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INTERVIEW WITH HON. J. ANTHONY KLINE

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MARCH FONG EU
SECRETARY OF STATE

California State Archives
State Government Oral History Program

Oral History Interview

with

HON. J. ANTHONY KLINE

Legal Affairs Secretary, 1975-1980

October 29, November 26, 1990
April 16, 1991
San Francisco, California

By Germaine LaBerge
Regional Oral History Office
University of California, Berkeley

RESTRICTIONS ON THIS INTERVIEW

None.

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J. Anthony Kline, Oral History Interview, Conducted 1990, 1991 by Germaine LaBerge, Regional Oral History Office, University of California at Berkeley, for the California State Archives State Government Oral History Program.

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PREFACE

On September 25, 1985, Governor George Deukmejian signed into law A.B. 2104 (Chapter 965 of the Statutes of 1985). This legislation established, under the administration of the California State Archives, a State Government Oral History Program "to provide through the use of oral history a continuing documentation of state policy development as reflected in California's legislative and executive history."

The following interview is one of a series of oral histories undertaken for inclusion in the state program. These interviews offer insights into the actual workings of both the legislative and executive processes and policy mechanisms. They also offer an increased understanding of the men and women who create legislation and implement state policy. Further, they provide an overview of issue development in California state government and of how both the legislative and executive branches of government deal with issues and problems facing the state.

Interviewees are chosen primarily on the basis of their contributions to and influence on the policy process of the state of California. They include members of the legislative and executive branches of the state government as well as legislative staff, advocates, members of the media, and other people who played significant roles in specific issue areas of major and continuing importance to California.

By authorizing the California State Archives to work cooperatively with oral history units at California colleges and universities to conduct interviews, this program is structured to take advantage of the resources and expertise in oral history available through California's several institutionally based programs.

Participating as cooperating institutions in the State Government Oral History Program are:

Oral History Program
History Department
California State University, Fullerton

Oral History Program
Center for California Studies
California State University, Sacramento

Oral History Program
Claremont Graduate School

Regional Oral History Office
The Bancroft Library
University of California, Berkeley

Oral History Program
University of California, Los Angeles

The establishment of the California State Archives State Government Oral History Program marks one of the most significant commitments made by any state toward the preservation and documentation of its governmental history. It supplements the often fragmentary historical written record by adding an organized primary source, enriching the historical information available on given topics and allowing for more thorough historical analysis. As such, the program, through the preservation and publication of interviews such as the one which follows, will be of lasting value to current and future generations of scholars, citizens, and leaders.

John F. Burns
State Archivist

July 27, 1988

This interview is printed on acid-free paper.

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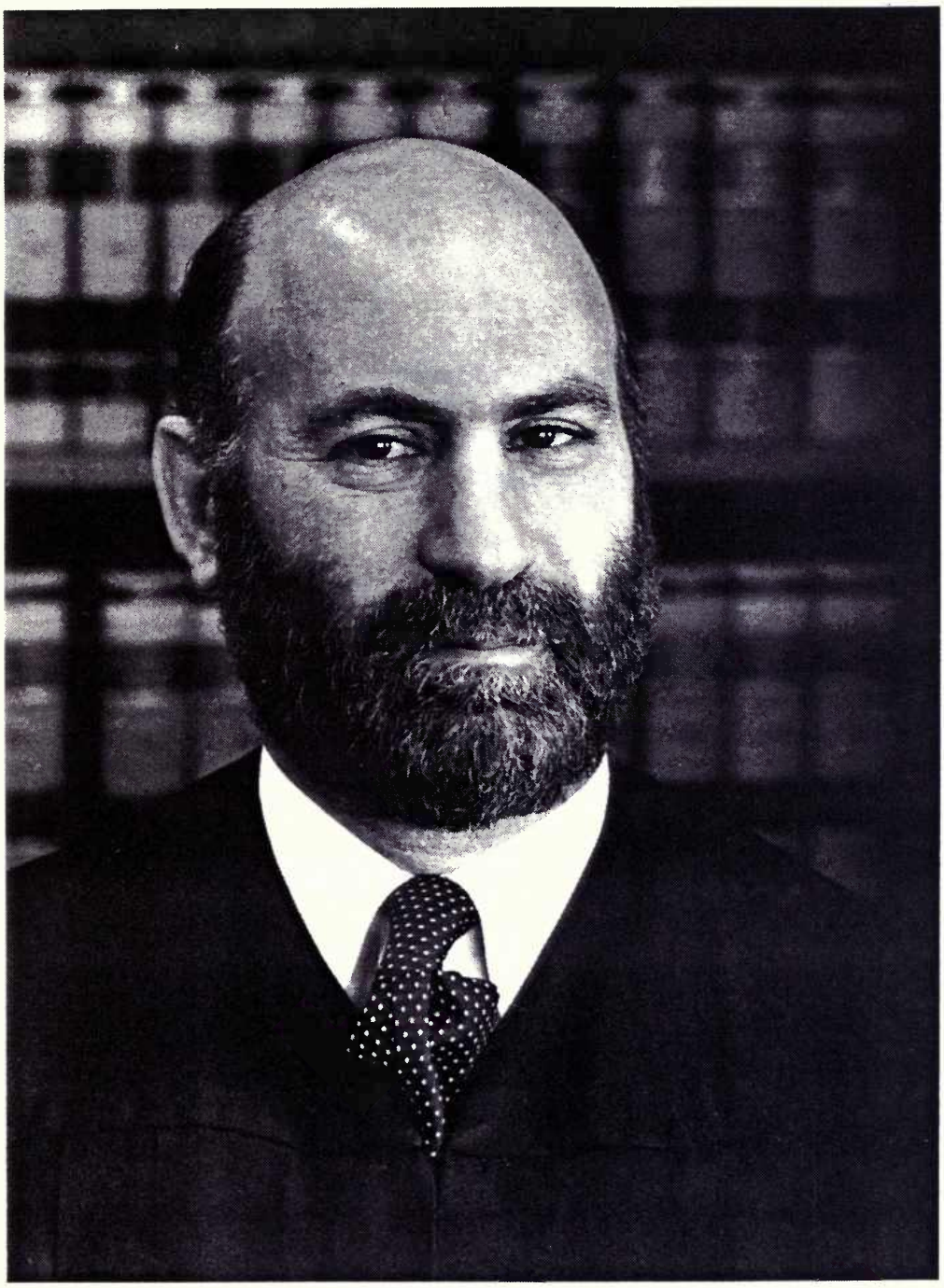

J. ANTHONY KLINE

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SESSION 3, April 16, 1991

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Interview Time and Place

October 29, 1990
Judge Kline's chambers, San Francisco, California
Session of one hour

November 26, 1990
Judge Kline's chambers, San Francisco, California
Session of one and one-half hours

April 16, 1991
Judge Kline's chambers, San Francisco, California
Session of one and one-half hours

Editing

The interviewer/editor checked the verbatim manuscript of the interview against the original tape recordings; edited for punctuation, paragraphing, and spelling; verified proper names and prepared footnotes. Insertions by the editor are bracketed.

Judge Kline reviewed the transcript and approved it with minor corrections.

The interviewer/editor prepared the introductory materials.

Papers

Judge Kline's publications are listed following the interview.

Tapes and Interview Records

The original tape recordings of the interviews are in The Bancroft Library, University of California at Berkeley. Records relating to the interview are at the Regional Oral History Office. Master tapes are deposited in the California State Archives.

BIOGRAPHICAL SUMMARY

J. Anthony Kline was born August 17, 1938, in New York City. He graduated from Johns Hopkins University with honors in 1960. He pursued graduate studies at Cornell University as an Alfred P. Sloan Fellow, receiving his M.A. in 1962. At Yale University he received the Gherini and Sutherland Cup prizes and earned his law degree in 1965.

After graduation from law school Justice Kline served as law clerk to Justice Raymond E. Peters of the California Supreme Court. Thereafter he was for four years an attorney in New York with the Wall Street firm of Davis Polk and Wardwell. In 1971, after returning to California, he was one of the founders of Public Advocates, Inc., the first non-profit public interest law firm in the west. He was Managing Attorney of Public Advocates when, in January 1975, he was appointed Legal Affairs Secretary to Governor Edmund G. Brown, Jr.

As Legal Affairs Secretary Justice Kline served on the Governor's cabinet for six years, until he was appointed to the San Francisco Superior Court in September of 1980. He was appointed a Presiding Justice of the Court of Appeal in December 1982.

At the present time Justice Kline is Chairman of the Board of Directors of the San Francisco Conservation Corps, a member of the Board of Directors of Youth Service America, the American Jewish Congress (Northern California division), the San Francisco Private Industry Council, and President of the Youth Guidance Center Improvement Committee. He is also a member of the California Judges Association, the Institute of Judicial Administration and the World Affairs Council.

Justice Kline has published the following articles:

Kline, An Examination of the Competence of National Courts to Prescribe and Apply International Law: The Sabbatino Case Revisited, 1 Univ. of San Francisco Law Review 49 (1966).

Kline, Displacement of the Poor from Housing by the Federal-Aid Highway Program: Remedies Under the Highway Relocation Assistance Act of 1968, 4 Clearinghouse Review 408 (1970).

Kline & LeGates, Citizen Participation in the Model Cities Program: Toward a Theory of Collective Bargaining for the Poor, 1 Black Law Journal 44 (Spring 1971).

Kline & Sitkin, Financing the Private Practice of Public Interest Law, 13 Arizona Law Review 823 (1972).

Kline, Law Reform and the Courts: More Power to the People or to the Profession?, 53 California State Bar Journal 14 (Jan./Feb. 1978).

Kline, Merit Selection: The Pursuit of an Illusion, 55 California State Bar Journal 421 (1980).

Kline, Curbing California's Legal Appetite, Sunday Los Angeles Times, Opinion Section, page 1 (Feb. 12, 1978).

Kline, The Media and the Courts, Los Angeles Daily Journal, 90th Anniversary Issue (Sept. 11, 1978).

Kline, Is Time Running Out on the Legal Profession?, ABA Bar Leader (Nov./Dec. 1978).

See also:, Hufstedler, Kline, Zolin et al., (symposium), Our Congested Courts, 1 Los Angeles Lawyer 14 (April 1978).

[Session 1, October 29, 1990]

[Begin Tape 1, Side A]

LABERGE: Why don't you tell me a little bit about your childhood: where you were born, your schooling, your parents?

KLINE: I was born in 1938 in New York City. My parents were themselves the children of European immigrants--Russian and Hungarian Jews. I grew up in a small town on the south shore of Long Island, Cedarhurst, went to Lawrence High School, graduated from high school in 1956. The town I grew up in was kind of a bucolic suburb of New York City, close by the beaches. [Interruption]

LABERGE: You were talking about the bucolic suburb of New York City.

KLINE: Yes, just a, you know, a suburb in the fifties after the war. It was a very pleasant childhood. I was kind of an obstreperous kid. I was bright, but I was a disciplinary problem in grammar school and in high school, had difficulty getting into college, spent a year at Ohio Wesleyan University in Delaware, Ohio.

Then I transferred to Johns Hopkins University, and at Johns Hopkins I had a kind of an intellectual awakening. I then became something of an overachiever. I majored in philosophy at Johns Hopkins, graduated with honors, then went to Cornell University on an Alfred P. Sloan fellowship, got a master's degree in public administration in 1962 and decided at that point that I was better cut out for a career in the law. Then I went to Yale

Law School, from which I graduated in 1965.

LABERGE: Is that where you met [Governor Edmund G., Jr.] Jerry Brown, at Yale?

KLINE: Yes. Jerry Brown was in the class of '64. I was in the class behind him. We lived in adjoining quarters at the law school and first became friendly there. I'll get back to that later.

When I graduated from Yale, I came to California to serve as a law clerk to a California supreme court justice, Raymond E. Peters. I served as his law clerk for that one year, 1965-66. In September of '66 I went to Los Angeles to head up Young Democrats for Brown. That was in the gubernatorial campaign of 1966. [Governor Edmund G., Sr.] Pat Brown was running against [actor] Ronald Reagan. After that election I returned to New York City and worked in a large Wall Street law firm, Davis Polk & Wardwell. I stayed at Davis Polk for about four years, much longer, really, than I ever intended to stay. In 1970 I came back to Berkeley, and became a legal services lawyer.

I was the chief of litigation of the National Housing and Economic Development Law Project, which was part of the Earl Warren Legal Center at Boalt Hall [School of Law]. This was a so-called "back-up center" that was taking on test cases on behalf of the clients of neighborhood legal services programs. My specialty was lawsuits challenging the destruction of low-income housing by urban renewal projects or federally-financed highway projects.

LABERGE: Did that include the Hayward freeway?

KLINE: Yes, as a matter of fact.

LABERGE: I read something about that, but I'm fuzzy on it.

KLINE: There were federal statutes that protected low-income people from displacement as the result of a federally-financed construction project. Those statutes have been on the books for many, many years, but were ignored because the beneficiaries of the statutes were, by definition, poor people who didn't know they had legal rights, had no access to lawyers and were unaccustomed to asserting their rights. One of the things the Legal Services Program did was to suddenly provide lawyers who told the beneficiaries of these statutes, of what their rights were, and asserted them on their behalf.

One of the reasons I was so successful in these lawsuits--in one period of about eighteen months I successfully enjoined well over a billion dollars' worth of freeways in six or seven states--was not because I was a brilliant lawyer but because state highway departments had grown so accustomed to ignoring the law that they were very easy to beat. In any event, our purpose in these lawsuits was not so much to stop the freeway or stop the urban renewal project as it was to vindicate the housing rights of people who'd been displaced. I guess the biggest single suit that I won at that time was a lawsuit enjoining the Yerba Buena Urban Renewal Project here in San Francisco; that's a lawsuit that went on for seven or eight years.

In any case, partly because of my success in court, and maybe for some other reasons, in 1971 the Ford Foundation awarded me and two other legal services lawyers, [Robert] Bob Gnaizda and [Sidney] Sid Wolinsky, about a $3 million grant

over a period of years to start the first public interest law firm in the West. Actually, it was only the second in the country. It was called Public Advocates, and Public Advocates is still around and still quite successful.

From 1971 to 1975, I was the managing partner of Public Advocates, which had about eight lawyers. We were based in the Tenderloin section of San Francisco, and we represented most every minority organization or women's organization in California. The National Organization for Women, the NAACP [National Association for the Advancement of Colored People], the Mexican-American Political Association, the League of United Latin-American Citizens, the Native American Association, on and on and on. We were really, I think, an extraordinarily successful law firm, and it was a lot of fun. Keep in mind this was in the early seventies when the courts were still seen as an important place in which to obtain social change. Some people don't think they're nearly as effective a forum for that today as they were then. But we were young; we were having a lot of fun, and we were committed to change. Frankly, I can't imagine that lawyers with the interests we had could have found more rewarding and more enjoyable work. So that was a wonderful time.

Because Public Advocates was a 501(C)(3) nonprofit corporation, we were not allowed to get involved in conventional political activities or any political activities. Frankly, we were not very politically oriented in the conventional sense of party politics or election politics. So I was never involved during the whole entire time I was with Public Advocates, that five-year period, in

any sort of politics, even though Jerry Brown at that time had been elected to the L.A. [Los Angeles] Community College Board and then had been elected secretary of state and thereafter ran for governor. I was never involved in any of his political campaigns, nor was I ever later. When I served in the governor's office, I was not active in his purely political efforts--campaigns for president or governor, things of that sort. I was never really involved in that. I didn't see myself, and I don't think anybody else saw me, as having any great skills on that front.

LABERGE: Or possibly interest?

KLINE: Not really. Yes, that's right. I had no real interest in raising money, and I had no particular interest in developing a political campaign. My interests were much more issue-oriented and confined, if not to the executive branch, to the development of policy.

In any case, in 1974, Jerry Brown was elected. I believe I was the first person he appointed. I was appointments secretary during the transition; that is, the period after his election in November and before his inauguration in January. During that period the two chief people in the transition were myself and [Executive Assistant] Gray Davis. So that my first responsibility, really, was to learn what the appointment responsibilities of the California governor were, chiefly from the Reagan people who were still in office. We had a pretty smooth transition. Gray and I went to Sacramento on several occasions and interviewed [Executive Assistant Edwin] Ed Meese, who set up interviews with every member of the governor's cabinet. They gave us

briefing books and quite a bit of helpful information.

Although the governor didn't appoint anybody to a state position during his transition, it was during that time that we began to gather the information that resulted in his later appointments. At that time we were not interested in judicial appointments. We were talking only about appointments to the governor's cabinet and department heads.

LABERGE: Before you go on, could you say something about your transition from working for a Wall Street firm to doing public interest law? How that came about, or what influenced you?

KLINE: I guess the real question is not why I went into public interest law or legal services; the real question is why did I go to Wall Street? There's a picture [motioning] of the Wall Street law firm on the wall, on the top, and there's Public Advocates on the lower right. And there's Jerry Brown's office right in the middle.

When I went to New York in 1966, the myth still prevailed that Wall Street was the big league for lawyers. I was a bachelor; I wanted to live in New York City with a little money in my pocket, and test myself in that world. I never had any long-term interest in staying on Wall Street.

Keep in mind that I went to graduate school and law school in the sixties. The country was going through great social change. Many of us saw the law as a way to effectuate progressive social change as the federal courts had, for example, in Brown v. Board of Education.[1] We were inspired by the

1. 347 U.S. 483 (1954).

possibilities the legal process presented. We saw the law and change through the law as the great victory of our society, the victory of reason. The idea it was possible to achieve long overdue changes in society, to make rights more widely available, to eliminate invidious forms of discrimination, racial and economic, and so forth, was heady stuff.

That was a long time ago, and the older one gets, the more one begins to wonder whether that idealism--whether that optimism about the use of the courts to effectuate social change--was as realistic or ever as wise as it then seemed. My present view, which I won't belabor, is that change that's achieved through the political system may be more enduring and more legitimate in the eyes of many people than change that is imposed by the courts. I see the courts much more as a last resort today than I did at that time. I think it's important to get people involved much more directly in vindicating their own interests and their own rights rather than have lawyers doing it for them in the abstract way that lawyers do.

In any case, going to Berkeley and entering the Legal Services Program was much more consistent with my past than Wall Street.

LABERGE: Was there someone who taught you, who influenced you in any way toward that bent? Or was it just the period of the sixties and how you grew up?

KLINE: I'm not sure I can answer that question. My parents were not very ideological or politically-oriented people. Harold Lasswell

wrote a book called Psychopathology and Politics[1] that suggests that the position an individual occupies in the political or ideological spectrum is more a function of Freudian sorts of considerations--such as toilet training--than most people realize. In any event, I don't know what the answer to your question is. I know that I always identified more with outsiders or with the underdog--this may have something to do with being Jewish--than I do with the established authorities. Though there were many professors at Yale who influenced me along these lines, as did Justice Peters, who was the most progressive supreme court judge of his era, there was no single person I would identify as a mentor.

I think I also should mention that when I left Wall Street, I became a Reginald Heber Smith fellow. That was a fellowship that no longer exists that was designed to bring practicing lawyers into the Legal Services Program. It provided a stipend for me that supported me in the early months in the Legal Services Program. They sent me to school, to . . .

LABERGE: . . . to Boalt? [Hall, University of California at Berkeley, Law School]

KLINE: No, it wasn't to Boalt. This course was run at Haverford College in Pennsylvania outside Philadelphia. It was a course designed to introduce young lawyers to the sorts of legal issues that were of interest to poor people, and the different sorts of skills you needed in dealing with clients who were low income or members

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1. Harold D. Lasswell, Psychopathology and Politics, a new edition with afterthoughts by the author (New York: Viking Press, 1960).

of racial minorities, which was a little bit different than the kind of skills you'd use if you're dealing with a business client.

LABERGE: They're doing something like that at Boalt now. There's a group of students who go around in vans, and will stop at People's Park or wherever there are homeless, and they give legal advice, anyway. But they'd had some kind of training to help those folks.

KLINE: I'm not familiar with it.

LABERGE: Let's see. Where have we gotten to? We had gotten to why you had come from Wall Street to Berkeley and Public Advocates.

KLINE: One other thing I ought to mention here is that it was during my first year in California, when I was clerking on the supreme court, that Jerry Brown and I became close friends. Although we were friends at Yale, we really built our friendship in Berkeley. We were living together while we were both clerking on the supreme court. He was clerking for [Associate] Justice [Mathew O.] Tobriner and I was clerking, as I said, for Justice Peters. But we lived together in Berkeley near the corner of Walnut and Cedar, on the ground floor of a beautiful old Victorian--that regrettably has since been demolished--for about ninety dollars a month. As you can imagine, Berkeley was a pretty exciting place to be in 1965. That was a very, very interesting time.

LABERGE: So you did that for just one year?

KLINE: Yes. Those judicial clerkships ordinarily are for just one year.

LABERGE: But that was right during the Free Speech Movement.

KLINE: Just after, right. Jerry did his, I think, for about a year and a half. He started, as I said, earlier. He graduated from Yale a

year before me, but he stayed over for about a half a year or more, and it was during that time that we roomed together.

LABERGE: You had kept up contact some way so that you ended up being roommates.

KLINE: Oh, yes, we'd kept up contact, that's right.

LABERGE: So then from there, did you go back to Haverford and do the . . .

KLINE: No, no. When I left Berkeley the first time, I went to New York and practiced in Wall Street for about three years. It was then, after a brief stint at Haverford, that I returned to Berkeley. When I returned, it was 1970. By then I was married.

LABERGE: How did you keep up your contact with Jerry Brown between then, for instance, and '74 when he was elected governor?

KLINE: You mean during the early seventies?

LABERGE: Yes.

KLINE: Oh, if he was traveling, he'd stay with me in Berkeley and, on one occasion, in New York. If I was in Los Angeles, I'd stay with him. I talked to him on the phone. That was not a period in which I saw him very often, because he was then working at a law firm in Los Angeles, at Tuttle & Taylor. Although we maintained a friendship, it was not as close during that time as it had earlier been.

LABERGE: But he obviously admired you very much. Most of the articles I've read have said that you were his most trusted advisor, and you were the first person he appointed.

KLINE: Well, I think the reasons may have been because I had not been involved in any political campaigns, I didn't have a political agenda, and he knew who I was as well as anybody really could,

at least in a sense that would matter to a governor. I think he felt comfortable with me. We shared a lot of experiences together. And I think it's very common for people in that kind of an executive position--governor, president, or mayor. You're comfortable in having people around you whose motives you don't question, whose aspirations are not in conflict with your own, who you can rely on to be honest with you. Examples of this abound, so I don't think there was anything unique to my relationship with Jerry Brown. I just happened to be somebody that had known him for more than a decade by the time he got to be elected governor.

[Interruption]

I'm not sure what more I can say about why Jerry Brown felt so comfortable with me. I guess it would be more appropriate for Jerry Brown to speak to that subject. I will just say this: I always felt comfortable with him, quite frankly, and again, this is something I'll doubtless say more about later.

I think I had the best job in the Brown administration, largely because Jerry Brown gave me so much room, and also because the job that I had was essentially ill defined, which permitted me to define it. I was the legal affairs secretary, although I was the appointments secretary during the transition period. The day he was inaugurated I was sworn in as his legal affairs secretary. I am sure I played a very different role as Jerry Brown's legal affairs secretary than any previous legal affairs secretary or subsequent legal affairs secretary has played with respect to his or her governor.

You indicated some curiosity as to what I was doing in Pat Brown's campaign in 1966. That's a good question. I'm not sure I remember, frankly, except that I'd gotten to know Pat Brown through Jerry. I guess Jerry was involved in that campaign. I knew some other people on the campaign: Fred Dutton, who was the fellow who ran the campaign at that time. The campaign needed somebody to head up the Young Democrats for Brown, and I was available in September, early September, until the election in November was over. I moved down to Los Angeles. I lived with Jerry during that period on Ocean Avenue in Santa Monica. That was really my first political experience, that gubernatorial campaign. But it was very brief; I only did it for two or three months.

That may be the only political campaign I've ever worked on in my life. Well, I worked briefly on the campaign of Harrison Goldin for controller of the city of New York. "Jay" Goldin, as he was known, shared an office with me at Davis Polk, and so I got to know him, but that was also a very brief political venture. I really can't say that I have been a particularly politically involved person, at least in a sense of campaigns and election politics.

LABERGE: What prompted you to take on the role as. . . . For instance, to start with appointments secretary for Jerry Brown?

KLINE: Jerry Brown talked me into it. I didn't have any interest in it, frankly. I went down to Los Angeles the night of the election, the night he was elected, and stayed at his house in Laurel Canyon. I don't remember how the idea came up. I know that I

didn't bring it up, but I can't recall exactly. He persuaded me that he wanted somebody who, as I said earlier, didn't have any agendas, didn't have any particular people that he wanted to pack his administration with, who had some organizational skills.

What we were really doing during that period was processing information. He was not yet governor, so he couldn't appoint anybody. We were essentially receiving mail from people who were applying for jobs in the new administration, seeking out names of people who might be worth talking to, talking to labor leaders, for example, or business leaders, and other representatives of various sectors in the community that had been active in his election and who expected that their representatives would have a place in the Democratic administration.

LABERGE: Even after, when you were legal affairs secretary, there was one little line in one of the Cal Journals [California Journal] about how you didn't plan to be there forever.

KLINE: No, I didn't plan to be there nearly as long as I stayed, frankly. I'd planned to be there very, very, briefly. I went there partly because Jerry wanted me to, partly because it started to get interesting. One of the things that happened during that transition period is that I was beginning to get an education in state government. Most of my work as a lawyer, both on Wall Street and as a public interest lawyer, did not relate to state government or the legislative process. I didn't know a lot and I was beginning to get educated during that transition period.

The prospect of being right there in the governor's office in the biggest state in the United States, if you had any interest in

public policy as I did, was an opportunity you couldn't refuse. So I don't want to give the impression Jerry Brown had to twist my arm. By this time I was starting to get interested.

LABERGE: Prison reform would be a good thing for us to talk about, too, at a later date, possibly.

KLINE: OK.

LABERGE: Because I think you have views very similar to Jerry Brown's. That's probably another reason he picked you.

KLINE: Well, no, I don't think that's true.

LABERGE: No?

KLINE: No. In many ways we do have similar values, but our views or our assessments of the best way to vindicate those values or whether government has the responsibility to do it were very often very different. I would wager that most of the time I spent dealing with Jerry Brown on government business was time spent arguing with him. There were areas in which our views were somewhat different.

LABERGE: Maybe we can get into that, too, and you can give me examples of that.

KLINE: I'll be happy to get into that in more detail, but in general, looking back on it now, I see that a lot of the areas in which we differed were areas in which he understood much, much better than I the limits of the power of an elected official with a broad constituency. I was much more oblivious than he was to the legitimate political demands of diverse constituencies that constrain the room a governor has within which to act. A governor or a president is not free to do everything he wants to

do. I think many of the things that the governors, presidents, mayors, and even legislators do are dictated much more by their perception of the political parameters . . .

[End Tape 1, Side A]

[Begin Tape 1, Side B]

KLINE: I don't say this in any pejorative sense. I think that that's just inherent in political office. You have to be attentive to the demands of your constituents, and often, there are going to be competing political considerations that are very hard to resolve. In any event, speaking at the most general level right now, Jerry Brown was naturally much more attentive to those sorts of constraints than I was. I think he was much more realistic. I think I became, by force of necessity, much more aware of those things the more time I spent in government.

LABERGE: When you first started, how many appointments did you have to make?

KLINE: Gosh, you know, I don't know exactly, except it was just a colossal number. It's amazing how big a state this is and the extraordinary power a governor has to appoint people to office. Just to give you some sense of it, with respect to judgeships, California has the biggest judiciary in the world. There is no country that has as many judges as the state of California. At the time Jerry Brown was governor, California had three times as many judges as there were federal judges in the entire United States. We had more judges in Los Angeles County than there were in England, if you exclude stipendiary magistrates. No chief executive in the world appoints as many judges as the California

governor. And this is true in other areas in the executive branch as well. The number of boards, commissions, departments, and advisory groups the governor appoints to just boggle the mind.

Now, as I say, I only was involved in that during the period of the transition. During the time that I was legal affairs secretary, the only appointments that I was involved with were judicial appointments. I think I'm probably the only legal affairs secretary in California history that was chiefly responsible for his governor's judicial appointments. Ordinarily it is the governor's appointments secretary, not his legal affairs secretary, who is responsible for recommending judges as well as all other appointments. When Jerry Brown was governor, at least during the time I was with him, his appointments secretary was Carlotta Mellon, and you might want to talk to her. I think Carlotta probably wasn't pleased at the interest I took in the governor's judicial appointments, but we worked it out in any event; that was the only area of gubernatorial appointments that she did not work in.

LABERGE: So in that transition period you helped him with just the basic cabinet appointments and . . .

KLINE: Yes. During that transition period, the appointments that we were concerned about were primarily cabinet secretaries and department heads, and a few other positions such as the chairmen of certain boards and commissions--I think the Adult Authority, which at the time was the chief parole board. There may have been a few other commissions, like the State Water Resources Control Board that had a lot to do with water policy. But

primarily it was cabinet secretaries and department heads.

LABERGE: Were there any people that you kept on from the previous administration, or is it customary to appoint all new people?

KLINE: It's customary to appoint all new people, but there were some people that Jerry Brown did keep on, who in fact he elevated. As a matter of fact, one of the most remarkable appointments that Jerry Brown made was the appointment of Roy Bell as his director of Finance. Roy Bell was really the chief civil servant in the Department of Finance under the previous four or five governors. He was a career civil servant, and I think people in Sacramento, the cognoscenti in any case, were stunned that Jerry Brown would appoint a nonpolitical person out of the civil service, a person who was very, very highly regarded. There was almost no criticism of that appointment; in fact, I think he was universally lauded for appointing Roy Bell his director of Finance. There may have been a few others, but by and large the appointments that Jerry Brown made, like the appointments of any new governor, were new people.

LABERGE: How did you go about choosing people? Did you have certain standards?

KLINE: Well, I didn't choose the people. In fact, people were not actually appointed until after he was elected. All I was doing during the transition was gathering information that would be refined and presented to the governor after his inauguration.

I do remember interviewing some people who were seeking appointments then early on. [William] Bill Press, who originally was interested in becoming secretary of resources, was later

appointed the head of the Office of Planning and Research, I believe. Louise Renne, who's now the city attorney of San Francisco, was at the time a deputy attorney general who was interested also, because of her work in the environmental area, in being secretary of resources, and there were a number of others, including the person who eventually got the job, Claire Dedrick.

But what Jerry Brown was doing during that period was essentially defining the sorts of people he wanted to bring in. He made it very clear, for example, that he wanted minorities and women in visible, powerful positions in his administration, and he was the first governor of this state or any large state, I think, to do that on a massive scale. So we were seeking out people from minority communities as well as women. And a lot of my time was spent meeting with Hispanic groups or representatives of the black community or the Asian community, or with women's groups, and finding out from them who the people were that ought to be considered.

By the way, I wasn't doing this by myself. There were people from various minority communities and women who were also involved at the time of the transition, on the governor's transition staff. Herman Sillas, who later became director of the Department of Motor Vehicles, is now a lawyer in Los Angeles, was one of the senior people on the staff at that time. Carlotta Mellon I've already mentioned. Percy Pinkney, who later became [assistant to the governor for] community relations in the governor's office, who's very active in discussions with the black community. There were others.

LABERGE: How about [Secretary of Agriculture and Services Agency] Rose Bird?

KLINE: Rose Bird had been more active in Jerry Brown's campaign than I had. I didn't know Rose Bird prior to the election. I met her in Los Angeles when she also worked on the transition team. We divided the state government up into the various departments and commissions that were under the authority of the six or seven cabinet secretaries, and I think she was in that group that was working with the departments that were in the agricultural and services agencies, as it was then called, and I think that may be one of the reasons she ended up as secretary of agriculture and services.

LABERGE: Let's go on to legal affairs secretary. Can you kind of outline for me the scope of your duties?

KLINE: Well, as I said earlier, it was pretty ill defined. . . . What legal affairs secretaries in California had done in the past, and what I think [Governor] George Deukmejian's legal affairs secretary does, is limited to dealing with extradition and clemency; serving as a liaison with the attorney general's office; being a liaison between the governor and certain criminal justice agencies, the Coordinating Council on Criminal Justice, for example. The Office of Emergency Services was another example, and there may be some others. And also advising the governor on legal questions that would arise from time to time. If the governor was sued personally, or if the governor wanted the attorney general to take a particular position in a particular lawsuit, it was the legal affairs secretary that would communicate his wishes.

I did all of those things. In other words, I did perform the conventional role of a legal affairs secretary, but my work went, I think, far beyond just that. In fact, I would say that the conventional work of a legal affairs secretary probably comprised no more than 10 or 15 percent of my time. I always had a deputy that was chiefly responsible for extradition and clemency. Incidentally, the state of California does more extraditing in and out than any nation in the world, by far, so it's a major job. There were lawyers in the Department of Justice that were assigned full time to work with us on this. The deputy in the governor's office who reported to me and was chiefly responsible--somebody you might want to talk to, actually--is Allen Sumner. Allen is now a special assistant to the attorney general in Sacramento.

Fortunately, Jerry Brown never had to decide whether to give clemency to a person who had received the death penalty. Had that happened, that would have changed our job dramatically. But during the eight years he was governor that never became an issue. Occasionally there'd be an extradition or a clemency question that I'd have to get directly involved in. I guess one of the best known was the request to extradite Dennis Banks to South Dakota. Jerry Brown made the unusual decision to deny extradition, which outraged the then-attorney general of South Dakota, who later became governor. His name was Janklow, William Janklow, who built a whole political career around his desire to get Dennis Banks back into South Dakota.

In any event, as I say, most of my work was in other areas.

LABERGE: How involved in that were you, in the Dennis Banks case?

KLINE: Oh, I was very involved in the Dennis Banks case. I spent a lot of time talking to people in South Dakota. I believe we held some hearings in the governor's office on that question. Received a lot of correspondence on it, spent a lot of time talking to Jerry Brown about it.

In the end, Jerry Brown believed Dennis Banks's life would be in danger if he sent him back to South Dakota. It was a tough call. Reasonable minds could differ about it. He offered to have Banks confined here in California, but South Dakota authorities rejected that. After Jerry Brown left office, Dennis Banks went to New York, and I think [Governor] Mario Cuomo essentially continued the policy of Jerry Brown. Eventually Dennis Banks returned voluntarily to South Dakota, and I don't know how that was resolved.

A clemency case I recall quite well, involved a man named Luigi Aranda. Aranda had been convicted of murder in San Francisco, and newly discovered evidence was presented that persuaded the district attorney of San Francisco, who at the time was [Joseph, Jr.] Joe Freitas, and also the two homicide detectives who were involved in the case, that Aranda was innocent. There were some others, like the deputy district attorney who actually prosecuted Aranda, who disagreed, who thought Aranda was guilty. This is a complicated case; I won't bore you with the details. The point is that we conducted several hearings in the governor's office trying to figure out what the truth was.

The governor decided to commute Aranda's sentence. He was persuaded, as I was, that although Aranda was not a very wholesome fellow--I think he was a Hell's Angel--it was impossible to believe he committed the murder because of the new evidence that pointed to somebody else. The governor didn't grant a pardon. What he did was to commute Aranda's sentence to the time he had served in prison. Clemency hearings of this sort, which are judicial or quasi-judicial proceedings, are unusual.

LABERGE: Could you say something about the governor's views on prisoners and whether prison rehabilitates people, or how he felt about prison reform?

KLINE: This was an area in which Jerry Brown and I didn't always see eye-to-eye. Jerry Brown did not want to spend his political capital on issues of this sort. I think in part, he took a rather moral position regarding an individual's responsibility for his acts. He granted much less in the way of clemency than Ronald Reagan and his father had. He was aware that a number of people that his father had pardoned subsequently committed the same crime, to his father's great embarrassment. Also, Jerry Brown did not place a lot of faith in the ability of prison to rehabilitate people. On the other hand, I think he did believe that whether it rehabilitated them or not, they were largely deserving of punishment.

I suppose the first big piece of legislation that I worked on--maybe this is a subject that we should talk about; I haven't identified it earlier, it just occurred to me--was the [Uniform]

Determinate Sentencing Act of 1976.[1] California in 1917 adopted the Indeterminate Sentence Act.[2] It was one of the first states to do that. In other words, when a person was convicted of most felonies, he would get a term of, say, five to life, or ten to life, or five to fifteen, and the actual sentence would be determined by the Adult Authority, on the basis of parole hearings conducted in one of the state prisons.

There was a general feeling in the mid-seventies--and it was bipartisan, it was not just among Democrats--that the indeterminate sentence system had to go. I think that the main reason for that were the disparities in sentencing: two people convicted of the same crime on the same date could spend wildly disparate amounts of time in state prison and there had to be greater uniformity. In fact, the name of the statute was the Uniform Determinate Sentencing Act of 1976. It was designed to achieve greater uniformity in sentencing.

The Republican candidate for governor, [Controller] Houston Fluornoy, was also in support of determinate sentencing, changing the system, as was Jerry Brown. But it was one thing to say you were in support of determinate sentencing, as most people of both parties were at that time, and quite another to come up with a bill satisfactory to everybody. I believe that the result of the Determinate Sentencing Act that Jerry Brown signed into law was to lengthen prison terms. I don't think there's any

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1. S.B.42, 1976 Reg. Sess., Cal. Stat., ch. 1139 (1976).

2. S.B. 112, 42nd Leg. Sess., Cal. Stat., ch. 527 (1917).

doubt that it has had that effect over time.

In 1976 the goal was simply to take the median terms for most offenses and make it the midterm penalty. But once you took the power to set sentences away from the Adult Authority and placed it in the legislature, you were giving the legislature the ability to lengthen sentences. You also gave it the ability to shorten sentences, but it's politically unrealistic to think they would ever do that, and to my knowledge they have not.

The real opposition to the Determinate Sentencing Act came from the far left and the far right. The far left did not want to put the sentence-setting power in the legislative branch, because then the sentence would just get longer. People on the right were opposed because they thought existing median terms were too short.

In any event, people in the senate from both parties did support the bill. In fact, it had a Republican author, [Senator] John Nejedly, a former district attorney. But that was my baptism in the state legislature. It was in the lobbying of the Determinate Sentencing Act that I got my first experience of the legislative process.

To return to your question, I had not spent a lot of time talking to Jerry Brown about criminal justice issues. I myself, by the way, did not have a great background in the criminal justice area. I have had considerable experience with the criminal law as a trial and appellate judge, but at the time I was in the governor's office, I had very, very little background. But the people who we were working with from law enforcement and

elsewhere provided me an interesting introduction.

The California District Attorneys' Association during the early years was led by Lowell Jensen, who was then the district attorney of Alameda County, John Van de Kamp, the district attorney of Los Angeles at the time, and [Edwin] Ed Miller, the district attorney of San Diego. They were a pretty responsible group of people. They weren't law and order maniacs, and I think Jerry Brown basically followed their advice most of the time.

[Interruption]

LABERGE: You were talking about the district attorneys' association, that they were a responsible group.

KLINE: Yes. And the governor spent a fair amount of time with many of those people. In any event, I guess to sum it up, Jerry Brown was not a bleeding heart liberal. I know there were a lot of people who think that he must have been or were sure that he was, but let me assure you--and I was there--that when it came to sentencing issues, Jerry Brown was not a liberal. I don't want to say he was the opposite either; I think he was a pretty pragmatic centrist on these issues, and I would be very surprised if the district attorneys and others in law enforcement who worked with him at that time would give you a different view.

You see, there were some inconsistencies in Jerry Brown, and I think that people found it difficult to believe that a Democratic governor as young as he was, who was as liberal as he was in certain other areas, wouldn't be liberal in this area. But he wasn't. I mean, he denied a lot of clemency requests that

I would have granted; he took conservative positions on criminal justice bills, on amendments to the Determinate Sentencing Act in particular, which was a very important bill, and other criminal justice bills. He signed a lot of bills later on after the Determinate Sentencing Act was enacted, lengthening sentences against the advice of public defenders and others.

So on the criminal justice side, Jerry Brown was a pretty tough-minded governor. [Perhaps the only important criminal justice issues on which Jerry Brown sided with the liberals were the death penalty and reform of the bail system. The death penalty was such a visible issue, however, that it obscured his moderate to conservative position on most other law enforcement issues.]*

LABERGE: You were talking about your baptism with the legislature; could you say more about that? How did you get involved in that bill? Did you help write it, or did . . . ?

KLINE: No, I was not involved in the writing of it. The two legislators who I think were the most involved in it were John Nejedly, who was the chief author, a Republican, former D.A., and Howard Way, who was at that time a Republican state senator from the Central Valley, from around Visalia. A rather conservative state senator on most issues, but in this area, actually, a real progressive. In the criminal justice area his views were to the left of Jerry Brown's, which is an anomaly, because Howard Way had a reputation as a conservative, and Jerry Brown had a

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* Judge Kline added the preceding bracketed material during his review of the draft transcript.

reputation as a liberal.

KLINE: Howard Way later became the head of the correctional agencies in the Brown administration. He was the first Republican. . . . Well, one of the few Republicans high up in the Brown administration. This came years later. There were a lot of conflicts between Howard Way and Jerry Brown. I was responsible for bringing Howard Way into the administration. I think Jerry Brown was stunned at my suggestion of him, but the more he thought about it, the more he met with Way, the more impressed he was with him. He was a very impressive man, Howard Way. Still alive, lives in Sacramento. I'd say he was one of the most impressive members of the legislature at that time. He had been a president of the senate when the Republicans controlled the senate for a brief time. He was a man of great stature. He was kind of a Hollywood version of what a state senator should look like. Very impressive; he had white hair and a great stentorian way of talking. But a wonderful human being, really.

The person most involved in the actual drafting of the determinate sentencing bill, was Michael Salerno, who is now in the Legislative Counsel's office in Sacramento. At the time, he was on Senator Nejedly's staff. But there was a lot of pulling and tugging on that bill, so my role really was to try and align the governor's views with those of the legislature or to find out where the governor was with respect to changes that various legislators wanted. You know, there's that old cliche about legislation and sausages, that if you saw how sausages were

made, you wouldn't want to eat it. I'm not sure I share that negative sense of the legislative process, but there are moments on a bill like that, in which I did get a little disillusioned.

It was a real eye-opener to see how power was exercised. I don't mean to suggest anything was improper. This was not a bill that involved money. There were no special interests tossing thousands of dollars around. And in any case, in the seventies even the special interests were a lot more restrained than I think they have since become.

LaBERGE: Was that unusual for you to get so involved in a bill introduced by Republicans?

KLINE: No, the fact that it was introduced by a Republican was really irrelevant. This was not a Republican bill. It was not a Republican issue. It was a bipartisan issue. I got involved in it because there was no other person within the administration that had jurisdiction in the criminal justice area, and the governor wanted somebody in his own office on top of it.

LaBERGE: Could you say more about how the power was exercised? Did you mean in the legislature?

KLINE: Yes. I don't mean there's anything nefarious or even complicated about all this. I mean, what it basically boiled down to was that there were some legislators--George Deukmejian, who was then a state senator, he's a perfect example--who wanted longer prison terms. That's what the real debate was over.

The position of a lot of liberal Democrats was look, what's important is that people go to prison, and they go to prison quickly; that the evidence is that the length of term doesn't really

make much difference, it just provides a greater sense of hopelessness on their part and it's more expensive to the state and it takes up room that we don't have. On the other end, there were Republicans who took a very, very different view, as you can imagine, of the sentencing authority. It was essentially trying to resolve those two conflicts and to stick to our basic goal.

Our goal was to say, look, we don't want to change the length of sentences. All we want to do is take the existing medians and make them the norm. We didn't want to go to the left and we didn't want to go to the right; we just wanted to change the sentencing process but not necessarily change the average length of sentences. But in the debate it was hard to persuade people that that was what was happening. People who didn't like what our position was would characterize it very differently than we did. So there was a lot of talking to the press.

That was another thing that I learned to do. In the past nobody had paid a great deal of attention to whatever I said. All of a sudden people were paying a great deal of attention to it, and so [I took a lot more care in instances of representing the governor's views or those of his administration.]

[End Tape 1, Side B]

[Session 2: November 26, 1990]

[Begin Tape 2, Side A]

LABERGE: Last time when we finished, one of your last statements was about the press and that you had to be careful. All of a sudden, people . . .

KLINE: . . . were paying attention to what I said.

LABERGE: . . . were paying attention to what you said, and that you were taking more care about what you said and giving the administration's views. Could you say more about the press--both your relationship with it, Jerry Brown's relationship with the press, and the power of the press?

KLINE: I didn't have a lot of contact with the press. Certainly not nearly as much as the governor did. I think he was much, much more open with the press than most governors are. Certainly much more free and easy with them than his predecessor or his successor. I'm not sure he profited from that. I think one of the lessons of Ronald Reagan's presidency was that it's a lot easier to manipulate the press and keep them at bay. It's one of the great mysteries to me that Reagan received such light treatment by the press, considering how distant he kept them.

Jerry Brown liked reporters; he knew a lot of reporters; he was confident in his relations with them. He didn't rely on counselors like Ed Meese and others nearly as much. So he gave them a lot more access, I believe, than governors of this state

ordinarily do. I don't believe, however, that the press reciprocated that with particularly easy treatment. In fact, I think that because the press feels a need to engage a governor in somewhat of an adversary way, he probably fared much more poorly than he might have if he had been a little more distant.

The press--and this isn't simply with respect to Jerry Brown--has an extraordinary ability to create the image of a political figure like a governor. This is particularly true in California, a state of nearly 30 million people that primarily relies on the media for its impressions of political figures.

Jerry Brown probably did better with the broadcast media than the print media, because he had a superior ability to communicate with people directly. He did it in a different way than Ronald Reagan, who was a much more avuncular person. Without the interference of an intermediary, like a newspaper reporter, Jerry Brown was able to communicate quite effectively, and I think one reason for the political successes that he had was his ability to effectively use television.

[Looking at list] You want me to move to some of the issues that you've . . .

LABERGE: Sure. If there's one in particular you'd like to . . .

KLINE: Let me just go down them. You've provided a pretty good list of some of the issues that I dealt with.

Let me take judicial appointments first of all. As we earlier discussed, I was not Jerry Brown's appointments secretary, although in the legal community people think I was because I was involved in judicial appointments. I was the person primarily

involved in judicial appointments. Now, most governors don't give that responsibility to their legal affairs secretary. The appointments secretary is involved in all appointments, judicial and nonjudicial. That wasn't true under Brown. The appointments secretary for most of his tenure, a woman named Carlotta Mellon, advised the governor on all of his appointments except those to the bench.

LABERGE: Even to boards? Commissions?

KLINE: To everything. Boards, commissions, executive branch, the whole kit and caboodle, excluding only judges.

Pat Brown used to have this saying that every time he appointed a judge, he produced one ingrate and made ten enemies. There's some truth to that. When I first went up to Sacramento, I thought that being involved in judicial appointments would be a very fulfilling thing. I was quickly disabused of that. California is so large a state and the governor appoints so many judges that it's impossible for him to know any significant number of those he puts on the bench. We're the most litigious society in the world here in California, and therefore we have required creation of the largest judicial system in the world, so the governor appoints a lot of judges.

Jerry Brown's greatest achievement in this area, in my view and I think in the view of many people, is that he brought on to the bench men and women from areas of the community--the legal community and the greater community--that had in the past been excluded. He changed expectations about what governors would do when it came to judicial appointments. It was not

KLINE: nearly as easy, in the early seventies or in the mid-seventies when he became governor, to appoint minorities and women as it now is, because there are so many more minorities and women in the legal profession who are constitutionally eligible. To be appointed to the municipal court, a lawyer must have been in practice for five years, and to all other courts a minimum of ten years. There weren't that many minorities and women that were eligible at the time he was governor, relative to the numbers that are presently eligible.

In any event, Jerry Brown searched out minorities and women to appoint, and I don't believe that by and large he compromised the quality of the bench in doing so. While it's true, as I just said, that there were not as many minorities and women in the seventies as there are now in the nineties, still in many parts of the state--Alameda County, San Francisco, Los Angeles, San Diego--at least in the large metropolitan areas there were enough minorities and women so that it was not difficult to find well-qualified people. I don't believe that Jerry Brown compromised quality.

What he accomplished by appointing significant numbers of minorities and women to the bench was to increase respect for judicial institutions amongst the large numbers of people of color in this state, and the majority of Californians who are women, who rarely, if ever, previously saw members of their own communities sitting in judgment over them. When a governor appoints a Chinese person to the bench, he immediately creates a visible community leader in the Chinese community, and that's

true in every other minority community, and it's also true when you're appointing women.

In any event, of all the things Jerry Brown did in the eight years that he was governor that I was involved in, the one that makes me proudest is my involvement in judicial appointments. I won't say that Jerry Brown did not appoint some people that he probably should not have. There's no governor of this state that can say that he didn't make some mistakes. You just appoint too many not to make mistakes. But by and large, I think Jerry Brown greatly strengthened the quality of the bench in this state.

I think it's unfortunate that Jerry Brown's contribution in this area is going to be inordinately affected by a person's point of view about [Chief Justice] Rose Bird. Jerry Brown appointed close to a thousand people to the bench. I don't think he ought to be judged on those appointments simply on one or two or three appointments, as important as those appointments were. The day-to-day work of the courts is really performed at the trial level, and that's where his appointments really made an impact.

I guess that this is an appropriate time to talk about court reform.

LABERGE: Before we go into that--maybe it's connected--how involved were you, for instance when you say Jerry Brown's accomplishments, weren't you a good part of that?

KLINE: Yes, but I didn't appoint anybody. I advised him.

LABERGE: But you sort of came up with the pool?

KLINE: Yes, I was his eyes and ears. He did rely on me heavily. But it's not as though I invented the idea of appointing minorities and

women. This was high on Jerry Brown's agenda, and he was the governor, and he made the appointment.

LABERGE: For instance, how would you go about finding a group to present to him as possible judges?

KLINE: The group is to some extent self-selecting. Ordinarily the universe from which appointments are selected are those who apply, and there was rarely a shortage of that. In the beginning it wasn't as clear that Jerry Brown was as keen on finding minorities and women as it later became. I remember one of the first vacancies we had to fill was on the superior court in Riverside County. Most of the information that you had to rely on came from others in the community where the vacancy existed.

I remember talking to a lawyer about a particular Hispanic candidate. He gave a glowing assessment of this individual, just glowing. The candidate had graduated high in his class in the University of California at Berkeley as well as its law school, I believe. He was bilingual, had done a lot of pro bono work, was highly respected by his peers and so on and so forth. And then at the end of his description he said, "It's too bad that he can't be appointed."

I asked, "Why can't he be appointed?" He said, "Because he doesn't have the support of the local bar association. He hasn't been active in bar activities, so he can't be made a judge." I said, "Wait a minute. I'm calling from the governor's office. It's the governor who appoints, not the bar association." This person said, "Yes, but, you know, when the bar association doesn't

support somebody, it just doesn't happen."

Nobody in California would have said that to me six months later. That view of how an individual got appointed to the bench--which was a view that was the product of eight years of Ronald Reagan and perhaps eight years of Pat Brown before that--was not a view that existed after Jerry Brown. Expectations about what George Deukmejian and now [Governor] Pete Wilson would or should do in this regard are to a considerable extent the result of what Jerry Brown did. I don't think any future governor of California will be able to ignore the need to reflect on the bench the cultural, ethnic, racial diversity of this state and the need to also appoint women.

LABERGE: I read just a little story about how when Jerry Brown first became governor, there were maybe fifty-three vacancies, and you were trying to get him to appoint people but it took some time because he had to study the issue.

KLINE: Jerry Brown once told me that when you seize the flag, the game is over. He did not like to make appointments. Because once you made the appointment, you lost the opportunity to consider the alternatives. Although he had a goal, in connection with judicial appointments--the one I described earlier--he was not a person whose chief occupation as governor was filling the vacant positions in the executive branch or on the bench. It was difficult, frankly, particularly in the beginning, to get him to see the need out there in the state to have these vacancies filled.

There was the problem of court congestion. I was certainly hearing a lot about it from judges and lawyers and others. I

certainly agreed that this was a responsibility the governor had to discharge. It was a little difficult to get Jerry Brown to focus on this. I have a feeling, incidentally, that this is true of a lot of governors. I don't think he's the only one. George Deukmejian has not proceeded with alacrity in filling vacancies either.

LABERGE: Now do you want to go into court reform before I interrupt you again?

KLINE: Well, let me just say this. That I don't think any modern governor has been as committed to court reform as Jerry Brown. This was also an area in which I was his chief advisor, in which I had a greater responsibility than perhaps anybody short of the governor.

One of the reasons he was concerned about court reform was his feeling that we couldn't continue to solve the problems of court congestion simply by creating more judgeships, which was the conventional approach, as it still is today. It now takes five years to get a case to trial in Los Angeles, or close to five years. The conventional answer to this problem that's being communicated to Governor Deukmejian and will be communicated to Governor Wilson is just create more judgeships.

There are I believe considerably more than three hundred superior court judges in Los Angeles County today. There are a lot of states that don't have anywhere near three hundred judges. Jerry Brown's feeling was that there was an analogy between judges and freeways. If you build more freeways, people are going to use them and create more congestion and foul the air more, and that if you really want to solve the problems of

transportation, it isn't going to be done with freeways. It's going to be done with public transportation or changing people's lifestyles in various ways.

Similarly, he felt that the problem of court congestion was to a considerable extent the result of the difficulties and expense in using the judicial system. There were many sorts of disputes that could be better resolved outside the courts. By "better resolved" I mean more expeditiously resolved, and resolved less expensively. There were a whole variety of ideas that he had. I don't think it was his feeling that there was any one reform that would make a significant dent in court backlogs. He felt--and I think most people who paid attention to this problem agree--that there has to be a whole array of reforms.

But one of the things that we discovered in this area is that while a lot of people give lip service to the need to reform the courts, enacting the actual reforms can be extraordinarily difficult. Nobody objects to seeing somebody else's ox gored, but when their own is threatened or perceived to be threatened, they get very upset. Let me give you some examples.

The United States is one of the few places in the world where a robed magistrate has to decide whether someone made an illegal left turn. Most traffic violations in other countries are resolved before an administrative hearing officer, not a judge. Here in California, in many municipal courts, 20, 30 percent of the work of a judge are petty traffic violations.

Well, Brown proposed that the traffic be taken out of the municipal courts and heard by independent hearing examiners.

There were a few states that had experimented with this: I believe Rhode Island, New York, Virginia. I think others. Perhaps Oregon. Well, the California Trial Lawyers Association opposed this very vigorously, not because the California Trial Lawyers Association or its members represent people in traffic cases; they don't. But they were afraid that if you could take traffic out of the court and it worked, that you might take some other things out of the court in which they do have an economic interest.

One of the problems in enacting court reform was the extraordinary number of lawyers in California, many of whom are underemployed, if not unemployed. So that certain associations of lawyers. . . . I'm not referring to the [California] State Bar [Association], incidentally, but there were other groups of lawyers that represented special interests: the California Trial Lawyers Association that represents plaintiffs lawyers and personal injury cases, the California Applicants Attorneys Association that represents lawyers that do workers' compensation work and so forth--there are other examples. They opposed reforms they perceived might diminish the need for their services. I've given you the example of traffic.

Another example was mandatory pre-trial arbitration. This is an idea that had been advanced for years. The idea is that in certain cases, where the damages sought were under $15,000 or $25,000--in other words, relatively small civil cases--the litigants should be required to submit to pre-trial arbitration. You needn't accept the arbitrator's award, but if you reject it and go to trial

and don't get more than you were offered by the arbitrator, you have to pay your adversary's attorney's fees. This is a modest proposal. But it was strongly opposed by the Trial Lawyers Association, whose fear was that if it would work for cases under $15,000, then they might make it work for cases under $50,000. If a significant number of cases settled at this early stage, less business for lawyers might result.

Well, mandatory pre-trial arbitration was a bill[1] that the governor did successfully get enacted; it's been an enormous success in California. Although the threshold level when Jerry Brown signed the bill was $15,000, that system has worked so well that it's now been raised to $25,000. This is an area in which California is in the forefront.

LABERGE: Do you know what year that was, by any chance?

KLINE: Gee, I don't. I would guess it was around 1978. Seventy-seven or '78 is what . . .

LABERGE: I can check it.

What about the independent hearing examiners? Did that ever . . .

KLINE: We got that adopted as an experimental pilot program, I think in certain counties. Sacramento County was one of them. The hearings were held in the Department of Motor Vehicles. But the opposition there came not only from trial lawyers, but it came from the California Highway Patrol. They didn't think that the tickets they wrote would be given the respect they were due

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1. S.B. 275, 1979-80 Reg. Sess., Cal. Stat., Ch. 46 (1979).

unless a judge presided over the proceeding rather than a hearing officer. We thought that was kind of silly, but the highway patrol is not an insignificant lobbying group.

I guess that one of the big points that came out of this is that there were a number of, I think, useful reforms that were enacted while Brown was governor. I don't think that his successes in this area were nearly as many as he proposed or would have liked. But this is an area in which the economic--or the perceived economic--interest of lawyers often transcended perceptions about the need for reform on other grounds. And if you didn't have support within the legal community, it's very hard to find it elsewhere. So there is a limit to what a governor can do.

The next issue here, [looking at list] moving kind of quickly, is bail reform. This was Assembly Bill 2 in 1979.[1] This was one of the few bills that were co-authored by the speaker, who was then [Assemblyman] Leo McCarthy, and the majority leader in the assembly, who was then [Assemblyman] Howard Berman. This was a reform that the governor addressed in his State of the State message, I believe in 1978. What we were trying to do in this area was for California to adopt the Federal Bail Reform Act.[2]

Now, the way bail works in California and in most other states--one of the few exceptions is Kentucky--but in most states,

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1. A.B. 2, 1979-80 Reg. Sess., Cal. Stat., Ch. 873.

2. Bail Reform Act of 1966, 80 Stat. 216 et seq.

if you're arrested and bail is set at, say, $1,000, if you have the $1,000 then you put up $1,000 and you're released. If you don't have $1,000, you have to go to a bail bondsman. The bail bondsman puts up $1,000, and his fee is 10 percent, or in this case, $100. If your bail is later exonerated, if the complaint is dismissed or you're found guilty or you're acquitted or whatever happens, bail is terminated, you never get back that $100. In other words, bail essentially constitutes a tax on being arrested.

There are many, many people in jail, pre-trial, only because they lack the funds to pay the bail bondsman his 10 percent. In other words, two people arrested on the same day for the same crime--one is rich and the other is poor--the person who either has the $1,000 or who can pay the bail bondsman his 10 percent doesn't spend a day in jail prior to trial. But the poor person--and most people who are arrested for crime are poor--doesn't have that luxury. So there's clearly, it seemed to us, unequal treatment. An awful lot has been written in this area, incidentally.

The federal bail reform system, the system we were trying to adopt, was simply one in which the defendant had the option of depositing his 10 percent directly with the court rather than with the bail bondsman. And if he appeared--in other words, if he showed up in court on the appointed day--the money was returned to him. Now, this was only for certain nonviolent crimes, and there were some exceptions to this.

The opposition to this reform came almost entirely from bail bondsmen. The bail bondsmen fought this bill harder than I

think I've ever seen any group resist proposed legislation in the six years I was up there. Between 1959 and 1979, during that twenty-year period, some of the most powerful members of the legislature introduced bail reform legislation along the lines I've just described. They were Democrats and Republicans. [Assemblyman William] Bill Bagley was one of the Republicans that was prominent in this area. [Senator] George Moscone was another example. There were many. These bills never got out of their first committee. The people who killed these bills were not, as you might expect, conservative Republicans. Instead, it was liberal Democrats. More particularly, assemblymen or senators from heavy minority districts. Bail bondsmen are an extremely astute group of people. Their lobbyists are usually very effective, and they are only concerned with one issue: killing bail reform.

And the way they do it is this. In certain assembly districts, where the assemblymen or candidates for office don't have access to wealthy constituents, they rely on bail bondsmen. Bail bondsmen were notoriously generous political contributors. The public officials with whom they are most generous are the ones who win in these areas, who tend to be Democrats. There are many black and Hispanic legislators, for example, who rely very, very heavily on bail bondsmen. Some of the biggest bail bondsmen in California are themselves black and Hispanic. They're entrepreneurs. In fact, I think at the time, that the most prominent bail bondsman in the state was a black Republican in Los Angeles named Celes King. He'd once run against [Lieutenant Governor Mervyn] Merv Dymally for office. Very savvy guy. A

nice guy, actually.

In any event, it was very, very difficult for us to get this bill because of the strong opposition of precisely those legislators you would expect to support this bill, because the people who were languishing in jail simply because of their inability to come up with bail were themselves primarily black and Hispanic. We finally did get a bill; however, it took two years. It got a lot of Republican support, actually. Some of the key people on this bill were [Senator James] Jim Nielsen, who's now the Republican minority leader in the senate, and [Assemblyman Eugene] Gene Chappie, a very conservative Republican who served in Congress later on.

The condition for enactment of the bill--the bail bondsmen were pretty effective on this, I have to concede--was that the bill would self-destruct in five years unless it were extended. Well, after five years--that was Jerry Brown's last year in office--they were counting on the fact that the next governor would not be as interested in bail reform as Jerry Brown, and they were right.

[End Tape 2, Side A]

[Tape 2, Side B not recorded][1]

[Begin Tape 3, Side A]

KLINE: Jerry Brown's relationships with the legislature were not as good as they might have been. I think he has to take some responsibility for that.

In some ways this was just the result of his personality. He

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1. Due to technical problems this section of the tape did not record. The material contained in Tape 2, Side B was re-recorded on April 16, 1991.

was much more spontaneous than most in high office. He was willing to take chances. He was willing to float ideas. He was willing to consider possibilities that a committee might have found a lot of reasons to quickly reject. I think Jerry Brown was much more tuned in to changes happening in the world--his idea of limits, for example--than most other people. And I think he had a great ability to articulate some of his thoughts in a way that people could understand. But one of the risks that he ran, and one of the prices that he paid, was that he would be seen as "flaky."

It was interesting; the person who first coined the word "Governor Moonbeam" was a columnist for the Chicago Tribune, [Michael] Mike Royko. About a year or two after Royko coined this phrase, which others picked up, he wrote a column in which he apologized for giving Brown this unfortunate moniker. Because the more he learned about Brown, the more refreshing he found him.

Jerry Brown was unconventional, and his unconventionality did him in to some extent. But there was virtue in this unconventionality. Jerry Brown was a member of the elite who had a strong anti-elitist strain. Thus he thought it was useful to appoint people to consumer boards who did not come from the regulated industry.

Perhaps I should explain. California has scores and scores of boards and commissions that regulate various professions, ranging from the board of governors of the state bar that regulates the legal profession, to the Board of Medical Quality

Assurance that imposes discipline on doctors, to the Board of Behavioral Sciences that licenses psychologists and marriage and family counselors, to the Cosmetology Board that licenses beauticians and so forth. Brown supported legislation to put "public" members on these boards. He thought it was a mistake for members of the regulated profession to control the regulatory function. He was a real consumer activist in that regard.

But then when he appointed nurses to the Board of Medical Quality Assurance which regulated doctors--who had a very different idea of the role of nurses in society and in the medical hierarchy--well, doctors took enormous offense. Similarly, when he appointed public members to the Board of Governors of the state bar, a lot of lawyers saw this as anti-lawyer, despite the fact in that case that the author of the legislation, a lawyer member of the assembly, didn't consult the governor when he introduced the bill.[1]

LABERGE: Who was that?

KLINE: That was [Assemblyman] Howard Berman. Jerry Brown signed the bill, but Jerry Brown didn't come up with the idea. But in any event, he was an enthusiastic supporter of the view that the public and nonprofessionals could usefully be involved in the work of regulating trades and businesses and professions in California.

As I have said, that annoyed a lot of people who belonged to those businesses and trades and professions who didn't want

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1. A.B. 590, 1974-75 Reg. Sess., Cal. Stat., ch. 874 (1975).

outsiders involved. So they developed strong antipathy, some of them, to Jerry Brown, because they thought he opposed their interests. He was really advancing his conception of the public interest. Jerry Brown took, I think, a much more transcendent view of the role of an elected official than most people were accustomed to.

He was for supporting scientific efforts like NASA [National Aeronautics and Space Administration], the space exploration, even though he understood that that would reduce the amount of funds available for domestic spending. Because he had a concept of what man's nature required, that the quest for new frontiers was imperative, that man could not rest on the limits of his present knowledge, he supported space exploration and new technologies. Some people saw that as "flakiness." But I think he was a very serious person, and I think he had a large vision, and I think he did have a much more salutary impact on this state than many people yet realize. People are now coming around to some of his views.

Another example of this is that Jerry Brown took a lot of heat for his reluctance to approve the use of malathion to kill the Mediterranean fruit fly. I don't know if you recall, but one of the things that was used against Jerry Brown in his run for the senate was this medfly problem.

LABERGE: I forgot until you mentioned that.

KLINE: This was a big thing. Basically, what Jerry Brown was saying was, "Look, the consequences of malathion on the thousands upon thousands of people that would be affected in densely-populated

urban areas, ought to be a graver concern of government than the alternatives that would flow from not spraying, but using other types of efforts to contain this fruit fly." Well, we now know that the use of malathion, which was used earlier this year in Southern California--Pasadena and lots of other parts of Los Angeles--was finally stopped because of the growing concern of the dangers that Jerry Brown appreciated. Jerry Brown understood the dangers in the quick fix.

Maybe the best example I can give you of that is to tell you a story that exemplifies his inquiring mind and the way it sometimes got him into trouble. While Reagan was governor, many believed California ought to authorize or subsidize the use of fluoride in local water supplies. As you may know, there were people, certain conservative groups, who saw this as part of some conspiracy to advance a Communist agenda. I never quite understood what it was all about, but I do know that this anti-fluoridation effort was motivated by people with very conservative political views. For that reason, I think, during the eight years that Reagan was governor, he took no interest in efforts to expand the use of fluoride.

When Jerry Brown got elected, there was joy among those pro-fluoridation people. I remember walking into the governor's office one day when he was meeting with a large group of people who were there to persuade him to support the use of fluoridation. He listened to them for a while, and then he said something like this. He said, "Wait a minute. The problem you want to address is that our kids have rotten teeth. The reason

that they have rotten teeth is they eat Hostess Twinkies and drink Coca-Cola. But instead of changing the eating habits of our children, you want to put a chemical in the water."

The people in the room suddenly began to think either that they were being mocked or that the governor was challenging their most fundamental assumption. What Jerry Brown was saying was, "Look, maybe the best way to solve this human problem is with a human solution. You shouldn't look to science and technology to solve problems that can be solved in much less expensive and much less potentially dangerous ways without the use of chemicals, without a quick fix. Kids shouldn't be eating Twinkies and they shouldn't be drinking Coca-Cola, and we shouldn't be avoiding that source, which is the source of the problem."

Now, in a way, he was having fun. I don't think he was opposed to fluoridation, but the shock in the eyes of those true believers for fluoridation was so palpable that it was easy for me to see, how this sort of badinage was going to get him into real trouble. And indeed it did in years to come. His willingness to consider new or different ideas upset a lot of people who had a lot invested in their particular solution to what they regarded as their problem.

LABERGE: It's 5:20 now. Shall we consider something else, or . . .?

KLINE: I'm not sure there's much more I can tell you. Is there anything else you think I should address?

LABERGE: Can you say a few words about the cabinet meetings?

KLINE: The cabinet meetings occurred with some frequency in the

beginning. Towards the end of the Brown administration there rarely were cabinet meetings. When Jerry Brown got elected governor in November, Gray Davis and I went up to Sacramento to visit with Ed Meese as part of a transition scheme. Meese showed Gray and I how the Reagan administration was organized. The cabinet meetings occurred regularly; then there were sub-cabinet meetings and so on and so forth. He [Meese] had a lot of boxes and a lot of lines of authority. It was extremely rigorous. I mean, the meeting would start at eight o'clock and it would end at eight-thirty and if it was in the middle of a sentence, that was too bad.

Well, nothing could have been further from that than the Brown administration. Jerry Brown, as I said earlier, was not a great lover of meetings. Secondly, he was not a person who would follow somebody else's agenda very easily. These cabinet meetings usually ended up focusing more on what was on Jerry Brown's mind than what was on the mind of the cabinet secretaries. This is not necessarily to Jerry Brown's credit, certainly. I think a lot of cabinet secretaries realized that if they were going to have useful communications with the governor, it was going to have to be one on one. I think most of the governor's important communications with his cabinet secretaries and his department heads was face to face or conversations one on one or telephone conversations. The cabinet meetings were not, in the Brown administration, a forum for cabinet secretaries to bring to the governor their policy problems.

You see, the organization of a governor's office necessarily

reflects the personality of the governor. Jerry Brown was not as strictly disciplined an administrator as most other governors certainly are. He was also very, very difficult to control for his executive secretary, Gray Davis, who was trying to put order on a very ebullient, imaginative, creative person who liked to spend time thinking and talking about what interested him rather than what interested other people.

Brown was also aware of the way governors, including his father, were controlled by their advisors. I recall him pointing out to me once how much Reagan's system insured the ability of those around him to control him. Reagan was presented, when he was governor, with decision memos. A decision memo outlined the facts, described the options, and then asked the governor for a choice. Well, if you control the facts and you define the options, then you basically control the decision. I don't think Jerry Brown was about to permit that to happen to him. He was not going to permit an Ed Meese or a [Assistant to the Governor and Director of Administration Michael] Mike Deaver to define the possibilities.

[End Tape 3, Side A]

[Tape 3, Side B not recorded]

[Session 3, April 16, 1991]

[Begin Tape 4, Side A]

KLINE: I think we were talking about the Bail Reform Bill, which was A.B. 2.[1] I believe the year was 1979; I'm not sure. You wanted to know how the governor was able to get this reform enacted because the opposition, which I think we've already discussed, was so effective. The bail bondsmen were a powerful lobby. For each of the twenty years between 1959 and 1979 they had succeeded in killing that bill, usually in committee before it ever reached the floor. It was usually liberal Democratic assemblymen and senators from low-income districts (who relied heavily on bail bondsmen contributions) who defeated the bill, even though ironically, it was their constituents who would have benefited the most from the reform that was being killed.

But the answer to the question of how we got this through is in many ways a measure of the strength of the opposition. It was actively supported by the governor, who raised the issue in his State of the State message that year, and was co-authored by the speaker of the assembly, then [Speaker] Leo McCarthy, and the majority leader of the assembly, [Assemblyman] Howard Berman, who clearly were the two most powerful and most effective assemblymen in California at that time. I don't even

1. A.B. 2, 1979-80 Reg. Sess., Cal. Stat., ch. 873 (1979).

think they would have been able to enact this measure had it not been for some of the excesses of the bail bondsmen.

Ironically, the key legislators who put the bill out in the assembly and later in the senate were rather conservative Republicans. In the assembly, the key people were [Assemblyman Eugene] Gene Chappie, who later went on to Congress, who was from Placer County; and [Assemblyman] Jim Ellis, who later went on to the state senate and who was from San Diego.

In the senate, the key person who at the eleventh hour--it was close to midnight on the last day of the session, I remember it well--who changed his vote in favor of this bill was [Senator James] Jim Nielsen, a Republican from Napa County, from an agricultural area. I think that certainly in the case of Nielsen, and perhaps in the case of Chappie and Ellis, they were offended at the enormous amount of money and pressure that the bail bondsmen were exerting. For example, bail bondsmen "loaned"--I put the word "loaned" in quotes here--about a quarter of a million dollars to [Senator] John Briggs, a senator from Orange County. I'm sure that it was probably conditioned on his strong opposition to this particular bill. I think the overtness of that financial inducement offended not just Nielsen but many others, and I think that was a key element.

But I don't want to underestimate the influence of Howard Berman and Leo McCarthy, particularly Berman, who really was an enormously skillful legislator. He's now a member of Congress from Los Angeles and is an influential member of that body as well. His ability to steer this measure through was critical, and

he did it through a bipartisan vote of people who were persuaded that it would save the counties money, that it was consistent with the presumption of innocence, and that it only related to nonviolent offenders.

LABERGE: Do you want to go on to workers' compensation?

KLINE: Yes. The California workers' compensation system, though it's a little-known fact, is the largest workers' compensation system in the world. It's much bigger than the federal system. When Jerry Brown was governor, there were then, I believe $17 billion passing--maybe it was $7 billion, but I believe it was $17 billion--passing through that system, because there were so many workers covered. But despite the size of the program, both in terms of the amount of money involved and the size of the bureaucracy, the sad fact was that California workers were compensated less than workers in thirty-two other states. The reason for this was that doctors and lawyers were taking out of this system what many believed to be an unconscionable amount.

Now, the doctors and the lawyers have very, very effective lobbies, and although they ordinarily are at cross-purposes in the legislature, their interests are not conflicting when it comes to any reform of the workers' compensation system that would diminish the economic advantage to those two professions.

In any case, there is no meaningful reform of workers' compensation, in my view, or of which I'm aware, that does not to some extent limit the amount spent on medical reports and lawyers' fees. The reform that Brown supported in 1980--it was

Senate Bill 375[1]--was supported by a coalition of labor unions, insurance companies, large employers--the California Manufacturers Association, for example. Now, that's an unusual coalition. Ordinarily you don't find organized labor on the same side as insurance companies and large corporations, but you did on this bill. And yet that coalition, which has some powerful forces within it, was unable to overcome the enormous resistance of lawyers and doctors, particularly lawyers.

The lawyers' group that lobbies on the issue of workers' compensation is known as the California Applicants Attorneys Association. Most people in California have no idea what an applicant's attorney is, but there's nobody in the state legislature who has any doubt. They are very well known and they are very well financed and they are very professionally represented by lobbyists in the assembly and in the senate. What they succeeded in doing was bottling that bill up in a committee to whose members they make sizable political contributions.

But our real goal was not to hurt doctors and lawyers. That was not our purpose at all. Our purpose was simply to benefit injured workers without increasing still further the large premiums that California employers have to pay. The manner in which workers' compensation premiums--costs of supporting the system--diminished California's competitive effectiveness in terms of our national economy, is not as widely known as it should be. The problem in workers' compensation is not only that injured

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1. S.B. 375, 1979-80 Reg. Sess. (1980).

workers are inadequately compensated, but that corporations are so heavily burdened by insurance premiums. So there is both a traditional Democratic and traditional Republican community of interests here, working people and large businesses, and yet those two unusual partners were unable to overcome the resistance of lawyers and doctors.

LABERGE: How were you even able to get that coalition together to begin with--the labor unions and the corporations?

KLINE: I don't think I can give Jerry Brown or his administration all the credit for that. They perceived their own self-interest correctly. It's no secret, really, that the costs of this system are inordinately the result of medical and legal costs that can be reduced without prejudicing the rights of workers and without relieving the corporations of burdens that they should bear. So it didn't require that much of the governor, but the governor did support it. I think that to his credit, he was willing to take on doctors and lawyers. I think this is another bill that helped to create the idea--the false idea, in my view--that Jerry Brown was anti-lawyer or anti-doctor or anti-professional, or maybe anti-elitist. But he was not unwilling to challenge vested interests, in this case doctors and lawyers, if he felt that it made sense, that it was a useful social policy, and that it was feasible.

LABERGE: Could you say more about lobbyists in general and the power of lobbyists in our government?

KLINE: Sure. I don't know that I have any special wisdom on this. I think that the power that lobbyists have today. . . . I haven't been in Sacramento since 1980, more than a decade. My sense is

that lobbyists have more power today than they did when I was there, but I was impressed when I arrived in Sacramento in 1975, with their extraordinary clout.

Lobbyists have the power they do usually because of the money that their clients spend. The costs of running for office have become so great in this state because candidates must rely on the broadcast media to get their message across and this costs a lot of money. Many elected officials are not fond of the well-heeled special interests, but nonetheless realize they are their principal source of large contributions. My own sense is that some form of campaign reform is essential to reduce the inordinate power of these groups.

Now, I don't want to paint with too broad a brush here, and I don't want to suggest that lobbyists don't contribute anything positive, because many of them do. And indeed, there are many areas in which lobbyists are influential for reasons other than money. I mean, for example, in the criminal justice area, certain lobbyists are influential in that area because of their political power. For example, the California District Attorneys Association exerts, I think, considerable influence for that reason. But there are other lobbyists who exert influence because of their expertise. There are members of legislative committees who feel that police officers and district attorneys and public defenders and representatives of the ACLU [American Civil Liberties Union] do have a level of expertise regarding the areas in which they legislate that ought to be used, and I think rightly so.

So I don't want to leave you with the idea that lobbyists

are invariably a pernicious force. I think those lobbyists that represent largely monied interests can and often do have an inordinate amount of influence, which is exerted privately rather than in any public form, and I don't think that that is healthy in our society.

LABERGE: Do you think that will increase with the proposition that passed of limiting the legislators' terms?

KLINE: No. That's Prop. 140.[1] I think Prop. 140 is an illusion. I think it's emotionally satisfying for people to think that by limiting terms they are somehow going to ensure that better people represent them who are less in the thrall of lobbyists. I think there's no reason to believe that. I think if anything, Prop. 140 is going to increase, not diminish, the power of lobbyists, because few legislators will be in the legislature long enough to develop the expertise that is necessary in many instances to thwart the improper or excessive influence of powerful special interests. I think that many members of the assembly and senate who know their tenure is limited are going to be looking for positions in the private sector that lobbyists can help them secure. Also, by forcing a reduction in legislative staff, members of the legislature will have less access to independent experts than they did previously, and will also for this reason be more dependent upon lobbyists. So I don't think Prop. 140 is a step forward in California.

LABERGE: Anything more on the legislature, your view of how Jerry Brown

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1. Proposition 140 (November 1990).

worked with the legislature or your workings with it?

KLINE: I don't believe that Jerry Brown was as effective with the legislative body as I think he should have been. He had never been a legislator, unlike the present governor [Pete Wilson] and George Deukmejian before him. He also lacked the personality to get along comfortably with a lot of legislators or those legislators whose views he didn't respect or whose motives he questioned. He operated more in his head than in his heart sometimes, and he was a bit more impatient with the legislature than I think he should have been, and I also think he was unduly confident in his ability to lead through exhortation.

Now, this is not to say that he didn't have some great successes. The greatest one, I think, was the creation of the Agricultural Labor Relations Board,[1] which was very difficult to do. He had many others. The creation of the California Conservation Corps is another enduring legacy that he must be given virtually all the credit for. The Coastal Act[2] and many other environmental measures are also to his credit. So, while he did have his successes, I think he might have had more if he had had legislative experience.

On the other hand, I must say this. I do think, frankly, that he was more effective than George Deukmejian, even though George Deukmejian did have legislative experience. I don't think

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1. Created by S.B. 1, Agricultural Labor Relations Act, 1975 Third Ex. Sess., Cal. Stat., ch. 1 (1975).

2. Nejedly-Hart State, Urban, and Coastal Bond Act, 1975-76 Reg. Sess., Cal. Stat., ch. 259 (1976).

Jerry Brown was as distant a personality as Deukmejian, or Reagan, for that matter. At that time, he was not as avuncular and personable as many powerful legislators undoubtedly would have liked. I don't think he had the ability to go along with legislative agendas that he didn't share.

LABERGE: What about the Agricultural Labor Relations Bill, what was your involvement in that?

KLINE: I didn't have much involvement in that. I was around for that, but I was not directly involved in that.

LABERGE: Could you say something about the way he got support for that?

KLINE: Yes, he developed a level of excitement. He met, he had intense late-night meetings with powerful agricultural interests like [Robert] Bob Gallo, I remember in particular, and as well with Cesar Chavez. He developed a working relationship with the key players on the farmworkers' side and in the agricultural community, and he then involved the legislative leadership in the discussions that he was having. I think the level of excitement that he generated was key.

Keep in mind this was early in his first term. He was a new governor; didn't get elected overwhelmingly, but he did early on have very, very strong support through the polls that I think rendered him a formidable leader from the legislative point of view at that time. It was something; he created the impression that it was going to happen, and you were either going to get on the train or you were going to be left behind. And if you got on the train, you have an ability to fashion the measure that resulted. That's, I think, what really contributed to that success.

LABERGE: How about addressing water issues during his governorship, particularly the 160-acre limit?

KLINE: I'm not sure that Jerry Brown will go down in history as having had an enormous effect on the solution to the water problems of this state, but apart from his father, I don't think any other governor in this century is going to go down having such a success either. Water is the most intractable of the important issues confronting this state and the most difficult to resolve.

There was a period in there, in the mid- to late seventies, when we also had a drought, and sometimes a drought does create, as we're now learning, the sort of crisis that will enable people to perceive possibilities that their minds would otherwise be closed to. But that drought was not long enough, and Jerry Brown's levers of influence were not powerful enough to effect any great change.

Now, what was happening between 1978 and 1980 on the federal level was an attempt by the [President Jimmy] Carter administration to reconsider the provision of the Reclamation Act,[1] which was enacted early in the twentieth century, that imposed this 160-acre limitation. Essentially, what the Reclamation Act said was that in order to qualify for the very heavy federal subsidy on water in the Central Valley, people who received water from the federal water project were limited to family farmers, those who farmed 160 acres or less.

The 160-acre limitation was never seriously enforced in

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1. Reclamation Act of 1902, 32 Stat. 388 (1902).

California, if anywhere else in the West. The value of the federal water subsidy to California agriculture cannot be underestimated. It is in the many, many billions of dollars. If the farmers were required to pay the full cost of the water they received from the federal system, then California farmers since the fifties would have paid many, many billions of dollars more than in fact they have.

Many feel that nonenforcement of the 160-acre limitation has many adverse consequences for our society. First and perhaps most obviously is that it is not being used to advance the interests of small farmers, but is instead advancing the interests of large corporate farmers who are least in need of this sort of subsidy, so that there is a misuse or perversion of the subsidy.

But there are many other adverse consequences: cheap water has financed the development of marginal land that probably should not have been put into production. It also encouraged the use of mechanization and pesticides and so forth because the size of the farms that are flourishing as a result of this subsidy were thought to require the heavy use of chemicals.

In any event, Brown was asked by the Carter administration to get involved in this reconsideration. I was his appointee to something called the San Luis Project, which was chaired by the solicitor of the Department of the Interior [Leo Krulitz]. The Secretary of the Interior at that time was Cecil Andrus, who had previously been the governor of Idaho and is today, I believe, now again the governor of that state.

There were a lot of recommendations proposed by this

project, but, in the final analysis, the agricultural interests of the country, and particularly the agricultural interests of the Central Valley of California, bottled up those reforms in committee and not much came out of it.

It may be that that's going to change now. Because of the present drought, there's much less willingness in California to indulge the special rights of farmers with respect to water allocations. And secondly, [Representative] George Miller, a congressman from Contra Costa County, is about to become the chairman of the House Interior Committee because Representative Morris Udall has indicated he's going to retire at the end of this term. George Miller has always been one of the great critics of those provisions in the Reclamation Act that have been used by farmers to keep a subsidy that people doubt they were ever intended to receive. It will be interesting to see what happens.

I can't say, though, that the Brown administration was a major player on this. This is really a federal issue, and California has very little to say about the allocation of federal water, even within our own state. We have some controls over it, but it's not the sort of issue that a governor can easily influence. Any governor.

LABERGE: Could we talk about either your appointment to the bench and your experience on the bench, or your assessment of Jerry Brown's whole governorship--its success or how you would judge success for a governor?

KLINE: Well, let me start off with going on the bench, because . . .

LABERGE: OK, because then we could wrap it up with . . .

KLINE: Yes. I probably should have gone on the bench sooner than I did. I didn't really come to Sacramento with a political background, as I'm sure I've indicated at the outset of this interview. My background was really legal. The six years I spent in Sacramento gave me an extraordinary education. I think I learned a lot about California, about politics, about people, about myself.

It was interesting also because my relationship with the governor gave me a lot more freedom than others in his administration had. I didn't have a department that I had to administer. I didn't have to worry about a budget for an agency. I was in the governor's office. I was right at the nerve center of the administration. I had the freedom to get involved in legislative issues or legal issues or other substantive issues or the appointment process, and it was such an interesting experience that I think I may have stayed on longer than I should have.

In any event, I think my career probably prepared me more for the role of an appellate judge than it did any other single thing. Because--my poverty law and public interest practice and my practice in Wall Street had been almost entirely federal courts--I thought that appointment to the San Francisco Superior Court would teach me something . . .

[End Tape 4, Side A]

[Begin Tape 4, Side B]

LABERGE: OK, you were talking about becoming a superior court judge.

KLINE: Right. I'm not sure that I realized it at the time, but I now feel that the San Francisco Superior Court is one of the most

interesting trial courts in America. Now, I know that's an extravagant statement, but I think I can support it. Basically, there are three reasons.

First, it is in a city that generates interesting cases. San Francisco is a commercial center, it's a culturally diverse place, and it is the sort of city that, as I say, develops interesting types of cases: civil cases, constitutional cases, criminal cases, and so forth.

The second reason is that the city has a history of a very talented trial bar. It's a lot easier and more interesting to be a judge if the lawyers practicing before you are able than if they are not. Now, I am sure that there are probably more great lawyers in Los Angeles than there are in San Francisco, simply because of the different sizes of the two cities, but I do believe that the lawyers who practice in court in San Francisco are probably unexcelled, that they probably are an abler group than the thousands who appear in the trial courts of other larger cities in California. I'm not sure why that is, but it's easy to show that San Francisco has produced an inordinate number of the great trial lawyers of this state and nation. So the quality of the lawyers is the second reason.

The third reason, though, I think is the most important. That is because San Francisco is the smallest of the metropolitan counties, and it is the size of the county that determines the size of the bench. When I was on the superior court there were only twenty-seven superior court judges here. There were more than forty in Santa Clara County and Alameda County. At that time

there were about three or four hundred superior court judges in Los Angeles and fifty or sixty in Orange County and San Diego County.

Now, a small superior court in a big city is an anomaly. What it means for a judge is that you can easily obtain an extraordinary amount of diverse legal experience. The day that I got sworn in to the superior court, the presiding judge asked me a question that I would never have been asked had I been appointed in any other large metropolitan court in the state, and the question is, "What would you like to do?" My answer was, "Everything." In about three years on the trial court, I did succeed in that goal; I sat on everything that a superior court judge presides over. I sat in the probate court, I sat in the criminal courts, I sat in the juvenile courts, I presided over the mental health calendar, I tried the biggest divorce in the modern history of the city.

LABERGE: Which one was that?

KLINE: That was the Montandan-Willsey divorce case. I sat in scores of very interesting, complex civil cases. In short, I learned a lot.

It's also a very collegial court, always has been, or at least in the years that I've been familiar with it. I made a lot of good friends, I learned a lot, and in some ways I'm sorry that events didn't make it wise for me to stay longer than I was able to.

LABERGE: Who are some of the lawyers that you think are the best, or isn't that fair for you to say?

KLINE: The best that I know?

LABERGE: The best that have, for instance, tried cases before you?

KLINE: Well, on the criminal side, I'd say [Alfred G.] Al Chiantelli. He's now a judge. [Douglas] Doug Munson. He's also now a judge. Hugh Levine. He's now a criminal defense lawyer; at the time, he was a district attorney. George Walker. He's still one of the outstanding criminal defense lawyers in San Francisco. [James A.] Jim Lassart, [Stuart] Stu Kinder.

On the civil side, there were so many. Gosh, I don't know where to begin. [William] Bill O'Brien, [Ronald] Ron Rouda, Jerry Falk, LeRoy Hersh, Charles Morgan, [David] Dave Phillips. [Interruption]

LABERGE: It's kind of funny because before, we had talked about how people thought you were antilawyer also, and the state bar wrote an article about you, blasting your statements about . . .

KLINE: No, I was the one who wrote the article, and they censured me as a result of the article. I wrote an article in the State Bar Journal,[1] I think it was in 1978, asserting in effect that lawyers were really part of the problem, not part of the solution, that lawyers were more frequently opposing needed reform than supporting them. I'm talking about court reforms. As a result, the president of the state bar at the time--he was an Orange County lawyer, a nice fellow named [ ] Gar Shallenberger--held a press conference and bitterly attacked me as being antilawyer.

I've always thought of myself as being prolawyer. It may be that I hold lawyers to a higher standard than I do other

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1. J. Anthony Kline, "Law Reform and the Courts: More Power to the People or to the Profession?" 53 California State Bar Association Journal 14 (Jan./Feb. 1978).

professional groups, but I think that's justified, given the role of lawyers, who stand between the people and the constitution, and who have more to do with the enforcement of the law and the quality of justice than any other group in our society. I don't think it's unreasonable to hold them to a high standard.

But I've never had a bad feeling about lawyers or the legal profession. I've been frankly rather amazed that Jerry Brown and I were seen as antilawyer or antijudge or anticourt. We were both law clerks in the supreme court, as I think I've mentioned, and both practiced law. My life has been committed to the law. I love it; I can't imagine doing anything else. Most of my friends are lawyers.

Yes, I have been critical of the legal profession from time to time, but I think that treating me as antilawyer is very, very unfair. I think if you want to get a comment of a person who knows me quite well and who was involved with the state bar when they did attack me was Charles Clifford. He's a partner at Heller, Ehrman, White, and McAuliffe here in San Francisco. He was on the board of governors of the state bar at the time I was censured, and he became the president of the state bar the next year. He knows me, I think, well enough. I'd be very, very surprised if Charlie thinks today that I'm antilawyer or that I really ever was. I think Charlie was more embarrassed for the bar than he was for me.

I should also say, and I don't say this happily, that being attacked by lawyers, is like being on Richard Nixon's enemies list. The mail that I received at the time that the bar attacked me,

which was reported in the press and on television, was embarrassing, I must say.

LABERGE: Has your experience on the bench changed your view of court review, of the need for it or of what kind of court reform we need?

KLINE: My ten years on the bench has given me a pretty highly developed sense of the limits of the law to solve human problems. The older I get, the more experienced I get, the more aware I think I become of the limits of the legal process. I think it's healthy that we're now trying to find alternatives to litigation. I think that this whole movement towards alternative dispute resolution is very salutary. I don't think that there is a legal answer to every human problem, but we live in a society in which the law is so glorified, where the notion of having one's day in court is thought to be desirable, which is not true in any other society in the world, has created the idea that the courts have the ability to right every wrong. They don't.

On the other hand, I don't want to be misunderstood about this, because I believe that our legal institutions, particularly the courts, are more responsible than any other single factor for the quality of justice in this country, which is unexcelled in the world. I guess that that may sound like a contradiction, the fact that on the one hand I have a more constrained view of what it's possible for the courts to do, and yet still believe that the courts have done more here than they have done anywhere. I don't think that's really a contradiction, because if we are going to preserve the effectiveness of our courts, we cannot have

unrealistic expectations about what they can achieve.

In any event, I have enormously enjoyed being a judge. There are very few people in our society who can say, as a judge can, that he is accountable only to the truth as he sees it. I'm sure I could earn a lot more money in private practice, but I can't imagine leaving this job for that reason. I know an awful lot of lawyers who earn four and five times as much as I do, who would leave their job for mine in a minute. The psychic rewards of being a judge are considerable. There are very few issues in our society that don't come into the courts, there are very few issues that we don't see. The diversity of issues is a very rewarding thing professionally.

LABERGE: Did Jerry Brown appoint you to the court of appeal? I'm looking at the. . . . He must have. Yes.

KLINE: Yes, he appointed me to the superior court in 1980, and at the end of 1982 he elevated me to my present position as presiding justice of the court of appeal.

LABERGE: Do you want to comment on the appointment of Rose Bird as chief justice? That's something we haven't touched on, but I don't know if you want to.

[Interruption]

What was your involvement and your reflection on the appointment of Rose Bird as chief justice of the supreme court?

KLINE: I did not conceive of that idea, although many people think I did.

LABERGE: That sets the record straight.

KLINE: Yes. In fact, I was somewhat opposed to her appointment as chief justice, although I was supportive of her appointment to the

supreme court. It was Jerry Brown who initiated the idea of appointing Rose chief justice. But I worked strongly to see that she would be confirmed, and was glad that she was.

The misgivings I had and that many others in the Brown administration had--or maybe not many, but certainly several other members of the cabinet--was that as talented and as able as Rose Bird was, she was not temperamentally suited to be the presiding justice of a collegial body. There was a stiff-necked aspect to Rose. She could be a bit self-righteous and was sometimes unduly suspicious of the motives of others. She tended to see people as either for her or against her, and I think that she felt that many more people were against her than really were, but over time her suspicions did generate animosities and thus became in some sense a self-fulfilling prophecy. Rose didn't have the ability to exert leadership over institutions consisting of people who could not be fired and who were very jealous of their own prerogatives as constitutional officers.

I guess that in retrospect, the appointment of Rose Bird as chief justice was probably the biggest mistake that Jerry Brown made as governor. I think the reason he did it was first, he believed that she was extremely intelligent, and she was. I think he also believed that she was highly principled, and she was. And finally, and not least of all, I think he believed that her appointment would shake up the judiciary, which he felt needed to be shaken up. He was much more right about that than I think he ever understood, and I think that therein lay the problem.

The problem was not that Rose was not a member of an old-boy network. The problem was that Rose lacked the ability to persuade the members of her own branch of government and the public at large that she did not have an ideological agenda that she was determined to impose on society. In fact, I think she created the opposite impression. But in any event, I think that Jerry Brown wanted to appoint a strong woman to an institution that had been a bastion of men from the beginning as a symbol that he was bent on opening up that institution to the diversity--the ethnic, racial diversity--of this state, and I think that was a good impulse.

LABERGE: Were you surprised when both she and [Justice] Cruz Reynoso and [Justice] Joseph Grodin were voted out?

KLINE: No, I wasn't surprised by then. I was a little surprised that Grodin and Reynoso were defeated, but I wasn't shocked by it. I think that by that time the antipathy to Rose had grown so widespread and she had demonstrated such an inability to alter the negative views of her and the court that it was a foregone conclusion.

I think the real issue that did her in was the death penalty. There was then overwhelming support for the death penalty. Most people believed she simply would not tolerate its application. She had never voted to affirm a judgment in any one of the scores of death penalty cases that were presented to her in the, I believe it was eight years, that she was on the supreme court. In the final analysis, for most people it became a referendum on the death penalty, the result of which was a

foregone conclusion.

It may be that Rose would have been unable to avoid that result even if she had been more skilled and less suspicious and more personable. I don't think we'll ever know the answer to that.

LABERGE: Would you like to sum up Jerry Brown's success as a governor?

KLINE: I'm not sure that the time is right to totally sum up Jerry Brown's success as a governor. Or, not whether the time is right but, whether I'm the right person to do that. I do believe that Jerry Brown was a good governor, and I believe, I think, that history will reflect more favorably on him than some people today believe. He was much more open-minded, much more inquisitive than elected officials ordinarily are. I think he was much more willing to listen to people whose background was different than his own than most people are. And I think he had a greater ability to stimulate people than most elected officials have.

One of the things that plagued him was that this open-mindedness and inquisitiveness also had some adverse consequences. Many people don't want leaders who are inquisitive or who are willing to entertain alternatives to conventional approaches. It's a little unsettling to them. I'll give you a specific example.

During the eight years that Ronald Reagan was governor, the people in the state who wanted support for fluoridating water got nowhere in Sacramento. For some reason I've never fully understood, conservatives in America believe that fluoridation is a collectivist Communist plot, so Reagan and his people never had

any interest in efforts to fluoridate water.

Well, after the election of Brown, supporters of flouridation felt that the answer to their prayers had arrived, and a meeting was convened in the governor's office so he could learn who these people were, what their ideas were, what it is they wanted to accomplish, and what specific measures they wanted him to support.

At some point in the meeting, the governor interrupted, and in effect what he said was this: "Wait a minute. The problem is that our kids have rotten teeth. The reason they have rotten teeth is that they eat Hostess Twinkies and drink Coca-Cola. But instead of changing the eating habits of our youth, you want to put a chemical in the water." Well, a lot of jaws dropped in that room.

Actually, Jerry Brown was to some extent just being playful. I don't think he was opposed to fluoridation, and I think that he did end up giving them the support that they wanted. But his challenge to the conventional wisdom that they had committed themselves to was very, very unsettling. That was indicative to me of a problem that Jerry Brown was going to have and indeed did have with many other constituencies and in many other connections in the years to come.

Jerry Brown is seen as being an anti-elitist by many groups. This is partly the result of the fact that he enjoyed appointing public members who were not experts to boards and commissions that regulated certain trades and professions. For example, he put nonlawyers on the board of governors of the state bar, and

he outraged doctors when he appointed nurses to the Board of Medical Quality Assurance. Things of this sort were not calculated to endear him to many powerful groups in the state. In the final analysis, I think he was undone by what some people came to describe as a "flaky" quality.

However, he was intellectually the most substantive governor this state has had as long as I've been here. I think he was also much more willing than some governors and other elected officials have been to tackle issues, even if he felt he was not advancing a popular view. For example, it was not easy for him to veto the death penalty at a time when he knew it had overwhelming support. There were other examples.

I also found that he was a lot of fun to work with. He had a great sense of humor. I don't think he took himself too seriously or as seriously as a lot of people in that position did. He could take criticism very easily. He didn't take criticism personally. And I think he had a highly developed sense that it's a brief interlude on this lugubrious planet and you ought to accomplish as much as you can in the brief time allotted.

LABERGE: Do you want to end there, or are there other issues you'd like to comment on?

KLINE: No. I can't think of anything. [Looks through papers]

LABERGE: There are some things we haven't talked about.

KLINE: Yes. You did ask me once what a typical day in the governor's office was like. My answer is that there was no such thing as a typical day. Unlike Ronald Reagan, who came in at nine and left at five, Jerry Brown was a bit more erratic. He was really a

night person. Sometimes he wouldn't come into the office until ten or eleven, but when he was in Sacramento he rarely left the office before midnight and was often there much later than that. He was a much more spontaneous person who was much more difficult for his staff to control than I think some governors are.

LABERGE: Including you?

KLINE: Oh, yes, including me. I don't think Jerry Brown was ever in the thrall of his staff to the extent that I know Ronald Reagan was. Many of the secretaries and others that were in the governor's office when Jerry Brown was there had been there under Ronald Reagan and [Governor] Pat Brown, and a few even earlier than that--[Governor Goodwin] Goodie Knight--so you couldn't help if you were there but hear from them what these other governors were like. And I know Pat Brown quite well and I know what dealing with him is like.

Jerry was much, much more spontaneous, was not as linear in his thinking. One of the problems that he had was that he was not as good at consulting others before he took a position as most leaders of the legislature have to be. He would call up Leo McCarthy or [Senator James] Jim Mills, who were then speaker of the assembly and president pro tem of the senate, with an idea in the middle of the night and say, "Let's just do it . . . "

[End Tape 4, Side B]

[Begin Tape 5, Side A]

KLINE: You couldn't do anything of any significance without building a consensus among the leadership in your party and the chairmen of your committees. I'm not sure Jerry Brown always fully

appreciated that. Once he became persuaded that a particular course of action should be taken, he got very frustrated by having to go through a long, deliberative process.

But although he was headstrong, he was, as I think I've already indicated, much more creative and much more imaginative than most political figures. That's what got him in trouble. That's what created this notion that he was unconventional or flaky, but I think that . . .

[Interruption]

. . . Before that, I was saying that while he was headstrong and sometimes got easily frustrated, he was also an extraordinarily creative and imaginative leader. My point is that in a state like this, at this point in history when change is coming so quickly to this state, that you do need the kind of creative thinking at the upper reaches of government that Jerry Brown had. Some of the things that Jerry Brown said are easy to ridicule, but my sense is that in the long view of history he will be seen as a much more productive thinker, compassionate leader, and effective governor, than some people today realize. We'll see.

LABERGE: Shall we end?

KLINE: Yes. Well, there is one. . . . I don't know if I mentioned it earlier, but one point I want to emphasize is the type of people Jerry Brown brought into state government. This is an area in which Jerry Brown has changed the California reality, and I think in a positive way. It was not so easy in 1975 and '76 and '77 to appoint minorities and women to powerful positions that had never seen a minority or a woman in the history of the state. I'm

not just talking about the supreme court, I'm talking about the Energy Commission and the Public Utilities Commission. I'm talking about the trial courts. I'm talking about a whole array of regulatory bodies that affect water and power and that make a real difference in the day-to-day life of California. He was accused by many people of appointing women and minorities simply to curry favor with these constituencies, and that in doing so he was compromising quality, the implication being that if you were going to appoint minorities and women, then you were not going to appoint people who were qualified.

This is, of course, racist and sexist, but in the mid-seventies that was the prevailing view of many, many people in powerful positions and many people in general. He just defied that, and I think he's just changed the way that people think. I don't know if I said it earlier on this tape, but I remember in 1975, his first judicial appointment was to the superior court in Riverside County.

LABERGE: You have given that story.

KLINE: Did I talk about that? Right. Well, I'll just use that as an example. I won't repeat it. But what the thinking was then, that's not the thinking today. So George Deukmejian, Pete Wilson, and future governors, whether they like it or not, or whether they realize it or not, even, are going to be measured to a considerable extent by the standard that Jerry Brown set. I don't think any chief executive of any country, let alone any of the states, has appointed as many women and people of color to important positions as Jerry Brown did in the eight years that he

was governor.

LABERGE: I would say you had quite a bit to do with it, don't you think?

KLINE: Well, yes, I did have a lot to do with it, but I don't want to create the impression that I had to twist Jerry Brown's arm. Jerry Brown and I really were on the same wavelength on this. My view is that government is not legitimate if it isn't seen by the mass of people as reflecting its own values and own life experience.

As applied to the courts, for example, Jerry Brown's attempt to bring the complexion and sex and ethnic makeup of the judiciary more into line with that of the people of this state strengthened respect for judicial institutions, didn't weaken it. I think it's completely untrue to suggest that the women and minorities that he was appointing were less able than the white males that he appointed. Some of the greatest judges he appointed were people of color. One that comes immediately to mind is Bernard Jefferson, one of the greatest judges in the history of California. There are many, many others. So I think that that is a legacy also that Jerry Brown will be credited for in the final analysis.

LABERGE: Thank you very much for your time.

[End Tape 5, Side A]

[Tape 5, Side B not recorded]