David Knight: Your name, and spell your last name for me. Allow me to adjust my audio level.

Robert F. Kane: Okay, all right. My name is Robert F. Kane. K-a-n-e.

David Knight: And you are retired from?

Robert F. Kane: I'm retired from the Court of Appeal, First Appellate District, Division Two.

Steven Vartabedian: It's my pleasure today to be talking with retired Associate Justice Robert F. Kane of the Court of Appeal, First District, Division Two. My name is Steve Vartabedian, and I am an associate justice of the Court of Appeal, Fifth District.

As a part of the Centennial of the California Court of Appeal, the Appellate Court Legacy Project Committee is creating an oral history of our appellate courts and their justices. Good morning, Justice Kane, and I thank you for chatting with us today.

Robert F. Kane: Good morning—afternoon—to you too.

Steven Vartabedian: Did I say good morning?

Robert F. Kane: You did.

Steven Vartabedian: Good afternoon.

Robert F. Kane: Well, when you're working hard I know you lose track of time. That's okay.

Steven Vartabedian: Thank you. You have had a truly remarkable career. As an attorney you tried more than 250 civil cases to jury, to verdict. You rapidly rose from the San Mateo County trial bench to take your place on the Court of Appeal, where you served for more than eight years.

You retired from the bench at the age of 53 and since that time resumed the practice of law, acted as a U.S. arbitrator with Poland, served as a U.S. ambassador to Ireland, and did private judging for more than 20 years.

But before we get into your distinguished, multifaceted career, I would like to start with your formative years and learn a bit about what shaped the person behind these tremendous accomplishments.

I understand you were born in Denver in 1926, the youngest of a family of seven boys and one girl. And I believe you settled in the Bay Area in about 1937. You can correct me if I'm off a little bit on that.

Robert F. Kane: That's right.

Steven Vartabedian: I understand that as a child you moved around a lot. Would you say that was an effect of the Depression itself, or were there other contributing factors in your life?

Robert F. Kane: Well, I think the Depression was a major factor, because my mother died when I was a year old. So that was in 1927, and that left my father with these eight children, some of whom were . . . all of whom were older than I, of course. But my four oldest brothers were . . . my oldest brother was 20 years older than I, and then they come down in kind of two-year increments. And so what to do with me, of course, was kind of a big issue.

I'm getting a lot of this from history myself. And initially my mother's very good friends in Trinidad, Colorado, took me in for a year and I lived with them. And I'm told they wanted to adopt me, but my father didn't want to break the family up and wasn't about to let me go.

So after that, at some point in time, maybe two or three years later, my father remarried and we had a stepmother; and so there was a little stability there. But then I also lived at different times with uncles and aunts and then later on with . . . as my older brothers became married and so forth, they pitched in.

And of course, my sister basically raised me almost from the time I was born until I finished high school. She was always in the picture. And she was about eight years older than I, so she was just a youngster herself, but she was sort of the surrogate mother in the overall picture.

Steven Vartabedian: Now, you mentioned that your mother died when you were one, and I understand that your father remarried; but even your stepmother passed away after a short period of time with the family. I can imagine it was very difficult for your dad with so many children. How did he manage? Were there things that were difficult for him and he had to find others—and I think you've already described that a little bit—to help with the children?

Robert F. Kane: Well, that's hard to reconstruct, of course, because I was so young that I didn't observe the real difficulties that my father, my sister, and my brothers went through. Though I can appreciate that; but when you stop and think that here is a man who was lucky, he'd been an orphan himself.

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He had a sixth grade education and done all kinds of things, but due to the Depression of course was out of work. There just

wasn't any work. And how he fended with this is really quite remarkable, and it must have been a huge burden that I just can't even feel.

One thing he did. . . . My one surviving brother who's now about 86 told me recently something I hadn't known before, when the family moved around a lot in Denver from house to house. And my brother still remembers the addresses; he can rattle them off. And it's really in a sense comical; we make a kind of joke out of it. But he was rattling these off to me and I said, "My goodness, in some cases they moved across the street." And I said, "Well, what was that all about?" He said, "Well, you know, Dad didn't have a job and he finally hooked up with a real estate company and was selling homes, and he would sit in these homes and show them to people and try to sell them."

And of course there was no real estate market going on in the Depression, but at least he had a place. But he moved the family into the house. You see, sometimes we'd be there for two or three months; then the man would decide that he would sell the house or he's going to take it off the market. And he said Dad would then find a place across the street. So there was a lot of that that went on; that's the first time I heard about that, but that was the kind of a picture that was going on.

Steven Vartabedian: So lot of these things you learned many years later?

Robert F. Kane: Yes, I mean I was in the package, but I was not old enough to appreciate it.

Steven Vartabedian: You've mentioned your sister—your only sister, your sister who I believe was about eight years older than you. She and her husband, your brother-in-law John Burke, had a big impact on you, I understand. Please describe the relationship that you had with them for us.

Robert F. Kane: Well, I would say that's absolutely right. I think my brother-in-law John Burke was probably the most influential person in my life and incidentally was quite a great influence on my son Steve; they were very close. My brother-in-law and my sister were unable to have children; and when they were married in 1939, they took me into their home.

The prior year I lived with an older brother and his wife down in Tucson, Arizona. But then when my sister and John married, they settled in Burlingame and wanted to take me in. And I was ready for high school and I had gone to some grammar schools in Burlingame, so I knew Burlingame. I'd lived there for a couple of years before I went to Tucson.

So I wanted to go to Burlingame High School in the worst way. It was a very good school, and the friends that I had were all going there. And my brother-in-law wanted me to go to Bellarmine Prep in San Jose. He thought I needed some discipline and some guidance by the good, strong Jesuits at Bellarmine. And I would have to take the train down there.

I begged and pleaded and made a deal with my brother-in-law, that if they let me go to Burlingame that I would study hard and get on the dean's list and do all the right things. So they bought that and let me go to Burlingame. I had a wonderful, wonderful time at Burlingame High School.

And my brother-in-law was, God rest his soul, an unusual individual. He went only through junior college. His aunt—who raised him in San Mateo because his mother had also passed away when he was quite young—his aunt raised him; and she was a schoolteacher, well known in San Mateo. And John had an absolutely innate sense of right and wrong.

He had a very high moral sense. He was a voracious reader. If one were to talk to him you'd think that he had been a student of the classics. I mean, he knew literature, he knew science. He still remembered all the theorems in geometry when I was going to high school, and he'd been out of high school, you know, 20 years.

That's just an example. And we've often commented in the family that it's a shame that John was not a teacher at some school. He'd have been a marvelous teacher . . . and a great philosophy of life and able to communicate.

(00:10:03)

So he just set such a great example and assisted me in everything I did—I mean, to the extent I became a student, he was responsible for that. I recall one time he said he'd pay me a nickel if I'd read ***Time*** magazine, which was a very, very good magazine at that time, in my judgment. And of course I had no interest in reading ***Time*** magazine; I wanted to play football or whatever. But I did, and he paid me and I kept it up and it was worthwhile.

Steven Vartabedian: You know, before your sister passed away, I'd been told—and this is couple of years ago at the age of 86—I'd been told that she would often say about you, her brother Bob, that you were always a happy kid in spite of the hardship you endured. To what do you most attribute this positive attitude?

Robert F. Kane: Well, I think that going back to John Burke, a lot of that was instilled by John, who instilled in me a strong faith, I think. I've thought about that, and I think that's it. And of course I

recognize that some people are happy and some are more pessimistic, you might say.

Part of it is nature, I suppose, but I've been around an awful lot of good people and had little things to admire and appreciate. I've had a lot of blessings. A lot of good things have happened to me. This is not a bleak picture at all in my mind. I think the Depression was terrible; I wouldn't wish it on anybody. But I have to say that I think it gave me a real appreciation for what it is to be poor and how you have to scratch out of it.

Steven Vartabedian: In fact, as a subteen and as a teenager I understand you held a variety of jobs. Now, could you tell us about some of those?

Robert F. Kane: Yeah, this is of course a family joke. Something would come up and somebody didn't want to do something and I'd say, "Oh, gee, I used to do that for a penny or a nickel an hour." And my children thought that I was boasting. But I had to fill out an application one time for some sort of a job or a position or a committee or something that required me to list all of the jobs that I'd held all my life. So I did that, and of course it came up; and a lot of people of my generation would have the same kind of list, I'm sure. But it started out I started to work. My first job was I was 8 and I got a job as an usher in a neighborhood theater in Denver. And my pay was to be able to see all the movies that I wanted, and I got a free hamburger at the little place next door once on the weekend. That was it; there was no monetary pay.

But that was it, but I was delighted to have that. And of course I've sold papers, delivered papers, driven a dump truck, worked on the railroad. I worked on ships, helped build ships before World War II, in the early part, before I was old enough to go in the service. I had jobs working for what was then a pest control company, where my kids get a big kick out of that. They always referred it to the cleaning of the ant cans; because in those days the way they did, the way a pest control place would take care of your home . . . This man in Burlingame had developed or he'd come up with the idea of taking old tin cans that soup came in, you know, or small tin cans; then he would cut those off where they were then about two or three inches high, and he would fill those with this poisonous syrup and plant those around the home or the business.

And then his crew would pick those up in these big trays. And he had created a washing machine in his garage at home; he made it. I don't know how he concocted this machine, but they'd bring these trays in. And my job after school was to go there and take these paper cups that were inside these cans that had this dirty syrup in them, discard those, and then put the new cups in. That was my job, the ant can, but I worked up from that to a delivery man at his place, so I thought that was pretty good.

Steven Vartabedian: Those were the days before hazardous chemicals and so forth.

Robert F. Kane: Oh, nobody had heard a thing about that; didn't hear a thing about that.

Steven Vartabedian: About how much did you make in that job?

Robert F. Kane: I started out there at 15 cents an hour, and then when I got moved up to the delivery man I think he raised me up to a quarter. His name was Mr. Robertson. He was a nice old gentleman.

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Very strict, old Scotch guy, but he also let me clean up the main . . . They had a business down by the railroad station at Broadway in Burlingame, and on Saturdays I could sweep up and things like that, and so I got elevated a little bit.

Steven Vartabedian: As you've told us, you very much wanted to attend the Burlingame High; and in fact you did, and graduated in 1944. Tell us a little bit about your interest and activities in high school.

Robert F. Kane: Well, of course I had to pay attention to the studies because I had this bargain with my brother-in-law that I had to keep. And I did. I was not a great student, but I was a good student. I worked hard and I was interested in sports. I've always been interested in sports; I played a lot of sports whenever I could. And I was interested in student government, and that was very much encouraged at Burlingame. It truly was a wonderful school. When I think back at the administration, at the teachers that I had, I still remember most of them by name; we're talking about a long time ago. I can picture them, and I had a great deal of respect for every single one of them. But I got into sports. I played basketball at Burlingame four years. I played football two years. I played baseball one year and I played tennis two years.

I was even in a school play. I remember that; I got asked to be in that, and in those days it was kind of sissy stuff if a boy got into a school play. But I got in and I enjoyed that actually very much. And then I got into student government and served on the student council and that sort of thing and ended up as the vice-president of the student body in my senior year.

Steven Vartabedian: You evidently had planned on pursuing a pre-dental education after high school; but like many of your era, your education was interrupted by World War II and you served in the U.S. Navy. How did your military service affect you?

Robert F. Kane: Well, I think the main thing in thinking about it is probably maturity. You grow up pretty fast, I think, when you go from pretty much open freedom to a point where you have to submit to discipline, regularity. You have uncertainty about your future. We certainly didn't know what was going to happen. I think it enhanced what patriotism I had. I was very, very proud to be part of it. I had a lot of wonderful friends that went in different branches of the service.

One of my closest friends—I think about this every day—one of my closest friends at Burlingame who was an only child, he went into the Army the same day I went into the Navy. We were drafted, of course, because we were 18; and we had been deferred two or three months in order to graduate from high school. So we all were drafted. And when you went up to the draft center, you can make it into the Navy, you make it in the Marine Corps, or the Army depending on your choice or what was available.

Well, my friend Keith Dalton ended up in the Army. He was just one of the best young men you'd ever, ever meet, and he went off to either Fort Ord or Camp Roberts for his basic training, I remember. This was like in June of '44. And he was shipped out to the Philippines in September, and I think he was dead in October. His first day in battle he was killed. So that made a tremendous impact on me—that we have to protect ourselves.

Steven Vartabedian: So we get to after the war, and it's 1946. You're I believe 20 years of age at that time; you're back in the Bay Area. Where did you go from there? Because you had this idea of going to dental school, doing the pre-dental education—what were your next steps at that point?

(00:20:01)

Robert F. Kane: Well, I had intended to go to Berkeley, and I already applied and so forth and complete their pre-dental, take their pre-dental course at Berkeley. And the reason I was interested in dentistry is that my sister worked for a dentist in Burlingame for several years near where we lived in this little, small apartment, and I used to stop by there frequently and visit with her. And the dentist was a very nice man.

And as I say, I noticed, I thought, gee, at that age you're starting to think about, what are you going to do? And I thought, well, gee, this looks like a pretty good life—because there he was. He's in a nice white coat. His fingernails are clean. He's calm. He's going to play golf on Wednesday afternoons and he seemed to have a nice car and a pretty good life.

I thought, well, gee, that ought to be pretty interesting. And he encouraged me; Dr. Brinton encouraged me. And so that,

together with my closest friend Byron Van Alstyne—he wanted to go into dentistry and his father was a dentist, and I was very close to them. His father and mother were sort of surrogate parents to me a lot. So Byron, when he went into the service—he was a year older than I—he went into the Navy and went into the hospital corps and became a dental assistant.

So when I go into the Navy, he's already working in the dental clinics at the naval training station in San Diego. And he said, "Well, why don't you get into the Navy and into the hospital corps, and maybe we can get you switched over into the dental part? And we'll work together and then we'll go to college afterwards and we'll go to dental school. And in the meantime we can play a lot of basketball." And I said, "Well, that sounds good." So that was our plan.

So unfortunately Byron did not have the science background that I had at high school. And he was probably the greatest natural athlete I've ever seen, this Byron guy, but he wasn't much of a student—but he had to become a student if he's going to go to dental school. So he said, "Look, why don't we go to junior college together and we'll play basketball and we can do pre-dental there. We're GIs; we can get in after a couple of years of junior college." I thought, well, that sounds pretty good.

So he and I went down to Menlo Junior College in Menlo Park and we enrolled. And they had a pre-dental program—all of the tough sciences, organic chemistry, the whole everything. And so we went down there, and of course Byron was a basketball genius and star and I had to scratch my way around trying to play and keep up.

And I started thinking about things. I said, wait a minute. He's there on a scholarship and I'm there paying; I'm using up my GI bill at a private junior college. This doesn't make any sense, because I'm going to run out of money.

So I switched up to San Mateo Junior College and completed the pre-dental course there and was about to go into dental school. Because you could get in with, they say, with two years at that time if you were a GI and you had the requisite courses—you could be admitted to dental school.

I had the good fortune of my brother-in-law again being very friendly with the dean of the dental school at the College of Physicians and Surgeons, which is now affiliated with the University of Pacific. There were two dental schools in San Francisco: Cal and what we call PNS.

So we talked to John Tocchini, the dean of the dental school, and he looked at my transcripts and he said, "Well, you're okay." But he asked me about how I was with my hands:

"What's your manual dexterity?" I told him I really didn't know; I'd never really worked. I worked with my back most of the time. And he said, "Well, let's find out."

So he gave me a block of plaster of Paris with a diagram of a jaw with teeth and a vernier caliper and some other tools. And he wanted me to carve out a jaw and the teeth per that diagram. And I slaved over that. I slaved over that, and it was terrible. It looked like a Neanderthal man or a caveman when it came out.

And John was good enough to tell me. He said, "Look, you could get through dental school, but you'd be a horrible dentist. You'd better think about something else." That was a great gift to mankind, I'm sure, because I would have been terrible. So in the meantime I graduated from the junior college. And I got the wonderful academic foundation, but I don't know what I'm going to do with it, and I still got two years to go for a bachelor's degree.

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In the meantime my friend Byron has now been recruited by USC on a scholarship to play basketball there, and he talked me in again to going down to USC. He said, "Oh, you come down there and we'll play basketball." ***[laughing]*** Well, I went down there and that lasted a semester because now I'm paying tuition again. The coach at USC got me a job in a box factory down on La Cienega Boulevard or someplace down there, which helped; but in the meantime I didn't know what to do.

I'm taking history courses and this and that and the other thing. I thought, what am I going to do? Am I going to be a salesman or am I going to be . . . what am I going to do? I don't know what career is available for me. So I went to the Veterans Administration and took an aptitude test and it came out real estate, a few things like that.

Law was there, but I hadn't thought about law. But I had friends who were going to law school, mostly in San Francisco, and I decided, well, that sounds like a reasonable approach. I think that's better than going ahead and getting a bachelor's degree in business administration. I'll at least be able to use the law degree for something.

So I applied and then I was accepted for the next September. So I went up, came back home to the Bay Area, and spent the spring semester in the undergraduate department of USF, just to kind of kill time. I had a couple of part-time jobs. So I started law school in September of '49.

Steven Vartabedian: So based on the aptitude test and the fact that some friends were involved, you decided to go into law. Did you have any idea at that time what it was like to practice law?

Robert F. Kane: I didn't have a clue, didn't have a clue. And we didn't have TV programs dramatizing the practice. I really didn't. Everybody told me how hard it would be and how different it would be to study. They threw up a lot of challenges; but I said, I'm going to give it a whirl.

Steven Vartabedian: And for people who had served in the military, did the same rule apply, I guess, that you could have two years of education and an associate of arts degree to get into law school?

Robert F. Kane: Yes, yes. And I actually had three years, and I could have gotten in, but they weren't starting any classes in the spring, so I had to wait until September. So it was great.

Steven Vartabedian: I understand that . . . well, I guess it took you two and a half years to finish law school. And it's during this time that you meet your wife of now 55 years, Mary Catherine, while you're in law school. So that was quite an important time for you, to say the least.

Robert F. Kane: Oh, definitely, it was.

Steven Vartabedian: Both in career and meeting your wife.

Robert F. Kane: Well, I fell in love. I really did. I fell in love with the law, and I was fortunate also because I needed . . . But I also was fortunate in getting a part-time job with the law firm of Bronson, Bronson & McKinnon down in San Francisco, downtown. At that time they were a firm of about 12 or 13 lawyers, although probably the most prominent trial firm in San Francisco. But they only had . . . not like today where there are law clerks all over the place. They didn't have law clerks as such. The firms didn't have that.

They had what they called a calendar clerk, Bronson did, a calendar clerk who kept track of all the lawyers—really the trial lawyers' cases in terms of motions and when things are due and not due; and a messenger clerk who would deliver all of the papers for filing at the courthouse and also serve other lawyers in those cases.

In those days they didn't serve things much by mail. Everything was by personal service and you'd get receipts. So I spent a lot of my time . . . my first job was as the messenger clerk, which was the lower on the ladder, and that was running all around San Francisco. I got to know all of the law offices that were existent at that time, how they operated. I got to meet a lot of the lawyers, have them sign these receipts for service.

Out at the courthouse, meeting all of the clerks, learning how to file papers, where the files were kept, how to get access to a file. What the time limits were on service and jurisdiction and things like that, I picked up that way.

Then when I moved up to the calendar clerk job, where I sat at a desk in the library . . . and every secretary daily would send her lawyer's schedule, and so whenever a lawyer tried a case and lost it today, she would send me a notice.

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I then had a bunch of stamps and things and I would then calendar when affidavits were due, the time limits on that, when the judge's jurisdiction would run out. And I'd keep track of all of that and put that out every day. That was fascinating. I basically learned the Code of Civil Procedure right there, in that job. So it was terrific.

Steven Vartabedian: While you were getting an academic training in class, you're getting real-life training in that.

Robert F. Kane: Then of course I got to talk to lawyers. You know, when I was out at the courthouse, sometimes waiting for a judge's signature or something, maybe something is in session, I'd get a chance to peek in and watch really good trial lawyers—because I knew who they were by then—try cases. And you can learn a lot; you learn a lot about . . . and really good trial judges. So you see how the thing works. I was blessed.

Steven Vartabedian: That sounds like quite a training ground, for sure.

Robert F. Kane: It was terrific.

Steven Vartabedian: So it's 1952. You graduate and pass the bar. Correct?

Robert F. Kane: '55. Excuse me, '52, right. '55 is when I went to Redwood City, that's right.

Steven Vartabedian: So what's your next step after passing the bar? Where do you go from there? Did you stay with the firm?

Robert F. Kane: Again, I'm blessed again. I mean, jobs were hard to come by and I didn't know where I was going to end up. And Keke and I had married the previous September, and of course she's now about ready to deliver Steve, our first child, in June of '52. And so I had taken the bar, and the results and Steve's arrival almost happened at the same time.

I didn't know where I was for a while. But what happened is I'd finished my job up as the calendar clerk at Bronson's and then studied for the bar and took the bar. But I needed some

money, so I got a job in the post office at the Ferry Building down in San Francisco, which paid me a little bit more.

I was working down there in the post office at the Ferry Building after the bar results came out, and I got a call from Lawrason Driscoll, who was one of the senior partners at Bronson's and was sort of the . . . not sort of; he was the top trial guy at that time and a wonderful man to me, a very nice man to me.

He called me and wanted to talk to me about a job. And I'm wearing dirty dungarees, and I've been handling dirty mail and mail sacks all day long, and he wanted to talk to me right then. I was too embarrassed, frankly, to go up to the office, and I looked terrible, and I told him that. He said, "Well, I'll meet you down at the coffee shop." So we met down at the coffee shop and had a cup of coffee and he offered me a job to come onto the firm.

I was really shocked, because I was a guy that went to law school and worked part-time. I wasn't coming with the Order of the Coif and all that sort of thing from some very prestigious law school. Well, I thought my own school was pretty prestigious, but not ***that,*** and I was really shocked. And Bronson had had several—law clerks, we'll call them—like me in the past, and I think there'd been only one other lawyer that they had hired from that pool. So I felt pretty privileged.

Steven Vartabedian: Well, they must have thought a lot of you.

Robert F. Kane: Well, and I thought a lot of them. It was great. And when you think back, when I tell people it was wonderful and the starting salary was $320 per month and there were no fringe benefits, there wasn't health insurance in that. That was it.

Steven Vartabedian: Which probably seemed like a lot of money at that time.

Robert F. Kane: Absolutely. Our expenses were low. We didn't have a car; Keke and I didn't have a car. I took the train or hitchhiked back and forth to San Francisco. So it was fine.

Steven Vartabedian: So what kind of cases did you handle at first with the Bronson firm?

Robert F. Kane: Well, at first of course they had me going out on medical records depositions of custodians of records. Believe it or not—I know today this is all done informally and so forth—but in those days, in 1952, if you wanted to get the medical records pertaining to somebody, you subpoenaed them for a deposition. And you would go, if they wouldn't come down to your office, you'd go out to the hospital or the doctor's office and have a court reporter; and you would identify their records and have them copied. That was it. So I did that.

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Then, again very fortuitously, a major insurance company had its prime lawyer move out of the area and they dropped about 500 cases over to Bronson of what you would call fender benders. These are property damage automobile cases. A hits B in an intersection—as I say, no personal injury, just auto damages. Basically a fight between two insurance companies; one insurance company has been subrogated to the rights of the one, they bring an action. These are the days before inter-insurance arbitration and all of that. So these battles got fought out either in the municipal courts or in the justice courts—wherever was the proper venue. And so they brought, I think it was 500 approximately, of these cases and dumped them into Bronson's office.

And so they took me and later Eddie Bronson, Jr.; the two of us, I think, handled most of those. So that was wonderful because it gave you the experience of going out and "trying" contested cases, although not before a jury.

Sometimes the justice of the peace who would be trying this wouldn't even be a lawyer. I tried a case in a barbershop one time, I remember, and it was the barber; he was the judge, but he was good. He did these things and he knew what he was doing.

Steven Vartabedian: Hopefully he wasn't cutting someone's hair at the same time?

Robert F. Kane: ***[laughing]*** No, we had an adjournment for that, but that didn't last that long either. These cases didn't last that long. But you sometimes tried even two or three of those a day if you were in one court. So that way you learn how to—hopefully learn how to—put witnesses on the witness stand, how to cross-examine, how to address the court, how to be a trial lawyer. So it was a wonderful, wonderful experience.

Steven Vartabedian: Did you have any particular mentors that you looked up to in these early years as a lawyer?

Robert F. Kane: Well, I think of course Lawrason Driscoll I mentioned. He'd probably be the prime mentor within my own bailiwick. But actually viewing these people out in the courts, there were some real models that, you know, you never could imitate them, but you could see what they would do. And these would be lawyers like—this might even be familiar to you, certainly some of the people that see this. Ingemar Hoberg was a fabulous plaintiff's lawyer in San Francisco, maybe the best for many, many years. Hoberg, Finger was the firm.

Of course I saw the great Melvin Belli many times and actually later had cases against him, and actually later than that had

him in my court as a lawyer. George Davis, who has recently passed away, was a fabulous lawyer. Vincent Hallinan is legendary. Paul Dena was a fantastic trial lawyer. And again a lot of the judges impressed me. I got where I thought I could see who was really a good judge and who was marginal, let's say.

Steven Vartabedian: I know as young lawyers we look at judges and maybe try to emulate them when we become judges. I think that's something many of us go through. Now, I understand that from 1953 to 1955 you were practicing with the firm of Roos & Jennings, and I believe it was there you experienced your first jury trial. Could you tell us about that?

Robert F. Kane: Sure. Les Roos and John Jennings were two wonderful lawyers who had an office in the Mills Tower, which is where the Bronson firm was, where I was; and I got to know them. You knew everybody in the building. The bar association actually had its lounge on the top floor of the Mills Tower. There was a lot of camaraderie there; people congregated there. And they had a mixed practice. Les Roos was a . . . he was of the famous Roos family, the Roos Bros. and Roos/Atkins and so forth. Les Roos was a very fine lawyer, a very good trial lawyer, a very good general lawyer. He was a Harvard-educated lawyer. He did some insurance defense work—not much, but some. John Jennings was a brilliant labor lawyer. He was a Stanford man all the way through. He represented some of the major maritime unions for many, many years, the largest one being the Sailors' Union of the Pacific, which was a huge labor union.

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In fact, he spent most of his time down at the union headquarters. Les Roos wanted some help on his work. John Jennings needed some pretty badly because he only did the labor work. He didn't want to do all the other collateral things that would come from the sailors that came and wanted to see their lawyer.

So they talked to me about coming in there and being able to broaden my practice. And it was a very painful decision for me to leave Bronson's, because I'd had a wonderful time there in going through law school and then for a year and a half or so as a lawyer. There wasn't any reason for me to leave other than the fact that the opportunity at Roos & Jennings looked too attractive. It looked wonderful; they were both men whom I admired. So I agreed.

So I went to work with Roos & Jennings, whose office was very unpretentious. It wasn't maybe much larger than this and they each had a separate office, but they were very small, and there was no office for me. So I had a little table in John Jennings'

office that I could work at when he was there; when he was not there then of course I could move into his chair.

So in any event I was happy doing all sorts of things there. I had divorce cases, I had probate cases, little business cases. And John Jennings and Les came to me one day and said, we've got a case that has to be tried this summer because we're coming up against the five-year statute. It's an old seaman's case that we filed against a shipping line under the Jones Act for un-seaworthiness, causing injury to this particular sailor, this merchant seaman. And I thought, this is wonderful, great; I finally get to try a jury case and I'm going to be on the plaintiff's side and have a real client.

I thought this was wonderful, and so they dug out the file and handed it to me. Of course here it is, it's now about five years old, and bear in mind this was in, like, 1954, so this was prior to discovery. Up until that time you could take the deposition of the parties. A plaintiff could take the deposition of the defendant or its agents or the defendant could take deposition of the plaintiff, but witnesses, no, unless there were special circumstances. So it was not the discovery that we have today.

So basically there was no discovery in the file, and a lot of information about people who could be scattered all over the world; these were mostly working seamen. So the thrust of the case was that Duke Himmler was the plaintiff.

I got to know Duke very well and he was a nice man, but Duke had had problems in life. He'd been a fighter; he'd been a wrestler. He'd had a conviction for, I think, involuntary manslaughter arising out of a fight in some bar or someplace in some seaport. His ears were fully cauliflowered, both ears, from the wrestling. He had tattoos that started at his neck and went to his ankles, which was very unusual in those days. He liked to wear wild, Hawaiian-type shirts open so all of his tattoos would be visible. His nose was, of course, pushed in, and he talked like a punch-drunk fighter might. But he was a friendly, affable man; and I met him, of course, and spent many sessions with him.

And the thrust of the case was that this particular ship that Duke shipped out on—I should remember the name of it, I don't right now—was captained by a man who had the nickname of Two-Gun McGee, the captain of the ship. He was a character who wore six guns like a Texas Ranger all the time aboard ship. And he liked to have people throw tin cans and bottles off the fantail or side of the ship and he would draw and shoot and that sort of thing.

Steven Vartabedian: I don't think Hollywood could come up with a better scenario than what you're describing for us.

(00:45:01)

Robert F. Kane: Well, I'll never forget this case. He was a very macho person, as I'm told, you can envision, and he liked to confront people who might be viewed as tough guys so that he could assert his authority. Of course out at sea, the captain is the authority.

So what happened was that he heard about Duke Himmler and Duke's background, so he apparently decided to have a crusade to prove to Duke and the rest of the people just how tough he, Two-Gun McGee, was versus poor old Duke Himmler. So when they would walk down the gangway in opposite directions, he would move over to Duke's path, and then when Duke would move over he would get in front and confront him—just that sort of thing.

And ultimately the crowning blow was Duke was chipping paint on the deck one day, sitting on a bucket chipping the paint. They did that in those days; prior to painting you had to chip that old, rusty stuff off. And the captain, Two-Gun McGee, was having some of the other shipmates take these empty beer cans and throw them out over Duke's head and then he'd fire.

And Duke just blew his cork. And they had to restrain him and they took him off in Enewetak, or someplace down in the South Pacific, and got him over to a hospital and flew him back to San Francisco, where he went into the public health service hospital which is out by Fort Myers. It was out by Fort Myers. And ultimately down to the big one down in Texas.

So John Jennings had filed a lawsuit for Duke against the shipping company on the theory that having a captain with this sort of aberrant behavior and knowing that he was like that made the ship, in fact, un-seaworthy. It was kind of a novel theory, but he had some support for it. But it had languished all these years. So now they come to me and say, "You're the guy to try this case." Well, I could see that it wasn't going to be at all easy, but I was so thrilled with the chance of being able to go into court to actually try a case that I was ready to go. Then I find out when I get into the file that the defense lawyer in the case is a man named George Lieberman. The firm was Appel, Lieberman & Leonard, absolutely one of the highest-thought-of law firms in San Francisco.

George Lieberman had been president of the bar, might have even been president of State Bar—very distinguished, quiet-spoken, brilliant guy. And he and one of my close friends, one of my closest friends in law school and after law school, was an associate in that firm. They only had one associate and that was my friend.

I said, my god, I've got to try this case against George Lieberman and one of my best friend works for him. That gets

compounded by the fact that the case is set for trial in August at the same time as the State Bar Convention, which I think was in San Diego at the time.

George Lieberman always went to the State Bar Convention, and he wanted to go to this one. And I wanted to go to this one too, but I couldn't because his client wouldn't let him waive the five-year statute. So we're up against it.

So I apologized to Mr. Lieberman. I said, "I'm sorry, but we have to try the case." Well there weren't any San Francisco judges. They all went to the convention. So they brought in Judge Ben, I think his last name was Culver, from Oroville or Marysville—I'm not sure about that.

And I thought, my goodness, here they're going to bring a judge in from the valley. He's probably never even heard of a steamship, let alone the Jones Act; I'm going to be in big trouble. Well, again I was blessed. Judge Culver turned out to be a marvelous judge; I mean, he's one I would like to model after.

In any event, so he came down, we go out to start this case. And I had never selected a jury, but I'd read everything I could about how you do it. And I think the first or second question I asked, Mr. Lieberman stood up very elegantly and made a very nice objection which I didn't understand—but the judge did, because he sustained it. And I thought, things are going to go really downhill from there. But actually we got through it; and Mr. Lieberman, he was firm with me but he was a gentleman. His ethics were so high.

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In any event, we tried the case. And poor old Duke Himmler, I went out and bought him a suit at a place on Kearny Street. They used to have a place called One-Price Suits; you could get a suit for $19 and a shirt and a tie, and I got him some longer socks to cover up the tattoos if you pulled his pant leg up. And of course I'd spent hours with Duke about how to behave; and there would be ladies on the jury who might take offense at his tattoos and let's cover those up and be calm. And Mr. Lieberman will be nice to you, but he's going to be firm; he's going to ask you about your prior convictions, but it's okay.

Well, he was fine—for a while. And we finally have a recess while Duke is on the stand. They had luncheon recess and I could tell that he's getting a little antsy. He comes back from lunch, the tie is gone, the suit's gone, we're back into the Hawaiian shirts, and so forth. I just threw up my hands and said, "Oh, well. Duke, be Duke. What's going to happen?"

Well, we finished up and they of course never did produce Two-Gun McGee. And we tried the case through and sweated it out, and believe it or not we had a hung jury and they were seven to five for our side of the case. And I was thrilled, and most of the jurors and I had a nice celebration afterwards at some bar nearby there on Van Ness Avenue near the courthouse in San Francisco. So that was that case, and I'll never forget it. And it was a great, tremendous experience.

Steven Vartabedian: And I take it, after having a favorable split on a hung jury, that you got a fairly nice settlement?

Robert F. Kane: Oh yes, it was fine. It settled and Duke went off into the sunset.

Steven Vartabedian: Now, a few years later you moved on, and I understand that you became the third partner to Harold Ropers and Gene Majeski in Redwood City. Please describe this stage of your career.

Robert F. Kane: Yes, that's correct. Well, when I went to work at Bronson's as the office boy or messenger clerk, Harold was a partner and Gene Majeski was a brand new associate in the firm. He had just been hired not too long before I went there as a calendar clerk or messenger clerk.

Harold was probably then the top trial lawyer of the firm, tried more cases even than Lawry Driscoll—although they were on par in my book in terms of competency and so forth. Harold left Bronson not too long thereafter, like in 1954. I could be off on the date, but it's around there.

He decided that he didn't want to do mainly defense practice anymore. He wanted to do plaintiff's work; he thought that's where the money was, and he was correct about that. So he hooked up with a couple of old-time lawyers in Redwood City, general lawyers that gave him some office space. And he went down there and opened an office on his own with the idea of establishing and building up a plaintiff's practice.

There wasn't any such plaintiff's practice between San Francisco. You had to go to San Jose and you'd bump into Jim Boccardo; that's when the next plaintiff's activity started, really. And so Harold went down there.

But lo and behold, he didn't really get much of a chance to get a plaintiff's business going because his former clients, claims people in San Francisco, were so enamored with his abilities, and rightfully so, that they begged him to take some defense cases in San Mateo County or even San Jose. And he succumbed to that.

Well, the first thing you know he had 10 cases, then 20, then he had more cases, defense cases that he didn't know what to do with. And of course you're going to run into all kinds of conflicts if he tries to do plaintiff's work.

So he recognized right away that he needed help; and he had spotted the genius of Gene Majeski, which is almost evident when you meet him. And he then talked Gene into coming down to Redwood City, and they formed a partnership over in this little office that Harold had; and that of course mushroomed.

Next thing you know there they got as many cases in San Jose because there weren't many defense firms in San Jose at that time, maybe one or two—and so they got very, very busy. So they needed help and word of mouth got to me, and I of course knew them. And people were suggesting that we talk, and so we did.

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And again I was very ambivalent because I was so personally attached to Les and John, Les Roos and John Jennings. And I had been there really such a short period of time and they had made me like a junior partner and, you know, they treated me just royally. And so I was conscience-stricken as to what am I going to do, because I'd grown up basically on the Peninsula; I knew a lot of people there and it will be comfortable for me to be in Redwood City, living in San Mateo, even trying cases in San Jose. I knew I would be trying a lot of cases if I went with Harold and Gene because that's about all we did; and so after a lot of again soul searching, I bit the bullet and went to Redwood City.

Steven Vartabedian: So during that time you're practicing with Ropers and Majeski, and then come the early 1960s, you decide to go out on your own, create your law firm, as I understand it.

Robert F. Kane: I did. It was 1961; that's correct.

Steven Vartabedian: And you practiced there until your appointment to San Mateo Superior Court in 1969, is that correct?

Robert F. Kane: That's right.

Steven Vartabedian: So at some point you're practicing in a heavy-duty trial practice, defending these cases. When did it strike you, hey, I might want to become a judge? And how did it strike you?

Robert F. Kane: I don't think I can pinpoint any discrete period of time. I think just over a period in trying so many cases, being in so many different courtrooms, seeing so many different judges and different personalities. And I guess vanity creeps in too; you

know, you say to yourself, gee, I can do a better job than that. And the idea that it was a very respectful position.

I've always, I think, treated judges with great respect even when I thought I had a lot of reason not to, because I think that's the way lawyers are supposed act. But it just occurred to me that that would be a nice fulfillment of a career. But as soon as you'd have those thoughts they disappear, because I'm onto the next case and the practice was blossoming, the income was improving, family is growing. So things were good doing what I was doing, so I dismissed that a lot of times.

Steven Vartabedian: And it's kind of hard to leave that—like you say, raising a family with a good income, a practice that's becoming better and better all the time. So when and how does that call come from? I guess it was Governor Reagan's office in 1969? How did that all happen, when you were running such a successful practice?

Robert F. Kane: Actually in 1966, I believe it was '66, there were two openings on the superior court in San Mateo. And I was contacted by—I'll refer to it as Governor Reagan's local recruiting committee. He had people, groups, as I understand, in almost every county that were looking for people that they thought might be positive additions to the bench.

So I was approached and asked if I would be interested in one of those two appointments. And I thought about it and said I was interested, but I had to pass because my firm had not been in existence too long—about four and a half years or something like that at that time. I had a couple of young lawyers that I felt that if I were to leave then, they might have a difficult time holding the practice, and I wanted them to inherit the practice; that if I stayed a little bit longer . . . Also, the big drop in income that I would be facing with a young family, I just didn't think I could hack it.

So I respectfully declined at that time, hoping and thinking positively there'll be ones in the future and by that time I can make some more provisions and my juniors will be getting more experience, etc. And that of course did happen in 1968, actually—the appointment was effective in '69. So that's what happened.

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Steven Vartabedian: Now during your two years on the trial bench, what was your primary assignment for most of that time?

Robert F. Kane: Most of the time I was the supervising judge on the criminal calendar, the general criminal calendar. So that had to do with arraignments, sentencing. In those days there were a tremendous number of search and seizure motions—what we

called 15385—and also Penal Code 995 motions on review from the municipal court holdings.

That was a busy calendar. That was most of it. I did have a couple of criminal jury trials—one that started out as a death penalty case but pled out in progress. But I frankly was very, very busy with that calendar, which I actually enjoyed very much.

Steven Vartabedian: How did you adjust to doing predominantly criminal work after having such a distinguished civil practice? I assume it was all 100 percent civil trial practice that you had as a practicing lawyer—maybe a few cases that weren't civil cases?

Robert F. Kane: No, it was predominantly . . . I think I had one or two early criminal cases in San Francisco, but I wouldn't even count those. So it was basically civil.

I didn't find it difficult at all. In the first place, in terms of substantive criminal law, I think I had a pretty good grasp of that. I had taught actually a course in criminal law in San Francisco at night law school, at San Francisco Law School in '52 and '53, and I taught evidence, I think, in '53 and '54.

So the substantive law was not a problem. That actually doesn't change much anyway. I mean, the definition of robbery is, I think, probably today the same as it was then, I think. I haven't looked at it. Definition of rape is probably the same.

Steven Vartabedian: Pretty much the same. When you teach law, just thinking a little bit from my own experiences, that really required . . . When you're teaching law you need to keep ahead of your students, and you have indicated criminal law, evidence; were there any other courses you taught?

Robert F. Kane: No, I just taught those two.

Steven Vartabedian: Those two. And this, I take it, was a good experience that helped you in your handling criminal assignments?

Robert F. Kane: Oh, absolutely. And of course even in that course there was also some procedural aspect to it, but it was at that time more on the substantive. So when I got this assignment, you know, I just did my homework. It really wasn't that complicated. I talked to a couple of my colleagues that had handled the calendar and they convinced me that it wasn't difficult. They were right. Now of course there was a lot of plea bargaining that went on, so I was involved in that, of course; that was another adjunct of it. But the number of pre-sentence reports and probation reports I've read were voluminous; you take those home at night and read them. I did, and I think most judges do.

Steven Vartabedian: I think most of us have had that experience.

Robert F. Kane: It's a very challenging . . . At that particular time in 1969 and '70, that was a tough time for the courts because that was when there was a lot of resistance. The free speech movement had generated a lot of resistance, so we had a lot of lawyers that came into court and would challenge things and make things difficult. So I found it a very challenging but a very good experience. You learn a lot about people in that job.

Steven Vartabedian: That's for sure. So as you're continuing in this work, how was it and what were the circumstances, perhaps, that you learned you were being considered for elevation to the Court of Appeal?

(01:05:03)

Robert F. Kane: My recollection on that is that Ned Hutchinson, who was then Governor Reagan's appointment secretary, and whom I knew of course because he had been involved in my appointment to the superior court, called me. And I am pretty sure it was a phone call; it might have been a face to face—I don't remember that.

Anyway, Ned advised me that Justice James Agee, who was a justice on Division Two of the First District, had announced his retirement. There was going to be an opening and would I be interested in that? I said, obviously, sure. I like this judicial career, and that's an advancement. I'd love to be considered. That's really where it started.

Steven Vartabedian: So you are appointed to Division Two of District One, and when you arrived there the presiding justice was Daniel Shoemaker.

Robert F. Kane: Yes.

Steven Vartabedian: He retired shortly thereafter. But did you have any recollections either from practice or from your experience with him on the bench, Justice Shoemaker?

Robert F. Kane: Yes, I remember Justice Shoemaker very well. We became good friends. My first memory of him . . . I'm not sure whether he was ever a municipal court judge in San Francisco or not, but I do remember him when he was a superior court judge and I appeared before him, I believe, on law and motion matters early on in San Francisco, like in '52, '53.

Then he went to the Court of Appeal, and I think I argued one case in the Court of Appeal in that division when he was the presiding judge, but I seem to have a recollection that he was a little tough on me. I didn't particularly like my position in the case, but he was a good judge and a nice man, very nice man.

So he retired. It came as a complete shock to me. He just announced to Wake Taylor and myself one day in our conference before an oral argument that he was going to retire.

Steven Vartabedian: This is about what 1971? This is the year you actually—

Robert F. Kane: Yes, yes, yeah. It's probably within four, five, six months of me being on the court. I was really kind of disappointed; I really liked the man a lot and he was easy to work with, but he did, he retired. Then Justice Wakefield Taylor became the presiding justice. Then Justice Allison Rouse, who was an old friend of mine, joined us.

Steven Vartabedian: I understand that for the majority of your eight-plus years on the appellate court you served with these same two justices: the PJ, Wakefield Taylor, and Allison Rouse as your fellow associate. In fact, I guess just briefly before your retirement there was another justice that came on, John J. Miller.

Robert F. Kane: John J. Miller came on maybe a year or something like that before I left.

Steven Vartabedian: But for the most part you were serving with these two other gentlemen for almost the entirety of this time. What was it like serving on the same panel with the same colleagues on all these cases for this duration of time?

Robert F. Kane: Well, it was marvelous from my point of view. I mentioned of course I had known Justice Rouse for many, many years and spent a lot of time discussing matters with him in the courthouse in Redwood City when he would have a jury out in a criminal case and I had one out in a civil case. We'd be next door to each other, so to speak, and things were very close in Redwood City in those days.

We only had three or four judges, so I knew Al Rouse very well, and I got to know Wake Taylor and respect him and appreciate him very quickly. We just had a wonderful personal relationship, and I think we had a great deal of respect for each other intellectually and philosophically or whatever—jurisprudentially. ***[laughing]*** We had very few dissents, which is probably understandable because we talked a lot.

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Even we used to take walks. Maybe a couple of times a week we'd go to lunch and we'd walk from the state building, over and all the way down to Market Street, down to the Ferry Building, and back—which is, I don't know, a three-mile walk or something. All of which time and during lunch we were talking court stuff for the most part.

I think if you could look at all of the few dissents that we had, there is not a harsh word or critic there. There's just a difference of opinion. So again the departure was painful. I hated to leave those two wonderful people and Justice Miller, who I didn't really know that well because he wasn't there that long.

Steven Vartabedian: It sounds like you had a very good relationship with these two colleagues. Very different from a time when you might have some courts where judges only communicate through memos. You really would talk through these things.

Robert F. Kane: Absolutely.

Steven Vartabedian: Face to face.

Robert F. Kane: We did. We spent a lot of time together.

Steven Vartabedian: That's tremendous. You have published quite a few appellate opinions during your time. Do you have any favorites among those that you authored that you wish to comment on?

Robert F. Kane: Well, there are probably a couple of opinions that I kind of like what I said and I read them again not too long ago dealing with attorney conduct and contempt in court. One involved Richard Hawk, who was the lawyer for Juan Corona, which is another case I can mention in a minute. But there's a separate case involving Mr. Hawk's multiple acts of contempt against the trial judge. And as I recall, I think Justices Rouse and Taylor and I upheld 10 of those counts and I wanted to uphold the other 2 as well. The case presented, I think, a situation where one could comment on the role of a lawyer and so forth.

I may even have that a little bit confused with the other case, which is called ***In re Aubrey Grossman***. Aubrey Grossman was a very well-known lawyer in Oakland, a very experienced trial lawyer. He took umbrage with a trial judge very vigorously, in a case that came up to us. That may be the one where the conduct . . . I think I may have dissented as to the two that were not upheld. But in any event those two cases together I think are worthwhile revisiting concerning how lawyers should conduct themselves in court and the respect that they should extend to the trial judge.

There are methods and avenues and procedures available to a lawyer to "show his contempt for the judge outside the presence of the jury." In these cases the lawyers didn't do that. They were challenging the judge and embarrassing the judge, and I don't think that should ever be done.

So I vented my spleen, I guess you might say, a little bit in those two cases. But I read them again recently and I think it's still good. I've been in some courtrooms over the last few years

on occasion and I am amazed to see that lawyers, for example, don't stand when they address the court. This maybe nitpicky by some people's standards, but if you go to England or to Ireland or any of those places, you'll see that when the lawyers come into the courtroom, they may have all kinds of contempt for the bench.

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And I have talked to some of the barristers there that do, but when they come in the courtroom door, they will look to the bench, stop, and bow their head, and they will get a bow in return from the court.

Now, we don't do that. The lawyers will bang through swinging doors and all sorts of things. They're in a big hurry to go get something signed or whatever. But I'm amazed. I mean, I was always taught, and that's one thing. . . . When I went to watch some of these good lawyers . . . Vincent Hallinan, who had a lot of contempt for courts—and he said that publicly—he went not to jail for that, but he went to jail for tax evasion.

Steven Vartabedian: He certainly was notorious in his—

Robert F. Kane: But he was . . . he would stand; when he addressed the court he stood. He didn't sit at the table and put his chin like he's having a conversation like we're having now. No. So I think there's a lot that apparently is not being taught or handed down in the . . . You know, we talk about this lack of civility and so forth that is apparently so prominent in lawyer conduct today, and yet I never see these kinds of things talked about.

I wonder why great organizations like the American College of Trial Lawyers and ABOTA—of which I am member and I am proud to be a member of them, they are wonderful—could really give some guidance. And maybe the lawyers aren't brought up that way. I don't know why it is, but I think there's a lack of respect.

Steven Vartabedian: One of the matters that you mentioned involved Richard Hawk as an attorney; and that you did say that there was another case, ***People v. Juan Corona***, that you authored the appellate opinion of.

Robert F. Kane: Yes.

Steven Vartabedian: And many people might remember that case. In 1978 was when you had the appeal, but a couple of years before that a very infamous trial involving the murder of 25 farm workers.

Robert F. Kane: That's right.

Steven Vartabedian: A 25-count murder conviction. And there were some issues about the effectiveness of defense counsel. Could you tell us a little bit about that case?

Robert F. Kane: Yes. Juan Corona was a farm worker supervisor, we'll say, who arranged the contracts for farm workers. He was charged and convicted up in Yolo County, I believe; it was either Yolo or Yuba. Twenty-five counts of murder where he had killed and buried these farm workers.

It was probably the most notorious case for a decade or longer. In any event, it found its way into our division for review after conviction on appeal. In the course of that, there had been a lot of items of contempt, a lot of misconduct that had been assigned on the part of counsel.

The appellate counsel also filed a petition for a writ of habeas corpus in conjunction with the appeal, and that allowed him to kind of go outside the record somewhat in order to expose these items of misconduct and misrepresentation of adequate counsel. So we had that whole package, which was a huge transcript. I remember when they wheeled it in on the dolly with the transcripts. My law clerk took a look at that and said, "We got our work cut out for us here." And just in the sequence of things it fell to me; it was assigned to me to work the case up for the panel.

So needless to say we spent a long time reviewing that. And unfortunately it became very clear that Mr. Corona—while clearly guilty; the evidence of guilt was overwhelming, which we said repeatedly in the opinion, I believe—was really not represented by competent counsel.

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There were many, many incidents. I can't recall them all, but some of the more flagrant things you might say Mr. Hawk did . . . one thing he did, he obtained a waiver from Juan Corona of all of Corona's literary rights that might ensue from a book or whatever, movie rights. And in that waiver or in that assignment, I should say, was a waiver of the attorney-client privilege.

So Juan Corona was asked by his lawyer, and he did waive the attorney-client privilege so that Mr. Hawk was free to talk about any conversations, whatever he had. That was one very glaring; I could list a lot of others he had in the record.

What we did is we assigned the habeas corpus to a retired judge as a referee who conducted an evidentiary hearing at some length, then reported back to us all of what went on surrounding and in the trial, which was overwhelming evidence of ineffective assistance of counsel.

So we were unanimously convinced we had no choice but to reverse. And of course we were aware that there was going to be some public disputation of this decision. There was going to be complaints about how much it's going to cost. It did cost, they had to retry him; but the fact of the matter is that he was clearly denied his right to counsel and he was entitled to a new trial, which he received.

So I think it was a right decision, and I think even people who will disagree with me on a lot of things went out of their way to say they agreed with me on this one. So that made it feel a little better.

Steven Vartabedian: Yes, that was certainly a case a lot of people were following as a very notorious murder case, as you said.

Robert F. Kane: Yes, the one other case I want to mention—and it's perhaps the most significant one in my mind, certainly, selfishly in my mind—is the case called ***People v.Tanner*** It's a Supreme Court case now and it can be found in 24 Cal.3d, but we had it in the Court of Appeal. And it became a public subject, which is too bad, but it certainly ended up in the right result, both I think jurisprudentially and personally, for Mr. Tanner.

What happened was it was a conviction of an armed robbery of a 7-Eleven Store in East Palo Alto by Mr. Tanner, who used an unloaded gun, but a gun, to rob the clerk. I think it was a small amount, $40, $50. It turned out that Mr. Tanner had been a former employee of a security firm that provided security services to 7-Eleven; and according to Mr. Tanner he was doing this job on his own to demonstrate to the 7-Eleven people the need for more security to enhance, maybe, his former employer's business. Anyway, that was his story.

It has some logic to it when you think of $40 and in addition to which he told the clerk, "Be sure to get a good look at me, because I want you to be able to identify me." So he was in effect asking for an arrest, which ensued shortly thereafter. But he's charged with the offense and he goes to trial in Redwood City and he is convicted. He's properly instructed by the court that it's up to the jury to make a finding as to whether or not he used the gun in connection with the crime.

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And the jury came back affirmatively on that and convicted him. Okay, now that promotes a mandatory prison sentence according to the section of the Penal Code and makes probation unavailable.

After his conviction on a motion for new trial and for sentencing before my old, very good friend, Judge Gerald Ragan, who

incidentally I think I can say I helped substantially in his appointment to the court, and he replaced me, he took my position. We've been friends for a long, long time, and he's a very good judge, and he's got a very good heart.

When it came time for the sentencing, Mr. Tanner's lawyer asked for probation and asked Judge Regan to strike the finding of the jury that he had used a gun in connection with the crime; and Judge Regan did that.

The Attorney General appealed from the order, directing the striking of the finding. That came to us, and we reviewed the legislative history at great length and concluded that we had no choice. All three of us empathized with Judge Regan. We even mentioned that in a footnote of our opinion, which I guess you can't find anymore; maybe somebody can find it. We said, "Our hands are tied. We've got a separation of powers thing here. The Legislature has clearly spoken. We can't butt in there."

The Supreme Court granted review. They initially came down with a decision in which they reversed us, and then on a petition for a rehearing to that court they granted a rehearing. Now, it is somewhat rare that a court grants rehearing on its published cases, but they did. They granted a rehearing and that would involve what went on within the inner confines of that court, the seven members of that court.

The long and short of it is that shortly after that rehearing . . . and there had been a lot of publicity. There had been a lot of stuff out in the media, and Chief Justice Bird was coming under attack for her position on a lot of the criminal cases and other things. So there was a lot of political electricity going on, you might say. But in any event the court granted a rehearing. And in their opinion on the rehearing they then reversed their earlier opinion, and now they voted four to three. It's interesting because the opinion, the majority opinion, holds that my court's interpretation of the mandatory aspect of the statute was correct—that there was no power in Judge Regan, no judicial power, to strike the finding of the jury.

Ironically, though, his order is affirmed because the majority opinion goes on to describe that by the time they got the case Mr. Tanner had already spent over a year in the county jail and had fulfilled all of the terms of probation that Judge Regan had imposed. And they basically said, "That's enough."

So when I say that it's a good decision jurisprudentially from my selfish viewpoint . . . because I can say, "Oh, the Supreme Court at least adopted our legal position." Procedurally they affirmed Judge Regan's order because the Supreme Court, which has the power to do that, construed that he had already fulfilled the terms of probation and had spent a year in a county

jail, and that was enough for this kind of a silly case. That's kind of the bottom line.

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Now, what's kind of disturbing is there are some dissenting opinions in that 24 Cal.3d case. One by Chief Justice Bird in which she basically—not basically, she does—she incorporates the opinion that she had rendered in the first case; just took it and republished it. Then there's another dissenting opinion by Justice Tobriner in which I think Justice Newman and Justice Bird concurred, which disagreed with the majority opinion on jurisprudential grounds, which is fine.

Steven Vartabedian: But on the legal principles involved it was actually Justice Mosk, I believe, that changed his vote?

Robert F. Kane: Yes.

Steven Vartabedian: To agree with you.

Robert F. Kane: Yes, he did.

Steven Vartabedian: In this rare instance where they even grant a rehearing; to reverse themselves is even more rare.

Robert F. Kane: Absolutely. Oh, yeah, very, very rare. So it's a very, very significant case. I think it's worth keeping in mind.

Steven Vartabedian: You comment on this. It would be very hard to find that case anywhere; and this, of course, is what happens to many of the items that we as appellate justices work on—that we might publish a case and either it gets de-published without any reason stated or there is a grant of review where sometimes the Supreme Court agrees with us, sometimes they disagree with us. Even other times they come back that they have improvidently granted that, but still our—and I when say our, the appellate justices'—opinion is off the books.

Do you have any feelings about the power of the Supreme Court to basically wipe away what has been written by the Court of Appeal, whether it would be a de-publication or one of these grants of review?

Robert F. Kane: Well, I'm one of those who don't object to that power which is granted to the Supreme Court. After all, that's the court of last resort. It is the court which sets . . . to the extent that a court can set policy, they set policy, legal policy. That's one of the functions that they should fulfill; and you know, the fact of the matter is there are so many opinions generated by the Court of Appeal . . . When I was on the Court of Appeal we had, what, 52-something justices. I don't know how many are on there now; must be a hundred and . . . you can probably tell me.

Steven Vartabedian: I believe we're now in excess of 100.

Robert F. Kane: I think it's far in excess of 100.

Steven Vartabedian: I don't know the exact number, I must confess.

Robert F. Kane: So you just see, I know I've read all the arguments and listened to speeches about the publication, nonpublication; and I think overall the Supreme Court does a very, very good job. They pay attention, and they're looking at the big picture. And they may see a case that you came to think is very, very important and ought to be published and this will be the law and so forth. They may have six or seven cases coming down the pipeline that are relevant to that, which they might have to tamper with if they adopted my opinion right now. So that's a function that they serve. That's fine.

One of the things is that . . . and I hope it doesn't trigger a personal reaction. But one of the criteria for publications, rule 973—or I may be off on that—but that hasn't changed. One of the five or six criteria for instructing Courts of Appeal when they may decide whether we're going to publish this case or not, one of them is the criticism of existing law.

I took that very seriously. I think if there is some body of law enunciated by the Supreme Court that my colleagues and I disagree with or we were critical of it, we should say so and then let the Supreme Court dispose of that, preferably by a grant of hearing. And if we're concerned about it, hopefully they would be, rather than just de-publishing it.

Now, that's just one little element. But they've got a tough job, and I respect that. They are the policymakers. I don't think judges should take things personally when they get de-published; and I probably had my share.

Steven Vartabedian: I have too, I can tell you that. ***[laughing]*** Let me ask you this, a more general question. How would you describe your judicial philosophy?

Robert F. Kane: Well, I guess some people would say a strict constructionist. As I indicated, I'm a firm believer in the separation of powers. I think that has to be . . . I would jealously guard that as best I could as a judge, even though I would disagree with the legislative opinion. If it's not subject to a constitutional attack, it's legally justified.

So I think my only review as a judge would be is whether or not it measures up to constitutional standards, not to second-guess the Legislature or try to modify it in some way by virtue of my own personal beliefs. So I guess you'd say that's a strict constructionist.

I'm a very strong supporter of the trial court. I think probably today trial judges have a more difficult job than we did, than I did. There's a lot more going on. There's a lot more law. There's a lot more complexity. There's a lot more ingenuity. But I think trial judges overall are very diligent and do a good job.

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And they need the support, and they weren't getting that in 1975, '76, '77, '78, '79—contrary to what I see now with Chief Justice George, who I think is rejuvenating the judiciary. After all, he was a trial judge; he was a Court of Appeal justice; he was an associate justice. And he knows the whole system. And so if I was a trial judge today I would feel that I've got somebody in my corner.

Steven Vartabedian: You talked a little bit about, talking about one of the cases you handled, your interaction with your research staff. Now, when you served on the Court of Appeal, did you use what we commonly refer to as elbow clerks instead of permanent legal research attorneys? And by the way, what are your thoughts on the development of career attorneys at the appellate level?

Robert F. Kane: Well, again I'm probably prejudiced. When I succeeded Justice Agee I got lot of applications for clerkship, although his clerk I kept for a few months. He had a two-year commitment with Justice Agee; I believe he was going to go with a law firm, but he stayed for a few months.

So it gave me a little time to interview people. And one of the applications I got was from a lawyer, and it hit me between the eyes. And it was a letter from a lawyer from Oakland giving me his background, and I just said, I've got to meet this fellow. And so I had my secretary call him and come over.

It turns out I hired him, and he was with me for the whole eight and half years I was there. His name was Bela Halmai, H-a-l-m-a-i. He was from Hungary and he had been a lawyer in Hungary. He'd been the number one in his class at Budapest University of Law School. He spoke four, five languages, including Latin, which he taught. He had been a prominent lawyer in Budapest. He loved the law.

Now Hungary, I believe, is a civil law country; it is not a common law country. He and his wife escaped from Hungary to Canada and then somehow got into the United States and ended up in Southern California in the L.A. area.

He didn't speak English; that was not one of his languages. His wife spoke a little English, and she was in the throes—and this was before computers really took off—she was trained in some kind of computer technology. She was a very smart lady. So

they got a job in Los Angeles as a live-in babysitting couple for a well-to-do family, I think it was in Pasadena, and they were taking care of the little child while the parents went off and worked.

And Bela would do the grocery shopping, which was difficult since he didn't speak the language. But he noticed that in the supermarket—he told me this—he went to a supermarket one day and he saw this fellow stacking cans and things on the shelves, and Bela said to himself, I can do that. And so he told the fellow, he said, "I want your job." The fellow couldn't understand him; finally he made it. The fellow said, "You've got to see the manager."

So he sees him. After difficulties the manager says, "We're not hiring anybody, so we don't need anybody." Bela says, "No, no, you don't understand. I need you." "You need me?" Make a long story short, he hired him as a stacker; and he worked that and saved some money and learned a little bit more English, and finally they got a chance.

His wife got a job with the University of California in Berkeley in their, I'll call it the computer division, and they moved up to Oakland. And Bela then wanted to be a lawyer, but he found out that he couldn't take the lawyer's exam because Hungary was a civil law country. So he had to go to law school. He applies and he's admitted to Boalt Hall. He still isn't speaking English fluently. He sails through Boalt Hall, passes the bar.

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He started doing some work with a couple of appellate lawyers in Oakland, helping them with briefs and law and motion matters and stuff. One of those lawyers happened to be an old friend of mine, and that's how he wrote to me.

So I had this meeting with Bela, and we had a long chat, and I finally decided, well, that's my man. So he was with me for eight and a half years. He did not know what a clock was or a calendar. He loved the law. He couldn't work hard enough. Then we started a program with externs from the law schools, and he would nurture them. Steve got the benefit of some of that when he was at Hastings.

And Bela just passed away a year ago, I'm sad to say. He became ill and cancer. But after I left, Carl Anderson took him on, and Carl would tell you the same thing I am telling you right now—that Bela was just . . . I was so blessed to have him.

So in that respect, if you could have career lawyers in that caliber, I'm all for it. It's nice to have the law students—for them. I'm not so sure, because I would never really work that way. I had somebody who was more mature.

Now of course we had a screening staff at the First District that were career lawyers. And we could get some of those cases; they would be prepared for opinion, practically. And those people were very good. But I think if a good lawyer can—if economically it's feasible—I'd opt for the career.

Steven Vartabedian: You've written some very fine articles about subjects such as criminal discovery, the work product doctrine. We probably won't go into that today, but let me just say one thing that kind of caught my eye was the fact that you have written an article on Supreme Court Justice Marshall McComb. That was back in 1973, and I just wondered what caused you to choose him as a subject. And tell us a little bit about that.

Robert F. Kane: Well, Justice McComb—this to me is a very sad commentary on our court system that resulted in his removal from office. It's sad and cruel. When I first met Justice McComb, of course, he was elderly, because when I got to the court . . . I didn't know Justice McComb before I got on the Court of Appeal, but I was only 30 feet down the hall from him; and you'd pass and get to chat a little bit and I had admired him from a distance for years.

But he was kind of avoided by most of his colleagues as he got older and displayed some of the symptoms of senility—which of course were not unique to Justice McComb, because there were a couple of colleagues that preceded him whom I probably shouldn't name out of charity who were every bit as aged and in some cases physically worse off than Marshall McComb by a long shot. Because he was a physical specimen, he really was, even at the end. But he was a very sociable person and he would like to go to lunch and have some company. So he would on occasion call different Court of Appeal judges like myself to see if we were available to go to lunch.

He belonged to the Bohemian Club, he belonged to the Pacific Union Club—you name it, he belonged to all of the best places. And he liked to go, everybody knew him there, treated him with great respect, and so I was a beneficiary of that.

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I'd get called to go to lunch once in a while. We would usually go by car, if we were going to go down to the Bohemian Club or the PU Club, and then we'd walk back. And I just became very fond of him. He was just a wonderful gentleman.

I also happened to have in my chambers as a bequeath to me by Dan Shoemaker a nice, big couch; and Marshall McComb would sometimes come down in the afternoon and might want to take a little nap. And I think he brought along a little white napkin, and he would put it down at the head of the couch and

lie down for a few minutes and take a little nap; and I could be over reading some cases or transcripts or something.

But in any event that was great. And so he was also quite friendly with a family in Los Angeles. And a lawyer in Los Angeles was very active at Southwestern University Law School, and he knew that I knew Justice McComb and that I knew that they were very close. And he called me and asked me that they would like to do a law review article on the life of Justice McComb from the viewpoint of another judge, and would I be willing to do that, and I said "sure." That's the genesis of that.

Steven Vartabedian: Okay. And you've already talked a little bit about Steve, Steve being your son who happens to be a colleague of mine presently on the Court of Appeal, Fifth District.

Robert F. Kane: Right—brand-new, freshman.

Steven Vartabedian: And I understand that from about 1973 to 1976 you sometimes had a commuting partner none other than your oldest son Steve, who was at that time attending nearby Hastings College of the Law. We'll talk some more about Steve a little later on, but for right now I'm just curious—during these commutes what advice you were giving law student Steve at that time.

Robert F. Kane: Well, I don't think it was so much advice. He'd talk about some of his teachers, almost all of whom I knew and who were very, very good. And several of them were part of what was called then the Over 65 Club; they'd been former deans and authors of books, law books and so forth. They were, you know, outstanding in their fields.

So he was very lucky to study at the feet of those people. I told him that for sure. We also had another passenger named Steve Wagstaffe, whom Steve had actually gone to grammar school with and had gone to Notre Dame at the same time; Steve Wagstaffe who's now the assistant district attorney in San Mateo and has been for quite a few years.

Between the two of them, I'd get a lot of questions about things. I can't remember what they all were, but I do remember one time that stands out in my mind. And actually it was brought up by Steve Wagstaffe, who was taking a course on professional ethics. And he asked me about a situation in which there would be a scenario in which you as a lawyer are responding to a motion by your opponent and you are in court and the matter is called and you're ready, and the other opponent doesn't show up. What do you do?

And I said, "Well, I know what I would do." And he said, "What's that?" I said, "First thing, I'd ask the judge if he'd mind if we took a recess while I would go out and call the lawyer's

office and try to find out whether he got hit by a truck or it fell off his calendar or what happened; I was going to find out; he should be there."

And Steve said, "Well, that's not what our teacher said or what most of the class said." I said, "Well, what do they say?"

"They said, 'You take his default, you have an obligation to your client.' "

I said, "That's the most ridiculous thing I've ever heard." And we had a big discussion about that.

We dreamed up some more scenarios, and I said, "That just is not ethical. That is just not ethical." I said that, and as the last resort I would have asked a judge for a continuance, put the matter over for a week or whatever; I mean, this is, I think, how lawyers should behave.

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Steven Vartabedian: In some of the reading I did about you, I noticed that in 1974 you took an assignment away from the Court of Appeal to return to the trial court to preside over a jury trial involving the then–cutting edge technology: presenting recorded videotape evidence to the jury. Do you remember this, by any chance?

Robert F. Kane: Yes, yes.

Steven Vartabedian: So please tell us a little bit about that experience.

Robert F. Kane: Well, I did two, actually. One was strictly videotaped—that is, there were no live witnesses. It was an experimental. And Joe Rogers, who's a preeminent lawyer in San Francisco, now retired, but one of the very best trial lawyers one could ever find . . . Joe Rogers, along with Guy Kornblum, another outstanding lawyer, conducted a trial practice clinic; and they had gotten revved up in this videotaping of trials that the judge in Ohio was the front-runner in. And I used to help out in their class; I'd go over and sit as a judge on moot courts and things like that.

And Joe had been an old colleague of mine and asked me they were going to do this trial and would I sit as the judge. They said they weren't able to talk anybody else into jumping into the water. I said, "Sure, let's give it a try."

So we did that, and then we also did an actual case with a jury, partly videotaped and partly live over in San Francisco Superior Court; and I went over and sat on that. I remember that very well because Joe Karesh was the presiding judge in San Francisco Superior Court, another good, old friend of mine. And when Joe wanted to do it, he said, "I don't know." He said,

"Some of the judges over there might not like the idea." And I said, "Well, let me just talk to Joe and give it to Joe Karesh," and he said "Done." So we did that, got a verdict. It was an interesting experiment.

Steven Vartabedian: It certainly sounds that way. I don't mean to embarrass you by the next question because I know you're very modest about this. But I do understand from sources who were involved in the process at the time that you were under very serious consideration for the California Supreme Court, but that opportunity never came; and also that you were asked to consider nomination to the Ninth Circuit by President Ford. I just want to talk about that Ninth Circuit experience. Why did you turn down the opportunity to sit on the Ninth Circuit bench?

Robert F. Kane: Well, it's a combination of reasons. It was again very tempting to be considered for a possible lifetime appointment to basically the second-highest court in the country. That's a great honor, and I didn't take it lightly.

The fact of the matter at that time was that the federal judges, our pay on the Court of Appeal was higher than the Court of Appeal on the Ninth Circuit, if I recall correctly—pretty sure it was. But the main thing was they didn't have any kind of retirement plan for spouse and children, and I had a spouse and five children.

So that was a major factor, and of course at that time I have to say that the kinds of cases that were finding their way into the Ninth Circuit were really not the most exciting. That has since changed—big time, I would say, so that I think it'd be a very challenging position today, but then it wasn't. So a combination of those factors . . . I just thanked them very much and said I just can't do it.

Steven Vartabedian: You know, you were also very active in the California Judges Association; and during your appellate court days, 1977 and 1978, you served as the president of the CJA.

Robert F. Kane: That's correct.

Steven Vartabedian: Tell us a bit about the experiences you might have had on the CJA.

Robert F. Kane: Well, they were very interesting and very contentious, I guess you might say, with the Governor's Office. Justice Frank Richardson of the California Supreme Court was the chairman of a nominating committee at the time, and he came into my chambers and asked if I would be the appellate representative on the executive board of the California Judges Association.

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And of course again I'm thrilled to be given a chance to do that. And so that's how that came about. And so let's see—that would be 1975, I guess, and we had our first meeting at the annual judges meeting, which is in conjunction with the State Bar. And I forget how many new members came aboard at that time. But our incoming president, who of course had been on the board already, was Judge Joe Wapner, who everybody in the world knows, of course, although he wasn't so famous then; this is long before his celebrity career. Joe had been elected as the incoming president; David Eagleson later on the California Supreme Court. Patricia Hofstadter, who was a municipal court judge in Whittier, came on or was on.

Let's see. Holly Best, I don't know if he came on that year or the next year. But anyway, we had a very good board; I really liked it. I liked the people. And so this might be '74, because I'm thinking Jerry Brown came into office in '75, January '75. And up until then we were just sitting along as the old CJA, until we were bombarded with a public attack on the judges for being underworked and overpaid, according to then–newly elected Governor Brown, and that he was going to do something about that. And so naturally our ears perked up, and our president Joe Wapner said, "Why is somebody having a fight with the judges? We haven't done anything."

So up to that time, the judges received an annual cost-of-living increase to their salary by law that was, I think, tied to the consumer price index; and that had been the case for many, many years. Probably one of the things that attracted some people to go into the judiciary was because that would keep up with inflation, everybody thought—except it didn't keep up with the inflation of the '70s, when interest rates went to 20 percent and so forth.

So everybody was kind of hurting. But the judges did have that provision, which was put into law at the behest of the Legislature, which had become really disenchanted with the idea of judges coming up every legislative year to ask for a raise. A lot of the legislators were lawyers. They thought that was demeaning; they didn't like that. So they on their own volition had inserted this cost-of-living increase to avoid that annual foray.

So now the Governor comes in and says we're going to eliminate that; and later on in some of the publications and newspaper accounts, most of which I've got, talk about rolling the judges' pay back and their pensions back.

As I said, these were difficult times for everybody because inflation was rampant. State employees were creating quite a fuss because they weren't going to get raises. And they were hounding the Governor; and whether that was the reason or an

outlet, somehow they reached over to the judges and said, "Those guys need to get whacked too."

So we were alerted to that, and we tried to have some discussions with the Governor's Office. And we did have some; they weren't very fruitful. And finally legislation was introduced to abolish or at least roll back our cost-of-living increase, etc., and of course we then had to go to battle on that. And we did; maybe they didn't expect it.

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But Joe Wapner was a tough guy, and he had a tough board; and we fought hard legislatively in the debates. And the result of that was that Judge Wapner and the people that were representing us—he had other judges in Sacramento—reached what they thought was and were told was a "compromise"; I put that in quotes. Whereby the judges would agree to a freeze on the cost-of-living increase for a period of 18 months and then it would come back into effect.

So we would take no raise at all for a year and half. We thought that was a very good gesture; I think it was. And so that legislation went through with that provision. So we went along without any kind of increase for a year and a half. And after Joe Wapner, Pat Hofstadter was elected president, and we had a few more skirmishes; and then I followed her.

I was elected in '78. Legislative advocates and lobbyists, if you will, in Sacramento were keeping a close eye on what's going on because there were a couple of attempts that started to extend the freeze. And we were successful in defeating those, but now we're coming down to the end of the legislative session in June or July of '78. And nothing has happened, so we're breathing a big sigh of relief, we think, because come July 1 our freeze is off. Or I think it was July 1 the freeze is off; and we'll then get a raise, we'll get a cost-of-living raise.

We'd had a meeting before that, maybe a year before at the San Francisco airport at which the Governor's then– . . . oh yes, at the San Francisco airport to discuss the . . . I have to back up. I think this actually was in Joe Wapner's tenure, so it was before; it would have been probably '75 or '76. I'm pretty sure; yeah, I'm almost positive Joe was presiding.

This meeting was called. The Governor's then–Legal Affairs Secretary J. Anthony Kline had requested a meeting with the board to try to see if we couldn't smooth the waters out that were bubbling between the judiciary and the Governor's Office, because they were. There had been a lot of public comments back and forth, and so we had this meeting. That was the purpose of the meeting, we thought; and Mr. Kline stated that yeah, that the Governor, it was a mistake on his part to have

attacked the judiciary in 1975, and apologies will abound for that. But those are bygones.

Now the Governor is interested in judicial reform, and he's going to need the help of CJA and wants this help from CJA to help him do that. Various items of judicial reform: maybe arbitration in some cases; looking at the indeterminate sentence law; confirmation of appellate nominees by the Senate was one of the things he had in mind.

And so we want to be working together, was his approach on this. And some of my colleagues there brought up many of the things that had been said and things that Mr. Kline had done—like going down to the courthouse in San Diego on a Friday afternoon and then talking to the media about how all the courtrooms were dark there, with the implication that the judges weren't working.

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Well, apologies, that won't happen again, that's not going to happen again, and the Governor is never going to attack the judges again; that was a promise. Okay, so we went away with pretty good feelings.

Now, we come down to this time I mentioned, at the end of the legislative session in 1978, where so far we have been successful in preventing any extension, or even efforts to extend, the freeze on the judicial salaries and reduction of pensions and so forth; and it almost appears that we're going to be okay.

The night before the last session of the Legislature, I received a call from our lobbyist in Sacramento telling me that I should get up to Sacramento the next morning because there is some skullduggery at work in the form of a bill, which will extend the freeze on the judges' salary. And I of course said, "Well, how did that come about?"

They explained to me that there was a bill sitting on the Governor's desk, which had to do with some courts in Solano County, municipal courts, which gave that bill what's called germane subject matter. You could not have a bill that had to deal with judge's salaries unless it was in connection with a bill that had a judicial connection. You can't do this. But they introduced an amendment to this bill, which had to do with, something to do with, the judges up in Solano County, municipal court—nothing whatsoever to do with pay raises or judges statewide. And that bill had been amended.

And that a conference committee between the Senate and the Assembly had been formed during the night and had signed off on it; it was going to be reported out onto the floor of the

Senate that day, approving this extension. And I said, "Well, how can that be?" Well, that's the way it is. We're going to have to fight it out up here tomorrow. So I got on a plane the next morning as soon as I could get, and flew up to Sacramento.

In the meantime . . . let me back up, I got that call in my chambers at the state Court of Appeal at about 5:00; I immediately put in a call for Mr. Kline. They told me that he was attending a Judicial Council meeting or some meeting in San Francisco, and I said, "Well, get the message to him to call me."

So he called me back and I asked him what was going on and he said, "You know, the state employees are outside the Governor's window screaming and hollering about no pay raise." And he's just catching hell from everybody, and he said, "You guys are making a mistake fighting this."

I said, "What do you mean, we're making a mistake?" I said, "We agreed to this three years ago. We lived up to our bargain." And I said, "This was a compromise, we arrived at a compromise; we didn't want to do that." He said, "That was no compromise; we shoved that down your throat."

I said, "Well, I'm glad to hear that now, that you admit that, but we're not finished." And he said, "Well, I think you're making a big mistake." He said, "I have talked to judges." He said, "They're in favor of this extension."

I said, "You don't represent the judges, I do; and you're not talking to the ones I'm talking to. In fact, I've got a mandate from my board that we should never allow that freeze to go off." I said, "I'm operating under a mandate from my board, which includes some people that I know you're close to." And I said, "I'll see you up in Sacramento."

So the next morning I jumped on the plane to Sacramento, meet with the lobbyists, we're over talking to our senators, any senators we know that could give us an ear. One of whom, of course, was George Deukmejian, and he already knew about this.

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He was incensed, as much if not more than we were, by the way the judges were being treated. And then on further inquiry we found out that the committee actually had never met. People had signed off on this thing, but they had just gone around and got the signatures from people who if they read it would never have signed it but they signed it, and who stood up on the floor of the Senate in my presence and disavowed—retracted, I should say—their signatures and stated that they

had not attended the meeting which the resolution says they have done.

George Deukmejian made a speech on the floor of the Senate stating that it was . . . He said, "We go into court expecting judges to extend due process and to give people a hearing. This doesn't even have the courtesy of advising them. This was done in the dark at night. A sabotage thing, you know."

So they then formed a new committee; they actually now formed a committee. I went and appeared before that committee, had some meetings with Kline and Paul Carpenter, the senator whose name is probably familiar to you. He was in on this skullduggery, and about 6:00 at that night we finally prevailed. I don't know the technical thing, but the report was not agreed to. So the freeze went off, so we won.

I get back to San Francisco and I'm of course exhausted and so forth. The next day, I think it was the next day, I dictated a letter to the entire judicial membership, the CJA, in which I described these events as constituting another Pearl Harbor attack by Governor Brown and his cohorts. And it's true—that's what it was, pure and simple.

Steven Vartabedian: That's quite a battle.

Robert F. Kane: And you know, so I'm very proud of that. I never expected as being president of CJA I was going to have to get into a dogfight with the Governor's Office, but we did, and justice ultimately prevailed.

Steven Vartabedian: Why did you retire from the bench at the relatively young age of 53?

Robert F. Kane: Well, it's a combination of factors, Steve. I mentioned this inflation thing that we had in the early '70s. I remember interest rates were 18, 19, 20 percent in some places. We were all feeling that. I thought when I went on the bench in 1969 that even taking a big cut in income that I had provided enough cushion that I could educate my kids through college, if everything stayed reasonably level. And that was a miscalculation primarily because of the inflation, but in any event that became the fact.

Coupled with that was the ascendancy of Rose Bird to the Supreme Court. I felt very strongly about that. I stated that publicly. I wasn't talking sub rosa to anybody; this was out in the open. And I was very disturbed by the fact that we were going to have a Chief Justice who, as I mentioned earlier, I think needs to be a champion of all of the judges, particularly the trial judges, who look up to the chief to lead the charge. We were faced with having a Chief Justice whose sole legal

experience consisted of being a law clerk for a chief justice in Nevada.

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A secretary of agriculture that Governor Brown appointed her to . . . which has nothing to do with the law, and as a deputy public defender in Santa Clara County. And she had actually argued a couple of cases in my court before me, and she was a good lawyer and a nice lady. She had also taught, I think, a clinical course at Stanford Law School. So that was all fine, that's good, but not for the Chief Justice of the State of California. So I objected to that. I didn't do anything, particularly, except to make it known that I objected to it. I didn't testify against her at her confirmation hearing. But a lot of people did, mainly for all of the reasons I've just articulated. But she was confirmed. I just saw that we were in for a rough hoe in terms of the fair administration of justice is concerned.

For example, shortly after she was appointed I met her for the first time face to face at some place. And I remember she mentioned to me, "So you're the judge that goes back and sits on the trial court." She said, "That's a wonderful idea." And I said, "Well, I've done it, and I think it's good. It certainly helped me keep in touch with things, and I'd recommend it." And she said, "Well, yeah, I think that's great." Well, soon after she became the chief, instead of asking for people to do that she started bringing people from the municipal court up to sit on the Supreme Court pro tem. And that just boggled my mind.

I mean, with all the fine appellate judges that we had plus superior court judges, that she would drop down to the municipal court—not to demean it, but just the fact is, that's a different world and there was no need to do that. And she did that obviously with premeditation.

So I didn't like that. Then, as time went on, she came to be more intrusive into the affairs of the Court of Appeal. She became critical of the method in which the mechanics by which our court was hiring staff personnel like the clerk, the deputy clerk, that sort of thing. She had some totally unfounded position that our people were exercising race discrimination or gender discrimination or both in the way they interviewed and processed potential employees for the Court of Appeal, totally without any grounds at all.

Well, that bothered a lot of my colleagues who heard about it even more than myself, because they called for a meeting with her. I think it was Winslow Christian who said, "Wait a minute; we can't have the chief telling us how to run our court. She's got financial strings on us, that's true, but to come down and tell us how we hire. . . ." So we had a meeting; he arranged a meeting. It was held in Winslow's chambers, and I think there

were all 12 of us, maybe, on the whole First District who were present at that meeting. And I don't think I said a word, but I'll tell you, there were some hard questions asked by people.

As a result of which there were, aside from the denials of interference, there wasn't any more after that. Then we got word of how some of the employees over in the Supreme Court place itself were being mistreated. And that was conveyed to me personally by one of the bailiffs at the Supreme Court later, when the Rose Bird battle really got going. And he's a black man and confided to me how he had not been treated properly. And so I thought, my goodness, this is strange that we have somebody that's an avowed spokesperson for all these freedoms and lack of discrimination. Why am I hearing this?

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Then, of course, as the opinions came down that she authored, it became disturbing. The fact that she would not join a single death penalty case was very, very bothersome; and there were other opinions that I didn't care for, but we were bound by them of course.

It was sad, because if you were to have a meeting with her—and I had a few with her. . . . She had appointed as her assistant, she gave him a title as I think executive legal assistant, a young lawyer that she had met in her Stanford activities; I forget his last name, Steve. I should remember it. But he was always at her elbow with a yellow legal pad. So if you interviewed and talked to Chief Justice Bird you were never alone, you were always being recorded. And I had no objection to that, but if I had been told I probably would have brought along my own or a tape recorder. I wish I had in some instances.

But in any event I thought that the court, and therefore the judiciary, was—we were losing our stature. Here had been a California Supreme Court that all my time through law school, all my time through practice, and up until then, I think, was probably considered the top state supreme court, that people looked at and cited their cases. That was changing.

People were ridiculing California, and that rubbed off on all of us, I think; it should have. And so I frankly just got disenchanted. And so when you add all those things together I thought, gee, I don't want to, I just don't think that I can afford to spend the rest of my life fighting a losing battle and particularly at the expense of probably not being able to get my kids through college.

So again the soul searching goes on. I bit the bullet; I told the press why I resigned, which is basically the same thing I'm telling you today. It's all there, the record is all there. I recall

saying that I thought she had given a speech, talking about doing justice; and I wasn't being facetious, I wasn't being bitter, but I said, "Well, if she really wanted to do justice for the system, the best thing she could do would be to resign."

Steven Vartabedian: I understand that at time you returned to the Ropers Majeski firm—that would be in 1979.

Robert F. Kane: Yes, sir.

Steven Vartabedian: Eventually opening the San Francisco office of the firm. And yet I imagine the firm and the whole practice of law had changed during this time. Can you tell us a little bit about the change over this decade?

Robert F. Kane: There were big changes. Aside from changes in the law and so forth, one of my first cultural reactions was somebody asked me to sit in on a deposition in which we were representing a party that really was very tangential. So they said, "Go get your feet wet and sit in on the deposition where you won't have to ask any questions or do anything, just listen."

Well, there were several parties involved, and a male lawyer was asking the questions and there was a female representing the party being deposed. This is a sight I know lawyers talk about—defending a deposition, which irritates me. You don't defend a deposition. You're there representing a client. What is this "defending a deposition"? In any event, they got into a little bit of a skirmish, and the lady lawyer let forth with some expletives to this lawyer that frankly shocked me.

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Now, I don't know how many hundreds and hundreds of depositions I had taken up until that time; and outside of going off the record and almost having or witnessing maybe some fistfights sometimes, I'd never heard, certainly never heard a lady lawyer use, that kind of language. And nobody else was fazed; I looked around, nobody was batting an eye.

I was appalled, and over time I found out that the culture had apparently degenerated to the point where using very profane, vulgar language is commonplace. Now that was a big shock.

Now as far as the law is concerned, of course in the practice of law when I left to go to the bench we did not keep timesheets. We'd either wait until you finish the case, which was the general rule, and then bill the client. And that was a lengthy process. You'd have to sit down, go through the file and all the stuff; but you got where you could do that pretty well.

And then, and I'm going to say that in all the years I did that, almost without exception, the following week the check would

be in the mail. And I never had a complaint about a bill in 17 years of trial practice before I went on the bench and another ten after.

But now I'm confronted with the situation where you keep track of your time by the minute, practically; and I thought that was a shame that it had gotten to that. Maybe it's necessary, but then of course now come the complaints later by the people paying the bill that they're overcharged, because now there's too much going on.

But I'd say the civility, lack of, was the thing that struck me most. The fact that you could not call up another lawyer and say, "Gee, I need another 10 days to get that answer in" or something; and he says, "Well, write me a letter, instead of saying okay just counter ten days and fine." That was pretty much gone.

People say, and I think it's true: the profession has become a business. It is a business. It's a humongous business today, and with all of the mergers and transfers and . . . I don't know, I have a very strong belief in the virtue of loyalty, I call it. I think it's the major virtue. And of course when I grew up in the law business, it would be unheard or think that Lawrason Driscoll at Bronson, Bronson & McKinnon would next week go over to the Keith Creede & Sedgwick or to Brobeck Phleger & Harrison; or that Jack Bates at Pillsbury Madison & Sutro would now go over to Morrison & Foerster or to Heller Ehrman White & McAuliffe. That would have been unheard of; it didn't happen, wouldn't have happened.

Today that's very pedestrian. Every time I read the ***Journal***or something I'm seeing who went where.

Steve Vartabedian: All the lateral movement.

Robert F. Kane: Firms have disintegrated. Firms have closed up. Bronson, Bronson & McKinnon no longer exists. Pillsbury Madison & Sutro has merged into oblivion. Brobeck Phleger & Harrison no longer exists.

Morison & Foerster—which was a very nice bank firm but very small, very prestigious, but stuffy—now is one of the biggest firms in the country. It's a different world, and it's a shame that, I think, people have to miss the joy of really representing a client—except for the sole practitioner.

But I always enjoyed the relationship with the client, even when representing an insurance company. Over time if you represent a person through a trial that they think they are right in and you prevail, they have as much gratitude to you as if you'd just won them a million dollars, it seems.

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I still have friends, people that I represented 40 years ago in a personal injury lawsuit that they thought they were correct and we happened to win; and they say, they think, I'm sliced bread. And I'm not. I mean, those are wonderful feelings, and I know that I have a lot of very, very good friends. Plaintiff's lawyers, lawyers I tried cases against, lawyers that beat my brains out that I love dearly. We've been lifelong friends. Many of them passed away. Ah. But the few plaintiff's cases that I had—and I had a few—it's a great thrill to get some meaningful justice for your client. That's an accomplishment.

Steven Vartabedian: Going into the early 1980s, I understand that there was at one point a time when then-President Reagan nominated you to the nation's legal service board and you went before the U.S. Judiciary Committee.

Robert F. Kane: That committee was the human resources, Labor and Human Resources it was called.

Steven Vartabedian: That's right; that was the Senate committee. And you were confronted by some pretty fierce opposition. Can you tell us a little bit about that experience?

Robert F. Kane: That's a great experience—and probably most lawyers won't have that, and it's too bad. The Legal Services Corporation is that public corporation created by Congress to provide funds for legal services out into the communities, and the board oversees that. It meets a couple of times in Washington, D.C., here and reviews the functions of the various entities locally that are disbursing and using those funds.

In the '60s apparently there had been at least a lot of alleged misappropriation of those funds in the sense that instead of these funds being used to help some poor guy who's got a landlord-tenant problem, these law centers were building up where they were involved in, I'll say, legal-political adventures—things that had political connotations. And they were getting large subsidies from the committee.

There was big criticism of that. Ed Meese, the Attorney General, and Ronald Reagan, the President, were seeking reform of that. In the election in the campaign period before either Ed was Attorney General or Ronald Reagan was President, one of the campaign issues that they addressed was this legal aid.

I don't think Ronald Reagan said it; I'm not sure that Ed Meese said it. The connotation was, and of course the attribute that was given to it was, that they were going to close it down. They were going to shut it down, much like the publicity was that they were going to shut down the Department of Education.

So the board, I think, was 12 members, 11 or 12. And up until 1984, I guess, Ronald Reagan had nominated four or five people to fill vacant slots on that board, none of whom got out of this committee because they would get raked over in such a way that in some cases the nominees said, "Look, I don't want to go through this, take my name off." Or the committee just wouldn't come to a vote and put them out.

So that board had been run by recess appointments for these four years, 1980 to 1984; but the President kept trying to fill these slots. And I'm sitting in my office one day in Redwood City and I get a call from I think it was Ed Meese, and he told me about this problem. And he said he didn't think I had any political skeletons in my background and I'd easily clear an FBI investigation. Would I take on the job? And I said, "I don't know what the job is; if it requires much time I can't, because I'm trying cases now again and stuff. But if it's not too much of a time factor . . . He said, "No, it's only a couple of meetings a year and a lot of paperwork, but you can handle that." I said, "Well, if I could help the President, if you think that'll help him get a board, sure, I'll be happy to do that."

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So they put my name in and the FBI did the check and so forth; and now comes the time for confirmation by the committee. And so Reagan had nominated myself and I think either four or five other nominees. I think there were six spots open, but he maybe nominated, I think, four or five of us. And just to digress—I can't avoid it, because the fact of the matter is that the qualifications that are in the legislation that created the Board are about four. One of which is that you've had some experience in administering legal aid. Number two is if you are a member of the bar of a state, any state in the United States. Well, I was a member of the bar—that's all you had to be, that's one criterion. One is that you needed to be a person who would qualify as a recipient of legal aid. You had to be below the poverty line; one member of the board has to be below the poverty line.

So I came in there, I guess, as the lawyer; I'm not sure. But we had a meeting the day before with the four or five or six of us, which was very nice, to prepare us for this hearing: what we're going to be asked, probably, and a warm-up in the bullpen, so to speak.

And they were very nice people; and, for example, the lady that qualified as one who is below the poverty level was a very, very nice black lady from a little town in Texas. She had never been out of Texas before in her life. She was going to be on this board. That's okay, that's what the statute said. I had no grudge against that at all, none whatsoever. But in any event

that same first day I'm there, which I think is a Monday where I had this meeting, and then I was free. So I'm back in my hotel.

And I by pre-arrangement put in a phone call to my friend Bill Clark, who was then—I believe he was then national security advisor . . . the admin deputy assistant secretary of state and then had gone over to NSC. And he and I had been friends since judges' school together in 1969. We had a lot of common grounds. We both had got appointed to superior court on the same day, he to San Luis Obispo, me to San Mateo. We both had got appointed, I think, to the Court of Appeal on the same day, he to the Second District, me to the First. We both had five children, three boys and two girls. We both had lost a son-in-law by accident, his son on a tractor explosion at his ranch and my son to acute leukemia at about the same age.

I mean, this is almost scary. But we had a lot . . . and then I'd say philosophically we're very much in common. I mean, he's a very great American and a great man of faith. So I had arranged to call him to have dinner with Bill and his wife Joan. So I get in touch with him and he says "swell." He said, "Why don't you just . . . you're only a block and a half from our apartment. Walk over from your hotel and we'll you see you there about 6:30 or so." And I said "fine."

So I hung up and a few minutes later the phone rang and it was Bill Clark again and he said, "Bob, you haven't been supporting the IRA, have you, in Ireland?" And I laughed. I said, "Are you kidding? What's going on?" And he said, "Well, we know you've got the Irish background here, but we want to be sure you weren't fostering some bad stuff over there." I said, "What's this got to do with anything?" He said, "Well, the President would like to nominate you to be the ambassador to Ireland."

Well, you could imagine—like you could blow me off the chair. Here I am in Washington, D.C. I am in a hotel room in Washington, D.C. My wife is 3,000 miles away. All my family is 3,000 miles away. I've got this hearing the next morning on this other thing, and he throws that bomb in my face.

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I said, "Look, I know you don't drink, certainly not much, and I don't know if you're smoking anything, but what is going on? What is this all about?" He said, "No, we're serious." He said, "The current ambassador Pete Dailey is here, and he has to resign because he's taking on another job for the President involving the implantation of the nuclear missiles over in Europe, and he has to go diplomatically handle that job."

And I said, "Well, wait a minute." I said, "Bill, I've got a trial next week in Redwood City; I'm back here for this hearing."

And he said, "Wait a minute, you've got to act fast on this; you just call up Keke and call up your partners and see what happens if you're interested. I mean, the President has to . . . we've got to know by Thursday."

So I called everybody. I called Keke, I called Gene Majeski, I told them what the deal is. Everybody calls back and says "go for it." So Bill says, "Well, fine, I want you to meet Pete Dailey tomorrow morning at 7:00 in the hotel restaurant for breakfast. He'll tell you all about the job."

So I meet Pete Dailey next morning. He fills me in and tells me what a wonderful job it is and then how I'll enjoy the Irish people and all the good things. So I trot off to my hearing now and I tell the rep from the President's office about it. I said, "Look, I'm moot because now the President is going to nominate me to go to Ireland and I'm going to be gone for a couple of years, if it works."

And he says, "Well, we've set everything all up; what's the deal?" And I said, "Well, you told us this thing was going to be at 10:00. It's going to be 8:00 and will be over by 10." And it's now about 7:30 and we were in the Senate office building. And I said, "I've got a plane out at Dulles at 1:30 based on you're telling me we'll be done by 10; I figured that would give me plenty of time to get out the door. I've got to get back to Redwood City because I do have to start this trial on Monday and I've got some preparation to do. And then all of this other stuff with this ambassadorship is going to probably start flowing."

And he said, "Why we don't just through the hearing and let the thing go and then your nomination will be withdrawn." I said, "That's fine with me." So we go into the hearing room. And you've seen all those pictures of those hearing rooms on television; they're a little nicer now than they were then. They've fixed them up in 20 years.

Orrin Hatch was the chairman of that committee. I think Tom Eagleton was the ranking member who ran for vice-president, as you recall, with McGovern from Missouri. Others on the committee were Ted Kennedy and Howard Metzenbaum. On the other side Admiral Denton was on from Alabama. They didn't have everybody there all at one time. You know how that goes—they come and they go and their staff then sits behind them in kind of a half circle.

So when we started out, of course, Orrin Hatch is very personable, very nice, and says he's going to ask some general questions of the six of us and then he'll take us sequentially for individual questioning. And he then says, "Well, we'll be out of here by . . . we've got another very, very important matter at

10:00 so we have to finish this." And I mentioned to him that I understood that was the case.

About that time is when Tom Eagleton came into the room. And I notice he came in and he was in his shirt sleeves and he had a mug of coffee and a cigarette. And I recognized him from his pictures and so forth. I noticed that he was shaking quite a bit with the coffee mug and the cigarette.

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So he came in and took his seat and when we had this discussion . . . when I had this discussion with Senator Hatch about getting out at 10:00 . . . and Thomas Eagleton broke in and he said, "Wait a minute, wait a minute, we've got to come back at 2:00." He said that "Senator Kennedy has advised me that he can't be here this morning and he wants to question this panel." And Orrin Hatch was upset with that. He made a speech about how nobody advised him that anybody needed an extension. Out of courtesy of course he would do that, but he wanted to know if anybody on the panel here would have a problem.

And I raised my hand and he said, "Well, Justice Kane"—or "Judge Kane," he called me—he said, "What?" I said, I explained to him, "I have this plane to catch at 1:30. I need to get back. I'd been assured that it would be finished by 10." He said, "That's correct."

"So I don't know quite what to do," I said. "I've got, it's a real problem." And he said, "Well, maybe we could . . . would you have any objection to going first and then if Senator Kennedy wants he could submit his written questions?" I said, "I have no objection at all. That's wonderful, thank you."

So we started out that way. I went first, and of course he's asking me nice, softball, easy questions. Then he turns the questioning over to Senator Eagleton, the ranking member, and I must mention here, Senator Metzenbaum was not present at the first part of Eagleton's cross-examination.

So Eagleton looks at me and talks about "seem to have a good record," and all the nice things that people say. And I'm waiting for the curveball—and it comes fairly soon, in that he says well, he just finds it difficult to see that I don't have a conflict by being a board member of the Pacific Legal Foundation, which I was. As he put it, a conservative like a rich man's club and then be on a board that is considering doling out money to poor people. So he kind of gave me that slam and I said, "Senator, I don't think it's any conflict at all, because as a matter of fact, a lot of our work is passing on cases to be prosecuted on behalf of poor people. So I don't know where you get that idea." And he said, "Well . . ."

A staff person then hands him a brochure that I think I recognize as being one of our annual reports, that had a glossy finish and stuff; and he's looking at it and he said, "Well, wait a minute." He said, "Pacific Legal Foundation has been on the side . . . you've been on cases against poor farm workers, haven't you?"

And I looked at him and I said, "No, I think quite the contrary. I think if you look at that brochure you're looking at and read it again, you'll see that that case that's referred to is a case that we took on, on behalf of the farm workers; because nobody else, including Mr. Chavez's union, would represent them, and we prevailed. We got him what he wanted." He looked at that and he read it and he looked at me and he took that brochure like that and the staff guy was about like that and threw it at him like that.

About that time, Metzenbaum is coming in. Now he sits down, and he wants to go after me on the basis of the Pacific Legal Foundation, but he starts in right away and he says, "Well now, tell me who the biggest donors are for the Pacific Legal Foundation." I said, "Senator, I haven't got a clue. I couldn't tell you."

"Well, I mean you're on the board, you supervise that." He got real nasty, and Orrin Hatch jumped on him. I don't think I've ever seen two senators that angry with each other. They were shouting. Hatch was saying, "Well, I'm the chairman of this committee. We don't treat witnesses like that, blah, blah, blah." And Metzenbaum was coming right back at him and says, "Well, you may be the chairman, but . . ." You know, they really went at it; they were red-faced.

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So we had some more questions along that line. I tried to explain to him that we don't look at who the donors are; we know that at the end you'll get reports. But I said many of our donors donate a dollar, five dollars; I've seen a lot of that. But our main work is helping people protect their property rights and so forth.

He said, "Well, okay, so let's go to another subject." He said, "I said I just got here and I haven't had a chance to really review it, but I can see here," he says, "you've had a pretty distinguished career." And I said, "Thank you, I think it's been—I've enjoyed it." And he said, "But I can't believe some of the things that are being said about you."

And I said, "Well, till I hear them I don't know what they are." Then he said, "I'm seeing here that you gave a speech and talked about the Supreme Court Chief Justice—that she should

resign from the court because she had cancer." He said that. And ***she*** suggested that, Rose Bird did, at one time, and others.

I said, "Well, Senator, no I didn't say that; I don't know how any human being could say that about a human being. But I know where that story came from and I'm going to tell you." And he said, "Well, go ahead."

I said, "Right after I had left the Court of Appeal, the president of the San Mateo County Bar Association asked me to speak at their annual bar dinner and give my impressions of the judiciary. I was very flattered to get that, and I went out and gave the speech and I said, "I like to use medical analogies to get a point across if I can."

People seemed to understand that, so I told them that there was quite a bit of criticism of the courts going on in the media at that time. And I said, "The trial judges get blamed every time somebody gets released on bail; they blame the judge." And I said, "He didn't have any choice, he had to do it. It wasn't an offense for which he could not." I said, "Nobody tells anybody that they're mad at that judge because he did exactly what he had to do, things like that. Nobody's defending them."

So I said, "You know, the problem . . . so the problem is the public. I'd like the public to know the problem isn't in the courts, if there is one; it doesn't lie at the trial level, where people go and see these things day by day. It's at the top, because we're not built like a building, where you build a foundation and go up; the legal system's built from the top down. What comes up through here tells people how'd they do down here." I said, "It's very much like the patient that goes into the doctor's office and the doctor says, 'What brings you here today, Steve?' 'Well, I've got this big swollen toe, it's just killing me.' The doctor looks at that and sees that maybe he's got gout or something. And he's going to give him a prescription. He said, 'Well, anything else bothering you?' 'Well, the last month or so I've had a lot of tingling in my arm down into my fingers, and I shake it and I can't get rid of it and it's just been hanging around but doesn't interfere with me working or whatever.'

"Doctor says, 'Wait a minute, you have tingling down your arms and you're telling me about a sore toe; let's take a look.' So they do a CAT scan and so forth and they found out that he's got a brain tumor. He said, 'We're going to forget the toe, we'll take care of you to get rid of that.'

"So that's the analogy to our judicial system. If we get a tumor or an illness up here, it's going to affect what happens down here."

So from that analogy . . . oh, by the way, one of the lawyers present—and I won't name him, but he is a nationally recognized lawyer today—who was in that audience and who had a lot to do, in a way, with Rose Bird's ascendancy to the court, came up to me afterwards and told me he agreed with everything I said.

So it made me feel good—except the next thing I hear is that, not the next thing but later on, when the campaign against Rose Bird was flushing out . . .

(02:57:50)

She gave a talk to a group of breast cancer victims that had survived. This is a sad story because she herself was a breast cancer victim. And I mean I knew about that, and I am very sympathetic to that. And my wife has had breast cancer.

So she was speaking to this group in Los Angeles, and it was during the time when the political campaign was on for the recall and so forth. And I have that speech, and in it she refers to her critics—not by name, but stating that one of her most vocal critics was suggesting that she should be off the court because of her cancer.

No name is mentioned, but you know, the cat has the milk on the whiskers from the dish that you left in the room. And then later I heard, not a judge at the time, but later a judge, reiterate that statement, which of course is one of the most callous things I have ever heard.

So I told Senator Metzenbaum, I said, "You know, that offends me, and I assume it offends everybody in this room. But that's the way that story came up." He said, "Well, I didn't think that a Supreme Court justice could be . . ." I had to correct him. I said, "I wasn't a Supreme Court, I was a Court of Appeal justice. But be that as it may, nobody would say that about anybody."

So he then says, "Well, I still come back to this business of your being with this legal foundation that caters to the wealthy." Paraphrasing, that's the way he put it. He said, "How can you have any appreciation for the plight of the poor?" And I just said to myself, Thank you, Senator Metzenbaum, for that question.

And I just looked him in the eye and I said, "Senator, my first vivid recollection of childhood is standing in a line with my sister and a couple of my brothers and my dad around the courthouse, I think it was, in Denver. I was about eight years old, seven, eight years old. That was a relief line for shoes. We had no water, no heat, electricity at home; we had no food, dad

didn't have a job. We'd planted rutabagas and tomatoes out in the backyard and potatoes to try to get something to grow."

And I said, "That wasn't just one day—that was quite a while." I said, "So I think I have a pretty good idea, as much as anybody in this room, as to what it means to be poor."

And he just looked at me and quit. And I just felt good, and I felt good because I thought, maybe this will make it easier for the others when they come along. They won't have such an arrogant panel to confront.

Steven Vartabedian: And that's quite an amazing story that you could relate your own childhood as a primary qualification for service on this kind of panel—which was a moot issue, as it turned out?

Robert F. Kane: Oh, yeah—it was a moot issue, sure. I mean, nobody knew that I wasn't going to be there, but that was that. So I was withdrawn, later.

Steven Vartabedian: And you alluded to the fact that one of the reasons—well, actually the reason your nomination for the legal service board, why that nomination was withdrawn, was that you were going to be appointed to be ambassador of the United States to Ireland. And in fact you had had some previous international service back in 1982, serving as an arbitrator in a treaty dispute with Poland.

Robert F. Kane: Yes.

Steven Vartabedian: Is that correct?

Robert F. Kane: Yes, it's correct.

Steven Vartabedian: Tell us about these experiences. In '84 you're appointed to be U.S. ambassador to Ireland. What was your experience like in these international arenas?

Robert Kane: Well, the 1982 thing with Poland was not a long-lived matter. What had happened was, and some people will remember this: that when they declared martial law in Poland, Ronald Reagan terminated Poland's air rights into the United States. They had air rights under an international treaty and he basically said, "If you're going to have martial law you're not going to be flying your airplanes over here." And that's what he did.

(03:02:55)

The treaty called for arbitration of any disputes, so Poland called for arbitration. They demanded arbitration. So I got a call from, I think again it might have been Ed Meese—I'm not sure—asking me if I would be willing to be the American arbitrator in this treaty dispute. And he said, "The first job will

be you have to meet with your Polish counterpart and select a neutral arbitrator."

It's a three-judge, three-arbitrator panel. And he said, "That may sound easy, but it probably won't be." And I said, "Well, okay. Let's think about that." And I said, "I've got a better idea." I said, "Why don't you ask the President to consider my partner Gene Majeski, who is Polish, born and raised by a Polish father in Chicago? He might even know even a little of the language. I'm not sure, but he's very bright, and I think he has a lot in simpatico. He would be a good man."

So they took that under advisement and said okay. So I was not going to go to do this. Then unfortunately Gene got a bad back where he couldn't . . . he was in bad shape for a while, and certainly he couldn't fly and all that. So they came back, and that's how I happened to go. So they picked a neutral spot; they picked The Hague. We had to have a neutral spot to meet. They sent a legal advisor along with me from the State Department, a lawyer, legal advisor.

We of course had a list of internationally known people that we thought would have been screened—vetted, as they say—that we would pick. And of course they on the other side had some. And of course they wouldn't like our list and we wouldn't like theirs, and maybe we'd find one in between.

So I went over there to The Hague and spent the first time maybe 10 days. We met several times, and it was almost Hollywoodish because when we met, we'd meet one day in our embassy in The Hague and another day in theirs. And of course the Polish embassy was in the ambassador's home and he had the green-felt table with the water bottles and so forth and ours was kind of the hardwood finish, like you'd see in the movies.

My counterpart had been a professor of law in Poland—very nice man, spoke English. And the long and short of it was that we just couldn't agree. Every time we'd get one that looked . . . we would adjourn for the day and go back. And cables would go back and forth and we'd vet these things out and now we'll try this. Finally we ran out of gas. So I came home and it looked like the arbitration was going to fall through the cracks.

Well, a few weeks later or months later, they called and asked to resume. So then I go back for a second trip and we went through the same thing, same result.

Now, there is a provision in the treaty that if the arbitration can't reach a result, you can appeal to . . . there's an international air conference board that has an office in Canada that mediates and has the final word on all these kinds of things. So they were then appealing it to the Canadian thing when lo and behold, peace reigned, I guess back then when the

wall went down, or the wall went down later. But things smoothed out, and President Reagan withdrew the sanction.

So I spent a lot of time, got a lot of education, met judges in the world court, had a terrific time. I spent a quite a bit of time with now your colleague in the Second District, Richard Mosk, who was one of our arbitrators at the Iran-U.S. arbitration tribunal. He was in The Hague for two, three years, did a fabulous job. I spent a lot of time with Richard and his family. So it was a great experience—but did we accomplish anything? I leave that to history, I suppose.

(03:07:48)

Steven Vartabedian: Then you had the experience of the ambassadorship.

Robert F. Kane: Ireland?

Steven Vartabedian: Yes, Ireland.

Robert F. Kane: Well, words can't describe the joy of that and the experience of that. I would like to have stayed longer; I was there just under two years. But I had some family obligations with my sister and so forth that I just had to get back and take care of. I think if I had stayed three years I probably never would have been able to go back to work again—because as you say, they carry around a soft pillow over there.

When I was there, if you took the president of Ireland and the prime minister and the Papal Nuncio, they would probably have been tops—and the next one would probably be the American ambassador and such things, as I had an honorary membership in every golf club in Ireland, of which are there about 360. None of the other ambassadors got that. They used to get on me all the time.

That's just a little thing about how they treat you. It was a wonderful experience. We certainly had nothing controversial going on other than our role in Central America, and Nicaragua was a sore point with the Irish. So I was defending that, but that was the only, and that was not really contentious. Well, it was contentious, but not difficult.

I would talk to the people who had their different views and had been to my office at the embassy, and they were concerned about our putting in the missiles in Western Europe. And these were basically what people refer to as the peaceniks. There would be priests and nuns and laypeople, but they were very gentle. They would be willing to talk and I would talk to them and I would ask them if they had put the same questions to the Russian ambassador down the street. Well, no, they never talk to him. I said, "Why not?" "Because he wouldn't talk to us."

I said, "If President Reagan had his way we'd get rid of all the nuclear missiles in the whole world—all of them, not just a few." I had one discussion with a priest and he said, "Well I'm concerned about the numbers." And I said, "Wait a minute. You and I have a very serious difficulty here." I said, "Because the numbers I have a problem with are any. You apparently seem to be willing to accept a limited number. Why is that? If they're no good, they're no good."

He thought that was very interesting. I said, "Well, I think it is." I said, "I think that's the way President Reagan feels about it. We can't get people to agree on that. So that's why we're doing what we're doing."

Steven Vartabedian: More recently you've done private judging, I know, with ADR Services, and you've also served as an expert witness—from our discussion here today, very appropriately—an expert witness about attorney malpractice and conduct by attorneys.

Robert F. Kane: A lot of that.

Steven Vartabedian: And certainly all of these experiences you have talked about prepared you well for you continued career that you've had in more recent years. But one thing I came across is that you draw a distinction between trial lawyers and litigators. Could you tell us what you see that distinction as?

Robert F. Kane: Well, that goes back to when I returned to practice in 1979. There was this new term "litigators." Before that you had trial lawyers and office lawyers. I soon learned to realize that by litigators they refer to people who were engaged in litigation matters: depositions, interrogatories, production of documents, motions to compel those things, etc., etc. But very few of them really tried cases from start to finish.

I found that you couldn't have one lawyer at a deposition. You had to have two, and a paralegal sometimes, to boot—or more, which still makes no sense to me. I can't think of a case in which a lawyer cannot represent a client at a deposition alone.

(03:12:53)

When they go to trial, he might have another lawyer sitting next to him, or two or three now. He's not going to have a paralegal and stop and do all this. So I think it's a name that's taken on by people who are enamored with the advocacy arena but don't have the credentials or the experience to be what I would call a trial lawyer.

It's a shame, in a way, and it's not all their fault; because most of them didn't have the opportunity to become a trial lawyer—to have the sleepless nights and the pain in the gut and the perspiration and the loss of weight and so forth for a week's

trial. ***[laughing]*** They don't have that, except of course for the people who go into the public arena in the prosecutorial stage—and now, large public defender's offices, they're in court a lot.

Steven Vartabedian: They sure are.

Robert F. Kane: Yeah.

Steven Vartabedian: Now, from a personal standpoint, in recent years you have relocated from the Bay Area to the Fresno area, in Clovis.

Robert F. Kane: Correct.

Steven Vartabedian: I know a part of that's to be closer to family. And aside from bearing a summer where the heat got up to 113 degrees for several days, how do you like your new home here in the San Joaquin Valley?

Robert F. Kane: Absolutely love it. In a lot of ways I wish I had moved here earlier, but of course I had so many good things in San Mateo that I can't really say that. But the three years we've been here have just gone by. I can't believe it.

We of course had never built a home before. I again lucked out. I happened to get a contractor, a great Armenian fellow, Jim Setrakian, who . . . If I were younger and had some money I would love to go buy some land someplace and have this fellow build homes. It was a joy to work with this man. I've heard lots of sad stories about contractors in litigation, in arbitration, in mediation; and this person is just remarkable.

So that was a joy. I haven't had a single problem since, and it's a great place to retire. It's quiet. People are friendly. I compare it a lot to Oklahoma. People give me the business on that, but I happen to like Oklahoma and the people you talk to.

Maybe it's the dirt. But my father always said that he always felt more comfortable and could trust the people the closer they were to the dirt.

Steven Vartabedian: You and your wife have been blessed with five children, and I know just this past June 9, 2006, you administered the oath of office to one of those children, Justice Stephen Kane, who we've talked a bit about. And certainly he himself has distinguished himself during his tenure as a superior court judge. Describe for us your feelings on that occasion of his taking the oath of office to sit on the Court of Appeal.

Robert F. Kane: "Pride" is the word, and I guess the thing you're not supposed to have too much of. But I was able to swear Steve in when he went on the superior court, which was 14 years ago and then on this occasion. And of course sitting there and listening to the comments by Presiding Judge Ed Sarkisian and Justice Brad Hill

and Magistrate Judge Larry O'Neil, who came from some different perspectives.

It was quite emotional for me, and then the gentleman from the Jenny Commission in his report reporting that Steve was found to be extremely well qualified. I heard that that is fairly rare. I don't know that to be a fact, but I heard that later. I know that certainly wouldn't have been the case in my case. We didn't have a Jenny Commission.

(03:17:41)

When I look at Steve's work, he's so much more qualified than I was—that's a given, that's easy. I've been very impressed with all the judges I've met here in Fresno. I've met quite a few of them and had a chance to see how they work and so forth. This is a wonderful judicial atmosphere, I think, in Fresno. That goes for the bar too, because I've met a lot of the lawyers, I've been to some of their functions.

It gives me the feeling that I had when I was a young lawyer in San Mateo when the bar was very cohesive and friendly and civil, even though you were battling somebody in court for several days. And that was on a very professional basis, and I get the same feeling here in Fresno—so it goes for your court too. I think you've got . . . well, I'm happy because Steve is going to have a wonderful life here.

Steven Vartabedian: I tell you, those of us here are very fortunate to have someone like you close by.

Robert F. Kane: Thank you.

Steven Vartabedian: Just getting to know you has been a real pleasure for me.

Robert F. Kane: Thank you. It's nice to reminisce on all these things—I'm sorry I'm doing all the talking. ***[laughing]***

Steven Vartabedian: Well, that's the idea—you to do all the talking, because certainly your life is something that we want to preserve in this particular project. And your experiences, your multifaceted career, is an inspiration to us all.

Robert F. Kane: Good, good.

Steven Vartabedian: Having emerged from the hardship that you did as a young person.

Robert F. Kane: It's been a great blessing for me, I will tell you.

Steven Vartabedian: I just want to thank you, Justice Kane, for sharing these tidbits from your life and sharing these things very candidly with us—things involving everything from your service with the judiciary

to your international experiences. Just getting a glimpse of the highlights of your splendid career has been my pleasure, and we thank you very much for sharing that with us.

Steven Vartabedian: Thank you; my pleasure indeed. Thank you, Steve.

Robert F. Kane: Thank you.

***Duration:199 minutes***
***September 28, 2006***