Justice Stewart: I'm Justice Therese Stewart of the California Court of Appeal, and I'm here to do a legacy interview with Justice Anthony Kline, J. Anthony Kline, he always reminds me, but I think of him as Tony. So Tony, tell me where you were born and when and where you grew up.

Justice Kline: I was born in 1938 in New York City. I grew up, as a very young child, in Manhattan, across the street from the Museum of Natural History. It was a great place to be, in Central Park, on the other side. Then my family moved out to Long Island, the South Shore of Long Island, in a suburb. I grew up in post-war America, and if you were a white male like me, that was a golden era.

Justice Stewart: It was, I imagine. I wasn't there yet. So tell me a little bit about your parents and their background, and I think you have one brother, but your siblings.

Justice Kline: Right. Well, I do have one brother. He is a state senator, or was, he just retired. He was a state senator of the State of Washington, the chairman of the judiciary committee in that body, and a real progressive person. He represented the rich people on the west coast of Lake Washington and the poor people in the Rainier Valley, so he could do whatever he wanted.

Justice Stewart: And your parents.

Justice Kline: My parents were the first generation Eastern European Jews. My father's family were Hungarian Jews and my mother's parents were from the Ukraine and Latvia.

Justice Stewart: So when you say first generation, they were born in the United States, but their parents were, everyone was from those places.

Justice Kline: Right.

Justice Stewart: So they met in New York.

Justice Kline: Right. They met in New York. My grandfather was a blacksmith, which was not a Jewish trade. In fact, he was referred to as the Jewish rabbi, I mean, the Jewish blacksmith, but then they moved to Long Island.

Justice Stewart: So did you attend, like, public schools, or what was your grammar school like?

Justice Kline: Well, in those days, the public schools were great. I attended public grammar school, public high school. I wasn't a particularly great student in high school. I was into sports.

Justice Stewart: Playing them.

Justice Kline: Well, I was a hurdler on the track team.

Justice Stewart: Oh, is that right?

Justice Kline: Yeah. I think what got me interested in learning was fortuitous. I went to college at Johns Hopkins, and Johns Hopkins was an unusual place when I was there. It was a very small university, only 1,200 students, but there were more graduate students than there were undergraduates. I was mixing it up with people who were into the life of the mind, which was a novel experience for me, and I think it stimulated me and I became a much stronger student than my parents ever expected.

Justice Stewart: It's always interesting when you upset their expectations, but this was in a good way, I imagine. Let me go back a little bit. I have this recollection that your childhood friends were a mix of Italians, a lot of kids of mixed backgrounds. Can you just say a little bit about that?

Justice Kline: Yeah, I grew up in an area that was referred to as the five towns. It was five towns and it was — the predominant ethnic groups then were Jewish, Italian, and African American. So it was pretty diverse.

Justice Stewart: And did you all go to the same school?

Justice Kline: We all went to the same high school. We didn't all go to the same grammar school, but we all went to the same high school.

Justice Stewart: Okay, so the high school served a bunch of different towns.

Justice Kline: Right.

Justice Stewart: But in growing up, in grammar school, was your school all Jewish or was it a mix?

Justice Kline: Well, it was pretty much Jewish and Italian. I guess the one thing everybody had in common in grammar school was nobody, no Italian friend and no Jewish friend, had a single grandparent born in the United States. So I thought all old people had accents for some reason, in the beginning.

Justice Stewart: Well, they did, I guess. Okay, so you went to Johns Hopkins and what did you end up majoring in?

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Justice Kline: Philosophy.

Justice Stewart: And then you have a master's degree, so apparently you did get the bug of education.

Justice Kline: Right. I went to Cornell in government and public administration on a fellowship. It was either going to be Ithaca, New York, or Fort Dix, New Jersey. That's where —

Justice Stewart: You chose well.

Justice Kline: Yeah. You got drafted, but not if you were in school in those days. In any event, I had a free ride to Cornell and it was an interesting interlude, and it was I think at that point that I decided what I really wanted to do was be a lawyer. I mean somewhere I got the idea that I had the neuroses that society rewards in lawyers. People told me I was argumentative.

Justice Stewart: I'm shocked. [Laughs] Well, when you went — did you have that idea when you started your undergrad and did your master's, or did that develop at that point?

Justice Kline: No, I didn't have that aspiration in college. I developed it in graduate school. I think that was because of the zeitgeist, which was the early '60s. I graduated from college in 1960 and began at Cornell. I was at Cornell 1960 and 1962, and that's when politics suddenly became interesting to me, or politics in this nation really picked up.

Justice Stewart: So you went to law school. How did you get from being a not-so-good student in high school to go into Yale Law School? Did your grades pick up in college?

Justice Kline: Yes, they did. They did pick up in college and in Cornell. Well, I wanted to go to Yale, because somehow I had the idea that Yale was an unusually open, stimulating place. It was a small law school. It was, I think, about the third the size of Harvard. The few people I knew who went to Yale all enjoyed it much more than the few people I knew who went to Harvard or Columbia. Those are the three I was the most interested in. So that's why I ended up at Yale. I think I made a good choice, because what was happening when I was in law school was the anti-war movement, the civil rights movement, and the early stages of feminism, and it was a pretty exciting place to be. A third of our class in any given time was in Mississippi or out on the streets, and it was a very, as I say, stimulating place to be.

Justice Stewart: If I remember right, you met Jerry Brown and became friends with him when you were in law school.

Justice Kline: That's right. We lived in the same entryway in the Yale Law School dormitory. I was fascinated. I didn't know until I'd known him for about six months that his father was then the Governor of California. He never bothered to mention that to me, but he lived — he had recently been in a seminary, Jerry Brown, in Jesuit. He was a Jesuit, and his roommate at Yale — I lived in the same entryway. There were 12 of us who had suites in one entryway, so we were pretty close. But I wasn't his roommate. I became his roommate later. His roommate was an Orthodox Jewish fellow who'd gone to Princeton and was very religious, and so was Jerry Brown in a very different way. What made them so interesting was they were involved in dialectics. They were both very verbal and they stayed up late and they were incredibly interesting. But what fascinated me most about them was that the Jewish guy was — his views, that we don't normally associate with liberal causes, was very conservative, and Jerry Brown, who was Irish Catholic, was taking views that were ordinarily associated with Jews,

very progressive, and that led to interesting arguments. It was a very fascinating place. So a lot of us who lived in that entryway are still friends.

Justice Stewart: So I remember that you once told me that your parents were not very religious, even though they were Jewish. Am I remembering that right, and was it interesting for you to get to know these two people for whom that was so central to their lives, it sounds like?

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Justice Kline: Well, if anybody ever asked me, What's the single most important thing about you, I would probably say it's that I'm Jewish, and the reason is, I was born in 1938. When I was seven years old, my mother had an emotional breakdown due to the revelation of the Holocaust, of the camps. Life Magazine had photographs of dead bodies, people wearing striped pajamas and piles of gold taken from their mouths, and there was talk about making lampshades out of human skin and killing babies and old people. I was traumatized by that, by my mother's reaction to it as well. I think that has a lot to do with my ability to empathize with oppressed people.

Justice Stewart: Well, so for you, it came out of that experience. But what was it like when you met Jerry Brown and the Jewish guy, as you referred to him, who were so focused on religion?

Justice Kline: Well, I wouldn't say that they were focused on religion. I think their different forms of religion, orthodoxy and non-orthodoxy. I mean Jerry Brown was a Jesuit and he had a whole circle of friends who were all Jesuits, all these Irish guys. I didn't know a lot of Irish people until I got to Yale and met him and his friends. But Dan Greer, that was the roommate, and Jerry were both very oral, very verbal, very communicative, very opinionated, but had open minds and they were inquisitive, and that's what I found so compelling. They were always interesting. Jerry Brown's father would come to New York to meet with Henry Kissinger when he was Secretary of State and Jerry would come back and tell us how irrelevant he thought a lot of this discussion was, and that provoked other arguments. It was pretty fascinating.

Justice Stewart: So he was also very political obviously, or at least his family was. And was that your first exposure? Well, you had studied government, but what was your first exposure to, potentially, well, to government as a possible career or, to sort of, what government was all about? Was that —

Justice Kline: Well, I don't think it was an individual. I think it was the zeitgeist. I entered Yale in 1962. There was a lot going on in the early 1960s that was new. The Legal Services Program was new. Kennedy was assassinated. Johnson became president and started the war on poverty. As I said earlier, the civil rights movement was gearing up, the anti-war movement. The issues, we were consumed with issues that government played a major role in. Now, I didn't start off in government. After I graduated from Yale, I came to California,

because California then had the most interesting appellate court in the country, the Traynor Court and the Supreme Court, and I clerked for the most progressive judge on that court, the William O. Douglas of those days, as I say, and it was Raymond Peters. He was a wonderful person and a great mentor with whom I stayed friendly until he died.

But then, before I came to California — I came to California because I'd never been here and it seemed to me — I decided I just wanted to learn about California, so I passed the bar here. But I had earlier committed to a Wall Street law firm, which is now called Davis Polk & Wardwell. When I was there it was called Davis Polk Wardwell Sunderland & Kiendl. It was a very elite law firm, which was just beginning to hire Jewish people.

Justice Stewart: And what was that like?

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Justice Kline: Well, that was pretty interesting. I mean that was being in the belly of the beast. I was there for about three years, and I learned a lot. It was a serious law firm with big clients and took themselves seriously and they were highly committed and I learned a lot. But I realized that in order to live like — you cannot live, I decided, like a human being in New York City unless you're rich. I thought I could be rich, but I didn't think I could get rich doing anything that I would enjoy, and I had already been admitted in California. Now, by that time, I came to California, and talk about the zeitgeist, I graduated from law school in 1965. So when I came out here, I found initially a place to live in a neighborhood called the Haight-Ashbury, which was another culture. So I fell in love with California.

Justice Stewart: You clerked at a time when your then-friend, Jerry Brown, was clerking —

Justice Kline: At the same time.

Justice Stewart: For Tobriner, right?

Justice Kline: Yeah, he was clerking for Mathew Tobriner and I was clerking for Ray Peters, and we both lived in — we lived together in Berkeley and we had a car group with two other lawyers. In those days, you could get from Berkeley to the Civic Center in no time. That's history. Most of the clerks, in those days, most of the members of the California Supreme Court had law clerks that were just out of law school for a year or two, and we were mainly from Eastern schools. There were a group from Stanford and Berkeley, but most of the law clerks then were from Eastern schools.

Justice Stewart: So then you go back to New York, you spend several years, three years at Davis Polk. Then how do you get back to the West Coast? What brings you back?

Justice Kline: What brought me back was the realization that I wouldn't be happy, because I had to stay on Wall Street, and to meet the expenses of living in New York and the travails of living in New York I'd have to engage in work that I wouldn't enjoy.

Justice Stewart: Was the work that you did at Davis Polk something that you either didn't enjoy or you couldn't see yourself enjoying long term, or was that what you —

Justice Kline: Well, it was partly that, but it didn't seem to me as useful — when I left Davis Polk, I went into the Legal Services, I became a Reginald [Heber Smith Community Lawyer] — I got a fellowship from Office of Economic Opportunity.

Justice Stewart: Is that when you went to work back here at the National Housing Law Project?

Justice Kline: Yes, right. We were doing class actions in the western United States on housing issues mainly. That was for a year.

Justice Stewart: And that was at Berkeley, in the law school.

Justice Kline: That was located in the law school at Berkeley. But there were a lot of legal services programs in the Bay Area, in Alameda County, in San Francisco. CRLA [California Rural Legal Assistance] had an office here in San Francisco, there was our program and there were others, and there was a lot of ferment.

Justice Stewart: When you say class action lawsuits involving housing, meaning substandard housing, meaning what kind of —

Justice Kline: Well, okay, I should say, I was in the Legal Services Program for one year after I left Davis Polk, and then, with two other guys from Yale, I started a public interest law firm called Public Advocates, which continued a lot — we continued a lot of the work. Eventually, that law firm had about 10 lawyers. It still exists.

Justice Stewart: Public Advocates.

Justice Kline: Public Advocates. What I was doing was stopping urban renewal projects and federal aid highways that were displacing people from affordable housing. So usually, I mean the early lawsuits were against the Century Freeway in L.A. — well, let me put it this way, in four years, we stopped nine freeways and seven urban renewal projects in eight states that probably, including the Yerba Buena project in San Francisco, which was displacing 6,000 people, that was billions of dollars' worth of freeways and urban renewal.

Justice Stewart: So you started work at the National Housing Project and you were a fellow, but you only could do that for a year. So you went and created this organization that you could continue that work.

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Justice Kline: Right. What the housing law project was doing was backing up legal services lawyers in the United States who were bringing suits against the destruction of low-cost housing. So I began — and also freeways. Freeways were major destroyers. The federal aid highway system destroyed more housing than was ever built by the public housing under the public housing legislation in the United States. It was colossal. James Baldwin referred to urban renewal as Negro removal and he was right. They didn't build freeways through Beverly Hills. The Century Freeway went through South Central L.A. It was Black people who were being displaced. And you could not lose lawsuits. The National Housing Act had provisions that ban the displacement of people from housing.

The Housing Act was designed to build housing for returning veterans, but it had a provision in it that you couldn't displace people from this federally financed housing unless you provided them quote, decent, safe, and sanitary housing at rents or prices that they could afford, which didn't exist, because those laws were ignored. And the reason they were ignored is that the beneficiaries of the statute, who were by definition poor people, didn't read the U.S. Code, didn't have lawyers, and weren't thinking about suing the government, until some guys from San Francisco and our law firm — some of the legal services programs in San Francisco were right near the Tenderloin, and people just walked into our office complaining about displacement. And we looked at the statute and we couldn't believe it. You couldn't lose, because the vacancy rate in housing in San Francisco was less than 1 percent.

Justice Stewart: So how did you — I guess what I'm wondering is, how you go from being a student and then graduating law school and you do a clerkship and a little bit of private practice, but you basically create, as a young lawyer, this whole new entity? You must have had to get funding for it. How did you put it together?

Justice Kline: You know, it wasn't hard. First of all, the lawyers in the legal services movement in the beginning were all from the best law schools in America. It was an exciting, new thing to do. California was a place in which there were more possibilities. California — one of the things that brought me out here and that I love about the state — is its people from elsewhere. It's ambitious people. It's more open. It's not so much where you went to school or who you know, as it is often in the East. You can just — things that are done tend to become normative. I don't know what more I can say. In any event, the two other guys who I started the law firm with, Bob Gnaizda and Sid Wolinsky, we all went to Yale, although none of us knew each other at Yale. We went at different times. This was an accident.

I guess Yale Law School was — most of the early public interest law firms were started by people from Yale Law School. We were very successful. We were having a big impact. We were in the newspapers. And so I didn't believe — I only had a job for one — Bob came from CRLA. Sid came from San Francisco Neighborhood Legal Assistance.

They had permanent jobs, but I only had a one-year gig, and I didn't believe that Ronald Reagan, who was then the Governor, and the political elites of the United States, were going to pay lawyers to represent poor people to sue the government. My view, and it was a whole new idea in the air, at least at Yale, about this idea of a public interest law firm.

So we went to the Ford Foundation. I mean, I was the one who took the lead, because I was the one who needed another job. Basically, we went to the Ford Foundation and we said, Look, the practice of law in the public interest in this country is not going to really mean anything unless everyday lawyers can do it. The reason they don't do it isn't because they don't want to or aren't able to, the reason they don't do it is they can't afford to do it. You start a class action against a corporation or a government agency in a federal court or even a state court, that's a two-, three-, four-, five-year proposition, and you don't have a client with a deep pocket. So the only way to make that happen was to institute something called the private attorney general theory of attorney fees.

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And I believed — I mean a grant proposal was a brief, a legal brief, of we could do this. We could get the courts as an equitable matter to order that where a lawyer — and these public interest lawsuits were not for money, they usually were for injunctive relief — if you could get a victory that had a benefit for a large number of people, then the defendant should pay your fee, particularly if the defendant, either a big corporation or a government, is in a position to spread the cost amongst a large number of people.

Justice Stewart: So you proposed essentially what became [Code of Civil Procedure section] 1021.5.

Justice Kline: I drafted 1021.5.

Justice Stewart: I didn't know that.

Justice Kline: That's the first bill [Assembly Bill 3172] that Jerry Brown signed when he became Governor. The author of that bill was Howard Berman, who later went to Congress. In any event — but however, 1021 was not the start. The start was our victory in a case called Serrano v. Priest, which had to do with school financing in California, which was a major opinion. After we won the case, in those days, the property tax was financing the school. So kids in Beverly Hills are in much better schools than kids in South Central. That wasn't right and we changed that. That was a big impact, and then we went back to court for our attorney fees on this theory, on the private attorney general theory.

Justice Stewart: But as a common-law kind of matter.

Justice Kline: Right, as an equitable doctrine.

Justice Stewart: Interesting.

Justice Kline: And in the second opinion in Serrano v. Priest [Serrano II], the Supreme Court vindicated that concept. So that even — 1021.6 of the Code of Civil Procedure codifies Serrano v. Priest.

Justice Stewart: You mean 1021.5, but yes.

Justice Kline: Yeah.

Justice Stewart: So that's fascinating. I didn't know that. Okay, so five years go by and you've got Public Advocates going strong, and you've been doing this work, and what happens? Jerry Brown becomes Governor. That's when you go to work for state?

Justice Kline: Well, I stayed friendly with Jerry Brown. We lived together when we were law clerks and we lived together when his father was running for Governor, for a third term against Ronald Reagan. I worked on that campaign and Jerry and I lived in Santa Monica. He was working for a law firm in L.A. Then he ran for the Community College Board in Los Angeles and got elected, and then he ran for Secretary of State. I have never been involved in any of his political enterprises, but we remained close friends. When he — and I didn't work on his 1974 campaign to be Governor, which he won. That was his first term. But I was in L.A. We were living together in L.A., because we were both working on his — no, his father — well, in any event, I forget exactly the details, but he asked me to come up and be his legal affairs, be his lawyer.

Justice Stewart: What did that mean at the time? What was your job essentially?

Justice Kline: Well, you see, it didn't have a definition. That was the beauty of it.

Justice Stewart: I think that's the story of your life.

Justice Kline: Right. I mean, I guess the Legal Affairs Secretary's job, technically, is to relate to the Attorney General's office to monitor legislation that wasn't within the jurisdiction of an executive agency, such as the criminal law process — legislation involving criminal law issues are not within any state agency other than the Attorney General's office — so it had a legislative responsibility. So I was involved in legislation. I was involved in certain cases that the state brought. One of the things we brought was a series of antitrust cases against big oil companies, who were drilling offshore in California. Another was the permitting of nuclear projects, nuclear energy projects in California, which was very controversial.

So it was a variety of things. Also relations with other states involving the criminal justice efforts to — South Dakota wanted California, for example, to send, I can't remember his name, Dennis, it was an Indian, a Native American, who was wanted on a criminal charge in South Dakota.

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And we felt that he wouldn't be treated fairly because of a variety of reasons that I don't remember very well, but things like that. But I had an advantage in that I was one of the very few people in the Governor's office that had a personal relationship with him. We were the same age. We were only three months apart. We were both around 36 years old when he became Governor and I became Legal Affairs Secretary. For example, appointing judges, that was another thing that I did. Most people think — that's the thing that was most visible to the public, my role in selecting —

Justice Stewart: Well, you put on some of the first judges of color and first Asian judges and —

Justice Kline: Well, I think Jerry Brown deserves an enormous amount of credit for that. He ran, when he was running for Governor the first time, our judicial system — which is, by the way, the biggest judicial system in the world, it's more than twice the size of the federal judiciary — was white men. There was one Asian American judge when Jerry Brown entered office, Delbert Wong in Los Angeles, and the second was Harry Low here in San Francisco. He campaigned on that and I was the agent of that policy. So I became, in certain communities, well known.

Justice Stewart: Well, even in that first term, his first stint as a Governor, there was Mary Morgan. They put on gay people. You put on African American judges.

Justice Kline: Native Americans, Filipino judges. And by the way, it wasn't easy then. It was much harder to diversify the bench then than it is today. And the reason is, there were so few women and people of color who were constitutionally eligible. You couldn't be a judge in those — well, still, unless you have been a lawyer for 10 years, and there were no women in the law schools in those days, as you probably know, and there weren't many people of color. So it was much harder to find good people. I remember when I was visiting the San Francisco Bar Association one day for a meeting, I was waiting at the elevators and there were a group of lawyers who were talking. Jerry Brown had just appointed an African American judge at the Court of Appeal in Los Angeles. I didn't know these three lawyers, but I couldn't help but hear their conversation, and their conversation was, Jerry Brown's into the three B's, broads, Blacks, and browns.

Now, the Black judge who stimulated that conversation was Bernard Jefferson, one of the greatest judges California has ever produced, in the superior court and in the Court of Appeal, whose work, which he did, his scholarly contribution to California jurisprudence, is excelled by very few people, more excelled by very few people. So that was a shocking thing to do back in 1975.

Justice Stewart: Well, I suppose it's not surprising that it ruffled feathers among some folks who thought it was theirs alone to —

Justice Kline: Yes, it did.

Justice Stewart: So you did that for five years.

Justice Kline: Well, I did it for longer than that. I did it for close to seven years, six or seven, I think.

Justice Stewart: So you got to know legislators because you were working on legislation.

Justice Kline: Yes.

Justice Stewart: So you went from being the friend of a political actor to becoming somewhat of a political actor in your own right.

Justice Kline: Yeah.

Justice Stewart: So then at the, I want to say 1980, Jerry Brown put you on the superior court?

Justice Kline: Right.

Justice Stewart: Tell me about that. That was your —

Justice Kline: That was an incredibly interesting period in my life, and it has changed me in several ways. I almost don't know where to begin. I should say, I wasn't welcomed by the San Francisco superior court, and the reason was that one of the things, at the time I got appointed, judges had automatic cost-of-living increases in their salaries, and California judges were then, by far, the best paid judges in America, because they had an automatic cost-of-living increase built in.

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So one day in 1979, Jerry Brown was meeting with state employees over a collective bargaining agreement and they were asking for automatic cost-of-living increases and Jerry Brown said, Nobody has that, and they said, No, judges have it. So he called me into the meeting. He said, The judges — I said, Yes, they do. He said, Well, they shouldn't have it. Now that created a huge fear in the California judiciary, and I was the agent of getting that legislation. So I was demonized. I could tell a lot of stories about that. So in any event, I wasn't welcomed at first, but I must say, I was eventually welcomed.

Justice Stewart: My recollection is that you told me you wanted to be a utility player and you told the PJ —

Justice Kline: Right. No, the day that I got sworn in, I got asked a question that a new judge would never be asked today in a metropolitan county, and the question was, What would you like to do? Now, at that time, there were only 27 judges in the San Francisco superior court. There's more than twice that now. And he said, What do you mean? I said, Well, I'll be a utility player for you, when somebody's sick or somebody's on

vacation, I'll sit in. I said, Look, my practice was mainly in federal court, I'll learn state jurisdiction. He said, Well — Don Constantine was the judge — he said, Well, that'd be great for me, but it'd be terrible for you. You wouldn't you're have your own courtroom. You'd be moving around. I said, That's okay. He said, Fine, that's what you'll do. In three years, I sat in every department. There was nothing I didn't do. I did probate, I did the mental health calendar, I spent a year in the criminal courts. But the most interesting thing I did, the one thing that was the most eye-opening and has had the biggest effect on my later conduct, was the juvenile court. For one thing, there's no juries there and you're the only judge.

Justice Stewart: And you're talking about juvenile delinquency, not dependency.

Justice Kline: Right. Well, I'm talking at that time both, dependency and delinquency, and as I said, it was an eye-opener. I mean, I got a window on the, I can't describe any other way than to say, it was racist. I mean, the cause of crime in America is basically, to a considerable extent, the result, in my opinion, of 200 years of social and economic injustice visited on a certain group of people, usually of color, and that's what I was seeing. So I mean, when I left the juvenile court, my interest in that group of young people continued.

Justice Stewart: Well, let me ask you about that. You, at some point, created the Conservation Corps, and I know it grew out of your, what you learned working in the juvenile court. Did you do that right then, when you were still on the court?

Justice Kline: No, I did it when I left.

Justice Stewart: So talk about that.

Justice Kline: Okay. The Conservation Corps movement started in 1934 in the Roosevelt Administration during the New Deal. He started the Civilian Conservation Corps. That was a work program during the Depression. Jerry Brown in 1975 brought the federal program down to the state. He created the California Conservation Corps. What the California Conservation Corps really was made up of largely, not entirely, but largely African American and Latino youth. It was highly disciplined, public service work, mainly in the mountains and in the forests of California, and it was a very successful program. These kids were paid. They were educated. They got high school diplomas. They were doing useful work. My view is that that was a good format to bring down from the state level to the local level.

Justice Stewart: But I think you told me that there was a connection between that and the effort on the part of some legislators to get recycling going —

Justice Kline: Yeah. What was happening was I was reading an article one day and I remember this, by the way, what I'm about to describe, is I would describe — if you ask me, you haven't asked me, but if you did, what's the single greatest achievement of your life, it's the one I'm going to describe right now.

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I'm reading the L.A. Times and there is a bill. I'm reading about a bill, a recycling bill in the Legislature that worked this way, that everybody who distributed a can or a bottle of beer or soda in the state of California for a year or a specific period, put one penny into a special fund called the Redemption Fund, and when the consumer presented the bottle back, or the can, he or she got that penny. Now, if a penny was not enough of an incentive to bring back, I think 60 or 67 percent of the bottles and cans, it went to two pennies, three pennies, whatever it was that would bring back that amount of money. Well, when I read that article, I realized that what you're going to have here is a special fund with a built-in surplus, because there'll never be 100 percent redemption. And the surplus under the bill was going to the cities, I believe for litter abatement. They were against the bill. They only got that to keep them quiet, so the bill could pass.

So I went to the — the author of that bill was a freshman assemblyman from Beverly Hills, Burt Margolin, and I went to him and I said, Look, I don't know why you're giving this to the people who were against your bill. You're going to get this bill. The reason the bill was sure to pass was the bottling industry, which was worried about recycling legislation in other states that they didn't like, this bill they were okay with. So he was going to get the bill, and it was the biggest bill of the session. And they didn't have any interest in community conservation corps, because what I was saying to Burt was create something called a Community Conservation Corps and authorize contracts in the Department of Conservation, which had access over the Redemption Fund for work contracts to do recycling. And he said, Oh, Jesus, Tony, it's a great idea, but I can't do it. The bottlers, they don't, they don't want to do this. And I put enormous — I used everything I could do — and I want to give him credit, the person who really got that bill was the Speaker of the Assembly Willie Brown.

Justice Stewart: So before that the Youth Conservation Corps didn't even exist.

Justice Kline: No. Yes. Well, that's not true. There were a few. In fact, they were all in the Bay Area. The Marin Conservation Corps was the first county conservation corps in America. The San Francisco [Conservation] Corps, and this is before the bottle bill, was the first municipal conservation corps, and the East Bay Conservation Corps was the first regional. That covered Contra Costa and Alameda County.

Justice Stewart: And they were youth.

Justice Kline: They were a small youth program. Yes, they were basically at-risk youth programs. Now, in order to get that bottle bill, because all of the existing community conservation corps were in Northern California but the votes were in Southern California, I had to start community conservation corps in L.A., which I did, because then I knew a lot of political people. I could get into that in detail. But in any event, so what we did was we got conservation corps in San Diego, in Orange

County, in Los Angeles, in San Bernardino, in Fresno, in Orange County, in Sacramento County and other places, and now I have a lot of votes.

Justice Stewart: And the money that would fund them —

Justice Kline: Right, and that funding — and by the way I don't know if I said it, but the one penny, one penny created, and it's much higher now, one penny would create a special fund of $125 million. So now it's a lot bigger than that. Now, if you're a mayor of a city, it would be municipal malpractice not to have a community conservation corps, because that's the only way you can get the recycling money. So there are now 14 programs in California, all of them financed through this, and that I consider the great achievement.

Justice Stewart: Well, I think you told me that it was replicated in other states.

Justice Kline: Oh, yes. There's now over 200. I don't know what the number is now, but now they're in all over the country, but they started here in California.

Justice Stewart: And your idea was connected with your work in the juvenile court the first time around, because you saw the need.

Justice Kline: Yes.

Justice Stewart: It's really interesting. So when you were doing all this legislative work on it, were you in between superior court and the First District [Court of Appeal] or were you on the First District by then? Had he elevated you?

Justice Kline: Well, I started working on it — yes, I was elevated. I was appointed to the Court of Appeal in 1982. I think I created San Francisco Conservation Corps with the help of a lot of people. I didn't do this all alone.

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And the most important of those people was Dianne Feinstein, the mayor of San Francisco at the time, who treated the conservation corps — she liked people in uniform, police, soldiers — and when you see a picture of uniformed kids taking graffiti off a bus, she saw a political benefit in this and she was right. She had only one requirement of me and that was to give her the right to appoint the board of directors. Well, that was a great idea as far as I was concerned, because then I knew we'd have influence with the mayor, and so she did. She treated the San Francisco Conservation Corps as a department of city government. The head of the program, he would sit in on her departmental meetings or weekly meetings, and she would tell the Rec and Park [Department] or the Airport or the Port, enter into contracts.

Justice Stewart: So tell me about getting from the superior court to the Court of Appeal. Was that near the end of Jerry Brown's — no, it's —

Justice Kline: Yes. I think it was at the end of his second term.

Justice Stewart: Was it? So it was in 1982.

Justice Kline: I went on the superior court in 1980, early in 1980, and I went on the Court of Appeal in late 1982.

Justice Stewart: Then did you want that? I mean, what led to that? Did you ask Jerry —

Justice Kline: Well, I was having fun on the superior, but he was leaving office and I also had — I was practicing law at a pretty high level and most of my work was a motion practice and an appellate practice, and I liked to write. And I figured if I was going to be an appellate judge, I better do it right then, when I could, because I could.

Justice Stewart: Right, because you didn't know who the next Governor would be or —

Justice Kline: Right. So I did. So I think the conservation corps emerged around 1983 or 1984.

Justice Stewart: Okay. And so you're on the court, and also in the mid-80s — and I want to get to what you actually did on the court — but this is related to that, and one of your other achievements, I know, is the creation of FDAP, the First District Appellate Project.

Justice Kline: Right, yeah.

Justice Stewart: So I assume you'd been on the Court of Appeal for a few years. Tell us how that came about.

Justice Kline: Well, I'll tell you how it came about. When Ronald Reagan was Governor, a group of lawyers — state bar and others — asked Reagan, got legislation creating a California state public defender, and Ronald Reagan vetoed it every year. So when Jerry Brown got elected — and the author of that bill was Mervyn Dymally, who was then Jerry Brown's Lieutenant Governor but had previously been a state senator from Los Angeles. So George Moscone came to me when Mervyn Dymally became Lieutenant Governor and he said, Look — this is right in the early days of the Brown Administration. He said, Look, I'm willing to take over from Merv Dymally getting legislation to create a state public defender, which would be the equivalent of the Attorney General in criminal cases at the appellate level. State public defenders in the counties were trial lawyers, but they didn't do appellate work.

So Dymally and then George Moscone wanted to create a state public defenders, which existed in other states, some of them. And so we did, and Jerry Brown signed the bill and there was a state public defender. The problem came up, when George Deukmejian became Governor, he decimated the office. He cut their budget more than in half. And I thought that was a — state public defender still exists. The state public

defender used to have offices all over the state. It represented convicted persons who are unable to hire to pay attorneys' fees. After George Deukmejian, it almost disappeared. Today, all the state public defender does today is death penalty cases.

Justice Stewart: Who was handling the appeals then for the convicted?

Justice Kline: Well, it varied. They were nominated — they were paid for by the counties.

Justice Stewart: So they were appointed —

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Justice Kline: They were appointed at the county level from a panel. It varied from county to county.

Justice Stewart: Was what you were seeing in the First District as an appellate justice not good enough representation of —

Justice Kline: No, it was terrible. The representation that the state public defender provided was terrific. Those were really able lawyers. The first state public defender was Paul Halvonik and then Quin Denvir for a very long time, and the two of them brought in some really outstanding lawyers. But appointed lawyers vary, some were good and some were not. In any event, because I was familiar with this issue of the appellate representation of poor persons in the criminal justice system, I had an interest in the subject and helped. I wasn't the only one by any means and there wasn't a lot of opposition. Everybody recognized we had to do something. The destruction of the state public defender made that necessary. So I can't take all the credit for that, although I was definitely a leader, one of the people who promoted the idea, and I think it worked.

Justice Stewart: Well, when you get a bee in your bonnet, it usually makes something happen, and I think that's one of the really good things that happened, one of many. So let me just go back to something we were talking about earlier. I had asked you actually before we started the interview, sort of how you got the values instilled in you about representing people who were not people of means, and we've talked a little bit about some of the work you did for that at Public Advocates. But now you're talking about convicted criminal defendants, and you're doing something that is about getting them adequately represented within the system. Does that also sort of go back to your reaction to your mom and the Holocaust? I mean, in other words, do you see them in the same way or feel about, caring for them in the same way that you did about the people whose houses were being taken down for veterans housing and for freeways?

Justice Kline: Well, I guess it did stem from that. I mean, the injustices that were done to Jews long before the Holocaust, I might add, provided some empathy with other people who were subjected to the same sorts of injustice, and that tended to be in our society, given slavery and our

history, racism. So I have felt useful fighting for justice for those people, I guess so. I mean I don't know, but I guess I did.

Justice Stewart: Well, I raise it because I wanted to sort of turn to your cases on the Court of Appeal and some of the things you've done. And many of the cases that I think of you as being a leader on relate to criminal defendants, to parolees or people who are trying to get parole, to youth, I'm thinking of the Elijah case, to the bail system. So maybe you can talk a little bit about some of those cases. But it brings up for me the idea of you doing these things for marginalized people that include the work you did with the Conservation Corps as well. It's a theme that runs through your career. So anyway, maybe you can talk about some of those cases, and we'll hit some other cases later on. I don't mean to limit it.

Justice Kline: Well, the cases that you're talking about, the bail case, I've always thought that this was a terrible — the cash bail system seemed to me unjustified. We're talking about people who are accused.

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We are not talking about — nobody's been convicted here. They were accused people and they are overwhelmingly poor people. Basically, the case that you're talking about, which is called In re Humphrey — Humphrey was an elderly man, living in the Tenderloin in subsidized housing, who stole a bottle of cologne and five dollars from another person who lived in the same housing facility. When he was charged, bail was set at $600,000. His public defender said, Judge, my client is impecunious, he can't afford that bail, and the judge said, Okay, I'll cut it in half, $350,000. That's for an impecunious person. The sum was laughable, and that was all because of a bail schedule.

Now, at that time, 85 percent of the people in San Francisco County jail were awaiting trial. They weren't people who'd been convicted of anything, okay, and most of them would never be convicted. The charges would be dropped. They'd be acquitted. There'd be a lower sentence and they'd get something, and of that 85 percent, almost 70 percent were just awaiting trial. No, wait a minute, 85 percent were awaiting trial, but most of those 85 percent were people who just couldn't afford the bail, and it was unnecessary, I thought. So I was at — I mean I didn't pick that case. It wasn't as though I was the plaintiff. I was the judge, not the party, but it was an opinion that I could get really interested in. It seemed to me that the time had come that this society — I wasn't the first person. I must say, the mentor I had around the issue of bail was a Berkeley law professor who was incredibly dedicated to this subject. Caleb Foote was his name, who wrote a seminal law review article on this subject, about the injustice of it, the stupidity of it, and the terrible consequences of it. It broke up families.

Justice Stewart: They lost jobs.

Justice Kline: People lost jobs, the broken families, and he influenced me a lot. He was a wonderful man. And I could identify with it. I was happy to get that case. This was a random thing.

Justice Stewart: Well, and it took some courage to do, because the bail system had been around for an awfully long time, so saying that it was unconstitutional was no small —

Justice Kline: Yeah, but I must say, one of the areas you haven't mentioned that I've been the most interested in is the punishment in state prisons. I represented prisoners when I was a lawyer at Public Advocates. It wasn't my main thing, but I did do it, and I won an important case in 1975 in the Supreme Court. Now, when I was doing that, and I was very much involved in the repeal of indeterminate sentencing, which happened when Jerry Brown was Governor. Indeterminate sentencing, sentences like 10 to life, started in California in 1917. And by the time Jerry Brown came into office, it was in great disrepute. And the reason it was in disrepute, there were two reasons. One, it was based on a prediction of dangerousness, and a colossal amount of research established that it is impossible to reliably predict whether an individual will be dangerous if released.

The second reason was that indeterminate sentencing resulted in unjust disparities in sentencing. Two people, the same age, commit the same crime, in the same way, on the same date might suffer widely disparate — one might get out in five years and the other in 20. And the opinion in the case that I had, Rodriguez, the California Supreme Court basically said that the parole board had to take into account culpability, because the court was getting all these Eighth Amendment claims, cruel and unusual punishment, but because the sentence was indeterminate, it was very hard for a court to determine whether it was disproportionate.

Justice Stewart: It's interesting. I didn't know that you had litigated the Rodriguez case.

Justice Kline: Yeah, I did.

Justice Stewart: No wonder it's been so much on your radar.

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Justice Kline: All right. So in 1975, finally, the Legislature repealed indeterminate sentencing and enacted determinate sentencing, except for three offenses, first-degree murder, second-degree murder, and I think kidnapping for ransom. So initially, the number of — there were a small group of people who remained indeterminately sentenced after the determinate sentence act went into effect. Most prisoners were sentenced by a statute that created a triad. Like, for example, certain burglaries would be punished at three years, five years, or six years, and it's a presumption that it will be the middle year, and if there's aggravating factors, it would be the upper term and mitigating factors the lower term, but the Legislature set the amount. Now, one of the

people who was against that, who tried to influence Jerry Brown, was the head of the parole board, who was an iconic figure in California in those days.

Justice Stewart: Did that basically put the parole board out of work in a sense, because I guess they still —

Justice Kline: It narrowed their work considerably, and the person who then was the head of corrections and later the head of the parole board, he said to Jerry Brown that if you sign that bill and you move sentencing away from the parole board and put it in the Legislature, sentences are going to go way up, and that's what happened. They went way up. There's many reasons they went way up. The main reason was, every time there was a sensational crime, then the punishment for that crime would go way up, because some politician would take advantage of the sensation and that would happen, but also the Legislature increased the number of offenses that were punishable by an indeterminate sentencing.

Now about 10 or 12 years ago, the U.S. — these high sentences resulted in a level of overcrowding in California prisons that called upon the United States Supreme Court to declare, about 12 years ago I think, that our prison system was in violation of the Eighth Amendment, because these plaintiffs could not receive health care or mental health care, because of prison overcrowding. So there was a lot of reform. There was the Governor's realignment program, which turned felonies into misdemeanors, there was Prop. 47, which did the same thing. Prop. 36, that was the Three Strikes reform and Prop. 57, which also involved the release of certain types of prisoners, youth offenders or elderly and so forth. But none of those reforms affected indeterminately sentenced prisoners who were eligible for parole, lifers.

So the percentage of lifers, which originally was tiny, is now almost a third of the prison population. And as to them, there are more life prisoners in California today, indeterminately sentenced life prisoners in California today, than there ever were under the indeterminate sentence act when everybody was indeterminately sentenced. And as to those prisoners — first of all, this is a paradox. The safest people to release are the people who've committed the heaviest offenses, and the reason is because by the time they're eligible for parole, they're in their late 60s or 70s or 80s, and the recidivism rate of the mainstream population hovers around 60 percent. The recidivism rate of lifers is about 1 percent.

Justice Stewart: Is that right?

Justice Kline: Yes.

Justice Stewart: Wow.

Justice Kline: There's a study in 2011 by the Stanford Criminal Justice Center.

Justice Stewart: So a lot of your cases have had to do with parole and sort of the real reluctance of parole boards to ever parole anybody and release them, and you have won some and you've lost some in the sense that, and I don't mean that literally, but you've made some decisions that have been upheld and you made some decisions that the Supreme Court has reversed you on. Is there more to be done in that area and do you have advice for judges?

Justice Kline: Yes, I do have advice. This is an area — I think, I have enormous respect for our Supreme Court, but in this area, it has not been just.

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In a recent opinion in a case called In re Butler, basically, what our Supreme Court did three or four years ago was to repudiate the principle for which Rodriguez stood, which was to introduce proportionality and punishment, constitutional proportionality into the parole system. What they said to the parole board, what a unanimous California Supreme Court said to the parole board was, Forget about the Eighth Amendment, we'll take care of that. You just decide who's dangerous. Now, recall that the reason that the Legislature repealed indeterminate sentencing back in 1975 was because of the overwhelming evidence that you cannot reliably predict the dangerousness of an individual — just bear with me. Bear with me for a minute here, okay.

Now, while you can't reliably predict the dangerousness of an individual, you can much more reliably predict the dangerousness of the group that the particular inmate belongs to, because they committed the same crime at the same age and the same way. Their culpability would be the same. And over time, you can empirically analyze their recidivism or not. And so you can determine — that's what Rodriguez back in 1975 ordered. Now, the Supreme Court is — oh, and by the way, it is almost impossible. What the Supreme Court says to these inmates, life prisoners do not have a right to appeal of the denial of parole, nor do they have a right to counsel, and to say to these inmates as our Supreme Court does, If you think your punishment is disproportionate, just file a writ petition, a habeas corpus petition, claiming an Eighth Amendment violation. That's preposterous.

The test of disproportionality in sentencing, it's called a Lynch test, is almost impossible for an unrepresented — for most lawyers, that's challenging, because you have to show — it's basically — what is disproportionate is really in the hands of the philosophers, okay. The only person since Rodriguez, there's only one or two people who the Supreme Court has ever granted relief on an Eighth Amendment claim, and the most recent one, which was Butler, the defendant in the Butler case, it took one of the largest law firms in America, O'Melveny & Myers, nine of its lawyers represented Butler and they prevail. But to think that an unrepresented inmate can file a successful Eighth Amendment claim is preposterous.

Justice Stewart: There are a few more things at least that I would like you to talk about. One of them is your dissent in In re Marriage cases, which I think went beyond being a dissent, because it influenced the California Supreme Court and later played a role in the overall litigation about marriage equality. So do you want to talk about that a little bit?

Justice Kline: Sure. What I should say to the viewers who are watching this that the lawyer in In re Marriage case, who argued that case before my court, is the person who's asking me all these questions, Therese Stewart. She did a great job. But I think I worked harder on that dissent than any opinion I've ever worked on, and I think the significance of it was that I did not rely so much on the Equal Protection Clause, I did rely on it, as I did on privacy. Now, the concept of — and there were several reasons for that. First of all, privacy is not discussed in the U.S. Constitution. But Article I, section 1 of the California Constitution does embody the principle of privacy. And so here in our state, I thought there was a real privacy issue here.

I think privacy is a very difficult concept to work in the law. I consider privacy, the comparable to substantive due process, a concept that sounds like a contradiction, because there is no limits. There's too many different kinds of privacy.

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There's Fourth Amendment privacy, there's nuisance privacy, and then there's something that emerged as a result of Griswold v. Connecticut and Roe v. Wade, this idea of autonomy privacy. That is the right, some people call it the right of intimate association or the right to decide who you are, that the state shouldn't be able to interfere in your exercise of your own definition. Well, like substantive due process, it's hard to put a limit on that. Some kids believe that they have a right to wear a T-shirt to school that has an obscenity on it or they think they have a right to have certain tattoos. Or they define themselves by the way they dress and so forth. And these are real things that are important to people. So it's hard to contain privacy, but the one area in which it does work in my view is in dealing with intimate associations.

And most of the important cases, Roe v. Wade, Griswold v. Connecticut, a lot of other cases involve the sale of condoms or same-sex marriage — when you're talking about sexual relations, there's a legitimate privacy aspect of autonomy that makes sense to me, and that's what I put into that opinion. That's why I worked so hard on it. And several members of the Supreme Court have told me, Carlos Moreno and the two justices, that my opinion influenced them and they did pick that up and so I'm glad I took the time and I'm sure you are too.

Justice Stewart: I am very much so, even though you always chided me for not doing enough on privacy in our brief, but I do remember discussing it at great length with you in the oral argument and talking about Griswold and talking about the contraception cases and so forth. But it was

another instance of you writing something — you haven't been fearful of writing things that change the law in significant ways. And I think that is a legacy that all the folks who have worked with you will hope to carry on in terms of not being so cabined that you can't see the human beings and the effect on them of the decisions that you're making. So are there other cases that you would like to talk about that you view as sort of among your big deal cases?

Justice Kline: Well, it's hard to pick between and among them, but In re Edward D., I think it is, is a case — that was a case in which a juvenile was prosecuted in Mendocino County for sexual harassment of a young girl that he was related to, and his public defender believed, got information from the family, it was a Native American family, that the kid was being framed by the mother of the girl and he went to the public defender. He said, Look, this kid didn't do it and he's being — because the boy's family — she didn't like the boy's family. So the public defender with the case went to his boss and said, Look, I need an investigator, and the public defender said, No, we don't have a budget for it. We can't do it. And if you keep bugging me about this, you're going to be fired. So he didn't get his investigator and the kid got convicted in Mendocino County.

But then, fortuitously, he was transferred to Humboldt County because his father was in jail in Humboldt County and there was another parent in Humboldt County and he got a new public defender in Humboldt County, and she looked at the case and said, Wait a minute, there's something wrong with this. So she called the Mendocino public defender. He said, Look, I don't think the kid did it, but I couldn't get an investigator because we don't have a budget. And so she brought this to attention. She filed a motion for a new trial in Humboldt County, and it was denied and we get it on a writ. And what that opinion, what my opinion is all about is the underfunding of public defenders. It basically wipes out, in effect, Gideon v. Wainwright. You have a Sixth Amendment right to counsel, but you get an underfunded counsel, and if you can't get an investigator in many cases you're out of luck. So if you read the opinion, it's a real indictment of a system that fosters this.

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Justice Stewart: Has change happened because of it, in your knowledge?

Justice Kline: I don't know. I hope so. I know that a lot of public defenders like me, but I don't know — that's new.

Justice Stewart: But has the government been more willing to fund?

Justice Kline: I don't know. I know that a lot of public — I think it has, because what public defenders now are starting to do in some counties, such as San Francisco, is if they can't get enough money, they would — what I said in my opinion was that the first public defender should have recused himself and stated that he had a lack of adequate resources to

adequately represent his client. That's what he should have done. So now public defenders, I am told, are starting to do that.

Justice Stewart: Well, I think Jeff Adachi did it.

Justice Kline: Well, the public defender here in San Francisco definitely did it. But there's another opinion in a case called, I think it's Elias V., and that was also the conviction of a juvenile on the basis of a confession for sexual harassment.

Justice Stewart: Or sexual assault, right?

Justice Kline: Yes. I'm sorry. Yes. It wasn't harassment, it was —

Justice Stewart: Touching.

Justice Kline: Yeah, touching of a young girl. And the issue in that case was a claim that it was a forced confession. Now, and I found that it was, even though it used to be — Justice Kennedy points out in Miranda v. Arizona — in the old days, forced confessions were done with a whip or a hose or something, people were physically coerced. But he pointed out in Miranda — people don't read Miranda enough. If you go back and read Miranda, he points out the education of law enforcement. There's a particular manual that most law enforcement officers in America read and are taught from in police academies, and it's psychological. It is the coercion, not with a hose but with psychology, but with tricks. There is no — for example, in no industrialized nation can a prosecutor invent, go to an accused person and say, We have evidence that you committed the crime and here it is — cannot make that up. In this country, you can, and you can do a lot of other things. The deputy sheriff who got this young boy to confess used every trick in the trade.

Justice Stewart: And the child was pretty young, right?

Justice Kline: Yeah, 12 years old, I believe, 12 or 13.

Justice Stewart: So you threw it out on the violation of right.

Justice Kline: Yeah, the Sixth Amendment right, that's right.

Justice Stewart: Well, that's interesting. I don't know where it will lead, but I think there was a time when many of us didn't think false confessions were something that was very common, and I think we're learning through the work of the innocence projects and other folks that it is something that's more common than we think, and that it happens in ways that I think are some of which are what you described in Elias, In re Elias.

Justice Kline: There's one other thing I would like to mention that fits into this category, and I pointed it out in an opinion called O'Hearn. It's a 2020, it's one of my more recent opinions. This has to do with the conviction of criminal defendants who are mentally ill. One of the things, I've learned a lot of things being a judge for over 40 years, things that I

would not otherwise have known. It's been an incredible education I've received as a judge and I commend it as one of the great things of being a judge, particularly in a state like this and in a jurisdiction like Northern California. The number of mentally ill people in our society, in general, more than a third of our prison population is mentally ill, as defined by people who actually receive mental health assistance or seek it. So the number is probably much more than just a third. And people are being convicted who are obviously mentally ill, and that was the case in O'Hearn. There is —

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Justice Stewart: And what did you hold in O'Hearn or what was the issue?

Justice Kline: Well, it was making criminal threats, and the police knew this guy. He made these threats all the time. He never fulfilled them. He shouted at people. He said he was going to kill them, and these were people in the housing project he lived in who knew he never laid a hand on anybody. He'd come out and just shout these obscenities at people, but never fulfilled them. I mean the police were very familiar with it, but he got ineffective assistance of counsel. There was no investigation made of his mental — the judge never looked at it, because his lawyers — it's a shocking case of ineffective assistance of counsel, of failure of the lawyer to learn of his mental health history and know he knew its conduct. It should have raised the issue in the mind of any ordinarily reasonable person that this defendant was mentally unbalanced, and he got convicted and he pled to a strike. He had violated probation every time — he was arrested for making criminal charges numerous times and every time he'd get probation and every time he'd violate probation, except this lawyer permitted him to enter a plea to a strike, which so if we he violated probation this time, he'd go to prison. And I talked about what it's like sending a mentally ill person to prison, how he's treated in prison and how the Legislature has ordered the diversion of mentally ill people. I think it's a bigger problem than a lot of people realize.

Justice Stewart: Right. Well, I'm looking at your list and see if there's — I mean I can think of some other cases but I think we've hit a lot of the big ones. I mean you've been on the bench for what, almost 40 years. So the number of cases that you've been involved in that have been significant is probably larger than just about anybody I can think of. But are there other ones that you'd like to talk about, anything big in the civil arena —

Justice Kline: Yeah, there is one. If you look at my history as a judge closely, you'll find out that the Commission on Judicial Performance that disciplines judges initiated a proceeding against me. And what that was all about was, I had a case called Neary v. Regents of the University of California. And the substance of the case isn't important. What's important was the parties settled the case based on a stipulated —

Justice Stewart: A stipulated judgment.

Justice Kline: Right. The plaintiff was a dairy farmer in the Central Valley whose herd all died and they called in veterinarians from U.C. Davis to find out why his cows died. He said that the owner of the farm, who was a very wealthy man, mistreated them with — mistreated the cows with a certain chemical when he had them cleaned, and he sued them for defamation. He sued the University of California, of which U.C. Davis is a part, for defamation, and he had a very good lawyer and he won $11 million from the Regents of the University of California. And then the parties decided to settle the case. Oh, and in order to settle the case, they needed the agreement of all three veterinarians who spoke at a press conference. And one of them, at least, maybe all, refused to sign the stipulation, because they didn't think it was a just verdict. And so they settled the case, and in order to settle the case, the parties stipulated that the judgment of the jury will be invalidated and they came to me as the presiding judge with a motion to reverse based on a stipulation. And I refused to do it.

The reason I refused to do it is that would permit people with deep pockets to purchase the reversals that a verdict of the jury or of a judgment of the court — this is not a commodity that can be bought and sold. That was my view. So the Regents appealed to the Supreme Court and the Supreme Court ruled in their favor, which I thought was shocking. There is no jurisdiction in America that permits this, none, and the United States Supreme Court in an opinion by Antonin Scalia that is unanimous barred it, barred such stipulations in the federal courts. I was shocked.

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So later in another opinion, an opinion called Morrow v. Hood, a 1997 opinion, you'll find it at 59 Cal.App.4th, page 924, and I actually brought my opinion. In a dissenting opinion, I was dissenting, I —

Justice Stewart: Somebody else sought a stipulated judgment in that case, right, and that was the issue on appeal.

Justice Kline: Right. And in Neary, the Supreme Court said that the Court of Appeal when presented with a stipulation must grant it. Well, my opinion starts off by saying that there are rare instances in which a judge of an inferior court can properly refuse to acquiesce in the precedent established by a court of superior jurisdiction, and then I pointed out that this was such a case, and I'm going to read. I normally don't like to read things when I'm in a situation like this, but I can't say it better now than I did in this opinion. Here's what I said, I did not refuse to acquiesce in Neary, because I believe the opinion is analytically flawed and empirically unjustified, though, as I have else explained at length, that is my view — citing cases. My refusal is instead based on my deeply felt opinion that the doctrine of stipulated reversal announced in Neary, a doctrine employed in no other jurisdiction in this nation and unanimously refuted by the Supreme Court, is destructive of judicial institutions.

Now, I pointed out that in Neary, the California Supreme Court disagreed with me and they said, they dismissed my opinion as homilies about judicial integrity and legal truth, which they think ring hollow in the ears of the litigants. They said that the courts exist for litigants, litigants did not exist for courts. That's what the Neary Court said. And I rejected that, because — I said, in this opinion, that I can't accept that view because I believe it misapprehends the role of American courts. The judicial responsibility is fundamentally public. Adjudication uses public resources and employs not strangers chosen by the parties but public officials chosen by a process in which the public participates. Those officials, like members of the legislative and public — legislative and executive branches — possess a power that has been defined and conferred by public law, not by private agreement. Their job is not to maximize the ends of private parties nor simply to secure the peace, but to explicate and give force to the values embodied in authoritative texts such as the Constitution and statutes, to interpret those values and to bring reality into accord with them. And that's the view I said I attributed to the United States Supreme Court and to myself.

Justice Stewart: And I know that the CJP investigated you, claiming that this was somehow a breach of your ethical duties and eventually that got thrown out, but it also resulted in a change in the law, as I recall.

Justice Kline: That's right. The Legislature — oh, I'm glad you reminded me of that. My opinion in the Neary case, refusing to accept the stipulation of reversal, was adopted by the Legislature. The Legislature basically didn't repeal the California Supreme Court opinion, but it came pretty close, because it limited the instances in which that can be done, those kinds of reversals can be done.

Justice Stewart: So we've covered a lot. Is there anything else you want to cover, any case we left out or —

Justice Kline: Yes, there is one. And that's the opinion that I most enjoyed working on. The name of this case is Polygram Records v. Superior Court. It's a 1985 opinion. The plaintiff in that case was the owner of a wine referred to, named Rege.

01:30:04

It was a discounted wine, and it was a lawsuit against a comedian, Robin Williams. Robin Williams was appearing in a nightclub, and this appearance and his gig was filmed by Polygram Records and played on HBO. And during his routine he was holding a wine glass and he looked at the wine — he just stopped what he was talking about, looked at the wine glass, and he said, We have white wine and we have red wine, and then he started on an idea of advertising the red wine. He got off on — he was saying, Well, we could call it Reggie — because he was doing advertising to a Black audience. We'll call it Reggie, all Black people are named Reggie — this was his joke, and he does a routine.

It's actually quite funny and he brings in certain Black athletes who at the time back in 1990, football players and so forth. And he started doing, how you would advertise this wine called Reggie to Black people, okay. Well, it turns out that there was a wine called Rege, and that owner sued Robin Williams and Polygram Records and HBO in the Napa County superior court, sued them for defamation. And Polygram Records filed a writ petition saying that there was no legal issue here, because nobody takes jokes seriously. Well, it turns out there's an awful lot written. I spent most of my time in this opinion, in the public library, not in the law library, because a lot has been written about jokes and humor.

Freud wrote, jokes and the subconscious, and almost one thing that everybody agreed with that is that, as Samuel Johnson said, is that humor is unpropitious to the definer. It's very hard to define what's funny. So people who have studied this — and a lot of serious people have studied this issue — and the only person actually who took humor seriously was Aristotle in the Poetics. He said — that's the only person I could find who took it — who felt it could be defined. So in any event, the denouement of my opinion is that if you leave it to judges to decide what's funny, a lot fewer things would be protected than the plaintiff in this case thought. But it's a — now, this opinion ranges in areas that I probably didn't even need to get into, because the mere association with race, which Robin Williams — it was enough of a basis to decide this case.

Justice Stewart: So they were saying that he defamed their label by associating it with Black people?

Justice Kline: Right, yeah, and nobody could accept that idea. That was really implicit. I could have dealt with that case — I admit, I could have decided that case in three pages.

Justice Stewart: But you did an exegesis on humor.

Justice Kline: Right. So I got off into humor, and that's one of the things you can do as an appellate judge occasionally. You can't do it too many times. But in any event, I find it to be an amusing opinion to read, if you're interested.

Justice Stewart: I'm going to read it. I haven't. I didn't know about this one before this interview.

Justice Kline: Yeah.

Justice Stewart: So before we end this interview, I have one last but important question for you, which is, and I know you have a son who is a young lawyer. But do you have advice that you would give young lawyers today and also advice that you would give people who are looking to be judges in their careers about either of those two roles — about being a lawyer and what really matters, about being a judge and what really matters?

Justice Kline: Well, I don't know if I can usefully give advice about how to become a judge. It's all so very fortuitous.

Justice Stewart: Yeah, no, not how to become one, but I mean about what how to be a good lawyer and how to be a good judge.

Justice Kline: Well, my short advice would be, be bold. That's what I would advise. Don't be afraid to be bold.

01:35:00

I mean, I have learned a lot as a judge. One of the things I've learned is the amount of injustice in our society. I mean, the amount of — the numerous ways in which children and women are abused in our society. It's shocking. You don't have to look really hard to find some injustices that are significant. I'm not talking about being unfair here and there, I'm talking about serious injustice. I think judges tend to be — judges are by nature inherently reactive. They don't go out and initiate things. Things come to them and they deal with them, that's what you do. But I think judges can sometimes be too timid.

As to advice to young lawyers, there are a million different ways to be a lawyer. There's no one way to be a lawyer. There's no society in the world that is as rule-oriented and so committed to the law as we are. By and large, I think it's a good thing, although not always. This is one of those debates I get in with Jerry Brown. He thinks there's too many laws and too many lawyers. But there are many, many ways to practice law and you should explore them. If you're considering a legal career, you should realize that a law degree has value in contexts that some people don't think of as legal, working in a commercial enterprise. Understanding the law provides skills that are really valuable in a society that is so law oriented.

My son, he started off in a big law firm, in the kind that I started off in, and he didn't last long. And that's true of a lot of young lawyers in his peer group. And then eventually he went into government. He practices law in the general counsel's office of East Bay MUD, and it's environmental work, something he cares a lot about. The life-work balance is reasonable, and he enjoys his work enormously. Look, I would tell anybody, whether it is in the legal career or not, don't commit yourself to anything that you don't enjoy, and if you enjoy it, then accept what may be some disadvantages, because that's the most important thing, enjoy what you do.

Justice Stewart: That's great advice. Thank you. So thank you for putting up with the long list of questions and for sharing your memories about your career, and I really appreciate it. And I think that the folks who listen to it will appreciate it as well.

Justice Kline: Well, I enjoyed it as well. Thank you.

01:38:07