Bert Levy: It is my great pleasure to be talking with retired Associate Justice, Stephen Kane, of the Fifth District Court of Appeal. My name is Bert Levy and I'm an Associate Justice of the Fifth District Court of Appeal in Fresno. As part of the centennial of the California Courts of Appeal, the Appellate Court Legacy Project Committee created an oral history of our appellate courts and their justices.

Good morning, Steve, and thank you for being with us today. You have been described as a judge's judge and the model of equanimity, steady, even-keeled and considerate. As a colleague of yours for many years, I would strongly echo those sentiments. It was a tremendous honor to serve with you.

Steve, you've had such a distinguished career and you kept off over 25 years of judicial experience when you retired from the Court of Appeal in June 2017. But before we get to your legal and judicial career, let's talk about your younger years. First, tell us where you were born and raised.

Stephen Kane: Well, first, Bert, thank you for agreeing to conduct this interview and I appreciate your introductory remarks very much. I enjoyed serving with you and the other members of this court during my 11 years on the Court of Appeal very much.

I grew up in San Mateo, California on the peninsula in the San Francisco Bay area. I was the oldest of five. I came from a very loving family and had wonderful parents, grandparents, aunts, uncles, cousins and had a wonderful childhood.

Bert Levy: I know you had wonderful parents. Tell us about them and what they did.

Stephen Kane: My mother, Mary Catherine Galligan-Kane, known as Keke, it was her nickname from young age, was born in Kansas City, Missouri. And after the war, her dad got transferred, worked for a telephone company to San Francisco. She finished school here and then through her brother, who was also a law student at the University of San Francisco, where my dad ended up going to law school, met my dad through her brother. They got married in 1951 and I was born the next year.

My mom was a very sweet loving lady, beautiful, liked people, loved children, was a wonderful hostess, very encouraging and supportive of me through my childhood. And I think I was closer to her than anybody growing up until I became a young adult and as she grew older and all of us kids became adults, she exhibited a sense of humor we had not seen before. She was a great mimic and she loved to laugh. So, my mom was just a wonderful mother and wife and friend to many.

My dad grew up in Denver, Colorado. He was born 1926, the youngest of eight. His mother died when he was one. He only

had one sister and of course the Depression came. His dad had trouble finding work and my dad got shuffled around among family members because he was the baby and there was no woman in the house to take care of him. So, of course, my dad, as you know, Bert, he was a retired member of the Court of Appeal First Appellate District and has also undergone an interview as part of the Legacy Project. So, he's talked about his life. But he eventually ended up living in Burlingame with his sister, his only sister and her husband. They never had children. It was John and Mary Burke and he lived with them from the time he was about 13 through high school, and they were a big part of his growing up and maturing years.

Then the war came and he entered the navy, came out. He thought he wanted to be a dentist. That didn't work out. The teachers told him that he just didn't have the hand dexterity to do that.

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So then he tried law and he ended up going to USF Law School, graduating, met my mom and then started practicing and ended up down in Redwood City with Harold Ropers and Eugene Majeski. And then later formed his own firm, and then went on trial bench, the appellate bench, back to law practice, became the Ambassador to Ireland, did private judging and finally retired.

My dad worked very hard when I was growing up and it was common for him to be working six and seven days a week. He was trying lots of cases. He was a very accomplished trial lawyer and it wasn't until he went on the Superior Court when I was in high school that his hours became more regular. But my dad was a very modest man, but had a lot of personality, liked people and people knew that he liked being with people. And I think, as a result, he connected with juries and other lawyers and judges. Family was important to him. So, I had a wonderful father and a wonderful mother.

Bert Levy: I had the privilege of meeting your father a number of times. He was a larger than life figure, really had a wonderful gregarious personality, wonderful personality.

He became, as you mentioned, the ambassador. Tell us a little bit about that. He was appointed by President Reagan, I believe, is it correct?

Stephen Kane: Yes. Well, it's interesting how all that happened. He actually was practicing law back with the Ropers-Majeski Firm, having retired early from the Court of Appeal. And he got a call indicating that President Reagan wanted to nominate him to the Board of Trustees of the Legal Services Foundation. And if you may recall, Bert, that it was a very controversial time back then

because there were two schools of thought that the federal government should increase the funding of legal services. And then there were those that were critical that they should actually withdraw some of those funds.

So, the appointments were very important politically. And my dad got nominated and he went through some senate hearings on that and I'm giving this by way of background because it's kind of interesting story and it was like the day after or shortly thereafter that this ambassadorship thing opened up and he ended up taking it. And they withdrew his name from the Legal Services appointment.

But the story that I remember that I enjoy recalling is that when he was in front of the senate and some of the opponents of his nomination -- one of the senators was grilling him. One of the questions to him was -- well, they referred to him as Justice Kane even though he was retired. They said, "Justice Kane, you've had a remarkable legal career. You've been an accomplished lawyer and judge, and you've done very well for yourself and sort of the American story. But really, as a Trustee on the Legal Services Foundation, how can you possibly understand what it's like to be poor and to relate to the people that will come and ask for those services?"

And my dad paused and said something like -- and I've read the transcript to this, "Senator, one of my first memories as a child is standing in line where they were handing out shoes." He said, "I remember going to bed at night hungry. You don't forget those things. I haven't forgot those things. I won't forget those things. So yes, I think I can understand what it's like."

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And he says, there were no more questions from that senator. Anyway, it was within days of that that the Ambassador to Ireland had announced he was going to resign. So this opened up and he got a call asking if he would be interested and he had never expressed any interest. This had never come up before and I remember he called me among other people and said, "What do you think?" And I said, "I think you should do it." And other people told him the same and he did and within weeks, he was over there as the ambassador.

Bert Levy: Isn't that incredible to come from that modest background, to become the Ambassador to Ireland for the United States of America. If I remember correctly, didn't President Reagan go over to Ireland and I think your father--

Stephen Kane: He was the one that greeted him.

Bert Levy: Yes.

Stephen Kane: He was the ambassador. It was a very special time to have the United States President visiting Ireland and my dad was the ambassador during that visit. And he had some wonderful stories about that visit and how wonderful President Reagan and Mrs. Reagan were and how the Irish people just welcomed them with open arms.

My dad had an old -- well then, was the latest, like video camera. But we're talking 19 -- in mid '80s. So he asked one of the staff at the residence if they could take some video when President and Mrs. Reagan arrived because my dad and my mother would be greeting them. And then they would be walking from the car, in the entrance, over to a place where he was going to then speak and so forth. And of course my dad would be in no position to be taking videos. But he asked a staff member to do it.

So we have that video and what is interesting is, as they're walking, President Reagan, who at the time was well into his 70s, but he was such a fit, strong person. And this video demonstrates that because they're walking along a path and there're some bushes that are just maybe a foot and a half high and he's waving to people and people are talking to him and calling out to him and he's looking at them and talking. And he walks past where the pathway is that he's supposed to be taking and everybody else is walking on that path. And so President Reagan is directed to go back. But instead of going back along the pavement, he just skips over this hedge, keeps his balance and just nothing and we've got that on video and it's just really special, priceless.

Bert Levy: That's great. Well Steve you not only had two wonderful parents. I know you also have a tremendous family, great wife and children. Could you tell us a little about them?

Stephen Kane: Well, my wife Brenda was a high school teacher down in Ventura County, having been raised in Santa Barbara and her brother, Omel play basketball at Fresno State back in the days when they were part of the big red wave and had a lot of success and a lot of community following. So he ended up meeting some friends of ours, friends of mine, one of whom was one of my law partners, Mike Woods and Mike's brother Dennis was a big booster at Fresno State. And they became friendly with Brenda's brother and they ended up meeting Brenda because she would come into town to visit, to watch him play basketball.

And so they set us up on a blind date. And about eight, nine months later, we were married. We have four children. We have a daughter and three sons. Our daughter is a school teacher here in Clovis. She's going to be getting married later this year. Then we have three boys. The oldest son, Nolan, is a lawyer, worked in the District Attorney's Office here in Fresno and he now is with a private firm doing plaintiff's litigation work.

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Our next son, Brody, is a CPA and he works for an accounting firm with offices in the Western United States and one here in Fresno. And our youngest son, Riley, is a paramedic who has decided he wants to go to nursing school and become an RN and he hopes to start that school in the fall of this year.

They all lived in the Fresno County area which delights my wife and me very much.

Bert Levy: Well that's fantastic. I've had the privilege of knowing all four of your kids almost since they were born and it's been a thrill to watch them grow up to be the fabulous members of our community that they are. And it's such a testament to you and Brenda that they all turned out to be such exemplary professionals, but most importantly wonderful individual human beings. They all have tremendous hearts and are very dedicated, I know to our community.

Stephen Kane: Thank you.

Bert Levy: Now during your formal, early educational period, you grew up in the bay area as you mentioned a few minutes ago. Was there any person who had a particular influence over you during your earlier years?

Stephen Kane: Well I've been so blessed Bert because I've had so many people that have had influences on me. The two most important are my mother and father. We talked about them. My mother's parents, my grandparents on mom's side, Joe and Mae Galligan were a big part of my life. They didn't pass away until I was in my mid 20s. They lived just a few miles from where we lived. I saw them quite a bit. They were just wonderful people, a lot of personality. My grandfather Joe Galligan had a fifth grade education, grew up in Louisville and was a salesman.

And it was very important to him and he impressed upon me how important it is to remember people's names and their faces and where appropriate, to have a story, a quote, a joke that you could share with people as you interacted with them. My grandfather had a million of those stories and jokes. He was a great joke teller. He never forgot a face. He never forgot a name and it worked well for him. He bemoaned the fact that he did not have much of an education and it was very important to him that his children and his grandchildren all be educated and all of us were.

My grandmother was just fun to be around. She was a character. Privately she would say things that were very funny, sometimes earthy. She was a great storyteller. In public, she was demure. She was polite. She was very feminine, but behind closed doors, she was a great entertainer. She was also very encouraging and supportive of all of us kids, the grandkids. She always told us

that we could do anything we wanted and just had to work hard. And she always protected us against any attempts by our parents to discipline us. She was the great grandmother that way.

So they were wonderful. I've mentioned my dad's older sister, my Aunt Mary and her husband John Burke. John Burke had a tremendous influence on my father because, as I mentioned, he moved around as a child, lived in different states with different brothers, different people. He finally got stability when he moved in with my newly married aunt and her husband. And here he was with no kids. He had been an only child and now he's got a 13-year old boy living with him and he couldn't have been better. He was a good man. He was a well-read man. And when I came along being the first, he was my godfather because my aunt was my godmother. They paid a lot of attention to me. He was a very funny Irishman, earthy, original, enjoyed interacting with people.

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He was spiritual, he was inquisitive, and he kind of imparted some of those qualities to me and my brothers and sisters. He was always quizzing us and talking to us and teasing us. He was a big influence. There were many other friends and relatives but those are the ones that come to mind.

Bert Levy: It's interesting to hear you reflect upon your relatives because you carried on their tradition. I can speak from first-hand experience over the years, it's wonderful. I know you attended Bellarmine Academy.

Stephen Kane: Bellarmine College Preparatory in San Jose.

Bert Levy: There you go. You want to just briefly reflect on that period of your life?

Stephen Kane: Well, that was my high school and I took the train from San Mateo to Bellarmine. It was a Jesuit-run college prep high school. This was where the influence of my grandparents on my mom's side, I think kind of carried today. They always believe strongly in the Jesuits as being the great teachers, and my mom's older brother, Joe Galligan, Jr. He had eight children and all of the boys went to Bellarmine.

And so, I ended up going there too. I was just lead to believe that was the top of the mountain going to Bellarmine, but I had to take the train. So, that was a different experience. It was a wonderful education but it was an all-boys school, still is. But I met some people there that have been lifelong friends and I'm sure Judge Larry O'Neill's name will come up in this interview because he's been a big part of my life. And I met Larry O'Neill the first day of high school and we've been friends ever since.

There were a few other people there that I went to school with that I still stay in contact with.

Bert Levy: Larry O'Neill is now a federal judge for the Eastern District of California. So, you graduated from Bellarmine and where did you go to college?

Stephen Kane: I went to the University of Notre Dame in South Bend, Indiana. And it was kind of interesting how that came about, because I had never considered the school until Christmas vacation of my senior year in high school. My parents were wonderful with inviting priests and nuns over to our house for meals and things all through the years. One of the teachers of the elementary school, my younger brothers and sisters attended, she was over at the house over the Christmas break and she asked me where I was applying to schools, and I mentioned some local schools. And she says, "Well, what about Notre Dame?" And I said, "Well, what about it?"

Well, her father had gone to Notre Dame in 1930 something, and she just went on and on about Notre Dame. My dad said, "Oh, I would have loved to have been able to go there." And I said, "Well, I don't know anything about it." I know about their sports but that's about it. I've never been back there, I didn't know anything. Well, it just snowballed.

And I did know that there were two or three of my friends at Bellarmine that were applying there, I did know that. So, when I got back from Christmas vacation I spoke to them, and of course, we didn't have the internet then. There was no easy way to find out about the school. You'd go to counselor office and maybe they'd have material on the school, maybe they wouldn't if it was that far away.

The deadline for applying was fast approaching, so I just made it before the deadline, and the more I looked into it, the more excited I got about it. And to my surprise, I was accepted and I went back there by myself, had never seen the campus until the day I arrived. But I had three or four or five friends from high school that were also going there. So, I had that but that was it.

So, it was a very abrupt life change for me. When I first got back there, it was nice and warm and sunny and everything was wonderful and beautiful friends. But then, I took my golf clubs back there because I was a golfer, I played on the golf team in high school, and I thought, "This is great."

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They had a golf course on the campus. Mid October it snows and the golf clubs are put away. I didn't play again until I think April.

It was kind of rough. I had roommate from Baltimore and from Indiana and then we ended up combining rooms with three guys across the hall, so ended up with like five or six roommates. It was kind of a crowded situation. First year took a lot of getting used to. But by my second year, I was settled in. I enjoyed it and finished up there.

Bert Levy: When I think of Notre Dame, I think of tradition, the Golden Dome, the grotto, the football Saturdays. What were the traditions of Notre Dame that meant most to you as you went on with your life?

Stephen Kane: All of those did. You're right, it's a school that is just filled with tradition and history. I enjoyed sports a lot. I like playing them, I like watching them. I love during the noon hour, we would go over to the -- what was called the Athletic & Convocation Center, the ACC, and we had pickup basketball games. I learned how to play hand ball, racket ball. You had to take PE back then. It was a mandatory course for freshman, all year. And every six weeks, you would have to elect a different activity.

So, they give you choices, you had like three choices every six weeks. So, one was swimming, one was soccer, one was ice hockey whatever. So, I enjoyed that. I like playing those sports and then of course, when the weather was good you could play outside and then of course attending all these sports. I never attended hockey game before. Watching college basketball was terrific. I got to see the Austin Carr team beat UCLA in January of 1971.

Bert Levy: Not that you remember that or anything?

Stephen Kane: No, probably the most exciting sporting event I've ever been to my life and of course all the football was amazing. When the football weekends would come around and you would see these multi-generation families showing up in their station wagons. You talk to people on the campus and you would find out that there were a lot of people from the South, in the Midwest, in the East Coast, in the Northeast, and this was how they spent their vacation money. They would go to one or two home Notre Dame football games.

They would drive from Pittsburgh or Atlanta or whatever, and this is how they did it. You develop an appreciation for what you had being a student there.

Bert Levy: Two of your sons attended Notre Dame?

Stephen Kane: Yes, Nolan and Brody both went there. I didn't realize how much I would enjoy taking my children back to Notre Dame. And my boys just became enamored with the place instantly and became determined that they were going to apply there and of course, it's very difficult to get it in, a lot more difficult than when I got

in. There was no guarantee of that. So, we were just delighted when they both did get in and enjoyed their years there.

Bert Levy: Notre Dame does have a tradition of academic excellence. What was your major in Notre Dame and did you find the academic experience to be a rigorous one?

Stephen Kane: My major was economics and it was very rigorous. But I concluded early on that Bellarmine had prepared me for school like Notre Dame. I saw some of my friends who are every bit smart as I was if not smarter that struggled because it had been just a little too easy for them in high school. But Bellarmine was a rigorous college prep, it's in the name. And even though adjusting to college was difficult and I have to work hard, I never felt overwhelmed by it. So, I credit Bellarmine for that.

Bert Levy: And you graduated from Notre Dame in 1974?

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Stephen Kane: I graduated in August of '73. I went through in three years because I had decided early in my second year that I wanted to go to law school. I was never really fond of school at any level. I always look forward to being out of school, working in the real world. And I felt that way as a 19-year old and once I decided, "I think I'm going to do law school", then my goal was to get through law school, pass the bar exam and become a lawyer and try it and see if I like that.

So, I wanted to make that happen earlier than later. Money was a consideration too, I mean, going to a private school, it's expensive and if I can shave off a year, that's going to be economic.

Bert Levy: So, you've graduated in three years in Notre Dame. You had how many brothers and sisters?

Stephen Kane: Two brothers and two sisters, so there are five of us.

Bert Levy: You mention, you became interested in the laws, is that the influence of your father?

Stephen Kane: I'm sure that that was a part of it, but to my dad's credit and I've always been pleased to say this that my dad never once urged me, prodded me, nudged me toward the law. But he was a lawyer and then a judge and I had my uncle who is a lawyer. I had a cousin who is a couple years older than me that was going to law school. I had another cousin in Colorado that was a lawyer. So, I had law in the family but I never really gave a lot of thought until I started college. And it wasn't really until my second year that I started thinking about, "What am I going to do when I get out of college?" I started thinking more about the law and I just thought, "I think that might suit me. I like speech

and debate in high school and it just seemed like a logical thing that I might enjoy.

Bert Levy: Were there any particular classes at Notre Dame that inspired you to pursue a career in law or was it just a general interest in the field?

Stephen Kane: I think it was the general interest in the field. And of course, my dad had a lot of friends in the legal profession that I had met growing up, and they were all terrific people. They were smart, they were good, they were fun to be around, so I had a positive impression of the legal profession.

Bert Levy: Where did you attend law school?

Stephen Kane: Hastings College of the Law in San Francisco.

Bert Levy: Was that at the top of your list that time?

Stephen Kane: I had applied to several law schools in California and to Notre Dame Law School, and I thought seriously about, if I got in to attending the Notre Dame Law School, I did get into Notre Dame Law School. But I decided that I probably wanted to settle back in California and it would be better for me to attend a California law school and prepare for the California bar exam and for a California law practice, so, I decided not to accept the Notre Dame Law school invitation.

I did apply to Balt, in Stanford, in Santa Clara, in UCLA, I think USF and Hastings. And I didn't get into Balt or Stanford, I got into the remaining schools and you know, I relied on my dad at this point, and he had nothing bad to say about any school and of course, he went to USF and was very proud of that but he told me that he thought that Hastings was an excellent school that was sort of gaining momentum as a school, as a law school and that he thought that would be a good choice and that's what I eventually decided.

Bert Levy: You entered Hastings in the fall of 1973?

Stephen Kane: Yes.

Bert Levy: How would you describe your law school experience at Hastings?

Stephen Kane: Well, again, I have the privacies by saying, I never liked school and people are always surprised to hear that because I went through a lot of schools and I did reasonably well.

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It wasn't like I hated it, but I just never enjoyed school. I wanted to be out in the world. So, law school was no different.

Bert Levy: Your first year at law school was a challenge?

Stephen Kane: Yes. And in my first semester, I remember the movie Paper Chase came out and a bunch of us went to watch it and that scared the heck out of us. But Hastings was good, but I have to say that I felt a little bit cheated at Hastings because when I got there, Professor Prosser, the king of torts had died just a year or two before, so I didn't have him.

The other highly distinguished reputable profs in various fields that we're there, I never was fortunate enough to be able to be in their classes as luck would have it. I didn't have Milton Green who was a great teacher in solo procedure, Perkins on criminal law, Powell on real property and others.

They had this tremendous lineup and for whatever reason, I didn't get any of them. So, I felt a little cheated on that.

Bert Levy: Was that just a luck of the draw?

Stephen Kane: Just the luck of the draw. I had some good teachers but it would have been nice to have had some of those. And of course, a lot of the friends that I made in law school did have those and they raved about them. But I had something that none of them had, for the first two years of law school, I lived at home in San Mateo. My dad was on the Court of Appeal in San Francisco two blocks from Hastings.

So, I commuted with my dad every day for the first two years of law school. And I got an education in the car that nobody else had. And things that I didn't understand or things that I wanted to talk about, I could talk about with him and he would explain things well, he was patient. He would tell me war stories. We would talk about the courts. He talked about what it's like being a lawyer, talk about what it's like being a trial judge because my dad was very adamant that the appellate court should respect what goes on in the trial courts and defer to the trial courts and he drill that into me.

So, I had the second education that layered on top of law school that made my years extremely beneficial and informative.

Bert Levy: Those are such cherished memories I would think. It sounds as if perhaps the education you got outside of the classroom was as important as what you received inside the classroom.

Stephen Kane: There is no doubt in my mind.

Bert Levy: It's wonderful, wonderful. Did you work or do any volunteer activities when you were at Hastings?

Stephen Kane: For the last year-and-a-half, I worked for my uncle, Joe Galligan who had an office in Millbrae. He invited me to come and work

part-time for him which was fabulous. I would work a couple of days a week and work on -- he had a general practice. So, I got exposed to everything, family law, tax, personal injury, business, wills and probate.

Bert Levy: The real world.

Stephen Kane: The real world.

Bert Levy: That's wonderful.

Stephen Kane: My cousin was a lawyer in his office and they had another partner, and I got to go to court a few times. I saw their clients. I got to see how a law practice operates, so I have that. And then after my second year of law school, I got an intern job with the United State Attorney's Office, the Criminal Division in San Francisco and that was a terrific experience. I lived up there during that summer and work strictly on criminal matters for the U.S. Attorney's Office. I got certified as a student and I got to try a non-jury case in front of a magistrate judge, criminal case, assault and battery, which was terrific.

And then toward the end of the summer, I actually got to work a little bit in the Civil Division.

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They had a need for some help and they kind of loan me out so I got exposed to that. It was a marvelous experience. So, between the two, I got a little bit of exposure to the criminal law and then I had exposure to a general practice.

Bert Levy: So, you finished your three years at Hastings. You couldn't finish in two years. I'm sure you wanted to.

Stephen Kane: I wanted to. I did.

Bert Levy: You finished for three years and then you took the bar exam.

Stephen Kane: Yup.

Bert Levy: Do you have any recollection of the bar exam and how you prepared for it?

Stephen Kane: We all do, right? We don't forget that. Well, another fortunate thing happened to me. My uncle, Joe Galligan's secretary, long-time secretary, she and her family had planned a trip to Europe for six weeks during the summer of 1976 that almost exactly coincided with the bar prep time period. It was like the second week of June to the third week of July and they needed a house sitter because they had a couple of dogs and a cat, and fish, and so forth. So, I house-sat by myself, then would go to the lectures for the bar review course, take care of their animals and then I

would study without any interruption in this house that I had all to myself. So, that worked out well.

And as I was studying for that exam, the summer before I worked, I became involved in the moot court program at Hastings and the last couple of weeks of July of that summer, I was at Hastings working on moot court stuff for the next year, my third year, when the bar exam was being administered at Hastings. And I knew a third year student that had just finished and had taken the bar exam and I ran into him in the elevator as he had just finished the last day of the bar exam and I said to him, "Well, how did it go?" And this guy had done well at Hastings. He was a good student and he said, "I passed."

He failed. And I found that out, of course, months later and I never forgot that. And I remember studying for the bar exam saying, "You know what? I've gone through school, I've been a good student, I've done what the teachers have said but this was hard and don't take it for granted because I'm not coming out of there and approaching this like no problem."

So anyway, I took the exam. I thought the exam was kind of what I expected. I mean, it was hard but I felt like I gave it my best shot. And the hardest part was waiting for the results.

Bert Levy: How did you find out you passed?

Stephen Kane: My dad either called the dean at either USF or Hastings that he knew or they called him because back then if you remember, Bert, we didn't have the internet and all that stuff. The bar association, as I recall, would release the names to the law schools and they could post them at the law schools. And they did that, I think, the day that they mailed out the envelopes. So, if it took two or three days for you to get in the mail, the law schools would have it posted. So, that's what happened. Whatever law school person my dad knew, either called my dad to tell him he had gotten the list that I passed or my dad had called to ask and then my dad called me and told me.

Bert Levy: That's a moment you'll never forget, I'm sure.

Stephen Kane: I'll never forget that.

Bert Levy: So, now you have graduated from one of the finest universities in the country, University of Notre Dame, magna cum laude. You graduated the top of your of class at Hastings.

Stephen Kane: No, I wasn't. I wasn't that a good student.

Bert Levy: Pretty good, I heard.

Stephen Kane: I tried.

Bert Levy: I heard pretty good.

Stephen Kane: No, I had a tough time. I mean, I didn't finish near the top.

Bert Levy: You did pretty well. You're engaged in moot court activities. I'm sure you thought in your mind you were interested in possible future as a trial lawyer.

Stephen Kane: Yes.

Bert Levy: And you were facing a very big decision in your life once you passed the bar, "Where am I going to land? What am I going to be doing?" What ended your thought process in the calculus in determining where you would ultimately begin practice of law?

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Stephen Kane: Well, this all goes back to the fact that I never liked the big city. I don't like the mild temperatures of the Bay Area. I like heat. I like the wide-open spaces. I knew that about myself when I was going to law school.

So, I went through the motions of applying to some law firms in the Bay Area, but in the back of my mind, I really wanted to maybe start somewhere else geographically because I wanted to be able to afford to buy a house without waiting forever. I wanted to be able to practice law and be a big fish in a small pond. I wanted to be able to try cases before I was 35. And I thought, "I'm going to have to go a smaller community to probably do that." So, I was thinking about places like Santa Rosa, Sacramento, and Modesto, and things like that, and I would send resumes out to these places and I did interview one or two places but nothing was really clicking with me.

So, over the Christmas holiday break of my third year of law school, I had some conversations with a couple of my friends in law school. One was Howard Sagaser who was from Avenal in Fresno County. And another was a close friend that I had that I studied with named, Rod Jinks(ph) who is from the Bay Area but he had come down here and interviewed with the McCormick Firm and had been offered a job as a business lawyer. And Howard got interviewed with the Thomas Nel Firm and was coming back to Fresno to practice. And they were telling me about their plans and I got very interested because Rod told me that this firm he was joining as a business lawyer was really noted as a trial firm and that I had to consider it.

So, I went home and I talked to my dad and he was familiar with the law firm. He knew Dick(ph) McCormick and Jim(ph) Barstow and Dud(ph) Sheppard from days gone by. That's a very fine firm but you really want to go to Fresno and we don't have any family or connections there and I said, "Well, I think I'm going to send them an application to see what happens." I did. They

interviewed me. They offered me the job. I came down for the interview. I just fell in love with the area. People seemed friendly. It was just kind of what I was looking for. And so, in August of '76, waiting for bar results, I started with McCormick Barstow and never looked back.

Bert Levy: It's incredible that your entire legal career prior to becoming a judge was with, as you mentioned, the very prestigious Fresno law firm of McCormick, Barstow, Sheppard, Wayte & Carruth. You spent your whole career with that firm.

Stephen Kane: Yes, 15 years.

Bert Levy: That's extraordinary really. You are initially an associate and then became a partner in the firm. Tell us about that experience.

Stephen Kane: It was extremely positive and I was just very fortunate to have come along at a time when that firm was growing and there were so many exceptional lawyers and people in that firm. Dick McCormick was still there. Jim Barstow was practicing. Dud Sheppard was practicing, Bob Coyle, Larry Wayte, Lowell Carruth, Oli Wanger, Steve Cornwell, Jim Wagoner, Mike Woods, Mario Beltramo. These were extraordinary lawyers and I learned from all of them. I got to accompany Oli Wanger on a jury trial he had. I did the same with Steve Cornwell on a case so I saw it from beginning to end with a very fine lawyer in charge. And then, all of those other lawyers that I've mentioned helped me and guided me and I got to observe them and watch them.

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They also knew that I was from the Bay Area. I didn't have any roots here. They all welcomed me into their homes. They all set me up on blind dates. Finally, one of them turned out to be successful. But it was just a very fulfilling time for me. Steve Cornwell roped me into coaching kid's soccer within weeks of my coming here, I have never played soccer. And I ended up doing that for six years and I did most of those years with Gordon Park who joined the firm when I did, got involved with that.

Bert Levy: Just before you were ever married?

Stephen Kane: Before I was ever married. And then, bought my first house after I was there only two years, small simple house but I could afford that in Fresno. There's no way that would've happened in the Bay Area. I got to try cases in my first year as a lawyer. I got a caseload. I got to be a lawyer. I got to work on big cases for other lawyers, taking depositions, going to court, traveling across the country.

I just feel like that opportunity and that setting accelerated my development as a lawyer more so than if I had gone to work for some big city firm, got paid more money, whatever, but I

wouldn't have developed as a lawyer as fast as I did here and I am forever grateful for that. Plus, this is a wonderful legal community as you know, Bert, to practice law in. There are a lot of wonderful members of the bar here that even as Fresno has grown it still has a collegiality in an environment that is welcoming for young lawyers.

Bert Levy: And Steve, you earned an exemplary reputation as truly outstanding lawyer and a person whose word is your bond and I know that you know that attorney's reputation is one's most important asset. And whenever anybody in our community ever mentioned the name Steve Kane, there was automatically a very positive response to the mention of your name, and that's something that I'm sure that you cherish both as an attorney and as a judge to this day.

And so, you were an attorney there at McCormick Barstow for many years and then the opportunity presented itself that, perhaps, you might want to become a judge. Can you tell us and share your thought process about the endeavor of becoming a judge and what analysis in your mind you went through thinking about the change from being an attorney in McCormick Barstow for so many years and then possibly taking the bench?

Stephen Kane: I have to say that of course my dad had been a judge and then retired early and went back to the practice of law. Again, he never encouraged me to go on the bench. And then, Bob Coyle left to go on the federal bench from our firm. And then, several years went by and then Oli Wanger and Larry O'Neill left to go on the bench, Oli to the federal court and Larry to the superior court. Actually, Larry went first and the next year Oli went on to the court. And at the same time, Brad Hill left our firm to go on the trial court.

So, these were people that I knew and admired. I was especially close to Larry and Brad and I really never thought about it much until after they were gone. And so, then I started thinking about it because they were enjoying it very much and they were telling me so. And the other piece to this puzzle is that Brenda and I at that point have four small children and I was working hard and I was enjoying the practice very much and our firm was growing and I had a lot of responsibility. And there were things that I wanted to do as a lawyer that I hadn't done yet because I was just sort of hitting my stride.

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But I had these tagging at home that was going on because it wasn't so bad working hard Monday to Friday but it was tough having to go to the office on a weekend to get ready for a trial or something and leave the family behind. So, that entered into the equation. So, I thought about it and thought about it and I finally, in about September of '91, decided to put my name in

and there was a long list of people that had their name in at the time. Some of whom had it in for a long period of time and I didn't think that my chances would be that good. And the sitting district attorney has his name in. Former president of the bar association had his name in and there were some very strong candidates. But sort of at the last minute, the district attorney withdrew his name and I don't know what else happened. But in January, just four months later, I get the call from Chuck Poochigian and now --

Bert Levy: Appointments?

Stephen Kane: Mm-hmm, appellate court here.

Bert Levy: He is appointment secretary at that time to Governor Wilson.

Stephen Kane: Yes, and extended the appointment offer to me. So, I only had four months of sort of stewing over this, wondering what the future would hold, which isn't a very long time. Most people wait much longer, so I was very fortunate. But it just kind of confirmed to me that it was right. This was the right thing, it was the right time. And so in February of '92, I took the bench.

Bert Levy: Of course, you prepared yourself well over the years to become a judge. Going back to when you were an attorney, you were active in the Fresno County Young Lawyers Association and the Fresno County Bar Association, and you're active in a number of community activities that I would think helped you in your judicial selection process.

Stephen Kane: I think so. I think all of that contributes. And I think that's how you and I met, Young Lawyers Association, baby lawyers and friends ever since and it all stems back to that. And there are others that I have met at that time that got me more immersed in the legal community than I would've been otherwise.

It's very easy when you're practicing law and you're busy to just live in that world. But we had people in the firm that encouraged the lawyers to be involved in other activities, legal and non-legal. And so, a good part of my maturation here was being involved in bar association activities, we got involved -- you remember, Bert, that group that we were on the board for several years was responsible for starting the mock trial competition for high schoolers here in Fresno which is still going strong. I think we instituted the photo legal directory at that time which is still in existence. And we started the Hopper Luncheon which is still an annual affair --

Bert Levy: For the young lawyers?

Stephen Kane: So, I am proud of those things. Then, I got on the board of the bar association directors and I thought that was very helpful too. And back then, we evaluated judicial candidates if you

remember. So getting back to your question, I think that really did play a role because we were asked to evaluate judicial candidates and it makes you think about what qualities good judges have and what should be emphasized and what should be looked at. And I got involved in that process.

Bert Levy: So, Steve, you were also a member of ABOTA, a very prestigious group, American Board of Trial Advocates. I know that's a tremendous honor that you received.

Stephen Kane: Yes, and I was very proud of that. The firm that I was with had a lot of members in ABOTA and I felt very special when I was able to join that group.

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Bert Levy: I think that's a wonderful testament to your talents and experience as a trial attorney. So now, you got the phone call from the governor's office in early 1992.

Stephen Kane: Yes.

Bert Levy: And you're sworn in as a judge of the Superior Court of County of Fresno. How would you describe your experience and transitioning from an advocate to a decision maker?

Stephen Kane: It wasn't as hard as I thought it would be. I guess I was ready for that transition because I didn't find it that difficult to transition to. The assignment that I was given initially was as a general trial department and I did civil law and motion and I was very comfortable with that. And of course, I was starting to handle primarily criminal trials and that was new.

Bert Levy: You said you'd never done any criminal work as an attorney?

Stephen Kane: No, I had not. And I had never done any family law. And occasionally, when you were a general trial department, you'd get the long cause family cases and a steady diet of criminal cases. So, that was what I needed to learn and to get comfortable with, and that took some time but I remember Judge Hollis Best saying, "When you come right down to it, the rules of evidence are the rules of evidence and a trial is a trial and a jury is a jury." And he says, "It won't take you that long before you feel comfortable." And he was right.

Bert Levy: You mentioned Justice Best, who was just a tremendous member of our legal community and judicial community for so many years. Did anyone take you under their wing as a mentor when you ascended to the superior court?

Stephen Kane: Yes, Larry O'Neill. You know Larry well.

Bert Levy: Yeah.

Stephen Kane: Larry is known well in this community. When he took the bench in 1990 as a superior court judge, I think he was 37 years old but way beyond his years. And when I joined the bench two years later, he was being sent out to juvenile court to be the new PJ out there. But a year later, he came back and became the assistant presiding of the whole court and then became the presiding judge.

Larry is an extraordinary person in many ways. His time management skills are second to none. He's got a lot of street smarts and he knows how to connect with people. So, he's got personality but he's also got the conviction and the strength of character to do things the right way and insist that everybody come along with that.

So, Larry was great because he would give me many practical tips on how to manage a courtroom, and they were all valuable, and they were all reliable and it helped me tremendously. When something would come up, I would ask him and chances were he had dealt with it before, he had a practical response and I followed his advice religiously and I think it made me a better judge.

Bert Levy: This is the same Larry O'Neill who you first met at Bellarmine, correct?

Stephen Kane: Yes.

Bert Levy: Isn't that amazing?

Stephen Kane: Yes.

Bert Levy: Both ended up in Fresno, both on the superior court bench at the same time. As of that --

Stephen Kane: Same law firm.

Bert Levy: Same law firm, exactly. I can share your sentiments about Larry because he did the same for me as well. What assignments -- so you mentioned the family law and criminal law assignments were somewhat new to you but you were able to acquaint yourself with criminal law after a relatively short period of time.

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And you gained the respect of the attorneys of Fresno County as well as the bench of the superior court and you ultimately became the presiding judge at the Fresno County Superior Court. Did you find that experience rewarding or challenging?

Stephen Kane: Both. It was rewarding. It was satisfying but it also was aggravating. As you may recall, Bert, things were changing in

the state court system at that time in the mid-90s. The state powers of the court in Sacramento had decided that they were going to move toward consolidating whole of the trial courts ultimately unifying them. But initially, it was a consolidation that was limited to administrative consolidation. That was decided. And so, Fresno County had three separate court organizations. We had the Central Valley Municipal Court which basically were the outlying former justice courts in Fresno County. And then we have the Fresno Municipal Court and then we have the Fresno Superior Court, three different courts, three different court administrators, budgets, different presiding judges but all constitutional officers. And when the state decided that they were going to require that all county courts have a single administration and work toward a single budget, that created a lot of turmoil in most places, many places.

Fresno County was the leader in this transition and I give a lot of credit to the three court administrators that our county had. We had Mike Weinberg in Central Valley, we had Sandy Silva(ph) in the Fresno Muni, we had Tamara Beard in the superior court. They got along well. They respected each other. They were extremely capable and that made it easier for the judges to go along.

So, Judge O'Neill was the presiding judge in '94 and '95 when all of these were starting to happen. And you'll remember we decided as a court to have a retreat over at the coast. The judges paid their own way over there but we had a meeting, a two-day meeting over there to talk about whether do we want to actually formulate, consolidate the judges into a single court with a single presiding judge? And we decided not to do that at that initial meeting but everybody got along and everybody decided that we should continue talking about it. So, we formed a committee, two members from each court, Larry O'Neill and I were on the superior court. We had Chip Putnam and Ed Sarkisian from the Fresno Muni and we had Jim Aaron and Tony Ishii from the Central Valley. And we met during the 1995 year and we came up with a memorandum of understanding that we thought all the judges could live with because we thought it was inevitable that we were going to be forced to this anyway. We wanted to get ahead of the curve and do it on our terms.

We then had meetings, the three courts bought into it. There was enough trust where it succeeded. And in that fall, I was elected the first presiding judge of that new consolidated court and that started in January of '96 and I served for two years. Those were very different years trying to work through all of this consolidation and to build enough trust so that judges from one court wouldn't think that they were being treated differently than judges from other courts. We had to ask municipal court judges to do superior court work. And at times, superior court judges do municipal court work. But we got through that and almost

without exception, the judges and the administrators worked together to make that successful, and it was.

And so when unification came along in '98, we were already there. So, we didn't have a big transition at that time whereas other courts did.

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So, I feel very proud of the efforts of everyone during that time period, but it was a very difficult transition for the presiding judge, for the administrators because we asked people to make sacrifices and to be flexible, and to have some understanding about the changes that were being made.

I analogized this too. Can you imagine what would happen if in a given city, take the city of Fresno, if it was decided that the city council should consolidate with the board of supervisors. Or, the Fresno County Sheriff's Department should consolidate with the Fresno Police Department. If you were to toss that out, the people that would be affected by that would say, "That's crazy talk." Well, that's essentially what the judges of this county did in 1995, '96, '97. So, I'm very proud.

Bert Levy: And ultimately, do you feel that that was beneficial in the long run for the administration of justice?

Stephen Kane: That's an ongoing issue. I never really thought about it any detail because it was an accomplished fact that we had no control over. There have been many benefits. But there are some aspects of it that we miss from the old system. The old system, there are judges that preferred doing municipal court work and they did not -- they applied for the municipal court, they like that kind of work, they like being in the court all day interacting with people, but they did not necessarily want to be in family law or doing juvenile law or something else. And now, everybody is a superior court judge so you're subject to being assigned to anything.

The old days, you could have five years as a lawyer and apply for the municipal court position. And some people think that's a good testing ground to see how somebody does to see if they -- and then, should be elevated. Well, we don't have that step process anymore. It's just one court. So, those are couples of things and some people feel that the consolidation has placed a disproportionate amount of authority and power in the San Francisco with the administration offices that operate the courts. But again, that's a two-edge sword because there have been efficiencies and savings that have been realized through that but there is the give and take of giving up some local authority too.

But I would say, the bottom line is, that for Fresno County it was a good thing because we were depending on the board of supervisors to fund our courts and they were not doing it, and

they didn't have the money to do it. And with state funding, we got more funding because it was obvious that we were in more need than other counties in the state. So, I think Fresno benefited from this unification state funding change.

Bert Levy: I remember you handling some high-profile criminal cases as superior court judge. But I think your first love was the civil law and I believe you were the first presiding judge of the sole civil department in Fresno Superior Court, is that right?

Stephen Kane Yes.

Bert Levy: Could you tell us a little bit about that experience?

Stephen Kane: Well, when I was presiding of the court, I had made a proposal in writing to all the judges that we create a civil department and I laid it out. I wanted five judges and I specified the days of trial and when they would hear law and motion and how it would work.

It did not pass because we were feeling a lot of pressure from the caseload. Three strikes had just passed and there was just a lot of extra hearings and worry about the state of the law and sentencing was getting more complicated and there was just a lot going on.

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And the fear was that if we took four or five judges and devoted them exclusively to civil that the criminal wouldn't be able to keep up with the load, so I lost.

So, about two or three presiding judges later, we have now Justice Brad Hill who became the presiding judge of the Fresno Superior Court. And right before he took office, a month before, he came to me and he said, "I think I want to start a civil department." And I said, "Really?" He said, "Yeah." He says, "I can't give you a five but I think I can give you a four. Will you head it up?" And I said, "You bet."

Bert Levy: Music to your ears.

Stephen Kane: It was. And to his credit, he didn't order a big meeting and take a poll. He just decided that he was going to do this as part of his administration and he was going to make it work and he did make it work, because we had three judges, Judge Hilary Chittick, Mark Snauffer and Don Black. They're still on the court.

Bert Levy: All great judges.

Stephen Kane: Great judges. And they all had civil background along with myself and we went to town. And we started trying cases and we set aside Fridays for settlement conferences that we

conducted on the cases that were set for trial the next Monday. And we all have law and motion at 3:30 in the afternoon. This was all part of my original plan of years before.

And at that time we started, I think we had 108 cases that were pending that had come up for trial and it had been turned away because of no court available, what we called NCAs. Some of them multiple times but we had 108 cases that had been denied to courtroom for a civil trial because there was no courtroom available. We started trying these cases, settling these cases and the key was Justice Hill as the presiding judge of the whole court and he was operating the master calendar sending out the criminal law cases and some of the long cause family law and others.

When a courtroom would open up and we needed another courtroom for a civil case, he would assign them to that civil case. So over the next seven or eight months, we completely eliminated that 108 NCA backlog to the point where I think in August of that year, I think we had one NCA case to try and we tried it that month or the next month and we were then at a point where cases set for trial for civil were set for the first time.

And to my knowledge since then, it's been under control. And in fact in recent years, I'm told that many of those civil judges have tried as many or more criminal cases than civil because they're so on top of the civil caseload that they have time to try criminal cases. So, I'm very proud of that, very proud of the other judges that have served in that department over the years and very thankful that Judge Hill had the courage to institute that department and then support it that first year.

Bert Levy: That's a tremendous accomplishment. Over the years, Steve, I know you had thousands of cases that you heard as a superior court judge. I'm sure thousands. Are there any ones that stick out in your mind that you would like to share with us briefly?

Stephen Kane: You're talking about the superior court?

Bert Levy: Superior court first, mm-hmm.

Stephen Kane: A few come to mind. In my second year on the court, the presiding judge asked if I would take a capital case that was going to go to trial in two months and I said, "Yes." And that case was tried in basically the summer of 1993. So, that was a huge challenge for me because capital cases have a whole bunch of different rules and things that you have to be concerned about.

Bert Levy: And that's after you had only been a superior court judge for a little over a year?

Stephen Kane: Yes. And so, I had to really bone up on how to manage and try a capital case.

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And then, at the end of the guilt phase in which the defendant was found guilty of first degree murder and special circumstances, both parties waved a jury on the penalty phase. So, here I am as a fairly new judge having to then decide the penalty phase on that case which I did. So, that case stands out.

I had one of those move away family law cases that you may remember because you were close to my chambers and I know I bent your ear a lot on it because it was before -- it was at the Burgess case came out, it was before the California Supreme Court weighed in on this and set some rules and we were trying to figure out who had the burden and so forth. And it was a very difficult case and I made my ruling. It was two very good lawyers, Bill Richert and Steve (01:21:02), very tough case where I made my decision and I wouldn't have felt good either way. They're just where they are, but that case sort of stands out.

And then a couple of years later, I had another capital case with three defendants and that took a long time and it was a lot of work to have a jury that long, several months, but we got through that. And then, there was a smattering of lots of other cases that I found interesting but nothing really stands out for today.

Bert Levy: So, looking back during your time as a superior court judge, just very briefly, what did you like most about being a superior court judge and what did you like least?

Stephen Kane: I think I liked most being in the courtroom being a judge, either presiding over a jury trial or a court trial or hearing law in motion. That's what I liked the most, it was being a judge. What I liked least was all of the stuff that went on behind the scenes administratively, personnel, funding, having meetings with some of the other agencies in the county that are so vital to the court system.

And, Bert, you've been involved in a lot of administrative things over the years in committees and so on and so you know that once you get involved in that, it's hard to pull yourself out and it can drain you. But it's all necessary and it's important and you can derive a lot of satisfaction from that work. But in a perfect world, for me, I would've preferred just to be in the courtroom all day and go home.

Bert Levy: So now, you've been a superior court judge for quite a few years and tell us about your decision to apply for appointment to the Court of Appeal and your approach of that process.

Stephen Kane: Having been on the superior court for 14 years, you can't help but think about what would it be like to be on the appellate court. And I really had no interest in that during the first 10 years that I was on the superior court because I wanted to try civil cases and criminal cases and I wanted to do law and motion and do all the things that a superior court judge can do. And I wanted to have a full menu of things to achieve on that court as a judge. But at some point, I just started thinking about, "Wouldn't it be nice because I did a lot of civil law and motion during my years. In fact, they were ahead of three years stretched where that's all I did. They created this position and they asked me if I would do it. And so, I was the only one doing it except for conflict cases in the entire county. So, I did a lot of research, a lot of writing, a lot of orders. And I think maybe that's when I started thinking about, "Wouldn't it be nice to be able to do this but to have more time to do it and to be able to write more elaborate opinions explaining myself? Not have 100 of cases to do every week."

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And of course, that's what the appellate court does. And so, I got more and more interested and I finally decided to put my name in and I put it in while Governor Davis was governor and there was never any action taken on my application then. And then, Governor Schwarzenegger came in. And eventually, I went through the interview process and Judge Hill put his application in also. And within a couple of months, we both got appointed in 2006.

Bert Levy: And Governor Schwarzenegger as you mentioned appointed you in 2006 and you served on this court from 2006 until 2017. Looking back now, was the job everything you hoped it would be?

Stephen Kane: It was. It was.

Bert Levy: How would you compare your experience in the superior court to that at the Court of Appeal and was that a difficult transition to make?

Stephen Kane: Well, it was not a difficult transition. I knew what I was getting into and I had set pro tem here several years earlier for a month. But I knew what this life was like so the transition was not difficult. In fact, the more difficult transition would be to go from the appellate court to the trial court.

Bert Levy: Yes.

Stephen Kane: You have a very hectic pressurized situation in the trial court. You're getting things thrown at you all the time. You've got to make lots of decisions everyday and then you go to the appellate court. And now, you've got two full-time research attorneys, you've got a judicial assistant, you've got wonderful colleagues,

you have oral argument just a few days a month, and you have the time to think about research right, discuss with your research attorney, talk to your colleagues, do a draft, do a second draft, do a third draft, whatever it takes to get it right. So, that was a very easy work style change to make.

Bert Levy: You enjoyed it?

Stephen Kane: I did. I did enjoy it very much.

Bert Levy: Now, as you mentioned a moment ago about your experience as a superior court judge when you were writing orders and making decisions in the law and motion department of the Fresno Superior Court, was there anything else in your experience as a trial judge that helped you approach the decision-making process here at the Court of Appeal?

Stephen Kane: I just think that being totally immersed in what's goes on in the trial court makes one a better appellate judge. When you read a transcript as an experienced trial judge, trial lawyer, you can read between the lines sometimes because a transcript only records what the co-reporter types. It doesn't record facial expressions, it doesn't record pausing and it doesn't necessarily disclose why people are saying and doing things the way they're doing it. But if you have that background, you have an insight of things that don't necessarily appear on the page of a transcript or in a brief even. And so, I think having 14 years on the trial court and having had 15 years as a trial lawyer in courts all the time, that made it easier for me to look at a trial court proceeding, an order or judgment and to weigh some of the grounds for appeal and decide the merits of that.

Now, some cases are very tough to decide. Some of them are very close calls and there are a lot of gray areas as you know. But the vast majority of them are not. Because if you've been there and seen it, you've heard that same argument, you know what the law is and you just have to apply the law. And with the limited standards of review that we have at the Court of Appeal, a lot of those cases do not keep you up at night trying to figure out what to do.

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The law makes it very clear what you are supposed to do. And so, I think everything that I did in the trial court helped me be an effective appellate court judge.

Bert Levy: While you were a justice, you authored many published and unpublished opinions covering many significant legal issues over the years, Steve. Are there any civil cases that you authored here at the court that you felt were particularly memorable or not worthy?

Stephen Kane: I have a couple of it that I'm particularly pleased about and I guess it's a little immodest but I feel good about a couple of cases that I wrote opinions on. One is the California Crane School case in which an issue came before us, which is very rare actually but it's something that I believe strongly in as a trial lawyer and as a trial judge and that is that trials proceed efficiently. And this was a case where a trial judge, I think, responsibly imposed time limits on the litigants because of how the trial was proceeding. And one of the grounds on appeal was, that was an abuse of discretion and that it deprived the appellant of the opportunity to put on their case. And I reviewed the transcript very carefully and I took this on myself, I didn't have my research attorney do this.

And I wrote a section that we published on the guidelines for trial courts in considering imposing time limits and made some suggestions to the things they should consider, things I had done before as a trial judge, once or twice, not very often. But I always thought it was important that there be some appellate authority that a trial judge could hang his or her head on in the right case to say to the litigants, "I need to control this case. And so, I'm going to ask you for your estimates and I'm going to make some tentative decisions about time limits and I'm going to give you opportunities for good cause to have me modify those but otherwise, absent that, this was what your limited to. We're going to tell the jury and we're going to get done with this case within this timeframe." There really weren't any appellant cases that would give a trial judge the support to make that call and this case does that. So, I'm pleased about that. The second one is Coito versus Superior Court.

Bert Levy: I remember that case.

Stephen Kane: Yeah. And the question in Coito is whether -- there were several but the main question was whether when a party through its counsel obtains either through an investigator or himself a written or recorded statement from an eyewitness to something, whether that statement is protected by the attorney work-product privilege either the absolute privilege or the qualified privilege.

As a lawyer, I had run into this many times and it aggravated me that the law for quite some time up to Coito had been that it is not protected by the work-product privilege. And in doing some research on it years ago when I was a lawyer, I think I discovered that these all stemmed from Bernard Jefferson who had written a book on evidence when he was a lawyer and he had come up with this approach that witness statements were not entitled to work-product protection. They were non-derivative evidence, I think, he called it. It didn't derive from the lawyer, it derived from just being evidence what witness has to say about what they saw.

And he then got on the court, and then on the Court of Appeal, and he got a case on this issue, and he cited his own book in support of it. And then, other appellate courts, the intermediate appellate courts followed it.

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So that during the years I practiced law, when my office would get a witness statement and the other side would ask us if we have them, we had to tell him we did. And then if they ask them, we had to give it to him basically. That was the practice.

There was a section in the CCP that said that they would have to show good cause, but as a practical matter, the courts were very lenient in ordering these because they have no privilege protection. I always thought was wrong. So, I get on the Court of Appeal and this case comes to us with this square issue before us. And the existing law says that it is protected and the other members of the panel said, "This is really a call at the Supreme Court should make not us." So, I wrote a dissent and I laid out why I thought it was protected by the qualified work-product. There was actually a Court of Appeal opinion out of the third that said it was protected by the absolute work-product privilege and that all three of us thought was wrong. So, we discussed that. But I wrote a dissent and the Supreme Court took it over and I'm happy to say that they reversed Justice Jefferson in that line of cases and held that it is at least entitled to the qualified work-product privilege.

Bert Levy: That's great.

Stephen Kane: Yeah.

Bert Levy: What about criminal cases? Were there any criminal cases that are noteworthy that you can remember here at the Court of Appeal?

Stephen Kane: There have been some cases that have been very noteworthy factually and many of those were non-published but there have been some very, very sad cases that stick in your mind just because of the ugly facts of them. But as far as opinions that I've written, the one that I recall that's kind of stands out of my mind that I'm still kind of disappointed about is People versus Pizzaro which was a very sad homicide that occurred in the Madera County in, I think 1989. And they had a trial, the defendant was convicted. It came to this court before I was on the court and it was reversed and sent back for a Kelly hearing on DNA. The trial court upheld the DNA, came back to this court, this court reversed that finding, ordered a new trial. It then went for another trial, he was convicted again. Then, we got the case.

And what happened was that one of the jurors had gone online and had discovered the previous appellate court opinions and

had read them and those opinions contained evidence about the case that was excluded in the trial that he was sitting on. So, we very reluctantly felt that we had to reverse because of the extraneous information of this jury -- and had violated all the court's instructions not to do this.

And then, there was a DNA issue also. But I took on the issue of this jury misconduct and I wrote that part of the opinion. And what I discovered is that the California Supreme Court, they had a leading case on this issue about jurors getting extraneous information. And the opinion is internally contradictory about what the standard of review is.

And I wasn't the first judge to point this out. There was another judge several years earlier and a dissent on a case where concurring. I pointed out the exact same thing. So, I went into more detail on this and I'm asking the California Supreme Court to resolve this issue. It didn't affect the outcome of our case because under either extent of review, we were going to reverse and had to be. But I was beseeching them to clarify this and I went through it in painstaking detail. They depublished my opinion.

Bert Levy: Painful. That hurts.

Stephen Kane: Well, it's just disappointing because that issue is still percolating and it needs clarification, so that's that.

Bert Levy: Interesting. Well, as an appellate justice for so many years, Steve, looking back, how important do you feel collegiality and reaching an agreement on cases was to you as an appellate justice?

01:40:09

Stephen Kane: Well, it goes without saying that it is paramount. You go through your Superior Court experience making every decision on your own, you're it. All the eyes are on you and you make the decision right or wrong and as Hollis Best used to say, "You make the decision you can make and never look back."

When you get on the Court of Appeal, everything's done with a panel of three. And so, that's different and conducting oral argument is different. You're not in control. You're one of three people that are in control. And if you cannot listen and understand other points of view on the panel and try to work through any differences or variations in viewpoints, then it's going to be a struggle. And very important to be able to work with people, to be able to compromise, not your principles but compromise on the language of the opinion I think more than anything.

Very often the result is agreed upon but how you craft the opinion and what issues you decide to address and which ones you avoid, those are issues that the panel member sometimes have disagreement on and you need to be able to -- even though you've just drafted and spent a lot of time doing in your mind a wonderful opinion, and then to have one of your colleague say, "You know, I agree with your conclusion but pages 16 through 23, I think we should just take that out."

And rather than taking it personally, you have to say, "Okay, are those pages absolutely necessary? If I can't convince them to keep it in, are they absolutely necessary? Can we eliminate that and still have the right product?" And sometimes, you do that, and you can't take it personally, you just have to say, "Everybody is different, everybody's got a different take, people are concerned about different things, but it's very important that you have that relationship." So, that when the next case comes and then you have a problem with something that they want to say or how they want to treat something, and you want them to pull that out or rephrase it, that they're going to be open to your suggestion.

Bert Levy: You mentioned oral argument, did you enjoy oral argument? Did you find it beneficial?

Stephen Kane: Well, those are two different things. I did enjoy it. I didn't enjoy it as much when attorneys appear by phone. To me, it takes a little bit of the personal interaction out of it. But when attorneys appear and argue and are prepared and there is some give and take between the bench and the lawyers, I like that. I think it reminds me of the days on the Superior Court doing law and motion.

You asked, is it beneficial? We get asked this all the time and we get lawyers that will tell us, "I always waive argument because it doesn't make any difference and so forth." Well, I always say to them, "Would you prefer that the case ride on the oral argument or on your brief?" And they always say the brief as we spend all the time on the brief. We put all of our arguments in there. I said, "Well, that's the way the system is set up." The appellate argument is primarily a written argument. The oral argument is for questions that we have that maybe the briefs don't address. Maybe we want to hear your response to something that's somebody says at oral argument.

But if it's not on the brief, then why are we here? So, is it beneficial? Certain percentage of the cases, it affects how the opinion is written. Does oral argument often cause the court to complete or reverse their thinking on a case? I would say no. I mean, it's happened but that would be rare and it should be rare.

01:44:59

Because if we review everything, the record, all the briefs and we think the result should be this, and in a 30-minute argument, we now think it should be the opposite. There are something missing there, is it the brief were inadequate or all three of us didn't know what we were reading or something is wrong. If the system is working right, we should be able to read the briefs and understand the issues and reach the result that we're ultimately going to reach.

Bert Levy: So, you were a judge on the Superior Court and the Court of Appeal for 25 distinguished years, how would you describe your judicial philosophy?

Stephen Kane: I agree with Aristotle who said, "Judges should be allowed to decide as few things as possible." I think that the judicial authority should be exercised restrictively. I think appellate authority especially should be differential to what happens in the trial court. I think that the courts should be differential to the other branches of government. I don't see the courts as being the branch of government that should correct all of the failings or shortcomings of the other branches or of society.

I think our oath requires us to follow the law as it exists not as to how we think it ought to be. And I think judges get tempted by counsel and by litigants to do more to grant the relief of their seeking. But I think my judicial philosophy is more narrow than that.

Bert Levy: And you have been very involved over the years in judicial and legal education, you've alluded to that during our discussion here this morning, tell us briefly about your teaching experiences both to lawyers and to judges?

Stephen Kane: I've done not as much as some but I've done it through the years. I've been asked to be on panels to talk about all sorts of different things, judgments, expert witnesses, trial practice, summary judgments, law and motion, bankruptcy issues that affect litigation and other topics. I've spoken in front of lawyer groups. I've spoken the front of judge groups and a mixture.

When I was on the Superior Court, I spoke a lot to students and classes that would come into the court, encourage that, I welcomed it, I went to a lot of schools myself, elementary and middle and high school, and even college. I had some great interactions and experiences with that. I've had young kids that come in to my court, in the Superior Court and then some of the teachers would have them write letters to me afterwards and I've kept some of those and some of them are priceless. The one that stands out of my mind is, I think I had a first or second grade class and I was pretty brand new judge, so, I was feeling pretty good about myself.

And they came in and I put my robes on and went out and talk to them, and explain all the important things that I did and answer their questions and they left. And about a week later, I get this nice booklet with letters from all of them and they've drawn a picture of me or the court or something and they've all written a sentence or two to me. And one of the kids wrote, "Dear Judge Kane, thank you for inviting us to come to the court house, I like the elevator the best."

So, my education and teaching has not been entirely effective but it's covered a wide range of people.

Bert Levy: Well, you had a major impact here at the Court of Appeal, Fifth District Court of Appeal, you were in charge of the mediation program here which has been quite effective. Tell us briefly about the mediation program here at the Court of Appeal?

01:50:10

Stephen Kane: Well, Justice Becky Wiseman and I started a program here several years ago, we just started talking about, once in a while you get an appeal on a case especially if it's been up here more than once and it's common for us to say, "Gosh, I wonder why they weren't able to settle this case." It just seems like it would be the kind of case that could settle if you ever got everybody in the room.

So, with mediation being so pervasive and effective in the legal community now, we proposed to the court here and started our own mediation program with the justices being the mediators, which is what makes this unique. Becky and I worked through the process and we finally got a system down where we decided that it would be best to be very selective on the cases, because we didn't want to waste peoples' time.

But we ask for volunteers among the court and I know you done it several times, and most of our judges did volunteer. We have a beautiful room for rent(ph) here with adjoining side rooms, and we've probably mediated -- I'm going to guess between maybe 5 and 10 a year and the statistic show that a majority of them have resolved at the mediation. And these are cases where they're on appeal but the record has not been prepared and the briefs have not been written.

So, we're getting them before they spend a lot of money on the appeal, they don't have to spend any money to come here to mediate, and the litigants have been very appreciative of that. They know that this is a freebie and it's an opportunity for them to meet with an appellate court justice who's not going to be on the panel and discuss all the issues and get that judges take on, "Well, what do you think?" And as a result, we've had good success and I am surprised that there are other courts utilizing it but it's working for us.

Bert Levy: Yeah, it's very helpful. Let's continue on with some general questions about the judicial branch of government. What major your challenges do feel that our justice system faces today?

Stephen Kane: I think, one of the first things that burden the court unreasonably are the number of laws that we have and that continue to pile up. Sacramento is in a feeding frenzy over passing laws without appropriating any money to implement those laws, and most of them or a lot of them affect the court system. And we're just adding more and more laws, I mean, look at our criminal sensing laws.

Bert, when you first went on the bench and had to do some sentencing, before three strikes, before all these other things that have happened, you could go to one of these orientation courses for judges on criminal sentencing and you could feel pretty good that 80%, 90% of the cases you'd be able to go to the booklet and figure it out. And probation officers feel the same way and defense lawyers and prosecutors. I think that's all changed.

Now with time credits and with enhancements, everything -- nothing is simple anymore and it sort of like doing a tax return. When they started hundred years ago, anybody could fill out their tax return. Now, if you got anything going at all in your life and you can't. I think that's really hurting the court system and it's hurting because a lot of mistakes are made, a lot of what the appellate court does is correct sentencing errors. And it's not because people aren't trying, it's because it's too complex and it's changing all the time.

We're dealing with retro -- I say, "we," I'm no longer on the court, but you're dealing with, is this law retroactive or not?

01:55:04

That comes up all the time. The legislature passes these laws and they don't make that clear or through the initiative process, the same thing. So, we have to do something about simplifying our laws. I don't think we get more justice just by having more laws. I think we get less justice.

Bert Levy: Do you feel that the sentencing law should be reformed?

Stephen Kane: Yes, I think they should be simplified, but the problem is you got all these competing groups and they'll never agree on it because simplifying will either be perceived as being too low on order or too lenient and you've got the two schools that will be in disagreement. I just think that's so important.

The other thing is, jury trials certainly in the civil side of things are falling off dramatically nationwide and I'm sure in California.

I don't think that's good. We still have lots of lawsuits and people have things that need to be resolved, but I think a lot of these cases are being resolved because it just takes too long and it's too expensive for them to litigate it.

That shouldn't be the reason why they settle a case. I mean, it can be a reason but it shouldn't be always the reason. I think that trials stay too long. I think jury selection takes too long. I don't think we get more justice by having longer jury selection. I don't think we get more justice by taking a trial that 30 years ago took three days that now takes six. I don't think it's more justice today than 30 years ago.

I think the civil side is overloaded with expert witnesses. I think the law is too accommodating to qualifying people as experts and as a result, they're dominating civil trials and that's very expensive and it's time consuming. So, those are a couple of my thoughts.

Bert Levy: Interesting. Let's talk about your decision to retire from the court and tell us what you've been doing since you retired?

Stephen Kane: I have gone into business for myself for private judging and so I'm doing primarily mediations and arbitration work. I've also been asked and recently done some of appellate consulting work. I don't intend to practice law. I'm not going to become counsel of record on a case but apparently there are some cases out there where parties would like some feedback from retired appellate justice on their briefs or how they're going to conduct oral argument. And so, I'm open to doing that kind of work as well.

I've had a couple of inquiries about whether I would be interested in being an expert trial witness on topic such as attorney's fees and legal malpractice and others. I have not yet been retained but I'm leaving that door open.

Bert Levy: Have you been enjoying your time?

Stephen Kane: I have. It's been difficult because it's -- I'm a sole practitioner and I was never that before. I worked for a law firm and then the superior court and Court of Appeal, so now I'm my own boss. So, there's a lot of detail work that I have to do with that I've never had to do before. But I have enjoyed it, I like not having to answer to anybody else. I like getting back into the legal community. It's nice meeting new people and encountering new cases and situations.

Bert Levy: Is the word getting out that Justice Kane is now available?

Stephen Kane: Well, it seems to be because I'm getting busier as time goes on.

Bert Levy: Well in your retirement Steve, I know you've been doing more than just mediations and talking about legal cases. You mentioned earlier that you enjoy golf, are you golfing in your retirement?

Stephen Kane: I've done less golf since I retired than I did a few years before because trying to get this business going is taking a lot of time.

Bert Levy: Any other hobbies that you enjoy?

Stephen Kane: Not particularly, my wife and I still live in the same house we raise all of our kids in. We've got two acres so there's some yard work that needs attention now and then. And as I said, all four of our children lived in the area so they're a distraction.

02:00:03

Bert Levy: A joy I know.

Stephen Kane: Yes. But, I think that covers it.

Bert Levy: Okay. Well, let's conclude with a few final questions looking back on your career and your experience as an attorney and a judge, what advice would you give someone considering a career in law?

Stephen Kane: Well, I think the legal profession offers a lot to a lot of different people with varied interests. When you and I became lawyers, you sort of thought of lawyers that either worked as a private lawyer or they went to work in the DA's office or they went to work as a government lawyer or they taught law school. I mean that was not it.

Today, so many businesses and occupations -- again getting back to my comment about we have laws and everything and too many of them. A lot of businesses require people with some legal know-how and there're a lot of people that go to law school that don't really want to be a traditional lawyer practicing law, but they want to be able to use their legal education and their tech field or their business.

So, if somebody has enough of an interest where they want to spend three years working hard, getting through law school and they think it might lead to something they could utilize either in the law or in some other endeavor, I say by all means, give it a serious look, but it is a large commitment. You can't go in half baked, it's not easy, it's hard and so you have to kind of want it.

Bert Levy: What advice would you give someone who is considering becoming a judicial officer?

Stephen Kane: Well, I think if they don't have extensive experience in the court room as a lawyer, they need to talk to people that have that experience. You know, a judge preferably or other lawyers

because for some it's a difficult transition from being an advocate to being a decider. Some people don't handle that well.

I can't think of a judge or two that was never happy going on the bench because they didn't like making such important decision in people's lives. They much prefer just being a lawyer advocating on behalf of their clients and letting somebody else decide it. So, somebody that is considering the bench should really be talking to people that have served on the bench and to get different perspectives on this because it's not for everybody.

Just because you're a very good lawyer or you love the law doesn't mean you're going to love being a judge or a trial judge. You might like being an appellate judge but you may not like being a trial judge or vice versa. So, you can't just look at books and go talk to some counselor at some school. You need to talk to people that are in the arena, court room lawyers, trial judges, and get their take on it.

Bert Levy: And what would you say are the qualities of a good judge?

Stephen Kane: I think we need to expect and demand a lot from judges. And so, I think they have to have a lot of very good qualities. It's not enough to be smart. People always talk about somebody that's applying (02:04:12) is here, she is smart, they went to a top law school or they finished the top of their class.

Being smart is just one skill set and I think you have to have integrity. You have to be able to be a very good listener. You have to have patience. You have to be decisive. After you've listened, after you've understood, after you've been patient, you have to be decisive. You have to make decisions and you have to do what Hollis Best said, you make your best decision and you don't look back. You don't take things under submission for weeks or months.

02:05:01

The best time to make that decision is when it's fresh and you do it and you move on. Ideally, you have to be able to connect with people. You have to be able to talk to jurors, you have to be able to interact with lawyers, with pro pers, people that aren't represented which we know there are more and more of those. You have to deal with that in family law in a big way.

You have to be able to talk to people in a way that they understand that you understand what they're saying. And that you are going to try to make the best decision you can, and, that you are going to apply the law. It may not be what they want but I think inside, that's what they expect. They expect you to apply the law as you see it. And I think you have to have courage, because you have to make decisions that are popular

even though you know that's what the law requires you to decide.

You have to be sympathetic but you can't let sympathy control your decision making. So, that's asking a lot of somebody to do all those things but that's what a good judge is, and judges should be striving to attain those skills as they go through their judicial life, but it's a huge challenge.

Bert Levy: And if I may just end on a personal observation Steve, knowing you for all these years, I can honestly say that you exemplify all of the qualities that you've just described of what makes a good judge. And when we were young lawyers starting out together, we looked up to Judge Blaine Pettit, Judge Leonard Meyers, you've mentioned Judge Hollis Best. They were icons in the Fresno legal community. And I can honestly say that I believe that Justice Stephen Kane are in that same pantheon as Justice Pettit, Justice Meyers and Justice Best.

And it has certainly been one of the highlights of my personal judicial career being able to serve with you on the Fresno's Superior Court and on the Fifth District Court of Appeal, and it's been a great thrill and honor for me to be able to conduct this legacy interview with you this morning. It's really been a joy and I thank you for your friendship and your dedication to the people of Fresno County on the State of California.

Stephen Kane: Thank you Bert, those are very kind words and you know, one of the attractions for me to go on the Superior Court was that you were on that court, one of the attractions for me to go to apply for the appellate court was that you were up here as well and it's been a wonderful ride that we both had legally in this community and I feel very fortunate. Thank you.

Bert Levy: Thank you.

02:08:46