M. O. Sabraw: My name is M. O. Sabraw.

Carl Anderson: Welcome to this edition of the Appellate Court Legacy Project. Today we have the pleasure of interviewing Justice Modeste Orton Sabraw. Justice Sabraw served in Division Four of the First District Court of Appeal in San Francisco from January 3, 1985, until his retirement on March 4, 1988. He is affectionately known by his family and friends as "Mo."

I am Carl Anderson, Retired Presiding Justice of Division Four, First District Court of Appeal. I had the pleasure of serving together with Justice Sabraw in the same division on the Court of Appeal for 3 years, the best 3 years of my career, and before that serving with Justice Sabraw on the Alameda County Superior Court for 10 years.

Justice Sabraw was born in 1926 in Saskatchewan, Canada, and came with his family to San Francisco at the age of 11. He graduated from the University of California in political science, graduated from Boalt Hall School of Law. He started out the practice of law as a deputy district attorney in Sonoma County, and two years later he migrated to Fremont in Southern Alameda County, where he practiced law for 13 years before being appointed by Governor Ronald Reagan to the municipal court for Fremont, Newark, and Union City. He served almost three years as a municipal court judge before being appointed to the Superior Court of Alameda County, where he served for 14 years. He has been retired from the Court of Appeal for 19 years and is now back in the saddle again.

Mo, how was it growing up in Saskatchewan?

M. O. Sabraw: Well, that was a very wonderful place for a young boy to grow up. We were out in the country adjacent to a small town of 176 people, and we had the freedom to romp and roll and do all the things that young boys are inclined to do. And it was, as I look back on it, a very happy, healthy period of life. We didn't have a lot of wherewithal; but we certainly had our fair share of happiness, as I remember it.

Carl Anderson: Well, when you were 11 years old in 1937, at the depths of the Depression, your family moved to San Francisco. What prompted that?

M. O. Sabraw: Well, you included that in your question: it was the depth of the Depression. My father was a farmer; but more than a farmer, he was very mechanically inclined. He was a good carpenter, he was a craftsman, and a farmer he was not much of. And in 1937, things were pretty tough—that was about in the middle of the Depression—and we were having a great deal of difficulty making ends meet. And so my parents decided that it was time to do something different, and so we sold whatever we had and

we bought a 1933 Plymouth, as I recall, and we set out for California.

Carl Anderson: During those times, can you just cross over the border at will?

M. O. Sabraw: Well, you couldn't if you were following all the rules; but we sort of crossed over the border at will.

Carl Anderson: How did you do that?

M. O. Sabraw: Well, we had a friend who actually drove us to Montana, where we bought our first car. And some of the plan was that we would drive to the American border at night, and just before the border my father, my mother, my brother who was nine, and my little sister who was four at that time got out of the car, went out into the field, and walked around the port of entry.

The plan further was that we would walk maybe a half a mile beyond the port of entry into the American side and wait in the ditch there until the car came by, our friend, and he'd blink his lights three times and we'd come up out of the ditch and climb into his car, and away we went.

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It went pretty well according to plan except that my father was carrying my sister in a blanket, and we had to go through a barbwire fence to get down into the ditch. At that point one of the barbs on the barbwire caught on my little sister, and she started to cry. And that was a rather anxious couple of minutes thereafter in hushing her up, but nothing came from it. And so that's how we crossed the border.

Carl Anderson: Why were you headed for San Francisco? Do you know why your folks wanted to go to San Francisco?

M. O. Sabraw: My father had a brother who was working in Westley, California, which is out by Tracy, and so this was somebody that we knew in the area. He was suggesting that there was work available, and as I say my father was a good carpenter, and so he felt that this would be a place where we could get a new start.

Carl Anderson: So did you start high school, then, in San Francisco?

M. O. Sabraw: No, I was 11 years old, I was in the sixth grade, and so I went into the sixth grade. Coming from the wheat plains of Central Saskatchewan to San Francisco was quite a shock. *[laughing]*

But I remember the first night that we were in town. We were staying in some rooming house, and I heard noise outside and I ran over to my parents and woke them up, because I didn't understand what was going on. And it turns out it was a fire siren or a police siren; we'd never heard one of those before.

[laughing] So that was our beginning of the introduction to San Francisco.

We became very well acquainted with San Francisco. I was selling papers on the corner. And we were accustomed to running pretty freely, and in those days you could do that in San Francisco; so we used to go down to Fisherman's Wharf and go fishing, and we'd climb on the back of a streetcar and ride to where we wanted to go. And we had an easy time becoming acclimated to life in San Francisco, and before very long I was very proud to say, "Oh, I'm from San Francisco." *[laughing]*

Carl Anderson: How long did you stay in San Francisco?

M. O. Sabraw: We were there for five years, and that brought us to December 7, the beginning of World War II. And with that event San Francisco was blacked out, and we were concerned at that point about the possibility of a further Japanese landing on the mainland. And my father decided immediately that he should move his family out of San Francisco. So within three or four days we had moved to Santa Rosa, and that's where we spent the next several years.

Carl Anderson: So did you complete high school, then, in Santa Rosa?

M. O. Sabraw: I completed high school in Santa Rosa, yes, and that was a wonderful experience. Santa Rosa was a little town of 12,000 in those days and a lovely little place. And some of the nicest memories that I have are those years in high school in Santa Rosa. I met my sweetheart there. We eventually married after the war, but that was the beginning of the romance.

Carl Anderson: So what happened after you graduated from high school?

M. O. Sabraw: Well, that was in 1944, and of course that was while World War II was going on, very much so, and everybody who . . . all males who graduated at that time were immediately subject to going into the military service. If you joined the Navy or Air Force or whatever, you went according to your selection; if you didn't, you were drafted.

I was very interested in the Air Force and did go down to enlist in the Air Force and was advised that because I was an alien that I would not be acceptable in the Air Force. And so I didn't, of course, and thereafter I was promptly drafted.

Carl Anderson: So you can't serve in the Air Force because you're an alien, but you can be drafted into the Army?

M. O. Sabraw: You absolutely can, or at least you could in those days; that's right. Yeah, that's right.

Carl Anderson: Did you ever get your citizenship straightened out? Because I understood your mother was born in North Dakota, South Dakota?

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M. O. Sabraw: She was born in North Dakota, yes; she was a citizen of the United States, and we didn't know that at the time that we had this nefarious entrance into the country. But she had never voted in Canada during the period of time that she was there.

Actually, my mother came to Canada at the age of five or thereabouts in a covered wagon from North Dakota to a homestead in Central Canada. And they brought everything that they owned from North Dakota in this wagon train—their cattle, their horses, their chickens, everything—to a homestead in Central Canada.

So she had citizenship by reason of her birth in North Dakota; and she never lost it, and that was her citizenship. But for me, I was born in Canada, I was born from an American citizen; I later learned that I didn't have to go through a procedure that I did. *[laughing]*

But in the military, although I was acceptable to go into the infantry, they learned that I was, and knew that I was, not a citizen. And I was interested in becoming a citizen; and so I was eligible to receive citizenship, providing I established my port of entry. Well, that became a bit of a problem. *[laughing]*

Carl Anderson: How did you do that?

M. O. Sabraw: Well, I explained to them how I got into the country, and they said, "Well, we need a port of entry. So what we will do is give you a three-day pass, and you go down to Mexico and establish your port of entry and bring that back to us." And that's what I did. I hitchhiked down to Mexico. In those days, if you had a service uniform on, all you had to do was stick your thumb out and the first car that came by would pick you up. But I came back with my port-of-entry documentation.

Carl Anderson: You just did that at the border, then?

M. O. Sabraw: I went through the border, came back; and then I had an entry into the United States that I could show, and that's all that was required of me. So with that port of entry and being in the military I could apply for citizenship; and it was promptly granted to me.

Carl Anderson: So when you showed up at the port of entry, you were in uniform and you had no problem?

M. O. Sabraw: Nope; no problem going into Mexico, no. *[laughing]*

Carl Anderson: I mean coming out of Mexico.

M. O. Sabraw: Oh, coming out of Mexico, I guess I had no problem; I don't recall any detail there that was a problem. I was in the United States Army uniform and I had an I.D. for the United States Army, so I don't recall any problem.

Carl Anderson: Okay. So then you established your port of entry, and then were you sworn in as a citizen?

M. O. Sabraw: I was sworn in at the superior court in . . . let's see, what county, whatever county that is; I was stationed at Camp Roberts at that time.

Carl Anderson: Oh, yeah.

M. O. Sabraw: Yeah, San Luis Obispo. Yeah, that's where it was, yeah.

Carl Anderson: Okay. So then you did your basic training at Camp Roberts and—

M. O. Sabraw: Uh-huh. I took my basic training at Camp Roberts, yes.

Carl Anderson: And this is infantry training?

M. O. Sabraw: This was infantry training, yes. And I thoroughly enjoyed the military; I enjoyed the infantry. I guess I was one of those gung-ho people at that time, and I was interested in becoming an officer. And so I applied for Officers Training School, took some tests, oral and written, and I was held over after we completed our training. And I didn't ship out with the rest of the company to the Pacific or Germany, depending upon where you were assigned. And I anticipated that I was going to go to Officers Training School. I had also signed up for paratroop training, and I was anticipating they were holding me back because this was what I was going to do.

Well, I did get my orders about three weeks later, and it was to report to a ship in San Francisco, a troopship, and 25 or so days later I ended up on the beach in Manila with a shipload of replacements.

Carl Anderson: Now, was this a paratroop unit?

M. O. Sabraw: No, this was a shipload of replacements of all categories. And at that point, I had no paratroop training; I just had an ambition.

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Carl Anderson: What happened when you arrived in the Philippines, then?

M. O. Sabraw: Well, we camped on the beach one night—the Battle of Manila was still going on—and I got a call the next morning to report to the headquarters tent. And they told me to go back and get

my gear and climb in a jeep, and we took off. I didn't know where I was going at that point. *[laughing]*

It turns out I ended up at Lipa in the Philippines, which was about 60 miles away from Manila, and that was where the 11th Airborne was at that point. And I was promptly put into paratroop training at that point, I and some others who were in a similar category with me.

Carl Anderson: So that was sort of an abbreviated paratroop training?

M. O. Sabraw: It was a quick, hurry-up paratroop training; yes, it was, yeah—about six weeks, though.

Carl Anderson: Okay. Do you recall where you were when the first atom bomb went off in Hiroshima?

M. O. Sabraw: My recollection is that we were on Okinawa at that point—and I know we were on Okinawa. And we actually had had a couple of jump exercises there, anticipating that we were heading for Japan, and later learned from operations material that that was the program: we and plus a large contingent was headed for southern Japan.

Carl Anderson: So what happened after the first atom bomb went off?

M. O. Sabraw: Well, the second atom bomb went off, and at that point we were with orders to go to Japan. And we didn't know where we were headed; we just knew we were going to Japan. We were loaded with all our gear.

And we came to Atsugi airdrome, and we anticipated that we were going to jump on Atsugi airdrome; it's an airdrome south of Yokohama 50 or 60 miles, something like that.

When we got there, the commanding general, General Swing, circled the airdrome and was suspicious that he didn't see any activity there; so he sent a plane down to land, and the word came back that there appeared to be nobody there at the airdrome, that it had been abandoned at that time.

Carl Anderson: It was totally deserted?

M. O. Sabraw: Totally deserted. There was coffee on the tables, there was papers, there was supplies, there was everything, like somebody said, "Let's exit now," and that's what happened.

Carl Anderson: Did you ever find out what happened to the Japanese that were manning this airdrome?

M. O. Sabraw: Well, we learned subsequently that they got out of there, they took their uniforms off, they threw them beside the road or

they ditched them, and they were civilians from that point forward.

We immediately sent some patrols out. I remember we went to a nunnery, and they were Germans, spoke only German; but they gave us our first milk that we had had in a long period of time. *[laughing]*

But we subsequently observed . . . well, five days later, MacArthur landed at the airdrome and we were there to receive him. And he promptly got into a sedan and headed for Yokohama; and the peace treaty was signed the next day in Yokohama.

But we observed the Japanese people at that point were . . . well, first of all, the only people we saw as we went out on our patrols was old men. And the old men were, I guess, pleased to see that nobody was harming them; nobody paid any attention to them.

Next thing we saw was little children, and the GIs started giving little children chocolate, *chokoleto*.

And the next thing we saw was old ladies out on the street.

And then finally the young *kawaii hitos*, the young Japanese girls, were out on the street. It took about three weeks for all that to happen. That was kind of the transition.

Carl Anderson: So everybody was sort of hiding in the hills?

M. O. Sabraw: They were closed in, yeah. The windows were shutters on, and nobody was coming out. Gradually, the progress of going through, seeing who could get along out on the streets took place and—

Carl Anderson: Did you stay in Japan for any length of time after the war?

M. O. Sabraw: I was there for a year, yes; I was in occupation duty for a year—went up to northern Japan and then from there the northernmost island of Hokkaido.

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I thought that General MacArthur did an excellent job in the occupation of Japan and the orders that were given to the troops, and the idea as far as he was concerned was also the war is over, and we're here to rebuild, to assist the country in getting back on their peaceful feet.

Carl Anderson: Were the Japanese population, were they helpful or—

M. O. Sabraw: They were I would say helpful; but more than helpful, they were completely nonresistant. I mean, there was no attitude or action that in any way represented resistance.

Carl Anderson: You didn't feel any animosity?

M. O. Sabraw: Well, they were hard to size up initially, because they were so quiet and so conventionally nonresponsive in terms of anything that happened. They just didn't want any trouble; they didn't know what to expect. They had heard all sorts of stories about what type of people we were, and I think they were taken aback to find that that wasn't what they were experiencing.

Carl Anderson: How was MacArthur viewed by the Japanese?

M. O. Sabraw: I think they came to love him. They'd come to respect him, first of all, because he was a responsible leader. He was not taking advantage of the victory that could have been used by him or any military leader. He was more of an administrator of the country in their eyes, it seems to me; and I give him great credit and wisdom for doing that. And of course he had been in the Philippines; he was familiar with that part of the world. He understood the Japanese, I think, and very effective.

Carl Anderson: Okay. Now, you stayed one year in Japan, then, in occupation duty.

M. O. Sabraw: Right.

Carl Anderson: Then you were discharged in 1946, is that—

M. O. Sabraw: 1946, that's correct.

Carl Anderson: And what did you do when you were discharged?

M. O. Sabraw: Well, my intent at that point was to come home and go to school. I had observed from the military that an education was very important. I liked the military. I was thinking about the possibility of staying in the military, as a matter of fact.

When I came to be returned home, there was an opportunity for me to get a direct field commission at that point, and I was very fired up about it; but one of the things I wanted was an education. And I think if I could have got a field commission and guaranteed that I would get an education thereafter and be satisfied that that was really going to happen, my whole career would have changed.

Carl Anderson: So were you commissioned as a second lieutenant or first lieutenant?

M. O. Sabraw: I was not, no; I came back to the states, however, and did receive a commission in the Reserve almost immediately.

Carl Anderson: And you rose to major, didn't you?

M. O. Sabraw: I did, in the Reserve.

Carl Anderson: Right, okay. So when you came home, you wanted to go to college. You learned in the military that this was . . . You thought it was going to be important to you, but nobody in your family had gone to college.

M. O. Sabraw: That's correct, that's correct, nobody had. *[laughing]* In fact, I have to think about this. I don't think anybody in my family had completed high school. My mother completed the eighth grade. My father completed the third grade. It was very important to my mother. To my father, as I say, he was very skilled with his hands, and he could do so much with his hands, and he was very bright; but going to school was not his bag. *[laughing]*

Carl Anderson: So when you were discharged, then, did you go back to Santa Rosa? Were your parents still there?

M. O. Sabraw: My parents in the meantime . . . during the war my father in the meantime had become a building contractor and did a lot of work for the government during the war and had moved to San Rafael because much of his work was at Hamilton Field and other government jobs in the area. And so they had moved to San Rafael.

My high school sweetheart was in Santa Rosa; and so I returned and lived with my folks in San Rafael for a year, but got married the next year in 1947.

Carl Anderson: What did you do about your schooling?

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M. O. Sabraw: Oh. Well, I had written to the University of California and allowed as how we had won the war and I wanted to go to school. *[laughing*] And I received a nice response letter saying, "Well, we would be very happy to have you. We would like to see a transcript of your high school grades."

And so after they saw the transcript, they allowed as how it might be necessary for me to go back and take French again and a couple of other things that I needed to take before I would be admitted to the university.

Carl Anderson: So did you do that?

M. O. Sabraw: I did do that, yeah. I went to Santa Rosa Junior College, and I completed two years there in a year and a half and made all the makeup that I had to do and then went to the University of California at Berkeley.

Carl Anderson: So you were married at this time to Betty?

M. O. Sabraw: Yes. Yes, I was, yeah.

Carl Anderson: So then you went to Cal and you graduated in political science.

M. O. Sabraw: I did, I did.

Carl Anderson: Okay. And Betty is working and putting you through college, is that right?

M. O. Sabraw: She was working at that time.

Carl Anderson: You were working, too.

M. O. Sabraw: Yeah. She was working at that time. Up until our first son was born, she worked, yeah.

Carl Anderson: Okay. And what prompted you to go to law school—because you went to law school right after you graduated from Cal, didn't you?

M. O. Sabraw: Right, I did, I went right into law school. Well, I had no idea of going to law school when I went to Berkeley; but I did get into a memorable class taught by Jacobus tenBroek, and this was a public speaking class. There I met Al Broussard and a number of other people. Joe Grodin was one of the students, but they were all headed for law school.

And tenBroek was an inspiring instructor. He's a memorable one in my memory as far as an educator. He was blind, and he was a lawyer; but he elected to teach public speaking, and he cranked in a whole lot of philosophy with respect to public speaking.

And then we went from one class to another—debating was another class—and everybody was going to law school. And so then the question was, what do you want to do? And I—

Carl Anderson: Well, did Professor tenBroek encourage you to go to law school?

M. O. Sabraw: Not to me personally, but that was the whole program, you know. The Socratic method was used in his class. But I didn't have one-on-one contact with him where he encouraged me to go to law school, no.

Carl Anderson: But he was a very popular professor. I think there was a society that was formed afterwards, wasn't there?

M. O. Sabraw: That's correct. Yes, that's correct.

Carl Anderson: His former students?

M. O. Sabraw: That's correct, yes, yeah.

So I applied to go to Boalt, and to my surprise I was accepted. And I decided that, well, I'll go there and I'll put a year in. If I get a year in law school and if I'm not able to go beyond that, at least I've got that on my record.

Carl Anderson: What did your parents think about your going off to school—not only graduating from Cal, but going on to law school?

M. O. Sabraw: Well, they thought that was phenomenal. You know, that didn't happen in our family. *[laughing]*

So one year after another the years ticked by until the third year and graduation. So at that point I was called back into the service, and I went back to—

Carl Anderson: Is that the Korean War?

M. O. Sabraw: The Korean War had just ended at that juncture, and I went back to Fort Benning, Georgia, for an advanced officers training course at that time. And when I completed, there was an opportunity for me to make a decision on whether or not I wanted to make a military career of my experience or whether I was going to go back and practice law. And I concluded at that juncture that I should go practice law.

But I stayed on in the Reserve thereafter and actually continued on in the Reserve until I had 16 years in combined active duty and Reserve duty.

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Carl Anderson: That was at Fort Benning.

M. O. Sabraw: Fort Benning.

Carl Anderson: Was that at Fort Benning?

M. O. Sabraw: Yes, it was at Fort Benning, yeah.

Carl Anderson: So what did you do when you came back? When you made your decision you wanted to go to practice law and came back from Fort Benning, what did you do then?

M. O. Sabraw: I talked to a lot of people about a job *[laughing],* and I applied in the district attorney's office in Marin County, in Ukiah, in Humboldt. I was really interested in going into the district attorney's office, because I thought I would get some trial experience there. Santa Rosa was my hometown, and so I probably had a little inside track there, I don't know. Anyway, I got a job in Santa Rosa in Sonoma County.

Carl Anderson: So that was for the district attorney in Sonoma County?

M. O. Sabraw: That was the district attorney in Sonoma County, Joe Maddux, yes.

Carl Anderson: And then what kind of assignments did you have?

M. O. Sabraw: What kind of assignments?

Carl Anderson: Right.

M. O. Sabraw: Exactly what I anticipated. I had a wonderful time there. I got to try misdemeanors, a few felonies. The office was a small office, and they had the approach there that they would give you whatever you thought you could handle and they felt you were able to handle.

Carl Anderson: So they'd give you the file and say, "The courtroom is upstairs"?

M. O. Sabraw: Yeah, they did that sort of thing, yeah. *[laughing]* But it was just a wonderful experience, and I just couldn't have been more grateful for the opportunity I had there.

But I knew that I wanted to practice law. I was most interested in the DA's office for the trial experience and the opportunity to act like a lawyer and feel like a lawyer, but I knew I wanted to practice law in private practice.

Carl Anderson: So you stayed in the DA's office for two years, got your trial legs, and then what'd you do then?

M. O. Sabraw: I had an opportunity to go to Southern Alameda County. While looking around for a job, I had made contacts in Southern Alameda County, and somebody that said they had a job for me if I could wait a while—came to see me in Santa Rosa. And they came to see me shortly after I was there, and I said, "Gee, I can't do this; I couldn't do it right now."

But anyway, they came back again, and so we did get together, and so I came to Fremont. It was before there was a city of Fremont. I came to Centerville in those days, and that was with Gene Rhodes and Judge Quaresma, who was the justice court judge, a great mentor of mine.

Carl Anderson: So you went to work there and then moved to Fremont, never having lived there before.

M. O. Sabraw: Well, actually, one of the things that they offered, which was the clincher, was that they were representing a subdivider in . . . they did a lot of construction and subdivision work, and the subdivider that they represented was building homes in Newark and they could provide a home for me. So I had the GI Bill, and there was kind of . . . if I moved here, why, I could move into a new home, and it worked out very well.

Carl Anderson: So how many children did you have at this time?

M. O. Sabraw: At that time I had three children. I had two children during law school, and our little daughter was born in Santa Rosa, and then the fourth child was born in Newark.

Carl Anderson: When you were practicing law. So you practiced law then for, what, about 13 years out in Fremont?

M. O. Sabraw: I did. Yes, I did.

Carl Anderson: You saw the city get incorporated.

M. O. Sabraw: I did, yes.

Carl Anderson: And were you active in the community at this point?

M. O. Sabraw: Well, I was. My good friend, lifelong friend, Gene Rhodes, suggested to me, "Now, you're coming into a new community, and I want you to remember that when you get in the elevator and you get up to the ninth floor, the person that you rode in the elevator with should know your name, they should know you are a lawyer, and they should also feel in their pocket and have one of your business cards there." *[laughing]*

But he gave me such great advice. He said, "Become active in the community." And that was fun for me, and I did. I got involved in the Board of Education, in the Rotary Club, in the Salvation Army, in the Chamber of Commerce, anything and everything.

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And it was a small community in those days, and it was easy to do, and it was fun. And he was absolutely correct that don't join an organization for the purpose of getting business; join an organization to participate. The worst thing that you can do is join an organization and not be active and not be involved.

And I got myself too involved maybe, but it was great for the business long-range. *[laughing]* In a short period of time—three years, I think it was, or four years; no, maybe it was five years—I formed my own office. And one of the partners—no, he was not a partner there, he was a lawyer there—joined me, and we were partners for Fred Avera.

And then within a few years the office grew, and I ended up representing the hospital and did a lot of construction work representing developers. I was extremely interested in real estate, taught real-estate law for a short period of time to people who were trying to get their real-estate broker's license or their license to sell real estate.

And the community was a special community.

Carl Anderson: What prompted you to become a judge? You were selected by Ronald Reagan in the first . . . well, really, the beginning of the second year of his first term as Governor.

M. O. Sabraw: Well, I wanted to become a judge. My early experience with the law, I thought that was the ultimate, to have an opportunity to be a judge. I never thought it would come to me, and I certainly didn't expect it to come to me at the point that it did. And I just felt that was an enriching way to spend my time.

And I had great admiration and respect for the bench that we had in Alameda County in those days. There were the Cecil Mosbachers, who I looked to with great appreciation. There was Don Quayle. There were so many, Monroe Friedman. They were real inspiring judges as far as I was concerned.

Carl Anderson: Those guys were on the superior court, but you were appointed first to the muni court in Fremont-Newark-Union City.

M. O. Sabraw: That's correct.

Carl Anderson: How many judges did you have at the courthouse then in Fremont?

M. O. Sabraw: In Fremont? Oh, initially there was only one judge, and that was my former partner, Judge Quaresma, who was a municipal court judge and later became the first municipal court judge. Thereafter, Roy Poochi became the second municipal court judge; but by that time Judge Quaresma had retired and joined our office. And I guess I was the third judge, yeah.

What was the question, now?

Carl Anderson: I wondered—how did you become appointed then? How did you come to the attention of Governor Reagan?

M. O. Sabraw: Well, I guess when I put my name in I got some support from lawyers and judges; and also I was active in the Republican Party, and I don't think that was an insignificant factor in those days. I was blessed with a lot of good responses, I think. That's how I would interpret it.

We did have a celebration down here for Ronald Reagan at the time that he was running for Governor, and we were of course in big support of him. But that's the only time I had an opportunity to shake his hand. *[laughing]*

Carl Anderson: Okay. *[laughing]* So you served on the muni court for three years, and then Ronald Reagan appointed you to the superior court.

M. O. Sabraw: Right.

Carl Anderson: And I know that when you were appointed to the superior court your colleagues there sort of dubbed you "Mr. Fremont." *[laughing]* You had quite a reputation.

M. O. Sabraw: Well, that would be a fair dubbing, I think, because I was scattered all over the town. *[laughing]* If I had do it over again, I think I would have spent more time at home and less time out doing the things I was doing; but that's a bit of hindsight.

(00:40:07)

Carl Anderson: Well, I know that you were on the superior court for 14 years, and during that time you were really a champion of Southern Alameda County. Historically Oakland had run the county, and maybe you could enlighten us about what you did for the good of the southern part of the county.

M. O. Sabraw: Well, we were very concerned. I was active in the local bar association as well as the Southern Alameda County Bar, and we were very concerned about the fact that all the action was in Oakland and half of the county was down here, and we thought that that ought to be represented. We thought we had to have a superior court.

We eventually did get one in Hayward and eventually got a courthouse in Hayward, where a fair segment of the superior court was assigned, including yourself.

Carl Anderson: Well, you were the first supervising judge at the new Hayward branch of the Superior Court of Alameda County.

M. O. Sabraw: That's correct.

Carl Anderson: That happened for a reason, I assume.

M. O. Sabraw: Well, we were keenly interested in seeing a move south, and as far as the court was concerned . . . And in fairness that was recognized and it wasn't resisted beyond an initial question of whether or not that should be done. And we got a nice, big courthouse.

Carl Anderson: But before the courthouse was built and opened, there was a sitting superior court judge in Hayward?

M. O. Sabraw: That's correct, and more than one. In fact, you were there—you were number two—and Wiley Manuel, who subsequently ended up on the Supreme Court, was number three. Is that right? That's my recollection.

Carl Anderson: Yeah, right. But there was always one judge there full time.

M. O. Sabraw: That's correct, yeah, that's correct; after it was initially established.

Carl Anderson: Okay. So you served 13 years on the superior court and then were tapped by Governor Deukmejian to the Court of Appeal.

M. O. Sabraw: Right.

Carl Anderson: How did that happen?

M. O. Sabraw: Well, if you won't listen too much, I'll tell you how I think it happened, how I pretty much know it happened. *[laughing]* I think you had everything to do with that. I was encouraged to make an application.

I had one experience that stimulated me in that respect. I was called in 1979 about coming over to the Court of Appeal and sitting for three months; and that was Rose Bird's idea, of bringing trial judges up to see what the Court of Appeal was all about. And it was received everywhere as an excellent idea.

Well, very early on, Shirley Wensler, my clerk, said to me in the middle of a trial, "Rose Bird is on the line." And I said, "Sure, sure."

Carl Anderson: The Chief Justice?

M. O. Sabraw: Yeah, Chief Justice is on the line, and she says, "No, I'm serious." So it's a true story. I got on the phone, and I don't know what prompted me to say this; but I said, "Are you sure you dialed the right number?" *[laughing]* And we both laughed. I think I was the first Republican that she had called in to do that, and we both laughed.

But that was a nice experience. I was over there for three months, I think it was, and I was with Bob Kane and our dear friend across the bay, who is no longer with us—

Carl Anderson: Tom Caldecott?

M. O. Sabraw: Huh?

Carl Anderson: Tom Caldecott? No, it was Division Two you were in.

M. O. Sabraw: Yes, yeah. It was …

Carl Anderson: Oh, Al Rouse.

M. O. Sabraw: Al Rouse, of course, of course.

Carl Anderson: Yeah, yeah.

M. O. Sabraw: And it was just a wonderful experience. And I had an opportunity there to write a decision that the Supreme Court later adopted as their decision. And I remember being asked at

the time by the committee that interviews—you know, the three- or four-member committee that interviews you by the—

(00:45:07)

Carl Anderson: The California Bar Association?

M. O. Sabraw: Not the bar association, but the Jenny Committee.

Carl Anderson: Yeah.

M. O. Sabraw: There's a four-member Jenny Committee . . .

Carl Anderson: Right.

M. O. Sabraw: . . . and they spent half the time asking me about that case, and they were impressed with the fact that that was very unusual. "You must have some talent." *[laughing]*

Carl Anderson: What was the case about?

M. O. Sabraw: You know, don't ask me that. *[laughing]*

Carl Anderson: Oh, okay. *[laughing]*

M. O. Sabraw: I honestly don't remember at this point. *[laughing]* I had that experience and also another case, the *Cushman* case, which ended up in a jury instruction formed on the case *Cavers v. Cushman*. And don't ask me what that was all about either, because I'll fumble on that.

Carl Anderson: So you spent three months, then, in Division Two at the Court of Appeal on assignment?

M. O. Sabraw: Yeah, and it was great. I think it helped me several years later in terms of evaluating whether or not I was capable of being there. You thought I was, but other people didn't know.

Carl Anderson: Well, Rose Bird was the chair of the commission that confirmed you; so naturally that helped a bit. *[laughing]*

M. O. Sabraw: Well, that's true. *[laughing]* That helped a lot. That's true, yeah.

Carl Anderson: You came to the Court of Appeal, then, on January 3. You were confirmed by the commission on January 3, 1985, and you came at the same time as Bill Channell . . .

M. O. Sabraw: I did.

Carl Anderson: . . . into Division Four, which had been really depleted; there was only one person in Division Four before December, and that was Justice Poché.

M. O. Sabraw: Yeah; Marc Poché, yeah, that's right.

Carl Anderson: So we had a full complement, then, in January?

M. O. Sabraw: Yeah.

Carl Anderson: What'd you do for the next three years?

M. O. Sabraw: Oh, I enjoyed myself absolutely immensely, both in terms of the work and, most equally important, the companionship. We had a great team going there. And I had known Bill Channell for a lot of years, but only ever so casually, and I found him to be such a gracious colleague and a special person. And of course getting back together with you again was like old times, and we just really had a wonderful time. We had collegiality like I'd never known before.

Carl Anderson: You didn't write many dissents while you were on the court those three years, but I do recall that there was a case I wasn't on that you were writing a dissent. And it's all the talk in the hallways is about this case and the friendly discussion between you and Bill Channell.

M. O. Sabraw: Yeah.

Carl Anderson: What was that case all about?

M. O. Sabraw: Well, Bill didn't see the light on that case exactly. He got mixed up with Justice Poché, and they formed a little bloc there, and they were blindsided by each patting the other one on the back. So I ended up dissenting, and that was a dissent that I had a great deal of concern about. It involved a couple of dogs owned by a senior gentleman up in Ukiah, who looked to those dogs as his helpmate, his companion, his friend. And he went to town one day and came back, and his dogs were missing; and he looked all over for those dogs. He eventually hired an airplane to fly around the area. He put an ad in the newspaper; he put an ad on the radio. He went to his neighbor, of course, immediately and said, "Have you seen my dogs?" The neighbor said, "No, I don't know anything about them."

He later discovered in a shallow ditch in front of his neighbor's house his two dogs buried in a shallow grave. So he went to his neighbor, and the neighbor said, "Yes, my hired man shot those dogs, because they were over on my property and I had cattle there." "Were they disturbing your cattle?" "No, but they were on the property." "Why didn't you tell me?" "Well, I didn't."

And there was a provision in the code—and it's still there, to my dismay *[laughing]*—that provides that stray dogs on property where cattle are maintained or other flock maintained can be shot.

(00:50:07)

Carl Anderson: Well, does the code define "stray dog"?

M. O. Sabraw: Well, not exactly, and the interpretation that I had was that it needed to be a dog that was proceeding against cattle in a threatening manner or attacking cattle. It didn't seem right to me that some dog, unfamiliar with where the property line was, had wandered over onto the neighbor's property and he was subject to being shot at that point; and I thought that was outrageous. That was the law of the Pecos; it didn't belong in our society today, particularly where we have pets that are recognized as members of the family. And so I had to dissent, and I just got it out of my system by dissenting.

Carl Anderson: You became famous for this dissent, as I recall. You became famous all around the state for—

M. O. Sabraw: Well, you would think that is the only decision I ever wrote, because I got letters from all over the place. *[laughing]* I got more response from that case than anything I ever did, and it was gratifying to me.

Actually, I was asked by the San Diego Bar Association after I retired, a couple of years after I retired—well, it was at the time when a lady across the bay had a little dog pulled out of her car and thrown on the freeway by somebody in a road-rage incident and attracted a lot of attention, and he ended up getting a year in prison for that.

But at that time that was a lot of concern about the treatment of animals, and the bar association down there was concerned to have my reaction about whether or not *Dillon v. Legg* could apply to this situation. *[laughing]*

Carl Anderson: Emotional distress? *[laughing]*

M. O. Sabraw: That's right. And I was of the opinion, of course, at that time that we haven't got there yet; but I wouldn't be surprised that it occurs in the future.

But anyway, I had a nice visit with the bar association. They had a big assembly come there on this subject. So that case turned out to be an interesting one and a dear one, but it didn't go anywhere. *[laughing]*

Carl Anderson: The Supreme Court didn't take it over?

M. O. Sabraw: No, although it seems to me that Rose Bird said that they should have. In fact, I'm pretty sure she did say that, because that was the case where she—

Carl Anderson: She wanted to take the case.

M. O. Sabraw: She wanted to take the case, yeah. *[laughing]*

Carl Anderson: Based upon your dissent.

M. O. Sabraw: Yeah. *[laughing]* Well, I don't know; hopefully based on some appreciation of the incorrectness of Bill Channell and Marc Poché. *[laughing]* We had a lot of joshing back and forth, and I used to say to them afterwards, "Well, if Carl Anderson had been on this case, the result would have been different."

Carl Anderson: Well, thank you.

Do you have any thoughts about the administration of the court system in California? You spent 20 years on the court as a judge in municipal court, superior court, the Court of Appeal. And where do you think we're headed?

M. O. Sabraw: Well, you know, I hear pretty regular reports on the court today, and I observe and I read the literature. I'm frankly concerned about the fact that we have in the last 20 years established a Judicial Council that has the responsibility for administering to the court as a whole. And it seems to me that there's a good measure of inroad being made with respect to the independence of the judiciary.

I'm not totally facetious in suggesting that at the rate we're going, one of these days we may have a ruling coming down from the council saying that when you take an unlawful-detainer action, these are the factors that you will consider and this is how you need to shape your decision. I'm joking a little bit about it, but it seems to me that that's an eventual extension of the direction in which we're going.

(00:55:11)

Local courts are told when they elect the presiding judge how long the presiding judge is supposed to sit; that the presiding judge will come to an indoctrination that's conducted by the Judicial Council, I believe. I don't know, I've never been a presiding judge, so I can't tell you that for sure; but that's what I understand happens, and I'm concerned about it.

I'm grateful to have been in what I consider the golden age of the judiciary where there was a large measure of independence, where individual judges had the responsibility of living up to their oath; but they had a great deal of independence on how they conducted their courtroom and how they administered among their fellow judges, ladies and gentlemen of the court. And I see big inroads being made there, and I'm disappointed.

I don't know that I'm peculiar in this observation, because I still attend judges' conferences with some degree of regularity, and I hear this comment everywhere. I do. And I'm not very popular, maybe, in being videotaped and expressing this—

because there's a measure of timidness on the part of judges, it seems to me, to express their thoughts in that respect, and they're going against the tide when they do.

Carl Anderson: What can be done to regain the independence?

M. O. Sabraw: I think a stronger judges association. I know the judges association that we used to have is being gradually, to my observation, being replaced, and less effective, less united; and I think that's too bad.

Carl Anderson: Since you retired, you've been very active in mediation and ADR work and arbitration—and the judges association has helped you with regard to that at some extent, have they not?

M. O. Sabraw: The retired judges association has been quite active, yes, and I think they've done a good job of monitoring proposed legislation. They've done a good job of instructing within the membership of retired judges, and I'm very pleased with what they're doing there; but I think that's different than the whole court working together.

Carl Anderson: What do you think about the requirement now? The State Bar is requiring us retired judges to be active members of the State Bar in order to practice mediation and arbitration.

M. O. Sabraw: Well, I don't want to overstate it; but I think that's outrageous. We are not doing anything different as a private judge than we did as a judge sitting on the court. There's no more reason for us to be considered practicing law and doing the work of a mediator any different than the work of a settlement-conference judge.

And with respect to requiring us to be members of the bar because, quote, "we are practicing law" in doing this, I think, is unreasonable.

Carl Anderson: Well, Mo, you've had a very distinguished career, and I know that you were a great mentor to young judges coming on the court and a great mentor to young attorneys. Did you learn that from other people on the court? How did that come about?

M. O. Sabraw: Well, I certainly learned it from other people on the court. I had mentors. I think of Cecil Mosbacher and Don Quayle and Monroe Friedman and Alan Lindsay. Alan Lindsay is more contemporary, but he was a grand judge and had a capacity to . . . *[laughing]* The story goes of sentencing somebody to state prison and having the defendant respond, "Thank you, Uncle Al." But he did—he had much to learn about the capacity to not be full of yourself; the capacity to listen; the capacity to not get troubled with the concept of who was before you, whether they're a big firm, a small firm. Whatever category they may be in, the law is the same and the facts are the same.

(01:00:24)

And to be able to do that, which I view many judges have the capacity to do, is I think an inspiration to fellow colleagues, and it's an inspiration to the bar that practices before them. And I'm grateful for what I've learned in watching them and hearing them and practicing before them.

Carl Anderson: Well, Mo, you've been very active as a mediator in the last 20 years or 19 years. How do you find time for your hobby of taking care of your horses and taking them on rides? Because you've done a lot of riding in your judicial career; where do you find that time?

M. O. Sabraw: Well, that's the blessing of private judging, because you do have more control of your time. I know for a long period of time I was very pleased to be able to take three to four months off during the course of the work, and just chart it out in advance; and you're not in the position of having to take anything or everything that comes through the swinging door.

I don't know how much more blessed a person could be than retiring at the time that we are retiring now: with every opportunity to continue to stay abreast with what's going on in the law and an opportunity to continue to greet the lawyers that we've known for years and years and years; the opportunity to feel like we're not getting stale or we're doing something about not getting stale. *[laughing]* And this is an opportunity that didn't exist previously, to say nothing about the fact that we have an opportunity to make an income that's commensurate with what I think judges should be paid.

[Pause in tape] I was saying that it's distressing to me to see judges' pay where it is today. For example, we have young lawyers getting out of law school and getting started at the same pay that a judge receives on his appointment, his or her appointment. I think that low pay is a reflection on the attitude of administration, the Legislature, whomever, of the value of judges.

Now, fortunately, we have example after example of lawyers who are making multiples of what a judges makes and are willing to give that up to become a member of the judiciary, and that's to their great credit; but I don't think it's to our credit as a community, as a state, as a country, to be paying judges in a manner that we are paying them, just because we can continue to get them. I think it's wrong.

Carl Anderson: What advice would you have for new judges coming on the bench?

M. O. Sabraw: Well, I would say that one of the initial important qualities to seek to emulate is to not be full of yourself. It's a great temptation as a practicing attorney to see the power and the

authority of a judge. Remember, that's the position and not the individual that we pay so much homage to; but it's a daily task to remember that. I think that's important. I think that's extremely important, because there's one way that a new judge can impact their image unfairly to them—is by looking too pompous or appearing too important in your own image.

(01:05:03)

Secondly, I think that it is extremely important to listen and, when you are done listening, listen a little bit more. You can do so much to enhance the image of the decision maker if you are patient enough to listen. It's not an easy assignment, because so often the judge has got a crowded calendar, he's got people waiting in line to be heard, and he has the responsibility of finishing up before the end of the day comes. So it's not an easy task, but there is a perception of being a good listener that can be projected by a judge. I think that's terribly important.

Carl Anderson: It's good advice for a mediator, as well.

M. O. Sabraw: Oh, absolutely. Any decision maker that doesn't do that I think is building in problems.

Carl Anderson: Well, Mo, you have thrown yourself into the judiciary 150 percent at every level: the municipal court, the superior court, and the Court of Appeal. And now you're doing the same thing in retirement. You're still involved in the community, and you make a difference, and we thank you for that.

M. O. Sabraw: Thank you.

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