Arthur Scotland: Welcome to the chambers in which Justice Coleman Arthur Blease has toiled for 27 years, setting the record as the longest-serving justice on the Court of Appeal, Third Appellate District.

I'm Art Scotland, the presiding justice of the Third Appellate District. Now, I've had the good pleasure of working with Cole here at the court for 17 years. Hard to believe it's that long.

Coleman Blease: It is.

Arthur Scotland: Since I came to the court in 1989.

Cole, the Judicial Council's Appellate Court Legacy Project is undertaking an effort to compile documents regarding the life and times of the justices who have served on the court and also to kind of get your insights on how the courts have changed over the years, how the court was in the early days. And ordinarily, we are taping justices who have retired; but I think you would agree that all your friends who love and care about you know that you've said that you love this job so much that they're probably going to have to carry you out of here with your boots on, right?

Coleman Blease: There has been one prior occupant of this court who was found dead in his chambers, so there is precedent. *[laughing]*

Arthur Scotland: Okay. [*laughing]* Well, we thought we'd better get you now, because we know that many years from now you're probably going to still be at your computer working on some mental-state issue driving yourself crazy. And we thought we'd better get to you now.

Arthur Blease: Or the Supreme Court crazy.

Arthur Scotland: So shall we get started?

Coleman Blease: Sure.

Interviewer: Let's do it. Wonderful. And before we get going, then, what are some of your early memories of San Rafael?

Coleman Blease: Oh, walking to school, riding a bicycle, you know. *[laughing]* Getting poison oak.

Arthur Scotland: Poison oak, there you go.

Coleman Blease: My name is Coleman Blease. The last name is spelled B-L-E-A-S-E, like "please," but with a B.

Arthur Scotland: Cole, we always begin at the beginning, and let's do that with you. When and where were you born?

Coleman Blease: I was born in San Francisco in 1929.

Arthur Scotland: October the 23rd?

Coleman Blease: Exactly.

Arthur Scotland: So you are soon to be 77.

Coleman Blease: Next month.

Arthur Scotland: And I can attest that you are still as vigorous and strong as ever, both in body and mind, right?

Coleman Blease: Well, the body's a little doubtful.

Arthur Scotland: *[Laughing]* So you were born in San Francisco. Can you tell us a little bit about your parents?

Coleman Blease: Well, the most important thing, I suppose, in terms of my following education, is my mother went to high school and my father went to the eighth grade; but he had a job during the Depression working for the Federal Homeowners Loan Corporation, and so we were relatively well off during the Depression. But then he was hospitalized when I was 13 or 14. My mother had to go to work, and I did, too, as well.

Arthur Scotland: By then you had moved out of San Francisco, is that right?

Coleman Blease: Right, we were in San Rafael by then. I went to school there from the 4th grade through the 12th grade.

Arthur Scotland: That was a pretty small community at the time, was it not?

Coleman Blease: A lot smaller than it is now.

Arthur Scotland: Any particular memories that you have as a kid?

Coleman Blease: Oh, you know, walking to school and spending time in the library, running on the cross-country track team, being in gymnastics, and for the most part liking school.

Arthur Scotland: You are known as a vociferous reader. Did that start at an early age?

Coleman Blease: Very; I think quite early. I rode my bicycle frequently to the local children's library to begin with and then the adult library.

Arthur Scotland: Is that something that your parents talked about? How did you come about your interest in that?

Coleman Blease: Well, my father was very conscious of his lack of formal education, and he was from a border state, West Virginia. Had a southern accent at one time, I'm told, but studied to avoid it,

and I can never remember his speaking without speaking in full and complete sentences; you could hear the punctuation. I suppose that was impressive.

And my mother was equally interested in language to the extent that she could. Ran a small mimeograph shop and corrected people's writings for years when she was forced to go to work.

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Arthur Scotland: What type of reading did you enjoy as a young boy?

Coleman Blease: All kinds of reading. I was a Boy Scout and an Eagle Scout and a Sea Scout and read probably somewhat unusual things as a minor: battleships, a book on navigation, histories of the Navy, and also all of the Zane Grey novels. *[laughing]* I went during the summer to spend time with my grandmother, and as a visiting kid who didn't know the local kids in Carson City, Nevada, I went to the library and read anything I could get my hands on. And there was a state library that was a block away, so it was convenient.

Arthur Scotland: While you were going to school did you have odd jobs?

Coleman Blease: Yes.

Arthur Scotland: What types of things did you do?

Coleman Blease: Well, I spent one summer unloading a coal car and spending my time either unloading or in the bathtub trying to get rid of the coal dust.

Arthur Scotland: What are your memories of high school? Did you enjoy high school?

Coleman Blease: I did.

Arthur Scotland: You mentioned you were on some athletic teams. Were you ever involved in school government or anything like that?

Coleman Blease: Yes, I was president of the senior class, spoke at graduation.

Arthur Scotland: Do you remember how big your class was in those days?

Coleman Blease: Somewhere a little over 100, 120, something like that.

Arthur Scotland: Did you get into San Francisco as a youngster growing up?

Coleman Blease: No, no. We were very much close to home, unless we went to Nevada.

Arthur Scotland: So you mentioned that with your dad being a federal worker that you really didn't feel the terrible effects of the Depression. Is that correct?

Coleman Blease: No. I was essentially unaware of it. In subsequent years when I attended 40th and 50th reunions of my high-school class, they heard wonderful stories about kids who were really badly off, and other families took them in in San Rafael. I did not know that at the time.

Arthur Scotland: When you were in high school did you think about college early on?

Coleman Blease: Oh, yes. The lack of education of my parents made it very high on their agenda that I go to college, and so I can never remember when I was not urged very strongly to go there, either by my parents or by teachers and others. In fact, when I went to University of California, I was the only one from my high school to start there as a freshman. I think one or two came over subsequently.

Arthur Scotland: Had you always thought about going to UC Berkeley?

Coleman Blease: I never thought about going anywhere else. I mean, it was available and cheap. In fact, when I started the tuition was $35 a semester, and I borrowed the money from the university, paid them back $5 a month.

Arthur Scotland: Where did you live in those days?

Coleman Blease: In basements, rooming houses; ate at the co-op, moved around.

Arthur Scotland: Did you have any jobs to help?

Coleman Blease: I worked for the entire eight years I was an undergraduate at the law school.

Arthur Scotland: What are some of the things that you did?

Coleman Blease: Oh, I hashed. I worked frying hamburgers. I had a job as a guinea pig in a high-altitude test chamber, anything I could get. I worked one summer at Trailmobile riveting aluminum trailer bodies together.

Arthur Scotland: I'm very curious about this being a guinea pig. How in the world did that come about?

Coleman Blease: Well, they had a job service at the university. You go over there and sign up, and they called and asked whether or not I wanted to be a guinea pig. It wasn't as bad as it sounded. They put you in a chamber, and then they told you they would take you out if the pain got too large.

Arthur Scotland: Great. *[laughing]* So did you make it to the end?

Coleman Blease: I did.

Arthur Scotland: Tough then, as you are tough now, right?

Coleman Blease: *[Laughing]*

Arthur Scotland: What years were you . . . you graduated from Berkeley, undergrad in '52, right?

Coleman Blease: '52.

Arthur Scotland: Can you tell us a little bit about what the school was like back then?

Coleman Blease: Well, I started in 1947, and because I was looking at the possibility of getting a good job when I got out, I spent three years in the School of Electrical Engineering. The place was absolutely jam-packed with returning veterans from the Second World War. It was a very exciting place, because it was composed of a lot of older people who had been all over the world and had experiences that I couldn't even imagine. And frequently when I ate at the co-op, I sat around listening to the political discourse of people who had been a lot of different places.

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I guess that's what ultimately encouraged me to get out of engineering, which was a rather dour place, although interesting; I'd always had an interest in science and to this day, but it really wasn't for me. When I decided to get out of engineering, which was the end of the third year, I took some aptitude tests and finally settled on the law. Actually I was interviewed by Frank Newman, who was, as you know, a Supreme Court Justice; and, you know, he encouraged me to get into school.

Arthur Scotland: At the time he was on the faculty?

Coleman Blease: He was then on the faculty at Boalt.

Arthur Scotland: How did you happen to be interviewed by him?

Coleman Blease: I don't know. He probably was assigned to do that.

Arthur Scotland: So in those days when you applied, you would actually go in and speak with a member of the faculty?

Coleman Blease: Yes.

Arthur Scotland: You indicated that you had a lot of discussions about politics and government. I know that you're very interested in politics. Was that something that you developed an interest in as a child, or did that start really in college?

Coleman Blease: In college. I had no . . . well, I say a little bit before college, because I spent a lot of time with the family of a girlfriend of mine who were interested in politics as well. I suppose it started there. But certainly the university was a place which was a hotbed of all kinds of political interests at the time, and I had a good sampling of all of that, mostly as a bystander.

Arthur Scotland: It's hard for me to believe that you'd be a bystander in a political discussion, because you're wonderful at debating different points of view. When did you start developing those types of skills?

Coleman Blease: Well, I don't know whether I developed those kinds of skills, but I was always a bystander in the sense that my participation was not in any direct-action kinds of matters. Never participated in a demonstration or a march or a picket or any of those things, but I was present when a lot of that happened. And when I taught at the university during from '62 to '64 in the Speech Department and I taught the undergraduate course in freedom of speech, I did have a lot of the members of the free speech movement in my class; and, in fact, they were all arrested under a statute which I had drafted to prevent that when I was lobbying at the Legislature.

Arthur Scotland: Well, we're getting a little ahead of the story here; we're going to come back to that. Let's go back to your decision to pursue the law. You went into Boalt Hall; you graduated in 1955, is that correct?

Coleman Blease: Yes, I did.

Arthur Scotland: Can you tell us a little bit about how it was as a law student in those days?

Coleman Blease: Well, let me tell you, first when I entered, I had been going to school for a solid two years, including summer sessions, in order to make up for the College of Letters and Science courses that I'd missed when I was in engineering. So I have to tell you, I was like a limp rag when I started law school. So l hung on; you know, I was not anywhere near the top of my class. And in those days, it was very much like boot camp. I mean, it was a rigorous and challenging and frequently insulting form of education. And with, you know, the merit system run wild, people, I always thought, were seeking to gain an advantage in the order of graduation, and I didn't care for that. In fact, I was always through the whole thing somewhat unsure about what I was going to become. I wasn't clear about becoming a lawyer until some years after I graduated.

Arthur Scotland: Really? So when you first thought of going to law school, you didn't have an idea of any particular—

Coleman Blease: Well, I was motivated by, you know, cause matters and really was thinking very much about civil rights and those kinds of matters, and I frankly didn't see what most of those courses had to do with it. That was something I had to learn later, and I regretted not having paid more attention, although there was a great advantage to all of that in that when I graduated, nobody invited me into a large firm or I might have carried a briefcase for many years. Instead I volunteered for cases, and one of the earliest cases I had went to the United States Supreme Court. And I got a lot of experience that I would not have ever gotten in any large law firm.

Arthur Scotland: You indicated that you were interested in causes. What about your upbringing or what influences in your life caused you to be concerned about those issues?

(00:15:05)

Coleman Blease: Well, you know, my mother was always the kind of person who was helping out older people, and I was dispatched frequently to mow their lawns and to help them do odd jobs around their houses; and then of course the loss of my father early on to a hospital made me wonder about the larger issues of life. And when I was at the university I attended Quaker meetings and was attracted to their rather austere forms of worship, and I was a member of the meeting. In fact, my second job out of law school was to lobby for the Friends Committee on Legislation with the Legislature.

Arthur Scotland: What was your first job out of law school?

Coleman Blease: Well, for almost a year I had a job writing oil and gas leases for a mining engineer who had oil wells in Bakersfield.

Arthur Scotland: How did you feel about that type of work?

Coleman Blease: It seemed uninteresting to me, I'll tell you.

Arthur Scotland: How did it come about that you began working for the Quakers and doing their legislation?

Coleman Blease: Well, they were looking for a paid lobbyist, and I both had a law school education and was an attender at Friends meetings. So I was a good candidate; in fact, I was probably their only candidate, to tell you the truth. So I was their first paid lobbyist in Sacramento.

Arthur Scotland: Let me go back for a moment. I remember you telling me a story about after you took the bar and the results came in and

you were to be sworn in, you were unable to attend one of your swearing-in ceremonies, didn't you?

Coleman Blease: I was unable to attend the swearing-in at the federal courts, because I couldn't afford to give up a half a day job; I was driving a truck. So it was only later on when I actually appeared in the Ninth Circuit and the various federal district courts that I was sworn in.

Arthur Scotland: So I take it that those were fairly tough days, just being able to get by and—

Coleman Blease: Well, they were difficult; I wouldn't call them tough days, no. No. I was never, you know, hungry, let's put it that way. There were always jobs to do, and although I worked long hours, I didn't feel deprived at all. There were lots of interesting things to do. I found school to be very interesting, especially after I got out of electrical engineering; and I found the courses that Jacobus tenBroek taught and I found him absolutely wonderful. It really only takes one really interesting person in your educational career to really start you off, and I suppose he was the one who really interested me in the law school. He was blind; he was the first chairman of the State Welfare Commission, which I think was abolished after because of him. *[laughing]* He wrote marvelous articles on the Civil War amendments, particularly the Fourteenth Amendment; books on the incarceration of the Japanese during the Second World War, all of which I read; wrote lots of interesting articles on welfare; historical, legal articles, much of which dealt with the development of the common law and matters such as welfare law, tracing it back to the Elizabethan Poor Laws in the 1600s. Which was an introduction to sort of the history and development of the law, and to find out that many of those early principles from 1600 were still at that time in the law of California. It's since changed very much, and much of it has sort of constitutionalized.

Arthur Scotland: It's interesting that you were fascinated by the development of the law, and then you actually went to the Legislature as an advocate. This was in 1957, is that correct?

Coleman Blease: Yes.

Arthur Scotland: That was a part-time Legislature at the time, was it not?

Coleman Blease: It was.

Arthur Scotland: Can you tell us a little bit about how you began? Had you ever appeared before the Legislature before? Were you familiar with how the Legislature worked?

Coleman Blease: No.

Arthur Scotland: How did you prepare for that?

Coleman Blease: Well, I didn't. Actually, they drove me up there and dropped me off, and I had no idea what the Legislature was about. And walking toward the Capitol the very first time, they had fertilized all the lawns, and it was really . . . I said, "If this is symbolic, this is unfortunate."

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But I got there with some very interesting people there—including Phillip Burton from San Francisco and John O'Connell, John Knox, and others—and I discovered something very early on. As you walk down the hall, I found out that the committees all seemed to be named after the principal lobbies in the Legislature. Oil, gas, and mining, agriculture, labor, all seemed to be dominated by a particular kind of lobby. It didn't take too long to figure out that if you wanted to have an impact, what you wanted was a committee of your own, and in 1958 we got one. It was then called the Criminal Procedure Committee, which was composed of people, I'd have to say, greatly interested in civil rights and civil liberties matters. From there on it became apparent that the question of how well you did was in part a strategic and tactical question. Who was for the formation of the committee, the composition of its members, how did you get those members on there that had to do with the relative composition of the Assembly as a whole. It became clear that if you wanted to stop legislation, although there were 120 members altogether in the Legislature, that with one committee you could stop it with 4 members.

So the Criminal Procedure Committee fulfilled that function, and by and large functioned in that way throughout my entire tenure, which was in some 17 years.

Arthur Scotland: Am I correct in understanding that you had some great influence in the fact that that committee was actually formed?

Coleman Blease: Oh, yes.

Arthur Scotland: How did that come about?

Coleman Blease: Well, let me say what influence is. You have to find members of the Legislature who will do the work for you. It doesn't take very many if they're well positioned, and it so happened that people who had the same interests as we did were very prominent in the Democratic Party at that time. Not that there weren't quite a number of moderate Republicans also at the time; the composition, I think, has changed somewhat since then. And I was always concerned that there be a balance which included Republicans and other people on those committees. You know, I guess that's a sort of interest that also stems from your general concerns about the composition

and fairness of matters. It's not just a question of dominating anything; it's a question of influencing people.

Arthur Scotland: So here you're a rookie, you're going there on your first day, you don't really know much about the Legislature. And you mentioned that knowing the right people and working well with people is crucial to your success. How did you go about developing those relationships?

Coleman Blease: Go and talk to these people. And if you find people who are interested in the same things you're interested in, that's a fairly easy thing to do. There may not be a lot of them; but if they're well placed, they can become critical in the whole matter.

Arthur Scotland: Who were the most influential legislators that you worked with over the years?

Coleman Blease: I'd say Phillip Burton, Jack Knox, many others; John O'Connell, who was the one who actually was critical in forming the Criminal Procedure Committee.

Arthur Scotland: Initially did you focus mainly on laws relating to criminal law, free speech, that sort of thing?

Coleman Blease: Well, there was the civil rights cases, which turned into the civil rights laws: the Rumford Fair Housing Act, the Fair Employment Practices Act. There were lots of criminal law matters because of the development of exclusionary rule and all of the aftermath of that. Later on it branched out, including things like the Rumford Act; and then later on I represented also social workers, welfare laws, and the like.

Arthur Scotland: It's my understanding that you actually had a hand in drafting some of those key pieces of legislation.

Coleman Blease: Oh, yeah, many hundreds of bills I had a hand in or a piece of—the 1538.5 dealing with the means of raising issues of search and seizure. I drafted the savings clause in the preemption provisions of the state Constitution when the Constitutional Revision Commission was operating. And my favorite, and perhaps it looks like the simplest, was the placing of the privacy provision in the state Constitution.

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One word; and I have to say I think I thought of the idea. And Ken Cory was a good friend of mine and then in the Assembly—later on he was controller of the state—and he carried the constitutional measure, put it on the ballot. One of the interesting things about ballot measures emanating from the Legislature is that the author, no matter how many words are in the piece of legislation, gets 300 words to explain it; but you put one word in the Constitution, and you get 300 words to tell you what the one word means. So the 300 words on the

privacy amendment were actually drafted by Anthony Amsterdam, who was then professor of law at Stanford.

Arthur Scotland: Were there committee consultants in those days?

Coleman Blease: Oh, yes.

Arthur Scotland: And how would you work with them? If you're coming up with legislation, what was the process that you used?

Coleman Blease: Well, you had to talk with these people extensively. They were critical, and the daily work of the Legislature is done by consultants, somewhat like the staff we have here is critical in our functioning.

Arthur Scotland: You were a legislative advocate not just for the Friends and the social workers. What were some of your other clients, so to speak?

Coleman Blease: American Civil Liberties Union of Southern California and the Social Workers Union.

Arthur Scotland: You did this from 1957 until the early '70s?

Coleman Blease: 1974.

Arthur Scotland: Any particular other fond memories or funny stories about things that occurred in the halls of the Legislature?

Coleman Blease: You know, I didn't take it as funny; and the things which were amusing, I'd prefer not to comment on. *[laughing]*

Arthur Scotland: Very wise; shows your good judgment. Well, in 1974, there was a . . . actually, before that, you had formed a law firm, did you not?

Coleman Blease: Yes.

Arthur Scotland: How were you originally? Before you formed your law firm in 1967, were you kind of working on your own? How did that go?

Coleman Blease: Well, I was teaching from '62 to '66, and I was being paid by the ACLU.

Host: Tell us a little bit about that teaching.

Coleman Blease: Well, I taught in the Speech Department.

Arthur Scotland: Which one?

Coleman Blease: At Berkeley. When I started, Jacobus tenBroek, whom I had taken the classes from, was chairman, and he set out to create a kind of specialized liberal arts college within the Liberal Arts

College. So he had hired not only the typical kind of rhetoricians; but he had hired psychologists, historians, and lawyers. He liked lawyers; he was a lawyer himself. And that's how I got in there.

I taught initially the undergraduate courses, the first-year courses, which were substitutes for the English requirement; early great books courses, so we got to read plaintiffs' dialogues, Freud and Darwin and Marx and all kinds of interesting people. So actually I was getting a very good education at the time, and since the students there were all very bright, I was the beneficiary of all of these bright students. In fact, I suppose you'd have to say I've been the beneficiary of very bright people for my entire career.

Arthur Scotland: One of those individuals you joined the practice with in 1967.

Coleman Blease: Yes.

Arthur Scotland: Who is that person, and how did that come about?

Coleman Blease: Well, Larry Karlton, who is currently, you know, a federal district judge. Larry had been the chairman of the ACLU Lawyers Committee in Sacramento, so I knew him before we moved to Sacramento. But when we moved to Sacramento in August of 1966, I didn't have anything at that moment to do, and it always bugged me when I wasn't working. So I came down to the law library here, introduced myself to the law librarian and said there are a number of things I'd like to research, and could I have access to the library and to the stacks where they had legislative materials. They said yes; ultimately gave me a key to the law library, so I frequently worked in there on weekends. But one of those days I met Larry, who was sitting, working in the law library, and we sat down and talked on the stairs, actually, outside the law library. And he said he was unhappy with his association. I said, "I would like to start up a law practice." But I had no money, and if he would open an office, I'd maybe come up with $50 a month to put my name on the door. And that's how we started.

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Well, then the social workers came and asked me if I'd like to represent them, and they said they had no work. I said, "That's fine, I have no clients." So it was a perfect start. And very shortly thereafter, they came to me and told me that they were going to go out on strike and asked me if it was legal. I said, "Not yet." *[laughing]* And they said, "Well, don't tell the members, because we're going to go out on strike," which they promptly did. And then they were promptly arrested for picketing, illegal picketing, and that gave us our first major cases. They started arresting everybody who picketed, and as many as 80 of them, I think, all told. In fact, the person who

caused their arrest was the former presiding justice of this court, Robert Puglia.

Arthur Scotland: Was that the first time that you had any dealings with—

Coleman Blease: Oh, no, no. I met Bob when he was on the superior court and appeared in front of him a number of times, you know, as criminal cases. So I knew Bob.

Arthur Scotland: This was when you actually were opposing him. Was he in the DA's office at the time?

Coleman Blease: He was the chief deputy attorney, district attorney. In fact, Hugh Evans was chairman of the personnel committee of the county, and he caused the firing of all of my clients.

Arthur Scotland: And he later served with you on this court.

Coleman Blease: Right; Bob arrested them, Hugh fired them.

Arthur Scotland: And you freed them.

Coleman Blease: And I freed them, right. *[laughing]* So I knew these people quite well before I got here.

Arthur Scotland: We'll talk a little bit about Bob later.

Coleman Blease: Yeah.

Arthur Scotland: I'm just curious; on this particular case, how was he to deal with in that case?

Coleman Blease: Oh, Bob was always easy to deal with. Bob, you know, was a marvelous person, as you know—highly knowledgeable about the law, and we always . . . and an exceedingly friendly person. So the fact that we were on opposite sides never affected our personal relationship; it was always a very straightforward and interesting relationship. But Bob had a rather different view than I did. *[laughing]* In fact, I could tell you—it might be interesting—about how *In re Berry*, which was the case that went to the Supreme Court which caused the freeing of all of them. Berry I didn't know; but he was one of three people who were picketing outside the county building when I was returning from appearing in the arraignment court, which was around the corner then. And I didn't recognize them, so I knew that none of them were social workers, and I saw the police car coming. So I saw a friend on the corner and gave him my card and said, "Would you give this to the young man there?" And I had an aversion to being arrested myself; I have to tell you that. So he went over and gave him the card and said, "Tell him to come to my office after this. He is about to be arrested. We will have him bailed out in an hour or so, and then come over if he'd like to be a test case." And that's what happened.

He came in, and it turned out his mother was a social worker. But we got a wonderful test case, which showed the overbreadth of the restraining order that applied to people who weren't social workers. It also applied to almost anything, because the social workers got very inventive. They were carrying blank signs, and signs like "Snoopy Likes a Clean Sidewalk"; and they just arrested everybody.

Arthur Scotland: Did you have any influence in what type of signs they—

Coleman Blease: No, I didn't; I wish I had, I thought that was really clever. It provided an absolutely wonderful test case: blank signs and non–social workers?

Arthur Scotland: You did most of the legal work on that case.

Coleman Blease: Well, Larry and I did the legal work on it, and I brought in other people that were on it.

Arthur Scotland: When it made it to the United States Supreme Court, you're probably the one that should have argued that case.

Coleman Blease: Well, that case didn't go to the United States Supreme Court.

Arthur Scotland: Oh, I see.

Coleman Blease: That was an earlier case dealing with the statute regulating the receipt of mail from Iron Curtain countries. *Heilberg v. Fixa* was the companion case to the very first case that adjudicated a strict application of the First Amendment; that is, applying it to congressional enactment never had happened before the early 1960s. That was one of the cases I volunteered for with the ACLU of Northern California.

Arthur Scotland: That made it to the United States Supreme Court?

Coleman Blease: It did.

Arthur Scotland: Did you get to argue that case?

Coleman Blease: No, I did not.

Arthur Scotland: What happened there?

(00:34:54)

Coleman Blease: Well, the counsel for the ACLU was eager to argue it. So he filled his named in on the paper that they sent him.

Arthur Scotland: As your firm developed more clients, what types of matters did you handle?

Coleman Blease: Well, we represented the Group Legal Services Program of the California Teachers Association. So we had lots of teacher cases, both representing them before administrative agencies, the Commission on Teacher Licensing and Credentials. We had court cases involving the various issues in educational law.

Arthur Scotland: So you were involved in discipline cases against teachers, that sort of thing?

Coleman Blease: Yes, we were, and later on the practice turned over. We did draft work during the Vietnam War, we did criminal work, we did work that disappeared. And then other cases took on and we became . . . we represented public-employee organizations in both Sacramento County and the surrounding counties. I later on volunteered to be counsel for the League to Save Lake Tahoe; I charged them pro bono rates of $30 an hour. Hired to sue casinos in Nevada, and that litigation was ongoing seven years when I came to this court.

Arthur Scotland: You have had an interest in the environment for a long time.

Coleman Blease: Oh, yes.

Arthur Scotland: Did that precede your being involved with the League to Save Lake Tahoe, or did that kind of generate that?

Coleman Blease: Well, not many overt . . . you know, I had general leanings in terms of environmental issues; but the League case gave me the opportunity to . . . I thought was going to be the opportunity to do more of that work. In fact I didn't do any environmental work at all, because we were kept on a law and motion calendar for seven years. We ended up in the Ninth Circuit three times before I came here on dealing with two major issues of federal question jurisdiction—one involving the compact and the other involving the land-use ordinance, which was the principal enforcement mechanism for the compact. And another one obviously dealing with venue because we'd sued the casinos in Nevada in Sacramento District Court. They thought that was unusual.

So in addition to having the very first case involving the First Amendment's application to Congress, we had the very first circuit case involving the question of the status of a compact, which had been in our Constitution in the very beginning; very interesting cases. And I taught myself a course on federal jurisdiction. Frequently on vacation when we would go and camp in Tuolumne Meadows, I would carry the Hart and Weschler book and read the cases up there by the side of the stream.

Arthur Scotland: Now, before this all happened, you met and married a woman.

Coleman Blease: Yes.

Arthur Scotland: Back in 1959, was it?

Coleman Blease: '59, right. I was on a junket to Southern California with the Friends, and Barbara was . . . and I was speaking at a meeting of the local Democratic Club, and Barbara was, I think, vice-president of the club, in Beverly Glen Canyon. And she was there, a quite attractive young lady. And so I called up the person who was running the meeting and asked her her telephone number. So I called her, and we went out on a date—a hiking date, actually—and a couple of weeks later I asked her to marry me.

Arthur Scotland: Oh, my. So this is really almost love at first sight.

Coleman Blease: It had to be. *[laughing]*

Arthur Scotland: So you shared a lot of interests in that short period of time?

Coleman Blease: Oh, yes. Oh, yeah, yeah. Barbara's every bit as much interested in the same kinds of the issues that I was interested in.

Arthur Scotland: You later had two sons.

Coleman Blease: I had two sons, now in their late 40s.

Arthur Scotland: And you are a proud grandparent.

Coleman Blease: We have one grandson, had been waiting a long time. He's now almost two. My oldest son married a Russian woman from Kazakhstan.

Arthur Scotland: Now, Barbara has also been involved in a lot of social causes, has she not?

(00:39:49)

Coleman Blease: Barbara has spent many, many years working with disabled people, both mentally and physically disabled. She actually has a . . . I'd say a genius touch with them. One of the people she'd been involved with she had met on the playground when she was 40 years old, couldn't read or write; and Barbara extracted her from that condition and worked with her. She later came on the first President Bush's Commission on the Disabled, was a member of that commission, traveled to Japan with Barbara to speak. Doesn't read or write, but is a marvelous stump speaker; has notes that are written in what you'd have to call pictorial graphs that Bob Rosenberg, another genius in the area, had converted all of her speeches into pictures, and she would give her speech from the pictures. Bob always described her as the only acknowledged retarded politician.

Arthur Scotland: Mm. So it sounds like you and Barbara have been a great match.

Coleman Blease: Oh, yes, I think so.

Arthur Scotland: I take it she was supportive in those early years as your—

Coleman Blease: Very much so. I had, say, hardly a penny, and when we married I moved myself and all of my belongings, which only occupied part of a Volkswagen bug, to Southern California, but mainly a couple of clothes and books.

Arthur Scotland: Where did you live in Southern California?

Coleman Blease: We lived in Beverly Glen Canyon in a shack, a plywood shack. It was all plywood, including the shower. You could hear the leaves drop on the roof. But it was in the woods, so it was very pleasant.

Arthur Scotland: How long were you there before you—?

Coleman Blease: We were there a little over two years before we moved to Berkeley.

Arthur Scotland: And so you were in Berkeley for a period of time.

Coleman Blease: We were in Berkeley for four years, and we were in the adjoining county for another year before we moved to Berkeley.

Arthur Scotland: This is when you were teaching there at the time?

Coleman Blease: Yes.

Arthur Scotland: Did the job at the Legislature bring you up to Sacramento?

Coleman Blease: Oh, yes.

Arthur Scotland: And where did you initially settle in, in Sacramento?

Coleman Blease: Well, we rented apartments, and when we were in Berkeley we would come up here for four days to an apartment and then go back to the house on the weekend and do the laundry.

Arthur Scotland: At some point in your practice with Larry Karlton, that changed. He was appointed to the superior court, right?

Coleman Blease: Yes, he was appointed to the superior court. By that time, Governor Brown was elected, the second Governor Brown. And fortunately, friends of mine were in the Governor's Office. So Larry was then appointed at the superior court and later to the federal district court, partly as a result of the fact I also knew a United States senator from here. My contact with the Legislature proved to be very fruitful for my subsequent career

and hit Larry's career and also Richard Gilbert's career, because we had three members of our seven-member firm went on the bench.

Arthur Scotland: Did you have any judicial aspirations at that time?

Coleman Blease: None. I mean, I thought it would be crazy for anybody who was doing what I was doing to aspire to the bench. That was totally an accident as far as I'm concerned.

Arthur Scotland: Really? Well, I want to get to that accident. But before we get there, when Larry left, what did you do with the practice?

Coleman Blease: When Larry left, I ended up with all of Larry's dogs. I mean, I had to. *[laughing]*

Arthur Scotland: You're talking about dog cases?

Coleman Blease: Dog cases, yes, yes.

Arthur Scotland: Right. *[laughing]*

Coleman Blease: I spent a lot of time liquidating his cases. And then the firm carried on, and then before I came here I ultimately dissolved the law firm. By that time, I had obtained . . . my practice was developing. I represented the superintendent of public instruction on cases—the post-*Serrano* cases, the second phase of the *Serrano* cases. I represented the County of Placer in litigation involving Squaw Valley; represented legislators who were the subject of investigation by the Federal Bureau of Investigation *[laughing]*; represented lawyers who were involved in disciplinary hearings before the bar association. It was sort of an odd-lot practice, and of course the League to Save Lake Tahoe and others. My history is a totally unusual history, I think.

Arthur Scotland: You've always been interested in politics. Did you ever think about running for political office?

(00:44:56)

Coleman Blease: No, no.

Arthur Scotland: Why not?

Coleman Blease: Well, my two experiences with running were disastrous. [laughing] No, I mean on the bench. You know, I can't . . . other than advertising, I had very slim pickings when I was put up for election and reelection here.

Arthur Scotland: You mentioned that becoming a judge just kind of happened. What led to that?

Coleman Blease: Well, what led to it is that it did occur to me after I found out that one of my close friends was the Governor's effective appointment secretary: Tony Kline. The notion did occur rather quickly. *[laughing]* Another friend of mine who worked in the Governor's Office, Paul Halvonik, also was a good friend of Bill Newsom's, who was a close friend of the Governor's and, you know, a subsequent member of the First District Court of Appeal. So all these people were in close contact with the Governor and could inform me about what my chances were, which were at the beginning slim, because he did not think I would ever be confirmed by the commission. *[laughing]*

Arthur Scotland: Mm. How did you happen to get to know Tony Kline and Paul Halvonik?

Coleman Blease: Well, Halvonik and Kline and Demetrios Agretelis were all members of Jerry Brown's carpool when he was working as a clerk at the California Supreme Court. So that's how they got to know the Governor.

Arthur Scotland: And how did you get to know them?

Coleman Blease: Paul Halvonik was my reader when I was teaching at Berkeley in the Speech Department. So I got to know Paul very early on in the early '60s, and he's been a close friend of mine ever since.

Arthur Scotland: How about Tony Kline?

Coleman Blease: And then I got to meet Tony through Paul; and Demetrios as well.

Arthur Scotland: So you really had not thought about being a judge.

Coleman Blease: No.

Arthur Scotland: You helped Larry to become a judge, and then suddenly you're—

Coleman Blease: Well, I helped Larry as soon, when a person that I knew . . . I also had done things, that I have to tell you, for Governor Brown when he was Secretary of State—for the person who became Governor, Jerry Brown. I had done some work for him. My friends had encouraged me to do that, some legal work for him.

Arthur Scotland: What type of legal work did you do?

Coleman Blease: I've forgotten exactly about . . . I don't recall exactly.

Arthur Scotland: So you'd actually met him, then, Jerry Brown.

Coleman Blease: Yeah, I do remember one of them had to do with the . . . one of the cases had to do with his appointments powers. He was out of state, and the Lieutenant Governor then was a Republican and sought to appoint members to the bench.

Arthur Scotland: Mike Curb.

Coleman Blease: Yes, Mike Curb, when the—

Arthur Scotland: Armand Arabian, right?

Coleman Blease: Yes, yes. *[laughing]*

Arthur Scotland: So you advised the—

Coleman Blease: I did some legal work on that matter.

Arthur Scotland: Now, you mentioned that originally your chances of becoming a judge were slim, because the Governor's Office was concerned that you might not be confirmed; but you're talking about an appellate court judge. Had you ever thought about being a trial judge?

Coleman Blease: Not really, no.

Arthur Scotland: Why?

Coleman Blease: I hope this won't be seen as arrogance, but I had a very interesting practice. And so if you want to compare jobs, my practice was more interesting than the superior court. And I know what happens when you go on the superior court; you're going to have to spend time in grade, and that would have been two, three years or so. I didn't want to do that.

Arthur Scotland: What appealed to you about the notion of being an appellate judge?

Coleman Blease: Well, I'd done a lot of appellate work, as you know. I had cases in the U.S. Supreme Court, the Ninth Circuit Court of Appeals, Nevada Supreme Court, the First District, the Fifth District. So I'd had 35, 40 appeals and including a good number of test cases and a good many cases that were here. So I liked that work, and I like writing briefs. I liked appearing in the Courts of Appeal. It was a natural. And I knew what the job was about, and I knew virtually all the members of the court here. In fact, I did know all the members of the court here—and the clerk's office and the Supreme Court clerk's office. So it was a very comfortable fit for me.

Arthur Scotland: So what was the circumstance that led to some concern on the part of the Governor's Office that you might not be confirmed?

Coleman Blease: Well, two out of three members were Republicans, to begin with. *[laughing]* And one of them, the Attorney General, was not very fond of me, because—

(00:50:09)

Arthur Scotland: The panel was Chief Justice Rose Bird. . . .

Coleman Blease: Right.

Arthur Scotland: Attorney General George Deukmejian.

Coleman Blease: Right.

Arthur Scotland: And then Bob Puglia, who was the presiding justice of this court.

Coleman Blease: Right. So the critical question mark was whether Bob was going to vote for me.

Arthur Scotland: Was it pretty much a given in everyone's mind that the Attorney General would probably vote against you?

Coleman Blease: I think they probably assumed that.

Arthur Scotland: Was this because of your involvement in legislation that he was pushing?

Coleman Blease: Yes. Yes, I'd been on the other side of a number of pieces of his legislation, and I think he saw that other than that was my job, you know.

Arthur Scotland: So what all went into this process of deciding to go forward to this court?

Coleman Blease: Well, I was being informed by my friends in the Governor's Office about the likelihood of my being appointed, and they told me, "Don't apply until we tell you that it's going to be accepted." And so I was informed that I was probably going to fill Bert Janes's seat when he retired, when he was scheduled to retire in December of 1978. And my expectation was that I wasn't going to be probably appointed until after a woman and two minority members were appointed. But those numbers changed somewhat, and I was led to believe that I might fill Bert Janes's seat; and then Bert Janes did not retire because of an investigation of the Chief Justice, then Chief Justice. And that was very upsetting for me, and I went . . . Well, I had a sailboat at the time, went down, spent a night on the sailboat and said, "Look, get your head out of that noose," and it took me one night. In the morning the ducks were floating around in the bay, I had a good breakfast, and it was all over. I came back and started the practice and said, "If it happens, it happens; if it doesn't, it doesn't. I have an interesting practice anyway."

And then about several months later, I was working as usual on a Saturday. I got a call from Tony Kline, who was in the Governor's Office and said, "The Governor has agreed to appoint you. Can you come over?" And I said, "I'll be there in two minutes." *[laughing]* I think I made it in a minute.

Arthur Scotland: And this was in around May of 1972?

Coleman Blease: Yeah, right.

Arthur Scotland: Was there some uncertainty at that point in your mind as to whether you'd get through the—

Coleman Blease: Oh, yes. Oh, yes. Right. I told my wife, "Do not come with me down to this hearing, because it could get fairly nasty."

Arthur Scotland: As it turns out, Presiding Justice Puglia voted aye.

Coleman Blease: He did.

Arthur Scotland: And do you have any insights as to how that came about?

Coleman Blease: Well, it has to do in my mind with Bob's character. Bob said that his function was to determine the competence of a person who was to be appointed to this court, and I'd known him for a long time; we'd been involved with cases, and he had no doubt about that. So I am the beneficiary of a very interesting person and one with whom I had very close relations on this court for many, many years subsequently.

Arthur Scotland: I know that the two of you were very good friends. On political views you might have not seen eye to eye, but—

Coleman Blease: We were 180 degrees apart on most political issues; but I think we agreed on many, many legal issues. There were very few issues that we disagreed with, and I think Bob was partly responsible for me being on a number of very highly interesting cases, including all of the water cases on the eastern side of the Sierra for many years.

Arthur Scotland: One of the things I respect about you, Cole, having worked with you for 17 years, is that I'm convinced there are a lot of opinions that you've signed that you sure don't like the result; but you understand the limited role of a judge and what a judge's function is.

(00:54:40)

Coleman Blease: Oh, that's exactly correct, and that stems from two sources. One, when I was at the Legislature I learned a lot about legislation and the functioning of the Legislature; and with that plus an interest in the constitutional background of this country, very interested in the separation-of-powers notions.

And the question of statutes is absolutely critical in the separation of powers, because that's the locus of most of the . . . or where most of the issues arise of separation of powers.

In my view, the Legislature proposes, and we dispose; but we have to dispose in the light of the legislation. Plus, I'll have to also tell you about my linguistic interest, because I am very interested in the philosophy of language. And that will fit in with these constitutional notions so that I think I can honestly tell you I am, as you know, very much interested in the construction of statutes and the fidelity to the statutory design and the language of it. And that leads you to lots of positions that you'd rather not end up with. And I think I've been somewhat persuasive in emphasizing to my colleagues here that that's the case. And I think generally one of the things I appreciate about this court is the fidelity with which the members of this court adhere to the language of the statutes. The Legislature can change it if they want to, but we have to follow it.

Arthur Scotland: Let me take you back to your early days on the court. You came on the court in 1979. You indicated you knew all the justices. How was the transition? What was it like in those days? It was a much smaller court.

Coleman Blease: It was seven members. Well, as I said, at the beginning it was an easy fit, although we had a lot of work. I think we were undermanned and understaffed at that time, and the average number of cases we did then was, I think, more than what we do now; I think it was something around 140 and more.

Arthur Scotland: I recall one year where the average was almost 180 opinions per person.

Coleman Blease: Yes. Oh, yeah. Yes. So we were a struggling court, and I worked a full six days a week for several years when I first came here. But that wasn't different, because that was what I was doing before and I enjoyed. I've always enjoyed working; it's good work. But we had a small cadre of people here. The composition of the court was quite a bit different than it is now. Not all the members could produce that number of cases. Some members produced an exceptional number of cases. George Paras being one of them, an enormously productive person; did over 200 opinions one year. And so the court essentially adapted to the skills and talents of the members here. One of them who did not produce a lot of opinions was very good at settlement conferences. So one of the developments was a settlement conference, and he could do that work and, as a result, produce through settlements what he otherwise might not produce in terms of opinions.

So part of the resolution of our caseload involved the development of the short cross calendars and settlement

conferences and others which were innovative matters at that time; and also, the organization for the disposition of the court's work, which is highly efficient and highly developed with respect to the proper resolution of our caseload.

Arthur Scotland: In my view, and I think in the view of many, the Third Appellate District has always been, as you mentioned, a very innovative court and a very productive court. How did that come about?

Coleman Blease: Well, I think it came about largely before I got here, but I think Robert Puglia is probably mostly responsible for all of that. The central staff organizational system; having a strong principal attorney; the distinction between routine cases and nonroutine cases—and the means by which we distinguish between those two categories, by having a discussion of routine cases at the writ conference which we hold every Thursday so that we can separate out less complicated cases from more complicated cases and dispose of those by a different route, and also in a manner which gives us the opportunity to make the cuts so that if there are cases which appear on our routine calendar which are not, in fact, routine, we can cut those cases out and assign them to chambers if need be. And any member of the panel can do that.

(01:00:20)

I think Bob was responsible for all that. Plus the efficient functioning of our clerk's office and the manner in which this court deals with attorneys, which has always been to help them in all the ways which are possible.

Arthur Scotland: You attribute many of the aspects of the management of this court to Bob Puglia, but how was he as a leader? Was he . . . did he do it all himself, or did he bring the court into the decision making?

Coleman Blease: No. Bob was a democrat with a small d. He involved the members, I think, in most of the critical decisions of the court. He understood that a functioning and healthy court had to involve the members and make sure that they understood what was happening. Not all of them were interested; but many were, and he made sure that that occurred. And so we had . . . Courts, as I'm sure you know, are rather interesting institutions. The principal members can't be fired. So it really depends upon what is generally known as collegiality. And that involves both the interrelationships of the members—their own courtesies with respect to each other—and their own appreciation of the nature of the job and their participation in the interaction on the cases. And I think Bob was encouraging with respect to all of those matters . . . that the court has for the most part always functioned very well, even though there are people in the court with diametrically opposed views on many matters, including the law; that is, opposed with respect

to how they'd like to see it come out. And so, we have achieved. There are rough spots, as I'm sure you know. *[laughing]* But by and large, it works very well.

Arthur Scotland: What struck me is the collegiality of this court over the years, despite the change of justices and change of personnel. How do you see that from the days when you first came to the court in 1979 until now?

Coleman Blease: I think it has improved. There were some hostilities early on, partly of a political nature, and that led to some inhibitions, I think, in terms of the relationships of the members, all of which have disappeared on this court. There is absolutely none of that here now. And that was somewhat of an impediment, and I'll have to admit that some of my rough spots have had to be worn off; probably still working at that. *[laughing]* But it's become much easier.

Arthur Scotland: One of the other things that strikes me about this court, particularly today, is that all the justices are here virtually every day.

Coleman Blease: Yes.

Arthur Scotland: So there's a great interaction among the justices.

Coleman Blease: Yeah, there were some problems with that early on—some of the members, one in particular who was not here as much as other members were. And so I think it's essential that everybody understand that everybody else is pulling their load. I mean, that improves the feeling and functioning of the court.

Arthur Scotland: Let's get back to you in particular. And I know you're very interested in linguistics; you've read extensively in that area. Lichtenstein, one of your favorite authors—you have a sign on your door that says, "The sign on the other side of the door is false," and when you go to the other side of the door it's the same sign.

Coleman Blease: Yeah.

Arthur Scotland: You're very clever in different ways. Tell me a little bit about that.

(01:04:56)

Coleman Blease: Well, I think this started probably in the Speech Department at Berkeley, because we were dealing with language questions. I taught courses: the undergraduate courses on the logic of argument, on argumentative discourse, upper-division courses on those. So they were all courses that showed the sort of logic and structure of an argument; and the logic and structure of an argument is precisely what we do with an opinion, if you think about it. We have sort of an introductory clause, we have a

statement of the facts, we have a statement of the law, we have a conclusion, and the logic of all those ought to be related to one another. *[laughing]* That is, the facts should be only those facts which are appropriate for the legal issue to be resolved, the legal issue ought to hone in on the facts which are necessary to the resolution of the legal issue, and the conclusion ought to be related to those as well.

So one of the books we used in the Speech Department was called *The Uses of Argument*, which was authored by Stephen Toulmin, who I found that later was a Lichtensteinian—in fact, a member who was a student in one of Lichtenstein's courses in the late 1930s. I didn't realize that this little book . . . which was basically on understanding that there's more than one logic; it's not just mathematical or modal logic, but there's a logic of each kind of discipline. There's a logic to the way we go about resolving legal questions, there's a logic in terms of how physics operates, there's a logic, in terms of, say, history. That there are characteristic ways in which people go about dealing with those subject matters, and each of them is entitled to the term "logic" appropriate to the discipline that's being carried out.

Now, Lichtenstein is a genius in having highlighted several critical matters, which are precisely the same kinds of issues that arise in legal analysis—and one of them is the distinction between a criterial notion, basically a rule, and an evidentiary notion, which turns out to have to do with the facts. So the kinds of rules we have in statutes are essentially meaningless until we apply them; that is, we don't know what these words necessarily really mean unless we either have a history which bears upon the uses of those words or until we apply them to a case.

And so the development of the cases becomes an application of the rule, and that application may be a fairly complicated matter because we get what we'd call a fact pattern. And so the fact pattern with respect to subsequent cases may become criteria with respect to another extension of the case to another application. So a fact pattern which is rule-like and not evidentiary—the things which are called facts in the cases are really fact patterns with respect to the next case. They're facts with respect to the case in front of you; they're fact patterns with respect to the next case. They're facts in one case, criteria in the next case. And the subtlety of the distinction between criteria and facts runs through the whole of the law. It's a central feature of it.

That's one of them. There are other specific applications in development of things like scienter. I mean, I was always puzzled for a long time about the distinction between intention and desire. It sounds like a philosophical question, but it's also a legal question. . . . For a long time until one day I was

reading a little Lichtensteinian tract by a disciple of Lichtenstein on intention, and I was reading it at the Lyle Fork of the Tuolumne River while we were camped in Yosemite at Tuolumne Meadows. Barbara was dipping herself in this freezing water, and I was sitting under a tree reading this dense little tome. And I come to an example, which turns out to be an example of what you call oblique intention. Ordinary intention is, in a law, the intention of doing an act. Oblique intention is the distinction between desiring the outcome and where you know what the outcome is—the key example being if you put a bomb on a plane to get rid of your spouse for the insurance money, you will kill the spouse and everybody else on the plane. You can't argue that you didn't desire to kill everybody else on the plane; you're on the hook for that. That's called an oblique intention, because you are held accountable for intending the known, precise consequences of your act.

(01:10:20)

So the distinction between an intention and oblique intention is that line. It looks somewhat like recklessness but isn't, because recklessness is a known risk, not a known outcome. So you can parse intention along the lines of intention, oblique intention, recklessness, and negligence, and strict liability and classify. I think those are all of the major categories of culpability which run through the law, both in the civil and the criminal side of the law. And having those notions in mind are important in being able to resolve lots of language questions.

The other thought, the other side about this Lichtensteinian matter, is that he has always said that all of these questions are in front of us, they are not in the head; that is, the meaning of language is not psychological. Otherwise, it would be quite mysterious how we communicated with anybody. So language is always public. *Language* is. We may have other things going on with us which are not public, obviously; but language is, and therefore for language to function, the people have to understand what it is. And so you have to have . . . language has to be public in the sense that we both know what we're talking about. And that's not in the head; that's in the language and in the experiences which give rise to language. We learn language because we do things. Kids learn to kick balls and have relations with people, and their understanding of those relationships grow out of those experiences and intentions. And since there are no words which communicate which are not public, there are no words which are just in the heads. Emotions are not in the head, intentions are not in the head. None of these things are in the head; they're all in the criteria by which we characteristically measure these things, you know.

And juries, jurors could not understand any of these notions at all. If they had to figure out what was in the head of somebody, they figure out what somebody did and whether that's a characteristic application of those words. You know, if

somebody buys a gun and buys bullets and then waits for somebody and shoots him, normally you don't have any doubt about what the intention . . . That's a characteristic application of the word "intention" in those circumstances, and jurors understand that; and they can understand all these notions if we separate it out from the gobbledygook involving some of our ordinary misunderstandings of language.

So that's why I am interested in these notions—is because they are intensely useful with respect to the law, and I found in the law answers to almost all the major philosophical questions.

Arthur Scotland: And because of that, of your thoughts in that regard, I know that you particularly enjoy issues relating to mental state—

Coleman Blease: Yes.

Arthur Scotland: Which we get quite frequently.

Coleman Blease: Oh, yes.

Arthur Scotland: And then of course statutory construction, which is an area—

Coleman Blease: Yes, yeah. And I've had some real disagreements with the Supreme Court in the way they approach these matters—the distinction between specific and general intent, for example. They're both species of intention; the question is, intention about what? And the distinction in *People v. Hood* between intending an act with . . . doing an act with the intention of accomplishing something else by the act, which we ordinarily call specific intention; and general intent in which we don't intend something further by the act. But the statutory question is, what's the act? You have to know that first. And so there always has to be intended conduct or else you're unconscious or something, you know. *[laughing]* The intended conduct of some kind for which you're held to be responsible.

So the mental-state questions require you to focus in on what's the intended act. Now, I had a case involving arson to illustrate that, where these kids lit fire to some leaves which burned over and burned part of a school. And arson is defined as the willful burning, setting fire to, or causing to be burned a defined structure, which would include a school.

(01:14:56)

Harry Ackley, who was the judge, set up a marvelous law-school example, because he found the kids guilty of arson, although they didn't intend to burn the school. And I wrote an opinion which was, I'll have to admit, slightly opaque on the question of the relationship between the burning of the leaves and the school, because the leaves themselves are not mentioned in the arson statute.

So whatever the act is that initiates the fire is not an element of the crime. So you don't have to . . . what you have to intend . . . so even though you burned the leaves without the intention of burning the school, that's still not a specific intention, because the leaves are not part of the crime. Even though there is a relationship of cause and effect, the cause is not an element of the offense; it's only the effect. And so you have to intend the effect. So the question of what would have been a specific intention in one context is only a general intention in that context. And I had to try to explain that in subsequent cases, and I never succeeded, I don't think.

The other part of it is that the general-intent offense is a function of policy. And it grew out of *Hood* and other cases dealing with alcoholism, because they didn't want to have assaults which were the product of drunkenness and have somebody defend on the ground that they were drunk when they beat the hell out of somebody. So they call this a general-intent crime and not a specific-intent crime, so you couldn't defease the question of intention by the defense of alcoholism. And that's involved in Penal Code section 22. So they unfortunately think that these are functions of the elements of the . . . strictly go to the elements of defense, when by and large they are functions of policy and ought to be so viewed.

Arthur Scotland: Aside from your great interest in mental-state issues and from statutory construction, there are a few other views; you've done over 3,000, probably pushing 4,000, opinions now, with hundreds of published opinions. I know there are several that you are very fond of.

Coleman Blease: Yeah.

Arthur Scotland: And one of them is the *California Trout, Inc. v. Superior Court Department of Water and Power of Los Angeles*.

Coleman Blease: Yes.

Arthur Scotland: Tell us a little bit about why you feel that's one of your important pieces of work.

Coleman Blease: Well, it's important for a couple of reasons. It dealt with a major environmental issue, which was the status of Mono Lake on the other side of the Sierra. It dealt specifically with the tributaries to Mono Lake, not with Mono Lake generally. Pursuant to a statute in the . . . which act is it? One of the acts, Fish and Game Code, that required a dam within the district that . . . within which Mono Lake existed; that they release enough water from the dam to take care of the fish below the dam, which includes, I think, four separate dams in that area. And the streams from several of those dams had all dried up because they were taking all the water out and using it for Los Angeles. So it got into a . . . That statute had been enacted and

passed in 1935, I believe, and this case arose in the 1980s. And there were lots of interesting procedural issues involving vested rights and laches and issues like that.

But the central issues had to do with the construction of the statute, which is fairly straightforward. And the lawyers came in from the water; water lawyers came in and told us this was an arcane area of the law. And I asked them whether or not "water" was an arcane word and "fish" was an arcane word and "dam" was an arcane word, because it didn't seem to me there were any words in that statute which would cause, ordinarily, any kind of a problem. *[laughing]* You might wonder about how it applied—I mean the problems of determining the number of fish and all that, which were always interesting problems, but they're not linguistic problems.

And so the case was resolved on that ground. But in the course of this, in answer to a question on laches, one of the reasons we said it was not laches is because there was an allied public-trust doctrine, and laches doesn't apply to matters of public interest, of which public-trust doctrine is an aspect of that. And unbeknownst to me, I backed into a major, major issue in the water law and said some . . . What everybody was telling me were interesting things about the public-trust doctrine, and that got me invited to all kinds of water conferences. *[laughing]*

(01:20:15)

I explained to them the first time I went to one of those things, I said, "Hey, I have to admit, I probably didn't understand what I was doing." Which is another aspect of our resolution of cases here, why you ought to be as careful as you can, because it's an extraordinarily complicated enterprise we're engaged in. The results of what we do are sometimes problematical with respect to other cases, and you want to leave as many of those other issues as open as you can for subsequent development, because you cannot foresee what all those are about.

I may have mentioned earlier, I drafted the statute under which all the free-speech people were arrested. I had no such intention; in fact, it was . . . I drafted it to prevent that very thing. And that turned on the difference between the meaning of the word "janitor" and the word "custodian." And the bill was put forward by the City of L.A. in order to get the bums out of the L.A. County Library, and they wanted to give the janitor some police powers to do that. And I foresaw that this might involve the people who might want to demonstrate, so I drafted the hell out of the statute to prevent that. But the word that was used was "custodian," and it never occurred to me that it meant anything other than "janitor." Well it turned out to be the Governor of California *[laughing]*, the chancellor of the university, the sheriff of Alameda County, and all of them ordered these people out.

Arthur Scotland: I think that's a very—

Coleman Blease: Yeah. That, among other things, taught me. I've had other experiences in which I was focusing as clearly, as hard as I could on an application of language and got it wrong, and it led me to the conclusion that we're all subject—I mean, even when you're thinking about it—we're all subject to making these kinds of errors, which is another reason to be as cautious as you can. You're not going to be able to trump our inability to foresee, and the interesting thing is that we can't foresee what turns out to be simple applications. "Custodian" is a simple matter once you think about whether it has other meanings than "janitor"; it obviously does. *[laughing]*

Arthur Scotland: Well, that's a great lesson learned.

Coleman Blease: Yeah.

Arthur Scotland: I think that's something that all judges should pick up.

Coleman Blease: That stayed with me for . . . That's an allied aspect of the question of construction of statutes and other rules. And I'm always concerned about whether I'm saying something that maybe has an untoward application. And these cases we have affect lots more potentially than the case in front of us, although we focus hard on that case. That's why I've always been more careful in published cases than in unpublished cases—because in the unpublished ones, we're merely deciding the case in front of us and it has no possibility of application beyond that. If we published every case, it would have a disastrous set of possibilities for the law and for our time, I have to say. It's easier to resolve the case in front of you, and you can be correct on the result and not entirely sure about the legal statements that you're making in there.

Arthur Scotland: Another case that you're very proud of is *FPI Development v. Nakashima*.

Coleman Blease: Yeah.

Arthur Scotland: Why do you feel … why are you proud of that case?

Coleman Blease: I'm proud of that for several reasons. It illustrates the criterial evidentiary distinction; it has an interesting parole-evidence question in there; and it deals with summary judgments which are procedurally very interesting matters in the law. And we see a lot of these things. It dealt with a relatively simple claim involving a note that says, "Pay X dollars on Y date." A lot of money involved. *[laughing]* It happened to grow out of a large real estate development. So the question of . . . You know, Y date passed, and they didn't pay X dollars, and now they wanted the money.

(01:25:05)

Now the question of the parole-evidence issue arises. First of all, the first issue arises is what was tendered in the pleading, because a summary judgment aims at the pleading. The issues that you tender in a summary judgment proceeding have to do, are confined by the pleading. What's the pleading? Well, in summary judgment, you can have the pleadings that we do all the time and see them here. In a summary judgment, if you're not careful with a pleading, how do you resolve the narrower possibilities in the pleading? You do that because the summary judgment statute 437(c) requires that you list the facts which are in dispute, and the facts are in dispute when you see the relationship between the rule and its application. If you look at the facts, they can narrow; by application can narrow the construction.

So that becomes an aspect of the pleading. You have a subordinate pleading, which arises in terms of the factual claims. So that's this criterial-application notion gets involved.

The parole-evidence question is a question of reading, because parole-evidence rule says you're not to vary the terms of a writing. Well, what does that mean, you know? If you see this application question that becomes that issue again . . . And I went and read all the major cases on that, and discovered to my interest that these involved either specialized uses of language like trade usages of a language, where obviously the background of the language was important in discerning the meaning of a term which otherwise had a common usage but also had a specialized usage. And you want to . . . we have rules in statutory construction that talk about, you know, where you have specialized usages or expert usages of language, and we bring in people to talk about that.

And so that parole-evidence question arises in the context of a summary judgment pleading and in the context of what appears to be a simple question of a note. And all those issues coalesce in this one case and gave you an opportunity to show the interrelationship between all these pieces in that case, which is why I like it. I think it's an important case dealing with summary judgments.

Arthur Scotland: It's a case that's cited often.

Coleman Blease: Yeah.

Arthur Scotland: One of the things you said as you were talking about this issue . . . One thing that I love listening to you is that it's apparent that you just love the law and you just really enjoy getting into these issues. And one thing you said was, "I've read all the major cases." And that again is something I really respect in you, Cole. Anytime you come into your chambers—be it during the week or on the weekends when you're often here and I'm

here—you have got, it seems like, every book open; you really do get up to your elbows on these cases. How important is that to you?

Coleman Blease: Well, it's very important. I'll tell you, it's not every case, because that would be quite impossible. We have lots of routine cases. We see the fact patterns arise over and over again, you know, juvenile terminate, parental-termination cases; and those cases happen with great frequency. There are lots of times in which we have initially had a dispute about a rule and its applications, and that gets settled. Once it's settled, we don't dispute it anymore; that's gone. The contests over the exclusionary rule have developed over time, and arguments I would have made 20 years ago I don't make anymore. They've gone the other way or whatever, and they're settled; we don't argue about them.

But those issues still get raised, and those are a lot easier to deal with, and then we have of course Wende cases, which are undisputed cases in which . . . So those all get disposed of rather quickly.

Then there are cases that I'll have to admit I do cherry-pick: that there are cases which are interesting because of some procedural aspect or some other aspect of the law or some novel area of the law that I don't know anything about, which warrants spending a lot of time. So there's a distinction between spending a half hour on a case and 500 hours on a case.

I once spoke to the new Attorneys General in California. I asked them how many of them had had a one-hour case, and they all raised their hands. I asked them how many of them had had a 500-hour case and none of them raised their hands. I said, "How do you know you have a one-hour case?" There's a grading question. So the separation of the wheat from the chaff is an important function.

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So the cases I spend a lot of time on are the ones I have selected out for treatment. This also has to do with your relationships with your staff. We rely heavily on our staff, and they're a wonderful staff; without them we could not do this. And so we all have a leg up on it when we get a draft. So the initial task is to determine whether or not this is an adequate treatment of the case, and if it is, I don't do much with it. You know, I go over it. But sometimes in the course of the editing, I start at the front, and then issues, thoughts start to occur to me. And then I look that up, and then I get more into it, and sometimes this case metamorphoses, and a case I was going to do very little on turns out to have been entirely changed, and sometimes it's a brand-new case.

Between that and cases which I get because I've written memos and end up with the case . . . I don't give that to the staff; I just do it myself. So I write—

Arthur Scotland: What you're referring to there is if you have someone else's case, and author and you disagree, write a memo and then you take it over.

Coleman Blease: Right. And then I get another vote, and then in that case I pretty much end up writing it myself. So I probably write a fairly complete opinion at least once a month.

Arthur Scotland: Let's get away from the law for a moment and what you do in your chambers to your personal life. You've talked a little bit about hiking, you've mentioned very briefly sailing. What are some of the things that you . . . and of course you read quite a bit.

Coleman Blease: Yeah.

Arthur Scotland: What do you like to do with your down time?

Coleman Blease: Well, that's varied over time and with my physical abilities; but we had sailboats in the bay for 15 years, and I used to go down frequently and sail. Sailing was a wonderful alternative to the law, because it's not cerebral at all. Well, it can; there are cerebral aspects to it. But when you have wind and waves and tides and stuff like that, it just knocks all this other stuff out of your head. And I've gone out many times with lawyer friends of mine on a boat; we don't talk about the law at all. You know, we're cruising along, and it's a marvelous thing; plus, getting away from it, the change of it. I think that's something you really need to do.

The hiking part of it is another part of it. When I went to Berkeley, I was 17 years old when I went from San Rafael to Berkeley. I entered this monstrous school; I didn't know anybody. I had been led to believe at the school—because they were very kind about my abilities, not knowing how much there wasn't—so I was led to believe you could learn a good bit about the world. And I walked into the library at the University of California, and they had 6 million volumes there, and I said, forget it.

Everybody is ignorant about almost everything, and so everybody has a little spot in this universe of knowledge. And so you have got to be choosy. And probably one of the major questions in anybody's life is about your ignorance, not about your knowledge. I mean, you have to be ignorant about some things; you have to choose those as well, or the rest of it, apart from your knowledge, is your ignorance.

The other thing about it was that I had no financial resources to speak of—the clothes on my back. *[laughing]* For years I was putting, you know, cardboard in my shoes. But I always loved to read. Obviously, 6 million volumes is more than you're going to get through in a lifetime.

I also liked to go to the mountains, and I said to myself, "There are two things that you really like to do that will never change in your life, no matter how much you have." And it's true to this day, and to this day those two things still are a major occupation.

(01:34:04)

We just got back from Tuolumne Meadows, where we stayed in a tent camp. Beautiful days, freezing at nights, you know. Getting a little long of tooth for this, I'll have to admit, but still the beauty of it . . . and it's just refreshing. And I by and large don't talk about any of these things when we're there, just enjoy it.

Arthur Scotland: And I know the third thing that you love to do is judging.

Coleman Blease: Yeah.

Arthur Scotland: Any particular parting thoughts on the role of a judge, what advice you would give to a new judicial officer?

Coleman Blease: Well, let me start with what Bob Puglia told me early on. He said, "You know, people come here new to judging. They always have a background, they have beliefs, you know. And what happens over time if you really want to do the job well is, you begin to recede." He described it as almost sort of shrinking into the woodwork. The job you have is so different from the job you had.

My former partner, Larry Karlton, on the bench . . . After some years of both of us being on the bench we were at lunch one day, and he said, "You remember this issue that we used to argue all the time?" I said, "Yes. Stupid, wasn't it?" *[laughing]* You know, our perspective had changed, and necessarily must change. Our job has changed, and our job is to fulfill the functions of judging in a legal system which has all of the things we, you know, normally understand and say about our fairness with people, our willingness to understand the sides of an issue, the diligence with which we pursue those goals. And I think attention to those things is what causes us to change over time. And I came from—and Bob did, as well—we came from sort of diametrically opposed belief systems. But which is what we shared was this common commitment to judging, and there is an integrity which goes along.

There is also a relief. I think there's a relief in not having to pursue an issue on behalf of a client, which is trying to pursue

an outcome. Our outcomes here are not a specific outcome, although we may be interested in one. But it's a specific resolution of a case, which always has, you know, specific posture and facts, come up to us in a certain way. Certain statutes which limit the range of possibilities, and it's in the adaption to a case in that posture which is critical.

When I was teaching at Berkeley I would hand out assignments dealing with one of the great books and give them a specific question and say, "Now, read this and answer this question." They'd write it, and then we'd grade that. And then the next assignment would be the same subject matter, different question, and frequently they would come back and say, "This is a different book." No, it's the same book, different question. The law teaches you about that, that you can . . . Your perspective on this will change depending upon your position. And the judge's position is a critical position, and when you assume that mantle, it looks different.

Arthur Scotland: Well, Cole, I have to say we haven't always agreed; but it's just been a delight and real pleasure to judge with you. I've learned a lot from you. I've learned a lot from you from day one; I learn a lot from you every day. And it's really been a delight and pleasure to talk with you, too.

Coleman Blease: Well, let me say . . . Let me respond to saying the same thing, because one of the things that Bob didn't do was all of the outreach programs of the court, all of our involvement with the counties and with lawyers and with all these other groups that you've done. And that's a marvelous development for this court, and it's critical in the law. Our relationships with the public, and with our constituents, the lawyers, and other people who come into the legal process is critical, and the more we do this, the more they understand what it's all about. And I think you've been largely responsible in doing that. For that I'm grateful.

Arthur Scotland: Well, I couldn't do it without the full support of you and the other justices in this court. It's a pleasure being at the Third Appellate District, and it's a delight. I look forward to working with you in the years ahead.

Coleman Blease: I'm looking forward to a lot of years. *[laughing]*

Arthur Scotland: Thanks, Cole, for sharing your thoughts.

Coleman Blease: Oh, thanks. Bye-bye.

*Duration: 99 minutes*
*September 22, 2006*