipal court by Pat Brown. I guess it was a year or so before I was appointed to the superior court, also by Pat Brown. I was affectionately known as a Double Brownie: Pat appointed me to the superior court, and Jerry elevated me to the Court of Appeal. *[laughing]*

Timothy Reardon: *[Laughing]* At that time you were appointed, Johnny, in '64 by, as you mentioned, Governor Pat Brown.

John Racanelli: Right.

Timothy Reardon: And how many years of practice . . . I know there was a requirement at some point.

John Racanelli: Ten-year minimum, a constitutional minimum. Still, I think, it's 10, and I had I think 11 at that point. I did. I was admitted in '52 and I was appointed in '64, which is sufficient.

Timothy Reardon: So, John, was there a particular judge that you looked to when you joined the trial bench in '64—as a mentor, advisor, or anything like that?

John Racanelli: Yes, yes. I can look back with fondness, Tim, to actually more than one. I think my role model was Judge Foley, John Foley, who was a wonderful human being, and he really exemplified all of the qualities that I had always associated with a judge and the judiciary: his demeanor, his temperament, his kindliness to everybody. He was just a great guy. I don't know if you ever had a chance to know John Foley, Bob Foley's father.

Timothy Reardon: Oh, I see, all right.

John Racanelli: I guess he's still on the bench, Bob Foley.

Timothy Reardon: He is.

John Racanelli: And John was my real role model. I had close relationships with others, who really became mentors to me. Bob Peckham was one.

Timothy Reardon: Sure.

John Racanelli: Matt Tobriner was a real model and mentor in many ways after I was on the Court of Appeal, very helpful to me. And Bob Peckham and I became very close friends. And I'm indebted to all of those individuals for being . . . playing a very important part in my professional and personal life as well. I became very close to Bob Peckham, as you know.

And I assume, you know, there were others; but I'm indebted to the people that I served with on this court, and if we get to that in later questions, I can elaborate on that.

Timothy Reardon: Sure. John, I know you had a variety of assignments on the superior court. Was there one particular assignment that you enjoyed more than the others? And we'll get to the fact that you were presiding judge, elected presiding judge of the Santa Clara Superior Court; but just with respect to assignments themselves, was there anything of particular interest?

John Racanelli: Yes. I thought about that previously. I think probably I served on, I guess, all the various divisions. In those days, as you appreciate, Tim, we were all generous and we all took different

assignments, rotated assignments pretty much, and there was no—well, I shouldn't say "no." Specializing in one area, one branch of judicial assignments, was very unusual.

I spent I guess just about half of the time on the superior court in the criminal division. I enjoyed that assignment. It was not an easy assignment, as you can well appreciate; but you felt a much more close kinship to the importance of what you were doing in a real sense. I mean, you're dealing with people's lives, dealing with a lot of heartache. But there was an affinity with you as an individual to those who came before you, and it was probably in many ways much more challenging where you're passing judgment on people. You tended to meet some very fine lawyers—at least I had that experience—and colleagues. I had great colleagues: John McAlearney, Bill Ingram.

Timothy Reardon: Sure.

John Racanelli: Bob Peckham was there for a while before he went up to the federal court. And I think the experiences that I gleaned during those several years on the criminal bench, criminal division bench, gave me a much wider . . . or brought a scope to the role of a judge in the sense of the sensitivity of that position when you're dealing with people's lives. And so I look back at some of the tougher issues that you faced in that calendar, as I'm sure you also appreciate.

The capital case, I think, I tried was in many ways one of the more difficult ones, one capital case that involved the death penalty. And that was really a very unusual and also a very challenging kind of an experience. I didn't say that well. What it was was a very almost intimidating experience to be called upon, even though the pronouncement at that time was pretty mechanical because the jury imposed the penalty.

Timothy Reardon: Right.

John Racanelli: That case went up on appeal and was ultimately reduced by the California Supreme Court on the grounds . . . I've forgotten what the ground was. Basically it was that the killing was so atrocious . . . in other words, brought with no stronger evidence of ability to have mens rea and reduced it to second-degree murder.

And I guess the other assignment that was equally interesting was the mental-health calendar. I had that calendar for quite a period of time. It wasn't exactly sought after, because for one thing the hearings were . . . I think they were twice a week in the mornings at Agnews State Hospital, because that's where the people were.

Timothy Reardon: Right.

John Racanelli: And it gave you an insight into another part of society that was very challenging, interesting, but also very sensitizing—the kinds of people that were the individuals that were being involuntarily committed. And this was the beginning of the Lanterman-Petris-Short Act, in the days when they had 72-hour holds. So it was largely based upon testimony of two or three psychiatrists—occasionally lay witnesses, but usually expert witnesses. And we held court there, because they at one time were bringing these ill people from there to the courts. It just didn't make any sense. Why don't we go to where they are? So we changed the route.

Timothy Reardon: That was the origin of the change, right to the hospital.

John Racanelli: Right.

Timothy Reardon: I think that's done now pretty regularly.

John Racanelli: Routinely.

Timothy Reardon: Routinely, yes.

John Racanelli: It wasn't at the beginning. It was kind of strange, but that's the way it was. *[laughing]* And so those were the trial court experiences, mostly. I guess actually I sat in every department. Family court—I guess they called it domestic relations then. That's interesting. In those . . . also at that same time, there were assignments that some judges just didn't want to participate in the family court, and domestic relations was one of them. They didn't want to get involved in custody and those kinds of disputes. I mean, they didn't have all the same resources they have now today to help the trier of fact make those critically important decisions. But I enjoyed it. I found it very interesting, too, to have that kind of contact with social problems, and try to participate in solutions in dealing with family disputes and custodial issues.

(00:25:15)

And then I was presiding judge one year. If you want me to comment upon that, I will cheerfully do so.

Timothy Reardon: Yeah, that must have been a challenging experience. You were elected by your colleagues presiding judge.

John Racanelli: Right.

Timothy Reardon: And just before you get into that one, let me just . . . you mentioned Judge Bill Ingram.

John Racanelli: Yes.

Timothy Reardon: And I know you're not going to remember this; but I had one brief appearance before you in the Santa Clara Superior Court in connection with a murder case on a change of venue from San Francisco, and fortunately you assigned the case to Judge Bill Ingram. And the matter was, let me just say, favorably resolved. So I just want to thank you for that, John.

John Racanelli: Made a full circle. *[laughing]*

Timothy Reardon: Yes. [laughing]

John Racanelli: He was a great guy.

Timothy Reardon: Terrific guy, and, yeah, a very easy judge to deal with, too.

But as far as the overall presiding judge position, did you find that challenging and rewarding? You said it was for a year, but—

John Racanelli: Yes, it was a year; in those days it was rotating for a year, and sometimes others would serve more than one year. It was challenging, Tim, and actually, appreciate this. *[laughing]* The court then was about—if my memory serves me correctly it was about 18 or 19 positions, judges. I think now it's 40-something; it's one of the bigger courts. And lawyer friends would ask, "How does it feel to be the presiding judge of such a large court? You're sort of like the quarterback, aren't you?" I said, "You know, that's a good point." I said, "I am." I said, "I'm really the quarterback. And," I said, "the team is composed of 18 other members, all of whom are also quarterbacks." *[laughing]*

Timothy Reardon: That's a very true answer. *[laughing]*

John Racanelli: That was a kind of answer, right? It was an interesting experience serving in that capacity. Invariably you'd come to these issues. We met once a week as a court, we had lunch together. Most of the judges would show up—not always, but generally—and discuss things of common interest to the court as a whole. And they were very lively sessions, depending upon the issue. And one of the most critical issues and one of the most challenging issues was presented when the Angela Davis case was transferred to Santa Clara County, if you remember this case.

Timothy Reardon: I remember that.

John Racanelli: And I was presiding judge, and one of the burning issues at the time was who should be assigned to hear or try that case. And boy, everybody had an opinion on that one. And to me the solution was rather simple. I said, "You know, it's been . . ." Up to this point, the Angela Davis case, which venued out of Marin County, was being handled and supervised quite ably by the

judge assigned by the Judicial Council up to that point. That was—oh, I forgot, Contra Costa County.

Timothy Reardon: Arnason?

John Racanelli: Dick Arnason, yes, Dick. Richard Arnason, both sides accepted him. I can't begin to tell you, though, the fierce debates we had about whether we should appoint one of our own, as opposed to continuing that; but this case was ours, this case commanded national attention, the eyes of the nation.

Timothy Reardon: Oh, that's interesting. I never—

John Racanelli: Well, it was . . . You can visualize it; if you can visualize. Of course, we didn't all come from the same political backgrounds, so that was a factor there in the background of this discussion that went on. So to me, it made eminently greater sense to just continue on with the same trial judge, whom the Judicial Council was willing to assign from Marin down to us and had been accepted by both parties.

There were other aspects to it, too, that were interesting. If I'm going on too long, just interrupt me. One was where the case should be tried. Well, first of all, there was no place to house her; they didn't have a suitable detention for a woman detainee, particularly one with some notoriety. And she was in custody in Marin.

(00:29:57)

Well, we went back and forth as to what we should do, how we should go about that. We considered Palo Alto. If you remember, Palo Alto had a little branch holding cell up there in that building where the prisoner could come from the basement up to the courtroom, all inside; it was kind of a circular stairway or something. That was discussed at some length, and I can still recall to this day receiving a letter from a high official at Stanford University deploring that possibility, because it would attract all these undesirables to the city environs. *[laughing]* Well, it was never on the books, because it just wouldn't have worked; the courtroom was just too small and would not have accommodated the needs that that case required. And ultimately the county built a separate kind of detention facility, and made separate arrangements for the comment of the trial; it was very elaborate. They spent an enormous sum of money to do all that. And finally Judge Arnason did what made an awful lot of sense. He set a high bail, she posted bail, and she appeared. She didn't go anywhere. The case was tried, and she was acquitted.

Timothy Reardon: Right.

John Racanelli: But it was an event of some magnitude as to the disposition of that case and the management of that case, and I look back on it now with kind of mixed emotions. It was awfully demanding, and I was grateful when my term was over and I didn't have to deal with that case any longer. I think the case was tried in December, into January, and the term ended in December.

Timothy Reardon: Did they use that security courtroom down there for that case?

John Racanelli: Right. I think that's why they built it.

Timothy Reardon: That's my recollection as well.

John Racanelli: With the glass partition. And they still have it there.

Timothy Reardon: Yes.

John Racanelli: And it was a separate entrance from the county jail facility to that courtroom. I suppose that still exists, out on Hedding and First, heading straight. So that was a case of some variety. She now, as you probably know, is a professor of some distinction, I think at UC Santa Cruz.

Timothy Reardon: I think you may be right; it was one of the UC campuses, I think, and so she's around and teaching in that capacity.

John Racanelli: Justice Arnason, I think, is—I guess he's retired.

Timothy Reardon: He's retired, but it's my understanding that he sits by assignment in Contra Costa County criminal branch and has been doing that for some time.

John Racanelli: He's an outstanding judge and a wonderful human being.

Timothy Reardon: Yes, he is.

John Racanelli: If you see him, give him my regards. *[laughing]*

Timothy Reardon: I certainly will, John. Well, from your comments here, I mean, it sounds like you enjoyed the trial court very much. Of course you were a trial attorney, so an easy transition of sorts to the trial bench. And just from your comments, you had quite a few interesting matters before you down there as a trial judge. When did you—was there a point in time when you thought that "maybe I should seek an elevation to the Court of Appeal"? Or was it just a matter of timing?

John Racanelli: Well, of course it was a matter of timing and a matter of great fortuity and will in action. *[laughing]* I think a good many of us thought in those terms. You know, Tim, 13 years on the trial bench is a . . . It takes a good piece of energy out of you at the time, and I think the most difficult thing was managing the volume of cases. There were so many cases in metropolitan

courts like San Francisco, and Santa Clara had grown to I guess not quite where it is now, but it was quite a large court; it became a metropolitan court. And all of us I think must have had the feeling at one time or another that you really didn't have adequate resources to deal with the volume of stuff that was being . . . coming at you day in and day out.

I remember being on committees, judicial committees at some of the state functions, and saying what kinds of things should we be contributing to, ideas or suggestions to our legislators that impact the court. I remember that just the enactment of 1538.5, that one statute—which now of course is a routine statute—when that statute was enacted on suppression motions, it pretty much consumed 40 percent of our resources. It took all those out of the civil, nothing but criminal cases; that was the only way we could deal with this onslaught of cases with no additional, you know, manpower, or person power.

Timothy Reardon: I know.

(00:35:45)

John Racanelli: And I said, there needs to be a way to communicate this information to the legislators effectively so that we can say, "If you're going to impose these additional burdens you've got to give us resources, because otherwise you decimate and really minimize the court's normal functions; it just tosses out of balance." And I think at that time it wasn't happening. I think now, of course, it's just the other way around; it's progressed admirably well where there is this input and these considerations are taken into account. But at the time, these changes take place that impact the court.

So at that time it was really a one-sided kind of argument. There was a burden imposed without an opportunity to register any serious or strenuous objections or recommendations dealing with that problem. So I saw that while I was on the criminal division, and that creates lengthy trials. All the capital cases were lengthy trials, and some of the noncapital cases could consume resources for great periods of time.

And it's interesting—I can comment upon this later—but the comparison between California and states like New York, where you don't have time frames to deal with. So they don't get terribly excited about big, long civil calendars, because there's nobody breathing on you, you're not gonna be dismissed, you're not gonna hear a lot of noises from the bar about your not being able to dispatch these cases more promptly.

So there was that. And I think it's wonderful to see the evolution that's taken place since, where attention is paid and there's a real opportunity for particularly the trial courts and metropolitan courts to have that direct participation in the

formation of legislation that impacts the courts at a time when it makes sense to have that input—at the outset. That didn't exist in those days, as I'm sure you would agree.

Timothy Reardon: Yeah. But I think it has had an impact in terms of getting the resources that are needed once these pieces of legislation do get enacted. So I think you should take some credit for accomplishing that job or making efforts to accomplish that.

John Racanelli: Mine was just a little pebble in the pool. *[laughing]* But there were a lot of pebbles being tossed in those days.

Timothy Reardon: That's right.

John Racanelli: The . . . I had a comment here, but I have trouble reading my writing. Well, I guess we did cover that. I guess I was elected assistant presiding judge several years later; but that was shortly before I was elevated to the Court of Appeal, and I think that's where this question initially started. *[laughing]* And so there was a time when you really wanted to be a lawyer again. And of course the closest we could come to that—and I'm sure you would agree—was to be appointed to a reviewing court; you really got back to the law rather than becoming a case manager.

Timothy Reardon: Exactly.

John Racanelli: Not that you don't have case management problems at this level. But clearly you had more support by comparison; you have an opportunity to stop and to reflect, to think. How many times on trial court with heavy calendars have you said, "I can't spend more than five minutes for this case"? *[laughing]* "Don't have the time."

Timothy Reardon: No, that's a different situation.

John Racanelli: Entirely. So for me it was the right time, Tim. It was around 13 years, the halfway mark; the opportunity came, and I was delighted to be considered and to have that opportunity.

(00:40:03)

Timothy Reardon: So after 13 years on the trial bench, which is certainly a long time in the trial court, you were elevated. And it was—I think as you mentioned—by Governor Jerry Brown at that time, and that was to fill the vacancy that was created by the retirement of John Molinari . . .

John Racanelli: Right.

Timothy Reardon: . . . who was the presiding judge. So this would have been 1977, correct? And maybe you can just tell us a little bit about

who was in—the judges who were in Division One at the time you arrived in 1977.

John Racanelli: Sure. Two wonderful people: Dick Sims and Norm Elkington, wonderful people. I couldn't have been blessed more than to be assigned to that division with those two outstanding jurists that really were. They were both two different kinds of personalities, but equally extraordinary jurists in their grasp of the law, their fairness in their decisions, their participation in the decisions. I learned a great deal from both of them.

Dick Sims didn't stay on very long, I think, after I came on. I think he retired about maybe a year or two; yes, he did, because Bill Newsom was appointed to fill his vacancy. So then it was myself and Bill Newsom and then Norman Elkington. And Norman was an outstanding individual. You know, Norman went on the bench, Norman went on the Court of Appeals at the same age that I did when I retired.

Timothy Reardon: I've heard that story.

John Racanelli: Isn't that amazing?

Timothy Reardon: That is an amazing story. And did he . . .

John Racanelli: Never lost—

Timothy Reardon: . . . never formally retired?

John Racanelli: Yeah, I think he eventually did; yes, he did, because I was there, I was still there when he retired. He was well into his 80s. And I think he was then grappling with some health problems. But he had . . . in all the time I spent as his colleague, as colleagues with Norman, he had full alertness, full knowledge of the law, his memory was clear. All he had to do was take a 10-minute nap during the day. "John," he would say, "let me have that 10 minutes and I'm okay." Nobody bothered him; he would lay for 10 minutes on the couch. And he remembered cases. I was awed that he had the retentive capabilities of a person much younger than his stated age. And he was a delight to be with, and he was a person of strong convictions. He could be persuaded, but he could also persuade. We had some very interesting conferences, as you can well appreciate.

Timothy Reardon: His background, as I recall, was either from the district attorney's office and the U.S. attorney's—

John Racanelli: He was Pat Brown's chief assistant DA when Pat Brown was DA; and then when Pat became Attorney General, Norman was selected by Pat Brown. I think he was his chief criminal assistant attorney general. And I think his track, I think he

went to the superior court in San Francisco first; not very long, a couple of years.

Timothy Reardon: Right, I think that's correct.

John Racanelli: And then elevated to the Court of Appeal in Division—

Timothy Reardon: And colleagues—

John Racanelli: Huh?

Timothy Reardon: I say, colleagues of yours in Division One, or former colleagues, still talk about Norm Elkington with some fondness, I might add.

John Racanelli: He was one of a kind. He was very succinct. His opinions, if you'll notice, are very short and concise, very pithy, but very clear in the holdings. And he was an inspiration to me. There were some times we'd have some real vigorous conferences, as you can well imagine. *[laughing]* Sims and Elkington—and me, the new kid on the block, overawed by both of them. *[laughing]*

And I remember once we had . . . I don't remember the issue now; but it was shortly after I arrived there, and it was a vigorous debate going on about how would you rule in this case. And both of them were very impressive arguments. And I said, "Well, I'm just not sure." I said, "I need a little more time to reflect."

"Take as much time as you want. We'll send you a memo, and if you decide to agree with one of us, that will be the majority, and the other will be the dissent." And that's what they did.

(00:45:10)

They sent me proposed opinions; one went this way, one went that way. And I pondered over that for quite some time. I'm not sure which way I finally came down; but I tipped on one side, and I thought, "Wow, this is really a collegial process."

I enjoyed those days with those three. And then when Bill Newsom came on after Dick Sims retired—I mean Bill is one of a kind. He's a brilliant guy, a tremendous sense of humor, scholarly. And we had some interesting conferences. And Bill was very—as you well know, Tim—very erudite. And I think his background was English literature, I think in undergraduate; maybe graduate, too.

Timothy Reardon: Right.

John Racanelli: So he can quote obscure writers and authors. And one day he circulated a proposed draft and he had a long footnote, and it was in French. *[laughing]* "What does this say? Translate it for

me, because, you know, I'm not signing something, Bill, that's exactly not what I believe." *[laughing]* "All right, John," he said, "I'll translate it for you."

Timothy Reardon: But as you know, John, he very much wanted to do this interview. And we spoke with him, and he's over in the Philippines right now. I believe I saw in this morning's paper his son, Gavin, is over there as well. So he very much wanted to participate, and we'll be getting along with this project hopefully to interview him and—

John Racanelli: Well, he'd be a wonderful addition.

Timothy Reardon: Yes.

John Racanelli: He's a great storyteller.

Timothy Reardon: Maybe we can bring you back as the interviewer.

John Racanelli: That'd be great. *[laughing]* Then I guess to round that out, then . . . As you know, Tim, at the time there were only four divisions, and there were three judges per division. But it soon became, I think shortly after became . . . The Legislature added one position to each of the four divisions, so then it became four-person divisions. And the Fifth didn't come into being until—oh, gosh, I tell you, it was before Deukmejian became Governor; so that would have been—

Timothy Reardon: Sometime in the '80s, late '80s.

John Racanelli: '82? I'm trying to think. Let's see, Reagan was eight years, '66 to '74, and then Brown was '74 to '82. So it would have been the latter part of '82.

Timothy Reardon: Was that created as a three-judge court?

John Racanelli: It was created as a three-judge court. The three-judge court, it was challenged.

Timothy Reardon: That's right.

John Racanelli: It came up before the First, who wrote a *per curiam* opinion.

Timothy Reardon: *[laughing]* Yeah, I remember there was a bit of controversy associated with the creation of the division and filling the—

John Racanelli: Had to deal with the pivotal point or issue—a kind of a precedent as I reflect on it now—where the argument was that you couldn't appoint these judges now because there was no presiding judge, which is one of the three people.

And the Fifth—how did that work?—it was because it lacked . . . Darn, the memory's a little hazy. Anyway, there was an

argument that the Governor couldn't appoint those three judges because they couldn't meet the minimum constitutional requirement of the appointment process, because there was no presiding judge. Well, there couldn't be, because it was a new division. *[laughing]* And we held otherwise in a *per curiam* opinion. And so Harry Low . . . who was the third one?

Timothy Reardon: Don King? Was Don King part of the original three?

John Racanelli: Don King, Don King, yeah. Who was it, I don't know the next one.

Timothy Reardon: Was it Zerne, Zerne Haning?

John Racanelli: Zerne; Zerne, yeah.

Timothy Reardon: Sure, okay.

John Racanelli: Zerne, yeah. They were the three. They were the grateful recipients.

Timothy Reardon: Oh, I can imagine. *[laughing]*

John Racanelli: And a wonderful addition to the court as a whole. So those were the personalities at the time. And we had the central staff, Lee. I don't recall Lee's last name.

Timothy Reardon: John, Johns.

(00:50:00)

John T. Racanelli: Tully John. He was a great guy, he was a hard worker, and he did a super job, I think, as head chief of the attorney central staff. At that time, too, that was just about when the concept of doing more by the court opinions, by the sheer volume of cases . . . Most of them were nonpubs.

Timothy Reardon: When you joined the court, were there . . . in terms of research attorneys, did each justice have one?

John T. Racanelli: One.

Timothy Reardon: And then it was expanded.

John T. Racanelli: It expanded to two, and I'm trying to think when that was. I think it wasn't right away, Tim. I think it was a matter of a few years before we had two permanent law clerks, and I was grateful because the volume had increased. As you'll appreciate when you came on the court, you needed to have a minimum of two, and that barely kept your nose above the water.

Timothy Reardon: The volume was increased.

John T. Racanelli: The volume was really challenging.

Timothy Reardon: Let me just ask; I'm just getting my dates straight here. From 1981 to '87, then, you served as the administrative presiding judge for the First District Court of Appeal, basically the head person in terms of administration.

John Racanelli: Right.

Timothy Reardon: And I don't recall who you succeeded.

John T. Racanelli: I think it was Wake Taylor.

Timothy Reardon: Okay.

John Racanelli: I think Justice Wakefield Taylor was my immediate predecessor, and also a very wonderful human being, very helpful to me. I was sorry to see him retire when he did. He was very amicable and very helpful. Went out of his way to assist new judges, to accommodate them and try to help them with their immediate needs, help assist in finding good staff people. Wake was an extraordinary individual. So I succeeded him as administrative presiding judge. I'd forgotten I had that six years, I guess; yeah, six years.

Timothy Reardon: You did. Were there any particular problems that you encountered when you took over as the APJ?

John T. Racanelli: I suspect one of the problems that I encountered, I still encounter. That is, how do you administer to a whole slew of equals—on policy issues, particularly? *[laughing]*

Timothy Reardon: When you made that prior reference, I knew that would lead into this APJ situation as well.

John T. Racanelli: Even more so. Then you had not only the whole complement of the court, but you also had five, four presiding justices, who had their own ideas about policies that may have impacted their division.

Timothy Reardon: Right.

John Racanelli: So we had some woolly discussions from time to time, and we met . . . I don't know how often we met, I think maybe once a month as a court as a whole. And I would meet presiding judges from time to time. The Chief Justice then, too, had a practice, I think, where she not only met with some or all of the administrative presiding judges in the state, but then also met with a lot of the presiding justices of each court, which I think was very constructive, with some very spirited discussions, I might add.

Timothy Reardon: The Chief at that time—

John T. Racanelli: Was Rose Bird.

Timothy Reardon: Rose Bird, okay.

John T. Racanelli: When I went on the bench Don Wright was Chief, and so she succeeded Don Wright; that's right, she succeeded Don Wright when he retired. I guess, you know, it was a new concept. But the rule probably still reads today as it did then, a sort of general assignment of what you're supposed to do as an administrative presiding judge. I guess the thrust of it was to try to develop a cohesive, unified approach to administrative issues, problems, and solutions. We didn't have at first a full-time, paid assistant. I think one of the clerks of the court was assigned to sort of help me administer routine things—you know, resources, helping to make our contribution of preparing the budget to give to the Chief Justice to be included in her statewide budget.

(00:54:57)

We did develop some . . . we were successful, I think, in developing as a result of these collegial proceedings with every judge participating some pretty good practical policies that uniformly impacted each court, so you didn't have five little, separate courts within the same one-court structure. I think we also inaugurated the concept of—if memory serves me—of the expedited calendar, calendaring process where we brought the lawyers in, had discussions to see if there was alternative ways of dispute, resolving the appeal without going ahead with the full briefing process. And had some modest success; I'm sure now it's been highly perfected.

Timothy Reardon: I'm not sure of that. *[laughing]* But we do have a mediation component now, which has to be . . . well, in certain cases they are now according to criteria set up for mediation, and it's done by a separate mediator on the court.

John T. Racanelli: A separate—one person?

Timothy Reardon: One person, and then he has volunteers from the bar to come in and act as the actual mediators, and that has had some success. I don't have all the facts and figures with me, but—

John T. Racanelli: It made a lot of sense; the federal courts have been doing it for years.

Timothy Reardon: Right.

John Racanelli: I'm trying to think of what major changes took place during my term as administrative presiding judge. They were largely I think probably procedural implementations. I think we probably made contributions relative to discussions concerning changes

in the rules of appeal; but, you know, no one achievement stands out, Tim. It was largely a perfunctory kind of an assignment. I think it was before we got into the fast track and did the transition.

Who succeeded me? Darn, the presiding judge of Division Three.

Timothy Reardon: Who succeeded you?

John T. Racanelli: Yeah.

Timothy Reardon: Carl Anderson?

John T. Racanelli: Carl Anderson.

Timothy Reardon: Yes.

John T. Racanelli: Okay. Anyway, it was about that time after the legislative changes in the statute to endorse the concept of speedy trials we got into that fast-track thing.

[Interrupted tape]

And I think we left off on the makeup of the divisions. Joe Grodin came on. I'm trying to think. Joe Grodin was the fourth, I guess. I think he got the fourth.

Timothy Reardon: Division Five.

John T. Racanelli: No, I mean in Division One; he was in Division One at first.

Timothy Reardon: It was in Division One. All right, okay.

John T. Racanelli: And then—I'm trying to think. Oh, when Wake Taylor retired, Joe then, the Governor appointed him presiding judge of Division Two, which is where he was when he was elevated to the Supreme Court. And who succeeded him? I guess Tony Kline, right?

Timothy Reardon: Yeah, Tony ended up as the PJ of Division Two.

John T. Racanelli: So it must have been Grodin's vacancy.

Timothy Reardon: Probably.

John T. Racanelli: So that was pretty much the composition of the court. And it's still the same, four fours and one three.

Timothy Reardon: We have with the five divisions, now we have four in each.

John Racanelli: Four?

Timothy Reardon: Of course there's a vacancy at the present time in Division Five with the retirement of Justice Tom Stevens, who came quite a bit after your retirement, but—

John Racanelli: Yeah.

Timothy Reardon: So they're in the process of trying to fill that vacancy.

John T. Racanelli: Barbara Jones, is that …

Timothy Reardon: Barbara Jones's division, correct.

John Racanelli: Yeah.

Timothy Reardon: John, I was going to ask you, in addition to the administrative presiding judge—as I think we've mentioned—you were the presiding judge of Division One for many years. And just doing a little research on this, during your time as the presiding judge of Division One, you authored—this may set some sort of record—over 500 . . . Strike that, over 200 published opinions; 500 probably would set a record.

John Racanelli: Right. *[laughing]*

Timothy Reardon: But 200 published opinions. And I'm not going to ask you to go through each one of them at this time. *[laughing]* But is there one or two that kind of stands out in your mind with respect to authoring these published opinions?

(01:00:07)

John T. Racanelli: Yes, there are, and, I must say, I appreciate the court's library reference service; it's very helpful material they sent to jog your memory, and Lord knows we all need the help with a memory jog as the years roll on. *[laughing]*

There are a handful. And by the way, I thought that 203 was a small number, given the number of years; but I guess it really isn't. And I computed it out; I think we're probably averaging—and I won't ask you what you're doing now, probably a lot more—I think we were probably averaging, participating, writing eight cases, eight to nine cases a month in those days, not counting extraordinary applications.

Timothy Reardon: Right, there was.

John T. Racanelli: And so if I published 203, that's about a publication rate of around 10 to 12 percent, which is not low, I guess.

Timothy Reardon: No, it isn't.

John Racanelli: It's not low.

Timothy Reardon: In fact, I think the stats would show about the same amount of opinions filed per month. I think there seem to be more published opinions now than I think probably in your time, but—

John T. Racanelli: So it still continues as to having more publication. Having less publication . . . I was a believer in having less publication, because so much of it was—you know, didn't involve new principles, new earth-shaking considerations; and because as a matter of right you're going to get not the kind of trailblazing applications or cases each and every month. *[laughing]*

Timothy Reardon: No, I think that continues to be at least the view of the First District with respect to publication.

John T. Racanelli: Makes a lot of sense. I can recall lots of debates about we weren't publishing enough, people have a right to know; and you'd just hear the differences in approach as to whether the publication's rate should increase.

Timothy Reardon: Well, that debate still goes on.

John T. Racanelli: It still goes on.

Timothy Reardon: At the present time.

John Racanelli: The Chief Judge then, she was on that side.

Timothy Reardon: I see. Okay.

John T. Racanelli: There should be more debates, more accountability, by publicizing and publishing what you did.

Timothy Reardon: Sure.

John Racanelli: So it's interesting. It doesn't surprise me that today it's still continuing. *[laughing]* But anyhow, in that I think there probably are two or three that really stand out in my memory. Probably the first and foremost is the water case, the so-called water case. That was in the mid-'80s. That was a case involving the United States against the State of California Water Resources Board. There were many water agencies involved, regional water agencies; I think they consolidated about 14 appeals in that one case.

The trial record was so voluminous; it was tried in San Francisco, as you probably remember. I think he's no longer with us, I understand, the trial judge. I want to say Figone; I think it was Figone who tried the case. And this is the only time I had this experience; the trial record was so voluminous, I was told that it filled up an entire anteroom with boxes of transcripts that he couldn't . . . There was no way he could go through it alone, and he didn't. So he just ruled on . . . had the

lawyers brief the pivotal questions of law and he decided only the questions of law, and that's how it came out.

I think I spent—my researchers spent—the better part of six months on that one case.

Timothy Reardon: One case, yes.

John T. Racanelli: And it's always intriguing, because on the record it only shows as one case. *[laughing]*

Timothy Reardon: Yeah, that's right. *[laughing]* In the stats, yes.

John T. Racanelli: Then Susan Miner, who was my chief researcher—she was a great, wonderful person, good researcher, good lawyer—spent a good chunk of her time just on that one case. And we ended up . . . what we had to do because it was so voluminous, the issues that we dealt with in briefs; I forget the briefing. I don't remember. It was several hundred pages, all those parties' briefs; and there was a bunch of amicus briefs. And we had to take it in stages. And so we did the memo, we'd cover the first phase. A couple of months down the road, we got the second phase.

So by the time we got to the hearing—to which we assigned over a day of oral argument to accommodate all the parties that were involved, mostly public agencies—then we heard the case and decided it unanimously and it held up. The hearing was denied; it's still on the books, as a lot of cases. That was 1986. And really, what it amounted to was, the first time . . . it was a very lengthy opinion, as you can imagine, to pull together all of these disparate provisions of the Water Code dealing with the various resource agencies that played a role both in management and the oversight of the use of water in the state and counties and the districts up in the mountains. That's the first time it happened.

(01:05:53)

And the Water Resources Control Board wasn't very old at that point, and they were struggling to implement as a mandate by statute to have a water policy on both quality and control of supply. And there was a clash between the state and the federal government as to whether the state had any right to control the federal. But they had the Friant Dam. And they had Shasta—I don't if they had Shasta, but they had Friant Dam.

So they were very much involved in the water distribution, because they were the ones who had issued all these 40-year contracts to the Central Valley and to the agricultural community down there where most of the water was going. And they resisted it, and they always claimed that they stayed

in their jurisdiction under the federal Brimson doctrine. So that was a burning issue on the appeal.

We held there was no incompatibility, that the state had that power to regulate water, its own resource, in the state—that's where that water was, in the state—and to establish a priority process to protect the beneficial uses of water. And there's as you know the statutory scheme of high rights, preferred rights—domestic, irrigation, agricultural; but also the in-stream uses, the ecology of the water. The delta issue was very prominent in that case.

So we laid down some hard and fast rules, which said . . . they said the Water Resources Board had the power to use and should use them, and they needed to develop an effective water plan that the statutory scheme called for, and they had a right to review existing water contracts, because these contracts were written for 40 years. The people down in the mouth, "Hey, we've got our contractors, That's your problem, not ours." *[laughing]*

So it was received by the community, by that community, as a desperately needed sense of direction and outline as to what was permissible and what could be relied upon in terms of water contracts and uses, and priority of rights, and which rights are more preferential to others.

So I don't know, we must have had 15, 16 substantive issues. And it's a long opinion—I don't know, 70 or 80 pages, and that was as concise as we could get it at the time. *[laughing]* And it held up and is still on the books.

Timothy Reardon: Nice.

John T. Racanelli: So that was a lot of labor; but it was very, very interesting. It was very well argued; there were some very bright lawyers who came, all the water specialists throughout the state. If we hadn't prepared, if we hadn't done the extensive preparation and memorandum, we would have been, to coin a phrase, in deep water. *[laughing]* So that was a—

Timothy Reardon: But that's a landmark case and one that took, obviously, a great deal of time and effort to get it ready.

John T. Racanelli: It is. And it's ironic. Statistically all it shows you achieved is one case. Another case that comes to mind—an entirely different form of recollection because of its nature—it was a case involving some social harm. It was the *Schoenfeld* case. The *Schoenfeld* case, as you'll recall, was the Chowchilla case.

(01:10:04)

Timothy Reardon: That's right.

John T. Racanelli: And they . . . to refresh your memory as well as my own . . . but that involved 27 counts of kidnapping for ransom, which is life, and they pled to all 27 counts; and 3 of the counts had the added allegation then, as the statute then read, of bodily harm. And if that was found, then they were ineligible for parole ever; life, life without parole.

And the injuries that were sustained involved injuries; we held injuries. . . . That was the only issue, by the way, on appeal, because they pled. We held three counts where the charge didn't meet the statutory test of bodily harm to have that aggravated enhancement, because it involved issues dealing with the confinement rather than the kidnapping or the transportation. It involved . . . one youngster had nausea. They were confined in that van underground.

Timothy Reardon: Right.

John Racanelli: Another kid had a bloody nose, and another kid had nausea. So we simply held . . . it was a split; it was a divided opinion. I wrote the opinion, Justice Newsom concurred, and Justice Elkington dissented; so we split it. We held that it didn't meet that standard, so we struck the bodily injury and just upheld everything else.

Those three men are still in the prison. It's interesting that the one guy . . . the effect of the holding affected one of the Schoenfelds. They were two brothers. These three men came from upper middle-class families in San Mateo County, if you remember that.

Timothy Reardon: I do remember that, yes.

John T. Racanelli: And one of them under the statute that then existed was young enough so that the absence of the bodily-harm allegation made him technically eligible for parole after six months of confinement. Well, he's been there since—he's been in prison—since 1976. It comes up each year, and occasionally I'll be solicited by a lawyer to write a letter, and I think Justice Newsom has. I think he's gone down and appeared before the parole board and spoke on behalf of the . . . So at the time, you know, fortunately nobody was killed or maimed.

Timothy Reardon: Right.

John Racanelli: But the horror of the 27 trapped in the van for 36 hours still looms like an ogre at the time it's come up for parole. And so my understanding from Bill actually is that they've done really well in prison. Records prove their intellectual achievements and educational achievements, but they'll never get a date.

Timothy Reardon: You know, occasionally, just in my own recollection, it seems like we do get a writ perhaps from one of the group there—and again, on this parole issue. But I don't think they've met with any success to date, at least that I'm aware of.

John T. Racanelli: I don't think so; I think they're all three . . . In fact, the most recent one was about a year or two ago; I think Bill had called me whether I'd consider writing a letter. I think I did write a letter, actually, and I expressed what I did. I was surprised the youngest was still in prison. It's 20-something years and he was technically eligible years and years ago, and their confinement far exceeds the average confinement of a murderer; so there's something out of balance.

So that case made an indelible impression, just the circumstance of what was involved. It was a horrible crime; but fortunately no one was injured or worse.

And then I suppose another one that sort of jumps in the front of my frontal lobes is a guardianship case. It was a case called *Guardianship of Phillip B.* That was a case involving a young boy named Phillip with Down syndrome, a boy; and all these Down syndrome kids or most of them have what the medical people refer to as a hole in the heart. There's a ventricular malady that's typical of that kind of a syndrome or a child afflicted with that syndrome, and it can be surgically repaired. But it has to be done in the early stages of the youngster's life; otherwise, it's too late and leads to death in the late teens or early 20s. And I think there was a high incidence of that malady; I think it was . . . well, I'm guessing, but I think it was around one out of five? But they were subject to surgical repair with good results.

(01:15:32)

The parents, an educated couple, refused to or wouldn't agree to the procedure, although medical testimony and medical evaluation strongly indicated that the boy should have that surgical repair and needed to have it soon.

This case involved and at some stage it went to the juvenile court; and the juvenile court issued an order to have, I think, a guardian appointed for that purpose, and it went to the United States Supreme Court. I don't recall why it was remanded, but it was remanded and it came back and went through the same process again. And the child in the meantime—I guess Phillip was then about 7 or 8, 6 or 7, early—developed an attachment to the custodial foster parents. And maybe I'm using that term too generically, but that was their role; it was a voluntary organization and they took care of kids like him. And he developed a close bonding with this couple, so much so—because he had, as the trial court found, which we ultimately sustained Judge Fernandez's ruling—that he developed a

parent-child relationship with these foster parents, who loved him and took him into their family. They had other kids, they had their own children.

And when the parents objected, then there was litigation about the closeness, because the boy was spending a great deal of time with these foster parents, and they sought to sever it. They succeeded because they were natural parents. And the child ran away. He hopped on his little tricycle and tricycled something like a mile and a half away to where these people lived to go back to them.

So there was no real emotional attachment as a result of this long-term separation. And also as the trial court found, and we sustained on the basis of the evidence, an emotional detachment from the child. They wouldn't let the child go, but they wouldn't agree to accommodate the child's eminent medical needs, and I don't think it was religion-based.

Timothy Reardon: I was going to ask you if it was.

John T. Racanelli: If it were, it never really surfaced in the trial. So the judge, the trial judge, came out of Santa Clara County. The trial judge ruled that there was this emotional detachment or estrangement, and then based on the substantial evidence . . . and there was expert testimony supporting the foster parents' application to maintain the custodial relationship so that they could consent to the surgery, which was ultimately what happened. They resisted, and the trial judge, as I said, found emotional detachment and a close bond. He had a term for it; I'm trying to think what the term was. It amounted to a familial bond between the child and this man and woman and their kids.

And so we upheld it, and the operation took place; the youngster had the surgery and he had a remarkable result. And when I retired, when I retired, there was a big party with my wife and Tony Kline, and some others, Calabro, at the old Dolphin Club—remember that? *[laughing]*

Timothy Reardon: Sure.

John Racanelli: And they invited a bunch of people, including this youngster. He came and shook hands with me. *[laughing]*

Timothy Reardon: That's a great job.

John T. Racanelli: Newsom was there, and it was a good feeling—because, you know, how often do we have those, right?

Timothy Reardon: Cases like that, yeah. They don't happen very often.

John T. Racanelli: So that one really stays in the very front part of my cerebral storage house.

Timothy Reardon: And I could see why. That's a good ending.

John T. Racanelli: There were a bunch of others. I scribbled some notes to jog my memory; I'll just quickly take a look at those to see if there's anything else worth commenting on. Really, I guess I could go on. There's a number of interesting cases. But, you know, some make more of an indelible impression upon you, some were more front-running at the time. There was a case that I remember looking at involving . . . I'm trying to think of the name of the case. It was *Heintz*; I think it was *Heintz*, in the late '80s. It involved a high-school kid. Or early '80s; I think it was early '80s. A high-school kid who wore a T-shirt to school every day against remonstrances of his teacher; it had "The Four-Letter Word the Draft" on his T-shirt. It was before the U.S. Supreme Court case; I don't remember the name.

Timothy Reardon: Yeah.

John T. Racanelli: But it said, "If you don't like it, just don't look at it; it's a First Amendment issue." *[laughing]* And that's what we said and that's what we held. We said that kid shouldn't have been suspended from school, because he was exercising the right. And we didn't use that language; we didn't know it was . . . We did know it was a speech issue, and we said he wasn't upsetting anybody and shouldn't be kicked out of school. And so I guess, I'm trying to think—was Joe Grodin on that case? I think we must have known there was a pending issue at the time. The Supreme Court came down and sustained our judgment. I guess they granted . . . I know what, they granted a hearing? I think they granted a hearing, I think so; I think the Supreme Court took it after that case came down.

And then there was the *Warfield* case, which involved . . . This was also sort of on the cusp of a change in the law then on sexual discrimination. This was a case . . . When did we decide that case? It was the late '80s, and it was against a golf club.

Timothy Reardon: I remember this case, yes.

John Racanelli: You remember the case?

Timothy Reardon: Yes.

John Racanelli: Where Mrs. Warfield and Mr. Warfield had domestic problems and separated. She wound up with the club membership, but the club membership was for adult males.

Timothy Reardon: Yeah, I do remember this case. *[laughing]*

John T. Racanelli: She raised the obvious issue, and she raised it under the Unruh Civil Rights Act. I guess it's still on the books, I'm not sure, but . . . And we held that she . . . and she was demurred out. And we held on appeal that she alleged a cognizable claim under the Unruh Act based on civil rights and sexual discrimination, because that's what was happening by denying her the right to membership in the club. And then we found that the club would be a public place because people took their business clients there for lunch, as they do at country clubs and so on. And that held up; it was sustained. So we were sort of on the edge of changes that were taking place in that area. The other one—

Timothy Reardon: I think there have since been some cases with similar issues.

John T. Racanelli: Right, right.

Timothy Reardon: Recently, yes.

John T. Racanelli: I thought there were, and here, in your district.

Timothy Reardon: Yes, here also.

John T. Racanelli: The other case is kind of one that you remember with some sadness. It was the *Callanan* case. The *Callanan* case was a case where they tried to do the right thing but just didn't have the legal authority. The City—after the mayor was assassinated, and Harvey Milk—the City Board of Supervisors enacted a statute subsequent to it to award death benefits to survivors of assassinated public officials. The problem was, it was ex post facto, and under the city charter, as you probably know or now learn, you can't do that. The only way you could provide such benefits was through a city charter enactment authorizing same. So it was a test case obviously, I think, as it turns out.

(01:25:13)

They had made the statute—they had endorsed the city ordinance—to help the survivors' wife and children. And we had to rule and we did, because we had the unanimous opinion that it was also unauthorized; it was void under the city charter. But I guess it's a good . . . Did they ever amend the charter? I'm not sure if they amended the charter to put that provision in, given this terrible history.

Timothy Reardon: I'm not sure. I have in my mind a memory that there have been some changes made with respect to survivor benefits. I'm not sure it fits exactly what you've described, but—

John T. Racanelli: You think about it, it sure doesn't happen that often, thank goodness; but other occupations where danger is an inherent element, they have those provisions to accommodate, particularly where there are families, where the decedents of

the family, the children. And so it's provided for; unfortunately it wasn't in this case, but who could foretell that kind of a tragedy? Those were very dark days.

Timothy Reardon: Yes.

John T. Racanelli: It was 19-. I'm trying to think—when they burned all the police cars.

Timothy Reardon: Right.

John T. Racanelli: You could see them from the building, cars burning on the street. Well, we've come hopefully some considerable distance since then.

Well, there are any numbers of cases. I don't want to burden you or the transcriber with all of them, but those really jump out. I must mention one other case, and it was a domestic case. It came up on appeal, and it was a case involving marital distribution, really, of community property. The question was really focusing on how much latitude the trial judge had on the substantial-evidence rule to decide issues involving distribution of marital property rights, and this was *Marriage of Zaentz*.

Zaentz was a man who was a very prominent—probably still is—movie producer, and he was the producer of *Amadeus,* which was a big box-office success. And the testimony before the trial judge was very vague: There are offshore holdings and transfers and, I mean, the money was just . . . He claimed that he didn't have anything; and she claimed he had a whole lot, *[laughing]*

Anyway, there was a morass of evidence, much of it . . . unfortunately, much of it very elusive kind of testimony. The trial judge, to her credit, wended her way through and found substantial evidence to support her findings on the distribution, and we upheld it. Basically it wasn't probably an earthshaking holding. We pretty much held the obvious, that the trial court had wide discretion to do equity in marital distribution based on the record that he or she has before them, and that is what she did. And that held up. A petition for rehearing was denied, so it's still on the books as far as I know.

Timothy Reardon: It's still on the books, right.

John T. Racanelli: And maybe one other case that sticks in my memory at least is the *Arthur v. Avon Inflatables,* a case that came up on demurrer. It was an interesting case on its facts. These people were on a yacht in the South Pacific somewhere, and the yacht developed problems and it ultimately sank, and the five survivors took to the two life rafts that they bought from Avon Inflatables.

Timothy Reardon: When was this?

John T. Racanelli: The case was 1984, so it must have been in 1982. This made a lot of publicity at the time, because they ultimately rescued two; three died and two survived after being at sea, I think, like three or four weeks. And the case was filed; the survivors and the decedents' families filed an action based on strict liability—defect, design defect, that the inflatables that had been advertised as the latest in emergency equipment lacked some things that could have saved their lives.

(01:30:05)

The problem was desalinization of equipment. They didn't have that. They didn't have the emergency responder, the beeper?

Timothy Reardon: Right.

John Racanelli: And they were close enough to the airlines in the Pacific that if they'd had a beeper, it would have been picked up by one of the many planes crossing the Pacific Ocean.

So the theory was that as an emergency apparatus, it lacked these. And there was something else about a double flooring of the life raft. The other three died from immersion in the water, constant immersion, but they might have survived.

And so we just upheld it. It's true. We said they could support a cause of action. Of course, no proof, but we held that certainly it would survive the demurrer. They had the right to go to trial on the issue of strict liability.

Timothy Reardon: Did you ever hear how the case came out, or did it settle?

John T. Racanelli: Settled, it settled.

Timothy Reardon: Okay.

John T. Racanelli: It settled, as those things typically do.

Timothy Reardon: Oh, yes; yes. *[laughing]*

John T. Racanelli: So anyway, I kind of selected those handful of cases from a coterie of cases which would keep us here all day; but, no, I won't do that.

Timothy Reardon: No, but the ones you've recited have been certainly interesting cases, and I can see why you recall them with some fondness.

John T. Racanelli: You know, one of the assignments that we did—and I don't know if it's on the list that you and I discussed—but it was my service on the Commission on Judicial Performance.

Timothy Reardon: I just wanted . . . let me just interject before we get into that, and that is, I think your philosophy is one of giving back where you can to the legal community. You've taught; you belonged to a myriad of legal organizations; and just from your background, you certainly have given back. But I know, as well, that you've served on a variety of legal organizations, and maybe you can tell us a little bit about the judicial performance commission that you did serve on.

John T. Racanelli: I served on that a long time. As you know, it's appointed by the Supreme Court. I guess the composition has changed now, but then it was five judges and four laypeople, or two lawyers and two laypeople. And John Molinari had been on it when he retired, and so the Supreme Court appointed me to fill his spot, his vacancy.

As you know, the commission's function is to monitor judicial performance from an ethical standpoint in light of ethical standards in the state. And there were some really tough cases that came up. Of course, the most notable one was the one that involved the Supreme Court itself, and I disqualified in that case. I didn't participate because of being close—a feeling I had—with Justice Tobriner, who was involved. And Chief Justice Bird was also involved, but she instituted the proceedings; she wrote the letter to the commission requesting the investigation.

Timothy Reardon: I remember that, yes.

John Racanelli: And so that started that log rolling. And it was fascinating in a number of ways, not the least of which was the circumstances of the book that was written by my now-wife, my then-fiancée, who was a journalist and a writer; and that was her subject. I mean fortunately I was disqualified. I never participated in the hearings, I never saw the transcripts. But she had access to some materials. To this day she wouldn't tell me, and I don't ask. *[laughing]* And wrote her book about what happened in the right-wing attack on the court, particularly on the Chief, which, as you know, led to ultimately to her defeat at the polls, but she also took down two others.

(01:35:02)

Because she became, as Betty calls it in the book, a lightning rod for the right-wing challenge to the court. Without getting into the specifics, and certainly not specifics involving identities, it was a very unusual sensation to . . . being there in other hearings, that this information just comes out, and everyone's kind of looking at you, and I said, you know, "I don't know where it came from, but it didn't come for me." And it didn't. *[laughing]* That was a tough . . . those were tough times.

I wish—and now it's been rectified by better language in the statute, I think—that the commission would have been able to

say more than it did in exonerating; but it came out like a not-proven sort of statement, if you remember.

Timothy Reardon: I do remember that, yes.

John T. Racanelli: And because of the principals involved: Justice Tobriner—who's a wonderful human being, just as honorable as you could find in a person; and of course the Chief, who was suffering her own maladies which ultimately produced her death at an early age; and other principals who shall remain nameless who were deeply involved . . . And that whole thing emerged, if you remember . . . Have you read Betty's book, *Framed*? *[laughing]* She goes all out in the book.

Timothy Reardon: I haven't read the book, but I know the coverage at the time in the press was significant—I mean, in terms of the amount of coverage that was going on and as I recall, maybe for some of the younger viewers. But, I mean, the general allegation was that the court sat on an opinion till after the election.

John T. Racanelli: A particular judge sat on an opinion—

Timothy Reardon: Right, yes.

John T. Racanelli: Held it up from going around—to help someone, to help her in the election. As a matter of fact, that year when she was up for confirmation of the unfulfilled term of Don Wright, she barely scraped through.

Timothy Reardon: That's correct, and there was a resolved—

John T. Racanelli: By 51 percent.

Timothy Reardon: Yes.

John Racanelli: And that was the antecedent history of it that ultimately led to the focus, although there were other issues, I'm sure; but I guess they really viewed those three as being the most liberal and capital cases. And that was quite a campaign and the first and perhaps the only time where muni court judges were defeated.

Timothy Reardon: Yeah, that's the only one I can recall.

John T. Racanelli: Certainly not in my lifetime; I don't think before or since.

Timothy Reardon: So that in itself was remarkable.

John T. Racanelli: Those were difficult times for the court as a whole as an institution. They did a great deal of damage. That was really unfortunate, too; it just shouldn't have occurred. You had to think that there was some malice afoot at the outset. And when you think about it, when you participate in that process, all of

us, there are any number of reasons why the process is delayed. It wasn't an inordinate delay, either; it was just a matter of days. But the theory was that it was just before the election. I mean, who knows?

But I thought that commission was . . . which, as you know, Tim, served as a model for similar commissions throughout the country. California was the first to do it. It was a very, I thought, important structure or organism in upholding the high values that the California judiciary has. I think judges appreciate that it existed. Even though sometimes judges would grouse about the kind of things the commission dealt with, they were grateful that there was a place where sometimes a casual situation occurs where there is a judge who needs to be reviewed or maybe have some discipline imposed, that it exists so that the whole court isn't besmirched by the conduct of one judge.

(01:39:56)

Of course, that's easier said, and judges I'm sure who are called before the commission, many feel that it's unjust, and particularly when you're dealing with ethical constraints. My experience was that the thing that got the judges most in trouble was the lack of patience. Trial judges—particularly trial judges—are always under the gun every day, and they would cause their own problems. I think things like fatigue played into it, too.

Timothy Reardon: Sure.

John Racanelli: Some were just bad habits, but those were relatively few. For the most part it was a lack of restraints, a lack of just commonsense restraints. If you really feel like you're getting to a point where you're really having a problem with someone, you just . . . Why don't they just declare a recess and calm down? Then you go back out and do what you're supposed to do fairly and impartially. But those, I think, were the bulk of the cases that we dealt with. They were aggravated cases; but they were the exception rather than the rule, and it's led now to a change in the composition. The composition of the commission now, it's got more laypeople, doesn't it?

Timothy Reardon: I believe that's correct, yes.

John T. Racanelli: And they're appointed by . . . I mean now there's more of a partisan element to it.

Timothy Reardon: There's that, too.

John Racanelli: The appointment process. So I'm not sure that was the right direction to go, but that's the way it went. I've had the occasion to speak on that issue in New York State. It was a conference

put on by the State Bar of New York, and I saw some of the comparisons, and what a contrast. They have 11 layers of courts, which is hard. It's incredulous; I mean town courts, village courts. Some are appointed by this group, and some are appointed by the Governor; and some are appointed by the town legislative body. *[laughing]*

Timothy Reardon: Sure. It's a very complex setup.

John T. Racanelli: Oh, yeah. And most of the town judges are trying to do something—they've been wrestling with it for years; but they won't give up their perks.

You know, New York State is an interesting state. There's New York City and then there's New York State, and never the twain shall meet. *[laughing]* And so they won't give up their historic perks in a way, because these are plum appointments with little appointments in the town's court. They get paid a salary; you don't have to be a lawyer, many of them. And to the credit of the existing chief judge there, who is a remarkable person, Judith Kaye—she's tried desperately, but you've got to get the Legislature and the State Bar, the head of the State Bar. The federal district court just came down with a ruling on it that was sustained on appeal, the Second Circuit, throwing out the process of selection of supreme court judges, which is our superior court?

Timothy Reardon: Right.

John T. Racanelli: And just in that district, and then in New York State, they have all these different jurisdictions, counties, boroughs; and so the state supreme courts' method of selection by delegates they held to be invalid throughout.

Timothy Reardon: That's a recent law?

John T. Racanelli: Very recent.

Timothy Reardon: Okay.

John Racanelli: And the State appealed and lost at the Second Circuit. So now they're in the process of trying to formulate something that comes closer to what we're familiar with here in states like California where there is an appointment process that involves the Governor and some kind of a selection recommendation by a group of typically lawyers selected by a process involving local bar associations. It's still not a done deal, but they're going down that track. But the system they have now is deplorable.

You know how it works in New York State, in a New York borough?

Timothy Reardon: No.

John Racanelli: You elect delegates, and the delegates tend to be very partisan, and the party leaders who select the delegates, they're the ones who are on the ballot; and so when you elect the delegates, those delegates then decide who the judicial nominee will be for that party, and without it you don't get on the ballot.

Timothy Reardon: *[Laughing]* And these delegates can be almost anyone.

(01:44:57)

John T. Racanelli: Anyone. And then they tell the judicial aspirant that they have to help the delegates, they have to help all this hard canvassing work that takes place; you need to contribute and support their friend. And this is just pernicious.

Timothy Reardon: Yeah, it doesn't sound like a great system.

John T. Racanelli: It's not. It's really ready for a revamp, and it's been that way for many, many years. But I think the reason it's existed so long is the makeup of the—this is my theory—the makeup of the state is such that it is heavily Democratic in New York; so they have that fiefdom, and the rest of the state is Republican, you know. That's everything. *[laughing]*

Timothy Reardon: Yeah.

John T. Racanelli: Anyway, it's a contrast.

Timothy Reardon: Oh, I can imagine.

John T. Racanelli: Dang right.

Timothy Reardon: John, you mentioned New York, and I know in 1991 you retired from the court and you're also living in New York right now. What have you been doing in retirement? And are you enjoying it?

John T. Racanelli: Well, as you probably know, Tim, when I retired from the court here in 1991, I then went with—I did some arbitration, mediation work with—JAMS, Judicial Arbitration and Mediation Services. And that was very, very interesting and very constructive, and certainly remunerative. And I did that until the time we moved. We moved from San Francisco to New York in the year 2000, and I continued. JAMS has an operation throughout the country, pretty much—a smaller operation, but nonetheless they have one. And I remained affiliated, although I do a lot less and almost now just about ready to close that book, because there comes a time when one should. *[laughing]* And it's been very interesting and rewarding to have continued doing that kind of work. And I think that's . . . you know, as

retired judges, you either . . . most retired judges don't go back to pro tem. I did it for a while. I did a couple of jury trials. Back when Stern was PJ.

Timothy Reardon: Right, I remember. In fact, I remember your report of your pro teming.

John T. Racanelli: From Stern? *[laughing]*

Timothy Reardon: Yes.

John T. Racanelli: And I did that a couple of times. But coming back here, I think someone asked if I would come back or not; and, no, I can't do that. First of all, you just don't come back for a day or a week; you have to come back for a rehearing and so on. So I made a promise to myself not to do that. I remember what Norman Elkington told me. Norman used to tell me, he said, "John, look," he said, "when you think I'm slipping, just tap me on the shoulder." I never had to tap him on the shoulder; he may have had to tap me on the shoulder though. *[laughing]* And I said, "Well, when is the time, Norman?"

He told me two things that stuck in my memory all these years. The first year, the first several months, I asked Justice Elkington, I said, "Justice Elkington"—I called him Justice Elkington at the time, but he told me "My name is Norman." *[laughing]* I said, "How do you know? How do you know when you meet the Watson test and there's a miscarriage of justice that requires a reversal?" I said, "At what point? What's the standard?" He said, "It's when you say it is." I said "Oh." *[laughing]*

And the other was when it's time to retire. He says, "John, when it's no longer any fun." I said, "Norman!" Okay, he's now in his 80s. When it's no longer any fun, it's time to stay home.

Timothy Reardon: So Norman was having fun right up to the end, it sounds like.

John T. Racanelli: Right to the end; right to the very end.

Timothy Reardon: Yeah.

John Racanelli: So I don't know if it quite fit, but it seemed time for me to move on to do something different. When I finally retired I still had time. I still had two more years before I had to run again—maybe longer, three years. I guess I was up in '94. I hadn't filled out the full 12 years. But at that point I had well passed the 20 years for full retirement. And you do know when it's time to make a move, and so I didn't have great difficulty doing that. And Betty still teaches, my wife, and does a lot of consultation on journalists' issues; she writes nonfiction books.

And we're having a great time in New York City. It's an entirely different way of life from San Francisco. It's a great town as you advance in years because you can walk to places, and we love to walk; and it's, you know, it's really the center, the cultural center of our nation. There's so many things to do, places to see and to visit.

(01:50:25)

And it's very interesting . . . as a side note, a very interesting familial reaction. First, my children are all here—well, all but one live in California—were very disturbed that we're leaving, because they wanted to see us and so on and so forth. The fact of the matter is, since we've moved there, we see more of them there than we did here, because you know how kids are. *[laughing]*

Timothy Reardon: Oh, yeah.

John T. Racanelli: "Yeah, Dad, well, we'll get there. We think it may be this weekend; we're not sure, Dad, but we'll see what we can do." And it never happens.

Timothy Reardon: Now they're—

John T. Racanelli: Whereas there they come, and they've got a place to stay and take in the theater. And one of them's a tennis buff; you know; he always comes for the U.S. Open, so he's staying for another week. It's been great; it's just been grand.

Timothy Reardon: Well, it sounds like it's been great, and we wish you the very best in retirement, John. I don't know if you had any concluding comment. We've covered a lot of ground, I think, today. And I know there's changes in the judiciary and in your own career you've observed; probably some for the better, some for the worst. But I'm just wondering if you had any views as to how you'd like to be viewed as an appellate court justice. Any final thought on that?

John T. Racanelli: Well, I suppose, at the risk of sounding terribly unoriginal, I think you'd like to be remembered for having been, you know, reasonably competent in doing what you did; that you undertook your responsibilities diligently and fairly. And I think most of us try to do that, and I hope I've succeeded—and certainly with the impartiality and objectivity that's expected of you in holding up the high standards of that office, and also always, always, I think, with the highest commitment to ethical standards. I think, if anything, that when judges are lampooned or lambasted, it's usually a breach of the ethical standard. I think it's regrettable that there's so many now performances where they make the judges like jokes. I think those *Judge Judy* performances . . . and believe it or not, some people, some uninformed people, will say, you know, "Do judges really

behave that way?" And you have to almost defend and say, "No, not really. This is really a caricature."

So to some degree, I think there has been a besmirching of the institution—unwittingly perhaps, for other reasons, market reasons, that makes it even more important that the people who occupy that important office consistently adhere to the high standards expected of them in our communities. And I think in large measure, my experience of the judges in California upheld that standard. They're, I think, probably one of the best of the country. When I went back to New York I was appalled at some of the abuses that were being reported in the press: bad things, money exchanging hands. I guess I probably shouldn't talk that openly about it, since I'm being recorded. But I'm talking about things that were reported in the press.

Timothy Reardon: Right, right.

John T. Racanelli: And it was astounding, because those kinds of things just shouldn't happen, and they didn't happen in most jurisdictions and certainly not in this state. So I've always felt privileged to have been a member of the California judiciary; and the people who I met and worked with, that's been really one of my rewards—not to mention the judge's pension. *[laughing]*

Timothy Reardon: Well, John, you certainly met the standards that you set for yourself, and I think the real beneficiaries are the people of the state of California, who have benefited from your service—public service and service in the judiciary. Let me just say in conclusion, you've had a long and distinguished career as a trial attorney, trial judge, and justice of the California Court of Appeal. Thank you for sharing with us your experiences, your wisdom, and knowledge as part of this Appellate Court Legacy Project. You have made a great contribution to the judiciary of California, and we are indeed grateful to you. Thank you very much again, John.

John T. Racanelli: Thank you, Justice Reardon. It was a privilege to participate. Thanks, Tim. You did good.

Timothy Reardon: A pleasure. Thanks.

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