

Regional Oral History Office
The Bancroft Library

Northern California U.S. District Court Oral History Series

University of California
Berkeley, California

Thelton Henderson

THE HONORABLE THELTON E. HENDERSON:
MAKING A DIFFERENCE, THE FEDERAL JUDICIARY
AND CIVIL RIGHTS IN THE UNITED STATES,
1933-2002

Interviews conducted by
Leah McGarrigle in 2001 and 2002

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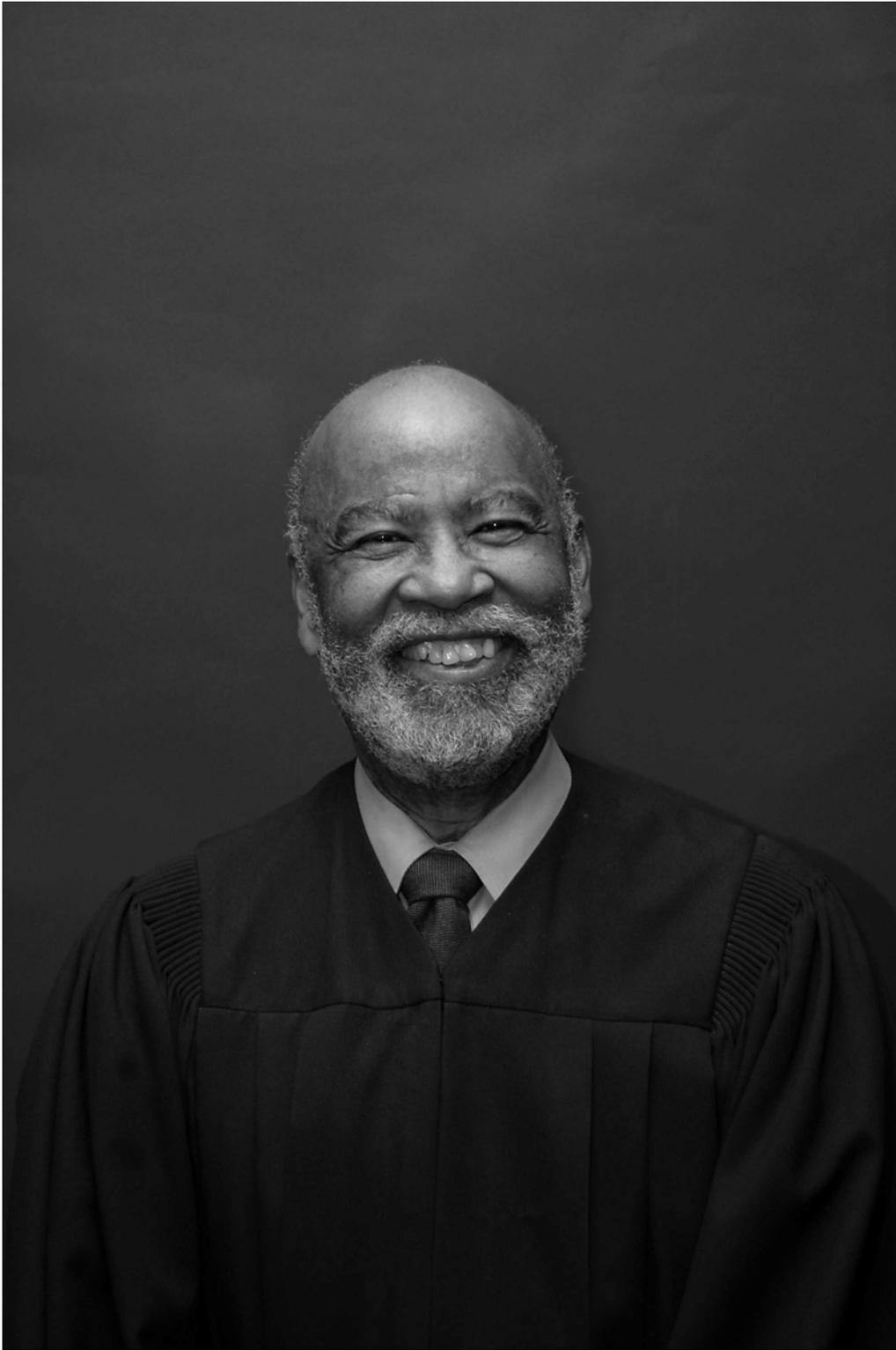
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Judge Thelton E. Henderson, 2004, photo courtesy of Ethan Nasr

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ACKNOWLEDGEMENTS

The Regional Oral History Office, on behalf of future researchers, wishes to thank the Northern District Court Historical Society, the Class of 1931 Endowment, the University of California Source of Community Leaders in Oral History Series, and Russ Ellis for their support of this oral history of Thelton Henderson.

January 2005

Northern District Court Oral History Series

The Regional Oral History Office, a research unit of The Bancroft Library, has collected the following oral histories, sponsored by the Historical Society of the U.S. District Court for the Northern District of California. Bound and indexed interview transcripts may be ordered at cost (bancroft.berkeley.edu/ROHO/to.order.html).

Harris, George B. (1908-1983) *Memories of San Francisco Legal Practice and State and Federal Courts, 1920s-1960s*. 1981, 224 pp. \$63

Henderson, Thelton (b. 1933) *The Honorable Thelton E. Henderson: Making a Difference, the Federal Judiciary and Civil Rights in the United States, 1933-2000*. 2005, 334 pp. \$ 74

Orrick, William H., Jr. (1918-2003) *A Life In Public Service: California Politics, the Kennedy Administration, and the Federal Bench*. 1989, 292 pp. \$71

Peckham, Robert F. (1920-1993) *The Honorable Robert F. Peckham, 1920-1993: His Legal, Political and Judicial Life*. 1995, 338 pp. \$75

Phleger, Herman (1890-1984) *Observations on the U.S. District Court for the Northern District of California*. 1981, 50 pp. \$46

Poole, Cecil (1914-1997) *Civil Rights, Law, and the Federal Courts: The Life of Cecil Poole, 1914-1997*. 1997, 248 pp. \$65

Schwarzer, William (b. 1925) *Litigator, Federal District Judge, Director of the Federal Judicial Center, and Professor, 1952-1997*. 1998, 378 pp. \$78

Sweigert, William T. (1900-1983) *Administration and Ethics in the Governor's Office and the Courts, California, 1929-1975*. 1987, 236 pp. \$66

Weigel, Stanley. (1905-1999) *Litigator and Federal Judge*. 2000, 187 pp. \$59

Wollenberg, Albert C., Sr. (1900-1981) *To Do the Job Well: A Life in Legislative, Judicial, and Community Service*. 1981, 396 pp. \$81

Zirpoli, Alfonso J. (1905-1995) *Faith in Justice: Alfonso J. Zirpoli and the United States District Court for the Northern District of California*. 1984, 249 pp. \$66

INTRODUCTION by La Doris Cordell

It was in July of 1971 that I first heard the voice of Thelton Henderson. The warmth, the timbre, the gentleness, and at risk of political incorrectness, the sheer manliness of his voice instantly put me in his thrall, where I, among so many others, have remained ever since. I was then living in a state of less than quiet desperation in Springfield, Ohio, having been rejected by every one of the law schools to which I had applied—Harvard, Chicago, Yale, and even, wondrous to tell, the University of Cincinnati. Actually, Cincinnati had placed me on their waiting list.

So, it came to pass that on a particularly dismal morning, a man with the unlikely name of Thelton called me on the telephone. “Come,” he urged me, “to Stanford Law School.” “I will consider that,” I responded demurely. I hung up and packed my bags. When I arrived on the Stanford campus that fall, having never traveled further west than Ohio, I instructed the taxi driver I had enlisted at the airport to drop me, suitcases and all, in front of Stanford Law School. I proceeded directly to Thelton’s office, knocked on his door and went in. And there I stood, in all my glory, my two feet in diameter afro, hoop earrings, dressed in a manner entirely consistent with the radical undergraduate campus of Antioch College from which I had just graduated. Thelton, elegant in dress and demeanor, ushered me into his office. This was the first of so many lessons I learned from Thelton—effective purveyors of societal change do not, he tacitly taught me, need to communicate loudly.

Once in his office, I launched into a panegyric, with particular emphasis on the good judgment he exhibited in having admitted me. And then I assured him, not once, but over and over, that I would make him proud. He sat there quietly with that wonderful smile of his. He must have thought that I was a little nuts. Actually, I know that he did, because years later, he told me so. Anyway, he heard me out, as he always has since, without judgment, more intent on the message than the medium. He thanked me and said, “I’m sure that you will do just fine.”

As Thelton was with me on our first encounter, so he is in the role of judge, never distracted by the idiosyncrasies of she who is speaking, always intent on what is being said. He is the consummate arbiter—a non-judgmental judge. And perhaps even rarer in these American Dark Ages, he is a man of enormous courage. Thelton has never equivocated in his rulings, nor pandered to those in power. He has made his decisions based exclusively upon what is right. And he has done so at great cost, both to him---on occasion inviting hatred from the far right rabble, and to us—guaranteeing that he would never be elevated to his rightful spot on the appellate court.

Following in Thelton’s footsteps, I became a judge in 1982. Of course, I asked Thelton to swear me into office; and, of course, he agreed. Before administering the oath of office to me, he spent a few minutes talking about his philosophy of judging, about what being a judge meant to him, and about what he hoped judging would mean to me. I kept a copy of the words that he spoke that day at my bench for the nineteen years that I served as a state court judge. Whatever seemingly insurmountable obstacles I encountered over those nineteen years, Thelton would appear, sometimes spontaneously, and sometimes at my behest, to provide me solace, at a minimum, and frequently, solutions. He was there for me with reason, empathy and wisdom. It doesn’t get any better than that.

La Doris Cordell

INTRODUCTION by Troy Duster

Several years ago I attended a conference in which a luminous biographer of several remarkable people described the nature of the craft. “A biography” he said, “is both the easiest and most difficult kind of writing.” The easy part is that the subject has a clear beginning, middle, and end—a definitively defensible longitudinal story. The hard part is where and how to cut off the potentially ever-expanding circles that provide the social and historical context, the width and breadth of the many forces that helped frame and shape so much of that life. The same must be true for an oral history—most especially of Thelton Henderson. When our paths first crossed as very young men, both near the beginning of our careers, I was struck then, as I am now nearly four decades later, at how political events of some magnitude just seemed to happen around Thelton. In his story, one will read about how his loan of a Justice Department rental car to Martin Luther King became a significant political happening. Now, nearly halfway through the first decade of the new century, there is the story of how Thelton’s “routine” stewardship of a California prison would bring him in to a dramatically public collision with Governor Arnold Schwarzenegger. And in between, there have been scores of similar tales of seeming happenstance that were converted into events of political magnitude.

If you just heard Thelton tell the story over coffee, you would conclude that—there he was, minding his own business, or just doing the commonly decent thing. Suddenly, he would say, things got blown out of proportion, and his actions inexplicably become the subject of a *New York Times* editorial. While it is undeniably true that extraordinary things happen to ordinary people, it is also true that extraordinary people seem to convert “ordinary happenings” into events of significant moment. So how much of this is the person, and how much of it is the times? That question is too simple, too binary, and steers us in the wrong direction, because the answer can not be partialled out in proportions—the answer instead lies in the relationship between two.

The various stories in the unfolding of the oral history illuminate this relationship, so I will only allude to the matter here, and tell of an incident that captures a related aspect. I gave this account at his investiture as a federal judge, but it is of an event that is so quintessentially “Thelton” that it bears repeating.

In the early 1970s Thelton was on the law faculty at Stanford, when I was on the Berkeley faculty of Letters and Science. Each was one of the only African Americans in the professoriate at our respective institutions, and we have always compared notes about that particular aspect of the social worlds that we inhabit. It was not uncommon for students to knock on his door, walk in, and ask “is Professor Henderson here?” The same happened to me, and in our own choreographed way, we would compete with one another as to who could come up with the best and swiftest comeback. Thelton won, hands down. One day, after he had become an assistant dean at the law school in Stanford, a newly arrived student successfully made it past the inner screening of an administrative assistant, who said, “You may see the dean now.” The student walked in to the vast inner office, saw Thelton alone at his desk, paused and asked, “Is Dean Henderson here?” Thelton peered slowly at him over his glasses, and told the student to have a seat, and said matter-of-factly, “Dean Henderson will be with you shortly.” Thelton returned to his work, completed another five minutes of what he was doing, then looked up and said, “Dean Henderson is here now.” In this little vignette, one can discern the interlacing of wit and humor with a latent but fierce tone of serious purpose. It was an “ordinary moment” in some ways, but that moment surely seared itself into the student’s experience. Extraordinary people can make ordinary moments memorable.

At a personal level, Thelton is easygoing, affable, flexible, congenial, and possessed of a laugh that is so infectious and so deeply resonant that those within range find themselves smiling. To this add a mischievous teasing style, somewhat in the tradition of Shakespeare’s version of Falstaff. Even when

Falstaff was seemingly bested by his peers in some sparring verbal one-upsmanship, he was always able to find his way back on top with a cleverly humorous turn of a phrase or frame. The affability and flexibility are real, wide-ranging, even characterological. But when he has extended himself, and an attorney in his courtroom crosses a line, the fiercely uncompromising part emerges, a stony steel-like resolve catches many a foe off guard and can become a newsworthy event.

It is the quiet determination that is most notable. Because he is so willing to let others take the stage and dominate a conversation, a dinner party, or a seminar, those who meet Thelton for the first time are often surprised at the clarity and strength of his convictions when he finally gives voice to them. Patricia Williams, the critical race theorist with a flair for unlikely and penetrating metaphor, calls it “identity theft” when the media are able to portray and identify one of their human subjects that has little resemblance to how others see them. In the history that follows, the reader will find a healthy counter-balance to the media portrayal of Thelton Henderson as controversial. It will become clear that it was not that Thelton chose to do battle. Rather, it is almost always the case that Thelton chose to do the right thing, remained steadfast and unwavering, and the battle was joined by those who objected.

Troy Duster

INTERVIEW HISTORY—Thelton Henderson

I first met the Honorable Thelton E. Henderson toward the end of 2000 in his judicial chambers on the 19th floor of the Philip Burton Federal Building in San Francisco. The judge's secretary, Erma Smith, arranged all of our appointments.

Interviews began on February 5, 2001, and concluded more than one year later on March 15, 2002. Sessions were spaced from two to four weeks apart depending on the judge's trial calendar, professional commitments and travel, and the occasional flyfishing trip. There are thirty-two tapes in all representing fifteen sessions, each lasting between ninety minutes and two hours. While our initial meeting and the first interview session were conducted in chambers, the subsequent interviews took place in the judge's beautiful home in Berkeley, where we sat across from each other on the enclosed sun porch next to the Japanese garden with the maple trees and hummingbirds, with light coming in the windows at different angles depending on the season. I drank hot tea on each of these occasions as I settled in for our work, and we sometimes shared a meal afterwards.

In preparation for this interview I conducted different types of research, including time spent in the jury room across the hall from Judge Henderson's offices, reviewing scrapbooks, clippings and photograph albums set out by Ms. Smith. I reviewed legal opinions provided by the judge's longtime professional law clerk, Karen Kramer. I conducted background interviews with the judge's close associates, friends and colleagues, including: Barbara Babcock, Michael Baller, Mort Cohen, Drucilla Ramey, Russ Ellis, Troy Duster, Harry Bremond, William Gould and Magistrate Judge Wayne Brazil. All contributed their ideas and guidance and will recognize their suggestions and advice throughout the interview. We met over lunch and over coffee, in offices and private homes, and we spoke on the telephone and communicated via e-mail. My husband, Philip McGarrigle, contributed suggestions, as did my friends Susan and Evan Lee. Additionally, I sought ideas from articles in the *New York Times*, as well as from historical accounts of the civil rights movement and the *Eyes on the Prize* documentary series.

I provided topical outlines to the judge in advance of each session and incorporated his additions into outlines for subsequent sessions. Judge Henderson reviewed the transcript and did not make any changes. Germaine LaBerge of the Regional Oral History Office did careful proofreading and indexing of the final transcript, and this interview would not be public were it not for her efforts and the efforts of our colleague Nadine Wilmot. Thank you both for your support, wisdom and hard work.

It has been one of my life's greatest privileges to join in this work with Judge Henderson, and the experience has changed me and touched the lives of my family and friends.

The Regional Oral History Office was established in 1954 to augment through tape-recorded memoirs the Library's materials on the history of California and the West. Copies of all interviews are available for research use in The Bancroft Library and in the UCLA Department of Special Collections. The office is under the direction of Richard Cándida Smith, and the administrative direction of Charles B. Faulhaber, The James D. Hart Director of The Bancroft Library, University of California, Berkeley.

Leah McGarrigle, Interviewer/Editor
July 2004

INTERVIEW WITH THELTON HENDERSON

[Interview 1: February 6, 2001] ##¹

McGarrigle: I'm here with Judge Thelton Henderson in Judge Henderson's chambers in San Francisco beginning our oral history. And I'd like to start, Judge Henderson, by asking you to describe your family, starting with your grandparents.

Henderson: Okay. My grandmother was the most visible, for me, part of that couple. Estelle Herring, who lived to be ninety-nine; we were hoping she would be around to see a hundred. She was born in Mississippi and her husband, my grandfather, was a minister. They married and spent most of their time in Mississippi, but eventually moved to Louisiana where I was born.

My grandmother was a parent. She never worked, she had nine kids and took care of the kids. When she divorced my grandfather, and I can't remember the age of that, not long after that my grandmother and the kids came to California, South Central Los Angeles, with me. I was three years old at the time, that was 1933.

McGarrigle: This is maternal grandmother.

Henderson: This is my maternal grandmother.

McGarrigle: Do you know the reason for the move from Mississippi to Alabama?

Henderson: I'm sure it was related to my grandfather's church. He traveled from ministry to ministry, and it was part of that process that took him to Louisiana to head a church in Louisiana.

McGarrigle: And what would the name of that denomination have been?

Henderson: It was Baptist, but I don't know anything within that. That he was a Baptist minister, Southern Baptist minister.

McGarrigle: It must have been unusual for divorce to take place at that time. Is it your sense that it was unusual?

Henderson: It was, and I might be careless on that. I know they separated. I said "divorce" and now that you focus on that, I can't tell you that they divorced. But I know they separated at least. I think they may well have just separated without going through the formality of a divorce. But I know my grandmother never remarried.

McGarrigle: So, what would that trip have been like from Louisiana? I wonder how they picked southern California as a destination.

1. ## This symbol indicates that a tape side has begun or ended. A guide to the tapes follows the interview.

Henderson: Well, you know, it's an interesting--I have an interesting family. I can tell you precisely how they did it. My uncles--there were nine kids, the two oldest boys. My uncle Lemuel came to California. He ran away from home. My folks were very poor and he ran away from home to California for a better life. Got out here and for the first time was able to get a job, and he essentially wrote home and said, "Boy, it's great out here!" And, based on that, my grandmother gathered everybody and we came to California.

McGarrigle: What would the ages of her children have been at that point?

Henderson: I think Lemuel was probably late teens. Certainly not twenty. He was a young, very young man. Let's see. My mother is eighty-nine now and we came out in '33. Lemuel was a few years younger than my mother, so I don't really--you could probably do the calculation. My understanding, just from the stories, was that he was a teenager when that happened.

McGarrigle: How would you describe your memories of your grandmother?

Henderson: Wonderful, warm, nurturing. I just remember her as raising this brood. My mother lived in service, as they say. She was one of the breadwinners for the whole family. She lived with white families in their house, took care of their house, and had periods. So, my grandmother raised me in the early years. I remember weekend visits, on occasion, from my mother. My grandmother raised me and I just remember her as being wonderfully indulgent. I was known as the spoiled kid. My mother, who was firmer, would come home and always complain that my grandmother indulged me too much in whatever it was. Candies or whatever it was.

She was very religious. My memory of her over the years was that she was always in church. In her last years, she was known as Mother Herring, sort of--this is my terminology--the senior mother of the church, the person with the longest and the highest standing in the church next to the minister. And that was her life. I remember when she was approaching one hundred, but starting to fail in health, one of the things I've often commented on was the calmness that she had about the possibility of death. And I think it was her religion, that she was just ready for her maker and she had lived a good life. And that always impressed me because I've never been a church-goer over these years. But that's my memory of my grandmother.

The other memory: when I was going away to college, and I notice this now with my own mother, I would go visit my grandmother, and because she was the matriarch of nine kids who had kids themselves, the way to meet my family when I came home from college was to go by my grandmother's house and everybody would come by there. That was the place the family came, and I would see them. The word would get out that I was in town, and seems like dozens and dozens of people would come by. As I said, she was the matriarch and that's where everybody came together, at her place.

You'd find her on the same pillow, on the same couch, knitting and holding court, as I call it. One of the ironies is that my mother, for whom I bought a place in Berkeley, now lives in Berkeley after her mother died. If we went by there now and, as you said, we may go by, I can tell you exactly where she'll be sitting. She'll be sitting on the left pillow of the couch in front of the TV, which was a pillow my grandmother lived on, essentially duplicating her mother. With the irony, though, that there aren't any kids or

brothers or sisters coming around. They're only two of them left now, her sister, and there aren't a lot of kids up, but it's the same. She's reenacting that part of her mother's life.

McGarrigle: What were the different roles your grandmother had in the church? I imagine it involved the community, helping people.

Henderson: Yes. Helping people and the programs, but beyond that I don't really know. I don't really know. Except that I know that she was revered in the church and indeed, when she died, there was quite a family discussion about whether the family would orchestrate the funeral or whether the church would. And it was interesting and they sort of compromised, but it was essentially a church funeral because that was so much more a part of her life. Also, I think, because they sort of knew how to do these things and my mother, the oldest child, sort of deferred. I can't specify because I don't know enough about the church.

I notice on the form here Family Stories. One was that she was always trying to get me to go to church, and I had no interest in it. I'm not unreligious, I just didn't enjoy church. Every time I'd come home from college she'd say, "You have to come to church with me," and finally I said, "Okay," and I went to church with her and thought I could sit through the event and was astounded that at some point they said, "Oh, we're so proud that Mother Herring's grandson is here with us today. And he goes to the University of California and he's going to be a lawyer. And now, Brother Henderson, would you come up and say a few words?" [laughs] I almost died! If I could have faked a heart attack, or something, I would have. It was one of the most traumatic moments I can recall. Then I staggered up there and said something, I don't even know what. I can't remember it. But that's a family story that's talked about a lot.

McGarrigle: Let me back up and ask you when and where you were born.

Henderson: Okay, I was born in Shreveport, Louisiana, on November 28th, 1933. I think I have in that little box, my clerk, another of the stories is how I got my name, which is an unusual name and up until recent years I had never heard of, or met, another Thelton.

The way I got my name, my mother was in the hospital waiting to give birth. I was scheduled to be Eugene, named after my father, Eugene or Gene, Junior. Somewhere in the process the nurse, who was a white nurse and that's relevant to this story, said something to the effect, "Gee, I think Thelton is a pretty name." And my mother, as she tells it, in those days certainly, they got shots or some sorts of medication to help the process and she was sort of in that state and said, "Oh, gee, Thelton is pretty" and named me Thelton on the spot. And we've never known where that name came from.

Many years later, when I had graduated from law school and was working for the [United States] Justice Department, the Civil Rights Division, working on voting rights cases, I went down to Caddo Parish, which is where Shreveport is, and I was working on a voting case. The way you do it is you try to find a pattern and practice of discrimination. "Why do so few blacks register to vote?" and "Why so many whites register?" and what's the pattern of the discrimination that causes that. So you have to look at the voting records, and I'm looking at the voting records, in this little machine we had, and I come upon a white policeman named Thelton who would have been about

the age of that nurse, and it's my belief that that's who I was named after, because up until that time I had never heard of, or met, another Thelton. So, anyway, I'm wandering all over and I apologize.

McGarrigle: Not at all.

Henderson: But I was born in Shreveport, Louisiana, in that little hospital in that manner.

McGarrigle: Is the E for Eugene?

Henderson: E is for Eugene. I was going to be Eugene something, but it's now Thelton Eugene Henderson, yes.

McGarrigle: I wonder if there was an opportunity for your mother to undo what the nurse had done or if given the times, if that was more something that she wouldn't have considered.

Henderson: I don't think she would have considered it. I think she never looked back on it. That was my name. I've never gotten the impression that she had any regrets about it. That was the name she picked.

I hated the name. I grew up hating the name, and only when I got older and, indeed, a judge and realized that--you know, and I started getting in the papers, that maybe there was an advantage, because I would get contacted by childhood friends and old classmates who were quite certain that I was the Thelton Henderson they knew. You know, there was no doubt. It kept me in contact with a lot of people, so that was a benefit, but I grew up hating the name.

When I went to junior high school, there's something called middle school now and I've never figured that out. In Los Angeles you had grammar school through the sixth grade and junior high seventh through ninth and then high. So, when I went to junior high school, which was in a different district from where I grew up, the teacher in home room went through the roster and got to me and said, "Thelton." "Hmm, that's Thelton Eugene. Do you want me to call you Thelton or would you rather be called Eugene or Gene?" And until that moment, it had never occurred to me that I had a choice on it. I think that was my last chance to ditch that name. A kid who had gone to Trinity Grammar School with me--I was mulling it and thinking, do I dare change my name for school purposes--and Leo Escovel, I still remember that, whispered, "Thelton, stay with Thelton." So, I said Thelton and that was it. So, I'm still Thelton.

McGarrigle: And you motioned to, and mentioned, a box that a clerk had--

Henderson: Oh! Well, there are other Theltons now [goes to get papers and returns]. And I'm quite astounded that the computer does miraculous things including gets information out of here. Just the other day we were talking about my name, and I was telling some of the stories I just told you, and my clerk went to the computer and pulled out several Theltons, to my astonishment. Although a clerk had done that in the past, so I knew there were other Theltons.

Here, I just pulled this out casually from the computer. So, I'm actually keeping that because I'm going to write those people. I'm interested in that name. I'm going to ask

them where their name comes from, how they got it. I'm interested in knowing whether they're African American or white, and I'm just going to try to maybe even start a Thelton Club, see how many of us there are.

McGarrigle: How interesting. That's going to be interesting.

We talked about your maternal grandmother and grandfather. Do you know the names of your grandparents on your father's side?

Henderson: I know my grandmother, Molly, because everyone called her Mama Molly. And they are from Texas. His family is in Texas and was from Texas, and I don't know, I've never heard mention of my paternal grandfather. Mama Molly, I'll continue to call her that, came out to visit several times when I was young, and I have a vague memory of her, but none of her husband--and I can't tell you, even as we sit, whether she left him back home when she came out or whether they were divorced. Or separated. He's a nonentity and it's interesting. I never thought of that until you just asked, that there is no such person and I don't know any stories about him or anything.

McGarrigle: It would have been a big trip to undertake at that time.

Henderson: Yes, it was. And certainly in those days traveling by blacks across country was not easy. There was discrimination on the trains. You had to sit at the back of the train, and you know there are the stories of carrying your food with you. Carrying your fried chicken in a brown paper bag because you might not get fed on the train. I remember stories of that with relatives who had come from back South on the train, but I think most of that was done by car. I think, generally, when someone--certainly there were no airplanes in our lives then--was either train or car if anyone traveled any great distance to visit.

McGarrigle: I know I read in my preparation for today's session that when you came from Louisiana with the family, when you were three years old, that you came by truck.

Henderson: Yes, we came with all the worldly possessions. I like to refer to it as Joad style like the Joads in *The Grapes of Wrath*. I just saw that movie again and it reminded me--with everything on there and came to what is now South Central L.A. Was then, but now has a broader meaning of--but yes, came by truck and settled in on--first house we lived in was on 53rd Street. Everyone lived there.

It's interesting. One of those interesting things about growing up, I have vague memories of that house, and of course I remember this big house. And I go back now and drive by and it was quite a small house, but I often wonder how all of us fit in there. I don't know if you know the term pallet--make me a pallet on your floor--but a lot of the kids slept on pallets and that was the way we started off, and then as they married or got jobs they would go out on their own out of the house, but that first couple of years there were a lot of people in that house.

McGarrigle: Was that the house your grandmother remained in?

Henderson: No, we actually moved a bit, and I don't remember specifically. That was the first house, and then we moved across town to 27th Street, which I have a clearer

recollection of, I guess because I was older. We stayed there for several years and then, remember all of this time my mother lived in service--is a term I've grown up using and knowing.

I was just joking the other day we ought to make my mother director of the budget. I don't know how she ever did this. When I was in college, she made ten dollars a day--I went to college in '51--cleaning people's houses. It must have been less in the forties. And somehow, through that, she got enough money to get a down payment on the house I grew up in, essentially, on 43rd Street. So, at some point, when I was about seven we got this house, 219 East 43rd Street. I grew up there and went through there, and that's the house my mother lived in until she moved up here thirteen years ago, when I got her a place.

But we're talking about my grandmother, I'm trying to put it together. About the time we moved to 43rd Street--my grandmother moved around, I want to say quite a bit, but I don't remember all the places--and ended up on 110th Street, which is a place I remember, and that's where she was when she died. She lived there for many years. Many, many years. Up until then, I have a feeling she moved around every two or three years. Moved to various places.

I've heard that some of them were welfare-related, public kind of housing that she got access to, but the last place was owned by the minister of her church. I think that added some, what's the word, added some constancy. He owned some property and some of the people in the church rented from him. It was affordable rent. And he was, in addition to being the minister or the deacon or whatever they called it, he was a good repairman. So he kept up the houses with his family, and that was a good deal for my grandmother.

McGarrigle: I wonder what the reasons contributing to her moving frequently were? Is it because areas were racist and inhospitable or--?

Henderson: I don't think that was the problem. I think we, you know my family, we were never trailblazers. So we weren't trying to move into white neighborhoods. I think that that wasn't a problem. We always lived in a black neighborhood where they would rent.

I don't know. If I had to guess, my guess would just be it had to do with the economics of it. That she got something cheaper or some problem here with payment of the rent or size. The size of the family, there was always this shifting number of children. Her children coming in and out and their children. Indeed, my mother as the oldest child, we had that phenomenon when we moved to 43rd Street, which was a very small, two-bedroom house, that my uncles and aunts and their families would move in and out depending on the crises in their lives. And I think that was the nature of my grandmother, too. And that, I have a sense, may have affected where she lived. I don't know.

McGarrigle: From your perspective growing up, how was that to be surrounded by family? Was there an awareness about the economic issues or was there more a sense of a very open, extended family?

Henderson: There was a sense of an open and extended family. I think that was the nature of it. I think that was, you know, you counted on each other to survive. And, certainly for me, I knew no other way. That was normal. It wasn't like, "Oh gosh, here they come. This is unusual." It's like, "Here they come, that's the way the world works," or "That's certainly the way our family works." So I never thought there was anything unusual about it.

McGarrigle: It was a very positive thing.

Henderson: Yes, it was. Yes.

McGarrigle: I have Special Meals on the outline. I'm someone who loves to talk about food, but I think also food can provide an interesting insight into traditions. Do you recall, for example, foods that may have been more Southern foods that your family continued to prepare?

Henderson: Oh gosh, yes! Starting with my grandmother, I remember--this is when she lived on 110th, and I lived on 43rd--and I can't remember quite the occasion, but sometimes we would go over to my grandmother's, and I knew I was going to eat there. And she cooked fried fish, just Southern fried in a little corn meal or something. I still remember it. It was just--I'd eat fish until I burst! And very often it was catfish, and she grew--this was in California, she still had very Southern ways. She grew collard greens in her backyard, and would go out and pluck collard greens and cook collard greens with salt pork and things. Yes, I remember very Southern. In fact, things like veal cutlets, I'd never heard of such a thing! I learned that stuff when I went to college.

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Henderson: From my grandmother--now my mother, I would get something beyond Southern food. Although that's what she cooked mostly, but because she lived with families and sometimes would cook for them, she learned how to cook other things that these families did. And every now and then, she would cook that, but again my favorite foods--and they still are when I eat with her, she still cooks--are collard greens, red beans and rice, or black-eyed peas, or fried chicken. Those are still my favorites and I've learned to cook it, and there's something magical about it because I get her exact recipe, and I cook it, and it doesn't taste the same. [laughs] I don't know what that is, but I--I watch her and I write it down. Southern foods that they ate in Louisiana. And as I said, still do. Although I certainly, you mentioned Alice Waters, I certainly enjoy a good meal at Chez Panisse [laughs] these days.

McGarrigle: Does your mother speak about the time when she was supporting family members, saving money to buy a house, working as you said in service, what her feelings about her work were at the time or her experiences?

Henderson: She talks about it. I get the sense that--she's quiet, she's stoic--these are hard times. She worked hard. Sort of a two steps forward, one step backward kind of existence during that time. Because there were so many people to take care of, I think there was never a concept in her mind, you know, that the ten dollars that--I don't know what she got when she lived in service, she got room and board and something, but I know after we got the house on 43rd Street where she was no longer going to do that.

At some point I learned when I got to college that she was making ten dollars a day. There was never a sense that I gathered that the ten dollars a day was for her and me. It was, sort of, that's ideal if nobody needs anything, but you know, it was always, "Here's two dollars for you," or whoever in the family. There was always someone in need.

And I'm not going to represent that all of my relatives were out there working as hard as my mother. My mother was the steady one. The others were, well, my uncles were--you know, I won't call them bums, but they weren't out there hustling a living. They were on the fringe of society I guess, but were the family and everybody loved each other and could always come in for help. As I said, my uncles would come in and stay at the house for whatever time they needed.

I'm sorry, I forgot your question. I'll wander and I'll do that and I apologize.

McGarrigle: Not at all. You did speak to the question, which is what it was like for her to work and to support the family. And to work in the nature of work that she did.

Henderson: Yes. Yes. She was steady as a rock. What everyone remembers--she just worked--never missed a day of work--and that's what she did. And I feel so lucky. I was the apple of her eye and I can certainly attribute the fact that I'm sitting here being interviewed in a chambers as a federal judge to my mother. And that care she brought to it, although she was not well educated, she wanted me to be, and she insisted that I study and that I, quote, "be something."

As I said, even the neighbors thought of me as a little spoiled brat because my mother--as hard as she would work--I still remember we didn't have a washing machine or even a refrigerator when I was growing up, through junior high, certainly. I remember her out in the back with the washing board, washing. And I always wore either khakis or white corduroys. You didn't do that in this sort of tough neighborhood, so I was sort of the little sissy. My mother just brought me up to think that I was better than these kids and part of it was being clean and looking good, so she never stopped. She worked and then she did that.

I remember lying on the, again this is pre-television, lying on the living room floor--studying, or maybe listening to the radio, and my mother always seemed to be in the kitchen. If she wasn't cooking, she was washing clothes, or she was ironing clothes. This is a child memory. Go to bed and get up early in the morning, fix my breakfast, go off to work. Very hard working. I got the feeling, and I still have the feeling, that this was all for me. It wasn't the way she wanted, but that was part of her game plan for me.

McGarrigle: We have a lot of hours that will bring us more to the present, but I just have to ask you this now, since we're discussing your mother: What does she say to you now about your achievements and your accomplishments?

Henderson: It's interesting. [laughs] Not much! She's very understated. I think she lets me know by, you know, saying, "Gee, I read about you today," or "Someone called and told me that you were in the paper," or "You did something good," or "You had an important ruling." That's it. That's the way she acknowledges it. Every now and then, and this is overflowing, gushing emotion for her, she'll say, "Hey, I'm really proud of you." [laughs] But that's my mother. I'm telling too many war stories, but I'll tell one in this

context. Of course, the biggest event that ever happened to me was when I got appointed to the bench.

Over the years, my mother gets migraine headaches when she gets excited, and her excitement is usually about me in some way. So, when I used to go home to visit from college, I wouldn't tell her. Because, by the time I got home, she was in bed with a towel on her head with a migraine just getting revved up. And "I've got to cook" and "I've got to clean his clothes" and it was just more than--so, I would just show up and then she was okay. Well, in that same way, when I was pursuing the judgeship, I didn't say anything. I didn't say anything to her or the family. That's just sort of the way my family does things. Finally, I went to Senator [Alan] Cranston's office and went through the last interview and it wasn't certain I was going to get appointed. Finally, at the end of the interview, he said, "Well, okay," he wanted me to answer some questions about this car loan to Martin Luther King that he was concerned about. I answered those and he had done some calling and said, "Okay, well, I'm satisfied. You're going to be the next federal judge." And then he said, "And here's what we'll do. We'll put these papers in and see you next week."

So, I go skipping out of there and I'm just--one of the happiest moments of my life, down at Hallidie Plaza, where he was at the time. I go down, I find a phone booth on the street and I call my mother. And I said, "Guess what, mother? I've just been appointed, I'm nominated to be a federal judge by Senator Cranston." And my mother said, "Oh gee, that's nice. Have you heard about your cousin Ronnie?" And she starts telling me something and we talk about my cousin Ronnie for a while and then at the end she says, "Now what--you--this judge--tell me, is that like traffic court?" And I give up, as I always do, and said, "No. But I'll tell you." And so that's sort of the way I've grown up. No big deal with my mother. It's lost on her.

She wasn't able to come up for my investiture where we have a big ceremony. She missed that and didn't get up here for, maybe, another two years or something. One Saturday, you know I want her to come see me in court. She, for some reason, I think she thinks people are going to be looking at her and she has to dress in a certain way and she doesn't want that ceremony. So, I brought her over on a weekend with a cousin and brought her up in here and took her into the court. Her comment was--this big courtroom--"Oh, you're a real judge!" Two years later, she didn't really know quite what I was.

So, anyway. That's again, too long an answer to your question. That's my mother's--I know she's proud of me, but I think she doesn't quite understand it. And certainly, early on, didn't. And, I think part of it was that in her world, blacks weren't judges. I think that was part of it, having trouble picturing it. Now, in 2000, that's more common. So, she understands that and she's seen enough articles and things that she knows I'm a real judge, but I think early on it wasn't computing that her little boy was a federal judge, whatever that was.

McGarrigle: That was understandable. Did you have contact with your father the years that you were growing up?

Henderson: I had contact with him. It wasn't a good relationship. When my mother separated from him and we came to California, something like two or three years later, he came to

California. We'd gotten the house on 43rd Street and they got back together and he moved into the house and we lived as a family until almost high school. So, from seven until maybe fifteen, or fourteen, I could pin it down if we needed to.

I was never close to my father. He was a very stern man. He was a very angry man. One of my enduring memories was at the dinner table. We had a little dinner table, half the size of this [pointing to conference table]. He sat there, there was the wall, I sat here, my mother sat here [pointing to the chairs]. I remember a meal was something--if I was lucky I'd get through it without getting chewed out by him for something. You know, "Damn it! Hold your fork right," or something. He always had a grievance it seemed, and I don't think this is my paranoia. So, I don't have happy memories of my father. One of the ironies is that after one incident, which I won't go into, we actually--this was her house--we actually walked out at dinner in a rage, and my mother called her brother, who is now dead, and we packed up and moved out because he had such a temper. And lived with a church member of my grandmother's for a couple of years until she could get divorced and get the house back.

After that, I then went to high school and became a pretty good football player. He was friends with my uncle. They had known each other in Louisiana, that's how my mother met him, through one of my uncles. And they would see each other in the bars and things and he sort of put out the word that he'd like to see his son because I didn't see him during this time. And so my mother, you know, said, "Okay." And he started coming around and two things I remember: He didn't know how to relate to me and I remember sitting--no, I've got this mixed up. I was in college by now and he would come by and, poor guy, the only way he could relate to me was bring a bottle of liquor in his pocket and, "Let's have a drink." And I didn't drink. But it was--it was sad. The other thing I remember, one time, he was drinking and we were sitting around. A number of us had come over and I was, as I said, I was visiting from college and he got carried away with it. And this is like the only time I really chewed him out. Got carried away, he said, "Yeah, I remember I always told Thelton to study hard and to go to college." I think, "Bull. Don't give me that crap!" You know, because he was never a presence in that part of my life.

Anyway, those are the negative things I may want to edit out of here. It wasn't a strong relationship with my father at all. He wasn't a factor--it was my mother--he was a negative factor, I think. I think in terms of where I went and what I was doing.

McGarrigle: Do you recall starting elementary school? What that was like?

Henderson: I do. There were two starts. One, I remember [laughs] 27th Street--I mentioned that house. I had to walk a long way across railroad tracks and I remember that was, like, the longest journey in the world. I remember, again, I had short pants because my mother had this idea of how I'd be and I was always the sissy of the neighborhood. The little boy with the clean pants, and I don't remember that as good times. You know, kids didn't like me or they'd tease me. That's one start that I remember.

Then, when we moved to 43rd Street, I started Trinity Street Grammar School. Probably in the second grade, I can't remember. And that was a whole new experience. And again, I remember the first day of school. I went to school and my mother gave me a quarter for lunch and I went to the homeroom and then lunchtime came. I sort of was

bashful. I didn't know what to do with the quarter. So, I'm sitting there and the other kids already knew there was a place across the street or they brought their lunch. The teacher, you know, saw something was wrong. "Well, do you have lunch?" And I said, "No," I didn't. Not mentioning a quarter and she, somehow, I can't remember, got me a sandwich. So it was sort of awkward breaking in there. I think the thing that saved me throughout school, because I was different in ways that I'll try to explain, I talked like this even then and kids thought I talked funny. And I don't know where I learned to talk like this, but I talked what they called proper like a white person and that was not good. I popped out of the womb talking like this, I guess.

So, I was always an outsider. I studied, I read a lot and that wasn't typical for this neighborhood, but I think the thing that saved me was I've always been a good athlete. And I've always told my kids this and I've told--that's a saving grace. People will forgive someone who's good at sports, and so I was the captain of the kickball team, or whatever. And that gave me a certain acceptance and, you know, you can hang around with the jocks and even though you're a nerd, otherwise, you know, here you are. I've often wondered--it would have just been awful had I not been a good athlete. I would have been a real lonely, isolated kid.

McGarrigle: It sounds like your athletics started early, then? In elementary school. You mentioned kickball.

Henderson: Yes, I was fast. Yes, I played. I was always just good at sports and I think--I don't think I'm a natural. As I got older and got past football and baseball and took up tennis, I realized I wasn't a natural athlete. [laughs] Guys that would beat my socks off in tennis. But I think it's just because that's what I did. I think I let out a lot of this loneliness in athletics. I was a fierce competitor and that's what I liked to do when I wasn't reading or anything. At least that's the way I've reconstructed it in my mind.

McGarrigle: What would your age or grade have been when you started playing football and baseball? Would that have been junior high?

Henderson: I don't think they had organized teams in grammar school. But, you know, you get teams. "Let's play baseball. I'll pick him, you'll pick him," and you have your teams and you start playing. I think it was that kind of sports in grammar school. In junior high, they did have--my junior high yearbook I was looking at recently--where they had teams and I was captain of the eighth grade all stars and captain of the ninth grade all stars. I think that's probably where I really started to really think, you know, that I was good. And in some way to play with teams and play in high school and things. Yes.

McGarrigle: Now, "captain" makes me think that you were perceived as not only a good athlete, but someone who had leadership qualities.

Henderson: I think so, in ways that I don't understand. I mean, I was always surprised, but I would be picked as captain, and I remember one time in junior high I was voted, whatever you call it, president or something of the class. I still remember being startled by it because I think, even today, I view myself as a person sitting on the edge of the crowd listening. And not a leader. I've never thought of myself as a leader and I've often thought back to what was I doing then. You know, I don't remember ever standing out and saying, "Let's do this." I was always watching. But, yes, there was something, I have to say

immodestly that the kids would pick me to be a leader and I honestly don't remember doing anything, or stepping out from under--or even wanting to be a leader. I think that's part of my personality because I was telling Russ [Ellis] a story--I went to see *Forrest Gump*, maybe he's told you this story and, you know they mixed--in the film, this was with Tina. You know the movie?

McGarrigle: Yes.

Henderson: Well, there was a scene of the young black girl, and he's a football star at the University of Mississippi, integrating the school. And they used real newsreel footage that they worked in with the movie and I remember that newsreel footage. She's walking in and she drops her textbook and Forrest Gump is standing there. He's viewing history from his--and he walks up and, through the magic of film, he picks up her book. And I saw that and I said, "That's me! I'm Forrest Gump." This guy sort of going through life with these magical things happening to him. You know, and I'm doing the same thing. I'm getting out of school and all I want to do is be an attorney and all of a sudden I'm hanging out with Martin Luther King. And all of a sudden when the church is bombed and all of a sudden I'm with Medgar Evers two nights before he's assassinated--and it's just, you know, and I don't know that seems to be the way my life has gone when it wasn't as if I said, "I want to be there and I want to participate." It's more standing there and the book drops and I say, "Oh, I'll pick it up."

I hadn't thought of the connection, but that's the way I see my early life as just, sort of, being there. But I was the president of the class and these things and I don't know. Never campaigned. It's strange and I don't even know how to articulate it better than that. Other than this disclaimer. It's not false modesty. I'm not being falsely modest. That's my perception of it.

McGarrigle: Well, I have to tell you that while I was doing your background interviews many of your close friends warned me to push beyond the explanation that it was chance circumstance that you were at a certain place and time [laughter]. For example, that your classmates identified you as a leader.

Henderson: Maybe it means that I don't understand leadership because I have just never thought of myself as a leader. I don't think of myself as a leader. I don't think I have the leadership drive or qualities, and even when I find myself being the chief judge of a distinguished court, which is a leadership role, you know, I don't really know what to do with it. I figure, "Okay, I will do my job. I will try to implement the will of the court."

Whereas it's interesting--Marilyn Patel--the leader--she is a leader. I see her as a leader. She calls up, she has something going on, and she has a program and right after here we've got an executive committee meeting of the court and she thought of the executive as a nice feature, that I never thought of in my seven years. And that's a leader. My role, during that time, I think I've been regarded by the court as a good chief judge, but I really saw my job as, "I'm on this big ship and let me steer it through the icebergs and keep it going in good shape, like I got it." Whereas, I think Marilyn says, "Okay, well let's--we're going to go to the Bahamas for--." She has something that she has in mind, and I just wanted to stay on the high seas and keep the engine full of gas, or whatever, and well oiled. And keep the brass polished and do a good job of sailing it without

shipwrecking. So, maybe it's just that mentality. I don't know, but I've never seen that as being a leadership quality. Maybe that's the--

McGarrigle: Different style.

Henderson: Different style, yes.

McGarrigle: And yet, people are observing and paying attention to things in maybe more subtle ways.

Henderson: Yes, that may be. I think partly what, if I could be so bold, is that I have a strong sense of duty and obligation. So, when I do find myself doing something, I do a good job of it. I don't slough it off and I think, maybe, that shows. And people respect that. I can brag about that. I think when I take on something, I'll do the very best I can. Maybe that's leadership, I don't know.

McGarrigle: We'll have time to explore that in different facets of your career.

Henderson: Yes. Yes.

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McGarrigle: You were telling me a story we started off tape and I'd like you to start again.

Henderson: Okay, yes. Well, I was talking about what a difference Mike Marionthall made. He was a tough ex-marine who was an All American guard at UCLA [University of California, Los Angeles], lost his leg in the war. Came back, got out, wooden leg. Not wooden, but a prosthetic, I guess you would call it. And came to teach and coach at Jefferson High, an all-black school with a bunch of tough kids. Discipline problems. And past coaches, they just got overwhelmed by it. You know, it was a discipline problem. Not much coaching. Mike wasn't that kind of guy. I think, having been wounded in the war, he had a different view and he wasn't taking any of that crap. And he shaped us up. Some of the tough guys on the team that were trying to do numbers on him, he'd say, "Sit your butt down." And nobody took him on.

So, we had a great football team just when I came along. And that helped me get my scholarship to Cal [University of California, Berkeley]. I think that made all the difference in the world. If we had had the old kind of football team, where we'd win one game all season, I think that's another thing that might have prevented me from getting to Cal. From getting that scholarship.

McGarrigle: Were there teammates of yours who also went on to college?

Henderson: There were. Jerry Drew, who was one of the greatest high school halfbacks I've ever seen even over all these years, he was a year behind me and he made All American. He came up to Cal the year after I did. Yes, Rommie Laud went to UCLA and actually made All American end at UCLA and played for the Chicago Bears. He was very good and, actually, Rommie just died a couple of years ago. And there were other kids on that team that didn't have the grades or the breaks that we got, who went on to play at [Los Angeles] City College and other lesser college teams. But we had a very good team.

McGarrigle: Was he someone who you stayed in touch with over the years?

Henderson: Jerry Drew?

McGarrigle: I'm sorry, Mike.

Henderson: Mike, oh, I'm still in touch with him! I've got a picture of him somewhere. Yes, we send Christmas cards every year. Up until a couple of years ago, all of these years he has been the timekeeper at the UCLA basketball games. So, he'd come up here at least once a year for the Cal-UCLA game and we would get together and have dinner and see each other. Yes, I've kept in touch with him. He was inducted into the UCLA Hall of Fame a number of years ago and I flew down there with Harry Pregerson to be at that ceremony. Yes, we've kept in touch and been very close.

McGarrigle: You mentioned to me, but we were off the tape, that Mike and Harry Pregerson were in the war together.

Henderson: Yes, they were. They were marines. They both enlisted in the [United States] Marine Corps when World War II broke out and the way they became friends--I think they knew each other before this day. But they were both wounded within minutes of each other, in foxholes that were adjacent, and spent time in the hospital recuperating. You know, I guess that can be a bonding experience, so they've been lifelong friends through that experience. And that's how I got to know Harry Pregerson who is, as I've mentioned to you, is a Ninth Circuit Court of Appeals judge. A very distinguished one. We've been good friends over the years primarily because Coach Marionthall said, "Look out for my football player there. And he's a good kid."

McGarrigle: How far would you go away from your high school to play games? What was the greater area?

Henderson: To play the high school games?

McGarrigle: Yes.

Henderson: During the season we were in the southern league and there were, as I recall, six perhaps or seven teams in the league that were in roughly the same geographic part of Los Angeles. So we didn't travel far. I don't know, thinking in terms of probably what the geographic area would be. It wasn't hilly, but maybe the size of San Francisco, which is just a part of Los Angeles, maybe not even that much.

So, we didn't travel a lot, but we had pre-season games, and I remember the first time I recall going outside of Los Angeles we played a high school in Fresno. We took a bus, it was a big trip for the guys, you know. And we had a list. "Bring your toothbrush." You know, the coach knew we weren't very polished in travel and got all our little kits, and we drove to Fresno to play a game against Edison High. So that was a big trip for us. And with pre-season games we would go to San Pedro, which is another town, and Gardina, outlying towns for pre-season games. But the season itself was this compact league of schools reasonably close to each other.

McGarrigle: On a trip as far as Fresno, would you stay overnight then?

Henderson: Yes, we stayed overnight in Fresno. As I recall the trip, we drove there, stayed at a hotel, got up, practiced, played the game the next evening, stayed overnight, and then drove back the following day. I'm guessing the game was on a Friday, I can no longer remember. Went on Thursday, played on Friday, came back on Saturday. Or something like that. Sounds minor now, but it was a huge adventure for most of us. Certainly for me, I had never done anything like that.

McGarrigle: I can imagine the excitement.

Henderson: Yes, yes, it was big.

McGarrigle: And you mentioned that there were two mostly black high schools in Los Angeles. So, the leagues were integrated. The high schools were not necessarily, but the leagues were.

Henderson: Yes, the leagues, well yes. And then there were the two black schools. It was interesting because, I think, we didn't realize what it really meant to be the black high school in the league. But looking back on it, and I've talked to some of the old team, there were signs of racism.

For example, we went out to play Washington High, which was all white, and we vividly remember the band playing Old Black Joe. You know, being outraged and saying, "We're going to kick your butt." You know we're going to, because we were good and we tried to lay it on, but there was that kind of thing. We felt that we were outsiders in that sense that there was both that kind of overt racism that we found and more subtle things that we thought were practiced against us.

McGarrigle: Was it unusual to have a white coach or were the coaches of the other teams, for example the previous football teams, also white?

Henderson: They were both. The immediately prior coach was black. The one before that was white and, actually, that coach became the assistant coach, or co-coach with Mike Marionthall, Richard Ragus, whom I still keep in contact with, too. Wonderful man who coached the team with Marionthall. He had coached the team and was a head coach prior to that. I've often wondered about that. Whether, you know, we idolize Marionthall and credit him with our success, and I wonder if we aren't shortchanging Richard Ragus who is also a part of that coaching team.

Yes, but he was white, and I think that most of the coaches over those years when they weren't good were white, and as suggested earlier, I think that part of the problem was they just didn't have the wherewithal to discipline these tough kids and that was the difference. I mean, Marionthall was a good coach, but he also did that extra step of saying, "Stop all that nonsense. You get to practice on time. You do the drill." All the things that the other coaches didn't carry off.

McGarrigle: You have lots of longevity in the friendships that extend from those days.

Henderson: I do. I've been lucky. I, and as I get older at this age, I realize what friendship is. And the older friends are important people you bring along in your life. A lot of people have dropped off and I think that has said something. And I'm sure I've dropped off in

people's lives, but the people I've brought along I've kept from, certainly, from high school that are still important parts of my life.

McGarrigle: That's really special. I have Speedball in quotations on the outline. [laughter] I picked that up from another interview I read with you.

Henderson: Yes, yes. Well, I was fast. I think that was a nickname that I was given. I--probably, more than good as a football player, certainly--I was fast. And, keep in mind, I think I tend to think more in terms of historical contexts these days. When I got to Cal, for example, I was the fastest guy on the team and I suspect the fastest guy Pappy Waldorf had seen!

But put that in context. We're talking about a period when not many, you know--I went to see USF [University of San Francisco] play with a friend of mine who's on the faculty there and she doesn't go to games often. She said, "Look at all the players on Pepperdine are black. Is that unusual?" And I thought, "Not really these days," although there was one white player on the bench. When I went to school, that was extraordinary. There's one black player on the team, if you had any. And that included football, so I have to give it that context. Because if you look at a football game now, it's not surprising to see a lot of black players. It was then.

So, what I'm saying is that I was fast in that context. Although, I used to like to say even then, there are guys at Jefferson High who can give me a five-yard head start and beat me running, but I'm faster than anybody here. So, I was fast in that context and that carried me a long way. Speed goes a long way in sports. Again, I've lost the train of your question.

McGarrigle: Not at all. [laughs]

Henderson: I don't know quite how I got there.

McGarrigle: I had your nickname on the outline.

Henderson: Oh, Speedball. So that's how I was called Speedball, just because I was very fast.

McGarrigle: And All City Football, can you explain what leads up to that designation?

Henderson: Yes. I don't have my scrapbook here to show you the little certificate. The coaches and a group of sports writers who cover the high school circuit, vote on it. As I understand it the coach of my team, Marionthall, can nominate two players from his own team or some number and then designate teams that we have played as being candidates. And then I think they do some sort of computation, the persons named the most in that context and who get the most votes are dubbed All City First, Second, and Third Team, which is a huge thing for a high school football player. Especially in L.A., which at that time probably turned out the best athletes in the state. So that was really saying something if you made All City in L.A. It meant you could play with anybody, certainly, in the state and maybe even in the country. Because L.A. was the center of sports. We probably had the best track teams in the country, at least the best times. And, we thought, some of the best football and basketball teams.

McGarrigle: What was that like to have that kind of recognition and to be written up in the paper?

Henderson: It was thrilling. You know, it's amazing what will satisfy you then. I have little clips like that from the paper where there's a big article and they just say, "Oh yes, Thelton Henderson was there." That was a big thing then, so I've clipped that out. [laughs] It was exciting to be on a good football team. I think what was more important to me was the camaraderie of team sports. I mean, my teammates were very important to me and that's the thing I valued most. It was a plus that we were good and won championships, but it was more hanging out with them and talking about that than it was saying, "Here I am, look at me." That was the way I looked at it.

And, as I said, I mentioned earlier, kids are really kind to athletes. I went to the school that was the hippest school. Guys could dance and do--and I couldn't dance--I didn't date. I didn't know how to talk to girls. That's nerd personified. But, because I was captain of the high school football team, they actually made up a social life for me. I've told this story many times. I'd gone across town to John Adams Junior High and there were some girls there that I knew who had gone on to another school. They actually made up that, gee, I was dating this girl at the other school. And I think they believed it because I had to do something. I'm captain of the football team and I wasn't a bad looking guy. I had to be dating someone. Today they might think, "He's gay," or something. They didn't think like that then. But that saved me. I was able to go around and not be this weird guy who read too much, and didn't have a lot to say, was extremely bashful.

I remember we had what we called dance night. One night a week--maybe a Thursday--they would play records at the gym at school. You'd go and guys would be dancing. I didn't know how to dance. And I'd go, but I could hang out with the team. And I was even cool because--just being cool and not dancing was sort of cool in that sense if you didn't know I didn't know how to dance. That's how I survived in this thing, really being out of the loop in every meaningful way, but being in the loop and standing there talking about sports and being a part of it.

I've told this story to my son when he was growing up, because he was going through that kind of insecurity. I would say I'd go to these dances and when I finally did learn how to slow dance--I could just slow dance or do some sort of two-step--I'd start dancing and say something like, "Gee, do your homework today?" She'd say, "Yes." And that was it. That was my whole line--my whole rap! [laughter] And then, like five hours later, this dance would end and it just was awful. I would see the other guys and they'd be talking and I'd say, "What could they be saying?" I couldn't even imagine what the conversation was.

So that was my life through high school, and actually into college. I was very socially inept, but again, sports--I was--I could hang in there.

McGarrigle: We talked earlier about being captain of the kickball team, but now here we're talking All City Football and captain of the Jefferson High football team. Do you remember how that honor came to you?

Henderson: I have reconstructed it. This is my mother. She wanted me to have a good education, and they had just built George Washington Carver Junior High fairly near our house.

And my mother didn't want me to go there. Black schools had a reputation for not being as good as the white schools. And I think that was clearly true back then. They had better teachers, and they were dealing with discipline at the black schools.

So I went across town to John Adams Junior High, and that was a big break for me because I think I did get a better education.

McGarrigle: Was that a special request your mother would have made of the district then?

Henderson: Yes, she made a special request and I was able to do it. My mother had that insight. I had to walk, I remember, blocks. I actually go back and drive it. It was a long walk. I'd walk to school. Then when I got out of junior high, the feeder school for that would have been Polytechnic High, or Dorsey High, or Manual Arts, which were virtually all white with a few blacks starting to go.

The reason I went to Jefferson High, which was all black, was that I was a good athlete. I was the fastest guy at John Adams and captain of the teams. I wanted to play sports. They had a rule that I could have gone to those feeder schools, but I could not play sports, because you couldn't play against your neighborhood school. So I couldn't have gone there and played against the kids in my neighborhood. The reason for that is to stop coaches from other schools from recruiting, getting good athletes from around the town. They had to use the kids in the neighborhood that supplied the school.

So I went to Jefferson High being the square. You know, saying, "Gee, golly fella," which is the way they talked at John Adams to these tough guys saying, [lowering voice] "Hey, man." So, again, I was more of an outsider--really an outsider and, again, it was sports that saved me. It was a tough school. Now these guys are my buddies, but when you're an outsider and you see these tough kids who I wasn't used to from junior high--I didn't go out for football the first year because I was afraid to. I mean, I thought, gee, I don't know how to do this and go out there with these guys that were posturing. So I didn't go out for football until my junior year, the eleventh grade.

You were asking me about captains. So then--and that was B football, because I was small and fast--then I went out for varsity football my senior year and went out for halfback and I was sort of unknown to the coach at that point. I was captain of the baseball team by then, but not known as a football player. And started off on the second team, or maybe even the third team, but I remember we were going to do a scrimmage against the varsity, the first string.

I remember we had a guy on the team named Joe MacFarland and he was sort of a happy-go-lucky guy and he was the leader of the team. And I struck on the idea of calling ourselves The Mac Team so everybody became Mac. I was MacThelton. And the coach liked that. We had a lot of spirit and we held our own with the first string team. And right after that he put me on the first string, trying me out. And I made the first string and I kept up that, kind of, "Hey, let's go guys! Last one there is a chicken." And that's sort of the way I am in sports. Not in dancing. [laughs]

I remember being astounded the first game. We're standing there--the first league game, I think it was--and he says, "Okay, as you know, we pick a captain every year, and I want you to follow the lead of the captain, and your captain is Thelton Henderson."

You could have knocked me over. That came out of the blue. I remember the guys saying, "All right, captain!" That's all I can say. I don't know. He saw something and I think it was that--the fact that I was on this team where we rallied. Jefferson was a team where everybody was sort of strong and silent and doing their thing. It was unusual to say, "Let's be a team. Let's call ourself The Mac Team." And I think he wanted that quality or wanted to encourage it.

And that's how I got to be captain, I think. It's interesting. I've never talked to Marionthall about that and maybe I will next time.

McGarrigle: I hope so. Next time.

Henderson: He may have something entirely different to say, but that's my fix on how that probably happened.

McGarrigle: This is a natural ending spot. Why don't we stop for today and then we'll pick up when we meet again.

Henderson: Okay. That's fine.

[Interview 2: February 27, 2001] ##

McGarrigle: You mentioned that you were also captain of the baseball team. Did you have a preference for one sport over the other?

Henderson: Not really. I liked them both. I think I was probably a better baseball player, although I didn't make All City Baseball, and the reason I didn't make All City Baseball was there was a guy named George Anderson who went to another school who made All City and then went on to the major leagues and then was a manager for many years. So, I could never outdo him. But I was a better baseball player than a football player and I loved baseball a lot.

Baseball was a different sport back in those days because Jackie Robinson, just a few years before—I started high school in '48 and it was in '47 that Jackie Robinson broke the race barrier and played major league baseball. So there wasn't the tradition or the entrée in the black community to play baseball in the way that they did football. So I played baseball, but we didn't have good teams because blacks were just starting to rush to baseball. I guess the answer is I didn't have a preference but I liked them both.

McGarrigle: And who was the coach of your baseball team in high school?

Henderson: I can't remember his first name but his last name was Keegan, K-E-E-G-A-N, and he was a former baseball player and a good coach with a tough job of getting the kids interested and putting together a team. We didn't have television, and you learn so much from television. I watch television, and I'd see kids watch it, and you learn, and you emulate the major leaguers. You didn't have that in those days. So we had a lot of kids out playing baseball who had no coaching. They just went out and had natural talent. So he had a tough job to whip us into shape. We never were a threat to win the league championship. We were always sort of near the middle of the pack.

McGarrigle: How did you come to play baseball?

Henderson: I liked sports. I think I mentioned that in the last session. Sports were a real refuge for me. That was what I did. I was very shy, didn't have many social skills and so I did it in sports. I would play--starting with grammar school, just kickball--played fiercely, put everything into it and was kind of fast and learned that I was kind of good.

That gave me the kind of status and stature that I think I needed. When my parents separated--this is getting to baseball, hardball--I moved to another part of town and lived near a park, Ross Snyder Playground, which had baseball diamonds on it and had semi-pro players and things like that. I would hang around--started practicing with the kids and got fairly good just playing around there and practicing by myself. The American Legion units had teams of kids and so I was regular age when I started. After a couple of years of American Legion baseball, I then joined one of the semi-pro teams. And finally they had a new semi-pro team that was starting, and I tried out for shortstop and made the team. I was a good fielder, just sort of having played softball. I could still do that, then I sort of learned the rest of it.

And, by the way, I think I've always told the story that they played on Sunday. I made the semi-pro team and that was sort of the last time I ever went to church. I went to

Sunday school because my mother had me go to Sunday school at the church down on the corner. When I started playing semi-pro baseball--I think that must have been around fifteen--that was sort of it. My mother allowed me to play and I stopped going to church and I've probably been to church a few times over the years for special things but that was pretty much it in terms of regular church-going.

McGarrigle: So the semi-pro teams must have drawn on a larger geographic area?

Henderson: Oh, yes. Some of the teams I played against were actually from other cities. Yes, nearby cities within the Los Angeles community.

McGarrigle: What kind of experience was that, getting accepted on the semi-pro team?

Henderson: It was great. It was a great experience, playing with some guys who were good players. One of the great thrills--one of the great baseball players, he's in the Black [Baseball] Hall of Fame and may even be in the Baseball Hall of Fame, was a great catcher named Biz Mackie, who was at that time probably fifty years old. He played on one of the teams and he was just an icon, you know. So you had a lot of guys like that who were aging, had played with Satchel Paige and things like that. And that was, you know, a great thrill for a young kid coming up.

So it was a very exciting time in my life and I think I was doing all this long before I played any tackle football. And that's why I consider myself a better baseball player because I really had had some background in baseball through this when I got to high school, whereas in football I just sort of went out for the team and turned out to be kind of fast and pretty good and started playing football.

But yes, it was a wonderful time for me, and I remember when I got my first jersey. I was telling this story to my son because my grandson who's five years old is just joining a T-ball league, and I was telling my son the story of my first jersey. I put it on and I just walked around the neighborhood with it, you know, like, "Look at me." I was just sure everybody was staring out the window at me walking around in my jersey.

McGarrigle: What colors were your first jersey?

Henderson: It was a heavy wool. It was a hot day, it was sweltering. It was the way they made them in those days, hot and sticky--white was the primary color and then there was trimming and that was green, green trimming and green letters. I can't remember what the name of the team was, but the name of the team was there. And yes, as I said, I must have walked ten miles that day, just walking around feeling good about that jersey!

McGarrigle: What positions did you play in baseball?

Henderson: Shortstop. I played shortstop on the American Legion team and then on the semi-pro team and at high school. And that's a position I played all my life. As I mentioned, I went to play football at Cal and I didn't play baseball my first two years. Then, when I got hurt in football I went out for baseball and went out for shortstop. The captain of the team was a very good shortstop and it was clear I wasn't going to beat him out. So

the coach [Clint Evans] switched me to third base and I played third base and some outfield when I played at Cal. Always considered myself a shortstop, though.

McGarrigle: I'm thinking during high school that you were busy if you were practicing with your high school teams, football and baseball, after school and then some weekend games, and then you were playing with the semi-pro team on Sundays.

Henderson: Yes, that's right. Yes, I was busy. But if you're thinking that I didn't study a lot, that's probably right. But I think it was more, I may have mentioned, it was that kind of high school. It wasn't rigorous. It wasn't an academic high school. So I kept up and got mostly B's, some A's and some C's, which was all I was aspiring to in those days, anyway.

So, yes, but I was busy and that was good. Most evenings I was involved in some sport, usually. And I think, looking back on it, that was good because there was a lot of trouble to be gotten into in those neighborhoods. I was doing that, hanging out with the guys till it was time to come home. I don't remember when that was, but there was some time I had to be home--or my mother expected me home. I would come in and eat dinner and then, at least sometimes, do some homework or just read and go to bed. That was the routine.

McGarrigle: Are there teachers who stand out for you from those years?

Henderson: Yes, there was a wonderful teacher who taught English and got me very interested in reading and writing. And I ended up getting the English award, whatever that was, which was something that she, I think, supervised. I have a certificate in one of my scrapbooks of getting the English award at Jefferson High. I can't remember her name. I've mentioned the athletic coaches. They were a big part of my life.

And there was a wonderful teacher--this is embarrassing. One of the guys on our football team was a great giver of nicknames. We all had nicknames, which he gave most everybody, and he gave them to the teachers and all I can remember is Mama Pruneface [laughter]. That was her nickname. But she taught English, and we studied poetry under her, and she was wonderful with the kids and really was one of those teachers that sort of insisted that you learn, whereas not all the teachers did that.

I remember one teacher really would play games as a way of getting it through to you. You would come in and she would have some interesting little thing that was really just designed to keep you occupied, and keep you from fighting, and I didn't learn a thing from her. And so some of the teachers really insisted that we study and learn something and Mama Pruneface--Mrs. Green! Mrs. Green was her name, okay, that popped in--Mrs. Green was a wonderful teacher.

Mr. Alvarez taught Spanish and was a disciplinarian. I guess, by then, I was playing football and I still remember he refused to give me any slack because I was on the football team. And that was good, I remember. I came in and I, sort of by then was getting into that athletic mode where I think athletes are treated differently than the other students. He gave me a little lecture about turning in my work and don't count on anything because I played football. And I learned Spanish pretty well from him. It was

a good start. I spoke Spanish pretty well, at one time. I think it gave me the foundation for that.

No one else comes to mind. I'm sure there are some others. I haven't thought about this in a long time.

McGarrigle: It sounds like in terms of subjects that English, literature, language, was consistently--

Henderson: I think so. And I think it's because, by the time I got to Jefferson, or even to John Adams Junior High, I read a lot. I think I've talked to friends and people growing up in that neighborhood and I don't think that was typical. I was a reader and I read a lot. You know, that was sort of the thing I did. I didn't go to parties, which a lot of the other kids did, and I didn't do a lot of social things. I think maybe that was a strength that they recognized or that I recognized. On the other hand, I was weak in math and still am. That was just a subject that I didn't take to. I've never had a real knack for math. But yes, English and literature and those kinds of things, I've always been fairly strong in.

McGarrigle: When you read on your own, what kinds of books did you read?

Henderson: I think left to my own devices--I remember walking down 43rd Street to a library--twenty, thirty blocks away, I would probably come back with more sports books than novels--not just histories of athletes, but sports books and then I would read adventure kinds of things.

I would read by authors, and that was a pattern that I did most of my life, and I remember reading Jack London at one point. I can't remember why. Probably a teacher told me about Jack London and I would read all of his things. Sometimes a teacher would mention something--I remember going all over Los Angeles looking for *The Diary of Samuel Pepys*. One of my teachers said that was something that one ought to read. And I never found it. It wasn't in the public library and I never read it. I know about it now, through other sources, and I've read portions of it indirectly. But I would read if a teacher said that something was important. But I think the bulk of it, though, was easy reading, sports things, adventure kinds of novels.

McGarrigle: Your mother must have been really proud. You had academic achievement and you had acknowledgment, for example from the English teacher, you had sports achievement.

Henderson: I think she was, but I think I mentioned, my mother doesn't express herself. So I didn't ever hear, "I'm so proud of you." It was more--yes, well, that's the way it ought to be, you know, or--if I didn't get an A, "Why didn't you get an A?" as opposed to when I did get an A, "I'm proud of you." But I think I recognized that I had her support and that I was pleasing her. I think I had a sense of that as I went through.

McGarrigle: In terms of your application to Berkeley, I think it was Mr. McClullen who encouraged you to attend, to attend Cal specifically?

Henderson: Yes, Isaac McClullen, to attend Cal specifically. And I would have never thought of that in my entire life. But he was a Cal alumnus and it came for me out of the blue. I was coming in from football practice. I remember the day clearly. We had practiced and I was walking toward the gym to shower and go home and he was standing there.

He started walking with me and said, "Have you ever thought about going to college?" And, not really.

I mean, I'd probably thought about it the way other kids there did--you would go to L.A. City College and mess around for a couple of years and then go get a job. If I thought about it, it was in that sense. No one in my family had ever even gone to college, so that there wasn't that tradition or expectation. But anyway, I can't remember what I said, "I don't know" or "No" or "Yes." I can't remember. But anyway, he mentioned that I had gotten a good score on the Iowa Test, which they gave at that time. I don't know if they still do. In high school it was a uniform test either in L.A. or California or nationwide. I can't remember. And that he thought I had the potential to go to college and that I ought to seriously explore it. He said that I ought to come see him. I went to his office, the counselor's office, the next day, or whenever I did. We talked some more and he said, had I thought about Cal?

All I knew about Cal was that they had a good football team in those days. There was a period in which they were going to the Rose Bowl. They went to the Rose Bowl three years in a row. So, "I don't know," they had a good football team. I had not the foggiest idea that it was an excellent academic institution. I mean, in those days Cal was no different from College of the Pacific, which I looked at--they offered me a scholarship--or any of the other schools. I didn't understand the gradation in terms of schools. So, I was lucky that that's the school I ended up with. And it was all because that's where he went.

The wonderful man that he is--I think I mentioned my mother, when I was in college, made ten dollars a day, cleaning houses, and I suspect in high school it was less than that. So, I couldn't even afford to apply, and Mr. McClullen helped me fill out the application, got the papers, and paid the application fee, whatever it was. I can't remember. So I owe all of that part of my life to him. He got me going, as it turned out, to an excellent school that changed the course of my life.

McGarrigle: Did you have a relationship with him before?

Henderson: No, I sort of knew him. I knew him as a person in the school. He was African American. Most of the teachers, by the way, were Caucasian, at Jefferson High. He was one of the few African Americans that I saw. I saw him around, but I didn't really know him until that incident.

McGarrigle: Were other colleges coming along--you mentioned University of the Pacific--looking for high school students to offer scholarships?

Henderson: They were. And I got offers. I got letters from College of the Pacific, which is now University of the Pacific, and they had good teams in those days. I actually visited Stockton, visited the campus and looked it over. I got letters from both of the Oregon schools: Oregon State and University of Oregon; University of Washington, University of Arizona. I think that's it. There might have been a couple of others, but I remember those clearly. Yes.

You turn on television now and you'll see a lot of blacks on these teams. That wasn't the case then. There weren't many blacks playing college football. I mean, they had a

sprinkling of them--four or five on a team, not all of them necessarily first string, was pretty much the norm. But I think it was the beginning of that. I think coaches were starting to see there was a wealth of athletic talent in the black schools.

And I think back in those days it was truly a student athlete, as opposed to now. I think many of the players that are really good just go to school to play football as an entrée to the pros. Then I think you were a student athlete. One of the things that was just starting to open up was kids that came from schools like mine often didn't have the grades to get into a school like Cal or these universities, and that was just starting to change. So I was lucky. I think I was--what's the surfing phrase--on top of the wave, or ahead of the wave, riding the wave, or something like that.

McGarrigle: For the counselor McClullen to have gone to Cal when there were so few black people there in the fifties--did he discuss that with you at all?

Henderson: He didn't. No, he didn't, and it actually didn't occur to me until years later that, hey, that was quite a phenomenon because when I got to Cal in '51, and I've told this story many times, there were probably twenty to twenty-five black students on the entire campus. And that was in '51. He had gone some years before, I don't even know--must have been quite a few less when he went. So he was quite a rarity, I think. I never discussed that with him, no.

McGarrigle: So you had these offer letters coming in, basically, these scholarship letters coming in and was it a clear choice to go to Cal?

Henderson: It was. I'm embarrassed to say I think it was because they had the best football team. [laughter] As I said, I made no distinction between anything else. In fact, UCLA at that time had a very up-and-coming team. They were just starting to emerge and they had a coach named Red Sanders. Actually, they had a reputation of being friendlier to blacks. He was starting to use blacks but he used a single wing, which is a different formation--I don't know if you know--instead of a T formation, and they weren't interested in me. If UCLA had shown an interest in me I'm sure I would have gone there because it was closer to home, I knew some of the guys who played at UCLA, and it felt friendlier to black players. But given they didn't make me an offer, and USC [University of Southern California] at that time was not recruiting black athletes, so that wasn't a possibility--so, given the schools I've named, Cal was clearly the choice. But, as I said, not because I thought I was going to a great academic institution, but because they had a good football team.

McGarrigle: Do you recall what high school graduation was like?

Henderson: You know, I think I mentioned this last time--high school, except for sports, was just a bad experience, socially. I went to graduation. I didn't go to the prom, mainly because I was too shy to ask anyone to go, didn't know how to dance, and knew it was going to be a disaster. I just sort of remember graduating. It wasn't a big event. Again, I was non-social is the best word. And so, I think at some point--I never, I don't know quite how this happened--I was popular, you know, because I was a football player and a baseball player. But, I think at some point, I think kids gave up on inviting me to parties because I didn't go. I don't remember partying. I don't remember going out. I didn't have a date.

So I rented a robe, went to the graduation, went home. That's really what I remember about it.

McGarrigle: Did you come up to Berkeley before you actually started school? Or was the first time you came up in the fall, to enroll?

Henderson: Mr. McClullen did all the footwork and I got accepted but because, as I mentioned earlier, I got mostly B's and some A's and some C's and this good score on the Iowa Test, they admitted me on the condition that I take two courses in summer school. I came up in June, July. I graduated and had a little time and then flew up for summer school here.

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McGarrigle: You mentioned the degree to which your experience was important.

Henderson: Yes, it was very important because I think it would be very fair to say that if I had not gone to summer school I would have flunked out of Cal before I started, and here's why: I came up on the condition that I would take two courses and that I would get a B and a C at least in order to start in September. So I flew up and one of the football players met me at the airport. I remember he had a lime green Thunderbird convertible and I thought, "Oh, that's the way football players do up here."

He took me to the first place I lived up here which was on Bancroft Way, right across from the track stadium, and it was a place called Tyrone House for Men. It was a rooming house, and it turned out to be the place. There were very few black athletes at Cal. We all lived at Tyrone House for Men, except one guy who was from Berkeley. He lived with his family. So that's where I moved in.

I came in the summer before the other people came and all I did was study. I didn't know anyone and I was determined to succeed. And I realized after starting to go to class that it was a challenge. This was new to me and I felt in over my head at times. I mentioned earlier that this was pivotal that I went to summer school because I took history of Western civilization and geology. My first exam was in history of Western civilization and, I remember it to this day, the first question was, "Give the significance of Napoleon's blockade of the English Coast." I got a D- on that exam. Another wonderful man, and I don't know his name, was my professor in that course. He had a note in the blue book which said "Come see me." I went in, and he was a kindly man, and he said, "You know, I should have given you an F because you didn't answer the question. I wrote the book and it's clear to me you studied." I didn't know how to take an essay exam. I had never done it in my life and so I started writing, "Napoleon was born here, and he was short, and he did this--." That's the only way I knew how to relate to information.

And he saw that and knew I needed help, didn't know what I was doing. We started talking and he found out I was up here to play football. He said, "Well, surely the football team will pay for a tutor, won't they?" "Well, I don't know, I'll go ask." They said, "Sure, we'll pay for a tutor." And he said, "Well, I'm going to have my teaching fellow who grades the exams tutor you." He started showing me the A papers, and all of a sudden I said, "Oh, that's what you do with all this information." And I was able to

pull my grade up--this was the first exam in the class. With the help of this tutor, I pulled myself up.

In geology I had no trouble, because it was true-false and multiple choice, which is all I had ever had. So I studied and answered that. I got two B's and got into Cal. I think that if I had come up here in September in that state, and had taken fifteen units, I don't think I could have possibly--and I might not have met that man who helped me. So I think that summer school decision was pivotal in my actually making it at Cal because by September I was pretty much ready to go. I wasn't polished, but I wasn't as crude, and I knew what college was all about.

McGarrigle: How did it come about that most of the black athletes were housed in one rooming house?

Henderson: Berkeley, you know, is known as the liberal bastion now, but it wasn't that liberal then, in terms of housing. That's the only place we could live. Even in subsequent years, when I played baseball--became really good friends with one of the white baseball players and we were going to be roommates. We went around looking for places, and they wouldn't rent to us. We ended up not being roommates. The answer is that was the only place we knew to stay. I think that the athletic department found this owner that would accept blacks and that's where we all went--once you found a place you knew you could live, that's where we went.

McGarrigle: Did they provide meals, then, in that kind of a setting?

Henderson: This place did. The woman who owned the Tyrone House for Men also had a restaurant down on Shattuck, and you could buy that package. You could pay room and rent, and have meals at the restaurant. That's what I did for the first semester. Then I learned that that was inefficient. It was a long walk down there and then, one time, I had a bad experience.

I think I didn't listen, or didn't understand, how it was supposed to work--but I went down there for lunch and I remember sitting, and sitting, and sitting, and I didn't get waited on. I don't think I complained, but finally someone said, "Well, for the boys at the house, you ate on off-hours." I didn't like that so I didn't renew the next semester, or the next year. And just started eating around, eating at the cafeteria, things like that.

McGarrigle: What kind of provisions did Cal make for you to come up in terms of tuition, and living expenses, and then you had trips home?

Henderson: Well, it was minimal, and I need to put it in perspective. I wasn't a star. I wasn't their hottest recruit. So I think there was a clear gradation. Jerry Drew, who played football at Cal with me and who was a high school All American, clearly got a better package than I did. He got more money, he got a better job. So, mine was enough to survive. Tuition was nothing at Cal in those days. I remember it as being something like \$67.50, which they called an incidental fee, per semester. So that wasn't an issue and I don't even think they bothered to waive tuition.

What they did was get you financial aid in the form of a job and help with books and things like that. So I made enough to pay my expenses. Once I got into the rhythm of it

they got me a summer job and that was probably the biggest thing. I would go down to L.A. and work at Douglas Aircraft. Douglas, whoever that was, or someone who ran it, was a Cal alum and provided jobs out in Long Beach. I worked there for the summer, saved up my money, because I lived with my mother. Then I would come up and have that plus the job they got me and that's what got me through.

McGarrigle: What kinds of jobs were those early jobs that the university set up during the school year?

Henderson: For many years I was a very good pool player. One was in the rec room, where they sell candy and the ping pong tables were and the pool tables. I would work at night, and there wasn't as much action then, and it gave me a chance to study because I sat at a table. They would close the candy counter at night, which was there for the daytime, I think. And I would check people in, "Oh, you want to play pool? There's your rack," and I would keep studying. But on some nights I would play pool when there was no one around and I got pretty good at it. So that was one job. It was very easy.

Another job was gardening. I worked for the landscaping department. And again, that was a low stress job. You would go around and clip things, and pick up things, and didn't have to do a lot. One job was working at a parking lot, checking people in and out of the parking lot. Really jobs that, if they could really manage it, they wanted a job where you could study on the job and sit, but absent that, a job where you didn't have to work very hard and would get pretty good pay. So those were the kinds of jobs I had.

McGarrigle: One of the people I spoke with in advance of starting our interviews, and I believe it was Russ Ellis, told me to ask you about when you came up and you went to a dinner. Maybe it was the start of your freshman year, or maybe it was before summer school, at an alum's house.

Henderson: Oh, yes. That was in Cloverdale. Amos Elliott was a very wealthy Cal alum who--all of this meant nothing to me then, but I knew was high up in Standard Oil--and had made a lot of money in whatever he did with Standard Oil. And in those days, unlike today with athletes, there was a lot of raiding if a star said, "Well, okay. I'm going to Cal," the other schools didn't give up. They would come to you and say, "What's Cal giving you?" And you had a lot of defection--a lot of people expecting you to enroll at Cal, and all of a sudden UCLA or USC [University of Southern California] made a better offer, and you were gone.

Usually the athlete didn't have the nerve to say anything. They just didn't show up. The way they dealt with that is they had a rule that once you entered a class at the university you selected, if you then switched to another school, you would lose a year of eligibility. Of course that was a big deterrent. So, Cal sent me and Jerry Drew, the All American, up to this ranch in Cloverdale essentially to hide us out from the other schools.

McGarrigle: And this was when you were still in high school?

Henderson: I was just out of high school. We went up to Amos Elliott's ranch in Cloverdale and--you know, no one knew where we were and--no access up there. That's where we spent the summer--actually a job, we worked on his ranch. I remember picking oranges, you know, three oranges a day. [laughter]

But the worst job--he had sheep and one day this guy said, "Hey, come on and help us with the sheep." What they do, I guess, is trim the sheep and then cut their tail, because they defecate on their tail, and it gets sloppy, and they just cut it off. So we were holding the sheep, and I had this razor sharp knife, cutting sheep's tails. Now they're wiggling and there's blood all over us, you know, and I still remember--just one of the worst days of my life. Then they would dab something on it and the sheep would go running off.

But anyway, that's what we did on this ranch, and actually he let us use his Cadillac on this big ranch, and that's where I learned to drive, in the sense that it wasn't a stick shift. You just put it in drive, or something. Aim it and drive around. We had a lot of fun driving his Cadillac.

I think what Russ had in mind was that I had never, up until that time, I think I had never eaten out, in the sense of eating out. You go over to your aunt's house and she would put a plate of greens and beans down and that was eating out. Amos Elliott had this big dining room table, and he invited some of the local people. And there were me and Jerry, straight out of Watts--had never seen forks and things out here, and things out here and the etiquette of eating. [gestures]

Jerry and I are still in touch and we joke about this. I was a bit more thoughtful than Jerry, and I had the sense to stay one beat behind--"Okay, picking up that spoon, I'll pick up that spoon." Jerry wasn't that type. Jerry just barged in. First time I had ever seen or eaten an artichoke. There was an artichoke there, and Jerry got his knife and started trying to cut the artichoke. I mean, we were really hicks! [laughs] And the part of the story Russ likes--because he knows Jerry Drew, and this is typical Jerry Drew--he said in this loud whisper that I think everyone could hear, "Hey man, how do you eat this shit?" But anyway, I think that's probably the story that Russ had in mind. It was my first experience in eating out and eating with proper utensils rather than just having a fork, and a knife, and everything piled on--courses, I knew that you ate in courses.

I subsequently learned that there was a place on Shattuck, the first restaurant we ate in called Refessi's, you know, and at that time, I think we thought it was a fancy restaurant. Years later, well, it's just a little hole in the wall, much like some of the small restaurants around the corner, here. But we thought eating at Refessi's was a great night out. And again, it was the first time we learned how to order. You know, go in and order food, and courses, and all of those things. So it was quite a learning experience.

McGarrigle: The time that you were at the ranch, were you and Jerry Drew aware that you were being tucked away?

Henderson: Oh, yes. We knew that. That was known. Athletes knew that's the way it was done, yes. It was known that that's the way colleges did it and it was okay. We had made the decision so, we weren't--you know, there were stories of athletes who wouldn't let you do that because they had said they were coming, but they were keeping their options open. So they would stay at home, or something. But we, we knew we were going to Cal, we weren't going to switch, so this made sense, to go on up there.

McGarrigle: Clearly Berkeley was a different place from Watts, and I guess this is something we'll talk about over time, how that struck you. Can you describe your first semester of school in the fall?

Henderson: Yes, I think I can describe it. You know, started in September and I can't remember whether after summer school I went back to L.A. for a little while and then came back for school. I honestly can't remember that. But anyway, in September I enrolled. I was still at Tyrone House for Men and there were a lot of people around and I started meeting some of the black students for the first time. A lot of what you'll hear was about my inexperience with all of this, and how I bumbled through it. They had a registration line out right inside Sather Gate, with tables there, and upperclassmen helping you through, and arrows, and you would pick your classes and things like that.

Another true story, that I should be embarrassed to tell, but, I was going through that line and I got to a certain place, and I remember this girl, I'll say she was a girl, she was a student and probably a sophomore or junior, saying, "What's your major?" And I truly didn't know what major was--I mean, I had heard the term. And so I said, "Law." I still remember sort of a snicker, you know, "this idiot." She said, "That's a graduate major. What is your undergraduate major?" And I didn't know the difference. And I didn't know what my major was. She said, "Come back when you figure out your major."

I went around and I bumped into a guy named Joe [Debrow?], whom I still keep in touch with, he lives in Washington, and I said, "What's your major?" He said, "Poli sci." And I said, "What's poli sci?" "Political science." I went back and my major was political science. The story I tell, that's a true story and he had a brother named Julius [Debrow?], who was a chemistry major. And to this day I'm glad I didn't bump into him! [Laughs] But it turned out. So much of my life has been lucky and all that poli sci was a pre-law major. So it was perfect.

McGarrigle: He didn't describe it in any more detail?

Henderson: I don't remember him doing so, but we're talking about forty years or more ago. I don't remember him describing it. I think I did it pretty much the way I said, "What's your major?" You know, you have got to have a major. He's black and, you know, I didn't even know. I don't think I had a sense that a major was what you wanted to do and study, as much as something you named.

McGarrigle: I'm surprised that the football coaches and the administration didn't offer more support.

Henderson: I've thought about that. I suspect they would offer what support you asked for and that they otherwise assumed you knew what you were doing. I think it was the same when I asked for a tutor in summer school, they gave it to me. If I hadn't asked for it, they wouldn't have--you know, I don't think they would have gone around saying, "If you need a tutor, we'll get you one." So I think they would offer the support. And I'm not one to ask. I've always been that way, to this day. I sort of keep my own counsel and say, "I'm going to figure this out." So I wasn't one going around to look and see what was there to help. I think that was my problem, just my personality. I don't think it was a defect of the athletic department.

McGarrigle: We talked about teachers in high school who had an impact on you and on your interests. Do you recall faculty at Cal who similarly inspired you?

Henderson: I remember Garff Wilson, G-A-R-F-F, who just died not that long ago. I took English from him. He was very helpful and very supportive, and I got good grades from Garff. I remember--oh, I've got to come up with this name--wonderful man who was a political science instructor. He was blind, and famous. They actually started a society--and, I hope his name will come. [Jacobus Ten Broek] He had a rhetoric and logic class which I think everybody who wanted to go to law school took. Very rigorous and magical man that made you want to learn and really taught you.

I remember those two, in particular. This is a pattern. I remember a wonderful teacher, and I think she might have been a teaching fellow in music. I didn't know anything about music. I didn't listen to blues on the radio at home. She really got me interested in classical music. She just loved it and would teach you the themes and the repetitive things. I remember just loving that class, and wanted to take it again. My recollection is that she wasn't a full professor so she didn't have a whole curriculum. So there was no other class to take from her. But I still remember her, and I remember studying *Eine Kleine Nachtmusik* with her. Still to this day, I'm captivated by it because of the way we studied it. Again, I don't remember her name, I'm sorry.

McGarrigle: You mentioned taking the rhetoric and logic class, and that many people did that in anticipation of law school. Do you recall when the idea came to you to go to law school?

Henderson: I've thought about that, I've been asked that. And what I've come up with--and I think it's accurate--my mother, again, her presence was there. That her idea was that--I think most of the black kids who were at Cal were sociology majors, or social work majors, or something like that, which was the traditional tracking, and they were going to get out and be a teacher or a social worker. I think my mother always pushed that you can do better than what the other kids on 43rd Street are doing, or the other kids at Cal and, you know, be a lawyer or a doctor. I've always talked about my weakness in chemistry and math. After taking a few courses in that, it was clear I wasn't going to be a doctor. I didn't want to go through that curriculum.

And so, I think, law was left. I think that's the process I went through. I mean, there were a few black lawyers in L.A., but I don't think I--probably on occasion, and in moments I was trying to make a point--may have alluded to them as an influence. But I don't think that's really the case. I think that's the way I went through the process. That I was going to be a lawyer as something other than and better than what the other kids were trying to do.

McGarrigle: Well, it makes sense. [pause] You started off playing football at Cal, and Pappy Waldorf was the coach.

Henderson: Pappy Waldorf was the coach, yes.

McGarrigle: What kind of impression did he make?

Henderson: Well, you know, he's--can't help but believe in him. He was a huge, big, imposing man, deep voice, smoked a cigar, had a presence, and at the time was coaching some of the top teams in the country. So he was quite, quite impressive. He was sort of, for me, a legend before I got here. You know, Pappy Waldorf, and just the idea of playing for him was impressive to me.

I didn't have a lot of contact with him, but he took an immediate interest to me. I sort of knew that because--I think I may have mentioned, in the previous [interview]--I was very fast. I was lucky that he had a--he liked fast defensive backs who could move around and catch it, and get to the ball, and knock it down, and keep people from running. So he--I think he took a liking to me. He never said anything like that, but I could tell it.

The first time I had an idea that he was really looking at me, we used to take forty-yard wind sprints and I would win them fairly easily without thinking. I didn't think, "I'm winning." I was just running. One day he told us to line up and he said, "Wait, Henderson. You, get back here," and he had me give them a five-yard lead. I thought, "That's unusual." I had never seen that before. I spotted them five yards and then still won the wind sprint. Then I started seeing he really was keeping an eye on me and seeing what I could do. I remember that, and there were some other things he did like that. He wanted to try me out in certain situations. I felt really proud about it. You know, that I was getting attention and seemed to be impressing Pappy Waldorf. So he was quite a guy and I think he made that impression on everybody.

There's an organization that exists now called Pappy's Boys, made up of players who played under him. There's a certain aura at Cal if you're one of Pappy's Boys. You're different from all the other players who played under other coaches. I think I may have mentioned to you that just last year the present Cal coach, Tom Holmoe, invited me, and has been inviting some of Pappy's Boys back, to talk to the players before some of their games, trying to instill a sense of the rich history that, you know, Cal used to have really good football teams. I talked to the team last season before the Oregon game--

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Henderson: --at the Claremont [Hotel], where the team stayed before the Oregon game. The coach wanted me to do two things--talk about the winning tradition and how we did things under Pappy Waldorf. The other thing he wanted me to talk about--and this struck me, because I didn't realize that he--he wanted me to talk about my injury. You know, I got hurt. I've told the story many times, you know, that was probably the best thing that ever happened to me, because I was putting a lot of time into football, and I was small, and I was fast--I wouldn't have ever been a pro player. But I would have spent a lot of time on the football field during the season. You know, it probably would have diminished my grades.

I would have played four years and had C's and B's, I would guess. I probably wouldn't have gotten into Boalt Hall [School of Law], because I wouldn't have had the grades. So the injury was probably the best thing that happened because I buckled down and studied. Baseball didn't take nearly as much time as football, and I got the kind of grades that got me into Boalt Hall.

He wanted me to talk to the players about my injury and how I got it together to go on and become a federal judge. I was struck because he told me privately that he wanted them to hear stories like this because with most of the players now when they get injured and can't play football, they don't have a life. They drop out of school. They don't see anything for them to do because they came to play football. He wanted me to make a point that there is a life after football, so those are the two reasons he wanted me to come talk.

But we've been talking about Pappy Waldorf and so, that's Pappy. He's a legend around here and it was an honor to play for him.

McGarrigle: Do you go to those reunions of Pappy's Boys?

Henderson: I go on occasion. I miss more. They have them down on the waterfront, here at Berkeley, at the Marriott there. I've been to a few of them, yes. After you have gone to one, you really only want to go to see old friends, so I've been to a few. And then the guys that I keep up with, I see during the year and there's really no incentive to go.

McGarrigle: I know I have read about your injury, and the fact that [Governor] Earl Warren was in the stands that day--

Henderson: Yes. I got hurt going down on a kick-off, and they gave me a shot of painkiller right on the field and put me on a stretcher. As they were carrying me out there was Earl Warren walking along and cheering me up. You know, I've always remembered that. He certainly wasn't on the [United States] Supreme Court then. I can't remember whether he was governor or attorney general, but anyway, it was memorable. I've probably told that story to too many people too often, that he did--wonderful man. I saw him a couple of times, subsequently. I remember him taking the time. I thought it was quite a gesture to console me as I was going out with a wrecked knee.

McGarrigle: Well, I imagine in subsequent years when he was on the Supreme Court, that must have been an interesting connection for you.

Henderson: It was, it was. I think I appreciated more the story I'm telling. It made it much more meaningful than if he had not gone on to do the things he's done and been a memorable name in our judicial history.

McGarrigle: We'll talk more about that. There was a period of recovery and then did you go right into playing baseball shortly thereafter?

Henderson: Yes. I got hurt my sophomore year, probably in October, early in the season. I went into the hospital and actually dropped out of school that semester because I was in the hospital for, I think, six weeks or something like that. So I missed too much school. I got out of the hospital and started back to school the following semester, which must have been January or February. At that time I hoped to play football still.

I had this operation and was working out and started running and doing exercises. Then they fitted me for a brace and in those days, I mean, it was nothing like sports medicine today. So they had a big, clumsy, leather brace on my knee. I realized that I wasn't as fast as I had been. I was nothing if I wasn't fast. And, as I was telling Russ, there's

room in football for a big slow guy, and there's room in football for a little fast guy, and there's no room in football for a little slow guy! [chuckles] I wasn't slow but I was slower.

So the next semester I was still hoping that my knee would recover, that it was just a matter of work, and that's what the trainers told me. But I wasn't ready to go out. So the next semester I hung around the team and I was actually a manager for the team. Managers are the ones who help the coaches, and get the towels for the players, and handle equipment. I did that, and I did it for two reasons. One, I wanted to be around the team. I still hoped to play. But also it was a way to keep my scholarship, so I did that. Then the crucial time came and I realized that my knee wasn't what I wanted it to be. It was a very painful injury and I think I had a fear of getting hurt again. So I gave up football.

That's when I went to baseball. It was clear at that point the only reason that I hadn't played baseball and football is I couldn't. So when it was clear I wasn't going to play football, it was just natural that I would go out for baseball.

McGarrigle: So there was no interruption in your team membership and your scholarship was not jeopardized?

Henderson: Yes. My scholarship was not jeopardized. That interim year when I didn't play football or baseball, I was a manager. So they continued to get me jobs and all. Oh, the other thing I didn't mention is that during the season, as a help, they had a training table. So you had a great meal every night during football season. Everybody would go up to a building by the cafeteria and they had this great food every night. So that sort of helped the budget, too. Their interest was you were eating properly and not eating pizzas and hotdogs, so that continued, yes.

McGarrigle: That's significant. A dinner is significant.

Henderson: Oh, it is. Absolutely.

McGarrigle: The baseball coach must have been familiar with you. How did that transition happen?

Henderson: Oh, it was an interesting transition. I remember the first--I won't say it was the first day --it must have been the first day. We had all the guys going out for the team. I mentioned Donny Walker, we eventually tried to become roommates. Well, I had played against him in high school, and I knew him. He was a good player and good guy. So we hung out. He was the only guy I knew on the baseball team. And we were standing there. Clint Evans was giving his pep talk, "Okay," you know, "we took second place last year. USC won and--" They were always the favorite. They had great teams and Cal was always coming in second. He was frustrated. He wanted to beat them.

So he said, "This year we're going to do it. We're going to practice fundamentals and we're going to be in shape. We're going to be in better shape than they are--" this huge baseball stadium there-- "So I want you guys to take two laps around the field and the last one back is a nigger baby." Everybody sort of looked and I still remember, and Donny Walker nudged me and said, "Let's go!" So we started running and everybody

ran. We came back and nothing was ever said. I mean, he didn't apologize. I mean, he treated me fairly. I don't complain. I think that's probably something he said every year, and all of a sudden there was a black guy there. He never thought about it.

The baseball coach was an old warhorse named Clint Evans and indeed, the baseball field now is named Evans Field. He was sort of a crusty old guy and I'm sure he knew I had played football. But we never talked about that, but as best I've been able to put it together, I was the second black to ever go out for the team and at least to ever play for him.

McGarrigle: Sounds like the other players had an awareness of what was going on.

Henderson: Yes, they did. Oh, yes. You could tell. There was sort of a shock and, "Oh God, what do we do?" And I think no one knew what I was going to do. I think it was all dependent on me. If I had said, "Hey, wait a minute--" it would have been a whole different scene. I didn't know what to do. I was sort of dumbfounded. I wasn't thinking of accusing anyone of racism. That probably wasn't even in my vocabulary in those days. But as I say, Donny said, "Let's go!" And that was it. I've remembered it all these years but I didn't dwell on it then. As I said, I thought that was what he says every year. Who knows what else he says. That was a thing that came out.

McGarrigle: Did you have a grave awareness or a sense of alienation, or isolation, being for example in this case, perhaps the second black student to play baseball?

Henderson: I did. Yes. For some reason the baseball experience was a much more alienating experience than the football experience. I think there was more of a camaraderie with football, and I felt like an outsider. Other than Donny and couple of guys that were friendly, you know, I was a real outsider. I felt that. I would go practice and I would hustle, but I didn't hang around the players, and I felt that there was hostility. There would be little comments made within ear-range from players, you know. I can't think of one in particular. It was an alienating, I think you have picked the word best, environment.

I remember--this was my second season--there was a company that had a pitching machine, which is quite common now but was a new idea then, and they wanted to film it. They brought it to the stadium and coach mentioned it. And so, they wanted to have some pictures. I think it was like a newsreel. They were going to show how this worked and people were going to hit. So the guy said, "Okay, let's get your top hitter up and hit at the ball." That was me, and I stepped up. He said, "Well--" He saw I batted right-handed and he said, "Let's see, we need a left-handed hitter." You know, I knew what that was. He wasn't going to show his pitching machine with a black hitting. That was my reading of that. So there were experiences like that.

Yes, and actually I'm starting to remember. We went down to L.A. to play UCLA and USC. We were going around and guys were talking and had a couple of beers and I can't remember, somebody had a car down there. I think one of the guys was from L.A. and had access to a car because I know we didn't rent one. We were driving around in Hollywood on Sunset Boulevard and one of the guys said, "You know, we ought to go find a black whore." Then he remembered and said, "Find me a black horse," so, you know, tried to cover it up.

So there was some of that on the baseball team that I didn't experience on the football team. That sort of colors my--I don't, you know, still on the varsity, letterman's thing with baseball, I've never gone to one of the reunions. I haven't felt like these were guys I wanted to get back with and relive the old days.

McGarrigle: And here you were, the top hitter.

Henderson: Yes.

McGarrigle: I have to ask you how it was to work for Stanford [University] later and we'll talk about that more in future interviews--but, have you remained a Cal fan?

Henderson: Yes. I think, when push comes to shove, I'm a Cal fan. But when I worked at Stanford, you know, I got to know some of the players there. So it was a real mixed thing. One year, Stanford went to the Rose Bowl and the captain of the team was a wonderful kid--I'm still in touch with him--named Jackie Brown. I was really torn that year because I wanted Jackie to win more than Stanford to win and so I think that year I sort of rooted for Jackie. Interestingly enough, I was the head of the minority admissions program and I ended up admitting Jackie to the law school. He went out and graduated and is practicing law now in Washington. But I think, by and large, over these years I'm a Cal fan. I'm an Old Blue. Yes.

McGarrigle: Tell me about Order of the Golden Bear.

Henderson: Okay. Well, Order of the Golden Bear was an honor organization of sorts. You were named to it by the president of the university, I believe, who at the time was Robert Gordon Sproul, one of the great presidents in the university history. Again, you know, Russ and I have talked about this, because he went to UCLA. Russ used to call me the official Negro at Cal because I belonged to all of these organizations--because probably it was some form of affirmative action and they would have some group and somebody would call and ask me to be on it.

The Order of the Golden Bear was one of those groups. I, again--I think you'll hear the outsider theme a lot here--I think I never really felt I was a part of it. I would go to meetings because it was cool to be in this organization. But I can't tell you a lot about it. I don't think I really said, "We're an order. We're all Order of the Golden Bear." We just sort of--"Okay, I'm in that cool group," and, "I'm the official Negro in that group," as Russ would say.

McGarrigle: It must have been somewhat dependent on GPA [grade point average].

Henderson: Yes. It was, yes. Grades was a part of it. I think that was probably why I got into these groups. I think I had a--I'm just guessing, but I'm pretty sure I had a better GPA than--I think they wanted to have a Negro, as we said in those days, in those groups. There was some sense of diversity or integration. I think I was a more natural candidate. I think part of it is I talked differently. I mean, those were days--I used to have kids come up to me and say, "Where did you learn to talk like that?" I think I talked a little differently. I didn't have a Southern accent. I talked more like them. So I think I was seen more as someone who fit in with these Negro groups, like that.

McGarrigle: Did your studies come, following that first experience in summer school, fairly naturally to you?

Henderson: No. I think studies have always been hard, including law school. When I talk to these students tomorrow, I'm going to say, "You know, I think the key to it is, I studied hard." I was determined to succeed. I don't think any of it ever came easy to me. Judging doesn't come easy now. I don't think I'm a real smart guy but I work hard, and I think I've learned some things that I can apply. So, I think that was the case there.

I think it was this tutor during that first summer there who told me when I asked, "How do you know when you've done enough? How do you pace yourself? How do you do this?" He said, "Why don't you study three hours out of class for every hour you spend in class." I've always used that as a guideline. And that's a lot of studying. Sometimes I'll tell people that. I'll tell young people that and they'll say, "Are you crazy?" But I've always done that. I've always felt that if I do that I'm going to do okay--independent of whether I have to do all that or whether I could cut a corner and do less. So I think that's--it's just been hard work. I think that's what I have believed in.

McGarrigle: It is hard work. I'm going back a little bit to Order of the Golden Bear. I had a question about whether you had a sense that that organization was in any way anti-Semitic?

Henderson: No, I had no sense of that.

McGarrigle: That was an idea that was given to me, and that's why I'm asking the question.

Henderson: Okay, no. No, I don't think I had any sense of that. Indeed I think I, you know, back then, coming out of South Central L.A., there were blacks in the world and there were whites in the world. I don't think at this point in my life I distinguished between a Jew and a white. A Jew was a white person. It wasn't until, I don't know--maybe my junior year, or something--I had two roommates, Bob Seifer, who's a doctor here in Berkeley now, and Harvey Grody, who just retired as a professor at one of the University of California campuses, who were Jewish. We would talk and I realized that was different.

I mean, I knew Jews--I knew that name. But I had never thought about it. That's when I got to realize that most of my friends, not the guys on the team, were Jewish--liberal Jews, who, I think, were very friendly to blacks. I felt a kinship there that I have to this day. Something about the Jewish liberals, from that day, that somehow were friendlier and more interested in the kinds of things I was interested in.

McGarrigle: There's another outsider perspective.

Henderson: Yes, probably. Yes. I hadn't thought of it, but you're absolutely right, yes. But then, again, to get back to your question--I don't think that I was aware of any anti-Semitism then. There might have been--I'm sure there was--but it wasn't in my consciousness at that point in my life.

McGarrigle: Larry Blake's is still there on Telegraph Avenue, I imagine it's changed quite a lot.

Henderson: It's quite a different--yes, it's quite a different place, now! Larry Blake's then was a restaurant and it had a basement downstairs with sawdust on the floor. And you would

go down there and drink beer and hang out or you could eat upstairs. That was the place if your parents came up and they wanted to take you to dinner. Around there, that was the place. Seemed expensive to me. I never ate upstairs. I actually never went downstairs, either. I must have gone downstairs because I know what it looks like. But yes, Larry Blake's was for the frat [fraternity] boys. We didn't go there. It wasn't our kind of place.

We went down the street to go to places like Robbie's, and there were other little coffee houses where I think we probably called them bohemians that hung out at--you would drink coffee and read Camus. We talked about my transition--or you're going to talk about it--from South Central L.A. to Berkeley. That was one of the important parts of it because I really felt comfortable there.

That's when I first could talk to girls and women, you know, because I never learned the black lingo--sort of the guys that come up and say, "Hey, Baby!" You know, I had never learned to do that. But I could talk about things the way they did at the coffee house. It was an important transition, and I think that's why I never went back down to L.A. to live because I think I felt comfortable with the social life that I found up here and along Telegraph Avenue.

McGarrigle: At this time, was there an awareness among students on campus about what was happening in the South? I mean the more liberal element--your Jewish friends, your other black friends?

Henderson: Not really. We're talking about the fifties. I mean, I knew that there was discrimination, racism, Jim Crow laws--in the South. It was more of an intellectual awareness. And I guess I knew it also from my relatives. You know, they would talk about the white man. You know, that kind of talk. They had all come from the South. I knew it wasn't a hospitable place. But I didn't really know any of the details. I didn't really learn that until I got out of law school and started working down South with the [United States] Justice Department, and really saw it first hand. You know, this was really what it's like.

McGarrigle: So it sounds like in some ways Berkeley distinguished itself from southern California, in terms of being more liberal.

Henderson: Yes, more liberal and--but also, I think, just--at that point in my life, with that awkward social thing, I think I sort of matured socially. I think I came up here and felt more comfortable with the lifestyle here. There were a lot of things that I felt inadequate about down there. I was not into clothes. I was not into dancing, and always felt I could never match the kids who were better off down there.

Whereas up here, you could wear Levi's--you could have a good existence without that. Without going to a club, without knowing how to party, without having a rap. This is Thelton talking, I'm not sure that's a correct label for everyone that I grew up with, but it seemed to me that that's what you had to do to really succeed socially and I didn't like it and I couldn't do it. Whereas up here, I found that I could be very comfortable. You could go to parties here and stand around and talk, and dance every now and then, and that was cool. That's the way the parties were. Whereas down there, if you couldn't do the latest dance, and do it backwards and forwards, you were square. So it was a huge difference for me, socially.

McGarrigle: Berkeley has remained an intellectual community.

Henderson: Yes, it has. I like that. I like Berkeley still. That's why I'm still here--bought this house in Berkeley, as opposed to staying in Palo Alto, or living in Oakland, or wherever else. This decision to live here is part of that experience. I even think that, probably, this house--sort of a brown shingle, old house--amateur psychology, but I suspect that these are the houses I went to when a professor would invite you to their home. I think this is part of probably what this is, too.

McGarrigle: It's a really lovely lifestyle. We have a lot more material. I think what I would like to do is reserve it for the next time.

Henderson: Okay. Yes, that's fine. Absolutely, yes.

McGarrigle: Thank you.

Interview 3: March 17, 2001 ##

McGarrigle: When you were attending Cal, did you made excursions to other parts of the Bay Area?

Henderson: Not really--would go to--I would go to San Francisco on fairly rare occasions. Really, that was about it. I was a stay-at-home. I didn't have a car and couldn't afford to just up and go to San Francisco to eat at a good restaurant like I do now. So, no, that wasn't a place I would go. I think, when I did go, a few times, I went specifically to a person's house for some social event, a party or something--but rarely went over and crossed the bridge. Never went to Marin County. That was just sort of a mythical land to me in those days.

McGarrigle: In terms of transportation, did you take the bus in addition to walking places?

Henderson: I took the bus around town, and I remember now they had a train that went across the bridge--I think it was an F train--unless I had a friend who had a car. If I had to go to San Francisco, you would take the F train and get off and make your way around San Francisco by public transportation.

McGarrigle: I know there were a very limited number of other black students on campus. I have on the outline Willie Brown and Gus Newport, but I'm not sure about the timing.

Henderson: Yes. Actually, I didn't know Gus in those days, and Willie Brown went to San Francisco State. But I knew Willie, and because there were so few black students in college in the Bay Area, our social group consisted of the black students at all of the colleges. So students at San Francisco State, San Francisco City College--we all hung out together, and had our social life together. So I knew Willie in that sense. But there were, as I think I may have said before, there were certainly less than thirty black students on the Cal campus when I first came up in 1951.

McGarrigle: We talked about the difference between the football team and the baseball team, in terms of the atmosphere, the racist atmosphere on the baseball team. How did you find Cal in general, in terms of race, at that time?

Henderson: There was little overt racism. It was more a sense of exclusion. There were the fraternities which didn't have blacks in them in those days. And the campus was pretty much run by fraternities and sororities. Those were the big people on campus. And I think we considered ourselves outsiders, sort of. We were going to school but we weren't a part of that social life--didn't go to social events, probably the only thing we did in common was go to, maybe, an athletic event, and go to class. Housing was segregated. So it was a pretty exclusionary experience, I think.

McGarrigle: Were there actual covenants against selling and renting to minorities, or do you think that was more a de facto situation?

Henderson: I think it was de facto. You know, although a lot of people are surprised to hear me say it, the school participated in it. They had a housing office at Sproul Hall where you could go and look up rentals. And they would have on the card that they didn't rent to blacks. And the school participated in that in those days. It certainly wasn't a matter of buying--no one was trying to buy something.

But you were always looking for a place to rent--and there were a few people that would rent. I know one year we found a place--an apartment, which was a rare find near campus--to rent, me and Jerry Drew, who was my friend from high school, and Don Wilson, who also went to Jefferson High. We rented a place, actually it was next door to the first place we lived in, Tyrone House for Men, that I have mentioned. We rented that place for either a semester or a year. I can't remember now.

But that was rare, to be able to find a place that would rent to blacks in those days. Many a place, you'd look around, or you would hear that they would rent, and it turned out they didn't, or they had some artificial barrier. I remember one place I found--very nice guy, said, "Oh, yes,"--wanted a six-month deposit. You know, which of course I couldn't afford. So there were things that were probably, I think, not required if I had been a white renter.

McGarrigle: Tell me about the ROTC [Reserve Officers' Training Corps] experience and then your subsequent reclassification.

Henderson: Okay. Everyone participated in the ROTC program when I first came. I was in ROTC and really didn't like it. And so when I got injured in football I was reclassified as a 4F because of my football injury. So I stopped attending ROTC. I was able to drop out of ROTC because 4F meant you weren't eligible for the army. However, when I recovered well enough to play baseball, the baseball stadium--the draft board, they had a draft board in those days, was right on the corner down the street from the baseball stadium, and I learned later that some of the people at the draft board there were baseball fans. They would come watch the game. So when I graduated from Cal, much to my shock, I was without a physical or anything, reclassified as 1A, which meant eligible. It turned out that they knew I was playing baseball [laughter] so I certainly could march and do the things one did in the army.

So graduating in January of '56 I went down to Los Angeles waiting to go to law school, which started in September. I got a job as a social worker which was sort of an easy job to get and with the best pay for someone in my position with a college degree. You took a test and the test was circulated that same day. The social work offices around the city would start calling you.

I did that and I was waiting for September when I got a draft notice to report for the draft, that I had been reclassified 1A. I went down, expecting to say, "Hey, you forgot I have a bad knee," and all. They had a file there showing I was okay. My law career was aborted for the time being and I went into the army in June of '56. I had to put off my law education until I got out of the army.

McGarrigle: So you had already been accepted to Boalt [Hall School of Law], then?

Henderson: I had already been accepted to Boalt and I had a scholarship to Boalt. I lost that scholarship in the interim for reasons I don't recall. I think it terminated, or something. It had an expiration point on it, or something. So when I got out of the army in June of '58, two years later, I had no scholarship, and so I worked for a year. I didn't go right back to law school. I worked for a year down in Santa Monica to save up money to go to law school. By the way, that's where I met Russ. It was really one of the great

decisions I ever made because Russ is one of my best friends over these years--and it was a happy, happy circumstance for me.

McGarrigle: I got a little ahead of myself. In terms of law school, how did it come about that you decided to apply to Boalt?

Henderson: I think the theme continues here. I was really a naive young man. I didn't know how college worked. I sort of came up here to study hard and get a degree and become something. I think I mentioned in the last interview that I had no idea that UC Berkeley was one of the top schools in the country. It just happened to be a school that I got a football scholarship to, and they had good football teams.

Well, the same applied to Boalt Hall. I did no research. I had no idea that Boalt Hall was one of the top law schools in the country. Lucky for me, I got in. It's the only school I applied to. Now I know how that's done. You apply to ten or twelve or fifteen schools, you apply to tough ones and you apply to one that you probably have a good chance to get into. I didn't know all that and I didn't personally go around, like I see kids do now, and do your homework and talk to people and get advice. I didn't do that. My family certainly didn't know the process. So I just applied to Boalt Hall. That's why I went to Boalt Hall. I happened to get in. I've often thought if I hadn't got accepted to Boalt, I probably would have had to, you know, start all over and say, "Oh, I need to apply to more schools than one," and would have missed a year that way.

McGarrigle: Do you think that the people at Boalt would have known you from your time at Cal?

Henderson: I think so. One of the professors there, wonderful man, Adrian Kragen--K-R-A-G-E-N taught tax and he was a baseball fan. I met him through one of the Cal alumni--wonderful man who bears mentioning in this process, Frank Storment--S-T-O-R-M-E-N-T--they had a group in those days called the Southern C's, C, being the Cal C, apostrophe S. And Frank Storment was very helpful to me. He was in southern California and he is the one who was the contact when I got hurt. He got me medical care after I got out of the hospital and I was home, gave me some amount of money, I would have to ask my mother--just to tide me through. Wonderful man, who did a lot to help me.

Anyway, Frank Storment was a friend of Adrian Kragen's and Storment knew I was thinking about law school. So Kragen sort of knew me through Storment, and he used to come to baseball games. One of the stories I tell is that Kragen, who's one of the nation's top tax law professors and scholars, and through his influence when I went to law school I thought, "Okay, I think I want to be a tax lawyer." And that lasted through about, maybe, four or five of his classes. But I hated tax and didn't understand it. [laughs] Of course, I knew after a few classes that tax was the one thing I definitely wasn't going to practice!

But I did know Adrian Kragen and he knew me through baseball and through Frank Storment. I didn't know anyone else on the faculty. And again, I hadn't gone up to talk to anybody, or a counselor, to really find out what law school was all about.

McGarrigle: I'm just thinking, when your application came through, and here you had a significant history already at the university, not just in sports but with your honor society membership and good grades--you were an ideal candidate for their law school.

Henderson: I think so, and also I strongly suspect that being an athlete at Cal, and coming from Cal, gave me a leg up in terms of admissions. I suspect I would have gotten admitted, but that didn't hurt my chances. I think that probably was a part of the process of having done well in undergraduate school and having been an athlete, helped me get in.

McGarrigle: What was that experience of joining the army like?

Henderson: Awful. The worst two years--I'm exaggerating a bit but, you know, I hated the army. One, I resented having to be in the army because I thought I ought to be in law school. It was just not a pleasant experience, partly because most of the kids I found myself with, being processed, were kids just out of high school. Here I thought I was this man of the world with a B.A. [bachelor of arts], and didn't have much in common with them.

But I didn't like the arbitrariness of it. You know, get up at five in the morning and go out and march to dig a hole. While you're resting, it's now maybe all of eight o'clock in the morning--you're resting over there, having marched for a while and done some physical labor, then another squad from another section comes and they cover up the hole. And then you start seeing this is just an exercise in discipline. Nothing wrong with discipline. I didn't like the process, you know, arbitrariness of sergeants yelling at you all the time. I wasn't a very good soldier. I was what I would call a minimal soldier. I found out just how unshiny your boots could be without you getting in trouble, and just how unclean your rifle could be, you know. I did what I had to do to survive.

McGarrigle: Did that experience take you to other parts of the country, then?

Henderson: It did. I was processed at Fort Ord, down in, around Monterey, where they took care of the medical tests and all of the paperwork. Then I was sent to what was Camp Lewis--it's now Fort Lewis--in Washington for my basic training. I think it's eight weeks of camping and learning to shoot, and learning your basic training as a soldier.

After basic training, because I had been a social worker and they wanted to capitalize on that, I was sent to Fort Sam Houston in San Antonio for social work school, as opposed to basic training school. As it turned out, they didn't have a social work school and they reassigned me to clinical psychology school. So I was in Fort Sam Houston for whatever period--I forget how long that school was--attending clinical psych school. Then I got my permanent assignment, which was Camp Carson in Colorado, right outside of Colorado Springs. I spent the rest of my two years at Camp Carson.

McGarrigle: For the army, how does clinical psychology fit into their program?

Henderson: Well, they have a mental hygiene clinic. I worked at the mental hygiene clinic. Anyone who had a mental hygiene problem came to the mental hygiene clinic and they had a major, Major Colmer, who was a psychiatrist, who ran that clinic. And there was a captain, I've forgotten his name--two captains, one was a clinical psychologist and one was a psychologist. And then they had enlisted men, like myself, working under them.

So my job was to administer the standard battery of tests that the army gives to people who end up coming to someone like me and interpreting them for the captain. So the standard battery of tests was the MMPI [Minnesota Multiphasic Inventory test]. There was the draw a person, DAP, where you have them, under a controlled set, draw a person for you, and then explain what that person was doing. There was one of the Stanford Binet tests. There were about five standard tests that I would administer over the course of a morning. Then I would grade them, and interpret them, and turn that in to the captain. So that's what I did.

The army is not your typical situation. Very often someone would end up there, at the mental hygiene clinic, for no better reason than that they told the sergeant to go jump in the lake. You know, "This guy must be crazy," you know, and you would end up--so there were a lot of questionable people who came. But also a lot of disturbed people, also a lot of people who just were trying to get out of the army. So a lot of people faking, you know, and we learned how to spot them. They were faking mental problems and those kinds of things. So this is what we did.

Interestingly enough, one of the things we would do is go to the stockade and interview people there because they couldn't come to the mental hygiene clinic. We would interview, and we would rotate in the clinic. I seem to have a knack for interviewing. At least the person that ran the stockade, the officer, I think he was a major, but I can't remember, he sort of took a liking to me, and they had a concern in the army about homosexuals, way back then. Who knows, my friend Russ says it's because I came from the Bay Area and had been around San Francisco, I had a knack for identifying, after an interview, someone who's probably a homosexual. Then they would isolate them. That became sort of my permanent duty. I mean, I was the one who always went to the stockade to interview people.

One of my more memorable experiences that--as I said, I really hated the army, I just couldn't wait to get out, couldn't wait to get off the post and get away--one day the captain or the major who ran the stockade asked me if I wanted to escort a prisoner to Kansas City, to Fort Leavenworth, which is the big military prison. I thought it would be great, just to get away. But I didn't know what it entailed, so next thing I knew, I had train tickets and a .45 strapped on and a guy in handcuffs, who was a murderer. My job was to escort him to Fort Leavenworth, Kansas. So I got away for a few days on the train. We took a train ride, and got to Fort Leavenworth. I delivered him and then I got to spend I guess the rest of that day there, and then came back. But it was nice, just getting away, being away from the camp. So anyway, those were the kinds of things I did during the two years I was in the army, or the year and a half, really, that I was at Camp Carson.

McGarrigle: Interesting. With the people who they designated as homosexuals, they were isolated, and then what happened to them after that?

Henderson: I don't know. I mean, they isolate them just so that they couldn't have sexual liaisons, I guess, or wouldn't be harassed by the other prisoners. That was the purpose of the isolation. Beyond that, I think they were just in for whatever other violation they were actually in for. Yes. They weren't in for being homosexual, no. They were AWOL [absent without leave], or they had broken some rule, and they were in like the others. But then you would go to have the mental hygiene clinic interview, which was just

standard for anyone in the stockade. But they were particularly interested in the new admittees, whether any of them were homosexual.

McGarrigle: Sounds like the whole army was an interesting crash course in human behavior.

Henderson: It was. Crash course is a good term for it. I thought it was a fairly crude organization. You know, I mean, it offended my sensibilities about behavior because everything was down the line. There was someone at the top and all the power came down the line, and it was all designed to whip people into shape and bend your will to theirs. I just didn't like the process.

McGarrigle: Did you find that was pretty much irrespective of race? Or did you think that race was a factor in there, also?

Henderson: You know, I wasn't really aware of race being a factor. I know there certainly were no --I just don't remember--I don't remember a black officer, certainly above lieutenant there. There were some lieutenants around who had gone through Officers' Candidate School, I suspect, or maybe had gone to ROTC. If I had finished ROTC, I would have entered the army as a lieutenant. So I sort of regretted having dropped out at this point, when I hated being an enlisted man.

But, no. I don't have a great deal of awareness of race--you know, I just thought the army was awful to everyone, including me. But I didn't get a sense that I was treated worse, or differently, because of my race. I mean, I was aware of race--certainly when you go into town. Back then, we're talking about '56, '57, certainly the city of Colorado Springs was very segregated. There was only one place we could go, Fanny Dumpkin's Bar and Nightclub. That's where the black soldiers went.

The same in San Antonio--very segregated. So, outside the base it was very segregated. It was the first experience I had where we had to sit up in a balcony in a movie. I mean, I had heard that there was--you would go to a movie and the blacks would sit up in a separate section. That was offensive. But again, the base itself, in all the places I've mentioned I don't remember any feelings of racism.

McGarrigle: At the time that *Brown v. Board of Education* came out was there an awareness on campus about what was happening, either at the Supreme Court or in the South, in terms of--?

Henderson: There was an awareness. It was a big event, you know. Everyone was talking about *Brown v. Board of Education*. It was going to revolutionize education and thereby revolutionize life for blacks in the country. I remember that. Beyond that, I think that most of the black kids--certainly my experience was that, "Gee, that's great. That will change things down South." That was a Southern experience and *Brown v. Board of Education* was meaningful for Southern blacks, who had segregated schools.

I never even thought that--even though, as I said, I went to Jefferson High which was virtually an all-black school, there is the graduating class right behind me [points to photograph on the wall], virtually everyone on there is black. Never thought of it as segregated. It was just the school I went to. So segregation seemed to me, and I think most of my black friends, to be a problem of the South. So we were well aware of

Brown v. Board of Education as a major legal event but didn't think it really applied to us in a meaningful way.

McGarrigle: Did people discuss the violence that was happening in the South? I mean, it had been going on for a long, long time. But then there was this outburst, and I think the media attention focused on it, brought that violence more in a more real fashion into people's lives in other parts of the country.

Henderson: Yes. We discussed it and we were aware of it. Certainly one of the big events in those days was the lynching of Emmett Till, you know. We were all aware of that. Again, I'm speaking more for myself now, it was almost an abstract event, in the sense that I couldn't relate it to anything I--I didn't have any fear that, in California, or Berkeley, or L.A. something like that was going to happen to me. It was something that happened in this place, down South, that I had never--

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Henderson: But you know, we were aware of Emmett Till, we were aware of lynchings in the South, we were aware certainly of discrimination. We all knew, what were for us infamous names, Senator [Theodore] Bilbo and the Southern senators who were racist. We knew all that. Growing up, earlier, we knew George Wallace and the Arkansas governor, whose name I'm blocking on, who prevented the integration of the Arkansas school--we knew all of those things. [Orval Faubus]

But as I said, I don't think it affected our day-to-day life. It wasn't in those times, we're talking about the forties and fifties--the sensibility wasn't there that, "Gee, we should protest. We should do something about it." I think the mood of blacks in those days was a combination--let's survive, let's figure a way to reach our goal. We weren't going to confront--it certainly wasn't an age of confrontation. I think it was more turning our head, and pretending it wasn't happening.

McGarrigle: When you were at Cal--or maybe it was in law school--there was an African American student association, started by Donald Warden.

Henderson: Yes. Donald Warden.

McGarrigle: Was that law school or was that undergrad--?

Henderson: That was law school. That was law school, yes.

McGarrigle: It was later, okay. So, I gather that Boalt held a spot for you. You didn't have to reapply?

Henderson: I didn't have to reapply, yes. They held a spot for me, and I think when I went to the army, I went to them. And they said, "Okay, we'll hold a spot for you for the two years of the army." I can't remember, but I think when I decided to work a year I probably had to contact them again and they held it for an additional year. But I didn't have to reapply. I think it was just a matter of telling them when I was coming and I had the spot.

McGarrigle: When you worked that additional year, that was no longer as a social worker? That was in a different position?

Henderson: That was in a different position. When I got out of the army, as I said, I felt I had to work. I got out on June 18th--I still remember--'58. Not a day too soon. And I went to L.A. to live with my mother, and decided that I would get a job in L.A.

I didn't look for a social work job again because a friend of mine, Don Wilson--who went to high school with me and he went up to Cal with me, and he was a football player--he was working on his PhD. At this point, I believe, he was working on a master's at UCLA, and he had a job with a place called System Development Corporation, SDC, which was an off-shoot, a spin-off, of the Rand Corporation. They were doing some man-machine studies there and the pay seemed great.

Don contacted me, or I contacted him, and he said, "Oh, boy, you ought to apply here," told me what they were making, and that was more than social work. So I went out there, and I applied, and I got a job right away. It was in Santa Monica. They had divisions there, and I can no longer remember what division they assigned me to. But it helped me to get the job, that I had this clinical psychology training. I think that was an important part of my getting the job. I had the kind of training they were looking for.

It turned out that I ended up in the same division, same section, same office with Russ Ellis, who had in the meantime graduated from UCLA. It was a wonderful friendship. I had known of Russ before that because he was a big track star at UCLA. He was captain of their track team and an Olympic candidate--in fact, just missed the Olympic team in '56.

We became fast friends, and I like to say, and Russ said, I discovered much of my blackness through the friendship with Russ, because my experience at Cal was more one of denying blackness. I think I told you that when I went there I was an outsider, and was trying to be a Cal student. White kids would come up to me and say things like, "Boy, you talk different from the others. Where did you learn to talk like that?" I took great pride in that. Boy, I, you know, I don't say "dis" and "dose," and it was through Russ talking about our blackness that, you know, "Hey, nothing wrong with that," and learning and talking about--Russ was much more aware because UCLA had a much bigger black student population than Berkeley did. So he had a different racial experience than I did. I shared his and learned a lot. So we became fast friends then and we are to this day.

McGarrigle: How interesting that you both ended up in Berkeley.

Henderson: Yes, I know it. Yes.

McGarrigle: Almost in the same neighborhood.

Henderson: Yes, same neighborhood, yes. I think that's probably not accidental. There has been a lot of chance to it. Russ went on to get his PhD at UCLA. He left SDC and went to graduate school at UCLA and met the fellow who's my other best friend, Troy Duster, who's a distinguished sociologist now. When they got their PhD, they both went to Riverside to teach, their first teaching jobs. I was by then a lawyer. I had come back

from the Justice Department and I was going to L.A. to visit my folks. I was dating a woman. We were driving and I called Russ and said, "You know, why don't we stop by Riverside and see you and Judith (his wife at the time)?" We did, and he invited Troy. That's how I met Troy.

Troy, at that time, was getting an offer from UC Berkeley, which was a big breakthrough, to have a teaching job here. Well, Troy went on to become a sociology professor here and moved up very fast, while Russ went to New York to teach at one of the State University of New York universities. Then when a position became available at Cal for--a new position, combination sociology and architecture--they were actually experimenting with the sociology of architecture, Troy recommended Russ for the position. So that brought Russ back. So that's how the three of us ended up here together. It was sort of an interplay there. Troy had a lot to do with Russ ending up in Berkeley.

McGarrigle: And now, Troy divides his time. He's bi-coastal--

Henderson: Yes. Troy's now bi-coastal, yes. He's actually retired from UC Berkeley, although he still holds consultant positions and he heads an institute on campus. But he has an appointment of some sort at NYU in sociology. So he is bi-coastal.

McGarrigle: I met him briefly at the Berkeley Community Fund event.

Henderson: Oh, yes, that's right. He came to that. Right.

McGarrigle: I skipped over the--your initial position in L.A. in social work. Is there anything that you would like to add, about what that was like?

Henderson: It was a very interesting experience. I dealt with AFDC, Aid to Families with Dependent Children. I had a case file. I had to keep it up so each day--not each day, but most days--I would go out in the field and interview people who were my clients to see if they were still eligible.

It was, since I knew I was only going to be there until September, I didn't get horribly involved. I mean, I did my job competently but I didn't really think of myself as a social worker as much as this is a job I have 'til I go to law school. There were some interesting and some compelling human interest stories. You saw a lot of misery in some of the clients. I would go by the houses and just see a lot of squalor and a lot of dysfunction, which sort of surprised me. I had not experienced that before. That was pretty much it.

McGarrigle: Tell me about your first day in law school. Do you remember?

Henderson: Oh, I remember it. They did it differently then. Dean Prosser, who was a renowned torts professor--he's dead now, but he was the man in torts--he was the dean of the law school and people still talk about Prosser on Torts. We sat in an auditorium for orientation, and he came out on the stage. First thing he said was, "Look to your left, look to your right. One of you won't be here next year."

As I like to tell the story, one of my best friends, Bob Hamilton--who was student body president when I was a student and has been still a good friend over the years, wonderful guy--he was sitting on my right. He had gone into the air force. That's why we both graduated at the same time. He graduated in '55, went into the air force. I guess he was there for three years. He came back and we started Boalt Hall together. Well, he flunked out after that first year and went into real estate, and is still in real estate, commercial real estate. But I remember that part of that first day, that experience of--just sort of being lost.

Again, I was not one--I wish if I could go back and do things over, I would certainly do more exploring about how things were going to work--someone has blessed me by making it all work for me. But you know, like undergraduate, like summer school, I sort of stumbled into it and then found out what was going on. I did that in law school too, unfortunately. So it was a very tough experience.

I didn't know what was expected of me, and like I did everything else, I decided, "Well, I'm going to study three hours out of class for every hour in class and somehow I'm going to do okay." That's what I set out to do. But without having the understanding I have now, "What am I going to do with all these law cases? How do you use them?" Not understanding that law school is a process of analysis and not memorization. I came in prepared to memorize. I remember the first year, I had notes on the wall, you know, "Burglary is the breaking and entering of a house after dark with the intent to commit a felony." I thought if I memorized all of that, I was going to do okay. Totally wrong. I mean, you had to analyze and understand differing facts and differing principles. So I went through that, studied just as hard as I could. But feeling in the class discussion when, you know, that, "Gee, I didn't know that. How did he know that? How did she know that?" Realizing there was a level of understanding.

In those days, it came up to Christmas vacation. The best thing that ever happened to me was that--it's different now, but then, you came up to Christmas vacation, you would have a Christmas break. People would go home for two weeks and then come back and take finals. Well, I knew I had better not go home. I stayed up here and I think for the first time, you know, the treadmill stopped, no more input, no more cases to deal with. I was able to go back, and some other people stayed around, and we talked. I looked at notes and a lot of it sort of fell into place.

I think that's, again, how I survive. I think my story has been one of survival. And I survived. I did okay. I didn't knock 'em dead, but I learned what was expected of me. Then I took the finals and I passed. But also, the more important thing--it was not unlike that experience with the teaching fellow, in that first class, where the teaching fellow said, "Here's the way it works," and, "Oh, that's what you want," and I was able to do it.

This--I didn't have a teaching fellow telling me, but I had the tests and then I had feedback from the exams, and then the professor made some of the A papers available. And I said, "Oh, that's--" and then I was on my way.

But it was a daunting experience, up until then. It was for a lot of people. I wasn't the only one, because--again, a lot of echoes in my life, one was--you get a lot of good students, to get into a good school like Boalt, everyone is pretty good. Everyone comes

in thinking they're hotshots, and you know everyone is not going to be number one. Everyone is not going to get an A, and you get a lot of sorting out. It's a blow to a lot of people, you know, that they are no longer the smartest guy in the class.

I didn't have that. I never thought I was the smartest guy in the class, but I thought by the time I got to Boalt I had a little more confidence. And I thought well, gee, I've done well. I did well playing sports. Now I'm not playing sports. I'm just studying. Maybe I'll really be something. So again it was sobering. I saw where I fit in, but I also saw that I could make it and that I was a pretty good student. That was good. That was comforting to know, that I was going to last at Boalt Hall, that I was going to be a lawyer unless something extraordinary happened to me along the way.

McGarrigle: Did you have any continuing contact with Adrian Kragen, and then the--?

Henderson: I did. During school, yes. I would go in. He was very helpful, I think. He probably saw things that I didn't see--that, boy, this guy, you know, needs some help, or really is in the woods on some things. I suspect he saw that and I didn't see it. But yes, he was very helpful. It was just a comfort to have someone on the faculty who cared, you know.

I think I may have mentioned in my earlier tape, that's one reason that I spent so much time with students, particularly black students, law students--because I know that's important. You know, I would go over to the law school a lot at the request of students. I welcome them to my court because I think it's a comfort, to just have someone who has been there say, "Oh, you're doing okay. Let me tell you what I went through." And he did those kinds of things for me. I remember him fondly to this day for that. And he's still around. He's up in age but he's still around.

McGarrigle: I met him a couple of years ago. He must be ninety?

Henderson: Yes. He's certainly upwards of ninety now, yes. He still appears in the Boalt Hall alumni magazine. He doesn't teach anymore but he still goes to events, and I'll see him at events and I'll always go out of my way to spend a little time with him and thank him again for what he did.

McGarrigle: Did you stay in contact with the alum who was in southern California?

Henderson: I did. Frank Storment--he died a number of years ago of cancer. But I kept in close contact with him because he was very special--to the extent I haven't mentioned it before, I've been remiss, he plays a role like McClullen and some of the others and I don't know how I missed mentioning him. But he looked out for me, he helped me financially, he helped me job-wise, in the summer he would get me jobs. I worked at Lockheed Aircraft. I guess someone at Lockheed was a big Cal alumnus and was part of that Southern C's. I would get a pretty good-paying job on the assembly line. That was all Frank Storment.

And, as I say, when I got hurt, he went back down to L.A. and he got me--he was such an alumnus--the Cal hospital, for some reason the doctor they sent me to for post-treatment care was a Stanford graduate, and Frank Storment was such an Old Blue he

thought that was outrageous [laughter]. He immediately got me the top Cal man down there, for my doctor. He took care of that.

One of the things that--we had a very modest little house on 43rd Street, and when he was recruiting me he came by the house. I remember it--we talked about that for many years as sort of--I think he said that he didn't--got a sense of, and I thought it was a normal house, but he got a sense that I was needy, that we didn't live that well. I think he took a special interest in me. He was always writing small checks and giving me amounts of money to help me through because he knew my mother was the only source of help. So he was a special guy.

I kept in touch with him. The last time I saw him he was in the hospital and I didn't know at that time that he had cancer. I went to visit him and we talked for however long. Then I said I had to leave and, at that time, I don't know what I was missing, but I didn't know he was dying. And then I went out in the hallway. I was going to leave and his wife came out and she started crying. That's when I realized that he was--but, anyway, I kept up with him until then.

McGarrigle: There were a lot of people who--there's the theme of a lot of adults who saw something they wanted to foster in you. They wanted to give you--see an opportunity for that to develop.

Henderson: I think that's probably right. You know, I don't know what they saw, but I know they stepped forward and really helped me in important ways. I'm very lucky that they did. Yes, I don't know what they saw. I think I wanted to succeed. They probably saw that, that I was really, you know, "Help me. How can I--I want to do something." Maybe that's what they saw. But anyway, there were these people.

McGarrigle: When you came back up to Berkeley to attend law school, was the climate different in terms of living arrangements?

Henderson: Yes. I think it was a little different. There was a sensitivity to race. There had been demonstrations. So Berkeley wasn't the same place. It wasn't this, what I saw as a white enclave run by the frat boys and sorority girls; it was much different. You know, it's interesting, I had not thought about it until now. I certainly didn't have the sense that there were only a few places I could live. I think that probably the housing discrimination was by and large gone. I don't remember being aware that, you know, you had to really look and rely on word of mouth to find out where you could find a place to live. I think all of that had passed in those short years between '56, when I graduated, and it wasn't that long, '59.

McGarrigle: Was the Afro American Student Association something that started with students from Boalt?

Henderson: It started with a marvelous guy, very interesting guy, Don Warden, who was a year ahead of me in law school. Don was--that's W-A-R-D-E-N, he had gone to Howard University and had grown up in New York. So he had a black experience, again, that I didn't have, having gone through the California school system.

Don was a remarkable guy. He had been a child evangelist and had traveled around the world and met Gandhi when he was a kid. He was a preacher. He had a--I still call it--he had a photographic memory. He delighted in going to parties and saying, "Get a Bible," and reciting verbatim from a portion of the Bible.

Anyway, very high energy, and he started something called the Afro American Association, AAA. He had a house over in Oakland, right across the border, that he bought and lived in. He would have meetings there. It was the blacks on campus primarily, but it expanded to blacks who weren't in school. We would meet at his house on Sunday and we would read a book on the black experience, whatever it might be, something by Richard Wright. It was, I remember, the first time I ever really learned about Marcus Garvey and many of our black heroes and black prominent people, Frederick Douglass--I knew the name but I didn't know anything about him. We would do this and it was a wonderful experience.

It's interesting the people that were involved in it. Ron Dellums who went on to be a congressman. A number of people, Huey Newton and Bobby Seal--they were young then, they were young kids--if the Panthers was even a part of their imagination, or whether it may have even started forming in those meetings. But a bunch of very interesting people who went on to do quite interesting things were at those meetings. It was, again, a part of my awareness of the black experience.

Don continued to grow and change in interesting ways. His name is now Khalid, there's another name, something like Muhammed El Mosur, and he changed his name. What we hear, others have kept in better touch with him, is that he represents a lot of the Arab oil people and has made a lot of money, lives part time in Arabia, or one of those countries. But still apparently has an office on Montgomery Street here. So a very interesting, controversial, dynamic guy. He was always debating on campus. He was the first one I knew to embrace the Black Muslims, and I remember a debate on campus defending the Black Muslims against someone. So anyway, Don was an interesting influence.

McGarrigle: Sounds like this was also a key time in terms of the transition from, as you said, the more white enclave into something more diverse.

Henderson: Absolutely. Yes, it was. A lot was going on in those days.

McGarrigle: Were you following presidential politics at that time? Was it important that John Kennedy had been elected?

Henderson: I followed them, but I didn't participate. I mean, I didn't campaign for anyone and I considered myself a Democrat as opposed to a Republican. I remember the debates, the Kennedy-Nixon debates, and I found them interesting more because it was the first time and historical. That's why I love to look at newsreels of them, because I get a better sense of them than I had at the time.

McGarrigle: With the influence of television, you mean?

Henderson: Yes, exactly. But, no, I didn't follow--I was charmed by Kennedy, as everyone was. I, when I went to the Justice Department, I remember being optimistic. I thought that it

was a big change for blacks, because Eisenhower was not very popular in the black community because we didn't think he did anything and we didn't think he cared. Certainly he turned his back on the Little Rock school situation, you know, and the saying back then was that he could solve it if he took the little black girl's hand and walked her into school. We felt that Kennedy cared more, would be more directly involved. Indeed, my own view is that a part of the impetus for the civil rights movement--

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Henderson: --we hope, but probably no one would have been--but that he cared and you could get his ear and that he did things that, I think, would send the civil rights people out to fight harder because they thought that things might change. I remember that quite clearly.

McGarrigle: I wonder how his being a Catholic played into his feeling of outsider--if there was any connection between that sense of discrimination against Catholics.

Henderson: Yes, I don't know. I never thought about that. If I had to guess, I would guess it did play a part, you know, because certainly I think he felt a political outsider. I mean he came from privilege in terms of wealth, but not privilege in terms of society. I've seen documentaries and things--his father greatly resented being the successful man he was, but wasn't accepted in certain parts of society because he was Catholic. You know, that has to have had some sort of impact upon him, I would think.

Certainly I always felt, and most of my friends who were involved in civil rights felt, that they both matured and grew during their lifetimes in terms of civil rights. That they went in not really knowing a lot about it, maybe not even caring a lot about it. Certainly by the time that Bobby [Robert] Kennedy was assassinated I think he was a different person, and was I think a strong supporter of civil rights for blacks.

McGarrigle: We'll get to your first experience with the Justice Department, but I just want to ask you first about the bar exam, what that experience was like.

Henderson: Yes. It was, again, an awful experience. It was a thing--"I'm going to study, hard as I can, and pass the bar." Although I did something that I've--I think I had reached a stage of maturity, so that I did what I am about to describe. In those days, the bar exam study course was at a place called the Ratskellar which is right across the street from the courthouse where I now work, in a basement.

You would go over there, a group of us would go in someone's car, and I don't remember who. You would go to the class. The class started at ten o'clock. You would have your bar review, you would read it, and then a professor would lecture you. Then you would break at twelve and then you would go to lunch or study or something, you would come back at two, and go till four. I couldn't function in that environment.

I didn't do much between twelve and two, and then at four I didn't know whether I was going to study there or come home. It wasn't going well. So after about a week of that, and this is a sign of maturity because I just decided I wasn't going to go to that class anymore. I wasn't getting enough done for that four hours of lecture. I stopped going to the lecture, and I stopped coming over to San Francisco. I had the outlines that you

bought from the people giving the course, Wicks--W-I-C-K-S--it was a Wicks Bar Review Course, and I just decided to go over to the library at Boalt Hall at eight in the morning and study all day. That's what I would do, did it until the bar came. And I passed.

I don't think it was risky. I think I had seen enough that, and understood enough about the process, that I thought reading that much, getting the extra time in and essentially studying would more than compensate for hearing a professor lecture, and giving me nuances about those notes. So anyway, that was the bar exam--I did that. I treated it like a, I don't know, like I was preparing for the marathon. I exercised. I ate properly. I would get up in the morning and walk, and I treated it almost like it was a physical test to be endured.

I'm glad I did that because the bar was a two-and-a-half day experience. I remember the last half of the last day, one more question, it was on contracts. Contracts was one of my best subjects. I had gotten A's in contracts at Boalt Hall. I was so tired my brain almost shut down, and I still remember that. I knew the question, I knew the subject, but I could just barely write it through. I was so fatigued from the two-day experience. So I was glad that I had kept fit, and slept well, and really was taking vitamins and all of those things that I did, because I think if I hadn't I might have pooped out earlier than I did. That would have been a disaster. But anyway, that's pretty much the bar. It was just a grueling experience to get through.

Another aspect of it--they had an honors program at the Justice Department. In the Civil Rights Division they had all of these bright guys that I still keep in touch with. Jerry Stern, who's written a book and is a marvelous lawyer--he was Armand Hammer's lawyer--gone on to do great things. Harrison, who was a controller in New York and was going to run for mayor. These were bright young guys who had just graduated from Harvard and Yale. They were in the Civil Rights Division, and there I was. They got their bar results back before I did because in the East they did it earlier. I was the only new attorney there who didn't have his bar results. So they would say, "Got your bar results?" and I just thought, wonderful chance to be the idiot, [laughs] you know, the office idiot, the only one not to pass.

I'm not a very expressive guy. I remember, I would go in the snow--it was snowing then and I was living in a rooming house--I would go down to the corner to the phone and call my mother. "Bar results yet?" "No." Finally I called her and she says, "Yes." My mother's perverse sense of humor, "I have something here, let me see what it is," and I thought, "Ohhh--" you know, she was putting off bad news, "Let me read it," and it said, "Da da da--Congratulations, you passed!" I remember, I don't do things like this, I went skipping through the snow, back to my room. I was the happiest guy in town that day, having passed the bar. But anyway, that pretty much sums up the bar experience I think.

McGarrigle: So the Justice Department job must have come in before you graduated, then. Was that in anticipation of graduation that John Doar contacted Boalt and made contact with you?

Henderson: No, John Doar called the law school, and this is a story I've told all these years. I think it's that one of the things he would do is ask other agencies, "Do you have any blacks working for you?" They didn't, of course. One day, one asked if he had any blacks

working for him, and there had never been a black working for the Civil Rights Division, an attorney. He thought he needed to do something about that. To my great fortune, another one of those little lucky things that has shaped my career and my future, he was a Boalt Hall alumni. He thought he ought to call his alma mater and see if he could find a young black graduating to hire.

He called Dean Prosser and--I just told this story last week in connection with Black History Month over at Boalt--Dean Prosser put a note on the bulletin board, which is the way the dean communicated in those days, "Mr. Henderson." I took it, and it said, "Come see me." My immediate reaction--it was the last semester of law school--my immediate reaction, oh, boy, I knew I was going to graduate at that point, even if I got all F's, the way they did it. I thought I had been missing some classes. I guess maybe he wants to see me about not going to class as much as I should, but it turned out he had gotten this call from John Doar, and Dean Prosser asked me if I was interested in working for the Justice Department.

I hope I'm not repeating. I've told this story in a speech and I don't know what I've told you so, I may be repeating. At that point, I didn't know what I was going to do. The white firms, at that point, were not interviewing blacks. They didn't interview blacks in '62, the big firms that now do. I didn't know what I was going to do for a job. I had not interviewed. I had no idea. So this was just another one of those things out of the blue that changed my life. So I said, "Of course, I would love to work for the Justice Department."

So he got me in contact with John Doar. I set up an interview back in Washington. I didn't have the money, so I had to go to the loan office on campus. I remember I borrowed a hundred dollars to pay for my plane fare back to Washington. I flew back there, made arrangements to stay at the YMCA [Young Men's Christian Association], got my interview, stayed around for the rest of the day, stayed at the YMCA, and flew back the next day.

This is why I remember the F train. I was just about out of money, came to the airport, it was drizzling and took the train, or streetcar, from the airport. I don't remember those connections, but I ended up on the streetcar and got off down on Bancroft and Shattuck. At that point had no money, and got off and saw the newspaper, the headline was "Marilyn Monroe Dead," so that was the day--the day after she--I still remember that day, walking in the rain back to my room. That's the story and then I--I can't remember whether I came back knowing I had the job, or I got a call right after that. But anyway, that's how I got my first--the job with the Justice Department.

McGarrigle: Do you think it was that random that John Doar called Boalt and that Dean Prosser called you in? Or do you think it was based on something that he had heard about you as an excellent candidate?

Henderson: No, I think it was random. I'm sure John Doar never heard of me and think that, as I said, I think that he instinctively called his alma mater, as opposed to other law schools he could have called. I think it was that connection.

I think it wasn't random--there were two blacks in the class, and my grades were better than the other guy. I think that wasn't random. I think that was probably--I've never

talked to Dean Prosser, but I think that was probably why he called me rather than the other fellow. But the rest of it I think was random. I think, as I said, if John Doar had gone to Michigan's law school, he would have called Michigan. So that part was lucky, and as I've said, a lot of those lucky things that have happened to me, and I think that's one of them. I mean, the chance that he went to Boalt Hall rather than Michigan--the kind of thing that has played a role in my life.

McGarrigle: Then, once he met you and interviewed you, clearly he was impressed with you and wanted to offer you the job.

Henderson: I think so, yes. I interviewed others besides him, but yes, I think we, I guess we struck it off, but he certainly did offer me the job, yes.

McGarrigle: How was it described to you, at that point--the job?

Henderson: I know they mentioned things like it would be a first. It wouldn't be easy. It might be dangerous down there. You had to use discretion. Be careful down there. Also, I had to do a good job because people would be watching. I think those were the things that--I don't think we talked a lot about what I would be doing, you know [laughter]. I sort of liken it to the interview between Branch Rickey and Jackie Robinson, "It's going to be hard, can you take it? They're going to be yelling at you." He was sizing up Jackie Robinson. Was he the guy to do this?

I just get the sense it was something like that. Did I seem to have the kind of demeanor, whatever the word is, that they were looking for, for someone who could do this. That's my sense of it. John can tell you better whether that's what he was really doing. That's my sense of it. But we didn't talk about what I would be doing day to day. I don't think I even really knew when I went back there and started, other than that I would be a lawyer and doing civil rights work.

McGarrigle: Well, the other was more important, I can see now as you describe it. They had to have that right candidate.

Henderson: Yes, I think so, because I especially see it now, looking back. You get the wrong candidate there and you have utter disaster, and just as if Jackie Robinson had failed, it might have been years before they tried it again. I think in that same sense, someone to go down there and do it wrong, although I guess that maybe I eventually did it wrong with the car loan to King, but you know, if you made a bad impression, and it would have been a question about whether a black could actually do it. I think it would have been a number of years before they would have tried again. So I think it was important in that sense.

McGarrigle: Did you set up house somewhere once you joined the Justice Department? Or were you so transitory that you didn't--?

Henderson: No, I set up house. I rented a room in the house of a black woman in a black part of town, Rhode Island Avenue. Washington's changed a lot. I rented a room in her place, and that's where I lived for the first part, until I sort of got oriented and got a sense of the city. Washington was, by the way, very segregated back then. It was just after the

Eisenhower years. There were still restaurants I couldn't eat in, in Washington, D.C., which shocked me.

But the city was very segregated. Washington is divided into northeast, southeast, and in the southwest part of the city they were building what then seemed like wonderful new apartments that were going to be integrated. I moved into one of the first ones that opened up. I had a nice apartment, one-bedroom apartment, that I lived in the rest of my time there, over in the southwest section.

McGarrigle: So even after you were sent on assignment to the Southern states, you had a home base in Washington.

Henderson: Yes, I had a home base. Yes, I had my apartment. I was out in the field much of the time. I think more than the others, because I think virtually all the other guys, I can't remember, were married. So they would be out for a while and you know, they had to get back home, the wife was saying, "Where are you? Come home." And I virtually knew no one, I was gone so much, I really had just my job. I had no social life, I didn't know many people in Washington other than my guys I worked with.

But I would be in Jackson, Mississippi, say, and I would be there for two weeks finishing my assignment, and someone in Birmingham would have to go back home. If there was something there, I would get a call saying, "Why don't you go on over to Birmingham?" So I would just stay, I would go on to Birmingham and keep going. It was fine with me. So I spent a lot of time in the field.

Actually, it was--I was just telling this story last week. It was actually almost profitable, because I think we got, I know we got per diem of twenty-five dollars a day. Well, I couldn't stay in a white hotel and I couldn't eat in a white restaurant. I would generally stay--unless I was in Birmingham where there was a black motel, the A.G. Gaston Motel, which is where I met King--but unless I was there, there was no place to stay in the other [places]--and I would stay at a military base. I think the military base cost something like two dollars and fifty cents a day. If I ate at the base, that cost a dollar, so I came out way ahead! If I was out in the field for twenty days, I probably made a profit on the average of about fifteen dollars a day, which in '62 wasn't bad. You know, so it was great. I would come home with my per diem and my check, and I was sending a lot of money home then. So it was good. I was out in the field a great deal of the time.

McGarrigle: Would you have been able to stay on bases as a member of the Justice Department, not necessarily--

Henderson: Not as a member of the public, no--

McGarrigle: --I mean, not as a--former military, is what I mean.

Henderson: Yes--no, it wasn't the former military. It was a member of the Justice Department, yes.

McGarrigle: What was it like to be working for your own government and yet be in these Southern states, and even in the nation's capital, and find this incredible discrimination?

Henderson: That's the way it was. You know, I mean, it didn't make me happy but it wasn't--as I said, I was surprised more out of naiveté. I mean, I just didn't know that in the nation's capital we would have these seventeen lawyers that were really dedicated--we just--that's all we did--we were going to win the civil rights battle by ourselves, work long hours, and it was almost a competition to see who could work the latest. Sometimes we would work up until seven and, "Well, let's go to dinner." They had been doing this, the older guys, for years, and all of a sudden they would say, "Oh, we can't go to that place, because we can't take Thelton." That was a surprise. That was a shock to me because even with the housing discrimination in Berkeley, I had never experienced that. I hadn't experienced a restaurant I couldn't go to. So that was shocking. And the fact that it was down the street from the Department of Justice was even more of a shock. So yes, I was shocked. But again, once the shock or the surprise got over, it was the way things were, you know.

McGarrigle: Was there a reaction among your family members here, and friends, about your taking this job and--

Henderson: Not really. I look back on that--I think I had gotten to the point where I certainly didn't consult my family about what I was doing. So, as best I can recall, I simply said, when I got the job, at some point, I don't even remember it, I must have said, "Gee, I'm going to Washington," and described it. I probably didn't spend a lot of time because my family--I think my adventures after college were just sort of beyond them. Even my mother, I think I've told you this story, when I became a federal judge, she just sort of didn't understand it. It was two years later that she saw my courtroom and said, "Oh, you're a real judge."

It was that kind of thing with my jobs, you know, "Gee, there's Thelton, going off to Washington to do something." But, I don't think it really registered, what I was doing, that they really understood it. So I didn't share a lot of it with them. I just said, "Yes, I got a job with the Justice Department. I'm going next week," or something.

McGarrigle: Well, that's understandable.

Given what we know now, in these last forty years, I wonder what you think about how the Kennedy strategy could have been carried out differently. The strategy was to focus on franchise in Southern states and not in the North. What do you think about that?

Henderson: I think it was a good strategy and a sound strategy. I think it was, in part, naive, but I think we all shared the naiveté. The naiveté being that the problem is really down South. I think the thought was we need to solve the racial problem in Mississippi, Alabama, Louisiana, and the Southern states. There isn't really a problem worth thinking a lot about in the Northern states. I think that was naive. I think that we now look upon racism that I've talked about in California and other places. I think it wasn't perceived as such in those days.

So that's tempered by the resources. I think I've mentioned that there were seventeen attorneys. I mean, there are now hundreds of attorneys in the Civil Rights Division doing these things. They're doing housing, they're doing employment. We had seventeen attorneys to litigate, to be prosecutors, for the government against civil rights problems in the entire country. So given that I think it was a wise use of resources,

“Let's use these seventeen attorneys, and attorneys that we can borrow from the tax division, and supplement it, to fight voting rights abuses in the South.” So, in that sense, I think it made a lot of sense.

McGarrigle: Was John Doar the coordinating point person for Robert Kennedy on this project? Was he the person who would call in the assignments and--

Henderson: Yes, he was. The head of the Civil Rights Division was Burke Marshall, B-U-R-K-E Marshall, who is now a law professor at Yale. I think he was an academic when he came to this position. John Doar was Burke Marshall's first assistant, which means he was the guy that worked with us, he was the guy that handled the litigation, made the day-to-day priorities. I think Burke was more the policy person who met with Bobby Kennedy and the president and made the policy. John was the go-to guy that we all knew and loved, and inspired us and kept us working sixteen hours a day to do these things.

McGarrigle: He sounds like an amazing person.

Henderson: Truly. One of the more amazing humans I've ever met. Extraordinary man, yes.

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McGarrigle: There must have been a common commitment among the attorneys to the cause of improving racial justice.

Henderson: There was. Yes, there was. I think we all were, we were just so--felt so fortunate to have the job and felt that we could make a difference. Yes, I think there was a camaraderie. We would rotate--although we were divided into divisions. There were the guys who worked in Mississippi, there were the guys who worked in Louisiana, and the guys who worked in Alabama.

But there was cross-fertilization, and I would go to all three states. I think maybe that's because I was black, and I think they very early learned that I could do things, and had access to civil rights leaders that they didn't. And we worked together. There was just a tremendous spirit of bonding. You know, you felt that these were the guys in your life, who were all working--yes, it was a very heavy experience.

I just got something last week, there is a Civil Rights Association of people who worked back in those days, and they still get together. They used to get together once a year, now it's every few years, and go to Washington and meet, and tell war stories, and relive the experience. Yes, quite an experience.

McGarrigle: What was your first assignment?

Henderson: My first assignment was an utter disaster. My first assignment, as it turned out, was in Shreveport, Louisiana, where I was born. I've never known whether that was accidental. I may have known at the time, but you know, I think about it. Anyway, I flew into Shreveport and I was nervous. I had all these warnings, "Be careful." I got off the airplane, went to the rental car place, rented a car.

Got in the car, started heading for Shreveport where I was staying. I was staying at--now this is interesting, I've said, just remembered, I usually stayed in military places. There was a little black motel that was really sort of, to give you an idea of the flavor of it, they rented by the hour [laughter]. You know, just an awful little place, that's where I was staying. As it turned out, one of the other guys had been to Shreveport and made the arrangements for me.

So I was heading for this place and I was so nervous, I got half an hour down the road and I said, "Oh, I didn't even check out my luggage." So I turned around--I was on this big wide highway--I turned around and headed back to the airport to get my luggage.

A few minutes later there's this highway patrolman flashing behind me. I pull over, and as it turns out--this was a brand-new superhighway--it was so wide, I was going the wrong way. You know, I thought it was a two-way thing. So this cop gets out and puts a gun to my head and says, "You drunk, boy? Put your hands up on the car. I'm going to blow your brains out. You got a knife on you?" Just scared me to death. And he found out I wasn't drunk and I talked in a way that he thought I was a rational human being. I still have someplace the ticket I got.

But anyway, put me in the car. His other guy got into my rental car that I had and they drove me to the police station. On the way there he started talking to me and he calmed down a bit because I seemed like a rational person and didn't scare him and I wasn't from Louisiana. Then he started talking and he says, "Oh, you're from Berkeley, huh? I used to be on the Hayward Police Department." It's interesting, I probably shouldn't say this, I've never forgotten that because it confirmed--here's this guy, real racist Louisiana Southern cop, who had come out here for a while, and I've always thought that's a lot of what populates these police departments. All the stories I see in court, I always think of this guy--he's the kind of guy that gets a black and puts a gun to their head.

But anyway, it was, as I said, it was a disaster. I ended up getting a ticket. As I said, I have it someplace in my memorabilia. It says: \$25 ticket for reckless, R-E-K-L-E-S, C-A-R-L-E-S, for careless. And I paid my twenty-five dollars and went back, got my luggage, and went on about--so it started off as an utter disaster with this--and I didn't tell. I was so worried, I didn't tell--maybe I never told John Doar this. I had several arrests. But I wanted this to work so much that I never told. I would pay it out of my own money because I didn't want them to think, "This isn't working." So I never told anyone about these things back at Justice.

McGarrigle: It might have confirmed their worst fears.

Henderson: Yes, it would have confirmed their--and they would have rethought it, or thought I was doing something wrong. But I wasn't doing anything wrong. It was literally being black in the wrong place at the wrong time. I mean, just the nature of, and part of my job required me to be where the action was. I would get swooped up--a couple of times it was on national TV. I was in Jackson, Mississippi, when there was a big demonstration. Roy Wilkins, who was the head of the NAACP [National Association for the Advancement of Colored People]--they were under a lot of pressure, because King was getting arrested, SNCC [Student Nonviolent Coordinating Committee] people were getting arrested. The NAACP was seen as this ivory tower group that wasn't

involved in this new civil rights movement. So he went down, I think specifically to get arrested, and show that he was involved.

I was asked to cover it, and I got there and it was crowded. Reporters were around. I had to park around the corner and I was always collecting things. There were a lot of leaflets that were being handed out, and I had some of those. I was hurrying along to Woolworth where he was going to picket and get arrested. I was rushing along and got arrested just for walking along toward the thing. It was on national TV because some of the news people by then knew me, the Justice Department attorney. I was taken to some truck where the police had an office set up there and kept there for a while. Then they realized who I was and let me go.

John Doar, was back in Washington, heard about it, sort of laughed, "Oh, they gotcha!" You know, but this happened. He knew about this one. But the others, as I said, he didn't know about because I kept it from him and everyone else. I think I probably told a couple of guys I worked with that I could trust not to tell.

McGarrigle: You mentioned some of the misery that you saw when you were working as a social worker in Los Angeles. I wonder how what you saw in terms of living conditions in the South compared to that?

Henderson: Oh, much worse. I mean, this was a different kind of misery, of a different level, but it was also different in the sense that--to this day, I have an admiration for the black people in these towns because of the bravery. They fought the system and their lives were in danger. So this misery was mixed with it.

One story I've told was a guy who had a house, and what we would do--we were working on voting cases. We would get to a town and we had what we would call--we were looking for a black leader, and there very often wasn't a black leader. When there wasn't, we would sort of go around and say, maybe to the local barber or something, "We hear you're the leader." And maybe they would become the leader.

But anyway, through some process, there was this wonderful man, I can't remember his name, who had a farm--I remember a large property, and it had a lake on it where you caught fish. That's the life I would like to live. But I went to eat there and they were so impressed--a man from the government, and invited me to dinner, and a very humble house, but the table, and they cooked dinner. I was sitting there and I remember the dining room floor had a hole in it. And you know, you eat the chicken and throw the chicken bone down through the hole, and just--and flies were around, I remember, and they were probably better off than other people.

I remember going into houses that were just so much worse than anything I saw as a social worker. I mean abject poverty, a two-room place with five kids in one of the rooms, sleeping on pallets on the floor--you know, no windows. You saw a lot of that, and it was depressing. A lot of neediness there, I guess is the word.

McGarrigle: Did people tend to burn out in the Civil Rights Division? Or did their commitment keep them going?

Henderson: Their commitment kept them going. No one burned out from the work. I think you were motivated, really thought we were doing something, and I think that kept us going. I think a couple of people left, but not from burnout.

One, who's still a good friend, he's a professor at UC Santa Cruz [University of California, Santa Cruz] now, Dick Wasserstrom. Dick was a little older and had taught law at UCLA, so he knew a lot more than I did, and we would see things. We were in Selma, I remember, and we saw some atrocities. Well, I didn't even know how to draw up a complaint then. I was just out of law school. Dick would draw up a complaint. I remember one guy attacked some voters, some people who were going to vote, and pulled a gun out, and said, "Oh, I'm gonna shoot you niggers if you--" and that was a violation of the Civil Rights Act, right there.

Dick went back to Washington and said, "I saw this," and they wouldn't file. They had a lot of other policy things about what they would file. He got frustrated and he left. I remember Dick leaving out of frustration. He didn't think they were doing enough, fast enough. I don't remember anyone else leaving during my time. But no, so there was no burnout, certainly not any that I was aware of. People were charged up.

McGarrigle: I have a lot more material to cover and I'm thinking, maybe, about reserving it for next time.

Henderson: Yes. That's fine.

McGarrigle: Thank you.

[Interview 4: May 23, 2001] ##

McGarrigle: I've been reviewing *Pillar of Fire*, which I borrowed from you--

Henderson: Yes.

McGarrigle: Taylor Branch's book about the King years. In light of reviewing that material, I wanted to ask you what your perspective now is, as a federal judge, thinking about the attitude of the Southern judges--I'm speaking about the time in the sixties--and the resistance to the Supreme Court *Brown* [*Brown v. Board of Education*] decision. And just generally your thoughts today about that time.

Henderson: Okay, yes. I think that at the time, as a young lawyer right out of law school, I don't think I had a broad perspective about the Southern judges that we were appearing before. Now that I've been a federal judge for a number of years, I look back on it and I am shocked--and yet, not surprised. I mean, the Southern judges that we appeared before on the voting rights cases and civil rights cases were out-and-out racists. They didn't disguise it in court, and they certainly didn't disguise it when a black like myself appeared in front of them.

I look back on that now, and what I image a federal judge's job and duties are, and I'm sort of shocked that they did it so openly. I suspect, in the broadest view and the most charitable view toward them, they often talked off the record about the Southern way of life, that they just really believed that this was an intrusion on something sacred and they were the defenders at the gate. But I think, again, it's clear to me that their attitudes and their rulings were extra-legal. They did not follow the law, they did not follow the rules. They did not apply the facts that they were given for a fair result. They were there to achieve a purpose, which was to preserve the Jim Crow laws and segregation.

McGarrigle: At the time, what was the thinking in the Justice Department about dealing with that situation, about dealing with judges who were more determined to uphold their way of life than to follow the law?

Henderson: Well, I think you had to be realistic. One of the judges who is now passed, and probably the worst of the lot, at least that I experienced, was a Judge Cox. You just knew you weren't going to get justice there, that there was no set of facts that would be supportive of the civil rights movement that he was going to help you with, or even enforce. But you had to go through the procedure. So you would go to him, but you have already planned your appeal. [laughs] You know, you just had to go through that to get him to make his ruling so you could move on. And that was the only strategy that you could do, because there is a system. I mean, even though he is violating the rules, as we saw it, you have to follow them in order to get justice done eventually.

And I think the great saving grace of it all was the judges on the Fifth Circuit, who did follow the rules, even though they were Southerners. I think I've mentioned this before perhaps, that I just admire them so much because it couldn't have been easy, the pressure was on them to be just like Judge Cox. But they weren't, they upheld the law, and I think they saved the day for everyone there by giving some credibility to a system, a legal system in the South.

- McGarrigle: I wonder did that lead to a different attitude, a different ethic among the appellate judges?
- Henderson: I don't know, I've thought about that many times, and I've not come up with an answer. You can't look at who appointed them, that doesn't seem to answer it. If I had to guess, I would think that they just said, "Look, a lot is at stake. The integrity of our legal system is at stake. We have to rise to the call." I would just guess that that was the process, but I don't know. [tape interruption]
- McGarrigle: Somewhere in my readings I picked up a book title *Unlikely Heroes*, and I think this book must describe, among other people, a Judge John Minor Wisdom.
- Henderson: Yes.
- McGarrigle: He may have been in an article that I read about you where you made reference to him.
- Henderson: Yes, exactly. He was one of those heroes who--and I remember him in particular, because there is a segment in that book, that his family were pillars in his community. And I still remember reading of an incident right after one of his rulings which enforced the law and broke down one of the barriers of segregation, that he went to the church that he and his family had gone to for years and years. And if I recall correctly, his family were pillars of that church and maybe even founders of that church. And when he came into church to sit, no one would sit in the row with him. And he sat there quietly, with dignity. I still remember that, it was so touching. And that's one reason I said that people like John Minor Wisdom and the other judges depicted in that book are true heroes, I mean, to me, and I think should be to everyone else.
- McGarrigle: Yes. Are there other areas that I'm not covering about this period that you know you'd like to discuss? Either today, or to make note of for another time?
- Henderson: I was thinking about this period, and I think that one thing that can be overlooked, and I raise this when I'm talking to young people now, particularly young blacks--that I think that it's easy to lose sight of the danger that existed in those days. Even reading *Pillars of Fire*, which has covered it as thoroughly as anything, it's easy to forget that the backdrop of almost everything that was happening was real danger. I was thinking of some of those things.

For example, and I think you'll get to this later in the outline, but during the Birmingham riots I was in a building, watching it as the police were hosing and cattle-prodding and chasing with dogs, and looking out a window, and two women came to the window. The police were down below, and they just had an anger, they went over and got--one got a flower pot, and one got a wastebasket that was full of things, and they dropped them out the window. Tried to drop them on the police, and [laughs] I remember with horror, you know--. And they hit, and the police looked up and ran in the building. And I thought, oh, they're going to come up and shoot everybody there. I was horrified! And of course everyone in the area fled. And it was real--I think, that if they had found us, and I have to say us now because I was there--I shudder to this day to think what would have happened. And then there were a number of other things where I found myself--and I was more shielded because of my job than most blacks--I found myself in serious danger.

Another incident I'll mention--Jim Thomas, who for many years was dean of admissions at Yale Law School, he was a summer extern working with the Justice Department, and I took him on a trip with me. We were heading for Greenville, Mississippi, and I think we had come from Birmingham. We were driving, and John Doar had asked me to call him that day for something to do with a trial that was about to take place. So I stopped in a little town called Forest, Mississippi. I'll always remember it--and stopped at a gas station that was closed, went to a phone booth, and got on the phone with John Doar, left Jim in the car. I was talking, and it turned out to be a much longer conversation. John was going through some things, and going through scenarios, and we must have talked for about fifteen, twenty minutes, maybe more.

And all of a sudden, near the end of the conversation, I sort of became more aware of my environment, and I saw a guy standing outside the phone booth, just glaring at me. It was a double phone booth, and he was standing in the next one, but he wasn't talking. And I looked, and I thought that was strange. And then I looked out, and I saw Jim saying, "Come on!" [laughs] And there were some other people near the gas pump. So I told John, "I think I had better go. It looks like something is going on." I went out to the car, and there was a big guy standing between me and the car. And I went a wide path around him, because I knew he was trying to provoke something, got in the car, and had the presence of mind--there was a fire station across the street that we had noticed. It was a hot day, they were sitting against the fire station--they were gone, and it just didn't seem right. So I got in the car, and instead of crossing the double line on this road to go the direction we were going, I had the sense, I'd been around long enough to know they would use anything to arrest me. So I went the other way, so I didn't cross the double line.

I drove maybe a mile and then turned around and came back and in that little time, I don't know, five minutes maybe to do that and come back, that gas station was loaded with people. We went by, and Jim and I have talked about that many times. It was [Ku Klux] Klan country, I should say. We think that they had put out the call, and that we might have been lynched if we had another five minutes. There was clearly a crowd, and the clues and that someone had said whatever they said about us being there and in this town and using the gas station. So anyway, those are just a couple of examples of the way things were down there and I think that is lost in the things I read, and I read everything I can get about that period, that there was everyday danger in what we were doing. And that's why people like John Lewis and Julian Bond--all of the people were real heroes--but in a way that's beyond what the books portray.

McGarrigle: Yes. The degree of personal courage.

Henderson: The degree of personal courage, yes, that is a good way to put it. It was just astounding.

I've probably told you the story of the big voting rights day--stop me if I have--at Selma, where they were holding up the voting registration, and blacks were lined up, curled around for blocks, had come for the big day to register to vote. And they were like letting in two blacks an hour, you know, you wouldn't have gotten to the corner of the courthouse to register. The sheriff had said that--we had gotten an injunction against the sheriff interfering, or anyone interfering, with the voting rights process. And like everything else, they turned it on its head, and said that any blacks who were trying to

give them food or water in this ninety-something-degree heat would be interfering. And they said, "That's nonsense." These people, they couldn't go to the bathroom, if they went to the bathroom they had to go to the end of the line, which was--. And so I saw some young people, I'm tempted to say SNCC workers, I think they were, but I can't be sure of that now, say, "We're going to take some food over." They got some Cokes and things and consciously--and I still remember this--consciously rehearsed how they would protect themselves when--when, not if, they got beaten. That kind of courage was just--it still amazes me.

McGarrigle: That's interesting how to make use of that information and how to carry on in a crazy world. I know from reading about some of the civil rights workers there were a couple, or at least one I'm thinking about, who was overcome by bitterness. But it certainly seems like most people who were involved and putting themselves in danger continue on today with that same courage.

Henderson: Yes, that's right. And you know, the interesting thing now, when you get my age, a lot of people who have lived through that and experienced it get a little disappointed. I find myself sort of out of touch with young blacks now. And I even had it when I was at Stanford. A young black would come to me as assistant dean and have a complaint about racism and the complaint was of the nature, "Well, the professor said something, or looked at me in a certain way." And it's hard for me to get excited about that.

Initially I would try to lecture and say, "You're not talking about much." And of course, with the age gap, then they are ready to dismiss me as an Uncle Tom. But what's really happening is, I have seen what real racism is and how it operates, and you know, there are some more serious problems than social slights. So it's an interesting continuum there as to how you continue that fight, how you recruit the young black people who don't know of the things I've just been describing, and yet racism to them is an entirely different animal. Racism to them is getting a certain kind of attitude in class, things that are much more difficult for me to relate to.

McGarrigle: Before we started taping, we were talking about your getting together with Russ Ellis and Troy Duster, as I know you do on a regular basis. Among you do you discuss how to make the earlier civil rights movement relevant today?

Henderson: We don't talk about that specifically, but we do talk about the state of race in the country. Troy, in particular, is very involved in those kind of things, coming up with, for example before Prop. 209 [1996], how to defeat Proposition 209, how to implement affirmative action, and those things. And Russ also, we talk about those things all the time. We sort of jokingly say by the end of the dinner we expect to have solved all the problems of world peace and racial discrimination. We don't, but we discuss them, and we learn a lot from each other because we really do have different perspectives. We learn--I have some insights as a judge, and the legalities of it. They're both sociologists, and they have those kinds of insights. So we talk about it quite vigorously. And in recent times, it's interesting, I think for the first time we have some disagreements about strategies, or even what the problem is, and we learn from that. So it's an interesting process.

McGarrigle: Well, that bears writing about, or a presentation.

Henderson: Yes, it does. I just got something I was reading from Troy. We feed each other information. I just faxed Troy and Russ something that I got. That's interesting, it happens to be on top. I'm involved in a group called Medical Education for South African Blacks, MESAB. It's run by a wonderful couple, Joy and Herb Kaiser. They raise millions of dollars to train South African doctors in the United States to go back to South Africa. They have an interim report on HIV, AIDS, a lot of statistics about AIDS. And Troy is going to South Africa this Saturday, and I sent him this because he is going to be talking about this. This is the latest on those statistics. And just coincidentally, he had faxed or e-mailed me something that he got off of the net, "Breaking the Cycle of White Dependence: A Call for Majority Self-Sufficiency," an article that's directed at those who talk about welfare moms and criticize blacks who are seeking government assistance. So anyway, we constantly feed things back and forth that interest us, then talk about them when we get together. It's a good learning process because they are both, as you know, extremely bright. So I learn a lot from them. Hopefully they learn some things from me.

McGarrigle: Yes. I'd like to explore that more further down the line.

Henderson: Okay. Yes, okay.

McGarrigle: I've read quite a lot in various articles about your role as a liaison between the Justice Department and the civil rights movement. I imagine that that was fairly complicated, and I wonder if you'd like to comment on that from your perspective today?

Henderson: Yes. Sure, I use the term liaison, that was unofficial. That's in effect what I was. Officially, I was an attorney with the Civil Rights Division. The way the liaison sort of came about was, I think I've mentioned, I was the first black to work for the Civil Rights Division in part because of the danger I talked about, and a real legitimate question about whether a black in the early sixties and certainly in the fifties could effectively go down South and do anything. I told you what it was like in court, you couldn't have access to the court and things the way the other attorneys were.

So anyway, when I started, the demonstrations in Birmingham broke out shortly after that, and I happened to be in Birmingham, observed them--and I think very early on it was realized that I had access to the blacks and what they were doing and to Dr. King and his aides that facilitated both sides in ways that the white attorneys didn't. There was a distrust. There was a distrust with me at first, but I think after a while they felt that I was trustworthy.

And so rather than solely being an attorney working on cases wherever they were, I sort of followed the civil rights movement. That's why I was at so many things. I was in Jackson at the time that Medgar Evers was assassinated. I had just left Birmingham and flew back to Birmingham the morning the church was bombed. And that's sort of what I did. I was there--even to this day I have a hard time describing what the capacity was.

When A.D. King's home was bombed, I was flown down there because that was sort of a crisis. A black man had claimed to have witnessed a police car put a package on the porch, and then the house blew up. And it was very critical, it was a charge against the police. I was flown down to interview this black man and try to assess his credibility for the Justice Department. So that's what I mean by liaison. I went back and forth.

The night that the church was bombed, I was flown in on a military jet. One of my jobs was to drive across town and establish contact with the black community because people were shooting at each other, it was very dangerous. So that's what I mean by a liaison. I mean, I wasn't being a lawyer, by any means, in doing these things. But that was sort of the role I played over this period of time.

McGarrigle: In the case of the bombing of A.D. King's house, what was the follow-up on that suggestion that the police car may have driven by?

Henderson: Well, I--nothing. I turned in a report that said I believed him. I spent a lot of time with him, I went over it. He said that he was coming from a bar and had a couple of drinks, was walking, he saw a police car come. And because he had been hassled by the police in the past, he stepped into some bushes. And the car either didn't see him or went on by, and he saw it stop in front of A.D. King's home. Someone got out and walked swiftly, placed something on the porch, got in the car and drove away. He got out of the bushes and continued and "Boom," the house blew up, or the front of the house--King wasn't hurt in that. But the bomb went off--and then within seconds, saw the same car come around the corner and investigate the bombing [laughs].

I reported it, I talked to neighbors, I talked to people, and I believed him. I mean, that's all I can say, that's not like a truth machine, to make it. But I believed him, I turned in the report. But nothing was ever done. And someplace in this office, I have an article. There is someone--I'm so forgetful these days. There is a guy that covered that story, and I think for *Newsweek*, and he recently transferred to the *Independent Journal*. He called me about a year ago to do a follow-up story. And I didn't know that this black man had subsequently--this witness--had subsequently been persecuted by the police, and spent time in jail for lying, apparently, is what--. And this guy interviewed me. There's a story that he gave me. He asked me for permission to quote me as saying that I had reported to the government that I believed him. He did a story that was quite critical of the Justice Department role in that. I have it someplace here. Erma [Smith] might have it if you're interested in it. But anyway, that's the--so nothing was ever done about it, nothing was certainly officially done charging the police department, or even inquiring into it, to my knowledge.

McGarrigle: There's been this recent trial in Birmingham. Was there ever the suggestion that the police may have been involved in that bombing as well?

Henderson: Not that I heard. I never heard a suggestion, and I spent a lot of time on that. As I said, I was flown in that day and I spent probably the next week talking to everybody. There were all kinds of people who had rumors in the black community, that they saw a car in the alley behind a church. I would talk to them, just trying to--and I never heard a--I mean, there was always a suspicion about the police. I think the blacks down there knew that the police were their enemies and were capable of it and were members of the Ku Klux Klan. But I never saw any credible--that said the police did it, or they saw something. I didn't see that.

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McGarrigle: Do you have anything to add about Robert Kennedy, or contact with him, or thoughts you have on his role?

Henderson: One of the stories I still use about Robert Kennedy, that I use with my law clerks--again, in this role of liaison, they very early on learned that I had access to information. One morning they had a staff meeting with Kennedy and the higher-ups in the Justice Department. They called me to that meeting. I went, and I thought I was fairly well-prepped, and I did a little paper on the demographics of the black community in Birmingham. And he asked a few questions, and I didn't have the answers. And I remember, he sort of pushed the paper to me and said, "Well, go do some work, come back when you have all the information." It was very gentle, but I was devastated. And I use that as an example. I went out and just knew everything there was possible to know for the next meeting. I use that as an example with my law clerks, especially when they're new. They can come in and not really hit the books like I want them to, and I tell that little story to gently make the point that you really do have to be prepared when you come in here. And then that's a lasting lesson. That was forty years ago and I have not forgotten it. It stayed with me on the importance of being prepared on important issues.

But he was inspirational. He would walk around the halls in his shirt sleeves and really take an interest. He would come into the office and just say, "How's it going? What are you working on?" When he left, he'd just be there two minutes, you felt puffed up that you had talked with this great man and he was interested in you. Whether he was or not, he certainly gave that impression. He was certainly a tremendous leader.

My memory of him is that I thought he grew so that by the time he was assassinated I thought that he was very much involved in seeing that civil rights were achieved in this country, and gotten beyond what I think the early criticism was of him and his brother, was that--well, it was a political matter, and if it didn't hurt politically, they would do what they could. And I thought he had gotten way beyond that and was going to do what he could. Not regardless of the consequences, but up to certainly a point way beyond where he started.

McGarrigle: I'm wondering where to go from here. I have Martin Luther King, Jr., on the outline next, the private versus the public man. I know I had also read that after you returned to northern California you continued for some time in contact with him.

Henderson: Yes, I continued in contact with him, and with his--. And he in fact, I think one of the important decisions, I've made a number of them that I think determined my future--he called me, and I was at that time in Los Angeles living with my mother again before I returned to Berkeley, and offered me a job with the Southern Christian Leadership Conference [SCLC]. I was enormously flattered, and thought about it and declined for a number of personal reasons. One, I didn't want to leave my son again at that point. But we kept in contact, and some time after that he came to the area. I was back in Berkeley by this time, he came here for a big fundraiser. I met with him and actually sat on the stage at a church where he spoke and raised funds. So yes, we kept in--and then after that, I think we lost touch. Or didn't lose touch, but I didn't maintain contact with him once I had gotten back into my legal career and started practicing.

McGarrigle: What was the climate like in the Bay Area in terms of the work that he was doing and the way that was viewed?

Henderson: Oh, he was a hero, I think. When he came to town, it was like tickets to a hot rock concert, they are hard--you couldn't get in. Yes, he was a hero, he was greatly admired, and it was just too bad he couldn't do like the rock concerts, appear at some added bookings, adding shows, because he could have come and filled this place every night for a week, if his schedule would have permitted.

McGarrigle: Was there discussion about the work that he was doing in the South and how that could apply in other areas, for example in California?

Henderson: I don't remember those kinds of discussions. There were movement people here, of course Southern Christian Leadership Movement wasn't active here. The NAACP was, they have national chapters. There was a CORE, Congress of Racial Equality, organization in the area, and SNCC was quite active here. You know, I think I've mentioned this, that they were competitive with--to them, King was another guy taking their thunder. And I think there was some jealousy, there were accusations that he was a creature of the press, that the press had created him as a leader, and I think they resented it because he got all the money. He would come to town and leave with a suitcase full of money, as they liked to say. And they had trouble raising money.

So there was that jealousy, but I think as objective as I can be about it, his was well deserved. I mean, he was the leader. He articulated the things that we still read about, that propelled the movement and kept it alive. He strategized--reading that book, and another book I've been reading. You know, he knew that--I think he understood better than most the importance of someone like [Commissioner of Public Safety T. Eugene] Bull Connor. You know, that that was part of his strategy, that--where was it, Albany, Georgia, where he had been before Birmingham, wasn't nearly as successful because the sheriff there was a reasonable guy. He didn't hit anybody. He would go in and they would talk, he didn't drag people. That movement was a fizzle, and I think he knew the difference.

He knew that when he got to Birmingham--I don't think he went to Birmingham because of Bull Connor, but he went because of the issues--but when he got there, I think he knew he had something, and he did. When Bull Connor started his things with the dogs attacking and the fire hoses and the cattle prods, that was national news. And most importantly, he knew what to do with that. So that by the time he really was a national hero, and coming to California, everybody admired him. I think we really expected him to lead us to freedom. I mean, to end all this.

McGarrigle: It's interesting that the criticism by the other groups of him leaves out the fact of his personal charisma.

Henderson: Yes, it does.

McGarrigle: And I wonder how you experienced that, spending time with him?

Henderson: Yes. Oh, I mean, his personal charisma was--again, it's a memorable thing, having met a person like that, and seeing him, and seeing what charisma really is. You know, you can talk about it, you can see it. And having seen it, it's memorable personal charisma. But also personal courage. I was at at least a couple of incidents that I can remember where, again, there was talk about his life being in danger. And I'm just still impressed

by him saying, "Well, that's nice and let's be careful, but that's not going to deter me," and go right on with his plans, or go to this place, or step out, having been told they heard there was someone who was going to kill him. That is memorable stuff because [laughs] I think if I were told that, I would say, "Okay, let's cancel tonight." You know, and I think that's one's natural reaction, not with him.

He really did have a mission once he got involved in this. And as you know from reading the book, he didn't volunteer to lead the civil rights movement, he was a reluctant participant. He was reluctantly pushed to the front of the Montgomery boycott movement. But once he got there, and realized his leadership abilities and that he could do some things, he never looked back.

McGarrigle: I'm thinking about my kindergartner [Anna McGarrigle], who has been studying Martin Luther King. She knows I'm interviewing you, and she says she told her teacher that her mother was interviewing a judge of the world.

Henderson: [laughter] That's great.

McGarrigle: She had raised her hand, and she had something to say, and she got called on--her teacher told me this--and she said she wanted her teacher to know that her mom was interviewing a judge of the world.

Henderson: [laughter] That's great.

McGarrigle: I think we had spoken about Medgar Evers in the past, and his leadership qualities. This is another amazing moment, you were with Medgar Evers the night that he was assassinated.

Henderson: The night before he was assassinated, yes.

McGarrigle: The night before he was assassinated.

Henderson: Yes. We spent the evening together at the Elks Club, which was a club, black club, sort of a social club that--we talked about what I was doing, what he was doing, and how to be more effective. He had had threats, I don't think he anticipated this particular threat, but he lived with threats, and he was a very brave man, a very charismatic man who walked down the street and there was, "Hi, Medgar," you know, just everybody knew that he was the local leader of the NAACP and really had committed his life to fighting the system in Jackson, Mississippi. I don't know, as I remember it, we probably stayed there until--it seemed quite late at the time, eleven o'clock or something, talking about these things. Then I left, and flew back to Washington the next morning. And that evening he was assassinated.

I think I've told you in another segment that a few days later I flew back to Jackson to attend his funeral. I believe I came as a representative of the government, I just don't remember that. But I know I flew back, they had me fly back to attend his funeral. And I've told you about the incident with John Doar, so I won't repeat that.

Yes, but again, he was a hero. He was sort of, because he was the head of a branch office of the NAACP, I think he didn't have the freedom that Martin Luther King had as

the head of Southern Christian Leadership Conference. I think that Medgar, my sense from the talks we had, was that he was sort of torn between what he had to do under the direction of Roy Wilkins from New York and what he might like to do. I know that one of the more memorable experiences I had when I was arrested in Jackson, it was felt that again King was getting all the play and that the NAACP was peripheral to this. They were the sort of people who raised money and weren't on the battle lines with the kids from SNCC and the kids from CORE, or even Martin Luther King, who had been arrested by this time at least a couple of times and I think had already written the great *Letter from a Birmingham Jail*. And no one from NAACP had been on the front lines and arrested, including Medgar at this point. And so they staged a big event where Wilkins flew into Jackson and they were going to picket a Woolworth store, a five and ten store in downtown Jackson. And of course he went up and he picketed, and dutifully got arrested.

I was covering it for the Justice Department, and as I--you have to stop me if I'm repeating myself. If you've heard this, and it's on tape, I apologize. But anyway, it was crowded, I had to park around the corner, and I was supposed to cover it and observe the arrest. And I was a little late for it, and in the meantime people had been handing out leaflets, the civil rights workers. I gathered them, I kept those to see what--and I had those in my hand and I was rushing down the street to round the corner when the police stopped me and arrested me. So I never got to the arrest. Then of course when they found out who I was, they let me go, they took me to a truck and saw my ID [identification] and let me go.

But again, Medgar, I guess we're talking about Medgar, he was torn between that, that kind of--he didn't say, but he was essentially critical of that kind of staged arrest, "Well, I'll go in and get arrested to show--" As opposed to really being out there. And I think his style was to really be out there, and I think he was sort of held back from a lot that he would do if he were running the NAACP show. That's my feeling.

McGarrigle: Yes, that's very interesting. It's amazing to think about how many lives were lost in this brief period of time in terms of leadership.

Henderson: Yes, I know.

McGarrigle: And others as well.

Henderson: Yes, it was. It was quite--and again, that's why I said a little earlier on, I think that it was dangerous. It was dangerous, and not to put myself out there, but I look back on some and think that I have seen a lot of danger, a lot of us were in a lot of danger. And probably it was luck, you know, I think it was just fortuitous that [Michael] Schwerner and [James] Cheney were the ones who got killed as opposed to--you know, "Well, let's get them," for they were coming along. I think that a lot of us don't know how close we probably came.

The one I think about most dramatically was the one I described where I saw this horde there, and I've often thought that might have been the day for me. Just a few more minutes, and--. And there might have been other times, you don't know. I stayed at the A.G. Gaston motel, I told you, which is where King stayed, and I checked out of there and headed back to Washington and that night--again, whoever, the police, whoever

planted these bombs, there was an alley behind the motel, and they put a bomb next to the room that I had been staying in and blew up the back of the motel. So timing was everything. They weren't trying to bomb me, I've never thought that. I think they were just bombing the hotel that King stayed in, I think that's what they--or that the civil rights movement stayed in. But I think they were dangerous times. They were dangerous times and it was scary. And again, I just applaud the bravery of the people who led it.

And I think more so, you've probably read this elsewhere, it's one thing for me to go down there, or anyone from the North, to go down there and do things for a while and then return to their home. It's another kind of bravery to do that and stay in that town, try to work, try to provide for your family with the segregationists having identified you as a civil rights activist. I think that was a whole different level of bravery that I can't account for. I never had that kind of bravery.

McGarrigle: Do you think it seems both at the same time a long time ago and not so long ago?

Henderson: It does, yes. That's an excellent way to put it, it seems like another lifetime almost, and yet when I read, or when I prepare for this session, I think it was just yesterday because I can remember some of it so vividly. Yes.

One of the disappointments, and I talked to--well, Troy and I and Russ, when we talk, or other people who have been involved in the civil rights movement, I think that one of the disappointments is having gone through that at such risk to get to the day when most people I talk to who care about civil rights feel they are having to fight the fights over--or losing ground. That is really discouraging and depressing, that you're still having to argue against someone who says, "The problem is over, there's no more discrimination, so what's this stuff about affirmative action?" It really, it's discouraging, not just to me, but I think to anyone who has been through all these things and thought that progress was being made. And indeed, not thought: progress has been made. I mean, the fact that I'm sitting here in these nice chambers as a federal judge is progress. Back in that time, there were no black federal judges. So there's a lot of progress, but certain things we've lost ground on.

McGarrigle: That certainly seems true.

I put in some calls to John Doar. He's very hard to get a hold of.

Henderson: He's hard to get. I just got an e-mail from someone. They had a reunion for the Civil Rights Division, when all the old attorneys that I've been talking about get together in Washington. I think it's next weekend. I was invited to a dinner, a small dinner, that they were going to honor John Doar, and I couldn't make it because of--I don't have my book here--something that I couldn't get out of. Oh, no, it was this past weekend and I couldn't go because I had committed to giving the graduation speech for a local law school. But this past weekend they had a dinner for John. I didn't talk to John. I talked to one of the attorneys who was arranging the dinner. But he is hard to get in touch with these days.

McGarrigle: I just wondered if there's anything that you'd like to add--we'll continue on--or that you think would come from him if we were to ask him his perspective today of--? I haven't given you a very clear question, I apologize for that. [laughs]

Henderson: I suspect if John and I were--and we have talked--you know, we talk about those days. But John still is sort of a mythical figure in my life, and so I am sort of still sitting at his knee, and I talk more about what he did for me and what a mentor he was. He is a modest guy. We would probably just talk about those days and how historically significant they were. I think he would deny the heroism that I saw in him and the leadership. I think it embarrasses him that he was such a great and revered man. That would be my view of what it was. But he had such a presence, and such a commitment, and such a leadership. Indirectly--and I've tried to emulate some of those with my clerks. He had a way of telling you a little story that was so pertinent to what was going on and that's the way he did it. I just remember those stories, and I'll try to do similar with my clerks. Tell them a story to make a point and hope they'll remember it for forty years like I've remembered his stories. I just remember driving down dusty roads in the South with him, and just telling stories that I still remember that were so pertinent about life, and about what we were trying to do and why we were trying to do it.

McGarrigle: Is there an example that comes to mind?

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Henderson: We were at a Southern prison, we were outside a prison. There was a case--I hadn't thought of this [laughs], it's sort of early Pelican Bay. But it was Southern--I think it was Parchman Farm, which was in song, an infamously cruel prison where they had--you literally did pound rocks with the hammer and the chain gang kind of thing. I was outside, and one of the prison personnel came out and said some racist things to me, and John was there, and others were there. I remember just--so angry, and saying--"That little son of a bitch, I wish I could get him in Berkeley. I wish I could push a time button and go to Berkeley, I'd kick his--" You know, just so furious and almost out of control, with just the openness of it, just treating me like less than a human being.

We were leaving--I can't remember why we were there because I never went into the prison, and I can't remember now. But anyway, we got in the car and we had a long drive. John told a story which, the effect of it was he was proud that I had not done something back, and that it was so important that I not because there was this larger battle, and that was what it was all about. I don't remember the specific story but I remember, "Yes, of course he's right. Of course you can't get engaged in battle with this little punk and destroy the whole thing." Because if I had, that's what the paper would say, certainly the Southern papers, "Black Attorney Attacks." I wish I could remember the story and I can't. But that's one example of the kind of thing he did. He put it in perspective for me, for all time, and he was just wonderful at it.

McGarrigle: That's a good example.

Henderson: I can't remember any of the specific stories, but it was always incidents like that. Another one where when I first got the job he told me, again very indirectly--and I didn't realize what he was saying until later--that there were some other attorneys, white attorneys, who would walk into court and walk beyond the swinging doors, and were

part of the establishment. He said that one of things he liked about me was that I was careful, I understood the times, and that I should not be too eager to walk beyond those doors until--you know, in my court, there is a swinging thing that separates the audience from the attorneys--and just in this informal way said, "Test the system before you walk beyond those doors." Not saying, "Don't do it," he would never do that, because he knew I was entitled to walk beyond them. But just saying use some common sense and don't destroy the larger thing. Don't get in a battle about going beyond that little door. The bigger battle is to win that case. He always put things in perspective. Coming from him, it was entirely acceptable. And maybe even telling it now, it might seem like you're giving in to the system, but that wasn't the tenor of the time. It was great wisdom about how to keep your eye on the larger goal and not get sidetracked. He was able to do that and inspire all of us. There's a whole generation of lawyers who still, I think, remember John Doar and revere him for all he did.

McGarrigle: Those are both good examples of what we've been discussing.

By the time Malcolm X came on the national stage there was already an element of discontent, which we've discussed tangentially, to King and his movement.

Henderson: Yes.

McGarrigle: And on the outline I have, "Discuss how the harder alternative made King more effective." There was this threat of a more radical element.

Henderson: Yes, that's right. And I think that when Malcolm X became prominent, I think he was seen as a great threat to the white establishment. Even white liberals, I think. You know, because he was talking about "whitey," and he was talking about blacks arming themselves, and defending themselves and doing whatever was necessary to defend themselves.

I think this was a whole different tenor from passive resistance, which is what Martin Luther King was preaching. And so just as King was losing a little momentum and people were saying, "Well, this isn't enough, this passive resistance," I think that Malcolm X coming along, and probably Stokely Carmichael yelling "Black Power," and H. Rap Brown, and the people who wanted to do something more-- I don't think the Black Panthers were around yet then--I think this made King a broader following. You know, "Let's go with this guy, I think we can do it that way, whereas the other way there is going to be massive violence." So I think it helped King quite a bit that Malcolm X was there.

McGarrigle: You had this interesting initial introduction to Malcolm X when you were at Boalt, and he came to speak.

Henderson: Yes. He didn't come to speak at Boalt Hall, he came down the street at a place called Stiles Hall which I'm still involved with because of the impact it had on me as a student. This was before the Free Speech Movement [1964]. The university was quite restrictive, even in liberal Berkeley, about who could speak there. Malcolm X could not speak on campus. And I think it came through--who could speak came through the dean's office. I remember that Vince Hallinan--and again, I have a feeling I may have told you this--who is the father of the district attorney now--a very leftist, may have

been Communist, I don't remember--. But he couldn't speak on campus, and when you had those kinds of people, they would speak at Stiles Hall which had an open forum. Anyone, just about, could speak there who had something to say.

So anyway, it was at Stiles Hall that I saw Malcolm X. He had been in the news and was a hot item. So I got down there early and got a seat right up front. And what a compelling man. I mean, he, as we like to say, he had his rap down. He really had a fix. And I have to confess that I thought he said some great truth about the condition of the black man and why it was there, and even what we had to do about it. It was controversial because there were people who came to bait him. Most of the people there were whites, and probably white liberals.

But I remember there was a Middle Easterner, and I don't know what that means now after all these years, perhaps an Arab or some such person who was a student there, who took him on about his interpretation of Islam, and it sort of went off on that. He was essentially accusing him of perverting--the Black Muslim movement of being a perversion of this person's religion, and that got very heated. And it was hard to tell who won that because I didn't know enough about the religion. But anyway, it was a memorable time.

I think I may have mentioned this also, at that time there was a student a year ahead of me, Don Warden, who got very involved in this and had a debate on campus as to whose methods--he was a brilliant guy and a wonderful debater, Don was--who can serve the black community better: Malcolm X or Martin Luther King? It was a very heated debate between Don and another black who spoke on behalf of Martin Luther King. And so that was sort of, at that time, the topic of the day I think, as to which approach was better for blacks. The Black Muslims: self-defense, aggression, fight back, don't turn the other cheek, pull out a gun, or that kind of thing. It was a very active debate, in those days.

McGarrigle: Berkeley was quite the place to be. The national stage was coming to Berkeley.

Henderson: Oh, it was, it was, very, very exciting, very exciting times. There was this, and at some point during my law career--the record books would have the year--was the year of the HUAC protests. It was right down here, they had the House Un-American Activities Committee's hearing, and a group of students came over. I actually had plans to join them, and I didn't. And I can't remember why. But we still have the picture of them being dragged down the steps of City Hall here from protesting the HUAC meetings. It was just on the eve of the Free Speech Movement when Mario Savio--it wasn't long after this that he jumped on top of the police car, and they held the car captive, and a whole new movement was born.

Yes, so really very exciting times, quite different from when I first came up to Berkeley in '51, the Eisenhower years, where nothing was happening. It was just sort of--Berkeley was the school. The student body life was dominated by the fraternities, and everything was nice and orderly.

McGarrigle: Status quo, it sounds like.

Henderson: Status quo, definitely the status quo, yes.

McGarrigle: There was a gathering of celebrities including Lena Horne and Dick Gregory in Selma, and I think, was James Baldwin there at that time?

Henderson: Yes. They came to be a part of this big voting rights day that I described earlier, and to support it. It was quite an event, because they were heroes, and Lena Horne, and people. So it got an incredible turnout just to see them and stargaze, I guess. There were concerns about their safety, as I recall. But they made an appearance. They didn't get out and demonstrate or anything. I think they were there to help publicize the event and get blacks to register to vote, I mean that was the role they played.

But I remember that because I had been particularly a fan of Lena Horne's, and I just thought that--I muscled my way in and used--I didn't often do that kind of thing--used my position to get backstage just to say, "Gee, I've always been a fan of yours," which is what everybody seems to say [laughter] when they meet their hero. So I didn't do anything different. And they were very committed. I mean, I was impressed. And of course we know that Dick Gregory has gone on and dropped show business and essentially been a civil rights advocate all these years. It was interesting. Yes, I guess I'm not saying much more, but that was--.

McGarrigle: I was interested also in James Baldwin, who you spent some time with around that time.

Henderson: Yes, I spent some time with him, and I got to know him. I first met him in Birmingham. He was there and active and spoke at a church. Very articulate, very fiery, and very inspirational. Then he went from Birmingham, because the action was moving from Birmingham up to Selma for this voting rights day that I already mentioned. He was there to participate in that, and I had heard that there had been a threat on his life. [tape interruption] And it sounded to me as if it was a serious threat, something to be taken seriously. A part of the threat had to do with his homosexuality. "We're going to get that little fag," or something like that.

So I went out and I told him this, and I said, "You know, I think you ought to treat this seriously," which he did. He had come to Selma in a red Ford as I remember it, a bright red Ford driven by a SNCC worker, and he was with his brother David. They talked about what to do, and I sort of suggested that if there really was someone, that it was just an invitation to get in this red car. Certainly we didn't know who the people were or what they knew, but the red car was just a red flag, that he probably ought not go in that.

After talking a while--it was getting near the end of the day, and I was actually staying in Birmingham at the A.G. Gaston motel, and I was going to go back there--so I said, "Look, why don't I take you back to Birmingham or take you out of town?" So he said okay, and they got their belongings. We got in my car just as it was starting to get dark. I gave them all the information I had learned about the dangers. "Be careful, don't let a car come drive up next to us because that's when they shoot out the window. So we'll be careful of someone trying to pass us," and those kinds of things."

We were driving, and it was getting dark. And finally we got to a point where we were certain--I don't know, we had driven fifteen, twenty minutes, maybe even a half an hour. At that point it was just about dark but we were also certain we hadn't been followed. For the first time he relaxed and so we then just anticipated going on to Birmingham.

The writer that he is had already formulated this scene. I noticed, I guess I've told you this, or maybe you've read it, I can't remember where this is coming from, but--

McGarrigle: Oh, it's an interview with you where you describe that.

Henderson: Okay. He said, "Isn't this amazing? Just last week I was in Birmingham and I thought that that was the worst place, the most dangerous place in the world, and now I'm fleeing to Birmingham." And then he talked about that he was going to have to write about this and had already had the title of the story, "The Flight to Birmingham." Unfortunately he never wrote that. I would meet him over the years and we would talk about it. He had other fish to fry. He never wrote that, and I was always disappointed because I thought it was such a compelling story. Maybe I'll write it now, that's one of the things I'm toying with and working on. I certainly would not do it justice the way he would have.

There is another story that comes from that I just told recently that always gets a laugh of sorts. And I have to back up, because before we got on the road--I think I had mentioned--when I wasn't in places like Birmingham, where I could stay at a black motel, there weren't many places in the South in 1962 that had motels where blacks could stay. So for me, they didn't want me to stay in private homes because I was working for the government, and virtually anybody in these towns was involved in the civil rights movement, that would compromise my partiality, or my apparent partiality. And so I would stay in military bases, and stay in the officers' quarters. So when Baldwin--James and David, his brother and this other guy whose name I don't recall--got in the car, I said, "Well, wait, I have to make a stop before we go to Birmingham." I went to Craig Air Force Base where I was staying, went in, checked out, got my bags and we drove to Birmingham, as I've said.

Some time later--by then I had had the car incident with Martin Luther King and I had resigned from the Justice Department and was in Washington trying to write about the experiences and put my life back together, and Baldwin came to town. By then he was a big figure. He was giving a speech, and I contacted him and went and attended the speech. Then afterwards there was an event and he invited me to that, at a home, and at some point there introduced me as the guy who saved his life and told the story. Then capped it by saying that, "I realized that things were going to be okay when Thelton stopped by this military base to get a gun to protect us." [laughs] All the years I knew him after that and we saw each other regularly, I never had the heart to tell him that I didn't have a gun. [laughter] I just never said anything. I think he went to his grave thinking I was ready to shoot it out on the highway if anybody came up and got us. So anyway, that's sort of a funny story.

McGarrigle: That's a good story about the times.

Henderson: Yes, it is.

McGarrigle: And in the years that he lived in France, it sounds like he maintained contact, he would come back to the States periodically?

Henderson: Yes, he would come back periodically. And this is an absolutely true story. [laughs] I went to France--I wish I could remember the year--and I had never been to France. I

was going to Paris for the first time--it was in the seventies by now. Some friends who had been there gave me the names of places--I'm not a museum-goer and certainly not a church--I don't want to see old churches. I thought that I'd like sidewalk cafés and that kind of thing. They said, "There is one sidewalk café that you ought to go to." And I did, huge expanse--not like the little narrow sidewalks here--a huge expanse with tables on it, and waiters serving. I went there, and I was sitting there reading and just enjoying it. Oh, and this friend had said, "And it's said that if you sit there long enough, you'll meet someone you know." That was supposed to be the story. And who walks up but James Baldwin. So we reconnected there, and he was staying outside of town in a little villa and invited me to a wild [laughs], absolutely wild party, as it turned out, that night, and we had a good time in Paris in addition to the times we've met here.

McGarrigle: There are a couple famous cafés in Paris where writers congregate. I wonder if that was one of them.

Henderson: Yes, that was one of them, and I just--. I'm such a bad historian, I should remember what that place was because that is a significant event. I should have taken notes. One of the things I regret, the few pictures I had with Martin Luther King I actually gave away [laughs], not knowing that was for me personally significant. Right after I got back to the Bay Area, people knew of my experience and I made some speeches. I went to Berkeley High School and wanted to talk to the class. I took some pictures and one of the students said, "Can I have this?" [laughs] So I give him this prize, [laughter] so I don't have any pictures of myself with King. I didn't have a good sense of history back then. It's just too bad, I wish I had taken down names and remembered things a little better.

McGarrigle: Well, the experiences stay on.

Henderson: Yes, oh yes, they are there, sure.

McGarrigle: Which is the important part, too.

McGarrigle: Did you have contacts with Coretta Scott King at that point?

Henderson: No, I've met her, but no, I've never really had any meaningful contact with her. She was not--she certainly wasn't ever down there. I mean, she was, but I didn't interact with her down there. He was always by himself. I had no contact with her.

I noticed that one of your questions was about women in general. I was talking about that recently with some people who had been involved in the civil rights movement. Women were really--the civil rights movement at that point was quite sexist, in the sense of the role of women. I think that it was--it probably was Stokely Carmichael, or one of the younger--when that topic came up, and said something infamous like the role of women is prone, or you know, just to keep the men company. And that was the attitude in those days, except for some strong women who came to the front. Diane--

McGarrigle: Nash.

Henderson: Diane Nash, and some women like that who emerged. But for the most part, they were peripheral. Again, in those days I wasn't thinking the way I think now, so it didn't seem

unusual. But looking back on it, they didn't--except for Diane Nash and a few other women--.

McGarrigle: It's interesting because they were certainly working behind the scenes.

Henderson: Absolutely.

McGarrigle: You had the women who were refusing to take the bus--

Henderson: Yes, exactly.

McGarrigle: Who were walking to work, and you had Rosa Parks, who was quite visible.

Henderson: Yes, and talk about an act of bravery right there. Yes, they were quite--but you know in terms of leadership, in terms of--I can tell you, the meetings I went to where it was King, and Young, and Bond, and Lewis, women weren't there. I never thought about it, but they weren't there in the big meetings where, "What are we going to do next?"

McGarrigle: The strategy.

Henderson: Yes, the strategy.

McGarrigle: At what point did Julian Bond become a more visible leader?

Henderson: I think [laughs] I may have told this story. When I first met Julian it was embarrassing, because even today he still looks--he sort of has a baby face. Handsome. But at that time, in '62 or '63, he really looked like a fifteen-year-old. I went to a meeting in a church, and they were talking about the events and the strategies. And there was this, in my perception, fifteen-year-old who was talking, and I was dismissive of him. Just--not because I wasn't listening, he was saying real things. But I thought, "Who is this kid? Where did he come from?" And it turned out to be Julian Bond. That was my first meeting with him.

From there I learned who he was [laughs] right after the meeting, and became increasingly aware of him as an articulate player in the movement. And I think he just grew and grew. He was more--in those days he certainly wasn't one to say, "Let's go get arrested--" he was more a strategist, but a very committed one. It wasn't as if he was afraid. That was his role. And I think he became increasingly--I think as the papers who were covering it, and I think there were ones who made the movement--became increasingly aware that there was this guy. He rose in prominence because they would refer to him and acknowledge that he was playing a significant--

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Henderson: It was late '62 that I think I first met him. The fact that I hadn't heard him I think is not dispositive of him. I think it indicates that he had not yet ascended, but that it was shortly after that he was on the scene. I think he was known to a lot of the young people and then the student movement before that. But certainly not to people like me and not to the press.

McGarrigle: Starting to talk about the FBI [Federal Bureau of Investigation] and Hoover. Of course, the FBI is quite prominent in the news in the last week or two. Hoover was an intimidating figure, to say the least.

Henderson: He was, and I remember when I first started with the Justice Department, and again, very naive about the way things worked--I mean, it was clear to me that the president was the highest [laughs] executive officer in the country, and Bobby Kennedy ran the Justice Department. And yet, you kept hearing these things they couldn't do or they couldn't get Hoover to do. I was mystified. You know, "Why can't you just--?" Then I sort of learned the real politic of it, that Hoover was a powerful entity unto himself.

We know now, from reading the books, that he got the goods on people in power and that gave him power. But Hoover, I felt then and feel more so now, was not only not helpful in the civil rights movement, I think he was an enemy of the civil rights movement. I think what we learned in the papers within the last month about the bombing of the church in Birmingham where the four little girls were killed--I personally do not believe it was coincidental or accidental that certain information that they had back then was not used to find the bombers then. I think that Hoover had his priorities, he had other investigative concerns in the South, and that he would not enforce civil rights laws in order to have the Southern law enforcement people cooperate on the things he was interested in.

McGarrigle: What kind of things do you think would have maintained his interest in the South?

Henderson: Oh, I don't know, whether it's bank robberies, or--

McGarrigle: Oh, okay.

Henderson: But just whatever other things that they did, that they needed the cooperation--and civil rights just got in the way. He had no interest in it, so his organization had no interest in it. And I don't know, I think--and I hope this isn't paranoia, that it was less than not having an interest in it, I think he was anti the goals of the civil rights movement, that he was opposed to those goals. But that's my view.

McGarrigle: Yes. Well, it certainly seems valid. He had such an enormous amount of power. It's quite awesome.

Henderson: Yes, he had tremendous, awesome power. And it's interesting, because you never heard jokes or things about Hoover then. I think everyone was afraid of him. And I think it's instructive now that he's dead, you hear stories about Hoover and jokes on TV about him cross-dressing. I think what it illustrates to me is more the fear then. That this was known back then, and I think it indicates his power that no one dared take him on, including the president of the United States. Or not just the president, Kennedy, the presidents over the years he was in power, didn't take him on.

McGarrigle: We talked a little bit about your experience with police brutality, and the sheriff who had said he had spent some time on the Hayward police force.

Henderson: Yes.

McGarrigle: And we can talk later about--when we get to your decisions, about the role that those experiences have played in your time on the bench. Were you in Washington for the March on Washington in August, 1963?

Henderson: Yes.

McGarrigle: Were you there listening to the "let freedom ring" speech?

Henderson: Yes, that was a wonderful day. There was a huge mass of people. And it's interesting, they almost didn't allow me to go because all the civil rights movement people were coming to town. I think, righteously so, the government, my bosses were worried about my having too close an identification with them. I think they didn't want me to be glad-handing and saying, "Hey, how are you doing, buddy?", when, again, we were supposed to be a neutral observer of these things, and I wasn't supposed to be a buddy of the victims.

But they didn't send me out of town. I think they were going to send me on assignment, they didn't. So I was able to be there and attend the march, which was very inspiring. I was astounded, because I heard that great speech that King made, I was astounded to read just recently--and over all these years I didn't know--that the "I have a dream" part of it was ad-libbed. I thought that was the text. But according to another book I just had on the desk there, and I loaned it to another judge--it's not *Parting the Waters*, but anyway--another book that's wonderful, covering this same period, pointed that out, that he had made a speech earlier at a church, that that was the "I have a dream." And he departed from the text that day, it was on the spur of the moment. It didn't have the right feel, and he improvised the rest of that great speech, which is, I think, remarkable, because it is such a great speech.

But anyway, I was there, and I know that there was a lot of anxiety about John Lewis' role. They had asked him, I believe it was Burke Marshall who was the head of the Civil Rights Division but it might have been Robert Kennedy--had asked the speakers to submit a copy of their speech, because there was great concern about this march. President Kennedy didn't even want it to happen, and finally gave in, but wanted to control it, cooperate and control how it went. And John Lewis had submitted a very fiery, controversial speech where he was naming names and indicting the government for their role. They really struggled to get him to change it and tone it down. It wasn't really known whether he was going to do it until he did. He did end up giving the speech he gave, which was what they had hoped he would do. But it was a lot of tension behind the scenes there, including the order of speech, and the content of the program.

But anyway, it was an inspiring day, but again I had no sense that it was an historical day. I'm amazed at this point, looking back, that I didn't have that sense. It causes me to look at what I'm doing now, if I go to anything worth anything I say, "Is this going to be in the history books?" [laughter] Or, "Is this going to be remembered?" because I certainly didn't have that sense back then, and I wish I had.

McGarrigle: It was so much a part of everything you were doing. It made sense that you wouldn't have seen it as historical.

Henderson: Exactly, yes. It just was another day at the office almost, for me, and I just didn't have the sense of it.

McGarrigle: I saw that John Lewis was honored recently. I'm trying to think of the name of the reward he received.

Henderson: Yes, he got the Kennedy award. Yes, the Caroline Kennedy--there is a picture of her giving him--

McGarrigle: --and Ford.

Henderson: Gerald Ford.

McGarrigle: Gerald Ford, right.

Henderson: Yes, Gerald Ford. "Profile in Courage" was the award. John Lewis for his early leadership in the freedom rides, and then those things, and Gerald Ford for pardoning Nixon of all things, which is interesting. Yes, that's right, that was just a week ago or so ago. John has a book out now that he's just come out with that I have, someone gave that to me. It's around here. We invited him--our court has a retreat once a year where we go to a place. This year we went to a place called Shamanad in Santa Cruz.

We talk about the business of the court. We meet with a group of lawyer representatives and talk about ways to improve the way we administer justice in this particular court and how we can better serve the community by our rules--and the bar, the lawyers who practice here. And we have a program, it's a three-day conference. This year, we invited John Lewis, who was the keynote speaker. I was so looking forward to that. And I got--my mother had to be rushed to the hospital the day before, and I thought I had better--so I missed that. I missed John, and that was just a few weeks ago that he was here. I would love to have seen him and reminisced about some things.

McGarrigle: Well, that's interesting, that present-day connection.

We talked about the great losses in this period, and how amazing it seems now they happened so quickly and so close together. I wonder what your thoughts are from today's perspective about the assassination of President Kennedy?

Henderson: I've told this story from another version, from a personal version. I'll talk about that first. Because I think I have mentioned that when I loaned the car to King, there was a big controversy down South about that. While looking back on it it was a relatively small event, the South seized upon it as evidence that the government, through me, was supporting the civil rights movement. Well, in 1963--by now it's '63--that was not good for Kennedy politically. He was still trying to hold the South, and I think probably there were already rumblings of what became Nixon's Southern strategy to get the South in the Republican. He was trying to hold together that very fragile coalition, so he didn't want word that he was playing sides on this, he was trying to stay as far away from it as he could and yet do his job as the chief law enforcement officer in the country.

So the Southern senators really seized upon this, and made a big deal out of it. They had scheduled hearings in Washington about this incident. I had, as I told you, initially

lied about it, and that was one of the problems I had. Well, I had lied in the sense that I said I did not drive Martin Luther King to Birmingham, which was certainly misleading. I didn't, but my car was used. And that was part of what really went on. These hearings were coming on. By then I had left and I was in either Los Angeles or Berkeley, I can't remember which. And just dreading--I was going to be called back there, and there was this--. And then the President got assassinated.

And I still remember the guilt of--at some point after the depression of what happened along with the rest of the nation, the second thought was, "Gee, they're not going to have those hearings." And I've always felt guilty about that, sort of a relief that, "Boy, they're not going to--." Because they didn't, because the hearings were aimed at him. Then when he was assassinated, there was no more political purpose in going forward with it. So in that sense, I felt off the hook, and there's always been that mixture of deep guilt. I think it might be the same kind of guilt that they talk about when your buddy in the next foxhole gets killed, and you're not. You feel guilty at the relief you feel that the bomb didn't hit there rather than yours. That's maybe not accurate, but anyway, that was--. But that's one aspect of the assassination.

I also felt a great loss for the things I was interested in, because as I have said earlier, I think that the more the civil rights movement got active, I think the more the president, and maybe even more so his brother, were committed to solving the problem. And this was such a dramatic change from the Eisenhower years, when--in fact, I've always argued that the civil rights movement was possible because of the Kennedys. Even though they were very reluctant participants at the start, they gave hope. And I think that's what--they would go out and do something, the civil rights leaders, and they got a response, even though it wasn't what they wanted. Whereas with Eisenhower [laughs], there was nothing. You could go out and beat your head on the wall and nothing happened, you stop beating your head on the wall. Whereas here, you beat your head on the wall, and the president says, "Oh, here's a bandaid." So then you--. And I think that is what was an important impetus for the civil rights--.

So when he was assassinated, I thought that it was a real loss for the civil rights movement. As it turned out, as we all know, I think in the same way that Nixon could go to China and a Democrat couldn't, a Southern president, Lyndon Johnson, could be even stronger than Kennedy ever imagined. So I think Lyndon Johnson was a much more forceful proponent for civil rights. So there the great tragedy in my mind for civil rights was the Vietnam War, because I think that if that hadn't come along and Lyndon Johnson had been re-elected, I think we would have made gains that would never be lost, because he was so forceful, and so effective, and was fully committed to civil rights. I mean, unlike the Kennedys, he would say on television "We shall overcome," and adopt the language of the civil rights movement. It was a great tragedy that we got involved in the Vietnam War which derailed him and stopped that.

McGarrigle: It was a surprising turn of events when Johnson, it became clear he was willing to take on that role, take on the South.

Henderson: Yes, exactly, it was surprising. And I think partly because he was a Southerner, he could do it. He was one of the wiliest politicians in the world. He had to assess what that meant, and I think he assessed that that would be his legacy. There was an article in the papers, a great historian at University of California gave the commencement speech. I

think he said that today the greatest problem confronting the American people is their failure to deal with the race problem. And I believe that. And I think that Lyndon Johnson believed it, and that he was going to--that was going to be his legacy, and it would have been a fantastic legacy, if he had just finally bit the bullet for the country, and--not get the whole thing, he couldn't have done it, but get a lot of these things behind us, and do an official position on it coming from the top, which is what they always asked Eisenhower to do, give some leadership. Their word back then was, "Why don't you take the little black girl's hand and lead her into the school and show some leadership?" He not only didn't do that, I think the signals you got was that he wasn't for all this stuff.

McGarrigle: Yes. Let's stop here, and then we can start--we have this huge body of material with the Civil Rights Act of 1964, and we'll get into that next time.

Henderson: Yes, okay, sounds good.

[Interview 5: June 26, 2001] ##

McGarrigle: We were just getting to your leaving the Justice Department. If we could take up again there, and I have at the top of the outline for today: how did the Kennedy White House handle the situation? I wondered if you met with President Kennedy or Robert Kennedy?

Henderson: No, I didn't, I didn't meet with them. I met with Civil Rights Division people, primarily John Doar, and then met with the FBI, who interviewed me about this. How did the Kennedy White House handle the situation, the situation being the--I'm going to call it crisis or tension, with my lending of the car to Martin Luther King. I think it was a very serious problem for them, I don't know if I alluded to this, in the sense that all these years later we know about the Southern strategy of losing the South, much of the South to the Republicans. I think that there was a fear then, and this exacerbated that fear because it presented a picture of the Kennedys not being neutral on this but having a black employee from the Civil Rights Division doing things in favor of the civil rights movement. In '63, that was a bad thing. I thought that they handled the situation with respect to me quite well, and in fact in the only way they could.

I think I mentioned that when I was initially asked about the situation, it was posed in the way, did I drive Martin Luther King to Selma? I said I didn't, which was true, but it also was misleading. It suggested that my car wasn't the car that he drove to Selma. And this put the White House and my bosses in an embarrassing situation. And I think a big investigation was underway to see what the deal was about this car. When I first saw that happening, I went on vacation. I had no appreciation for the politics that I'm now describing to you. I thought it was a little boo-boo about a car, and if there was any problem with it, it was who paid for the mileage. I mean, I just saw--had no idea that this was a big political situation, at least the way the Southerners were treating it. So I never corrected that. So I think that they handled it the only way they could, which was to ask me to leave. I certainly understood that and had no hard feelings about it.

Indeed, it was clear that even if I had stayed on, my value was lost, as I couldn't have traveled down South. My friends who worked with me in the Civil Rights Division told me--I never was able to verify this--that there was at least one arrest warrant for me in Alabama about that incident and maybe some other incidents. So my career was over as a civil rights lawyer, in any event. So I thought they handled it well. The one that handled it most well, in my view, was John Doar, who stood by me, gave me support when I really needed it. My confidence was shattered, I felt stupid for having done this on my first job out of law school. And John, even over the years, has just been a dear friend in that whole thing.

McGarrigle: It's very interesting that it's less than forty years later, and it's very hard to imagine the executive branch not standing behind civil rights.

Henderson: Yes, I know it.

McGarrigle: Yet here was a situation where they could not associate themselves openly with civil rights.

Henderson: They could not associate themselves openly, and it was the tenor of the times. Indeed, they so much couldn't, that as I think I mentioned in the earlier interviews, it became a logistical problem for me. Because many times I had no place to live. Others could live with a family, families would have had me live with them and they had plenty of room, but I couldn't because it created the same problem. Living with all the blacks that were involved in civil rights, it would suggest that I'm living with them, therefore I'm not--I don't know what the word is, a neutral, independent government attorney, but that I'm siding with the civil rights movement. Which I find curious now, that you have to distance yourself from the very movement or the very activity you're trying to enforce. But that was the climate of the time.

McGarrigle: You did mention last time that it may be that it took a Southern president to go in and do what Johnson did.

Henderson: Yes, absolutely. And then one of your questions, I was going to get back to that again, yes, about Johnson. That's right. Yes, I think that Kennedy--if I didn't say this last time--I think that he did play a very important role though, as hesitant as he was. Because prior to that, Eisenhower was president and he gave no indication, zero in my view, of support for the civil rights movement. He didn't entertain the civil rights leaders, he gave no hope that the government might do something. The great saying of the day was that he should take the little girl's hand and walk her into the school in Little Rock--I forget the name of the school. You know, he didn't even respond to that. Kennedy did, and I think one of the reasons the civil rights movement progressed under him was that he did give some hope that the government was listening and cared. And I think this energized the young kids in particular, that if they did something and got the right situation, the government would step in and help. So he certainly deserves credit for that. And I think I may have also mentioned that I think because his brother lived beyond the president's assassination, I think Robert Kennedy, in particular, grew. I think by the time of his assassination, he was a much stronger and overt, if I can use that word, supporter of civil rights than he had been at the start.

McGarrigle: Did you want to comment on Nicholas Katzenbach as attorney general, or other things related to that time?

Henderson: Not really, I think that--how did things change with President Johnson, I think I may have mentioned that. I think that he--this is me speaking, I'm certainly not aware of him saying it, but I think that he determined--I think he was a man who was taken by greatness, wanted to be great, wanted to be a great president. I think he saw his legacy as the man who righted the civil rights problem or the "race problem" (in quotes) in this country. As I have said earlier, I think he started doing it in a way that only a Southern president could pursue it. I think Kennedy, as I've already just said, couldn't do it. I've likened it to a Republican like Nixon being able to go to China, and a Democrat couldn't. There are certain things you can do because of who you are and how you're perceived. I think Johnson, as a Southerner, Johnson as a very strong personality, Johnson as a master politician, probably could have done most of the things he set out to do. And that's why I think the fact that the Vietnam War came along was a great tragedy, not only in and of itself for this country, but was a great tragedy for the civil rights movement in the sense that it diverted Johnson's attention and ultimately ended his political career. I think that was a huge loss. And I often fantasize about what life

would be like now, for African Americans in particular, had that not come along and had Johnson finished his agenda.

McGarrigle: Could you comment on what you think the agenda was, or what shape it might have taken?

Henderson: Well, I think Johnson's goal was to enact laws that would be in place, that would be designed to correct all of the social inequalities that he perceived. And I think one of the great myths of our country, one of the great racial faults of our country is to deny that the treatment that blacks have gotten since the days of Reconstruction actually exists. We're seeing it now. There's an article in the paper today about that, that we're in denial of it. The article in the paper today talks about Ward Connerly trying to get legislation passed that doesn't give racial information, on the what I think simplistic argument that, "Let's just be color-blind," and that statistics about blacks being stopped in cars, statistics about minority achievements in school, are just racially divisive. This article convincingly persuades me that no, you need to know how Latinos are doing in school, and what the dropout rate is, and what AIDS [Acquired Immune Deficiency Syndrome] is doing to certain minority groups. It's a myth in our country to say that this isn't helpful, and that if you have it, you can't do something about the racial inequities. I think that Lyndon Johnson was trying to enact laws that would help us deal and give us the means of dealing with all of the racial problems and inequities that I think certainly existed then, many of them remain to this day.

The larger problem, I can't answer that, is once the laws are enacted, would they be enforced? And would things really get better? I think our country has shown a great ability to not enforce the law of the land. One example is *Brown v. Board of Education*. Segregation in our school system is at least as great now as it was when *Brown* was passed. There was just massive resistance to ways of implementing it, busing, all of those kinds of things. So whether Johnson would have been successful, ultimately, we'll never know. I think there would have been improvements, though, because I think there are areas of the law that when it becomes the law, people reluctantly will abide by that law. There are other areas like schooling, which I think are more important to many people, because it involves their kids and what they perceive to be their kids' best interest in something as important as education, it just didn't work.

McGarrigle: [tape interruption] We are talking about the fact that Martin Luther King received the Nobel Peace Prize in 1964—

Henderson: Yes. As I said, it was a source of great pride in the civil rights community and the black community, and I think even more so. I recall that there was, in fact one of the books I'm reading or just finished goes to that period, where there was a lot of jealousy from Roy Wilkins and other leaders of the other civil rights groups that King was being treated like the leader of the civil rights movement, and they thought they were equally as important, and they thought that perhaps he was hogging the spotlight. I think one of the things that the Nobel Prize did was sort of acknowledge on an international level his achievements in civil rights, and I think he emerged as the true leader. Whether they accepted that I'll never know. But the civil rights movement, I think it served that purpose, and I think it just was unchallenged at that point that he was the man in terms of black leaders.

McGarrigle: Yes. We talked a little bit last time about Malcolm X, and the challenge that Malcolm X's views presented for liberals.

Henderson: And the other contingent of Stokely Carmichael and H. Rap Brown. I think--I don't know if I expressed this view, I'll get back to Malcolm X in just a minute, but I thought that--you'll have to let me know if I'm being redundant, I can't remember--but I thought that the young "impatient movement," I'll call it that, was going on at the same time, Stokely Carmichael and H. Rap Brown emerging as leaders of SNCC, you know, and following on the heels of people like John Lewis, who were much more moderate and I think much more responsible, really dealt--it's a little strong to say a death blow to the civil rights movement, but it certainly slowed the momentum of the civil rights movement. The call for Black Power, which sounded great, the ejection of Jews and other whites from their movement, was just very destructive. I think we still haven't recovered from that, and I think it was just that these young people--and they were young then--just didn't understand the history of this and didn't understand the politics of civil rights, and took the short route. And it was totally unrealistic to say, "Okay, Black Power. Black Power means we'll handle our own fate. We don't need whites," it was just foolish. We do, and we still do. We need to work at least with sympathetic whites to advance the cause. It just really, I thought, was a bad thing.

Malcolm X, on the other hand, I think did grow. I think Stokely and H. Rap did not grow. He evolved, so that by the time he was assassinated, I think he was an integrationist. He was certainly no longer an opponent of "whitey." He seemed to be developing a philosophy that we have to understand each other, and to advance. I thought that made a lot more sense to me, and I think if he had stayed alive, he was such a charismatic individual that I think he would have had a movement. He was competing with his former organization, the Black Muslims as they're called, I think he would have had a very powerful movement. It would have been more forceful than Martin Luther King's position. I think he would have continued to press, but I think it would have been much closer to the traditional civil rights movement in terms of the solutions he proposed.

McGarrigle: Yes. There really isn't someone who came after Malcolm X to carry that on in a charismatic role, or is there?

Henderson: I'm not aware of anyone who has that charisma or following. Maybe I'm short of memory, but I don't think anyone really emerged following his solution. I think it killed off that wing of the movement that he was representing and I think it fell back to the Black Muslims, who, as I understand it, were the ones who killed him. I think they killed his movement, and I think anyone who might have gravitated toward him from that movement went back into the movement, and that remained the alternative, I think.

McGarrigle: Is there more on this subject that comes to mind, things that you're thinking about, or that you would work into your own writings that I'm not capturing?

Henderson: Not really, no, I think that pretty much covers it in a fairly broad brush, my thoughts on that.

McGarrigle: I have "meeting Eldridge Cleaver at Troy Duster's house," and then "almost representing Eldridge Cleaver with Bill Keogh" [on the outline].

Henderson: And that's actually spelled K-e-o-g-h on Keogh. Yes, I met Eldridge fairly early on and knew of him through "lefties," we'll call them, people who were interested in him when his book *Soul on Ice* came out, and he was quite the hot item then. Then when he was released, he came to the Bay Area as a prominent member of the Black Panther Movement, and met him at Troy's house. Again, a very charismatic guy, who I thought --and this was my own view--was a bit taken aback by his celebrity, was trying to feel what that meant, what he could do, and how one did that. I think that was a new phenomenon for him. But I thought, at that time, again, that he really--his goal in life was to free blacks of racism, in some way. And I think the Black Panther party line was that you couldn't be submissive, you had to bear arms and you had to stand up to "whitey," and that was the way to do it. Again, even then, I know I certainly never thought blacks ought to roll over and be submissive, but that this kind of action was not the way to go to get the racial advancement and the integrationist approach that I always thought was the best way to go.

Almost representing him was an interesting story. By then I'd gone on to work at Stanford Law School. I think I've told the story. Jim--James Thomas--who at the time was the dean of admissions at Yale Law School, gave me a call and asked if I was interested in talking to Kathleen Cleaver, Eldridge's ex-wife. Eldridge had been over to Algeria, I believe it was, and had been back, and he was in jail, and was going to be tried for the things that caused him to flee to Algeria. And I said I was interested. I talked to Bill Keogh, who was the assistant dean for admissions at Stanford, as it turned out, Jim Thomas' counterpart. I should back up and say that Jim Thomas, I may have told a story about when I thought I was almost lynched in Forest, Mississippi. I was with a young summer intern from Yale and that was Jim Thomas. He was with me on that trip.

McGarrigle: When you were on the phone talking to John Doar?

Henderson: Yes, when I was on the phone. Jim Thomas was the kid at the time in the car. Well, he went on to graduate, and these years later was the dean of admissions at Yale. So he is the one that started this.

So Bill and I got very interested in representing Cleaver. Bill still is a superb criminal lawyer, and we had wanted to try cases. We had actually taught some clinical courses at Stanford together, and I admired him. This seemed to be a chance to handle something big, and of course, our idea, we were going to do it for free. We weren't in it for the money, we were in it--. First we met with Kathleen Cleaver, who introduced us to a young woman who was--I don't remember what they called her--a representative of Eldridge's. And we talked, and it was in the nature of an interview, what would we do, what were our credentials. We met for perhaps an hour in a, as I recall, a hotel in Palo Alto, where we were. When we left that meeting, Bill and I were a little puzzled. It wasn't the usual meeting, and we couldn't figure out quite what we didn't understand.

But we went on, and she left us with some questions that we wanted to think about, and we had a subsequent meeting a short time afterwards, answered those questions, and tried to clarify that we thought we were good, we thought she was going to be hard put unless you got a big name, you know, the equivalent of Johnny Cochrane or F. Lee Bailey now--that we didn't have that reputation, but we were good, we knew what we were doing, all of those things. We went back to convince them of that. And again,

when we left, there was a little something we didn't quite get. To cut the story short, we heard a while later that she had selected, or they had selected a lawyer from Boston, and we were told that the lawyer had met their asking price, which was paid them for the privilege of representing Eldridge.

And then we understood what we didn't understand before, that they were waiting for us to say, "We'll pay you," which was the farthest thing from our mind. We weren't going to pay to work for free! But that was what they did and apparently that's how they marketed this.

So we didn't represent Eldridge, and we actually felt better because we thought they were questioning our ability, questioning whether we could actually do the job, but it wasn't that, as it turned out. So that was a very interesting experience. Then as I think I may have mentioned, interestingly enough, some years after that, after Eldridge got out, you know, he sort of had a tragic decline. He was going into a clothing line, and was running as a Republican or something, and just what looked like, just trying to do whatever he thought he could to make a living and survive. He actually lived about a block and a half from my house, in a boarding house down the street. There's a coffee house on the corner of College and Ashby, and I live right above College. I used to go there, and Eldridge sort of held shop there, had a table and his belongings there, and it was sort of a sad thing to see the decline of this powerful guy of one time who just was rudderless at this point in his life. By then I think he had had his falling out with Huey, and it was a sad decline to see.

McGarrigle: I saw Huey Newton in a restaurant in Berkeley once, and he definitely seemed to be in a decline.

Henderson: Yes, I think he just--you know, I think those things happen with people who have fame thrust upon them in the way he did. I think it's the same thing with a movie star or a rock star. All of a sudden no one's buying their records, and no one is interested, and they walk in and no one cares, and they don't know what to do. They don't have a separate identity. And that's what I felt with him. He was the guy who wrote *Soul on Ice*, and he wasn't getting any reaction, or there wasn't any excitement. He was no longer one of the leaders of the Black Panthers, he was just a guy trying to come up with a new gimmick. And none of the new gimmicks resonated with anyone. And he was helpless, you sort of got that feeling.

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McGarrigle: At the same time that the Watts riots were happening in southern California there, was that kind of overt violence in northern California? That kind of eruption of violence?

Henderson: Not of that kind, not the wide-scale riots. There was the "Zebra killings" in San Francisco, if you recall, with "Zebra" being I think the police code for black on white crime, the black and white stripes of a zebra. There were demonstrations, much more activity up here, but I don't remember anything approaching the Watts riots up north.

McGarrigle: Did the Watts riots influence your thinking at the time and the thinking of people you knew at the time?

Henderson: I think it did. I think it influenced everyone's thinking, including what Dr. King called the white power structure, in the sense that it surprised everyone, it showed a level of black rage that I think wasn't heretofore realized. And I think it showed that that rage could get out of control and then be a destructive force. It led to commissions and studies, and some remedies about the things that were the source of the Watts riots.

Did it change my thinking? I don't think so. I think I was aware of these problems. I do remember, my mother lived right in the heart of this, and I called her the night of the Watts riots, and I remember getting sort of a blow by blow, because some of it was happening in my neighborhood. I remember her looking out the window and saying, "There go some kids walking down the street." Not on our street, which was a small residential street, but at the intersection down there, they had broken into the local furniture store and were walking down the street with a couch. You know, and sort of describing what was going on during the Watts riot, and I sort of felt that I was seeing the Watts riots through my mother's eyes.

But I think my answer would have to be that no, it didn't change my thinking. In a way I thought it was a good thing, not because it was destructive, but a good thing to let people know that there really was a problem. That this stopped, that there was black rage. We're seeing it here now in 2001 in the form of--what are they calling it when they stop blacks--racial profiling and that kind of thing. I think this was a precursor of racial profiling, and the precursor of--the black community has always known, and I have always believed including to this day that black people get shot in criminal situations that white people don't. There was an article in the paper two weeks ago by a white columnist in Atlanta protesting the shooting of blacks in questionable situations and depicting a situation where a former cop, who had psychological problems, went to his girlfriend's with a gun, with a loaded gun, and waving it, and shooting, and threatening to shoot. The police managed to arrest him without killing him. And I believe as that columnist did, that if that had been a black man, they would have shot him. So all of this was being expressed in the Watts riots, and I think there's still a rage in the black community, as there should be, about this different and destructive behavior towards blacks by law enforcement.

McGarrigle: On the way to our meeting today I was listening to the tape from our last session, and you mentioned that when you heard Malcolm X speak at Stiles Hall that there were things that he said that made a lot of sense to you. And I didn't follow up by asking you what those ideas were, and I'm wondering if that ties in to what we're discussing now?

Henderson: Yes, it does. In fact, it was those kind of things. I thought that Malcolm spoke in a very articulate--there were some great truths about the racial condition. I think, I never had any questions about the truths that he said. He did it in a very articulate way, I thought--well, you know, some of it was glib--the movie *Malcolm X*, there's a line they quoted, that "We didn't land on Plymouth Rock, Plymouth Rock landed on us." Well, that's glib, but I think it describes the situation, that we aren't treated like whites who landed on Plymouth Rock, and given the same privileges and give the same opportunities. And that was his theme, that things happen to the black man in the United States because he is a black man, that don't happen to white men. That was a constant theme, and he was right. And I think it resonated, that's why he was followed. I think the only difference was the solution he proposed for it when he was an early Black Muslim leader. That's why I said earlier I thought he showed a sign of growth. I don't think he ever denied

change, that these things were happening, that this was the condition of the black in America, but he did change in terms of how he thought we ought to approach and deal with them. That was the growth that I saw in him during his lifetime.

McGarrigle: I don't know where on the outline it makes the most sense to go, maybe you have an idea.

Henderson: Okay, yes, the "Summer of Love," I sort of remember it, and remember driving around Haight-Ashbury looking at it and beholding the flower children, but I don't have much more comment about that.

Richard Nixon in 1969 I thought brought an interesting approach, or interesting response to the suspicion in the black community about his presidency. I remember that his theme, his racial message to blacks was watch what we do, and not what we say. And that was always hard to understand, but I understood him to be saying, we're going to do things that are good and productive for the blacks, we may--I don't know what the rest of it was, we may have to say, because we're Republicans, or because we have a conservative wing, we may have to say things that you may not like to hear, but you would be better to watch what we do, and you'll see that we're doing good things for you.

Well, that was his message, but--and I think he did try to do some sort of minimalist kinds of gestures towards the black community. But certainly, at least the people I ran with and talked to, he wasn't viewed as a friend of the civil rights movement. I'm not aware of anything long-lasting that he did to benefit us. I guess that's my response to Richard Nixon in those years. I've already mentioned the Vietnam War, and how I thought it was, as you well know, disastrous for the country, but also disastrous for the civil rights movement because of diverting Lyndon Johnson and the country's attention from the civil rights problem, and ending Johnson's--causing him not to run for re-election.

McGarrigle: Did the Vietnam War politicize groups who had not been previously politicized in a way, because young men of all backgrounds were being sent overseas?

Henderson: Probably so, I think it did, in fact I know it did. I know that I was at Stanford Law School at the time, and it was a very big issue. I think that students that otherwise would have been studying hard and going on got very involved in protesting the Vietnam War. I suspect, and I know some of those students, some of those students were also the ones who were very active in the civil rights movement. I know some of the students from Stanford got so involved in the civil rights movement that several of them became really activists and got involved in very radical kinds of things. They got involved in, I think bombs, there were bombs on campus, bombing the president's office, and I think some of the expression from the Vietnam anger went over into the civil rights movement in these ways, very radical behavior. I think a lot of students were radicalized generally, and to that extent it probably got them involved in the civil rights movement.

McGarrigle: Before we talk about your time at Stanford, why don't we talk about your return to California and the neighborhood law practice you worked at initially in West Oakland.

Henderson: Yes. Okay, I think I may have mentioned, my return to California was noneventful. I stayed back East trying to write about the experience with the car and what I'd seen down South. The combination of running out of money, because I no longer had a job, and not having very much writing talent [laughs] I suspect, it wasn't coming along apace--I came back to California. Sort of, it was a very low period in my life. As I said, I felt a failure. I felt I had failed on my first job out of law school, my first real job. And didn't really know what I was going to do other than I had a law degree and I was probably going to practice law. I came back--as you know, I grew up in Los Angeles, I didn't want to go back there because I really loved the Bay Area--and moved into an old rooming house that I had been living in as an undergraduate, charging something like--in those days, my recollection is thirty-five dollars a month or something--and trying to decide what I would do next. I, in ways I can't recall, came upon a fellow who was a year ahead of me in law school. Don Warden was his name at the time. And he had graduated--very, very dynamic, brilliant man who had started an organization called the African American Association. They had a radio program on one of the black stations, where he spoke about black problems to the black community. And of course that got him business. So he had this thriving little neighborhood law practice on Adeline Street.

I started off, I think I was still trying to do a little writing when I got back here, and I was trying to support myself. I started off essentially making court appearances for Don. You know, "Go over to Oakland Superior Court and make this appearance for me, or continue this case, or plead this case." I can't remember, I would do it, get a couple of hundred dollars or something. And that did it, because as I said, rent was something like thirty-five, and I was not living a fancy life. And then finally at some point, I decided that the book wasn't going to pan out, or at least that I wasn't going to devote my time fully to writing the book, that I had to get back to the practice of law. So I joined Don's firm along with another fellow, a friend of ours, Bill Holliman, H-o-l-l-i-m-a-n, who had graduated at the same time we did, but from Hastings Law School.

We formed a firm called Henderson--and I don't know why I was named first--Henderson, Holliman, and Warden, on Adeline. It was your typical neighborhood practice, it took everything that came in the door. Much of it was criminal, there certainly were no big corporate cases that came in. But it was your typical divorces, criminal, some personal injury, that kind of thing. A very interesting practice, and I enjoyed it, and I thought I was doing something. But I soon got the feeling that--you know, after a number of months, I've lost the time frame here--I hadn't done things like taking depositions, and the things that real lawyers do. Someone would come in on Thursday or Friday and say, "Gee, I've got to be in court on Monday." And in those days the bar had a little book. And I said, "What is it?" "Well, it's drunk driving," I'll say. And you'd look in your little book, and the fee for drunk driving was \$500, or whatever it was in those days, and you say, "Okay, that will cost you \$500." They would only say, "Gee, I only have \$397.68." "I'll take it," and you'd go into court. That was the nature of it. You made a lot of money, because that adds up, but I didn't feel I was really going to grow as a lawyer, that ten years from then I would have this thriving little neighborhood practice and never have a big jury trial, or never learn how to do a big case, a civil case.

So, as I think I mentioned, in the course of coming to this realization, I bumped into another fellow who was a year ahead of me in law school, Rod Duncan. Rod was

practicing in Oakland with a state assemblyman at the time, Nicholas Petris. I believe I must have told Rod that I was doing this, but that I wasn't in it for the long haul, because he ended up saying, "Well, why don't you talk to us, I think we want to add a new lawyer." If I remember correctly, I believe he specifically said they would love to have a black lawyer with the firm. So I went over and talked to them. It sounded more like the kind of work I wanted to do, where you really did the things that I now see as a federal judge. You do investigation, you hire investigators, you take down depositions, you do discovery research, all the things Henderson, Holliman, and Warden weren't doing.

And so I went over to that firm, and just essentially, I felt so bad about it. I thought I was abandoning Don and Bill. But I had to do it. So whatever equity I had in the firm I just gave up, I didn't ask for my partnership share, I didn't ask to take any cases with me, which you usually do when firms break up. I just left it, left everything to them, including even some uncollected bills from clients. I went to Fitzsimmons and Petris. I began to practice law there, and it was more to my liking in the sense that I was feeling I was going to grow as a lawyer during that time.

McGarrigle: I thought it was interesting, I read in something I had read about you that the firm--and this makes sense given Nick Petris' background--handled quite a bit of Greek probate matters. I thought that was such an interesting connection.

Henderson: It is. Well, Nick is Greek, and he was an assemblyman and he was very, very close to the Greek community. I think every Greek in the area knew Nick, and I think came to him to be represented, or most of them seemed to. And of course, many of them, I learned, wrote wills. I think it may be a tradition in the Greek community, they left money or things to their family or their church in Greece. Then when they died this had to be probated, and I did a lot of this probate. So I sort of started to learn the arcane procedures for seeing that the money got to the church in this little town in Greece, and all of these things. So it was very interesting, a very interesting part of the practice for me.

McGarrigle: Did you ever have follow-up on the other end? There must have been communication with lawyers in Greece or representatives of these--

Henderson: There were, during the process of that, yes, I talked with them. As I recall, to communicate, we didn't have e-mail and things, now we'd probably do a lot of that by e-mail. Then it was by phone, and that was unusual, so it was mostly mail. You would do it by mail, and probably airmail, I can't recall.

McGarrigle: And then I understood that you did some criminal work as well?

Henderson: I did, and it's interesting, I was thinking about that. For Fitzsimmons and Petris, I did the criminal work in the firm. And I think it's because I did criminal work with Henderson, Holliman, and Warden, but it was of a small nature. But I had experience in criminal law and the others were civil lawyers. So when something criminal came into the firm, I did it.

I think a transitional point for me was that we represented a couple, David and Connie Moya, who became really good friends. They had a cosmetology kit business. I liken it

to when you graduate from law school, you take a bar review course so that you can freshen up. Well, this was the same thing with cosmetology school. When you want to get your license to be a cosmetologist, you have to take a test. Connie and David devised a system where you packaged a little kit with the curlers, little things--and they would rent them to the students, and they sort of dominated the field, and made a lot of money doing it. We represented them, and I ended up representing them. One day, David Moya's half-brother killed someone in Los Angeles, where David and Connie were located, and they asked me to represent him. And because I did the criminal law for the firm, I undertook it.

Looking back on it, this was probably 1966--you know, I look back on it, it was presumptuous of me. I had been out of law school four years. I had never handled a first-degree murder. I had handled some felonies. I took it on, and fortunately--I always look back on it, if I had lost that case I would have still been haunted by it, because I think the explanation would have been someone with more experience should have represented my client. As it turns out, though, I won the case, and it was quite a victory. And I suspect I won it because I was scared, and I worked harder than the good lawyers [laughs] would have worked on it. I just--there was nothing I didn't know. And I remember during the trial I was so prepared with everything that I could hear the question as the prosecutor was asking it, I knew--.

Anyway, I won the trial, and it was a serious trial, because he was accused--and I say "he," I can't remember my client's name, David's brother. It was also Moya, but--no, it wasn't Moya, because it was his half-brother, I can't remember his name. But he was accused of killing a police informant in a bar in the Hispanic part of L.A. And the prosecutor, when I went down to talk to him, was so convinced that this was a gangland type of slaying of one of their informers, he wouldn't give me any kind of deal. At that point, I probably would have recommended certainly that he accept a manslaughter--who knows about second-degree murder. But he wouldn't even offer anything. That--just plead out first degree. And of course I couldn't do that, so we went to trial, and I convinced the jury, as I was convinced at the time, that it was self-defense. Now the consequence of that was that it was fairly big news in the Hispanic community, and I sort of got a reputation of being a really hotshot lawyer who could get you off if you had a serious charge against you.

I then had to think about that, because I had had a couple of other cases that were pretty good victories. I had represented a woman in a Montgomery Ward store in Richmond accused of shoplifting, and of being part of a shoplifting gang. The detective who says he saw her reach up and get a rack of clothes about yay wide, I'm holding my hands apart probably two feet, and take those clothes, lift them off the hangers, fold them in half, we're talking about dresses and things, and put them between her legs and walk out. And I was incredulous, you know, because that is a big bundle of clothes, and I had the clothes there. I folded them, and I put them between my legs, and I couldn't even--you know, I could barely stand, my legs were--. And I convinced the jury that this was impossible. And I think part of the ability to win that case was I really believed that. Well [laughs], I learned after the trial that there are gangs that do that and they have learned! They can really walk naturally!

But the point I'm making is that up until then on my criminal cases, I believed in my clients. You know, some of them I believed they did it but they weren't bad people, and

I was going to try to get the best deal. But they certainly weren't professional criminals. After this murder trial, I started getting calls and attention from what I thought were real criminals. They did these things, and they just wanted a good mouthpiece. That offended me. That wasn't what I wanted to do. I had to make a decision, I probably could have had a, I think a rather successful criminal defense practice, but I didn't want to represent real criminals who wanted a good-- So that affected me, and in a sense it may be why I'm not a good criminal defense lawyer this day, because I had no taste for it at that level.

So I continued to practice with Nick Petris until the poverty program got in full implementation, Johnson's poverty program [the War on Poverty]. They were funding legal aid clinics, legal aid offices throughout the country. I heard from Rod Duncan that they were opening up a legal aid office in East Palo Alto, and that appealed to me. I was ready to leave Petris because I was at that crossroads, for many reasons, in what I wanted to do. So I went and interviewed with the director of the San Mateo County Legal Aid Office and got the job, and moved over to East Palo Alto to head that law clinic.

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McGarrigle: Did it require that you move your household?

Henderson: It did. I resisted it for a while. I mean, they wanted me to live in the community, that was in those days, this was, I think we're now at '66--the nature of these things, to show your commitment to the community by living there. But I got a moratorium, and I commuted from my apartment in Berkeley for quite a while. But it was an awful commute, and I eventually did move to East Palo Alto, probably six months later.

I should mention, by the way, that this job transition continued. I moved probably every three years until I got to Stanford and stayed eight. And now that I'm a federal judge [laughs], I think most of my colleagues had two jobs or one job before they became a judge. I think people who don't know me and are trying to introduce me at something, it's almost embarrassing, you know [laughs] that I went from here to here, and the ones who have enough confidence, that he couldn't hold the job. But--and they feel--I think the ones who take it seriously don't know quite how to present me, or they omit talking about my work history. Because I really did--I've said this and it's true, I never had a job I didn't really like, so it wasn't that I was getting out of something I didn't like, but I always saw something I thought I would like better. And so I would move to something. And it was not an upward climbing kind of thing. If you look at it, sort of at best it was lateral, and I wasn't like ambitious and trying to head someplace, as much as trying to find the perfect job.

McGarrigle: All the jobs were the perfect precursor to your work as a federal judge.

Henderson: Yes, interestingly enough, but quite by accident, when I look back on it, there was no pattern to it. Including--I noticed one of your questions--I ran the Legal Aid Clinic for three years until one day one of the students from Stanford who worked for me mentioned that--we're now in 1968--that the school was graduating its first black, in 1968, a woman named Sally Ann Payton, who now teaches and has for many years been on the faculty of the University of Michigan. I thought that was incredible that in 1968

Stanford Law School had never graduated a black. I know my alma matter, Boalt, hadn't done great, up until that time they had never had more than two blacks in any one class. But at least they had that over a number of--.

So I went over to the law school to make an inquiry about this. How could this be? And began talking to the dean, who assured me that it was certainly not discrimination, it was a matter of the entrance requirements, and the pool that they drew from. Anyway, he ended up offering me a half-time job to set up a minority program at Stanford. I thought about it, and I thought that I would like to do that. I thought it would be important to set up such a program, it would benefit a lot of minorities and benefit the law school. Because even then, before I knew the term diversity, I thought diversity was a good thing for institutions and that Stanford could benefit from it.

So I went half time at Legal Aid and half time at Stanford before realizing very quickly that, I think the way I put it is, there is no such thing as two half-time jobs. I was essentially working certainly 85 percent on both jobs, and couldn't keep up. I had to decide, I had to either go back to Legal Aid, or go to Stanford. And at that time I had a young assistant at the Legal Aid office that I think was ready to take over, and it was a good opportunity for him. So I went over to Stanford full time. I think in '68 I was half time, so sometime in '69 I went over full time as assistant dean for undergraduate affairs. My duties included in part setting up and operating a minority admissions program.

I did that until 1976. I was very proud, I remain proud of the accomplishment. The school kept the commitment it made to me, I got commitments of money and support for what I was doing, including money to travel and bring minority students to the campus to see it and recruit them. They did all of those things, so that by the time I left the school, 20 percent of the entering class was minority. Minority in those days we defined as black, Chicano--which is what now are probably called Latino, Hispanic--and Native Americans.

McGarrigle: And not Asian?

Henderson: Not Asian at the time. There was a belief at the school, and I think I shared the belief, that Asians performed well and didn't have the kind of--as a group--the kind of profiles that needed the program, that it was a matter of whether they applied, and it was felt that they had excellent undergraduates, but that many of them simply went to science things, that there was no dearth of people who had the qualifications to get into Stanford. That was the belief then, I don't share that anymore. But that was the perception. So we limited it to those three groups.

McGarrigle: Was that a position that was created uniquely for you?

Henderson: It was.

McGarrigle: It was.

Henderson: I was the first black administration or faculty at the law school in the law school's history. And it was created especially for me. I negotiated with the dean about what they would call me, what my title was, what my salary would be, and what my duties

would be, and that's what we came up with. We had talked about special assistant to the dean, and all of those kinds of things, and we settled on assistant dean, which was a mainline position, which I thought was better for the program, rather than--I was suspicious of "special assistant for minority affairs" kinds of things.

McGarrigle: That really took some thought on the part of the dean. I mean, the dean must have been ready to commit the school--

Henderson: I think he was, the dean--

McGarrigle: --and he must have really felt strongly about having found the right person to help him.

Henderson: I think so, I think he was ready to move, and I think it was the tenor of the times. Martin Luther King had been assassinated. I think the public was conscious of the need to do something racially, and I think he was a part of that. And I think he--that's why I said, I think he supported me in important ways. And that was important. I wasn't going to go over there if I thought they were just going to use me to showcase, "Well, we now we have a black employee, everything is okay." I wanted to go far beyond that and actually work toward solving the problem that brought me over there--only one black graduate in the history of the school.

Part of my driving force for leaving a job I really liked at Legal Aid was that I believed at the time and still believe that lawyers are a powerful force for change in this country. And I just thought that an excellent school like Stanford ought to be producing black lawyers and minority lawyers, that I thought most of whom would put their talents to helping solve some of these problems.

McGarrigle: What was the environment like initially when you got there, and the reception among your fellow faculty and administrators?

Henderson: I thought by and large it was supportive. I certainly, to this day, have some very good friends from the faculty. I think there was some resistance, some people were friendlier than others. But I certainly had no overt hostility. I think some people just didn't believe in what we now call affirmative action. That wasn't a term then, as I recall. But they didn't particularly like it, and they weren't going to let it intrude on their faculty prerogative. But by and large it was supportive. And indeed--some surprising support. Some of the more--people who had reputations for being conservative were some of the bigger supporters, and they were people that would come to me, or I could come to them, and they were a tremendous help in what I wanted to do. So it was very gratifying, very gratifying.

One fellow who was an active Republican--and I'm not using Republican in the sense of racist, you know, in that--but you expect them to be less receptive than Democrats, at least I do. He was just a giant on this. I could count on him to do anything almost that helped these kids stay in school, helped me get them in school, and make programs in the school that worked for them. So it was a good experience, and as I said, to this day I have some very, very close friends. Just had dinner the other night with one of those faculty and his wife who were paying me off with dinner for having performed a wedding for their daughter, who was a little girl at the time, and now is grown, and a doctor, and married. So it was a very fulfilling experience for me.

McGarrigle: I met with Barbara Babcock initially, in the very beginning stages of our project. I think she probably arrived [at Stanford] the same year that you did, or around--?

Henderson: One year after I did. She came in, and I remember greeting her at Mike Wald's house, so I was there when she came. But we are still very good friends. Yes, Barbara is an important friend for me over all of these years.

McGarrigle: She must have been one of the first women or maybe the first woman at the law school.

Henderson: She was the first woman at the law school, yes, and the first tenured faculty member.

McGarrigle: I know in my readings I have come across Anthony Amsterdam's name.

Henderson: Oh gosh, Tony. Tony came a few years later from the University of Pennsylvania. He was one of the big academic stars in the world of law schools. He became not only a very close friend, but just an inspiration. I still say that he's probably the brightest man I've ever met. Just a remarkable mind that's hard to describe unless you see it. I had been trying to write an article while I was at Stanford. I felt while I was there and I was doing some teaching--although I was an administrator, I wasn't on the faculty track--I thought I wanted to do some writing about these things. I had done a lot of research in forming an article on the nature of discrimination in our legal system. So Tony came, and I got to know him and realize what a brain he was.

So one day I called him and said, "Tony, I'd like to come up and talk to you about an article I've been writing." He said, "Okay, well, why don't you come up at three o'clock?", or whatever it was. And I went up, and I described it. And keep in mind, I hadn't warned him of what I was coming up to talk to him about--and got into it a bit, and he said, "Oh yeah, well, what you want to do is look at," and I'll make up the case, "you want to look at *Smith v. Jones*, that's in volume six of the U.S. Supreme--" [laughter] It was just--and you have to be a lawyer to understand, nobody can do that. And it was just there. And I got the feeling that if I had had another subject, he would have done the same thing, that he just--.

Anyway, so Tony, as you can see the glow, he was an inspiration. One of the things I learned, as smart as he was, nevertheless he worked harder than anyone I saw. That inspired me, because I thought I'm mediocre, I'm not that smart. I've always thought of myself as a plodder, I work harder than the other guy to get wherever I get. And it was always an inspiration to see that the really smart guy works harder, too. It pumped me up a little to work harder.

I always think of a thing that John Doar told me that has stuck with me over the years when I'm working on something important. We were driving somewhere on a country road in Mississippi or Alabama and we were talking about a lot of things. But the thing that stuck with me from that day was he said, "You know, Thelton, the most successful salesmen are the ones that ring the extra doorbell at the end of the day." And somehow that always resonated with me, and I always tried to ring that extra doorbell when it counted, to do something right. Tony just reminded me of the guy that rings three extra doorbells each day, and it has been an inspiration to me.

McGarrigle: I have to say for the historical record that all of your friends and colleagues have warned me about your immeasurable modesty.

Henderson: [laughs]

McGarrigle: At the same time they expressed their pride in your brilliance. So you need to know that among those who are close to you and love you, that's the--.

Henderson: Well, that's nice to hear, and I certainly hope I'm not accused of false modesty. I really believe the things I say. I'm still baffled by it all. I went to a baseball game last night with my old law partner. Sandy Rosen's firm got a big block of sixty tickets and invited a lot of people. I was sitting up there, and I was just sort of astounded. Probably a half dozen times--these were lawyers and people in the legal profession, would come up--I think maybe it's because I'm getting old--but they would come up and say, "I just want to shake your hand and say, 'Gee, I've admired you.' " And those things baffle me. Because if you talk to my clerks, I sit here, and I render opinions like all the other judges, and I'm not aware of doing anything that warrants that. So anyway, it's not false modesty, I'm genuinely puzzled [laughter] by whatever it is.

McGarrigle: Anthony Amsterdam has done all kinds of interesting things, and death penalty work.

Henderson: Yes, death penalty--

McGarrigle: It sounds like that has been his focus.

Henderson: Yes, that was his focus back then. I think we can say that Tony almost singlehandedly was responsible for overturning the death penalty for a while in California and nationwide. He was the foremost man on that. I've since then come to know a lawyer who has done very well in San Francisco, Jerry Falk, who was with Howard, Rice, Nemerovsky [and Falk], who was a young assistant, worked with Tony then as a very young lawyer, and Jerry himself is a brilliant lawyer. They just did a fantastic job on the death penalty. Tony just came out with a book within the last two weeks, along with a social scientist, that my friend Troy Duster bought and was reading. I was over at his house recently and read it. I could barely understand the book [laughs]. It's very complex theories, but very coherent theory that only Tony could write as clearly about as complex a subject. So he is still very productive.

I thought it was a huge loss for him to leave Stanford. Stanford lost him, I think when all was said and done he was a New Yorker. I think he and his wife Lois wanted to get back to New York. But it was a huge loss out here because he inspired so many young lawyers to do civil rights things, to work on death penalty things and fight the good fight. Now he does it back in New York, at NYU [New York University]. So it's certainly not lost, just moved back to the East Coast. Yes, one of the people in the world I admire most.

McGarrigle: It sounds like Stanford as a whole was supportive of what you were doing. In terms of the trial advocacy courses that you taught as well, was that accepted by the faculty? It was something that was not a purely academic subject.

Henderson: Oh yes, I think so, I think it was accepted by the faculty. There is academic freedom, so that I taught a course in criminal law with John Kaplan, who has now passed on. So you know, another person isn't going to say to John, "Why are you teaching a course with Thelton?" I mean, that was the nature-- I taught a wonderful juvenile law course, defending juveniles, with Mike Wald and Bill Keogh. That's where I got to know Bill Keogh.

I taught--and this is embarrassing, having just described Tony, who no one can match, as far as I'm concerned--he went on sabbatical, and he taught one of the more popular clinical courses, what was it called--it was "Defense of the Criminally Insane" was the official title of the course. Anyway, Tony went on sabbatical, and he taught it with a wonderful psychiatrist, Don Lundy, who went on to become one of the better known expert witnesses when there was a criminal insanity defense. They taught it. Tony went on sabbatical, and I like to say I stepped in and took Tony's place, which is insane, because those students that year didn't get their money's worth, in the sense of getting Thelton Henderson doing what Tony had done the year before. But I had sat in on the course enough before he left that I think I could at least try to do it the way he was doing it, I knew the materials. So those were the courses I taught, and I taught a civil procedure course on my own, which I very much enjoyed. And yes, they accepted me.

Indeed, let me say this, my feeling--I went there to--as I said, I never had a real agenda --I went there to set up the minority program. They offered the teaching and I thought, "Gee, that's fun, I'd like to be a teacher." I taught those things. I believe to this day that--because they had never had a black faculty--that what Stanford was doing was trying me out and preparing me for a faculty track. I wasn't interested in that, and I don't think I was that good a teacher at the Stanford level, my own view. And again, it's not false modesty, those guys were really smart there. I don't think I had the teaching experience or interest to step in and be a tenured faculty member who only taught and did research. But I think that was their goal, that they saw someone that they liked who was popular with the students, seemed to fit in. And I think they were prepping me to teach, to slowly shed the administrative duties and be a teacher. Now, no one has ever said that. That was my perception of the way they presented things.

McGarrigle: Yes. I'm struggling for another name here, the constitutional law scholar who was at Stanford.

Henderson: Gerry [Gerald] Gunther?

McGarrigle: Exactly. Was he on the faculty at the same time as you were at Stanford?

Henderson: Yes, he was on the faculty, and a giant. At that time, Gerry was on the short list for the [United States] Supreme Court. I mean, he is a brilliant scholar, and his name was very often mentioned, if the right opening came up, that he would be appointed to the Supreme Court. Gerry was one of those guys who was a huge supporter of the minority program. He came to me one time. It was sad, I had admitted a young kid who was just in over his head, it was just one of those--couldn't guess it. Gerry had a paper that he had assigned to write about the Interstate Commerce Clause. This kid was in the last throes of his time at Stanford, and he turned in a paper entitled "Ruchell Magee and the Interstate Commerce Clause."

Ruchell Magee is a famous prisoner at San Quentin who is still in prison. Oddly enough, as a federal judge, I sometimes get habeas corpus petitions from Ruchell Magee. He writes petitions. The thrust of the paper was that, how can I as a student think about things like the Interstate Commerce Clause when my black brothers and sisters are-- You know, it was a total cop-out. Gerry, instead of just giving him an F, really pondered, does this deserve attention? And he came to me, and--so he cared. Instead of just saying, "This is an F, because we're not talking about Ruchell Magee, this is about--" And he was a big supporter, and did all he could, I think, to help the students and spend time with them and help them understand constitutional law as he taught it.

Again, he was another--I've been inspired, I love smart people, somehow they just seem special, and Gerry was one of those guys. I like being around them, because they articulate things, and I go out and try harder. "Gee, I want to--there must be a way." It's like if you saw somebody with a perfect body, you know, I would go out and lift more weights to try to do it. I don't know what I did to try to get the perfect mind, but I read more, and tried to. And he was one of those guys that did that, just an absolutely brilliant constitutional scholar.

McGarrigle: Well, let's end for today, and then finish up a little bit with Stanford and pick up more maybe about your life in Palo Alto before you made the decision to come back to Berkeley.

Henderson: Yes, okay, that would be interesting.

McGarrigle: It would be nice to finish today talking about LaDoris Cordell, who you admitted to Stanford when you were there.

Henderson: Yes, I did. LaDoris and I have been fast friends over the years. I swore her in when she was appointed a judge by [Governor] Jerry Brown, and we've been very close over the years. To begin with, I admitted LaDoris--I don't remember the year, early on--when I was running the admissions program. The reason I remember it so well was that she went to Antioch [College], and Antioch, at least at that time, didn't give grades. So all I had to go on, there were two things you looked at in those days to admit someone to Stanford. You looked at their grades, their GPA, and the quality of the school, you factored that in. So that a B plus at Podunk College was different from a B-plus at Harvard or Yale or one of the top schools.

The other thing you looked at was the LSAT score, Law School Admission Test. So all I had was her LSAT score, which was a good one, but it was not good when you looked at the people you were admitting at Stanford, where the average LSAT was a 97th percentile. So I wasn't sure what to do with her, no grades. She was very talented. She was an artist. She wrote for the school paper. She played tennis. She sang. She was a performer. And I thought, she was a dilettante [laughs]. She can do all these things, but she probably doesn't know how to study. Then I was talking to people and said, "Look at this amazing young lady, but I don't think she's ready for Stanford. I think she can do a lot of things, but--" And someone pointed out that, "Gee, aren't you penalizing her for being so broad-ranged," and that gave me a new perspective.

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Henderson: LaDoris Cordell. I looked at it again, and I thought, "Okay, I'm going to admit her." And it turned out to be one of the best admissions decisions I ever made. I don't get any credit for it. She was a whiz at Stanford, did--now, looking back, I should have known she would do--did very well in class, was a school leader, and still sang [laughs] and did cartoons. It was just amazing.

She graduated and got an NAACP--I want to say fellowship, but it was an internship or some award that they gave to encourage young law school graduates to work in minority communities. She got one of those, which included a sort of a stipend to help her along, as she built up a practice. She set up a law office in East Palo Alto and brought that usual energy, was doing a superb job. You have to be five years out of law school, or have five years experience before you could be appointed as a municipal court judge, back in those days. So I think five years out of law school she sought a judgeship, and got the judgeship. Jerry Brown appointed her.

I think I might have played a role in that because a classmate of mine, Sam Cohen, very close to Jerry Brown--Sam had helped Jerry set up and run the Agricultural Labor Relations Board, or ALRB, I think it was called. It was the same project that propelled Rose Bird to the [California] Supreme Court. That's what she started working on because Jerry Brown was very interested in Cesar Chavez, and this board was designed to help the farm laborers get due process and fair access to the system.

So Buzz, I called Buzz, and told him about this bright young lady, and Buzz did the rest. I think he helped on that end. In any event, she got the appointment and asked me to swear her in, which I did, and then went on to a sterling career. First on the municipal court, and then she ran for election and got elected to the Superior Court [of Santa Clara County]. Watching that election and watching LaDoris, I was always--and I think Barbara Babcock shares this, she is a big fan of LaDoris--we always said we're not sure whether she should be a judge or a politician, because she's so active, so articulate, understands politics so well, that she would have been a brilliant politician to boot.

Anyway, I think because she's so bright and active, she ended up just last year, after eighteen years--I think you have to have twenty years in to get your full retirement--she sort of tired of judging, and I think also she's very outspoken, and it alienated some of her white male colleagues who belong to a club that excluded women and minorities. She just said it. You know, judges are supposed to bite your tongue and not say--she's not like that. So I think also she had alienated a number of her colleagues with her outspoken comments about these things, so she left last year before her retirement vested and took a job as vice provost and special counselor to the president at the university [Stanford]. I was talking with Barbara Babcock a couple of weeks ago, who has been in closer touch, and says she is loving it and doing a good job. So I suspect that is what LaDoris will do probably until she really does retire. But she is a marvel, she's again one of those special people I've had the privilege of knowing over the years that I feel proud of. It's one of the things that, if there's any legacy from my days at Stanford, she's part of it, for admitting some people like that who have gone on to do wonderful things.

McGarrigle: That's a great story about your having discussed her application with other people.

Henderson: Yes. Well, I was looking for guidance. I felt that I was missing something. It turns out I was. And I don't know, to this day it's not clear to me I would have rejected her, because I do a lot of talking out loud. Even here at the bench I'll get my clerks in, I'll talk out loud about what I'm thinking about or ruling. And I was doing that with her and playing through the scenario of whether she was a dilettante--. I don't know how I would have ended up, I would hope I would have admitted her anyway. But this one person whom I can't recall I think really set my sights right in terms of, "Well, aren't you penalizing her," as I've said, "for being that good, and you ought to at least think of it in that context." That helped me.

McGarrigle: Well, let's end there, and then we'll pick up again in a couple of weeks.

Henderson: Okay, fine. I've got the date, I think July tenth.

[Interview 6: July 10, 2001] ##

McGarrigle: Before we started on the tape, I was interested to hear you describe the work that [Edward M.] Ted Keech did for you. Maybe you can talk about that, that's an interesting program.

Henderson: Yes, okay. As I was saying, I started at Stanford in '68. In '68 there weren't many, certainly wasn't a large number of minority students coming through the college ranks so that you had a big pool of people to admit. And because Stanford--one of the reasons I went there, as I said, was because they had graduated their first black in '68, the year I went there. There also wasn't the tradition, black students, minority students didn't think of Stanford when they were looking for law schools. So I had to develop a program to help the students that I did admit, that we did admit. There was kind of a stretch between the credentials that they had and the credentials of the typical Stanford admittee.

One of the programs was a tutorial program, and Ted Keech volunteered to work in that program after he graduated. I'm having trouble remembering, he may have done it his third year, and then done it an additional year after he graduated, or he may have done it two years after graduation, I can't remember. Ted did a wonderful job. The students loved him. He was totally committed to it. He was smart, and it was a huge asset to the students to have somebody who knew the law school game, how to write--he was a good writer--how you go about mastering the materials, how you organize, and just generally available. Ted was wonderful. As I was saying before we started taping, I still remember him fondly from that. I was indebted to him. He certainly made me look good and made the program work.

Another aspect of that same program, I really had to be creative in those early years. We developed a four-year program for the same reasons that I've stated. A typical law school program is three years. We decided to enhance the survival rate and decrease the trauma of coming to a school like Stanford that we would divide the first year into two years. They would have two years to do one year of work, sort of learn what law school is about, learn the skills. Then after finishing the first year they would get on the regular track, do the second year in one year, and the third in one year, but the whole thing added up to four years.

That was a very successful program, albeit a not popular program, because the students felt that they would be viewed as second-class citizens by the other students. So we tried to conceal it, and when we did, most students didn't know who a four-year student was. In fact, the rest of the school didn't even know there was a four-year program. But the students themselves didn't really like it, and I had to sell it to them. I had to say, "Well, I'll admit you, but in this four-year program," and describe it, and a number of students who could get into other schools on a three-year program rejected it. But it was a successful program, and we have some good lawyers out there I won't name who went through that program. They will tell me now privately that they are so glad that they had it because they don't think they would have been able to handle fifteen units all at once, coming in under that kind of pressure with the kind of background they brought.

McGarrigle: Did you select out of the minority students those who you thought most needed it? Or was it automatic that they went through?

Henderson: No, it wasn't automatic. No, there were some who went into three years. What happened was that they all applied for three years, and as I said, there wasn't a pool, and then there were some openings, and I couldn't fill the openings. The number of slots the school allowed me, I couldn't fill them with the applications in those early years until there got to be a tradition of Stanford being included in the applications. So this was an interim program. And when I couldn't--someone I thought--and that was just my own judgment, "I just don't think this person has quite what it takes to run that fast that quickly," I would then offer them the four-year program. It was a judgment thing. I would review it with the dean to make sure I wasn't playing God in the sense of making that important decision between three years and four years. But that was the way it was done.

McGarrigle: I see, how interesting. It was very innovative.

Henderson: Yes, I thought it was. And it did the job. We were able to get more people in, and the survival rate was high. We even modified the program after a couple of years. I decided that when--a couple of people came to me after a year saying, "Hey, you know, I've really done well. Look, I've got a B average, and can I accelerate? Can I do my next year rather than do a half a year? Can I do more, and take some extra and maybe even go to summer school and get out in three years?" We allowed that if it had a certain kind of showing. So it was a very successful program, I thought. But it pretty much outlived its usefulness, because at that same time undergraduates were doing the same thing we were doing in law school, an outreach for minority students.

So in a very short time, I'd say in three years, four years certainly, we were getting a flood of applications and qualified, better qualified people. So that by the time I left Stanford eight years later, we were getting people who were making law review, graduating at the top of the class, and some of them going on to clerk for the United States Supreme Court, I mean really--. So that was the progression. But in the early years it was tight, and tough going.

McGarrigle: Did you have counterparts at other law schools? Or was this relatively unique?

Henderson: No, there were counterparts at other schools, not a large number of minority people in my position, but very caring non-minority assistant deans or associate deans. And indeed, we eventually formed a consortium of major law schools around the country because I was spending a lot of money. The way you would do it would be to pick a law school. Let's just say, if I was looking for Native Americans, I remember I took a trip to the University of New Mexico where there was a Native American program, and an institute there, and recruit, and try to get Native Americans to go to Stanford. Well, it gets kind of expensive. You go there for two days, you set up interviews, the interviews were--I can't remember now--half an hour, maybe forty-five minutes, so you can get in maybe ten people in a day. It gets expensive with the traveling. And other schools were trying to do it, so we organized a traveling road show. We all went together. We'd get on a plane or a bus, all go to the University of New Mexico in Albuquerque, and do it all, not just minority then, we would do the recruiting of the whole university. That saved costs and made it more efficient. So yes, there were counterparts in that sense.

We would share notes, and there was sort of competition, though, because you saw someone good, and a friend from the University of Chicago or Yale wanted that person, and I wanted it, and we would compete and try to make our best pitch to get them to Stanford. Our biggest selling point was I would try to get them out here in April or May when the weather was good, and the weather wasn't so good back East where they came from. That was always a strong selling point. We'd get a lot of students who would say, "Hey, I like this." But anyway, yes, there were counterparts throughout the country.

McGarrigle: That is so interesting. Did Stanford have specific goals? Or did you have specific goals at the outset for the program?

Henderson: No. Just--I, in my mind I thought 20 percent, just an arbitrary number, of the entering class ought to be minority. But that was never spoken, it wasn't articulated. But it was interesting, I've told this story that after about five years, six years, I can't remember, we started getting fairly successful in getting a large percentage of the entering class, were minorities. And a couple of the more conservative faculty, because there weren't any numbers, and I was really going out and doing a good job, was sort of on a roll, would come and say, "Hey, boy, really doing a good job, I really like Joe Smith in my class, and you're really getting--don't you think we have enough now?" [laughter] Sort of suggesting, "Slow down," I think. Now that wasn't official, that was just individual faculty members.

By the time I left I felt very proud that 20 percent of the entering class, or 18 percent, were minority. As I think I mentioned in one of the earlier tapings, one of the reasons I stayed at Stanford as long as I did was that I was worried about leaving. I wanted to institutionalize this program. I was worried that all the commitments and things that were set up were made to me, and that if I left, it wasn't clear to me that my successor would have the same backing and same commitments. So I stayed, and I think it did become institutionalized. My successor, LaDoris Cordell, was one of them, did a wonderful job herself, a much different style than me. But I think she kept it at 20 percent and added some innovations to the program that I hadn't thought of and it lived for quite a while after I left.

McGarrigle: What kind of reaction is it possible to have to a faculty member who comes and basically infers that enough is enough as far as your admitting minority applicants?

Henderson: My reaction, and that was just my style in those kinds of settings, was to try to charm them and tell them--not to get angry, that would be counterproductive--but to sell the program to them and say, "Well, you know, we're still trying, we've got such-and-such," and, "Look at this person, look what they're doing" and "Remember so-and-so who graduated last year, do you know what they're doing," and, "Here's what I'm trying to do." I would just use that to sell the program, and try to convince them. Sometimes I did. I got some converts who really became supporters of the program that I think weren't supporters, for reasons of their own, and I'm not about to say they were racists. I think they thought they were compromising the academic integrity of a school like Stanford. Some of them even told me, "Well, gee, don't you think that they ought to go to--" and then name a lesser law school, a less competitive law school. I would say no, I think they ought to--there are advantages here, I think they can do it, and if your fear is that they're not going to graduate number one in the class, only one person is going to graduate number one. And yet everybody from Stanford starts off with an

advantage over everybody from this school you want them to go to. Why do you want to deny that advantage to someone who can do the work? So that was my argument, and many of them I convinced that that was legitimate, others never were convinced. But we remained friends, and I think we respected each other. [tape interruption]

McGarrigle: I'm interested to know what your observations were about the different minority groups at the law school.

Henderson: You mean the different racial groups?

McGarrigle: Yes, the different racial groups, and what the dynamic was.

Henderson: Ah, that was an eye-opener for me. My vision of the minority program, as I think I told you last time, we defined minorities as black, now it would be Afro-Americans, African Americans, Chicano, we called them then, which were Latino or Hispanic, and Native American. As I said, Asians were not included in the program at that time. My vision of the minority program was that there would be--there were student groups, and now there are gay student groups, student groups with all kinds of interests--that there would be a minority law student association, and they would form for their own interests, and I would be available as a mentor or a guide, or whatever. And was very surprised early on when the Chicano students came to me and said they wanted to have a separate group. They didn't want to be a part of a group with Native Americans and blacks, they wanted a Chicano law student association.

I explored it, and opposed it. But I realized that they were adamant about it, and so they formed this separate group, as did blacks, the black law student association, and a Native American. That seemed to be the preference. I think I was idealistic that they had common interests, and they saw separate interests that they wanted to represent. They would get together for a special event or a special thing, but--. So that was a disappointment to me, because I tend to think in terms of coalitions and joining of interests. To this day I think that they would have been more powerful in the school as a voice had they joined, but they saw separate, sometimes divergent interests. And I was trying to sell a program where they weren't competing against each other for admission, they weren't competing against each other for money, organizational money. I was trying to eliminate all of that so that they could focus on their commonness, which was being a minority under a special admissions program in a traditionally white, elitist school.

And I'll go on, if it's interesting, that throughout there was a lot of tension, but even now I've remained friends with all of these people. One of the students I admitted, Fred Alvarez, works with Harry Bremond. He's a managing partner of the labor division, a very impressive job, over at Wilson Sonsini [Goodrich & Rosati]. We've been friends, and he was one of those students that I admitted back in those years. I can't remember, I don't think--I can't remember whether Fred was for a separate group or not, I think it was already a reality by the time I admitted him that there were the separate groups. But despite that tension and my contrary views, I have remained friends with all of these students, and we keep in touch.

I had a wonderful, wonderful meeting this early spring of this year. A student that I admitted who was in the Chicano law student association--I won't mention his name--

who had a tough time, he was from New York. I remember one of the more dramatic days I had at Stanford. He came to me crying, and he wanted to quit school. He said, "You know, I'm tough. I was in a gang in New York, and handle myself, but I just can't handle this."

And went out, I forget the place, there was a popular student hangout, went over, bought a pitcher of beer, had some drinks, got him a little drunk, and I had a little drink, and we talked, and I talked him into staying in school. It happened one more time the next year. But he went through and he called me early in the year and said, "I'm coming out for my twenty-fifth class reunion, and I want to get together with you." I never felt prouder. He is a successful attorney, he has a son that he wants to go to Stanford. You know, just powerful. I've never felt more pleased with something I've done than seeing him sitting where you're sitting, and then going out to lunch and hearing about his family. So it was some good memories from that, I made some wonderful friends among those students. It was a good program.

McGarrigle: What a difference you make. It sounds like your students make a point of staying in touch with you often.

Henderson: I do, or maybe I make a point of staying in touch with them, but we do stay in touch. Whenever I would travel, if I am certainly going to a town where I know they are, I will look them up or let them know I'm coming, or they'll do the same. Yes, we get together as often as we can.

McGarrigle: Did you find Native American applicants? I know it was difficult.

Henderson: It was difficult. I did. I don't have the numbers, but I did find Native American applicants. There's one, talking about keeping in touch, there is one that is here in San Francisco, a successful lawyer, who now seems to be more of an entrepreneur and businessman. But yes, I've kept in touch with them. There is one who I've kept in touch with recently who, actually he's judge, and wanted to be a federal judge during the Clinton--because he's a Democrat. And I wrote letters for him, for appointing people in his state. He didn't make it, but yes. Now, there weren't as many, as you said, it was much harder. And I learned a lot about the process. One of the questions is: what is a Native American, for purposes of our admission program? And I don't remember the exact standards now, but it was a certain amount of blood, a certain ancestry from the mother and the father, a certain blood lineage, I guess is the term, so we had to get through that first. This institute in New Mexico served that purpose. They would certify who had the correct--my language is awful here--background--that's not--I've lost the language over these years, but who had the right lineage, the right ancestry to be properly a Native American under their definition, which we accepted. So that was a start.

And it was interesting, I could probably get out--I have some class books there, and show you. Most people, including me, you would think, had a clear idea of what a Native American looked like, but one of the Native American students that I admitted and keep in touch with was Kathleen Harris, who was a daughter of a U.S. senator from Oklahoma whose wife was Native American. And so she qualified, and she was blonde and blue-eyed and fairer than you are. And several of the Native Americans, visually you would never identify them as Native American just by looking at them.

That was an early concern because I worried about whether they would take advantage of the program, and they were people who by name--they had a regular name, Harris was her name--who could disappear into the culture. And my idea was that people who would come in, get their education, and go on--not devote their life to civil rights necessarily, although I would have loved that--but keep a tie with the community and be a role model for others. I was worried about people who might just disappear, and no one ever knew that they were Native American. But that didn't happen. I think they all have stayed in touch with their community and been a role model. One, and I was reading about him recently, Richard--who is involved with the Smithsonian Institute and is the head of an Indian Affairs nation--a very powerful--one of the top Indian representatives in the country, who came through Stanford, was one of the students I admitted. So they've all kept their ties. One is a judge on a reservation. So it, again, in my view it has been a successful program and done what I had hoped it would do.

McGarrigle: I've read that you were active in organizing the alums of the program to continue giving to the school in terms of scholarships to help new students as they came along. Is that ongoing?

Henderson: It isn't now. It was, I ran out of gas, and it took a lot of time, and I couldn't do it--and actually tried to hand it over to some other students and thought I had it underway, but it has floundered now. But I did try to do that. I had in mind--because every time I see students, they are so appreciative and tell me how much that education has meant to them and how much things the program did, and my immediate message is, "Well, let's do it for someone else. You know exactly what it's worth, let's give back financially and otherwise." That's what I was trying to set up, and I thought we had that underway. But it hasn't really caught hold, and I think in part because--as an example, the ones who have really done well, the main fundraisers [laughs] go after them. And a couple of them have given quite a bit. I think I mentioned my friend who I admitted, who went on to become secretary-treasurer of the *Washington Post* and make quite a bit of money, and she is a big donor to the university, whereas I would have wanted her to give this money to this program for me. So I think that has been part of the problem. The ones who are struggling or not hugely successful don't have the money to give. The ones who have the money to give are scraped off the top like cream by the university.

McGarrigle: That makes sense, it makes sense the way you explain it.

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Henderson: Kathleen Harris, who again, as I said, was blonde, blue-eyed as I recalled, and had none of the education, in fact, in the sense of--she had gone to traditional schools when I admitted her. She married, I'm just remembering, one of the members of the Chicano law student association. They're still married, and I've forgotten now where they live, not in California. That was an interesting cross-cultural, as I thought of it then, marriage.

McGarrigle: Did you work with Tony Amsterdam to defeat one of the nominees for the Supreme Court, [G. Harold] Carswell?

Henderson: I didn't work with him. What happened--I mean, I did work, by networking. I remember that really well. I didn't know Tony was involved in that. One day he came

to the office, and that was the big news then among liberals, that he [Carswell] was being put up and that he had a bad record on civil rights and all of those. One day Tony came by the office--I'm interrupting myself--but I had pretty much considered it a fait accompli. I didn't know much about the confirmation process at that time. He came by and said, "Hey, we can beat Carswell. We can defeat this guy." And then I perked up and got involved. "Let's call. Do you know so-and-so, call so-and-so. Let's get the civil rights community out to oppose this." So the only work--Tony did it, he was the one connected--but I called the people I knew and put the word out. So in that sense I worked with him, but it was not in any formal way.

McGarrigle: Yes. I was just reading through the materials Erma had left out for me, and I saw that Fern Smith had graduated from Stanford in 1977.

Henderson: Fern, yes, I was looking at her picture recently, she was one of the students, in those little annuals, yes, on the second shelf I've got the little annual books there that I still look at to remind myself of the good old days, or if someone is coming to visit and I don't remember them, I can look in there and remember what they look like. In fact, at about that time Vaughn Walker, who is on our court, was a student back there with Fern. So there are a number of students at Stanford who are now federal judges. Yes, Fern was a student back in those days.

McGarrigle: Did you know Vaughn Walker at that time?

Henderson: No, I didn't, I didn't know Vaughn. I knew of him, he was a student leader. But I didn't know him, we didn't have activities together.

McGarrigle: About. I wondered, thinking back, what you recall about the atmosphere and the reaction to the *Bakke* [*Regents of the University of California v. Allan Bakke*, 438 U.S. 265 (1978)] decision.

Henderson: Certainly my reaction, and most people I knew--great disappointment in the *Bakke* decision. It is interesting because I was just reading last week the author of that opinion, Stanley Mosk, just died. I'd forgotten that he wrote it because I like Stanley, I've come to know him from across the street, and I had forgotten over these years that he wrote *Bakke* which I thought really distressed me and a lot of liberals who believed in affirmative action, as I still do, and think that it serves a good purpose. But I guess the answer is that it distressed me. I didn't agree with it in terms of what it did or what it didn't allow. I think that race is real. I think that being black, being minority, is a handicap, and that it can and ought to be taken into account in creating a level playing field for people, like getting into law school, or like getting into the profession, and *Bakke* said you can't do that in the educational system. So I thought that was a bad decision.

It's much like the debate now. There was an article in the paper last week by Ward Connerly and another one on the same page by Eva Patterson arguing about the need for racial statistics in the state, and Connerly arguing that we just have to be color-blind, and race is irrelevant. I think that is foolish. Race is very relevant.

And I think I may have mentioned in other parts of this interview, I'm a federal judge, and I've gone as high as I am going to go, and have a pretty good position. Race still

plays a role in my life. I still get discriminated against. And I'm relatively privileged in our society. It's foolish for someone to say race is not a part of people's lives anymore, and that people aren't handicapped by their race, and that people don't take advantage because of their race. And I thought that, going back to *Bakke*, *Bakke* discounted that as a reality. So I opposed it, in terms of what it did. Opposed it, meaning I didn't do anything actively, but I mean I didn't agree with it, is a better statement.

McGarrigle: We had talked at the very beginning and not on the tape about the family who you lived with when you were in Palo Alto, at least initially, the Hilberman family--. Or not lived with, I'm sorry, who you rented from, is that right?

Henderson: Oh, let's see, no. The Hilbermans were the people that I'm still in touch with. In fact I'm trying to help Joey Hilberman now--it's Joe, I still call him Joey--get a judgeship. But the Hilbermans are the family that my mother worked for, they had the hardware store. You're probably thinking of the Seitzes--

McGarrigle: Okay, I didn't have the second name--.

Henderson: Yes. Helen and Jules Seitz. When I got married, when I was preparing to get married, there weren't many places--I can even go beyond that [laughs] and say I wasn't aware of any places in Palo Alto that rented to blacks. And Helen and Jules Seitz rented to me and Emily. We have always been beholden to them. They became our friends, and I thought that was special, because they took some heat from that, renting to me.

It is interesting, two weeks ago I went to visit Jules. He's ninety-two now, and Helen just died a couple of months ago. He's in a rest home in Piedmont now. But yes, we've been friends over all those years, we've kept in touch. I think that that must be who you were thinking of.

McGarrigle: Okay. I didn't have the name, I had it incorrectly.

Henderson: Yes. The Hilbermans are other wonderful friends. It's interesting, they're both Jewish, I've had wonderful Jewish friends who have been like these two families. I don't know what there is about their Jewishness that does that, but a lot of them have been of Jewish--. The Hilbermans owned a hardware store on Sunset Boulevard, not out in the flashy part in Hollywood--. But my mother, as I think I've told you, cleaned houses all her life. If you had a house cleaner, and you had a friend who said, "Hey, does she need a--?" And you say, "She's really good," you might refer her to a friend, and that's how she got her work. Well, through this process, she ended up cleaning their house.

They liked my mother, and I think at some point--I was talking to my mother recently about this--I don't know if my mother expressed some dissatisfaction with doing this all her life, but they got the idea that she deserved something with a little more dignity. And after they got to know her, they offered her a job in their hardware store. Cashier, and helping around, and sales clerk--just a wonderful family.

They had three kids: Joey and Bernard and Annie. I was in college at that point, and I came to be friends with the family and still am. We're in close touch. Joey's daughter goes to Cal. We get together every couple of months for breakfast or brunch, and help in ways I can. Bernard, one of his daughters actually externed for me, went to law

school, and came through. And so, a very close relationship over the years with the Hilbermans.

They did a lot for my mother. She feels pleased to have had a job like that at a time in her life rather than being a domestic, as she called herself, all her life.

McGarrigle: And you mentioned a judgeship. That's one of the sons.

Henderson: Yes, Joe is--I've got a file right in here someplace that I'm keeping. I'm trying to help him by whatever connections I can use with the Gray Davis administration. He has had a successful legal career in L.A., but I think he's at a point in his life he'd like to be a judge. I don't know if I have any connections or can do it, but I'm trying to help. He's got other help. His brother, Bernard, is a doctor in Santa Cruz, and his sister, Annie, is a teacher. I've kept in touch with all of them over the years.

McGarrigle: It must have been really interesting to have been working on the program at Stanford and at the same time to have had trouble renting a place in the very city where you were working.

Henderson: Yes, it was. But you know, by that time in my life, that was the way life was. I think I had accepted that I would course my way through these things, and not stop and let it halt my progress, that I would just find my way around it, and I've been lucky. There seemed to always be a Jules and Helen Seitz around, where I can find a place to live.

Indeed, when I moved from there, another wonderful couple, Ray and Lisa Gerrard--they were on the faculty--rented me a place on Middlefield Road, if you know Palo Alto. Again, another couple that--I still keep in touch with them. Every time I have a controversial ruling, I'll get a postcard or a letter from Lisa and Ray saying, "Right on, Thelton, keep on!" [laughter] You know, they love my--the more radical my rulings are, the prouder they are of me. So they were good people too.

There are people like that in the world, and I would look for them, rather than stop and look at what the other people who wouldn't rent. I tried to move through life finding the Gerrards and the Seitzes.

McGarrigle: Nineteen seventy-six is the year I think you bought your home in Berkeley, so you made a decision that you wanted to return to Berkeley.

Henderson: Yes. I did. Yes, I made a decision. [laughs] It was a silly decision in the sense that I really liked my job at Stanford. I thought I was doing something meaningful. It was exciting. But Geoff was at that point thirteen or fourteen, he was a good-looking young kid, good athlete, and he had a couple of experiences that reminded me of my own experience. I think I may have mentioned it in earlier tapes, I can't recall. I think I told you, I went across town. I lived in a black neighborhood. My mother--and certainly in those days in L.A. the reality was that white schools had better teachers than the schools in my neighborhood. My mother insisted that I go across town.

And I went across town, and at some point in junior high school, eighth or ninth grade, I noticed a phenomenon that I would go to school, and walk a long way, walk home. So I didn't--I would play, but I didn't really socialize with them, I would come back and

play with the kids in my neighborhood. So I wasn't really aware until a couple of times on Monday morning kids would be saying, "Boy!", talking about the party they all went to. And at some point, retrospectively, I realized that I wasn't a part of the social life, and at a certain point parents entered in, and they determined who went to the parties, and I wasn't one of them.

I didn't want this to happen to Geoff, and something happened there that I sensed that that was beginning to happen to him, that as kids, most of them were white kids, were starting to date and have parties, not all the time, Geoff was being excluded. I thought I just don't want that to happen to my son, so I thought Berkeley would be a much more nurturing community for a kid like Geoff, who is from an interracial marriage to begin with. So I pulled up stakes and left the job, a job I really liked, bought the house in '76, and we moved over here. He went to Berkeley High.

McGarrigle: I think we talked earlier, when we talked about your time at Cal and at Boalt, about Berkeley and how Berkeley had changed, and then what it must have been like to purchase a home in the Elmwood, which is a beautiful neighborhood, walking distance to campus.

Henderson: Yes, and I've probably have [laughs], it's the only sound financial thing I've ever done in my life. I have this wonderful house, worth quite a bit of money, and I'm so pleased. I just got in right in the nick of time, I couldn't afford that house now, I couldn't go buy that house if I tried to do it today. So yes, that was a good--and it's a wonderful neighborhood, and it was a good neighborhood for Geoff. One of the reasons I got this particular house, he loved sports, and this house had a basketball court in the backyard. Having grown up in L.A. and all of that, that was just my idea of a house. A basketball court, I used to go through white neighborhoods and see kids out shooting baskets against the garage or something, and that was not something--you could drive through the width and breadth of where I grew up and never see a basket. That was part of my idea of what I wanted for my son, so it's a perfect house.

McGarrigle: Yes. That was the period then when you and Sandy Rosen and Joe Remcho associated and--.

Henderson: Yes, that was the period, I did a number of things, a total uprooting. I left Stanford. I bought the house. I didn't have very much money, but what little money I had, I can't remember now where it came from, I didn't--I don't think I got any severance from Stanford, but whatever--I had a little money, I used that to make the down payment on the house and to invest in the partnership. The three of us put in money to start the law firm. Then I sort of crossed my fingers [laughs]. You know, I was talking about this the other day with someone who was talking about starting law firms, and the precariousness of it. And I knew it, but I ignored that generally they say you should expect to lose money for a year, sometimes two years when you set up a law firm, before you build it up. And if that had been the case, I don't know what I would have done, because I didn't have any money [laughs]. Literally, virtually everything I had was in the house and the law firm. But I was very lucky. Sandy and Joe were much better lawyers and businessmen than I, and we got business from the start, started getting a draw, and I was able to make it work. But it was crazy, when you look back on it, to have had such thin finances, that I allowed myself to start the practice. But yes, that's when we set up the law firm.

It was interesting the way we set up the law firm. Dru Raimey, Drucilla Raimey, who is the retiring director of the Bar Association of San Francisco, sort of a legend in her own right in these areas, was at that time an attorney with the Mexican American Legal Defense Fund [MALDEF]. We were good friends, and Sandy was her boss. He was the directing attorney for MALDEF. And Joe was an attorney with the ACLU [American Civil Liberties Union], and she knew all three of us separately. We were all saying, "Yes, I think I'd like to leave what I'm doing and start a practice."

So she got us together saying, "Why don't you talk to Thelton, Sandy?" So Sandy and I talked and said, "Yes, I think we want to do the same thing." We want to practice what we called public interest law, but not as a public interest organization such as MALDEF is, but with our own firm. Then she put us in touch with Bill Turner who was the head of the NAACP Legal Defense Fund office in San Francisco. He was having the same thoughts. And that didn't develop with Bill. Bill decided he didn't want to go just yet. So then she sent Joe to us, and that's how we put the firm together. I had a picture in my office of Dru Raimey just lounging at a coffee shop, a picture she liked, and it had "Our Founder" in there. [laughter] She literally founded the firm in the sense of putting us together.

McGarrigle: I think it was fairly early on you had a case that had a large settlement, from a Title VII case?

Henderson: Yes, we had--[laughs], it was interesting, it was the--I forget the name of it, FMC [Food Machinery Corporation] was the company, and it's in San Jose. It's a big--

McGarrigle: Defense contractor?

Henderson: Big defense contractor. We sued them and got, had a large settlement--not--a large attorneys' fee. We got in a dispute over attorneys' fees after we resolved the case. And it was before Judge [Robert F.] Peckham, whose office was right here [knocking sound] where I'm sitting, these were his chambers. He was the chief judge of the court. So he took under consideration the notion of the issue of attorneys' fees. And it was my last law case, it was certainly my last big case before I became a judge.

So when I took the bench he hadn't resolved the issue of attorneys' fees. It was a fairly substantial amount, and we had split the assets of the partnership. Joe and Sandy were still there, but I had sold out my interest to them when I took the bench. But there was still this asset, and we were all waiting for this check [laughter]. And months went by and nothing happened. And I was right next door in Cecil Poole's old chambers--but you know you don't go next door and say, "Hey, when are you going to rule on my money?" [laughter] So nothing was said.

One day I was walking down the hall and he said, "Oh, Thelton, you know, I've decided that since we're colleagues and friends, it wouldn't look right if I award you the money. So I've called in, I've asked them to send in a judge who isn't on our court, from out of the district." So they got a guy whose name I can't recall from Arizona, a senior judge, and he came in and handled the case, took it anew but moved very quickly, and gave us a very generous--you know, not generous in a sense of more than we deserved--it was a big difference between what the defense firm was offering us and what we thought we

had billed and earned. So he gave us more, actually, than we had asked for. So I was very pleased with that. And that was my last legal fee. [laughter]

McGarrigle: I didn't realize that was at the end of your time at the firm.

Henderson: Yes, that was right at the very end.

McGarrigle: I thought it was towards the beginning.

Henderson: No. And I did that, I think you are going to or have talked to Mike Ballard. Mike and I were on that case together, and Dru Raimsey actually was the one that introduced us to the case. She had the case and it got much too big for her. We came in, Mike and I, and took over the case. That's where I got to know Mike, who was a superb lawyer, and I learned a lot from him. He is just a superb Title VII lawyer.

McGarrigle: At that point, you had been handling quite a few Title VII cases?

Henderson: Yes, I had been.

McGarrigle: Earlier in Palo Alto as well as in Berkeley?

Henderson: That's right, yes.

McGarrigle: That was a class action case uniting Hispanic and black clients, is that right?

Henderson: What was that?

McGarrigle: That was a class action--it was *Frank v. Bowman Transportation* is the way I have it.

Henderson: Yes, okay, right.

McGarrigle: The FMC case. But it was a class action case and you had Hispanic and black clients who were alleging discrimination?

Henderson: That's right, exactly. You've done your research well. That's correct.

McGarrigle: At the same time that you were also practicing in your law firm, then you were also teaching at Golden Gate [University Law School]?

Henderson: I was teaching at Golden Gate. And the reason--I love to teach, so I enjoyed it, but also, as I say, we were worried about income. We didn't know how much money we were going to make, we wanted to have some money coming in. And so I took a teaching job at Golden Gate, with my income being a partnership asset. So I gave my salary to the law firm because I was using the law firm, and it was just an income-producing thing for the law firm. I did that, actually I did that up until the time I became a judge.

And I had always had this--it's interesting, I've told this story, if I hadn't become a judge, I suspect that I would have worked it out, or I would still be trying to work out a balance between teaching and practicing. I love teaching, and I wanted to teach, and I loved practicing. I like trying cases. It was a very hard thing to balance, but I was

trying to do that balance then. Then I became a judge, and now I'm actually thinking of returning to that. Now that I'm a senior judge, I've actually had some overtures from Golden Gate and other law schools to teach. And I'm thinking of now balancing judging and teaching, because I do like to teach. I like young people, and I like--

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McGarrigle: What were your preferred subjects?

Henderson: Trial advocacy. I like trial advocacy. I like to teach the techniques of being a good lawyer in court. I like civil procedure, I thought I was pretty good in civil procedure. I also taught administrative law, which I found very difficult. I didn't really have a background in that. But I taught administrative law, which as I said I thought I probably did a good job of it, but it wasn't something I enjoy. I also taught a legal ethics course, which I enjoy. They have nice little ethical problems to deal with and I am always surprised that the older lawyers of my generation, they didn't teach that in law school.

I can remember, I think I've told you about the period right after I came back from Washington, I practiced with Don Warden. And I didn't even know the concept: you're not supposed to mingle your money with the client's. No one ever taught it. I mingled money, probably violated every ethical rule going without knowing it. So I was interested in teaching things that I hadn't learned. So I enjoyed teaching ethics to the students, and posing--had a good case book, and posing--. So those are the things I taught.

When I was at Stanford, I loved the clinical courses. I told you about--I couldn't remember the nickname of the course, the defense of the legally, of the criminally insane, we called it "the sick seminar" [laughs]. But I loved teaching that with Tony Amsterdam, and I loved teaching a clinical course with Mike Wald, the juvenile law course, where we actually trained students to defend juveniles in San Mateo County. But I wasn't at Golden Gate long enough to put together a clinical course. But I would have, if I had stayed there, I probably would have headed in that direction of creating a clinical course to give the students practical--I'm a big believer in practical experience.

I've always--maybe I've said this before, but I always felt that one of the criticisms I had of a school like Stanford or any major school is they teach you, you get a wonderful education, but you don't get a practical education. So the student who gets out of Stanford or Boalt Hall or Hastings [College of Law] for that matter, is wonderfully prepared to go work for a large law firm, where they have billing clients, you can learn at the client's dollar. I see it here in court. The attorneys will come into court and they will have two associates that just sit there and learn. And the client pays all three of them. Well that's nice, but I always would say, "What about the Legal Aid office?" which I used to run. "Nobody is going to pay me, if I take two associates, they're going to have to learn from me." And I thought the law school had a duty to that part of the profession, to train people who were wonderfully prepared to start doing that, and not learn it the hard way, at the expense of the client. And that they were ignoring that part of the bar. That's why I thought clinical courses were so important. Tony Amsterdam I think believed the same thing, and he started the clinical program at Stanford with that theory, the program we know today. Anyway, I forget how I went down this street.

McGarrigle: No, that's interesting, and it makes me think about how different Stanford and Golden Gate are, and how different--that was a different experience for you.

Henderson: Yes, exactly.

McGarrigle: You're in an urban setting, a lot of returning students, night students, working students.

Henderson: Exactly. Working--exactly--who really want to get the basic education and go out and be a lawyer. And aren't necessarily interested in going with a big firm and being a corporate lawyer. A lot of the very good lawyers that you read about in town went to Golden Gate. Smart people who started a second career, even went to night school or had to work. And I think there's a real need for that kind of school and that kind of education. It's perfect.

McGarrigle: This may be a good point to stop, because then we have your appointment to the bench, which is going to take us all of next session. I did find a little piece on Sam Williams, so we can start talking about the committee that Mr. Williams was chairing, and the merit selection committee organized by Senator Cranston.

Henderson: Okay. Yes, that was quite a story, quite an experience for me. Yes.

[Interview 7: August 24, 2001] ##

McGarrigle: We left off in preparation for talking about your appointment to the bench.

Henderson: Yes.

McGarrigle: So why don't--. Of course, I also have some miscellaneous things on the outline, I'm not sure how you, how you think they--. [tape interruption] I'm not sure if there was one or more than one selection committee, and so I need you to clarify that.

Henderson: Yes, okay. There was one merit selection panel. But probably the confusion is that at the time I came through--and Marilyn Patel, we went through this process together, and that's how we got to know each other and become good friends--Senator Cranston was a Democrat, and [President James Earl] Carter was in office. So, the Democrats controlled the process. But Senator [S.I.] Hayakawa was the other senator, and he had a separate process. And Cranston had agreed--it was simply a courtesy and not a requirement--Cranston agreed to give--now, you might have to check this one, or I can check it--one out of three appointments.

McGarrigle: Oh, okay.

Henderson: So, and that was what the confusion is. So Hayakawa got an occasional appointment during this time as a courtesy of the system. Now, whether Hayakawa had--how he did it is what I don't know, but that's probably what's confusing you.

McGarrigle: Okay. So the group--this group chaired by Sam Williams--?

Henderson: Yes, that group was chaired by Sammy Williams, and that was Cranston's group, that was Cranston's group, yes.

McGarrigle: Okay. And you knew Sam Williams from undergraduate days?

Henderson: I knew Sammy, we grew up together. Sammy Williams lived a block and a half from me. We used to play. Our street, 43rd Street, used to play Wall Street in touch football. So I've known Sammy virtually all my life, yes. And there's an interesting story about that that I'll tell you about. It sort of came up that Sam and I went to Trinity Street Grammar School together. He was a year ahead of me. Then we went to John Adams Junior High together, and then I went on to Jefferson High and he went to Polytechnic High. We didn't go to high school together. Then we met again, we played football at Cal together. Then we both went to law school. Sammy went to USC and I went to Cal. And we've been in touch over all of these years in various ways.

McGarrigle: It's quite a theme, in terms of continuity.

Henderson: Yes, he's a wonderful, accomplished man. You know, he's a modest guy. I have no doubt that Sam helped me in this process, but he's never mentioned it, never called and said, "Hey, I'm going to help you." We've never talked about it. It's been interesting, I think it speaks of him. He's not the kind of guy who would say, "Hey, look what I did for you," or anything. Whatever he did, and I probably will never know at this point, I think he just did quietly and let it go at that.

And interestingly enough, I see Tony Amsterdam's name on here, same thing. Tony was on that commission. He has never mentioned it. And in fact during my interview, and I think this says something about their ethics-- You're always reading in the papers now about people breaching ethical lines and doing questionable things. I think they are two complete, unassailable individuals. They never even sat in on the interview. I never saw them. And now that I think about it, I'm sure it was so that there would be no question of ethical--if they did something out of friendship for me--and it's both Sammy and Tony. That's the way they did it.

McGarrigle: How would it have come about that Cranston would have selected them?

Henderson: I don't know. Through some process, you know, he must have gotten together with his staff and said, "We have to--I want to select a merit selection panel, give me some names." And I'm sure names were presented to him or his staff just selected people. And it's interesting, and I think it inured to my benefit, because most of the people on there--Bob Gnaizda, Vilma Martinez, who was the head of the Mexican American Legal Defense Fund, many of these people were members of the public interest community. And this helped me later on because I was of the public interest community.

I mean, I did things, I ran Legal Aid, and at some point there became a question of whether I was black enough. I think I may have mentioned that. When Cranston--when this committee appointed me, a group went to Cranston and protested that I really didn't represent the black community. And indeed, when I really thought about it, I was much more active in the public interest community. That's how I knew these people, and I was very fortunate that Cranston stayed with me on that and then decided that I was going to be his candidate in spite of--despite the protests from the black legal community that thought somebody else should get this position.

McGarrigle: Did you in later years have conversations with Senator Cranston?

Henderson: I did, I did, and actually I had occasion to thank him. Each time I would say, "Thank you for changing my life." And he sort of smiled and said, "I didn't do you a favor." You know, he was gracious, "I appointed the best person, and you were that person."

I had a poignant meeting with him after he was out of office. He had some of the troubles after that savings and loan thing. And he had retired or not run again, I forget how that went. A friend of mine, Joe Cotchett, bought two tables at some big expensive fundraiser for Kathleen Brown, when she was running for governor. And he called me to offer me one of the seats at one of the tables. And I went, and at the table was Senator Cranston.

As I say, this was Joe's "B" table, because Joe was at another table with a lot of big names, and then he had me and some lesser lights--that is the way I saw it--and Senator Cranston. And I sat and had a chance to talk to him, and it was very poignant because here's a once very powerful man, who actually ran for president, sitting there very quietly. And several of the younger people at our table didn't even know who he was. I thought that was-- [inaudible] You know, and it was a very poignant kind of a thing that pained me a little. But to his credit, he wasn't telling Alan Cranston stories. He was just there, very quietly, and he and I talked a bit, about, again, about what he did for

me. And I talked about, I tried to focus on all the good things that I thought that he had done for California and for the country, a very satisfying chance to sit with him that evening, for me.

McGarrigle: It is a poignant story.

Henderson: It is, yes.

McGarrigle: There was also a local committee, a San Francisco committee?

Henderson: There was, there was a San Francisco committee. You know, and I--it's interesting. [laughs] This says more about my lack of savvy in how you go about pursuing a judgeship--I don't remember, one, who was on that committee. I know Bob Gnaizda was on it, and Vilma, that's V-I-L-M-A, Vilma Martinez was on it. And I can't remember the other local people on it, interestingly enough. But the way--let me tell you the story about my process through this system. I had left Stanford, as I told you, in '76, to set up a law office--Rosen, Remcho, and Henderson--with Sandy Rosen and Joe Remcho. And one day, working at my desk at the office, I had opened a piece of mail that was a form letter. "Dear Counselor," as I recall, or "Dear Attorney," and "Counselor" was crossed out and "Thelton" was written in. And the essence of the letter was that, "Your name has come to our attention"--"our" being this committee that Cranston set up--"as the kind of person Senator Cranston is thinking of appointing to the federal bench." And, "If you're interested in such an appointment, here's an application."

And I've told this story many, many times, and each time I tell it I'm more convinced than the last time that up until opening that letter, I had never thought about the possibility of being a federal judge. It had never occurred to me as a possibility. I can say that Jerry Brown, as governor at the time, had been appointing a number of black lawyers to state court judgeships, and I had thought about that as a possibility, but hadn't done anything to pursue it. And in part, because of what I just mentioned, I think I wasn't a part of that black law group that had access to him, and I wasn't sure--you know.

So anyway, I open this letter and I thought, "Hmm." And Sandy and Joe, my partners, were much more politically savvy than I, and I went to them and I said, "What do you think of this? What do you think?" And they said, "Well, we hear from the grapevine"--they were friends with Gnaizda, we were all a part of this public interest community--"we hear on the street or through the grapevine that Cranston is going to appoint a woman to the court," and that turned out to be Marilyn Patel, "and we hear he's going to appoint an Hispanic," and that turned out to be Bob [Robert] Aguilar in our San Jose court, "and a black." And they went on to say, "We practice in federal court, and not many blacks do that, so I think you have a good shot at it, Thelton." So, based on that slim analysis, I sent in the application.

At least once a week now, more than once a week--this gives a context for my approach back in 1978, I think this started--but, today there's an opening on our court, Chuck [Charles] Legge just resigned. And I must get a call three times a week from attorneys who are angling for that position, and want my endorsement, or want some guidance. I had no concept of that back in '78. I filled out my application, I mailed it in, and I kept

working. I didn't talk to a single judge, I didn't talk to a single attorney, I didn't even call my good friend Sammy Williams with whom I grew up to say, "Hey, can you help me?" I didn't call my good friend Tony Amsterdam. I didn't call my good friend Bob Gnaizda. I just turned in the application. So, it's sort of a miracle that I'm a judge [laughs]. I was so stupid, so naive.

And at some point later, as I said I mailed it in, and one day I got a call from a woman who said, "We want to interview you for this position. Can you be over at the state bar next Tuesday," or whatever it might have been. And I said, "Sure." And again [laughs], I didn't do anything, I didn't prepare. I showed up at the state bar at the appointed time. I sat out in the waiting room. And it was interesting. They were clearly interviewing-- I saw a couple of people I knew out there, and one coming out that I knew, that had just --. And I went in, and I had my interview.

I didn't think I did particularly well. I answered the questions, and as I said, the only person I can remember from that interview--. Tony wasn't there, Sammy clearly wasn't there, and I can't even tell you now that you've raised the question whether it was the local committee or the statewide committee. I think it was the statewide committee, and I'll tell you why. I remember Bob Gnaizda being there, and Vilma Martinez. I was asked questions, and I answered them, and one person--and there were Republicans on this committee, that's what makes me think it was statewide--because one person asked me what I thought was a fairly hostile question. He said, "Well, I see from your resumé here you've done a lot of civil rights and public interest. That's essentially all you've done. And a federal judgeship requires--you know, we have antitrust, we have corporate interests, and I have to say, I'm a bit worried whether you can be fair to these kinds of interests, given your background."

It sort of nettled me, and I said, my recollection is, fairly pointedly, "Well, my experience in court is that most of the judges come from that background and I sometimes feel they are unfair to me and my clients from their corporate--and I assure you that I can be at least as fair to them." [laughter] And that wasn't the right--. And Bob Gnaizda, as I recall, sort of--"Well, let's move on!" And I think saved me. I wonder if he would have that same recollection, you know, that's my recollection of that.

And I left the interview thinking, "Well, that's it. I had my little courtesy interview and that's it, I'm not going to get the judgeship." Especially because I saw some of the people being interviewed, and they were much more prominent, active politically than I. And again, did nothing. Left the interview and went back to work. And some weeks later there was an article in the *Chronicle*--no one called me--there was an article in the *Chronicle* that this committee had recommended five names to Senator Cranston: Bob Aguilar, Marilyn Patel, Thelton Henderson, and two white males, as I now refer to them, and I just no longer remember their names.

And that was the first I knew that I had passed that step. And because Cranston, you know, was politically savvy--there was only one opening at that point on our court, and we had heard that the court had applied for two new positions because of the caseload. And that was in the works, to create two new positions, but that hadn't come. So there was only one opening and five names. And before anyone could even react, the next step, as I now know, would have been to lobby Cranston. "Me, me, I'm one of five,

make me the one with this opening!” Cranston, so that he didn’t get that lobbying, before we could even respond, appointed Bob Aguilar.

So that position was gone, and that left the rest of us wondering what this means. When the two new positions come up, and I remember that’s when Marilyn and I got to know each other and we became very close, because we were dangling, or twisting slowly, slowly, wondering what was going to happen to us.

It was at that point that I learned that I didn’t have the support of the black bar. I was married at the time, Carrie was very political, she understood these things much better than I. And I started to think, well gee, at this point if he opens up the nominating process again, I’m dead meat. Because Willie Brown, who was in the assembly then, fortunately he wasn’t speaker--. You may want to think whether you want to put this in my oral history, I’ll leave that to you. You know, he was supporting other people--a good friend of mine--and was opposing me. He was one of those that told Cranston, “Henderson really is not our man.”

So, I thought, “Okay, I’d better go get some black support and show Cranston that I’ve got--.” And I went to a few people. I remember, I went to John George, who is now dead. John and I were roommates [laughs] back in undergraduate days, an old friend of mine. And he was on the Oakland--I guess the board of supervisors that they have. You know, a very prominent politico, very respected. I went to John, and John sort of chuckled and said, “Boy, Thelton, you’re really late, I’ve already--. A year ago someone came to me and asked for my support, I’m committed to them.” And I started going to old friends, and that was the case. I went to Nick Petris, who was a powerful state senator at the time, and I had practiced law with Nick. And he did the same, said, “Well, boy, Thelton, you’re a little late, I’ve already signed on with--.” And I realized that, you know, I really was trying to start playing the game and I was a year late. I just didn’t know how it was done.

But my wife had the insight. She said, “You know, when you really think about it, you are--you have much more connection, much more influence in the broader public interest community than in the black legal community, which you haven’t really hung out with. That’s your strength, go to that.” And then, it all fell into place. I started going to people. There was a fellow, whose name you--who taught at Stanford, his name was Bob something, he was Cranston’s campaign manager [laughs], or raised funds for him. I went to him, I went to a number of people, and they were wonderful people. They had access to Cranston, and that was the way I did it. It turned out that a few of them were black, and I think that’s the way I salvaged. It got people, and as I said, I’m positive that Sammy helped me and that Tony helped, but I never talked to them. I felt that somehow--I know now people do that. I felt it would not be ethical to go to people on the committee and use the friendship. So I never talked to Tony, I never talked to Vilma, I never talked to Bob Gnaizda, but I’m positive they helped me. And we’ve never discussed that.

Anyway, so time passed, and Marilyn and I didn’t know where we stood. Then our worst fears were realized, or my worst fears, because I knew that there was this move to get other black candidates. Cranston opened up the process again, and the committee added a few names that I can’t remember, because I was focused on my own interests. I’m not sure they added another woman, because I know that was Marilyn’s concern.

She was very strong in the feminist community and I think she wasn't worried if they did. But I don't know if they--. But I know they added two blacks, a black judge, Don McCullum, who's now passed away, whom I knew and actually had thought about practicing law with many years before. He was a well-respected superior court judge in Alameda County. And Henry Ramsey, who's still to this day a very good friend of mine. His son has externed for me--and they added those two names. And they were formidable--Henry particularly. Don McCullum had been the head of the NAACP. Henry had been a Berkeley city councilman and very active, and a professor at Boalt Hall. So I figured I'm dead meat, at this point. And, for, I think for the reasons of the public interest thing and the support there, or whatever reasons, Cranston stuck with me. I didn't ever talk to him about that.

I don't know why he did that. He had nothing to win from it. I wasn't political. I mean, I had this base of friends in the public interest community, but I knew no politicians that had gone to him to help. He had no political gain to appoint me, but he did it. And that's how I got the appointment.

I think I've told you some aspect of this, after sweating through this process, these new names came out, I heard through LaDoris Cordell who--she was an attorney at that time, she is a woman that I may have mentioned earlier, I admitted her to Stanford Law School, and she went on to have a sterling career and become a superior court judge. She's now a vice provost at Stanford University. Anyway, LaDoris had called and said, "Look, let me help you in any way I can." And we sort of laughingly appointed her my campaign manager. She put a lot of energy into it, and had her ear to the ground.

This is embarrassing. All these years, there is a fellow at Stanford that I helped get into Stanford, who ran one of Cranston's offices. His name is Conway Collis, or Collis Conway--over these years I've gotten--. [laughter] Anyway, he was a friend of LaDoris's, so he was sort of telling her what was going on. And I got a call from LaDoris one night, fairly late, saying, "The committee just met, and tomorrow they're going to announce that you and Marilyn have these two positions that finally had come open. And we know that you and Marilyn are going to get the positions." So I said, "Hot dog!" And I went to sleep, and I went to the office the next day and heard from Marilyn that she had gotten a call that she had gotten the position. And I think she was saying, "What about you?" "Gee, I haven't gotten a call."

Later that morning, I got a call that said we would like you to meet with Senator Cranston at his office at Halliday Plaza at four o'clock today. And I said, "Uh-oh, that can't be good. They've announced Marilyn and something's bothering him. He's holding up on me." And I thought about it, I thought of all the things I'd done. When you go through this process, you think, "Gee, I've lived a good life, nothing to worry about." Then you start thinking, "Oh, boy, what about that time I stole the apple when I was ten years old!" [laughter] You know, you start thinking of all these things, and what could there be?

So I thought the only thing that could bother him would be this lending of the car to Martin Luther King. So I called John Doar and I said, "Gee, I've got this meeting and I'm worried that--." And John was in a deposition in Texas or something, and I traced him down. And I said, would you please call Alan Cranston about this, and put it in perspective and explain it. He said he would. So I sweated the whole day, I couldn't

work, I couldn't free my mind. I just sort of sat on pins and needles until four o'clock or four-thirty when I went down for the interview.

And I went, they ushered me into a room, and I'll never forget that room. He had his top guy from Washington, whose name I can't recall right now. They had the room configured in a way I'd never seen, sort of an "L." A long couch here, and I sat here, and Cranston sat there and then this other fellow sat over there. And during the course --they would ask me questions, and very quickly I realized that I couldn't look at both of them at the same time. And the way I came at it, they would ask me a question.

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Henderson: --me a question and I don't remember all the questions. And I would answer it, and if he would ask me I would answer it, and then I'd finish and he would sort of look over to Cranston like, to get whether--. And I realized, and then I would look over to see--and then I realized [laughs] I couldn't look at both of them at the same time. And I often thought this must be the way politicians do things. They had a set-up where they could exchange glances, or nods, or negatives, that I couldn't see.

I remember, I went through this process and they asked me about the car, among other things, and I told them what happened. Then he said--the first time I got an indication that maybe things were going to go okay--he said, "Well, we got a call from John Doar today," and something to the effect, "I would trust that man with my life," in terms of his integrity. "And he said that I needed to understand the times there, and if I deprived you of a judgeship because of that, I would never forgive myself." And I thought, okay, that has to be helpful. So we went on a bit, and then finally he said, "Okay, well, I'm satisfied, you're going to be our next federal judge."

McGarrigle: It's interesting because he was very forthcoming with that information, which couldn't have been a stronger statement.

Henderson: Yes. So then he said, "You're going to be our next judge." And I sat there, and I was stunned. [laughter] You know, I didn't know what--. Then the other fellow said, "Any questions?" [laughter] "Duhhhh, I--." Then he said, "Okay, well now, you'll get these forms, and da, da--here's what you should do, and here's the way it's going to work." And I sort of said, "Gee, thank you," [laughter] and walked out. I just didn't know what to say.

I think I've told you another aspect of this. My dear mother--I walked out, and there was a phone booth on the corner and I went to the phone and called my mother in L.A., and said, "Gee, guess what, I just met with Senator Cranston and I'm going to be a federal judge." And my mother said, "Oh, gee, that's nice. Did I tell you about your cousin Ronny?" [laughter] That's my family, and I said, "No, you didn't." So we talked about family matters and then I was thoroughly disgusted. [laughter] I had just called with the biggest news of my life, and then, you know, after about ten minutes, maybe fifteen, at this point I have no interest in what we're talking about. So then I say, "Well, I better be going home now, I'm standing on the corner in a phone booth."

Then she said, "Okay, but let me get this straight, you're going to be a judge, you said, is that like a traffic judge?" And I said, "No, Mother, it's different," and hung up. So

that's the story, the whole process of--most of it. I'm sure, I've left out little things you may want to ask about. But that's the whole process from that first letter, to Cranston giving me the word.

McGarrigle: Do you share stories sometimes with your colleagues and friends sometimes? I'm thinking about Harry Bremond.

Henderson: Harry Bremond, yes.

McGarrigle: Who I met with, and we talked some about the majority community, being a minority person in the majority community.

Henderson: Yes.

McGarrigle: And I'm just struck by that lack of context in the broader scope in terms of family, and what it means. I mean, there were federal judges who didn't have this experience of disconnect between their appointment and--

Henderson: Yes.

McGarrigle: Do you discuss amongst each other?

Henderson: Oh yes, oh yes, we discuss it. Well, you know the one I'm closest to, in terms of discussing it, and I think who understands it more is Marty Jenkins, who is right next door. Marty and I, for example--. Marty--a similar background, came from fairly modest beginnings in Bayview/Hunter's Point area. The thing we talk about, I probably don't want to mention names because it will be seen as a criticism and it isn't, but right before Marty came on a couple of--who are now younger judges on our court--had come on. And I would remark to Marty, you know, I would say, "Gee, I feel so--I don't know how I got here, Marty." And he said, "Me, too, you know, gee, I feel so privileged. How did a poor boy like me--now I'm a federal judge. You know, we're on the nineteenth floor and--." And then we'll comment that, "Gee, it's interesting, some of your colleagues who just came on have a whole different world view. You know, their view is, 'Gee, how did it take so long for me to get on? What's wrong with this system?'" [laughter]

And that is--. Yes, me and Marty, we think we're just lucky fellows to have escaped the ghetto, gotten through all of these things, and now we're federal judges. I think, first of all, our colleagues were much more knowledgeable about the process, and I think that--our white colleagues--and I think at some point said, okay this is a stage in my life, now I want to be a federal judge. And then they knew how to do it, and they talked to connections and they got it. That wasn't the case with me, as you've just heard. I think maybe that's part of it. I was just so politically naive, and I feel that in some ways the job came out and sought me, I didn't seek it, and I'm just very, very lucky.

McGarrigle: Now I'm in a little bit of a dilemma, because I know from talking to your friends that when they read this, they won't excuse me if I let the luck portion in. [laughter] So, I mean, I'm just thinking--John Doar, Tony Amsterdam, and we've discussed quite a few other people and the caliber of backing that you had. And what they all saw in you in terms of capability and intellect, and on and on.

Henderson: Yes. Well, that's true, I have to acknowledge it. But, again, I think I'm just very lucky, I think that I'm lucky that people like John Doar had a role in my life, and sought to be--. I once wrote him, and I don't do this often, a long letter a few years ago. And just essentially said, "I've been sitting down and thinking of the person you are, and what you've meant in my life, and I just want to thank you for being a part of my life." And I really meant--. I feel that John Doar is a very special man who didn't seek me out, we came together and I worked for him. And he helped me, he did help me. But, again, I think that's luck. [laughs] I really do. Tony Amsterdam is a truly extraordinary human being. We became friends at Stanford, and as I've said, I think he played a role in this. That's luck. I think it's luck that I grew up around the corner from Sammy Williams. You know, I don't think I did anything. I don't think I was a special person. But I think it is luck.

And there's another story about Sammy that I like to tell. When these people who were opposing me, and I won't mention any names--when I came out of that group of five--a group of African American lawyers went to Sammy, not knowing I had grown up with Sammy [laughs] and known him all my life. And they said, "Hey, gee, we want to let you know, Thelton isn't the man. Gee, do you know he has law offices on Montgomery Street in the financial district, two white partners, he's married to a white woman, he's not really of our community." And said some other things, and Sammy said, "Let me take care of it." And they went away thinking he was going to kill it, and Sammy continued to help me. But that's one of the stories, that was just luck that that was Sammy in that position. So, I consider all of those things to be lucky breaks. Had it been someone else, they would have said, "Oh, is that right?" Sammy knew better, he knew who I was, he knew my civil rights commitments and the things I stood for. So he was there to see that these people didn't stop the process.

So you know, my friends, I love them because they tell me this, that I had something to do with my success. And I believe I did, I did something, but again you ought to talk to Marty because we are really soul mates in this. You know, I think that what we both believe is that a lot of good people helped us along the way, and that we helped ourselves by simply doing our best, and being available to take advantage of the breaks when they helped us. I think if we had been bad lawyers, or dishonest, it wouldn't have happened. And I think what we did was simply have a pretty good record and when people were looking for someone like us, we were available to be helped in the way that these people helped us.

McGarrigle: Does it come up with your law clerks and other people of another generation, the question of how much race matters, in today's context? It's such a complex subject.

Henderson: It does, we talk about it, we talk about it. Because as I may have said in another part of the interview, I always hire clerks who are very conscious of social issues. And we talk about these things throughout the year that they're with me.

My own view is that--. You know, I'm a product of informal affirmative action. You know, I think it--and I've already told the story--I think that these appointments were affirmative action. Cranston wanted to diversify the Northern District of California. Until Marilyn came along, they had never had a woman in the history of that court. Until Bob Aguilar came along, they had never had an Hispanic. And I think it's to Senator Cranston's credit that he said, "I want to change that."

Now, interestingly, they had had one black. I wasn't the first black. Cecil Poole had been on that court, and was in the process of being promoted to the Ninth Circuit, so that created an opening for me. He'd wanted to keep an African American on that court, and so--that's affirmative action. And I feel I'm a product of affirmative action, and I think a lot of times along the way--I think that when I went to Boalt Hall, to law school, I was one of only two blacks in my class. I think that Boalt had an affirmative action program. And Kay [Kathryn] Werdegar, who is on the California Supreme Court, was a classmate of mine. They had two women in that class, and that was what they did. They had one or two women. And I think that was affirmative action, saying "Gee, we ought to have a woman in the class."

So, you know, I believe that I've benefitted along the way from this kind of informal--in those days--affirmative action. And that was what happened when I got the job as a judge. I think that it was some sort of--maybe not affirmative action--when I went to Stanford, I think they wanted a black in their administration to do a number of things. One was to set up the minority program which we talked about. And in some sense that was affirmative action. So--.

McGarrigle: It's interesting, especially in light of today's environment.

Henderson: Yes, especially, yes. You know, I'm astounded at--I'll say this and I'll be political to that extent, I'm astounded, that I've had people who went to school with Clarence Thomas who say that when he was a student he was active in civil rights and all. And I'm astounded to hear him say, having been a beneficiary of affirmative action, that he's an opponent of affirmative action. I simply don't understand the thinking process that leads him and others like him to it. But that's--.

McGarrigle: Yes. Was Ruth Bader Ginsburg at Stanford as well, during the period that you were there?

Henderson: No, she wasn't.

McGarrigle: She wasn't, okay.

Henderson: No, I didn't know her. I knew of her through a friend of mine who graduated from Stanford and actually worked for her in New York on this women's project, women's rights project, I guess. And I knew her name, but I've never known her.

McGarrigle: Okay, I thought there was a connection there. You know, I read that you had met President Carter at some point, several years after your appointment to the bench.

Henderson: Yes, I did. You know, I'd never met him--again, this is part of my lack of political connection and clout. I certainly didn't meet him through the process. And then several years later, Stanford University was honoring him and he was a guest. And the dean of the school at the time--

McGarrigle: --Donald Kennedy was the president.

Henderson: Donald Kennedy was the president--I have a picture in my chambers, maybe you saw it, where I'm meeting President Carter. I'm in a line there, and Donald Kennedy's in that

picture, and the Dean John Ely. John Ely was--John called me, and said, you know, "We're having a reception for former President Carter," and he was astounded that I'd never met him. He said, "I'd like you to come over and be a part of that." And I said I'd love to, and so I was there, and that's how I met him. And I'll always remember that as I went down the line and stopped and talked to him for a while, his first question. It was pointed out that I was one of his judicial appointees, and he said, "Oh," and asked me a little about myself. He said, "Are you keeping the faith?" And I wasn't quite sure what he meant, and I sort of said, "Oh, yes, sir." And then I thought about it and thought about it, and I'm convinced that what he was asking was am I upholding the principles that he endorsed when he appointed me, and am I keeping the faith in terms of the kinds of things I'm doing on the bench. And I've always remembered that, and hope I have kept the faith with him. But anyway, that was my one and only meeting with President Carter.

McGarrigle: What was the initial reaction in the legal community once your name was put forward?

Henderson: I can only tell you the legal community that I had touch with. I think they were very happy. You know, I got calls, I got congratulations, and my investiture was just one of the most glorious events of my life. I think that something new started in the court, and I think there is something about having someone join our court or any court, who is a part of the "establishment," and indicating quotation marks when I say "the establishment," taking the bench.

There were sort of small, formal affairs, and the partners from the law firms come, and we have it in our ceremonial courtroom, and it's three-fourths full. It's a nice little affair. When Marilyn came aboard, when Bob Aguilar came aboard, and particularly when I came aboard, I think it was just--it was a celebration, and you couldn't fit in the room. People were pouring out into the hallway, and they had to open up another courtroom and put a TV in there. So it was a different event, one of our own. You know, "We're a part of the court." And I think that has guided me throughout my career, and I've always remembered that.

I spend an enormous amount of time, I think, talking to law groups, minority groups, because that event made me think that I'm part of that community and that they take--a lot of them didn't know me, they just knew I was black, they knew I had been involved in public interest things, and so they took me in as one of their own. And I feel that obligation, and I still will, at the drop of a hat, will go talk to a group, just to have them be able to say, "He came to us. We have access to a federal judge." I think it's very important to certain parts of the community, because I think before Marilyn came along, before Bob came along, that community couldn't say that.

I know early on, one of the memorable things, I was eating in a restaurant, and this had to be the first, certainly the first year of my judgeship. Two young women came up to me and said, "Sorry to interrupt your meal, Judge, but I want to tell you that I appeared in front of you a few months ago and I just wanted to thank you. You were so nice to me." And I said, "Great," and they left. And I thought about that, and I told stories about it like I am. And I said, "Gee, isn't that extraordinary, why wouldn't I be nice to them? What was exceptional?" And they were making a profound statement to me, and I think it was partly that somehow--and I know Marilyn has had similar

experiences--someone that they could identify with, that appreciated the issue, was there. And I think that was--seemed very important to those two women.

I've had other minority attorneys say the same thing, they've just felt so good to be standing there and having you. And sometimes they'll say [laughs], "Even though you ruled against me, I felt good that you did it and that it had been valued and evaluated, and I got a fair shot." And I think--I'm not about to suggest they don't get a fair shot from my colleagues--I think it's a perception that somehow I listen carefully or understand what they're saying in a way that perhaps my colleagues don't. So, I think it's an enormous responsibility that you have when you get in that position, and again, I think the person I talk to most about this is Marty Jenkins. He sort of gives me a lot of verification for what I'm saying, because I think he agrees with virtually everything I'm saying about this.

McGarrigle: There must be a very strong experience of respect that the attorneys you're talking about feel in your courtroom. Being respected, respect.

Henderson: I think so, and I certainly hope so. Yes, I think I show that, I respect--I've been there, been there, done that. And they have a tough row to hoe. Very often these attorneys are fighting the system, and they very often--. It's a lonely battle, and they don't get heard a lot. They'll come in, and they're criticizing some of--they're criticizing a policeman who they think didn't treat their person properly, and they don't always get an ear to that. I mean, "that's not the way it's done." "Oh, come on, get out of here, what's the big deal?"

And I certainly thought it might be a big deal, and I think they appreciated that. And I very often didn't rule for them. And I've told stories that very often attorneys have come into my court with a discrimination claim--I think I'm viewed as this great liberal, all you have to do is shout discrimination and I rule for them. That's certainly not true. I rule against on many cases, and I jokingly tell my buddies--. Harry Bremond has heard me tell the story that every now and then I'll hear the case and I want to say, I wish I could, that, "Gee, that not only is not discrimination, I'm astounded you weren't fired five years ago, you're incompetent, and that's why you were fired!" [laughter] You know, that happens. And when I see that, I will rule accordingly.

But more often what happens is that I will hear somebody say, "Gee, I was at work and there were these racial slurs--." And I remember one case, where there was an allegation of all kinds of things. There was a locker room kind of thing, where the workers came and they would put things on this person's locker, and hung a gorilla on there as a racial slur. And I remember thinking, boy, I believe that. And I sort of talked about this with my colleagues and one of them said, "Gee, I just don't believe people do that." And I said, "I believe it. In fact, I've heard my uncles or my father tell stories at the dinner table that are very similar to the ones I'm hearing."

I think that's the kind of thing that I've brought to the bench. It's not a bias. I think it's an insight that helps me understand some of the issues that are brought to me. I think my colleagues are fair-minded people, but I think they don't bring some of the experiences that I do. I don't bring some of the experiences--I'm sure I've ruled on complicated business issues, and I didn't have a full understanding of the business environment, and probably didn't have as sophisticated a ruling as some of my

colleagues with that background. I think the same thing happens in civil rights and discrimination cases.

McGarrigle: I'm not sure that that happens in the business setting, but--.

Henderson: Yes, well [laughter], yes, I'm not--but I'm open to the possibility that I really didn't understand a lot of the background and subtleties of sophisticated--because I never worked in the business area, I didn't practice in it, so--but, anyway.

McGarrigle: I wanted to ask you more about the investiture. Because I understand you ended up wearing Judge Zirpoli's robes and--.

Henderson: Oh, yes.

##

McGarrigle: -- who you--

Henderson: --admired greatly. He was a--. He has passed on now. He was a hero to me, and he was a hero to many of my friends. He was a judge who stood--he was a brilliant judge who --many years later I had a chance to talk to him, before I got into trouble with my [Proposition] 209 ruling and my Pelican Bay ruling, so that I could no longer even be viably considered for the Ninth Circuit Court. I was a candidate for it, and I was getting calls and even inquiries from senators' offices asking if I was interested in the Ninth Circuit. I love the job I have, and I wasn't sure I wanted to do it. In fact, I was worried about being "Peter principled," being promoted to my level of incompetence. I wasn't sure I would be a good--.

And I talked to Judge Zirpoli, and he was still alive at the time, because I knew that he had been asked to apply to go up, and he never did it. And it was affirming to me, because a lot of people said, "You're stupid not to try to go up to the Ninth." And he said, no, he had the job he loved, and while the other one had seemed to be a promotion, it was a promotion to which he wasn't interested. He wanted to stay where he was. And that helped me. I had a letter that I had been told to draft and send to our senators, Feinstein and Boxer--and to the president, saying, "I want to be considered." I remember after talking to Al Zirpoli, I tore up the letter, never sent it. It's up to debate. At that point I thought I probably had a chance to get on. Later events, I've had no chance, but by then I'd already decided I didn't want it. But Zirpoli was that kind of person, I admired him deeply, as did most of my friends.

And so, when we had the investiture, we had--as I said, it was full house, and I had decided, and this wasn't a tradition on the court, that I wanted my son Geoffrey to put on my robe. I asked Judge Peckham, who was a chief and presiding over the ceremony, if this would be okay. And he said, "Sure, we don't do that, but I can't see anything wrong with that." So, in the robing room, there's a room where the judges meet. This event happens in our ceremonial courtroom, not a regular courtroom. And there is a robing room where the judges meet prior to whatever the big ceremony is, and they put on their robe, and we get ready, and hang out.

And in the robing room Kumi Okamoto, who handles all of these ceremonies, has done it for years, still does it--my robe was hanging there, and my son was there, and she said, "Okay, now, Geoff, when we get to the point where Judge Peckham asks--the ceremony is essentially over, and he's going to swear in your dad, you come up with the robe. And the robe is hanging right there." And Geoff says, "Okay." So, we all walk away, and in retrospect, the robe is still hanging there. Kumi-- Geoff would take the robe, and he's supposed to be sitting there with it on his lap. [laughs]

So, we go in and we do the ceremony. I get up and Judge Peckham says, "Raise your hand," and he sort of--. And Geoff is sitting there [laughs] staring, and Judge Peckham sort of stage whispers to me, "I don't see the robe on Geoffrey's lap." And my first instinct is, "I'll kill that little son of a--." [laughter] And I look over and there's no robe! And, it's interesting, Al Zirpoli was getting on in years but didn't miss a beat. It was just, you know how if you could time it in a movie, and this was a key scene, the director would have done it exactly like this.

The crowd was just starting to say, "Hey, something's amiss." But not quite, and Al Zirpoli picked it up. And I don't know how he did it, he jumped up, and took off his robe, and said, "Here." And then Geoff came up and put it--. It couldn't have been more perfect, because there was no one I admired more, and so I put the best face on it after all these years, that I got a chance to wear Al Zirpoli's robe, which was just an honor for my investiture, and that's the way that happened.

McGarrigle: And you had appeared before Judge Peckham not too long before that in a major case?

Henderson: My last big employment discrimination case was in front of Judge Peckham. In fact, there's another story related to that. We had resolved the case, and the issue remaining had to do with attorneys' fees, we hadn't been awarded attorneys' fees. So Judge Peckham took that issue under submission, and we sort of slugged it out with this large firm who was offering us--. And I've learned as a judge, that's just the way it's done. They never offer you what you've really earned, your hourly rate. They will offer you something less than that, because plaintiff's attorneys, you don't do it on a fee. The large law firm that's representing the corporation, they send in their billable hours, they get a check, and it adds up. And in that process, they tend to devalue the plaintiff. "Well, you put in all these hours and now you want three hundred thousand dollars. Nonsense, it wasn't worth three hundred." And that was what we were battling over.

And Judge Peckham took it under submission, and in the process I became a judge. You know, I was in the process of these things I had told you about earlier. I joined the court, and I actually had chambers next door to his, as it turned out. Because Cecil Poole was his next-door neighbor, and once Cecil went to the Ninth Circuit, I especially wanted Cecil's courtroom for symbolic--I'm replacing him. And that was right next to Bob Peckham's. So, months passed and no ruling on the attorneys' fees. Then one day I was walking down the hall going to my chambers, and Bob Peckham was--and he said, "Oh, Thelton, you know--." I don't know what he had been doing all this while, but he said, "I've decided that it wouldn't be proper for me to give you attorney's fees now that you're a colleague. It won't look right. Whatever I give you, the other side is going to say I'm giving money to a buddy or a colleague. So I've asked the Ninth Circuit to send in someone from out of the district to handle the attorneys' fees. Is that okay?"

I said, "Of course, it's okay." And I don't remember this judge's name. They called in a judge from Arizona who was known to be quite conservative, and I thought, oh boy, we're going to get killed. He has not got a reputation for giving big attorneys' fees to civil rights lawyers. The guy ended up giving us [laughs] really a generous award, you know, probably better than we hoped for. All I could figure is that somehow when he looked at it, and he said, well, gee, this guy was good enough to become a federal judge [laughs], he must have been a pretty good attorney, I'm going to give him--. But he gave us a quite satisfactory attorneys' fee award. That was my last case, and that was before Bob Peckham, yes.

McGarrigle: So it's an interesting transition from private practice to the bench?

Henderson: Oh, god, it was an amazing transition, and a scary transition in the sense that--you've been following my--I really had a very limited legal experience. And so all of a sudden, I'm presiding over antitrust cases, I'm presiding over bankruptcy cases, I'm presiding over admiralty cases and maritime cases, and securities. None of which I had ever tried or even had an interest in [laughs]. It was kind of scary learning it, especially early on. Now it seems fairly routine. I've done it long enough, I know the issues, and my clerks are available if there's a new case that's relevant that I haven't kept up with. You can't keep up--. So now it's not intimidating at all, but early on it was very, very intimidating.

McGarrigle: What kind of a daily work schedule did you have early on?

Henderson: Oh, gosh, I tend to be a workaholic, I think, I'm not patting myself--. I came, you know, I think in those days I probably got to the office between seven o'clock and seven-thirty and probably never left the office earlier than six o'clock or six-thirty, would stay later if need be. And I purposefully set my law and motion--everyone on our court has a day that they set aside to hear motions, because the average case load on our court is roughly 350 cases, and you have to manage all those. There are motions coming on them. You set aside a day to hear the motions on your cases.

I purposefully set Monday as the day I would hear my criminal and civil motions, and the reason I did that was that I wanted to have the weekend. So, I would--certainly in the early years, I would go to work on Saturday and Sunday just to prepare for my motions on Monday. So, it was long hours. But I enjoyed it. I'm not complaining. I think it was exciting. I was learning. I was determined to be prepared, and respected, and knowledgeable. I think that's some of the things you've probably talked to my friends about. I probably have carried a burden I don't have to carry, but felt I did. And I always felt that--.

And it's interesting, Cecil Poole, I had this conversation with him. I think we felt that if we fail, we're not good judges, it's going to be harder for a Senator Cranston to appoint someone later on in that position, and it was very important that I do a good job. So that was part of what drove me, and part of it was my own insecurity. It was very important to me that I walk around and feel that I'm a real judge, and not whatever people were saying about affirmative action, some second-rater that happened to get the job handed to them. So I was driven by that, and I worked very hard over the years.

McGarrigle: Was there a program in place where Judge Peckham as the chief judge brought you along somehow in terms of procedure, and policy, and logistics, being a new member of the court?

Henderson: Not really. There is a judges' school. Back in those days, they did it in Virginia. You go to it, it's three or four days and you have [laughs] what I call "talking heads," who are judges like myself. I've actually been asked over the years, in recent years, to go back and teach a course in procedure or something. But, I didn't go to that. And I did it on the advice of some judges on the court, I can't remember if Bob Peckham was one of them, I don't think so.

But essentially saying, "Okay, you can go back there and go to these lectures and get these materials for four days, and sort of be four days farther behind when you get back." Or, they had a book. They would give you a book that was a condensation of these lectures from previous years, which I had. "Or you can read these and come around and we'll help you." And I chose that. So I never went to judges' school. What I did was run down the hall to my colleagues. Al Zirpoli was a wonderful help. Bill Orrick, you know, I would walk in and say, "I have this problem or this dilemma, what would you do, or what would you advise me to do?" And I would get the best information in the world.

That was the way I did it, and I think that's the way we usually do it. I think Marty now, he comes over still and I try to share what I've learned in all these years with him. One of the things we instituted as a result of this kind of thing, while I was chief judge, we started a mentor program where when you come aboard, you can select a judge as your mentor and say, "I would like you to be my mentor." And Fern Smith is on there. When Maxine Chesney came aboard, she chose Fern as her mentor, I just remember, and Marty asked me to be his mentor. And that works. I'm not sure that all judges even want a mentor, but it's available. And I think that is more meaningful, someone who's right there and available, and saying, "I'll be your mentor" means, "I'll be available. When you come in on short notice, I'll spend the time with you. When you call me at home, I'll be there for you."

McGarrigle: So was that a program that came about when you were chief judge? Was that your idea?

Henderson: That was my idea, and we've instituted it. And it's still a part of the program, yes.

McGarrigle: Did you know Bill Orrick from back in Washington, D.C.?

Henderson: I just had lunch with Bill two or three days ago, and we were joking about this. I knew of Bill Orrick. Bill Orrick was one of what the papers used to call the "Irish Mafia," who were these big shots. You know, walked around in suits, and sort of ran things, and would walk down the hall with Bobby Kennedy. And I was one of the guys that would go up against the hall and say, "Boy, I wonder who they are." I mean, I knew who they were. So no, I didn't know him in that sense. I certainly was a young lawyer right out of law school who knew he was one of the big shots running one of the departments and being a decision maker--but no, I didn't know him.

And one of the joys now is being, we've really become close friends, and talk about those old days, but from an entirely different perspective. He'll say, "Well, we sat in

and had this meeting and we decided this and that,” and I’ll say, “Oh, gee, I think I got it down here and I ran down to Mississippi.” So, you know, it was a totally different perspective. But no, I didn’t know Bill then. I got to know him when I came on the court.

McGarrigle: His family has very close connections to your neighborhood, to this part of Berkeley.

Henderson: I heard that. Yes, that they either lived here—

McGarrigle: I think they owned a lot of land in this area.

Henderson: They owned a lot of land in this area. Yes, Bill has been a wonderful friend and until--I think his brother has gotten in frail health in recent years--they also own a wonderful spread in Monterey along the Seventeen Mile Drive, just adjacent to the Pebble Beach golf course. And our court has a retreat each year. We get away for three to four days to discuss the business of the court, and we do it at Asilomar, which is there. His brother always invites us over for cocktails before our dinner there.

So, you know, Bill is a good friend. And yes, his family did quite well. As you said, owned parts of this and parts of a lot of other things, apparently including that wonderful home that his brother now lives in. But, Bill is wonderfully modest about all that. I think he’s one of these people that is embarrassed by his wealth, whatever his wealth is, I don’t know what it is, but he handles it wonderfully well. Marty and I had lunch with him. We were always joking, “Boy, if I had any money, I would have it on the back of my shirt, ‘I’m rich. Step aside!’ ” [laughter]

But no, Bill is a wonderful friend and has been so supportive. When I was getting attacked during my 209 ruling, you know, the reporters were looking for something, to see how my court felt about me. And, of course, if they had said, “Oh, yes, he’s a tyrant,” they would have run with that. But they went to Bill Orrick, and I still remember the article, and he was quoted as saying, “He’s a great chief judge, he’s a credit to our court, and I--” what did he say, “I admire him extravagantly.” Or “extravagant” was a part of the phrase, and I’ve always appreciated that support from Bill. But anyway, to get back to the initial question, we didn’t know each other in those days, unfortunately.

McGarrigle: It’s interesting that you’re at this different point.

Henderson: Yes, I know it.

McGarrigle: Well, we’ve had a full session. Why don’t we stop for today, unless there are things that you’d like to add on the topics that we’ve discussed?

Henderson: No, that’s fine, it’s been a full session.

McGarrigle: Then we can start talking more about some of the rulings and the trip to South Africa, and anything else.

Henderson: Great, okay. Good.

[Interview 8: September 14, 2001] ##

McGarrigle: Well, first of all, to make an acknowledgment about the date today, which is September 14th in the year 2001. And what a trying week it's been for everybody.

Henderson: It has been.

McGarrigle: I'm very glad to be here with you today, I've been looking forward to it.

Henderson: Thank you.

McGarrigle: I'm glad we're able to do our work.

Henderson: Yes, okay.

McGarrigle: To finish a few things from last time, and then to move into some of the areas we've been discussing for our meeting today--. I didn't ask you about the time when you were going through the FBI check in preparation for your confirmation and when you went to Washington for the judiciary committee hearings. I wonder if you could discuss those things.

Henderson: Okay, I think last time I told you that when I finally met with Senator Cranston and at the end of that final meeting he said, "Okay, you're going to be the next federal judge." And he explained to me how the process would be, including the FBI investigation. Well, it was a fairly tame period, but it's a period when you start worrying about your past. And I began getting calls from friends, "Hey, the FBI is coming over tomorrow to ask me about you. What should I say?" was the general--. "Well, say whatever you want to say," was my response.

But I became aware of the FBI talking to my college friends, my former neighbors, my law partners, people at Stanford whom I'd worked with and that kind of thing. And generally, after the interview they would call and the general response was nothing, it was fairly routine. You know, "I told them what you did at Stanford and about the class you taught and those kinds of things, and I thought it went well." That was the general response I got from my friends.

One of the questionnaires that I got, I believe from Senator Cranston's office, asked me to list--I forget--five perhaps, or maybe it was three Republican friends that I knew. [laughs] And I had never thought of my friends in those terms and wasn't sure I knew any Republicans [laughs], and if I did, I didn't know which ones. I remember it is still a joke with one of my best friends from college, Bob Hamilton, who was student body president, a very well-known, dynamic guy, and we're still friends to this day. I called Bob and said, "Gee, maybe he's a Republican, because he's in real estate." And I called, he was insulted! [laughter] You know, "Are you a Republican?" and he was vastly insulted at the question. But, finally, I got--. I thought that the best venue for finding people I knew and were friends with was Stanford. I remember specifically, Jack Friedenthal, who's still a very good friend and was on the faculty. I knew he was a Republican, and I listed him. And I honestly can't remember who the other people were. But that was part of the process, of listing Republicans that I knew who I

assumed could say I was okay. You might want to ask another question because I'm rambling at this point. [laughter]

McGarrigle: Then you at some point were notified that it was time to go back to Washington.

Henderson: I was notified that it was time to go back to Washington for the hearings. And I was told--and I'm awful on those kinds of things--I was told that one of the things to do would be to make a courtesy call to certain people at the Justice Department and to Senator Hayakawa and to Senator Cranston and some other names that I don't recall. One of the things that I continue to say is it's a miracle I ever got this position. I don't do things like that well. I somehow feel very awkward about making a courtesy call. It seems like it's a ritual I don't understand. So I didn't do it, I didn't--. I went to Washington and checked into a hotel.

And I did go to the Justice Department, as I was instructed to do, for a vetting session. And I wish I could remember the name. I met with a wonderful man, who knew of me through some friends from my Justice Department days. And he helped me and gave me a lot of comfort and told me how the process goes. He had looked at my background and told me he didn't see any problems there, that if I was asked this, here is the kind of answer I probably ought to offer. It was fairly informal. It probably took an hour, as I recall.

But other than that, I sat in my hotel room, hung around until the hearing. And the hearing was fairly routine. They had a group of us. My recollection, it was about twelve of us. The ones I remember were Marilyn Patel, who went through with me, Wally Tashima, who is now on the Ninth Circuit Court, is another one I remember. It was pretty much a group thing except that after it was over, I was told that I should stay, which was becoming par for the course. I mentioned that Marilyn was appointed by Cranston, and I was told I should stay and meet with him before--and it was that kind of process in Washington.

Senator Strom Thurmond came in and I think he wasn't going to veto me or blue-slip me, but I think he sort of wanted to let me know he didn't feel comfortable with me, because he asked me some questions about membership. I belonged--I was on the board of directors, just prior to this, of the ACLU, and I was on the board of directors of California Rural Legal Assistance, CRLA, and I was on the board of directors of Equal Rights Advocates, that's three of the groups, and probably some other board. And he sort of said, "Well, I see you have all these groups with initials on them. ACLU, CRLA, tell me about those groups." And I told him, and I think he just--he knew what those groups were. I think he wanted me to know he had some concerns about it.

Then, he had an assistant who I was told was a very active player in this. His name was "Duke" something, was well known in those days. I don't think he's around anymore, he certainly doesn't do that job. He gave me a form and asked me if I would be willing to write to Senator Thurmond and assure him that I would not--that I would, one, resign from all these groups--I think I'd already resigned, but assured them that I was not involved in these groups anymore. And that for, I believe it was for the next five years, if any of them appeared in front of me I would recuse myself. And I told him that I would be pleased to do that, and I did. I got back to the office and drafted such a letter

which I mailed to Senator Thurmond. But that was pretty much the process that I went through.

McGarrigle: The hearings, is that before a committee?

Henderson: It's before the Senate Judiciary Committee. It's before the Judiciary Committee.

McGarrigle: And then they discuss amongst themselves the various nominations?

Henderson: Yes, but it's usually--it's pro forma.

McGarrigle: It is, okay.

Henderson: Usually--in fact, I'm told over these twenty-one years since then, some of the judges have told me that they even had trouble getting a quorum from the committee to even attend. That there was a foregone conclusion that the person was going to pass--and the real problem, getting somebody there to even hold the hearing.

McGarrigle: Okay.

Henderson: Yes, but that was the purpose of it. And if anyone does have concerns, they want to put something on the record, this is the time to do it.

McGarrigle: I see, okay. We discussed last time the ceremony that you had at the court, and some of the transition between appearing before Judge Peckham and becoming a colleague of his.

Henderson: Right, yes. Yes, that was an interesting transition. And I told you about the attorneys' fees issue on my last case, which was before Judge Peckham, and the awkwardness that Judge Peckham felt about now having to rule on an attorneys' fee matter, a matter that would entitle me to money. He correctly felt awkward about that, and decided that he had best recuse himself because the appearance of impropriety offered the opportunity for the other side to protest about the amount of the fee, because I was now a colleague, and so he recused himself from that part of the case, and the Ninth Circuit assigned a judge from outside our district, a judge from Arizona to come in and handle that part of the case. And it turned out fine, as I think I mentioned, because we were very pleased with the amount he gave us. And I sort of have jokingly said over the years that his reasoning must have been, gee, I was good enough to become a federal judge, I must have been a pretty good attorney, so I deserve a lot of money. So, we came out okay in that switch of judges. Yes.

But the transition to judging from lawyering was dramatic for me because I think I'd never really thought about the role of the judge. As a lawyer, I thought my job was to persuade the judge--and it was my job--to rule in my favor. But I never thought about the tools that attorneys have to do that and that those tools aren't available to a judge. And by "tools" I mean you can take a case as an attorney and argue its most extreme position. This case stands for this proposition, and argue that with great drama, when in fact that case may not quite stand for that position, or arguendo, argumentatively it does. But, you know, you can push it to its extreme. Whereas as a judge, I suddenly realized that my job was sitting up there--and I even remember first visualizing it, an attorney

here and an attorney there down below me, representing the extremes of views. And that I was in the middle, and that that was my job, to stay in the middle, and try to sort out these two extreme positions being presented to me, and come up with something that represented “the truth,” in quotes.

And that was a real adjustment, to somehow become that person rather than the advocate. And I still believe to this day that it’s much easier to be an advocate. You can just wing it. “Okay, judge, here’s what we think you ought to do.” You know, you see it all the time. “We think you ought to give us a million dollars for this case.” And the other side would think you ought to give them ten thousand dollars. And just--. And the judge has to sort that out and come up with something that’s fair, and that’s much harder. It’s much harder, because very often in presenting these arguments to you, many things are obfuscated by counsels. And it’s not uncommon--. In fact, it’s common for me to leave the bench and meet with my law clerks, and one of the first questions I often ask is, “What do you think is really going on?” Because you know you haven’t gotten the whole picture. So, it’s a different task, and I think a more daunting task to be the judge with those limitations, than to be an attorney without the limitations or the brakes on your advocacy that are on the judge.

McGarrigle: Certainly the responsibility is quite different.

Henderson: It’s quite different, yes.

McGarrigle: We talked before we started our interview today about Judge Zirpoli’s interview, and Judge Zirpoli discusses various aspects of his role as a judge crafting opinions. I wonder if you’d like to comment on any of that?

Henderson: I would. Well, I would say--if I haven’t already said it in an earlier interview--that Judge Zirpoli was, when I took the bench, was one of my heroes. And one of the heroes of my friends who practiced law. We always admired him for his courage, we admired him for his wisdom. He was a very wise, very savvy judge, very practical judge, and we admired him for the stands he took on the war--the war protesters. We thought he was a very humane judge. And northern California, in part because of Judge Zirpoli and other judges on the court at that time, was known nationwide as a place that was sympathetic in its sentencing of young students and people who were protesting the war, burning draft cards, and those things.

So, I greatly admired Judge Zirpoli when I took the bench, and felt privileged that I was now a colleague of his, and could call him a colleague. Judge Zirpoli, I may have told you that I decided that I--you know, when you get on the court you get to pick a chambers that’s available. I was replacing Cecil Poole, who had been elevated to the Ninth Circuit. And he was next door to Judge Peckham, and I thought I’d love to have my chambers next door to Judge Peckham on the nineteenth floor.

The problem was that Judge Poole wouldn’t move out, and it took me almost a year to get my chambers. And it was interesting, I’m glad I said nothing. I could have said, “Get out of my chambers. They’re mine now,” but Judge Poole wanted some renovation done in his new chambers at the Ninth Circuit. And he was one of my mentors, I learned a lot about him, and he knew from a very practical sense how the system worked. And he said that there was some cracked marble. It is a very ornate

building over there at Seventh and Mission. And his chambers, there was some--I can't remember--some marble was cracked and needed to be replaced, or it was missing and needed to be replaced. And he was insisting on that before he moved in. Because he said if you ever move in, they forget about you. But if you're sitting there, saying, "I'm not moving in, I'm waiting for this marble," they'll do it much faster.

And it turned out that the marble--again, because twenty years ago judges could push budgetary matters and furnishings much more than they can now. And this marble was to be ordered from the original marble quarry in Italy, so they were waiting and I couldn't get into my chambers. So, I took chambers on the seventeenth floor--I'm sorry, the eighteenth floor--and was next door to Judge Zirpoli. So that was wonderful. That's how--one way I got to know him. So it was a wonderful source. I could run next door and say, you know, I think for the first few times I said, "Judge Zirpoli," and he finally said, "Call me Al." [laughter]

And one day--I think one of the things I remember, and I pass it on to other judges and to my law clerk, one day he said, "You know, look, Thelton, I think you're getting too deep inside the legal issue. Why don't you step back and say, 'This is a real world problem, it's not a legal problem. These are the human beings, this is the what they're fighting about.' And take a look at it that way before you plunge into the law, and it will guide you correctly. If you sit back and say, 'What should I do,' just as a human matter"--that's my word, I don't think he said that, I can't remember the word he used--"rather than a legal matter, the answer you'll come up with is probably the right legal answer 95 percent of the time. And you're never going to be right more than 95 percent of the time anyway." And I've always remembered that, and I try to do that. I try to step back in the way that Judge Zirpoli taught me and look at what's going on absent sophisticated interpretation of the statute that is guiding you. And it has served me well, but that was one of the wisdoms I learned from him.

- McGarrigle: Were there particular cases? You mentioned the cases involving the Vietnam War. Were there particular cases or opinions that Judge Zirpoli had issued that stood out for you and your friends who followed his time on the court?
- Henderson: Not really, because I didn't--. At that point, I didn't have an extensive federal practice. I mean, I was just starting, so that the body of law in the court I didn't work with as much as my law partners did who practiced in that court regularly. But, I remember, I can't remember the names, but a couple of prison cases that he had ruled on that I thought were a guide for anybody working in that area. I don't remember the names of the cases. But beyond that, I can't really remember cases that he was noted for.
- McGarrigle: Yes. That's interesting, though, given the large amount of work that you've done in that area, the area of prison cases.
- Henderson: Yes, that's right. And he helped me on prison cases later on. I inherited a case involving the Sonoma County prison system. And Judge Zirpoli was still active, and still a wonderful settlement judge, and he volunteered. He learned that I had the case. No, I'm sorry, he didn't volunteer. The attorneys said they thought they might be able to work out a settlement rather than go to trial in that case, and because of Judge Zirpoli's expertise and reputation in that area, they asked if I would ask him to be the settlement judge. And I went next door, and he was very near the end of his career in

terms of cutting down his workload and his caseload, so I was hesitant to do it. But I went in and talked to him about it, and he said he would be happy to do that. And sure enough, he settled the case and got a consent decree.

And one of the everlasting things he did was recommend a monitor. Because once you get the consent decree, you then have to monitor the jail, or the system to make sure that they comply with the remedies that are provided in the consent decree. And you usually get a monitor for that, and he referred me to a wonderful monitor who is still a friend of mine, Tom Lonergan, who is an ex-police officer. And that was important, I learned, and an ex-sheriff down in L.A. who had gone into monitoring--and he had the respect of the law enforcement side, and that was an important part so that--. But he also had the respect and the trust of the plaintiffs, so he was a wonderful monitor.

And when I many years later got the Pelican Bay case, I recalled Tom Lonergan and appointed him to monitor in that case. And I think Tom eventually developed some health problems a few years ago and then I've replaced him. I still have the Pelican Bay case with someone who's doing an excellent job, John Hagar. But I, again, Judge Zirpoli, I thank him for educating me on the Sonoma County case, because it was a great help when I got the much bigger and more complex Pelican Bay case.

McGarrigle: I understand there's quite a limited number of African American attorneys practicing in federal court. Does that remain true or is that no longer true?

Henderson: It remains true, for reasons that puzzle me. I don't understand it. I think I mentioned that I think that one of the reasons that helped me get the judgeship was that I was one of the few attorneys--African American attorneys--practicing in federal court. So I had a visibility when a federal position came open. It remains true. It is a rarity for me to see an African American attorney in my court. It is a greater rarity to see one who is "the attorney," in quotes, the lead attorney who is trying a case. It is not uncommon to see a black associate come to a hearing or to a motion and sort of sit at the table. And I've always assumed that this is the firm's way of saying, "Well, we have blacks in our firm." And I think they're trying to--you know, attorneys are always looking for the edge--they're trying to get on my favorable side by showing some blackness on their side. That is not unusual. But it is unusual to have an attorney who is really trying a case, working in an important way on the case. I don't know why, I don't know why that is.

John Burris, a very prominent attorney in Oakland, who handles primarily police--excessive force cases with police--is probably the most active black attorney in our court, I think. Howard Moore, who does similar civil rights things, practices in our court. And then the list starts running out. I could come up with a few other names if I thought hard enough, but it's a very limited list.

And I talk to black bar groups quite a bit, and I always argue that, boy, you guys ought to come into federal court. And most of them say, gee, they feel uncomfortable there, they feel unwelcome there. And it's hard to build up a practice unless you have the fortune of getting a case in federal court and learning that system through someone else. And most of them don't have that opportunity to get into federal court without--and with somebody to help you to learn it. So, I think they're intimidated by it. As you know, the federal courts have many, many more rules than the state court. And I think

it's intimidating unless you learn, as most attorneys do, I think, through a firm. You go and you sit at the table, you go back and you learn from a mentor. And I think that's the way most federal practitioners probably do it. And I think that black attorneys don't have that luxury, so they tend to stay out of court.

McGarrigle: And the attorneys who are working for the government, not so many coming in?

Henderson: Not so many there. I mean, right now, take the U.S. Attorney's Office in our own district. Two of my former law clerks who happen to be African American are working there. And, I would guess, there are in that big office--I don't know how many attorneys are there, quite a bit. I would guess there are no more than ten--and we're talking about several hundred attorneys in the U.S. Attorney's Office. There is, I believe there are two at the present time, maybe three public defenders--federal public defenders who are African American. And that's interesting, because Barry Portland is a very fine public defender and sensitive about this issue. And again, I can't tell you why they don't have more. But yes, there aren't many coming through that system.

McGarrigle: I wonder if that speaks to the number of minorities who are in law school now?

Henderson: It probably does. Well, as we know, certainly in the state schools, Prop. 209 has dramatically cut back the number of minorities in law school. It's had less of an impact at the private schools, at Stanford and USF [University of San Francisco] and Santa Clara [University]. But the state schools--my alma mater, I think I've already mentioned that in my class, when I started in 1959, there were two in my class--in that entering class. There was one in the class ahead of me--.

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Henderson: --the second year. There was one in the entering class, Henry Ramsey, who remains a good friend. And then I got in the third year, there was one in that class. That was the numbers back in the late fifties and the early sixties.

And that remained until Martin Luther King was assassinated, and then many universities and institutions decided during that year--'68, I believe it was, '67--that they needed to do something, and the numbers increased. And then Prop. 209 came along and we're right back where we started. The year after Prop. 209, Boalt Hall had one black in its entering class, and it's staying at that level. I'm participating--I hold, once a year--to help the school recruit minorities--I hold an event here at my home. The school holds--you know, they asked me to do it, and Warren Widener who was a graduate and an African American, a former mayor of Berkeley, actually started this event. We now hold it at my home--where we invite all the minority students, Asian, Latino, and African American, and other minorities, here that have been admitted. Fly them in, and try to give them a pep talk. "Come to Boalt Hall. We need you. And we want to increase the numbers."

And I think part of my role is being the, quote, "209 Judge." I think part of the idea is that if I say Boalt is okay in these times, with 209, that hopefully the students will agree with me. Because Boalt has sort of a black eye after 209, and students are reluctant to come to these schools because of 209 and feeling they're going to be alone and not the support--. So anyway, I'm trying to do that. We don't know how effective it is. I think

the numbers have gone up a bit from the one they had that year. That is still not nearly as many as they had in the seventies and eighties.

McGarrigle: That was an interesting consequence of Dr. King's death, that there was an increased awareness around the issues that he was fighting for.

Henderson: Yes, I know it. It was an unintended consequence, I think. But it was a clear consequence. As I said, Boalt Hall called a meeting, I remember it clearly, and invited certain alumni back and I was among them, and they said, "We have to do something. We haven't been doing our part on race." They didn't have any--I may be corrected on this--I believe they had one black faculty member. They said, "We have to do better." And they started actively. Henry Ramsey, the fellow I mentioned who at the time, I believe he was a prosecutor in Contra Costa County, he came onto the faculty, and had a very fine career there as faculty until he became a judge, a superior court judge in Alameda County. And Boalt, my alma mater, started doing things like that, and I think I've already mentioned that Stanford, that's what led me to Stanford. They wanted to do some things in that area, and they started recruiting and hiring African Americans. So, yes, and I think that was nationwide. I think there was a nationwide move to integrate our society as a consequence of Dr. King's assassination.

McGarrigle: Yes. I was thinking back to Judge Zirpoli and to your time early on the court. How would you describe Judge Zirpoli's style in terms of managing the attorneys, and his approach?

Henderson: Okay, you know there are--. He was very gentle and firm. I think he had the respect of everyone who appeared before him. He was knowledgeable, you knew he was prepared. And I think it wasn't heavy-handed at all. I think he came into court, he had his procedures, he let you know where he was going. He was a gentle man, but he was a firm man.

I don't recall, and I saw him--. I would sit in his court when I was a new judge and see how he did things, because I wanted to emulate him. I think that one of the things I learned and then still do is--some judges holler, some judges pound the gavel--he told me, by the way, that he had never pounded the gavel in all the years he was on the court. And I've been on twenty years now, and I've pounded my gavel once. And again, it was emulating him. And the one time I did it was, there was a big drug conspiracy and a lot of defendants from Richmond. And the courtroom was packed, and there were babies screaming in the courtroom. And I walked in, and my deputy said, "All rise, come to order." And it was as if I didn't even exist. [laughter] I sat there, and she said, "Come to order." And people were talking and walking around, and I finally banged the gavel and said, "Come to order," or something. But that's the only time.

And Judge Zirpoli was the same. The other thing that I noticed that he did, he didn't yell, he would look at you if there was a problem of behavior or control. He would just say very firmly, "Counsel, I don't want any more of that," or, "Counsel, do not do that again." And that was that, and it worked for him. And for the most part it's worked for me. I've just sort of adopted that style. I think we all have to have our styles, and I like to think my temperament is somewhat close to his, so it works for me.

But I'm constantly telling young attorneys, "Don't copy an attorney who has a different style from yours." Some attorneys can be bombastic, and it fits in, and they're charming in it, and they get away with it. An attorney who is like me, I couldn't be bombastic, it wouldn't work. I could take acting classes and try it, it would not be a true projection, and I think the same with judging. I couldn't have been a judge like some of my colleagues who are more volatile, and it works for them. The Zirpoli temperament, I think, worked for me because it's more my own temperament.

But again, getting back to your question. He was a very firm judge, and he moved an efficient court. He would cut off an attorney, an attorney would start wandering around and he would say, "I'm not interested in that, let's get to this," and direct it very efficiently and very participatory. Now, that's not a thing I could do and learn from him, although I knew he did it. I tend to let attorneys wander, I don't have the knack for saying, "Okay, don't go there." Because I think I'm less certain than Zirpoli was. I say, "Well, maybe this will be helpful, I'll just hear it out." He was very clear, this isn't helpful and here's where I want to go and here's what I want you to talk about.

McGarrigle: And in terms of his reputation as a settlement judge, is that a different set of skills?

Henderson: It's a different set of skills. One, again, I think the primary skill in settling is understanding the issues, understanding what both sides want, understanding their concerns, also understanding what the case is worth. You have to be an evaluator, like an insurance evaluator. What is this accident worth? And a judge has to do it, because if you don't know that, you'll never get them together. You have to have a true sense. "This case is worth \$150,000," or whatever your figure is, and then start working towards getting them there.

And also knowing the sources of money. And that's why I've never been a good settlement judge, because I never had cases that involved insurance, and insurance is a big part of this. I was always amazed at Gene Lynch on our court, who was just a whiz at settlement, and he could come up with innovative things. "Well, look, why don't you call this insurance company? They're collaterally involved here and they're on the edge of this case. I'll bet you they'll give you, if you talk to them right, they'll come up with the \$25,000." Just putting them together until they get to that figure. And Judge Zirpoli had that knack. He knew all the players, he knew all the components of the case, and he worked hard at it since settling is hard work. And he was very good at it.

McGarrigle: I can't imagine--this is a digression, but--that many members of the public or of the bar understand the complexity of your job.

Henderson: I think they don't, and I doubt if they do. It's very complex, and it's a very hard job. I think the other thing that they don't understand is how hard my colleagues work. Another thing they don't understand, because I think attorneys tend to work in generalizations, is how ethical my colleagues are and how they worry about what they're doing.

You'll hear somebody say, "Oh, boy, what do you expect from judge so-and-so, that's what he did." And what I know is that the judge really struggled with it, talked to colleagues, and said, "Boy, you know, I'm thinking of doing this," and really thinking it out struggling with the consequences. And these things are hard, it's a very hard job. I

don't know an individual on our court who doesn't take the decisions that they're making that affect lives in various ways--personally or monetarily--with great seriousness. And it's hard. After twenty-one years, I can do it with less personal trauma than I could twenty-one years ago, but it still affects me.

I still jokingly say to my clerks, "Sometimes I'm still a coward. Sometimes I hear argument and both sides are earnest and one has to lose. And I still, I know exactly how I'm going to rule, because I'm convinced that where the law leads me--and I don't have the guts to say, 'Okay, you win, you lose,' right there on the bench, and look them in the eye." I'll still, on certain cases, take it under submission and mail it to them in writing. Just because it's hard, it's hard to tell people sometimes that their life is changing because of something you're about to do. It's a very hard job.

McGarrigle: That must make for an interesting kind of collegiality with your fellow judges.

Henderson: It does, it does. And another thing that is surprising, we have the spectrum of appointees from liberal to conservative. And there is, I may have mentioned this already, there's an amazing collegiality. I, you know, I'd like to think I'm friends with everyone on the court, but when we go to events or go to court retreats we hang out together, we talk, and it's genuine. Yes, there's a collegiality that I like very much. I might say historically, I think that Bob Peckham gets a lot of credit for that. I think that during the many years he was our chief, one of his priorities was that we be a collegial court. Because when I later became chief and traveled around the country and went to conferences, I was startled that there are many courts that aren't collegial. I thought everybody was like our court. There are courts where judges don't speak to each other and could hardly hold a civil meeting, or can't hold a productive meeting like we do because the judges are at odds. And we've never had that.

One of the innovations that Judge Peckham introduced and it is now being followed by many courts is that we have a retreat. Once a year we get together, close up the court and go away to a quiet place and talk about our concerns, talk about ways to improve the court, talk about our relationship with each other. And as Judge Orrick calls it, have a "spit and growl" session, where we spit and we growl and we work it all out there in a very collegial atmosphere. And I think we come back and we're better off for it.

McGarrigle: Is there an agenda that's coordinated by the chief judge?

Henderson: There is an agenda, we have an agenda. In fact, we're getting ready for one of these in October. And just had a memo from Judge Patel last week saying, "We're getting the agenda together, if there's something you want on the agenda, get it to me by whatever date." And she's putting together that agenda now, so it reflects the concerns of the whole court. And then she has items she wants on. But it's a two-day meeting, and one of the things we often have there, we have attorneys. For example, a few years ago, a very helpful session--we were getting a large number of intellectual property and patent issues, and we agreed that these are really difficult cases and sometimes the judges are really challenged by the issues. So we invited four of the most prominent patent and intellectual property law attorneys from the leading firm to come and talk to us, "Tell us what you see. Tell us how we're doing." And out of that--I was chief at the time--out of that I appointed a committee to change the rules of how we did patent cases. And those are now enforced. We got a committee of the leading patent attorneys and we now have

rules that are different from most of the courts in the country on how we will process a patent case. And the attorneys like it, and I think it has improved.

So, this is the kind of thing we do, and we try to be responsive to the bar. We have a very good bar. Most courts have a very good bar, but we're particularly proud of the members of our bar because they participate. They help us improve the way we do our job. And in the process, I think it improves the way that they can do their job. There's a good interrelation and a lot of that comes out of these retreats.

McGarrigle: That's really interesting to know that there's a willingness to learn. Not to be held apart so much, but to learn from the people whose professional lives you interact with. That you invite specialists in a particular area in to educate about their specialty.

Henderson: Yes. It is. I find that I have made innovations over the years, not just from this retreat, but we also have--I was looking at Judge Zirpoli's oral history, and he was talking about lawyer delegates. And these are lawyers who during his time were delegates of the judges. The judge would say, "Okay, I want to appoint so-and-so," and these people were delegates. Well, we've changed that over the years, and now they're lawyer representatives. I don't get to put my person on that group, but I can vote for people who are offered to us. So they are now called lawyer representatives, and we meet with them twice a year. Once at a retreat--once at our court, I'm sorry. And then once at the Ninth Circuit conference. And again, these are a diverse group of members of our bar: criminal law, large firms, small firm, racial diversity. And they tell us their concerns, and they will generally--they run the show. They set the agenda and we attend.

I have changed my practices any number of times over the years. When I'll go to one of these sessions, an attorney will say, "Gee, I just really, I wish the judges understood that when they do that it costs my client another \$20,000 or something, and there's no need for it." And you'll say, gee, I've never thought of that. I've just been doing it because that's the way I learned to do it. And I've changed. So again, yes. And I think all the judges do that, we all have different ways of doing it, but I think we're all responsive to the needs of the attorneys.

Now, one thing we haven't been responsive to, and I think we'll still get complaints about it, is that judges are individuals, and at certain points you have to do things your way. So one of the complaints we constantly get is that, "Well, in your court, Judge Henderson, you want me to do this, and I have to file this within a certain number of days, and you will allow a twenty-five-page brief. Judge Lynch won't let you have more than a fifteen-page brief." Now locals know that. Somebody who comes from out of town, they may file something with Judge Lynch that's twenty-five pages and it's thrown back.

And attorneys don't like that. They say, "Why don't you all have the same rules?" That seems like-- I worked on that during my seven years as chief judge. Set up a committee, and we looked at the rules, and I tried to say, "Well now, this particular practice, we have six different ways of doing it on our court. Can we agree that we'll all do it this way?" And it just--can't do that, it's just not something that seems workable. But other than that kind of problem, I think the judges all--we learn a lot from the attorneys and are responsive. And the attorneys think a lot about this. And they're

thoughtful things, they're not selfish things. So there is a lot to learn from the attorneys, and we're listening.

McGarrigle: Yes. And something like the number of pages or the page limitation on a certain kind of brief, that's not covered by any more general rule.

Henderson: No, it isn't, it isn't.

McGarrigle: That's completely discretionary.

Henderson: It's discretionary. They have a--we have a book of local rules, and that will tell the attorneys what the local rules are. But whenever I'm lecturing to bar groups and this subject comes up--I call them the "local-local" rules, because my rules sometimes will deviate a little from the local rules, because we can do that. And so that's just the one example, it's an easy one to give--is that Judge Lynch's "local-local" rule is a fifteen-page brief, because of his belief--and he's firm on it--if you can't say it in fifteen pages, it ain't worth saying. Or, you know, that anybody who will sit down and really think out their problem can say it in fifteen pages. And if you can convince him you can't, he'll give you an exception. That's his belief, and most of the rest of us think, "Well, we'll just give you the twenty-five that the local rule allows." So, that's just one easy example of--.

So there are the "local-local" rules, the individual judge, there are the local rules, and then overriding those are the federal rules of civil procedure. So our local rules have to be consistent with that. We can't change the national scheme of things and say the statute of limitations is something else other than what the federal rules say.

McGarrigle: Yes. I want to get into talking about some of the areas that Judge Brazil and I discussed which is the changes in the federal rules of civil procedure and the ways in which the court has run pilot programs. But first I wanted to ask you about Judge Peckham's style. We talked about Judge Zirpoli's style, and how would you describe Judge Peckham's style?

Henderson: [laughs] He had a very misleading style. He was such a gentle man, but he had sort of an interesting sense of humor. So, he could see the most--an attorney could say the most outrageous thing, and he would just say, "Oh, that's very interesting, Counsel." And if you didn't know him [laughter], the attorney would walk away thinking, "Oh, I said something very interesting." But it was a cutting sarcasm, how you say it was really stupid. He had that sort of very gentle--. Never raised his voice, very fatherly. You know, you thought you were there with your father or your uncle or something, and guided through.

He always seemed to be a step ahead of the attorneys. It's like he knew that was coming, and he had a response for it. But a very gentle man, a very well-prepared man. And again, I watched him a lot and I tried to learn from him. I just don't have his wit. He had a wonderful wit up there, sort of a sarcasm with--and a patience that I tried to adopt because I thought it was admirable. But it's hard to maintain. He was very patient, and I tried to be very patient, but I learned on occasion that I couldn't sustain his patience. I would get impatient at things. I would often ask, "How would he do it?" And I knew he would have been a little more patient than I was.

McGarrigle: And he had these areas of interest that I know continued with you as chief judge in terms of improving management, case management issues, alternative dispute resolution, and then the international travel, which you mentioned you also--.

Henderson: Yes, right, exactly. He was very interested in international travel and he was very interested in improving the management of cases. And I was reminded again, as I read Judge Zirpoli's oral history, that Judge Zirpoli saw the transition from a master calendar, where no one had a particular case, and a judge handled the motions, and then near the end, the case went to a judge to try--to the present system, where the judge gets a case from the very beginning, and it's your case for all time. That's the way it was when I got on the court, and Judge Peckham was very interested in improving the way we manage those cases under the single assignment system. And much of what we do, and I think much of what is done nationwide, he was a leader in that. He wrote some very early articles about case management, and about alternative dispute resolution that I think were very influential, and he was a national player in this area.

When I came aboard, I didn't have an agenda. I may have mentioned this, and I certainly may edit these parts of the tape, but I don't remember if I talked about how I became chief judge. I sort of considered myself, as I do with much of my life, the "accidental" chief judge, in the sense that it's done by seniority. When Judge Peckham finished as chief, he actually--. At that point there was no term limit as there is now. It's now a seven-year term for the chief judge. There was no limit. He could have stayed on indefinitely, but he wanted his good friend and our good friend, Bill Ingram, to be chief. And, you cannot become chief after you're sixty-five. So, as Bill Ingram was approaching that age, Bill didn't want to be chief. He said, "I don't like administration." Bob talked him into doing it. So Bob stepped down early so that Bill could be chief. And Bill didn't want to do it for the entire term, he said, "I'll do it for a short while just to please you, Bob." And so he had it for a couple of years.

Another thing that was a problem for Bill was that he was sitting in San Jose, and it's hard to run the court from San Jose. Bill had arranged to be in San Francisco, I think, two or three days a week, and he was traveling back and forth. It was just awkward and he didn't like it. So he stepped down after a couple of years. And the next eligible judge was Bob Aguilar, and then Bob ran into some problems that were well-publicized, and it was thought that at least until those problems were resolved, that he shouldn't be the chief. And Bob [Aguilar] agreed, Bob voluntarily said, "I don't think I should be the chief right now until these problems are resolved." So, then the next person on the --no, I've got it backwards. Bill Schwarzer was going to be the chief, and had actually printed up his stationery and ready to take over. Then he was asked to be the director of the Federal Judicial Center in Washington.

McGarrigle: I'm going to change the tape.

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Henderson: And then, Bob Aguilar was next in line, and I've already discussed that, so when that happened, then everyone looked around and the next in seniority was me. So, I wasn't thinking about being chief, I wasn't on the projection to be chief. So when I took over, I had no agenda like Bob Peckham, who clearly knew what he wanted to do with the court. He had a very clear vision. I had no vision and in my first speech to the public, I

told them what I thought my job was going to be. I said that I was, I felt like a captain on a big ship, one of those really big ships that traveled the seas. That it's well-oiled, it's clean, it's modern, and all I want to do is keep that baby from running into an iceberg. I just want to keep it going the way it's going, the way Bob Peckham had run it. And, the reason I say Bob Peckham, is that Bill Ingram had the same idea that I did. He didn't want to change anything, he just wanted to keep it running well, keep it well-oiled, and that's what I saw as my job on the court to-- I thought we had a forward-looking court, an innovative court, and I simply wanted to keep it that way. And in addition, carry out the will of the court--I tried to be a consensus judge. If the court wanted something, I tried to implement it. I negotiated with Washington on behalf of the court to get us money and resources. So that was what I saw my job as, as the chief.

McGarrigle: It must be an interesting challenge to be in the leadership role among a group of leaders.

Henderson: It is.

McGarrigle: You have one vote, I mean, the way I understand it, is that right?

Henderson: I have one vote, and you have to--my view is you have to operate by consensus. You can't run over judges, lifetime tenure. It's not unlike the dean of a university or a law school with tenured faculty, you can't--you have to have them go along with you, because they have power, and you are just one vote. You can give direction, you can give energy, you can give focus. But you've got to have the faculty, you've got to have the court go along with you. And at one point [laughs], I described the job--because you have a lot of strong personalities--I described the job of being chief as akin to herding cats. [laughter] You know, which is you go around, you try to get them in a direction, and one of the cats sits back and doesn't go with the rest, or walks through a door and heads another way. And it's not unlike that, but you have to use persuasion. I spent a lot of time, as I say, walking the halls and just dropping in. "Hey, how's it going? What's going on? What are your concerns? How am I doing?" Getting a feel for the court, or sometimes if there was something I was trying to do, I'd go around, go to lunch, go to the judge's lunchroom. I went regularly then, I don't go nearly as much now. Because that's a good source. You just go down there to lunch and sit, get a feel for what everybody's doing and what the problems are. Then you try to respond to those and correct the problems or send something in the direction that you think they ought to go.

McGarrigle: And all the while you're managing your own caseload.

Henderson: Yes, all the while you're managing your own caseload. But, one of the things our court does, I think different courts do it differently, we reduce the chief judge's caseload, and give the chief judge an administrative assistant to help you with the administration. And in addition, we have something that is a blessing, that other chief judges don't have. We have Kumi Okamoto, who sort of comes with the job. And it's this wonderful woman who, if you have a problem, for example, I'll come in and say, "Gee, I got this five-page letter from the administrative office, and they're asking all these questions, they want all this information, what do I do?" Kumi says, "Oh, yes, let's see, in 1987 we got a similar letter, let me go get the file." [laughter] You know, so it makes your job so much easier. I mean, she knows the history of that court, the history of the chief judge. And she gives a lot of guidance and implements things.

McGarrigle: What position is that that she holds?

Henderson: She's administrative assistant.

McGarrigle: She is the person who comes to the chief judge then? I see.

Henderson: She's the person that we have. Probably at this point, put it in the oral history, I made a dreadful mistake, because I just took Kumi for granted. I went to a meeting at the Ninth Circuit of chief judges and some of the other chief judges were complaining about the work load and all, and I said, "Well, gee, don't you give that to your administrative assistant?" And they said, "What administrative assistant?" [laughter] And it was the first time I realized that everybody doesn't have one. And again, this is Bob Peckham's genius. Bob Peckham, just in some way that I still don't know the history of it, was able to get this special slot for our court. Bob just knew how things worked, and he had friends in Washington, and we have this person who is a part of our budget. Most other courts don't have one, a Kumi. So it's a real advantage for us.

McGarrigle: She has a long tenure at--a lot of institutional memory.

Henderson: Oh, she is the institutional memory, yes, she does. She's just invaluable. You toss something to her and you know it's going to come back perfect, just the way it ought to be. And it makes the job so much easier.

McGarrigle: I'm trying to think. I know you mentioned some of the innovations under Judge Peckham. You mentioned some of the innovations that you implemented as well. For example, the interchange with attorneys in particular areas of specialty. And I know with Judge Wayne Brazil we discussed the Civil Justice Reform Act of 1980.

Henderson: Oh, yes.

McGarrigle: That took place at about the time that you became chief judge.

Henderson: That's right, that took place, and yes, we implemented that. We were a pilot program on that so we were given some sum of money, I don't recall what it was, to be a pilot program under the Civil Justice Reform Act, in which we were to look at certain things. The Civil Justice Reform Act was born of concern by some senators or legislators--senators, I think, primarily. I remember Joe--Senator Biden was one of the prime sponsors of the legislation--responding to concerns by the business community that cost of litigation was just too much. It was costing too much if you got sued, if a business got sued. And the Civil Justice Reform Act was designed to reduce the cost of litigation and the time of litigation. Cases were sitting on calendars for a long time, and so this was legislation designed to speed it up.

We were a pilot program, and Wayne Brazil played a very instrumental part in coming up with strategies and programs on our court that responded to that. And one was ADR, which would reduce the cost of litigation. We could get litigants into some kind of alternative dispute resolution program before they started, as I said, lobbing hand grenades into each other's foxhole and running up the costs early. It would save money. And so we set up an ADR office which was really Wayne's design and his baby, in which we offered mediation, negotiation, settlement, early settlement, and early neutral

evaluation, and other things that I won't go into here. And I set up a committee, I appointed members of the legal community here to serve on that and come up with their concerns. Again, it would explore, "Tell us what your concerns are in big firms. Tell us what your concern is in a small firm, about cost." And these were people that I thought would responsibly respond to these rather than advance the agenda of their firm or their particular area of practice. And it was a very, very good committee that did those things.

It met regularly, we had a reporter to report the meetings and the developments of that committee. But Wayne Brazil gets major credit for the program that we implemented. And every time I did a check in the community--after early concerns, because attorneys don't like change, after some early concerns, "What's going on here? How is this going to change the way I do things?"--every report I've ever gotten, including a report from Wayne, is that the program is working, and the statistics that we've gathered have indicated that the cost of litigation has in fact been reduced, and the length of motions being submitted and cases being on calendars has been reduced.

McGarrigle: And some of these changes were actually implemented at a national level also, so that they became--they extended beyond the scope of the pilot program?

Henderson: That's right. Exactly, but they wanted to see, and we were the pilot program. And after they saw that yes, that is working, these kinds of devices that we were trying as a pilot program were shown to be effective and accomplish the purposes of the reform act, then they were implemented in other parts of the country, yes.

McGarrigle: Judge Brazil indicated that there was some way in which the scope of that has been reduced slightly. That recently there has been a retreat from full disclosure in the national rules.

Henderson: Yes, there has been. And we have had to--again, it's like my earlier discussion of the local rules, which we have. We can do virtually anything we want, but it has to not be inconsistent with the national rules. So, in that same sense, we had a very generous rule on disclosure, that before, when you're served with a complaint, before you ever start your litigation, you have to make certain disclosures. Just saying, you know--because one of the concerns, one of the major costs in litigation is attorneys fighting and filing motions, and having hearings on getting basic documents that are relevant to the litigation. And so we said no, you're not going to fight over those, you're going to turn those over voluntarily right at the start of the suit. And national legislation--I think, my guess, and Wayne would know this better, is that some intense lobbying at the national level in other legal cultures resulted in a more limiting disclosure, not the one that we advocated and started off with. Because I think that, this is my own view, that many attorneys, and I think perhaps the bigger firms with greater resources--and I've had friends say this--benefit from gamesmanship. You get a little guy who's less experienced, and he doesn't know how to get these answers. He's not as good as a big firm or--. And you'll end up getting to trial, and he hasn't gotten some of the things that a good lawyer would know how to get, or would have the cost to go get.

And we were saying, no, we're not going to let you play those games. We're not going to let you play "hide the ball." But there's still an element that benefits from that, and I

think that's what the legislation supports, there is still an element of "catch me if you can" that we tried to eliminate in our role.

McGarrigle: How did you find that you liked these issues around management? Case management, and I don't know exactly the catch phrase, the administration of justice, however you would characterize it?

Henderson: I like them, but it's less liking them, you can't survive without them. I mean, it's a matter of survival. If you do not know how to effectively manage 350, 335, you cannot survive. You have to effectively manage them. So, one, it's a matter of necessity. But, also it's a matter of pride. I mean, judges--. We're here at home now, but I have a thing that I'll show you the next time we interview at my office. Sitting on one of my shelves is a report, we get a monthly report on the caseload of each judge. And it's sort of a peer pressure--okay, gee, I--. Gene Lynch, for example, always had the lowest caseload although he's assigned the same number of cases. And it's because he's such a good settlement judge. He'd settle his own cases and reduce his caseload.

And I had, when I first started, I had one of the highest caseloads. And I was working Saturdays and Sundays, and Marilyn Patel and I started work the same day. We were given the same number of cases, and each month I would look at it. And hers started going down slowly, and mine started going up! [laughter] And I thought, "I don't understand this." I know she's not working harder than I am. And I started looking at what other judges were doing, and learning, and going to Judge Peckham and saying, "What am I doing wrong?" And finally learning the techniques for processing this. So, it's a matter of necessity, and finally, I had gone up--at one point, I think I had something like close to a hundred cases more than Judge Patel over this period. And I said, something is clearly wrong. And I finally saw some of the techniques judges were using and [snaps fingers] got it back down. And getting back to my story, you will see on my shelf there--once I learned it, then I really started working on it.

And one day, I forget the year it happened, but it was several years after that, I actually passed Gene Lynch, and I had the lowest caseload on the court. And I framed that! [laughter] But it's up there with a red star, and there I was. But anyway, I enjoy the management. But as I said, you have to do it, even if you don't enjoy it. It's a necessity. I think that state court judges--I had never been a judge, so I came in with an open mind. "Tell me, Bob Peckham, tell me, Al Zirpoli, tell me, Bill Orrick, how you do things. I want to just do them right." State court judges come from a different system, and I think they often, not all the time, have a harder time learning, because they do it differently. They don't have a single-assignment system, and some of them have a little struggle adapting to our system, because they have to change. I didn't have to change, I just had to learn. I think sometimes that's easier than changing.

McGarrigle: I can just see the stress level just going way, way up, when it's already high to begin with, with a hundred additional cases. The sheer magnitude of it is enormous.

Henderson: Yes, it is, it is. And a lot of it is temperament, and I won't mention names here. But one of the judges on our court, who--when I was chief, I would get these reports before we'd publish them--I knew, was as hard-working as anyone on our court. He always had one of the highest caseloads. You'd see it, and you couldn't figure it out, it never went down. And then I finally realized that a lot of it is temperament and technique. For

example, some judges will say, "Okay, we set the trial date, that's written in stone." And the attorneys come up and say, "Gee, can we have a continuance?", you know, something. "No." And you know if they aren't really ready, they have no choice, they'll settle.

This judge that I'm mentioning was different, he would say, "Okay, I'll give in." So the cases stay on his calendar. He was working as hard, but he just had a different temperament. He let attorneys off the hook. I tend to go back and forth between those. Sometimes, depending on the case and the attorneys, I'll give them a break. Other times I'll say, "Okay, I got you," [laughs] and I'll increase the pressure. And, you know, knowing that what I'm doing is putting them at a disadvantage, but one that they created. That's important, not one that I've created for them, and that they have to settle. And I always give a warning before I do that. When I set the trials, I'm very careful. I say, "Okay, this is a firm date, you got your calendar?" And sometimes the attorney will say, "Well, gee, I won't be trying the case. I don't know if so-and-so is available." I won't set the date then. I'll say, "Are they back at the office?" "Yes." "Go to the phone. See if that date is--" I want to make sure. I don't want anybody to come back and say, "Oh gee, you set a date next June, Judge, and I find out I can't do it." You get all of that clear, I tell them this is a firm date, it's on my calendar, and sometimes I'll jokingly say I guess if you can come up with a death certificate or something, I may consider changing the date. And having given all those warnings, I'm very tough on it. I don't lightly--. And I say, "Now at this point we've all contemplated it, unless something unusual happens, we can make this date, right? You can do all the things that we now know have to be done."

And it's difficult for them to come back and say, "Well, I knew that, but then I got busy." Or, "I went on vacation, and I didn't hold this deposition that I knew I had to do for six months." I say, "You've got a problem that you've created yourself. I'm going to trial." And then they'll settle. So it depends, caseload is a variation of things like that. Some judges in that same situation will say, "Well, okay, I'm going to give you another break because it's not fair to your client." And I just say, "Well, you have to deal with your client," and then you'll get a settlement. Anyway.

McGarrigle: Well, I can imagine another aspect of that is having cases--as you have had over the years--which are so high profile that they distract from the other things on the docket and take an inordinate amount of time.

Henderson: That's right, yes. Yes, you're always dealing with that. The high-profile cases are, you know, the ones that really take your time and really give you a great deal of difficulty in dealing with the entire caseload. If there's a weakness of the single-assignment system, that would be it. Because you always have to move along your 300 or so cases, even if you have--. Like I was talking to Judge Patel just yesterday, and we were talking about the enormity of the Napster case, which she has had. You know, that takes tons of time, but at the same time you've got to do the other things.

That's one reason I think that there is a growing trend in our court, and I believe nationally, to hold trials--begin trials at eight-thirty in the morning, or some judges, eight o'clock--and end at one-thirty, which is what I do. I start my trials at eight-thirty, we go straight through to one-thirty without lunch. But we have a couple of breaks, fifteen or twenty minutes, and then we're through for the day. The attorneys like it,

because they also have other cases and things that--. They can go back to the office, they can return phone calls, they can do other things, and they can get ready for the next day of trial. I can go back to my chambers. I can do other business. And I think there's a growing trend to doing that as opposed to when I first came on the bench. All the judges, I believe, I'm sure, had trials from nine o'clock in the morning until five o'clock, with an hour and a half for lunch. Then, at the end of the day, you're tired, and you're not likely to do a lot of other work. Or if you do, you don't have as much time to do those other things.

McGarrigle: That makes a lot of sense in terms of schedule.

Henderson: Yes, I think so.

McGarrigle: And that's something that you started?

Henderson: No, I didn't start it. I don't know who started it on our court. I first heard about it from Judge Patel. Jim Ware, who's in our San Jose court, is a big innovator in that area. And he even has a clock, like a chess clock where you punch the time. He sets time limits on his trials, too, and that's another innovation. Rather than just traditionally, letting the attorneys decide how long is this case going to last. Well, it's going to be a ten-day trial, and then you sit there, and on the fifth day you're saying, "Boy, what is there else? This is the whole case." And then you see another three or four days of peripheral witnesses who are simply saying the same thing the others did. And I think there's a growing recognition that this is not time-efficient. And with the Civil Justice Reform Act, it's also expensive. Why do you need another three or four or five days? This could be done much more efficiently.

So another trend, and I think our court is a national leader, and this is setting time limits. I just did it last week on a case that I set for trial. And what you do is that the attorneys have to give a pre-trial statement, and they have to list all of their witnesses. And I will look at those witnesses, and they have to tell what the witness is going to testify about.

And what you'll see on there are things that--. "This witness will testify about the events at that crucial meeting where the contract was signed." Okay. "This witness was also at that meeting and will testify about the events that--." Then you say, wait, you see that five times, and you say no. "Let's just--two of them will give different versions, but we're not going to have eight people tell us about that meeting." So you eliminate six of them and then you estimate, well, that ought to take a half an hour to tell you everything that's worth telling about that meeting. And you add those up and then my own technique, in case you're wrong and a little too short, you give them a little more time, and that's the time limit. You have this amount of time to put on your trial. And it's very efficient.

And to give you an example of how it works, very often I will ask the attorneys first. And judges have an advantage. For example, ADA, the Americans with Disabilities Act, that's a fairly simple area. The typical case, and we have had dozens of those cases, the typical case takes four or five days. We know that, we do it all the time. Sometimes I'll ask the attorneys, "Okay, how long do you think you'll need for this case?" Some of them will say, "Oh, fifteen days, ten days." You know, and that's the way attorneys are. I think judges used to say, "Okay, set aside ten days." But now I'm

saying, “No, I can’t see it. Unless you come up with something different, we’re going to do this in five days. Now, that’s not a final order, you can tell me why this one is different.” I’ve never had anyone come up with a reason why this one was different. So these are trends, and that is I think in the tradition of Bob Peckham. He talked about those kinds of things many years ago.

McGarrigle: It’s all also about increasing access to justice in terms of the cost.

Henderson: Yes, absolutely.

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Henderson: It does, it decreases the cost because on these cases, having two attorneys sit five extra days in court is very expensive for the client, and yes, this reduces those costs. It does another thing, by the way. I’ve had attorneys who first objected strenuously when I first started doing this, really suggested that it was unconstitutional, that they were going to appeal, and I was going to get reversed because I’m not letting them have their day in court. Now that it’s known, I have attorneys tell me after the trial, boy, that’s the most efficient trial they’ve had. I mean, this is early on before this was done a lot. And they appreciated it, because it made them think about what was important, it saved them the concern, “Should I fly out this minor witness from New Hampshire,” who didn’t have much to say, but they were worried that if they didn’t, and they lost, someone would say, “Well, it was malpractice, why didn’t you call?” It relieves them of those kinds of pressures, and it’s much cheaper. It works much better, and I think that’s what Senator Biden had in mind when he--. I think he was the primary writer of the Civil Justice Reform Act.

McGarrigle: Yes, yes, that is what Wayne Brazil said.

Henderson: Yes.

McGarrigle: Well, what interesting topics. Why don’t we end for today and then take up next time with anything we didn’t cover in this area. Then we can talk more specifically about some of the cases you’d like to talk about.

Henderson: Okay, yes. Send me that and I’ll review the cases and be ready to remember why I did what I did and what the interesting aspects were.

[Interview 9: October 19, 2001] ##

McGarrigle: Last time we met it was the week of September 11th, of the attacks, and it was actually September 14, it was Friday. It's a month later now, and I wanted to ask if you could discuss in any way that those events and subsequent events have impacted your work and your life.

Henderson: Okay. I think it's had quite an impact on my work. Let's talk about that first. In the sense that, I think, the attorneys have been devastated by it, have been distracted so that my judicial calendar is in a shambles. I've had a number of requests for extensions. You know, essentially pleading that they can't concentrate, that they need more time. And in any other circumstance, I and I think most judges would say, "What do you mean you can't concentrate? Get that brief in."

But I've granted a lot of continuances, and indeed just yesterday I was working on a motion, a motion asking me to reconsider a ruling. I had issued a ruling because, actually--it's interesting, I had a hearing on September 11th, which of course the court was closed, I put it over for two days. And came in and heard some arguments from the attorneys. Then I wanted more briefing, and I was very specific as to what I wanted. And I got the briefing and it didn't give me what I'd asked for. I'd asked for the specific areas of enquiry that this lawyer who wanted to take another deposition that was being opposed by the other side--I said I want the exact areas of enquiry you want to go into, because the other side would say they've gone into everything, so we don't need it, it's harassment. And I got, instead, a brief on legal issues. So I turned it down. And then I got this petition that I was looking at yesterday claiming distraction. That they didn't understand what I had asked for, and the office was distracted and they essentially threw out this routine brief, which is what they do, missing the point that I wanted. So, it's had an impact.

The judges, you talk to judges in the judges' lunchroom and everyone talks about distraction, lack of focus, both with themselves and just in general in the things we do routinely. So I would say it's had an enormous impact. I know it has on me. It's had a sort of enervating effect. I feel low-energy. I feel very often that I'm plodding through things now to get them done, whereas normally I'm energized by a new motion or a new challenge. So, yes, these are strange times.

McGarrigle: Are there themes to the discussions that you're participating in, for example with your colleagues at work? You know, it could be fears for the future, or views politically or on this clash of cultures that we're seeing now?

Henderson: There is some talk about those specifics, but I think if there is one emerging theme that I could talk about, it's more that things will never be the same. And that we're seeing it now. For example, the judges who have always been fairly arrogant about going through the metal detectors that you have to go through, going into the basement. You know, and you drive down to the basement, you wave, and they say, "Good morning, Judge." Now, we're talking about--we stop, and I show my I.D. I now carry it, you know, and respecting the security in a different way even though they know I'm Judge Henderson. When I drive up to the building in the morning, yesterday morning, there was about a ten-minute wait. Because trucks and things, they'd go down into the

basement, they have to I.D. them, you sort of line up around the corner to get in. It's all different now. And then when I get up to that gate, I show my I.D.

The mail, Judge Patel was telling me the other day that she got two memos from judges saying, "What do you instruct us to do about our mail?" You know, secretaries don't want to open the mail. You know, everything is different, everything is different. When you come up to the door that lets you into the judges' chambers, all the offices have a camera on the buzzer there. And you know, we're always concerned about it, but someone who knows the system can buzz in. You buzz all five things, and somebody will just let you in without knowing you, assuming you belong. No more of that.

So we talk about those things and just how different things are and how different our lives are going to be certainly on security matters. And again just yesterday a memo was sent around with heightened security, the marshal wants to be sure he can contact us right away, let us know if this address and these numbers are current. So, it's quite a difference in all of those ways. Those are the things that we seem to talk about when we get together.

McGarrigle: There's been such a measure of re-prioritization in so many ways. We see it at the government level, we see it at the level of individuals. I imagine that that will impact at some point the work, also.

Henderson: Yes, we haven't seen that yet. We've actually talked about it. I've seen articles in the paper that litigators, people who sue--primarily plaintiffs, are taking a second look. And certainly, to give you a contrast, there's an article in the paper this morning that one of the refineries in Richmond just did it again--had things on TV, yellow smoke rising and polluting the whole community. Well, you know, that's the plaintiffs lawyers' dream, they rush out and they get as many--but that the disaster in New York is a whole different phenomenon and the national consensus, "Hold off, this is not business as usual. Let's not go suing hell out of airlines to see if they were negligent about letting the terrorists on." So you know, I think there's going to be some long-range change in thinking about those kinds of things.

McGarrigle: Do you, with the other judges, discuss the politics of what's happening right now? I mean, I imagine there's a whole spectrum of views about origin of the--what we're seeing today, which relates to colonialism in Algeria, you know, and U.S. involvement all over the world in the recent decades--

Henderson: We do, we talk about that. And most of the judges I talk to--you tend to talk to those judges you know best and talk to most--is a hope that there's not some sort of indiscriminate clamp-down about civil liberties. I mean, there's a worry of racial profiling and those kinds of things. We talk about that quite a bit, and we talk quite regularly about when are we going to start getting some of those cases? When are we going to start getting petitions saying, "Mohammed someone is being detained and wanting a writ of habeas corpus." I think that's going to come. We talk about that.

McGarrigle: Yes. That will be interesting to watch. Have I left unexplored anything on that area that you'd like to discuss?

Henderson: No, let's see--no, I don't think so. I think that's--pretty much--. Oh, I guess there's another thing. Another reason these are interesting times, a thing that is talked about a lot but different people, different judges have different things in mind, is the new patriotism and what that means. And I sort of have a little game I play. I don't know, beginning sometime last week I was struck, there was an article in the paper that some flag store up in Sonoma had sold something like 300,000 flags in the days after the attack, and I just thought that was phenomenal. I later learned that it wasn't 300,000 individually, they would ship boxes of flags. But still, right after that I started, as a little game, I get in my car and I go through the car pool, and I see how many flags are on cars. I do that every morning coming and going, and I give a report [laughs] at court. And it started off 128,000, I think, just flags from radio antennas, or flags on the back window. Just whatever I could see without getting into a wreck. And it slowly has gone down. Yesterday, I saw twenty-eight. So, it's just an interesting thing.

But we talk about what that means. And it means different things to different people. One judge I certainly won't name, said, "I don't understand it. What does that mean? Someone puts a flag on their aerial. Okay, what's the statement?" He's puzzled, and then another will say, "Well, it just says I'm proud to be an American or you can't do that to America." You know, and there's a discussion about that kind of patriotism. But it's very delicate, it's very delicate.

And one of the discussions, I tried to raise my own concern that historically for me, someone who's been a civil rights lawyer and fought the system, I don't have the same reaction when I say I'm an American. Sometimes when I say I'm an American, I'm saying I feel excluded in part from the American dream, because when you recite the words "All men are created equal," I never thought that included me. You can't talk about things like that now, and so I no longer raise that in these discussions. These are not the times to raise that, and you just have to be "red, white, and blue all the way" during these times, or at least it makes these conversations very awkward. I don't engage in that right now.

McGarrigle: And that's potentially a concern, that we are glossing over issues of major importance.

Henderson: Absolutely. And it's a concern to me. And another concern which I will talk about with friends, and I'll say it for this oral history. I'm forgetful these days, but there was something in the paper last week which reminded me of what my family has talked about in World War II. I mean, my family being poor and uneducated were janitors and house cleaners and people who couldn't get jobs. Then in World War II, some of them were able to get jobs in the defense plants, and they were all Americans and this kind of thing. And black soldiers fought, and then came back from the war having defended their country, and things were the same after the war. And there was something, and I can't remember what it was--it was in the paper--that was reminiscent of that. A call for minorities to be patriotic, and it echoed of that. What I think is a national cynicism, that these are times--and even though we're not going to give you a full piece of the American pie, we want you to fully participate in this problem. And these things trouble me, they will always trouble me, and it's a bit troubling that these aren't matters where you can fairly talk about it in these times. I think you ought to be able to, because it's a part of the discussion.

McGarrigle: There hasn't been, that I've seen, any discussion about the makeup of the armed forces at this point. Who are the young people who we're sending?

Henderson: Yes, there isn't, and I'm assuming, and I don't know the statistics--but certainly you see the newsreels--[laughs] they don't have newsreels anymore, but you see the news and it certainly seems to be a lot of minorities who are in the military these days. And I know it's a separate discussion, I've heard these discussions, that that's a part of the national economics, that kids who can't go to college and all, sometimes the army or the military is their way of surviving, and so you have an inordinate number of them. If that's so, and I don't know it to be so statistically, then you're going to get an inordinate number of them getting killed in these kinds of encounters. And that's, of course, a concern, too.

McGarrigle: Yes. Well, as this comes up then we can discuss it further in any other context if you'd like also.

Henderson: Yes, okay.

McGarrigle: There is a very large topic, which is very interesting, about the whole process of writing opinions. For example, how it's changed for you?

Henderson: Writing opinions, I think that different judges will tell you different things about what that means for them. At its basic level for a federal judge it's simply ruling on the matter that's before you. For example, I tell my law clerks when they start working for me that this is the course of a case--and most judges on our court, I think the average caseload right now is something like 337 cases, and that is a lot of cases to have to manage.

And the theme for judges is case management. How do you manage all of this paper flow? What I tell my clerks is that this is the life of a case. Someone files a complaint, and they serve it. And I'm being a little tongue-in-cheek with this, and I say the other side gets the complaint and they open their trial book, how to conduct a trial. And page one says, "File a motion attacking the pleadings." Whether the pleadings are attackable or not, they file a motion saying, for example, that the complaint fails to state a cause of action or a claim. And we have to rule on that. Our job is to rule on all of these motions that begin, because we know ultimately that only 7 percent or so of this caseload is going to go to trial. The rest are going to settle, or we're going to dismiss them by one of these motions.

So, most opinion writing--an opinion is really just one of our orders that's published--an opinion, most of the time, is just simply a ruling to keep the case going. Now the opinions that you're probably talking about, though, are the ones for which judges are noted, or that I'm noted for, such an opinion, my Pelican Bay opinion or whatever opinion. Now those, I think, are different because in my own view every now and then I will get a case that seems to have an important legal issue. And rather than then wanting to just say, you win this motion, you lose this motion, let's get on with the case --you want to stop and say something and tell the attorneys and the world, indeed, what you think the law is on this particular issue. And those are the ones I really enjoy.

I've got one right now, I just spent the major part of yesterday with a law clerk. I've got a case involving an Indian reservation up north where the tribe opened a restaurant in town and they're being sued for violating the Americans with Disabilities Act, that they don't accommodate disabled people. The tribe has said, "We have sovereign immunity. You can't sue us, the ADA doesn't apply to us." And the plaintiff said, "Well, you're off the reservation. You can't just walk around the world and carry your sovereign immunity from your reservation." It's a fascinating issue, my first instinct when I first got the papers was of course, that tribe can't open a restaurant or a theater--carrying that example right outside the reservation, what about if they opened one in San Francisco? Can they--? My instinct was no, but it's a much closer issue. And we spent much of yesterday looking at the cases.

Now, that's the kind of opinion I love to write. I don't even know where I'm coming out on that issue because I'm just learning the full range of the law. But that is fascinating for a judge. I love to write those kinds of opinions on those kinds of an issue. Now, I have my own biases about what I like. I like that kind of an issue. I will have no noteworthy opinions in certain areas, in the business areas, I wasn't a business lawyer. I think I give full opinions there but I don't try to make a statement about the nature of the law, the nature of securities, the nature of antitrust. Most of my major opinions for which I'm noted have been, not accidentally, in the civil rights area. Because that's what I feel I know, that's where I feel I have statements to make.

Now your question in addition is how has it changed? I think it hasn't changed a great deal. I think the law has changed, and so you get--you have to evolve with it. An opinion I gave fifteen years ago, probably if the same issue came up, because the Supreme Court has changed the law at that level, I may have to revise, essentially a view I had fifteen years ago to conform with today's law. But beyond that, I don't think that writing opinions has changed a great deal.

Maybe a thing that's changed is that to do this opinion--as I said, I spent most of yesterday on this motion with this Indian sovereign immunity case--there's more of a challenge for judges now because the caseload has grown. You have more work. It's more of a challenge to find the time to write a meaningful and thoughtful opinion. And that's a real problem because you stop to write this opinion and things start backing up. And you get into a certain situation where you've got not only this opinion but two other big or major things. For example, I just finished what was a major portion of a case, the Ravenswood school district case, which you probably know of and that took an enormous amount of time. Well, when those start backing up, a judge is really challenged, and sometimes what you do is say, "I would really like to make a major statement," but you're challenged to do it and you end up just simply making the ruling, saying as little as you can to give a fair ruling, rather than making a statement about that body of law.

McGarrigle: Yes. How do the law clerks and your permanent research attorney work with you in terms of, for example, getting started on a major new area like this issue you worked on yesterday?

Henderson: Okay, what happens is the motion is filed, and the way I run my chambers, the motion comes to me. My deputy clerk Rowena brings the motion up and puts it in my inbox. I look at it, I read it, and I then assign it. The way things go now, Karen, my permanent

clerk, has been with me all these years. If it's a certain kind of case where I know she has the expertise or it's particularly tricky and I've got a new clerk, I'm likely to give it to her because I know she can cut through the procedural things quicker. But anyway, I make some determination as to who I give it to, but I also read it on the belief that certainly with the new clerk we don't want to reinvent the wheel. I don't want a new clerk to come in and spend ten hours on something that I may have done last month, and I know the controlling case. So I will talk to the clerk about those issues. I'll say, okay, here's the lay of the land, and here's the direction I think I want you to go, and here's my instinct on just the moving papers. But let's wait for the other side to respond.

I have staff meetings every Monday, which is at the end of the day, Monday is my law and motion day. At the end of the day, we review the motions I've heard that day. But we also review the motions coming out the following week, so I start getting oral reports from my clerks including the matter that I've just assigned. They've read the papers, they've looked at some of the cases that I've told them to look at, and we talk about it.

I work better orally with my clerks, and they will go do the things that I've told them to do, look at the cases I've told them to look at, look at the statutes that they're led to by the moving papers. And we talk about it not only at the staff meeting, but during the week. And I sort of direct the research until finally I get a bench memo from the clerk, which is an analysis of all the issues after all the papers are in. And when I get the bench memo, it's essentially an analysis of the issues and a recommendation. I insist upon a recommendation from the clerk as to how I ought to rule, so that when I take the bench, I have an inclination to rule one way or another.

And then I'll listen to the oral argument and I'll have questions in my mind, or I'll even give the attorneys questions that I think were unanswered in the papers. And after I hear the argument, we'll retire and have the staff meeting that I mentioned, and we'll discuss whether anything in oral argument changed the analysis or the inclination I had when I took the bench. That's the way I work with my clerks.

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Henderson: I don't often talk to other judges about how they do it. I know not all judges do it the way I do, because I think some judges read more themselves, some of the judges do their own work and have their clerks just help with cite checks and help on the side. But I work through it, and my clerk is a full partner on this and we go through these things together. And it works quite well for me.

McGarrigle: Do they actually help with the drafting of the written work?

Henderson: Yes. Well, what happens, it's interesting, in my chambers--again, going back to what opinions are, as I said earlier, an opinion is really just one of my orders. And West Publishing will publish that order, and that's what you're talking about as an opinion. So what my clerks learn after the staff meeting--. A typical staff meeting, we'll say, "Okay, you heard the argument today on X case. My first question, did you hear anything in oral argument that changes the analysis in your bench memo, or changes your recommendation to me?" At least 90 percent of the time the answer is no. It was all in the papers, there were no surprises. "So, think we can go with this?" Again,

almost all the time it's yes, or sometimes it will be, "Well, yes, except I think we ought to change where I said this, I misstated their position but that doesn't change--."

We'll do that kind of fine tuning and I have the bench memo right there with my notes on it. I will say, "Okay, turn this bench memo into an order." Because they've got the memo and they will reshape it and make it an order. It's, you know, "This matter came before the court on such-and-such a date, it was argued, here's the analysis. You win. You lose." That's what an opinion is. When that is published, that's the opinion.

Now, an interesting thing that happens with my clerks is that as the year progresses and they learn how I work, the bench memos begin looking more and more like an order [laughs], because they know what's going to happen. So the bench memos become a sort of a quasi-order, and you can see what they're doing. They're already preparing the bench memo to be the order that they suspect I'm going to enter at the end of this process. But that's the way we do it in my chambers. I'm not sure that's typical. As I said, I don't know how the other judges do it.

McGarrigle: I spoke with a law school friend of mine who has appeared before you. And I said, "What would you want to know?" You know her, Susan Lee.

Henderson: Oh, yes. [laughter]

McGarrigle: And she said, "I would want to know what justices Judge Henderson likes to read, and if there's a style of any particular justice he thinks about?"

Henderson: Okay, yes. Well, of course, I'm a huge fan of Thurgood Marshall. I don't think--he was not the intellectual judge on that court, but I think he was in many ways the conscience during his time of that court. And I have always been struck by an interview I participated in with Sandra Day O'Connor at one of our Ninth Circuit retreats in which I was on a group of four judges and lawyers. It was called "A Fireside Chat with Justice O'Connor." So we had to do a little research so we could ask questions of her. And I--she was a Stanford graduate and had talked at Stanford, so I called some friends over there, and one of them said, "Ask her what she thinks about Thurgood Marshall and how he influenced her."

And I was amazed, and she still says it to this day, that he would tell little stories that influenced her. Tell how it really was when he went down to a little Southern town to try a case and how he feared for his life, and how blacks were treated. She said that had an impact upon her, just that informal-- So I think he had an influence on people like O'Connor and on people like me, certainly. So I certainly read what he has to say, and I read it periodically. And, I just recently finished a biography of him by Juan Williams that I admire very much.

Justice Douglas is one of my heroes. I think he was an intellectual giant, a brilliant man. I think that I've always admired Learned Hand, who Gerry Gunther, one of my friends who's a professor at Stanford, a leading constitutional scholar, just did the definitive book on Learned Hand. And, I've always admired his intellect.

And I admire great intellect. And I think in part because I'm not, I'm not an intellect. I'm not a scholar in the sense--I think I've said before in a different context, I think I'm

more inclined to go on intuition and follow it, and come to some sort of resolution based on that rather than the kinds of things that Learned Hand did come up with--new formulas and things. I'm not that kind of a judge, but I admire judges who can do that. So I think those come to mind immediately as role models.

On our own court, I certainly admired the kinds of things that Bob Peckham did. He was an intellectual leader on our court and I think he saw early on--maybe I've already mentioned this--the need for organized case management techniques to handle this increasing case load. He is the reason that our court is one of the leading alternative dispute resolution forums in the country, and has a more organized program on that than any other court. So I've always admired Bob Peckham.

I admire Bill Schwarzer, who just has a towering intellect, and he's the guy that I think formed the basis for the standards for summary judgments in the Ninth Circuit now. He saw the need to modify the summary judgment, and insisted on it, and wrote about it, and lectured on it, and I think we finally came around to--. The rulings we make on summary judgment are in large measure what Bill Schwarzer thought they ought to be.

So those are some examples.

McGarrigle: We talked a little bit earlier about Bill Orrick who grew up in this neighborhood where we're meeting today. And you mentioned that he had an involvement in the civil rights movement when he was working in the Justice Department, the antitrust division, I believe.

Henderson: Right, he was the head of the antitrust division, yes, in the Kennedy administration. And as I think I was saying, you know, I wouldn't have predicted--. Let me back up, because I've never told Bill this story, I will. When I was practicing law, a little before I took the bench, one of my partners asked me to make an appearance for him in court that he couldn't make. And it was just a status conference, "Okay, it's not much to do. Just go and tell him we want a continuance or something and we'd like to come back in ninety days."

So I went over to the court, and I don't remember the time that he told me the hearing was. Let's say three o'clock. Anyway I got there early, got some coffee, and I was sitting out in the hallway drinking the coffee. And it was like a quarter to three, and I'm thinking I'm early. And a clerk looks out in the hallway and says, "Are you here on the Smith case or whatever it is?" I said yes. He said, "You better get in here, you're late!" [laughter] So I get up, I put the coffee away and I go into Judge Orrick's chambers. And he's sitting there, and I walk in, and the other attorneys are looking, they're gloating, they've got me, because I'm already in hot water. And he says, "Counsel, do you see that clock up there?" "Yes, sir." "I live by that clock, and by God, you better, too! Now sit down and--." You know, and then we went on. I've never told him that, he doesn't remember. [laughter]

McGarrigle: Were you late, or you had a different--?

Henderson: No, I was late, my partner told me the wrong time. He was right, I was late, and so--. [laughter] And you wouldn't have predicted that Bill Orrick would be perhaps my best friend on the court. I love the man, but he certainly had me terrified that day. [laughter]

He takes great pride in those years. He takes great pride in his role in the civil rights struggle in the sixties when he was the head of the antitrust division but he didn't sit at a desk running the--he was one of the people that the Kennedys had out doing the things that had to be done.

And not many people know that Bill is the guy who led the way for the civil rights march that we all hear about now in Selma across the--I think it's the Edmond Pettis, certainly the Pettis--bridge. That was that historic march that Martin Luther King and others led. Bill is the one that got the legal order in Montgomery from the judge that let them make that march. And he takes great pride in that and in other things that he did like that during the civil rights movement.

McGarrigle: And that was Judge Johnson, you said?

Henderson: Judge Johnson, yes, that's right.

McGarrigle: So he was the head of the antitrust division, but he had this overlap with the civil rights.

Henderson: Well, no. What happened--he was the head of the antitrust division, but when you have these kinds of crises--I guess it's just like now, with the events of September the 11th. You have people from all parts of government you call out. The fact that someone is running the Commerce Department, he's no longer running--he's dealing with, I don't know, biological warfare. In that sense the Kennedys were calling out the top-ranking officials to do other things and civil rights was the big agenda then. So in that sense he was head of antitrust, but he was doing the things that were important to the administration in addition to running antitrust.

McGarrigle: It's interesting historically, to reflect on the fact that the priority for the administration, and we're talking about the Kennedy administration with civil rights, and now as you say, the priority for the administration is something completely different.

Henderson: Yes, exactly. Yes, it is. Yes, and I guess--I haven't kept up with priorities for administration, but it is interesting with the new Bush administration that that has just taken over the entire agenda of this administration. We were talking earlier about what judges talk about, and one of the things we have tended to talk about is what that means. For example, we're always concerned about judicial appointments, and we don't know what this new situation is going to mean for judicial appointments. There's certainly a national call for unity, and so the fighting and warfare that was going on right before the terrorist attacks--the Democrats and Republicans are joining ranks on most issues.

We don't know how that's going to affect the fight that was going on about the ideology of the judges that were going to be appointed. But it's having, you know, far-reaching effects, we know. And I worry about this is going to affect civil liberties and things like that. Whereas in other times if you presented these issues without the background of terrorism, you'd have an entirely different scenario.

McGarrigle: Yes. Was it, in terms of writing the orders, was it different? Did you always have--since you've been on the bench did you always have word processors? I don't know if initially you used typewriters?

Henderson: [laughter] No, we had typewriters. We look back on that, it's changed. We had carbon paper, [laughs] I mean it was really antiquated. And Jeanette Taylor was my first secretary, and the whole process has changed. The clerks and I would write the orders, and give them to Jeanette to type. I had a yellow pad, and I would write things out, and try to write it clearly, she had to learn my handwriting, and give those to her to type. And, as I said, and carbon paper. [laughs]

And then when computers came, it's changed the whole thing. My secretary now is Erma Smith. My clerks do the orders and opinions, because it's much easier. You can make all the changes on the computer, word processing, and we can pass that back and forth, and the secretary doesn't even play a part in that. If the secretary does play a part --on occasion a clerk will have something, and the clerk will be on vacation or unavailable--and this happened recently--will give me what they consider a final draft. I will edit it, and the clerk goes on vacation. Through the magic of computers I can then give my final draft to Erma, who can do those changes and pull the clerk's draft up onto her computer. But that's--the secretary has very little play on that, and what the secretary does largely now is my correspondence and other things, but has no interaction on the legal part of it. That's just between me and the clerks.

McGarrigle: Do you actually do a lot of the rewriting yourself, or do you direct the clerks more to rewrite to your specifications?

Henderson: I direct the clerks. I will sit down, and I said, I'm very oral. I say, "I like this, but I don't want to say it that way." And I don't know, either I'm too lazy, or it's the way I've learned to do it--and I'll say, "You know, we ought to say"--and they're taking notes--"Let's say"--and I'll give some ideas of the flavor of this passage. And then they'll go rewrite it, and try to meet that. And if they don't, finally, at the final--. I won't give it back again, I will then edit it and change it to catch the exact flavor that I had in mind. But the clerks are pretty good at that. They can pretty much capture what I've tried to have them do.

McGarrigle: I have to say that Mort Cohen and others would take issue with your self-description as not being a great intellect because they have all impressed upon me their high admiration for you in all regards, including in terms of the way they see you in the legal arena, I guess.

Henderson: Well, that's interesting, you know, let's talk to that. And we can keep it in if you want. But I know what I think a great intellect is, and I'll give you an example. I will go to the judges' lunch room and we'll start talking about a legal issue or a case. And you get into a discussion with, let's just give an example, Bill Schwarzer and Marilyn Patel--this happened fairly recently. And they will say, "Well, you know, the *Jones* case, you know that footnote in there that--." [laughter] I don't think that way, I could not engage in that discussion. I don't carry knowledge around in that way, and I consider that a superior intellect. They know these cases. I can only start dealing with those cases when I get it before me. They can talk abstractly. "Well, that case is--da, da, da--and this footnote, and what Justice Burger had in mind." I don't think that way. Those are intellects.

I can take this case and say, "Here's what it means right here in this brief, in this matter before me," and work with it that way. And that's a different process, and I don't see

that as an intellectual process as much as I think I have good problem-solving abilities. I know how to apply things, I know how to resolve things that are brought to me. I think I'm good at that, but I don't see that as a real intellectual process. I think I've been fortunate in getting a good reputation for being thoughtful in writing good opinions. But I see myself more as a--what would it be? As someone who has learned to come up with a good product [laughs] rather than that kind of intellectual, free-floating kind of knowing the subtleties abstractly of a case or a doctrine. Anyway, that's what I'm talking about.

McGarrigle: I guess it just depends on what one is looking for. If we're looking at results, then--

Henderson: Yes, I think I come up with as good a result as they do. You know, I think I do in terms of what my job is. If I were a lawyer, if I were your friend, Susan Lee, and I wanted to invite some judges from my court to talk about the threat to civil liberties in this post-September 11th--I wouldn't invite me, I would invite these other people because they would have some concepts and cases and precedents, and would have a very stimulating--. I wouldn't. I'm a good--if I were a fighter, I'd be a counterpuncher. You know, I think I can respond to things, I have ideas, and I'm good at responding. But I don't think I'm good at sitting down, tossing out the ideas, or the stimulating ideas. And that's what I see an intellect doing, that's my own view of it.

McGarrigle: I'm not sure how to end that one.

Henderson: [laughter] Well, I don't either. Except to say that my friends are kind. I'm flattered, because I have smart friends. And the ones you mentioned are smart. If they think I'm smart, I'm deeply flattered. [laughter]

McGarrigle: In terms of technological developments, has the fact that orders are--I gather orders are online now?

Henderson: Orders are online, yes.

McGarrigle: Including orders that were previously unpublished, is that correct?

Henderson: That I don't know--yes, absolutely, they are, they are online and you can get those. You know, electronics are revolutionizing the court. We now have, and get me back to your question if I'm going too far afield, but, orders are online, but also we have an experiment going with electronic filing. We have now--you know, traditionally an attorney--if your husband were to file a suit on behalf of Affymetrix he would type it up or have it typed up in some process, hire a messenger who would take it over to court and file it for \$125, or whatever the filing--pay it, and then take it back to the office and he would serve it.

We now have an experiment going where they can do that electronically. Just push your computer buttons and "psshhh," there it is. So, a lot of things are happening now. It's experimental, because we worry about deadlines. We worry about the old, "The dog ate my homework" excuse. "Well, gee, I filed that, I don't know what--the machine didn't do something and that's why it's late." We worry about those kinds of things. But it has revolutionized, certainly from the day I took the court, when everything was done by

filing. There weren't computers, they certainly weren't widespread, and it was a much slower process.

Now, I think this is creating some concern, the speed-up. Because I know attorneys get tired of hearing, as you get older, I guess they get tired of hearing me say, well, for example, just last week I had continued something for thirty days because an attorney said he was having trouble contacting his client. So I said, "Okay, let's continue, we need this answer." We got back, and he still hadn't contacted his client, and I started getting upset. And I said, "Where is your client?" "Oh, he's over--." "Be more specific." "Overseas." "Where is your client?" And he gave me the thing, and I said, "Oh, that's a country, they have fax, they have telephones." [laughter] "Now I just got off the phone with a friend in Egypt. Now why can't you contact your client in Burma?" You know, and they don't have an answer. It's just attorneys have bad habits, and he hadn't gotten around to it.

But this is changing the whole practice of law, the fact that you can, or as I hear from my attorney friends, the fact that the client can contact you wherever you are. In the old days, you had a client in England, it took quite a while to interact business. You can do it instantaneously now, and that has speeded up the process for attorneys, and become a problem for the busy attorneys in terms of workload. Client says, "Get me an answer. I need to know whatever," and they mean they want to know it by the end of today. Whereas in the past, you sent the mail and they needed to know in a week or so. So, and impacting the court in the same way because there's generally one side that wants to, that has the resources to move fast, and they want to move it fast. The job is much more stressful, I think, because of that.

McGarrigle: In terms of the fairness issue, also, it's what you're saying with the resources.

Henderson: Exactly. Oh, there's a definite fairness issue. For example, on the fairness issue on resources, we are getting Jim Ware as the head of one of our committees, and he's a big --what's the word--technocrat. He's loves--he's made his own computer, he loves computer stuff, he loves electronics. And he has designed an electronic courtroom for us. And one of our concerns, we're trying to get it, is that I will very often in a trial get a motion to have an electronic display to the jury. In one, we had a workshop, I remember, where they showed the big fire a number of years ago at the MGM hotel in Las Vegas. And the guy that displayed it was making the point that they displayed on this big screen how that fire started--da, da, da--and it was very impressive, and ended up in a giant verdict for the party--that they thought was a large part of that, the way they displayed it and made it clear to the jury. Well, one of the concerns is what about the other side? When they don't have that kind of equipment, is there a fairness issue? I think there is.

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Henderson: --I guess one possibility is to say, yes you can use it, but you have to make it available to the other side. I don't know about that. Or, I don't think we can say, "No, you can't use your equipment if it fairly displays what you want to display." And, so, one of the things we're doing is setting up a courtroom in our San Jose court and in our San Francisco court where if we see that kind of thing coming we can have the trial in that court, so both sides have access to the equipment.

McGarrigle: Oh, I see.

Henderson: That's what we're trying to do.

McGarrigle: So the court will actually provide the equipment?

Henderson: The court will provide it. And, if I had a trial--. I have my own courtroom, but, oh, this is a big technical case that's going to require that equipment or one side wants it, we'll both go into that court. My trial will be in that court. Both sides can then use it, and I think that's the answer to the fairness issue.

McGarrigle: And there's still, I imagine, all the resources devoted to the experts who prepare--?

Henderson: Yes.

McGarrigle: This is one level, providing the equipment.

Henderson: Exactly, that's one level, but then you're right. The cost of experts and all is a whole different level. And I don't know what you can do about it. I think you can never address the question of resources. Perhaps I've talked about this. I think it's always going to be an issue. And I've always been impressed--. One of my biggest cases early on was the Kraszewski case,¹ have I talked about that?

McGarrigle: No.

Henderson: There is a very wealthy lawyer now, Guy Saperstein. Do you know that name?

McGarrigle: Yes.

Henderson: Well, he had a case in front of me, a nationwide class action case. And the story I'm told, and I don't believe it's apocryphal, is that it was growing, it was growing, and he finally mortgaged his home. He wasn't yet a big, successful lawyer. And his partners said, "You're crazy." And they withdrew from the partnership, said, "I'm not mortgaging my home." And he struggled through it, and ended up winning something like \$30 million in the end on that case but after great financial pressure on him. I don't know what the answer is to that for the partners who didn't want to do that or if he didn't want to. Do you give up your case? Do you pull it back to a manageable level? I'm not sure there's any answer to that other than to do what he did, go into debt if you believe in the case. But it's a real problem, especially when the other side has essentially unlimited resources to pour into that case and to raise the ante for attorneys like that. It's a serious problem.

McGarrigle: It would have been a different result had he not been willing to mortgage his home or had he not had a home that he could mortgage.

Henderson: Yes, exactly, exactly.

1. *Kraszewski v. State Farm General Insurance Co.* (Ninth Cir. 1990) 912 F. 2d 1182, cert. denied 111 S. Ct. 1414 (1991).

McGarrigle: Interesting. And in terms of the fact that the orders are now online, does that change your thinking as you're writing orders and opinions in terms of who your audience is? You have a potentially much wider audience.

Henderson: Not really, no. I don't think so. I don't think it changes anything I do. I think I do it the same way. For me, in my thinking, the fact that it now goes online is just coincidental. I do it, and I give it to my deputy to file and mail to the parties. Now I do it, and I give it to her, and it does that and it also goes online. So I really don't think about it differently and I don't do anything differently.

McGarrigle: [tape interruption] In terms of the opinions that are very high-profile, where you have a lot of pressure from the public, the media, and the various parties--I was just thinking about the tremendous pressure on you and how you approached that situation when you have an environment that's highly charged. And we can speak specifically now and then at a later point about some of those opinions.

Henderson: I think for me, it may say more about me than other judges, but when you get caught up in a legal issue--and I do, I told you the process, I get the complaint, I get the motion--really, it's rare that I will see the public's interest in it. I mean, every now and then I'll get a case, I remember I had a case where Michael Jackson was the defendant. I said, oh, there's going to be a big crowd of teenagers, and indeed there was. Kids hanging out in the hall, the courtroom full. Well, you can spot those.

But most cases, no matter who the client is--Microsoft, MGM Studios--you don't say, "Oh, the public is interested in it." So you get the legal issue and you start working on it. And the first time, generally, that I know it's controversial or of widespread interest is when I walk into the courtroom, or sometimes before the hearing. My clerk will say, "Boy, there's a room full of reporters." And I'll say, "Oh!" So, normally it's not when you're working on it, you're saying, "Oh boy, this is a big one." Now, of course, [Proposition] 209 [*Coalition for Economic Equity v. Wilson*], I knew that one was a big one. Pelican Bay, I knew that one was a big one before I took the bench. But most of them, the others that have been controversial or are well known, were just another legal ruling about the case.

And to the extent that I feel pressure, I think the wisdom of our founding fathers has taken care of that. And the answer is lifetime tenure. That's the answer. You know it's controversial, you know, I'm grateful and all federal judges are grateful that you can rule on this according to your conscience, and unlike state judges, not worry that some D.A. [district attorney] is going to run against you if you, in a matter of conscience, decide a certain way on a controversial criminal case. We don't have that pressure, and I think it allows us to rule in a way that we think is proper. It certainly relieves pressure.

And certainly probably the most controversial case I've ever had in terms of the public was the 209 thing. And you know, I have to say I felt the pressure. At one point, I stopped reading the papers, because it was not the papers' coverage, but at one point I would read the letters to the editor, and it was such vitriolic attacks, and I think unreasoned kinds of attacks, that it just, it became hurtful. And I stopped reading it. But again, at no point, even, I think Senator Tom DeLay among others called for my impeachment. Well, I was lucky, I didn't take that seriously. I know I'm not going to get impeached for having issued a ruling. Our system doesn't work that way. But that

one I could say that I felt pressure. I mean, I was aware of the pressure. It didn't influence me in the way I handled the case in any way.

Now, a different kind of pressure--it was interesting, I won't mention the attorney's name--but a very well-connected attorney who's a friend of mine, very high up and big in Democratic politics--. One day, not that long ago, we were talking and we had talked about a time when I was being considered and being asked by the senators to move up to the Ninth Circuit. And I was very uncertain about whether I wanted to do it. And this goes back to the comments about my opinion and intellect. I was worried if I would like it. I love the job I'm doing. I love being a trial judge. I feel I'm pretty good at it after all these years. I wasn't sure I would like being an appellate judge. And Cecil Poole, who has now passed, I used to talk to him regularly. And he didn't particularly like it. He had on occasion said, "You know, I'm really not sure I should have gone up here because I really liked what you're doing over there in the trial court."

So I had all of that in mind. And in talking to this powerful Democratic friend, I was mentioning that and saying that yes, I think I've made the right decision. And, he said something that shocked me and still does. He said, "Well, you know, as matter of fact as an insider, your chances for the Ninth Circuit were over when you ruled on Pelican Bay." Absolutely shocked me. I didn't follow up on it and ask him what he meant. But I thought about it, and that it wasn't a controversial ruling, they didn't even appeal it. It was a controversial issue, how you treat prisoners, and I found five areas of treatment up there unconstitutional. It was in the papers. The opinion is still quoted and cited for prison reform. But the attorney general didn't even appeal my ruling, that's how right it was. So I was startled that some people in the political process saw that as disqualifying me from going to the Ninth Circuit. So that's another aspect of controversy that I--you don't even have to have done something wrong. That's what I understood him to say, just a controversial ruling, finding bad state treatment of people in prison was something to disqualify you from consideration for promotion to a higher seat. So, these are interesting things.

McGarrigle: There are so many disconcerting--. There's so much that's disconcerting about that thought. What flows from that thought, what that means about who's--that's just--I can see why you would be startled.

Henderson: Yes. It was truly startling. And what you have to worry about in that, and I worry about it for ambitious people who want to make that move, I would hope that we don't have a system where someone is hesitant to rule. As I thought, I can't imagine my ruling any other way on Pelican Bay. I would hate to see someone say, "Well, gee, that's the right ruling, but gee, I want to go up to the Ninth Circuit. I'm going to modify so that I don't disqualify." That would be tragic in our system if things like that happen. I have no reason to think they do, but certainly that's the message that the politicians send--is that if you do certain things, even if you're ruling right, that we don't like, your career is going to--

McGarrigle: --suffer for it.

Henderson: Suffer for it, yes.

McGarrigle: And that gets to another issue, which is fashioning remedies. That was so much a part of, and continues to be so much a part of--*Madrid [v. Gomez]*, right? Pelican Bay?

Henderson: Yes, *Madrid*. I call it Pelican Bay, but it's the *Madrid* case, yes.

McGarrigle: The Pelican Bay case--and that delicate balance that you struck in Pelican Bay and other cases.

Henderson: Yes. It's a very interesting process. But once you find the five areas of constitutional violation, of course to process them you go into the remedy stage. You have to fashion remedies to see that those deficiencies are corrected. And it's not easy. Sometimes it's easy, sometimes there's just been improper attitude at a prison. And that's-- "Just stop doing that, tell your guards to stop doing it because it's wrong." Those are the relatively simple ones. But another one, just within the past week, I sent out an order. One of the problems up there is the quality of medical care. It's a serious problem. At the time of the trial, we had a number of deaths which I think was a direct result of inadequate medical care for the prisoners. Bursting appendices and things like that, that just weren't properly attended. Well, you can't just say, "Okay, get better medical care."

One of the problems, budgetary--one of the problems is the location. It's in a rural area up near the Oregon border, it turns out that you can't attract doctors up there. One of the problems that surprised me, some of the doctors they attracted were not good doctors. These were some of the--and I'll say it for the record here, by the time people read this it won't matter--but some of these doctors were just not good doctors. They were losers where they had practiced before and they gravitated up there and they were on the staff. That's a much harder problem to solve. I'm still working on that, still finding ways, as is the prison. And I have to compliment the state, they're trying to solve this themselves, they're not resisting.

But trying to come up with more money. We've increased budgets to pay the doctors more to attract them. We've got exchange programs where we have connections to the nearest big city, in the hospital, to try to get some exchange there. We've got a--last time I visited the prison, they demonstrated they have a system of--what do they call it? I can't remember the name of it, but the process is--they will have a doctor in Sacramento, a good doctor. They will have a qualified nurse who is very good with the prisoner at Pelican Bay. They can see each other. And the nurse will say, "Okay, I just took the temperature, the blood pressure is this, these are the symptoms," and the doctor will do the diagnosis.

McGarrigle: Oh, they are video conferencing?

Henderson: Video conferencing.

McGarrigle: Oh, wow.

Henderson: They're doing all of those things to meet the medical needs, and they're really trying. But it's a hard problem. So you get both of those, you get the simple problems of people who just didn't want to do the right things and other problems like the one I just described that are much harder to solve.

McGarrigle: It takes a large degree of creativity to create solutions in that area.

Henderson: It does.

McGarrigle: That must be something that you enjoy doing.

Henderson: I enjoy that, I enjoy that. I like solving problems. I consider that a problem to be solved and I enjoy it. And I'm very lucky I've got a wonderful special master. And I have something to say, this isn't the time to congratulate people, but he has made it work. My previous special master, Tom Lonergan, was excellent and then he had health problems. And John Hagar is just a wiz at the prison. Your problem on these things is getting special masters who can work with both sides. If you get a special master who doesn't know how to do it, the plaintiffs think he's in the pocket of the prison, of the state, or the state thinks he's in the pocket--and it doesn't work. John has a facility for being trusted by both sides, he can get them together, he's quick in seeing the problems, and he gets--I get the credit because I sign off on these things, but he should get the credit for making all these things work.

McGarrigle: Yes, okay. We--. I have this on the outline. You had mentioned in an earlier session that Judge Peckham had this amazing patience.

Henderson: Yes.

McGarrigle: And Mort Cohen has told me that he thinks you have an amazing patience, and he wanted to know when is your patience tested? Maybe you've discussed that in different times about, for example, attorneys who are ill-prepared and appearing before you, I can imagine. Are there other instances when you find your patience tested?

Henderson: I do, and I have to say I think that I am probably less patient now, as we sit here, than I was twenty years ago. And that's one of the reasons--I think I've probably mentioned Bob Peckham who was on the bench longer than I've been on the bench now, and never lost that patience. He always had it. I think I was really patient when I started out, I think I'm less patient now. I have little things that will bug me, and I will show impatience. Which I'm not bragging about it, I don't like it, I think it has just evolved.

Indeed, just the other night I was at an event--a big going-away event for one of my friends who's the head of the bar association [Bar Association of San Francisco]. So all the legal community was there and a man came up to me--Phil [Carazosa?]-who is now a reporter. He sort of moved way up, and he's at the [*San Francisco Chronicle*]. But at the time, he was a young reporter for the [*Law Journal*], and he did my first interview. I remember, I had just started the job, and he wanted to do a profile on me. And he came up to chambers and--actually he told me what time he was coming, he called, I went down the elevator, got him in my shirt sleeves. And I said, "Oh, I'm going to get a coffee, come on." And bought him a coffee. We went up to chambers, and he wrote this wonderful profile about me. That I was sort typical of the Carter appointees, I came down in my shirt sleeves, I was informal, I bought him coffee, and I was this mellow guy.

And I was telling him the other night, here twenty-one years later, I said, "Boy, that stuck for me so long, that was my image," because that was the first thing that was

written about me. And I said long after I was not patient [laughter], people still saw me from that wonderful profile he did of me. And I think that's right, I think that as I started--there are certain kinds of behavior that I just disapprove of with attorneys. And when I see it, I think I tend to cut it off. And that's the lack of patience. At first, it took a while to see it. I see things and certain kinds of attorneys practice in certain ways that I think aren't befitting of members of the court or members of the bar and officers of the court. And I think I tend to no longer be patient with them when I see it coming.

McGarrigle: That could be case management improvements.

Henderson: It probably--yes, I think that it does. And the other thing that I do, and I think maybe this is just what happens to new judges--I think that, for example, certain kinds of cases and certain kinds of attorneys, you know they're long-winded. When I was new, I would sit, and I can't tell you how many times I've missed lunch and abused my staff. My law and motion starts at ten. An attorney will go on and talk and talk and then it's twelve-thirty and I've got a one-thirty calendar and the court reporter's looking. And I'm sitting and listening, and then the other attorney says, "Oh, well can I say one more thing?" And twenty minutes later, he or she is saying that one thing. I don't do that anymore. When I see that--those kinds of attorneys coming--I will set time limits. And say, "Look, I'm giving you more time than you'd get than if you were arguing a major case before the Supreme Court." And I now know those things, which I didn't know or didn't think in that way when I was new.

So, those might be seen as lack of patience. But I think maybe it's just I'm more efficient now. I think I know what's important, I know how to direct the argument and get to the point. And I know the kinds of attorneys. There's a kind of an attorney who thinks the essence of effective advocacy is to get the last word in. You know, so they've said it three times, and then the other side has said it three times, and now this one wants to say it one more time before I leave. And I no longer have that kind of patience, you know, so--. I think that's all a part of maturing, I'd like to think of it as I've matured. But probably some attorneys, if they saw the Thelton Henderson who heard arguments last Monday and saw the Thelton Henderson who heard arguments in 1980, I'd probably appear more impatient.

McGarrigle: Yes. All of that makes sense. You mentioned enjoying the interaction orally with the clerks in terms of discussing the cases. How do you approach your public speaking commitments? I understand you're a compelling public speaker.

Henderson: Well, you know, I hear that and I'm flattered by it. A major speech is a major trauma for me. I'm not a natural speaker, and I always express my admiration for people who are. Willie Brown comes immediately to mind. I understand Willie can--and he spoke just the other night at this event that I was master of ceremonies at--that he can get in a car and be driven to a meeting and say, "Okay, this is a group of lawyers, here's their agenda, here's what this night's about, here are their issues, and da da da." He'll get out and give a wonderful twenty-minute speech that just floors them.

I can't do that. I have to start working on the speech, you know, a month ahead of time. And I have to do a draft, and I have to polish it, and by the time I give it I'm essentially reading it, but I've done it so much that I can glance at it and seem like I'm speaking. Well, that's really hard work and it has limited the number of speeches I'm willing to

give because it's such hard work. And I constantly say, standing up there and talking to you for forty minutes, which is a typical, major speech, forty-five minutes, is the easy part. If I knew it was going to take forty-five minutes, I would do speeches every night. But it takes me a couple of weeks, a month, to do it. And so, I think that by the time I go through that I do give a good speech. But it comes out of my hide, and I can only do them on rare occasions now.

Fortunately I've been doing it for twenty years and I have a backlog of speeches. And sometimes, if it's a group that I think I would like to speak to for whatever reason, I might tell the person that asked me, "I don't want to write a new speech for you. If I can rework one of my old speeches that I gave fifteen years ago, or gave three years ago to a different audience maybe in a different state even, I'll do that." And then that's easier. Because Karen Kramer, who is my permanent law clerk, she is a good speech writer. I'll bring her in on it, and we'll just say, "Let's rework this speech." That's more what I do these days, than write a major speech, because it's just too hard for me to do a major speech. Unless it's a major group where I owe a major debt, or it's a group that I think, "Okay, I will help them in a way, it's a group I like, and it helps them to have a federal judge speak to them," I will do it, but that's rare. Now it's like doing retreats.

McGarrigle: [laughs] Well, that makes absolute sense.

Henderson: Yes. And I've learned--I should say, I've learned how to give speeches over the years. The first speech I gave that I think that I can recall, was to the Legal Aid Society in San Francisco years ago. And my friend Peter Sandmann introduced me, and [laughs] it was a perfectly dreadful speech. Because I didn't--I was new to it, I didn't know what it was to give a speech. So I wrote a very serious speech, I don't even remember the topic. I didn't have a notion of sound bites, I didn't have a notion of patience, or points to be made. I just sort of wrote this very thoughtful lecture. It would have been better as a professor giving a lecture, and I'm still embarrassed, because when I finished everyone just was sort of glassy-eyed and [laughs]--

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Henderson: So it's an art that I didn't start off with. I think I now understand how to write a good speech. But still, the people I admire--Bob Peckham could give a speech like Willie Brown and others. You know, just they love to speak, too, and on the drop of a hat. The best speaker I've ever heard in that regard was Leon Higginbotham, who was one of my heroes. He was a federal judge in Philadelphia. We went to South Africa together in, I think it was '85, back in the days of apartheid. And when we were invited there by the black lawyers of South Africa, we were told, "You don't have to make any speeches. We want you to just come talk to the lawyers informally, travel the country, and share your civil rights experience in America with us as we're battling apartheid."

Well, we get off the plane, and we're greeted, we have a big dinner. The next morning we get up, and we don't know our agenda, we're being taken around. They say we're going to this major auditorium, and there's something like a thousand people, and they're waiting for your speech. [laughter] What speech? Leon Higginbotham gets up there and gives an absolutely brilliant forty-minute speech by jotting some things down on an envelope. Well, that's a speaker. I could never do--I would have faked a heart

attack to get out of that [laughs], I couldn't have done it. But those are the speakers I admire, and I'm not that kind of a speaker.

McGarrigle: It was a long time ago, but do you recall some of the points that he spoke to?

Henderson: You know, I don't. But I think it was notions of freedom and the commonality of the South African struggle, and the commonality of the black struggle in this country and the things that could be learned. And that was our mission, but it was brilliantly woven. It wasn't just little--and it was like a speech I would have taken that month to write. It was connected, it was coherent, it was cohesive, as if he had thought about that. And indeed, maybe he had, but he certainly hadn't written all of this down. It was just a coming together of ideas that made for a perfect speech for this group. It's a real skill. I don't have it, I wish I did.

McGarrigle: Well, let's end there and talk next time more about the opinions and about that trip to South Africa.

Henderson: Okay, yes, that would be good. I'd love to talk about the trip to South Africa. And give me some idea on the outline. You know, as I've said, I've read the opinions, I'm ready to talk about them.

[Interview 10: November 9, 2001] ##

McGarrigle: You spoke to the subject of public speaking, but I neglected to ask you to describe some of the themes that you pursue in your speeches.

Henderson: Okay, yes. The themes that I pursue, especially now that I have a background of public speaking and a backlog of speeches that I've made, I prefer and almost insist upon speaking about public interest kinds of things. I love to talk to law school students, young people, about the obligations of a lawyer. One of my favorite themes is the obligation to practice *pro bono publico*, for the public good, and remind them that when they become lawyers they take an oath to do just that. And there's a tension in the present legal economy, although the economy has gone a little flat these days, but just a year ago I gave a speech at Stanford, and I told the story of when I was assistant dean at Stanford from '68 to '76. I would get calls in those days from friends who were practicing with law firms. And they'd say, "We're coming to interview at Stanford, Thelton, and would you spread the word that we have a good pro bono program?" Because in those days the students would go into the interview and they would challenge the firm and say, "Well, tell me about your pro bono program and I'll let you know whether it's good enough for me to come work for you." Whereas up to a year ago, that was all history, and the students would come in and say, "Tell me about your stock option program." And pro bono is sort of a thing of the past. So I talk about things like that, and say, "You know, money is fine but don't forget the little guy." That's the theme of most of my speeches. Some sort of obligation to do good as attorneys. "Do well, and do good." That's the general theme.

Early on, when I was new to public speaking, I would get an invite and try to address my speech to the interests of the group, and it was a wide range of groups. Over the years, I narrowed it to public interest groups, which is what I'm mostly interested in.

McGarrigle: Are there fewer attorneys vying for those positions with public interest groups?

Henderson: There are not fewer attorneys. Well, there are not fewer attorneys vying for those positions, but there are fewer positions. My own law clerks, when they finish with me --I generally hire clerks who have a public interest background or a strong public interest commitment. And they want to work in that area, and it's very hard, even using all of my connections for them to find a job in that area just because the money's not there. So it's hard. But I think there are just as many attorneys looking for those jobs, but I think most of them end up going with traditional law firms just because they can't find a job that they would like.

McGarrigle: Before we move into talking more about the decisions, I wanted to ask you, since it's been several weeks since we've met, if you've noticed any further changes in your court following the September 11th attacks, but also the U.S. military action.

Henderson: I haven't. I've thought about that, and I don't think I have. Did I tell you the motion I got for reconsideration? Did I talk about that?

McGarrigle: It was the attorney who claimed distraction?

Henderson: Yes, okay. Since that I've had no similar kind of thing there. And no, I think in my court, from my observation we're back to, in court, business as usual. I don't notice any change, I had a number of hearings this week and it seems normal. I had one attorney who was late and alluded to traffic on the Bay Bridge, but he didn't push it very hard because I said, "Well, that's the bridge I come over, what did you see that I don't see?" [laughter] And he sort of backed off from that. But no, I think things are, at least from my observation, are pretty normal and I don't see the terrorists, the September 11th events, present in what I'm doing.

McGarrigle: I guess if he had been coming from Marin he could have had a different story, because people are taking the ferry, at least they were, I don't know if they still are.

Henderson: I saw the statistics on that. I guess the ferry traffic has risen dramatically, as has BART [Bay Area Rapid Transit] patrons. And the first day after Governor Davis's warning, it was one of the best commuting mornings I've ever had. There were just a few cars on the bridge. Picked up my two passengers and we sailed across the bridge. Just, no traffic.

McGarrigle: When you pick up passengers, does it happen that they recognize you and have worked with you?

Henderson: They do. I've been doing this now for twenty, twenty years I guess. And I don't know, sometimes it takes a long time before someone will say--. Or I'll see someone at another event. This just happened last week. And they'll say, "You don't recognize me, but I've ridden with you in the car pool." But they've never mentioned in the car pool that, "Oh, aren't you Judge Henderson?" Very often, I'll get to the end and I'm ready to drop them off, and then an attorney will say, "Aren't you Judge Henderson?" Or "I appeared before you a year ago." So I think they recognize me and if we start talking early they will inevitably say they have also ridden with Judge Patel, who uses the car pool. And they'll talk about the chilling effect of riding with a judge. You know, what do you say? [laughter] And it's sort of uncomfortable, I gather, for them. But yes, we talk about those things.

And actually, I have some friends who also--people I know, and we just talk--who are attorneys. And we talk across the bridge. Last week I talked to an attorney and we were talking about an event that I was an emcee for Dru [Drucilla] Raimey, who is the head of the Bar Association of San Francisco [BASF]. He had a big retirement dinner, and we were talking. And there was a fellow in the back who I had taken for a ride for years and I always drop him off--when I tell him where I'm going--I drop him off near Hastings. And I had assumed he was either a Hastings student or a lawyer. And finally, we were talking so much legal stuff and I turned around and I said, "Well, you're a lawyer, what do you think of that, what he just said?" And he said, "No, I'm an architect." [laughter] So I don't know, I had this idea in my mind all these years that he was a lawyer, and I think when I dropped him off at Hastings he was doing some work for Hastings as an architect. But, anyway, I'm rambling, but--

McGarrigle: That's interesting. It must be interesting to live within the community and yet have a role where people do feel that, for various reasons a sense of distance or maybe self-consciousness about burdening you with things that you may not find relevant.

Henderson: Yes, it is. The whole existence is a distancing thing. I think I've probably told you on the occasions I go down and get my coffee at the public cafeteria there and will often come up on the public elevators. And it's awful, because the door will open and people will be talking, and I'll get on and there's inevitably someone who recognizes me and says, "Oh, hi, Judge Henderson." And "Pop!", the conversation just stops! You know, no one will talk, it's the strangest thing. And I think it's something about whatever they imagine judges to be, they don't talk.

I was talking to Mort [Cohen], whom you know, my fishing buddy. And he will tell you that we used to go fishing, and we generally hire a guide, and sometime early in the morning the guide would say, "What do you do?" And Mort would say, "I'm a law professor," and I'd say, "I'm a judge," and "Poof!," that was the end of the day. [laughter] You know, "Okay, you want some more bait?" So I stopped doing it. I'd say, "Well, I'm a lawyer," or "I work with the federal government." And then you can talk and have a normal day.

McGarrigle: What do you attribute--what are some of the things that you would attribute that reaction to?

Henderson: I think it's just what people imagine judges to be. Judging you, or a forbidding figure, or a humorless figure. I don't know, but it's something that in these situations people don't feel free to say, "Oh, hi, how you doing? Boy, you got some coffee on your shirt." They just don't talk to you that way. And I don't know, I think it's what they imagine. I like to think I have a great sense of humor, I love to joke, I love informality.

Now, a different thing is I've gotten to know some of the guards down in the basement and we joke, we have a great time, all the way from my car to the elevator. I think they've learned it, but originally they would--and most of the judges, I think they--"Good morning, Judge," and they'll walk them to the elevator. But I think over all these years they've learned that I can take a joke, I love to joke, and we'll joke. But most people don't see judges that way, I guess.

McGarrigle: Interesting.

Let's see. We've spoken about the process of writing orders, but I got a little bit ahead of myself. I didn't ask you to describe what happens before that. And you did tell me starting from when you get the case what happens in terms of the law clerks' involvement. But I think there are some ways we could explore that further that would be interesting.

Henderson: Yes, okay. Through the process I've earlier explained, after I decide, and it probably would be as fair to say after we decide because it's an interactive process with my law clerks, after I decide the proper outcome of the motion, I've had drafts from the clerks and I then turn it over to the clerk to write. I have a little code, I put "TIF" on it and give it back after giving some comments and ideas, which just means "Type in Final." I'll give it to the clerk to type what he or she views as the final explanation, the final writing of the order. And within that I might say that my policy is that the closer the motion is, if it is a very close one, the more I want to say about it. I feel an obligation to explain it to the loser. "Here's why I find you lose." The easier it is, where it's clear that I ought to deny this motion, it wasn't meritorious, the less I want to say. I'd like to

just say, “You lose,” [laughs] and then that’s because it’s so obvious. But within that, I love to edit. I’ve found over the years that I’m a better editor than I am an initial writer. And I have trouble, maybe even writer’s block, getting something started. So I like to have the clerks do the initial draft and then I start playing around with it and putting my style to it. But within that, I edit this “TIF,” the “Type in Final” draft, and that’s what we put out.

Now, you were asking about the process itself. In reaching the outcome, who wins, who loses--I have found, and this was one of my surprises when I became a judge--I was surprised for some reason, to learn that judges have so much discretion. The law just isn’t clear, there’s a lot of ambiguity, and good lawyers will always find a case for the other side of whatever you want to do. One of the questions I ask my clerks at all times is to be prepared to tell me the range of discretion I have in this motion. What areas do I have discretion in? And then I try to exercise that discretion in a way that makes sense to me, in a way that comports with my sense of fairness. If you have discretion from one to ten, say, one being conservative or ten being liberal, or whatever kind of standard, I will try to exercise within that parameter my own beliefs, my own sense of fairness. And I think most judges do that. And this isn’t something private, I’ve spoken about this publicly. And sometimes I’ve been asked, “Isn’t that unfair that you exercise your discretion in ways that are personal to you?” And I think, “Nothing else makes sense,” was my answer. “Wouldn’t it be strange if I exercise my discretion in a way that offended my own sense of fairness?” That’s my answer to that, and I think all judges do that.

McGarrigle: It makes me think about the expression usually applied to medicine, that it’s an art and not a science.

Henderson: Yes it is, it is an art and I think I didn’t fully appreciate that as a judge. And it was a repeat, I think I may have mentioned, I didn’t appreciate that when I went to law school. I had to learn what the art of being a law student was. I remember my first year, I did nothing but study, and I tried to memorize. I thought it was an exercise in memorization. I remember being in my bedroom and I had sheets of paper like this taped to the wall, that said, “Burglary is the breaking and entering of a home after dark with the intent to commit a felony.” Okay, I know what burglary is. And I was memorizing all of these definitions and I learned early enough, but it took a while for me to learn that that was just the start of the process. That you then had to explore what this meant. “Burglary is the breaking--” Okay, then you spend two days on what is a breaking. A guy is walking by and there’s an open window and he gets a coat hanger and pulls something off the table. Was that a breaking into the house and entering of a home? Then you have two days on what is a home? There’s a shed out in the back yard, is that a home for purposes of--? You know, and I finally learned that it was really analysis and not memory.

Well, in a similar way, when I became a judge, I thought, “Okay, one of the sides will come to me with the law, I will identify it and rule.” But boy, it’s so much more than that. It is an art, and the very good and the creative attorneys always manage to give you a little extra. They’ve done a little better job or they’ve done a little more thorough job and they’ve come up with cases, they’ve come up with interesting interpretations of the cases to try to persuade you to rule their way. And again, it took me a little while to get into the flow of that and see how judging really works.

McGarrigle: Does the issue of what might happen on appeal come up in terms of formulating your decisions?

Henderson: Not really. I mean, I know that we face reversal. But that's not a play. And that's the good thing about being a federal judge and lifetime tenure. I make the ruling that seems right to me. And reversal, I know at this point in my career that I'm going to get reversed on occasion, and every now and then the legal publication will come out with a ranking of judges who get reversed. They've done that maybe four or five times over the years I've been on the bench. And I always rank [laughs] in probably the upper 15 percent, upper 20 percent of our court. One time I had the second-best reversal rate. But, after having said that, it's meaningless because you can play it safe and have a very good reversal rate. I think you're not doing your job. You can say, "Oh, this is close, I'm going to deny the motion." You'll never get reversed on that, for denying a motion, almost never. But that's not the way I want to judge.

One of our brightest judges, Bill Schwarzer, one year early on in my career had a very high reversal rate. And the reason was that he disagreed with the Ninth Circuit on what should constitute summary judgment. And he had written on it, and he just got reversed. He would do his version. And now, the standard for summary judgment that we now use was Bill Schwarzer's idea. So you couldn't look at his reversal rate and say whether he was a good or bad judge. He was a very good and very bright judge. So anyway, what I'm saying is that reversal rates can be misleading. But to answer your question, that doesn't come into play. We think about what the law is.

And another thing that has surprised me is how often I get a case of first instance, and at that point you really have to guess. You have to look at the whole body of law. The Supreme Court hasn't spoken on the issue, the Ninth Circuit hasn't spoken on the issue, and that's your guidance. And maybe there's a case in the Fifth Circuit or the Second Circuit, and they've spoken on it. And you look at it, and you can't just say, "Okay, that's the only authority, I'm going to do what they did." You have to say, "Gee, how does that fit in to the culture of the Ninth Circuit? And how does that fit in to the present constitution of the Supreme Court if it gets up there?" At least that's what I do. And I'd look at it and I'd try to decide what makes sense to me in that total context. And I'll make a ruling. And if I guess wrong I get reversed, and that's the best I could do on it. And then I learn from that. The Ninth Circuit says, "Oh no, that's not the way it should come out and here's why." And then I learn--and there's the precedent for me to follow. But again, I'm just saying for the third time, I don't worry about reversals.

McGarrigle: Well, and all of that's changing all the time. If Bill Schwarzer's standard is now the standard, then that's one example of how the standard is changing.

Henderson: Exactly, it is, it is, and sometimes it's a moving target for you. But that's part of what your law clerks and you do is to just keep up with that and try to learn what the current standard is and follow it. As I said, I'm surprised at how often there isn't any guidance. To give you an example, if I haven't already given it, did I mention the Indian gaming case?

McGarrigle: Briefly at the end of the last session?

Henderson: Well, see, that's just an example. I'm working on that opinion still and it's a puzzler. There's very little out there and my initial instinct was to go with what made common sense, that you couldn't carry sovereign immunity off the reservation, but the cases aren't nearly that clear. And I'm really struggling with what makes sense, what's consistent with what little the Supreme Court has said about this specific issue in the context of the Americans with Disabilities Act. But that's what makes the job wonderful, too, you're constantly getting these challenging cases and these puzzlers. And you're constantly getting the chance to participate in something important and play a role in this, and I love that.

McGarrigle: Yes, before we started taping you made the analogy to chess in terms of the unpredictability of the work.

Henderson: Yes, exactly, yes, it is. And that's fun. I think it would be a boring job if it were predictable. If you were, "Well, here's another Title VII case," put a stamp on it and move on. Every case is different.

McGarrigle: I think I read somewhere, did you have a time when you sat on the appellate court, on a panel?

Henderson: Yes, I used to sit fairly regularly. You know, they're still short-handed, but early on in my career they were very short-handed. They were short of judges, there was a flood of cases. And as you know, the Ninth Circuit sits on three judge panels. And to stretch the panels and create more panels, they put out a call for district court judges to sit by designation, so there would be one district court judge and two Ninth Circuit judges, and that gave them many more panels to handle. And I did that quite frequently early on in my career and I haven't done it for a while now. And that's exciting. It's educational, I've learned, and that's one reason I did it, I learned how appellate judges evaluate my work, because I was doing it. And that was very helpful to me, to see how they review the rulings that district court judges make. And I very much enjoyed it.

McGarrigle: You must have sat with different combinations of judges.

Henderson: I sat with different combinations, I sat with judges I knew in other contexts, judges I didn't know. I sat with very conservative judges, I sat with very liberal judges as you get in the Ninth Circuit, and learned from each experience. And it was educational in that sense. I think that attorneys, especially my attorney friends, misunderstand the role of judges, and who judges are as people. And I think they're too easy to assign evil [laughs] to a judge who rules in ways they don't like. And you learn very early on that different people don't like my rulings, because I'm probably too liberal for them. But I'm always hopeful that they understand that it's an honestly held belief as opposed to some sort of thing I've inflicted on the world.

McGarrigle: That it's malicious.

Henderson: Yes, that it's malicious or ill-intended. That's what you learn when you sit on these panels. These are bright guys, they have a point of view, they read a case differently. And that's the way our system is supposed to work. And again, you were talking about public speaking a while back. I think a current theme I have is the value of diversity, and I talk a lot about the importance of diversity in our society. And I think that that's

why diversity is important. I think we don't have a just judicial system if we only have one kind of person with one kind of background, one kind of gender and race sitting on the federal bench.

McGarrigle: Is John Noonan still on the appellate court?

Henderson: John Noonan still sits on the appellate court. I've actually sat with him. And he has done the reverse of what I did. When I was chief judge, he would call up and ask if he could come over and handle a case or a few cases on our court, so that he could see what we do and become a better appellate judge. And I admire him greatly for that, and he still does that. He still will come over and try a case so that he will understand more of the dynamics of a trial judge. But yes, he still sits.

McGarrigle: Oh, how interesting. I babysat for his kids about thirty years ago. [laughs]

Henderson: Oh, is that right? Oh, that's interesting, yes.

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Henderson: He is a fairly unusual judge. He's unorthodox in many ways. He's very bright. He probably would be labeled conservative, but he's not predictable. Certain things will grab him and he'll be very unpredictable, come out with what you'd think was a very liberal ruling for reasons that are never clear to outside observers.

McGarrigle: And then he's written quite a bit.

Henderson: He's written quite a bit. As you know, he was a professor at Boalt Hall, and he's written quite a bit. The word that I heard, he had written--let's see now, it's been a while--I think about abortion, and that was one of the reasons that President Nixon appointed him, he liked his views on abortion. That's what I've heard, that's not substantiated. But that was sort of the rumor at the time he was appointed.

McGarrigle: I recall a photograph of--it must have been then-Governor Reagan in his home--it must have been President Reagan. I'd have to think about the years.

Henderson: Maybe it was Reagan who appointed him, then. You're probably right.

McGarrigle: I have to think about the years.

Henderson: Yes, that's probably--of course it was Reagan, because Nixon appointed Sam Conti, who is much older, on our court. That was another era. It was Reagan, thanks for that correction, yes.

McGarrigle: I just mentioned at the outset I was a little bit at a loss in this area. My husband said, "Ask three or more of the most important aspects of judging," so I put it on the outline. [laughs]

Henderson: Yes, okay.

McGarrigle: A lot of abstract questions, but I know our readers are fascinated by this area of the process of the work that you do.

Henderson: Yes, I think--and I think I've mentioned this--that Judge Zirpoli, I think, gave me my first insights into the art of judging and deciding and then explaining what you've decided. I used to when I was new run down the hall, and I admired him greatly, and asked him what now [laughs] probably seems like a dumb question, but, "How do you do this?" or "This happened, what do I do?" And he, better than other of my colleagues, who would sort of give me an answer, "Here's what I would do," he was a great believer in backing up, and he always felt judges get too close to it. You get inundated with *Smith v. Jones* as a precedent or *Acme v. ABC Corporation*, and you're trying to decide, and he always said, "Just step back from it and take a broader look. It's more than *Acme v. ABC*, it's more than *Smith v. Jones*. Look at the humans that are involved, not just the money, but what is really going on? And that will give you some added insight into it. And then the law is designed to control this human behavior. And then you put the law with it and say, 'Okay, how does the law speak to this kind of behavior, whether it's fraud, whether it's--what does the law have to say about this?'" And that helped me a lot, and now I always try to step back, view the whole picture, and then come in with the law. See what the law says about this in reaching my decision. The rest of it, as I've said, once I've reached the decision, if it's an easy decision, I'm very terse on it.

Some judges on our court are even terser than I. For example, a summary judgment is a motion that says, "There is no material issue in dispute. This can't be disputed that this happened, that happened, that happened--. That not being disputed, you ought to rule for us and throw this case out or rule on this point." Most of the time they're wrong, there is a dispute. And when it's crystal-clear, some judges just have a one-sheet order, "We're denying the motion for summary judgment because there is a material issue in dispute, to wit, this." And that's the end of it. And that's probably all you need to do when it's very clear that there is an issue in dispute and it should be denied. And it ranges from that very simple over to very subtle issues like this Indian case that I've been talking about. And I'm going to--it's probably going to be a fifteen-or twenty-page ruling analyzing the history of sovereign immunity on Indian reservations, probably interweaving the history of the Americans with Disabilities Act, and this Supreme Court case has recently spoken on this issue and it's going to--. Because one, I want to explain it. I don't even know how I'm coming out on it at this point, but it won't be an easy decision, and I think I owe the attorneys a full explanation. But also one of the things I'm doing on a case like that is that I'm pleading my case to the Ninth Circuit. So one of the sides is going to appeal. Whatever I rule, it's going to be appealed. And I want to be my own best advocate there. I don't want to leave it to the winning side to do a good job of representing what I did. So I'm very careful in those cases and write a very long and detailed answer.

McGarrigle: I was wondering if, and I don't know if this is interesting or not, but if there are changes you've seen in, for example, the prosecutors who come before you, the defense attorneys, the different aspects of the bar?

Henderson: No, I don't think they've changed over the years. I think they're pretty constant. Probably, I've changed more. [laughs] It's interesting. I think the attorneys have been pretty constant. Let me give you one example. When I first started, criminal defense lawyers would, and other judges have changed in this same way and we've talked about

it, criminal defense lawyers would come in and they represent a drug dealer or something and they would file a motion saying, "Well, we want to find out who the informant was, we want to do this. We think the government agent is lying." Twenty years ago, you say, "Yeah, yeah." And now, there's so much out there that shows that government agents misinform, and there's another agenda, that we listen. So I think we've changed. I think the attorneys have been drumming that song for at least the twenty years that I've been on the bench, twenty-one. So, I've changed. I now listen more carefully, I'm more likely to grant a hearing, an evidentiary hearing to see if some of these things are true. I'm more likely to entertain a motion to suppress which has as its premise that they just kicked down the door without warning and then made up how they got in, than I would twenty years ago.

And I think other judges that I've talked to have had that change, just because the times have changed. Just reading the paper this morning before you came, there's an article about the FBI botching the anthrax investigation. Federal judges are more likely to have a question about an FBI agent testifying in court than we used to. Boy, that was the kiss of death to a defense, when an agent got up, and said, "I'm an FBI agent, yes, I've been through this school, and da da da, and yes, that's the fingerprint!" "Well, that's it." Now, you are saying, "Well, I don't know. Is that the fingerprint, or--?" You know, so all of that is changing.

McGarrigle: It's interesting, because it sounds like the FBI and maybe other government agents had at one time a higher level of credibility than, for example, the police. And that maybe that's what is changed now.

Henderson: Yes, I think so. But I think part of what's changing, too, though, is the press. I think the press has played an important role in this. And I think that, I don't know this to be the truth, but I would guess that during the time of J. Edgar Hoover, when he had such enormous power, they probably weren't any more efficient than they are now, but the press didn't write about it. We didn't know the little things that the FBI did, or maybe they didn't even dare try to look around and investigate it because he held such tight rein over it. And I think since Watergate, the press is more likely to report these kinds of things and we know about them, rather than that they're just now happening for the first time.

McGarrigle: Yes. Oh, and I didn't mean to suggest that--just in terms of the public view. Because it's been a long time that there has been question about police activity.

Henderson: Yes.

McGarrigle: And it's extended now.

Henderson: That's right, yes, it is. It's interesting, it's a two-edged sword. And the same thing with judges. You know, I think there was a time when for the most part attorneys wouldn't agree with judges, but judges were revered and thought to be an important institution. Now, we're as likely to get attacked, you know. And we're more likely to read about a judge who did something improper. So it's probably good but it's also probably bad. I think we need to have institutions that we believe in. And when we start learning that our politicians are corrupt and we have corrupt judges, we become more like banana

republics, and I think that's bad. I don't have any resolution for that, but that's the two-edged sword of this new view.

McGarrigle: In terms of the way that the perception of the federal bench has changed and also the economics have changed, what kinds of changes have you seen in terms of attorneys who are studying the federal bench for themselves, as an option for themselves, the view that people have of the federal bench as an exciting career?

Henderson: Yes, I think--you know, it's interesting, and I would distinguish the federal bench from the state bench, because I have a lot of friends on the state bench--I think that the federal bench is still a lofty goal for a lot of attorneys. It's a wonderful job. I think that it's perceived that way. It is a problem for some attorneys. There is an attorney whom I will not name here who is Asian, and we've never had an Asian judge in the history of our court, and there have been some positions, and these senators have courted him, "Hey, why don't--" And he's got kids getting ready to go to college, and he can't afford it. He can't afford the cut in pay. So that's a problem. We have been lobbying for years, and there's a lawsuit now, that the constitution says that you cannot diminish the pay of a judge, and we've argued to the court that by not giving us a raise, and therefore inflation cutting into our salary, that's a diminution of our income. It's been a deterrent to get a number of people. Judge Legge just retired, I think prematurely. He was a wonderful judge, because he's got bills. He was a managing partner of a law firm and he had some savings. And over the year he's cut into those savings, and he finally retired to go with JAMS [Judicial Arbitration and Mediation Service] so that he could replenish his income. So that's a problem for the bench. I hope it's not the start of a trend, because a few years ago Gene Lynch left the bench and is doing very well with JAMS. It has seriously eroded the state court bench, they're calling it a brain drain. But so far just those two judges, I think, certainly in the Ninth Circuit, that I know have done it. But it's a problem.

Now, what does that say for me? I like to say that when I [laughs] got my appointment twenty-one years ago, I was probably one of the few judges in the history of the bench where I got a raise in pay. [laughs] I mean, I actually made more, so I was very happy with the salary that I got. But I think that's unusual, and I think that more of the people that are appointed are likely to be with a big firm or have a successful practice, and they take a cut in pay.

McGarrigle: That speaks to the diversity of the bench in terms of the diversity of experience.

Henderson: It does, it does, yes. And that's good, because again, I believe in diversity. By the way, one of the dilemmas that federal courts have is what to do with the diversity of experience. Many people argue that, "Gee, wouldn't it be more efficient if Thelton Henderson, who has a background in civil rights, why doesn't he just handle civil rights cases? He's never done a patent, why should he learn patent? He's never done an intellectual property case, he's never done a securities case, isn't that dumb to have him decide in all of these sixteen areas of cases? Admiralty. He should just do civil rights. And a judge who was a securities lawyer should just do securities, wouldn't that be more efficient?" Well, I think the answer is that would be appalling to the bar. You know, because we do have our patterns, and wouldn't it be awful for one side of the bar if you drew Judge X on a securities case, sometimes you know your fate before you start, "This judge rules this way on these kinds of things." And I think part of the

success of the federal court is you may draw Judge Henderson on a securities case, and while he doesn't have expertise, he's got smart law clerks, and he'll work hard, and he'll give you an honest ruling on it that most of the time will stand up under appellate scrutiny. And I think that's a superior way of doing it. But it gets criticism because in some sense it's less efficient.

McGarrigle: Well, it certainly seems like something would be lost, quite a bit would be lost by altering it.

Henderson: Absolutely.

McGarrigle: And plus, there is the opportunity to--I don't know what the technical phrase is, but to associate cases. I know that in some of the prison cases, that they've come to you because you're associated with cases that are ongoing?

Henderson: "Related" is the term.

McGarrigle: Related.

Henderson: Yes, related case. Yes. We have--. And that is a notion of efficiency, too. And the related case rule simply says if I have a case and I've done a substantial amount of work on it, and then another case is filed, that it is more efficient to relate it to me, because I've ruled on some of those issues or I have efficiency and a knowledge of this--it's more efficient to relate it than to send it to a new judge. It's efficient in two ways. They would have to take time to bone up and get to where I am, but also I've made some rulings and the other judge, because that's what judges do, they may rule a different way. Then you've got inconsistent rulings on the same kind of case. So that's what the related case is designed to do, and I think it's a good rule.

McGarrigle: I had on the outline in a spot further down the issues of vacancies on the court, and speaking to the changed perception about the federal bench. When you were a chief judge, did you have an issue with vacancies on your court?

Henderson: Not really. Well, it was slow. We had vacancies and you always--you want to have a full court, because whenever you have a vacancy it means thirty to forty cases more per judge. And you bring in a new judge and you reduce your caseload. So that's always an important issue for our court or for any court. I'm having trouble instantly recalling. I know we had vacancies and I know that we were concerned that it was taking longer than we would like to fill those vacancies, and that just seems to be the political reality these days. Oh, and I do remember that we were really disappointed--I was, in any event--with President Clinton, who had a lot of vacancies when he took over. And it's always been my view and those I've talked to that somehow he didn't sense, or appreciate, or share the importance of judicial appointments. And he made compromises. It seems that he met ahead of time and cleared people and so had a much more moderate appointment level of the people he appointed. And I think some people in his own office he passed over because they were going to be opposed by the Republicans. I thought that was a disappointment.

McGarrigle: Yes. So, for eight years that must have had quite an effect, then.

Henderson: It did, it did. Yes. It had quite an effect. And at the same time, the Republicans held up a lot of these appointments, I think even though, as I just said, I think he was pretty cooperative on it, he was willing to make the compromises. So that George Bush inherited a lot of appointments, that you know, I would love to have seen made. I would have liked to have seen zero vacancies when Clinton left office, but there were hundreds of vacancies.

And we're caught in the political process now, the Democrats, if you read the paper, just earlier this week the Republicans are complaining about the Democrats now holding up the process. Just the other day I read that Senator Boxer, there is a "blue slip" process that--let's see, how does it work, you either withhold a blue slip, or you pull a blue slip. The form is a blue slip, I guess. She has blue-slipped one of the candidates in the Ninth Circuit, so that her nomination has not gone forth. And that seems to be the politics now. And I'm grateful that it wasn't the case twenty years ago. [laughs] Certainly, I've probably mentioned this already, I wouldn't get through the process now, having been on the ACLU board of directors, Equal Rights Advocates, and other fairly liberal organizations. You just, you don't even get a hearing with those kinds of things now.

McGarrigle: It sounds like with Clinton that he not only was more moderate in his selections, but that he didn't take advantage of all of the openings that were there.

Henderson: Exactly, he didn't, he didn't, and that's why I said earlier that, I said I don't know, he just seemed not to appreciate the importance of it in the way that Reagan did, for example. Reagan I think clearly understood, and it's not a pejorative when I say he had an agenda, but he appointed a lot of bright young conservatives to the federal bench, and they are going to be around [laughs] to haunt liberals for years to come. I think that's exactly what he had in mind. And Clinton didn't, unfortunately I think--and as I think, I don't know, I think he just didn't appreciate that, he had other goals in mind as president, I guess.

McGarrigle: You had mentioned at one session that William Fletcher is a neighbor of yours.

Henderson: Yes. Willie lives two doors down, yes. Yes, we're good friends. We've become very good friends over the years. He's a wonderful man. I was just telling--I had some house guests--I get up in the morning, and as often as not, the *New York Times* in its blue wrapper and the *Chronicle* in its yellow wrapper are sitting right in front of my door. And I said, "How does that happen?" Willie knows I now have trouble walking and he gets up early to go down to the corner, and he puts my paper on the porch, just a wonderful neighbor, just one of the most thoughtful human beings I've ever met.

Our neighbor in between, they love to tell people they're the only people in the country that live between two federal judges. [laughter]

McGarrigle: I recall that long period of time when his appointment was held up.

Henderson: Yes. It was held up, and that was sort of a neighborhood [laughs] angst or pain, you know. Early on, you know, you would see Willie or Linda, his wife, and say, "How is it going?" They would give you a full report. You know, it went on for something like three and a half years. So after a while you sort of stop asking, you know, it's too painful to hear. It was a bad time for them, I think. But Willie, he's a fighter, he wasn't

going to give up. He would give you the report, and he was always upbeat and convinced that justice would prevail. It was a very unfair process. As you know, he was a classmate of Bill Clinton's at Oxford, and was probably being punished as a-- what is it--F.O.B., Friend of Bill. But the guise they used, his mother, Betty Fletcher, is on the Ninth Circuit, and is one of the more liberal judges on the Ninth Circuit. I think they were afraid that he was going to be his mother's son, and another liberal on this dreaded Ninth Circuit. But they were very dishonest about it. They used--you have to stop me when I'm repeating. Have I told this story?

McGarrigle: No, we haven't discussed that, no.

Henderson: They used a statute, which is a nepotism statute. The nepotism statute is designed to prevent me from appointing, when I was chief judge, for example, appointing my son as clerk of the court. You know, that kind of nepotism. They perverted it in their argument to say that you couldn't have two judges on the Ninth Circuit who were a mother and son. And that was ridiculous, and it was a perverse reading of that statute. But they used it, for a long time, to block his appointment. But finally he got it, he got the appointment, and has been a superb judge, in my view.

Have I told you the story about--the doorbell rang one night?

McGarrigle: No.

Henderson: [laughs] You know, we talk about--we're good friends, and I never hesitate to tell him that--"Okay, well I know one day you're going to get one of my cases, and you're going to have to reverse me. I'm going to make an error. It's okay." [laughter] "When you do it, it's okay, no hard feelings, I make errors." And I always say this. So one night, the doorbell rang. I was upstairs, and as you know, I hate to go down the stairs once I go up for the evening. I came down, sort of grumpy, and I look through the window there, and there's Willie smiling. So I said, "Oh, hi!" And he hands me a ruling [laughter] that had just gotten out that day, where he upheld my ruling. [laughter] So I like to say I'm the only judge in the country that gets his appellate rulings hand delivered to him [laughter] at home.

McGarrigle: By a member of the bench. [laughter]

Henderson: By a member of the bench, exactly, yes, by the judge that wrote it. So that's--but Willie is a good and wonderful friend, and is supportive, and a good neighbor, yes.

McGarrigle: That's a great story.

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McGarrigle: Your law clerk Karen Kramer has helped me by printing out some of the more notable opinions from over the years, and I know you have the same list. Why don't you decide where you would like to start, and we'll talk about the opinions in the context of when they were issued.

Henderson: Okay. I guess, let me just look at the list here. One of the early notable cases I think was *Spain v. Rushen*, and the reason was that at the time, twenty-one years ago, there

was still a climate where people remembered an infamous breakout at San Quentin. There were still local painful memories of events surrounding that, because a judge in Marin County was killed as a related incident. So this case came to me on habeas corpus. Charles Garry, who is now dead, but a very famous liberal attorney, who had represented the Chicago Seven and a lot of causes like that, was representing a San Quentin prisoner named Johnny Spain, who was involved in the breakout in which someone named George Jackson was killed. I could talk about the events forever, but I'll try to condense them. They had had a trial, and it came up to me on two issues. One, Garry contended that the judge erred. A woman in the jury, midway through the trial, came to the judge and said, "I feel nervous in the trial. This witness today, I believe the testimony is going to be about the killing of a woman who was a good friend of mine, and I feel almost like crying, and I don't know what to do." The judge said in effect, "Oh, don't worry about it, it probably isn't about that," and went on with the trial--didn't inform the attorneys. And it was about that. And one of the issues was the judge had a duty--they didn't have a fair trial, because they had a juror who was hearing testimony about her friend being killed, and the defendants who were accused of doing it.

And then the other issue was that during the trial, Johnny Spain was shackled with something like twenty-something pounds of chains, both in front of the jury, was one of the issues. And also that the chains were so onerous that he couldn't free himself from that to participate in his own defense. I looked at these issues very carefully. And for reasons I don't recall, it's interesting, because I was still fairly new, I ruled on the jury issue, and I reserved the other issue. I found that yes, the judge should have told the attorneys about this juror, he had a duty to, and that it deprived Spain of a fair trial. I said in my ruling that having so decided, I don't need to reach the other issue. It went up on appeal, and went all the way to the Supreme Court. It got sustained in the Ninth Circuit. And the Supreme Court reversed me and said, well, that--they just said, they reversed me--that I was wrong on that point, that that didn't amount to an unconstitutional deprivation of a fair trial. So it came back.

And there was a second issue which I had not ruled on, and Charles Garry was smart enough to say, "Well, now rule on the second issue. We think that one is as good as the first one." And interestingly enough, in my evaluation, I thought the first issue was a strong issue, that's why I did it that way, and that the second issue was less persuasive. But I ordered an evidentiary hearing with one of our magistrate judges and assigned it to Joan Brennen, who is now retired. It was interesting, Joan was an ex-prosecutor from our--you know, and I assigned it, and let her handle the evidentiary hearing. Charles Garry presented experts who testified that you can't possibly function well with twenty pounds of chains, and they were chafing his arms, he had sores from the chains, and sat there depressed because he couldn't free himself.

Anyway, Joan did a wonderful job, turned in a report, I forget how many pages, sixty, eighty pages, of findings of fact, which concluded that indeed, he had been deprived of the right to participate in his trial. So taking that, I then wrote an opinion, so finding. And it went back up. I got sustained on the Ninth Circuit, and the Supreme Court didn't take that one up, so that became the law.

That was a very controversial ruling, and indeed, so controversial that a few years later I had a case, again involving San Quentin. San Quentin had been sued, and the state

attorney was there, and the plaintiff. It was a very contentious case, and they asked to have a special master to decide some issues. I said, "You pick the special master," and they picked a state court judge, a retired state court judge from Marin County. And the judge had such bad memories of *Spain v. Rushen* that he wouldn't work on the case. He didn't want to work with this Judge Henderson, who had ruled that this Spain, who was with some people, involved with some people who had killed his friend-- So it was-- some very strong feelings about my ruling. But to this day I think it was a right ruling, and it certainly withstood the appellate process, which is the ultimate test of a ruling, I think.

McGarrigle: Was that extraordinary, that Johnny Spain appeared in court in those twenty pounds of chains, or were there other prisoners who--?

Henderson: Well, not with that many chains, and that was part of it. And I think that certainly an inference of the findings was that the twenty pounds was punitive, that it was just excessive. You know, you could have handcuffs, you could have shackles, he can't run, they've got guards all over the place--that you didn't need twenty pounds of chains to suppress this guy who weighed about 150 pounds. That was part of it, yes. It was unusual, and that was part of my finding, that that was not a usual, or reasonable, way to control him.

He was shouting. He was a behavior problem, there is no question about it. The issue is what do you do with someone who weighs 150 pounds, and is shouting and interrupting. You know, I think there was a recent case where the judge was reprimanded because she put an electric shock on a prisoner who was doing that, and every time she would [makes a sound like "chzzzt"], it would jolt him. They said, "No, you can't do that." You know, judges have to be more patient. You can't physically harm people who are disruptive in court. You take them out, and you do all kinds of things, but you can't do that. And I think this was an equivalent. You can't laden them with twenty pounds of chains.

McGarrigle: So the judge who didn't want to participate because of his memories of the *Spain* case, he was relating--I mean, your decision was about a different issue, it wasn't about the murder or the violence that was committed. It was about the constitutionality of--

Henderson: You know, I think--well, no--here's what I think it was. I think, probably when he read about the opinion, or heard about it, he viewed me as someone who--this is my guess, this is my interpretation--this liberal judge who doesn't understand, his friend has been killed, these are bad people. And he has now found that he was mistreated--how can you mistreat this killer? I think that was his view of it. And then I was a villain for not justifying what had happened to this bad person. I don't know, that's my reading. But what happened was he--I think maybe he thought he could do it--and I remember, I actually had a meeting in court, and I could tell something was wrong. He just, you know, I said, "Hi, how are you?" And he couldn't even bring himself to shake my hand, he could barely restrain a sneer. You know, he just didn't like me, and he thought maybe he could go through the process, and I think after that meeting he just said, "I can't deal with this awful person." So I think that was the dynamics of it.

But again, I've had that before. Not from a judge in that situation, but you know, there are many people who--and then judges of all stripes get that. You know, we talk about it

all the time. You'll find yourself in a situation where there's somebody who doesn't like something you did. That's the nature of judging, and we're always saying, "The only time everybody is happy with us is when we do a wedding [laughs] or we do a naturalization." That's just the nature of our existence.

McGarrigle: So at the time, we were talking about the impact of some of these decisions, at the time there was tremendous impact.

Henderson: Yes. That was a tremendous impact, I think, and it was celebrated, and it was, I've been told since then--Geronimo Pratt, if you know that name, was--. An interesting feature of the Johnny Spain case, *Spain v. Rushen*, was that Johnny Spain was a member of the Black Panther Party. And that was a part of that, the one I got reversed on the jury issue. Because Charles Garry was arguing that of all the people who were involved in that San Quentin escape he was the only one convicted, and that it was because he was a Black Panther. And the judge let that come out. It was irrelevant, and the Black Panthers were very controversial at that time. There was also a prisoner who just recently got out, a couple of years ago, I believe, named Geronimo Pratt, who was a Black Panther. And there are many people who believe that the Black Panthers were targeted by the FBI and other government agencies. So that was a feature of this, and I was told by attorneys that this ruling gave heart to those who were representing Geronimo Pratt and other Black Panthers, that there was some hope, you know, that this kind of government behavior would be changed.

Another opinion, it's interesting, one of my early opinions, I think maybe in my fourth or fifth year--[Ken Kemmo?] was my clerk at the time, did a wonderful job--was *Nehmer v. the Veterans' Administration*, which we call the Agent Orange case, a very important case in which the Veterans' Administration was sued for their treatment of veterans who had fought overseas and were complaining of ill effects and the aftermath of Agent Orange being sprayed in the jungles. And I found that indeed they were right, that the Veterans' Administration had misinterpreted the regulations, and had fallen short on their duty to these veterans. And for years I got letters from veterans thanking me for that ruling. The only case similar to that in terms of, I think, popularity and getting letters for years was a ruling I made on dolphins, finding that dolphins were mistreated, and I still get letters on that thanking me for saving the dolphin population.

But *Nehmer* was very important, and interestingly enough--I think this case was at least fifteen years ago--I presently have before me a motion on *Nehmer*, because I entered a ruling that was designed to guide the Veterans' Administration in the way they handle these claims. The case recently returned to me because as the claims were being processed the plaintiffs' attorneys have come back after all these years and saying, "Okay, we're getting near the end, but they're cheating again." That's my language. "And they aren't processing it. These people have a claim, and they're calling it something else, and this is a product of Agent Orange within the meaning of the original ruling and they're saying it's not an Agent Orange." So actually *Nehmer* is still alive--.

McGarrigle: Well, Karen [Kramer] gave me this article from March of this year, "Lawyers Badger V.A., Vets Hurt By Dioxin."

Henderson: Yes, exactly, that's the case. You know, one of the things I will say, I think it's appropriate here, two government agencies have surprised and disappointed me, for

whatever that's worth. One of them, the Veterans' Administration on this--I guess I was naive when I took the bench, because I always thought the Veterans' Administration was an administration that had, as one of its purposes, the welfare of veterans! And this behavior here in *Nehmer* just shocks me, they clearly don't seem to be acting for the betterment of the veterans that they're supposed to serve. And the other has been the Bureau of Indian Affairs. You know, I've always naively thought, "Well, you're there to do--" And the abuses I have seen of Indian rights and all has been quite a shock to me. And I sort of feel naive in the sense of, you know, believing what I must have learned in civics classes about the way the government works. But I think I have been deeply disappointed in the government in both of these cases, or not both, but all of the cases that involve the Veterans' Administration and their treatment of veterans, and the Bureau of Indian Affairs and their treatment of Indians.

McGarrigle: That sentiment must come from the very top of the organizations, and it sounds like it is fairly consistent over a long period of time.

Henderson: Yes. And it seems to, as best as I can tell it spans administrations, so I don't think an administration comes in and says, "Here's what we want you to do." I think it's just some sort of historical continuity, that the people who work in these agencies do what they've always done. I'm sure there will be some policy changes when you get a new director, but there has been a consistency, certainly in the twenty or so years that I've been looking at these issues.

Another of my cases that got a lot of attention--now this is one that probably was a little different, it's called *Hi-Tech Gays*, we call it, the case, and I forget the official title of it. But this was an issue brought by gay people in the high tech industry in Silicon Valley in what seems like the early days of Silicon Valley. Because they were identified as gays, they were subject to higher security requirements. To deal in the high tech industry, in certain parts of it you had to get a security clearance, and gays were complaining that they had to jump through a few extra hoops simply because they were gays. The government rationale was that because they were gays, they were more subject to blackmail and those kinds of things. And I think that was long enough ago that--I think gays were more in the closet then than they are now. That might be less of an issue today, when most gays certainly seem to be "out," as they say.

And I found that--and this was, I have to confess here, it was a bit of a stretch on my part--I found that gays were a suspect class, and up until that time and still to this time, I guess, racial minorities were a sort of suspect class, women were a suspect class--meaning when you look at the way they're treated, you have to do it with heightened scrutiny, and look and see that behavior, because historically those groups were discriminated against. There had been no such finding with respect to gays. And I found in this case that the problems of gays were so similar to the problems of women and minorities in terms of the discrimination they face that they ought to also be treated with heightened scrutiny.

I was reversed. But the next year I got a record number of clerkship applications from gays around the country, and I still get clerkship applications from gays. And it was the first time I noticed it, because I've had a lot of gay clerks over the years, and the clerk who helped me write *Hi-Tech Gays* was gay. And in those days, I remember it clearly, John Lewis was his name, did a wonderful job on this. He had worked for me for

several months, and one day Karen, who is now my permanent clerk, came in and said, "Gee, John is nervous, he doesn't know what to do." I didn't know he was gay at the time. "He doesn't know how to tell you, and whether he should introduce you to his partner," and I said, "Sure, bring him in!" And then he knew it was okay. Well, that was the climate in those days. And right after that my applications started saying, "I'm gay," and so it was a sea change for me.

But as I said, I got reversed on it, but I'm still proud of that case, and I believe, in time, the high court will agree with me that they should be treated the same. But as of now I remain reversed on *Hi-Tech Gays*, but I list it, because I'm proud of that case.

McGarrigle: Yes.

Henderson: There are a lot of others. I've got a long list here, and I don't know if you want me to continue to go down the list, or just--you direct me.

McGarrigle: Okay, let's take a break for a moment. [tape interruption] I'm just reflecting on *Hi-Tech Gays*, which I read some time back, and I'm wondering, did the higher court explain what the rationale was for allowing a higher level of scrutiny for gay applicants than for non-gay applicants?

Henderson: No. They actually, they didn't get into that issue the way I did. They simply found that the gays were not a suspect class. See, that's why I alluded earlier that that was a bit of a stretch. I found that there was no precedent for that, no case that John and I had found that gays were a suspect class in the way that blacks, Hispanics, and women were. So the Ninth Circuit simply said, "You're wrong, Henderson, they aren't a suspect class. Therefore you don't get to the next step."

McGarrigle: I see. Interesting. Well, let's move along, we'll do a couple more cases and then we'll take a break.

Henderson: Okay.

McGarrigle: You know, and I should ask you too before we move past the *Hi-Tech* case, in terms of the impact at the time--you commented about the rise in the applicant pool--

Henderson: Yes.

McGarrigle: --the gay applicants for your clerkships--but in terms of impact in other ways?

Henderson: I think, I still will hear from gays, and as I said, I think that there are, you know, being in San Francisco and the Bay Area, I think there's a very strong gay community, and I still like to think that [laughs] I'm popular in that community. I have a lot of gay friends, but also just by virtue of that ruling. And I think that it gave heart. I think that it was the way that gays viewed their status, and I think they took heart that a federal judge agreed that their lot was not unlike others who were discriminated against, and this opinion sort of tried to make that official.

So I got a lot of invitations from gay groups to speak, and be there, and I tried to do that. As I said earlier, in terms of my speeches, I try to be available to public interest groups

and minority groups, and I consider gays a minority in that sense. So I think it was a widely read and hailed opinion at the time, and over the subsequent years. I think there was a lot of hope that it would be sustained by the Ninth Circuit and go up to the Supreme Court. That was the hope of the gay community, and my hope, I should say that. And that is largely the way our appellate law works. You get a new ruling--and it has never been found that gays are a suspect group, and you take it up, and one side hopes that the appellate court will say, "Yes, now that we look at this, yes they are." And then you have a new law. The other side is hoping just what happened, that the Ninth Circuit will say, "No," and it stops there. And the Supreme Court didn't take it up on appeal, so it stopped at the Ninth Circuit.

As I said, I still think at the right time this issue is going to come up again in another context, and I think one day our Supreme Court or certainly the Ninth Circuit is going to find that that is the case, that they are a suspect class and ought to be treated similarly to other suspect classes.

McGarrigle: In terms of the--jumping back to the *Spain* case--in terms of the environment at the time, that was such a highly charged environment, what was that like for you, having come out of the civil rights movement, living in Berkeley?

Henderson: It was early on, you know, I think I've mentioned this in another context--it was highly charged. I was just, about this time as I recall, getting sort of used to this kind of thing. When I first started, I was startled at all the power that I found I had. I think I mentioned that one of my early cases called for me to order the [United States] navy [laughs] to do something. I remember saying, "Can I order the navy to do things?" [laughs] I mean, I didn't appreciate it. So I was constantly startled at all the enormity of the issues and my power to affect them. And you know, sort of now, twenty-one years later, I understand that fully, and while I don't take it for granted, you know, I do it in due course. But this one was in the papers, it was a *cause celebre*. And I might even mention, I just remembered how there was a store down here that--what was it, Whole Earth Access, down Ashby, that I used to shop at. Shortly after the *Spain v. Rushen* ruling, I went shopping at Whole Earth, and I got in my car and sort of absent-minded, I looked back, and put my car in gear, and backed up, and bumped--

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Henderson: --because parking was difficult. And I bumped into the car, and said, "Oh, gosh." Just a slight bump. I get out, and this guy, this bearded guy looks like he's about to attack me, "Hey you son of a bitch, didn't you see my car?" He's really being confrontational. I'm trying to figure, what am I going to do? I'm not going to get in a fight, but there's clearly no talking to this guy. And the woman who was driving the car got out and said, "Aren't you Judge Henderson?" And I didn't know whether that was good or bad. [laughter] But I said, "Yes." And she turns to this guy and said, "This is the guy who released Johnny Spain." And he changes, says, "Oh, my--!" And we talked, and you know [laughter], it probably saved me from a beating or something. But I remember that so clearly, and the guy talked, "Oh, I'm really sorry man, you know. I have this temper," and he backed off. Certainly in the civil rights community, it was a widely followed case.

Another interesting story that I tell often about Johnny Spain--Dennis Riordan represented him. He is a superb appellate attorney. After I had ruled, and it was clear that they had run through the appellate process, the Supreme Court had denied certiorari, and it was final, and had to get through--there was a state court hold on him, and I did some communication with the state court judge down in Los Angeles, some paperwork. Dennis Riordan said, "I'd like you to"--and I think Johnny Spain was out on bail at that point-- "I'd like to bring Johnny Spain by to meet you." And I said, "No, no, not while the case is still going on. You know, I don't want anyone to say somehow I'm biased before the case is over."

And finally it was over, and I had one more paper to sign. And Dennis Riordan said, "Would you mind if Johnny Spain brought the paper over to sign? You can sign it and then--." So I said, "Well, okay." So he brought the paper over and my secretary said, "Bring the paper in, I don't want to go get it from him, I want this to be--." I signed the paper, and then I said, "Okay, why don't you send him in." And we talked for a few minutes. It was sort of awkward, I didn't know what to say, and I said finally, "What's the most--you've been in for, I don't know, fifteen or twenty years, whatever it was-- what is the most remarkable thing about being out of prison? What is the most striking change you've seen?" And he said very simply, "Doors." And I said, "Doors? Well, what are you talking about?" He said, "Well, for twenty years I've walked up to a door and waited for someone to open it. And I can't get used to the fact that I can turn a knob and walk through a door." And I've never forgotten that, you know, it sort of pointed out what incarceration does, and here is this man who still--my secretary pointed out that he, you know, sort of stood at the door [laughs], and she said, "Well, go on in." It took a while for him to open the door and come in to see me. I've never forgotten that. Somehow it dramatized for me what incarceration is like.

McGarrigle: It's very profound.

Henderson: Yes, very profound, yes. If you want to talk about another case, I would say one of the interesting cases was my *Kraszewski* case, which was a rather remarkable case. I don't know, I forget what year that came. I think it was Muriel Kraszewski, sued State Farm. The best way I describe this case was that agents, State Farm agents--the first thing [laughs], I was startled that they make more money, substantially more than federal judges. They make a good living selling insurance. My insurance agent is someone I've had for all these years, who is a State Farm agent. When I have a fender-bender I call and say, "I want to report this." A woman answers and says, "Oh, okay, Judge Henderson." I guess they recognize me or know me if they've worked with him for a while. And they don't do the work. I never talk to [Tom Suppy?], who is my agent, unless there is something special, and that is the way it has been for years. Well, back in these days, when you have a smart secretary, they see, "Gee, these guys are making good money, I want to be an agent, I don't want to be his secretary." They couldn't do it, at least that was the charge. And they brought suit, there was a class action, and they were represented by Guy Saperstein and his firm, I forget the name of the firm now. But anyway, he was the lead attorney on it.

It was a very hard-fought case, as I recall. I inherited the case, I think, when I became a new judge. Someone had it, and it was one of those reassignments to me. Well, it had horrible fights along the way. There were fights over discovery, fights over the nature of the class action, who could be a part of the class. But all along Guy Saperstein was

screaming that they were withholding documents, important documents. We finally got to trial--well, let me stop. One of the memorable things I remember was that before the trial the defense attorney asked for a meeting with me, and during that meeting pulled out a check for several million dollars, and said, "We're willing to settle this case right now for this amount." And the reason I'm being vague is I can't--I think that it was something like \$11 million, but I can't really remember. And Guy Saperstein rejected it. And I've often thought about that, because I had practiced in this area, and all of a sudden--and by the way, he had to, as I've heard the story, had to mortgage his home to finance this litigation. And a couple of his partners quit, because, "This guy is crazy. He's hocking a house, I'm not going to hock my house." And he hung in there, you know. And I've often wondered, if I've been an attorney, and here's an \$11 million check, I'm going to get a third of it or 40 percent, whether I would have said, "Okay, I'll take it."

He rejected it, and we went on to trial. I ruled in his favor because I thought it was clear that they did discriminate against women. They put all kinds of hurdles in their way. One example was that if a woman didn't have a college degree, some of them were told, "You have to have a college degree in order to be an agent." Well, that wasn't true, there were many agents who didn't have college degrees. If they had a college degree, they might be told, "Well, to set up your own office you have to have a certain amount of money." Well, that wasn't true either. So there were hurdles that they put in their way to prevent them from becoming agents, and that was clear to me, and I had no trouble finding the discrimination.

And finally ruled, and the case was over. I think, I don't remember, because there were so many procedural things after the trial in the way you had hearings to determine what each woman in the class would get. We had individual hearings, but I've heard that Guy Saperstein ended up making something like \$30, \$37 dollars. So you know, I admire him even further for knowing the value of this case and doing it.

But it was a very important case and again, it's one of those cases I got letters from all over the country from women. I, even today, if I get into a certain situation and I bump into a woman who is a State Farm agent in some conference or a meeting, she'll come up and say, "Thank you for *Kraszewski*, because it changed--." And I got reports from this case which I required for many years, and the last report I got was that women constituted close to 50 percent of the agents with State Farm now. So I think, I consider it a very significant case.

About five years ago I went down to L.A. where I grew up, and wanted to meet with some of the old high school gang and a doctor that was very important to me, who was a team doctor for the Jefferson High football team. We invited a group and went out to a restaurant, and one of the guys there was a guy that I went to high school with named Lang Stanley, who was at the time the top 880-yard runner in the country, and he had gone into insurance. He was with State Farm. He pointed out he wanted to come to this dinner and had asked to join it, because the *Kraszewski* case had affected him too, because once they had opened it up to women, it also created some opportunities for blacks. So it had far-reaching--and I was very pleased that it happened to help an old high school buddy in ways I never intended.

So anyway, *Kraszewski* is a very important case in the list of cases I've ruled on, because I think it opened up opportunities, primarily for women, but coincidentally for other groups.

McGarrigle: Did it turn out that Guy Saperstein's claim that State Farm was hiding documents--that there was merit to that?

Henderson: Absolutely, it did. And it did it in an interesting way. We were in trial, and one of the State Farm witnesses was testifying. And I had--Guy Saperstein was a very aggressive attorney, very good, but I think at that stage I didn't know him that well. I thought, "Oh, he's a complainer," and he didn't satisfy me that they were hiding anything, so I sort of dismissed his screaming about these documents. And he kept doing it, and I think I tuned out at some point. So midway through the trial a witness was testifying, and he said something to the effect that, "Well, when I was looking at these--" whatever they called them, "--these green slips," I'll make up that word. And I said, "Green slips? That's what this controversy has been about for the past year." [laughs] I stopped and I said, "What green slips?" And he described them. I said, "When did you see them?" He said, "Oh, two weeks ago." Then I said--I had been told that they didn't exist. So, boy, I stopped the trial right in the middle of the trial. We investigated that, had a hearing on it, found they did exist. And these green slips, I'm calling them, were applications of women who had wanted to be agents. They were of everyone who wanted to be agents, but one of the aspects of the class action was that Saperstein was trying to find out all of the women who had tried to become agents and were thwarted, and this would have greatly added to the class. Then over the years, these women had moved around the country, and he couldn't find them. So we stopped, produced the green slips, and I issued an order that--I think it's the most expensive order I've ever issued on discovery. I remember my clerk at the time was Jonathan Roe. We jumped into this, and Jon was very excited. We worked on a ruling that essentially said that Saperstein could hire investigators, because time had passed, find these women, and do all of these extraordinary things. I think the financial impact on the defendant--they would pay for it all--it was close to \$1 million, just to implement this ruling. So yes, he was right that they had withheld, and I so found. We stopped the case, they got all of this, reconfigured and then went on with the trial.

McGarrigle: Are there sanctions that take place?

Henderson: Oh, yes. Well, the sanctions, I didn't go into that. I might now. I was new enough that I didn't go into a sanction for withholding the document. I thought that the million dollars they had to pay to correct it was sufficient. Nowadays, I'm more experienced, I might have focused also on who misled, and who withheld. That was less my focus, I was trying to correct the misdeed and get that into evidence. But it is clear to me, I could have had an evidentiary hearing, found who was responsible, who made the decision to withhold, whether it was unintentional, erroneous--. I just didn't bother with that.

McGarrigle: The other thing I was wondering about is, the defense attorney made this offer which, you know, at the time seemed--it was fabulous.

Henderson: Yes.

McGarrigle: And yet Saperstein rejected it. Did you make efforts at that time to bring them closer together?

Henderson: I didn't, I didn't. I remember, my main thing was what I said, I was thinking, "Wow, isn't that gutsy?" And I really personalized it in some funny way, thinking--and over the years I've often wondered, would I have had the guts to turn down what was probably for him--and this, we're talking about fifteen or so years ago, when a million dollars was more than it is today--would I have had the wherewithal to turn down what was surely \$4 or \$5 million in hand? And keep in mind, the other thing was that when an attorney, under the way these things work, says I'll give you \$11 million, that's the opening. You know, and you gauge, well, what is it really? It's probably closer to \$15, \$16, \$17 million, maybe as much as \$20, if you really negotiate, and go. So that was my main thinking.

I didn't try to do that and go through that process because Saperstein so firmly rejected it, and essentially said--and I remember--that it was worth much more--and I remember--now I am impressed that he had a really good sense of the value of that case. He knew it was worth a lot more, and as I said, I've heard that he ended up--his portion, not just--this \$11 million or whatever it was, was for the whole thing. This was for all the women, and it was for his fee. And as it turned out, his fee turned out to be in excess of \$30 million, I think. So he had a very sure sense of what that case was worth, and I've been impressed by that. But when he rejected it so firmly, that, "No, this--we're not even in the same ballpark, and let's go on with it," I didn't try to pursue that.

McGarrigle: In terms of your high school friend, the athlete who became a State Farm agent, this case must have opened to scrutiny their policy in other areas as well.

Henderson: I think so. I think that's what happened. And Lang suggested as much, that it opened up--and he had been some sort of independent agent in L.A. all of these years since college. He went to San Jose State, I believe, and ran, and then went into the insurance business. This opened up an opportunity for him, and he was doing much better now. And I was just pleased at that dinner, I remember, where he made a special little toast to me, and announced to the other guys, who could care less that old Thelton was a judge [laughter], you know, that, "Let me tell you what Thelton did, here, that affected me." So I felt--it was a moment of pride there in a group I valued.

Oh, look at the hummingbird. Wow, it just flew away. Such a pretty little thing.

McGarrigle: No, that's interesting, that's really interesting. This is an aside, but did he run for--he ran for San Jose State, but did he compete on a national level also?

Henderson: He did. As I said, at Jefferson High he broke the national record for high school 880, a superb runner. And then got to San Jose State and ran--he never--and he ran competitively, nationally, but he never--. It doesn't seem to work out, I've followed this over the years--that the top guy in high school will continue to be the top guy and go on and win the Olympics. He was a very good college runner, but he didn't make the Olympics for some reason. And ran for four years, and then went about his life. It was a disappointment, because we all thought--he was a hero at Jefferson. He was just dominant in the 880, and we thought that he would be dominant in college. He was good, and won most of his meets, but I think people mature at different ages. So people

that he probably beat in high school were still on an upswing and went on, or I don't know how that works. He was one of the top runners, but not good enough to make the Olympics, as it turned out.

I think another thing that happens that I think I identify with is that back in those days, we're now talking about the fifties, to come out of Jefferson High and go to college was a trauma in and of itself. It wasn't easy to fit in. And I think that affected a lot of the Jefferson athletes. I know it was difficult for me. We had another runner out of Jefferson, Guy Blackburn, who was the top--won the state 100-yard dash for two years in a row. I don't think he held the national record, but held the state record. And he came up to Cal, and I was able to follow Guy. And he just was not as good. I think there is something about running at Jeff, not having to study hard, and all of those challenges. And then coming to Cal, where it wasn't as supportive, that I think affected Guy, and probably Lang at San Jose State.

We had a number of people. Gary Green won the state 400 meters, or 440, two years in a row, and got out of Jeff, and didn't have whatever it was--went to L.A. City College, and was never heard from again. And I think that in that era things like that happened with black athletes. A lot of black basketball players--well, I'll tell you a story. Bob Tealer, T-e-a-l-e-r, came to Cal when I was an undergraduate--he was a friend--and went out for basketball, a superb basketball player. Sort of couldn't make first string, and transferred, and went to a Midwest school, and made All American. And again, there were issues. He had long hair, and the coach, Nibs Price, didn't like this new--stuff they do in pro ball now was forbidden. Dunking, and he could do all of that stuff. The coach wanted him to pass the ball, move three steps here, [makes sound effect], and then take a shot when he was clear. And it just wasn't a receptive climate for a lot of the black athleticism. There's a term now, when the black athlete mouths off at somebody on the court, you know, I'm forgetting the term. But that was not acceptable back then. And I think a lot of black athletes suffered because there was a hostile climate for that kind of behavior, and the kind of things that they brought to the game. So a lot of black, wonderful athletes back then, and when I was coming up, just didn't make it.

And there was another thing that I've mentioned. You've heard me mention Sammy Williams, who was a friend of mine, was a wonderful quarterback at Polytechnic High in L.A., All City, came up to Cal--in a time when blacks weren't allowed to play quarterback for a major college. So Sammy ended up playing defensive back. So it was a different climate then. I'm just suggesting, this started off, and I think it affected even something as individualistic as track. I think it affected track people who, you know, who needed the kind of nurturing to be as good as they were, and they weren't getting it.

McGarrigle: Yes. And the coaches were different, everything was different.

Henderson: Coaches were different, everything was different, yes. And it was just a different climate. I remember my own experience when I got hurt in football, I began playing baseball. They had a new device back in those days. This was what, 1953 maybe, or '54, I can't remember. They had a pitching machine, which was new. And they brought it out to the field and said--and they had some film crew, and they wanted to publicize this thing. They said, "Okay, let's get one of your better hitters, get somebody to--." And that turned out to be me, so I got up, and the guy said--oh, I remember this so clearly--"Well, let's see, let's get a left-handed hitter," once he learned I was right

[handed]. And that was just the climate back then. You know, I've always remembered and resented that, but that was the way things were done.

McGarrigle: How do you, at the time, you know, not become bitter, and move on from that?

Henderson: Well, many did. And I feel lucky that I didn't, that--I now am angry at things I wasn't angry at then, because my view was, "This is the way the world is, but I want to move ahead, and if you stop and confront that and speak out, it's going to slow you down, or even stop you from going." And I was determined to succeed in this. I think I've mentioned, I got this chance to get out of the ghetto, and I was going to make it work. And it was clear to me, the message in this white world I found myself in, was that you don't do it by confronting and complaining, you do it by fitting in. And I was determined to fit in. So I bit my tongue a lot. I guess made it, because here I am.

McGarrigle: And then so many years later you have had the experience, for example, of the Johnny Spain trial--

Henderson: Yes.

McGarrigle: --in which the Black Panthers stood for a lot, in terms of confrontation.

Henderson: Yes, exactly, I know it. And, you know, I've had--.

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Henderson: --strategy, we'll call it. You know, I admire people who confront, and I often wonder if a part of it--if I'm not rationalizing, that I'm now telling you that, well, I was so intent upon succeeding that I compromised these things. I often wonder, when I try to look deep inside, whether what really happened was I didn't have the guts that some of these people had. I would watch, in the sixties, civil rights demonstrators. I think I've told you stories. When I was down South on my job, I just had a world of respect, where I was just reading the other day John Lewis, who is now a congressman, and someone I admire so much, would get on a bus and say, "I am going to integrate this bus," and ride into a Southern town in the late fifties, where you could almost guarantee he is going to get beat up, I mean, what enormous courage. And I don't know if I had that courage. So maybe I'm rationalizing when I said I just went along with it and avoided those confrontations, I guess that's something I'll never know about myself.

McGarrigle: Well, you were certainly in the South, putting yourself at similar risk. You had a different role, but you were certainly selected to do that, because John Doar believed you were the person who could do that.

Henderson: Yes. Yes, I think so, but--yes, it's that kind of thing I think I'll never know, though, whether I would have, had I not been in that role, would I have been one who would walk into the teeth of Jim Crow and racism down South the way so many people did. And I'm not sure.

McGarrigle: It must be interesting to speak to groups of young people and to try to make this real for them.

Henderson: It is, because it is an abstraction for many of them, and I try to bring in, tell stories like I do, about John Lewis, and one of my favorite stories is the day in Selma that I think I've mentioned, where they were holding up the voting registration, and it was like 100 degrees heat. The sheriff had decreed that--and the registration line was wrapping around the block, and there were hundreds of people. They had slowed down the process, so they were letting in two people per hour, or something. And some young SNCC workers, they said, "You can't--." Our office had gotten an order saying you can't interfere with the voters, and that was designed to keep the whites from interfering with the process. Well, the sheriff interpreted that to mean the blacks couldn't bring them food and water. I mean, it was perverse.

I still remember standing there and watching these kids being instructed by someone that I don't remember, one of the leaders, "Okay, take the water over, and the food. Now, you might get beat up. Don't forget," and going through this thing about what you do if you're attacked--and thinking, what bravery, what bravery to do that. And again, I don't think [laughs] I could have done that. I don't think I have the stuff to play that role. I think I was better at being what I was, watching it, and reporting it, and hoping the government would enforce their rights after they were attacked. I think that is bravery that is written about, but I think still not appreciated, to this day. I mean, just being there and knowing the hostility, and that the sheriff, Jim Clark, had deputized racists and members of the Ku Klux Klan to enforce the order there in Selma, and to confront that is just bravery that I still admire and have trouble understanding, because I don't think I had it in me to do those kinds of things.

But I try to tell that story. I try to make sure that young minorities who are still fighting for equal rights understand that history, because it is different now. There's another story that, it reminds me. When I came back from the South and finally returned here to Berkeley, they were having demonstrations. I remember one of the demonstrations had to do with Lucky's store. They were--I forget what the issue was--hiring, I am sure. And the tactic was to go into the store and get frozen goods, and, you know, just as if you were buying them, take them out and walk around, until they thawed, that was one of them. And the police came in, and I remember actually seeing it, there was a Lucky store up here, and seeing the difference. Because they would lie down when they were going to be arrested, and the police would ever so gently pick them up. And I was thinking of the remarkable difference, and I'm always trying to describe that, you know, that--and say, "That was fine, and you were involved, but contrast that with what I saw in Selma, where they beat you to a pulp for something like that." And it's hard for me to articulate that difference, and I remember almost smiling condescendingly when people would say they were demonstrating in Berkeley, contrasting that with what I had just seen in Birmingham, and Selma, and Jackson, Mississippi.

McGarrigle: Yes. Well, it must be interesting to live in Berkeley, where there's such a reputation--of course, I mean, Berkeley, you almost don't have to describe the reputation Berkeley has, it's widely known. [laughter]

Henderson: Yes.

McGarrigle: Among the different groups of liberals and the infighting that happens in Berkeley--.

Henderson: Yes. It is. It's hard to describe it, and it's hard to understand it very often. You know, my own view is that all too often it's counterproductive in ways that--counterproductive in the sense that you get little factions that have the same interests but they can't walk the same path, because they want to do it this way--and it becomes inefficient. I'm seeing a similar version of that right now. I think I've mentioned that there has been a movement--it started in part as a result of this conference I organized last year. Again, you'll have to stop me if I've told you this already. [laughs] I don't seem to carry over from meeting to meeting what I've told you and what I'm thinking about telling you. But one of the panels that I set up dealt with those issues, entitled "New Strategies For the New Millennium--"

McGarrigle: We didn't discuss that.

Henderson: A part of that, my idea on that was that the civil rights movement is really antedated now, and the conservatives have co-opted the whole dialogue, I've thought. And let me give you a little simplistic explanation of it. What used to be affirmative action is now "reverse discrimination." And sort of the whole dialogue has changed and I thought, "Okay, the old strategies that evolved in Thurgood Marshall's day, and with the NAACP, are really antedated--bringing these suits, and progressively losing." There was a need for new strategies. "How do we now cope with this new language, and new Supreme Court ruling differently?" And one of the things that came out of that was Eva Patterson, who runs the Lawyers' Committee for Civil Rights, set up an organization to deal with just that. It was going to be sort of responsive to the Federalist Society, which is a conservative group. They were going to emulate them, involve judges as the Federalist Society does, involve think tanks that would come up with strategies, involve lawyers.

And as it turned out, a group was thinking the same thing back East. They sort of got started a little earlier, and announced--and you would think, they both want to do exactly the same thing, and yet the logistics of who's first, who runs it, let's merge resources--has just been very difficult, in ways I don't understand, where people want to do the same thing. But that seems to be the liberal bane, that--at least I don't see it among conservatives, who seem to be able to do these things much better.

McGarrigle: Yes.

Henderson: I don't know why. Some people say, "Well, it's money, the conservatives have more money. They can do these things, whereas Eva and this group are fighting over the same money, because it's limited." Maybe that's the answer. I don't know.

McGarrigle: There's a lot of liberal money too, though, in Hollywood, for example.

Henderson: Yes, there's a lot, exactly, exactly, I mean, you would think that wouldn't be the problem. But I am just saying that is one of the things I have heard.

McGarrigle: Yes, one theory.

Henderson: Yes.

McGarrigle: The urgency is different.

Henderson: The urgency is different, yes, exactly.

McGarrigle: Let's take a break.

[Interview 11: November 30, 2001] ##

McGarrigle: I have on the outline, I'm taking this out of sequence, but it's interesting that one of the law students who you admitted to Stanford in the seventies has just been appointed to replace Justice Mosk.

Henderson: Yes, on the California Supreme Court, yes. Yes, I have been following that. It's just amazing, the accolades that Carlos [Moreno] has gotten. He was a federal judge, as you know, and had an excellent reputation before Governor Davis appointed him. You know, in some way this was predictable. Carlos was a dead-serious guy, had incredible focus. He went to Stanford to do well, and get out, and do well in his career. There was never anything frivolous about him--not that there usually is about law students--but he was a man with a purpose. And he still has it, from the articles. I haven't seen him in a while, but from the articles, he has kept his eye ahead, he has kept close to his community, which didn't surprise me, and I'm just so proud of him. In reading the *California Bar Journal* article, I noted that one of his classmates was praising him, Fred Alvarez, who was another fellow that I admitted, and who also has done wonderfully well. He leads, I think, the labor section at the firm of Wilson Sonsini. So those were, as I said, those were my good years at Stanford, and that was part of it, dealing with young people like Carlos and Fred.

McGarrigle: Yes. I've been reading a little bit about Justice Mosk's career, and--complicated career.

Henderson: Very complicated career, yes. He was quite a guy. And, you know, he was--the supreme court is right across the street from our building, so I got to know Stanley over the years, and--always gracious. We've tried to, our court, the federal court, has tried to reach out and socialize and do projects with the state court, and so we would invite the supreme court over for luncheons that we had, or when we had guest speakers. And he was always there, I mean always. I think it was part of his graciousness and his feeling that we ought to know each other better. But also I think right up until the end, his inquiring mind, he wanted to know what was going on, he wanted to know who was across the street and what we were doing. Quite a tremendous jurist.

Had an interesting comedy of errors last month. Justice Ming Chin, who is on the supreme court, his daughter clerked for Marty Jenkins, whose chambers is next door to mine. And on her last day, about a month ago, they had a little going-away. I went next door and the justice was there, and we started gabbing, actually started talking about Carlos Moreno, because he had been appointed at that point. Then he said all of a sudden, "Did you know that Stanley went to Southwestern Law School?" And whenever you say Stanley, for the last thirty years around our courts, it's Stanley Weigel [laughs]. So I started to say, "Gee, no, boy, I thought he had gone to Stanford--" We started this two-way conversation, he was talking about Stanley Mosk, and I was talking about Stanley Weigel. Then finally, I think like three minutes later [laughter] we realized we weren't talking about the same guy. But anyway.

Yes, Stan Mosk was a giant, big shoes to fill. But I think that Carlos is up to the job.

McGarrigle: Are Justice Mosk's decisions considered inconsistent at all?

Henderson: I think they--well, if you--people always want to label judges. And to the extent that you put a label on a judge, they're inconsistent. His *Bakke* decision, for example, is cited often as being inconsistent with--but I think, I haven't studied them that carefully. I think if I did, I would find the rulings internally consistent. There would be a legal thread of thought that would inform you as to why he did what he did, and I think probably his biggest, the biggest tribute to him is that you couldn't label him. You couldn't say, "Okay, we've got this case, we've got Justice Mosk's vote." I think he would look at each case individually, and whatever his own judicial philosophy was would guide him to his ruling, which I think was one of his strengths.

McGarrigle: Yes. I was wondering how he was perceived by, for example, the civil rights community?

Henderson: I think he was largely perceived as a friend, and sympathetic to notions of civil rights and civil liberties. But again, he would on occasion surprise you, surprise the civil rights community by not voting for something that they were espousing. Now, he is also, I've read, you know, that he was very politically astute. And he was, he was a very--. But the suggestion by some of his critics is that some of these inconsistencies were born of his sense of politics, that, you know, he sensed around election time that this was not a side to be on. I just--you know, again, I haven't followed his career that closely, but I'm not ready to believe that. There were some things around the time that they were going after Rose Bird. And I don't even remember what they are. But critics have suggested that he very adroitly stepped aside and got out of the line of fire, so that he didn't come up as one of the recall people. And I don't remember the details of it, but I certainly don't know that that's so or not. But I respect the man tremendously, and I think he was a giant on the court.

McGarrigle: I wonder how common it is for a federal district court to be across the street from a state supreme court? It must be an interesting--.

Henderson: I suspect it's not common. I think--you know, I don't know how that ended up. Well, and then the city government is down the street, City Hall. I guess it's the notion of a civic center. Maybe that was why it was done. But you know, years ago, our court used to be down on Seventh and Mission, where the Ninth Circuit now sits by itself, is the only court in that building. But I don't know the history of why we moved up there, and why we are across the street from the state building, which houses the California Supreme Court.

McGarrigle: I took the drive recently and I got off at Ninth Street [in San Francisco], and I had gone to Hastings so I'm familiar with that neighborhood.

Henderson: Yes.

McGarrigle: I was thinking what it must be like for you driving there, there's some kind of dismal areas right--

Henderson: Oh, yes.

McGarrigle: --around the building.

Henderson: Very dismal areas. And when I come to work every morning, I take two passengers, and I drop them off, and I go down Howard these days to Ninth Street, and then turn right on Ninth and go right to the courthouse. When I cross Market in particular, it's dismal. That--what's now, I think, the Bill Graham Theater, right beyond Market--and it's cold right now, as we sit here it's cold--yesterday there were people sleeping in the doorway there, and the shopping carts lined up. Then you go by the square, I don't know what they call it, where the library is, and City Hall. There are those lovely trees in between there, there are people sleeping there, and there are these steam vents in the floor, people sitting--it's dismal. One of the sad things, every now and then, I don't do it often now because I don't walk as much as I used to--if you go beyond the federal building a couple of blocks in the Tenderloin area, one of the saddest sights I see are little kids playing out on the street. I just feel they are all potential victims, because there are just a lot of weird people in that neighborhood. It just seems so sad to see little kids out there playing, and there is a lot of traffic, and that is their playground. It's not a good neighborhood, and I hope someday it will improve. As bad as it is, it's better [laughs] than it was twenty-one years ago, when I took the bench. They literally had no decent restaurants. If you go up Golden Gate toward Van Ness, that was a fairly dismal area. There was one restaurant, now you have Stars, you have some places around there that have tended to upgrade that part of the neighborhood. But no, it's not your best neighborhood.

McGarrigle: Then you have the juxtaposition of the symphony hall and the opera house.

Henderson: Yes, that's right, yes. And you know, when you go in that direction, those are the improvements, I guess, that have been made. But they really need to go in the opposite direction, the one I was just talking about, where the little kids are. That I haven't seen, there has just been nothing that has happened in that direction. With more people moving in, and I sort of suspect, when I look beyond the doors--and all of them seem to have iron bars to keep people out and to admit people--I sometimes wonder, you know, how many people are in a room living in those places, and just what kinds of things are going on. It's quite depressing.

McGarrigle: It must be interesting to drive through that, to work, and then to deal with issues that relate to all kinds of people at work.

Henderson: Yes, it is. It is very interesting. I guess sometimes I feel lucky I have friends who are on the state court. I guess, in some sense, that they deal with whatever problems flow from that kind of neighborhood, whatever they are, the petty drugs, whatever the violence that's in those neighborhoods. And I feel lucky that I don't have to deal with it. Not because it's distasteful, or too small a case for me, but just because it's the kind of human misery that I would just as soon not be involved in on a day-to-day basis as a judge.

McGarrigle: Yes. We've been following up in the last several times about the aftermath of September 11, and I know there is some increased security at the federal building.

Henderson: Yes, there is, yes.

McGarrigle: I wondered if there was anything you would like to comment on.

Henderson: I don't know if I mentioned, the court, we decided as a security measure that any strange mail, "strange" in quotes, and that is specifically defined as any mail without a return address, or that looked unusual, but particularly mail without a return address, or a suspect return address, was simply marked "Don't Open" and we are going to destroy it. And that is interesting, because I am sure we're destroying legitimate mail that has come in from someone, a pro per, or someone who wants to write. I get a lot of mail just from people who want me to know that they hate me [laughs] or love me, or are interested in what I've ruled. So we're probably destroying some of that. But I think we've decided, in these trying times, we'll err on the side of safety, and do that. There aren't any other safety measures, since we last talked, that I'm aware of. There is a study, we have what we call bollards, b-o-l-l-a-r-d-s, that rise and fall, to let you into the basement. And they don't work that well. Sometimes they jam--and there's a study now to change those. I just got a memo from the chief, Chief Patel, that there are some other kinds of barriers they're studying, and they've hired someone to study how well they work, and how superior they may be, to the ultimate goal of keeping out cars, and trucks--.

McGarrigle: Was the decision to destroy the mail, was that a decision you made with the other judges?

Henderson: Yes. That was a recommendation by a committee of the court, presented to the court. "We thought of all the problems, and we've weighed what we know about anthrax, we've talked to the FBI, we've talked to the marshal. Based on all of that we recommend that we do that with the mail," and the court agreed to it.

McGarrigle: I wonder how they destroy the mail, if there were to be something dangerous in it, they must have a special way--

Henderson: They must have a way--

McGarrigle: --of disposing of it.

Henderson: --I don't know what that would be, yes.

McGarrigle: Was that a difficult step to take for you, given the types of letters that you receive, for example the pro per?

Henderson: Not really, no, I didn't. I think that--I certainly agreed with the ruling. You know, I sort of joked that--with my staff that, well, that was less work to do [laughs]. Meaning opening mail, and--. But what I have done, years ago, Erma [Smith], my secretary, screens my mail. I get a lot of mail, and she opens it, and she reads it. One of the things she did long before I knew she was doing it, was simply not show me hate mail. You know, and one day she mentioned, you know, that she just files it away someplace, because she knew it would only upset me or hurt my feelings, or waste my time. So I suspect that a lot of this--I joked that, well, now she won't even have to read some of the hate mail in the--that's the way I looked at it, no, it didn't upset me.

McGarrigle: In terms of the changes in sentiment regarding civil liberties, there has been a great deal written, at least on a daily basis in *The New York Times*, about concerns. I wondered if you would care to reflect on that at all.

Henderson: Yes. I've, as I said earlier, I haven't read these things closely, but I share those concerns. I share them at really two levels. One, that there seems to be more of a willingness than I would have to encroach upon traditional civil liberties. The second level I worry about is, my sense of history tells me that when you do it in the name of war powers or emergency powers or whatever they are, that you don't always return to normal after that situation, that you've encroached in some permanent way a little more than you did before, in a permanent way. And that bothers me.

I'm also enormously bothered by some of the articles I've been reading in *The New York Times* and other papers about politicians on both sides, as it turns out, using the present situation to advance their own agendas. So, advancing economic packages, and advancing pork-barrel legislation in the name of responding to September 11th. And I think that the same thing is being done with civil liberties. People who have another civil liberties agenda are now pushing these things forward, just simply because the time is ripe to maybe do it, rather than because there is a need to do it.

McGarrigle: We talked last time about the current situation regarding the civil rights movement. Maybe the opposition isn't ready to prepare to step in, to counteract some of these encroachments. I mean, people are--we're reading articles by journalists who are pointing out these things, but we don't seem to see a large-scale effort.

Henderson: We don't, we don't, and that's sad. I don't know why. I don't know whether it's a lack of organization, a lack of will, a lack of focus, I don't know what it is. But you're absolutely right, we're not seeing it. I don't understand it.

McGarrigle: Yes. I was interested in talking about when you were growing up in Los Angeles, what changes you saw with the different ethnic groups in the area, and this actually relates to the subject of suspending civil liberties in wartime, when the Japanese were sent to the internment camps.

Henderson: Yes. Well, growing up in L.A., I really, you know, as I said, we moved around a little until my mother finally bought our little house on 43rd Street, which is where I grew up, through college. So that is where I focus on. When we moved to 43rd Street, it was--let me back up. I think I've mentioned that for the black in Los Angeles in those days, the forties now, you could gauge the progress of a black by how far west the family moved. The farther west probably, the better off you were. Central Avenue was the great divide, and people who got beyond Central Avenue, the farther--. So I don't know quite how this happened because my mother was certainly not rich, but we got a house where we did, that was a bit beyond Central Avenue, and it was an integrated neighborhood. And at the time that meant nothing to me. A German couple lived directly across the street. Several white families lived on that block. Across the street and several doors down a Japanese family lived, and I used to play with the kid, whose name I no longer recall. The war broke out, and they were gone. I, you know, what was I, eight years old then, it was just '41 when--I must have been eight years old. But I had no understanding of what that was all about. I wasn't aware of the internment as such. But I had sort of heard from someone in the neighborhood that they were "sent away," without knowing what that meant. Then you would hear rumors that the house was sold for a song, or bought for a song. And I do have a very vivid memory, there was, in downtown Los Angeles, if my memory serves me right, there was a Japanese section of town. And the Japanese who were removed had to move suddenly, and my uncle, uncle John, ended up

for a very brief time running a restaurant, owning a restaurant, that was vacated by Japanese people. You know, I've never talked to John about this in all these years, but I'm sure it was sort of there for the taking. Because he had no money, and I think somehow he found out there's this restaurant, and he tried out the restaurant business for a short while, was an utter failure [laughs], but--. So those are my experiences or memories of the Japanese internment, those two personal experiences.

McGarrigle: There wasn't necessarily a time when those families returned to those places, I guess.

Henderson: No.

McGarrigle: Back to the neighborhood.

Henderson: No, no one. The kid down the street never returned, and as I said, I never saw him again. I think when the Japanese returned, by then there had been further changes in integration. By that time my neighborhood was almost all black, in fact I think it was all black, as blacks moved further west. I think when the Japanese came back, they tended to go to Banning High School, Garfield High School, which were across town. But certainly none moved back into my neighborhood, and none went to Jefferson High. Look, I think--do you want to look at my picture here [walking to the wall with framed photograph of his Jefferson High School graduating class], my memory starts to fade, but I'm sure there's no Asian--there's a kid, there's a Filipino kid named Marcos Natividad on the photo, and that's it. And Marcus [laughs] was blacker than I was, I mean he talked the talk, and I think--I didn't know anything about his family. But no, no Asians after the war came back and lived in my neighborhood.

McGarrigle: Sounds like before the war it was a fairly integrated neighborhood.

Henderson: It was, it was an integrated--.

McGarrigle: Maybe more integrated than some of the neighborhoods we were discussing in, you know, in Berkeley and San Francisco some time later.

Henderson: Exactly, it was. Yes. But that was the--looking backwards, that was sort of the nature of movement in L.A. then. It was integrated, but the integration was sort of one-sided. It never stayed integrated. Blacks would move into a neighborhood, and that would start the "white flight." So I think there was integration while there was some probably critical mass of blacks moving in and whites moving out. Which is interesting, because I started today telling you about my own experience in this house. Which is different. I think maybe at this income level--you know, and I have wonderful neighbors, no one that--well, the ladies next door moved out, but you don't have the "white flight," I think, in a neighborhood like this. But I think at neighborhoods like the ones we could afford to live in, you had the "white flight." You also had another feature, which I think is part of the cruelty of racism, discrimination, and all of those things: blacks moving in and paying dearly for the privilege, to move into a formerly white neighborhood. They would sell it at a very high price, and blacks would pay it to move into a nice neighborhood. And of course as soon as it became black, the price plummets. I remember when we finally decided that my mother was going to move up here after my grandmother died, we sold the house. I don't remember the figure now, but it was a

shockingly low price, at a time when real estate values were just skyrocketing. In the ghetto where my mother lived there was just no market, you know, just--

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Henderson: --a very depressed price. I don't remember the dollar figure, but having lived in Berkeley, and having seen real estate prices up here, I was shocked at the price she had to accept to sell.

McGarrigle: There is a lot that flows from that. If people aren't taking appreciation with them into retirement--

Henderson: Yes, exactly.

McGarrigle: --then there is a lot of significance to those numbers.

Henderson: Yes, there certainly is, yes. So it's--you know, there are a lot of hidden evils, I think, in that kind of discrimination. I've often--every time I go back to L.A. and I have any time at all, I'll rent a car, if I'm at a conference, and I'll drive through the old neighborhood. We were talking about racial changes, and I think--maybe I've already mentioned this--and go back. My old neighborhood is virtually all what I'll call Latino, I just don't know the proper word, Hispanic, Latino. Virtually 100 percent. I think I saw, the last I drove through there, I saw one--I didn't see everyone who lived on the block, but it looked like maybe a black family still lived on the block. But everyone I saw was Latino or Hispanic, and that seems to be, for that neighborhood and that area, what is happening.

Getting back to real estate prices, when I was in high school and getting ready to go to college, there was a neighborhood that virtually all the professional and successful blacks aspired to live in, Leimert Park, L-e-i-m-e-r-t Park neighborhood, which was quite west, beyond Crenshaw, which was--now itself all black or all probably Latino now. And they finally started selling to blacks in Leimert Park, and it was great prestige to live in Leimert Park. And the same thing happened there after paying, really way beyond the market. And drive through Leimert Park now, and it is not a depressed black neighborhood, but it's--you know that those people lost thousands and thousands of dollars, simply by virtue of that neighborhood becoming black. And that's so sad.

McGarrigle: I don't know the details about the covenants and the real estate deeds--

Henderson: Oh, yes.

McGarrigle: --but Justice Mosk was involved when he was in state government--

Henderson: He was.

McGarrigle: --with Jesse Unruh and the Fair Housing Act.

Henderson: Exactly. And they had restrictive covenants, and there is a law case now, famous law case, that I ought to know the name of, but that finally found that such restrictive covenants were illegal, or perhaps even unconstitutional, I don't remember. But they

certainly had them in those days, and the real estate interests certainly played hand in hand. They would not, until whatever agreement was reached with the real estate interests to show in Leimert Park, you couldn't see a house there, you know. I'm sure that if my mother had more money and said, "I want to look at a house across town," she couldn't even have done it.

And they controlled, so that when they finally opened up an area, it was this predictable thing: "Okay, it's now going to turn black." I think if blacks had been more sophisticated they would have said, "I'm not going to pay that high price," you know, but they did. They just ran in and took joy in being in a nice neighborhood, and then watched probably the most important investment in their life just lose money like a bad stock market.

McGarrigle: Yes. In terms of an influx of people from the South, I've been told during the war that a lot of Southerners came to Los Angeles. There was an impact on the police force, for example, which we talked about in Hayward.

Henderson: Right.

McGarrigle: You had mentioned that--

Henderson: Right, exactly.

McGarrigle: --knowing, having encountered somebody who had come from Hayward. Was there an awareness at the time of a change in the police force?

Henderson: Not really. I wasn't that aware of those kinds of things. I do remember, the L.A. police force, this is looking back on it, was pretty infamous in the black neighborhood. I remember one incident. It shows a difference between me and my uncle, who grew up hating the cops, and, you know, probably with some justification, but also it has to be admitted that he was a criminal. He was on the edge of the law, and that informed his views of the police.

I was in college, and I came home for some vacation, and had no money. I remember I took the bus, got off at the Greyhound bus station, which was in downtown L.A. on 1st Street or 5th Street, and we lived on 43rd. I started walking. I remember, the best I can recall, I just didn't have any money to take the streetcar or whatever. And I had a little suitcase or bag, and I was walking home, and the police stopped me and said, you know, "Where are you going?" "I'm going home." "What have you got there?" "My belongings." "Well, can we see?" And you know, "Sure," they looked in, and there was my clothes, and they went on.

I happened to tell the story, just not thinking big about it, my uncle got furious, you know. I don't think the word "Pigs" was in style then, but those kind of-- You know, and he's right. They were stopping me because I was black in a neighborhood that probably I didn't live in, and they were checking to see if I had burglarized or stole that. Well, we're a bit more sophisticated now, I think that wasn't uncommon then. They did things like that in the black neighborhood. They would just stop you and search you, or they would say, "Move on." So, you know, I don't think blacks had a good experience with the cops. There was a saying, maybe I've said it already, there was a guy, Officer

Goodlove, who patrolled the neighborhood. And the saying [laughs] around the kids was, "He'll not only hit you upside your head if you looked at him the wrong way, but he'll take your nickel too." [laughs] You know, that was sort of the feeling, and that was sort of--you know, and I think there wasn't a notion, certainly that I was aware of that, "Hey, let's go to the police commission and complain about Officer Goodlove." You just didn't do it. That was the state of life with the police in those days.

McGarrigle: It has continued to be a difficult police force.

Henderson: Yes, it has been, it is a difficult police force. You were talking about Southerners, my experience with Hayward just convinces me, I have no data at all, that in part, I think when you get Southerners who have this bias, and you give them the power on the police force, a lot of that influences attitudes about blacks. Now, in an attempt at least at fairness I have to say that I think it's the nature of law enforcement that when you're dealing with--you're not--I think I may have told this story, when I was in junior high, and I was on an honor group and we were sort of a special committee called "The Knights," we wore sweaters, and we were the cool guys, and we got to hang out with the principal every now and then. One day the principal said, "You know, it's too bad that I don't spend much time with kids like you. Most of my time is spent with the bad kids." And I've always remembered that, this is fifty years later. And I think that's the same experience with police. They don't spend time with the good citizens. They spend time with the dregs of society. As I said, in an attempt to be fair, I think you have to say that informs them. They look at a grim view of the world, liars, and drug dealers, and rapists, and I think that to some extent informs the way they deal with a lot of people. I think it inures to the detriment of blacks. I think sometimes they'll come upon someone, and they're seeing that, when actually, you know, in some instances, it might be [laughs] a federal judge who is dressed sloppily. But they'll come up with some inclination to treat me like whomever it is they think they're dealing with.

McGarrigle: I think I have in my file an article--a journalist went to several prominent black men in the Bay Area and asked them if they had ever been stopped by police officers, I think you were one of them.

Henderson: Yes.

McGarrigle: And there were these different accounts of a congressman being stopped on his early morning jog at the capital, I know I have it in here somewhere.

Henderson: Yes.

McGarrigle: You may have talked about--

Henderson: I think every black has had that experience, you know, that problem. And it's not uncommon. You get with a group of blacks, a group, the old gang, you know, people I grew up with, Ron Dellums and people like that, if you're sitting around, talking, Henry Ramsey, judges, will tell stories, trade stories about their experience. Yes. I think we have all had that experience. [tape interruption]

Yes, I was saying that Ed Chen is a new magistrate judge on our court. He is the first Asian to be a magistrate in the history of our court. He had a very wonderful induction

ceremony, and one of the guests there was Fred Korematsu, who is a famous name in constitutional law. *Korematsu v. the U.S.*, I guess. He was interned, and he went to court and fought the legitimacy--the constitutionality--of his internment, and eventually won, after losing in the Supreme Court, eventually, some years later, won. [Gene Manami?], Ed Chen, and some of the attorneys who worked on that were at the investiture. What started this, we were talking, I was stricken by the lack of resentment of the Japanese I've met at these kinds of things, including Fred Korematsu, about what I believe was the unfairness of our government in the internment. There is a sense of irony about it. In fact one of the people, you know, said, "Well, I think the difference was the 'slant eyes'," you know, when you say, "Well, why didn't--we were at war with the Italians, we were at war with the Germans, what's the difference?" And just sort of a sense of irony about the "slant eyes."

But it struck me, the resiliency of the Japanese in the sense of coming back, reclaiming the areas they worked in, and certainly are doing well now. There is still litigation going on. Brenda Wong-Aoki was telling me, the last time we had dinner a couple of months ago, that there is litigation right in San Francisco, because the Japanese had a building that they thought, according to her, that they were giving to friends to keep during this period of time. That building is now a YMCA, and they've been trying to get it back, and it's in litigation over--and I don't know where that will be. After long, long negotiations, I think finally a lawsuit has been filed to reclaim what they think was their property. So there is still a lot going on after all of these years with the Japanese internment.

McGarrigle: There were instances of whites taking over property to return it. In Bob Peckham's interview he talks about a relative, it may have been an uncle, who did that, who safeguarded property for Japanese friends and then returned it to their names when they came out.

Henderson: Yes. And then of course, one of the things you learn as a judge is that not everybody does what they are supposed to do, and I'm sure some people just didn't return it. Or tried not to return it. Yes.

McGarrigle: Did Fred Korematsu speak at this event?

Henderson: He didn't speak at this event. He spoke at a preliminary event to this that I heard him speak at. He's a shy man, who will go to these things. I think he's aware of the symbolism of his presence and he's very good at going. I've seen him at a number of events. And when he's called upon to speak he says a few modest things, and always gives his attorneys credit for the case--but a very engaging man. I find him utterly charming and self-effacing, and brave. I mean, he--it took something to step forward and say, "I'm going to fight this." And he did it, and he deserves all the credit he gets now in his place in history.

McGarrigle: Is there a case that you would like to start with, that we have listed and haven't covered yet? We started last time.

Henderson: Yes, let's see.

McGarrigle: We're not limited to these, also.

Henderson: Have we talked about *Priest v. Rotary*?

McGarrigle: No.

Henderson: Okay, well, let's talk about that, because I would like to talk about that because I think it represents, to some extent, the way I view my job and the way I have approached my job. *Priest v. Rotary* involved a sexual harassment case someplace up in northern California, I think maybe Eureka, and it was essentially a case of a waitress who worked at a restaurant, and alleged that the owner of the restaurant was harassing her and the waitresses, you know, sort of grabbing them as they went by and propositioning them, and using sexual pressures as an employer. And this was in the early days of this kind of thing. We now have a fairly strong body of law on this, but this was not that usual back then. This was probably in about my third or fourth year as a judge. The interesting thing about this opinion is that it really started as a discovery dispute. Discovery is very routine. You don't write opinions about discovery usually, give them the documents, answer the question, and that's what discovery is all about. But this one sort of caught my attention, and caught the attention of the clerk, who was working on it. I remember the clerk quite well, Susan Lewis, who was a wonderful clerk, and a feminist. She came to me and said, "This is a discovery motion. The defendants want to go into the plaintiff's sexual history. You know, they want to talk about her sex life, and all of that, and the plaintiffs are objecting." We talked about it and said, "Well, why would they want to go into--that doesn't seem relevant to whether the defendant was sexually harassing her." We started talking, and it sounded more and more like something that had bothered me when I practiced law, that if you got a rape victim, you know, they wanted to go into the sexual history--it just seemed unfair, you know. They were going to show, essentially, that "she deserved to be raped," was what I always--and this smacked of that. I got more and more interested, and ended up writing a fairly lengthy ruling, which we recalled all of these things, and said in probably more words than I needed to that plaintiff's sexual history was a form of harassment in itself, to go into this. It had no place in a lawsuit like this.

For many years that was cited for that proposition, so I felt proud, and that's why it's on the list. I thought that I wanted to make that statement in the context of what was otherwise a simple discovery request. If I had stuck to the ruling I probably could have written a one-page thing saying, "No, they're not entitled, this discovery denied, you can't go into it." But I wanted to make the larger statement about the tactic, and so it's one of the ones I'm proud of, because it was cited quite often, in the Ninth Circuit at least, for that proposition.

McGarrigle: Has that, as sexual harassment law has evolved, has that principle become embedded in the law?

Henderson: As far as I know, yes, as far as I know it has been. I'm not aware of any principle that has come in and said, "No, you can, in a sexual harassment, straight sexual harassment suit, go into, routinely go into the plaintiff's sexual background, and sexual life." Knowing the way the law is, there has to be a case where a plaintiff's sexual background may be relevant in the context of that particular case, that there might be an exception. But I am not even aware of that, but knowing the way the law goes, there probably is a case that says, "In this particular circumstance it's relevant, and you can go into it, to this limited extent."

McGarrigle: What was it like with *Spain* and *Madrid* and some of the other opinions that got a lot of attention at the time, was there--and *Hi-Tech Gays* also I'm thinking of--did you hear about that decision from people in the community?

Henderson: I did, I did. And more interestingly for me, I would hear about it from other judges. And that was really what I was trying to do. I was trying to--Susan and I spent an awful lot of time on *Priest*, did research, and I think it was a good, solid ruling, and it made a good strong statement. I would hear at conferences, or every now and then get a call or a letter from a judge saying, "Gee, I read this, really great, it guided me through something." That was what I was proudest of, because I thought, perhaps in some grandiose sense, I thought that I was, with a lot of these rulings, creating a body of law that was coming from the bottom rather than from the Supreme Court, that I was spending the kind of time on issues that were important to me, that I thought were important, that other judges perhaps weren't as interested in or didn't have the time to do. For example, as I said, *Priest v. Rotary* took a lot of time, and it's easier for a judge, I know, I'm not being critical, it's easier to just say, "No, you can't do that discovery," and move on. And I was trying to stop and make the broader statement, and I was quite pleased when I would hear that it was having an impact, others were citing it, and others were looking to it when they had something like that, so I did hear things, positive things, that pleased me to no end.

McGarrigle: Yes, what a lot of gratification from your colleagues.

Henderson: Yes, absolutely, yes. Absolutely. I would most often get it when you go to a Ninth Circuit conference. You would bump into friends you don't see, you would bump into judges, and someone would say, "Oh, you're Judge Henderson. I've been wanting to meet you. I liked this, and I actually used it," you know, and that kind of thing. I got a lot of strokes, a lot of gratification from that.

McGarrigle: Yes. I was thinking about the *State Farm* case and how that opened the way for people, and in a way *Priest* did that also, if you opened the way for women plaintiffs to--like rape victims--not have to expose their personal lives in a context that was irrelevant.

Henderson: Yes, exactly. And part of the thing, the concern is that if you let that become a part of a sexual harassment suit, it can have a chilling effect. I mean, if the word gets out that, "Gee, Mary Smith sued her boss"--and before you knew it they found out--you know, she had to talk about her abortion when she was in high school, it can have a real chilling effect on the bringing of the suit, and that was part of my concern. You know, and you go into a balancing thing, when I was saying it, when that is the potential here, as against the, really, irrelevancy of it. It has really nothing to do with the charges. There is no place for it.

McGarrigle: Did you see an increase in sexual harassment lawsuits after that?

Henderson: Oh, there has been an increase. I'm not prepared to say it was because of *Priest v. Rotary*. I don't know if the two are related, but yes, there has been a dramatic increase in sexual harassment suits. But I think that's the nature of these things. You get some early lawsuits, and you get some success, and then that part of the bar brings more of them. We're seeing that now in ADA cases--Americans with Disabilities Act--we're just flooded with those. I have probably a few dozen of those cases on my calendar

right now. They started slowly, but you know, you win a few of those, and they're challenging all of our institutions. I read about a ruling last week--

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Henderson: --I forget the court, I think it was the Ninth Circuit, had ruled that the Americans with Disabilities Act applies to prisons. You know, so that's sort of the way the law goes. You know, you get a case in a hotel, someone wins it, and then the attorneys run around to hotels and find out which ones aren't complying, they sue or they negotiate. Then they go to restaurants, and clean up the restaurant industry, in which you saw they did that and they lost a fairly prominent case against Clint Eastwood's restaurant in Monterey. But they win most of them because generally business is slow in complying with new legislation. Now they have found that it applies to prisons. At some point most of the businesses are going to measure up and the ADA will take a back seat in litigation. There won't be that many suits, because there won't be that many places that a person in a wheelchair, or with some disability will go to, that isn't in compliance.

McGarrigle: Yes.

Henderson: And that's the nature of it. So I think we saw that in sexual harassment. Although there, it's interesting though, now that I'm talking, you get a different thing. I think there's an instance--the economic pressures under the ADA really do work, and people say, "Gee, I've got to spend that money to modify. I've got to broaden this aisle so that someone with a wheelchair can shop here," and there are the economic pressures, whereas I think in what I'll call "attitude cases," which involve an attitude, it's a little different. Sexual harassment, you still have people—"I don't know why I can't say 'Hey babe,'" [laughs], you know, or whatever. And so you still get some residual resistance there because the economic pressures seem not to be the same, because male sexist attitudes I think still endure, and there's not the direct connection between the manager at the local store who may continue to have those attitudes and have them permeate the thing--there seems not to be the direct economic connection in the mind.

McGarrigle: Yes. The businesses don't perceive it as purely a business decision.

Henderson: Exactly.

McGarrigle: Now they do sometimes do these intensive trainings when they perceive a threat.

Henderson: Yes, they do those, and sometimes they work, but sometimes they don't. My experience has been--you know, and I've had a number of these trials, where they just have the attitude that "the law is wrong." You know, you get that all the time. I mean, it happened in civil rights. "*Brown v. Education* is wrong. Busing is wrong," even though the court said--and they just don't do it. I think you get more of that in sexual harassment kinds of cases. I've heard people say--not my friends, fortunately, because I don't--but I've heard people say that they know people that say, "No, I don't know why I can't hit on my secretary," yes. And that's just ingrained there, and the threat of a lawsuit or a judgment doesn't seem to change that kind of thinking. Nor do sensitivity classes, for that matter.

McGarrigle: [laughs]

Henderson: Yes.

McGarrigle: That's so interesting that it's across the board and as you say, the cases that deal with attitude.

Henderson: Yes, exactly, yes.

McGarrigle: Some of these cases are ongoing. *Nehmer*, I know you have aspects of that.

Henderson: Yes. *Nehmer* [laughs] is a case that will not go away. As I say, we call that the Agent Orange case, which Ken Kennel, one of my early law clerks and one of my best, worked on this. And I will send Ken a little clipping every now and then, saying, "Can you believe it?" I think he clerked for me fifteen years ago or something, and we thought it was wrapped up at that time. It's still going on. I've got a hearing coming up in two or three weeks on *Nehmer*. I think I've mentioned that one of the interesting features of *Nehmer* for me is just that the Veterans' Administration, in my view, just is being stubbornly resistant to doing what appears to me to be their job. I think I mentioned last time that one of the surprises to me is that a government agency that I assumed was in the business of advancing the interests of veterans seems to be doing almost the opposite, resisting things that are in the Veterans' Administration for, I don't know, probably agency cultural reasons, or historical reasons that are not clear to me.

McGarrigle: Do you find that you have to use some of the strategies that you would use in a *Madrid* case, for example, to have them check in with you, or do you use a master, or--?

Henderson: No, I don't use a master. In this instance, it's a group, and I forget the name of them. It's almost like a legal aid office, but for veterans. So it's a group of attorneys who specialize in representing veterans' interests, and they're doing a good job. They are on top of it. They're monitoring it. As often is the case, the litigation that I see is the tip of the iceberg. My guess is that they've had a lot of controversies with the Veterans' Administration, that they've worked out many of them, maybe even most of them, and they say, "Okay, yes, we're doing this," and they'll say, "Okay, well, we'll do it this way." "No, this way," and they end up with some agreement. So what I'm seeing are the things that they don't agree on.

McGarrigle: I see.

Henderson: So I think that this group is doing a good job of making them comply with this order of mine fifteen years ago, which said, "Here's the way you have to deal with people who are claiming to be victims of Agent Orange, who were veterans, and the residuals." This has been going on all these years.

But again, the things I do get, though, are just interesting. I am sure [laughs], as I always am, that I am not biased against the Veterans' Administration, or some sort of sympathy for veterans. Here it seems to me crystal-clear in each of these instances that they aren't in compliance, and that they're taking some sort of hard-headed, wrong-headed view of the entitlements that veterans have--to medical treatment, essentially, and to assistance for their disabilities born of Agent Orange.

McGarrigle: Yes. That is surprising.

McGarrigle: I got this list from a combination of places. *Earth Island Institute*, is that the dolphins?

Henderson: That's the dolphin case, yes, and I think I've mentioned that. That was [laughs], I think, probably the most popular thing I've ever done in the sense that very few people except the fishing industry were unhappy with that. I still will get postcards, and little notes on occasion from people thanking me for "saving so many dolphins," as they put it. Yes, that was an interesting case, and I learned a lot. I learned a lot about the fishing industry, and of course I'm a fisherman, that was interesting. I learned a lot about dolphin and their behavior. One of the [laughs]--you have to stop me, you have an open invitation to stop me when I start repeating myself. But shortly after this ruling, which was on the front page of most papers, or second page--I used to, that's when I could still go fishing in Cabo San Lucas, and didn't get seasick. Mort [Cohen] and I used to go there at least once a year. So not long after this ruling, which, as you know, had to do with fishermen "setting" on dolphins, as they say, following the dolphins that they knew swam over the tuna--and that's how they found the tuna they were looking for--and they would throw nets over the dolphin, and pull everything up and there were the tuna and in the process kill the dolphin. That was what it was all about. Congress had passed some legislation about the number of dolphin that could be killed in this, and they were supposed to do counts, and they weren't doing counts. And there were supposed to be monitors on the boats.

My ruling said, "Have the monitors," and the monitors were usually a Sierra Club-type of volunteer who was a very brave person, because they would go out there with these hostile fishermen and they had to live with them during the catch of the tuna. I made my strongest statement. We had the lawsuit, and I issued my ruling, and they, the fishing industry, tried to avoid my ruling. They sent out fleets of these ships without monitors, and I issued an order that I was fully prepared to enforce. "Turn around, and come back," and had this served on the ships going out to sea to say, "I'm not playing around. You can't go out and have another fleet and evade the order." Had them come back, put monitors on, and I think that's when things started improving. It was a serious case and I was going to treat it seriously, and I was going to use the power of the federal government, marshals if I needed. Some of them claimed hardship, you know, they can't come back, I said, "Well then get a helicopter and fly a monitor out, and put them on," you know. That was a very important ruling, and I think as I said, I got reports after that on the progress, and I've now forgotten but thousands and thousands, I've been told, of dolphins' lives were saved as a result of that ruling.

But I stray from the original story. Shortly after that I went fishing in Cabo San Lucas, and Mort and I used to go down, and we would fish for dolphin, or--I mean--for dolphin [laughter], talk about a Freudian slip!--for marlin. We would catch marlin, and I've never wanted one stuffed on my ceiling, but this particular time it was tuna season. Without really thinking we set out and the guide said, "Well, let's try for some tuna." I said, "Okay, I love tuna," and the next thing I know I said, "Hey, a dolphin!" [laughter] And we sat on the dolphin! I mean, not sat and threw nets, but we followed the dolphin [laughs], and I thought, "Uh-oh, this--"

McGarrigle: [laughs]

Henderson: "--is getting uneerily like this case!" And threw our lures, the big lure that we threw out there, right in the midst of the dolphin. I said, "I'm not going to do that. What if we

catch a dolphin?" The guides, who had been doing--they do this for a living--assured me that dolphins are much too smart to go after this lure, that no dolphin has ever been caught. So we fished among the dolphins. But Mort and I thought, "Oh boy, if this ever gets back to the newspapers [laughter], I'm dead meat!" That was one of the ironies of that ruling, is that I actually went and sat upon a dolphin to catch some tuna. Didn't kill one, though. [laughs]

McGarrigle: It must be a high level of excitement issuing an order telling a fleet of fishing vessels that, you know, they're not in compliance, and to cooperate.

Henderson: It is. It is a high level of excitement, and a high level of anxiety, and let me tell you why. Sometimes when you issue an order, and you really--it's such a far-reaching order, there's that little nagging feeling, what if they say, "Up yours, Judge!" [laughs] You know, what do you really do? Or do you really want to get the United States Marshal out there and try to arrest these boats, or try to do something. You know, and it makes you a little nervous, at every level.

I've got a case right now that is December 4th, I believe it is, I've got an order against an attorney that I've only seen once. We were supposed to have a trial, and I had the pre-trial conference, and he didn't show up, and that's unheard of. He didn't call, I had my clerk call the office, seems to be a solo practitioner, hasn't returned the call. And I know he must get my messages. So I issued an order that he's to show up on December 4th, and show cause why I shouldn't sanction him. In the meantime, I get something from the other attorney who came to the pre-trial conference saying, "I think we've settled the case." So then I'm thinking, "Okay, this guy isn't going to show up on December 4th." And my question is, "What do I do?"

Now I know I can send the marshal down, and I think he is--again, this is interesting, his office is up around Eureka, and I think we have some problem with cases up that far north, because of the distance. And generally there is no federal practice up there, so we get people from up there who aren't familiar with federal court. So I'm really worried, you know, that I'm going to have to send a marshal out, find this guy, arrest him, bring him down to answer for these things he's done, missing court appearances, not responding to orders to show cause. And you know, that's a very small case, and I offer it as an extreme, because even at that level I feel a little anxiety about using that governmental power. But the bottom line is I think we have to. I think courts cannot let attorneys--"Well, I'm not showing up." The system breaks down. And I think that I feel a need to make the system work by sending out a strong message that, "Yes, this is a rule of law, this is the law, you'll comply with it. And if you don't agree with it, your option is not to ignore it, but go to an appellate court, if I'm wrong."

McGarrigle: It touches on--those issues touch on broader issues of control.

Henderson: Exactly.

McGarrigle: And that has to do with attitudes, and how you change them, and sensitivity training as in, you know, is it effective? Race discrimination, parenting.

Henderson: Yes, exactly.

McGarrigle: And how to control human beings, other human beings.

Henderson: Yes, exactly. And different judges do it differently and get different results. You know, I very frequently, jokingly, probably in the twenty-one years I've been on the court, the toughest judge on our court was Stan Weigel, who I mentioned earlier. He was--just terrorized attorneys, and he was famous for it. I would very often--and I had a reputation as being a pretty easygoing guy--and it was clear to me that because I was easygoing, attorneys would try things with me that were outrageous. And I would sometimes say, only half-jokingly, "Well you know, if you were in court down the hall, you wouldn't do that, counsel. You know it!" And I would just leave it at that, and they knew what I was—"If you were in Stan Weigel's court, you wouldn't have even thought about doing what you just did." And so partly it's the judge, and the way you--the reputation you have, what the attorneys perceive you will do about their peccadillo, sometimes more than a peccadillo. And that's a part of that whole dynamic.

I've constantly struggled over the years with trying to be an attorney that--I mean, sorry, a judge, that attorneys didn't fear, didn't do things because they feared me, but because I was reasonable, and they were reasonable, and try to have things progress on what I would call "a rule of reason," that "I am going to be reasonable, and I think I am, and I expect you to be reasonable." But there are attorneys that [laughs], who, some, I think are incapable of being reasonable. They are going to push the envelope beyond reason every chance they think, and who make the calculation that, "If I do this with another judge he is going to really come down hard on me so I'm not going to do it. But I'm going to do it with this judge because the best I'm going to get is a finger-wagging and a reprimand." And they calculate those kinds of things. And that's part of judging. I think you have to learn some sort of balance that you feel comfortable with to make court work for you.

McGarrigle: And that is congruent with who you are.

Henderson: And in fact it comes out of who you are. I feel very uncomfortable yelling at attorneys, and I insist, sometimes against my better judgment, that I am going to expect the best from attorneys, and that I am going to expect them to act in a reasonable manner. I just sort of--it's the only way I can proceed. And I get disappointed a lot. Over the years I have learned that there are certain attorneys that you just cannot rationally do that with, and I do treat them differently. There are attorneys that will come in and say, "Well, gee, I need a continuance," or, "The reason I missed this deadline is that I had a doctor's appointment," and I'll say, "Get it in writing. I want something from your doctor," because I don't trust them. They lie, and I'll just use that word. And they've done it in the past, and I won't give them that benefit.

When I'm talking to law students, or young attorneys about practicing, I'll use those examples, and say, "That's the worst thing that can happen to you, is to get a reputation like that, where the judge doesn't believe you." And I believe that's right. But there are attorneys--

McGarrigle: Is there any particular part of the bar that you see that with more, or is that across the board?

Henderson: I would just say litigators.

McGarrigle: [laughs]

Henderson: No, I don't think there's a part of the bar. There are parts of the bar that--I just had an admiralty case a couple of weeks ago, and I remember at the end of it I complimented-- I said, "I really like to work with you guys. You get along so well." You know, they come in and they say, "Well gee, you know, the seaman is out at sea, and he is on a two-month cruise, so we have agreed that we don't have to take his deposition now. We have agreed that it can go beyond the deadline because we know he'll show up." And they've got it all worked out, it just seems smooth, and as often as not before it comes to trial they have settled it. And that seems to be a part of the bar that just historically, that's the way they work.

Then there are other parts of the bar, I think insurance cases and insurance defense, a lot of civil rights kinds of cases, where there is just bad blood, sexual harassment suits. They seem to very often take it personally, and they are at each other's throat, and it makes the job so much harder for the judge. I have developed--if the case is big enough--I have developed a practice of appointing special masters. I've actually said from the bench on occasion, "Gee, I don't"--you know, because they fight over everything. And indeed, they fight over what they just did. [laughter] You know, they fight, you know, and I have an order that says, "Don't copy me on your correspondence," because you'll get--I used to get letters, "Dear Mr. Smith, this will confirm our conversation of today, wherein you agreed to da-da-da-da, and da-da-da, and I said I--" The next day, "Dear Mr. Jones, I am astounded at your letter." [laughter] "I didn't agree to this!" You know. And then they are copying me. I don't want to read this nonsense! I said, "I don't referee 'spitting matches,'" as I call them, and I said, "I don't get paid, in my view, to do this, and I will appoint a special master." When I see it's a large case, and this is a start, and this is what we're going to get for two years [laughs], I say, "I am going to appoint someone to resolve these things." It just ruins my day to have to deal with this. It's like little kids. You know, saying--the teacher says, "Don't you go over beyond that line," and the teacher turns back, and they stick their foot over--[laughter]--you know, they're like little kids in that stuff. And I don't like to do it.

McGarrigle: Yes, well, you shouldn't have to.

Henderson: [laughs] Well--

McGarrigle: It's astounding. I think the public in general would be astounded to know--you know, people who haven't pursued law school or other formal education would be astounded to know that this has to be part of your job.

Henderson: I know it, exactly, they would be. And I was astounded, I mean, because I didn't practice that way, and I didn't have it there that often. You know, it's a significant part of your time. It sort of goes back to the thing about the principal at John Adams Junior High, you know, spends his time with the bad kids. We spend most of our time with these kinds of--I mean, we spend time with big cases and trials, but a lot of our time is spent sorting out. I've got a letter upstairs that I've brought home for the weekend that's one of those kind of things. I just decided to bring it home just because it's so convoluted. You know, the attorney wants this, the attorney reneged on this, and you read it, and you've got to really start trying to figure out what's going on, and it takes a

lot of time. What a waste of time, from people who just don't comply with the rules and so you have to get outside the rules, which is where they take you to resolve these crazy things. It's real bad use of a judge's time, but I've not found a way that you can ignore it.

Every now and then if they catch me at the right time, what I'll do is say, "I'm busy. This is going to take some time and I'm going to set it here on my desk and I'll get back to it." I'm not going to put this as a high priority. I'm just going to let them cool their heels for a while, until I feel I have the energy and time to deal with this silly little dispute. Partly, as I think you've probably heard here now, I realize I could send some of these kinds of things to the magistrate judge. But I don't like to do that. I think their time is as valuable as mine, and why should I send these things to a magistrate judge to sort out when I think I should do it myself.

McGarrigle: Is that common for a federal judge to send some of these types of matters to a magistrate judge?

Henderson: It depends on the judge, yes. A lot of the judges, I think, routinely send them to the magistrate judges. What I've developed over the years is that if it's a routine case and a legitimate dispute over whether, let's say, a deposition should go two days or three days, and it's legitimate, there's some--or whether certain questions should be answered, or whether interrogatories ought to be limited in number--and it seems legitimate and standard, I'll refer that to a magistrate judge. But early on, when you get your first case management conference, you can very often see it isn't that. It's going to be a fight from start to finish. I don't send those to the magistrate judge. I think it's my job to manage, that's what the case manager--that that's part of my management job to get this under control. So I will take those myself. Maybe I am punishing myself and maybe the answer is not to take them [laughs], but I don't think that's the answer. I take those myself and I will spend the time on the theory--my theory is that attorneys who are handling themselves in that way will be much more responsive to the judge than to the magistrate. That's one reason I don't do it, that I can take control and enforce my own rules better than a magistrate judge.

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McGarrigle: There is an efficiency in your keeping the matters together as well as there may be a different responsiveness on their part.

Henderson: Yes, that's right.

McGarrigle: Since they've already indicated they are in a problem--

Henderson: Exactly, they are in a--and there are just certain--your question was very astute, a little while ago, "Are there parts of the bar?" And there are parts of the bar that I named that just, when you get a big case, they think their job is to fight. And different attorneys will do it. I have a case now, I won't mention it, which is very interesting. It's being fought bitterly at every step of the way. One of my former law clerks happened to be there visiting, and they went in for a hearing that I had. The name of one of the attorneys came up and he said, "Oh, God, that person is awful. I worked for a while with this firm, and she is the--"--it was a she, interesting-- "--is the toughest, most

hardballing, most unreasonable person I have ever seen.” And this is a clerk who had no axes to grind. That, to an extent, explained a lot of what was going on because indeed, that the firm just took these--everything seemed to be a hardball position, an unyielding position. And they won some of the motions before me, but most of them simply made me force them to give up things that were quite routinely [laughs] given up in these cases.

So, you know, a lot of that goes on, and I think a lot of it is just either company strategy, I think sometimes the company says, you know, “Don’t give an inch. I want you to fight tooth and nail. I want us to be known as a company that doesn’t give an inch, so that when you sue, this is--it’s a war zone.” And sometimes it is that, sometimes it’s the firm. “That is the way we practice.”

McGarrigle: Do you think that that has--I mean, people talk about the way things have changed over time, has that changed in terms of the bar, that there’s--and maybe the different business demands, and the economics of practice, and I don’t know what all the factors would be?

Henderson: Yes. I don’t know what the factors are, but, oh, gosh, yes it’s changed. I think when I was a young lawyer, I think the culture then, there weren’t as many lawyers, I think the culture--and I know I did it many times--“Gee, I just--hi, Bill, I just got your notice of a deposition for December 19 [laughs], gee, I’m going to be away, and so, you know, I wonder, can we go into January?” “Sure, what looks good?” “Let’s see, how about January 8?” “Okay, see you then.” I think that is so rare now. You know, “I think perhaps it was noticed for December 19 to inconvenience the other side, and can we change it?” “No, that’s it. I complied with the rules.” And they end up coming to me to just--you know, and that is the nature of it. Hardballing--and I think that someone was telling me that, in the mentoring, that some of the firms have that view, that is the way they train the young lawyers, hardball. “Don’t give an inch. Get this leverage and keep it, and make them go to court to get any relief.” It has changed, and attorneys don’t seem to do anything on a handshake or a verbal agreement anymore. Now I know there are exceptions, but what I’m saying is, I think it has changed dramatically over the years.

McGarrigle: It’s interesting, because in that time period more women have gone into the practice.

Henderson: More women have gone in, yes.

McGarrigle: But that doesn’t seem to have altered the style so much.

Henderson: That doesn’t seem to have altered the style. You know, I think that when I was at Stanford, and women were just starting to be admitted in significant numbers, and I knew a lot of those early women at Stanford, there was a feeling or a theory that they would “mellow out” the bar by bringing their sensibilities. I suspect that more of what has happened is that they have been driven out, that sensibility has been driven out, and that the women who do well, certainly in litigation--like the one I mentioned, she is a very good--I’m just talking about her style, the one I mentioned a few minutes ago, she is a very good litigator and has a reputation as a successful litigator. I think more of what happened is that women who can do that have done well in litigation, but the ones

who thought well, they'll make it mellower, aren't in litigation, and I don't think they could survive.

McGarrigle: We talked about Stanley Mosk, but I also wanted to ask you about Allen Broussard--

Henderson: Oh, yes.

McGarrigle: --who our office did an interview with--.

Henderson: Oh, yes.

McGarrigle: --several years ago. I noticed some parallels. He came out from Louisiana as a child--

Henderson: Yes, he's from Louisiana, yes. Allen, I've known Allen, Allen was a little ahead of me when I first came up to Cal. I've told you before, you know, there were very few blacks around, Allen was one of the slightly older guys who went to Cal, and I knew of more than I knew. Then he went to Boalt Hall, and he was a guy that was up at that law school, that was when I believe Boalt Hall was not where it is now. Boalt Hall was a smaller law school down on campus near the library. He then practiced in Oakland. I knew of him then. He practiced with Carl Metoyer, and Lionel Wilson. Had a very prestigious black law firm there. They were well known, and I think people coming along aspired to practice with them, or have a practice like theirs. Then I got to know him best when he was on the [California State] Supreme Court and I was on the district court. Again, we were right across the street, and he was a hero of mine, in the sense that he was able to do more things in the community while doing a superb job on the supreme court than I could imagine. I get invited to things all the time, and I try to respond to a portion of them. But Al, especially if it was from the black community, just you know, I envied his popularity with the black bar. He just seemed to hang out with them, he was at their meetings, he was one of the founders of the Charles Houston Bar Association--and cooked great gumbo [laughter] to boot! I mean, he was a marvel, and in his later years when he resigned from the supreme court and went with the [William K.] Coblentz firm and went into mediation and that kind of thing, I actually sent a few cases to him. As I said, I mentioned sometimes I will get a monitor or something on some of these bigger disputes. I would, if he were free, I would call on him to do things like that, or to mediate some of my bigger cases.

McGarrigle: Was there, in terms of his relationship to the black bar, was there a different politics going on there? I mean, we talked earlier in the interviews about your support coming mostly from the civil rights community, and there were different candidates who had been put forth and supported by different, I don't want to say factions, but different individuals, within the bar.

Henderson: Yes. Were there different politics--

McGarrigle: Yes. Was there a different--maybe because he had practiced in a black firm from the beginning, he had a different base of support?

Henderson: Yes. I think he had a different base of support. I think that, you know, I think more than I, at that point, he was "of the black community." His law practice was black, his partners were black, he was very much a part of that community. You know, as I said, at

some point during the process when I was seeking the job, I had to acknowledge that I was not as much of that community. I knew everybody, but I really spent my time and my practice in a broader community, a public interest community as I call it, where many of my colleagues and friends and my law partners were white. So yes, there was a difference, we had a different base. I think he knew virtually everybody I knew, didn't hang out with them as much. I knew everybody he knew, I didn't hang out with them. On occasion, you know, he would say, "Let's go for a drink," and we would do it, and we would go to one of the black clubs in Oakland that I just didn't hang out at.

You know, and I would go, and it would be sometimes a new experience, or a first experience. And I knew most of the attorneys there, but I didn't hang out there. And I suspect that if we had the opposite--you know, I said, "Okay, let's go--let me take you for a drink, and go to a place," he'd say, "Oh, gee, I've never been here." And then friends would come in and attorneys and he would know them. So I think it was that difference, that--yes.

McGarrigle: Yes. It's interesting, Berkeley being right adjacent to Oakland, it's still a very different world from Oakland.

Henderson: Oh, very different world from Oakland, very different world from Oakland. You know, it's interesting, and as I said, I have friends in Oakland, but I don't go to Oakland that often. If I go out, I go in Berkeley or I stay in San Francisco. But I will go--there's a club, it's moved now, that I used to go to. There have been times that I've felt--what could I call it--pangs of guilt or something, about not being more intimately involved in the black community and the black activities. And I would consciously go to this club, which was on 14th Street, right off of Broadway, and I can't remember the name of it now--and you know, try to hang out and be there and be more involved. I have, for a period, I would try to go conscientiously to Charles Houston Law Club events and meetings and I've actually been invited to speak, and I always do that. But I found it wasn't my natural instinct. I didn't feel--I didn't feel like--I couldn't say I felt like a fish out of water so much as I didn't feel I understood the dynamics or the agenda there.

One of my best friends is Bill Hasty, who has played in the poker game, and I have gone to some events--and this is a joke with us--I stand around sort of awkwardly, and people will come up and say, "Well, gee, hi, Judge Henderson," and I say, "Well, gee, how are you, young fellow?" or--and that's sort of what I do there. And Bill, who came up with a much more privileged background than I--his father was the first black federal judge, and Bill--but Bill will go around, "Hey, my man!" [laughter] And he's doing--and I would say, "I can't do that!" [laughter] You know, and he will just--he's one of the boys. And I say, "I can't do that! I don't even know, you know, I feel like you're going to break my thumb" [laughter] "when we get into these shakes, I don't even know how to do the shakes!" The handshakes. And that's just me. So that's a distancing thing, I think, that I feel bad about. Because you know, as we said, I grew up in Watts, and I think somehow after getting to Cal and being in that environment, I sort of fell into the Telegraph Avenue coffee shop kind of thing and friends grew from that. And in law school there was only one other black in my class, my friends, my law friends sort of were all white. Justice Department, I was the only black. I think somehow my career has developed in that way. Legal Aid, I ran the office, almost all the employees were white. I think--so my friendship structure, I think, has been that. And I don't know why. I've thought about it a lot, and I don't know why that has been. But it's different

from Al, whose friendship structure has been, I think, primarily black, with a lot of good white friends, though.

McGarrigle: Yes. I guess it gets to the point that we--in the limited time--in the time we have on Earth, we cannot be all things that we would--

Henderson: Yes.

McGarrigle: --you know--

Henderson: Yes.

McGarrigle: --maybe would have liked to be.

Henderson: Yes. That's true, that's true. And you know, I guess I am at that point, I guess whenever you get to a point of having your oral history taken, you start looking backward [laughs] as much as forward. And you know, there are some interesting things that--I am not even sure I am ready to say what they are now, if I know, but that I would probably do differently in that regard, in terms of the way I would do some things or structure my social life. I don't know.

McGarrigle: Well, let's end for today and then we have more material to pick up the next time.

Henderson: Okay, okay, great.

[Interview 12: December 21, 2001] ##

McGarrigle: One of our big topics is your trip to South Africa in 1985.

Henderson: Yes.

McGarrigle: Maybe you can discuss your awareness of apartheid and the situation in South Africa, and how that came to be.

Henderson: Yes, okay. First, my awareness of apartheid in its particulars was embarrassingly slight. I mean, I was aware of apartheid, and I was aware of all the criticisms of the South African regime. I was aware of a person in prison named Nelson Mandela, but when I actually started getting ready to go there, I realized I knew precious little more about it. I think it's fair to say that Judge Leon Higgenbotham [Third Circuit Court of Appeals] and Julius Chambers [of the NAACP Legal Defense Fund], with whom I went, were not much further ahead than I was.

As an example of that, when we actually got there--and I remember the first day, we were walking down a sidewalk that first morning, when we got up, and all of a sudden we saw some white people. We were in Johannesburg, and we were trying to sort out what apartheid--how that worked, and relating it to how it worked in the deep South, you know, where blacks had to step off the sidewalk. We were thinking, "Gee, what do we do here?" And I think it was then that we realized we didn't really know the day-to-day operations of apartheid, just the overall concept of apartheid where blacks and browns and mixed were certainly second- or third-class citizens. [tape interruption]

So anyway, to sum it up, I think I knew precious little about the particulars of apartheid, you know, other than it was an evil system. I would also add that when we went there, certainly there was no prospect of apartheid ending, when we did. When we left, Judge Higgenbotham wrote a wonderful summary of our trip for the Carnegie Corporation, which funded our trip, which essentially said that we didn't see apartheid ending without a lot of bloodshed, that we thought it was going to have to be a revolutionary kind of thing, because we didn't see the governing--the people running the country as giving up that power readily. We also at the time didn't see the necessary international intervention. We had said that if the United States just stepped up to the plate, as we thought they should, and helped put pressure on them, that it could end. But we didn't see that happening. So we left pretty pessimistic about the future of those who were the victims of apartheid.

McGarrigle: To back up a little bit, how did that trip come about? How were you first approached about going on that trip?

Henderson: Well, they were, someone at Carnegie had thought of the idea of having some people who had been involved in civil rights in some way or another in the United States go to South Africa, meet with lawyers and South African black leaders who were fighting against apartheid. They saw some parallels there, and the idea was that we could share our experience of fighting segregation in the United States, and that the South African lawyers and leaders could learn from that, in developing strategies to fight apartheid. So, I'm sure they went to Judge Higgenbotham, who was probably the most obvious person other than maybe somebody like Thurgood Marshall as a leader, and Thurgood

certainly couldn't go on a trip like this, I don't think, because of his position. They got Leon Higgenbotham, and then another obvious person was Julius Chambers, who at that time was the director of the NAACP Legal Defense Fund. They were doing the primary litigation against discrimination and segregation in the United States, so he was probably the primary strategist. And how they came up with me I don't know, but I was added to this group very proud and pleased to be included in such distinguished company. So I think that was the idea. They had been in contact, and I believe, if memory doesn't fail me, that Carnegie had been quite active up until that time in South Africa, and in helping take a look at and fighting apartheid. I think this was a continuing part of that foundation effort.

McGarrigle: I don't know about the Carnegie Foundation, what other things they are involved in, but that would seem to be unique at that time.

Henderson: It was. I think it is primarily--as most institutions, there is a person--and I apologize, I can't remember the guy's--David something, who I think was really, that was his personal interest at Carnegie, and I think he was the mover and shaker. I wish I could remember his name, but I don't do those things well these days. But anyway, I think he was the guy that really put the clout behind the South African part of Carnegie's program.

McGarrigle: Was that your first trip to Africa?

Henderson: That was my first trip to Africa, yes.

McGarrigle: Do you remember what your feelings were at the time, getting ready to go to Africa?

Henderson: I remember having mixed feelings, because I had talked a lot with friends who had gone to Africa, and it has not been an uncommon experience for my friends to go over and say, "I'm going back to the homeland," and then coming back disappointed in that part of the trip, because what they have described to me is that they aren't embraced by the Africans in the country they go to as an African, they are seen [laughs] as an American, and it's a jolt, and it's a disappointment, and a letdown to them. So I had all this in mind, and I wasn't sure what was going to happen, but I was convinced that I would be seen as an American rather than as an African returning to the homeland. So I was sort of prepared for that. And I think indeed that was the way it came about. I think there was less a feeling of, "Well, here's my black soul brother from America," as opposed to, "Well, here's an American judge who's coming over here to help us." So I think I was ready for that, and if I hadn't been, I think I would have been deeply disappointed in the lack of bonding with the South Africans and the South African lawyers that we met.

McGarrigle: Did anybody--this is an aside, did anybody in your family ever do a genealogy which goes back generations?

Henderson: No, no one has ever done it. We've talked about it. I now talk about it with my son, and actually we have tentatively talked about going back to Salt Lake City, where they apparently have the best records there for this kind of thing. But no, no one has ever done that. I would love to do it. I just haven't seemed to generate the energy. I'm even more interested in it as I sit with my mother now, and care for her. She tells stories that are still surprising to me. We need to do this, because I am aware of slaves in the family

that she can remember, and that my grandmother told her about. I would love to do it, but the answer is no, we haven't yet done it.

McGarrigle: It sounds like when you got to South Africa and you weren't sure how the experience would be different from the American South, that maybe there wasn't so much preparation in advance for what you should expect--

Henderson: Yes.

McGarrigle: Do you know how Carnegie defined--it sounds like you had specific dates, you had people you were going to meet, but maybe not so much preparation about the current situation in South Africa.

Henderson: That's right. I think that given what they really wanted us to do was meet with the black lawyers who were fighting apartheid, it may have been an oversight on my part, much more so than Judge Higgenbotham and Julius Chambers. I found that I didn't know the day-to-day operations of apartheid. I think they have known a little bit more, because Judge Higgenbotham had actually been to South Africa at least once before. But it was more in terms of behavior, so it wasn't a real handicap, it was just--except in the way we carried ourselves and where we could go. We sort of knew we couldn't stay in white hotels, eat in white restaurants. We knew there was some strict line that was drawn. We didn't know the day-to-day interaction in the system, particularly with whites. This is what I didn't know and what we didn't know.

For example, one of our early experiences was that in some of the places we were told that we could go to--and the reason we could go to the white places was that we would be treated as and considered as "honorary whites." So that was a shock and a surprise. We found ourselves wondering why they think we would accept [laughter] this dubious award, you know, "Keep your place. We don't particularly want to be an honorary white." So those were surprises that we just weren't ready for. It was an interesting--we found it interesting that they would make such a concession, or what they viewed as a concession, to justify letting in two black federal judges from the United States, one, Judge Higgenbotham, of great distinction. At the time we went, Leon was considered the heir apparent of Thurgood Marshall. It was assumed that when Thurgood Marshall stepped down, assuming a Democrat was president, that he was going to be appointed to the Supreme Court. So he was a man of great distinction. Julius Chambers, as I said, was probably the foremost civil rights lawyer in the country.

So it was sort of interesting that they thought over there that the concession they would make, "Well, they will let us eat--"--and I remember one of the places, one of the lawyers--it was a little hash house. [laughs] You know, and to think, "The nerve of these people, thinking they are honoring us by letting us eat there if we will become "honorary white people." [laughs] So it was just part of the whole farcical aspects, I thought, of apartheid. It was just this artificial thing, with all its cruelties, that--and all its inconsistencies that these systems have, throughout the world, I think.

McGarrigle: Yes. That's such a rich vein of information there that you've given, I'm not sure where to go with it.

Henderson: Yes, I know it, it's mind-boggling. [laughter] I'm not sure either. Yes.

McGarrigle: You know, you must have had some interesting discussions among the three of you.

Henderson: Oh, we did, we did.

McGarrigle: What were your--? Here you are, each of you at this certain point in your life having experienced these things at home, and, I don't know, do you come to terms with those things? How do you--?

Henderson: Yes. It's part of the learning how the world works. I found this, this was a lasting experience to me. You know, you learn, I learned that there are consistencies in the world, so that--we went over hoping to be of assistance to the black South Africans. We learned much about our own country by looking at South Africa and apartheid. And that's what happens.

I noticed that--one of the things we want to talk about are my trips to other countries with Steve Mayo and his group. And again, we went over to teach things to other countries about our system, but I always came back learning much more than I taught, you know, and having insights into my own system that I wouldn't have had, had I not gone over there and had to think about their system, and think what I was trying to teach them. And it was similar with apartheid. You learned a lot.

One of the early, naive things I did in South Africa, and I just will always remember this exchange. I was in the country, and I said that, "Gee, when I was in law school," I was telling this group of lawyers, "there had never been a black federal judge. And so I had no way to--no role model to say, 'Someday I might be a federal judge.' It never occurred to me." I went on to say, "But now I'm a federal judge, and here I am, and you think I'm a pretty good federal judge, and I'm here with a great federal judge. Now, it is foreseeable that something like this will happen to you. How will you react to that? You, sitting there in this audience, might be a judge someday." And I was shocked, as was Leon Higgenbotham and Julius Chambers--and we did this around the country after this first experience. And they said, "We would never serve as a judge here, if that opportunity came, because we would be participating in a corrupt and evil system. We wouldn't be judges under apartheid. We would not accept it. It would be a farce."

That was an eye-opener, and it was the first instance in which we started seeing some of the basic differences between our system, where I can, and Leon can be a judge, and I've been a controversial judge in certain instances, but that we can bring our view of the constitution, and due process, and the law, and actually sit and have it as a part of the system. Whereas there was no such luxury. They would be a judge enforcing the laws of apartheid, and it would be an entirely different and unacceptable experience for them. So that was just part of the learning process that we had, not understanding.

The other interesting thing that we learned, and we really had not seen it as clearly as maybe we should, was that in this system, in the United States, there is an appellate system, but we do have a separation of powers. So when I rule on something controversial like Proposition 209 or whatever, there is an appellate process, and it will go through that process. But it will go through in an anticipated and predictable way. Whereas in South Africa, if a judge--the legislature is supreme there--and so if a judge issues a ruling that the legislature doesn't like, they just meet, and undo the ruling. And we didn't appreciate that, so it's an entirely different kind of strategy one has to develop

from the strategy that Julius Chambers and the NAACP had developed given our system.

McGarrigle: It makes you think in a broader sense about legal systems.

Henderson: Yes, it does, exactly.

McGarrigle: Just like, if you put them in a box, and you inserted them, it could be a Nazi-era Germany.

Henderson: Yes, exactly.

McGarrigle: And just how absolutely complete and self-contained they can be.

Henderson: Yes, exactly. And also, you know, I think I may have mentioned before that we learned that certain principles and things aren't just transportable in this neat little box. You can't say, "Here's a box of due process, and you're going to plug it into your country," because due process abstractly just doesn't work in a country that has no history or understanding of due process. You have to--whatever you transport has to have a context for the history and culture of that country. We learned some of those things. We sort of knew that going, but we learned the particulars as we went around the country and talked about the American experience, and Thurgood Marshall, and how he had carefully planned *Brown v. Board of Education* and the important cases he had worked on and realized there were no parallels. That they could not strategize in that way, because if they took all the years that Thurgood took to get to *Brown*--it was a deadening prospect, to say--the legislature would just sit down and say, "Okay, *Brown v. Board of Education* is no longer law." And that had a sort of a deadening aspect for the South African lawyers that we didn't have here.

McGarrigle: How did they get their legal training in that set of circumstances?

Henderson: Well, they got it--there were schools there. It was--there were parallels. It was not unlike the legal education in the South during those years. Blacks went to, very often vastly inferior schools, "separate but equal," but they weren't equal. They were separate. And blacks in South Africa went to separate schools, they went to separate law schools and got an education. I'll never forget going to a law school in South Africa, and it was so shockingly inferior to the law school of Witwatersrand, I hope you'll find the spelling, that's a W. We had gone to that, and then two days later we went to a black law school, and it was almost like going to a grammar school. The library was virtually nonexistent, they had textbooks that were almost like funny--what do you call it--not funny paper--?

McGarrigle: Oh, comic books?

Henderson: Comic books. I mean, it was--you almost wanted to cry. But they got their education in institutions like that, and then they went on to become lawyers. But again, there were many handicaps because of the English system of barristers and solicitors.

They didn't have the entrée, I mean, the normal--the white lawyer would get with one of these, and there's a mentor program, and they would get their referrals from the

barristers for those who actually went into court. And they didn't have that system, so they had to sort of set up their own shop, and scuffle around, and get the little cases that they could get on their own. So it was different, and there were huge handicaps for them. But again, those were the parallels. It was sort of the same with black lawyers here. As I said, I not so long ago read what I think is the definitive biography of Thurgood Marshall, and he started that way in Baltimore. I mean, he was hustling cases and getting what referrals he could in Baltimore before he became local counsel with the NAACP. So there were those parallels with the South African lawyers.

McGarrigle: It really points to the amount of strength that certain individuals have--

Henderson: Yes.

McGarrigle: --to be somehow, in the face of that--I mean, if they are scrounging for cases and they know who the judges are and they know what the legislature is going to do if it doesn't like the decision--

Henderson: Yes.

McGarrigle: --then you're talking about an incredible strength.

Henderson: You're talking about an incredible strength. You're also talking about, I think, an incredible faith. I think that requires a faith that you're doing something, that you are somehow making progress. I think that was required. I think, again, I always think of Thurgood as my model. And you read the biography, and you realize, the criminal cases, he went in knowing that there were two strikes against him, that very often the judge was racist, but that he was going to get some level of justice for his client, and I think you have to believe that, because he certainly wasn't doing it for the money. "I'm a lawyer, and I'm going to make a lawyer's salary." I think he was trying to accomplish justice, and I think it requires a belief that somewhere in there you're going to get a modicum of justice, not the same justice that the white lawyer is going to get for his client. But it takes a lot of strength to fight that fight, and to bite your tongue knowing that the deck is stacked against you.

And that's what those lawyers did in South Africa, that's what civil rights lawyers have done over the years in this country.

McGarrigle: Yes. Is there an overlap in a spiritual sense with that kind of faith? [pause] Are people believing in a higher power?

Henderson: Oh, yes, I think that--yes. I think that there is a spiritual [inaudible]--I think that part of the strength you get, and certainly at times I think I felt it, was that yours was a higher calling, and that even though the odds were stacked, you were on the side of the good guy, or maybe even the side of God or something, and that that gave you some strength and I think probably some sort of feeling of moral superiority, which is empowering in and of itself. I know I have walked away from things which I've lost, but saying, "I know I was right, and you know you were wrong." And somehow that is empowering.

And adding, "Well, someday this will change. And this was just a fight along the way." I think that is a part of what the civil rights lawyer does and thinks, and you have to.

McGarrigle: Yes. There are somehow ideas about truth--

Henderson: Yes, exactly.

McGarrigle: --and authenticity, and what those things mean.

Henderson: Yes, exactly. And I think inevitability. I think there has to be a sense of inevitability, that someday these things will change. And the real issue, I think, in the years that I have been through it, is how fast those changes will come about. I think much of the argument has been about pace, that--you know, certainly during the Kennedy years, when I think the civil rights movement really sped up, I think a part of it--maybe I've talked about this already--was, I've always--my theory of the reason it took off was, during the Eisenhower years you'd hear in the civil rights community, "Boy, just think of the changes that would take place if President Eisenhower would take that little black girl's hand and walk her into Central High in Little Rock." Eisenhower gave no hope that that would happen. And so there wasn't the kind of thing, "Well, gee, if we can just do something to get Ike's attention, and the press' attention, things will happen." There was not that hope.

But I think that hope did come when Kennedy was president, and I think he was sort of reluctantly dragged into it. But I think he did give hope to the civil rights people that, you know, there is a sensitive ear there, and we need to get the right moment and the right event, and we think at some level we'll have administration backing. I think that is when the civil rights movement really got active and took off. And if you read Martin Luther--some of the books that are out now on Martin Luther King, and then they've looked at the records and talked to people, that was a basic part of his strategy, "What can we do?" You know, and they struck gold when they went to Birmingham, and this fool Bull Connor just did exactly what they wanted, got cattle prods, got dogs biting people--and you saw the very raw and basic deprivation that blacks were saying, and it played in the national press.

McGarrigle: Yes.

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McGarrigle: Did you find that in South Africa, there was a great deal of awareness about the civil rights movement in the United States?

Henderson: Yes, there was. In fact, I think--we were sort of embarrassed, they had much more of an awareness of what was going on with us than we had of what was going on with them. That was initially embarrassing, you know, that they did know. They asked questions, they asked--they knew about *Brown v. Board of Education*, they knew about some of our important cases, they knew about some of our civil rights heroes. Other than sort of knowing about Nelson Mandela and some very basic things, we didn't know nearly as much about their struggle and the particulars of apartheid.

McGarrigle: Yes.

Henderson: Yes.

McGarrigle: It just struck me, when you said you couldn't stay in the hotels, and then there was this concession about the possibility of becoming an honorary white to eat in the restaurants, you stayed with the individuals I think you were visiting.

Henderson: We did. We stayed with very gracious hosts, the black lawyers, who took us around the country--or turned us over to the black lawyers in the next town that we were visiting, and we stayed with them, sometimes in rather humble--an extra bedroom. I remember that on one occasion the black lawyers, particularly the ones who were more successful, had--what's the term--when you bring in your extended family. They sort of took care of the extended family. So we would go into places with grandmothers and uncles and additions to the homes. On one occasion I remember that somebody from that extended family vacated for the two nights I was in that home, their bedroom, and I stayed in this very small--which is probably about the size of this thing [gestures to porch]--with a bed in it. That's where I stayed on that particular night. But we did stay with the lawyers, and never stayed in a public facility. Yes.

McGarrigle: It must have been interesting, when you're in the home you are eating with the people who are hosting you, it's a different window--

Henderson: Yes, it's a different window and we preferred that. I think it gave us a much better sense of what was going on than if we had checked into a hotel, eaten at the hotel or at a restaurant, and then went back. I think we got a look at life, and I think we had conversations that were much more meaningful about what was going on, and what they were experiencing, and even talking to the extended family members. I think we just got a better and clearer picture of life there.

McGarrigle: If you could describe in a few sentences what that picture was that you got, or one or several of those pictures you got of life--

Henderson: Yes. One of--again, I think here we dramatize, or can dramatize the parallels with the American experience of segregation. The utter poverty, I think, and what I would call the artificial luxury that the black doctors--and we also saw the professional class--experienced under apartheid, so that when you lived in the house, as I said, we would see, I would see the relatives sometimes sitting in the back yard being taken care of by the doctor or the lawyer who did it. And the--I remember when we were picked up at the airport, the black lawyers had invariably a Mercedes-Benz, and they had a very nice suit, and that was the external trappings of their profession. But you'd go back and they were there in what in our standards would be a fairly humble house in a homeland where as often as not--and it wasn't very fancy. So you saw that contrast between what I imagine driving around--"Well, there goes lawyer Umbecki," or whatever his name is, and you know, living that life but really by any other standards not doing that well, certainly not by the general legal standard.

And there were parallels here. I think I've told the story of when I grew up there weren't many lawyers in town, and the ones that you had, generally the successful ones, drove a fancy car, and dressed fancily. But I now look back on them and I know, and I see even my friends who are successful lawyers, they are really doing well--these lawyers weren't doing that. They sort of lived a different life. They hustled cases, I've used that word, and they took them as they came in the door. And they made a decent

living doing it, but they weren't experiencing the life of what I'll call a "real lawyer." So there were those parallels that we saw.

McGarrigle: Well, there is an interesting psychology about mimicking, in a way--

Henderson: Yes.

McGarrigle: --the class which is the oppressor.

Henderson: Yes, exactly. That is a good point. And they were mimicking it, in very real ways, with the external trappings, the briefcase, the suit, the car. But if you looked beneath it you saw material differences. They didn't have the system of support, they didn't have the clientele to really support anything beyond those external trappings.

Also, the other thing that plagues lawyers in both systems, I think I may have told the story, when I was practicing in Oakland after I had come back from the Justice Department, one of my classmates came to me. It was a guy I didn't know that well, but he was a friend. He said gee, he had this woman, this black woman that he had come to know, and she needed a lawyer. She didn't have any money [laughs] and I remember thinking, "This is astounding!" This was a guy with one of the big firms who was making top salary, and he didn't give a thought--and I was really struggling, you know, trying to put together a practice, and he didn't give a thought about—"Well, take this free case." It didn't occur to him to take it. I didn't have any expertise in that particular area. I ended up taking the case, because I was the dumb kind of guy that will do those kinds of things. But I've always remembered that.

McGarrigle: He was making a statement purely on race lines, is that--?

Henderson: Yes. Race lines. He, this was a friend of his, and he thought about who might take these kinds of cases. Well, it's the poorest lawyer around, that's me, and not one of his buddies who is successful, who might take it, and could afford to take it. I think that is what happens to the black lawyers in this country, and to the black lawyers there. They took a lot of cases that--just, they couldn't say no, because they ought to take it. It's a case, somebody ought to take it, and the lawyers, the successful lawyers weren't taking it. I think that's a part of the lawyers that I saw under apartheid, and the lawyers that I saw here in the United States. It's just a part of your condition that you can say no, but it's hard to say no.

McGarrigle: Well, there's also a sense in which there's an inference that these are your people.

Henderson: Exactly.

McGarrigle: If you say no--

Henderson: You say no--

McGarrigle: --you're turning your back.

Henderson: --you're turning your back on your people. You know, and I--it can be a crippling thing, because you can--you know, you have to make a living, and at some point you have to

say no. And one of the real ironies about this that I have talked about over the years, and I, you know--is that you'll do these things, you'll take these cases, and you'll take them for nothing or for much less than they're worth, and then one of the really invidious things about racism is that--we used to say that when one of these same clients that you've helped the family, you've done the little criminal stuff for them, you've done the divorce for them or whatever, is that when one of them is--the car is run into by a drunk Greyhound Bus driver and they've got really serious injuries, and "Ah, now here is a case," they go to the white lawyer. You know, and I think that is one of the ironies of racism, and what happens here is that they think, "Oh, now I need a real [laughs] lawyer who is going to get me big money," and I think that is one of the things that black lawyers in this country and in South Africa, we saw, suffer from, so they--that's changing now, here in 2001, but over the years since I graduated from law school, that was a problem. So you sort of never got the really good case. I don't know anything about it but if I had to guess, I would bet you that even going back to Motown, Barry Gordy, I'll bet you he had white lawyers, or at least at some level. Now maybe that was in part because the black lawyer didn't have the corporate experience to set up Motown. That, again, is just a part of that fabric of racism that makes it harder for the black to get ahead under these systems.

McGarrigle: It is just crazy-making.

Henderson: Yes, it is crazy-making. Yes, it is, and it's frustrating. As you said, I think you have to be strong to forge ahead on that. You have to be strong and optimistic to say, "I can succeed under this system with these disadvantages."

McGarrigle: Yes. The lawyers you were meeting with in South Africa, knowing that they were working within this system in which they wouldn't participate as a judge if they had been given the opportunity, what were their goals at that time? What was their strategy, or was there a strategy?

Henderson: Oh, I think that most of them, probably their ultimate strategy was to see the end of apartheid, where there would be a level playing field for them. But I think the short-term strategy was simply to work among themselves and do as best they could, under the system, and hope, in a different way than we hope for gradual change here under our system, but hope for gradual change and improvement. They spoke a lot of international--to try to get international help to pressure the regime, and Carnegie I think was good on that, because over the years, after I came back, I would meet some of these people who Carnegie would bring over here to sort of reverse the process, come over here and look, and learn, and spread the message of apartheid. I think that was part of the gradualism that I think they expected to happen or hoped to happen.

McGarrigle: In 1985, at the same time that you were in South Africa, there were demonstrations on campuses in the United States--

Henderson: Yes.

McGarrigle: --so pressure was being brought.

Henderson: Pressure was being brought. I think the idea--because I think the United States just wasn't stepping up to the plate on this. You know, and I think apartheid was a very evil

system, and as we ultimately learned, was subject to international sanctions and monetary sanctions, and in 1985, I think, students as much as anyone saw this. And they were demonstrating for this kind of pressure on local and national government, “Hey, you can do something.” You know, “Don’t buy South African products.” “Don’t do this.” And tried to get monetary sanctions. Yes, that was happening quite actively.

McGarrigle: Was that a movement in which civil rights leaders were involved as well, or was that more strictly a student movement?

Henderson: I can’t speak with authority on that. My sense is that it was more of a student movement. I think students who saw this were looking for something important to do, saw this as maybe more important in ‘85 and during this time than whatever they could do in the civil rights movement here. I think that, certainly after King’s assassination, I think there was a lack of focus during a period, and I think maybe--I’m only guessing--that students saw an evil over there that was more dramatic for them and more apparent than whatever it was that was happening here. That’s just my surmial.

McGarrigle: Yes. I’ve read that while you were in South Africa that you went through a fairly stressful arrest situation, or at least--

Henderson: I did, yes.

McGarrigle: You were taken somewhere.

Henderson: Yes. It was a very interesting and dramatic experience. We had--as we traveled around, I think we were getting near the end of our trip, and Leon Higgenbotham, who, as a great speaker, had been asked to stay back from whatever town we had been in to give a speech. We felt we needed to go ahead to keep our schedule. So Julius Chambers and his wife and I went ahead to Cape Town. We, one of our things was to go see a trial in a town right outside of Cape Town. I’m sorry, you know, my memory these days--.

McGarrigle: Yes, that’s okay.

Henderson: So on that particular day we actually went to this trial, of some young blacks who were being tried for violating the Anti-terrorism Act. We actually went to the court, and saw a portion of this trial in the small courtroom. When we came out for recess, we were standing outside, and some men got out of a car that was parked there, and came up to our hosts, people who were taking us around. Our host came up to Julius and me and Julius’ wife, and said, “They want you to come down to the police station for questioning.” We thought, “Well, what’s this all about?” They said, “Let’s just go, let’s get in the car and follow them.” These were white men, and we were in a black homeland, which is interesting, which theoretically were independent nations, or independent countries.

So we got into the car and followed them and went to this small single-story brick-like structure which we understood to be the local police headquarters, or something like that. We were taken into a room with no windows, and seated here. Eventually a black, who--you’re probably too young to remember a black actor named Woody Strode, who was actually an All American football player, who I believe played--Jackie Robinson’s time--big, imposing guy, who played in a couple of John Wayne movies, and you know,

big guy with a shaved head. Well, this guy reminded me of Woody Strode. He came in in a military outfit and sort of walked around dramatically as if he was in a play, and looked at us, and made sure we were seated, sort of stood over us so that we looked up and made his presence felt--and then started grilling us, started by saying in the same sort of deep voice, "Well, tell me, you're Americans, I want to know what you're doing in my country." And we looked, "His country? We're in South Africa." And it took a while for us to realize that he was talking about the homeland that we were in. We showed our visas, "Well, we have a visa to be in your country," thinking we had a visa to be in South Africa. He said, "Well, anybody can forge documents. How do I know?" And he sort of threw this on the table as if it was a piece of scrap paper. "How do I know these are real?" And we just didn't quite know--you know, we're floundering, trying to talk in some rational sense, when he was talking, we thought, irrationally.

The subtext of this was that there was this--Julius and I called him "little punk" guy, who--little--physically, dramatically different from this big guy. Some little guy in a little ragtag uniform, that when we were asked questions, he sort of stood behind us tapping a pipe or some sort of baton. And we thought the message that we were given there was that if they didn't like our answer, he was going to crack us over the head with this pipe. So it was a very intimidating setting. It went on and on with this sort of insane dialogue. "Well, I'm a judge, you know. Okay, here's my--" "Well, anybody can--false documents of judges." This made no sense to him. Then finally we adopted a different strategy. I thought, "This is crazy. These people are crazy." It got a little frightening. We were starting to think, you know, we're in this room, who knows we're here, and they're crazy, what are they going to do?

Finally I said, "Well, we are legitimate. In fact, yesterday," and this part was true, "we were visiting the American ambassador at his place, and he knows about us. You can check there." Then I had a moment of inspiration, and I said, "And in fact, he's expecting us back tomorrow morning for breakfast." Which was a lie. "And he knows about us. Now, you can call him." And that, for the first time, we saw him, you know, instead of just rejecting what we said, sort of thinking about it. There was someone else there, and he signaled to this person, who went out. In retrospect, I think this person did some checking, and came back much later after we went through much more of this sort of questioning. Finally he says, "Well, we've done some checking, and we think you're okay," or something to that effect. "You can go now, and have a good time in our country."

This is after being there for, I don't know, what seemed like hours, I can't remember. We got in there and we thought, "I don't think I want to be here tonight." And we actually flew out of there. We were supposed to leave the next day, and we actually got out of there that night, because we somehow didn't want to be sleeping there, didn't trust these people.

Interestingly enough, I wish I could remember the homeland [name], and I can, if it becomes important--it was a homeland that was in the news, and they were known for their dictatorial kinds of things like this and their corruption. The guy that was questioning us was the half-son of the head of this homeland. There was a lot of corruption there, and about a year later it was in the papers, he was killed in a coup attempt against his father. So it was that kind of a very corrupt--and I was glad we got out of there, because there was a lot of craziness and corruption in that particular--in

most of the homelands there was corruption, the leaders were sort of bought off by the apartheid government and given money in the same way that I think, note the parallel, that we give some countries money, and it never trickles down to the people, it sustains those in power. Well, this was the same thing here. It became a fight over the money, and this guy who was questioning us was killed in what was described in the papers as an attempt at a coup.

McGarrigle: The people who initially notified you at the courthouse when you were waiting for the trial that you needed to leave to go to this other location, they were white?

Henderson: Yes.

McGarrigle: They were policemen?

Henderson: Yes, these were policemen. But it also, in looking at this whole incident, it indicated to us, because homelands were black, that the homelands were not self-governing. These white people from Johannesburg or Cape Town were calling the shots, and they were the ones that fingered us and said, "See what these people are doing." These were part of the apartheid government. But again, when we were questioned, we were questioned by this guy who was part of the leadership of this homeland. But it was clear to us that whites were clearly running the show in this homeland. Yes, they were white.

McGarrigle: Something I read indicated that there was a very strong paranoia about communism.

Henderson: There was a very strong--and you would hear about this. And even the blacks, I guess, were brought up in that way, that communism, if you could label something Communist, it was probably the worst label you could give it, yes. There was this--you know, if it smacked of communism or some aspect of Communist theory, then that was the kiss of death on that in South Africa, yes.

McGarrigle: I guess you weren't able to attend the trial of the young black men.

Henderson: No, we didn't return after that. As I said, we figured our best interests were to get out of there. As I said, I was genuinely afraid to stay there that night, because--I don't know, if you can imagine some sort of Hitchcock film where you've been through this and then the protagonist, if that's the correct word, says, "Well, we'll see you. Have a nice time." And, you know, [laughs] it doesn't ring true. It's almost a threat. Yes. You know, that, it was just almost chilling.

McGarrigle: Right.

Henderson: "Have a nice time in our country," it just was chilling. We thought that it was more of a threat or something, and we got out of there. Yes. So we didn't see the end of the trial. But we saw enough of it in that morning to know that notions of due process that we have here were absent there.

The other thing, we had a great admiration for the black lawyers that were representing these young men. They were doing their best under trying circumstances. But we had no doubt there was going to be a conviction, and indeed there was, as we subsequently learned.

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McGarrigle: There was a very serious consequence, then.

Henderson: Yes, this was a serious charge, to violate the Anti-terrorism Act. I don't know specifically what the consequences were, but we knew enough that if you were convicted of this you spent quite a bit of time in jail and very often there was torture involved in those things, yes.

McGarrigle: Was there media coverage in the United States about your trip, or following up on the report?

Henderson: There was. There was media coverage about our trip. There was quite a bit of media coverage about this arrest that I've just described. That hit the press, and it was in *The New York Times*, and in the local paper, in *The L.A. Times*, in the major press. That got a play, and I've got those clippings someplace, in a scrapbook someplace.

But--yes. But about the trip itself, there wasn't a lot of media coverage. There was some coverage that I think the Carnegie Corporation produced, and then there was some coverage of this wonderful report of our trip that Judge Higgenbotham primarily wrote. We were supposed to write it as a group, but he was so able and capable, we pretty much turned it over to him. There was some coverage of that and of our conclusions, but not major coverage beyond that.

McGarrigle: You said earlier, and we may have been off the tape, that leaving South Africa, the three of you did not come away with the sense of optimism for change.

Henderson: No, we didn't. I think we came away with a sense of pessimism, you know. Then I remember the concluding portion of it that Leon drafted, primarily, was that we didn't see any meaningful changes absent much bloodshed, that people were going to have to, if they could, they were going to take to the streets. And again, we had to view that and note the parallel in our country. We weren't even optimistic of that, because the reaction in South Africa wasn't going to be Bull Connor getting the cattle prod, and maybe getting dogs and fire hoses. I mean, the retaliation in South Africa was much more direct, much more massive, much more cruel, you know, tanks on the street, and shooting people. We just thought--but we got the sense that there were people ready to do that and we thought someday, in the not too distant future, there would be such an uprising and it would mean many, many deaths, almost all of them black deaths.

McGarrigle: We talked earlier about the pace of change. Did the pace of change following 1985 surprise you? And here we are sixteen years later.

Henderson: It did, because when we were there Nelson Mandela was in jail. We didn't get to see him, and he was a name we knew. We actually drove by the prison. And an interesting aspect of the pervasiveness of apartheid, we were followed by what we were told were Secret Service people--we didn't make much bone of it, you know, they just sort of followed us around the country, and stayed back at a distance. When we got to the island where the prison was--I'm even forgetting that, I'm sorry. I want to say Robben Island, but it's whatever island--we stopped and we wanted to take a picture of it. The car that was following us, and our hosts said, "It's illegal." We got out a camera. They

said, "Don't do that, they're watching there. It's illegal to take a picture of this jail and that island." So you know, there was just that kind of pervasiveness about the apartheid government.

McGarrigle: You mentioned that following your trip you visited with South African lawyers who came here funded by Carnegie Corporation.

Henderson: Yes.

McGarrigle: That must have been interesting to be connected to the changes as they were happening.

Henderson: It was, it was. You know, they would always--I think a part of their grant was--maybe they had to, or they were made aware of us, but they would generally visit, they would go to the East Coast and they would invariably visit Julius in New York, and Leon in Philadelphia, and those who got to the West Coast would visit me. I would host them. A couple of them actually stayed in my home here. I would introduce them to the civil rights community here. I think that was part of what--their networking. I even had a couple of larger events where they spoke, and people got a chance to meet them, and that is great in Berkeley, you can do that. Yes, we kept in touch.

Every time I read about South Africa--it's interesting, because I met some wonderful, and powerful, and charismatic people, and I actually expected many of them to be leaders when it ever--and some of them have been, some of them have been names, but not by and large, because they weren't, I think, members of the African National Council. I think those are the people that we now read about, and when Nelson Mandela did get out, those were the people that were leaders, and the lawyers, I think maybe I was naive to think that lawyers who were involved at the levels I've been describing would also be political leaders. For the most part they haven't been, but they have been prominent secondary figures, I think, in the apartheid movement.

McGarrigle: Yes. You mentioned having lunch earlier this week with Herb Kaiser and his wife, and Bill Gould at Stanford.

Henderson: Yes.

McGarrigle: It's interesting about the Kaisers and their commitment to training physicians in South Africa.

Henderson: Yes, it has been. They've been inspirational, and they've become good friends. I'll mention that the way I met them--I should go back to South Africa. One of probably the great experiences I had in South Africa, and we learned this early on--we were told --in addition to saying that "We would never be judges under this system," we were told that there were three judges in the entire country that the black lawyers felt could be trusted and gave a fair trial. One was Richard Goldstone. We met Richard Goldstone on one of our visits, and I have been close friends with Richard and his wife Noleen ever since, and they've come to this country. He is now on the South African Supreme Court, and he set up and was the first, I'll say, "director" of their Truth and Reconciliation Commission, and he has gone on to international fame. He was the first prosecutor of the Serbian war crimes. He has got an international reputation.

Anyway, I was lucky enough to meet Richard and Noleen and become friends with them. It was through Richard that I met the Kaisers. They called me one day a few years ago and said Richard had suggested that they call me. They live in Palo Alto. They moved to Palo Alto to be near their grandchildren. MESAB [Medical Education for South African Blacks] was headquartered in New York, and they moved to Palo Alto, and they turned over the day-to-day operation of MESAB to people in New York, but they still do a lot here. So anyway, yes, I've become fast friends and fans of Herb and Joy Kaiser, whom I said--it probably was off the tape--that they've raised many millions of dollars and they have a big fundraiser each year in New York. Last year Nelson Mandela was the speaker, and they have people, like really big names--Bishop Tutu. And it's a very successful--it raises a few million dollars each year. Then they are doing wonderful--[tape interruption]

McGarrigle: Are the Kaisers related to the Kaiser--Henry Kaiser?

Henderson: No, they're not. That was one of the questions I asked, because they were having a discussion with Bill Gould, who, by the way, had gone to one of their big fundraisers in Washington, D.C., when he was a head of the National Labor Relations Board, the commission. Bill is, as I said, he teaches labor law and is very intimately involved in--. And they started talking about Henry Kaiser. I thought, "Ah, this is the Henry Kaiser that built the steel mills, and--" But it turned out that Henry Kaiser was a cousin of Herb and Joy, and was a very renowned labor lawyer that Bill knew, and that was their relative. But no, they're not related to the Kaisers, the hospital Kaisers, the steel.

McGarrigle: It was a different Henry Kaiser--so a labor lawyer?

Henderson: It was a different Henry Kaiser who was a very prominent Eastern labor lawyer, who was with--I guess as they talked about it, with the labor law firm that produced Arthur Goldberg, who went on the Supreme Court, a very distinguished Eastern labor law firm. Anyway, those are the Kaisers that they're from.

McGarrigle: Yes.

Henderson: And as I said, Herb was an ambassador at a very high level, ambassadorial level, and they lived the ambassador's life, travel. I guess they're shifting, they shift countries every few years, so he's been to many countries, and has an international background. It's interesting to talk to them about the many countries they've lived in, the many political dignitaries they've known over the years. Quite an impressive couple in how they--something struck them with all of these experiences about South Africa, that they decided after his retirement to focus on South Africa and the medical problems there.

McGarrigle: When you came back from South Africa, that was a huge experience to digest. I wonder how it changed your approach, for example when you went back on the bench here.

Henderson: Let me think about that. [pause] I think--I'm not sure I changed my approach. Let me say something, going back to South Africa, that may lead to an answer to that. I went to one court. It wasn't Richard Goldstone's court, but it was another judge who welcomed us to his court. We visited and we talked, and he said, "I'm going to have a hearing today. Would you like to sit in with me?" And this particular hearing, they had three

judges. They have the presiding judge, and then they have someone that he appoints who is sort of a special master, and then another judge, and I no longer remember how that comes about. And he invited us to sit up on the bench with them and we said, "Oh, thanks." And we did it, and had what seemed like a rather innocuous hearing.

But we heard about that the rest of our trip, and again, for the same reason that the black lawyers said they wouldn't be judges. They were mildly critical of us for sitting up there in an apartheid hearing. And we very naively thought, "Well, this is just a different vantage point to experience it." I've always remembered that, you know, sitting up there, and seeing how we were viewed by the black lawyers, and maybe the defendants, as being up there, being a part of apartheid by just our presence. We didn't have any vote, we didn't have any input into the system, but the symbolism of three blacks sitting up there--and they thought that perhaps we were being used in a way, because that signaled an approval.

McGarrigle: Do you think there was that--that motivation existed?

Henderson: I didn't think so, no. I thought--and again, this is from a judge's view--I thought that this judge genuinely thought, "Gee, I want to acknowledge you, and you've come to see this. Be my guest and sit up here with me." And I still believe that. I don't think there was any ulterior motive. But I think the lawyers thought there might be, and again, there was just--because that was their daily experience, I think they were much more likely--even though this was one of the judges that they represented was one of the good guys, that there might be that ulterior motive.

But I've had a lasting feeling about what people perceive since then. What people perceive in terms of me and what I am, and how there could be misperceptions, because I came to know that judge--not as well as I did Richard Goldstone, but he came to this country, and I actually--he stayed at my home, and I know he was one of the genuinely good guys. But there was that perception of judges, and I have always kept that in the back of my mind and tried to be aware of not only what I think I stand for, but what people think I stand for. In my case though, it goes the other way. I think, you know, people are more likely, I think, to dismiss me as a knee-jerk liberal. And I worry that very often people on the defense side of a civil rights case don't feel they stand a fair chance in my court, and maybe at some level that is true, in the sense not that I won't give them a fair trial--but we've talked about this in terms of diversity. I have a different view of this than other judges. So I think I've carried that experience about perceptions of judges from that South African experience. Beyond that, I don't think--and I don't even know how that has manifested itself in my approach on the bench, which was your question. But it certainly is something that is a part of me and my perception of my role as a judge.

McGarrigle: The judge who invited the three of you to join him was a colleague of yours--

Henderson: Yes, exactly.

McGarrigle: --in a way that was different from the relationship you had with the lawyers.

Henderson: Exactly, it was. And I think he saw that as a collegial move. Indeed, I have had judges, ever since this trip, and ever since the trips with Steve Mayo to other countries, I think I

have been on the U.S. Information Service, U.S. Information Agency, and State Department lists. I think they have lists, and people come over from other countries, judges, I think they look at a list, "Well, you're going to San Francisco. Thelton Henderson and others are interested in international kind of things." I get calls all the time. "Why don't you visit them?" And I'll get a call from USIA, and say, "Judge so-and-so is here from Canada, Australia, wherever, Nigeria--would you host him for a day?" And I will do that. If I'm in a hearing--I've never invited them up on the bench to sit with me behind the bench, but to sit where my clerks would normally sit, right up front, you know. I do those things, and I think it's something you extend to a colleague, and a judge from another country is a colleague, as I see it, and I'm sure that is what this judge saw, you know.

McGarrigle: And there was a third judge who the black South African lawyers told you they felt--

Henderson: Yes. And it's interesting, I have some place around here--I have not maintained, after we left South Africa, he has not visited this country. Richard is an extensive traveler, as we sit here he is in New York, I just talked to him the other day. He is teaching at NYU. He travels extensively, he loves it. He is an international traveler. His wife Noleen is the perfect mate for him. She likes to travel, they remember names. The other judge died a few years ago from cancer, but he traveled too, extensively, and as I said, had stayed with me, so I got to know them. The other judge sort of was an experience in 1985 and we didn't keep in touch, and so I have--I can't even give you his name right now, but I could dig it up.

McGarrigle: Did you and Julius Chambers and Judge Higgenbotham stay in contact after that trip?

Henderson: We did, and Leon, who just died a couple of years ago, we stayed in close touch as judges, and we were at a lot of conferences together. Julius, we stayed in touch, but he left the directorship of the NAACP Legal Defense Fund a few years later and became president of a college in his home state. I want to say North Carolina or South Carolina, and I've forgotten that, and he has done that. Then we didn't keep as close a touch. He is still president of this college and is doing an excellent job, so I don't see him on the legal circuit in the way I used to, and we haven't been pen pals. So I would say I haven't heard from him directly maybe five or six years now. But I hear about him. He is still active and doing things at this college.

But Leon and I kept in touch, and in fact, this last year at this black judges' conference that I organized and chaired in San Francisco last year, one of the main speakers was Leon's widow. She had a lot of references to the South African trip and the friendship that we had developed in her speech, which of course I think was a little thump she threw to me as the organizer. But I was very proud of it, that association. So yes, I considered Leon as a mentor, and such a great man, and such an inspirational man.

Another tie-in, interestingly enough, with Leon and that South African trip--a couple of years ago I got a call from Richard Goldstone, because we had traded many stories. And one story that Leon and I had traded and had told Richard about was when we first became judges, we were both, Leon and I, challenged by white lawyers when we got a civil rights case, and saying, "Gee, we don't think you can sit on this case, because you are a civil rights lawyer, and you know, how can you be fair to us, and we think you ought to recuse yourself from this case." We were saying how we were both offended

by the notion, because when an antitrust lawyer becomes a judge and gets an antitrust case, nobody says, "Gee, you defended antitrust cases, so you can't hear." And it was fairly offensive. Well, Leon actually wrote probably a twenty-something or thirty-page ruling on the challenge instead of just dismissing it out of hand, that is very famous. So Richard called, he was aware of Leon's ruling, and the situation they had, keeping in mind the South African Supreme Court as it now exists is new, well, they had had a similar challenge that, "Your court can't be fair to certain kinds of cases, and we think you ought to not have jurisdiction to rule on certain kinds of cases because you were appointed by Mandela and anti-apartheid interests." And he wanted some American parallels. What did we say in our--he wanted--and we were able to lead him to Leon's. And fortunately, or unfortunately I didn't--I wasn't as productive as Leon. I just simply dismissed the appeal with a one-page thing saying there was no merit to it, so I didn't have anything, but Leon did.

So that was again, a carryover, and I know that the ruling they gave had some echoes of Leon's reasoning as to why this is not a valid challenge to judicial authority.

McGarrigle: This is the best sense of dialogue in terms of comparative law--

Henderson: Exactly, right.

McGarrigle: --comparative legal systems.

Henderson: Yes, it is, yes.

McGarrigle: I think we could at least touch on, if not cover completely, some of your other foreign travels, since we're on the topic of--

Henderson: Yes.

McGarrigle: --foreign travel, and different legal systems.

Henderson: Yes, as I said, I have traveled, and I've learned more as I've traveled to those countries, I think, than I've taught. I think the idea, though, was to--well, I think what USIA and USIS, who sponsored these trips, had in mind was transporting aspects of the American system to other countries. By way of background, Steve Mayo, a wonderfully energetic and dynamic fellow who used to be a prosecutor and a very good one, somehow found he had an abiding interest in these things, and now he does that full time.

McGarrigle: I met with him actually as a follow-up to Judge Peckham's interview.

Henderson: Oh, okay, sure. That was--

McGarrigle: We did a very focused interview on--

Henderson: Okay, I was going to--you know that then.

McGarrigle: Yes.

Henderson: Okay, I was just going to mention that. And actually, the way I got into it, Bob Peckham loved to travel, and was very big on this. When he passed away, and I became chief, I think I sort of--Steve sort of invited me to be "the Bob Peckham," because foreign countries really love people with titles of "chief." [laughs] And I think it became good to say, "He's the chief judge of the federal court in San Francisco." Steve can tell you more beyond that. But anyway, I stepped in and started going on these trips, and I really loved them. They were very enjoyable, and--I'm looking for--you had something--

McGarrigle: Yes. [tape interruption]

Henderson: So anyway, Steve invited me on these international trips. As you have noted here, some of the places we went were Bolivia, went to Egypt, went to Panama. We went to Austria, which was a particularly interesting trip, because we went to Strasbourg and then stayed in this castle, which I love to tell stories to friends, it was a castle in which parts of *The Sound of Music* were filmed. A wonderful place that is now used for these kinds of international events. We met with Palestinians who were in the course of changing their legal system as they distanced themselves from the Israeli system of which they were a part. Very dramatic.

One of the nights we were there, they had one of the elections in Israel, and--

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Henderson: It was a very emotional evening as the returns came in. I remember the Palestinians were very depressed, and they saw dire things happening to them, because the candidate that they didn't favor was elected. Again, I don't remember who that was, unfortunately. But I remember just getting a sense of the realness. The Israeli election had always been more or less of an abstraction to me, and here it had very real meaning to these people we were with and had become good friends with. So that was a particularly dramatic one of my trips.

Again, getting back to the idea--and I'll give you one example, if I haven't already, about the trip--when we went to Bolivia, the project was to try to help them solve one of their problems, which was this in a nutshell: that the example I gave--have I done this before?

McGarrigle: No.

Henderson: If someone were arrested for shoplifting, they were found with this pen, the maximum sentence for shoplifting is one year. And yet we had a professor that we had been talking to that Steve had helped put this program together, who had done statistics to show that the average Bolivian will spend two and a half years in jail for shoplifting with this pen. An American, with our experience, will say, "Well, how can that be? Why is that?" Well, if you are Bolivian and you're caught with the pen and you know how America works, you would say, "Well, okay, look, I know I'll spend two and a half years and I want to plead right now. I'm guilty. See, here's the pen. My fingerprint is on it. I want to plead guilty and serve my year." Well, the Bolivian [laughs] system says, "No, you have to have a trial." "Well gee, I don't really want a trial. I want to plead and start!" "No, you have to wait for your trial, and that's two and a half years."

They had no system for plea bargaining. You couldn't sit down and say, "Let me plead now."

Many, many reasons, but a part of it was a corruption that you get. We found in many of these countries--and corruption is an American term now--you didn't have a strong public defender system where they could come in and represent this person. There was a concern that that was too much power to give a prosecutor. "Well, let's see, I'll take your plea, and we'll plea bargain, and we'll give you nine months instead of a year." They didn't have that concept and I think rightfully, because so much in those systems, particularly in the judiciary, is bartered and up for sale, that it is difficult to do those things, whereas we take it for granted.

So we looked at this system and ended up installing a system which strengthened the public defender system in Bolivia so that they have set up a system, with a lot of massive monetary input, and raised the salaries of prosecutors sufficiently so that there wasn't the incentive to get your income through corruption. And that system has changed.

McGarrigle: Who was, on the Bolivian side, who were the people who were pushing through--

Henderson: The change?

McGarrigle: These changes.

Henderson: Well, we met with the top political figures in Bolivia. We had a very constructive meeting with a dynamic young guy who was at the top of the government who liked these changes. It seemed he had studied in the United States at some point, seemed very savvy about these things. He was the main facilitator of this, and the one we were counting on--but we also had, we spent plenty of time with the Supreme Court of Bolivia, with the leading legal figures, the heads of the bar, and the legal leaders of the country. So they were all aboard. I think that made it easier. But, I was looking ahead to one of the other countries we visited. One of the things we found--and you know, there is a lot of arrogance with America--"Let us change your system, and let us tell you how we do it." We would bump into that every now and then, and most notably in Egypt where we went and were told any number of times by people we met with who were outside of the immediate group that was trying for these changes, "Well, what makes you think--you know, you're a blip on our time frame. Do you know how far Egypt goes back? And when did you guys start, 1776 or something?" And told in no uncertain terms that we were young upstarts in terms of a legal system, and that it was presumptuous of us to try to go over and--we had to be wary of that, and we had to--and Steve Mayo was very good at, you know, making the disclaimers, "We're not trying to tell you how to do it. We're trying to share our experience, and indeed, we're trying to learn from you," was the more--

McGarrigle: I wonder if you remember whether there were any issues around religion, or were you dealing with--?

Henderson: No, I don't remember such issues. It was--there were international issues going on, because we almost canceled our trip. There were religious--and I'm going to call them zealots--that's not the correct term, but extremists, perhaps. There had been a number

of instances, and you may remember them, where they were going around pouring acid, throwing acid at American women who were wearing dresses, and attacking American travelers in Egypt. And we had to actually give some thought to whether we were going to go. We concluded that it was safe, that if we didn't go around with big signs saying, "We're Americans!" you know, that we could do the trip as we had planned it. And we went. But there were those problems, and then a lot of anti-Americanism in parts of Egypt.

We stayed at a hotel, a big hotel, I don't know, Hilton or something, in Cairo. It was heavily guarded, you know, when we walked in there was a big lobby area there and a second story and we could see what looked like paramilitary people in camouflage uniforms with submachine guns that were there, I think, to make sure that no violence was visited inside that hotel, which I think had a lot of Americans in it.

McGarrigle: Do you know just approximately what year that was, that would have been in the eighties, probably?

Henderson: It was up in the eighties, yes. Well, I'll tell you. I started getting this leg problem, it was on one of these trips that--so it was in the late eighties. Because I remember one of my last trips was in Bolivia, and I went walking, a very slight incline--we were going shopping one day, and I had great difficulty walking. That was still in the days when I thought, "Gee, I'm really out of shape." And I now know that that was the first signs of my muscle deterioration. So it was right before I had that exam that let me know I had the problem. That was in '90 or '91, so I would say this was about '88.

McGarrigle: Other than Egypt, were there other suggestions that these trips were sort of an American attempt at colonization through legal system?

Henderson: You would get that. As you got to know the people, we would usually spend at least a week there. It tended to be formal at the start, and then you got to know people, and some people, I think, in many of these countries, particularly like Egypt, I think that--I think I have, I try to have a folksy style, and I would always say, "You know, look, I've fought our system, that's what civil rights lawyers do. I'm not here to tell you we have a perfect system. And I've fought it my whole legal career, because there are injustices to blacks and minorities." I think that gave me an edge in these settings. I think over the course of this time people would come to me and there would be a frankness that we would engage in that perhaps the non-minority members of our staff didn't get. So I think I saw a lot of, "Let's really talk," you know. "Okay, here's our formal agenda. Let's really talk about your country and my country," that I think I got more than the other members.

McGarrigle: Yes. I know Mrs. Peckham said that her husband just loved those trips.

Henderson: Oh, he did. He loved them, and he would talk about them. And I would hear them, and I was kind of envious of him, you know, "Gee, that sounds great." Yes, he just loved those trips, and loved meeting people. And he is a different person. I know he would go back to those countries and visit socially. I tend not to do that. I visit, and I do the job, and I come back. I think Bob gathered names and kept in touch in ways that I didn't. I think he would even plan subsequent trips around the connections he had made. Yes, he just loved it. And he was good at it, he was very good at it. A good

diplomat for American interests, because he was so gracious and so smart, and I think he brought a presence that helped the American image. He is that kind of person, yes.

McGarrigle: Well, I think we could end for today. Are there things touching on topics that we've covered, that you would like to add to?

Henderson: Yes. No. I did have a--we can do this next time. I think--have you heard the name Frank Storment?

McGarrigle: Yes, and why have I heard that? No, so tell me about--

Henderson: No--because I was thinking the other--.

[Interview 13: February 1, 2002] ##

McGarrigle: Our discussion, before we started this morning, we were talking about a piece from the *New York Times*, it was an article by John Conyers. I'm interested to have you describe your first contact with him.

Henderson: Yes. I first met John Conyers, who is now I think a distinguished congressman from Michigan, when he was a young lawyer out of Detroit. I was with the Civil Rights Division working down South. I believe it was Birmingham that I first met him, but it might have been Selma, I simply don't remember.

As I said, he was a young lawyer who had come down South with a lot of other lawyers from around the country to observe and participate in the civil rights movement, and help in whatever legal ways he could. We would hang out together, I think it's safe to say, and I distinctly recall driving around with him in the car that I used to get around, and showing him the lay of the land, and talking about life, and being young lawyers. We were pretty close to the same age.

I learned later that--I can't remember the name--there was a very prominent black politician from Detroit that John either practiced with or knew. I learned later on that going down South, in addition to John's interest in what was happening down there, was also part of the grooming and preparation for John to run for political office. Not many years, two or three or four, after those days that I had met him, he actually ran for office. As they say, the rest is history. He has been in office ever since, and now I think is a ranking Democrat on the Judiciary Committee, and I think doing some good things on that committee.

I haven't seen John in a number of years, but some years ago he was in town and I called him up and we got together for a dinner to recall old times. But I have great trouble keeping some of these wonderful contacts I've made, just because I feel I don't want to be sycophantish about calling and cashing in on a thirty-year or forty-year old friendship. So I haven't kept up the friendship and I probably should have.

McGarrigle: I wanted to--we have a lot of things that we've spoken about already this morning and that will come up today and next time. We were going to start with getting back to some of the major orders.

Henderson: Yes. [tape interruption]

McGarrigle: The first order on our outline is *Sierra Club v. MTC*.

Henderson: Yes. That was a big case, which we call in the office "The Clean Air Case." I remember that very clearly because I opened up the hearing with a rather dramatic, I think, pronouncement that perhaps nothing is more important to any of us than the air we breathe--and that this suit was exploring the quality of the air, and whether the defendants had complied with some orders for cleaning up the air in California.

The plaintiffs had brought this suit to enforce something called a SIP, S-I-P. That stands for State Implementation Plan. There was a plan for the state to implement measures to clean the air. The defendants argued that--well, they had a two-pronged argument.

One, that I could not order the enforcement of the SIP, and that even if I could, they were not out of compliance. That was essentially the argument, and in my view, they couldn't have been wronger. They were far out of compliance, in many, many ways. I found ultimately that their compliance was very inadequate, and indeed half-hearted. So I ordered enforcement on a fast track because by then years had gone by when they really weren't doing the things that the State Implementation Plan called for them to do. So because of this long period of delay, I set what I called a very fast track toward implementing it. I felt that was appropriate. Usually when I get these things there has been a short time and the plaintiffs, as soon as there is some lack of compliance, they go to court to get it, so not much has happened and you can give time to do it. But I felt here so much time had elapsed that they needed to put this on a high priority.

I did something in that case that I have never done before or since. There was so much technical data for me to incorporate, in terms of exhaust fumes, and measuring the quality of the air, and how you implement these SIPs, that I felt I needed help. I wasn't sure I could adequately interpret the scientific data I was being given, so I hired, with the consent of the parties--and indeed they paid for an expert in this area, who was at the time a professor at UCLA--unfortunately I don't remember his name, I can get that. He was very helpful, and actually it turned out to be a big feather in his academic cap, because he got all this data, and subsequently wrote a book about it that's out there on the market about this case and about clean air.

So that was a very important case, I thought, and we treated it as such. It was a lot of work, but I learned a lot too, as you do in cases. That remains one of the fascinating things about this job, having to think about on-ramps and off-ramps and how you design them, something I never thought about, and whether when you're going on to an on-ramp, how long--when you design it, how long a car sits there before it can get on to a freeway, because a certain level of exhaust comes out while you're sitting there, and that's part--. It was fascinating, just learning and thinking about all that, and learning how our highways and our roads are designed.

McGarrigle: What was the reason, is the reason known why the Sierra Club waited to bring suit?

Henderson: I don't know. I just don't know. No. It may have been resources. It was a very expensive suit, and I remember the attorney who did it was with one of the larger firms, they may have had--I just don't know, I'm speculating that maybe they had to get the resources. It's not unlike the Pelican Bay case where the prison law office, I think, could not have gone forward with it without Wilson Sonsini joining and putting up the bodies, and also the money to finance it. It may have been one of those kinds of things. But I just don't know.

McGarrigle: Was that controversial at the time in terms of media coverage?

Henderson: It was. There was a lot of coverage in the media, and they, every hearing, there was something in the paper. I think early on I indicated, once I got a grip on the case and saw that indeed the compliance had just been really half-hearted--they were almost snubbing their nose at the implementation plan. I spoke strongly from the bench. And I think once the papers got a sense that that was my view, they followed it pretty closely to see what I was going to do and where this was going to go.

McGarrigle: Interesting. *Hopkins v. Dow Corning*.

Henderson: Yes. That was a very interesting case. It was one of the first--nationwide--breast implant cases, individual breast implant cases. I think, at the time, I believe they got an \$8 million, something in that range, verdict, the plaintiff did. That was the largest, I believe, at the time, verdict on an individual breast implant case.

Ms. Hopkins was a secretary who had had a breast implant, and sometime later came down with some serious connective tissue disorders and felt that they were connected with the breast implant. At the time it was, again, a fascinating learning experience for me. I didn't know the nature of breast implants. It turned out to be little sacs of liquid that were implanted, and the evidence indicated that some of it leaked, and that that was the source of the problem.

The defendants made a very vigorous case and a series of motions arguing that there was no scientific evidence connecting her disorder, this connective tissue problem, with the breast implants. They denied there was leakage, but if there was leakage, it didn't cause any damage. I mean, that was essentially the defense. I felt there was certainly adequate, more than adequate scientific data, the plaintiff's experts, that these did leak, and that the leakage caused the problems. So the jury, being allowed to get that information, came out with, as I said, the largest verdict up until that time.

McGarrigle: Was this case a precursor to some of the class action litigation?

Henderson: Yes, it was, and that's why I--because the class action--see, I think this was one of the early cases. My recollection, at this point, is that there wasn't a sense of, "Hey, there are a lot more out here." So they were bringing them as individual cases then. But I think not long after that they said, "Hey, there must be a lot of these things," and they started filing class action as a more efficient way of doing it, yes.

McGarrigle: Did you remain involved at all in later litigation?

Henderson: No. Well, what happened, and this often happens, I got several other of the cases. But my own reading of the way attorneys read judges--I think when a defendant is brought into Henderson's court--"Isn't Henderson the guy where they had the biggest verdict ever?" They settle [laughs] I think, so I never had another trial. The other cases brought, for whatever reason, including maybe the one I just suggested--this was the only trial I had on a breast implant. All the others that I drew settled.

McGarrigle: I see. Did that verdict stand, the dollar amount stand?

Henderson: Yes, oh, yes. It stood, and they got the money. Yes, there was no reversal. It went to the Supreme Court, in fact, on the issue of the scientific evidence, and it was found that I had ruled correctly, or at least that I hadn't ruled incorrectly, on that issue. That was the main appellate point, that I had let in scientifically inadmissible evidence, that is, the plaintiff's evidence.

McGarrigle: It is interesting to think about both these two cases on the list here, and how much technical, scientific, engineering, and other related expertise is required.

Henderson: Yes, it is. And it's challenging. But it's interesting, I enjoy it. As I said, I understood, I think, what was given me in *Hopkins* adequately--I did realize at a point in the *Sierra Club* that I was in over my head, and I think that's one of the things judges have to do, you have to know when you need help. I think I recognized it there, and I got the help.

McGarrigle: *Asthmus v. Calderon*.

Henderson: Yes, that's very interesting case. *Asthmus* is a death case that I still have on my roster. During the period of this case, and I don't remember the year, some legislation was passed during the Bush era with the acronym AEDEPA [Antiterrorism and Effective Death Penalty Act], I think it's AEDEPA [laughs], but you had better check that. It stands for Effective Death Penalty and Enforcement Act, or something like that. The purpose of it, conservatives felt that--and I tended to agree on some of this--that there is just too long a period processing a death penalty case, and perhaps too expensive. I have four death penalty cases now, and I think the oldest one is '89. They just sort of go, and go, and this was a move to speed up the process.

A provision of AEDEPA was that if states met certain criteria, they could get their death penalty cases on a fast track. This was a whole implementation set up, that you could speed this up and there would also be federal funds to help in that process. So the case was brought challenging whether California was eligible under this criteria. I found that it wasn't, that they didn't meet the federal criteria set forth in AEDEPA on one important prong of it, because California had a very woeful shortage of attorneys representing those on death row.

One of the criteria said that you had to have adequate representation for the people on death row, and my view--and I was sustained on appeal, it went to the Supreme Court--California was woefully inadequate on this. It was interesting, one of the reasons I thought--one of the reasons it was clear to me, was that California had set up standards where the pay was woefully inadequate for attorneys. I don't remember what it was at the time, but if you volunteered to do a death penalty case, you almost had to be a volunteer, the pay was just not something you could make a living on. You almost had to have firms volunteer, and what you got then was young lawyers at the firm, who wanted to do essentially *pro bono*. And although that pay they got went to the firm, it was nowhere near the billable hours those attorneys--and that's the system they had set up. I don't remember the numbers any longer, but there were hundreds of people on death row who didn't have an attorney, they couldn't find, under this system, people who would volunteer. So I found that California didn't qualify for the fast-tracking. They very, very vigorously disagreed with this and appealed it to the Ninth Circuit and then the Supreme Court. As I said, I was upheld on this, as I think I would have to be. It was clear, unless you redefined what representation is, that they didn't meet that prong. So that was a very important case, certainly in California, for death row prisoners.

McGarrigle: Is the death penalty something that you speak about at all in public?

Henderson: Not really, because you can't speak out. I speak about diversity and the law and all of these kind of things, I'm very open about it, but I try to adhere to the ethical principle that I shouldn't speak out on things that are before me, or things that may come before

me. So I have four death penalty cases, and I feel I shouldn't speak out on what I feel about the death penalty. [tape interruption]

McGarrigle: So I understand there were changes in California following *Asthmus*.

Henderson: Yes, there were. I think--yes, the attorney general implemented, and they sped up--I think the California Supreme Court, starting with Justice [Ronald] George, got together with the state officials and they came up with a program to get representation. I can't tell you that everybody immediately had a lawyer, but they did, in response to this, set up a program to get representation for the people on death row. I think they responded quite dramatically and vigorously to that. Once they gave up the fight in saying, "We already give adequate representation," once the courts didn't support them but supported my view, then they got down to the task of getting representation.

So I think right now you'll hear--those lawyers opposed to the death penalty who are in the trenches, they'll probably still say there's inadequate representation. But I think for purposes of AEDEPA, they are represented now, by and large. There may be some individual people who are new to death row who don't yet have attorneys assigned, but I think there is now a system set up that will get them an attorney in a reasonable period of time.

McGarrigle: When you have a case such as this which goes to appeal at the Ninth Circuit and then on to the Supreme Court, are you following that very carefully?

Henderson: No, I don't follow it at all. I make my best ruling and as often as not I learn about it when I pick up the paper, or perhaps somebody will call me, or one of my ex--one of my clerks, very often, by the time an appellate ruling has come, they are off doing their own job, and sometimes they're interested because they've worked on the case. They'll follow it and they'll get the word early. It's interesting the way they put it, you know, "Judge, we were upheld!" [laughter] And it was we, you know, "We worked on it, Judge," or, "We just got reversed." That will happen on occasion. But they're very interested in it, and we sort of have a running joke with the clerks that I get affirmed, they get reversed. [laughter] I'll hear sometimes from them.

McGarrigle: Well, they clearly are invested in the work that they do.

Henderson: They are, and that's one of the wonderful things about the job. They care very much. They care about justice, they care about their own work, and they care about me. They are aware that reversals are one way my record is looked at. They want me to have a good record, so yes, they do care very much.

McGarrigle: Why don't we talk a little bit about *U.S. v. Federico*?

Henderson: Okay, yes, that probably, there's not a lot to say about it. *U.S. v. Federico* was one of the early tests, very early tests when the sentencing guidelines were implemented, the criminal sentencing guidelines. There were a lot of protests from the defense bar that these guidelines were unconstitutional, for a number of reasons. They intruded, legislative intrusion on the judicial branch--took my, our discretion away in sentencing. We had had a lot of discretion up until then.

The story I tell very often is when I was a new judge I was fairly astounded at the discretion. One example is that the argument you would very often hear--you had someone who had committed five bank robberies, and had pled to three of them as part of a plea bargain. Each carried a maximum of ten years. The argument would go something like this, from the public defender usually, who represented him. "Well, your honor, this is really a drug addict. The reason he robbed the banks was to support his drug habits. Sending him to jail solves nothing. You really ought to put him in a rehab program, give him six months to finish that program, then put him on probation." The prosecutor gets up, "Nonsense, your honor. This is going to be on your--. The next time he robs a bank he is going to have a gun, he is going to kill somebody. You've got to put this guy up. What you ought to do is do ten plus ten plus ten, thirty years." And I could have done either of those, or anything in between. Enormous discretion. Well, the guidelines came along and said, "No, no, no, that's too much discretion. We're going to give you a little window," which is usually six to eight months. "We're going to have a little grid, and we're going to look at things like this guy's previous record, and if it's drugs, how much drugs were involved?"

So anyway, *Federico* said the guidelines were unconstitutional, and interestingly enough, the interesting thing about this case is I'm pretty sure that when I found that the guidelines were constitutional--if I didn't shock the plaintiffs, I surprised them. But it was clear to me that by all the authority that was before me they were constitutional. But I think my ruling was a big disappointment to the criminal defense bar. They expected or at least hoped that I would find they were unconstitutional. I think that's the big story to tell about that particular case.

McGarrigle: I read an interview with you, I think it may have been done through Boalt, where you talked about a case that involved at least one young man from Humboldt County who was growing marijuana--.

Henderson: Oh, yes.

McGarrigle: And the question related to your feelings about the sentencing guidelines.

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Henderson: Yes. I have very strong feelings about the sentencing guidelines. I don't like them. As you know, when I became senior, I got out of the criminal wheel. I no longer take criminal cases. One of the reasons, one of the compelling reasons, was this case. There were two young men from Eureka who were growing marijuana, quite a bit, on a farm property that their family owned, and also on adjacent--it was adjacent to federal forest property. Here were two kids, one was twenty-two, I believe, and one was twenty-four. I think one had had a previous possession of a small amount of marijuana or something like that, I don't remember those details. They pled guilty after all the legal maneuvering. And under the sentencing guidelines, I had to send them to jail for a mandatory minimum--I had no choice--of ten years each. It broke my heart, I just have to say that. Their families were there, and I just thought it was draconian, I thought it was much too severe for what had happened.

That and a series of--another one that was similar, there are many deficiencies in the sentencing guidelines, another is that if you're in a drug conspiracy--. I had a case of a

fellow who was asked to take an ice chest in an apartment complex, “Would you take this ice chest up from the first floor up to the third floor?” Well, the ice chest was full of drugs. It’s clear to me that he knew something was in there, but they gave him twenty bucks or something, he said, “What the hell, twenty bucks to take this thing up there.” Well, he was a part of a conspiracy. I ended up, because of the quantity of drugs, giving him ten years for that. Under the scheme of the sentencing guidelines, cooperation is one of the things you take into account. So what I got there was the guys at the head of this organization cooperating, turning each other in, getting less time than the guy who got twenty bucks. I mean, it was just perverse. I just decided I did not want to participate in that, so I no longer handle criminal cases. I wish I could remember, I just read something within the week of another judge who was commenting on this and says he had gotten out of the criminal draw because of his feelings about the unfairness of the guidelines.

McGarrigle: Are the guidelines here to stay, as far as we know, or are there challenges?

Henderson: There are challenges, but also there is a lot of dissatisfaction such as I have just expressed. What I hear from people is that they will eventually, when the right climate is out there, be changed or done away with, but they’ve been here for a good while now. I don’t remember when *Federico* came up, that was quite a few years ago that I made that ruling, so they’ve been here certainly ten or more years, whatever that has been [1988].

McGarrigle: This is probably a very naive question, but the death penalty cases are not criminal cases? I mean, how does that differ?

Henderson: They’re habeas cases, and that’s a different category.

McGarrigle: I see, okay.

Henderson: Yes, that’s not criminal.

McGarrigle: Okay.

Henderson: They’re categorized under habeas corpus cases, yes.

McGarrigle: Okay. Before we move on, I wanted to ask you generally if you would like to comment on your--I don’t know if there’s an approach or a philosophy different judges have in terms of juries. You know, many of these cases involve juries, I know they don’t all.

Henderson: Yes, I can tell you my general view of juries. I’m a big believer in the jury system. I am constantly pleasantly surprised at the work of the jury. By and large they are very conscientious citizens who give up a lot of time from their jobs and their family to do this service. But more importantly, I’ve concluded that in some way, if you get a jury with a retired executive from PG&E and a retired executive from Bank of America, and a housewife, a carpenter, you know, a bus driver, you get this group together, and we were talking earlier about complex cases that I’ve had to do, some of the cases are complex that we give now, and I’ve concluded that in some way that diverse group--some really know math, some know science--they put it together, and they figure it out.

And they really, 90-something percent of the time, just--because I talk to each jury after the trial, and we--they zero right in on what the case is about.

One way to tell it is that most judges, I think all judges let them ask questions when they go back to deliberate, and I can tell when a jury is right on it. Sometimes that very afternoon or the next morning I start getting the questions, and boy, that was the question to ask. So I am a big believer in juries. I think they're right, I've seen a few jurors that I've disagreed with. And then that's a disagreement, which is not to say I'm right, but I think they missed the point.

I think some juries, maybe because of the advocacy, the effective advocacy, or the ineffective advocacy, sort of misunderstand the burden of proof and think beyond a reasonable doubt means something that it doesn't, when it is pretty clear to me that the case has been proved. I think they have let off a few people that I probably would have found guilty, of meeting the burden. But that's the way our system works, I even believe that. Our system says--and you've probably heard it in the law school or in civics, that our system says it's better that one guilty person or ten guilty people go free than that one innocent person goes to jail. And I think that's sort of, I believe in that concept. So I have seen, I think, a few guilty people go free over the years. But I am a big believer in a jury system.

One thing that really gave me an appreciation of our jury system in a way I wouldn't have expected--you know, I told you I have taken these overseas trips with Steve Mayo. Maybe I've already even told you this, but we went to Bolivia. One of the things was exploring a jury system there. And I had never fully thought this through--we found out that certainly Bolivia could not implement a jury system like ours, because they had a large Indian population that was uneducated, and two things: one, the Indians themselves, we were told could not imagine in their role in the society being brought into court and playing that role, making judgments about people of another class--in the country the class system didn't allow that. But also the education, just in that, they couldn't. It gave me a new insight into our system, and our society.

I think we're not a classless society, I've never believed that. But I've been further impressed by the people who do--and in our educational system, and in the people who do come into my court and get selected for a jury and assume that role--and assume that it's a role for them to play. It gave me some greater appreciation of what we do here.

McGarrigle: You certainly see, probably more than any other professional I can think of, a wide range of people in different contexts on a daily basis.

Henderson: Yes. You really do, you really do. And most of them are fully willing to assume that role. Now, you get a lot of people who really don't want to sit on the jury. Some are bolder than others. Some come in and say outrageous things that they've been told, "If you say this, they'll kick you off." And you can spot them pretty easily, they aren't very sophisticated.

I remember [laughs] one woman, she didn't want it, and every time I'd ask a question, you know, for example, "Is there anyone who knows a policeman?" If there's a policeman involved, I want to see what the relationship is--her hand was up, and it turned out, "Well, I don't really know a policeman, but one walked by my house."

McGarrigle: [laughs]

Henderson: You know, and I said, "Okay," and went through this. And I would ask something--. And finally I saw it, and on the break I said, "Come in," I said, "Watch this, when I go back in," I said, "Okay, now is there anyone who scuba dives?" [laughter] And her hand went up. [laughter] She didn't know what she was doing, but she was going to try. And she talked about scuba diving. So there are those people who don't want to serve on the jury. I eventually dismissed her. But a lot of people will make a gentle stab at it and claim a hardship. I first look for people who have a legitimate hardship, and I'll get a lot of people who will come up and state a hardship that really isn't a hardship. But that's the most they'll push it. Once I say, "Well, that's not a hardship, that's a part of your civic duty to be a juror," they'll go back, and if they're selected, they'll do it, and they'll do a very good job.

I take the position--it's like the army. I hated the army. I didn't want to serve in the army, it interrupted my education. I learned, though, during the army that the army, if you just protest--I didn't do that--but if you protest enough, you won't go in the army because they say, "Well, who wants this kind of person?" You know, I mean, "If they don't want to get in that badly, they're not going to be a good soldier." And it's the same with a juror. If someone protests, the scuba diving woman, you don't want her on the jury. In any event, I'll let them go, just because you don't want jurors like that. But that's rare that you get someone who will work that hard and really doesn't want to do it and if they have to do it, they're going to be a bad juror. We're lucky in that sense, I think, that most of our citizens will treat the responsibility seriously and do a good job. You can see it in their eyes. I always like to see the jurors when they come back in and say, "Have you reached a verdict?" There's a certain look they have, "Yes, we have, and it's really been hard. We've really worked, and we've done the best we can." That's gratifying.

McGarrigle: I would imagine. How interesting.

Henderson: Yes, it is, yes.

McGarrigle: I talked to Mort Cohen again about *Coalition For Economic Equity*. I got him on the phone a couple of weeks ago.

Henderson: Oh, yes. Good.

McGarrigle: I said, "You know, I've reread it, and I want to talk about it, but I've been putting it off, and--"

Henderson: [laughter] Yes.

McGarrigle: You know, it was a good conversation with him.

One of the things I noted in looking at the written order again--it is the very short time frame between the time Prop. 209 was enacted, November 5, 1996, and the time your order was issued, just a few weeks later on December 23rd, just before Christmas.

Henderson: It was, yes. That, the reason for that--I treated this case seriously, and I remember it was--I can't remember whether if it was late in the evening on the 22nd or the 23rd, I wanted to finish this very important motion. I had my whole staff, that's when I was chief judge so I had three law clerks instead of two that most judges have. All three of us worked on it, we dropped everything in the office. We worked on this from early morning until late at night.

One of the clerks, Reed Colfax, he's the clerk I probably have mentioned, he was home schooled and had never gone to a school until he went to Yale. He was raised on a farm up north. His job, each year, was to go home for Christmas and kill--I forget now, I want to say a goat--kill one of the animals, and get it ready for their Christmas dinner. So I had promised Reed that we would finish this in time for him to drive up to wherever it was up north. So that night, the night of the 23rd, or the last night before he could go, we finished it and went over it and we had been polishing it up. I could have very easily sat on it, done it after Christmas. But I thought it was an important decision, and I wanted to get it out before Christmas, and go into the holidays with that behind me. So that's the major reason for the short time frame.

Had I known--it's very interesting--had I known how it would come out, I well may have done something differently. Because as it turned out there was a special panel, you probably know that, that the defendants went to, that sat for the month and that was the panel that reversed me. It wasn't the court. Had I known that, I would have held it up and issued it in January, which would have had a different panel, a less conservative panel. But, that was--we'd better talk about whether you'll include that, but that's the reality, that it was this panel of three of the most conservative judges on the court, that the appellate lawyer, very wily, they knew how the system works, they were waiting to take it to them, and not take it to the court as a whole. I didn't know that because I didn't have a particular agenda. I was trying to get out the ruling. But anyway, that was an important dynamic in that case.

But anyway, that's the reason for such a short thing. I moved it along fast because I thought it was an important issue and it was injunctive relief that was being asked which moves on a much faster track. And I thought that once I issued these rulings, got the injunctive order enforced, we would then go into discovery. I fully anticipated discovery and looking at the records, affirmative action records, getting a fuller record on which to review what I had done. That never happened.

McGarrigle: I have to tell you, I said something that made Mort laugh. I don't know if he'll remember, but I said, "You know, Mort, I don't think a lot of the people who have criticized this opinion have read it."

Henderson: Yes, no. They haven't.

McGarrigle: He laughed. I know I sound naive, but am I right?

Henderson: Oh, absolutely.

McGarrigle: I thought so.

Henderson: Absolutely. And I think many of the reporters who have criticized it haven't read it. In fact, I'll tell you, one of the more gratifying things, Bill Cahill, I don't know if you've--

McGarrigle: Yes.

Henderson: A very, very smart guy. He called me right near the start of it, and I think he had been convinced that this was a cockamamie thing, a liberal judge just trying to throw his body into the thing and stop Prop. 209. He said, "Yes, I read that over the weekend, that's really a good, well-thought-out decision!" [laughs] I still remember that, I was very flattered, because Bill knows, he knows a good decision.

But that's true. I think most people didn't read it. The press, I thought, took a very simplistic view. "How can a proposition which simply says, 'Nobody can discriminate against anybody,' be unconstitutional?" People just never got beyond that, and went off and said, "Only some black, liberal judge with a civil rights background could come up with some concocted reason for finding it." I think most of the public never got beyond that.

McGarrigle: I wonder if you could describe somewhat the impact at the time on you, and then subsequently as well?

Henderson: Yes. Well, I have to say, [laughs] I think I probably used the word naive before. I feel I was very naive about the emotional impact of affirmative action. I knew it was an issue in our society, I had no concept that this was such an emotional issue until this decision. Again, I thought--I knew it was going to be controversial, I had no question about that, but I thought it would take the same course as anything else I did that was controversial. We talked about some of these, you know, the clean air thing. I thought that was controversial. *Hopkins* was controversial. I thought it would take that route, that people wouldn't like it, but they would look at it, it would go through the usual process, another court would rule on it, and it would run its course. And indeed, what I thought would happen, and I still feel I'm right on this, I thought that my decision stated the law as it existed then. I relied upon--I've forgotten now--a 1982 Supreme Court case, which has never been reversed, that essentially said that a referendum created an unconstitutional hurdle for minorities. I analogized that and I thought that Prop. 209 created an extra hurdle for minorities in the area of affirmative action, and I found that that was unconstitutional. You can differ with that analysis, but I thought it was a legitimate analysis of the law.

What I thought would happen was that depending upon the panel you draw on the Ninth Circuit, which is probably still the most liberal circuit, I might get sustained, I might get reversed, depending on the panel--but probably, because I thought I had a pretty tight, careful analysis, I would get sustained, and that when it got to the Supreme Court, I would be reversed. I fully expected that. But I wouldn't be reversed for my analysis, that the Supreme Court would simply reverse themselves, and say this 1982 case--and I don't even remember the name--is no longer the law. That's what I expected to happen. So I was shocked at the course it took. It never even got to the Ninth Circuit as such. It got to this little emergency writ panel that was set up that the defendants went to. Then it just went into the public dialogue, and I was remembered as this rogue judge who made this ruling. So I was sort of surprised and very much disappointed at the course of

it because I did want the full dialogue. I thought it deserved the full dialogue, which it never got.

McGarrigle: The reason for that emergency panel having been assembled, did that relate to something other than needing a decision?

Henderson: No. What happens is--we have it on our court. If you--like today, today is Friday, I'm not in court. If somebody has a case in front of me, and they want me, I'm here at home. And they go to court and say, "I need an emergency ruling on this case," there is a judge there on general duty that they can go to to handle it. I didn't even know this, and appellate courts have the same system. If you can't get to the whole court, there is a three-judge--they work in threes, we work in ones--there is a panel ready to handle emergencies. And that's what they went to. I've heard many debates about whether that was a proper use of that panel. My own view is it wasn't, that this was a sidetracking of the panel, of the system.

But you know, what I also heard was that in some other case that process was used to the consternation of some conservative judges, so that there wasn't a lot of room for people to say, "Hey, you can't do this." This apparently had been done before, raising the same--a lesser issue, but raising the same question of how can you sidetrack the whole court, the usual system of drawing three judges by going to this panel--this is what I've heard, I've not verified it. But anyway, that is what happened, yes.

McGarrigle: Another thing that struck me was the large number of people who worked on this case on both sides--

Henderson: Yes.

McGarrigle: --and the interests that were represented. I had just listed a few of them. There were different Asian American groups, women, African American, Labor Federation--

Henderson: Yes.

McGarrigle: Dozens of people involved, lawyers, on both sides.

Henderson: Yes. It was a big, and I thought distinguished group of people on both sides. It was a very big issue. I think that some of the people that worked on this case were part of the people who had worked on Prop. 209 itself. I think people who opposed Prop. 209 and then lost the vote carried on. In fact, I'm convinced of this, because if you look at the timing of the case, the suit was filed, I think, within days of the election. I can't remember how many, but you know, a matter of several days, or two or three days after the election in which Prop. 209 was passed, a suit was filed. So clearly they were ready, I think, because the polls I think showed that 209 was going to pass. And I think they got this litigation coalition together. As you said, a very impressive--

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McGarrigle: -- public interest groups--

Henderson: Yes, he was with the ACLU [American Civil Liberties Union] and he worked on this case, he told me that. And I knew that, I think I saw him in court in this case. But anyway, yes, it was a very good statewide, I think even maybe nationwide, coalition of lawyers who got together and in fact, I remember names so poorly, I was over at Hastings sometime ago at a conference or something, and one of the professors came up and said that he had conceived of the theory around the 1982 case. They had faculty people. He just indicated, "Hey, did you know that I'm the one who wrote the memo that they accepted as the legal theory to go forward on?" So, there were a lot of people involved in that.

McGarrigle: It came to you--is this correct that it was originally assigned to Judge Walker and it came to you on a related case motion?

Henderson: That's correct. It was assigned to Judge Walker, and I got a related case motion saying that this case was related to--I can't remember the case. I had a case against the City and County of San Francisco, attacking their affirmative action program. It was a contractor, I don't remember, who had not gotten a construction contract. I was working on that case and saying it was related. I had a question about it. One of the early questions was, 209 seemed to be such a much bigger case. I thought it was related under our guidelines, which--related case guidelines say that to relate the case has to be substantially the same parties, or property, or--these are "ors"--or question of law. It was clearly the same question of law, in my mind. And given one of those events, that it's likely undue burden, some duplication of labor and expense, for a new judge to take it and learn that body of law--or that you might get conflicting results, that the new judge may rule differently. You want a consistency of law. I thought it clearly was related under our standard. My bigger question was--sometimes even though you meet those, there are other considerations--one that I had was whether somehow the San Francisco County, City and County case, was not a tail wagging the 209 dog. That was a worry, you know, was this, even though it was related, does this--209 is so big and different.

And there was a lot of maneuvering that never reached the press, which shows, it confirmed to me, that it was indeed related. The people in the--I wish I could remember the case, the construction case--actually right after 209 was filed, and the related case thing was filed, they offered, or they tried to dismiss a portion of the case before me that made it related, so that it was no longer in existence, and that told me even more that it was in fact related. So all of this was part of the story. Because I know, I got severely criticized for relating it. I think a lot of people thought I snatched the case away from Judge Walker. Interestingly enough, I think because of the way judges operate, I've never talked to Vaughn about this. I don't know his feelings, whether he thought I snatched it, it's just something that has never come up. But anyway, all of these things, as I sit here now, I believe the case was related, so I related it. I think that, you know, I've been criticized over this for the relation. But again, I think it's because people don't understand. A lot of people don't even know there is a related case rule.

Rich Wieking, I believe on his own--Rich Wieking is our court clerk--actually, I saw an article in one of the legal newspapers, the *Recorder* or the *Journal* a few days later explaining how the related case rule works, and also giving some statistics which told the public this is not something that happens once a year. We get, I forget, twenty or

thirty related case things a month. And that was in the paper. I don't know how many people read that. But anyway, that's the story on the decision to relate it.

I might add that I knew that was going to be controversial, but I also felt that one of the reasons we're given lifetime tenure is to do what you think is right and you're not going to lose your job for it. So that was part of my calculation. You take the heat when you do controversial things, and that was part of the calculation in the relation.

McGarrigle: The fact that affirmative action was such an explosive--and so much of a lightning rod--issue makes this case different than even many of your other cases, which have been highly controversial as well.

Henderson: Absolutely, yes.

McGarrigle: And from what I understand, the nature of the attacks and the degree to which they were personal is striking, disturbing, all kinds of other things.

Henderson: It is. It is. It's striking, just because, I said I was astounded. I believe that--very shortly after the ruling, one of the talk show people, some right-wing guy, what's--Savage is his name, Mike Savage, now that I--had a rally right on the front of the federal courthouse. I can remember down there, the whole thing was full of people, simply denouncing me. And again, I remember being shocked at that, "Where did this come from, where did these people come from?" But there was a massive group of people, I'm assuming conservative or whatever, who thought I was the devil incarnate, "how dare I could do this." All of that surprised me. I just had no idea there was the emotion out there.

Another interesting insight was a chance--I read letters to the editor regularly now. I had never really done it in a regular way, but I started looking at the papers, the *Chron* and the legal newspapers, and there was clear to me a very organized, a concerted letter-writing campaign by the supporters of 209 or my enemies or whoever these people were, that was impressive in a sense. I mean, it was just a machine that got into gear on the public relations front. It was quite astounding to see.

McGarrigle: Well, that's interesting, in light of something that we talked about in the past, which is where the civil rights movement is today, and the organization that's occurred on the conservative end of the spectrum.

Henderson: Yes, oh, yes. Much more organized. I think much more tuned into the electronic, the computer age and networks and web sites. I saw it for the first time here, that they really communicated with each other. You could see the letters, there was a theme to them, you know, and they all got down and--I think that generally letters to the editor reflect in some way what they're getting. You know, they're saying, "Hey, we got 500 letters on--so we have to print, represent this in our letters." And they were getting just bombarded, and they were displaying a sample of them, and all of them said, if not "Kill Henderson," [laughs], you know, "What an awful person he is." So that was insightful.

I eventually--one of your questions--I stopped reading it because it was kind of hurtful, you know, and frustrating to say, "Gee, I know this ain't the way it is," but that's certainly what was getting sent out to the public. So I eventually, very eventually, I didn't read it for long, just stopped reading the papers whenever I saw 209 because I

knew it was certainly not going to give the view that I thought was what we had worked late in the night on December 23rd put out, so it just wasn't satisfying to read the discussion about it in the papers.

Also, I got--and I guess Erma can tell you this--I got a lot of hate mail, a lot of mail, hate mail and mail threatening my life. And you never know how serious to take this, but certainly the Marshals' Office and the FBI took it seriously. I remember that when it was particularly direct or specific, Erma had little white gloves that she opened the mail, in case you needed fingerprints, you didn't want to smudge it. She would call, and I would say--I've forgotten now, she could tell you, but it seemed like maybe once a week someone from the FBI office would be down, and they had their little white gloves, and they would get a packet of letters that seemed to be particularly threatening and specific. They would do whatever they did with it, check it out, investigate the people, but much of it didn't have a return address. When it did, I think they would follow up in some way.

I also was being apprised, I can't remember whether it was the Marshals' Office or the FBI, there was some hate group, organized group, that operated out of Nevada, that they were keeping an eye on because one of their informants who infiltrated that group had told them that I was on a hit list with either four or five other judges around the country, so they were watching that. Nothing ever developed such that they had to specifically protect me, I think. They concluded that it was talk, that the group didn't have the resources or the will, perhaps, to follow up on it but that they would talk about it and actually had started some plans but never carried out those plans.

McGarrigle: Did the people from the FBI have advice for you specifically in terms of safety?

Henderson: Oh, they did. Yes, they had advice that I should--and I did it--that when I come home here at night, I ought not just drive in the driveway, I ought to drive down the street, look at cars and see if there is anyone sitting in a car that I don't recognize. I learned to do that. I would come down the street, and look and go down and circle the block and sometimes come back and do it this way, just for double safety, see if I missed anybody. Just little things like that, unusual activity, tell the neighbors, which I did, to do the same.

My neighbors were wonderful. Dana next door would call, or I'd get a message, "Well, I don't know if this means anything, but I saw a guy sitting out there--" And they were very good. This is a good neighborhood for that sort of a--people who are very active, there's always a campaign where we're getting water that we're buying by the large bulk in case there's a disaster--so it's a very good neighborhood for people getting together and working. So I felt some comfort from that, that the neighbors were also keeping an eye out.

McGarrigle: Was this in any way some kind of a throwback to some of your other experiences with danger in South Africa or in the American South?

Henderson: Yes. It was, in the sense of--yes, it reminded me of some of the same concerns. The first thing it reminded me of, as we've said, that I was the first black to work for the Civil Rights Division. I remember some of the training I got there, less training than safety things, that I should look out for myself in certain ways, be alert.

I think I told you the story of James Baldwin, did I?

McGarrigle: Yes.

Henderson: Well, that was part of--you know, when we were driving back to Birmingham from Selma I used some of that training, that you never let a car drive up--or if a car is driving up to pass you, especially on a lonely road, be aware, because that may be the person who will pull up and shoot a bullet into your head. So you know, just basics--not basics, but things like that.

So I thought of that in this context, you know, "Gee, I've got to do some of those same things. I've got to watch out for people I don't recognize," which is part of what you did back there. In particular it was much easier then because generally when you're in Birmingham or Selma, you watched out for white people. There was an assumption it wasn't going to be a black who was going to shoot me or bomb me. I used some of that same thing in terms of my awareness here. There was a sort of a *déjà vu*.

McGarrigle: Yes. Following the appellate decision, did you experience a change in your relations in the African American community? Was there a reaction?

Henderson: Well, there was, and I think that's worth talking about. Maybe we've talked about this. I have, unlike two people I admire very much--Al Broussard, who was on the California Supreme Court, and Wiley Manuel--and the reason I remember that is I was just over yesterday sitting in court in Oakland that is named after Wiley Manuel, who was the first black supreme court justice in California--who were heroes, rightly so, in the black community--and they were very active in the black bar, and went to a lot of activities in Alameda County. Unlike them, I don't do that. I haven't done that over the years. And so, I haven't been as close to the black legal community. Although I think my commitment is the same, I just don't do the same things socially. So, when this came along, I think it went a long way toward whatever they had been looking for from me in the years. I don't think I'm bragging, or saying that all of a sudden I became very popular, and a hero, maybe even, with them. I got a number of awards, and I got all kinds of cards and letters. And I would see them, and—"My man!" And I think all of a sudden I got some legitimacy that maybe I didn't have.

I think I had always tried to present myself as being liberal and involved, but not an activist in a sense that--well, activist isn't the right word, I don't know what the right word is, but that I could be counted on to do the right thing--but just as in *Federico*, I'm not knee jerk, and I'm going to call the law as I see it. And I'm not going to--I'm having trouble articulating, but let me approach it from another point of view. One of the complaints I've had over the years is that the demand on a minority judge, a black judge, is humongous from the minority community. You're called on to do things and--that I've found difficult sometimes—"Go to do this, or make this statement." I'm constantly getting calls, "We want you to sign this petition." [laughs] "I can't do that!" And the demands, I think, are to push as far as you can to do the things you're being asked, and I've always resisted that. I think over the years they've said, "Well, he doesn't come through, he won't do these things." It's not because I didn't believe in them, but because I thought I could not do them as a judge. So I think that people felt lukewarm about me and my commitment, from the black community. Well anyway, I

think 209 said, "Well, he's one of us," and I think that's what the black community--I saw a marked change that I think exists to this day.

McGarrigle: I was thinking about a bunch of things, one is it was just Martin Luther King's birthday. I told you that my first grader is really understanding and intuiting the significance of King's life, and she even knows parts of his speeches. So that's just something in the last week that we've celebrated, his birthday, in the school and with the kids. I had on the outline, after Martin Luther King, Jr.'s birthday, moral authority. I wondered if there is a way in which you'd like to comment on that.

Henderson: Yes. Let me try that. You know, I think that I have said that one of the things that bothers me now, I feel that we are still looking for a leader of the dimension of Martin Luther King and that we don't really have it for reasons that I don't understand. There was just an article recently, maybe it was in connection with King's birthday, essentially attacking Jesse Jackson as that leader, and I don't remember who did the attack. But I noted that they depicted him as someone who one, is an adulterer, and two, what's the word--oh, strong-arms corporate America to get contributions for his organization. And it was in a way that was designed to diminish him as a black leader, and I thought that was a regret. Although we know now that Martin Luther King was probably an adulterer too, but still he had huge moral authority in those days. I think those that knew about any adultery, it wasn't in the press at the time, it was a little cause of J. Edgar Hoover tapping his phone. But I thought Martin had huge moral authority that galvanized the country as a whole, and essentially demonstrated the evilness of segregation and racism in a way that we haven't had since.

Now, I am just sort of describing it. I don't have any answers, and I'm not sure anyone does. But I think we sorely lack the leader. I'm a fan of Jesse Jackson, but I don't think he represents that. And it may be the times. It may be that no one can do it. It may, I think it may be, even now that I think about it fully, it may be the dilemma of Prop. 209. Because I know I've said in the past, that after blacks were given the right to ride in the front of the bus, the different things that King was fighting about the right to vote, the right to drink out of any fountain they wanted, and the more obvious discriminations--we got to the really hard things that we talked about earlier, the right to be a partner at the law firm, which had less to do with whether they had access to these invisible kinds of networks that worked for whites, that these are the hard problems now. And I think we haven't found ways to deal with them.

I don't even think we've answered the dilemma of affirmative action. You know, I think it's simplistic, the conservatives have simply turned it on its head and called it reverse discrimination. Well, it's much more complex than that. We have many, many people talking about reverse discrimination that they've experienced--which is not--they haven't discriminated--if you talk to the people who imagine that their child didn't get into the University of California because it's going to black kids, that's fantasy. That isn't happening in the way it's been represented.

But what is happening, I don't know, and I think that we're still trying to work out this next level of unfairness, I'll call it--I won't call it discrimination--that is existent in our society. I don't have the answers. I think if someone gave me a grant to really spend my time on it, I could probably come up with some of the problems, but I don't think I have the wherewithal to come up with the answers.

McGarrigle: The first step would be identifying the problem.

Henderson: The first step would be identifying the problem. Then here's the thing that Martin Luther King did so brilliantly then, using the moral authority, he was brilliant at articulating the problem so that you understood it. I don't think we're getting an articulation now of the present-day problems. At least I don't hear them.

And you know, let's give credit to someone else who did a wonderful job of that in a different way, Malcolm X. I think Malcolm X--I heard him speak, I think I may have mentioned, years ago when I was a student at Cal--I thought he was brilliant at articulating white racism and the way it affected the black man in a way that I think empowered Martin Luther King, because Malcolm X scared people. He would say, "Here's the problem, here's the racism, and here's what I think we ought to do. I think we ought to defend ourselves in any way necessary." That was an implied threat, "We ought to get guns," and then I think it empowered Martin Luther King, who was able to say--essentially identifying the same problem--say, "We can win this by love, and by turning the other cheek, and by nonviolence," which is a much more palatable solution for the white majority. I think in some way there was a symbiotic relationship, they worked hand in hand, because I thought Malcolm X empowered the nonviolence movement by making that a more palatable alternative to what he seemed to be saying, at least in his early days.

I just saw the movie *Ali* a couple of weeks ago, I was reminded that Malcolm went through a transformation, he went to Mecca, and then learned some very important things that he may not have known. One is that one of his favorite phrases, "the white, blue-eyed devil," that there were many Muslims who were white and blue-eyed, and that it wasn't as simplistic as he saw the race problem, and he came back with some insight, which greatly modified his view. Unfortunately, he was assassinated while he was in that transformation.

This might be going far afield of your oral history--

McGarrigle: No, it isn't.

[Interview 14: February 15, 2002] ##

McGarrigle: I had a chance to speak with Bill Gould last month at Stanford. He had several things that he wanted me to bring up with you. One is, he still remembers very vividly the swearing-in ceremony that you performed for him in March of '94 when he became chairman of the National Labor Relations Board [NLRB]. Maybe we should start there.

Henderson: Okay, I remember it very vividly too. It was a really wonderful event. I was pleased and honored when Bill called me to do the swearing in. We did it in my--no, we did it in the ceremonial courtroom, actually, instead of my courtroom, because the ceremonial courtroom is bigger and is designed for such events. He didn't know what it should be like, and so he let me design it. I did it pretty much like we did court swearing in, when we have a new judge, or a new magistrate judge, we have a ceremony that we've done over the years. So I patterned Bill's after that.

It was--I think the thing that I remember was that if you wanted to see the elite of labor law in the country, really, they were there--labor-side labor law. The regional director of the NLRB was there, every labor lawyer of note was there. I was just looking through the file, and I saw the guest list, it was really impressive. Paul Brest, the dean of Stanford, spoke, and people like that spoke. Then Bill spoke and told of how he planned to approach the job. Then I swore him in, and it was over. It was relatively short, I think that the event took maybe forty-five minutes, a little less than an hour. But it was a wonderful, warming event, and I was looking at the file, and there was a picture of me and Bill hugging after the event. It was a very, very special event. I remember it too.

McGarrigle: Do you recall some of the names of some of the other labor lawyers who were either there or who spoke?

Henderson: Oh, gosh. You know, at this point--one named Duane Beeson, might be Paul Thayer--my problem is that they're named partners--

McGarrigle: [laughs]

Henderson: --so I'm thinking of Thayer & Beeson, and I can think of those names without knowing their first names. They appear before me all the time, but I'm not sure I know their first names other than Mr. Thayer or Mr. Beeson. Those are two names that just popped to mind.

McGarrigle: They are "counsel."

Henderson: They're "counsel," exactly.

McGarrigle: [laughs]

Henderson: To me they were counsel, to him they were friends and representatives of labor unions.

McGarrigle: The two of you in the seventies had worked together as co-counsel on a discrimination case.

Henderson: Oh, we did. And actually, I really learned about Title VII law from Bill. It--what's the word--it exalts my association with him to say we were co-counsel. He was counsel, I worked with him. It was a big trucking case, a nationwide trucking case. But Bill was essentially my mentor there. I learned about it. He just--he's a marvel, in the sense that he's got all the cases right on the top of his head, and he knows the area. He had previously, his famous case, the Detroit Edison case--it was off-cited, and Bill was the counsel in that case against the Detroit Edison Company when he was at Wayne State. So when he came to Stanford I knew about this. I said, "Boy, what a great job on that. You made an important point of law." I had told him, "I'd like to work with you if you do any of that while you're at Stanford." So this case came along, and we worked together on it.

Again, as before, the case didn't go to trial, we settled it after doing all the data, and doing all the research. I did a lot of the grunt work, and I was willing to do it, to learn from Bill. But it was a great experience, to learn from a master. And I guess he doesn't do that anymore. Bill has so many projects, I guess he probably can't squeeze in another big employment case, like he used to in those days.

McGarrigle: He's been at the law school a long time, then.

Henderson: Yes. He came to the law school early in my career, in the early seventies, yes. So probably close to thirty years. He was the first black tenured faculty at the law school, I recall that very well. You've seen him, which is--I'll tell you a story, which probably doesn't fit in my history, so stop me if I've told you--

McGarrigle: Do you want me to turn this off?

Henderson: No, you can put it on.

McGarrigle: I haven't met him, I only spoke to him on the phone.

Henderson: Oh, okay, I see, I thought that--he doesn't look black, you know, he can pass, if he came into a room, you wouldn't--. And Harry Bremond was--the word was around Stanford, they had a new black faculty member, and so Harry asked me if I would get him to come over to a luncheon that Harry was going to give and invite the black doctors and people, with a thing he was going to do but also introduce Bill. So he had little tables around that held about six people, I think, around his living room. He lived in Atherton in a big house.

So there was this doctor who was talking, and he was sort of a loudmouth, and he was talking about race. And Bill, who has a head for figures, would say, "Well, gee, that's not quite right. It think it's 33 percent of blacks," and da-da-da-da. And the guy would say, and then he'd start again, and Bill would say, "Well, actually, there's a study about--" [laughter] And the guy, "Huh?" You know, and was just hating Bill. Finally, the guy said, "Well, you just have to be black to understand." And Bill said, "I have one more bit of information for you." [laughter] I was just so--the guy shut up for the rest of the thing after that. But, the guy didn't know Bill was black, and he was trying to tone him down by saying, "You're not black, shut up."

McGarrigle: Yes, interesting.

Henderson: But anyway, that was--[laughs]

McGarrigle: That's really--you know, points out some of the difficulty and absurdity about the whole definition around race.

Henderson: Absolutely, yes, yes, it does. It is. There's a lot of absurdity about it. Well, you know, whom was it, W.E.B. Du Bois or one of those, who talked about what, the "fatal drop of blood," you know, which is the theory, if you have one drop of black blood, you're black in this country, which is pretty ridiculous in some sense, certainly in any scientific sense.

McGarrigle: Was that--that must have been significant news at Stanford, then, when Bill Gould was appointed the first black tenured faculty.

Henderson: It was, oh, yes, it was. It was big news. I guess as all firsts are, it was big news. And he has been an impact, you know, a role model for blacks. He has--not just blacks, but people, he has lured a lot of good people into--lured is probably not the right word--but drawn a lot of people into labor law then practicing in that area. And he has been a big help to one person, and I noticed his name on the outline, was Gary Williams, who was a student of his, and decided he wanted to go into teaching. Bill just went to extraordinary ends to help him. He's now a very distinguished professor at Loyola Law School down in L.A. Bill has been a big--and everything you want, when you say, "We want diversity," it will mean something to minority students--he's done all of that, everything you can hope for by getting some racial diversity at Stanford.

McGarrigle: He also mentioned Bill--am I pronouncing it correctly, Bill Keogh?

Henderson: Bill Keogh, yes, who just died about a month ago, yes. Bill was a good friend. He was the dean of admissions at Stanford during my time. Bill--I may have told this story to you about Bill in a different context, did I tell you the Eldridge Cleaver story?

McGarrigle: Yes.

Henderson: That was Bill Keogh. Bill eventually left Stanford, was a very, very fine lawyer, and practiced up until his death. But Bill was a big supporter--as I said, he was the dean of admissions, and I ran the special minority admissions program, but of course that was under Bill--but Bill gave me--I couldn't have asked for more support in terms of the decisions I made, in terms of the financial support I got, in terms of the insights and experience he lent me.

McGarrigle: Bill Gould--well, among other things he mentioned a photograph of you in your baseball uniform--

Henderson: [laughs]

McGarrigle: --and he said [laughs] I should ask you about it, so I'm going to ask you about that [laughter], and then I have another question.

Henderson: Yes. I guess there's a photograph, when I played at Cal. I think I used to keep a photograph someplace there of me swinging at a ball, I was probably striking out or

something. But he was impressed by it because you know Bill is a huge baseball fan. He's a Boston Red Sox fan and in fact is writing a book, he's such a busy guy, he's writing a book about being a Boston Red Sox fan.

McGarrigle: Oh, how interesting!

Henderson: So when he saw this picture, in fact, you know, when I think about it, that may be one of the bonding things we had, that we both loved baseball. I don't think he does it now, we've both gotten older, but he used to go out, he has a glove there, he would go out on the baseball field where the Stanford team plays and hit balls, and have someone pitch to him, and hit. We did that a couple of times. So that was sort of a bonding experience. But he was very impressed by--you know, I think what it was, I was sliding into a base, that was the baseball picture, and he liked what he saw, a "fierce look" in my eye of, you know, really sliding into--

But anyway, yes, that was--yes.

McGarrigle: Okay. Well, he hasn't forgotten.

Henderson: He hasn't forgotten--

McGarrigle: [laughs]

Henderson: --he hasn't forgotten.

McGarrigle: He wanted to know, and we've spoken about this in different ways, about--in terms of writing--but he wanted to know how you prepare for a ceremonial event. It stayed with him in such a strong way, the amount of meaning that you brought to the event, and he wanted me to ask you to discuss your preparation for such an event.

Henderson: Okay. Well, for this one, again, I should say that I'm glad he felt that way. I probably put more time into his than I might have. For example, when the new head of GSA, General Services Administration, came to San Francisco, I swore him in, I did a ceremony, and other agencies, and I--[laughs] I don't know if I should say this, I don't think I put as much time into theirs as I did for Bill. But for Bill, I knew him, and I worked very hard, and tried to say some meaningful things. I did research so that I was able to comment on things that I knew would be meaningful to him, and meaningful to the audience, and meaningful to people who were involved in the labor movement. So it was just, as I said, it's like a marriage ceremony. I have some basic scripts, and then I adapt them to the couple. So I had a basic script for ceremonies, and I adapted this one to Bill, but I just adapted it more. I mean, I put more things into it, spent much more time on it. So that was really all I did. I'm so glad that he was delighted with it.

McGarrigle: Do you often perform marriage ceremonies for friends who ask you?

Henderson: Not as many as I used to, and there's a story about that. When I was a new judge, someone called and asked if I would do a marriage ceremony. I said, "Sure." I had never done one before, and I had agreed to it. Then I went next door. Bob Peckham, who was the chief judge at the time, was my neighbor. I said, "Bob, I'm going to do a marriage ceremony next month," or whenever it was, and "Can you give me some hints

or could you give me a couple of examples of ceremonies you've done?" And Bob immediately said, "Oh, Thelton, you can't do marriage ceremonies!" I said, "Well, why not? You do them." [laughter] "I'm a federal judge." And as it turned out, the power to perform a marriage comes from the state, not the federal government. Bob had been a state court judge, so he retained the power.

McGarrigle: Oh.

Henderson: And I didn't know that, so I had to call and tell the people, "Gee, I'm sorry, I don't have the power to do a marriage." They got someone else.

But at that time, that was 1980, at that time there were a couple of other judges who weren't as lucky as me to have a neighbor like Bob. So someone called them, and they started performing weddings, and they weren't empowered to. There was a rash of illegal weddings. [laughter] So they changed the law. In Oregon--these judges were in Oregon--and they changed the California law. The law says who can marry, and it just had never said, "Federal judges can marry." So they changed the law, and I think dated it back to legitimize these marriages. So anyway, when they changed that law, about a year after I got off--and I've been able to marry ever since.

And your question, one of the questions was how often do I do it. Well, at the start I learned that when you do a marriage you're generally doing it for a fairly young couple, and they have a lot of friends who are of that age and thinking about the same thing. And if you do a good marriage, or at least one that the audience likes, they'll come to you or they'll write shortly after and say, "Oh, you did a lovely wedding, would you marry me?" And I have trouble saying no, so I would say I would do it, and it builds. At one point, one summer, I was spending every weekend marrying [laughter] people I didn't know, and I didn't like that. You know, so I changed. I said, "This is not fun." I mean, I like marriages, it's a happy occasion, but if you don't know the people, it's just work. So I decided I was only going to marry people I knew, or as a special favor to people I knew. So I've cut down considerably, I probably do three or four marriages a year now. And of course, most of them are in the summer months, when people tend to marry.

McGarrigle: Yes, well, that's really interesting.

Henderson: Yes.

McGarrigle: That's still quite a bit.

Henderson: That's still quite a bit, but I enjoy that. The most recent ones, last summer, Tom Grey's daughter, he teaches at Stanford, an old friend, and Barbara Babcock, they are married, her stepdaughter--I did that wedding, and then this is the way it works. Bob Raven, and Yemima Raven, his wife, were talking to Tom Grey, because he teaches at Stanford. His daughter was getting married, and he was trying to find someone, and Tom said, I learned later, he said, "Don't tell Thelton I said it--"

McGarrigle: [laughter]

Henderson: “--but he’s marrying my daughter.” [laughter] So I get a call from Bob, and I did their --so those were the two weddings I did last summer, two, the daughters, I knew them when they were little girls when I was at Stanford. So those are the kind I do now, and I love those. Those are very happy occasions. You know, judges often say, at least I say, “There are only two occasions when you make everybody happy. One is when you do a wedding, and one is when I do a naturalization.” Everything else I do as a judge, somebody’s unhappy with what I do usually. So those are happy occasions, and I enjoy weddings. [tape interruption]

Yes, the budget, the budgetary constraints was one of your questions, now versus when I was first appointed to the bench. And it’s really quite dramatic. When I first took the bench, the tradition on the court was everything is done by seniority. The new judge would look around at what chambers were available, and pick. The one, the senior-most judge who wanted to move had the first shot at the open chambers. And let’s say a sitting judge wanted to move to a better chambers, a corner chambers, for example, from one that wasn’t on a corner. Well, traditionally, the judge would--didn’t like the carpet in the new chamber, they’d rip out the carpet, didn’t like the color of the bookshelf, they’d either re-stain it or put in new bookshelves--you just sort of redecorated. And all those who didn’t like the furniture would get new furniture. That’s all long gone now. I mean, there is a furniture budget now, and for a new judge. But for a judge moving from chamber to chamber, you used up your furniture budget when you made your first move, so--. And I remember very distinctly, they had a lot of courses for new judges, and they had tapes of past courses. And I remember thinking--that’s when the Sony Walkman was new. I remember having my secretary order me a Sony Walkman, which I used, just got it. I don’t even know how she did it. I would listen to these educational tapes in my chambers on the Sony Walkman. You can’t do anything like that now, they would laugh you out of town if you ordered a Sony Walkman.

So the budgetary constraints now are quite dramatic. My own view of part of it, although--you know the story I just told may be a part of the answer--I think there was a lot of waste. But I think also a part of it is I think there has been enormous hostility from the legislature to judges over those years. Increasing hostility--they won’t give us a meaningful pay raise, I think we’ve had two cost of living increases of about 32 percent in the last ten years or something--I think that has as much to do with the budgetary constraints as anything.

McGarrigle: So the changes are not unique to this district then, they’re nationwide?

Henderson: Oh, they’re nationwide, oh yes.

McGarrigle: Nationwide. And what are some of the things that you and other judges attribute the hostility to? I mean, there is the political--

Henderson: Political--well, not liking our rulings. I think they see judges as doing things--we find their legislation unconstitutional, regularly, and it usually is. My own view, and I’ll clarify that this is my view, I’ve talked to a lot of judges and they share that view, a thing that has happened, I think over the twenty-one years I’ve been in--maybe it existed before, I just wasn’t aware of it, is that we get a lot of legislation, I rule on a lot

of legislation, and I look at it and I think, "This is absurd! What in the world could they be thinking about? This is clearly unconstitutional."

And what I have been told by legislator friends, whom I won't name [laughs]--and they'll say, "Yes," they'll shrug at it, say, "Yes." That it's popular legislation, they satisfy their constituents, they'll say, "Oh, look what they passed," and let the judges take the heat. There seems to be a--we're constantly having to rule on something that the legislators--I think it was irresponsible to pass it. And we have to take the heat by striking down something that's popular, but unconstitutional. So I think that's a thing I've seen. Maybe it existed before, I just wasn't aware of it. But I certainly have seen it, and it seems to have increased in the twenty-one years I've been on the bench.

McGarrigle: So the nature of your job has changed in a lot of ways.

Henderson: I think so. I think it has changed in a lot of ways. I think that--let me see if I can articulate beyond what I've just said. Well, I think there are more groups out there litigating. I think certainly there are more propositions put forth by special interest groups that might be questionable and themselves are unconstitutional. I think we're having to rule on a lot more of those kinds of things, which again, just by striking down a proposition--by definition it has been passed by a majority of the electorate--and, you know, you're not popular when you say, "This thing that you passed that you think is good, is unconstitutional." I think we're having to do a lot more of that now than twenty years ago.

McGarrigle: Does that affect the appellate court differently than the trial court, in terms of the tension between the legislature and the court?

Henderson: I would think so. I think that when the trial judge strikes, that's what gets all the news. And then if it's appealed beyond that, it's a back-page item, that the judge, the appellate court affirmed the ruling, or reversed it, but it doesn't seem to get the attention. Also, I think being on the appellate court, there are three judges who do it, and I think that diminishes any attack on any one of those judges. You need at least two to make a ruling, and it is different in that way.

McGarrigle: Yes. The trial judges are the front line--

Henderson: Yes, you're the front line. I think we're in the trenches in that--yes.

##

Henderson: I should mention that the history of this--I became chief judge--[phone interruption, tape interruption] I haven't ever thought this through. The chief judge on our court, on all courts, is the senior-most active judge--I'm a senior judge, so I'm not an active judge--the senior-most active judge, which is a full-time judge, when the position becomes open. When Bob Peckham passed away, Bill Schwarzer was next in line and was ready to be senior judge, and indeed had stationery all printed up, when he was asked to be the director of the Federal Judicial Center, which is a high honor, in Washington, D.C. That's the educational arm of the federal judiciary.

So Bill left, and next in line was Bob Aguilar. Bob was having some problems at the time, and he very graciously decided because of those problems--he didn't want them to spill over into the court as a whole--so he passed up the senior judgeship, and that's how I became senior judge.

[chuckles] The last thing I wanted was to be senior judge. I have always said in these kinds of situations, I didn't get this far in life without knowing my weaknesses. [laughter] And one of my weaknesses is administration. I'm not good at it, I don't enjoy it. I didn't want to be chief justice. I don't like being out front, to--I feel uncomfortable. So I actually indicated that I didn't want to be chief judge. I said it to anybody who would listen, which meant that Marilyn Patel would next be chief. She came to me and indicated she wasn't really ready to be the chief, and asked if I would take it. So I did so, more to hold it for her, rather than force it on her at that time. It's hard to remember, I don't remember if I thought I was taking it year to year until she was ready, or whether I knew I was taking it for seven years. But in any event, I embarked upon being the chief under those circumstances, and actually grew to not like it, but to get used to it and learn the job, and have a satisfying seven years.

Let me just say, I think anyone who has been the chief there has to confess to the world --I don't see how I could have done the job--there's a wonderful woman whom I inherited, who is the administrative assistant to the chief judge, named Kumi Okamoto. I don't know if you've met Kumi, she just makes it all work. She's sort of the institutional memory for the chief. She has every file going back to when Bob Peckham was the chief, you know, so that if I had a problem, say, "Oh, gee, I got this letter from the administrative office in D.C., and they want this difficult thing, gee, I don't know what to do--" Kumi generally knows what to do, and she'll generally pull out a file and say, "Oh yes, they sent out a similar letter ten years ago, here it is, and here's the way we responded." So she gets as much credit as I do for making it work. She knew who to call in Washington. She knows how to get things done, and that made the job considerably easier for me, and I'm sure for Marilyn too.

The challenge of leading a group of federal judges--it's a challenge, because you--at least my style is to look for a consensus. When I took the job, I remember saying that Bob Peckham had been such a wonderful administrator and chief judge--the ship of state, so to speak, was in wonderful shape when I got it--and that my goal was to simply steer the ship straight ahead and avoid icebergs. And that's the spirit I brought to it. I didn't see myself as an innovator. Bob was an innovator, and I tried to keep his innovations going. He introduced alternative dispute resolution, he was a big advocate of case management, and all of those things. I had no such vision. I really saw my job as keeping the ship sailing straight, not hitting icebergs, and implementing the will of the court, whatever that might be. And that's essentially what I tried to do for the seven years I was on the court as chief judge.

McGarrigle: Now, I know when I spoke with Wayne Brazil, which is sometime back now, that he enumerated multiple innovations that took place under you. [laughs] But now I have to go back to my notes to recall what they were.

Henderson: Yes, okay.

McGarrigle: So, if I took issue with that, in terms of innovation, what would you say?

Henderson: Well, what I would say is that, no, there were innovations--and I think my skill was recognizing the ones that were good, and implementing them. But what I am saying is that I didn't think, "Oh, this is a great idea, I am going to lead the court down that path." Wayne had a lot of innovations, I would recognize them, and get the consensus of the court, and implement it. And there were a lot of bad innovations [laughs], and I think I had a skill too for saying, "No, that's not going to fly, I'm not even going to try to carry that one to the court." I think that's what I did. And I tried to do it in a way that wasn't biased toward the proponent, but really that I thought tried to recognize what would work and what was good for the court, what was positive, and what was maybe a little quirky and wouldn't work.

So there wouldn't be any inconsistency there. I think there were a lot of innovations during my seven years, but I think they came from the lawyers' delegates. They would come up with ideas. They would come from other judges. I would get some innovations. I looked around, and did a lot of research. I would travel, and I would see something that worked in another court. I'd say, you know, "Gee, look what they're doing, that's great!" And I would bring it to our court, lobby it around, see what a cross-section of judges thought, and if they said, "Hey, that's good!" then I would run with it. So I think that would be the answer.

McGarrigle: How do you go from being a peer with other people who are all trial court judges, to becoming the chief? What is the transition?

Henderson: It's an easy transition, and our court is wonderful on that. Immediately you go down the hall, and they'll say, "Morning, Chief!" They start calling you Chief, and pretty soon you start feeling like the chief. And they're very respectful. It worked well, it's an easy transition. Yes, I didn't have any trouble with that.

McGarrigle: Then you become part of another subgroup of people in the country who are all chiefs.

Henderson: That's right.

McGarrigle: You join sort of another--

Henderson: You join another group, and every federal district court has a chief judge. Ours is one of the bigger courts. Some districts have two judges. One of them is chief, and the other is whatever-- [laughs] But you know, you join that group of chief judges. You have a meeting of chief judges nationwide, at least once a year, and you get to meet them. And there you discuss being chief judge, and the problems.

It's very helpful, these, because you start realizing that there are some universal problems. You talk about, "How do you deal with this, how do you deal with this type of judge who is becoming a problem for the court?" Or, "How do you deal with this kind of problem? How do you deal with an unworkable case load? Where can you go for help?" So, you know, all of these things help you to be chief. I went to all of those.

Then we have Ninth Circuit conferences, when just the chief judges of the Ninth Circuit get together at conferences and discuss the same thing but on a regional, or a circuit basis. And that's all helpful.

McGarrigle: Hmm, sounds really interesting.

Henderson: It is interesting. I was fascinated by the job, despite the reluctance upon which I entered it. I got into it, and sort of enjoyed some of the problem-solving. And there were a lot of problems to solve.

McGarrigle: Problems along the lines of the things you've described, or in other instances as well?

Henderson: Some along the lines of the things I described. A problem I never solved, and I'm not sure how it would be solved, and it's a continuing problem. Our court, the Northern District of California, for years, long before I was chief, had the reputation for having the highest expense in the country for capital cases. You know, if you do the per capita cost, ours was more than twice as much per case as the next highest district in the country.

And also for FJA--Federal Judicial--there are funds that come out of Washington to manage criminal cases, to appoint counsel--I'm forgetting the initials, we can get that, Federal Justice Act, FJA funds. Again, ours are more than twice as much that we spend when we appoint a counsel. Let's say there are two defendants, and they both rob the bank, and the federal public defender represents one of them. The other one may have a different story, their interests may be adverse, so that you can't appoint the federal defender because that's one office representing people with diverse views. So there are these funds, FJA funds, to appoint a private counsel to represent the other one. Well, that money to pay them--our budget is much more than twice as much as any other court. I constantly got pressured. I was called back to Washington twice to tell them--"Why are you people spending so much money?" The Ninth Circuit, I was called before the Ninth Circuit a couple of times. Never could solve that. And Marilyn, our present chief, is still working on it. We finally got a grant from the administrative office to hire a person who would review our death penalty bills and look at this and try to help us come up with a solution. I think they're getting lower, but they're still the highest in the country.

So that is a problem that I just never solved. I didn't know how to solve it. Part of the problem is cultural, we thought. The history of our public defender office--our first public defender was a very dedicated public defender. He started a culture where our criminal defendants were going to get the best representation, just as if they had hired the person themselves. Many other offices don't do that. I think it would be fair to say that some of the Southern states, you know, you look at the budget and you say, how could they--you can't possibly [laughs] do it right for that. And I think it is a different culture, you know?

And we call our attorneys here, and assign them, and they really go in there, and they do their investigation. They hire investigators, and it costs money. In addition to being reluctant to say, "You can't do that thing, which you think is best for your client," you're flying in the face of the culture of this court, and this district over the past thirty years. So that was a problem I think I've never solved that we're still trying to solve. We don't know how far to go to solve it.

I would go to national conferences about the death penalty, knowing that our court spent much more. But in some way I would go away a little proud, saying, "They really are

doing the best and they're not saying, 'Well, this guy killed three children, and we'll just sort of go through the motions.'" They really go in there and they give the representation. I think that's probably the way it ought to be.

McGarrigle: Well, that was my next question. Has anybody posed the question that the other districts need to double their budgets so that they are where your budget is?

Henderson: It's--when you're under pressure, you can't say that to the--but that was--

McGarrigle: No, no, but that is sort of what flows from the discussion.

Henderson: Exactly, but that's--exactly. And that was--. But also, and in candor, we would look at individual cases. And there was some gouging. They were saying--and that's a problem when you deal with a number of people. There were some attorneys who clearly were gouging, on both sides on the death penalty cases, padding the budget, and on the FJA assignments.

Indeed, I have, since being chief and becoming familiar with this, I've denied--they have to turn in a request for their work--and on a number of occasions I've cut it back, said, "No, no, no." For example, there was a bank robbery, positive identification. One of the ways to pad is--came in and the attorney said, "I want to have a continuance. I want to look at some of the facts. I think we're going to work it out." We came back and asked for another continuance. Then at one point he said, "Gee, I'd like to hire an expert. Can I have permission to hire an expert?" I said, "What do you need an expert for?" And again, and this is what our court does, giving him the benefit of the doubt, assuming he is doing this in good faith, I authorized an expert with a budget of--I don't know what it was, maybe \$1,000 to spend on--. And he went through a few of these things, and then ended up, pleaded just as we knew at the first. Then he had this big bill. And I said, "No way. You can look at everything you want, but there was really nothing to look at, and we're not going to pay you for going through this." So that is a problem that we're dealing with. That's one, an easy one.

But very often you get into the situation of saying, "It's my judgment. Well, I don't think you needed to do that." Whenever I felt--and I think all of the judges on our court--whenever you feel, "Well, we're going to give them the benefit of the doubt," that's where the bill goes up, and I think we tend to give our attorneys the benefit of the doubt, that they are operating in good faith and in the interest of their client. But it's a huge problem in our court.

McGarrigle: That's very interesting.

What was the reaction when the news came out that you were chief judge?

Henderson: I think--you know, it's another one of those first stories, the first black chief judge of this court. I don't know, the first black chief judge in the West. Something, you know, those kind of things. A lot of calls of congratulation, a lot of visibility, a lot of invitations to go here, do that, speak here. I think that was pretty much what it was.

McGarrigle: In retrospect is it something, the way it worked out, your having taken the chief judge position and Marilyn Patel having it now, is that something that you are glad that you took?

Henderson: I'm glad I took it, having done it, yes. I really didn't want to take it at the start, as I said. Having done it, and having sort of done a fairly good job, I think, I'm glad I took it. I saw my period [as chief judge] as a period stabilizing all of the wonderful innovations that Bob Peckham had introduced, the ADR [Alternative Dispute Resolution], or some of the case management things. I think it was perfect. Marilyn has a lot of wonderful ideas which she is implementing, and I think she's carrying the court forward with some new things that we probably needed at that point after seven years of my stewardship. I think it's good to have someone like her with good ideas, new energy. You know, her court, I think, is one of the most respected courts in the country for its administration and its programs. We're very often, whenever any important pilot projects are considered, our court is asked to do them, and I think it's because of that tradition and we do have good administrators. And I think that was started with Bob Peckham.

McGarrigle: It is unique, then. One of the questions I had is, "What was unique about sitting in San Francisco, and being in California and the West Coast?" It sounds like there is quite a tradition and a unique quality to the court.

Henderson: I think there is, and I was talking about that the other day. I don't know why, but I think that we've been blessed by good appointments from the senators. Just the other day I was in a discussion with some judges--we won't name other courts in the Ninth Circuit --but that we think our court has--well, all the things I've said, good judges, good programs, wonderful camaraderie--collegiality I should say--and there are other courts that don't have, and it's fairly well known. We think it's part of the culture of the San Francisco or northern California bar that feeds us generally the judges we get. We think there must be some other culture in other districts that we think aren't quite as productive, I'm trying to be discreet as I say that, but we've been lucky on it, and we just have a wonderful bar.

Many of the innovations I've made in my own courtroom over the years have come from workshops and retreats that we've done with lawyer representatives. They're thoughtful people who come to these and say, "Well, gee, with all due respect, you have this program, we think you haven't considered its impact upon the attorneys." It's not a selfish thing they're saying, they're really making their recommendations as to how the system can work better. I think that's a part of the tradition that helps us, and these are the kind of people who become judges on our court. We're just lucky on that, I think.

McGarrigle: I know the San Jose court came into being under--or at the direction of Bob Peckham.

Henderson: Right, yes. That was a long-term project for Bob. When I was at Stanford and I would do some legal things, what is now the San Jose court, they were operating out of trailer courts. That was the first step. Again, Bob was very visionary. He saw the need for a San Jose division. The money wasn't there, so he got enough money to actually hold court in trailers there until the political things were worked out. I believe it was Norm Mineta, who is now secretary of transportation in the Bush administration, who was the congressman there. He worked through Norm and perhaps others to get the money to eventually build a San Jose courthouse. So that was a long-term project.

We eventually got the money for an Oakland courthouse. My recollection is that John Vukasin, who was on our court, was instrumental in that. John, who has passed on now, was very good friends with Ed Meese, and Ed was attorney general. We think that connection helped us get the means to have a federal court in Oakland. That was a big help, to have John lobbying for us for that money. But--yes, those--it took a lot of study, and I guess that's one of the things I had to supervise when I was chief, is what are the rules? How do you distribute the caseload between three courts? How do you set up the venue? How do you set up the rules that tell an attorney, "Your case is in San Francisco, yours is in Oakland, and yours is in--" It's very complicated. But again, with the help of lawyers--we had lawyers on the committee who told us what the problems would be with one scenario or another. I think we've got a pretty good system here.

McGarrigle: Is it unusual to have three courthouses in a major metropolitan area?

Henderson: I think not in New York, for example. There's a well known southern district of New York, the eastern district of New York and probably others, those are the two I know of. So in large metropolitan areas, no. L.A., they have a courthouse in Orange County, they've got one in Pasadena, so they've got branches too in the large cities. So I don't think it's that unusual.

McGarrigle: Okay. In 1998 you--well, before we move along to that part of the outline--.

Henderson: Oh, could I go back and just say one other thing about the courthouse--?

McGarrigle: Yes.

Henderson: I think that probably one day in the not too distant future, we may have a courthouse up--

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Henderson: We have lawyers who come from, say, Eureka, because it's a long distance to come. There is a slowly increasing caseload coming up there, and I think at some point there will be a critical mass where it will say, "We're going to have a courthouse in Eureka," or someplace up there. Maybe not as far as Eureka, but so that the Eurekaans don't have to drive all the way down here. I don't know, it might be in Santa Rosa, something. But I think that's coming, when the statistics justify it. It won't be that far away, I think.

McGarrigle: Yes. It makes sense. That's several hundred miles.

Henderson: Exactly. And of course, for a juror, if a juror asks to be relieved of jury duty because of the hardship, we'll almost automatically grant it, because I think you can't say, [laughs] "Each day, you've got to drive down here for jury duty, drive home, and back for a two-month trial." That's a hardship. And so we tend to let them off. On rare occasions when we've had a juror, and we've started the trial--I know that Judge Jensen, I believe it was, actually issued an order that that person could stay in a hotel, and not have to do that. But that's an expense you don't want to do. So I think the answer eventually is going to be to have a courtroom up there so that they can participate.

Another thing, by the way, we're talking about innovation--I'm sorry to go back to this --but I think one of the innovations that certainly I learned about from Bob Peckham, was the phone conference. You know, at some point Bob realized that, "Gee, why does an attorney have to drive from Eureka down here for a half an hour case management conference? It's expensive, I can talk to him just as well by phone." And that's one step that I think he pioneered for our court to accommodate the attorneys from far away--or from Chicago, for that matter. Why should an attorney have to fly in from Chicago, come in for a half an hour conference that's just going to move the case forward. So we do a lot of telephone conferencing to accommodate the attorneys. I think that's another innovation that certainly I think Bob--he didn't think of it, but he pioneered and actually implemented it. I think it's quite common on our court, more so than on most courts.

McGarrigle: So you're really talking about access to justice in terms of efficiency and cost.

Henderson: Exactly. And especially the cost to the client, because the client is going to pay for that plane trip, the client is going to pay for all the hours it took to get out here. You eliminate that by a five-dollar phone call instead of what's probably a few thousand-dollar trip. Yes.

McGarrigle: At the outset today, we talked about the impact of some of the legislation that has occurred since you've been on the court, and what that has meant for you as you've had to evaluate constitutional issues. What has your interaction with legislators been, state and federal?

Henderson: I've had very little. That's one of the things I wasn't good at, so I didn't try to do it. [chuckles] I had as little interaction with legislators--with administrators. I'm sure in the few years that Marilyn has been chief, she has been to Washington three times as much as I went in all my years. I don't enjoy the process. I think part of the effect--Bob was so good at that, Bob Peckham. He knew everybody. I remember, when I became chief, and I was just learning it, we had a problem, and Bob was still alive. He was next door to me. I said, "Bob, I've got this problem, I don't know who to talk to." He said, "Oh! Call Bill Jones, his phone number is--" [laughter] It was astounding! And after seven years I couldn't do that. You know, after seven years I could not say who to call, let alone have the number in my head. And that told me how he operated. He knew who to call. And he enjoyed it. He enjoyed just schmoozing. That's part of being I think a successful administrator, is knowing the people, becoming friends with them, so that it's a little easier to get what you need. I'm very bad at that. I could get what I needed, but I didn't know the people, and it was a much slower process. And Marilyn is good at that too.

McGarrigle: Did you have occasions to meet Willie Brown over the years in his various capacities?

Henderson: I have. I've met Willie, and I think I've mentioned, I've known Willie since undergraduate days.

McGarrigle: You did mention that.

Henderson: We had very few blacks in college in '51, when I went to Cal. He went to SF State [San Francisco State University]. And in order to have a black college social life, we socialized together. So I've known him since those days. It's interesting, my former

partner, Joe Remcho, was Willie's lawyer. He represented Willie when Willie was the assembly speaker. So I've known him through that and through Joe.

An irony is that at one point Willie and I didn't speak. I think it was more my lack of understanding of the political process. When I--have I mentioned this?

McGarrigle: No.

Henderson: When I went for a judgeship--that's when I was practicing with Joe, that's one of the ironies--Willie opposed, as I saw it, my judgeship. He went to Alan Cranston with a group of black lawyers and essentially said, "Thelton isn't the man from the black community." And he had his own candidate. I took that personally at the time, as opposing me. A few years later I realized how politics works. He wasn't opposing me as much as favoring his person. And that's the way Willie works. He's out there getting his people in. But for many years I was furious with him at opposing me. I took it personally, as I said, until I realized, "Well, it wasn't for--." "Besides, I have the job, what the hell." [laughter]

So, you know, we're friends now. In fact, I've introduced him. Some of the events I've been an MC at he's come in and spoken. We have the black judges thing, he came in, and he welcomed them to San Francisco. So we've been on a number of programs together, and in fact, you know his reputation for expensive Wilkes Bashford clothes--I think I can't use the line anymore, I've done it three times now spread over the years--is that when we're on the same program and on the stage together, I always manage to say, "Gee, if I had known the mayor was going to be here, the clothes horse with his \$3,000 suit, I would have worn my robe, so I could cover up my little--"

McGarrigle: [laughs]

Henderson: "--flimsy suit, which looks really bad." That's the line I've used, it gets a good laugh. But anyway, yes. So that's essentially it. I don't--we don't do things socially, but we see each other professionally. I've called on him on rare occasion when there is some interaction that--with the federal court.

McGarrigle: Yes. Okay. Let's see, "changes in administration and Supreme Court"--you mentioned Ed Meese earlier in reference to the Oakland courthouse. I wonder if there are any comments you would like to make along those lines?

Henderson: Well, I think in the last few years--you mentioned, I think I'm going to be on a program later this month, the one at Stanford ["Judging the Judiciary," Black Students Association, Stanford Law School, February 21, 2002], and one of the questions they're going to ask this group of black judges is the changing role, if any, of a judge in dealing with social change. There is an issue right there of whether judges should be involved in social change. But I think that I've seen a steady change from the days of the Warren court, when that court clearly saw its role as helping the underdog in our society and speaking on social issues like *Brown v. Board of Education* and employment discrimination cases. I've seen a definite recession of that kind of involvement of the court--with the commensurate recession, if that's the correct word, of the lower courts, because you get your guidance from the Supreme Court. It's increasingly difficult for a

civil rights plaintiff to prove discrimination. So I think those are very substantive changes for the civil rights litigation.

I noticed here you have antitrust, I think there have been big changes in antitrust over the years. Bill Baxter, who was at Stanford--who was a good friend of mine, we used to play tennis together--I think when he was the head of the antitrust division, he was one of the prime architects of a cutback in antitrust litigation. I think his view, and he was certainly much brighter than I in antitrust, was to let the economy deal with antitrust more than the government, to get the government much more out of it, so that we've seen tremendous changes there. And again, in our caseload you could see the drop in our caseload in antitrust filings. The government didn't file nearly as many antitrust cases, and private lawyers didn't during those years.

McGarrigle: What has the wisdom on both sides been about the result of that?

Henderson: Pardon?

McGarrigle: Has--what are the prevailing views on both sides on that, that the economy is taking care of that? Or that it's something that needs to be dealt with more directly?

Henderson: You know, I'm not sure I am informed on that. I don't think I could answer that. I mean, I know my views on it, but I don't know what the consensus is out there. I think you probably have people on both sides saying, "You need more control." And even though it isn't an antitrust issue--the current Enron thing--I think it forces those who think you need stronger laws saying, "You've got to control business. They need control, government control of what they do, or they will take advantage of their size and their insiderness." I think the Enron kind of thing is part of what the antitrust argument is all about. Will big business, if they gain control--look at the Microsoft case--when they have a certain size and a certain control over things, will they, instead of it being good for the economy--size means lower products--they will control it and it will be higher products, and they will make a bigger--. That seems to be what the debate is all about. I don't have any answers.

McGarrigle: I didn't ask you directly, because somehow I thought maybe you weren't at liberty to say what your views on that are.

Henderson: I probably am not. I shouldn't because if I have an antitrust case, an antitrust lawyer will say I'll be recused from the case, "Oh, he believes this, we don't stand a chance against him."

McGarrigle: Okay, that's why--

Henderson: So I probably ought to shut up.

McGarrigle: --I went over it. [laughter]

Henderson: Yes.

McGarrigle: I have a long section under personal and professional. It's very interesting that you have a lot of interests and hobbies that involve variations on a kind of strategy and a

kind of thought process that I can't articulate, but I see some things in common with--I happen to be married to a fly fisherman, as you know--

Henderson: Yes.

McGarrigle: And I know a lot of fly fishermen, and women, and I find that very--I can definitely understand the antidote that provides to one's hectic life, but I also know that you play poker and chess and other games of strategy.

Henderson: Yes.

McGarrigle: How do you see yourself fitting in all those activities?

Henderson: Well, let me--I'll forget, let me jot it down--let me try to--well, fishing, I think that fishing might be a little separate from the others. I think that fishing, you've talked to my friend Mort Cohen. When I was a kid, my uncle Fred, who has passed on--I've mentioned I didn't do much with my father, we weren't close, and there wasn't much to do in South Central L.A. One of the things I remember that I enjoyed, my uncle Fred would take me fishing out at San Pedro. There was a barge, there was a stretch of rocks that would go out into the ocean and some barges there, and we would go fish on there. And I just loved it! We'd catch fish and we would take it home, we'd fish all day. Then I grew up and I went away to college and I never fished again. And I always wanted to fish, and I got busy trying to be a lawyer and all of those things.

Many years later I ended up teaching at Golden Gate Law School, and I met Mort Cohen, who was an avid fisherman, and it was the answer to my dreams, because Mort is wonderful. He makes the appointment, he does all the research, and all I have to do is jump in the car with my pole or my rod and go fishing. We became fast friends starting with that. So that's the fishing story. I just love to fish, and I think it goes back to those trips with my uncle when I was a small kid.

McGarrigle: But you also took to fly fishing, which is a fairly specialized--

Henderson: Yes.

McGarrigle: And something not everybody has the wherewithal to do.

Henderson: And that, Peter Sandmann, another of my friends you may have met, is the one who got me interested in that. We went, I wanted to do fly fishing. I thought at first that it was sort of a snooty--

McGarrigle: Too elitist?

Henderson: Exclusive, elitist thing. But once I got into it--I went to a class up around the Fall River, I forget the name of the place, and I just loved it. I think I may have told you, the first fish--I knew I was hooked. We took the class, it was a five-day class, and we learned to cast, and all the little things. One day we spent a whole morning simply going by the river and turning over rocks and looking at the things that grow and go into the water that the fish eat on, and--

McGarrigle: Cattails and all that?

Henderson: Cattails, exactly. And then, I think it was about the third day that we went fishing, and I still remember it, the way I remember fishing with my uncle. We got a fish, and the water was clear. We put on the tie, and they were teaching us mending, which is the way to loop your line so that the fly will float right with the current, you know. If the fly is going at a different pace than all the other things, the fish think something is wrong, they won't even go for it. So mending is a way to get your line to go just with the current. There was a fish down the river and the instructor said, "Okay, throw your line straight ahead and then mend and let's see what happens." And I saw it floating down, and I saw the fish look up, and it came up and took the fly. And I still remember that! [laughter] That's exactly what I was trying to do! It was the biggest thrill. And I was hooked. That's what it's all about, trying to get an artificial lure to look like the real thing, and doing everything right, and getting the fish to bite it.

McGarrigle: Now, was this odd at all to you at the beginning to fish catch-and-release streams? Because that was a different objective than--

Henderson: That was a different--yes, no, not really, because in that sense, I like fish, but I'm a lazy fisherman and I didn't particularly like cutting up the fish and bringing them home and cooking them anyway. As often as not, when I was fishing in the ocean and keeping it, I'd give it away. So no, that wasn't a big deal. No, I just liked the sport of it. I bring home salmon when I catch salmon on the ocean or the river, I'll bring that home, and I'll usually smoke one and have smoked salmon, and maybe have a big party and cook one for friends. If I catch enough, I'll give it away. But yes, no, catch and release is fine. Catch and release drives my mother crazy, she says, "How much did you pay for that trip?"

McGarrigle: [laughs]

Henderson: "A thousand dollars? And you [laughter] threw the fish back in?" [laughter] I mean, she still can't--it doesn't compute with her, it makes her crazy.

McGarrigle: Well, my mother thinks my husband is crazy too.

Henderson: Yes, exactly.

McGarrigle: Particularly if he has the option to keep the fish.

Henderson: Yes, exactly.

McGarrigle: Because catch and release, you know, if you can keep it and you still send it back--

Henderson: Yes, something's wrong with you. And my mother thinks, I think in her mind, says, "Let's see, if he goes down to Verbrugge's for a thousand [laughter] we could eat fish for the rest of the year!" I think that's the way she thinks, she doesn't understand just the sportsmanship of it. And that's what I like, I just love to--. And I like the camaraderie. You know, my poker buddies and I, we go fishing together, and it's just hanging out with the fellows, fishing during the day, sitting around talking during the afternoon, playing cards at night, cooking a dinner together. It's all just wonderful.

McGarrigle: It's a pretty rigorous schedule, because I imagine you're up by dawn, or around.

Henderson: It's crazy. It's usually on vacation, and we end up playing poker until midnight. [laughter] And then, "Okay, never do this again!" You know, at 5:00 the next morning, say, "Oh my God, no, we're going to bed!" And then staying up the next night. I think that's part of the craziness of it. We come back to work dead tired. But it's fun.

McGarrigle: I had seen in the office, Erma had pulled out some photo albums, and I saw some pictures of you in different places. I had listed some of them, Rancho Buena Vista, and Baja--

Henderson: Oh, yes.

McGarrigle: --and others. I wondered if you have some special, in particular, special places?

Henderson: Oh, Rancho Buena Vista I just love. Mort and I used to go there at least once a year, sometimes twice a year. We'd catch marlin and big tuna, mahi--not mahi mahi--some sailfish--dorado, dorado. You know, and it was wonderful. The reason we don't go anymore is me. I got this ailment that I have, that I got the treatment for yesterday. It changed--the medicine I take, I used to have to put a patch on. I don't know if you're familiar with this--there's a patch you could put on that kept you from being seasick. With the medicine I'm taking now, I get seasick despite the patch. And that was part of the reason I do so much fly fishing now. I almost exclusively fly fish now, because I can't go on the ocean because of the seasickness. So I'm pretty much limited to rivers and lakes. But that was a wonderful place. We'd go down there--I remember the first time we did it, before I had the ailment. I had got the patch, put it on the day before, it was a three-day patch. We went out on a little thing, I think they called it a pon-pon or something, a little boat, and just five in the morning, just go out to sea, out in Cabo San Lucas. And I remember being out there, we couldn't even see land, and I was saying, "This is a miracle! I'm bouncing on this boat, and I'm not seasick!" It was just great.

So I remember that in particular. You've heard me speak of my fly fishing trips, I think my favorite place for fly fishing is the Fall River, up near what's the town--?

McGarrigle: Is that, it's not Bernie?

Henderson: Bernie, yes, it's near Bernie.

McGarrigle: Okay.

Henderson: Yes, it's near Bernie. Thank you. I love that. We rent a farmhouse there, and it's just wonderful. If I had the means, that's the way I'd like to live the rest of my life, is own a farmhouse on the Fall River just like the one we rent, go up there whenever I wanted and fish. It's just wonderful.

Another place--years ago, ten years ago maybe--we had a Ninth Circuit judicial conference in Alaska. Mort and I, Mort was on the program, so he was up there, and then we went fishing in Alaska. I think other than a couple of trips and Cabo San Lucas, that was the best fishing trip I've ever had. You know, it doesn't get dark, or it rarely

gets dark, so we would--there was a limit of two salmon a day. We'd catch our limit and go in, play cards or read and go to bed, and set the alarm, and get up at midnight--

McGarrigle: [laughs]

Henderson: --because it was then the next day, but it was still light outside [laughs], and go fishing again. We literally would throw back a salmon if it was under thirty pounds.

McGarrigle: Wow.

Henderson: I mean, that's how good--we would catch one and say, "Oh, we can do better than this," and we would release it, and just--until we caught a thirty-pound or bigger. It was just wonderful.

McGarrigle: Do you remember what river that is in Alaska?

Henderson: Hmm--

McGarrigle: We can put that in later.

Henderson: Yes. I want to say the Kowatanee, but it's something like that.

McGarrigle: Do you get--you know, knowing a lot of fly fisherman, I see a lot of the frustration, I see the line tangled in the trees and the flies lost, you know, before the line ever gets to the river. Do you experience the frustration of that, or does that not happen for you?

Henderson: I have on occasion, you know, gone and it gets in a tree back there, and get it loose, but rarely. I'm pretty careful. I'm not--probably part of it depends on what you're trying to do. When I get into an area like that, I'm more likely to move on. I prefer to cast from maybe here to that house is as far as I'll try to go, and throw it out, and let it go. Or if I'm on a boat, of course you don't have that problem. When I'm on the shore, certainly over the years I've had some tangles. But no, it's not a common problem with me. And I don't know why, it's not like I'm a wonderful caster or anything, other than just careful.

Also, I don't dare to--Mort's theory, I think, is the more casts, the more often you're in the water, the more fish you're going to catch. Whereas I say, "Well, I'll just take my time, and do it right. I'm not worried about being in the water maximum time." Now that might make a difference. You know, I'll just move on down, make sure I'm all lined up, and then take my cast, and--.

McGarrigle: There's a certain amount of patience.

Henderson: Yes, it is. And I think--.

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Henderson: --and then you mentioned poker and chess. I love--I think that poker is--poker tells you something about yourself, and about your opponent, in very important ways. And I think that's one reason I love poker. Your personality emerges. And I love the

gamesmanship. You know, as the guys that I play with say, I would rather over the night win three pots with a bluff and lose fifty pots--[laughter]--you know, and remember the bluffs for the rest of the week. I love to win, steal pots. And it probably says something about my personality. I just love the game. I love to try to psych out my opponents, I love to read them, try to see what they're doing. And there are some personalities. There are things, they're called "tells" in poker. People will--Harry's going to read this [laughter]--but he knows it! [laughter] In the game we have what is called the "Bremond Tremble." You know, when there's a big pot, and Harry picks up, and says, "I raise"---

McGarrigle: [laughs]

Henderson: --drop! He has four aces. [laughs] And he can't hide it. Whenever that--. You know, and it's just a part of his personality. The "Bremond Tremble" tells you everything you need to know. And there are other things in the game. Certain people, you know in a certain situation, if you raise, you pretty much know--and I love that. Just reading people, it tells you a lot about the human personality, and tells me a lot about my own personality, the way I play. I love that part of the game. It's just great fun. I love the gamesmanship.

McGarrigle: What kinds of interpretations do you make about that part of your own personality that you see through the game?

Henderson: Well, I think that what it tells me, I tend to go for broke. I like to go for the big pot, and make the big move. I don't always succeed. I go to Vegas with my buddies, and I know my personality is that I will try to come back rich or lose the few hundred dollars I budget for myself. But you know, I don't know why anyone, and people do it all the time, would go to Vegas and sit there nursing their money for two days. It just seems like the dumbest way to play! I mean, if you go, go for broke! So that tells me something about my personality. I don't know how it translates in the rest of my life. I don't think I--although I do up the ante sometimes as a judge, I push the envelope and go for the big ruling that seems to be important, rather than take a limited view of the case. That probably is true. But I think that's what it says, I think I like to just go for it. It's fun.

McGarrigle: When did you start playing poker?

Henderson: I started playing poker at Stanford. They used to have a faculty game. Barbara Babcock played, Mike Wald, Jack Friedenthal, the librarian at the law school, Charlie Meyers, who became the dean--just some of the faculty people, we would play poker. And I barely knew how to play, sort of learned as I went. But I think I had a feel for the game, because I played cards from high school, just cards that kids--not for money, but there were some games you'd play in South Central L.A. that are popular, and I don't even remember the names of them. Tonk was one of them, T-O-N-K. I don't even remember how it is played. But I loved those games, and I was pretty good. Oh, hearts. I played hearts at Cal. [laughs] I became a really good hearts player because when I got hurt in football I was in the hospital for six weeks, and there were four beds in the hospital. We were all injuries, all football injuries. We used to play hearts. We would have to pull our beds--I was in a cast--

McGarrigle: [laughs]

Henderson: --we'd pull our beds around and play. We would play that the loser had to drink a pitcher of water. [laughter] I mean, that would really add incentive, because you know, the nurse had to come in and bring a pitcher--and we really played serious. And I got really good at hearts. So, I liked cards. I think I was a good cards player, almost never got the queen laid on me, and I learned the strategy. So anyway, I think when poker came along, it was just a continuation of liking cards and playing.

McGarrigle: Were those other people who were in the hospital with you, were those also Cal players?

Henderson: Yes, they were Cal players.

McGarrigle: There were a lot of you laid up at the same time.

Henderson: Yes, we had a lot of injuries in football, yes. One guy had a broken arm, I remember he was sort of [laughs]--I had the leg, the knee--I remember because he was next to me. There were two beds over there, and I have a fuzzier recollection of what their injuries were. But--yes.

McGarrigle: This group who you played poker with is a devoted group, I know some are your friends, but it sounds like it's something that definitely takes place on scheduled dates.

Henderson: Yes. We play now, we started off once a month, and at some point some years ago, we realized we liked it enough, we ought to--so we play now every third Wednesday. It's like clockwork. We've settled on the place to play, we play it at one of the player's law offices, and he's got a nice round table in his office that he works at that's perfect for poker. We meet there at 7:30 every third Wednesday and play.

It started off years ago, I think we called it the public interest poker game, because many of the players were public interest lawyers. Now none of them are, and it's gotten pretty high class. Indeed [laughs], one game not so long ago at--Harry lives in Los Altos, or Los Altos Hills, I get them confused--and he announced that at 11:00 he had to go. We said, "Well, why do you have to go?" Because he had hired a driver [laughs] to pick him up and drive him home. So it is certainly not [laughter] public interest poker anymore. But you know, the guys love it, and we've been doing it, it's a ritual now that is I think very important to all of us. And it expanded, as I said, into fishing trips too. We used to go up on the Klamath River once a year, this poker group, for three or four days, and sit and play poker and fish. The reason we stopped is that the Klamath River, they allowed, they started allowing people to dig in the river for gold, and in the process they dug up the salmon beds, and the fishing just went kaput. So we now sporadically schedule fishing trips, but not in a regular way.

McGarrigle: Starr Babcock I worked with at the state bar [of California] years ago, I know he is in that group, Bill Cahill and Harry Bremond you've mentioned.

Henderson: Right, exactly, yes. Then Bill Chapman, who is a very fine lawyer, we play at his office on California Street. Peter Sandmann, two n's, is in the game, a regular. Sandy Rosen, my former law partner, is in the game. Gail Saliterman is the only woman in the game, she's in the game. Bill Turner, who is a very fine First Amendment lawyer, is in the

game. And we invite, every now and then, if we are short during the summer, people go on vacations, Stuart Pollak, who was a state court judge, just got promoted to the appellate court a couple of weeks ago, plays in the game on occasion. A lawyer with Thelen Marrin, whatever their name is, Dean Morehouse is a visitor to the game. So those are the players, pretty much. It's a great game, it's a great game.

McGarrigle: I have several other things here that you listed. We've talked about the work you are doing with Joseph Rosen to line somebody up for the Tobriner lecture series [Mathew O. Tobriner Memorial Lecture, Hastings College of the Law]. You've been on that lecture board for quite a while now.

Henderson: I have. Well, I actually, I replaced Bob Peckham on there. Bob was on that board, and when he passed away, I think--here is what I think happened--Bob introduced the tradition of having the Tobriner lunch here, the day before the lecture come over and have lunch with the court. So I think there was an informal tie-in with the court. When Bob passed, I think they wanted that tradition, and they asked me to take his place on the board, and I willingly did. It's been a wonderful experience. And so we continue the tradition now that Marilyn is chief. I simply have to call her and say, "Hey, set up the lunch. Here's when the Tobriner lecture is coming," and we have a court lunch the day before. It's just part of the program now.

McGarrigle: Yes. You mentioned that Richard Goldstone was a lecturer--

Henderson: Yes.

McGarrigle: --some time back?

Henderson: He was a lecturer a few years ago, and as usual with Richard, gave a wonderful lecture. At the time he was the prosecutor for the--

McGarrigle: For the war crimes tribunal?

Henderson: For the war crimes tribunal. And he came and gave a wonderful lecture on--gave us sort of background of that tribunal and what his job was. It was just fascinating.

We've had a number of very good lecturers over the years. I'm having trouble [laughter] thinking of them now. I know Derrick Bell has come, he is on the NYU faculty now, Daniel Schorr spoke a few years ago; Anthony Lewis, who writes for the *New York Times* and is a lawyer, I learned; Larry [Lawrence] Tribe, the constitutional scholar, has spoken, many others of that quality. It has been a very good lecture series.

Last year Aharon Barak, who is the chief justice of the Israeli Supreme Court spoke, gave a marvelous lecture. So it has been a high-quality speaker series. And as I told you, we're trying to line up next year's speaker. The thought is that if we can, we'd like to find somebody who is knowledgeable and has a reputation in the area of international human rights, with maybe a focus on the terrorist, terrorism issues that are facing us now, due process in an era of terrorism, and those kinds of things. So that's what we're looking for.

McGarrigle: Yes. You've had a lot of--and continue to have a lot of community involvements. You mentioned last time a drug diversion program in Oakland that you work on, mentoring people.

Henderson: Yes. I just started that, and it's fascinating. The Oakland courts have a drug diversion program designed for young drug offenders who have no prior record, and there are certain criteria, not a large amount of drugs, you know, people that they think are just getting into it, and maybe can be rescued and diverted if they're given a break. It's a court that is held on Tuesdays and Thursdays at 2:00.

I volunteered to do it. A friend of mine, Henry Ramsey, who is a former presiding judge of the Alameda County Superior Court, asked me if I would do it. I wasn't sure I would have the time. It's an eighteen-month program, every Thursday, and I have to be over there at 2:00. But I figured I could do it as a senior. So anyway, I've done it, and the interesting thing is that I had to be specially sworn in because I'm a federal judge. So I've been specially sworn in by the presiding judge over in Oakland to run this court. It's very satisfying. You have some kids who are trying, and it's a mentor program, so you find a mentor for them, and there are some good people who have volunteered to be a mentor and be available to them. You make sure that they get into an educational program to finish school, or a training program, and you make sure they get into a program that counsels them on drug use and drug sales. It's very satisfying. And you get some kids in the program who are what I call "shucking and jiving," they're not serious, they're going to try to manipulate the program, and you have to deal with them too. Just last week, I concluded after a few meetings that this kid was shucking and jiving, and you terminate the program, you say, "No, no, this ain't working." Then of course the charges against him for selling drugs are reinstated, and he has just got to go through the regular system. So that's the leverage you have over them. Most of the kids react to that, try to get through the program. I'm new enough to it, I can't give you any success stories yet. I'm hoping that I'll learn some, some kids will get out and actually go on to school.

McGarrigle: Yes. Well, that's interesting. I didn't know exactly what it was about.

Henderson: Yes. Very satisfying. I entered it with some reservations because, Lord knows I don't have a lot of time to give up an entire afternoon once a week. But I'm glad I did, I'm enjoying it, and I think it's worthwhile.

McGarrigle: What do they call you, what is your title there?

Henderson: I'm Judge. They call me Judge. And you go in, there's a hearing, and there's a calendar. Usually there are five to eight kids who are in there. They will come in--if it's the first hearing, you then tell them what--they know, they've got a--a public defender represents them--and so the public defender is there, and there is a probation officer, and then there is a prosecutor, someone from the prosecutor's office, just like a regular court. At the first hearing you set up the guidelines, you set up the program for them. "You, okay, I want you to pursue a GED as opposed to finishing--. I want you to re-enroll at Skyline High." You know, you look at each individual, and you look at the educational component, you set some educational guidelines, and then work guidelines. "Okay, I want you to come back with five letters or something indicating that you're looking for a job, not just coming back and saying, 'I couldn't find a job.' I want five

documented--either a job, or five documented attempts.” So you set up the program like that. Then the rest of the program is having them come back periodically, maybe every thirty days, and reporting, including drug testing, if their problem was using drugs. And see if they passed the test, or if they’ve tested dirty, seeing how they’re doing in class, letters from the teachers about attendance and performance.

McGarrigle: That’s very involved.

Henderson: It is, it is.

McGarrigle: I also have a long list of awards.

Henderson: Oh, yes.

McGarrigle: [laughs] Then if you’d like to speak to any of them--. I was at the Berkeley Community Fund dinner and I remember that.

Henderson: Yes. I’ve gotten a lot of awards. I’ll tell you, actually, [laughs] it’s gotten embarrassing. I’ll give you a specific example. I got a call last week from a wonderful lawyer with Morrison and Foerster named Jack Londen, L-O-N-D-E-N, who just does more *pro bono* I think than anybody I know. And he’s on the Lawyers’ Committee for Civil Rights. He called and asked if I would accept an award by the Lawyers’ Committee in August. And I told him that I really didn’t want to, not that I wouldn’t be honored to accept an award, but that--it took me a long time to realize when someone says, “Would you come get an award,” I thought, “Well, I’m doing them a favor.” Especially when I was chief, somehow it enhances their event, not by me, but just a chief judge doing it. And they’re usually a civil rights group. But then I realized that very often these are fundraising events, and I didn’t really realize that. So I thought, “Gee, that’s arrogant of me to use my name and have people pay to come see me get this award.” And I told him that, I said, “I can’t do that again.” I think it looks like I’m an egotist to get out there, and I got a number of awards last year. Then he called back and said, “Well, this isn’t a fundraiser. It’s a private--it’s not a big public event. It’s at the same time that the National Bar Association is meeting in San Francisco,” and that’s the Black Bar Association, the black equivalent of the ABA [American Bar Association], “and we just want to give you an award.” [laughter] So I said, “Yes.” But I’ve gotten a lot of awards, and I’m certainly honored and flattered at receiving them. But I think this one that I just accepted next August is certainly among the last that I’m going to allow just because I think enough is enough.

McGarrigle: A couple of years back, UC Berkeley--or maybe it was Boalt--you were a Boalt Hall honoree.

Henderson: Oh, yes. That was a huge honor. Now, that one was different because it was a different audience. I got the citation award, which they give to the Boalt alumni of the year for that year. That was a huge honor. It was particularly a huge honor in the way it was done that year. They hadn’t given the award for a couple of years for reasons that aren’t clear to me. So in that year they gave three awards. So I found myself up there with Larry Sonsini of Wilson Sonsini, and a wonderful guy whose name [laughs] we can dig up who was the president of the University of Oregon [Dave Frohnmayer], a remarkable

man. I just thought--I was proud to be up there with those two people getting the same award they got. That was quite an honor.

McGarrigle: Well, I don't think this would be complete if we didn't talk about your role in *True Believer*. [laughter]

Henderson: You know, now that you know, Brenda [Wong Aoki], I'll--let me tell you the whole story there. [laughs] I was in my office, I still remember. Brenda, this was a number of years back, and she had played small parts in a couple of movies and actually wanted to be in movies in addition to her other performing things. So she went to try out, she was a friend of the casting director. She actually tried out for a part in *True Believer*, the part of the sister of the guy who was in jail. After her tryout, she went to dinner with the casting director, who was a friend. The casting director essentially said, "You know, gee, we've got three more judges to cast, and I'd like one of them to be black." Brenda said, "Wow," [laughs] "I have a friend who is indeed a black judge." So Brenda called that night and said, "Hey, do you want to be in a picture?" or "Do you want to try out for a picture?" I said, "Okay, yes, that sounds like fun. What does it involve?" She told me. And, completely naive--said, "Should I tell the lady to call you?" I said, "Sure, let's see what it is." I think the next day the casting director called and said "Are you interested? The picture is *True Believer*." I had never heard of that, with James Woods, and Robert Downey, Jr. I had never heard of them, at the time. I didn't know it would be a picture that would be played at local movies or what, you know, underground movie, I just didn't know. So I went down for the tryout, and didn't know how it was done. I sat down and I saw people reading scripts, [laughs] I was just sitting there waiting for the--. Finally I went up to the window and I said, "Am I supposed to have anything before I go in?" They said, "Oh, yes! You're for *True Believer*?" And they gave me about an eight-page thing with some dialogue on it. So I sort of read it, again not knowing how this works. Finally they called me in. There were four people sitting behind a table and a chair--.

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Henderson: --and they said, "Okay," one of them said, "I understand you're a real judge, is that right?" I said, "Yes." They said, "Oh. Okay, read for the part of Judge whatever." I read for it, and he said, "Okay, show more anger." And I tried to show more anger, and I realized as I was doing it that in my own court, probably the most severe thing I could say to a lawyer, in a very calm voice, "Counsel. I don't want that to happen again." That's the way I control--[laughter] So I was working from that and they wanted me to scream, and I don't scream in court. So finally they kept saying, "A little more anger," and it wasn't coming. So they said, "Okay, we'll try this other judge." [laughter] So I read for it, and that's the part I got. It was a bigger part than the other one, where you got to show some anger and get angry at the prosecutor, but I couldn't do it, because I didn't know how to act. So I got the other part, and the rest is history, as they say. [laughter] I went over and the movie, it was in New York, I mean that's where it took place. But this scene, for some reason, they got the Oakland courthouse, so I didn't have to go to New York. I went over to the Oakland courthouse, had my own trailer, it was great.

McGarrigle: Oh, really!

Henderson: And sat there all day reading my lines. You know, I sort of still remember them. “Are you ready to proceed, Mr. Dodd?” [laughs] And that was James Woods. I did that all day long. The thing I regret is that at the end of the day, it was seven o’clock at night and I had been there since about seven o’clock in the morning, everybody was leaving, and the director said, “Okay, oh, we have to do a”--something, some term—“with the judge.” I said, “Oh,” I didn’t know what that was. They said, “Okay, you read the cue line.” And somebody read some lines, and I think I was supposed to go--you know--and I didn’t know it. [laughter] So I was sitting there looking--and he said, “Let’s go.” So I didn’t get a close-up in the movie, that was supposed to be my close-up! I sort of sat there looking, and--. But I’m in the movie, you can see it, and you can hear my voice, and see me in the back. But the reason I didn’t get the close-up was that I didn’t do anything to justify a close-up.

McGarrigle: It was a terminology--

Henderson: There was a term for it. “We’re going to do a--”

McGarrigle: If they had told you--.

Henderson: Yes. Or if they had told me, “Hey, do something interesting.” But they just started rolling the camera, and giving me cue lines, and I was looking--[laughter] “that’s interesting!” So anyway, but it was a great experience. And I have never looked at a movie since then without looking at it differently, because I know how it took, it was probably five minutes of the movie and it took a whole day. You know how they cut back and forth, and I must have said my line, “Are you ready to proceed, Mr. Dodd?” twenty, thirty times. And they do it from different vocals, and they will give them the cue, and then they’ll shoot from a different angle. It was fascinating. I really enjoyed it.

McGarrigle: Did you have time to speak with James Woods or the other actors?

Henderson: I did, but I made--again, I didn’t know what I was doing. I went up to him at one point and asked him a question. “Well, you know, gee, I’m thinking of doing this this way, what do you think of that?” And he, there’s an etiquette there that I didn’t know, I was breaking every rule. And he said, “You had better ask the director.” Then later on I realized you don’t go to the actors, the director calls those shots. So I talked to him and then later on, not talking about the movie, when he was more relaxed, he asked me about being a judge. Then he said--he reversed it, which is interesting--he had a scene where he was arguing, and he said, “Do they ever do this?” He was pounding the table. And he said, “Do they do that in court?” [laughter] You know, I said, “Oh, that’s--” I didn’t say this to him, but I thought, “Hey, you should ask the director.” [laughter] But I told him. I said, “Well, yes, that’s within the range, and I’ve seen attorneys do it.” So we talked about those kinds of things.

McGarrigle: And you became a member of Actors’ Equity.

Henderson: I became a member of the Screen Actors’ Guild, SAG, as we pros say. And for many years was in it, just because--I never expected to be in another movie, but I loved telling people I’m the only federal judge in the Screen Actors’ Guild. I got the literature. And indeed, each year--I forget when that movie was [1986]--but this year I’m going to get a check. It’s down to about \$17 [laughs], for my part of the movie.” So yes. But I no

longer pay my dues. I think about three or four years ago I stopped, because it was about \$300, it was pretty expensive to just say I belong to the Screen Actors' Guild, there were no other benefits for me.

McGarrigle: So you not only got paid for the day, but you got a percentage?

Henderson: Yes, I got paid for the day. I lost money, as I like to say, on the movie. I got about \$1,000 for my pay, and I threw a big party here at the house that cost about \$1,500 [laughter]. And we rented the movie down on Shattuck. They were showing the movie there, and I just rented it and took all of my friends. We went to see the movie, and hired a caterer who served from out of here, and we just sort of had fun. My friend Bob Hamilton--to my surprise, we came from the movie, and there was a big spotlight out--you know, the [laughs] cars were driving by to see what was going on. It was a wonderful night. We had a good time. Yes.

McGarrigle: I haven't covered everything on the outline, but the last thing I had was your garden, the Japanese garden. We've sat in here all these hours and had a view of it.

Henderson: Oh, yes. I love that garden. It started off, it's become Japanese. The Japanese thing was because of this big, beautiful Japanese maple here and then the other one back there. I always had an idea of doing a Japanese thing. Then I think I mentioned Didi went to Japan, and brought this book back. [interruption] She gave me this book when she came back. I started thumbing through it and I had some rocks there and all of a sudden I knew what I wanted. I said, "This looks like what I'd like the yard to be." I had some rocks like that, then I saw the rest of it. So I hired the gardener to put the bamboo, make a fountain back there and put the other plants. So yes, it's a great--you know, I love the backyard, and I probably, in the spring--you see the chairs out there, I love to sit out there. It's very relaxing. Indeed, my Dr. Xhiang, my Ron-Ron Xhiang, says I ought to do my qigon out there, the qigon meditation, that I ought to sit by that tree and do my meditation. That's part of, I think, the whole philosophy of meditation, is to do it in a setting like that, or at least that's what she says. I haven't done that yet. I have done it here and looked out in the back, I haven't gone out in the back to do my qigon. Q-I-G-O-N, is the way she spells it.

McGarrigle: I see a basket, this is your land too, this with the basketball hoop here?

Henderson: Yes.

McGarrigle: That's your grandson's, probably?

Henderson: That's one of the selling features of this. Geoff was a teenager when I came to look at the house and I saw that basketball court. He loves sports, and I've always wanted to have a basketball court for my son. I think that may have been the clincher for me. The court was already there, and as I had hoped, he took to it right away. So yes, that was an important feature of the house.

McGarrigle: To round things out, and for the future, can you give the name of your grandson also?

Henderson: Oh, Brian Matthew Henderson, yes. Six and a half years old, a great little kid. He's going to be--people who read this history years from now will remember that name. I

think if Geoff has his way, Brian is going to be a major leaguer in something. He loves sports, and he's a good athlete. He and Geoff, every time they get together, they go out. They were here the other night. Brian now can actually shoot baskets, and that's a regulation size basket. Not with a regular basketball, he has a lighter one, but he's got the range. He can dribble up there and put the ball in a high percentage of the time. It's not just a random toss. So it's interesting. I sort of imagine him doing that in the way that Tiger Woods was driving golf balls at that age. I think that is what Geoff has in mind too. So we'll see. Anyway, he's a great little kid and I love being his grandfather.

- McGarrigle: Is that a--that's a different role, the grandfather role. It sounds like you're really enjoying it.
- Henderson: I do. It is a different role. Well, as most grandparents say, I guess the difference is that I can play with Brian and then say, "Okay, see you, Geoff." [laughter] You know, and go on home, or say, "Bye." You know, maybe that's a good thing about a grandparent, you get all the goodies and he has to clean the diapers [laughs] or whatever else has to be done. But yes, I like it, it's great.
- McGarrigle: But you pass yourself on in a different way also, probably, in that relationship?
- Henderson: Yes, I do, I think I do. Yes. I think I play a different role. The hardest role is to keep my nose and not try to tell Geoff what he ought to do with his son. You know, that's the hardest part, is just biting my tongue and letting him be the father, and letting me be the grandfather.
- McGarrigle: Well, we've had many hours, Judge Henderson, and we've covered many things, and I'm sure I have left things out. As we've discussed, you're at liberty to, when the transcript comes to you, to make all those corrections.
- Henderson: Okay. I will, I look forward to reading it. This has been a wonderful experience for me, and you've been wonderful in doing your research. I can't tell you how impressed I am. I've kept all the papers here, and you really have done your research. And it's been good for me to make me review my life in an organized way. That's been meaningful to me. Thank you.
- McGarrigle: Why, thank you. I'm very proud of the work we've done. As I tell Russ, it has been a complete privilege.
- Henderson: Well, it's been mutual.
- McGarrigle: Why don't we end today and then if things come up further, we can call another session.
- Henderson: Okay, okay. And let me--yes. I'll go through these, and--

[Interview 15: March 15, 2002] ##

McGarrigle: I wanted to ask you as follow-up to part of our discussion last time--when you were first introduced to the game of poker.

Henderson: [laughter] Okay. Well, I was probably first introduced to poker, as best I can remember, when I played football at Cal. It's the first time I can remember playing poker. I always enjoyed cards. In black communities, Wisk is a big game, Big Wisk. I used to play Wisk with the guys, and other games. One was called Tonk, T-o-n-k. I don't even remember how that's played. But you know, I just was fascinated by cards. When I went to Cal, the football team would go up early, before school started, to prepare for the season. We all stayed at Bowles Hall, that's B-o-w-l-e-s Hall, one of the big dormitories up above the stadium. Practiced during the day, and then we all lived there. And there were poker games.

I sort of learned the hard way. You know, get in a game and I had a feel for it, and started playing poker. That's my first recollection of poker. More recently, when I really started playing on a regular basis, I was at Stanford and my job was assistant dean. They had a poker game there--Barbara Babcock, who is still in a game with me, was one of the players. Mike Wald, Jack Friedenthal, some of the faculty members. And we would play once a month.

Then after I left Stanford and came to San Francisco, I got into--we were just talking about that, it was at least thirty years ago--got into what we called "the public interest poker game," a bunch of public interest lawyers played poker once a month. And then that has expanded. A real poker lover, or aficionado, whatever you want to call us, one game a month wasn't enough. You'd either hear about another game or that group would start another game. So I probably play in three to four games a month now, all with buddies, and various times during the month.

McGarrigle: So we were looking at the book review in the *New Yorker* about some books that--one reissued, and one, the new book about poker, and the reviewer makes the comment that a friendly poker game is an oxymoron.

Henderson: [laughter]

McGarrigle: From your experience, what do you think about that?

Henderson: I think that's a very wise and astute comment. Yes. I mean, I think that at some level, you're--even if it's for ego--you're trying to scuttle the other players. You're trying to hoodwink, you're trying to bluff, you're trying to deceive, and you're trying to win. All the games I play in, we all insist that it's not about money. At one level that's true. I mean, I don't go there to try to win money to enhance my bank account. But at another level, it's all about money in the sense that you're looking for that gratification. Because if you win money, you've convinced yourself you're a superior poker player. And I think it's about that, it's about one-upsmanship, and the currency for poker excellence is money.

McGarrigle: Yes. How has the size of the game monetarily changed over the years?

Henderson: Oh, gosh [laughter], it's grown. I can't remember when it first started out, but I think it was something like fifty cents, and the top bet may have been a dollar or something. It is now--the top bet is five dollars and ten dollars on the last two rounds. But the winnings, interestingly enough, haven't increased in proportion to that raise, because you play a different game. When the stakes go up, people drop out earlier, they don't chase as much as they do. So it hasn't gotten out of hand in that sense.

McGarrigle: What are the skills that you think that you specifically bring to playing poker?

Henderson: I think--and this is a part of poker I like--I think poker really reflects a basic part of one's personality. There's a player in a game that we've been playing for years and I'm convinced that he will blink in certain situations. You know, it's just part of the personality. In a certain situation, when I'm sitting upstream from him and I know that he's my competition, and I want to test him, I can raise, and I'll know exactly what he has from that raise. If he calls, I say, "Whoa, I'm in some trouble, I'd better make sure I have the hand." But as often as not, he'll fold at that point, even though he looks good and may even have me beat. And I think that's just a basic part of his personality, and it has been for thirty years. [laughs]

And I'm interested in that, and I'm always wondering what my basic personality is, that the other players get. I think it is that I love to bluff. I love to try something and see if I can pull it off. It's probably--I think, in the rest of my life, I'm a pretty reserved guy. I think maybe this appeals to some part of me that wants to be wild and adventuresome, and I probably get it out in poker.

McGarrigle: Yes. I imagine that some of those same skills at reading people are applicable in the courtroom setting as well.

Henderson: I think so. I like to think that I read people very well, or read people well, attorneys and parties. I certainly try to. You know, I'm sure people will disagree, that I've not read them correctly, or that whatever I did or reacted to wasn't the real person. But I'm going through my [chuckles] judgeship thinking that I do a pretty good reading on people and scope them out.

McGarrigle: That seems like it would be important.

Henderson: Yes. Yes, I think so.

McGarrigle: Before we start talking about some of the things on the outline, earlier you mentioned a Langston Hughes poem that you sometimes use--

Henderson: Yes.

McGarrigle: --in presentations. I wondered if you could just talk a little bit about it.

Henderson: Yes. It's a poem, and I wish--I have all my speeches--it begins, "There is a dream throughout the land--" I remember that opening. I first heard of this poem from Leon Higgenbotham, who is a great friend and a great judge. I actually plagiarized it to the extent that I went to a speech he gave, and I heard him read that poem, and it just struck me as perfect for some of the kinds of speeches I give where I am talking about the

importance of diversity and the speech I give on inclusion, and the importance of--that we're all in this together. This poem by Langston Hughes just captures it perfectly and I very often will end my speech saying, "This poem says better than I've tried to say in this half-hour speech about inclusion," and will use it. I've gotten a lot of compliments on the poem, and people asking, if I don't say where I got it. I usually say it's by a poet who happens to be black, Langston Hughes. And people will ask where can they get it, and things like that. So I think that it does make the point I'm trying to make.

McGarrigle: Yes. Well maybe we can include it.

Henderson: Yes, okay. Yes, let me know, it's at the office there. Unfortunately, now that I'm thinking about it, why don't I have a book of his poetry? And I don't. I'll make a note to get it, I ought to. [sound of writing] Yes, I'm going to do that this weekend.

McGarrigle: Good!

Henderson: [laughs]

McGarrigle: There's that one I brought today, too, that will be interesting to you, from when he was a very young man, it's included in some of those materials ["That's American," from *The Collected Poems of Langston Hughes*, 1994, by the Estate of Langston Hughes].

Henderson: Yes. Okay, great.

McGarrigle: You mentioned that you started piano lessons as a child. I wondered how that came about.

Henderson: My mother. You know, I was thinking about that. We grew up quite poor and I think my mother has just made a tremendous difference in who I am and how I got here. I was thinking about our neighborhood. Many times in those kind of deprived circumstances, parents give up on the system, and reflect it in their kids. I can remember some instances.

My mother was just the opposite. I mean, I don't think she understood all of this, but I think she believed in what you might call the "Leave it to Beaver" kind of--that that was the world, and that you got an education for your kid, and part of that, they had music lessons, and they came up refined, and they dressed clean. And I always had these white corduroys that the kids teased me about that she would scrub on a washing board regularly. And so a part of that for her, her vision of life for me, included piano lessons. I started taking piano lessons fairly young. I can't remember how old I was but I went, would walk over to a woman's house, I can't remember her name, and I would take my lessons. She gave recitals, had a big lawn. I remember I had my little recital and played my two little pieces, and then played a duet with a kid named Spencer, [laughter] I still remember.

I was never very good, [laughs] but I took piano lessons. I played, and she bought a piano. I look back on it, we had this really tiny little house, that I know is tiny now. And it had a piano in it. I'm trying to picture how that [laughs] piano even fit in that living room. But we had a piano, and then at some point, a woman moved next door, named Viviane Greene. She appeared in nightclubs in the black community, and had

some records, and you would hear her records on the black radio stations, and she gave piano lessons. So I started taking piano lessons from Viviane Greene next door.

I actually took piano lessons until my parents separated. When my mother and father separated, we moved out of the house. So there was the piano until all of this got straightened out. It took about a year. I lived across town in a fairly rough neighborhood. I think I've told you about that experience. When we finally got back in the house, my father had sold the piano. So that was the end of my piano lessons, I never took them up again. But I don't want anyone to think that [laughs] a budding music career was thwarted. I mean, piano lessons ended, but I wasn't--I look back now, I wasn't very good. I was mechanical. I could learn something and play it. But I learned later on when I took guitar lessons that I didn't understand the concept of chords. I mean, I could play chords and things like that, but I didn't really know what that was all about. So, anyway, that's my piano career.

When I, years later, I graduated from college and went into the army, and I got out of the army in 1958, and had been accepted to law school. But I had no money at that point and decided to work for a year to save money to have enough of a cushion in law school, and wanted to take up music again. By then folk music was starting to come, and it was right in the early pre-rock--rock wasn't here yet, but folk music was big. The Weavers, and people like that were making hits. Joan Baez was just about to be discovered. I decided that the piano wasn't where it was at at that point. It was cool to have a guitar, which was more transportable. So I started, I worked in Santa Monica during this year, and met, got to know a fellow who is now my best friend, Russ Ellis. We worked together. He had a wonderful voice, and he actually sang professionally for a while. We enrolled in a guitar class at UCLA Extension, in night school, a wonderful teacher named Beth Lomax-Haas. The Lomax, her father was Alan Lomax, a noted musicologist.

McGarrigle: Yes. He has been in the news a lot lately.

Henderson: Yes, exactly. He discovered Leadbelly, and was a big figure then. This was his daughter, who taught. So Russ and I learned to play guitar together, folk music and the chords, and we loved it. We would take our guitars to work. It was sort of a research environment and they'd let you do it. We'd take our guitars to work and visit each other's office and sing songs and take our guitars to a party, and to anybody's house who would let us bring it in. We just loved it. Harry Belafonte I remember was big then, so we learned "Day-o" [laughter] and you know, it was just wonderful.

One day I was at class, and Beth Haas' theory on teaching was you would sing the songs, because you are learning to make chord changes and when you're new, that's not easy, and she is trying to speed you up. So, you know [sings] "Go tell Aunt Rhodie, go tell Aunt--" And if you weren't singing, two minutes later--and you would have to sing and make the changes. So she would hear us singing. One day she said, "There is a group that just lost their bass singer, a group called--a local group that sang in coffee houses--called The Travelers. They asked me if I knew anybody and you have a wonderful voice, would you like to try out for them?" And that just astounded me. I never thought I had a voice, and I didn't even know I was a bass. I said, "Sure," and I went and tried out and I actually made it. I sang with The Travelers, essentially, for the rest of the time until I went to law school, and could hardly play the guitar [laughs]. But

there I was singing harmonies, [singing] “Why don’t you go--” You know--. It was great. I loved it.

Then when I got to law school I kept up the guitar and took lessons on and off throughout law--and actually gave lessons. But it was--[laughs] I have to confess, it was less to make money, than attractive women [laughter] who wanted to learn guitar. I gave lessons to--actually that’s not completely true. But they certainly would get a lesson.

I think the best period I had was a wonderful man, sort of a crazy man [chuckles] named Rolfe Kahn, who I took lessons from, blues lessons. I was very interested in the blues at this point. I took blues lessons throughout law school until Rolfe picked up stakes. He was sort of a vagabond, he had been in Boston, and actually, I was just reading a book about Joan and Mimi Baez, and realized Rolfe was in there. He had been on the music scene in Boston when [Bob] Dylan and everybody was breaking out, and had come to Berkeley. He moved on to Taos, and the last I heard, he was living in Taos. So I took blues lessons from Rolfe. It was just wonderful learning some of those funky blues things that I--

McGarrigle: And was that voice as well, or just instrumental?

Henderson: No, just instrument. That was just instrument. I mean, we could sing and I could learn things and sing on my own, but he didn’t emphasize--you didn’t have to sing. He was just teaching guitar or a technique.

McGarrigle: What are some of your favorite songs from that period, starting with The Travelers and through law school?

Henderson: Oh, “Nobody Loves You When You’re Down and Out” was one of the first ones I learned with some nice guitar runs on it. Boy--I should have--

McGarrigle: I didn’t ask you in advance--we can add that in, too.

Henderson: Actually, I have one of his albums there. I learned--Rolfe had a couple of albums and I learned almost all of the things on that album but I’m blocking on the names. Maybe I can go get the album, it’s there someplace. Hold on a minute and I’ll--[tape interruption] I’ve pulled out the album that I learned some of these songs from Rolfe—“Poor Lazarus,” “Columbus Stockade,” one of my favorites--[sings] “Way Down, in Columbus, Georgia.” “Nobody Knows You When You’re Down and Out,” “Frankie and Albert,” “Make Me a Pallet on Your Floor,” “He Was a Friend of Mine,” those are some of the songs that I learned.

McGarrigle: I think you should make singing part of some of your presentations--[laughter] I think that would be wonderful.

Henderson: I don’t have the nerve. You know, LaDoris Cordell does that. She is a wonderful piano player, and she will sometimes in her presentations sing. You know, and then say, “I’ll speak at your event, but have a piano.”

McGarrigle: Well, that’s fantastic.

Henderson: Yes. I don't have the nerve to do that. I would--once I was introduced at an event, and the guy who introduced me knew me and knew I played the guitar and said, "Well, he's a good singer, but we won't ask him to sing." And I started off--I was in a jovial mood that night, and it was a friendly crowd--and I started singing a song as the introduction to what I did. But that's the only time that I've ever done that. I don't think I'm up to that. [laughter]

McGarrigle: Well, isn't Alan Lomax responsible for that recording on the new bluegrass album that was the soundtrack to the film *O Brother, Where Art Thou?*

Henderson: Yes, absolutely.

McGarrigle: He discovered the man who was in the cotton fields--

Henderson: Exactly.

McGarrigle: --he was in a prison chain gang?

Henderson: Yes, he did, yes.

McGarrigle: And that was "Po' Lazarus."

Henderson: Yes, that's right, yes, exactly. Yes, he's very important in, I think, the history of black blues, country blues, and as I said, he is the person who discovered--I just told you--

McGarrigle: We were talking about Baez. No--

Henderson: No. Leadbelly.

McGarrigle: Oh, right.

Henderson: He discovered Leadbelly, and others. But that is probably the most prominent discovery. Yes, he's the one who found this guy.

McGarrigle: Yes.

Henderson: Yes.

McGarrigle: What was that experience of playing with the group The Travelers like? What kinds of venues did you play in?

Henderson: It was great. I mean, and this was really the early days of folk music, when people were just starting to have guitars and buy guitars, and coffee houses, at least this was my first introduction to them. It was great. You know, as I said, I lived in L.A. at my mother's home but I worked in Santa Monica. That was a conducive area, as far as a lot of art, artsy kinds of people, bohemians, whatever you want to call them. Of course Venice was right next door.

So we would get booked into coffee houses, and indeed, we would--also, I remember a couple of--more than a couple of our concerts, if you could call them that--were in big

backyards of what seemed to be wealthy people. They would just hire us and give a party. We would go out on a raised platform with a big crowd of people and sing our repertoire. So it was just, you know, wherever. It certainly wasn't for the money. We didn't [laughs] we didn't make a lot of money. I think it was just because we loved to do it, or maybe we were showoffs and liked to perform. But I just loved it, and it certainly wasn't for the money. I can't even remember how much we got for the performance, but it wasn't a lot.

McGarrigle: I imagine that throughout those years brought you in contact with a wide range of people.

Henderson: Oh yes, yes, I did. I still--I've lost track of a couple of--there were four of us in The Travelers and I've maintained contact over all these years. The leader of the group, who was the best guitar player--as I've said, I wasn't a good guitar player at that point--he went on to be a very well-known guitar teacher in the L.A. area. Don't ask his name, this isn't a day I'm remembering things.

Yes, I met a lot of people through guitar playing and through music who have been good friends in life.

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McGarrigle: At what point was it that you first came in contact with Mimi and Joan Baez?

Henderson: I first came in contact with Mimi and Joan--I met Mimi at Troy's house. Mimi was very involved in and she was the founder of Bread and Roses. It was a constant matter of fund-raising, and someone had told her, "There is this active, influential guy in Berkeley who has contacts and friends, and you ought to talk to him about ideas for raising money for Bread and Roses." So she set up a meeting with Troy, and Troy, as is his wont, called some of his friends. "Well, there is this interesting woman and it is a good project. Come on over and listen to what she has to say." So I went over and met her. And I think it took me all of four seconds to fall head over heels in love with her [laughs], I was just--you know, a lovely, lovely woman in every way, physically, but internally, such a beautiful person. I forget [pause]--she took names, and I said I would be happy to help. I didn't have any particular ideas.

Some short time later she called and said there was an event she was going to. KQED [public television] was having a music fest, it was down on Shattuck where their offices were then, and did I want to come along? So I went, and after that we became wonderful friends, even dated for a while. Of course during the course of that I met her sister, they were very close, and actually went to some of Joannie's concerts. She had a bus, and I'd get on, and go to some of the concerts with Mimi to watch Joan perform. Actually, what's little known, Mimi was a performer, but very shy, and refused to perform locally. So I actually went with her to some of her performances, where she would perform at a club, but it was always out of the area. That was just an important thing to her, I don't think she wanted to perform locally or in front of her friends.

But anyway, Mimi and I have been, until she passed away last year, just a very, very special friend of mine. And I always admired what she did with Bread and Roses. It was a very important project to her. I helped her raise funds over the years, and made

my own donations. So anyway, that's the relationship, and I was very, very honored and touched. I think--well, sitting on that table, there are two silver goblets. When I went to--not Mimi's public memorial, but they had a private memorial at her home--and Joannie called me and I went, and it was family and a circle of friends. I felt very honored that I was recognized at that level of friendship. After people were starting to leave, Joannie came up and said, "I want you to have this goblet of Mimi's. I know she'd want you to have it." And I brought it home. Then after the public memorial I got a package from Joannie saying--I think the other one, there were two--"The other one ought to go with the one I gave you." So I have those, and I really treasure those as a memory of Mimi.

McGarrigle: Was it something you would do, to sing together at all, or for you to play the guitar when she sang?

Henderson: We did, but I was very aware when I was around her or her sister that they were musicians, and I was not and I was very insecure. And what we would do--I know we would play, I would goad her and say, "Well, play something." After a while she would pull out the guitar and usually would play something that she had written, as opposed to--. She wrote songs. Then she would say, "Now you have to play," and I would--you know, pull out one of my old war horses that I just described, and--some of those I had gotten good at, because Rolfe Kahn had taught me some good arrangements.

I think it surprised her, because as I said, I'm not a musician who can pull out and perform, but I can play a song I have learned. So we would do that. But it was very limited. It was like she could do that all year long and play something, and once I [laughs] ran out of my repertoire, it was all over. So you know, I didn't play a lot. I spent a lot of time rehearsing, waiting to be asked again. [laughter] You know, "Okay, let me get this one down, and have it ready the next time I have to play something." But it was fun. I enjoyed it a lot. It was great fun and sort of a bonding experience. It made me feel a bit musical, to be playing with someone of her talent.

McGarrigle: I wonder if you could describe the atmosphere at the time in terms of some of the protest movements that were going on and how that overlaps with Joan's music and Mimi's music, the Vietnam War, anti-war demonstrations. Were you involved with that?

Henderson: Oh, well, they, Joan, even to this day, is available. I mean, if you have an important protest, you know, you will try to call Joan Baez or perhaps Mimi and say, "Will you come sing, to start it off, sing a protest song, or some song." And Joannie has always been available for that. I've gone to some of those. I went to one in Golden Gate Park. I don't remember the occasion, what the protest was, but it was huge. I went with Mimi and there was Joan leading it off, singing, "We Shall Overcome," and songs like that. I think it was a part of those movements and it was also a great attraction. I mean, I'm sure people came who might not otherwise have come to protest, to hear her, and then of course they were a part of the protest. I think that folk music played that role in those days, and Joan I think was a leading person on that. She had the biggest name and the biggest commitment. She was always there to do that, and it's interesting that she still does it. I'll read in the paper that she was at a certain event and sang songs.

McGarrigle: What was the overlap in some of those protests, or was there overlap between the civil rights movement, and, for example, the Vietnam War demonstrations?

Henderson: There was--well, certainly there was overlap in terms of people attending. I think the people who tended to be involved in civil rights sit-ins, protests, went on to be the people involved in many instances in the anti-war protests. Although my sense, I haven't thought this through a lot, my sense is that the anti-war, it was a younger generation coming along, who more likely would have been civil rights, but never got involved in civil rights, but got involved in anti-war. And I think those two movements never really merged. You know, Martin Luther King made a very dramatic evolution in his philosophy and his focus. When he spoke out against the Vietnam War, that was sort of attention-getting nationwide, but he was assassinated before that whole change happened. And I think that was a critical part of that movement, his endorsement, if I can use that word, of the anti-war movement was very important in bringing, I believe, the civil rights movement into that arena.

McGarrigle: Then in Berkeley, also, the Free Speech Movement was happening, later--well, in the mid-sixties--

Henderson: Yes, mid-sixties, early sixties. Yes. That was, yes--and they're still showing documentaries on that--that was certainly earth-shaking in terms of university life. The students there, Mario Savio is the most prominent, but a number of friends of mine were involved in that. Mike Miller and friends of mine from my undergraduate days were involved in the Free Speech Movement. I think that gave students nationwide a sense of power. I mean, they really won that movement, and I think the administration probably played it poorly and the police played it poorly. I think after the Free Speech Movement, my own sense is that students nationwide had a sense of empowerment. "Hey, what other things are being done to us that we can correct by activism?" I think that was probably the start of student activism.

I went to Cal in the fifties, and, boy, there was no activism, and it's not the same place. When I went to Cal, I think I've mentioned this in other parts of this interview, you could actually go to the housing office which was on Bancroft Way--not on a part of campus, but a building that the university owned--to look for housing, and you could see on the housing card, "No Negroes." You know, imagine that now. And the most activist--I was involved in a group--I think I've told you about Stiles Hall, this place that I was involved in, a university YMCA that was quite activist and had a lot of people there who were interested in social issues--got together a group. And one of our projects at Stiles Hall was to go around to dormitories and sororities, ring doorbells--not ring doorbells, make an appointment and go and give a very mild little speech about the evil of discrimination and the virtues of integration and the virtues of inclusion, I doubt if that word was used. That was what was done. Now, you know--but not--what did Mario Savio say, "Throw our bodies on the--" None of that was even a concept in the fifties when I was a student. So anyway, I think what I'm trying to say is that after the Free Speech Movement, I think students were willing to just confront, sit in, do whatever they could do to advance the cause they believed in. I think that's--but it certainly wasn't in my days--very mild students. And another sense of the university, and the students' relationship to it. And this is what part of what the Free Speech Movement is.

Vincent Hallinan, who was a very--have I--it sounds like I've mentioned this before?

McGarrigle: No, but I know him--of him.

Henderson: Okay. He was very--he represented Harry Bridges in those famous cases which are still talked about, when he was tried as a Communist. Vincent Hallinan wasn't allowed to speak on campus and Stiles Hall was called the "Alternate Free Speech Forum." Vincent Hallinan spoke at Stiles Hall, which was on Bancroft Way across the street from campus. Malcolm X, I first heard Malcolm X at Stiles Hall, because he wasn't allowed to speak on campus. So this was a part of what the students were protesting in the Free Speech Movement. It was about their own free speech, but it was also about the role of a university. "You say we're supposed to learn, why can't a national figure like Malcolm X speak to us on our campus grounds?" But it wasn't until the Free Speech Movement got a full steam ahead that they really confronted this. Of course now virtually anybody can speak on campus. So I think it was a great breakthrough for students.

McGarrigle: When you went to the sororities and fraternities, what kind of reaction did you get?

Henderson: Polite. Polite, I mean, I don't think anyone was particularly rude. But I don't think we converted many people. I think it was thought, "This is the polite thing to do, we'll listen to these do-gooders, but we're certainly not rushing any" [laughs] "blacks or Negroes next time around," and that didn't happen for a long time.

McGarrigle: Was that the goal of the group?

Henderson: Well, it was combined. It was--try to persuade them or just put out the message that it's really wrong to discriminate here in the university, in your sorority. And part of the issue was this. When I first came up, I didn't know a great deal about fraternities or sororities. It never occurred to me to think about whether they discriminated or anything. I knew there were such things. But some of my friends--Cal was just starting to get slightly larger numbers of Negroes, as we called ourselves then and as we were called. The fraternities, some of them, not the elite ones, would send out rush invitations, just getting the enrollment. So some of my black friends got those, and said, "Oh," and went to it, and were told, "We don't--what are you doing here?" So part of it was a reaction to that and trying to say, "Hey, this is wrong." But also part of it was, as I said, it was a combination of that and a very meek protest about the housing thing, what I described, where you couldn't live where you wanted.

I think I remember I told you about one year, I was a junior by then, I played--a friend of mine on the baseball team, Donny Walker, we became very good friends. We came up and decided we wanted to be roommates. I remember--I never drive by this place on College near Dwight Way without thinking--we went to this place that advertised and rang the doorbell and said, "We're here to look at this room and rent." She looked at me and just said, "Gee, we don't rent to Negroes." And I still--at that point, I didn't have the stomach to go any further. I said, "Let's forget this," and Donny and I never became roommates. So it was part of that that we were--the Stiles Hall thing was designed to at least try to do something about. I don't think we accomplished much, except we felt better doing that. Yes.

McGarrigle: Early on, Russ mentioned a group that the two of you--I don't know if you still play together in the Dozens Cousins?

Henderson: Yes. [laughs] We don't. We haven't played in a while. We used to play all the time. I mean, we would meet regularly over at one of our houses, and actually [laughs] had a repertoire. We would practice songs, practice our harmonies. It was great fun. Actually, I was with Russ recently, and--no, what happened, I had my twentieth reunion with my law clerks last year. We met and they were sitting around and one of my clerks had done some deep research, and she had called Russ to get some goods on me, and she pulled out a tape and played it over the loudspeaker, [laughter] of the Dozens Cousins, one of our sessions! And I had forgotten that we actually recorded some of these things. Yes, but Dozens Cousins, we would sometimes at a party that we gave [laughs], we would pull out our guitars and sing a couple of things that we had worked on. But it was more for our own entertainment, and we just loved to sing together, loved to learn songs.

At one point we tried to expand out, we realized that three guitars going "Chang-chang-a-chang-a-chang" [laughs] didn't add anything, and Russ actually bought a bass to give us more variety. But we never really pursued that to really become sophisticated players. We just strummed the chords and sang harmonies.

It was great fun. We haven't done it lately, we still talk about it but we haven't done it. I think we all got busy with our careers and lost--stopped doing it.

McGarrigle: There was a third person in the group?

Henderson: Troy.

McGarrigle: Oh, Troy, okay.

Henderson: Yes. That's the third, yes.

McGarrigle: Okay, I see.

Henderson: We were the Dozens Cousins, yes.

McGarrigle: And how did the name come about?

Henderson: Russ has great facility with words, and it was his idea that--Dozens is a black game, have you heard of the Dozens? Okay, you probably heard of the word "your mama." Well, that's called playing the Dozens, a putdown in the ghetto of one's mother. You know, "Your mother wears high-heel tennis shoes," or some sort of put-down. It's one-upmanship, it's called "Playing the Dozens."

McGarrigle: Okay.

Henderson: So, just, "The Dozens Cousins." It is just a nice rhyme, and a nice play on words, that's where the name came from.

McGarrigle: Okay. Now, Russ did tell me that you have some--or you had, at the time you were playing more together, some--maybe you didn't do this publicly, I don't know--you'd have parties, sessions where you did engage each other in--I don't want to use the language incorrectly--in friendly insults or--

Henderson: Oh, yes, oh, yes, we always--that was more together, and I think we have some of those on tape. Yes, just, it's a game of one-upmanship and it's a sign of wit. I remember in high school you'd play, you'd have a lunch break or a recess and guys would play the Dozens. And there was ranking. It's an interesting--I didn't understand this until years later when Troy and Russ, sociologists, actually started looking, as others had, at the Dozens as a sociologist. You know, just for me it was a game that the guys did. But there is a distinct ritual about it, and there is a top dog. The best Dozens player at Jefferson High was Jerry Drew, who is still one of my best friends. The reason is that he--well, it's also a playing to a crowd. So guys gather around and somebody will say, "Oh man, your mama ba-da-da-da-da." And the crowd would say, "Whooooooh." And then you'd come back and say, "Well, your--" And the crowd is silent. Well, that's deadly! You're losing. And it picks up, and they get this desperation and there are very precise rules about it, because if you and I are doing it and the crowd is going and then sort of a peripheral member of the crowd, not a power person, laughs too loud, then you say, "Hey, what do you--?" And then, "boom!", he's in, you get on him, and it's very precise rules. I think Troy and Russ are the ones that pointed that out. I mean, I knew it because I had experienced it, but it is a very interesting game. Their theory about the Dozens and why this is popular--and I can't tell you at all whether it's still done, whether young black kids in the ghetto still play the Dozens like we did--

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Henderson: --a ritual in the black community, or it was, saying "Life is hard. There are going to be insults, you are going to be insulted because you're black and this is just part of that, doing it to each other, you've got to toughen up and be able to take these kinds of things, because that's what you're going to get from the white world." That's his sociological take on the role that the Dozens play.

McGarrigle: And it starts from a very young age then.

Henderson: Starts from a very young age.

Some years ago, probably in the seventies, the very famous anthropologist at Cal, and I think he may have just retired, Alan Dundes--and they had a Cal alumni week, and I was asked to participate in it. One of the things I did was introduce Alan Dundes to the audience. He was the lecturer and the name at--that was Dwinelle Hall. So I did some research because at that point I had heard the name, but I didn't know him. And did a lot of--I thought I gave a good introduction. He really liked it and came up afterwards, and we got to know each other. And the Dozens came up, because he was interested in it. Oh, I can tell you when it was. I was in East Palo Alto, running the Legal Aid Office. I said, "Oh, yes," and we talked about the Dozens. I said, "Yes, gee, I'll--" He said he'd like to hear it, he had never heard the Dozens. I said, "Oh, I'm sure, I can--" in East Palo Alto. And I tried [laughs], and I tried, I could not come up with anybody who said, "Oh, there's a place, you know, where you can go and hang out and you can hear someone do the Dozens." So I don't know. I know in my neighborhood you could

walk along, go to a park and you see a group of guys and you stand there long enough, you'd hear the Dozens. I couldn't do that in East Palo Alto, and I don't know what that means.

McGarrigle: And Dundes is a folklorist who likes to track--

Henderson: Exactly.

McGarrigle: --origins of--

Henderson: Exactly. And he wanted to--he was interested in the Dozens, and wanted to actually witness it. I don't know if he ever did. We stayed in touch during that period, but mainly because I was trying to [phone rings]--I'll let that go. That's probably the hospital. I got a message yesterday--

McGarrigle: Why don't you--do you want to get it? [tape interruption]

Are there other musicians who influenced you over the years?

Henderson: Influenced me? Probably--well, not others. I think Rolfe Kahn was probably the biggest influence because he was really good and taught me some sophisticated guitar kinds of things, it was a breakthrough for me from strumming chords and doing a little finger picking. There was another guy who--Jim Kwestin, have you ever heard of--he was very hot in the sixties. He was from Boston. Indeed, this is interesting, he was in this book about Joan Baez and Bob Dylan and all, apparently he was on that Boston scene. He came to Berkeley one year, and had a space, gave lessons right on the corner of Haste and Telegraph. There was a little building in the back of that place on the corner. I went over there and took lessons from him. A very charismatic guy, and the jug band, as he called it, had a national reputation. And I learned some good things from him, finger picking, in a way I hadn't learned before. He was influential. I learned, I was able to build. I think guitar is a building process. You learn something, and you build on that, and you go to the next thing, more sophisticated. He was before Rolfe Kahn. But I think he helped me be able to take the lessons I took from Rolfe. I think without Jim as an intermediate, I would have--Rolfe probably wouldn't have even been interested in me as a guitar player. I think he wanted people who--he didn't want to teach beginning guitar.

So Jim was big. That's pretty much it.

Some of the songs I've learned just from friends I'd see--I always had a guitar--I'd see a friend I knew, and I'd say, "Hey, how do you do that?" Then you'd sit and you'd learn it. A lot of the stuff I learned was like that because someone who is serious about the guitar, but maybe if they aren't good, they all know at least one really good song, and one really neat arrangement. If I knew them well enough, I would just say, "Let's sit down until I learn that arrangement." So a lot of what I learned was just informal.

McGarrigle: You spent a lot of time doing music, though.

Henderson: Oh, I did. I love, I love, to this day, I love music. And I spent a lot of time then, and I'm--at some level, I'm very proud to be a judge, and happy with my career. But I think

I went through a lot of life wishing I was [laughs]--I think I may have mentioned, I've always had this fantasy that I go to a nightclub and I'm sitting there waiting for the show to start, and I'm sitting in the front row and the guy is out there working on the amplification and I'll say, "Hey, well, why isn't the show starting?" And he says, "Well, the guitar player hasn't come." And I say, "Ah!" [laughter] And I get up and I substitute--I mean, that's sort of been my fantasy in life. Of course, I was never good enough to do, it but I always wished I was good enough to do something like that, and be a really good guitar player. So, yes, I spent a lot of time. And it was a breakthrough. I'm basically a shy person, and I realized that with a guitar I wasn't shy, I mean, early on. And it's the kind of thing that happens. It's like smart kids, I think they learn after they grow up that they weren't nearly as smart as [laughs] they thought they were when they were fifteen. I think years later I realized I wasn't nearly as good a guitar player [laughs] as I thought I was in those days. So I would get up and I would play for anybody and just loved it.

McGarrigle: It is a different form of self-expression, isn't it?

Henderson: Yes, it is. It did something to me. It brought me out in ways that I wouldn't have done otherwise. And I met people socially through it. Yes, so it was a very important part of my life.

McGarrigle: Well, the next part of the outline I have for today has to do with advice.

Henderson: Okay. But let me go back because you asked something about music. About two years ago I had an attorney come into my court for a hearing and he said, "Yes, I just heard your name on the radio this morning, Judge Henderson." "Something about one of my rulings?" and he said, "No, it was a rock and roll station, and they were interviewing someone, and she was saying, 'Well, I learned guitar from a guy named Thelton Henderson, he used to babysit for me, and I think he's a big judge or something now.'" [laughter] And they were talking. And it turned out to be Martha Davis, and she has a group that was big in the seventies, Martha Davis and the Motels, and had albums out. Bill Davis, who was the head of Stiles Hall--and I told you, that was a very important part of my life, my membership at Stiles, the university one. I used to babysit for his two daughters, Martha and Janet.

As I said, I took my guitar, and I actually gave Martha her first guitar lessons. And then Bill bought her a guitar, and then I was in law school at that time, and I went on to graduate and follow my career. And never thought a lot about it until years later, I started hearing about this group Martha Davis and the Motels, and realized that was Martha. So anyway, that was a very satisfying thing. Just two or three weeks ago, Erma, my secretary, got a call, and I got a message that Martha's agent had called, and she was appearing in Palo Alto at the Icon Club, I don't know if you know it, that evening, just for that evening. And that was unfortunately the evening of my poker game and I didn't get to--I wanted to go over and hear her. I wanted to go over and hear her and I couldn't. So I've never seen her perform. But anyway, I just wanted to mention that as a side note--

McGarrigle: Oh, that's fantastic.

Henderson: --to my music.

McGarrigle: Well, I hope--maybe there's a way you could get back in touch with her.

Henderson: I'm in touch. She lives in Santa Barbara now and has what I understand is a nice ranch there. She's semi-retired, she goes out on tours still.

Probably another thing that dates me, when this attorney told me she was in town, and she was performing at the Great American Music Hall, and again, it says more about my poker than anything, that night I had a poker game. But I know they play late, so I left the poker game early, I quit at something like ten-thirty and we usually play until eleven o'clock or eleven-thirty, and I went over to the Great American Music Hall. I was going to either see her perform, or see her, say hi and talk to her. I went in, and I've never felt so ancient [laughter] and out of place--orange hair here, rings in here, and here I am in my--you know, work clothes, and my out-of-date suit. And I didn't know how to maneuver through that. [laughter] They were on a break and I knew she was in the back there, and there were these hostile-looking young men, you know, [speaks in deep voice] "Who is this guy?" And I said, "Hey, I know Martha. I'm a friend of Martha's, I haven't seen her in years." And I couldn't get through [laughter].

McGarrigle: Oh!

Henderson: So I never saw her that night, it was such an--but I called her sister. I called Janet, who I had also kept in touch with, and Janet still lives in Berkeley and she gave me Martha's address. So I plan to, one of these days, drive down to L.A., or go to L.A. to drive up to Santa Barbara and see her. She's lovely, and she's certainly a woman now, just a lovely young girl.

McGarrigle: I'm thinking, next time she plays at Great American Music Hall, that's your opportunity to be back onstage.

Henderson: [laughter] Oh, no! [laughter]

McGarrigle: Advance invitation!

Henderson: It's my invitation to sit in the audience and listen to her. [laughs]

McGarrigle: I don't know, I don't know about that.

Is music something that you've introduced to your grandson?

Henderson: Not yet, no, I haven't. I'm being passive, in that Geoff likes music but it's not a passion. His passion is sports and that's what's being introduced to my grandson now. I don't know, at some point I'm sure I will try to, I'll probably try to play the role for him, if his parents don't do it, that my mother played and pay for music lessons, if they would approve. I have to defer to them, but maybe suggest, "Hey, maybe it's time for Brian to take some sort of instrument that maybe he would choose, rather than me." But no, I haven't yet.

McGarrigle: Or maybe if he sees you play and sing, then maybe he'll get into it.

Henderson: Yes, that's true.

McGarrigle: We've talked on and off throughout the interview about your advice to young people, but I wanted to leave that open in case there's more that you would like to add to that. And not just to young people, but to everybody.

Henderson: I've actually thought about that. That is a difficult one, because I worry about sounding pompous, and I worry, "Who am I to give advice?" That kind of thing is working in this. But I guess, first I'll note that I'm very interested in young people in the sense that I think they're--this is obvious, you know, they're the hope for the future. I've spent my life, we were just talking about my grandson, and I've spent my life hoping, when I was young, more naive, that I would see the end of discrimination and those kinds of things. Then later on I hoped that my son would see the end of discrimination, and am now hoping that my grandson will see it and realizing that he won't, and hoping that at some point in his line of children, it would end. I'm not yet cynical because I still have the hope that things will be better--well, indeed, things are better, but that they will progress faster than they have. It's been a very slow, and for me painful, process to see where we are racially now, which at some very basic level isn't very far from where we were back when I was talking about my days at Cal. In another way it is very far, because when I was in law school, as I think I've said elsewhere on this tape, there had never been a black judge, federal judge, in the history of this country, and now I'm a black federal judge. So that's certainly advancement. But there's still some very basic attitudes in the country about race that are very disappointing.

I think, before we started this, I find it almost shocking that the president has proposed for the federal court of appeals a man who has a past of supporting people who had been convicted of burning crosses on blacks' porches and writing an article telling Alabamans how to develop a strategy to enforce miscegenation laws. I just find that not unlike the days when everyone was saying if President Eisenhower would just take black kids' hands and walk them into Little Rock High School, that would be a symbol. And we lack that leadership. And it hasn't changed in all the years I've been around. That was what I think is lacking in our country. We've never had the leadership really saying, "This is the way our society ought to be," in ways that I think it ought to be, which is accepting, a society of inclusion.

Now, this doesn't answer your question, what's my advice to young people. I don't know. I don't know, other than my advice to young black people, who, despite what I just said, I find to be overly pessimistic and less willing to do the things that I did, that Troy did, that Russ did, to get ahead. Which was to say, "Okay, we've got a chance. We all grew up in a ghetto environment, hey, now we find ourselves in a university and this is our chance to make something of ourselves, and we're going to study hard and try to make it where we can best fit in." I find that so many black people now are cynical of that and instead of trying in those ways will ridicule one of their own who is studying hard, and saying, "Oh, you're just trying to be like Whitey," and I find that so destructive. I think I'm repeating myself [chuckles], I can't tell.

McGarrigle: No, no.

Henderson: I talk about this, and I can't remember if I've talked to you.

McGarrigle: No.

Henderson: So my advice to young people is, “Don’t fall into that trap. It’s a deadly, counterproductive trap.” And that I think, despite all the bad things that are happening in our society to people of color, there is a place. You can become a federal judge. Not everyone from the ghetto is going to become a federal judge. But there are things, but you can only do it by doing the best you can do and preparing yourselves. And I think a lot of kids aren’t doing that now. They’re giving up, not trying.

I’m having an interesting experience, I volunteered to be a judge in the state court system now that I am senior, every Thursday. I’ve done it four times now. They have what they call a mentor drug diversion program in the Oakland courts. I’ve actually been sworn in by the presiding judge over there as a state court judge to hold these special sessions. I go over every Thursday and meet with kids who have been found eligible for this program. There are kids with drug offenses, maybe selling or using, but small amounts and with a record, maybe no record or such a minor record that they are eligible for the program. It’s a fascinating experience for me. It’s unlike anything I’ve done in twenty-one years as a federal judge, because we don’t have juveniles. I realize that I’m generally dealing with much more sophisticated criminals in my court. But one of the themes I hear is these kids saying, “That’s all there is to do. Get a job at Burger King, or sell drugs. And I don’t want to--chumps work at Burger King.” And I just find that attitude so counterproductive. I guess, so my advice is that there is an option to selling drugs, and it’s studying hard and if you’re lucky, have a mother like mine who makes you believe in that, and pursue it. I think, again, I can’t say enough about my mother’s role in giving me these values and making me think that the studying is worthwhile and you can make something of yourself.

McGarrigle: What did I leave undone? Where would you like to go with that, to talk more about family, or to talk about--it’s a very open ended question.

Henderson: Yes. Let’s--yes, I’ve got--[sound of flipping pages] I should have been looking at it.

[Reading from outline] “Is the advice different to minorities than to non-minorities?” You know, I think it is. I was just talking about this the other--I think it’s different in this way. I was talking to some friends about “the race problem,” or whatever you want to call it. These were white friends of mine. I think the theme that we pursued was the need for non-minorities--and we’re not talking about liberals, liberal white kids who might grow up in Berkeley and have a sensitivity, but others--to realize the difference in opportunity and to realize the values they grow up with and to have some sense of identifying. I think we concluded that so many whites don’t believe there is a problem and say, “Well, I did it,” and not realize that they did it because they went to special schools, they had special tutors, they had advantages that aren’t there.

So I think that advice to non-minorities is quite different in terms of somehow having an empathy that so many don’t have, to understand that there really is a difference in opportunity in this country. Because I think--well, Troy has said that part of, he thinks, part of that mechanism is that if you don’t accept that, then you don’t have to do anything, and that’s part of the working of the human mind that, “Well, all they have to do is go out and get a job like I did, and everything will be okay, so I don’t have to do anything about the problem.” Well, I think that my advice is, “Yes, there is a problem, and you can help, if you’ll open your mind and acknowledge the problem and the role that can be played.”

McGarrigle: Yes. It makes a lot of sense.

Henderson: “Questions of identity.” Now, this is interesting, if I understand what you mean by that. I think I’ve always had a kind of a question of my own identity. I think since I’ve gotten out of high school, I came up to Cal and I talked differently, I was told, than the black kids that my white friends at Cal were used to. I was told that. I would meet someone in class or at an event and they would said, “Where did you learn to talk like that?” I think I have always been a racial outsider, in a sense, with the black community. And I don’t know why. Indeed, in recent times I’ve been--what’s the word, maybe embraced is a little too strong, but following some of my rulings in court, I think the black legal community certainly has reached out and said, “Hey, he’s okay, he’s one of us!” And I think up until then I was viewed as someone who was okay but not one of the boys and one of the gang.

I think that has just always been an identity problem in my life. Most of my friends--right now my two best friends are Troy and Russ, and they’re African Americans certainly--but I think if you followed me around for a week, most of the friends I’m hanging around with, that I play poker with, are white. I don’t know what that means. I think that I’ve always liked to think that the people I hang out with are people I can talk to and that have I have something in common with and share interests. But I don’t know what that identity thing means, but I think I have had that identity problem in terms of my relationship with the black community.

McGarrigle: I wonder if there is a way in which that makes you more, in some ways, maybe more independent?

Henderson: Probably. I suspect that a part of it is--also, I think that, again, I think my mother played a big influence. I remember, I can remember I would come home and talk about something, and there were phrases, and I can’t remember one now, and my mother was always correcting. And I don’t know where she learned it. I would say something, I would--.

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Henderson: --then I would learn it. So even way back then I was sort of an outsider. I was sort of this weird guy who tried to talk proper, I didn’t dress like the other kids, a little neater, a little cleaner--that sounds odd--cleaner--but I just still remember these white corduroys [laughter] that just--I’ve been marked for life! These white corduroys. And I think that, and with the girls, I always felt a sort of a hostility, and I really reached my social identity when I came up to Cal. I didn’t date in high school, I didn’t know how to dance, and I came up here and started sitting around the coffee shops and being able to talk, and all of a sudden there were people I could talk to, and I think that is part of that answer, I found my comfort level, socially, up here. And these happened to be white kids that I met at Cal. That doesn’t mean I--you know, I’ve always had black friends and have many of them, but I think somehow that comfort level that I found as a freshman up here has guided a lot of my friendships over these years. But I don’t know, that’s what I’ve thought, maybe, what’s going on.

McGarrigle: Well, there was a world of ideas here, and you fit very comfortably into that world.

Henderson: Exactly, exactly. And I liked that, and that wasn't something I could do, I was weird if I did that back at Jefferson High, you just didn't do that. And I never learned, even to this day, I've never learned "the rap." Not long ago a friend of mine, I went to a black bar convention down in San Diego, I think it was the National Bar Association, they had a national convention. I went down there. A very good friend of mine was there. It was amazing, he is every bit as smart as I am, and when we talk we talk like we're talking. But all of a sudden there he was, "Hey, my man!" And doing these handshakes. [laughter] And I said, "How can--where did you learn that!?" I have never learned that. I can't do it!

I think that's part of my discomfort. I go there and I realize, I'm this guy standing around. I'll engage if somebody says, "Aren't you Judge Henderson?" "Yes." Then we'll talk like that. But I can't go up and say, you know, "Hey, my man!" I mean, "What be happenin'?" [laughter] I can't do it. So I think that has been a distancing thing, because I think that's part--and if this comes out wrong [laughs] I'll look back--but I think it's part of the existence, to be able to do that, it's part of the black identity. As I said, I take pains to say that my friend is every bit as articulate as I am, it's not like that's the way he talks, but he knows how to do that and has perfected it. He's brilliant at it. I keep saying, "God, that's great! Where do you get--?" And then he'd turn around and we would talk, and it's like being bilingual almost. And I'm not bilingual, I can't do that.

I think in terms of a personal philosophy, I was thinking about that, I don't know, it sounds trite, but I think do your best, and certainly I think more in terms of what I tell minority kids, because I think they need more help and advice--I am repeating myself, but you can, despite all the negative things I've said, I think you can succeed in this society if you're a minority and if you're a poor minority. One of the things I've learned and it's helped me a lot, I think that anyone involved in civil rights is a critic of this country by definition. You're criticizing the way this country treats minority groups. But, as I think I've said elsewhere here, for a number of years I used to travel with a group of judges and lawyers to other countries to help introduce some of our legal concepts and institutions to these other countries. It became emphatically clear to me that despite my criticism in this country, we do some wonderful things and we are, I believe, we are better in the way we treat our citizens than any other country in the world. I think that's important to know. So it's a relative thing. I feel we can be better. But compared to the rest of the world, we do well by our minorities, and there are opportunities to move here, and I think it's important to note that. And the criticism is just, we aren't doing enough, or we aren't doing it fast enough, or we could do it better. My personal philosophy is take what's there, work to improve, but again, telling young people, "Don't give up and say, 'Boy, there's discrimination in the world, so I'm not going to try to do anything.'" I think too many young minority kids take that view.

McGarrigle: You have an opportunity with your interaction with the juveniles in the court in Oakland to--

Henderson: Yes, I do, and that's why I'm doing it. As I've said, I think you can do much more with young people. And I'm sensing, I've only been to four sessions, and I can see it. I can see that some of these kids, if you catch them and can put the time and attention, you can turn them around, you can help them. I had a wonderful session in court yesterday. The last hearing was a young kid who had been remanded by another judge in the

program, he wasn't doing things right. You know, you're supposed to bring proof of your seeking employment, or if you're employed you're supposed to bring pay stubs and you're supposed to be tested for drugs weekly, and he just sort of wasn't showing up for this. He was late for that, and the other judge said, "Well, I don't want to terminate you from this program, and I'm going to send you to jail for three days to show you what's awaiting you if you flunk this program," which is a diversion program. "If you flunk this program, you go back into the system, and that drug bust, they prosecute you, and you'll probably end up going to jail." So he was coming back from jail, and he was in prison garb, and there was a black man, an elderly--elderly, now, I think he was younger [laughs] than I was--but there was an older black man sitting in the audience, I didn't know who he was. The kid's attorney was a public defender, and I was talking to the kid and I said, "You know, we're very concerned about whether you're right for this program." He said, "I'm right for it." "Well, let's go over this." "Yes, I know, well, I had transportation problems, that's why I was late." And we talked about that.

Then finally--I was going to let him out, but I was going to make him think he had to talk me into it, and I was being gruff. And his attorney said, "Well, his grandfather is here." This man stood up, and talked about the rough life this kid had had, his father had abandoned him and his grandfather had stepped up and was ready to try to take care of him. It was very, very touching, and I talked to him a long time. I actually did something we don't usually do, let him come in and they hugged and he said, "I'm here for you," and "Listen to the judge." You know, it gives me hope that if we work with this kid right, get some resources, and help his grandfather, that we can help this kid. That's fulfilling. That's fulfilling.

I used to feel that we could save every kid I came in touch with. Now I feel if I help this kid and a few others in this program, I've really done something. So that's what I'm trying to do and that's why I've volunteered my time to work in this program. I think hopefully I can make a difference. I've been able to talk to them, I've been able to draw upon--even though I just said a minute ago I don't know how to talk that talk, when I'm in a black social group--but I can draw upon my experiences in South Central L.A. and Jefferson High. And they sense it. I think it's important that I'm not just an abstract judge who's coming down on them but someone who can let them know, "I understand that, and I had some of those same experiences. Let me prove it to you." I think that's important, so--

McGarrigle: It's inspirational.

Henderson: It's fulfilling. I enjoy it. I was thinking I made too big a commitment because it's every Thursday afternoon. But it's worth it, that's a good use of my time. [tape interruption]

I have realized--about my plans and reflections--I've come to a realization, I think I mentioned that when I became a judge, I jokingly say that I was certainly one of the few judges at that time who got a pay raise [laughs] when they became a judge. I didn't make that much, certainly didn't make much when I was at Stanford as assistant dean and hadn't started making much in my law practice when I got it. But now that I'm a senior judge, and have my income secured for the rest of my life, I've realized that money is not that important except in terms of what I might be able to do for my family and my grandson. And I realize I've had a number of attractive offers to retire from the

bench and go practice or do things, and I'm not interested in it. I realize I love this job, for many reasons. I love it for the intellectual challenge, the stimulation, I love it because, just like the juvenile program I mentioned, you can actually do some things that I think are beneficial to society. So my plans are to do this until I start drooling at the mouth on the bench and somebody says, "Hey, it's time to hang it up." So I think that's my life plan. And get better at poker [laughter] and get better at fishing. And read some good book and watch my grandson grow up. I think that's my plan.

McGarrigle: Well, thank you for all the hours.

Henderson: Well, thank you. You've made this totally painless. But that's an understatement. You've made it enjoyable. This has been beneficial to me, Leah, I feel like we've become good friends. I think there was a bonding here that I really like. This has been helpful to me. It will be helpful in other ways, it's caused me to think about my life in an organized way. I think I'm going to use that for many other things, including the writing I'm [laughs] always threatening to do, because I think this is going to be helpful in that. So it has been a wonderful experience for me.

McGarrigle: Likewise, likewise.

Henderson: Thank you.

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Judge with friends, Troy Duster and Russ Ellis, circa 1984, photo courtesy Deborah Woo



Judge Henderson with grandson Brian, 2004, photo courtesy Henderson family



Judge Henderson fishing for salmon in Alaska, 1986,
photo courtesy Mort Cohen



Judge Peckham giving Oath of Office to Judge Henderson, 1980,
photo courtesy Henderson family

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