Dennis Perluss: Dennis Perluss, P-E-R-L-U-S-S, and I am the Presiding Justice of the Division Seven of the Second District Court of Appeal.

David Knight: And Justice Neal, your turn.

Richard Neal: Richard C. Neal, N-E-A-L, and I am a Retired Associate Justice from Division Seven whose seat Justice Perluss took when I left, as I recall.

Dennis Perluss: Exactly right.

David Knight: All right, we're ready anytime.

Dennis Perluss: We are here this morning—it still is—as part of the Appellate Court Legacy Project, which grew out of the Centennial of the California Court of Appeal. The goal is to create an oral history of the appellate courts in California. And as part of that oral history, I have the privilege of interviewing Justice Richard Neal, who as he indicated in giving his name for our audio level, is a Retired Associate Justice of Division Seven, whose warm seat I occupied when I became a justice of the Court of Appeal.

The suggestion that we received, as an interviewer, was to proceed in basically a chronological order, more an instruction to me than to you; you should feel free to respond in whatever way you want. But following that direction, what I want to do is start sort of at the beginning and talk a little bit about your childhood and education and other experiences initially leading up to the time that you became a lawyer, and then spend a little time talking about your career as a lawyer before you became a trial court judge. And then we will proceed at that point to talk about your judicial career.

So if you could, could you describe the family initially that you were born into? I know it's a family that is suffused with the law.

Richard Neal: Well, it is. My father was a lawyer and law professor. He and my mother met while my father was the editor-in-chief of the *Harvard Law Review* in about 1940, and my mother was an Irish girl from Arlington, Massachusetts, with one of those "Park your car on the Harvard Yard" accents, and she was secretary to the *Law Review*. So that's how they met.

She was the sweetheart of a number of people who later on proved to be glittering eminences in the law. I'm not sure I could tick off the names anymore, but Caspar Weinberger was one of that group, and a number of other notables.

So it seems to me that Dad clerked for Robert Jackson after leaving law school, and then he headed west and was somehow involved, I'm not precisely sure, in the project to write the UN Charter, which I think went on in San Francisco. And Mom and Dad got married around that time. So I think their first home was an apartment on Nob Hill in San Francisco.

I came along fairly soon, in 1947, so that was two years after the war was over; and I was followed in due course by three additional sons, and they range from me down to Andrew, the youngest, at 13 years behind me. And that's the family I grew up in, four boys.

When I was young, we lived in—the part of it I can remember, anyway—in Palo Alto. Dad was teaching at Stanford Law School for a stint from about 1950 to 1960. So my brothers came along, but I think the last one didn't arrive until we'd moved to Chicago, which we did in 1960 or 1961. Dad went initially to take a spot at the University of Chicago Law School as professor there.

Edward Levi and Philip Kurland had been wooing him for some time, I guess. I think Kurland was part of that same group that was there at Harvard when Dad was there. So he moved, and within a year or two they made him dean there. And meanwhile, us California kids were dragged kind of with trepidation into the south side of Chicago, where we took up quarters down in Hyde Park near the university. It's amazing to think that.

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I think it was a meatpacker mansion. It was three stories high. It had a full coach house about the size of your average California suburban home. It had 10 bedrooms, 6 bathrooms, numerous fireplaces; it was a big, brick thing— still there.

So I went to high school there in Chicago, and my youngest brother arrived, was born while we were there. And so I attended the University of Chicago Laboratory High School for all four years of high school, and it broadened my horizons by living in the south side of Chicago, and I enjoyed that. So that's the family.

Dennis Perluss: Was your father the first lawyer in the family?

Richard Neal: I believe he was. His father was in the early days a traveling salesman for an outfit down in Alabama that made cast-iron soil pipe, the Attalla Pipe and Foundry Company. I guess he rose to the point where he and my grandmother owned the little company that made this cast-iron soil pipe. Somehow they made their way to Chicago and raised my father and his siblings in Oak Park, Illinois. Back beyond that I don't have much information about what predecessors did.

Dennis Perluss: So, high school?

Richard Neal: So, high school; the Lab School agreed pretty well with me, and I had a good career there. I was a soccer player, a track runner, and eventually got myself accepted to Harvard College and went off to spend the next four years there.

Interrupt with any questions. But I moved from there back to Boalt Hall. I really had a strong attachment to California and I had missed it when we moved to Chicago. So I pretty well had resolved to come back west when

I got out of college. I put in no applications at any of the eastern law schools.

Dennis Perluss: At what point did you decide that you wanted to go to law school?

Richard Neal: It was probably by default. I just had not formed, by the time I arrived at the end of the college years, any other concrete aspirations. Obviously I had been surrounded by and immersed in matters legal in my high school years.

Dad as the dean was entertaining students and visiting professors and so forth with some regularity. So I was surrounded by all of that, and Dad always said it was the last great generalist training; and so it seemed like something you could do and leave a number of options open. I went into it by default, I guess for lack of any other clear career goal at the time.

Dennis Perluss: The time you were in college, which is more or less the same time that I was in college, I mean those were boisterous—

Richard Neal: There were turbulent times, and it all kind of broke in my senior year at Harvard. In the spring of 1969, Harvard for the first time had the so-called free speech movement. I guess it got started in Berkeley in 1965. It took a while to percolate back to Harvard, but it came on in full force in the spring of 1969; there were demonstrations and so forth.

The first thing I did actually out of college was to take a teaching job at a private school in Tacoma, Washington, if you can believe that. It was part of my plan to return to the West Coast, and it was the place where I could get a teaching job.

And I got a deferment from the draft for a year. From that I can't say that I'd formed any strong aversion to military service; and looking back, I kind of wish that I had done it. I think it's valuable experience and one's patriotic duty; but seen through the eyes of an 18-, 20-, or 22-year-old . . . Anyway, I hadn't kind of arrived at these convictions.

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So I took this teaching job and I taught English at this school in Tacoma. I had been an English major at Harvard. Then in the middle of that year they had the lottery, where I drew a high number, and so I was just by good fortune not subjected to the draft. And so I at that point headed for Boalt Hall, where I went to law school.

Dennis Perluss: There was a year gap. It started in the fall of 1970—still turbulence at Berkeley, though, in those years.

Richard Neal: Yes, there was some, although I don't recall being much affected by that. I actually do recall there were several demonstrations in the law school proper, one where people went around and soldered up locks and lit fires in trash cans and so forth; but I don't recall being much affected by it. What I do recall is that law school was, I thought, considerably less fun than college was—probably a fairly universal reaction.

Dennis Perluss: Did you have any professors at Boalt that you found to be particularly inspiring or significant in terms of your—at least in your early stage as a lawyer—in forming who you were and what you thought?

Richard Neal: I'm not sure that I would say yes to that. There were certainly some memorable characters in the group. Stefan Riesenfeld was a German immigrant with a heavy accent and kind of a funny classroom style. I had Sandy Kadish, who was a longtime, well-respected pillar of the faculty there who was a criminal law professor. And Ed Halbach, who went on to be dean, was a probate professor.

One guy that stayed with me over the long run is Jesse Choper, who showed up on my doorstep many years later with his hand out doing his job as dean and doing it very graciously. And I saw him just Friday night because Boalt Hall put on a reception for Pete Wilson, who was a graduate of Boalt Hall and kind of a treasured alum.

So Wilson was there, and Jesse was there, and the new dean, Christopher Edley, from your law school, who has really done . . . he's a whirlwind of energy, and I think he's really lit up Boalt Hall from what I see. And I'm digressing now, far from chronological sequence.

Dennis Perluss: No, no, that's fine. Any classmates of note in terms of either what they ultimately did or people that were significant to you in, again, either early or later in your career?

Richard Neal: Who do I stay in touch with?

Dennis Perluss: I know Marsha Berzon was in that class.

Richard Neal: Marsha was in that class. I didn't know Marsha really at all, I guess. Tony Ishii is a federal judge in the Central Valley who I knew a little bit. I don't know that we were a class that produced a lot of stars. I go with some regularity to the alumni functions when they come to town here and so I stay in touch with a couple of people in the class; but nobody in particular of note, I guess.

Dennis Perluss: What was the sequence—taking the bar, getting your first job, how did that happen?

Richard Neal: I took the bar immediately following graduation in 1973, and I got married about the same to my first wife; and then I had decided I was going to stay in California to practice. So it was a choice, Bay Area versus Los Angeles, and I think I concluded that the opportunities were more attractive down here at the time than they were up there.

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So I took a job ultimately with an old firm here in town called Lawler, Felix & Hall, which is now long gone like many of the firms that were here then, and immediately went to work as kind of a briefcase carrier for some of the senior lawyers in what was then the flavor of the year, or the

period, anyway— these big, antitrust, price-fixing class actions, of which they were many.

So I was soon down at the courthouse watching trials in the federal district court, writing briefs. And that's what I did for the first number of years in the practice, was work as a junior team member, mostly in the antitrust field, including the case that we were talking about here before we went on tape—*United States v. ABMI*, a federal merger case that as I recall our side got a summary judgment in the district court from Jesse Curtis. And there was something called the Expediting Act. This is coming back to me. I can't believe . . . I haven't thought about the Expediting Act for the intervening time, but it allowed a direct appeal in certain cases to the U.S. Supreme Court, and this was one of them.

Dennis Perluss: That was a case in which your client had taken over a smaller company and there was a question of whether it was anti-competitive.

Richard Neal: Whether it violated Section 7 of the Clayton Act, I guess—whether it was a merger that dampened competition. These were two building-maintenance companies, concerns. But the narrower issue that we won summary judgment on was whether or not the acquired company—I think, I can't remember whether our client was the acquired company—but anyway, whether that company was engaged in interstate commerce because of the statute required that the company be engaged in interstate commerce to apply.

So we persuaded Judge Curtis that our guys were just a bunch of janitors pushing brooms around in Los Angeles and had nothing to do with interstate commerce. The government took that up to the United States Supreme Court. And I did a lot of work helping get the brief together, including rummaging through volumes of dusty legislative history to try to find some pronouncements about whether the drafters of this legislation, Section 7 of the Clayton Act or whatever subpart of it was involved, had thought about and spoken about—whether this extended beyond interstate commerce to local commerce. And I dug up a pearl or two, as I recall; I don't know how important they were in the outcome, but I thought they were pretty important at that time.

And we won the case and I got to go back to Washington. Marcus Matson was the senior fellow in the firm at that time, and he had been prominent in the electrical industry antitrust conspiracy cases, which I guess were the mother of all massive antitrust litigations—lots of cases around the country. I guess there were massive price-fixing conspiracies in the electrical industry, and it spawned a huge litigation project.

So Marcus was pretty senior already by the time . . . and I remember, by way of illustrating how times have changed, he must have been already probably in his 70s, and he had a secretary who couldn't have been more than a few years his junior. And he would say, "Oh, get my girl in here to take some dictation," or something like this, and it would just appall anybody in the modern scene. But this was him.

So he was good enough to take me and the younger partner who worked on the case with him back to Washington for the argument in the Supreme Court on this case. So I got to go and watch the case presented and experience the grandeur and solemnity of the Supreme Court from the other side of the bench.

In due course we won the case, and I think within a year or two Congress enacted legislation overruling the case. So it was a short-lived victory.

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Dennis Perluss: Long enough for your client.

Richard Neal: That's right, enough to make us feel like we'd done a pretty good job.

Dennis Perluss: Did the experience in the Supreme Court inspire in you a desire to do appellate work, or not particularly?

Richard Neal: Not necessarily, although over the years I would say I did a reasonable amount of it. In our practice, anyway, we tended to handle the appeals ourselves from the stuff that we handled in the trial court.

I don't know whether the firms that we now think of as preeminent specialists in appellate work who appear in this court here and who are very good and very specialized, where they were in terms of their evolution, formation, back in those days; but we tended to do our own.

So I did a reasonable amount of it over the years, both in the state and federal courts.

Dennis Perluss: Did you enjoy the appellate work? More than the trial court?

Richard Neal: I guess, yes, in one sense; over the long haul I concluded I was more of a log guy and a brief guy than a trial guy. I tried some jury trials with mixed results, but I reached the conclusion it wasn't really my forte, standing in front of a jury. Maybe I didn't have the right common touch. But anyway, I guess I evolved towards a view that I was better suited to be an appellate lawyer, or a law-and-motion lawyer, or a litigation lawyer than a trial lawyer.

Ultimately I guess that it had something to do with the decision to move to the bench, when I got to that 20 years or so down the road. I had tried a couple of substantial jury cases for Litton Industries, including one that became known pretty well as the *Applied v. Litton*—it's the case involving interference with contract, oft-cited around now—and lost both of those at the trial level, and not necessarily, I don't think, because of bad lawyering. But nonetheless the experience in those cases convinced me that this was not my gift.

And about that time I'm not sure how the thought of a judicial position got on the table. So I pursued it and landed in the L.A. Superior Court in 1992. If we skipped too quickly over the practice part of this, we can go back.

Dennis Perluss: Not necessarily too quickly. But any other particularly significant cases that you worked on; or perhaps even more importantly, people that you got to know during the time, that 20 years that you spent as a lawyer and the entire time in Los Angeles?

Richard Neal: Entire time in Los Angeles.

Dennis Perluss: The firm went through, or you and the firm both went through, some changes.

Richard Neal: The firm actually didn't change very much from the time that I started to the time that I left. Its major changes occurred soon after I left, but it was pretty much the same firm that I started with when I left in the mid '80s. I didn't mention the date I moved to a second firm.

I concluded that, rightly or wrongly, that the old guard in my original firm, the Lawler firm, was there for a while, yet I wasn't going to get opportunities to become a partner at a year, whatever, I forgot. But in any event there was a well-entrenched layer of lawyers who were older who owned and ran the firm, but were not old enough to be likely to retire anytime soon.

So I made a decision at some point to try and find an opportunity where I could be the senior guy in the case—probably not an untypical experience. But there were some great mentors in that firm.

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John Wigmore was a guy I worked with extensively. He was a great-nephew of the Wigmore, Professor Wigmore, at Northwestern University, and was quite an able lawyer in his own right and a demanding taskmaster upon the rock of whom several young lawyers' careers, at that firm anyway, had faltered. But I remember him sitting in my office throwing pencils at me while I was on the phone with somebody because he didn't like the way I was . . .

So he was a crusty character; but if you met his standard, he was somebody to learn from. I tried a case up in Denver in the federal district court; it was a Robinson-Patman Act case, with John sitting there at my elbow, again sort of "Object, do this, do that," but yet not taking the lead. And so he'd put me up there.

Then Robert Henigson, who was a Harvard Law guy of maybe 1950s vintage, another senior heavyweight player in the firm, a fine, bright lawyer; I remember his tales. He was Jewish, and he came to Los Angeles whenever it was—in the '50s, I guess—and he had a very strong bond of loyalty to this law firm, Lawler, Felix & Hall.

Apparently the reason for it was because he walked the streets of Los Angeles and they weren't hiring Jews; and Oscar Lawler hired him and he was forever grateful for that and repaid it with a strong loyalty to the firm. He ended up being the managing partner about the time I departed.

I remember telling him I was leaving. It was a hard task, because I had great respect for him. I worked with him; he was very smart and straight as an arrow. Kind of crusty, but . . .

Then there were a couple of other people. Richard Outcault, now deceased, was a Stanford Law graduate, a former student of my dad's, a very substantial lawyer. I learned a lot from him. So the firm was very good to me, and I learned a lot from some pretty accomplished lawyers.

So what brought about its demise? There were a numbers of groups that peeled off, and soon after I went, a group went to Pillsbury Madison & Sutro, and the firm dwindled, then got acquired by Arter & Hadden. I ended up with another firm called Pettit & Martin, and I spent about seven years there. And I did indeed have some of the opportunities that I looked for, including trying these two cases for Litton Industries.

I represented the Ritz-Carlton Hotel people in a major dispute over the construction of their Marina del Rey hotel. It was a dispute with the general contractor, which went through a full-blown arbitration. I represented Four Seasons Hotels in a dispute down over the Newport Beach hotel.

Another thing that I got involved in that was very good experience was representing Chevron, a longtime client of the Lawler firm, going back to the turn of the century probably. And they had a steady diet of smaller stuff that produced opportunities. I say "smaller"—they were tort cases that produced opportunities for trial experience. I flew out to oil rigs and learned about the maritime laws a little bit. And so that was some fun stuff.

Dennis Perluss: How was it that you began to think about the bench?

Richard Neal: Well, I was in part motivated, I think, by this conclusion that I wasn't necessarily suited or at my strongest as a fellow in front of a jury. Now, from my perspective 35 years into this business, I appreciate that that is probably true of a large part of the people who practiced in the litigation arena and should not have disqualified me.

Dennis Perluss: I think most of us feel—if we're honest—feel that way. *[laughing]*

Richard Neal: But nonetheless I concede that that was an important part of being a lawyer. My younger brother Steve is an exceptionally gifted and successful jury-trial lawyer who tries the big commercial cases and prominent cases to juries. So I guess I view it as a reason, anyway, to consider some turn in my career.

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And of course at the same time I felt I had a lot of hard-won experience and reasonable intelligence and some qualities that would be well suited to the bench, and so it seemed like a good thing to do. And I'm sure I was influenced by several people; one that stands out is Paul Boland,

who we lost, as you know, recently. He had an influence on a lot of lawyers around town, and I was one of them. I think he was one of the people that pushed me along the way towards pursuing the judgeship.

Anyway, when I got up there of course I found that I loved it and it was a fit. I started out over in the criminal court, which is typical enough. I got sent to the CCCB, central criminal courts, and this was early 1992. I don't think . . . maybe I had set foot in that building once in my career as a journeyman-courts lawyer in town.

So it was with some trepidation that I landed over there. I spent maybe a week with Lorna Parnell as my . . . Well, first of all I should mention that Lance Ito was running a little school for the new, incoming class of judges, which in my case included Bill McLaughlin, who is now the PJ over here, a terrific guy, and Bob O'Neill, Victor Person, and Tom Stol—I can't quite say his name, a silver-haired guy who ended up presiding in Pasadena—and one or two others.

So we had a little class there that Lance ran us through for a week, and then they assigned us to a mentor. So I remember sitting there on the bench, actually side by side, with Lorna Parnell, who took me under her wing for a week or two—and then into the pool you go, and you're sitting up there in the criminal court where you've never practiced and wondering, "How am I going to do this?" But I made the adjustment pretty quickly.

There was this wonderful custom over there that helped somebody in my circumstances, which was that the courtroom deputies—the prosecutor, and the public defender—would approach the bench and have a little off-the-record discussion with you about things. It seemed very strange to a civil litigator, but there it was; it's the well-established custom there. And so I was able to ask any dumb question that I wanted and have it answered privately out of the public eye by two people whose incentives were to kind of make me look good and keep me happy. They wanted to get along with me.

Of course, if you practiced, as I did, in a civil practice where you were used to going to a different state or a different tribunal and learn reading the rules, it was not all that daunting to go into the criminal court and start to read the rules, read some of the cases; and you got up to speed fairly quickly.

I came to realize fairly early on that the lawyers, and particularly the defense lawyers, love to get somebody like me in there who had not been a prosecutor. I came in as one of the early Wilson appointees, and Deukmejian had appointed a lot of prosecutors to the bench. I think the defense, and the criminal defense bar particularly, was frustrated that they were trying all their cases in front of prosecutors. They thought, aha, here's somebody that will listen at least to what we have to say and maybe even read something we ask him to read.

So it turned out to be a great experience. And it was one murder trial after another and everything else seemed to settle. So you were trying—

you felt like you were dealing with—some matters of consequence, and it was interesting and challenging.

Dennis Perluss: How long did you sit in the criminal court assignment?

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Richard Neal: I was only there for a year. I had just been reassigned for another year, and at the time Bob Mallano was the presiding judge of the L.A. Superior Court. And I had tried a little antitrust case in front of him down in Torrance years before, so he knew me; and he had a spot open up there because I think Judge Charlie Jones went on disability or something.

So he had a fast-track court that needed to be filled; and he knew that I had a civil background, and so he asked me to come over there. After the assignment I was all set to go back to the criminal court for another year, and so I made the switch.

Dennis Perluss: I will interrupt just to say—I don't know if you remember, but I actually was on that panel.

Richard Neal: I remember that, and when you divulged that you were a member of the ACLU, you were the first challenge.

Dennis Perluss: *[Laughing]* That's right. It was a particularly grisly case, and I didn't feel I needed to in any way soften the answers to make myself more desirable.

Richard Neal: I don't remember; what was the case?

Dennis Perluss: It was some young kids who had brutalized an older couple or an older man. It was a robbery—aggravated assault kind of a case, as I recall. It was enough as a civil litigator, as I was at that time, to make me shudder; and think that going back to somebody's financial statement seemed like a useful thing to do.

Richard Neal: It seemed like a good thing to do; I do remember that. I was trying to recall my encounters with you. The other one was over there in Department 22, where I ended up where there was an entertainment-industry case with a colorful plaintiff's lawyer.

Dennis Perluss: Joe Yanny. And his client was a fellow named Philip DeGuere, who was actually a very successful writer/producer type. It was just that this particular show did not go well.

Richard Neal: You were representing Columbia?

Dennis Perluss: No, I was representing the Ziffren law firm, who had been his lawyers, and he had sued them for malpractice. And Columbia was involved in the case, and CBS; all three of us were the defendants, on different theories, in the lawsuit.

Richard Neal: So we had a number of mandatory settlement conference sessions in chambers there, I recall, and we all sat patiently while Mr. Yanny paraded before us with his ponytail. The interesting sequel to that story was that Eileen O'Brien, who was my research attorney there in Department 22—a very bright, energetic young woman, who I think is now working for the AG and maybe is in this building—but she made the mistake, she fell under Yanny's sway and went to work for him for a while after she left the court, I think to her eternal—

Dennis Perluss: *[Laughing]* My follow-up to that story is that after we resolved that, Joe Yanny I think is the only lawyer who has ever threatened to punch me out for something that I said that he felt was not an acceptable position to be taking—but his client DeGuere was involved in something, and there was an appellate matter and he referred the case to me.

Now, I had a conflict, so I was unable to do it, but I thought, "Well, gee, maybe we got along better than I realized we were getting along."

Richard Neal: Yanny referred the case.

Dennis Perluss: Yanny referred the case to me.

Richard Neal: So he obviously thought well of you.

Dennis Perluss: In any event, so you went over to the Department 22, right?

Richard Neal: Yes.

Dennis Perluss: And you were there for what?

Richard Neal: Pretty much the duration of my time on the superior court; that carried me from, let's say, 1993 up to 1997, and I think those were probably the best . . . Of course, I say this without the benefit of any other experience, but the criminal experience that . . . I formed the conclusion that those were probably the best assignments in the superior court.

Downtown you get the most interesting and substantial of the caseload in the court and you get to handle them from start to finish. So you're in charge. I liked the law-and-motion work; but on the other hand, I was glad not to be doing it as a full-time diet. I don't know whether you ever did this, but I sat for one week. I stood in for Charlie Lee while he was on vacation when he was in Department 81; I think maybe it was one of those master calendar law-and-motion departments back when they had those. And that gave me great respect for all of those who served there for a year or two, because it was 30 or 40 matters a day that you had to work up and go out there and face the crowd and be able to appear semi-intelligent on all of those things. It was a crushing load.

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Dennis Perluss: I know it's grueling. While you were doing fast track, were there still the non-fast-track departments?

Richard Neal: Not downtown, but I think maybe in the branch courts there were.

Dennis Perluss: I don't recall exactly when they switched. For a while it was half and half, with odd numbers doing something.

Richard Neal: Well, maybe that's it, because now that you say it, if I was serving a stint in the master calendar it was obviously still around. So I think you're right. I think it took a while. I went half and then half.

Dennis Perluss: A question would be whether you had in your own mind a view as to which was better—the sort of all-purpose fast track?

Richard Neal: I think I had little doubt that the fast-track individual calendar system was a better system. First of all, I think you get an investment in the cases that judges that just see it as it goes by don't have, and therefore a motive to manage and dispose of the case that you may not have.

For example, if you contrast the master calendar law-and-motion system—if you had a tough call up there and you're dealing with 20 or 30 a day—you're going to err on the side of denying the summary judgment motion or demurrer that ought to be granted, because you don't want to make a mistake on that side of things.

Whereas if it's in your own place and you're only doing . . . and it's your own place in your fast-track courtroom and you're only doing a half a dozen of them a week or something like that, or even if you're doing more, you've got an opportunity to deliberate and handle it a little more deliberately; and you've also got the motive that it stays on my calendar here until I find something to do with it.

So as I recall, as fast track got fully up to speed, the court system achieved dramatic shrinkage in the amount of time it took to get from filing to trial. And I remember the days—and I'm sure you do—when under the master system where there was a list posted outside Department One with cases running to the triple alphabetical letters that were five years old. So that really was a major problem that needed to be solved, and I think the individual calendar system was a large part of the solution to it.

Dennis Perluss: Any particularly memorable cases when you were sitting in civil where you were the trial judge?

Richard Neal: It depends on what you mean by memorable, I guess. Several categories; one case is memorable because it involved events that are memorable to Angelenos in general. Remember the O. J. Simpson's white Bronco that he fled in shortly before he was arrested and charged with the murders? That Bronco became the object of a little commercial dispute that was tried in a court trial in front of me. So that was sort of fun.

Another case that stands out because of the hammer and tongs battle I had with the plaintiff's lawyer, who shall remain nameless . . . but

somehow, at the very beginning of this case we got crosswise and he set out to sabotage the proceedings, basically to cause a mistrial.

This went on for six weeks, with the most outrageous things being said to me. He'd come to the side bar and say, "You're no Judge Neal, you know. Everybody in the courthouse knows that; I know what you're thinking." I decided early on I was going to suck it up and weather this thing and produce a decision that would stand up.

So we get to the end of it and I think I'm pretty well there, and I get everybody set to come in for closing arguments at 10:00 the next morning. About 9:00 the following morning, I get a call from somebody in this guy's office saying, "I'm sorry. Mr. X will not be there for the closing argument; his brother has just come down very ill and is in the hospital and he is off seeing him."

(00:45:15)

Well, fortunately there had been another fairly senior lawyer there with him, so I said, "Get him in here." So he showed up at 1:00 and immediately advised me that his client was not going to let him do the closing arguments in the case and it had to be this other guy.

Of course, normally somebody tells me "My brother is on death's doorstep" or something, I would say, "Of course we need to adjourn." But I knew this guy was not to be relied on, so I finally told the other lawyer and the client, "You've got a choice here. You're going to go to closing on this case with Mr. Smith, the co-counsel, who has been here through the case, who has got as much experience in years as the other guy, and he can do a fine job; or you're going to put the case to the jury without a closing argument, and I will tell them that you've elected to do that and they're not to hold it against you. But those are your choices."

So they were stubborn, and so I submitted this case to the jury without a presentation by the plaintiff. If I told you . . . And I'll give you a thumbnail of the facts. It was a bad-faith claim involving some insurance on an automobile, just property damage insurance; there was no personal injury involved, so it was just the cost of the automobile.

The evidence showed basically that the son of the insured had taken this out to a remote area and with cans of gasoline in it and prepared to set it on fire before he was caught. It's all kind of a little dim in my recollection, but there were outrageous facts.

So the jury came back in about half an hour with a defense verdict. *[laughing]* And then I waited anxiously for a year or two, but the Court of Appeal did the right thing; and a lot later, in post-trial proceedings, it became apparent that my instinct was right, that this guy's brother was not in the hospital on death's doorstep.

So I don't know whether that's the kind of thing that should stand out in your recollections from your portfolio of cases; but I tended to view them, every case is kind of an interesting problem to be solved, every

case has got some human interest and something to challenge you and something to make it interesting. Beyond that, I don't think I had any cases that were of earthshaking public interest or anything like that. It was just the usual work that comes along in one of those departments.

Dennis Perluss: Do you have any view either as of 1997—I mean, how you viewed the world as of 1997—or probably more interesting today, about unification and what that's done? I was thinking, as you talked about CC being a normal starting assignment . . . and of course it wasn't unusual when you were appointed; but now that's a goal that people work.

Richard Neal: Now it's traffic court instead. I understand the management side perspective that led to that. It seemed to make sense not to have to fund two parallel systems, and as I understand, there was excess capacity in the muni courts in terms of judicial utilization. They had a very fairly fancy administrative apparatus and perks and so forth. I can't give any particulars to them; an impression that I had.

So it made sense from that standpoint. On the other hand, I do wonder whether at least some good people are deterred from coming on the bench by the prospect that they have get to go sit in the traffic court for a couple of years or more or some other place; and so the old system at least allowed you to bring folks in without that. I guess that feature of it will persist, and if it's an obstacle or a deterrent, it will continue to be down the road.

Dennis Perluss: I think that's what the tension is, at least in a court like Los Angeles, where there are many positions that need to be filled, where the work is a little less challenging than downtown civil.

(00:50:04)

Richard Neal: You can make the case that that two-tiered approach makes sense from the standpoint there are certain people who would come into it with background, experience, and abilities that are fine for the lower-level jobs that you might not want to put in the higher-level job.

Dennis Perluss: Well, speaking of higher level, at least in terms of how the case progresses, how did it come about that you looked toward the Court of Appeal and decided to apply to be elevated?

Richard Neal: I think it had several components. One was that I had found out I very much . . . as a lawyer I liked the written work. I was one of the early people who computerized, because I liked to sit in my office and craft documents. And as a superior court judge, part of the work that I liked very much was the motion work, the brief work, the writing work, the written work, and that seemed a natural fit with a Court of Appeal job.

There was the opportunity to have some influence in a small way over the shape of the law. And with 90 justices in California and intermediate court, you recognize that that is only a limited opportunity; but nonetheless it is an opportunity, and there is a certain glitter as well that goes with the higher station and fancier title.

When I told my father I had an application in, he said, "Oh don't do that. You don't want to do that. You want to stay on the trial court, don't you think? Fred Ruzanski, back in Massachusetts, always proudly said that he turned down the Court of Appeal."

And in a way, Dad was prescient, because as I was talking with you before we went on camera here, I ended up a getting a little restless in the appellate work—because I missed the press of bodies in the superior court and the human daily contact with a wide range of people that go with both the practice and the trial court that really is missing here in these quiet halls. And I have found, having returned to the private world and that hurly-burly, that I absolutely I like it. I understand why I missed it. It was the right move for me to make. Much as I still enjoy the crafting of awards . . . is what I write mostly now, awards and orders. I like that part of it, but as a full-time diet it was not the right match for my temperament.

That said, I worked through the book that was provided to me by the AOC, I guess, and I had great fun going back and reading the published opinions a little bit selectively that I had done and reliving a little bit the pleasure of putting those together. So certainly the Court of Appeal experience was by no means one-sidedly negative.

Dennis Perluss: Well, I want to talk to you. Let me just inquire; it seems like we've been going about an hour.

[Interview break]

About how long was it between the time that you first applied and when you were appointed? Was that a fast process?

Richard Neal: No, it was probably several years. I think I may have applied, somewhat impetuously, maybe as early as 1993. Chuck Vogel was around and he asked me. And I think he was already the APJ here and he encouraged me to do this, and that was all the encouragement I needed.

So I put it in, but it sat there for quite a long while, and I can't remember what the sequence of vacancies was. There weren't too many, and so it could have been as long as four years.

Dennis Perluss: Then ultimately the Legislature created a new position on Division Seven. This had been a three-justice division since its inception?

(00:55:03)

Richard Neal: Yes, and that was me.

Dennis Perluss: That was you. I hesitate; I should have thought about the adjective I was going to use, but I didn't. You joined a group that had been together for a while and certainly had some distinctive personalities on it.

Richard Neal: Well, that's all true. I must say that they treated me extraordinarily well. They were highly cordial, courteous, and gracious. Mildred presided over these weekly conferences with great panache; she has a million stories, quite a few of them a little ribald. We were an appreciative audience, and she was a delight. However, in terms of being a place where there was one or more colleagues who I would go in and put my feet up on the desk and kick some case around well, it really didn't work out that way.

For various reasons I think that Mildred just was not at a point in her curve, if ever she was, where she was much inclined to do that; not that we didn't have an occasional brief chat about a case, but it's not Fred's mode, and Earl was somewhat on the shy side. And for whatever reasons, that did not develop.

I can imagine that with some other folks if I had been teamed up with them, I might have . . . Paul Boland, for example, I knew pretty well and for a long time, and I have no doubt that if I had been matched up with him, there would have been a lot more give and take about cases in my life than there was.

Dennis Perluss: Did that take place in writing, or it just didn't take place at all, the interchange as you—

Richard Neal: It took place a little bit in writing. To some degree it didn't take place at all. I mean, the extent it did take place in writing—and it took place mostly in writing—there was a little bit of it; but it wasn't by any stretch what you could imagine as the . . . And then you may have with your colleagues here now, and I'm certainly aware that others have it, where you would have kind of a rich, open exchange about lots of cases; that just didn't really go on.

Dennis Perluss: If you can remember, in your initial year as an appellate justice, were you struck by anything about how it was what you had imagined, or it was different from what you imagined just in terms of the decisionmaking process of how you came to view a case and resolve whatever the issues were that were presented on appeal?

Richard Neal: Something that was striking.

Dennis Perluss: Other than perhaps the lack of sort of a collective decisionmaking, which is what I heard you say.

Richard Neal: Yes, which I think is true. Maybe this is striking that . . . and I don't know whether this is true throughout other divisions or other appellate courts. This is something I still to this day believe is true: that despite people's differences in background, political orientation, and so forth, I was struck by the high percentage of cases in which there would be little difficulty in reaching a consensus decision about what the right answer was.

One of my horseback theories is that if you have a defined, factual universe to deal with and reasonably intelligent, reasonable people, most of the time you'll reach the same idea about what the right answer is; and that the reason we have so much faction and dissent and heated

controversy in our political world is because people operate from different assumptions about the facts and they get their facts from different sources.

(01:00:09)

So it was, in a way, surprising; in a way kind of , . . "heartwarming" is not the right word, but encouraging, I guess, that we seemed to reach agreement. We seemed most of the time to agree what the right disposition in a particular case with the defined universe to deal with was.

Dennis Perluss: Did you find that oral argument had any real, significant impact on either the outcome or the contours of the opinion that explained the outcome?

Richard Neal: Well, it sure did for me. I'm a strong believer in it. I think that, particularly in the age of the word processor, when you get so much paper to wade through, that it's very important to have the lawyers stand in front of you and articulate what the essence of the case is and answer some hard questions about it.

So I asked a lot of questions. I loved the oral argument part of it, and that was always the best day of the month or days of the month. Mildred would come out afterwards and say, "Dick, you talk too much. You're arguing with the lawyers." *[laughing]*

Dennis Perluss: She said to me—it was either my first or second calendar—she said, "Dennis, the point of oral argument is not to prove to the lawyers how smart you are." *[laughing]* I think in the same vein as "keep those questions shorter."

Richard Neal: *[Laughing]* Keep those questions shorter, yes. So we had a difference of approach there, but that was the part of it that I enjoyed the best overall, I guess.

Dennis Perluss: Do you have any thoughts about the impact of the whole front-loading process and its relationship to oral argument? It has seemed to me, to share my bias, is that oral argument would have a greater impact if we didn't take the bench with what is effectively a fairly final draft—subject to revision, but a fairly final draft of the opinion already done.

Richard Neal: Well, I agree with that. We all remember our days as a lawyer. You get the other side's brief; it's organized, it seems to be cogent. And until you get in there and build it yourself, you may not overcome kind of a first-reaction bias that this makes sense. And the tentative draft of an opinion coming around from somebody else has the same, I'm not sure how to characterize it, but the same effect—that it's easy to swallow. And so I agree with you.

On the other hand, I'm a little on the fence on this, because I think that if you don't in some form do that tentative work, there are workload considerations here maybe that used to apply; but also you've got to come to grips with the case enough to have a useful oral argument, and so that's one way to do it.

I think my solution to this would be to—and it's something they do out in Riverside, I think, and I tried to advocate that we experiment with it around here, but without success—if you're going to create a tentative opinion, release it to the lawyers and let them look at it. And now they can say, "Here's where you're wrong and here's why." So I think that might both take a little of the set-it-in-concrete impact that tentative opinions have off of the process and be very useful for oral argument that really got down to brass tacks. That's one reform that I would . . .

The other is I don't think this balkanization of the court into panels that sit with one another constantly is the right way to do it. I don't know whether you have any view about that—and I haven't functioned in the other environment, so I'm speaking only with knowledge of half of the equation—but I tend to think it would be very good to have ad hoc panels and spread the different influences, approaches, and so forth around and mix it up and do it the way so many other courts around the country do it. But then there would be only be one presiding justice. *[laughing]*

(01:05:03)

Dennis Perluss: Yes, that's certainly a consideration. What about the impact of dissents? What is your view of the value of an impact . . . this may be too loaded a word. You did, on occasion, as we all do, write dissenting opinions. Was it simply that you disagreed? Was there some other threshold that had to be met?

Richard Neal: There was some other threshold. I'm not sure what it was; it had to be a case that I thought was in some respect unusual, I guess. I'm not sure I could articulate a set of criteria that I would go through consciously. But I didn't . . . I counted them up this morning. I think I wrote 5 out of perhaps 500 over the span of four-and-a-half years. So I was pretty sparing about it. I think overall you'd prefer to have a unanimous decision; and if there isn't some peculiar reason to dissent, I tried not to do it. So that was my mindset.

Dennis Perluss: To what extent did you find, recognizing that your experience was with a particular set of colleagues, that if you did disagree—and given what you've said about minimal collegial decisionmaking—to be able to make suggestions that would accommodate views? I mean, that's the part of the collegial process that communication, orally or in writing—however it may be done—would seem to accomplish at its best.

Richard Neal: Minimize the number of dissents and so forth. As you say, there just wasn't much of that in my group. There may have been some similar predispositions among the rest of them to use the dissent process only sparingly. I have no idea how many dissents . . . I would guess that Mildred and Fred hardly ever did it. Earl probably more often, but I don't know whether he did it any more often, or does.

Dennis Perluss: I actually think I counted, just to give you a sense of comparison, when for his retirement party, in our five-and-a-half years together I counted something like between 30 and 35 cases in which I either dissented from

an opinion of his or he dissented from an opinion of mine; and many folks would have thought that we were sort of from a similar philosophical background. I guess not.

Richard Neal: I guess not. I followed yours a little bit, and I would say the answer is no—in some ways, anyway. *[laughing]*

Dennis Perluss: I'm not going to use the word "memorable," because as you've pointed out, it can have different meanings; but what are a couple of the most significant cases, from your perspective, that you authored while you were here?

Richard Neal: I guess I put at the top of the list the *Cruz Home Depot* [ed. note: *Cruz v. Homebase*] case. I think it's right at the top of the list of cases in the book. It's a case that attempted to define what a managing agent for purposes of punitive damage responsibility is. It was kind of surprising to me when I confronted it that there wasn't some case law addressing it already, but there wasn't. So that's one.

I think the *Saelzler* case, in which I dissented. That was a case involving a species of liability that's gained currency, or had at the time, for criminal conduct on the premises of your, name it—campus, in this case it was in an apartment complex. And you had . . . I'm not sure how well I developed in my opinion what the facts were. Let's see—fairly well. A rape that went on in an apartment complex, and the question was whether the apartment complex owners were responsible for the rape because they had not done sufficient security.

(01:10:16)

And it's always seemed to me somewhat problematic to make people responsible for the criminal conduct of others on your property, and this was an opportunity to address that. And the Supreme Court took it up and I think came down my way; although when I looked it up this morning it was a four to three decision, so it's clearly one that reasonable people can disagree about. So there was that one.

Dennis Perluss: The case of yours that I probably use the most, although I didn't try to count it up in my own writing, is *Kelley v. Trunk,* which was a case about the significance of an expert witness.

Richard Neal: Funny you should say that, because I see that come up with some regularity too at the ground level in the arbitration practice. It surprised me how often people will come in with an expert declaration that does not set out the basis for an opinion and try to hang their hat on that. And I guess I've seen it mainly in the medical negligence field. Have you seen it elsewhere?

Dennis Perluss: Also in the whole state of Northridge earthquake cases that we get. We get declarations from somebody saying, "This damage which I'm looking at in 2003 was the result of the earthquake nine years before," without any explanation as to how they've come to that conclusion and how they

distinguish between this type of damage and a different type of damage and all.

Actually, the question has the most recent . . . and I think probably the most visible use that I made of it is where the trial court for whatever reason does not rule. There is an objection to the admissibility of the declaration. The trial court does not rule, so under that principle it's in evidence. And I have written that even though it is part of the record that we evaluate, given our de novo review, we have to evaluate whether or not it has any significance even though admitted into evidence. And we've upheld summary judgments where there is a contrary expert opinion in the record, but that we have felt has no weight.

Richard Neal: Well, that's interesting, because I have probably encountered that particular problem as many times as any other court.

Dennis Perluss: The other case that I . . . I don't know if you recall it. It was *Roberts v. Sentry Insurance.*

Richard Neal: Yes, I looked at that; I read that this morning too.

Dennis Perluss: Summary judgment denial in a prior case being a basis for establishing probable cause in a malicious prosecution.

Richard Neal: That one seemed like a no-brainer almost to me. Unless there is some misrepresentation in the facts put before, how can a judge not be sort of somewhere in the middle of the spectrum of reasonable lawyers? So in terms of what the outcome was, that was one of the easier ones to figure out, I thought.

One thing that I was proud of as I read through these is they're all short; I think five pages was the longest. And I strove for that. I wrote not only each of these from the ground up, but I tried, I strove—I'm not sure I was completely successful, but I set out, anyway—to write every opinion that had my signature on it. I did not, on the whole, mark up stuff from my research attorneys and put it out as my opinion.

I sat at that terminal just about where you are and cranked them all out, on the theory that . . . several theories I guess: number one that the Constitution gave me the office so I would make the decision and not somebody else. And I guess linked with that is the idea that I really think for myself. I'm sure it's not true of smarter people; I had to write it and kind of build it in writing to understand it and be confident that it was the correct answer.

(01:15:03)

And on these that were published, I spent particular time and effort to strip the facts down to bare essential facts necessary to decide the case. I just deplore this tendency you see in opinions from this court and other courts where you have this recital of facts that has all kinds of minutiae that have nothing to do with what you're deciding.

To state the legal principle in kind of a simple, direct way and with only a case or two necessary to explain it . . . the string citation is another thing that pervades, I think, the lower generally. And as appropriate—and often it was appropriate—I think to give a little explanation of what you think the policy is and why it is served by the result as well.

Dennis Perluss: How did you use your attorneys then?

Richard Neal: I would take their memorandum and use it as a . . . I'm sure this was frustrating to them, because they were all bright, thoughtful people; but they would give me a memo or a proposed opinion and I would read it and use it as a resource, but set it aside and just write it myself. And that seemed to work as a process.

It was occasionally somewhat daunting to try and get through 12 of them in the space of a month. But so much stuff is generated, I think it's a service to the lawyers to be able to pick up an opinion and read three or four pages and not have to wade through, the way you do with so many things you see these days, and try to find what the essence of it is.

I got a little bit involved—not formally, but just in the battle of letters—with this debate about whether, which I'm sure you're aware of . . . in fact, I think at some point I sent you an e-mail. Alex Kozinski was querying me about it because he was fighting the battle.

I don't think it makes any sense to publish all of the opinions of the appellate courts in California, which generate, I think, what—the Supreme Court generates 100 civil opinions a year, and there are 1,200 or 1,300 opinions a year emanating from the Court of Appeal? I may be losing touch with the statistics.

Anyway, the proposal to publish them all would increase tenfold the amount of stuff out there that you have to deal with. You know as I do from serving around here what the uneven quality of a lot of it is, particularly if it has not been singled out to be pruned and polished to be published; and it would result in a world where there was something out there for everybody. You would find a case to support any jackass proposition that anyone puts forth, and meanwhile the poor lawyer would have to cull through 10 times as much stuff in a world where there's already so much to cull through.

So I've forgotten . . . I got off on that tangent. But it makes brevity a virtue.

My father early on collected a pile of Posner opinions. Dad always says, "Posner's the best common-law judge we have in the country." So he sent me a bunch of those slip opinions, and I had them on my desk; and they were a great kind of bit of guidance, as one sat to write your own opinion, as to what a good appellate opinion might look like. So these read all right; reading back through them I was—

Dennis Perluss: I think they stand up quite well.

Richard Neal: *[Laughing]* The Commercial Code cases were kind of fun, so there are a number of those in here. Then there were just a lot of instances where . . . you ask which one stands out. There are lots of little things that need an answer that don't have any earthshaking significance, but nonetheless need a resolution or an answer.

There was that *Belton* case that the Supreme Court took. It just involved the statute of limitations for incarcerating criminals—not something of huge interest to the world, but there was a question mark there and it was fun to work through, see what the right answer is.

Dennis Perluss: Do you remain surprised at how many issues after all of these years still have questions attached to them?

(01:20:00)

I mean, new statutes raise new issues. But in the common law, for example, the liability of a property owner for criminal conduct on property, those were issues that really hadn't been decided—or the summary judgment point, the malicious prosecution, or Roberts's point. Why hadn't that been answered? Actually, I think it had been answered, but answered the other way.

Richard Neal: I guess it's partly a function of the litigiousness of our world—the entrepreneurial nature of the lawyer class, who is always out there ahead of the curve looking for some new strain of ore to mine, and they find it invariably. One thing I'm spending a lot of my time doing as a private judge is dealing with the wage-an-hour law, both as a mediator and an arbitrator. I have actually presided end to end over a trial of one of those.

I think those laws have been around for quite a while; but at some point some enterprising lawyer said, "Hey, here's a law that hasn't really been worked out," and they went to work and it's a big deal. It's cost industry billions of dollars, I'm sure, and returned a sizable slice of that to the people prosecuting and defending the cases.

Now, as issues get resolved, they'll be finding new sub issues. We went from the wage-an-hour to the meal-and-break business. I don't think you wrote one of the principal opinions on that issue, whether the hour's compensation is . . . Again, I thought that was a no-brainer. I thought that was clearly a penalty, and you looked at where it is in the section and the standard that says, "Do you measure it by the actual amount of work and so forth," and there was a footnote in one of your decisions which I thought was absolutely right. I was flabbergasted when the Supreme Court came out the other way. *[laughing]*

Dennis Perluss: *[Laughing]* Well, I thought it was worth about a footnote.

Richard Neal: *[Laughing]* You're right. I mean, with this wall full of codes I used to look up at that; it's a small wonder that there are new issues to be found. And the wall-full keeps growing.

Dennis Perluss: Right, I don't even keep them all on my wall anymore.

Richard Neal: I'm not sure it's a way to run a society, but on the other hand, I also believe in democracy and the people have the right to go down any foolhardy path they want to go down. It's appalling to me that we spend half of every year . . . I've forgotten what organization it is has ta independence day every year, and they add up the taxes plus a regulatory cost and then they tell you, "Well, as of July 17, you're now starting to work for yourself." *[laughing]*

Nonetheless, we still have the laboratory of the states—was it Brandeis? I think it's Brandeis, so whatever foolhardy things we try here in California, they can try some other foolhardy thing in another state; and hopefully we learn by the experience.

Dennis Perluss: Well, you mentioned a short while ago that there was a sense of lack of interpersonal contact that helped prompt you to leave, because you obviously left, well, with many more years of productive lawyering and judging left. Tell me a little bit about that decision.

Richard Neal: Well, it was kind of one part finances and one part this other thing that you just mentioned. My wife Barbara, who you know had left the big-firm world and gone in-house at Edison, and right about the time when the crisis, the real energy crisis, hit . . . And her pension was actually in danger—I mean, if they were going to go bankrupt. So we were worried about . . . and we've got five boys, and a number of them still needing to be put through the rest of private school and college. And so partly I decided to step up to the family fisc; Barbara had carried the laboring ore on that while I was judging, and so it was my turn. So I was a part of it.

(01:25:14)

And I kind of figured, I eyeballed the landscape out there and saw that there were a number of fairly older folks doing ADR and there was room for some new blood and the prices were right. I kind of figured with some trepidation that I could do at least as well in the private world as I was doing here and that there was considerable upside.

So there was that calculus, but then there was also the business that we've chatted about a little bit. I came to realize that I missed the human-contact side of our business. So Barbara was very unhappy that I made this decision initially and characterized the organization I joined as "tacky." *[laughing]* "How could you leave a position like the one you have?" But it's worked out marvelously for me in every way.

I indeed found that getting back into the room with the litigants and the lawyers was really good for my contentment with life and fulfillment. I've got the two distinctly different processes that I go back and forth between. That helps make life interesting and keeps you . . . the mediation on the one side and arbitration on the other. Financially, it has worked out far beyond our wildest dreams. I've gotten to the point where I'm literally booked out. I've got cases booked in November of next year and just no time to offer between now and about June. So I'm very busy,

and I like the work, so I'm glad to be busy. The organization turns out be a great organization. It was just really taking off in a way. Probably the founders would not quite agree with this characterization, but JAMS had been in a period of . . . it was a bad period in the sense that they were owned for a spell by Warburg Pincus, one of these New York investment banks, which didn't have the same agenda as the neutrals did and were trying to squeeze things down to wring a little more money out of it.

So they brought in this guy Steve Price, who's our president, who had quite a distinguished background in business and some distinguished success as a workout guy. And he looked things over and said, "You don't want to try to resuscitate this. You want to sell it." And he brokered a sale back to the members. So we're now owned by the judges.

And then he proved to be just a wonderful leader. And working with some of the founders of the organization has just transformed the organization into a really well run, forward-looking enterprise. As a result, it's become the dominant player in the ADR market. The business model is great for people like me. I'm an independent contractor. I don't have to politick about what my share is as we did in the old law partnership days. JAMS gets all the money up front and distributes it to you every month.

So from a business standpoint it's wonderful. But it's also just a nice bunch of colleagues; on any given day over there in the panel lounge in L.A. it's Diane Wayne, Chuck Vogel, Keith Wisot. Not all at once, but Dick Tevrizian is there recently. The former Chief puts in an occasional guest appearance. Malcolm Lucas is there, Ed Panelli is there.

It's just a great bunch of people to have as your colleagues. So it's worked out so very well, and I think we're providing a . . . I like the Cato slogan "Free minds and free markets," and I think the marketplace is vindicating what we're doing and people are lining up to use us.

(01:30:05)

Dennis Perluss: I'll shift gears a little bit. Any advice that you would give to lawyers who are thinking about becoming judges, or lawyers who have just become judges, about how to both enjoy their position and to function as best they can in the position?

Richard Neal: Advice to lawyers or to new judges. Well, I think it's a terrific opportunity for folks. And one piece of advice is that lawyers with good background and training should be comfortable if they have the knowledge and skills to do the job and to follow their instincts and their judgment confidently and plunge in.

You're going to have me digressing a little bit here, but I followed over the years this debate about the brain drain caused by ADR and so forth. I think it's good for the judiciary to have fresh blood, a steady influx of fresh blood, and I think every judge that leaves is a place for somebody new to come in. I think that people with the right kind of backgrounds who are seasoned lawyers and know how things are done in the trenches and what games are played and so forth are ready to hit the ground

running. They don't need years and years to know how to become a good judge. If they've got the right temperament and the brain and the work ethic that has made them good lawyers I think it follows that they will be a good judge; and I think it's good for the system to see new people coming in.

Republican though I was, the influx of folks that Burt Pines injected in the court system . . . and I saw all these great lawyers who everybody in the community knew to be good lawyers coming on the bench. That's great.

So I guess in a way I'm saying, if you trained yourself well, if you've been trained well and you've been a hardworking, thoughtful lawyer, just get in there and do it as a judge. You learn as you go, obviously. One thing it seems to me, as a judge you see a higher volume of cases; and as a lawyer you live with a case for six months or a year, and you don't get quite the same kind of exposure to the whole portfolio that you start to get as a judge.

So your instincts improve as you see all of the variants of things that come along. And so I think, trust your instincts. It's not a substitute for legal knowledge, hard work, and so forth; but judgment is the most important thing. I mean, apart from decisiveness.

I hear from an old guy that I used to practice with: "Well, I don't care how the judge decides the case, just make a decision and I can decide do I want to appeal, do I want to settle? I can get on with it. The one thing that I can't handle is a judge that won't make a decision." And there are a few of those around.

I guess that's a piece of advice. If you're indecisive, don't become a judge. Stay out there and be an advocate and let someone else who can decide, decide. From the beginning I don't think I ever had any trouble with that. For better or for worse I usually, after I've worked things over, I have a pretty good notion. And occasionally I have an oral argument and someone convinced I was absolutely wrong, but then I'd turn around and do it the other way decisively.

Dennis Perluss: *[Laughing]* Decisively the other way. Very good. Well, thank you so much for taking the time today.

Richard Neal: Thank you. You've been a most gracious and thoughtful interviewer.

Dennis Perluss: I've enjoyed it; I learned some things. And thank you.

Richard Neal: Thank you.

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