David Knight: Spell your last name, and what your title was while on the bench.

Miriam Vogel: Miriam Vogel. V as in Victor, o-g-e-l. I was an associate justice in Division One of the Second Appellate District.

David Knight: And your turn, Justice Grignon.

Margaret Grignon: Margaret Grignon. G-r-i-g-n-o-n. Associate Justice, Division Five of the Second Appellate District.

David Knight: And we're all set, ready to go whenever you'd like.

Margaret Grignon: Okay. Good morning.

Miriam Vogel: Good morning.

Margaret Grignon: I thought I would just get started by asking you some questions about your early life, because it doesn't show up in any of your biographical information, and I don't know it, so I thought it would be interesting. Apparently you were born in Brooklyn, New York, and came to California when you were about 10 years old?

Miriam Vogel: Seven months.

Margaret Grignon: Seven months. Okay.

Miriam Vogel: So, much less of a memory of it than I would have had I been there for 10 years. I . . . . My folks moved out here, stayed for a year or two. My mother got homesick, moved back to New York for about 20 minutes – long enough to remember what the winters were like – and we were back here the same year. So I'm as close to a native as I can be without having been born here.

Margaret Grignon: Tell me something about your mother and father.

Miriam Vogel: My father was an electrician. Both my parents got through about fifth or sixth grade; they were not formally educated. They never . . . . They didn't live long enough to see me become a judge. They knew I became a lawyer, but never knew just how far I was fortunate enough to go, which is always a sad point for me. But they were older when I was born, and I'm an only child, so they died in the early 1980s, when I was still practicing law. And they were very supportive parents. And my mother worked while I was growing up. And my dad was very well read, although, as I say, he wasn't *formally* educated; he was extremely well informed. And they lived different lives than I lead. They didn't travel. I think the world was so different in their day. And there's not a lot to say, there really isn't. 2:38

Margaret Grignon: So when you were in high school, you decided to go to college. Did you have any ideas then what you might want to be when you grew up?

Miriam Vogel: When I was in high school, I decided I wanted to be an English teacher. And my grades, except . . . my grades were good my senior year, but before that they weren't. So my plan was to go to Santa Monica City College for two years, get my grades up, transfer to UCLA. So I dutifully enrolled at City College, came home, and my parents looked at my schedule and said, "Where's the secretarial courses? Where is it that you're taking typing and shorthand?" And I said, "I'm not. I want to be a teacher and I don't want to do that kind of thing." And they then told me that if I was going to live at home – which in the late 1950s was about the only choice – that I was going to take typing and shorthand, whether I wanted to or not, so I would have something to fall back on.

So I dutifully changed my schedule, and I despised it, and I showed them. I got married, quit school, and then of course I *did* need something to fall back on. *[laughs]* I had to take a job as a secretary and worked until I had my first child, and then went back to work after my second child was born and worked – let's see, that was from about 1961 until 1971, when I went back to school. I took a college equivalency exam at that point. I had taken a couple of college courses on and off during the years when my children were young, and then in 1970 found out that I could get into law school if I took and passed an equivalency exam and scored higher on the LSAT than whatever it was that was then required. My memory doesn't go back to what those numbers were; I know they've changed. And I passed the test and got the necessary score. And I was working full time during the day and I went to law school at night, thinking that if I liked it I'd stick with it and if I didn't I wouldn't. And from the first night I just fell in love with it and kept going, and that was that.

Margaret Grignon: So you had four children?

Miriam Vogel: I had two of my own and two stepchildren from my former marriage. Yeah, and so I worked during the day, juggled the kids – they were all, let's see, they were about 10, 11, 12, they were all very close together at that point – and went to law school three nights a week, 12 months a year, for four years. So it was a drill. *[laughs]*

Margaret Grignon: What was the . . . . What made you think about law school? What got that idea in your mind?

Miriam Vogel: My former husband. He was a lawyer – is a lawyer. And he liked it. I really hadn't given it a great deal of thought, other than knowing that at some point I wanted to go back and finish my education. And one day in the *Los Angeles Times* 6:00

there was an article about Beverly College of Law when it received its state bar accreditation. Steve Weisman, who was then a superior court judge, and Marv Freeman, another superior court judge, along with Beverly Rubens, who had been a professor at Southwestern, started the school strictly as a night school. And in the article in the newspaper there was a paragraph explaining how the process worked for a limited number of students that they would take. "Special students" – that was the phrase, "special students." And I thought, "Wow, that sounds interesting" – sounds like a way to shortcut what I had assumed all along would take me years to accomplish, of finishing up my undergraduate degree and then going for something beyond that. And that's how it happened.

Margaret Grignon: And you had some famous colleagues that attended the law school with you.

Miriam Vogel: Yes, I did: Florence Cooper, who is a federal district court judge now, was first in our class. I was second. Laurie Richards, who practices law down in San Diego, was third. And the three of us were inseparable. Another member – *still* a member – of this court, Judy Ashmann – Judy Ashmann-Gerst – was a year ahead of us, notwithstanding that she's younger. And there's a couple of other judges now who I didn't know, but they're . . . The school is now part of Whittier College. It's Whittier College School of Law. The only day in our lives that we stepped foot on the campus in Whittier was for our graduation. When we went, the campus was in two office buildings over on Larchmont near Beverly Boulevard between Beverly and Melrose. And then after that, it moved over onto the old Chenault Art School on Melrose, and it moved from there someplace else, I don't know. I've really lost track with it. But it was a wonderful experience. It had a fabulous faculty at the time. And I think we got a decent education.

Margaret Grignon: And that was four years?

Miriam Vogel: Yes.

Margaret Grignon: And then following that, how did you get in touch with Bob Thompson?

Miriam Vogel: He got in touch with me. One of the professors – Marge Roman, who taught a class at Beverly – had clerked for Bob several years earlier and had worked with him on a project when he was President of the California Judges Association. And she seemed to think I had promise, and she mentioned me to him. And I had a call one day at my office. I got a message that Justice Thompson had called and if I was interested in clerking for him to call back. And of course I was, and I did, and he interviewed me and hired me on the spot. And it was the most wonderful opportunity in the world for me. 9:11

Margaret Grignon: And it started out to just be one year, but you ended up staying two years.

Miriam Vogel: Not quite two years. It was somewhere in between . . . about a year and a half, because the person who was going to follow me wasn't starting 'til later. If I remember correctly, that was you.

Margaret Grignon: *[laughs]*

Miriam Vogel: And he hired someone else in between: Art Alarcon's wife, ex-wife, Lynn, who filled that gap in between when I left – because I was going into practice – and when you could start. So I think it was about 17 months or a little more I was there. But I learned so much from him. It was a wonderful experience.

Margaret Grignon: Why don't you tell me a little bit more about that, and what you learned from him, and what kind of justice he was.

Miriam Vogel: He worked very hard. He took his role very seriously, and he cared passionately about the law. He wrote his own opinions. He read the records. He was definitely a hands-on judge. He actually typed his own opinions, and he had a wonderful secretary, who had been with him back in the years when he was in private practice and she had joined him at the court. And when I interviewed with him, the court was still in the old State Building, the one that's since been torn down. But then by the time I started my clerkship, the court was in its temporary offices over at 3580 Wilshire. And each chambers had one attorney office, because that's all the justices had then, was one elbow law clerk. I think a few of the justices may have had permanent staff then, but not very many. And there were the chambers for the justices and then one window office and one little tiny office at the entrance to the judge's chambers which was clearly designed for the secretary. But since Bob's secretary was with him forever and his law clerks came and went, Hattie had the window office and the law clerks had the little entry office. And since Hattie, his secretary, controlled the roost, her philosophy was, since the justice typed his opinions, the law clerks could type theirs, too. No handwritten opinions. Certainly no dictating – that would have been unheard of. So, fortunately for me, I could type *[laughs]*.

And actually it was really, I think, a blessing in disguise – I don't know that I recognized it as such at the time – because I really started to practice law thinking at a typewriter, and then later in practice and on the court it evolved into first word processing and then computers. And to this day I am wedded to a computer and couldn't really write efficiently without one.

Bob . . . . But going back to working for Bob, I did memos, I did drafts – which he completely redid. I . . . . It was . . . . My claim to fame was that in the 17 or 18 months I was 12:33

there, I think there were two unpublished criminal opinions that were slam-dunk affirmances where he actually used edited versions of what I had written as opposed to just starting it from scratch and re-doing them. And he dissented relatively often in those days. The composition of the division was such that he did not always agree with his colleagues, and so there were those. And in addition to doing the research memos for him, I cite-checked everything he did, which meant Shepardizing them. And of course, everything was in paper then. We had no word processing, let alone computers, and so everything was manual. The caseload was very, very different from what it is now – certainly what it was when you and I were on the court. To the best of my memory, he did about eight opinions a month that he authored. It might have even been fewer than that. There was a central staff that did criminal cases. The writs rotated among the divisions, I believe in three-month increments, and . . . so that each division would get all the writs for three months. And with that responsibility came the single writs attorney that handled writs, who at that time was Mike Palley, if I remember correctly. It could have been somebody else. It could have been somebody else who ultimately ended up on the court. There were a few people who worked there at that time who ended up being judges: Abby Soven was Otto Kause's clerk (Otto was in Division Five at that time, obviously, before he went on to the Supreme Court), and Abby became a superior court judge. Aurelio Munoz worked for the court at that time, I believe in Division Two, I'm not sure. Don Gates was there, again in Division Two. If I put my mind to it, I'd probably come up with a couple of other people.

Margaret Grignon: There was a woman whose first name was Mimi, but I can't remember her last name.

Miriam Vogel: Mimi Hoffman. She became a superior court judge. I think she might have started a little later. Was she there when you were there?

Margaret Grignon: That's my memory, that she was.

Miriam Vogel: She probably started about that time, because she was . . . she's retired now, too. It seems like such a long time ago. It was . . . . I started there in the fall of '75, so that *is* a long time ago.

Margaret Grignon: Yes, it is. Well, when you left the research attorney position, you went to Wyman Bautzer and then on to Horvitz & Greines and Maiden Rosenbloom.

Miriam Vogel: Yes.

Margaret Grignon: So do you want to maybe talk about how you decided what law firms to go to and what the changes involved? 15:34

Miriam Vogel: Well, Bob Thompson took it on himself to become my employment agency, and he was very disturbed by the fact that I was viewed as too old at the time by a lot of the firms. I really . . . . I was 35 years old, so you can certainly understand how they thought I was too old! But of course it was the fact that I had not gone to an ivy league law school. Even though I was second in my class, it was still not in the category of law schools typically considered by the larger firms. But he used all his connections and I went on a lot of interviews where I'm sure they were offered simply because no . . . some people just didn't want to say no to Bob.

But the two firms who actually offered me positions were Wyman Bautzer and Buchalter. And at that time I was divorced, and I had two children, and since Wyman offered me $26,000 a year instead of $25,000, that made the decision for me. And I was there about not quite a year. I was assigned to one big antitrust case, and I was in a group of young associates proving that yes, age does make a difference. And I really wasn't in the position to be working where I was billing 2,200 hours a year. I was on my own with two kids to care for, and at about that time Ellis Horvitz came knocking at my door. He and Bob were friends. And the firm then was Horvitz and Levy. It was just . . . . Actually, it was Horvitz, Greines & Levy, Greines being the Greines and Martin firm now. It's changed so many times, I can't keep track of it. But Ellis came offering a more reasonable schedule and a little more money, and it seemed like a good opportunity. And so fortunately Frank Rothman and Mariana Pfaelzer, who had been wonderfully supportive of me at Wyman, were very understanding, and I left on good terms.

And I worked for Ellis for a couple of years and then ran into my friends at Maiden Rosenbloom. I had worked for that firm as a law clerk during my last year in law school. Just to back up a bit, while I was going to law school at night, I was working as an office manager for an architect. He built all the old Vegas hotels – the Sands and all the ones that have been torn down and aren't there anymore. And I met his lawyers during the course of my employment and got to know them, and they had asked me during my last year in law school if I would like to come and spend that year clerking for them. And so I had . . . for pay. And I had done that. And after I had been at Ellis' and going back forward, I ran into a couple of partners from there and they were looking for an associate and . . . back on the west side, which is where I was living. And it sounded like it would be more interesting – not just appellate work, although I could still keep doing that, but actually doing some litigation. And so I switched again and then finally settled in and stayed there until I went on the bench in 1986. And I became a partner – a name partner. It was . . . Maiden Rosenbloom Wintroub Vogel & Fridkis, which was quite a mouthful. 19:23

Margaret Grignon: How many lawyers were in that firm?

Miriam Vogel: I just named them all for you! *[laughs]*

Margaret Grignon: Okay!

Miriam Vogel: We had . . . . It . . . . Actually, by the time I was a partner, Bert Maiden was essentially retired, so there were four of us. And we had at most two associates at one time; typically we'd have one.

Margaret Grignon: And you did primarily litigation?

Miriam Vogel: Yes. I did a lot of appellate work and litigation as opposed to what I would call real trial work. I did all the motion work, I did some discovery. But it was a nice break with the appeals, which at that stage of my life I thought was too isolated – a view that has changed over the years.

Margaret Grignon: And what turned you towards the direction of the bench? Had you thought about that for a long time before you made the decision?

Miriam Vogel: Well, by that time I was married to Chuck, and he had . . . when I met him he was a superior court judge, and he had retired from the bench and gone back into practice. He was at Sidley & Austin. But he loved the years he was on the bench, and in the back of my head, I thought someday when I was old and gray that would be something I would like to consider doing. But I was having a wonderful time in practice. We had rented new space in Century City and built out a beautiful suite of offices. I had a corner office and a good practice and was making decent money.

And then I met Marvin Baxter, who was Governor Deukmejian's Appointments Secretary. And Chuck knew him through some dealings he'd had with him, and Marvin was asking me about all kinds of other people who had their application in for the bench, and I didn't really know any of them. It's funny – I remember one of the people he asked me about was Candy Cooper, who was then under consideration. But we chatted . . . . We found ourselves on a plane ride, a small plane going to Sacramento, and had a long time to talk. And a couple of days later, he called my husband and says, "How come your wife doesn't apply for the bench?" And they were looking for women – particularly women with a civil background. And I said to Chuck, "No, I don't want to do this now." We had just signed a lease, I'm happy, it's too soon. And my husband sat me down and talked to me. He said, "You don't understand. There's a window open. Either you jump through that window now or it's going to slam down behind you. So if this is something you think you'll ever want to do, you do it now." And for a 22:05

change I listened to him instead of ignoring him – one of the smarter things I ever did. And I sent my application off in July and was appointed in December, and never regretted a minute of it.

Margaret Grignon: Even after your initial assignment to the Compton criminal court?

Miriam Vogel: Well, there were a few minutes there – the five longest weeks in my life. But it didn't last all that long. It was, as happens to everybody with one assignment or another, having never stepped foot in a criminal courtroom of course that's where I was assigned. I remember my first day on the bench in Compton, when my clerk said, "We have a bench warrant to pick up, Your Honor. What do you want to do about it?" I said, "I don't know. First you'll have to tell me what it is!" And he was very good, a nice young man, and he explained and patiently walked me through it. And it was a difficult assignment, primarily because of the drive. It's about an hour and a half, and I was carpooling with another judge who was assigned out there and didn't really want to be there. And the hours weren't . . . . We left when he wanted to leave. It was not a good way to start out.

But that was, coincidentally, when night court was put into place because of the backlog that the court was experiencing then. This was before unification. And at the Criminal Courts Building, when I . . . four or five of the judges . . . I don't remember how many night courts there were, but I do remember that Paul Turner was one of the judges. And so I got Paul's courtroom at the Criminal Courts Building, and that was the end of my five weeks in Compton and the beginning of my new life as a real judge downtown. And that was a wonderful experience for me, because I . . . that was just learning by immersion. I imagine when people talk about going to a foreign country and learning a foreign language because there is no choice but to do it, that's what happened to me during that year in felony trials. And it certainly served me well later when I was on the Court of Appeal.

But that year just flew by, and at the end of it . . . . Jack Goertzen was the presiding judge, then, and called and asked whether I would like to sit in the law and motion department, which was really a dream come true for me because that's really been the focus of my practice. And I was on the old eighth floor, which was law and motion and writs and receivers, for the next four years: two years -- three years, I guess, three and a half -- two years in law and motion, a third year in writs and receivers, and a fourth as a supervising judge. Does that sound right? Sounds like too many years. Yes, and then I had a . . . No, it couldn't have been, it had to be three years total, because then I had . . . I had a total of just under five years on the superior court before I was elevated, and I had about 25:30

four months in a civil trial court after I finished on the eighth floor and before I got appointed to the Court of Appeal.

Margaret Grignon: And did you find that that trial court experience was invaluable when you went to the Court of Appeal?

Miriam Vogel: Absolutely. I . . . . If somebody let me make the rules, the first one would be that nobody gets appointed to the Court of Appeal without having served at least a year in a trial court. I don't think any judge fully understands the pressure that's on a trail judge and the speed with which things progress – particularly in a court . . . something like a felony courtroom in CCB, the way it was then where the judges did their own calendars in the morning and they had juries waiting and then had to start trial, and we're doing six things at once and barely had time to look at anything. Or, conversely, what I did in civil when I was doing 30 to 35 motions a day, five days a week. The idea that anybody could spend any in-depth time reviewing that was just so . . . could only be an idea held by somebody who'd never been there. Writs and receivers was a little more livable, only because we heard . . . we had calendars every *other* day, but of course the records were far more voluminous, so we had so much more reading to do. I don't know that I've ever worked as hard as I did during those years. I kept your kind of hours, getting down there around six o'clock in the morning, and I would be lucky to get out of there at seven o'clock at night. And I'd work weekends. But I learned more procedure than I think anybody could learn in any other fashion. The only rules I don't know are the ones . . . now are the ones that have changed between then and now, where I haven't had reason to look at them.

But I really do think it's an invaluable experience. I think even though I would never consider myself expert on criminal law issues, and didn't when I was on the appellate court, I felt I had a sufficient understanding by reason of my year sitting in a felony trial court to understand the dynamic of what went on in the courtroom and what went on during trial and how quickly plea negotiations occurred and just the feel for it that I never could have had had I not had that experience. And I think the same is true of civil. I mean, I know there are exceptions that prove every rule, and, with apologies to Richard Mosk, I still think everybody should be on the trial bench first. I think the only other judge who was on our court – during my tenure, at least – who hadn't been a trial judge was Earl Johnson.

Margaret Grignon: Well, I don't know if it was your tenure – Justice Danielson?

Miriam Vogel: We overlapped for about 10 minutes. So, yes, you're right, he wasn't.

Margaret Grignon: I don't know if you found this to be the case, but even though, you know, we'd both been on the trial bench for a 28:51

substantial period of time, there were still areas of the law that we'd never been involved in: dependency . . .

Miriam Vogel: Absolutely.

Margaret Grignon: . . . probate. And I always felt a little uncomfortable when I got those cases on the Court of Appeal because I didn't have this sense or this feel for what it was really like in those kinds of cases.

Miriam Vogel: Particularly dependency. With probate I was okay because I'd handled some probate cases. When I was in practice, we represented The Foundation for the Junior Blind, which is frequently named as a beneficiary – people's wills donating to charities. And we'd get involved in wonderful will contests with greedy relatives. Those are some of the most fun cases I've ever been involved in. So at least probate wasn't a complete mystery to me. Dependency, on the other hand, and family law – the only time I ever handled any family law matters was at the appellate level, and so I really didn't have a sense for what was going on in the trial court there. But it makes a *huge* difference, I agree.

Margaret Grignon: So you're on the trial court, you're enjoying it immensely, and how did you . . . . Did you think from the outset that you wanted to make the progression from the trial court to the Court of Appeal, or was that just another opportunity that presented itself?

Miriam Vogel: No, I knew it was something I wanted to do. I had really enjoyed my clerking years, and I liked to write. I've always enjoyed writing And so I knew I wanted to do it ultimately. And I might have waited longer again to apply because I was enjoying myself on the trial court, but again it's a question of timing. And Governor Deukmejian's term was drawing toward a close, and others with less experience than I had were applying – Justice Kennard being one of them, who I think holds the record for sailing through every court in a matter of months. And I thought it was no harm in sending my application in. And so it was good timing, it was good timing.

Margaret Grignon: So now you're on the Court of Appeal. And I know that you have a way of approaching . . . you had a way of approaching your job and a way of writing and your staff that, you know, is not the same as every other justice. So maybe you could talk about, you know, your life as a Court of Appeal justice and how you handled your work.

Miriam Vogel: Well, I was very fortunate to have, from the beginning, two fabulous research attorneys, both of whom had clerked for me when I was in the law and motion department. When I was appointed, they separately called me to congratulate me, and I jokingly said to each of them, "Well, why don't you leave 31:50

your jobs and come and clerk for me?" One was in private practice and the other was working for Edison. And to my delight, they both said "yes." So . . . . And it wasn't until years later that the third position was authorized and I ended up hiring someone additionally.

So I started with two people who knew how I worked, basically, and that I was a hands-on judge. And we would get our draw, we'd look at the cases and divide them up among the three of us, and . . . simply by what looked interesting. There wasn't any particular rhyme or reason to how we did it unless, as time went on, if one of us had started with scratch with a case that was back on a repeat appeal, whichever research attorney had worked it up the first time got it back. But I would take a couple each month and do them from scratch and write an opinion and then give it to one of my research attorneys to review.

And the cases they did, they knew that what they were doing for me was really a bench memo and that it was not a draft opinion the way a number of justices work with their law clerks, some of whom edit heavily, others less so. But I pretty much rewrote everything. Sometimes I just started over and would rewrite from scratch; occasionally it would be very heavy editing. But the way I really get my arms around a case and really understand what it's about is by writing about it. I find this is true today when I'm writing briefs, now that I'm back in practice. Nothing has ever changed for me.

And, yeah, I don't absorb things by just reading. I have to . . . . If I'm not writing a brief, I have to at least write notes, 'cause it's the act of committing something to paper and putting it in my own words that makes me realize how the case fits together and the sequence of events, of the facts. And something that I learned from Justice Thompson: when it comes to writing the legal discussion part of it, his old saying was that if you can't write it, it isn't right. And I . . . It's a truism that is most definitely true because I would sometimes start out with a view of the case, thinking, oh, well, this is a slam-dunk affirmance or this has to go that way or whatever, and then I would sit down and try to write it that way and it just wouldn't work. I'd write and write and write and get to a point and think no, wait a minute, that's illogical, that doesn't make sense, there's a gap here. So I, over the years, I would say wrote probably 90 percent of the opinions where I was the lead author and heavily edited the other 10 percent because I was very definitely hands-on.

And then within the . . . within my chambers, if a case had started with one law clerk – Julie, for example – and if she gave it to me and I re-did it, I'd give it back to her for cite-checking. Then we'd circulate it, and then after calendar we'd – after oral argument – make whatever changes needed to be done, 35:20

and then I would give it to my other law clerk for a final cite-check so that all three of us saw all of the cases. And it was really interesting, sometimes, that we'd . . . the third person to look at the case would pick up something the other two of us had missed. The more eyes, the better.

And with my colleagues' cases, typically I didn't get my staff involved when I was a panel member on other cases – I read everything myself. If I had some question, I might ask one of my research attorneys to look at the briefs and look at the opinion and then sit down and talk to me about it or do a little independent research or whatever. And then of course the dissents I did and concurring opinions I almost always did myself. In fact, I can't think off the top of my head of getting my staff involved with those, other than to cite-check them when I was finished, unless I knew going in, from talking to the other members of the panel, that what I was doing was taking over the case and writing a new majority opinion, and then occasionally I might give it to my staff if we were going in an entirely different direction. But . . . .

Margaret Grignon: I was looking at your published dissents and concurrences, and over the period of time that you were at the court, there really were not that many: I think 15 dissents and maybe 11 concurrences in published opinions?

Miriam Vogel: I think that's low. I don't think they pop up enough. I don't have a complete list, either. I've got a complete list of all my published and unpublished opinions separate, but I think somehow dissents slip through my system as I well, and I don't know that Lexis or Westlaw or any other service picks them up. I would guess I wrote many, many more dissents than that, and certainly more concurring. Now, some of them were in unpublished opinions. The rule in my division was that it took two votes to publish, and the mere fact of a dissent was not a reason to publish – or the mere fact of a concurring opinion. So I would frequently write a dissent or a concurring opinion and ask that we publish it but couldn't get a second vote for that. So there's a lot of them out there that are unpublished.

Margaret Grignon: Okay. That must be where the biggest discrepancy is because the cases we have are just the published cases that show up, so . . . .

Miriam Vogel: And then there are, oh, I'd say 10 or 12 – including one that's still pending, where I wrote a dissent and the Supreme Court granted review so that the Court of Appeal opinion got wiped out. There's actually one still pending.

Margaret Grignon: There is? What's that?

Miriam Vogel: A wage and hour case: *Bell v.* . . . . No, it's not *Bell*. It's in there. It's in the notebook. It's funny – I just saw it the 38:26

other day. Whether insurance agents are exempt from overtime pay – whether they're within the executive exemption. Fran Rothschild wrote the majority opinion and I dissented, and the Supreme Court took it.

Margaret Grignon: Is that *Harris v. Superior Court*?

Miriam Vogel: Yes, yes, yes. *Bell* is a case that is the dispositive case – the Court of Appeal case that Fran relied on in the majority opinion that I suggested was wrongly decided. That's been pending since '08, so . . . .

Margaret Grignon: Yeah, it was a 2007 Court of Appeal case, so it's been pending a long time.

Miriam Vogel: Right.

Margaret Grignon: Let's talk about your dissents a little bit – at least the published dissents. I looked at the dissents to see whether, you know, having a dissent got you a . . . got a good chance for the opinion to get a review grant on the opinion. And you know, basically, probably, it's not as helpful as a lot of people would think. At least, you know, I have maybe four or five of your cases – published cases – where you wrote a dissent where there was a review grant. And that's not very many over this long period of time. What is your perspective about the effect on the Supreme Court of dissents?

Miriam Vogel: I think if you count the unpublished cases with the dissents, the percentage is probably slightly higher. I think it depends on the issue. I think a dissent in a case with an issue that the Supreme Court has been dancing around for a while, or has expressed interest in related areas – for example, a wage and hour case, though there's several of those pending now. And I think a thoughtful dissent from any justice on the court now would certainly get more attention from the Supreme Court than a unanimous opinion one way or the other. I think it helps, but I think I agree with you – probably not nearly as much as some of us would have thought it did. I think a dissent I wrote in, what is it, *Preston v.* Somebody or Other – an arbitration clause where the California Supreme Court denied review but the United States Supreme Court granted cert and went my way – that was a moment of great satisfaction for me.

Margaret Grignon: Oh, really! I did not pick that up in the notebooks.

Miriam Vogel: That's in there.

Margaret Grignon: And what was the issue? What was the arbitration issue?

Miriam Vogel: It was whether an agent – artist manager – and a lawyer who had an arbitration provision in their contract were bound 41:24

by it. And the majority in my division said no, they first have to go to the Labor Commissioner and so forth and so on. And I said no, they don't, this is ridiculous. You have two lawyers, one – oh, it was Judge Alex, the fellow who plays a judge on television, and his manager – and so you had . . . and he *was* a real judge before he retired and became an actor. And I believe the manager may have been a lawyer, too. And – this is now several years ago, so the details aren't fresh in my mind – and I just couldn't deal with the idea that they weren't bound by the agreement that they made to arbitrate. And Justice Ginsburg saw it my way, so . . . .

Margaret Grignon: That's very exciting.

Miriam Vogel: Yes, that was fun. That was fun.

Margaret Grignon: Very few of our cases ever went to the U.S. Supreme Court. In fact, only one of mine did, and they ruled against me. So . . . .

Miriam Vogel: Two . . . . I have two where they ruled against me. I actually had three cases go all the way. The other two . . . . One was the Son of Sam rule. The fellow who kidnapped Frank Sinatra, Jr. wrote a book. I said our statute – which had been enacted after the New York statute was criticized by the Supreme Court – I said the California version was fine. I learned otherwise. And the other case was a little unpublished decision. Johnnie Cochran was being stalked by a fellow who insisted on parading outside his office with signs that were both vulgar and defamatory. And the trial court had tried everything to put an end to it, to no avail. And it ultimately issued an injunction prohibiting the expressions on the billboards, which I said – they weren't billboards, they were just signs – which we upheld because my theory was there was just no other way to stop it, and you just couldn't let it go on. It wasn't a prior restraint because there had been other efforts at restraint which had been ignored. That theory didn't last long, either. *[laughs]* That was a unanimous reversal, so . . . .

Margaret Grignon: After the California Supreme Court had denied review . . .

Miriam Vogel: Yes.

Margaret Grignon: . . . in that case?

Miriam Vogel: Yes.

Margaret Grignon: Interesting.

Miriam Vogel: Yes.

Margaret Grignon: That's interesting. Two of the dissents where review was granted, I thought it was interesting, one – you probably won't remember these – but one was *Steve H. v. Wendy S.* in 44:07

1997 and one was *Morris v. Franchise Tax Board* in 1995. In both of those cases, the Supreme Court initially granted review, and then, just when you get your hopes up, dismissed review.

Miriam Vogel: Yes. I think what happened is both of them settled.

Margaret Grignon: Okay.

Miriam Vogel: It's the only explanation I was ever able to come up with, because it . . . just "review dismissed." No explanation whatsoever. The Steve and Wendy case was an . . . .

Margaret Grignon: IIED case? Intentional infliction of emotional distress? I . . . .

Miriam Vogel: Yes, but it arose out of something really oddball. It was a marital case, and . . . I don't remember. It's funny, 'cause I saw that in my notebook and I meant to go look it up.

Margaret Grignon: I think it had something to do with whether divorcing spouses could sue outside of a dissolution case for intentional infliction of emotional distress?

Miriam Vogel: That's way too tame. It was a much more interesting issue . . .

Margaret Grignon: Okay.

Miriam Vogel: . . . than that.

Margaret Grignon: Okay.

Miriam Vogel: No, I'm sorry, I don't remember. And the other one, I have no clue, I don't remember what it was.

Margaret Grignon: Had something to do with small business tax, but I didn't read anything further past that.

Miriam Vogel: Well, in a tax area, one case where I wrote an impassioned dissent – *Auerbach* v. Somebody or Other – it was a Proposition 13 tax case arising out of a building in Beverly Hills that was then the Tommy Hilfiger store. I think it's Brooks Brothers or something now. And I was so sure I was right. And I did convince them to take the case and review was granted and unanimously affirmed the majority. So clearly, even when a dissent persuades the Supreme Court to grant review, it doesn't mean that the Court's going to go the way of the dissenting justice. That's not a safe assumption.

Margaret Grignon: No, that's true. And I think that's also true with respect to review grants in general. I was looking at some of your cases. First of all, I was very interested to see how many published decisions have requests for review – or petitions for review. I did not realize it was such a high percentage. At least of your cases, there's a huge percentage of petitions for review. 46:24

And then on the review grants, you know, I looked to see whether, you know, they were affirmed or reversed, and there's a fair spread of affirmances and reversals. So just because the Supreme Court takes it doesn't mean anything.

Miriam Vogel: No. I mean, they took *Laird v. Blacker*, the attorney malpractice statute of limitations case, and they did exactly what I did – they took *Marriage of* . . .

Margaret Grignon: *Pendleton*?

Miriam Vogel: *Pendleton*, exactly. That was the premarital waiver of spousal support – did exactly what I did. I think there are a certain number of cases – and I see this still today – where it's clear the court – the Supreme Court – feels that it should be the last . . . it should have the last word. And that the case is of sufficient significance that it's important that it articulate the rule so that it takes a case, even where it agrees with the Court of Appeal.

Margaret Grignon: And *Covenant Care* is another case where they affirmed your decision. That's another . . . . My memory is that . . . Did that have something to do with elder abuse and the . . .

Miriam Vogel: Yes.

Margaret Grignon: . . . impact between . . . or the . . .

Miriam Vogel: Yes. I think it was the statute of limitations between that and another tort that was alleged in that case.

Margaret Grignon: The other thing that's interesting is to maybe talk about some of the – besides dissents and concurrences – but maybe talk about publication a little bit and your views on publication, and how you decided whether to publish something initially. And there's a few cases – you know, a few, handful of cases – where you apparently decided to publish after you had already issued the opinion, so maybe talk about that a little bit.

Miriam Vogel: I would have published more than my colleagues. I think Divisions Three and Four have the highest publication rates on our court. They have in all the years that I can remember. Division Two, I believe, is the lowest. Division One was almost as low. There's a fundamental philosophical difference, I think, among the justices. I am very close to the view that everything should be published. I recognize the problems it creates for lawyers doing research, but as a practical matter, we have access to everything now on Westlaw and Lexis, and we all look at it, and if we're looking for something even though we can't cite it, we're looking at unpublished decisions for novel ideas on issues that we're briefing. But the system being what it is, I think the rules are more flexible now with the last set of amendments that were adopted – what – two, three 49:12

years ago now. Time flies. And it's . . . . During the years I was on the court, I would have published more had it been up to me. I think all the criteria under the rules have . . . Obviously if it's an issue that's not been before the court, if it's a novel approach, if you're disagreeing with another division or another district, I would add to that if the last thing written on the subject dates back to the 1950s, maybe it's time to remind the Bar that this is a continuing issue and that the view hasn't changed and that this is still a rule, so that there's something on point. Or where a case is of significant public interest. I believe under the new rules the existence of a concurring opinion or a dissent are factors properly considered in deciding whether to publish.

I . . . . It always concerns me that a certain segment of the bar and public perceives that we used the nonpublication of rules as a way to hide opinions – that we were concerned couldn't bear public scrutiny or that didn't hold together for some reason. And on a public relations basis, I'm of the view that the more published, the better. On the other hand, there are so many routine cases that add absolutely nothing to the discussion of any legal issue or are so fact-driven they couldn't possibly be relevant to anybody in any other case for any other purpose. And there's the economics of it. So for people who still have books they use on a regular basis as opposed to online research, there's the storage space and all that. I think there are problems now because the federal courts permit citation of unpublished opinions, and I find in state court briefs that I'm seeing a lot of citation of unpublished federal cases, which technically I think is okay. It's only unpublished state court cases we can't cite – specifically California cases. So it . . . . I recognize it's a difficult issue, but in my view I would publish more than is published today.

Margaret Grignon: When you wrote an opinion for publication, did you write it differently than an opinion not for publication?

Miriam Vogel: Yes, which is why there are so few of mine that you find subsequent publications orders, post-dating the filing. I would be much more careful to have a complete statement of facts and discussion of the legal issues that would be comprehensible to somebody other than the parties to the case. The . . . . My view has been that unpublished opinions are written for the parties and their lawyers, and that it's safe to assume a certain level of knowledge. They don't have to be independently comprehensible. Toward the end of my years on the bench, I was deviating from that because by that time everything was available on line and so if people were going to be looking at it for whatever purposes, I tried to polish them more. But I think it isn't just me, but that most justices took greater care with published opinions, triple- or quadruple-checking the accuracy of every citation, checking our own grammar even more than we usually did, just making sure they were absolutely 53:01

accurate. And one of the things I was of course concerned about was I didn't want any dicta in there that was going to create problems for people down the road, so taking out any kinds of extraneous information. It's just two or three or four more steps of editing.

Margaret Grignon: Well, and workload has something to do with . . .

Miriam Vogel: Yes.

Margaret Grignon: . . . publication, too, I think. I . . . . During some of the years that you were on the court, the workload was pretty – what's the word I would use –

Miriam Vogel: Overwhelming?

Margaret Grignon: Overwhelming.

Miriam Vogel: Yes. Yes. You and I were part of the group that tried to get that backlog down. And it was . . . . There were years where we did over 200 opinions. And that's just not a doable number of cases where you can polish with the kind of attention that we all like to do for published opinions. So I would suspect, if I looked back at the statistics during those years, I published fewer then than other years.

Margaret Grignon: Yes, I think that's probably true. One of the other trends that I noticed in your opinions on the review grants (and I wondered if you noticed this), I didn't see any review grants – although maybe, you know, there were unpublished ones – at least in the published ones from 2003 to 2008 of your opinions, in that all the review grants were *prior* to that.

Miriam Vogel: Really!

Margaret Grignon: So I just wondered if you'd noticed that and if you had any thoughts about whether the Court was different, you were different, or what was different.

Miriam Vogel: No, the Court was basically . . . it's been basically the same since before 2003. The only new justice on there now is Justice Corrigan in all those years, right?

Margaret Grignon: I think that's right.

Miriam Vogel: No, that's funny. I'll have to go back and look. I . . . .

Margaret Grignon: It could be I missed something, but I just started to see a pattern, and then I kind of went through and thought, Well, let me just see when the first review grant that I see is, and the first one that I saw I think was 2003. 55:04

Miriam Vogel: No, that's interesting. The one thing that, of course, *has* changed is the depublication, because before Chief Justice George was Chief Justice, I think there was a greater inclination on the Supreme Court to depublish cases when they didn't really agree with the result but they didn't really want to take it and deal with the issues for whatever reason. And that has slowed to a virtual crawl. Very, very rarely do I see now that anybody's cases are being depublished.

Margaret Grignon: That's right. The depublications of your opinions were much more frequent in the early years . . .

Miriam Vogel: Yes.

Margaret Grignon: . . . and almost nonexistent in the later years, so . . . .

Miriam Vogel: Yeah. I don't think that's peculiar to me. I don't think they're depublishing much. In fact, I've heard the Chief say that he doesn't like it – it's unavoidable sometimes, but that he's not a fan of that process, which I happen to think is a great idea because it leaves the bench and the bar in the dark about why it was depublished. Was there an errant footnote in there, was there . . . was it dead wrong but they didn't like the facts, or what? So it's . . . . I'm happy they don't do that anymore.

Margaret Grignon: Yeah, I think that's a good step forward. Maybe talk a little bit about partial publication? It doesn't seem like you did that too much, but on occasion.

Miriam Vogel: On occasion. I found it very difficult to do because there just aren't that many cases that I found that lend themselves to a clean separation because the Statement of Facts . . . . In order to do it effectively, I had to be able to do a reasonably concise Statement of Facts that was going to pertain primarily to the issues for publication and then have other issues that I could cut out neatly. And it might just have been the luck of the draw, but on the ones that I felt were worthy of publication, there might be a paragraph or two in there on some isolated issue but it would have been more bother than it was worth to cut out that. I think it's a good procedure. I'm not . . . . I don't mean to suggest that I don't like the concept of partial publication, although I will say when I read opinions that are partially published, I often wonder what the other parts were, and I sometimes go looking to see if I can find an old version of the full opinion, 'cause I may have something related to what's in the published part. But in some cases it works very well.

Margaret Grignon: I thought we could talk for a minute about your notable cases. And the ones I wrote down were *Nola M.*, *McMillan, Rosencrantz,* and – probably because you mentioned it to me – *Estrada v. FedEx*. I don't know if that's as notable as the others, but . . . . And you may have others. Maybe talk about some of those cases a little bit? 58:20

Miriam Vogel: Those are the key ones. *Estrada*'s most notable now because my current clients think that's one of my biggest mistakes – because most of my clients are on the other . . . are on the side where they are defendants in class actions. But actually, *Estrada,* the decision was a mixed bag. It's notable because of what I've read in the press since it was decided, and that is of the hundreds of millions of dollars that have been paid out as a result of settlements following on that case. But it was rather an extreme set of facts.

McMillan may be one of the longer-lasting cases I've had as far as long-term effects go. And that, interestingly, was depublished. And I've often wished it wasn't, but then again, it gets as much publicity still as if it hadn't been. At the time, trial court judges were appointing discovery referees over the objection of parties and without regard to whether the case or the party . . . whether the case justified it or whether the parties could actually afford to pay the fees of a retired judge, which then were typically $350 an hour – which is obviously very low by today's standard but it was a lot of money then, and it was *really* a lot of money for people who didn't have extra funds to spend on litigation. And the practice was developing that the judges were simply avoiding their responsibility to do their discovery work in the IC departments. And they were appointing their buddies – their retired buddies – to do the discovery work and giving them free rein.

What happened in *McMillan* is that when the client didn't pay, the trial judge ordered the lawyer – the plaintiff's lawyer – to pay the discovery referee. And she came up on a writ petition, saying, "Now, wait a minute. I can't afford this, I didn't agree to this, I don't want to have to do this." And I criticized . . . . To put it mildly, I criticized the whole system and I went further than just the discovery referee part of it. I had several paragraphs in there about the whole concept of private judging. This was when it was in its infancy. And I suggested that we were going to end up with a two-tier system in the judiciary, similar to the private school/public school split, where those who could afford to do so would go outside the system and those who couldn't would be stuck with what was left, which wasn't going to get the funding it needed if the people who . . . with the big cases didn't stay in the system.

David Knight: I'm sorry, Justice, I have to interrupt you . . .

Miriam Vogel: Sure.

David Knight: . . . 'cause I'm just about out of tape.

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David Knight: Wherever you like. 1:01:48

Margaret Grignon: We were talking about *McMillan*.

Miriam Vogel: Yes. A group of retired judges – I think six or eight of them – wrote a letter to the Supreme Court, asking for depublication of the case. And how harsh I was, how wrong I was, how terrible it was, and what a service they provide. And the Supreme Court did depublish it. But the Bar had read it, of course, because it was in the advance sheets and in the *Daily Journal*. And the Chief Justice was concerned about the problem, and a statewide committee was appointed – and I was appointed to the committee – to look into the problems with this. And it was really an L.A. problem; although there was some of this going on elsewhere in the state, it had run rampant in Los Angeles. The L.A. County Bar also formed a committee. And ultimately legislation was adopted imposing burdens on trial courts to articulate the reasons for a need for a discovery referee and to make a record and to make it more difficult. And although it's still done, I do not believe it's done today without the consent of the parties. I think that if a trial judge today says he'd like to appoint a discovery referee and the parties object – particularly on economic grounds – I think most trial judges will respect that and not make the appointment. So, in the long run, it has had an effect, it has. And I think it cured what was a major problem.

I, of course, recognize that private judging – alternative dispute resolution, to call it by its polite name – is here to stay, and that arbitration and mediation are wonderful things which contribute to my well-being since that's what my husband does, so I can't bad-mouth it too much. And within reason, to the extent that judges need help from referees now and then – particularly in the huge cases – I understand that there's a place for it. I still have lingering concerns about the long-term effect on the process. And I do think that we have seen many of our colleagues – former colleagues – leaving the bench early, not to do what you and I did, which is to return to practice, but rather to go join one or the other of the various ADR groups and to provide the same services, for lots of money, that they used to provide on the court. They . . . . People are not staying on the court as long as they did. And with the good people, I think that's a bad thing.

Margaret Grignon: Well, it gives them a opportunity to do something else. But I don't think that I've seen that there's been a flight of trials, for example, or of litigation from the public courts into the private courts, which is what some people feared. Do you think differently?

Miriam Vogel: Oh, I don't know. I know some of the arbitrations that Chuck has are cases that I think in the past might have ended up in the courts. So I think it's . . . . I agree with you, it's not to the degree that some of us thought early on. These are probably matters that would have been arbitrated, perhaps by 1:05:30

AAA, if there wasn't the pool of retired judges to do it. But I do think there is some, and I think it's hard to quantify. It's difficult to quantify.

The other cases you asked about . . . . *Nola M.* That's still out there, that's still good law, that's been cited by the Supreme Court. That's the case of a young woman who was raped on the campus at 'SC at night. The rapist was never apprehended, so Nola sued USC, saying it was the university's fault for failure to provide sufficient guards or other deterrents to criminal activity. And she won a million-dollar verdict. And 'SC appealed and we reversed on the ground that she had not proved causation because she had not presented any evidence to prove that there was anything that 'SC could have done that actually could have prevented that kind of criminal act. And the case got cited in a number of law review articles and treatises on the subject. It went on at some length about the concept of causation in the context of third-party criminal acts. And it's a sociological problem, because it's in theory a police issue. The police are the ones who are supposed to be out there protecting all of us from criminal activity. And then it becomes a political question about the burden that's going to be places on a private landowner to undertake the kind of expense that's required to protect people who come onto the business' property. And it obviously is something the Legislature could address if it wanted to, but under traditional concepts of tort law, we held in that case that a landowner is not liable for the acts of third-party criminals unless, of course, there is some way to show that there was something the landowner did to contribute to the cause.

There was another case that – one of the *Leslie* cases, I think, one of the ones the Supreme Court took and never decided – was an interesting one. It must have settled – I don't even remember the name of it – but the variation on this theme was that a woman was raped in an underground garage in her apartment building. The . . . . One of those metal dropdown gates . . . .

Margaret Grignon: Wasn't that the *Leslie M.* case? No?

Miriam Vogel: It might have been. No, 'cause *Leslie M.* is still out there. No, the other one is one . . . it's a woman's name with an initial, but it's not *Leslie M.* because the Supreme Court granted review, and then the parties settled, and *Leslie M.* is still on the books, so I know that wasn't it. No, the other one was . . . There were similar facts, though. They caught the rapist in this other case, and he confessed. And the woman – the victim – sued the apartment house owner and the rapist. And . . . oh, this wasn't the gate, you're right. *Leslie* was the gate. This one, a light bulb was out. There was a stairwell from which the tenants would go from the garage up to the lobby and to the elevator that would take them to their apartments. 1:09:29

And because the light bulb was out in the little stair area, that's where the rapist hid. She goes to trial against both of them, with the rapist admitting guilt. The jury attributed 90 percent of the fault to the landlord and 3 percent of the fault for the rape to the rapist, and gave her a couple million dollars. We reversed that one. I wrote the majority opinion on the ground of causation, and then Reuben Ortega did a separate concurring opinion on the allocation-of-fault issue and about the insanity of having that allocation and how by itself that couldn't stand, and that it was apparent that what the jury was doing was reaching for the deep pocket. And the Supreme Court granted review; it sat there for 18 months or more and then got dismissed. And so we just, again, concluded that the parties must have decided to settle it, for whatever reason.

But . . . . And then there is *Leslie M*. That's the one where the gate didn't close. And that's still out there.

A number of subsequent cases have been decided on the duty issue. Judges love duty. And it's easy, it's very easy, to find duty under traditional rules of foreseeability. And every time I read one of those decisions, I look at them and say, "Why are you having this discussion? Why bother? Why not cut to the chase and say, as we did in *Nola* and *Leslie* and the others like it, 'Just assume the duty'?" It isn't going to get you anywhere unless somebody can prove causation. The classic case where causation can be proved is where you have a small farm, farmer leaves a large piece of farm equipment with the key in the engine, and a criminal kid comes on joyriding. Two kids come on, they get on, the key's there, they turn it on, and they hurt somebody else who's on the property. Well, at that point the farmer's negligence *has* contributed to the injury because he was negligent in leaving the key in this dangerous piece of equipment. But that's not the case where you have something totally independent and separable from what the landowner has done. So I've always thought those were interesting cases. And I think I have four or five out there in published decisions one way or the other on the subject of causation. They've been cited with approval by the Supreme Court in subsequent decisions. So those were important.

Margaret Grignon: The distinction I see is that I think maybe why judges are more comfortable with duty is that that's traditionally a question of law. So it's easier to say, "It's when I see it, or when I don't see it."

Miriam Vogel: "Don't see it." Yes.

Margaret Grignon: And causation is typically thought of as a factual question. And maybe that's really the difference. Levels of comfort.

Miriam Vogel: Yes, I think that's true. And the only time you can really come to grips with the causation issue is the way *Leslie* was. 1:12:48

And *Nola* both, after a full trial on the merits, where you have all the facts in front of you and you can look at it and say, "There simply is no evidence of causation." Or occasionally on summary judgment, if there is simply no evidence put on in opposition to a defense motion. In that event, what would be a question of fact has become a question of law, because there isn't anything to discuss. But yes, of course you're right on that point.

The other case, *Rosencrantz,* is a parole case. *Rosencrantz* was a murderer who killed a kid when he was 18 – killed his buddy's boyfriend for outing him to his father. He was . . . . He is gay. And it was a terrible crime; there's no two ways about it. It was a horrendous crime. He was sentenced to 25 years to life. And the Parole Board kept denying parole, and kept denying parole, on a record that suggested that they were denying parole in large part because he was gay. And they were refusing to consider a lot of other factors. He was *the* model prisoner. He was everything we hope prisoners will be about behaving themselves while incarcerated and learning new skills. He had . . . got a college degree in computer science, he set up a whole system for the prison, he worked with other prisoners, and the Parole Board just wouldn't pay any attention to him. So the first *Rosencrantz* case, we ordered the Parole Board to hold a new hearing – which it did, and then it did the same thing all over again. So we ordered the Parole Board to release him. And the Supreme Court left both of those alone, but then it went to the Governor, and the Governor vacated the release and we ordered the Governor to vacate his decision. And that's when the Supreme Court stepped in and said no, there is some evidence here to support the Governor's decision. Now, the "some evidence" in *Rosencrantz* was the commitment offense, which, although I haven't followed this area of the law for the last year or so, I think the courts seemed to have backed off a bit. I think it was *Dannenberg,* where the Supreme Court said there really has to be a little more than just the unchanging facts of the commitment offense, so . . . . Which, I think from a constitutional perspective, is probably required, because what was happening in my view was that we were . . . the courts were . . . the Parole Board was transforming a sentence of life with the possibility of parole into a sentence of life without the possibility of parole. Because if they could forever and always deny parole solely on the basis of the commitment offense and it was never going to change, then parole was never going to be granted. And while that might be a fine and lovely policy for Charlie Manson and Sirhan Sirhan, it's not the idea behind the legislation and it's not really permitted by the rules as far as other less notorious prisoners are concerned. So I found my mark in the Life Prisoners newsletters, which I continue to get forwarded to me *[laughs]* as one of their long-term heroes.

But I think those are very important cases. And I think that was a place where judicial intervention was warranted, 1:16:30

to see that a fairness principle was imposed throughout this process. And I do think that it is up to the parole boards to make these decisions and not to the courts. But I do think that the court's involvement is necessary to make sure that the Parole Board and the Governor is playing by the rules.

Margaret Grignon: Well, why don't we end with your transition. You didn't actually retire from the bench, but you left the bench to go back into private practice, so . . . .

Miriam Vogel: Oh, I did retire. I'm collecting my pension. *[laughs]* Unlike you, I'm older. I followed in your footsteps, that's what I did. I . . . . It's going to be a year since my retirement, which I find incredibly hard to believe. July 3rd. And I haven't been as happy professionally in so long. It's just been invigorating. I'm now using all your words, because it's everything you told me it was going to be. I had some trepidation, and I wasn't sure I would be busy.

And when I joined Morrison & Foerster, it was with the understanding that I was going to be billing about 1,400 hours a year. And that's now the running gag at my firm. It's not double that, but it's approaching it. And it's just been a wonderful experience. I realize that doing anything for 22 years is a very long time to be doing the same thing – 18 of those years on the Court of Appeal. And while I loved it and I don't regret any part of the time that I did it, 'cause I learned so much that . . . it becomes a habit, like anything we do for that many years.

And going back into practice is a challenge. I realize that it takes a creativity to actually come up with the issues to argue on appeal. It's not as much of a reactionary kind of a role. I don't mean . . . I mean that in the sense of reacting. I guess "reactionary" is probably the wrong word. But as a judge, you react to that which is put in front of you. It's not . . . . I never perceived it as my role to come up with issues the parties hadn't developed, whatever the temptation to do that. So you get the case, you get the issues, and you respond to them, and you decide them according to the law. Being back in practice, I realize that getting the case and thinking, "Hmmm, now what do I do?" is really a challenge. And it's a wonderful group of people I work with and very, very interesting cases. And I don't miss the criminal, I don't miss the dependency. (But I do have one criminal case, in any event.) But it's been a wonderful decision. And I don't know how long I'm going to keep doing it, but certainly for the foreseeable future. And I think it says something about our changing society and our view of age. I'm 69 years old now. I was 68 when I started with the firm. And the idea that they would bring me in at that age – for a full-time practice, as it's turned out – it's not something that would have happened in my parents' day. 1:19:58

Margaret Grignon: No. In fact, you said you had trouble when you were 35!

Miriam Vogel: Yes. That's right. Exactly. *[laughing]* Exactly. Who would have guessed then that this could happen now? But I feel very, very fortunate. I've had wonderful opportunities. And much of it is being in the right place at the right time, and I'm very grateful for that.

Margaret Grignon: One of the things that I've discovered is that maybe some of my views that I had as a Court of Appeal justice might have been different if I'd had this experience more recently. For example, my division is very big on waiver, and I have learned that things keep getting better. You have it in the trial court, and then you write your first brief on appeal, and then you reply, and then we get ready for oral argument or petitions for rehearing or whatever. And I think I might not be quite so apt to say waiver as I was when I was on the bench. Have you had any similar experiences?

Miriam Vogel: I think in the sense that I feel the lawyers' frustration with some of the trial judges now that I think I had lost sight of in the years I was on the court. I think that some of the demands put on lawyers by trial judges today are so unrealistic, and I don't know that I can identify any specific rule. You've been doing this now for longer than I have. I've just got a year's worth of experience under my belt, and so I'm not seeing the same issues over again. I do agree with you on the waiver issue, but in my division we weren't as big on waiver as Division Five was. And I . . . . And the difficulty of knowing which issues . . . . I get a brief, and I say, "Oh, my goodness, why are they raising 14 issues, or 9 issues? It's obvious that these two issues are the only ones that matter." Well, sure, it's obvious to us as judges once we got it and it's all done. But the lawyers don't know which issue is going to be obvious to which judge, and they frequently don't know at the time they start working on their brief which division they're going to be in, if they . . . . if you're the appellant and you start before the record's filed, and it's still floating around in Division P or whatever they're calling it now before it's assigned. And given the state of the court until last week with the vacancies, you didn't know who was going to be in which division. So it's hard. I think it does make us aware. I think it helped me, perhaps, that I was married to a lawyer throughout all of my years on the bench, and so that I had constant reminders about what it was like out there in the real world. But I do think some re-immersion for some of our former colleagues might be helpful, particularly those who've been away from it for a long time.

Margaret Grignon: Well, I don't have any other questions. Did you have anything else you'd like to talk about? 1:23:12

Miriam Vogel: No, just to say thank you very much for conducting this interview, and I hope somebody finds this worth listening to.

Margaret Grignon: Well, I enjoyed it, anyway.

Miriam Vogel: Thank you.

Margaret Grignon: All right. Thanks.

Duration: 84 minutes
June 16, 2009