David Knight: And your title when you were on the bench?

Marcel Poché: My name is Marc Poché, P-O-C-H-E, and I was an associate justice on this bench for about 20-some years.

David Knight: Wonderful. And our interviewer is?

Patricia Sepulveda: Good morning, and I'm Pat Sepulveda. I'm an Associate Justice on the First District Court of Appeal, Division Four, here in San Francisco, and we're conducting this interview this morning as a part of the Appellate Court Legacy Project. The purpose of the project is to establish an oral history of the appellate courts in California through interviews such as this one with justices who have formerly sat on our courts or who are currently sitting on our courts. And we're here today to interview former Justice Marc Poché. And Justice Poché sat on the First District in Division Four.

And Marc, thank you very much for coming all the way up here from San Jose, Santa Clara County . . .

Marcel Poché: Thank you.

Patricia Sepulveda: . . . where you're currently sitting as the superior court judge; we'll talk about that a little bit later.

What I'd like to start out with is to get some personal, background information from you. I notice reading this extensive biographical material they sent me about you that you were born in New Orleans, which I hadn't realized.

Marcel Poché: I don't think I did until I was about 13, because my folks moved out here when I was a baby.

Patricia Sepulveda: That was what I was going to ask. So you really weren't raised in New Orleans at all, and raised in California?

Marcel Poché: I was raised all over California. My dad was an auditor, and auditors go from sort of failing corporations to failing corporations and try to make them stand up; and so I think the most I stayed in any locality before high school was probably a year and a half.

Patricia Sepulveda: And then high school, where were you then?

Marcel Poché: High school, I had the good fortune to go to Bellarmine Prep in San Jose, which is a Jesuit school, and I stayed there four years.

Patricia Sepulveda: So you would probably consider that San Jose area to be sort of your home base in California?

Marcel Poché: It certainly ended up being that way. I did my undergraduate work at Santa Clara, and then after law school and the Marine Corps I came back to San Jose to practice law, although that surprised me a little bit.

Patricia Sepulveda: Okay. Well, let's talk about your college days. As you said, you went to the University of Santa Clara and majored in political science, I think . . .

Marcel Poché: Yes.

Patricia Sepulveda: . . . and graduated with honors from that university.

Marcel Poché: I did.

Patricia Sepulveda: And after that, you did two years in the Marine Corps, is that—

Marcel Poché: Yes. It was a program: basically you were enrolled during college; you went back to Quantico in the middle of the summer; they tried to kill you. If you lived and graduated from college, they gave you a second-lieutenant set of bars and then they put you through nine months more of infantry training and then sent you out in the Fleet Marine Force.

Patricia Sepulveda: So what did you do for those two years?

Marcel Poché: I had a real break. I was sent to a small Marine air base in North Carolina, which was basically young officers flying jet planes, and it probably had 2,000 troops. These kids were, for reasons I don't understand, mostly from the South; they were mostly black. The South was purely segregated in '56 despite the *Brown* decision, and a lot of these kids got in trouble. Well, there were no lawyers on the base except one. He knew that I wanted to become a lawyer, and there was another fellow in the same situation; so we spent the better part of two years trying things that should have been for the most part at a general court-martial level . . .

Patricia Sepulveda: Uh-huh.

Marcel Poché: . . . at a special court-martial level, which meant the jury was essentially three ranking Marines, and we would trade on and off on prosecuting it or defending it.

Patricia Sepulveda: So did that experience solidify your desire to become an attorney, then?

Marcel Poché: Yeah, it certainly did.

Patricia Sepulveda: And when did you decide really that you wanted to go into law?

Marcel Poché: I think early in my undergraduate career, profs that were close to me made those kinds of recommendations, and I guess I took them.

Patricia Sepulveda: Now, you said North Carolina. What area of North Carolina was it?

Marcel Poché: A little town by the name of Edenton, named after Lord Eden, one of the first governors of that part of North Carolina, about 50 miles inland from Norfolk, right over the Virginia border; absolutely beautiful town, right on the Albemarle Sound. It dates from about 1710. And it was a little port and it was a rich port, and so the importers and exporters built mansions. I mean, frankly, they are about a block long; they have a full basement; they're built of marble, and then they have a sort of New Orleans iron fricassee. The roof is copper, and there are usually two brick chimneys that go up three floors; full porches on it; and they're a block long. And they planted little magnolia trees. And the only thing that's different is now the little magnolia trees are big magnolia trees. It's breathtaking to be up there.

(00:05:15)

Patricia Sepulveda: And I remember you telling me you fell love in with that town, and that's where you originally went when you retired from this court.

Marcel Poché: That's correct. And North Carolina was all that I cracked it up to be.

Patricia Sepulveda: Was it?

Marcel Poché: It was wonderful; wonderful people, wonderful sports and recreation.

Patricia Sepulveda: Had the township changed?

Marcel Poché: The town had changed only in that it had become more of a tourist town. It took you through all the old places, including the home of one of the original nine members of the U.S. Supreme Court, or I guess it was seven members of the Supreme Court, and his law office. They were just dripped in history. This little town, which has never been more than 7,000 people, had buried there three signers of the Declaration of Independence.

Patricia Sepulveda: Wow.

Marcel Poché: So it was simply dipped in history, and it was beautiful. I found I couldn't sit around and fish all day long every day of the week.

Patricia Sepulveda: It was a little too slow for you.

Marcel Poché: Yes, ma'am.

Patricia Sepulveda: We'll talk about that decision to come back to California in a few minutes. But we had you up to the Marine Corps, and then when you got out you went to Boalt Hall?

Marcel Poché: Yes.

Patricia Sepulveda: And graduated from there with your law degree and went into private practice.

Marcel Poché: I did, in San Jose with what was then one of the biggest firms, the Ruffo firm, probably 10 lawyers. Now the biggest firm probably has 300 lawyers—a very different place.

Patricia Sepulveda: And how long were you with them?

Marcel Poché: I made partner I think in a couple of years and stayed a couple of years beyond that; and then I was offered a position on the Santa Clara faculty and I stayed there I guess about 10 or 11 years and got to the rank of full prof with tenure. And then out of the blue, I decided that I wanted to run for the California Assembly. So I took a year off and did just that and made the mistake of taking on an incumbent. I lost it then I think by about 1,000 votes, which was probably the worst thing that ever happened to me.

Then I went back to teaching, and I taught as a visiting prof at Boalt Hall. I met Congressman Don Edwards, who became the head of the California delegation; I met him during my election campaign, and he asked me to sort of run his operation. So I was teaching full-time law, I was taking care of him, and I was doing a little practicing on the side. It was kind of fun.

Patricia Sepulveda: Kind of busy, I bet.

Marcel Poché: It was.

Patricia Sepulveda: What kind of practice did you have?

Marcel Poché: It was mostly . . . I think I would call the practice a lucrative practice. The senior partners I think were there from the creation. And we represented every original

Italian in the county, usually who'd come over from Italy, bought in at a foreclosure sale during the Depression for a dollar or so an acre, made money during the hard work of truck farming, and then a zillion people decided they wanted to subdivide Santa Clara County. And so we would help them get their rezoning, probate their wills, plan their estates, divorce them.

Patricia Sepulveda: Whatever they needed.

Marcel Poché: It was a set base, yes.

Patricia Sepulveda: And at Santa Clara what did you teach?

Marcel Poché: This is sort of embarrassing, but I was the cleanup hitter. To the extent I have any expertise, it would be in civil procedure, which I think I taught the entire 12 years.

Patricia Sepulveda: One of our attorneys here was telling me that you were her professor there in civil pro.

Marcel Poché: Yeah. And then I taught everything else except tax. So if somebody would get sick a month before we started school, they'd say, "Poché, go in and teach real property"; "go in and teach crimes."

Patricia Sepulveda: Whatever.

Marcel Poché: And that was fun. I mean, you can't master the subject; but you can at least absorb it enough to pass it on. And then when you end up being on a court like this, it comes in very handy. I found not that I knew everything, but I knew enough about a lot of crazy areas of the law; so I had sort of a nose, for maybe we ought to look at that a little bit. Other than that, I can't think of anything else, except you meet a lot of nice people.

Patricia Sepulveda: And then at Boalt, was it the same? You were doing a mix of different assignments?

(00:09:50)
Marcel Poché: Yes, I taught a large class at Boalt in civil procedure and a seminar class in torts. At least at that time, every first-year student would have at least one core class where he or she developed a relationship with a teacher so there were somebody they could talk to, and that worked very well. I made some lifelong friends.

Patricia Sepulveda: And then later, did you continue teaching as an adjunct when you were doing other things? When you were working for Edwards, you were doing it then, yeah.

Marcel Poché: Yes. I did during that period, but not once I went on the courts. Teaching is hard work. Teaching is in my view

damn hard work, and I don't care how talented you are. And the law-school students nowadays are not interested in your coming in and telling war stories about how it was 20 years ago or how you and Governor X did this; they want to learn how to be lawyers, and they're paying a heck of a lot of money.

Patricia Sepulveda: It's true. I've been teaching the last four years at Golden Gate as an adjunct, and you're absolutely right; it's a lot of work.

What made you decide to go off into this political thing?

Marcel Poché: I guess it's like not nearing; it was there, and it sounded very interesting. And this was the era of Jack Kennedy and Bobby Kennedy, and those people pulled a lot of us into government.

Patricia Sepulveda: I have this little thing in the back of my head from working with you for a year or so. Weren't you a Republican at one point in your life?

Marcel Poché: I was actually head of the Young Republican Committee when I was in college. One of my heroes was Joe McCarthy, who I actually went back to Washington and met. So, I mean, there are some crazy parts in there I can't put quite together; but it was fun.

Patricia Sepulveda: Most of us I think start out liberal and perhaps turn conservative. It sounds like you started out conservative and at least turned moderate, shall we say. *[laughing]*

Marcel Poché: Yes, and I'm still moving.

Patricia Sepulveda: Still moving one way or the other. So was Vasconcellos one of your partners?

Marcel Poché: Yes, he was, and he was a friend of mine. He was probably about two or three years ahead of me in college. He was a friend of mine in high school and in college, so almost the first thing we did when I got to the law firm was he wanted to be an Assemblyman. And a few of us got together: like Norm Mineta, who later became a long-term congressman, became the Secretary of the Interior; he was one of our little group.

And coincidentally, we had a get-together about three weeks ago. Each of the members, they're all alive; I wouldn't say they're terribly youthful-looking.

Patricia Sepulveda: Do you have a name for this group?

Marcel Poché: I guess it was just the Vasconcellos Election Committee; and John was there, and he's still saving the world in his various ways.

Patricia Sepulveda: So at what point was it where you went from being the Republican to the Democrat; do you recall?

Marcel Poché: If there was a time when I really did, it was a time shortly after I became a lawyer. And a young Jesuit priest who I had known before he was a priest at Bellarmine, who was a fellow that just specialized in helping the most tragic cases in the world . . . So if you had just shot the President's daughter on the White House lawn and everybody wanted to lynch you, you would find Father John Enright on the phone—not trying to convert you to Catholicism, but just to tell you that God loves you and he loves you and is there anything he can do.

One of the people he met was a fellow by the name of Melvin Darling; but I hadn't *[laughing]* . . . if you want me to tell the story at some point, I hadn't met Melvin Darling. I mean, I haven't seen—

Patricia Sepulveda: I have it right here in my notes to ask you about Melvin Darling.

Marcel Poché: I hadn't seen Father John Enright in probably 10 years, and I got this letter from Tamal, California in handwriting; that's the plate address, or at least it was, for San Quentin. And Mr. Darling wrote to me and essentially said, "I wonder if you could come up here. There's something I want to talk to you about." Well, I didn't get it. That was the letter. I didn't know him. I mean, the name Darling didn't mean anything to me. So I figured out where Tamal was, and I went up and met him. He was a big fellow, about 6'6".

Patricia Sepulveda: So this was just out of the blue as far as you were concerned?

Marcel Poché: Out of the blue, and of course then Father Enright contacted me. And Mr. Darling did not want to die an old man in prison, and he didn't even want to be saved; what he wanted was for someone to put on a clemency portion of his process and not win, but at least convince his aunt, who was the only person that he had any contact at all with, that everything that could be done had been done.

(00:15:05)

Patricia Sepulveda: He was on death row.

Marcel Poché: He was on death row, which incidentally you never see as an attorney. They bring them down and all this.

So I first had the problem, can you do that? I mean, ethically can you take on that kind of case and just all I'm gonna do is see if I can convince the Governor. Consulted with some experts, and they said definitely, and we had the longest clemency hearing before Governor Pat Brown apparently that they'd ever had.

And coincidentally one of my future compatriots, Winslow Christian, was the clemency secretary for Governor Brown when I was making this pitch. But we didn't win.

Patricia Sepulveda: What kind of evidence do you produce at a hearing like that?

Marcel Poché: You produce people; you tell the story. I don't want to take up all your time.

Patricia Sepulveda: Uh-huh.

Marcel Poché: Let's see, how I can do this quickly. He was a poor boy, a really poor boy. His mother abandoned him, his dad got put in a TB hospital, and he was raised by his maternal grandparents, who had no money. All of his teeth fell out, for example, and there was no dentistry. He did well in school; but he was separated from the girls, because he grew so rapidly that there was a retarded sexual development. So he was embarrassed at that, and he was also embarrassed by that in terms of showering with the boys. So he was pretty isolated.

But the one thing he had in his life was this idea that his grandparents had given him that Mom was going to come back someday and that she was really a wonderful person and she really hadn't abandoned him. So when he was about 16, he got a letter from Mom saying, "I'm coming back, and I'd like to see you all at Christmas." So he saved his money, and he bought her a little ceramic frog; that was going to be the Christmas present. And Mom arrived on the scene, and introduced this kid to every form of sexual perversion that at least I've ever read about and then left with a note to the grandmother saying, "I don't want to see you or any other of the kids ever again," and she left the broken ceramic frog on the top. It doesn't sound like much, but that pretty well broke him in half.

So what he did is, he was suicidal and he knew he needed help and he couldn't get help. So he took a check from his . . . I think it was his aunt's, he took one

from her checkbook, went down to the local grocery store and asked to cash it. And when they started processing it, he said, "This is a check I stole from my grandmother."

So they arrested him; it was his first offense, so they threw him in the California Youth Authority, even though nobody had lost anything. So he stayed there for about three years, did very well. Everybody liked him in the Youth Authority, and he wanted to stay there because it was safe and because he got care; and they said, "No, no, no, your time is up. You have to go out."

So he did exactly the same thing again, I think on the day he got out of the Youth Authority—same aunt, same checkbook, same grocery store, only now we're talking about felonies. And he spent most of his young adulthood in prison, mostly at Vacaville, where he was so bright, they wanted . . . the doctors wanted to help him with all these medical things. And he had pretty close to a photographic memory.

So we called our witnesses, we spelled out that story to the Governor. Oh, and the crime in question was, he went through the same process in getting out of prison; he didn't want to get out. He gets out. He figures he will take a gay person with him, and that will allow him to get killed by the State of California.

So he went down to the bar at the St. Francis Hotel. He meets a guy who was wearing a white overcoat and everything's white, and he invites him to his hotel room, which was in the, I want to say Commodore Hotel, which was just north of the St. Francis.

They go up to the room, and as they get in, the way he tells that story, he says, "Your time has come," and he pulls out a little nine-millimeter gun and shoots him, takes his credit cards. Well, he waits, first of all, because he thinks they're going to come pick him up. Nobody picks him up, so he calls Hertz U-Drive; and at that time Hertz U-Drive would actually drive the car to you, and then you would take the attendant back to Hertz U-Drive.

(00:20:14)

So he has all this guy's credit cards; his shirt was covered with blood. He figures he'll be picked up going through the lobby. Who comes out from Hertz—I remember this in the transcript—but Ms. Candy Barr, and Ms. Candy Barr from Hertz delivered the car to him.

He took the car to Reno, used the guy's credit cards again, played the wheels, then took the car down to Las Vegas. When he got to Las Vegas he went in one of

those recording booths, which we used to have where you could go in and make a little three-minute record for $2, and it was to Inspector Guthrie of the San Francisco Police Department, who was a fictional character in a series, a detective series on TV; but he actually existed. And he said, "You might want to pick me up, because I have just killed X in the Commodore Hotel for no good reason, and I waive my right to trial."

Patricia Sepulveda: So it sounds like he was committing most of his crimes, if not all of them, with the purpose of getting back into what was his safe environment, prison or CYA, whichever, and then this crime in order to be executed by the State.

Marcel Poché: Yeah. I don't think there was any doubt about that; in fact, the district attorney didn't even argue very vociferously at the hearing. And this was after the time of Caryl Chessman, and it was a time when I did not . . . I had met Governor Brown, because essentially I taught one of his children. But I didn't have any relationship with him and didn't try and pull any strings. But he had been through the Chessman thing; he was not going to be pardoning anybody. And I don't blame him; I mean, I don't criticize him for that decision. I think those are god-awful decisions for governors to make.

Patricia Sepulveda: So you lost that hearing, and then I understand you actually attended the execution?

Marcel Poché: He asked both the priest and I to come to the execution, and we both said, "Well, thanks very much; but we'd like to remember you as you are." And he said, "You know, this is as close as I'm going to get to a deathbed, and you're the only two people in the world that give a damn about me besides my aunt." So we did, and John Vasconcellos and I went up the night before in a cell located in a room next to the chamber and spent some awful time there. It's very rare when you know . . . It's not rare that you know you're going to die; but it's almost sui generis when you know that you're going to die, where you're going to die, how you're going to die and precisely when you're going to die. So it's sad and it's unreal, you know.

And then John and I went up the next morning and watched him, and I don't have to tell you in this interview it was tough. I was standing right in front of the glass and they came in, and the glass was in an octagonal shape; so I was kind of in the middle of the octagon. They brought him in; they strapped him into the chair. He wasn't fighting or anything. Two of the guards patted him in a friendly way, so he got along

with all the guards and that sort of stuff. And then we had a great scientific breakthrough at that particular execution. It was the first time apparently anywhere that the person being executed would actually see the cyanide clouds. And so these little guys started coming out from under the seat, and he looked at them and he looked at me, and his hands were tied down, and he says, "Going up, Mr. Poché."

So that caused a lot of change in my life. I can't put it together for you logically.

Patricia Sepulveda: I was going to ask you. It was obviously a very moving experience. It's one that I doubt very few judges ever have; perhaps they should if they're going to sit on assignments where they deal with death-penalty cases. But I was going to ask you what impact that had, if it did, on handling criminal cases as a judge or a justice. Do you think that influenced you in any way, or was it your personal life more that it impacted?

(00:24:54)

Marcel Poché: It immediately impacted my personal life. It sort of forced me to be introspective—I don't think I had been until then—and to think about what we're supposed to do here, what's important.

Patricia Sepulveda: Uh-huh.

Marcel Poché: And I frankly got . . . I love practicing law, but I just all of a sudden didn't like practicing law. It was creating corporations and getting permits to issue shares and writing you an estate plan. It kind of fell off my—

Patricia Sepulveda: It seemed a little less important in the scheme of things. So this was before you made your run for the Assembly.

Marcel Poché: Yes, this was about probably six years before.

Patricia Sepulveda: So it may have had some impact on your interest in politics and—

Marcel Poché: Absolutely in terms of . . . yes, in terms of, you know, what the President would call a decision.

Patricia Sepulveda: So for Edwards, what did you do? You said you kind of ran things for him?

Marcel Poché: Believe it or not, at that time congressmen did not have local offices, and they stayed in Washington most of the time. We didn't have superjets that could scoot them back and forth in a minute's time. But the way you get a congressman elected is with a local office, and it goes something like this. Here's an actual story.

I was in a hobby of flying pigeons with a lot of guys. They were for the most part Europeans, they were for the most part very conservative people in terms of their politics, and they were really good pigeon flyers. And one of them called me and he said, "My wife is dying; she is going to die anytime. And my son had just enlisted in the Navy, and he had orders to get on a ship in San Francisco and sail to, I guess it was Korea. And is there anything you can do about that?" And I said, "Yes. I want you to call the congressman directly." And he listed his phone number.

So he called Congressman Edwards directly on the phone in the middle of the night. The congressman says, "I'll call you back."

He calls the Secretary of the Navy, tells him the story. The young man doesn't have to take this boat. He gets to stay with his mother and help her die, and then he takes the next boat to fulfill his military obligation, which is fine when you do that. It's not political influence or doing it just for your party; it's that that person is going to walk precincts for you for the rest of his life, and he's going to say, "This congressman really cares; he's not just there for whatever it is, the unions or whatever . . ."

Patricia Sepulveda: "He really was *my* representative in Washington."

Marcel Poché: ". . . and I talked to him, and he did this wonderful thing for me." And so now every congressman has at least one local office. They're well funded, and they're not there—except maybe in a couple of cases—they're not there to do anything wrong; they're there to just get you through the bureaucracy.

Patricia Sepulveda: Uh-huh.

Marcel Poché: For example, now that these kids aren't getting well treated by the Walter Reed, the congressional offices are now making sure that in a lot of places, especially Podunk, that there's somebody there for the guy that now has one leg or no face to help the guy.

Patricia Sepulveda: So you were basically the local representative or—

Marcel Poché: I set that up. I set up the staff. I tried to make him a lot more electable and did that for about six years.

Patricia Sepulveda: Uh-huh. Then was it from there directly to work for Jerry Brown, or was there a gap in there that I'm missing?

Marcel Poché: I guess it was there directly, because I was teaching law and I was working for Don Edwards. And we were having a party for Jerry at my house—not with him, but for him on election night—and that was the night my father died. So I was sort of cut out of the celebration and cut out of a lot of other things. And I got a call on election night from him about midnight, and if you've ever been around Jerry Brown, he's not into protocols. When you have a phone conversation with him, he's just continuing the last phone conversation; it may have been two years ago, but that's the way he operates.

So he would pick up the phone and say not, "How are you, Marc, and how are your wife and kids and how's Fido?" He'd just pick up the phone and start talking directly about the contract you were talking about three years ago. And he'd say, "Well, when are you coming up?" And I said, "Well, Governor, I'm really pleased you gave me this private invitation, and we're going to be up there." "Oh, no, that's not what I'm talking about." He said, "I want you to come up and be the Director of Finance for the State of California." And I said, "I can't do that." And he said, "Well, why?" I said, "Because I've only taken the basic course in accounting, and I really don't have a clear . . . you know, the difference between debits and credits." He said, "Well, that's okay. Come up anyway, and we'll introduce you to all the Reagan people. Come up before the swearing in."

(00:30:17)

So I did. I went up to Sacramento. Actually, I wound up in the company of one Rose Bird; but that would get us into another interview. And met Ed Meese and all the people that ran Reagan's office, and they were all very helpful and nice.

And then I went home and went back to San Jose, and he called me about a day later and he said, "Well, are you going to take it?" I said, "Well, no, I'm not going to take it. I may have talent for it, but I have not the knowledge to do it." You know, it's one of the biggest positions in California government, the Finance Department. It's sort of like the Congressional Budget Office. They know everything, and you're not going to get any money, no matter where you are in the California process, unless Finance says okay. And so they have very, very talented people: CPAs, actuaries, that kind of stuff. And at least my Governor dealt with them probably half of every day he was in office.

So instead he said, "I'll tell you what. I want you to be my Legislative Secretary." I knew what a Legislature was, and I knew what he was, and basically being Legislative Secretary for this Governor was just the job

of introducing him as a human being to these 120 other human beings, most of which hated each other because they'd run for governor and they saw the only reason he ran is his dad was governor, and he's a snively little kid.

Patricia Sepulveda: You knew Jerry because you taught him?

Marcel Poché: Yes.

Patricia Sepulveda: You touched on that back in the—

Marcel Poché: When I was a senior in college . . . I would emphasize that I came from a poor family, and the Jesuits had given me a scholarship all the way through; and they came to me and said, "We've got a plan." We want you and another friend of mine to live in a residence hall with the incoming freshmen and essentially make sure they don't burn the place down.

So we had this very interesting experience where I had about 100 young men, some of whom I got to know very well and they're lifelong friends now; and there was this sort of unusual individual, Jerry Brown, who would walk down to our room usually about 10:00 at night and want to discuss the difference between Kant and some Greek philosopher. And fortunately we were seniors and we could say, "Well, that's very interesting; now go to bed."

So that's how I met him. And I was coincidentally with him at very important times in his life. So when he left the Jesuits—I had just gotten out of the Marine Corps—he phoned me and said, "I've left the Jesuits." And I said, "That's fine." And he said, "Can you put me up, because I'm coming by Berkeley to talk to the registrar?" I said, "Sure, we'll eat at about 5:00 in our little rabbit hutch."

He shows up about 6:00 and says, "I just met with the registrar herself, and she was very nice to me." He says, "I was three hours late, and she didn't even mention it. She was really nice, and I'm getting the courses I wanted." And I said, "You know, did it occur to you that your dad is the Governor, is the President of the Board of Trustees of the State, you know, the Regents?"

No, it hadn't passed his mind. So I was with him when he flunked the California bar. He was here working for, I think, Matt Tobriner. I was with him when he won his first political office, which was Secretary of State.

So what I would say is we have a good, close relationship. I do not purport to be one of his intimates,

but we have a good relationship and we certainly did up there.

Patricia Sepulveda: And you became his Legal Affairs Secretary. Did you serve in that same position for the whole time you were up there or—

Marcel Poché: I was not Legal Affairs; that was Tony Kline.

Patricia Sepulveda: Okay.

Marcel Poché: I was Legislative Secretary.

Patricia Sepulveda: I'm sorry.

Marcel Poché: And then they found out there was this box on Ronald Reagan's executive organization chart called director of program and policy. So he said, "Marc, I want you to be director of program and policy." So I had my name in two boxes. I can tell you that I don't know what a director of program and policy does, but I can assure you I did nothing for—

Patricia Sepulveda: So you did both of those positions.

Marcel Poché: Both, right.

Patricia Sepulveda: And that was for how many years, then?

Marcel Poché: It was for two years, because I didn't bring my family up; it was tough on the family. I really did not want to move to Sacramento, even though he really wanted me to and it would have been a fascinating eight years to end up being his chief of staff.

(00:35:06)

Patricia Sepulveda: So somewhere in there, we got married, we had children?

Marcel Poché: Well, I got married right after Santa Clara.

Patricia Sepulveda: Okay.

Marcel Poché: I have three children. And I must say, I thought about taking the eight-year gig; but I just didn't think it made a lot of sense.

Patricia Sepulveda: Must have been a fascinating experience, though.

Marcel Poché: I think, even if you don't like him, to be around Jerry Brown for any considerable period of time is quite an experience; he's very brave. He's not very organized, but he's very brave. He's a good man; he has a good sense of humor. It was fun to kind of run the State of

California, and it was kind of heady stuff. We really thought we were hot stuff until you'd walk out of the building, and when you'd walk out of the building nobody would know who the Speaker was, nobody would know what the big bill was in the Senate Finance Committee that had to pass or the world would split in half. So you could exercise your ego for eight hours a day, then walk outside and be completely demoralized that you really weren't very important. *[laughing]* It was good training.

Patricia Sepulveda: Back to the real world.

Marcel Poché: It was good training.

Patricia Sepulveda: And would you say you were one of the small circle that had ready access to the Governor in that position?

Marcel Poché: Yes.

Patricia Sepulveda: And you mentioned Tony Kline, one of our justices here, was the Legal Affairs Secretary. Is that where you got to know Tony?

Marcel Poché: Right. His office was essentially where that desk is, and my office was essentially here. We both had doors, but we spent our time just listening to the other guys talk. We got to be very close. And yes, I would say there were probably five, maybe six, people that had access anytime they wanted it or anytime he wanted.

Patricia Sepulveda: The Governor. And you said you left after two years. Was that when you went to the bench the first time or—

Marcel Poché: No, I went back to teach at Santa Clara . . .

Patricia Sepulveda: Oh.

Marcel Poché: . . . and I taught for a year, and then I took my little cocker spaniel out for a walk around the park, and a San Jose police car pulled up—now, this was before cell phones—pulled up alongside of me and said, "Are you Marc Poché?" And I said, "Yes." He said, "Well, the Governor wants to talk to you."

So they had radio phones at the time. And he wanted some advice on some issue, I don't remember what it was; so we talked for probably 20 minutes, and I told him what I thought. And then he said, "Oh. I've just appointed you to the superior court," and then he hangs up the phone.

So I had to get out of . . . I had signed a contract to teach; I think I had probably started teaching that year.

Patricia Sepulveda: Had you applied for the superior court?

Marcel Poché: No, no, no. And so it was—

Patricia Sepulveda: Oh, good. This was out of the blue again.

Marcel Poché: It was an interesting few months, and then the same thing happened about two years later. It was a different dog that I was walking; but it was actually the same scenario, only what he wanted advice on was a heavy, heavy issue, and it was a long phone call. But exactly the same thing happened: at the end of the phone call he said, "Well, Marc, I just nominated you for the Court of Appeal."

Patricia Sepulveda: Interesting.

Marcel Poché: So it's been a crazy, crazy time.

Patricia Sepulveda: Yeah. So that was Santa Clara Superior Court, and you were there a couple of years, I think, two years?

Marcel Poché: I was there a couple of years, then I served . . . what did I do? I was mostly in custody felony criminal cases. My courtroom was the courtroom that was built for the Angela Davis trial. So there were trapdoors, and the chambers were about as big as a good-sized desk with one-inch bulletproof glass.

Patricia Sepulveda: Security everyplace.

Marcel Poché: And she was totally acquitted, not by me; I wasn't there at that time.

Patricia Sepulveda: Oh, okay.

Marcel Poché: That was an interesting time, too: good colleagues, interesting work, and a great bench. It was just . . . you know, the bench then in Santa Clara County must have been about 30 superior court judges; now it's 99.

Patricia Sepulveda: Is it that large? I didn't realize that.

Marcel B. Poché: Oh. I couldn't pick half my colleagues out of a lineup.

Patricia Sepulveda: Hmm. So you thoroughly enjoyed the trial court the first time around?

Marcel Poché: I did.

Patricia Sepulveda: Now, again, did you ask to be elevated at that point, or was this another Jerry Brown out-of-the-blue call to you?

Marcel Poché: I didn't ask to be elevated at that time, but I'm quite sure that I talked either to him or to Tony Kline about, you know, sometime I would like to . . .

Patricia Sepulveda: Someday, you'd like to do this.

Marcel Poché: . . . do that, go to the Court of Appeal.

Patricia Sepulveda: And that was what year, approximately?

Marcel Poché: I was appointed to the superior court on September 23rd of 1977. I think I was nominated for the Court of Appeal in late '79; didn't get a hearing until something like March of '80. And I was—

(00:40:15)

Patricia Sepulveda: All right.

David Knight: *[Tape change]* And we're ready to go.

Patricia Sepulveda: Marc, when we overlapped for about a year here on the Court of Appeal, you shared a lot of stories about your time up in Sacramento. Are there any of those that you can actually share on film?

David Knight: I'm sorry, again.

Patricia Sepulveda: Marc, when we overlapped for about a year here on the Court of Appeal, you had shared several stories about your time in Sacramento. Are there any of those stories that are entertaining—that are appropriate, at least, for being shared?

Marcel Poché: Well, I'll try and think of a few. Number one, Jerry Brown had this reputation of being sour and having no sense of humor. And at the same time we're reading this in the papers, three of us were in there at night with him; and I don't remember what it was we were discussing, but he was leading the conversation, and it got so funny that all four of us ended up on the floor holding our stomachs because we were laughing so hard. But you couldn't get anybody at that time to believe that story; it happened to be true.

I can tell you a story about Mike Hanlon, who was a PJ here and a year PJ in mine; and he was also a Bellarmine boy behind me, and he also apparently joined the Jesuit order with Jerry and also left the Jesuit order. He was sitting on the superior court . . . I beg your pardon, he was not sitting on the superior court;

he was sitting on the muni court and wanted to be on the superior court. That morning I was dealing alone with the Governor at his long desk, and we were . . . there were all kinds of legislation we had to go through: are you going to sign it or are you going to veto it. And this was time to get it to yourself and the Governor; you really had a fight, and you had to straight-arm people, because this stuff was going to become law without your signature if you didn't. So I had done that in-fighting, and all of a sudden Tony Kline comes through the door, as we all know he can, and he's got a bunch of commissions. And his message is, "Governor, essentially you've got to sign one of these. They're going to kill you in the press if you don't give the Superior Court of San Francisco a superior court judge; you're going to get all kinds of bad press."

And Jerry grabs these commissions and he doesn't talk with Tony; he scans through them, and he gives me the commission and he said, "Is that the guy I was in the Jesuits with?" And I said, "Yes, I think it is, and he's a good guy and a good judge."

So he takes it, he puts it down on his table, and he has a big black felt pen, and he signs it and dates it and at the top he puts—I don't know if you ever saw Mike's thing—"A.M.D.G.", a period after each. That's the Jesuit motto: Ad majorem Dei gloriam; All things for the greater glory of God. And I think Mike sort of puts that one over on the side.

Patricia Sepulveda: I was going to say, is that framed somewhere, I'm sure, for Mike?

Marcel Poché: Well, there were other things, like he did not want to appoint judges during the first part of his term. He wanted to see if . . . don't ask me to explain that; but he wanted to see what could happen, and it started to happen. And he decided, well, okay he would start appointing judges, and he started phoning municipal court judges at about a quarter to 5 on Friday. And in some of those cases, the phone would be answered after many rings by a clerk saying, "Well, no, the judge isn't here; can I take your call?" And he'd say, "Yes, just tell him the Governor of California called, and thank you."

Patricia Sepulveda: And I bet that person didn't get the appointment.

Marcel Poché: Well, they had to work for it; let's put it that way.

Patricia Sepulveda: Interesting. So you said you went down to work Santa Clara Superior Court and then got the elevation to the

First District about 1979, 1980. Now, at that point, the Sixth District didn't exist?

Marcel Poché: Correct.

Patricia Sepulveda: So that was why you came here rather than there.

Marcel Poché: Yeah. We had jurisdiction . . . The First District, the way I recall when I got here, had jurisdiction from the Oregon border down through Santa Cruz, San Benito, and Monterey County—was the Number One district.

Patricia Sepulveda: Huge, huge. And how many divisions—four at that point?

(00:45:00)

Marcel Poché: Yes, there were four divisions, and the seat . . . And the Legislature in the final year Ronald Reagan was Governor of California created an additional seat on each of the four divisions; but then they didn't have anyplace to put the people. So that went on for a year, and it was one of those seats that I was appointed to.

Patricia Sepulveda: So it was a newly created seat, and that brought each division up to four justices?

Marcel Poché: Four.

Patricia Sepulveda: And at that point did you have the same staffing that we had when we were here together?

Marcel Poché: When I got here in 1980, just to give you an idea, as you discovered in your year with me, I like to write and rewrite. And I had a very pleasant secretary, and I'd really never been in her office, because we had just started on this thing. And so I'd be writing that decision and hand it to her, and she'd type it out; then I'd decide that this paragraph really should go here.

After about three or four of those, she came to me and she said, "Judge, is that the way you operate all the time?" I said, "It really is. I think I'm my own best editor, and I just really have to do a lot of rewrites." She said, "Well, I'm not sure if I can do this." And I said, "Well, why not? Don't you have an IBM Selectric?" And, no, we had these old standup machines, the old black machines; what did they call them? And that's what each secretary had in those days.

So there were no concurrent opinions, there were no dissenting opinions. *[laughing]* And the guide was three months per judge, and we were so far behind that a few of the progressives like John Racanelli and Jim Scott—

only Racanellli was a PJ—decided, "Look, we've got to do something about this."

So we had a big meeting out at someplace out by the wharf, and Scott makes this very impassioned plea, saying, "We're not doing justice. If you have a civil judgment, you're lucky if you get a decision in three years from the First District Court of Appeal," and criminal was worse. And we took a vote and the vote was pretty close, and then some of the more senior judges who were PJs just announced to the world, "Well, that's not going to happen in my division, because we each really work on our three cases, and it's going to be over my dead body; but there's more than that."

So to get this district current took a lot of work, and quite frankly for those that did it—people like Winslow Christian, Jim Scott, John Racanelli, and probably a lot I'm forgetting—they really had to take on the judicial establishment, and that's when it started to change. There was no law library; there wasn't much of a library. Of course there were no computers.

Patricia Sepulveda: Did you have research attorneys, the same—

Marcel Poché: We had one research attorney and that person could stay with you two years, because at the end of one year you could do something like bump them 5 percent.

Patricia Sepulveda: But they weren't permanent employees.

Marcel Poché: No. And then the evolution was a few years later we convinced the Legislature to give us—we, the judiciary, convinced the Legislature to give us—an additional one. It seems to me about a year after that, we convinced them to make the first research attorney a career position, so you could hire somebody really good and keep them; and then years after that the same thing happened with the second. And I can't remember about writ attorneys; I really don't know. It's lost in the memory of when they fit into the position.

Patricia Sepulveda: Did they have the big, central staff of attorneys for backup?

Marcel Poché: Yes. They had a central staff, and it produced a lot of work. And I think it was always well run in terms of the principal attorneys that I can remember very much, and they were very talented attorneys; but it had a way of sort of running itself, and then you'd be handed an opinion that you were supposed to sign and get a couple of other signatures on. So it didn't always work out that way; but they were good and they helped us.

And then the idea of central staff fell out of favor, and it seems to me about the time I was meeting you and then leaving the court, the central staff was very small.

Patricia Sepulveda: It is; it was, I think, just a few.

Marcel B. Poché: Like we had an expert in workers' comp or something and—

Patricia Sepulveda: PUC and—

Marcel Poché: Somebody else doing Wendes.

Patricia Sepulveda: Wendes, which is no longer being done. So there were a lot of changes in terms of the staffing, technology obviously, over those 20 years. In the eight years I've been here, I've see quite a few changes in terms of my colleagues in my division. You must have seen quite a change during your 20 years here as well.

(00:50:11)
Marcel B. Poché: When I arrived I think the average median age of a member of the Court of Appeal was pretty close to 70, and at 70 you had to get out then under the law. They were for the most part, at least in the early part, very talented trial judges that really had reputations as such. They had one research attorney; they had a glass door like that, so you couldn't see in. Their secretaries had glassed-in doors, and they were typing about three opinions a month. And then things started to change, and I think that change was initiated by Jerry Brown, because he was appointing people who were much younger, and the people that followed him—George Deukmejian, Pete Wilson, and so forth—I think kept that up. You don't see a lot of people being appointed at 60 or 65 to the Court of Appeal. It's a mix, and I think it's a much—

Patricia K. Sepulveda: When you started, where there any women on the court?

Marcel B. Poché: There was a . . . what's that? In Santa Clara County we had one woman.

Patricia K. Sepulveda: How about up here?

Marcel B. Poché: Up here, there were no women when I got here; but Betty Barry-Deal was appointed by Jerry Brown while I was here, and then at the end of my tenure you people were taking over.

Patricia K. Sepulveda: Were taking over the place; trying to, anyway.

Marcel B. Poché: On the superior court when I first went, there was one woman, a very, very talented person; and she didn't get a lot of help, let's put it that way. And now you look, the benches are now getting to be like the law schools: there are more women than there are men.

Patricia K. Sepulveda: I think Contra Costa is very close to being that way. Certainly this bench has had a number of women appointed since I've started here, even.

What about minorities? Has there been a change, or was there a change over your 20 years on the Court of Appeal?

Marcel B. Poché: Clint White was here, and John Miller; both of them. Clint had been a superior court judge, John had been a very active legislator—both bright people. That was it for a long time. I don't remember . . . Cruz Reynoso was on the court, but he wasn't on *this* court.

Patricia K. Sepulveda: Right. Not a huge change, even until today.

Marcel B. Poché: No. It was a senior men's club.

Patricia K. Sepulveda: I remember coming over for Mike Phelan's confirmation hearing and having exactly that thought.

Marcel B. Poché: I mean, that doesn't make it bad. I mean, there's many law firms that I've been in and out of like that, and they take everything very seriously and they wear hats and vests.

Patricia K. Sepulveda: Uh-huh.

Marcel Poché: That's about the way I was.

Patricia Sepulveda: Division Four when I started here was very collegial, and we went out to lunch almost . . . some subgroup of our division almost every day. Was it the same over the 20 years? Did that change with different makeups in the division or—

Marcel B. Poché: It changed dramatically over the years. I don't want to get into names, but a lot of people when I first got here were more absent than they were present. That doesn't mean that they weren't working hard; I assume they were on their cases at home. And I'm not talking about my division. You just didn't see them very much; and if you did and you wanted to talk with them about a case, they were very willing to do that, but they had to sort of go refresh their memory on the case. They couldn't just walk in like you and I did and say, "Hey, Pat, that paragraph, I really have some trouble with it," and you'd

say, "Oh, no, I really want that paragraph in," and we both knew what we were thinking about.

Patricia K. Sepulveda: Right.

Marcel B. Poché: That was pretty rare at the beginning. I think a lot of that had to do with age and technology, but people were very friendly. There was no trouble going to lunch, and the court had a few dinners.

Patricia Sepulveda: Uh-huh.

Marcel Poché: It was basically a friendly place; it was just a very quiet place.

Patricia K. Sepulveda: Quiet, yeah. It's still pretty quiet, usually.

Marcel B. Poché: Yeah. And I had gone from . . . I had just been named the—what do they call it?—the supervising judge of the criminal court. And I had a few weeks of it, which you know a lot better than I do—you get 200 lawyers running through your courtroom in one day, and you have to make 200 decisions on people's lives and stuff like that and take phone calls. And then you're in this monastery where it was so—

(00:55:20)

Patricia K. Sepulveda: Very cloistered.

Marcel Poché: Yes, indeed.

Patricia Sepulveda: Quiet, quiet atmosphere.

David Knight: *[Tape change]* Ready to go.

Patricia Sepulveda: Marc, one of the profiles that they gave me regarding you described you—and this is not an exact quote—but something of a very liberal justice who was not afraid to dissent during his time on the Court of Appeal. Do you think that's an accurate description?

Marcel B. Poché: Yes, except that I think the word "liberal," when applied to this court, including all divisions, when I first landed here gives a meaning that would not normally be given to a liberal. This is a very conservative, quiet place. No dissents, no concurrences, awful lot of affirmances, and no writs.

And I came out of the law-teaching experience too, and I think I was naive in a lot of ways, and that caused me to write a lot of dissents. And one of the reasons for the dissents is that it was just so difficult to get a conference with the people involved to talk about the case. It's not that they were denying you a conference; it was just

they would be there, but . . . In order to set up a real conference about a case you'd really have to book it ahead of time. They'd have to go reread the case; they usually had then both signed an opinion. So they'd get movement. Well, I understand that. Once you put your name on something, you've got a little . . . Yes, so I wrote a lot of dissents.

Patricia K. Sepulveda: I actually have the numbers here, because they compiled at least the published cases. They're really impressive, actually, in terms of the numbers: there was 276 majority opinions published, 50 separate concurring, and 62 dissents.

Marcel Poché: Well, some of those—

Patricia Sepulveda: I don't know if that's a record, but—

Marcel B. Poché: No, and some of those got picked up.

Patricia Sepulveda: Yeah.

Marcel Poché: A lot of those dissents were written . . . Well, mostly those dissents were written on cases as I remember them where the law was settled. There was no big fight about what the law was; and the facts were like facts, they were there. I would get from at least what I thought from time to time an opinion that was just refusing to acknowledge that the Supreme Court of California had changed that law and changed it dramatically so that the Supreme Court case wasn't the same.

Well, if you're sitting on the Supreme Court and you really meant it last week when you said the sky is green and these opinions are all coming out saying the sky is red, what are you supposed to do? Take the case and say, "We really meant red"? They don't have that power, as I understand it. You're wasting time.

So I wrote the dissents, really for the purpose of getting the cases de-published, that I would have reached a different result because of that. I don't think very much of that was law that I was myself making up to get a more liberal answer, you know.

Patricia Sepulveda: Right.

Marcel Poché: I can't be my own critic, or at least that's the way I remember it. I was . . . I remember being busy on this court for most of that time. A lot of those kind of dissents and a lot of dissents where I think there were two ways of looking at a problem—

Patricia Sepulveda: Uh-huh.

Marcel Poché: And you would get an honest, well-done, proposed majority opinion from X. It's a law you didn't know anything about. You'd study it, you'd do your own research, and you'd come up with something absolutely different. You would then . . . Both of those opinions would be given to the third party, and I made a point of never mow-mowing a third party. I figured if my third judge wanted to ask me about my opinions, I'm available; but I'm not going to . . . I think I did. I don't think I ever—

Patricia K. Sepulveda: You did, and I actually very much liked that practice.

Marcel B. Poché: And then the third party would make a decision. In one particular instance, I remember that party went with X four times in a row, and four times in a row the Supreme Court viewed it the way I viewed it. One of them was a very interesting case, but that's not a criticism of X.

Patricia Sepulveda: Uh-huh.

Marcel Poché: The law was really in flux.

(00:01:02)

Patricia Sepulveda: It was just you could go either way.

Marcel Poché: And there were just two different ways of looking at it. And sometimes I would do that just because they ought to both be fleshed out. I think that helps the Supreme Court when you've got a case in a new area of law—let's say abortion or something like that. Nobody knows what the heck the answer is or how it can be looked at; you almost have an obligation, it seems to me, to raise the other side at least fairly. But what I've described to you I think is not meant as a criticism of the people that wrote those opinions. That is what I think Courts of Appeal ought to be doing: really thrashing out the facts.

Patricia K. Sepulveda: There was one of those cases I noticed in here that caught my attention involving the Boys Club of Sanford.

Marcel Poché: That's right.

Patricia Sepulveda: Where you wrote a dissent that was whether or not the Unruh Act applied to the Boys Club, and the majority apparently said no and you said yes, and it went up to the California Supreme Court. And what caught my eye in the case was that the Chief Justice, Rose Bird, wrote a separate, concurring opinion solely for the purpose of

complimenting the dissent that you had written in that case. And in fact, she said that it was worthwhile to reproduce parts of it, because she thought it should stand somewhere in the annals of legal history and that basically it ended up being the same reasoning that the majority in the Supreme Court used for much of the opinion.

Marcel B. Poché: Well, that was very kind of her to do that.

Patricia K. Sepulveda: Very unusual thing, I think. I don't recall ever seeing that happen before.

Marcel B. Poché: No, I mean, you might get a friendly cite; but I know that was extraordinary, and maybe even more extraordinary, given some examples of our history together over the years.

That was a case that was decided by a really good trial judge in Santa Cruz. Essentially what happened is, there was a Boys Club that was funded, as I remember, by a woman and she put in the restriction, "This is for boys only."

Patricia Sepulveda: Boys only.

Marcel Poché: The Unruh Act said you can't discriminate on the basis of sex in a business establishment. I don't think there was any doubt that it was sexual discrimination.

Patricia Sepulveda: Uh-huh.

Marcel Poché: But there was argument about whether or not it was a business establishment. And while we were trying to decide that case, the California Supreme Court came out with a case in which it found a very small homeowners association, which had I think an annual membership of something like $50, to be a business establishment. Well, these kids were paying $10 or $20 for their memberships just to swim in the pool.

Patricia Sepulveda: Hmm.

Marcel Poché: What I do remember about that is how strange it sounded to a lot of people that you were going to allow little girls as a matter of law to swim in the little boys', but it was just . . . you didn't have to be a bad person not to get that, but it really struck a lot of people—it was really very odd.

Patricia K. Sepulveda: Strange, bizarre.

Marcel B. Poché: It was just the women's rise, and women's rights wasn't really very powerful in 1981.

Patricia K. Sepulveda: Hmm. Were there any other of these opinions that stand out in your mind, ones that you're either particularly proud of or you found so interesting that they still stick with you?

Marcel B. Poché: Well, I'll tell you the opinion I'm most proud of is, there's no record of it. It was a case of a guy in Vacaville, I think he was a lifer, and he needed a liver transplant. And he petitioned the superior court fore a hearing on that, and the policy of the California prison system I think was to give kidney transplants. But he said, "I am the meanest son of a gun in the prison system and nobody likes me, and it's with good reason, and that's why I'm not getting a kidney. I've got donors, and I can't get a hearing in the Supreme Court and can't get checked out."

So I went in to Carl Anderson, who was the PJ and a longtime friend—though we often differed on the law—and I thought to myself, "Am I going to be able to convince Carl?" And as I walked in the door, he turned to me and he said, "Marc, did you see this case?" I said, "Yes, I did." He said, "We've got to do something about that".

(01:04:56)

So we issued a writ for a hearing, and the superior court in that county did not bring a hearing. So the guy wrote back to us and says, "Hey, I'm really dying," and we just invented what was called a writ to give a kidney transplant with no delay. And then there was a dissent. And then for years, Carl and I would get Christmas cards from him; he would describe himself as the meanest guy in the prison system, "thanking you for life."

Patricia K. Sepulveda: Thanking you for his kidney.

Marcel B. Poché: Yeah, I mean, cases that meant a lot to me like were the Boys and Girls Clubs.

Incidentally, the Boys and Girls Clubs of Santa Cruz, Inc., then changed after the Supreme Court said they were protected by the Unruh Civil Rights Act. And the woman who was funding them changed her mind, too, and it became a national movement. So there aren't any Girls Clubs anymore or Boys Clubs; it's the Boys and Girls Club of America, Inc. And every time I walk by one of those places, I figure I have done more for teenage sex than probably anybody else that sat on a court.

Patricia Sepulveda: *[Laughing]*

Marcel Poché: We had one arising out of the taxation of real property belonging to a county but outside of the county, and it was essentially that Hetch Hetchy water project, which supplies San Francisco with all its water. And San Francisco decided that because Proposition 13, I think it was, limited the amount of increase in your property tax to 1 percent per year applied to this thingamajig. And the law was obtuse, simply obtuse. There are three or four sections in the California Constitution that deal with how you appraise this property and stuff like that; but you'd really take a couple . . . or I'm warning you to take a couple of Excedrin before you go to those things and try and figure out whether or not 13 fits in. That was the question.

I wrote an alternative majority opinion and I said it does, and the Supreme Court bought it. And to this day, San Francisco has not given me a statue of myself on a horse, because I think I saved them about $40 million a year on that case.

Patricia Sepulveda: Wow.

Marcel Poché: But it was fascinating, because it was so obtuse; you know, that's what I found. I didn't really care about who won or lost, but it was just the question of does the stuff fit together.

Patricia K. Sepulveda: Did you enjoy, do you think, the writing more on the Court of Appeal, oral argument or—

Marcel B. Poché: The thing that I liked most about the Court of Appeal, and I think I understood this while I was here, was the quality of lawyering that we had in this division; and not only the staff that I was so fortunate to have over the years, but just the quality that was around here, and being able to get in legal discussions with those kind of hardworking, sometimes absolutely brilliant people.

Patricia Sepulveda: Uh-huh.

Marcel Poché: And that's where I spent most of my time, at least with my career; we'd just bounce things around. So I had Melissa Crowell, I had Morgan Prickett, I had Penny Buckley, I had Mary White; really very talented people and they spent a lot of time writing, too. But the thing that you asked me, what I enjoyed; I enjoyed—

Patricia Sepulveda: The give and take with them.

Marcel Poché: The give and take and really tearing a case apart with our proposed opinion or somebody else's. And that was

just very enjoyable, that's all I can say. And I enjoyed writing, too; but you know better than I that it gets to be a load.

Patricia K. Sepulveda: Uh-huh. Did you do a lot of your own writing?

Marcel B. Poché: Yes.

Patricia K. Sepulveda: Would you say, did you write all of your dissents or most of your dissents?

Marcel B. Poché: Yes. And I would write a substantial part of most of the opinions—I'm not saying, you know, from my dissent on down.

Patricia Sepulveda: Right.

Marcel Poché: But the guts were substantially mine—with a lot of help, I mean.

Patricia K. Sepulveda: I think that's fairly uncommon, from what I understand.

Marcel B. Poché: Uh-huh. Well, you have to come from that kind of a background. Superior court judges are not trained—nor do they have the time—to sit down and write long opinions. They're trained to make quick decisions about matters that nobody knows very much, and then go on to the next case and hope to hell it was right. We have the luxury of time, we have geniuses to help us—and we certainly have them—and it was fun, you know.

Patricia K. Sepulveda: And I have to say, oral argument when you were here was also fun, and I miss engaging in hypothetical questions with you, much to the chagrin of one of our colleagues who's still here and still kicks me under the table if I try to ask a hypothetical question. But did you enjoy oral argument or—

Marcel B. Poché: I enjoyed oral argument, and I found that oral argument really affected the way I voted on a number of cases and also affected the final product if it was mine in terms of . . . I don't want to say every oral argument; but the good oral arguments that didn't change your mind would still change your mind that point number one really was not very well dealt with and maybe you shouldn't go with what you have. And I think it's important that lawyers walk away from this process thinking that the judges really did understand their case. They might have really blown it; but they really understood their case, and they tried well. And I think oral argument can confirm that, although you do remember the case in another division that was, I think, a workers' comp case. Those kind of cases where you

don't ask questions, and each of the members of the court had a proposed majority opinion and it was supposed to be a very short oral argument. And the attorney for the applicant stood up and kept talking about Mrs. Brown's injuries; and finally the author of the opinion who was presiding that day said, "Excuse me, who is Mrs. Brown?" *[laughing]* The problem is, they'd mixed up the cases; so they had the numbers right, but the name and facts were wrong. And had somebody not asked what would usually be considered a dumb question, it could have been embarrassing.

Patricia K. Sepulveda: Another reason never to waive oral argument?

Marcel B. Poché: Yeah. And early on in my career I was able to use oral argument to convince a vote—from getting honest answers from the attorneys involved on a particular case. It was a criminal case, and I really don't remember what it was about, but—

Patricia K. Sepulveda: And when you have good attorneys, as you say, there's nothing more stimulating and nothing that will hone the issues more clearly, I think in your own mind, than to have that kind of discussion, that back-and-forth.

Marcel B. Poché: It's a rare treat.

Patricia K. Sepulveda: It is. So you like the Court of Appeal and you retired, much to my chagrin, at about the same time as Justice Hanlon did out of our division and went back to North Carolina with your wife, Joan. And you're having a great time, from the e-mails I received.

Marcel B. Poché: We were. We bought a house in this little town I've told you about, right on the water.

Patricia Sepulveda: Right.

Marcel Poché: When you walked into the house, all you saw was endless water—it was a sound—and a bunch of migratory birds. I bought a boat, I learned how to operate the boat, I learned how to fish; I actually took some golf lessons. We got some good friends. But my mind was going to mush.

Patricia K. Sepulveda: Were you doing any private judging at all or not?

Marcel B. Poché: No. Private judging hadn't really come to North Carolina, and it certainly hadn't come to the boonies when we were in the boonies. And the statutes relating to belonging to the bar essentially said, "Sure you can join our bar; take the bar exam." I guess I wasn't willing to

go through that. It would have been nice with a sort of a side practice.

Patricia Sepulveda: Right.

Marcel Poché: But that wasn't available. I did learn a lot about North Carolina courts and some of the North Carolina police; but I wasn't given the opportunity to be a judge until the opportunity came in the form of conversations with the gentleman that was handling Governor Davis's judicial appointments, and he would call me from time to time to seek an evaluation of somebody they were thinking of putting in a high position.

(01:15:09)
Patricia K. Sepulveda: Was that Burt Pines?

Marcel B. Poché: Yeah, and this went on all the time, which was fun. And one day he said, "Well, you sound kind of bored. Would you like to come back?" And I said, "Yes, I would. He said, "Well, what would you like to come back as?" I said, "I would like to come back as a superior court judge."

Patricia K. Sepulveda: This is the question that has been troubling so many people: why, rather than if you had the opportunity if it had been available to come to the Court of Appeal versus the trial court?

Marcel B. Poché: Well, it's not any prejudice against the Court of Appeal. It's just that I did that for 20 years, and I didn't do a lot of trial court judging, and I really enjoyed the trial court judging. And I also didn't want to commute to the First, and the Sixth didn't seem to be available. But it was very clear to me that that's what I wanted; I was surprised that I got it, I was surprised I got it as quickly. And Gray Davis was very nice to me and he probably shouldn't have been, because when we worked together we had a lot of fights working for Jerry Brown, and I thought I was right and he thought he was right; and I'm not sure if the situation had been reversed that I would've said, "Sure, Gray, what court do you want?" And that's essentially what I got.

Patricia K. Sepulveda: How were you greeted by your colleagues and attorneys down there? Was there any, you know, kind of the doubting whether you would be willing to take certain assignments or—

Marcel B. Poché: I think I was greeted well. A lot of my colleagues, at least at the beginning, were former students of mine.

Patricia Sepulveda: Oh.

Marcel Poché: That's when you really feel old, when your former students are retiring from places like that.

Patricia K. Sepulveda: I was going to ask you, I assume that nobody was left from when you were on the trial bench down there the first time around.

Marcel B. Poché: Len Edwards was.

Patricia K. Sepulveda: Was he still there?

Marcel B. Poché: Maybe three or four when I got there. So there was some historical link; there was the link of having taught them. I didn't—not that it would have mattered—but I didn't ask for any special treatment. The route on the superior court down there—as you go down to what used to be the municipal court, and you deal with cases that people think are not so good—I found it a great assignment.

Patricia K. Sepulveda: Were you doing jury trials and—

Marcel B. Poché: Jury trials and arraignments for misdemeanors. And that was I think one of the most important assignments you can get. I mean, you get a room full of people who were charged with drunk driving on down. They figure they're going to be shot or thrown in prison that day. They've never been in court before, they can't afford lawyers, and you are the person that's got to figure out what the justice is, not the DA and not the Supreme Court. And you're the one that really has to tell them about their rights. I know it sounds corny, but I thought that was a great assignment.

I went from there to doing all the felony law and motion and doing all the probation violations. I liked the former; I thought the other was pretty tough, because we'd get about 100 a week and we'd get the files a day before the hearing, and no matter how many hours I would stay up, I figured I just don't understand this fellow's case well enough to send him back to prison.

Patricia K. Sepulveda: These are the probation-violation folks.

Marcel B. Poché: But if you've still got some tape, I'll tell you about one case I had.

Patricia Sepulveda: Uh-huh.

Marcel Poché: I had a young man who had two serious felonies with gang enhancements, and the last sentencing judge had given him a 10-year state prison sentence, suspended. And he goes out and does it again.

So he appears before me. I don't remember if he had an attorney, and I said, "Well, the offer is 10 years." So this young man says, "I'd like a hearing." I said, "Very well; there will be a hearing next Wednesday." And my wife was in court that day, as was a 90-year-old woman friend of hers who had never been in court before. So we had this hearing, and the district attorney put on her case in about two minutes and it was slam-dunk.

(01:19:47)

The defendant takes the stand, and I wasn't even looking at him; and I hear this absolutely perfect English coming out of this fellow's mouth. It's like the *Oxford Dictionary* and there are no "ums" or "ands" and "well, you know" or "uhs"; it was just astonishing. So I started looking at him, and he was very handsome, and I couldn't figure out what his background was. I couldn't figure out if he was white or partially Hispanic, and all I had . . . and he had no tattoos. And he told a story that essentially was, his mother had left him when he was about two, he was raised by a drunken father who literally kicked him out of the house for good on the night that he graduated from high school two years ahead of any of his peers. And he walked 10 miles to get a place to sleep with his friends, who turned out to be pretty active gang members.

And I looked at him and I said, "Frankly, that's the most impressive testimony I've ever heard. You're a very bright guy; and I don't know how you got in this mess, but I'll give you the same thing the last judge gave you."

So I gave him a suspended 10-year sentence, put him on probation with a lot of conditions and gave him work and a school furlough.

I just got a letter in the mail that says, "Dear Judge Poché, thank you for giving me the break. I have just graduated from"—it was either UCLA or USC—

Patricia Sepulveda: Oh, really?

Marcel Poché: —"with Honors. I have retaken the LSAT examination, and I've scored above 99 percent and I've been admitted to . . ." You rattle off about 10 universities, including Boalt Hall and Stanford. "But I'm waiting for some of the East Coast decisions." So this kid could end up at Harvard or Yale.

Patricia K. Sepulveda: Amazing.

Marcel Poché: It was just an amazing story.

Patricia Sepulveda: In probably 9 out of 10 courts he would have stumbled into a probation-revocation hearing and would have gotten sent to the 10 years, I would guess.

Marcel B. Poché: And it would have been justified. And what bothers me is, I wouldn't have given him the break, I think, had I not been so impressed with the mentality.

Patricia K. Sepulveda: If he hadn't been so articulate? Yeah.

Marcel B. Poché: Yes. The guy was shockingly bright. But that's what's wrong with me. If somebody just told me that story with a lot of usual speech, I probably wouldn't have done it.

And that's what I think keeps trial judges up at night, as you well know. You have this enormous power. You've got to enforce law and order, but there are cases that maybe are worth a second chance.

Patricia K. Sepulveda: And sometimes you have five minutes, if you're lucky, to make those decisions.

Patricia Sepulveda: Yeah.

Marcel Poché: You also did a stint in family law, which I did three years, doing it on the trial court, as well; and that's another area where you are affecting people's lives in tremendous ways. Did you enjoy that?

Marcel B. Poché: "Enjoy" is too strong a verb.

Patricia Sepulveda: Uh-huh.

Marcel Poché: But I found it very challenging. In a sense I liked it, because the law was complex. I never did really understand the law in family law, because they change it every half hour—they add three more statutes. And you have to deal with a crowded courtroom every time you turn around. You have to deal with a lot of cases every time you go down there; you don't really have very many trials. You have to deal with people in there telling you . . . Well, you know more than I do; but out of all of that, if you can protect a few children, then I think you've earned your pay. But at least in Santa Clara County, I think we are under-judged in that area by at least six judges. Where we would put them, I don't know; but every morning over at the law and motion calendar in every department . . . And the most you could give them was five minutes a side. And if you did that, if everybody took their five minutes, you'd be there through the lunch hour.

Patricia K. Sepulveda: Really?

Marcel B. Poché: And law and motion, as you know, in family law is not demurrers and stuff like that; it's who gets the kids.

Patricia K. Sepulveda: We used to get 20 minutes a side.

Marcel B. Poché: Absolutely. Do I get to move to Chicago with my child or . . .

Patricia K. Sepulveda: What kind of support am I going to get and . . .

Marcel B. Poché: I found it an excellent assignment. I asked for it; I stayed another year. But I frankly thought I was just too old to keep on doing that, and at the end of every day at the family court I was wiped out.

(01:25:04)

Patricia K. Sepulveda: I got that.

Marcel B. Poché: I think all my other judges were, too, much younger judges in great shape; but it's just such an emotional drain, and you just never had a minute at all. I'd walk in at 8:00, I'd see most of my judges were already there and working. They'd go downstairs at 9:00 for their hearing. They'd come up at 12:00. You'd have to get something out before the calendar that started at 1:30. So it was even rare—not just for me, but for any of them—to get out of the building anywhere near lunchtime or even have lunch.

Patricia K. Sepulveda: As I recall, it was 50 to 60 hours a week every week, doing trials, writing decisions, and doing those calendars; but now you're doing civil or have been for a little bit.

Marcel B. Poché: Doing civil, supposedly civil jury, although in the last three months I think I've seen two juries; a lot of them are just through the courts. But as I said, dependency law . . . In fact, I told you walking up here that I had a case yesterday involving a woman that set up a trust, bought an insurance policy for $20 million and died in an automobile accident; now the question is, has the trust been well taken care of?

The week before that, I had an Unruh Civil Rights Acts case where the defendant admitted that he would not do business with this particular gentleman, because he doesn't do business with—his words, not mine—"terrorist Zionist Jews." So there's a lot of diversity, and that's fine. I hope I can keep doing it.

Patricia K. Sepulveda: I know you talked about your bird racing. Do you still . . . you don't do that still, I take it?

Marcel B. Poché: No, I live in a different place, and you have to have some space for pigeons and I don't.

Patricia K. Sepulveda: Still traveling and doing photography and—

Marcel B. Poché: I am back being a serious photographer, and we took a nice little cruise to the Greek Islands a few months ago; and in about 10 days we're going to take a quickie to China, because Joan's never been to China. So I get a little of that.

Patricia K. Sepulveda: Oh, good. Good. Finding enough time for that, or are you—

Marcel B. Poché: You just make it, you just block it out.

Patricia K. Sepulveda: Are you ever contemplating retiring again?

Marcel B. Poché: No, I haven't faced it. I mean, I think I would work . . . I will retire when my bailiff or my clerk comes up to me, as I've told them to do, and says, "Judge, it's—"

Patricia Sepulveda: "It's time."

Marcel Poché: "You've had a run, but you're starting to drool on yourself."

Patricia K. Sepulveda: I don't think that'll ever happen. *[laughing]*

Do you have anything that you'd like to cover that we haven't gone over?

Marcel B. Poché: No, I want to emphasize that I really liked this work on the Court of Appeal and really liked the people I dealt with. There was one gentleman that I really did a lot of dissenting with, and after he left this division I became very close to him, and that was the only person that I really had—and I think he had with me—some real personality problem. But I was glad to put that together and—

Patricia Sepulveda: Good.

Marcel Poché: And the talent really increased the longer I was here, and the hard work really increased the harder I was here, and the quality of the staff and the librarians couldn't be better, and it's an awe-inspiring job. I'm really fortunate to have been poor and known a governor and was able to do this kind of work.

Patricia K. Sepulveda: Well, we would have loved to have had you come back here; but I'm glad that you came back to anyplace in the judiciary.

Marcel Poché: Thank you. Thank you.

Patricia Sepulveda: Thank you again for taking the time—coming all the way up here and missing all those jury trials.

Marcel B. Poché: It's been a real pleasure; thank you.

Patricia K. Sepulveda: Thank you.

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