William Stein: All right; William Stein, Associate Justice, Court of Appeal, First Appellate District, Division One. Stein is S-T-E-I-N.

David Knight: Thank you. And Justice Newsom.

William Newsom: William Newsom, N-E-W-S-O-M, Associate Justice, First District Court of Appeal, Division One, Retired.

David Knight: Excellent. Whenever you're ready.

William Stein: We're here this afternoon in an oral history interview project of the AOC, interviewing Retired Justice William Newsom of the California Court of Appeal, Division One, with whom I had the honor of serving for a number of years.

William Newsom: In the circumstances, I can't deny that it's me.

William Stein: All right. You're not under oath.

William Newsom: Nevertheless, I choose not to . . . neither deny nor affirm it's me.

William Stein: All right.

William Newsom: Thanks.

William Stein: But I can testify from long experience of knowing the man that it appears to be him, yes.

William Newsom: Was there not a famous opening question or objection in a case, where somebody asked . . . objected that it was hearsay to say that you were born?

William Stein: Precisely, affirmed, sustained. How could you know that?

William Newsom: How could you know it?

William Stein: You couldn't possibly. You couldn't testify to that from personal knowledge. *[laughing]*

William Newsom: You know when you have such an objection, you're gonna have a contentious lawyer on your hands.

William Stein: Well, I would have to say we know you were born; but you can't testify that you were born as to a specific time and place.

William Newsom: Exactly.

William Stein: But that leads into my first question, Bill.

William Newsom: Yes.

William Stein: You were born in San Francisco.

William Newsom: I was.

William Stein: And as was your father . . .

William Newsom: Father.

William Stein: . . . and his father before him, or . . .

William Newsom: Exactly.

William Stein: . . . one of the third generation and . . .

William Newsom: And my grandfather's father came here from Indiana . . .

William Stein: Uh-huh.

William Newsom: . . . and he was a policeman in San Francisco.

William Stein: Okay, yeah. And as you were growing up, before you went to college basically, what was your parents doing, and what were you doing?

William Newsom: My father was a building contractor in the Mission. My grandfather had been a banker with the . . . he opened the first branch of the Bank of America in 1929 at 29th and Mission Streets, and his son, William, my father, was a building contractor. I grew up in the Marina.

William Stein: Anything in your early life before college that sort of started pushing you towards the law or that kind of a career?

William Newsom: Despair.

William Stein: Despair, yeah.

William Newsom: In other words I had no visible skills, and no one could detect any or invent any; so by default, I went into the law.

William Stein: You couldn't figure out which end of the hammer to—

William Newsom: Exactly; I subsided into the law.

William Stein: Now, what about friends of yours that you grew up with, the childhood, high-school-type friends that may have had an influence on your later life?

William Newsom: Childhood friends. I guess that one of my childhood friends who indirectly influenced me was Jerry Brown. He was a little younger; but he went into the Jesuit order, and I became convinced that I didn't want to be a Jesuit partly as a result of knowing Jerry.

William Stein: Newsom family and the Brown family were—

William Newsom: Very close.

William Stein: Very close?

William Newsom: I used to often say—Bill, you might have heard me say this—that as a matter of fact I was the only merit appointment that Jerry Brown ever made, which was a joke, because of course the reason I was appointed was a friendship between the Brown and Newsom families. My father was the manager of Pat Brown's first campaign for district attorney, and Norman Elkington was very much involved in that campaign.

(00:04:55)

William Stein: Yeah. There's an old story that goes on and on and on about how to become a judge, and it always ends up with the last line. The punch line is always either you or someone who owes you big-time knows the Governor by his first name.

William Newsom: Exactly. And in my case, I'm sure that my father's connection with Pat Brown had a lot to do with it.

William Stein: Now, I noticed in your undergraduate career at USF, you had a major in French literature.

William Newsom: Yes.

William Stein: And then after law school you stayed on at Stanford and got a degree in English, a master's degree in English literature.

William Newsom: That's true.

William Stein: A rather unusual background for the law, but—

William Newsom: I was still striving for alternatives to the law and thinking about becoming an English teacher. I finished all the work at Stanford for the coursework, 64 units, for a Ph.D.; but I had to serve in the military for a few months, and that interfered with it. So when I got back, I changed my mind and said, "I'm getting too old. I've got to do something to make a few dollars." So I went into law.

William Stein: Kind of funny how when we were that young, we thought we were old, and now we realize how young we are now.

William Newsom: Exactly. I had no idea.

William Stein: Now, then after law school, you actually . . . your first job in the legal field was with the court; you were assistant commissioner of San Francisco Superior Court.

William Newsom: Assistant commissioner of the San Francisco Superior Court, which is a sinecure, I would say, an outright sinecure. My father, though not himself a lawyer, knew all of the superior court judges, like Al Weinberger, Ray O'Connor, and the rest, and they jointly decided I would make a wonderful assistant commissioner. And so that was a law clerk for the court, and I worked for the commissioner himself, who was a terrific guy, wonderful man, William Ahlbach?

William Stein: Okay, yeah.

William Newsom: And I had that job for several years, and it really came down finally to being a full-time clerk for Judge Karesh, who had law and motion.

William Stein: Sure.

William Newsom: He was a very nice man, a rabbi from South Carolina, and we had a lot of fun together.

William Stein: Then you went on to associate with a fairly famous San Francisco attorney.

William Newsom: Yes. James Martin MacInnis was a wonderful man. And the way I came to know MacInnis was through Karesh, because I was working on a famous case in San Francisco called the *Miller Lux* case . . . was one of these interminable cases in which about 30 lawyers were involved, all of them being paid huge sums of money; and all the people who made the money were now deceased, so nobody cared about the outcome. The old saying would be that in . . . the living would envy the dead; but everybody got well paid, and MacInnis was one of the lawyers.

MacInnis, I thought, was a superb lawyer, and he made a wonderful argument in the case. He got up, and they were talking about the meaning of the terms "per stirpes" and "per capita"; and the lawyer from Pillsbury, who was Turner McBain, got up and said, "I was a Rhodes scholar, Your Honor," to Karesh, and he said, "I make some small claim to knowledge in this field." And so MacInnis then interrupted, got up, and said, "Your Honor, may I be permitted a brief comment here?" And Karesh said, "Go right ahead." And MacInnis turned to McBain and said, "Quo usque tandem abutere, McBain, patientia nostra." And McBain clicked his heels and said "A scholar!" and Jim MacInnis said, "Turner, a mere snippet of high-school Latin."

That got me interested in MacInnis. I thought, "This would be a great guy to work for." So he turned out to be.

(00:10:06)

William Stein: Would it be fair to say he made you a lawyer?

William Newsom: He did.

William Stein: Okay.

William Newsom: Yeah. He made me a lawyer; he got me interested in the law.

Somebody once said about MacInnis this comment. He said, "Jim looked life full in the face out of the corners of his eyes." That was MacInnis. He just didn't take that much too seriously.

William Stein: I recall working with you, too, Bill, and you brought to the court a pretty different background in business and finance, that you had a grasp of business and finance that most of us don't have; but I wondered if that had anything to do with your time you spent in Rome as an associate with Getty Oil Italiana.

William Newsom: I think I was forced by that job to pay attention to business more than I ever had, because I was really doing the job that was assigned to Paul Getty, Jr.; but he was busy doing other things that had nothing to do with business, more with pleasure. So I had to do the work for Paul.

William Stein: Well, he picked a good man.

William Newsom: Yeah.

William Stein: Yeah. And then you went into a sole practice up in Tahoe City?

William Newsom: Yes, I did. I moved to Squaw Valley, and I practiced in a one-man shop up there in Tahoe City. I did a lot of environmental law, and I found that that interested me a lot.

William Stein: And you did a lot of environmental cases when you got to this court; and we'll talk about that a little, yeah.

William Newsom: That interested me a lot, too, because as you know, the First District in the early days comprised the Eureka area and the redwood country; so we had some wonderful cases. And you were on them, too.

William Stein: Well, no, I'll get into those a little bit later.

William Newsom: Yeah, yeah.

William Stein: Well, first we've got to get you onto the bench. So now you're up in Tahoe City practicing environmental law and whatever else you could gather together up there and opening . . . a new position was created, right, in Placer County?

William Newsom: Placer County. And there were two judges up there, Leland Propp, and the other judge was Ron Cameron, a very outstanding state Senator; he was also a brilliant lawyer, Order

of the Coif. And Cameron was very kind to me, but Propp wouldn't speak to me; he didn't like me. And so I asked Propp to take five minutes from his busy schedule so I could be sworn in, and he said no. He refused to do it. *[laughing]*

So I wouldn't speak to him, either, for about six months, and Cameron tried to broker a peace deal between us. I said, "All he has to do is say he's sorry." Finally one day he did; I think he'd had a couple of drinks and came in and said, "I'm sorry for what I did."

Anyhow, Jerry Brown appointed me to the superior court in Placer County; and I was amused afterward to see Brown about a year later and he said, "Bill, how do you like it up there in El Dorado County?" *[laughing]*

William Stein: Well, you know, it's a common mistake for us flatlanders. We think Placer County should be in Placerville.

William Newsom: Yeah, exactly.

William Stein: And El Dorado County should be in Auburn.

William Newsom: So it's an understandable mistake for Brown. *[laughing]*

William Stein: Those of us who never get above sea level.

William Newsom: Yeah. Also, Brown didn't have a lot of experience in the world at the time. He had led a sheltered life, because he'd been in the Jesuits, and he just didn't know the mountains at all.

William Stein: They kept to the path of Father Junipero Serra, probably.

William Newsom: Exactly, even though Serra was a Franciscan, I think.

William Stein: Well, he was a Franciscan, but similar.

William Newsom: Yeah. You as a co-religious—co-religiouses would know that.

William Stein: [Laughing] Yeah. Is that when you moved to Dutch Flat, or is it—

(00:14:49)

William Newsom: Yeah, because I was living in Squaw Valley when I was appointed.

William Stein: Right.

William Newsom: But in those days, before global warming or whatever it was that ended snow, it was terribly difficult to get from Squaw Valley down to Auburn, the county seat—was a prodigious trip by car through a lot of snow. So I moved to Dutch Flat, which is

much closer, about 20 miles from the courthouse. And I liked it very much, because it was a small, peaceful gold town mostly consisting of buildings from the '60s and '70s; still a beautiful place, I still live there.

William Stein: And it fits into your . . . what you like to do when you're not being a lawyer or a judge, right? The outdoors and the . . . yeah.

William Newsom: Bird watching, hiking, and things like that, and history. It's still a beautiful place, untouched, unspoiled.

William Stein: But then your friend Jerry called you again and had you come and return to San Francisco in 1978?

William Newsom: Interesting story, Bill. It was traditional . . . I was in the Third District when I sat on the superior court, so it was traditional that if appointed to the Court of Appeal, I would be appointed to the Third District Court of Appeal.

So somebody said, "Would you like to go to Sacramento?" I said, "No. I really like it better here in Auburn. If I could go to San Francisco I think I would, because I have two children down there." And my kids were of an age where I thought it would be important for me to be around them more than I could be living up at Tahoe.

So somebody said, "Well, it's too bad; but it's a tradition that you can't be appointed to San Francisco, because that's the First District and you're serving in the Third District." And Brown heard that and said, "Why not? Why can't I appoint him to the Third District?" And somebody said, "You can, but it would be very controversial." So Brown said, "I'll do it."

William Stein: That sounds like Jerry.

William Newsom: Old song that goes to the effect that somebody said once, "I make water on the grass to annoy the crickets." That was part of Brown's philosophy, *[inaudible].*

William Stein: Yeah. Churchill said something about the British naval traditions at one time similar to that, right? Put up a tradition? Why would I follow that? *[laughing]*

William Newsom: Exactly. Brown loved being perverse.

William Stein: You have an interesting background, though; and I mean most of us did it, too, in that we were on the trial court and then we were on the appellate court. Do you have any recollections or observations about the difference in the role there and how it affected you, or at all?

William Newsom: Yeah. As you know, Bill, it's a huge difference, because I think in a lot of ways it's tougher to be a good judge on the trial court, because you don't have time, really, to reflect on rulings—on important rulings on evidence, for example. You have to make quick judgments, whereas in the Court of Appeal you could soberly, if I might say so, reflect on that over a period of time. So I thought it was tougher and in other ways, too; because first of all, you had to make quick decisions, and secondly, your hours were longer and more regular. And I think it was a tougher job.

William Stein: You don't have the time to reflect and reason as much as we do.

William Newsom: Exactly.

William Stein: Yeah.

William Newsom: I want to say, too, that in that same context, I always thought it was a much tougher job; I never had it, but I thought it would be a much tougher job to be an umpire calling balls and strikes.

William Stein: Yeah.

William Newsom: Because there's so much at stake—maybe the World Series, the last game, and you make a mistake, and you can't take it back. That's a tough job.

William Stein: *[Laughing]* They don't have a Supreme Court sitting above them that they can appeal to, right?

William Newsom: No, no appeals. So I've often thought it was a lot easier job being a trial court judge.

William Stein: Yeah. Well, let's go . . . there's a question I'm supposed to ask you.

William Newsom: Yes.

William Stein: Why'd you leave the bench?

(00:19:56)

William Newsom: Oh, I had a very good reason. I'd served 20 years on the bench, and I'd maxed out on my pension. So after that, I think you wind up paying back money to the State; and also I had another job, which I could hold and which I still hold, as a trustee for the Getty family. That's been a very remunerative job.

William Stein: And probably very personally rewarding; it's an old family association and—

William Newsom: Exactly. We had a close family association. Gordon Getty lived at my house as a high-school student, and we were very close, family-like associates. And it's been an interesting job. I've been able to travel all over the world; for example, I'm tomorrow going to Africa to the Crater Lodge.

William Stein: Is that the sons are running, is that the operation that the Getty sons are running?

William Newsom: Yes.

William Stein: Yeah.

William Newsom: Gordon Getty now; and Paul Getty, I mentioned, who died.

William Stein: Yeah.

William Newsom: And I had a close association with them, because when the young Paul Getty, Paul Getty III, was kidnapped . . .

William Stein: Right.

William Newsom: . . . I was asked by the grandfather, J. Paul Getty, to go over to deliver the ransom money.

William Stein: Right.

William Newsom: An interesting sort of job.

William Stein: Yeah, you've talked about that once before.

William Newsom: Yeah. They cut his ear off . . .

William Stein: Yeah.

William Newsom: . . . as a sign of seriousness, and that did get the attention of the grandfather.

William Stein: And you're actually the godfather.

William Newsom: I am the godfather of the boy.

William Stein: Well, no, not a boy anymore. *[laughing]*

William Newsom: No. He's 45, I think, at last count. He's doing well.

William Stein: That's what I heard, yeah.

William Newsom: Yeah, very well.

William Stein: That's what I heard.

Well, it comes to that point or that part of the interview where we talk a little bit about some of the cases.

William Newsom: It's very difficult to remember cases.

William Stein: Don't worry about it. *[laughing]*

William Newsom: Yeah.

William Stein: I've spent some time.

William Newsom: You have? Thanks.

William Stein: I mean, if we spend any time going over all of your work, we wouldn't have enough videotape left, and it probably wouldn't be a whole lot of interest to either you or I or anybody else.

William Newsom: Or posterity.

William Stein: Posterity; but I did pick out, I cherry-picked, a few.

William Newsom: Thank you.

William Stein: And I'm going to go backwards in chronological order, because I think the more recent memory might be . . . I find my recent memory is better than my past memory.

But just before you retired, there was *Martinez v. KSOL*. That was the then–shock jocks for the radio that tied up the Bay Bridge to get a haircut. It was . . . Bill Clinton was criticized because he had held an airplane on the ground at LAX while he had a haircut.

William Newsom: For a haircut.

William Stein: And these guys took a van, went out in the middle of the Bay Bridge in commute traffic, and just tied up the bridge while one of them had a haircut. And we struggled; you were the author, but we . . . A class action had been filed by all these people who had been delayed in the bridge, and I know we struggled very mightily to come up with a . . . *[laughing]* A demurrer had been granted and the case thrown out and appealed, and I know you worked mightily hard, about 15 pages of going through all the causes of action till we found one; then you found one that could send it back for a trial, which was false imprisonment by holding everybody up on the bridge.

William Newsom: Sounds pretty flimsy to me.

William Stein: Remember that? I know, it was pretty thin. *[laughing]* But remember, it resulted in a settlement where the radio station basically paid for a morning on the Bay Bridge and everybody got to commute free.

William Newsom: A good result.

William Stein: Good result, right.

William Newsom: I think they should have treated us to a haircut as well.

William Stein: And then I know one that you'll remember better, even though it's a little further down the line, in 1987. Charlie Krueger. Remember Charlie, the 49er player . . .

William Newsom: Yes.

William Stein: . . . who had the bad knees and kept playing football? And the trial court had tried the case. He was alleging fraud, concealment by the doctors not telling him . . .

William Newsom: Yes.

William Stein: . . . what these injections were really doing and to keep him in the game, as they say now. And you remember Charlie at all?

William Newsom: Very well, and I remember the case, because it interested me a lot. Krueger was a sincere fellow, not a faker in any way. He had a great career at Texas A&M, and he was anything but a shirker. He made that clear in the case. He said, "I've had 27 fractures in my athletic career, count 'em." And he said, "I've never extended a recuperation by a day if I get back on the field." He was one of these guys who wanted to give people their money's worth, including his employers.

(00:25:09)

And so I thought he was a very credible witness and I was very sympathetic to him, and we worked out a deal with . . . I think the Supreme Court took the case, I think; but it resulted in a settlement, and Krueger made some substantial money from it, which pleased me.

William Stein: Yeah, he was in that era where the retired ballplayers didn't get much of anything, retirement. And the case was . . . actually, I was on the superior court when it was tried. I wasn't the trial judge . . .

William Newsom: Yeah.

William Stein: . . . but I remember seeing the guy, 'cause he was a big hero of ours; I mean he was one of the original 49ers football players.

William Newsom: I got to know him later on a little bit . . .

William Stein: Oh, really?

William Newsom: . . . because he was a bird watcher. I used to see him with two canes, staggering around up at Hetch Hetchy.

William Stein: Sure.

William Newsom: I used to go up there with Quentin Kopp and stay in the city-owned lodge there . . .

William Stein: Uh-huh.

William Newsom: . . . for which, I might add, we paid full room and board. And I saw Krueger up there and had a chance to get to know him a little bit after the case, and it pleased me that he'd made a settlement.

The key to the case was that the doctor for the 49ers had a conflict of interest in telling Krueger, after feeding him pain pills, to go back on the playing field and as soon as he could. And Krueger would do that; but the price he paid later on was ruined knees forever.

William Stein: Yeah. It was interesting. I enjoyed reading it the other day, just to get ready for the interview, because it was pretty . . . about the old football game.

You cut a lot of ground, new ground, and caused a lot of concern in the landlord-tenant era in 1983 in *Becker v. IRM Corporation*. That's the person who was injured by slipping in the bathroom and falling through an untempered glass door, and it was the first case that held strict liability for the landlords, who were basically absentee owners of large apartment complexes. It really set off quite a furor.

William Newsom: It did.

William Stein: That's the one that the Supreme Court did grant review on—took your case, took your opinion up, and basically republished it as their opinion and made it a statewide rule.

William Newsom: That was a compliment to me, I thought.

William Stein: I thought it was, too.

William Newsom: Yeah.

William Stein: It was . . . you know, they took it up, and basically you can read your opinion, which you have to find now in the *Cal Reporter* since—

William Newsom: You look under Bird, Rose Bird?

William Stein: Uh-huh. Yeah. She had a . . . she concurred in it, and actually I think it was . . . well, I don't remember now who actually

concurred; but it was your opinion, it almost tracks your logic, I think an extension.

How about Chowchilla kidnappers, the *Schoenfeld* case?

William Newsom: That's a case that causes me a lot of difficulty right now.

William Stein: I know it does, and I want to talk a little bit about that later, if you don't mind.

William Newsom: Yeah. Yeah, sure.

William Stein: But that was another case where you bucked the trend pretty hard. You wrote a very interesting opinion, and I thought persuasive opinion, that the mental injuries, emotional damage that was done, was not in the code. They were . . . the intent was increase for bodily injury, I think you wrote—and you had a flair for phrases, Bill. I mean, that was one of the things I always loved about your stuff. But that the statute raising to no parole, no possibility of parole for emotional damages, is yet to be written.

(00:29:46)

William Newsom: I think that's the case.

William Stein: Yeah, I know.

William Newsom: Judge Deegan was the trial judge, a wonderful man; but he conceded later on he'd been in error. We were very glad that our court, the First District, reversed it on the penalty, because he had found that the fact that one of the children had diarrhea was . . . supplied the great bodily injury requirement. And that was specious, and he concedes that. And he wrote me a letter to that effect, too, and he said how glad he was that we reversed him. But they're still in prison.

William Stein: Yeah, I want to talk to you about that a little bit further down the line.

William Newsom: I don't understand it.

William Stein: Yeah, I know. That's one of those cases where the trial court's under tremendous . . . I mean, there was tremendous public outcry. It was a—

William Newsom: Exactly.

William Stein: It was a school busload of children who were kidnapped and held, and thank god nobody was really injured.

William Newsom: Exactly.

William Stein: But the public outcry was so hard, and those trial judges face election in the local community; but it still takes a lot of guts, Bill, even sitting as an appellate judge, to go against that kind of public outcry.

William Newsom: But I had a great colleague in Racanelli, who had never backed off from what he thought was right. You served with John, and you know what I mean; he's an outstanding judge. It was . . . I think Holmdahl was the third judge.

William Stein: Holmdahl was the third one, yeah.

William Newsom: Which reminds me, I always think of the time that Elkington, who was a very conservative judge—who was a great judge, too—and I remember in one of his dissents from a criminal case . . . Racanelli and myself had written the majority. And he said, he started his dissent as follows: "In the words of Oliver Cromwell, I beseech ye in the bowels of Christ to consider that ye may be in error." *[laughing]*

William Stein: *[Laughing]* You know, one of the things . . . and I think it probably comes from your interest in other things than the law and going back, actually, to your undergraduate and master's degrees in English literature. Not only do the phrases show up in the opinions; but I can recall . . . I have to tell a story on you.

William Newsom: Good.

William Stein: Actually, it's not on you; it's about you.

William Newsom: Please.

William Stein: I was fascinated in oral argument that the lawyers would get up and argue for a period of time, and then you could just come up with, out of the air—it was nothing you could've prepared for—a quotation, a piece of poetry or prose, just a quotation that just kind of summed it up, put a dot to the end of it. [*laughing]* And then everybody said, the lawyers looked and said, "What?" *[laughing]*

William Newsom: "What did he say?" *[laughing]*

William Stein: "Where did that come from?" *[laughing]* The most obscure references in literature.

William Newsom: I could dredge things from what I call the well of unconscious cerebration.

William Stein: Do you do a lot . . . you must've done a lot of reading outside the law.

William Newsom: Yes. It was always my passion, particularly in poetry.

William Stein: I remember one phrase that was . . . came out of a case in '81 that you might otherwise not remember, but it concerned the conviction of a conspiracy to basically elevate misdemeanors to felonies. And I think you coined a phrase about something to do with a conspiracy to tattoo a minor becomes a felony. *[laughing]*

William Newsom: I remember that well. *[laughing]*

William Stein: I never forget it, I have to say, I have to say. *[laughing]*

One of the things that I find quite interesting in these is where you take the cases that you actually dissented in that then the Supreme Court took over and affirmed your position. I think I remember one that I found the other day involved a man who was a liquidator running, quote, "going-out-of-business sales" in the old City of Paris Building?

William Newsom: Yes, I vaguely remember that.

William Stein: Yeah, well, the newspapers and the broadcast people got on him as a charlatan, that he wasn't really going out of business and these items were just basically being brought in to sell. And he sued them for libel and the trial judge ruled that he was a quote, "public figure," close quote, and so that he had to prove malice. And you dissented. But it was affirmed, and you dissented on the grounds that he was a . . . I remember you said he was a liquidator, not a legislator *[laughing]* . . .

(00:34:58)

William Newsom: *[Laughing]*

William Stein: . . . and that there was no salutary public purpose served by conferring so broad an immunity on his detractors.

William Newsom: *[Laughing]*

William Stein: And by god, the Supreme Court grabbed that up, reversed our decision, and you came out the winner on that one.

William Newsom: Sounds good. *[laughing]*

William Stein: I know, it was. And then there was Norris. He was the fellow who was being transferred . . . he was a prisoner being transported from San Quentin to court who overcame the guards and made them drive him to San Francisco. And they'd convicted him of kidnapping to commit extortion, because he'd extracted out of these officers their official duty of driving him to San Francisco. *[laughing]* In that one—

William Newsom: Seems a little tortured. *[laughing]*

William Stein: Well, yes, and you had pointed out in your dissent that manifestly his purpose was not in kidnapping the officers to have them commit official duties, but to get him out of the . . . to escape. *[laughing]*

William Newsom: Rather good. *[laughing]*

William Stein: And by god, the Supreme Court affirmed and took your dissent and made it the majority opinion.

William Newsom: Delightful. I'd forgotten that.

William Stein: *[Laughing]* I have to say, I'm a little bit embarrassed on this one, and I'll have to go back and figure out how I got on the wrong side of this one. But in *People v. Crow*, there was a prosecution for welfare fraud. The sentence had been enhanced for a loss exceeding $25,000, and Dossee and I affirmed that. You dissented on the grounds of, "Well, wait a minute. These people were on welfare, and so they were entitled to some of it. So when you subtracted what they were entitled to from what they took, it's not $25,000 net loss."

William Newsom: Interesting.

William Stein: I'm amazed today to figure out how I missed this; but anyway, the Supreme Court in fact sent it back for a recalculation, subtracting out—

William Newsom: They did.

William Stein: Yeah, they took your dissent and said, "Subtract out what they're owed, and then if it's more than 25,000 enhance it; but otherwise, you know. . ."

William Newsom: I'm delighted to hear that.

William Stein: You've been very successful in your dissents.

William Newsom: *[Laughing]*

William Stein: And some of your majority opinions are dissents that I won't go into *[laughing],* but I just don't—

William Newsom: Did you ever hear about the . . . Did I ever mention to you that I had a . . . I wrote a long dissent in a case involving a woman whose husband and herself, the two of them, owned a chain of taco stores and very lucrative; and I wrote a long dissent, an angry dissent, based on the notion that she was innocent and that the license was half-owned by her as community property. And so I can't remember how I worked this out, but I quoted a justice named Figg-Hoblyn, the chief justice of the Alabama Supreme Court, to the effect that mere sale of cocaine did not

involve moral turpitude. And that went nowhere as a dissent; it's not one of my famous dissents, but I thought it was very well-written, and I had a lot of fun with the case. And then the National Organization of Women wrote me a long encomium of a letter saying, "God bless you for protecting the rights of innocent women." But they still lost the license.

William Stein: I wanted to go back to the *Schoenfeld* and also the Pete Pianezzi. You don't drop the cases when they're final.

William Newsom: I don't.

William Stein: You don't. You basically take the law and your conscience, and you go on with it.

William Newsom: As a pit bull might go on with a bite he's taken of something for several years until you pry his jaws loose.

William Stein: Tell us a little bit about Mr. Pianezzi and how you got into—

William Newsom: Pianezzi was somebody I ran across in the North Beach many years ago. I heard a story, and I always heard that he was framed. And so I worked on the case outside the court system, and I determined on my own that he had, in fact, been framed. And a reporter for the *San Diego Union,* called John Sandifer, called me one day; he said, "I just picked up some information from a stool pigeon for the FBI," a famous stool pigeon, Fratianno?

(00:40:04)

William Stein: Uh-huh.

William Newsom: Jimmy Fratianno? And Jimmy Fratianno was interviewed by the FBI, and he said, "This murder was committed by . . ." And he named the guy, he said, "and they pinned it on some poor guy named Pianezzi." So this reporter called me and told me that. And so I took that, I went to the Supreme Court with it and persuaded the majority of the Supreme Court to—they had to grant, they had to give, permission to grant a pardon to Pianezzi.

So Jerry Brown was able to then—because he had the clearance of the court, he was able to grant Pianezzi a pardon, which I got years later, and Pianezzi and I became great friends. He went to the North Beach Restaurant every day and he had played cards with Pee Wee Ferrari and those guys, and he was a terrific guy; but it was very satisfying to me to know that I'd had something to do with clearing Pete's name. Pete never . . . he said, "I was no angel, Bill; but I never killed anybody in my life."

William Stein: "I might've done some things they didn't get me for, but . . ." *[laughing]*

William Newsom: That's right. *[laughing]* "But I never murdered this guy and never murdered anybody."

William Stein: But you also in the *Schoenfeld*, in the kidnap case we talked briefly about . . .

William Newsom: Yeah.

William Stein: . . . there's still a lingering issue there. You were required as a justice in following the law to affirm the sentence that had been imposed, but you feel . . .

William Newsom: Yes.

William Stein: . . . you still feel, and you did then, that it's unjust and that the time has come to . . . and you keep . . . every time they come up for parole, you keep . . .

William Newsom: Yeah, I write a letter.

William Stein: . . . you keep writing a letter.

William Newsom: Yeah. So far no good, but I'm trying.

William Stein: Yeah, but, I mean, you do that. I don't know of very many people who would.

William Newsom: I have strong feelings about it.

William Stein: Yeah.

William Newsom: I think it's a gross injustice.

William Stein: Your feeling of justice is enough.

William Newsom: Yeah, I'm . . . it's melodramatic to say, and it's self-serving; but I do have a capacity for outrage when I see a gross injustice.

William Stein: The court today is . . . You've been retired now a little over 10 years.

William Newsom: Twelve, I think.

William Stein: Twelve years.

William Newsom: Yeah.

William Stein: When you retired, the Canon of Ethics was I think still being written by the California Judges Association, and now of course

it's being . . . there's a constitutional amendment, and now it's under the auspices of the Supreme Court. What started out in my opinion as the Ten Commandments, you know, "Thou shalt not," has now become like the Federal Code of Regulations and the IRS Code. And it's just a changing era. Did you ever . . . do you have any feelings or anything you want to say about . . . well, for instance, you'd handled a lot of environmental cases, and your background in that is . . . I mean, that was your life, in a way, a big part of it.

William Newsom: Yeah.

William Stein: And no one ever considered that there was anything unusual about that, that you would work on the cases. You were the judge.

William Newsom: Yes. And also I like to think that I had the capacity to put aside my personal prejudice and sometimes on very painful grounds make a decision that I thought followed the law.

William Stein: Yeah. You were the president of the Sierra Club, weren't you?

William Newsom: No.

William Stein: No, but I thought that you were the—

William Newsom: I was a member of the Sierra Legal Defense Fund.

William Stein: Okay.

William Newsom: Yeah, the predecessor of the Earth Justice Now.

William Stein: When I go . . . I've been through a sampling of the cases, and I won't bore you with it today; but you wanted . . . you know, the quote, "side you might favor" won as many as it lost.

William Newsom: I think so.

William Stein: And if . . . I remember there's a Coastal Act case where the developer had spent a lot of effort and time and money, but hadn't gotten the subdivision map when the Coastal Act came in, and the question was whether he could, whether he was entitled . . . You found he had invested right in completing that subdivision. And then in the next case, the same parties, you said, "But you can't do the second part of the subdivision that you haven't invested money and time in now without complying with the Act."

(00:45:02)

But you know, today the approach to the ethics seems to be if anybody . . . It's become, to me, it's become more subjective than objective.

William Newsom: I think you're right.

William Stein: And I think it's really hurt the ability to—

William Newsom: I think it's hurt, hurts a lot. I do.

William Stein: Because every time we recuse ourselves for some . . . you know, somebody might think we can't be fair, then they say, "Oh, well, see? We were right."

William Newsom: I think your point is well taken.

William Stein: But you never had any, you never had any difficulties.

William Newsom: No. A couple of times I loathed what I was required to do, because it resulted in something I thought was a very important resource being destroyed; but they'd followed the law, and who was I to say, substitute my values for the law? I tried never to do that. I might have failed a few times, but I'm not aware of which occasions I failed on.

William Stein: We've talked about this off and on, and I'd like to spend some time on your colleagues. You were appointed here in '78 to replace Justice Sims and probably saved a number of trees just by doing that. I mean, Sims used to write the longest opinions, but he retired. *[laughing]*

William Newsom: Brilliant point, Bill. *[laughing]*

William Stein: That's a conservationist approach. *[laughing]*

William Newsom: Yeah.

William Stein: Justice Racanelli was the presiding justice.

William Newsom: Yes.

William Stein: And Norman Elkington was here. The three, just the three, of you, and I wondered if you would like to take a few minutes to talk about Norman, since he's not going to be interviewed.

William Newsom: That's a shame.

William Stein: Yeah.

William Newsom: But Norman was a fascinating man. He was a very conservative man politically, but he was very righteous—and not self-righteous, but righteous. He wanted to do the right thing, had a grim view of criminals, which was fine with me; but he was a little rigid, but enormously hardworking and almost always pretty much on the money, being right.

But I think another thing we're saying about Norman Elkington is a surprising thing. You may know this, Bill. Norman was an avowed atheist. Did you know that?

William Stein: I did know that. I spent . . . I was . . . for purposes of the tape here, I was appointed when Norman retired. And Norman had stayed on for 90 days and we actually shared these chambers for that time, and then he didn't have any extra work. We actually just talked about the old days for a couple of months.

William Newsom: Yeah.

William Stein: I had a very enjoyable discussion with him, and it was very interesting, because he was an atheist, but he wasn't . . . I don't know what you'd say. He wasn't a nonbeliever in a sense. I mean, he had a moral structure; he was an atheist, but he had a moral structure, probably, as you say, probably stronger and more rigid than people who, quote, "follow a traditional . . ."

William Newsom: Exactly. I think his father was a fundamentalist preacher, and that soured him on formal religion.

William Stein: Now, we didn't get into it that far; we didn't get into it that far back when we talked, but—

William Newsom: But my father always said—my father was not a lawyer, but he knew Elkington very well, and he said—"Bill, he was the hound of heaven on your trail. I would not want Elkington prosecuting me." He said, "He was a tough, tough, prosecutor, no quarter."

William Stein: Yeah, that was . . . he was with Pat Brown in the DA's office.

William Newsom: Yeah, exactly, and his brother—

William Stein: I'd forgotten that, yes. His brother was the clerk of the court.

William Newsom: Yeah; yes, exactly. They're a wonderful family.

William Stein: And, yeah, interesting. Do you remember . . . I've heard this story. Norman never told me the story himself, so I'm trying to verify that. But we have a 90-day rule, of course: If our cases aren't filed within 90 days, we don't get paid.

William Newsom: I remember it well.

William Stein: You do? Why don't you share that?

(00:49:55)

William Newsom: Because Norman changed his mind about a case 88 days into the case and he said, "Don't worry about getting paid, Bill, because I'll lend you the money till the next paycheck."

William Stein: Yeah, he was—

(00:50:10)

William Newsom: Yeah. So he said, "I have more money than I need," which meant he had money because he'd never needed money; he didn't spend anything, I don't think.

William Stein: I don't think he ever spent anything.

William Newsom: Yeah.

William Stein: It wasn't that he had a lot of money; he just didn't have a lot of expenses.

William Newsom: Yeah.

William Stein: And, now, John Racanelli was the presiding judge when you came aboard.

William Newsom: Yeah.

William Stein: And he was the presiding judge when I came aboard, but he's already been interviewed. Then shortly after you came here they added a judge, a position on the court, to make it four, and that was Joe Grodin.

William Newsom: Terrific guy.

William Stein: And we worked with Joe for—

William Newsom: Yeah, wonderful guy. He was badly treated by the public in being, what do you say, vilified or . . .

William Stein: Yeah; thrown out, yeah.

William Newsom: . . . thrown out of the Supreme Court because of the death penalty, and it was Rose Bird's . . .

William Stein: Right.

William Newsom: . . . high-profile opposition to the death penalty that Joe Grodin paid a price for, which he should never have paid.

William Stein: And I always often, to use a timber analogy, I think I always think of that situation is that Rose Bird fell and going down took out Cruz Reynoso, and then she and Cruz fell and took out Joe.

William Newsom: Yeah. Grodin was an outstanding judge; Racanelli, too. It was a tremendous pleasure, as you know, to serve with those guys. They were outstanding.

William Stein: Then when Joe Grodin went up to the Supreme Court, John Holmdahl, who had served a long time in the Legislature, came aboard.

William Newsom: Yes.

William Stein: And he was still aboard when I replaced—well, I can't say "replaced"—I took the vacancy created when Norman Elkington retired.

William Newsom: Yes.

William Stein: So there was the four of us then: it was Racanelli, yourself, Holmdahl, and myself for that period of time. You're free to say anything you want about me, Bill; but I, you know, reserve the right to put my . . . to burn the tape. But if you want to just . . . comment you want to make about either—

William Newsom: I think we had a very cordial relationship on the bench together, and I must say that leads me to make a wider observation. I think the system of having three judges decide a case leads to very good results in general, because if somebody tends to be a little too rigid or too tolerant of certain things, in our discussions we would work that out and we would compromise. And I think people are reluctant to appear to one another strident or extreme. So I think the three-court judge is a very effective judicial system.

William Stein: And then when—

William Newsom: Three-judge court, yeah.

William Stein: Yeah. Then when John Holmdahl retired, Bob Dossee came aboard; so it was John Racanelli, yourself, me, and Bob Dossee. And looking back from my perspective, I considered that the golden age. I thought that was one of the greatest group of people to work with.

William Newsom: I thought so, too.

William Stein: I mean, the three of us—

William Newsom: An outstanding court.

William Stein: Yeah. You don't have to be nice to me, Bill.

William Newsom: No, I'm going to be, because I think there was no weak link there. It was a very good court.

William Stein: As a physical historic matter, we had the earthquake in '89, and we had to vacate this building. We all went . . . that's about the time we were down in Marathon when . . .

William Newsom: Yes.

William Stein: . . . when it was the four of us who went down there. You retired from Marathon, didn't you?

William Newsom: I did.

William Stein: Or, no, did you come back here? I don't—

William Newsom: No, I didn't, no.

William Stein: No, no, you retired from down there, so we were in our exodus.

William Newsom: Yeah.

William Stein: Wandering in the South of Market era when—

William Newsom: That's right.

William Stein: But I still think when I look back on it that that group of individuals, we worked together very, very well.

(00:54:42)

William Newsom: I thought so, very well. And also, let me say about the earthquake—that led to one of the bizarre decisions of the Court of Appeal. I remember I was on the committee that had to make a decision whether to assume that every single judge of the Court of Appeal would be disabled, and therefore you had to have disabled facilities in every bathroom. And I ventured a guess that probably there would never be more than 50 percent of the judges disabled, but that was brushed aside.

William Stein: You mean physically disabled.

William Newsom: Physically.

William Stein: Yeah.

William Newsom: Yeah, physically. And so I was brushed aside by the AOC, and they required us to place facilities for the disabled judges in every chambers. *[laughing]*

William Stein: I do remember that. And then, of course, John Racanelli retired in 1991; and Gary Strankman came in as the presiding judge and—

William Newsom: Another wonderful judge, very brilliant. I think I remember when Strankman came on the court, there was some implicit criticism that he was going to be a doctrinaire conservative, and that was completely false. He was doctrinaire nothing, an

excellent judge, very bright man, and a man of complete integrity.

William Stein: I know when I came on the court and I looked over the . . . because I had been an Attorney General and practiced in front of the division.

William Newsom: Sure.

William Stein: And when I looked over the lineup, I thought, "Oh, boy, I'm gonna have trouble with that guy Newsom in criminal cases."

William Newsom: I would guess so, yeah. *[laughing]*

William Stein: But, boy, I'll tell you, when we got in here and got working, you know, we followed the law.

William Newsom: Exactly.

William Stein: And as you say, you may have had to do some things you personally wouldn't want done if it were a clean slate that you were writing on. I did some of those, had to do some of those things, too, but—

William Newsom: Bill, I was always more pro-redwood tree than pro-criminal. *[laughing]*

William Stein: Okay. *[laughing]* A couple of things I'd like to cover quickly if you feel like talking about them is how we process; you know, how you work with the staff. And how did you get your staff together?

William Newsom: I inherited Frances Dogan, a wonderful African-American woman, from Justice Sims. He asked me to keep her on for three months as a humane matter.

William Stein: Yeah.

William Newsom: And I found her so delightful and diligent that I kept her on for years, until she went her own way. And except for that, I had Warren Rider here for years and years.

William Stein: Right.

William Newsom: And Michael Murphy.

William Stein: Right.

William Newsom: Which I think is a dream team of research lawyers—outstanding people, and they were here for years.

William Stein: Right, Michael just retired.

William Newsom: Yes.

William Stein: And Warren is still with us.

William Newsom: Still with us. And of course, we had a terrific writ clerk.

William Stein: Susan?

William Newsom: Susan Horst.

William Stein: Yeah, and she's still with us.

William Newsom: And also, who was that wonderful lady, Susan who worked for Racanelli?

William Stein: Yes, who is still with . . . well, she just retired from the court. She transferred to another division when Racanelli . . . well, because when Gary Strankman came down, since he had been on the court, he was on Division Three, he brought his staff with him, and so she was . . . Susan Miner.

William Newsom: Miner.

William Stein: Yeah.

William Newsom: Terrific lawyer.

William Stein: Terrific, you know. During your stay here, Bob Dossee handled the asbestos insurance opinion. Were you on it?

William Newsom: Thank god he did. I was on it.

William Stein: Yeah, you and I were on it.

William Newsom: But thank god Bob was in charge.

William Stein: And she headed that thing up and—

William Newsom: I remember.

William Stein: And before I got here, she had headed up an important litigation on water law, as I recall.

William Newsom: A major case that Racanelli was the principal author of, which I can't remember the name of the case; but I think it's still a leading case in the whole area.

William Stein: Probably the most knowledgeable person in those two areas in the law that will ever live.

William Newsom: Outstanding person.

William Stein: Yeah.

William Newsom: Susan Miner.

William Stein: Anything else about how the court administration worked and that you want to share with posterity?

(00:59:55)

William Newsom: I thought it was an excellent system, and it worked and provided substantial justice, you know. And I look back on it with very few regrets and with a lot of pride.

I wanted to mention something that—

William Stein: Please do. This is your interview.

William Newsom: I was very flattered to see that in a recent case—"recent," 2002—another justice . . . is it Marchiano?

William Stein: Marchiano.

William Newsom: Marchiano.

William Stein: Marchiano.

William Newsom: Like Rocky.

William Stein: Well, he's—

William Newsom: I think spelled differently.

William Stein: It's an extra-different pronunciation; it's Rocky Marciano, and he's Marchiano.

William Newsom: He paid me a high compliment. He's talking about in one of his decisions the difficulty in interpreting the language of a particular statute. He said, "It brings to mind former Justice Newsom's comment that the legislation, quote, 'illustrates poignantly the maxim so useful in statutory construction that if the Legislature had known what it meant, it would have said so.'" I like that. *[laughing]*

William Stein: I like that. We still quote*. [laughing]*

William Newsom: You tried, but couldn't.

William Stein: Yeah. I know it's your interview, but I have to say when Strankman left, then—

David Knight: Sorry, we need to—

William Stein: Sure.

(Interview break: 01:01:30 - 01:01:47)

William Stein: Yeah, okay. Back on this thing.

William Newsom: Yeah.

William Stein: Technology and how it changed and how it's affected the court and the work we do. I mean, you started out here, and we didn't have much in the way of technology.

William Newsom: Very little.

William Stein: And you've seen it grow. Any thoughts on it?

William Newsom: No, I just never was able to avail myself of technology, because if I wrote something, I often wrote in longhand myself the gist of what I wanted to say, and then I could turn it over to somebody; but I couldn't handle electronic gadgets at all. So a lot of things I wrote myself.

William Stein: But you are a pioneer in the court, and you don't realize it. You were one of the first to use telecommuting before there was any "tele."

William Newsom: Was I?

William Stein: You spent a lot of time working away from the court.

William Newsom: Oh, yes.

William Stein: Which has become, by the way, much more popular and actually frankly easier to do today because of the little computer.

William Newsom: Yes, but I set a new standard for that. I thought I was . . . I think sometimes referred to as "Justice Delayed."

William Stein: *[Laughing]*

William Newsom: And I should add that I lived a lot of the time in Dutch Flat when I was working here in San Francisco. But so I did use a recording and send stuff down; but I also sent a lot of stuff by overland mail.

William Stein: It's interesting, because today we have justices who will go unnamed—but not in the First District—that don't even live in the state.

William Newsom: True?

William Stein: Yeah. And I have a home up in Gualala, where I spend probably about a third of the time myself working there.

William Newsom: Who was the judge who . . . was it Zerne Haning . . .

William Stein: Zerne Haning.

William Newsom: . . . who was an avid fly fisherman?

William Stein: Fly fisherman.

William Newsom: He had some of his most brilliant insights while catching trout in the streams of Montana.

William Stein: Yeah. I think they made a movie about him. You know, *A River Runs Through It*, with Robert Redford playing the justice. *[laughing]*

William Newsom: *[Laughing]*

William Stein: No, but you actually . . . see, you actually pioneered that.

Now, I do remember you always had a lot of car trouble. You remember that?

William Newsom: I did.

William Stein: We would get a call that you were having car trouble and you would be delayed; and as it turned out the car trouble, as I recall, was the fact that the car was incapable of the speed required to cover the distance from where you were.

William Newsom: Exactly.

William Stein: Yeah.

William Newsom: Or the car could not extract itself from snow, which was a common thing up there, too.

(01:05:00)

William Stein: That's right, Dutch Flat.

William Newsom: Sometimes in August we would have sudden snowstorms.

William Stein: You just never know.

William Newsom: Yeah. *[laughing]*

William Stein: You had some other outside interests unrelated to the law: mountain lions.

William Newsom: Yes, I was the head of the Mountain Lion Foundation, and I led the fight to ban trophy-hunting of mountain lions; and that was my pre-judicial days.

William Stein: Quite successfully, too.

William Newsom: I think so.

William Stein: Yes, they've made quite a comeback.

William Newsom: Yeah. I deny it, but—

William Stein: Well, no, no, I think, yeah—

William Newsom: Yeah, they made a good comeback.

William Stein: They have.

William Newsom: I just don't like to concede it.

William Stein: Okay. *[laughing]*

William Newsom: Yeah.

William Stein: How about the impact of your judicial career on family life and social activities? Did you ever have problems in—

William Newsom: No, minimal. I was divorced. I've only been married once, and I was divorced at the time that my wife, the ex-wife, came up for, I remember, to Placer County for my swearing in. And we remained very close friends over the years; she just died about five years ago, Tessa, and neither of us ever remarried, so . . . but it wasn't a huge impact.

William Stein: The only thing I noticed in your social activities when I see your picture in the *Nob Hill Gazette* is that the title has changed considerably in the interim. It used to be Associate Justice William Newsom; now, it's Mayor Gavin Newsom's father, Bill.

William Newsom: Exactly, yeah. *[laughing]* Yeah, exactly.

William Stein: So are you having trouble . . . you actually toyed with the idea at one time of running for mayor of this town.

William Newsom: I did.

William Stein: You did run for supervisor.

William Newsom: I did.

William Stein: And Congress?

William Newsom: No.

William Stein: No? I thought—

William Newsom: In one year for supervisor and state Senate against Milton Marks . . .

William Stein: State Senate, yeah.

William Newsom: . . . who was an impossible person to beat. I came fairly close, I think 53-47 or something.

William Stein: Yeah.

William Newsom: But he successfully beat John Burton, many people.

William Stein: For historic purposes, there's a phrase here that if there were more than two people gathered on the street corner in San Francisco, one of them would be Milton Marks. *[laughing]*

William Newsom: I remember going out and to a rosary, and I would have sworn I saw Milton in a priest's garb leading the rosary. But it couldn't have been Milton; he was Jewish, I think.

William Stein: But he might have been in the audience. *[laughing]*

William Newsom: *[Laughing]* He covered every wake in town.

William Stein: I know. In fact, I recall being one of the first at a wake, and he'd already signed in. *[laughing]*

William Newsom: Amazing.

William Stein: But it was . . . anything you'd like to add about your career here as a judge and—

William Newsom: No. It was thoroughly enjoyable. I loved every minute of it, and I thought I did a fair job. But I don't miss it; I did enough of it. I think I wrote enough opinions. I covered most of the subjects over the years.

William Stein: Any thoughts on how you want to be remembered, or your jurisprudence philosophy or—

William Newsom: I think if I were remembered, I would be remembered as a reasonably moderate person and with a sense of humor. But somebody once said about another person, but it could be my epitaph: "He looked life full in the face, but out of the corners of his eyes."

William Stein: Okay. I think that probably covers it.

William Newsom: Thanks.

William Stein: You're welcome.

Duration: 69 minutes
May 25, 2007