



CALIFORNIA STATE ARCHIVES
STATE GOVERNMENT
ORAL HISTORY PROGRAM

INTERVIEW WITH
BARRY KEENE

OFFICE OF
BILL JONES
SECRETARY OF STATE

The Bancroft Library

University of California • Berkeley



California State Archives
State Government Oral History Program

Oral History Interview

with

BARRY KEENE

California State Senator, 1978-1992
California State Assemblyman, 1972-1978

July 7 and 14, 1994
August 8 and 26, 1994
September 16, 1994
Sacramento, California

By Carole Hicke
Regional Oral History Office
University of California, Berkeley

RESTRICTIONS ON THIS INTERVIEW

None.

LITERARY RIGHTS AND QUOTATIONS

This manuscript is hereby made available for research purposes only. No part of the manuscript may be quoted for publication without the written permission of the California State Archivist or Regional Oral History Office, University of California at Berkeley.

Requests for permission to quote for publication should be addressed to:

California State Archives
1020 O Street, Room 130
Sacramento, California 95814

or

Regional Oral History Office
486 Library
University of California
Berkeley, California 94720

The request should include information of the specific passages and identification of the user.

It is recommended that this oral history be cited as follows:

Barry Keene, Oral History Interview, Conducted 1994 by Carole Hicke, Regional Oral History Office, University of California at Berkeley, for the California State Archives State Government Oral History Program.



March Fong Eu
Secretary of State

California State Archives
1020 O Street, Room 130
Sacramento, CA 95814

Information	(916) 445-4293
Document Restoration	(916) 445-4293
Exhibit Hall	(916) 445-0748
Legislative Bill Service	(916) 445-2832
(prior years)	

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 issues of the state of California. They include members of the legislative and executive branches of 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.

TABLE OF CONTENTS

INTERVIEW HISTORY i

BIOGRAPHICAL SUMMARY iii

SESSION 1, July 7, 1994

[Tape 1, Side A] 1

 Family background and childhood--Stanford University, B.A. and J.D.

[Tape 1, Side B] 10

 Self-supporting law student--Impact of JFK's death--Legislative internship in California State Assembly, 1964-1965--Drafting legislation on reporting of child abuse, A.B. 277, 1965.

[Tape 2, Side A] 20

 Internship under Ed Z'berg on Committee on Natural Resources and Conservation--Staff of Constitution Revision Commission, 1965-1967--Jesse Unruh as speaker--Professional legislature--Frank Newman, Bruce Sumner, Dick Patsey.

[Tape 2, Side B] 29

 Marriage and children--Santa Rosa District Attorney's office--High expectations for staff--Prosecuting two cases--Firm of DeMeo & DeMeo, 1968-1970.

[Tape 3, Side A] 40

 Election to Santa Rosa School Board--Unsuccessful campaign for assembly, 1970--Democratic politics in Sonoma County and the state.

[Tape 3, Side B] 50

 Winning the assembly seat, 1972--Debate with Gary Antolini--Campaign manager Bruce Gray--Private practice with John Olmstead--Campaign slogan: "Jobs and the Environment."

[Tape 4, Side A]	61
Campaign strategies.	
SESSION 2, July 14, 1994	
[Tape 5, Side A]	67
Issues of 1972 assembly campaign: Coastal Protection Act; farm labor; Eel River dam--Balancing constituents' different interests--Types of leadership.	
[Tape 5, Side B]	77
Transition to Sacramento as assemblyman--Ups and downs of a legislator's life--Bob Moretti's speakership--Freshmen caucus of five.	
[Tape 6, Side A]	85
Leo McCarthy vs. Willie Brown for speaker, 1974--Appointment as chair of Committee on Health--Effect of defeat on Willie Brown's leadership strategies--Budget issues leading to Proposition 13 under Jerry Brown.	
[Tape 6, Side B]	95
Health committee members: Gordon Duffy, Frank Lanterman and others--Consumer-oriented legislation--Medical malpractice--Durable power of attorney--Issues of Natural Death Act, 1976.	
[Tape 7, Side A]	105
Merits of Right to Die Act debates and bioethics--Remarkable staff of health committee--Politics of Medical Injury Compensation Reform Act (MICRA), 1975.	
[Tape 7, Side B]	115
Trial Lawyers' opposition to MICRA--Issue of commitment in the legislature--Generic drug substitution bill, 1975.	
[Tape 8, Side A]	126
Low-flush toilet bill and the Eel River dam debate.	

SESSION 3, August 8, 1994

[Tape 9, Side A] 130

Omni Rex hearings, 1976--Assembly Committee on Health staff cuts--PPOs--
The Knox-Keene Act, 1974.

[Tape 9, Side B] 140

Implementation of Knox-Keene Act by Department of Corporations--Cost
containment of health care--Genetic engineering and DNA research--Medical
care for inner cities and rural areas.

[Tape 10, Side A] 151

Mental health issue under Governor Reagan--Farm Bureau support for senate
election, 1978--Split-the-state bill.

[Tape 10, Side B] 162

Assembly and senate differences--Defeat of Al Rodda--Senate leadership
change from Mills to Roberti--Senate Rules Committee--David Roberti and
John Garamendi--Elections and Reapportionment Committee.

[Tape 11, Side A] 171

Attempt to redistrict by computer--Proposal for constitutional convention for
governmental reform--Speakership fight in assembly, 1978--Willie Brown's
power as speaker.

[Tape 11, Side B] 180

Power of the speaker--California Coastal Zone Conservation Act of 1972--
Coastal issues: safety, land-use planning, offshore mineral and oil, tankers--
Fish.

[Tape 12, Side A] 192

The oil embargo and energy crisis.

SESSION 4, August 26, 1994

[Tape 13, Side A] 194

Causes and effects of Proposition 13, 1978--Impact of 1971 Serrano decision.

[Tape 13, Side B] 205

Loss of revenue from Prop. 13--Proposition 4, 1979--Jerry Brown's administration--Rose Bird and other Brown judicial appointees--George Deukmejian as governor.

[Tape 14, Side A] 215

Majority leader's relationship with Deukmejian administration--Chair of Senate Judiciary Committee--Durable power of attorney--Work of Judiciary Committee.

[Tape 14, Side B] 226

Special interests vs. public interest--Senate majority leader--Legislative reform--Various bills.

[Tape 15, Side A] 236

Trail bills--Aquaculture bills--Canadian Film Board films on acid rain, 1988--Meese v. Keene, 1987.

SESSION 5, September 16, 1994

[Tape 16, Side A] 244

Money and/or knowledge as source of power--Response to oil spills with Lempert-Keene bill, 1991.

[Tape 16, Side B] 255

Negotiations with assembly, oil companies, environmentalists and trial lawyers--Marine Spill Response Corporation--Forestry legislation-- The California Accord, 1991.

[Tape 17, Side A] 265

Background to the forestry bills--Wilson vetoes and Willie Brown kills legislation--Issue overshadowed by personality and politics--Various players--Disillusionment with politics leads to retirement.

[Tape 17, Side B] 275

Campaigning for Michael Dukakis, 1988--California governors--Comments on decision making and leadership--Reaction to retirement decision--Reform proposals--Teaching at CSU-Sacramento--Mediation.

Mediation for settling policy issues--The public interest--Changing governmental structure--States as laboratories for democracy--Ed Z'berg.

INTERVIEW HISTORY

Interviewer/Editor

Carole Hicke

Director, University of California at Berkeley State Archives
State Government Oral History Program
Director, Pillsbury, Madison & Sutro History Project
Director, Morrison & Foerster History Project
M.A. San Francisco State University (history)
B.A. University of Iowa (economics)

Interview Time and Place

July 7, 1994

Session of three and a half hours

July 14, 1994

Session of three and a half hours

August 8, 1994

Session of three and a half hours

August 26, 1994

Session of two and a half hours

September 16, 1994

Session of two and a half hours

All sessions took place in Mr. Keene's home in Sacramento, California.

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.

Mr. Keene reviewed the transcript and approved it with minor corrections.

Papers

Mr. Keene's official papers are deposited in the California State Archives.

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

Barry Dion Keene was born on July 30, 1938 in New Jersey. He spent his childhood in New York, Los Angeles, Las Vegas, and Chicago, and attended the University of Chicago from 1956-1959. He received his B.A. (1960) and J.D. (1964) from Stanford University.

After law school, Mr. Keene served as a legislative intern in the California State Assembly (1964-1965), then on the staff of the Constitution Revision Commission (1965-1967). He practiced law in Santa Rosa, where he also worked for the district attorney's office and was elected to the Rincon Valley School Board (1968-1972).

Barry Keene chaired the Committee on Health in the California State Assembly from 1972-1978. From 1978-1992, he was a member of the California State Senate, chairing the Judiciary Committee and later serving as Senate Majority Leader. Upon retirement from the legislature, he served as president of the Association for California Tort Reform. From 1994 to the present, Mr. Keene has been a full-time lecturer at California State University-Sacramento's graduate program in Public Policy and Administration.

[Session 1, July 7, 1994]

[Begin Tape 1, Side A]

HICKE: I would like to start this morning by asking you when and where you were born.

KEENE: OK. My parents lived in Camden, New Jersey. My mother was seventeen when I was born, and I believe my father was nineteen. I was born in midsummer, on July 30 of 1938. He worked in the shipyards in Camden. They went to Atlantic City for the summer, and I was born there. I arrived on July 30, 1938.

HICKE: Did you grow up there in Camden?

KEENE: No. They moved to California before I was a year old.

HICKE: Let me just back up a little bit and ask, were your grandparents from the East Coast?

KEENE: Yes, they were from the East Coast, from Maryland and Massachusetts, and had moved around a fair amount.

HICKE: You are of what parentage?

KEENE: Mainly British Isles.

HICKE: How about brothers and sisters?

KEENE: I have one brother, who is seventeen years younger than I, same parents. There were a couple of miscarriages along the way, and

then he was born. He and I have grown quite close after stumbling through what was more a parent-child relationship than a sibling relationship.

HICKE: Could you give me the names of your parents and your brother, please?

KEENE: Yes. My father was Michael Sidney Keene. My mother was Sarah Hutchison. My brother is Scott.

HICKE: Tell me about your parents.

KEENE: My father wanted at some point to pursue an athletic career, but lost an eye in his teens. So he was not able to pursue that career, and was not very successful in business. As I mentioned, he tried to go into interior decorating at one point. The family separated, and he was gone a lot. I was raised basically by my mother and grandmother, and my father would reappear from time to time. They would try to resurrect the family, and it just was what today we call dysfunctional. We didn't have a term for it in those days.

HICKE: Let me go back to your move to California. Where did you arrive in California?

KEENE: In southern California. I grew up in Santa Monica and west Los Angeles, that area.

HICKE: What kinds of things did you do as a child?

KEENE: In the early period, I did a lot of reading. I was an only child at that point, and read a lot, everything from comic books to history. I played basketball, baseball, those kinds of things. I was not very successful in my early education. I didn't perform well. There were teachers who occasionally expressed the opinion that I was capable of

doing a lot more than I was doing, and there were others who felt that I was doing as well as I was going to do.

Somewhere around the eighth grade, I had a social studies teacher who took a particular interest in me. I was still not doing well. I was not in any of the advanced classes. I got into a fight, and she and a vice principal, whom all the kids looked up to, a rough-and-tumble kind of guy who related well to boys, sat me down. They said, "If you continue down this path, you are going nowhere. That's what's going to happen. If that's where you want to be--nowhere--you just keep doing what you're doing. We think you've got a lot more in you than that."

It was a real turning point for me. I suddenly had this sense that I had to prove that I was not going to be a failure, that I was going to do something right. I started taking an interest in what I was doing at school. I started getting rewards at school. I started feeling good about myself at school I guess. I started competing with some of the better students. And again, the rewards started coming. It was a very different situation than I was experiencing at home, where I felt like I was a burden on the family, not contributing very much.

From that point on, I became academic-oriented. I played basketball; I did well. I started getting interested in algebra and Latin and the sciences. It was just a total transformation. I'm not saying it was that single event that did it, but it was that event that clarified things for me.

HICKE: Do you happen to remember the names of either of those two?

KEENE: Yes. The vice principal's name was Hawkins, and the social studies teacher, her name was Stahl. I can't remember the first names.

HICKE: What school was this?

KEENE: This was in Los Angeles at John Burroughs Junior High School. That would have been about the eighth grade.

HICKE: Did you have a choice of subjects to take at that point? Like Latin instead of wood working or something?

KEENE: I think so. I think there were some electives that I had an opportunity to take. But it was like a crossroads for me in terms of my thinking. There was this flash of, "You can be successful, you can do it, and you can be appreciated and rewarded for it." I hadn't had that sense of self before. I was a little clownish in class. I think academics also fit into a personality component that I was developing, and that was--what's the word--introvertedness. I had become somewhat introverted. I was alienated from the family and getting into books. All of this reinforced a sense that I had that my success was going to be in school and not in the home.

HICKE: And did this continue, then, through high school?

KEENE: The academic success continued. The introvertedness also continued to some degree. I had no thought of going into politics. [Laughter] I didn't want to be in front of people in crowds and be subjected to having to please all those people.

HICKE: What did you want to be, or did you have any thoughts along those lines?

KEENE: I don't think I did. I didn't really know what I wanted to do. I thought I might want to go into the sciences. Physics and the

biological sciences were beginning to be interesting. I started off in a math-physics program, but I didn't know where I was headed.

I eventually wound up moving into broader areas. I didn't go to Stanford all through my undergraduate; I attended the University of Chicago for a couple of years.

HICKE: Oh, that was an interesting experience, I can imagine.

KEENE: It was truly a broadening experience. The [Robert M.] Hutchins influence at Chicago was such that rather than reinforce what you did well and deepen your skills, they would try to broaden you. So for the first time, I encountered classical music and art and a wide array of literature. That was a real growth experience for me. It took me off a narrow track and put me on a broader track.

The down side was that I was no closer to making any kind of decision about career, and I wound up in law school by default.

[Laughter] It was a case of wanting to keep as many doors open as possible, so what do I do? I go to law school. I think a lot of people go to law school for that reason, and it's not a very good reason.

HICKE: Let me ask you, how did you decide on the University of Chicago?

KEENE: People decided--people in my family, my father was one of twelve--that I needed to get to know my father again, and reestablish a relationship with him. I got a scholarship to the University of Chicago and decided to take it, and try living with him for a while. It didn't work out very well. But the school experience was very good.

I wanted to get back to California, and came back, and ultimately got my undergraduate degree at Stanford, and then went on to law school.

HICKE: What was your undergraduate degree in?

KEENE: Liberal arts.

HICKE: OK.

KEENE: [Laughter] Checkered.

HICKE: We've skipped over quite a bit here. We kind of skipped over high school. Was there anything in particular in high school, either teachers or part-time work that you did, or classes that were memorable?

KEENE: I had some very good teachers, and some not so good ones, which I guess is everyone's experience. Hopefully, people are still having the experience of having some very good teachers who influence their lives. Some contributed to a sense of discipline. I can think of one teacher who taught grammar and had us diagram sentences, and suddenly the language made sense. I was taking Latin at the same time. So the sense of discipline and organization and the roots of communication, all of those things, resulted from that.

I had a basketball coach one day who said to me. . . . I was shooting around the gym all by myself. He kind of walked by and said, "Let me see you do that again." I took another shot and made it, and he said, "Boy, you've got great hands." [Laughter] That stuck out in my mind, "Hey, maybe I could do something."

HICKE: Another light turned on.

KEENE: Another light turned on. I think he was just, as I look back on it now, I don't think it was anything special, except that he was trying to encourage me.

HICKE: So you played basketball?

KEENE: Yes. Nothing outstanding, but I played, and I enjoyed it, and it was another source of pleasure and reward for me.

Came back to California, enrolled in law school.

HICKE: OK, we're in 1959 now, is that right?

KEENE: Yes. I had not completed the undergraduate requirements at Stanford. I owed them a second year of foreign language, and I had taken a year of French, so I took a correspondence course from the University of California and completed that. I got my degree at a strange time; I think it was '62 when I technically completed my degree. They had me listed in the class of 1960. So all that got confused. Stanford had a three-three program, three years of undergrad . . . [pause]

HICKE: Three years, and then you could go into law school?

KEENE: Go into law school, and then get your degree at the end of your first year of law school, get your bachelor's degree. But I hadn't completed that second year of foreign language.

HICKE: How did you like law school?

KEENE: I didn't like it for the most part. I felt it was good from the standpoint of acquiring skills. I'm not sure I realized this at the time, but I didn't feel comfortable with it. I didn't enjoy it nearly as much as I enjoyed college, undergraduate. I didn't exactly know why. But in looking back on it, I believe law school was a narrowing experience. It tends to stifle creativity. It does teach good analytical skills, but I had been moving into this broader relationship with life experiences, and then I went into a funnel. I went into what was a narrowing experience for me. It was not my goal to get a job with a

Wall Street or Montgomery Street law firm, or make the large salaries that Stanford law grads typically aspire to.

There was not a strong sense of public values there at that time. I think things have changed dramatically at the law school there; but at that time, it was very business-oriented and corporate-oriented, with people who wanted to make money and practice with substantial firms, become partners and do what lawyers of that period were supposed to do. It wasn't until the sixties and the Kennedy administration that people began thinking in terms of public values.

Some of the graduates in my class went into the Justice Department, into antitrust, into civil rights. So things started to broaden, but the law school experience was not part of that. The times were changing. The sixties were arriving, but late in arriving at Stanford Law School.

[Interruption]

KEENE: I may have been too critical of legal education, at least the experience that I had at Stanford Law School. I would have selected differently had I had the information and knowledge and experience that I have now, but I got some positive things out of it: the analytical skills, the economy of communication that lawyers have. But on the whole, it was a narrowing experience, not a broadening one, with respect to other areas of my personality that were beginning to open up.

HICKE: Were there any particular friends or colleagues that you remember?

KEENE: Yes. I didn't retain too many close friendships. I had a few, a couple that I still keep in contact with.

HICKE: That's good.

KEENE: Yes. But most of the relationships didn't last. And in fact, when I entered politics, most of my friendships were pulverized by the demands of that career. Particularly with the district that I had. That may be something that we want to talk about; that was a component that made my experience different and harder than that experienced by most other legislators.

HICKE: OK, we do want to get into that definitely. What about any kind of political activity while you were in school?

KEENE: The only political activity that I recall was picketing Woolworth's with some people at the Stanford mall, Stanford Shopping Center, I guess it's called. We picketed because Woolworth's in the South was not permitting black people to sit at the luncheon counters. This was the onset of the civil rights movement.

HICKE: This was what, early 1960 or something like that?

KEENE: Fifty-nine, '60, in that period.

HICKE: How did that turn out, or what happened?

KEENE: I didn't get into a fight, I got pushed into a window and got picked up by the local police and that became something of an incident. But that was all the political activity I was involved in I think at the time.

HICKE: Did Woolworth's back down, or did this have any effect on them?

KEENE: I can't remember how all that turned out. And obviously, the Woolworth's at the Stanford Shopping Center was not doing the discriminating; it was in the South. Our indignation failed to distinguish.

HICKE: Oh, yes, that's right.

KEENE: It was happening in Mississippi and Alabama and places like that, some of the Southern states. So we were picketing the chain.

HICKE: Yes, not the individual store.

KEENE: Yes. But I look back now on the people who were actively involved in the civil rights movement, and I can only admire what they did. But I didn't head South, and I didn't subject myself to that. I sympathized heavily with them and felt a sense of solidarity, but I didn't expose myself to what they did.

HICKE: Did you do any part-time work? You must have had a scholarship, I assume.

KEENE: Yes, I had a partial scholarship, and I was working a lot. I think that that made the law school experience also somewhat more negative. I had all kinds of jobs going. I was a cashier at the cafeteria, drew beer, made hamburgers, patched roofs, did all kinds of things. The financial situation was not good, and that was part of the problem. My grades deteriorated, and I looked . . .

[End Tape 1, Side A]

[Begin Tape 1, Side B]

HICKE: You were just saying you lost your scholarship.

KEENE: Yes, I went from scholarship into a loan mode. They had student loans available, and I really felt the pressure of limited financial resources.

HICKE: But you stuck it out?

KEENE: Oh, yes. I was a pretty tough character in those days in terms of discipline. I was going to get through, there was no question about it. I had to drop out for two years, and worked construction, drove a bus, saved up some money, and got back into school. But I was very determined by that time.

HICKE: Yes, I should say so. And summers you were working also?

KEENE: Yes. At different jobs.

HICKE: How do you evaluate this experience of working part-time and having to drop out to work?

KEENE: It was a mixed bag. Because it made me realize that I was capable of doing a great deal more and overcoming tremendous adversity and still keeping my eye on a goal. So that was the good part. It was a little too challenging, and came close to sinking me a few times. I lucked out, I think. I don't attribute it all to determination; I had a couple of lucky breaks along the way, or I would have lost it. It was circumstances and that sense of having to reach my goal, absolutely having to reach my goal.

HICKE: What were the lucky breaks? Anything significant, or just the way things happened?

KEENE: Oh, a job coming through in the middle of what was called the Kennedy recession--when I was out of school in San Francisco, determined to get back to Stanford Law School, washing dishes at a restaurant, trying to support my mother and younger brother, and suddenly a job came through as a claims adjustor for an insurance company. I breathed a sigh of relief, because I was really feeling the pressure and didn't know how we were going to survive. So there were some lucky breaks as well as a powerful sense of survival. And survival for me at that point meant completing my education and being able to sustain myself and go on to other things.

HICKE: While you were going through law school and deciding you didn't want to be a Wall Street lawyer, what other things were you thinking about going on to?

KEENE: I was moved by [President John F.] Jack Kennedy and what he was doing. He stirred a lot of people my age who got into politics because they wanted to do something for their country. Kennedy challenged them.

I was a senior in law school when Kennedy was assassinated. That was the moment of transformation for me, and I remember it like it was yesterday. I had a little English Ford that I had acquired, a little car called an Anglia. It was a tiny little thing that broke down with great regularity. Neither Ford nor the British could build cars in those days.

HICKE: So you studied car repair along with everything else.

KEENE: [Laughter] That's right. After his murder was confirmed, I went by myself to a high place on Skyline Drive on the Peninsula, and was listening to the radio and thinking. They played Beethoven's Third Symphony, the "Eroica." I was sitting there listening to it, sorrowful, and feeling very much alone. I had powerful feelings that I didn't have anybody to share with at that time in my life. I decided that I was going to do something in public life. However, I had no thoughts of running for office.

I wound up applying for a legislative internship. It was sponsored half by the Ford Foundation and half by the [California State] assembly in those days.

HICKE: So this was 1964; before you got out of law school you applied for this? Or you applied to go afterward?

KEENE: I applied before I got out, but it was for after graduation. I didn't get selected, in part because I didn't know anything about government, other than textbook stuff from civics classes. But politics and

government were not my forte. When I interviewed, I must have seemed like a person who was not really interested and would not be of benefit to the program.

HICKE: They didn't have a crystal ball, did they? [Laughter]

KEENE: No. I was disappointed.

And then, some people dropped out, and there were some additional spaces created. I was selected to fill one of the slots. It was a great experience for me, a tremendous experience.

HICKE: OK, can you tell me in more detail what sort of experience it was, what you did?

KEENE: Yes. I was assigned to a committee. We had dual roles. We worked as a group of interns. There were about a dozen of us. I've been teaching interns recently, this last senate fellow class. Now they're called "fellows."

HICKE: Oh, have you?

KEENE: Yes. And you've got people from every ethnic group, gender, so forth. In those early days, of the twelve, there was one woman, and all the rest were white males. So that has changed dramatically.

I was the only one from Stanford. There were several from the University of California system, a number from Berkeley. Two from USC [University of Southern California]. There may have been some others from schools outside of California.

I was assigned to the Assembly Criminal Justice Committee, which in those days was called the Criminal Procedure Committee, for reasons that were never clear to me.

Gordon Winton, an assemblyman from Merced, who was a lawyer, who also had an extensive interest in education and was one

of the best legislators from a policy standpoint, was the chair of the committee. I admired him a lot. He made the unfortunate political decision to run against Jesse Unruh for the speakership, after which he was reapportioned out [Laughter] by Jesse. He lost his legislative spot, lost the committee obviously, and I was cut loose in the middle of my internship. [Laughter]

HICKE: Oh, right in the middle?

KEENE: Yes. And was sent to Assemblyman [Edwin L.] Z'berg's committee, the assembly natural resources committee [Committee on Natural Resources and Conservation], which was really kind of a break, because environmentalism was just coming into vogue. Z'berg had the foresight to both latch onto the movement and become one of its architects. He had a very "resourceful" consultant who also had that vision of environmentalism, because people hadn't heard the word ecology, other than people in the sciences.

HICKE: Who was the consultant?

KEENE: Jim Pardau.

HICKE: What were your tasks when you were working with this committee, your actual duties?

KEENE: As I say, I was unexpectedly shifted based on the change in chairmanships, and they were just completing a report called "Conflict in the Redwoods." It's ironic, because I had no knowledge of timber at that time and later became a legislator from the most commercially forested part of California. [Laughter] Conflict in the Redwoods!

HICKE: Oh, that's a good one.

KEENE: I had never been to the redwoods. [Laughter]

HICKE: Well, that one's still going on, too?

KEENE: Yes. And it did foretell the future. I got involved in the conflict in the redwoods. Most of the redwood trees in the world were in my senate district.

HICKE: That might even be a theme of your career, probably. One theme.

KEENE: Yes. So it was a lot of research and bill analysis and responding to legislators' requests in the natural resource area. I don't believe I contributed anything original, compared with my experience on the Criminal Procedure Committee, where I was cut loose to work on child abuse legislation.

HICKE: Oh, we don't want to skip over that.

KEENE: Yes, it was a big thing. The issue was brought to my attention by an article that I read proposing that something be done about child abuse, and pointing out some of the terrible things happening to children. I began doing some research and ran into this wonderful source at Children's Hospital in Los Angeles.

HICKE: Do you recall her name?

KEENE: Elizabeth Boardman. She had done a lot of work in the area, and described some of the situations. Sexual abuse at that time was not a big part of it. It was a small piece, so we weren't talking about the same kind of thing we are now, we were talking about parents who physically battered their kids. She said, "You know, there are certain things about this that you might be able to do something with. One is that it's repetitive, that people who do it, do it again. There's a very high rate of recidivism in this kind of activity. It's particularly damaging because it is the very people responsible for the welfare of the kids who are doing the battering."

So I said to myself, "Well, if it happens again and again, why don't we create some sort of reporting system where we log these things?" She said, "Well, the folks up in Sacramento won't stand for that; putting people on record will offend their sense of civil liberties and privacy and everything else." I said, "Well, there must be a way that we can do it."

And the other thing that she told me was that the people who most often saw these cases were doctors, who didn't want to get involved in criminal cases.

HICKE: And wouldn't report what they saw?

KEENE: And wouldn't report what they saw. So in my naive idealism, I said, "That's terrible, they ought to be required to report these things, suspected cases of child abuse." Anyway, I drafted some legislation that started out requiring physicians, mandating physicians, to report suspected cases of child abuse. The medical establishment opposed it at the outset.

HICKE: California Medical Association?

KEENE: Yes. It was called, I think, the Public Health League in those days. The reporting system was difficult to work out, because originally the Department of Justice wanted all reports directed to them. They said, "Hey, child abuse is a crime, we're the people who ought to keep these records." I had to persuade them we weren't requiring the reporting of crimes but cases of suspected child abuse that had not yet matured into crimes; but when there was a pattern of abuse, then there would be grounds for prosecution. So I proposed siting the central index in the Department of Social Services; but getting the law enforcement establishment to go along was quite a task.

Then I got back to the doctors, and I said, "Look, we'd like to see these cases reported, and obviously doctors don't want to be in the position of acting as barriers to the prevention of child abuse." "But we don't want to get prosecuted for failing to report cases," they responded. So we toned that down, and said that the only penalty would be professional discipline, and not any criminal or civil penalties associated with failure to report. There was a duty to report, and if you didn't report a case where one should have been suspicious of child abuse, you would be subjected to professional discipline.

So it was a good bill.¹ It was way ahead of its time.

HICKE: Oh, yes. Was there an issue of confidentiality that the doctors were concerned about?

KEENE: Yes. And so were civil libertarians. In response, there was a requirement of confidentiality built in. You couldn't release this information except to certain sources for purposes of investigation of suspected crime and so forth. So we did build in safeguards.

It was a good piece of legislation, and because nobody was really interested in it at the time, I was cut loose to craft it. It was a great experience for me. I didn't know it at the time, but I was learning how to craft legislation, how to put diverse elements together, how to deal with special interests.

HICKE: Negotiating.

KEENE: Yes, negotiating, bargaining, and modifying. The bill should have been carried by the chair of the committee, Gordon Winton, who was

1. A.B. 277, 1965 Reg. Sess., Cal. Stat., ch. 1171 (1965).

occupied with lots of other stuff. He was very active in the education field, he was very interested in doing something about handguns, which was also ahead of its time. For a legislator from Merced, that was a risky thing to do. So he was heavily involved elsewhere, and the only guy I could get interested in it was a certain legislator who had nothing else to do. He was a legislator from southern California who had not carried any major legislation. His name was [Assemblyman] Don Allen. He was a gruff ex-marine of few words and fewer ideas. I don't mean that as a harsh judgment, but he was just not a creative legislator. He was delighted to have a project. He took this on, and framed his requests for support in very basic terms about, "We've got to do something for these kids; we've got to help them, we can't let them be brutalized." It came off very well.

The legislation passed. It received a lot of attention. And child abuse came into the limelight. We were contacted by Bing Crosby Productions, and they wanted to do a program on it. There were two programs on child abuse, two television programs. One was on a show called "Slattery's People," in which they featured a young intern who was developing a bill on child abuse. And the other was "The Defenders" with E. G. Marshall, in which they defended a man charged with child battering, who was covering up for his wife.

So things were beginning to connect. It started snowballing into a public issue of some consequence. I feel that it was an area where I made a contribution even before my legislative career.

Agenda-setting is an important aspect of legislating.

Larry Margolis, do you know Larry?

HICKE: Yes, I interviewed him extensively too.

KEENE: Oh, did you? Larry was Jesse Unruh's assistant at the time, and he did an article for a publication called State Government in which he talked about the internship program, and said, "We had one intern who did a project on child abuse and actually put the legislation together."

HICKE: How did you find Don Allen?

KEENE: I don't remember exactly, but I think it had to do with the fact that he did not have a great deal to do. He may have requested a bill. Or it's possible that because the original article came out of the Los Angeles Times, a Los Angeles legislator came to mind. I don't remember for sure, but I think it had to do with those things. Sure enough, he embraced it and loved it, and wrote some very nice letters about me. So it was a fun experience, and a truly educational experience, and one that probably made me begin thinking about public office.

HICKE: Yes, a rewarding experience probably.

KEENE: Yes.

HICKE: Did it get to the senate without any difficulty also?

KEENE: We made amendments on the way to appease the law enforcement folks by making sure that their roles were not diminished. They could use the information acquired as the basis for prosecution; however, to satisfy the civil liberties folks, the information was not kept in a criminal system but in social service files. To protect the doctors, we held them immune from criminal and civil liability, and provided that the only penalty would be for professional misconduct. They could not be sued for filing a report or for failing to do so if they were in good faith.

HICKE: What kind of oversight would there be?

KEENE: At that time the Board of Medical Examiners was the disciplinary board for physicians. I later changed the name to the Board of Medical Quality Assurance when I carried other legislation. And then it was called the Board of Medical Quality. Whatever it's called now, it's the oversight panel for physicians and surgeons. [Interruption]

HICKE: Here's an article in the Wall Street Journal.

KEENE: Oh, yes, he named the fictitious abused child "Barry, Jr." [Laughter] It was the first of many times I was the subject of press abuse.

HICKE: And can you tell me, has more legislation been passed to build on this?

KEENE: Since then? Yes, it has. The reporting requirement was extended to teachers, social workers, dentists, and I think some other groups.

[End Tape 1, Side B]

[Begin Tape 2, Side A]

HICKE: You were just saying there have been other changes.

KEENE: Oh, yes, and the penalties for child abuse, as has been the case with criminal penalties across the board, have been increased. The issue of child abuse has received much more emphasis and attention than it did in those days.

HICKE: Do you know if other states had any legislation, or did they pick up on this?

KEENE: I know that they did, but I can't tell you the details. But this was the first of its kind.

HICKE: When you were drafting the bill, where did you go for sources, for examples?

KEENE: I don't specifically recall sources other than Children's Hospital in Los Angeles, which had large numbers of cases that they could talk about and refer to.

HICKE: Was there any opposition, other than the ones that you've mentioned?

KEENE: As I've said, it was principally the law enforcement folks, civil liberties folks, and medical folks that had to be reassured or have their objections met by amendments to the legislation. I can't recall any other opposition.

HICKE: OK. Anything else on that committee, before we go back then over to the Z'berg?

KEENE: No, that was really the most important aspect. In the Z'berg committee, I basically assisted the chief consultant, who was Jim Pardau.

HICKE: OK. That was '64-'65?

KEENE: Yes.

HICKE: When you were reaching the end of that year, the end of your fellowship, what were you thinking about doing?

KEENE: I decided I wanted to do something in government, that I wanted to shape policy. I don't know if the idea had crept into my mind of running for public office, but if it had, it was not a pressing idea. I might have thought about it, but not all that seriously. It was not a commanding part of my career search at that point. So that's about where I was.

The legislature had appointed a Constitution Revision Commission in the mid-sixties. I had not yet passed the bar but was one of several attorneys selected to work on the staff of the commission. It took me to San Francisco.

HICKE: Who selected you?

KEENE: The chairman of the commission was an assemblyman named Bruce Sumner. He was either still in the assembly or had just retired. He was a moderate Republican from Orange County, which is unusual. He selected me. I don't know who brought my name to his attention.

HICKE: They called you, in other words?

KEENE: Yes.

HICKE: And that started in '65?

KEENE: Sixty-five and '66, I think was the period.

HICKE: In my notes I have that you were on the revision commission from '65 to '67.

KEENE: Yes.

HICKE: Did you work with certain people or on specific articles?

KEENE: I worked on Article III, the executive article. I worked on Article XII, the public utilities article. Both of those were part of the package approved by the voters in 1966, as something called Proposition 1A.¹

The major substantive changes in the Constitution had to do with the creation of a full-time legislature with salaries set by statute. Jesse Unruh wanted a stronger legislative body very desperately. He wanted the legislature to be a coequal branch of government; he felt that the executive branch had too much strength and too many advantages, and that legislatures needed to be taken seriously. He led that fight nationally, but Proposition 1A was a large part of it, because it enabled that to happen in California.

1. Proposition 1A (November 1966). Constitution Revision, Cal. Stat., ch. 139, 1966 First Ex. Sess.

Now there are people who are critics of the full-time legislature and believe that it's one of the reasons that the legislature has declined. I rather doubt that they're correct, but that's the case they make. They say that Proposition 1A was partly responsible for the decline.

HICKE: What were you doing, research?

KEENE: Yes, researching the constitutional provisions, preparing a report to the commission, appearing before committees of the commission and the full commission, and ultimately gearing up for the Proposition 1A campaign on the ballot. But most of the campaign work was done by a public relations firm, Whitaker & Baxter. We did the scholarly backup and a lot of the internal politics. We made our recommendations to the commission; the commission then made recommendations to the legislature. The legislature held hearings--at which we and commissioners testified--modified the recommendations, and finally decided what should go on the ballot. So there was a lot of internal and political negotiation that had to occur.

HICKE: Did you work with Jesse Unruh at all?

KEENE: Yes. I didn't have much personal time with him, but his presence was far more than personal. His ideas and use of power were perceived throughout the legislative process, by staff and other legislators.

HICKE: Can you recall any specific examples?

KEENE: I can remember [Assemblyman] Willie [L.] Brown's [Jr.] reaction as a freshman legislator. I was an intern at the time, and introduced myself to him. We were walking back to the Capitol from someplace. I said, "What do you think; how do you like your first year in the

legislature?" He said, "Well, I sure as hell don't like the speaker telling me when I can go to the bathroom." [Laughter]

HICKE: Already he was Willie Brown in action. [Laughter]

KEENE: True, but now they say the same thing about Willie [as speaker]. Unruh knew that he had to keep tabs on Willie Brown and John Burton, who had come in together. He regarded them as too liberal to indulge. He had this strong sense that he had to bring people together and create sufficient consensus to get things accomplished, and that you only had the luxury of accommodating a few people who wouldn't play on the team, and that you had to find some way to cause these people to cooperate. He isolated them on the floor, and I think he sat with one of them. It may have been Willie. He may have had his seat next to Willie Brown, or John Burton, I can't recall. But he had a definite sense that these were folks that he was going to have to watch, if his operation was going to be successful.

Willie's sense of it was interesting, because it gave indications of what Willie Brown was going to be--an independent individual and very much a legislative leader. But there was also an irony in his resenting the power of the speaker, because he came to exercise it to an equal or even greater degree than Jesse Unruh.

HICKE: Was he just going to keep them in shape, probably?

KEENE: I think he was. My power of observation at that period was limited.

HICKE: Well, that's a good example.

KEENE: Of course, there was Unruh's use of reapportionment to eliminate enemies, in the case of Democrat Gordon Winton, who was the last individual to have the temerity to run against Unruh for speaker. In order to do what he did, he had to create an astounding Republican

district that ran from Merced in the Central Valley all the way to Monterey on the coast for young Frank Murphy.

HICKE: Did he have total control over the reapportionment process?

KEENE: Oh, yes. As total as one might conceive in those days. Yes, it was pretty total. He was easily the pre-eminent political power in state government, and was more forceful than the governor, [Edmund G.] Pat Brown [Sr.], in part because Unruh was a hardball player, and Pat only very reluctantly.

HICKE: Did you have a party affiliation at this time?

KEENE: I was a Democrat. The Kennedy period certainly reinforced that. Adlai Stevenson before that was someone whom I had admired.

HICKE: Your part on the revision commission, just to get back to that. You were revising the part that had to do with the executive?

KEENE: Yes.

HICKE: Do you recall what kinds of changes were being made?

KEENE: Other than the full-time legislature, most of the changes were not substantial. We created provisions for succession in the event of death or disablement. The federal government was adopting a constitutional amendment at roughly the same period, but it became an issue, I can't remember exactly why.

It may have been after the assassination. What if he had lived; who was in charge? So we handled that. We did a few other things, but there were no major changes. We didn't create any new constitutional offices or eliminate any; we didn't change the powers very much.

HICKE: How about the public utilities section?

KEENE: Same thing, no substantial changes. We reduced the verbiage, we adopted a clearer style of draftsmanship. We integrated provisions that had been adopted at different times, successive changes in the Constitution. Nothing very substantial, other than this campaign for a full-time legislature.

And that issue goes back to at least George Washington, who was a citizen-legislator and said, "I'm going to go back to the farm." There's a recent book out by Gary Wills, Cincinnatus [1984].

HICKE: I've heard about that.

KEENE: So that was an issue at the time, whether professional legislators were too far removed from the ordinary lives of people to be able to understand their needs.

HICKE: Were there other states that had professional legislatures?

KEENE: California pretty much led the way, and shortly thereafter was regarded as the best legislature in the country by far. Wasn't even a close call. California was regarded as a serious legislature in a major industrializing state that played a tremendous policy role and had the staff support and informational backup to get the job done. Other states began emulating California. So we've come the full circle in California. [Laughter] We're now regarded probably as one of the worst.

HICKE: Well, time to keep circling, right?

KEENE: [Laughter] Yes, that's right.

HICKE: Was there anybody on the commission that you worked with particularly closely?

- KEENE: Yes, the dean of the University of California law school, Boalt Law School they call it, whose name was Frank Newman, who later became a Supreme Court Justice.
- HICKE: I interviewed him too.
- KEENE: Oh, what a brilliant guy. What a wonderful man. He must be slowing down.
- HICKE: I don't know; I had a terrible time pinning him down every time I'd try to get hold of him. He's off all over the world on human rights projects now.
- KEENE: Yes. There are a handful of human beings in life that are truly outstanding, and he was one in my life that fits that description. And it wasn't because I got to work with him enough, or felt that I had gotten nearly all I could have out of it, but just watching him operate and his thought processes was enough to enrich me tremendously. His knowledge of draftsmanship and his approach to drafting language to reflect ideas is something that has stuck with me throughout, and it makes it very easy for me to write law and reflect things that people want. It was because of Frank Newman and his ability to do that, and how he did it, and how he thought about it.
- HICKE: I seem to remember that he was very adamant about clarity, for one thing.
- KEENE: Yes, yes. Clarity and directness. He also was a person who, it's becoming almost a cliché, thought outside the boundaries of the circle. He was a guy who, people are arguing it here, and he'd say, "What about this?" So he was a person who, as a lawyer and law professor, had this capacity to sterilize communication; make it very economical, direct, clear, and uninteresting [Laughter] in many ways

on the one hand; and on the other hand had retained this enormous creativity of idea generation. He could generate new ideas that people hadn't thought of and ways of reconciling things and ways of thinking about things that were not evident to the people who were engaged. He might come up with an idea that was exactly the opposite of what they were thinking at the time, a direction that was 180 degrees the opposite of the direction in which they were headed, and come up with reasons for it, and be persuasive and convince them. He had a real brilliance about him, a kind of genius about him, that was very inspirational.

HICKE: Did you ever work with him after that?

KEENE: No.

HICKE: Anyone else on the commission that you particularly remember?

KEENE: Yes, and there were some very bright and able people, people who would be highly regarded, like Ralph Kleps, who was the administrative director of the courts, and a brilliant individual. A great lawyer named Burnham Enersen. He was a tremendously accomplished lawyer and an excellent thinker. But of that trio, Newman was dazzling. He was really dazzling.

HICKE: That sounds like it was an interesting time for you.

KEENE: It was intellectually overpowering.

HICKE: OK. Is there any more to say about the commission?

KEENE: Yes. The chairman of the commission was a wonderful guy, Bruce Sumner, who was totally committed to policy, and conveyed a sense of fairness and decency that set a wonderful tone for the commission, because the commission was very disparate. Dick Patsey, who is now

a superior court judge in Alameda County, was also exceptional in many ways.

HICKE: When I interviewed him, he talked a lot about the revision commission.

KEENE: Did you interview Dick?

HICKE: Yes. I didn't ever get to Bruce Sumner, though. Which is too bad. But go ahead about Dick.

KEENE: Yes. Well, you know Dick Patsey then. He was a very able, thorough, smart, and good lawyer who kept things moving and together and taught me a great deal about excellence in workmanship. He was very demanding that everything be perfect, and it taught me a level of workmanship that I retained. After that, I was proud of some things that I had done, certain things I had done on horseback and were not quite up to par, but I always had the sense that things ought to be the best that they could be.

HICKE: Anything else about that commission that we should discuss?

KEENE: I became close friends with another young lawyer named John FitzRandolph, who is now dean of the Whittier Law School and was the person in my intern class who you would have thought would have gone into politics. He was an attractive, outgoing, bright, capable, well-spoken individual who had a knack for politics, an interest in it, and had planned to run for public office. I always felt that that was great, and I thought that that was what he would do. We kind of reversed roles.

[End Tape 2, Side A]

[Begin Tape 2, Side B]

KEENE: He wound up not running for public office, and I was the one who wound up running. We've remained in touch over the years, but not close touch.

While I was on the commission, I met a young woman who had been recently widowed and had three children. The commission operated out of San Francisco. We married. I adopted the three children, and we had two more.

HICKE: What was her name?

KEENE: Her name was Lucie Marie. We decided to live in Santa Rosa. We built a house. I can't recall if I had a job there, or began looking for one after we decided to move there, but in any event, I was hired by the district attorney's office. Another fellow, who became one of my closest friends, was hired by the public defender's office.

HICKE: What was his name?

KEENE: [Michael] Mike O'Donnell. Mike and I tried many cases against each other while I was in the district attorney's office.

HICKE: You mean as opposing counsel?

KEENE: As opposing counsel. He was very, very good, and I kept getting better as I went. People used to come to see us against each other.

HICKE: Little bit of "L.A. Law" in Sonoma.

KEENE: Yes. [Laughter] It was a great experience, because you learned to dance in and out of court. You went to trial all the time. Most trial lawyers have a couple of trials a year. There would be trials every week, sometimes two in a week. It was a good experience and sharpened my legal skills, advocacy, my ability to speak in front of groups, persuasion, analytical skills, all of the things that I had to some degree gotten out of law school, I could test out and improve

on through actual experience. So it was very good for me, and I think it was better than going into a law firm at that time.

I was enjoying trial practice, left the district attorney's office after a couple of years, and went into private practice with one of the. . . . Well, all the law firms were small at that time in Santa Rosa, but one of the established law firms in Santa Rosa that did work on the plaintiff's side, De Meo & De Meo.

HICKE: OK, before we start that, let me go back a bit and ask you what kinds of trials you were involved in.

KEENE: Well, I started out doing traffic cases. It's fairly standard that you're given very little responsibility, and then it gradually increases. Speeding, running red lights, those kinds of things. You begin to become less fearful of people sitting in black robes behind high benches, and you begin feeling your way. Then misdemeanor cases, assault and destruction of property, trespass, fairly simple kinds of cases. And then gradually, working your way into simple felonies, bad checks, that kind of thing, into more serious cases, assault and rape and murder.

HICKE: Who was the district attorney?

KEENE: The district attorney was a man named Kiernan Hyland.

HICKE: Does anything particular stand out?

KEENE: He was a good guy. He was kind of a nice, fair-minded guy who turned the administration of the office over to an assistant named John Hawkes, who was a very serious-minded individual, and I was fortunate to be associated with him, because he, like Dick Patsey, was a person who admired workmanship, preparation. So I tried to

respond to that by being prepared to go to trial, and doing all the homework that was necessary to be prepared.

I had a reputation later on in my legislative career for being tough on staff, and I think it originated there, that I was side by side with a number of perfectionists whose style I admired because they always did a little better than what you'd expect, and tried to avoid all the avoidable mistakes and attain the highest degree of quality in the work that they were producing.

HICKE: I expect that's a style that produces success in a lot of areas.

KEENE: Well, I think it does. I think if you push people beyond their capacity, it probably begins to reduce their productivity, their willingness to continue trying. On the other hand, it's hard to find the line, because many times they don't produce what they're capable of and simply don't like the discomfort of being challenged and regard it as something that they don't want to do. In state service, I think that it may be more true than in other places. A lot of the staff that I encountered at the Capitol had figured out ways to protect themselves, to render their positions more secure, in ways that did not have to do with productivity. These were not [David] Dave Doerr types who knew a great deal and therefore were valuable for that reason. These were people who had figured out ways to protect themselves, politically or otherwise. I had a high degree of staff turnover, probably too high, for the reason that I demanded a lot from them.

HICKE: I think I see a little thread here. You yourself were challenged to work up to a little higher standard than you had early on, and then you worked with people who worked up to a higher standard, or had

high standards. And so of course, you began to see that that was the way to go about it. Is that sort of how it happened?

KEENE: Yes. I remember giving almost a lecture to one of my staff people, a young woman who. . . . Is this too much digression?

HICKE: No, no, this is very interesting.

KEENE: A young woman who made a mistake that was avoidable, in my judgment. It was a major mistake that cost us a piece of legislation. She said, "I didn't mean it, I've learned my lesson, I can see now that it shouldn't have happened, and had I been more diligent, it wouldn't have happened," and so forth. I said, "There are some things that you don't do. You don't drop babies. Some things you just don't allow to happen." Years later, things smoothed out and we chatted. She went on and did some very good work academically. She said, "I remember that discussion that we had about not dropping babies."

[Laughter]

HICKE: Oh, that's great. So how about your actual court trials? Do any of those stand out?

KEENE: There was one in which Mike O'Donnell got an acquittal or a hung jury against me involving this young Native American guy who had been raised in a poor neighborhood, had gotten into something that was over his head involving bad checks, and was manipulated by other people, and after it was over, I said to myself, "What am I doing? Why in the hell are we prosecuting this guy and wasting the resources of the state? This is not a criminal thing. This wasn't a willful thing; he got manipulated, and I'm trying to send him away to prison." It was a point at which I started questioning the justice

system and the way it operated, and began thinking about whether I was using my time well.

It was shortly thereafter that I'd like to say I got talked into running for public office, running for the assembly.

HICKE: This was before you joined De Meo & De Meo?

KEENE: The case was before; I ran shortly after.

HICKE: So the case was about '67 or '68?

KEENE: Probably '68, yes.

HICKE: And you ran for the assembly in 1970, did you say? Why did you run?

KEENE: Well, I should mention something that occurred while I was in the district attorney's office that had relevance to the definitive campaign for the assembly seat. In the district attorney's office, one of the cases that I got involved in was a very spectacular murder case that involved the killing by a motorcycle gang, a notorious motorcycle gang in Santa Rosa, of a very popular student at Santa Rosa Junior College, who was a great wrestler and was a very popular individual. He was with a girlfriend, probably necking up in some area up above Santa Rosa, and they were accosted by this motorcycle gang. He took them all on, and was flinging them around the place, and one of them grabbed a gun and shot him through the head with a small caliber pistol, and killed him. My job was to prosecute the case, which was to be tried by the district attorney, but I was to put the case together, and he would. . . . It was one of those rare cases when he personally was going to go to trial.

I was selected to do that over another individual who had been in the office for about a year longer than I was, a young man named [Lawrence G.] Gary Antolini. I think I was selected for a couple of reasons. One is that the D.A. had regard for my legal skills and preparation, and the other was that Antolini, to his credit, was more versatile than I was and could handle a large amount of the workload around the office, and a great deal would have been lost if they had taken him off, whereas if they had taken me off. . . .

So in any case, I got it. Antolini resented it enormously. The only reason that I mention it is that we were close friends before that, and I think it was part of his decision to run against me for the assembly. He became a candidate for the assembly against me, not in my first election but in the first election that I won. In 1970, I lost my first election, and in the next election, he was my opponent.

HICKE: In '72.

KEENE: In '72, yes. So there was that case. They finally pleaded guilty, negotiated a plea of guilty in order to avoid the death penalty. It became interesting also because one of the individuals, one of the four motorcycle people involved, in fact the head of the gang, was one of these people who. . . . they had a theory of double Y chromosomes, XYY, and he was supposed to be--I don't know if he actually did--he was supposed to be one who had them. We began doing research on that; but they wound up pleading guilty, which was a shame in a way, because I had high hopes that the case would be tried on the merits to resolve that issue.

Then one other case that may be interesting is, one of the most prominent people in Santa Rosa, who had developed a good portion

of Santa Rosa in those days, in fact had one of several shopping centers that he developed named after him [Coddington Town], was a man named Hugh Coddington. He had a son who was developing a pattern of getting into trouble. One day, we received a police report of people who were killed in an auto accident, and the two vehicles that caused the death were engaged in a drag race, and took off and left the scene. One of the vehicles had hit this car that was making a left turn in front of them, and they both took off. It turned out that one of the drivers of one of the cars was the son of this very prominent Santa Rosan.

Nobody wanted to prosecute the case. The D.A. was a--I don't mean this derogatorily--but he was a "good old boy" in town. He was popular with everybody, known to everybody, in organizations and so forth. I wound up with the job of prosecuting the case, and decided to use a section of the penal code that people didn't expect, and caught the defense counsel a little bit off guard. We eventually negotiated a plea agreement that was satisfactory to the family of the deceased, the defense and so forth. So it never really went to trial. We went through the preliminary hearing stage, the stuff that they're going through with O. J. Simpson now.

After it was over, the defense counsel, Jack De Meo, offered me a job. He was and is a very prominent plaintiff's lawyer in Santa Rosa. He took this case in part because he was friendly with the very prominent father of the defendant. The son, incidentally, later got himself killed in some criminal episode. And that's how I got into De Meo & De Meo.

HICKE: OK. So 1968 was the year you started there?

KEENE: Yes. It was a plaintiff's practice, civil litigation, and again, like some of my former employers, the De Meos were perfectionists. Jack as a trial lawyer, and Jack's father, Nick, who started and ran the firm, was a notorious perfectionist.

HICKE: [Laughter] I like your choice of word: notorious.

KEENE: Yes. A perfectionist of some renown. I mean, he drove other people in the firm crazy, just absolutely crazy. He micro-managed, and in fact became well known as a person who wrote books on law office management. He was known for that and for discovery procedures, for being one of the fathers of discovery in California, and wrote Continuing Education of the Bar books. Jack was the court room lawyer, and he probably had gotten his perfectionism from his dad. I fit in nicely by that time. [Laughter]

HICKE: Been preparing all your life for this.

KEENE: It all comes out now. It all becomes clear. I wouldn't have been aware of this pattern of relationships had we not been doing this.

HICKE: How many other people were in the firm? You were an associate at first?

KEENE: Six, seven.

HICKE: Seven other lawyers?

KEENE: Which made it the second largest firm in Santa Rosa at that time.

HICKE: And what stands out about that period?

KEENE: Oh, I guess gaining a sense of confidence in the practice of law and a sense of security about being able to earn a living. It was my first job off the public dole since my part-time jobs while I was at school. Acquiring some trial skills, negotiating skills mostly, because most of

it was not trial, but rather pre-trial preparation. There were court appearances, but most of the activity was directed toward settlement.

HICKE: Did they hand you cases to start off with? Obviously, you were an experienced trial lawyer already. So they just gave you a case and said, "This is yours"?

KEENE: Yes. Or a problem. "Prepare a memo for me on this particular issue, which is likely to become an issue if we go to trial on this case." Or, "Make a court appearance," some motion or something, file some papers. We did a lot of general stuff in those days. I was not only doing trial-related stuff, I was drafting wills, handling adoptions and divorces, and doing a little bit of everything. Some criminal work.

HICKE: Santa Rosa wasn't exactly a small town, but it wasn't a large city. So law practice was probably a little different there than in a larger place?

KEENE: It was very incestuous; everybody knew everybody. Newcomers were not so highly regarded. It took a while to break into the pecking order.

HICKE: Are you speaking of your experiences as a lawyer?

KEENE: Yes, and other young people that wanted to live there and practice there. It was always a desirable place to live and raise a family and build a house.

HICKE: Are you speaking, perhaps, about the judges? For instance, the judges knew everybody?

KEENE: Yes. Well, judges as well as other attorneys. The judges were interesting characters. A number of them were very interesting characters, doing things that judges probably could not do today.

HICKE: How about some examples?

KEENE: [Laughter] Well, there was some pretty good drinking going on, alcohol usage, because it was part of the ethic at the time, and part of that area, which had certain redneck patterns about it in those days. It's hard to think of Santa Rosa in those terms now, but Sonoma County was the semi-hinterland in those days, and there were some rugged traditions. A lot of hunting, and people going into the back country in jeeps and on horseback.

HICKE: And you're not talking about just wine at this point, I'm sure?

KEENE: No. I can recall a particular incident in which a colleague of mine--this is when I was in the district attorney's office--was coming back from Occidental. Occidental was a place that was known for its restaurants. There were three Italian restaurants there that fed people very generously. The quality was questionable, but they fed people very generously, and we would always try to eat there when we were holding court in that area. The judges rode circuit around Sonoma County and held court in different places.

So this fellow was reported in an auto accident, and the police called in and said, "Well, his Volkswagen has rolled down an embankment, and he's in pieces, totally covered with blood, and appears to be unconscious or dead." I mean, those were the first reports that we got. Well, it turns out that he was drunk and covered with ravioli. [Laughter] And was perfectly fine otherwise.

HICKE: Oh, that's great.

KEENE: So there were incidents like that. We had one semi-fearsome judge, who was trying to free . . .

[End Tape 2, Side B]

[Begin Tape 3, Side A]

KEENE: . . . this cat from underneath a house, but the cat turned out to be a skunk. He came to court, and it was the worst stink you can imagine. [Laughter] The attorneys were obligated to be there, but no one else would set foot in the court. So he began issuing bench warrants to people who were not showing up, and nobody was willing to tell him that he was offending the olfactory senses of everyone around. They were afraid to tell him. Finally, he got the word from his bailiff. And he dismissed the bench warrants and closed down the courtroom for that day. But that's what Sonoma County was like in those days. It was a lot of fun.

HICKE: Anything else about this period with De Meo and De Meo?

KEENE: I ran for the school board.

HICKE: Oh, we didn't get the story about running for the assembly either, so go ahead.

KEENE: Yes. In 1968, I'm trying to recall if I was in the D.A.'s office at the time or with De Meo, I ran for the school board and was elected to the school board. So I was beginning to develop an interest in running for political office.

HICKE: Did you see problems with the school board, or you were interested in having some input?

KEENE: I thought that it was too much of a rubber-stamp school board when I decided to run. I had three kids in the system at the time, thought I could make a contribution, and was introduced to local politics. I had to go around and talk to the teachers and familiarize myself with the educational process and the issues, develop a constituency, run a campaign. All very good experience, because I was pretty naive as far

as running campaigns. I had acquired some political skills by then, but they were not of the campaign variety.

HICKE: Did you have to raise money?

KEENE: I had to raise some money, enough to put out a brochure and take some pictures and buy some ads. So I did that. I ran on the "rubber stamp" issue, that the administrator was dictating policy, that there was no experimentation in the schools, that we were falling behind. It was a successful campaign.

Out of the five seats, either one or two changed, and I was one of those. To my surprise, I found that the people who were there--the incumbents--were really very dedicated and capable people. They were just a bit cowed by the administrator. My contribution in terms of shaking up the board was to help members realize that they were in charge. Rather than going through the motions, they could maneuver and change direction.

And they did, and we built a new school that was a very advanced school. It utilized partnership teaching and pods, and everything else. I can't describe all the details. But for its time, it was regarded as one of the most advanced elementary schools around. A lot of parents that had previously been very conventional wanted their kids to go to that school. That was a good experience.

After a couple of years on the school board, I became involved in Democratic politics along with Mike O'Donnell, my friend, whose law partner was a man named Jack Shea. Jack was the head of the Democratic Central Committee in Sonoma County. One day over lunch, the three of us decided that we had to start getting Democrats elected. Democrats in that area were pretty much in the closet.

There was not a great deal of successful political activity by Democrats. There were the older folks, the war horses, who kept the party going and had the monthly dinners and hosted Democratic candidates from other parts of the country and other parts of the state, but there was no successful election of Democrats, with two exceptions. One success was a congressman, long deceased, named [Clement W.] Clem Miller, who was killed in a plane crash. He was succeeded by a Republican who served more than two decades. The other was a state senator named [Joseph] Joe Rattigan, who left office when the state senate was reapportioned for the first time in the mid-sixties. Both were outstanding, but there was no foothold, no Democratic purchase there on the North Coast.

Democratic leaders decided that an assemblyman who had served for a couple of decades named Frank Belotti was probably the most vulnerable, and that since he was in his seventies, might be successfully challenged by a young person with fresh ideas. I said, "Mike O'Donnell would make a great candidate." [Laughter] Jack Shea said, "Well, we have something else in mind." Jack couldn't run, in part because he was one of the last of the polio generation, and ultimately died of respiratory-related stuff. He would have been a very capable candidate, but he couldn't handle the physical part of it.

So Mike O'Donnell was my choice [Laughter]. But democracy prevailed, and I ran. They said, "Well, look, you've got roots in California, you've got background in the legislature, staff background in the legislature, some political contacts there. You really ought to run." I guess I was very flattered and thought it would be fun to do, checked it out with family, and decided to do it. Having no idea

really what I was getting into. And of course, the rest of the family had none. That proved to be a disaster over the long haul. We put some money into the 1970 campaign, some personal money, raised some money, probably in equal proportions.

It was in the middle of my school board term. I ran against Belotti, enlisted the very helpful and strong support of my wife, and we did a door-to-door campaign. It was managed by a terrific guy who may be the next mayor of San Francisco, a guy named Lou Giraudo, whose family founded the Boudin french bread bakery, and who is now a lawyer, who recently sold the interest in several french bread bakeries that he acquired. He wound up owning most of the San Francisco french bread bakeries, sold them, and is now quite affluent. I like having affluent friends. [Laughter] He also is a guy who has had long-standing political ambitions, coming out of San Francisco, a very political city and county. He was involved with very many politicians over the years.

But in 1970 he was a vice principal at St. Ignatius High School in San Francisco, and we were introduced by a close mutual friend. He ran my campaign, and he brought students up during the summer from San Francisco. He was highly organized and highly motivated. He was a dynamo who really energized the campaign, and imported to the North Coast some of the strategic things that had been developed in San Francisco, things which made sense in San Francisco but not necessarily on the North Coast.

HICKE: Such as?

KEENE: Door-to-door campaigning, knocking on doors. I mean, here's this sprawling, 350-mile long area, with ranches and small towns, houses

on hills, a million dogs, and he says, "The only way you're going to beat this guy is through personal contact, door-to-door campaigning." We said, "What the hell? That's his prescription; he knows how to do it; he says that it works." And certainly it did work in most parts of Santa Rosa, and Eureka, but it became difficult in most of the district.

Nonetheless, we did it. We did a door-to-door, and we knocked on, we estimate, 70,000 to 80,000 doors.

HICKE: Oh, my word!

KEENE: Now, we didn't make contact with all the occupants of those. We invented or imported, I don't know which, little notes that appeared to be handwritten notes, to which we attached a paper clip and a rubber band, and put them over the doorknobs. The notes said, "Sorry we missed you," and some little message pertaining to their area. We would go down opposite sides of the street, my wife and I, and knock on doors.

Importing that style to the North Coast was successful, but it required a great deal more energy and effort on our parts, my wife and I, than would have been the case had we been running in some small district in San Francisco or Los Angeles or some other part of the state. And that in turn put a tremendous burden on the family, and by then the kids numbered four or five--I think four--at the time of my first campaign. The oldest child in particular became very resentful of having to get the kids ready for parades, and having to take over managing the house and doing household chores. So it took its toll. Eventually, I think the political life took its toll on the family.

HICKE: And the result of the campaign?

KEENE: We came within a hair. We came within a few thousand votes of beating this twenty-two-year incumbent. Remarkably, legislative leaders invested no money in the campaign until the very end when they took a poll, and much to their surprise, found that we were even with the guy. The money was too late to use. They had put their money instead into a Berkeley campaign for a young guy named [Kenneth] Ken Meade. Ken was a University of California football star who was good political material, mediagenic and all the things that you needed to get elected, far more astute than I was politically, and very close to then-Speaker Bob Moretti, and they decided to put all of their resources behind Ken Meade, who replaced a Republican in that area [Assemblyman Don Mulford]. The Republican was in there for a long time. Meade was elected in '70, and I lost. Had I received any portion of those resources, any substantial portion, I think we'd have beaten him.

HICKE: How did you meet Lou Giraud?

KEENE: Through a mutual friend named Lou Sasselli, who knew us both and thought that we would be a good team. Lou Sasselli was a supporter of mine and a longtime friend, from his San Francisco days, of Lou Giraud. And we almost made it.

HICKE: It was a good fight.

KEENE: It was a good fight. It took a lot out of us. We fortunately had some money left over, and took the family to Mexico for a month. Our trailer broke down in between Oaxaca and Mexico City in some jungle area.

HICKE: Oh, great.

KEENE: The newspapers, the Santa Rosa Press Democrat, went to Mike O'Donnell and said, "Have you heard from the Keenes?" "No." "Well, neither has his mother-in-law, and they're beginning to get worried. Are you worried?" "No, I'm not worried." "Well, if you knew that he hadn't been in communication, would you be worried?" "Yes, I'd be worried." Well anyway, suddenly there were headlines out there, "Keene family missing in jungles of Mexico." [Laughter]

HICKE: Oh, no!

KEENE: They got hold of Senator Alan Cranston's office and sent this Mexican highway patrol group called the Green Fleas. Do you know about the Green Fleas?

HICKE: Yes. I guess they're still the same, those green rescue trucks?

KEENE: Yes, I guess so. They were looking for us, and everybody was looking for us. We were quite content to be where we were. So that was kind of an interesting sidebar of the campaign. Unfortunately another consequence was my parting company with the De Meo firm. Nick De Meo was a Republican, and most of his contacts were, and Jack was a Republican too, and most of his contacts also were in Republican circles. And there I was upsetting the apple cart as the first Democrat in the century to get elected to that assembly seat when I finally won it in '72. But in '70, just being a Democrat was not easy in Sonoma County. Up north, there were more Democrats.

HICKE: In the northern part of the county, you mean, or northern part of your district?

KEENE: In the northern part of the district, there were more Democrats. Labor around the Eureka area, students around the college, Humboldt State University. But they were out of power.

They had been represented by a guy who switched parties and was nominally a Democrat named [Senator] Randolph Collier. He was the senator from that district when I was elected to the assembly. He was also senator the year before I was born; he took office in 1937.

At the time of my election, he was very important, and by no means a friend, because he collaborated with all the Republicans; the business community ran things, and Republicans ran things. If you wanted to succeed in business, you pretty much had to move in those circles. People who were Democrats didn't feel welcome or well-regarded in those days.

My biggest political accomplishment in the region was establishing a moderate to liberal Democratic constituency that developed a foothold and could elect Democrats, and they did. They elected a Democratic assemblyman when I went to the senate. They elected a Democratic congressman, and suddenly the Democrats were controlling the region. We turned it around in the election of '72, and maybe the election of '70, which was a precursor and set the stage. It was so close that it was obvious I was going to run again. The Republicans felt that Belotti would not make it a second time against me and did not know how to ask him to resign, because here he was in his seventies, his wife was his most loyal supporter, and regarded the office as part of their lives, inseparable. The powers that be were in an awkward position because they couldn't get him to resign.

Well, fate intervened. He was injured in an auto accident in 1971. While he was in the hospital they discovered that he had

cancer. It was obvious he was not going to run again. The seat looked like it was mine for the taking. The Republicans had other ideas, and as I say, they were a political powerhouse at the time.

A very prominent banker, one of the wealthiest people in California, and a powerful member of the Republican party named Henry Trione, who was a senior vice president of Wells Fargo Bank and on the board of directors and had just founded a winery, decided they were going to mount a candidate against me and provide all the resources necessary to keep me from getting elected. The person that they selected was a young deputy district attorney, a glib and attractive individual named Gary Antolini.

The race was covered by a managing editor at the time, who has since come into some prominence here in Sacramento. At the time, he was managing editor of the Humboldt newspaper, the Eureka newspaper, called the Humboldt Times-Standard, and his name is Dan Walters.

HICKE: It was really Dan Walters?

KEENE: Yes. He is probably the foremost critic of state government in California today. Do you remember when Butch Cassidy and the Sundance Kid are being trailed by this posse, and everywhere they look, they've got the posse behind them? "Who are these guys? Who are these guys?" they ask. Well, that was my reaction to Walters, who excoriated me in not only his editorial columns, but my feeling was that it spilled over into the news coverage. I told him so, which of course angered him all the more, and he's never quite forgiven me for it. And as I was going through the files that I mentioned to you, I came across a nasty letter that I had written to him about

journalistic responsibilities, [Laughter] and let me tell you, he took it out in spades later, in his treatment of me in his Sacramento column. I think he just always resented it, and he was sure Antolini was going to win the race.

HICKE: Just in general, did you stir up the Democratic Central Committee too? You told me that they didn't support you in the '70 campaign. Am I not right, that they put their resources into the Meade campaign?

KEENE: Yes, but it wasn't the local central committee. It was the legislative leadership.

HICKE: Oh, that's what you were talking about.

KEENE: What was happening, and what occurred during [Speaker] Jesse Unruh's period, is that power, including the power to elect people and keep them in office, was shifting from local parties, which never had much power to begin with in California, to the Democratic legislative leadership. Campaigns were being run increasingly out of Sacramento.

HICKE: Because he kept a hand on the . . . ?

KEENE: On the money, the "mother's milk of politics," as he called it. And he figured out how to raise money and also provide policy direction that did not necessarily follow the money. His formula required the Democrats to stand together in raising money from special interests so that they would not cave in to them. Then they could direct policy by virtue of that solidarity. He used that as justification for running things with a pretty tight fist. However, he overstepped himself most notably one evening when he locked up the legislature; but I'm sure

Larry Margolis had a lot more direct comment on that particular episode.

HICKE: Unless you have anything to add.

KEENE: Well, I just read accounts of it. [Former Senator James] Jim Mills has written an account of it.

[End Tape 3, Side A]

[Begin Tape 3, Side B]

HICKE: OK. We were talking about the Democratic leadership and how the power moved from the central leadership.

KEENE: Yes. In 1970, Moretti had the money; as speaker he had the campaign contributions, the war chest. He directed those contributions to the Meade campaign, and other races in California. In '72, things shifted, and the reason that they shifted was that Democrats were in danger of losing control of the assembly, the most horrendous of events obviously to a speaker like Moretti. Also, it looked like I ought to be able to win that seat. So then the resources began coming in from Sacramento.

But the Republicans matched those resources dollar-for-dollar, and this became the most expensive legislative campaign in history in 1972. We spent a quarter of a million dollars between us. It doesn't sound like much now.

HICKE: No.

KEENE: In 1972, it was big money. It was the most expensive race. Dan Walters was covering it and still alludes to it in his columns. The Keene-Antolini race is quaint and parochial to everybody else; but he

remembers. And spending was in equal measures. We each spent about \$125,000 on the campaign.

HICKE: Did you have a campaign manager?

KEENE: Yes. In 1970, I had a very principled campaign manager, Lou Giraudo. We were both liberal idealists and shared a lot. We had a lot of energy, and he was a very bright, creative, resourceful, energetic individual, and we were a very good team. We did what was almost impossible, winning a seat in a region that had not held many Democrats and had none at the time except the nominal Democrat, Randolph Collier, from Siskiyou County in the senate.

In 1972, I had a hired gun, put there by the people in power in Sacramento. In other words, in order for them to invest money in the campaign, they wanted to know that they had a chance of winning, and one piece of that was a campaign manager who has the skills to win. This guy had the skills to win, didn't care anything about issues, and had previously worked for Republicans in Texas, including George Bush in Bush's senate race.

Now, Texas politics is hard-nosed, vicious at times. California politics has become that way, but it wasn't so true at the time. Maybe it wasn't as true in Texas either, I just don't know. But this guy came out of Texas, he prided himself in being a guy who could win and who would be ruthless in engaging the opposition, and regarded himself, correctly I think, as strategically wise, knowledgeable in the execution of a campaign, and knowing what it takes to win.

HICKE: What was his name?

KEENE: His name was Bruce Gray.

HICKE: And you're saying that you really didn't have a lot of choice about having him?

KEENE: I didn't think that I did. The reality, which I'm reluctant to acknowledge, is that I probably had veto power, and I probably could have said no.

HICKE: But if you didn't know it, what good is that knowledge?

KEENE: I didn't know, nor did I know that he would have as much control over the situation as he did. I was literally a prisoner of my own campaign, as opposed to the earlier campaign in which it was very much a partnership. He was in control of the money, he wrote the checks, he hired the staff, and he said, "That's the way we do it. I run the campaign, I guarantee you that you're going to win."

HICKE: [Laughter] You get your money back if you don't?

KEENE: Yes. [Laughter] And he said, "You don't worry about a thing, just put everything in my hands."

HICKE: He wanted a puppet.

KEENE: Yes. One of the most revealing incidents was when, to Gray's horror, at some public forum I offered to debate Antolini on television. By that time, Collier, sensing I was going to win, had mostly come over to my side, was giving me assistance, and yet keeping his powder dry by retaining relationships in the Republican camp. But in any case, he had an individual in the Santa Rosa area, a field person, who collaborated with my guy. They kind of liked each other because they were both in it to win, and policy and issues were so much nonsense, games to be played by people who they elected.

HICKE: Looking back on it, it's funny, but I'm sure it wasn't quite so amusing at the time.

KEENE: Oh. No, it was. . . . I shook my head on many an occasion and said, "So this is what it's all about; what have I gotten myself into?" We were at war with each other, Bruce and I, and we entered into an accommodation in the interest of the campaign, but it was not a happy or friendly experience.

I blurted out publicly that I would debate Antolini on television, and I meant it. I thought it was a good idea. I thought that we would raise the issues. He said, "You're a fool for doing that. He's glib; he'll out-manuever you; you're a teacher; you want to talk about all these ideas. People aren't interested in ideas, they're interested in how good a response a person can give at these debates, and he has these advantages over you. He doesn't care about things that you care about. He's all gloss, and it's gloss that wins these debates."

I said, "I don't feel that way at all. We both come from similar background, trial experience; I can do it." "No, no, you're going to blow the whole thing on this; we've got to get you out of it. Got to get you out of the debate."

So Bruce and this guy from Collier's camp, Collier's political figure in the Santa Rosa area, where the largest concentration of population was, come to see me and they say, "You can't debate Antolini. Here's what we're going to do. We're going to have a little auto accident, and you're going to break a leg. You're going to be in a cast, and you're going to be unable to debate him."

I said, "I can't do that. That's the craziest thing I ever heard of. You want me to pretend that my leg is broken, and put me in a cast, and tell people that I can't debate this guy?"

And they said, "No. No, we'll break your leg just a little."

HICKE: Oh, dear!

KEENE: "We'll break it just slightly."

HICKE: Oh, no!

KEENE: "We'll push your car off the road." [Laughter] "We'll push your car off the road, and you'll have minor injuries, be taken to the hospital, and you'll be put into a leg cast, and you'll miss the debates."

Well, they had gone far too far at that point, and I wouldn't go along with it. I said, "Hey, if that's what it takes to win, I don't want to do it." And I finally convinced them that I was serious about rejecting any plan that would involve something like that. It wasn't just the physical injury, it was the shame and the . . .

HICKE: Sham.

KEENE: The shame and the sham and the humiliation of having to do something like that. Well, we had the debates, and the first debate was up in Eureka. Dan Walters was one of the panelists, and everybody that came away said quite clearly that I had won that debate, that it came off very, very well. We had a second debate in Santa Rosa with pretty much the same result, not as dramatic, but I obviously didn't lose any ground, and most people thought I had gained some ground. And I had a pretty good command of the issues at that point, and developed with some practice an ability to respond in short sentences, something which I don't do easily now.

[Laughter]

HICKE: Fortunately for me.

KEENE: So the debates came off well. Somehow I made it through the campaign, but we did not part as friends, Bruce and I. I was so happy to have it behind me.

One of the worst incidents was when Bruce set up a group called "Italian-Americans for Keene." Now, Antolini was clearly an Italian American. He [Bruce] went through the card files and looked for everybody with an Italian surname, which included Sasselli and Giraud, and without their permission he created this committee and put out a mailer saying, "We are Italian Americans who ordinarily would support one of our own, but we're supporting Barry Keene." It went out without my knowledge, without my permission, and I threw a fit.

I got a very poignant letter from a former friend of mine, Albert Rizzo, whose name was used, who came out of the district attorney's office and didn't like Antolini, but totally resented this thing, and I had to send him a letter of apology. So I really had ashes in my mouth over this incident, and Bruce and I were never the same after it. It was the closest thing to a "hit" mailer that I ever put out. But, amazingly, I never put out a hit mailer in twenty years. Twenty years of legislative campaigning in a district that was by no means a safe Democratic district. It was always a marginal district. It grew a little bit safer in time. But I never put out a hit mailer against an opponent. It's a source of great pride.

So that was the year that I was elected, and by almost precisely the same margin that I had lost in 1970. It was a very close race.

Election night was very interesting. It was the first local television in Santa Rosa, and we were at the Flamingo Hotel in Santa Rosa--no, I'm sorry, it wasn't the Flamingo. It was the Los Robles. We were watching television as some commentators, political scientists, from Sonoma State and Humboldt State, were being

interviewed and predicted my defeat. Then they interviewed Gary Antolini and his wife, who claimed victory. We thought we had lost. People were no longer festive. A lot of the party had dwindled.

Then suddenly, things started happening in Humboldt County. It was very dramatic, because it was late in the evening. Returns started coming in from Humboldt County. "Well, here are a few precincts that seem to be going for Keene. Interesting development here, but it's not going to change the outcome," the commentators noted. And then, increasingly, the Humboldt returns poured in, and I was beating him overwhelmingly up there. I believe the television debates I described were in part responsible for it. I drew from both sides, from the college/environmental side and the labor people, the working people who were Democrats.

HICKE: How did you do that?

KEENE: Just as a middle-of-the-roader, I think. I was able to keep the Democrats together up there, at least at the grassroots. It became a problem that I had to deal with for the remainder of my twenty years in office. They stayed together. The result was an overwhelming triumph in Humboldt County, and that produced the needed margin of district victory. They were really beaten. They had interviewed Antolini's wife, Barbara, who had grown quite religious, and made some comment about God being in their camp. Then the thing started turning around.

HICKE: The celebration grew a little noisier?

KEENE: Oh, very noisy, very, very noisy.

HICKE: Had the spotted owl been spotted at that point?

KEENE: No.

HICKE: That was not a problem?

KEENE: No. The forest issues were there, but it wasn't spotted owl. There were different issues at the time. I remember the political science professors saying, "The bellwether precincts are in, and the outcome is clear." [Laughter] They were dead wrong.

HICKE: And Dewey is elected.

KEENE: And Dewey is elected.

HICKE: Well, in '68--let's go back and pick this up--you left the De Meo and De Meo firm, and you went into practice for yourself?

KEENE: Yes, and left for reasons relating to my becoming a politically controversial individual and something of a handicap for the firm. They chose to say that I would probably run again, and my energies would be diverted from the firm to politics. But I think a lot of it was clients who were complaining about me being a member of the firm.

I went into law practice for myself, shared an office with another lawyer who wanted to be a tennis pro and not a lawyer, [Laughter] and I think eventually left the practice of law. We had a delightful relationship, although we haven't kept it up over the years.

HICKE: Olmstead?

KEENE: John Olmstead, yes.

HICKE: You were doing the same kinds of things at that point?

KEENE: If anything, it became more general, because I had to take whatever cases I could. I did get involved in the creation of what eventually became a public employees' union but was an association at the time, called the Sonoma County Organization of Public Employees, and has since become a quite powerful organization. It was a good idea

because, at that time, the employees were very poorly treated. I have a few different views now about public employee organizing than I did in those days. I think the pendulum may have swung too far.

HICKE: Was it your idea?

KEENE: It was my idea. Originally, there were some sheriff's deputies who came to see me. I think I had them as a client or something; they said, "Look, what can you do? This is the way we're getting treated by the supervisors, what do we do?" So I said, "Well, people at the city level have been complaining about the same thing. Why don't we set up a county-wide organization, Sonoma County Organization of Public Employees?" So I got them a charter, incorporated them, did all of the stuff that needed doing. I said, "Look, this is not a contract of any kind, but as an organization, I hope that you'll send me some work--when someone wants a will made up, you send them to me."

The law practice began picking up. Unfortunately, at that time the politics were also beginning to heat up, "Are you a candidate or are you not a candidate? If you're a candidate, you better" So I had to phase out my law practice at the very time that it was beginning to turn the corner financially, which was unfortunate, because it increased pressures on the family. It turned out to be a financial loss, and it should have been a financial benefit.

So there was a succession of sacrifices that were being made. I wasn't so much asking the people who were making the sacrifices whether they were prepared to make them; they were just doing it. I think particularly with the kids, the resentment was building up. Another campaign.

Bruce Gray came up with one idea that turned out to be a very good idea. It was a bicycle campaign in which the whole family bicycled the length of the district. It totally captured the media, both locally and to some degree in the Bay Area and statewide, that there was this family out there on bicycles, running for office, riding through the redwoods, holding campaigns on the coast and barbecues and different things at different stops. That was very successful, captured a lot of media attention, and really was probably as responsible as anything else for defeating Antolini. During a very critical period, their campaign totally lost command of the media. They were not paying attention to him; they were paying attention to us. He tried ridiculing it; he tried saying it was just a public relations device; he tried lots of things, but our strategy was working. It worked well.

HICKE: What were the issues that you ran on, particularly the ones that divided you from Antolini?

KEENE: Coastal protection, farm labor, environmental issues, although it was not so clear in the campaign that that was so. People sensed that it was so, that I would be more sensitive to environmental issues than he was. Although in our rhetoric, I was not about to sacrifice jobs. One of our slogans became "Jobs and the Environment."

HICKE: Jobs "and" the environment?

KEENE: Not one or the other; both. That's the way it read: "Jobs and the Environment. Not one or the other. Both." That became one of the slogans. Then we were looking for a logo, and our logo was a solar-powered chainsaw. [Laughter]

HICKE: Oh, great!

KEENE: So we took care of the environmental side, and we took care of the timber and mill workers. It became a source of both amusement and attention.

HICKE: And memorable.

KEENE: Yes.

HICKE: When people asked you about this slogan, how did you explain? Did they ask you how you were going to do both?

KEENE: They did, and I tried to convey a sense of compromise, that we could be stewards of the environment and we could retain logging as a viable industry. I think I believed it but also recognized that there would be very many rough spots along the way. When I was first elected, we had this picture on the wall; it was a beautiful picture of redwood trees in a vertical position. I said, "This satisfies the people in the southern part of my district." Then we turned the picture sideways, and I said, "When the timber industry comes to visit, we turn the picture this way. They prefer horizontal to vertical redwood trees." Had a lot of fun with that.

HICKE: [Laughter] Very good.

KEENE: Yes, both parts of my district enjoy redwood trees: some vertical and some horizontal. Used that in a lot of speeches.

HICKE: Did you often try to use humor?

KEENE: Yes.

HICKE: That's, I suppose, fairly effective.

KEENE: I suspect it's much overlooked by people in campaigns. Good campaign managers will inject it, because candidates tend to become very serious. There's a point at which they lose it, they lose

perspective, and good campaign managers need to keep that sense of humor in there.

HICKE: Yes, good point. So coastal protection and environment. Other issues?

KEENE: The agriculture industry supported Antolini. Most of the business community supported Antolini. Part of it was their sense that he embraced Republican virtues, pro-business virtues, pro-agriculture virtues. The litmus test was a proposition that was on the ballot on farm workers. I don't remember the exact issue, but I favored the proposition, and Antolini opposed it. There was another issue involving coastal protection, and I supported it, and Antolini didn't. Seems to me there was another major district issue that divided us.

HICKE: Was there a problem of offshore drilling at this point, or discussion about it?

KEENE: No, that was later. I took a position against offshore oil drilling, but that was a later campaign.

[End Tape 3, Side B]

[Begin Tape 4, Side A]

KEENE: There was one thing that got me into trouble, and Dan Walters exploited it in the course of the campaign. It was an appeal to labor and jobs. I got into this speech-making mode, very emotional, and said, "I would do anything for the working people of this area. I would vote to dig a tunnel from Eureka to Santa Rosa to create jobs, and if it didn't create enough jobs, I would have the workers fill it up again." It never occurred to me that it would be given literal substance. "Here's another Democratic big spender who wants to

spend your hard-earned tax dollars on public works projects and pork barrel," and all of the rest that goes along with that.

HICKE: That was Walters' reaction?

KEENE: Yes, and that of others. The opposition kept saying, "He says he's going to dig a tunnel from Eureka to Santa Rosa. This guy is crazy, and if he's not crazy, then he's obviously taking a wrong approach and going to be another Democratic big spender." So they kept on beating away at that.

HICKE: So how do you respond to this?

KEENE: Well, it's hard to recover completely. You try to do a bit of damage control. I said, "Well, obviously jobs are much more important to me than they are to my opponent, but I hope no one takes my words seriously. There is work to be done on the North Coast; there are parks to be developed, there are bridges to be built and freeways to be built; and those are the kinds of public works that I was really talking about." But you get a little deeper into the tar each time.

One of the key issues was a critical stretch of freeway through the city of Arcata, and I lost some support in that community, because I wound up supporting the freeway. So it was a jobs versus environment issue for them, and I wound up supporting the freeway, taking the jobs side on that one.

HICKE: Is it better when you're attacked like that to . . . Well, there are choices, you can either attack your opponent, or you can try to explain yourself. It sounds like you picked a really good one, which was to not excuse yourself but explain what you had in mind.

KEENE: Yes, I believe it worked out OK. A lot of the damage was offset by people who were truly concerned about jobs and felt that public

works was one way to deal with it and had grown accustomed to Senator Collier bringing in some pork for them. The anti-tax folks were less happy, and it solidified their opposition to me. There were two tax organizations in Sonoma County. One was the regular right-wing--[Laughter] I shouldn't say this after you've interviewed Dave Doerr--tax organization, the Taxpayers' Association. Then there was the Irate Taxpayers' Association. [Laughter] I can't remember the guy, also known as Genghis Khan, who ran it. In any event, I sustained some loss on the issue, but it wasn't as bad as it could have been.

HICKE: I've heard this sort of general debate, mostly in presidential elections, about whether, when somebody attacks you, you should immediately go on the defensive. Some have not reacted soon enough, and they perhaps lost ground.

KEENE: Well, I have a theory about that. My theory is that if you present yourself to people, if you connect the dots, rather than allowing your opponent do it, that you don't have to be nearly as mean as people think. In other words, a lot of the negative campaigning is a product of the failure of positive campaigning. I spent a year of my life on the [Governor Michael] Dukakis campaign. When his campaign foundered was when Bush came in with the negative stuff. They were going to plan it all out and execute it perfectly. But they lost touch with the American people after the convention. When the campaign momentum slowed, Bush's people started talking about Willie Horton and the condition of Boston Harbor. There was a third issue that they also exploited. They succeeded in establishing their image of Dukakis. Why? Because there was a vacuum. By the time

they had successfully done that, it was too late for Dukakis to change people's minds. By then, even if he had decided to go on the attack, he would have lost. It was too late. Bush had captured the agenda. The Dukakis folks let the Bush people paint on an empty canvas. The portrait painted by the Bush artists was not flattering.

So now the prescription is you've got to be negative, and of course it escalates. Who benefits from that? Why, the people who make millions managing campaigns. My theory always was that if you can aggressively present yourself and establish yourself, people aren't going to believe negative attacks. It worked for me. Believe me, I'm not naive. But you can't sit and wait for the bombs to fall.

HICKE: So get in there first and define yourself, and present your image whole without any holes in it?

KEENE: Yes. One of my opponents took me on for supporting Rose Bird when they were attempting to recall Rose Bird, and I thought it was a bad idea to recall supreme court justices, and said so. He had these billboards up and down Highway 80 and up through the district, huge billboards, "Barry Keene supports Rose Bird, Dick Brann opposes Rose Bird." He thought it was a litmus test issue and that he could defeat me on that one issue alone, but by that time, I had an image in the district and I had established that image. So I could oppose the death penalty, and I could support Rose Bird, and get away with it. All the negative campaigning in the world wasn't going to work, and I didn't have to come back and say, "Well, this guy's lying," because he wasn't lying, he was telling the truth. I didn't have to come back and say, "Well, he's a bad guy because of this, or that, he beats his wife, or he

does this and that," I didn't have to do that. I just had to explain my reasons, and fortunately, it worked.

HICKE: Well, that brings up another question. I'm interested in what you think about this question: whether when you're representing a constituency and you have to vote on an issue, do you vote according to your own conscience or what you think is best, or do you vote according to what you think your constituency wants?

KEENE: My sense of representative government is that your constituents are asking you to do more, and it's your responsibility to do more, than represent their views at that moment on that issue. Those views are not to be disregarded; they're to be given a great deal of weight. But they don't want the person whom they elected to suddenly give up his or her principles when it involves an issue of principle. However, I also believe that too many issues are elevated to issues of principle when they're really not issues of principle; they're conclusions reached on other bases. Even then, in matters of judgment, people expect those they elect to use good judgment.

Constituents are very busy; their attention is diverted; they don't have access to all the information; and most important of all, they don't have a sense of the trade-offs that have to be made constantly, and the political relationships that arise in a collaborative context, which the legislative process is. So they are buying into both the principles and judgment of their representatives.

Nevertheless, in the interest of political survival, you sometimes have to trim your political sails. People who come from very safe districts are very pious in their criticism of individuals who come from marginal districts about when political sails should be trimmed.

HICKE: That's a good answer.

[End Tape 4, Side A]

[Session 2, July 14, 1994]

[Begin Tape 5, Side A]

HICKE: I'd like to start this morning by picking up a little bit on something you were talking about last time, which is the campaign--it was '72, right?--and then you had started to discuss the issues a little bit, and I wonder if you could elaborate on that.

KEENE: It appeared to me that my opponent, Gary Antolini, was attempting to position himself to the right of me, and to describe me as a radical. The fighting issues were two that were on the ballot: the Coastal Protection Act.¹ I took a position in favor of the proposal, and he took a position against it. And protection of farm workers. I took a position in favor of the initiative, and he took a position against it.

The result was that he captured a certain percentage of the people who were more concerned with economics than the environment, and made some inroads into Democratic constituencies of North Coast workers. Fortunately, it didn't go too deep, and they felt that I would be able to balance environmental and economic

1. Proposition 20 (November 1972).

issues. At least, that's how I read the outcome of the election, because I had a very strong vote in the northern part of the district.

There were some local issues, such as a freeway through the city of Arcata, and he took a very strong position for that, as well as for a Eureka freeway. I tended to be more cautious on those issues though I wound up supporting them.

In the southern part of the district, land-use issues in the Sonoma County area in particular tended to dominate the political screen.

HICKE: Is this vineyards or farms?

KEENE: Conversion of ag land to development. He tended to take the development positions, and I tended to speak in favor of the protection of ag land. Now, you might think that that would bring agricultural people back into the fold, but in fact, they didn't want any restrictions on their land, and many of them had in mind ultimately selling out.

HICKE: Making a pile of money, eh?

KEENE: Making a pile of money, and selling the land for development purposes.

I believe I mentioned last time that there was a third big issue district-wide. It also defined the campaign in almost a classic way. That was for the construction of a dam on the Eel River, one of the four then-remaining wild rivers in California, which would have involved the flooding of an exquisitely beautiful valley called Round Valley.

HICKE: This was an Engineering Corps project?

KEENE: Yes. It was supported by the congressman, Don Clausen, a Republican congressman. Heavily supported by him. It was heavily supported by the then-senator from the area, who was Randolph Collier, which is what caused some of the friction at that time between Collier and myself. I opposed it. Antolini insisted that it would increase summer flows in the Eel River, which is a river that flows from south to north, one of the few rivers in the world that does. It empties into Humboldt Bay after originating in the Mendocino mountains. He insisted that the water would be captured and used for the benefit of the North Coast.

I kept explaining that you don't build billion-dollar dams for the purpose of increasing summer flow for rural constituencies, that the reason you build major dams is to capture water and deliver it to the California Water Plan in southern California, and that that was the real intention, and those would be the real beneficiaries of the dam on the Eel River, and the losers would be the North Coast.

HICKE: That was in dispute? It wasn't clear what was going to happen to the water?

KEENE: It wasn't in dispute that some percentage of the water would go south, but what was in dispute was how much would be retained to increase, not to maintain, but to increase flows on the Eel. Eel is a river that produces enormous volumes of water when there's a snowfall in the Mendocino mountains followed by a warm rain in the early spring. Flooding has been disastrous on the Eel from time to time. In 1964 you had what was thought to be a hundred-year flood, and the freeways were underwater and towns were destroyed and bridges and so forth.

HICKE: So flood control was an objective of some sort also?

KEENE: Yes, and they said that that would prevent this sort of thing from happening. Now, remember, this is eight years after the big flood, the big hundred-year flood, so he's arguing, "Well, it will protect people, produce flood control, and maintain a more even flow in the river."

Well, the big reason for the dam was to secure additional surface water to be used in the Central Valley and southern California. I kept making that point, that we should not export our resources, that we should maintain the Eel, and I was the only public figure saying this outside of Marin County, where Peter Behr was beginning to develop seniority in the senate and always had strong environmental credentials. But Marin County; who was listening to Marin County? Marin: they were regarded as environmental extremists at the time.

So I was the only person on the North Coast who was speaking out against the dam, was speaking out for farm labor, was speaking out for the coastline. Antolini was on the other side of those issues.

It succeeded in preserving for me a growing environmental constituency on the North Coast, still modest, but growing. It left a sufficient number of workers feeling that I was associated with the interests of what we called Joe Lunchbucket, the guy who worked at the mill, rather than the bosses, rather than the people who own the mill and the people who log the timber and leave, and leave them without jobs. It was a very close race, which I might not have won had I not run in 1970 and established a base of support and name identification and grassroots organization.

HICKE: That's an interesting point.

KEENE: But the critical issue I forgot earlier was a huge issue at the time, it was the Eel River, damming the Eel River.

HICKE: How did that turn out?

KEENE: The dam was never constructed. Oh, the chief supporter in California of the dam--I tend to leave out the obvious sometimes--was Ronald Reagan.

HICKE: Oh, yes. That makes sense.

KEENE: Yes. And the governor was most noteworthy at the time for having said, "You've seen one redwood tree, you've seen them all." Well, the Eel is where the redwoods grow. They grow huge because the river brings sediment down and overflows and improves the soil. The river canyons and valleys draw in fog from the coast, and that takes moisture stress off these very high trees, which can't depend on the moist soil alone for their water. So putting a dam on the Eel had major implications, not only for the salmon runs, the anadromous fish runs, which were declining for lots of reasons, but also for the redwoods themselves. And most of the largest trees are along either the Eel or other North Coast streams: like Redwood Creek right up above the Eel, in the Redwood National Park, or the Klamath or Trinity Rivers.

We weren't thinking, in those days, of biosystems, which is a term that has come into vogue now, except intuitively, that this would somehow screw up ecologically related systems, that it would not be good for the area, and that its cost would produce no offsetting major benefit for the area. Most of the benefit would be exported elsewhere. I was convinced that that was a correct

equation. The chambers of commerce and the Redwood Empire Association and a lot of the people who saw the world through economic blinders railed against me for those positions. I probably, as I say, would have lost that election had I not had the head start, and also the benefits of the earlier run, because I think this fit in with the type of positions I was taking. Fortunately, we were both from the southern part of the district, so they couldn't use that fact against me.

HICKE: Also, Round Valley would have been inundated, you said?

KEENE: Yes. That includes an Indian reservation and a town called Covelo. Covelo was the home of a very wealthy rancher, who is now secretary of the resources agency, Richard Wilson. He opposed the dam. He was a prominent Republican and one of the few people of wealth who had contact with Republican activists and an excellent reputation in the Republican party who took on the issue in opposition to the dam. That kept it from becoming a completely partisan issue at the time.

So my political base, my evolving political base, involved working people on the economic side, and environmental groups on the other side. It was a very difficult balance to maintain, but I did try to balance, because I thought their interests were legitimate. The small communities, mill communities, and workers in some of the cities, were terrific people as you got to know them.

The North Coast is a great place, because the people up there for the most part are not small-minded; they're not bigoted; they're not avaricious. I know I'm generalizing now, but it's a strong feeling that I had. What they are is very independent, and they therefore

have regard for other individuals. They hate government every bit as much as the farmers in the Central Valley do, and government restrictions and restraints and those sorts of things, but they're not narrow-minded folks. They just have this sense of independence. And they feel injured by some government policies, particularly policies that are made vicariously by representatives from the more populous parts of the state. It became something of a balancing act, which I described last time when we discussed the logo of the solar powered chainsaw and this picture of redwood trees that went horizontal when the timber industry and timber workers came in and went vertical when environmentalists came in. These weren't serious gestures; we sort of made a joke of it, but it reflected a very serious challenge for me in public office.

HICKE: Yes.

KEENE: Because the district was so polarized in so many ways. But as I got to know the district, I realized that it needed economic attention, and that it wasn't enough to sit back and do grand things. I once attended, illustrative of that, a party at the home of Michael Wornum; it was a campaign fundraiser for him. He was a strong environmentalist and a Democratic assemblyman from Marin County. He introduced me, and asked me to say a few words, and said, with his British wit--he was born in England--he said, [in accent] "And perhaps Senator Keene can explain to us why he wishes to devastate the redwoods." It was . . .

HICKE: [Laughter] A loaded question!

KEENE: A loaded question, and he didn't intend it as a mean question.

HICKE: Oh, he didn't?

KEENE: Well, I was there for him. I was there to help him get elected. I was willing to take a punch on the jaw to help him, and he was playing to his Marin constituents. But it caused enough of a reaction in me that I said, "Well, the reason is clear, Michael. Your house is made of redwood. The deck on which we're standing is made of redwood. And that hot tub over there is a redwood hot tub."

HICKE: [Laughter] Enough said?

KEENE: Yes. But it was at the level of fun and political jousting, not mean-spirited.

HICKE: Well, as we go along, I hope we can continually explore just how it was you managed this balancing act, because I think that's certainly something that a lot of other people would like to know how to do. And it's important for the voters, too. They need to have somebody who can see all sides of the question.

KEENE: Well, we're very much a plural society. We have common interests and competing values as well. I know I'm stating the obvious, but it's a launching point for a thought. A lot of people attribute that pluralism, [Arthur] Schlesinger in his book The Disuniting of America, to responsibility for governmental gridlock and social friction. It seems to me that the real challenge, that the practical challenge for legislative leaders and other public leaders is the reconciliation of those interests in a way that looks to the future, and reconciliation is obviously not always possible. Decisions should still be made. The person making the decisions should be prepared to take the consequences, and the constituents must be made to understand that a person should be rewarded for making tough decisions, and not politically crucified.

That's increasingly difficult in these times, as we do move to a fragmentation and single-interest orientation and political litmus tests and some very destructive practices in the political arena. I think, though, that it's possible to do a great deal more in creatively reconciling those interests and coming up with solutions, if leaders will feel the responsibility for doing so, and not avoid, not step out of the fray and refuse to take political risks. I think the results can turn around the current cynicism, can restore credibility to the policy process. But I was very much in that bear pit trying to figure out how to survive politically; yet we did some very positive things.

We are in the process of restoring the railroad to the North Coast, something that economically had no possibility of survival and environmentally had little possibility, because of the huge storms that wiped out the track year after year. We got people together on that, and they are absolutely determined to save that railroad, both people on the economic side and people on the environmental side, who don't want huge freeways built through the redwoods but would much rather rely on rail transit. So that was the kind of thing that captured the fancy of people, and we set up a railway district, and it's actually doing quite well. Received a lot of unexpected help. That's the kind of thing where you can reconcile interests and do something that is positive and constructive, and it makes people feel good to work with each other and talk to each other.

HICKE: So you actually found an area where there was a common interest?

KEENE: Yes.

HICKE: That was a success, then. Do you see other people who are able to take some of these risks today? Either in state government, or perhaps also nationally?

KEENE: [President William J.] Clinton is still something of a mystery to me, and I think it will take a while to figure him out. But he appears to be doing some of that. He's demonstrated some willingness to take risks. Obviously, this health care problem is a mountain climb. It's Mt. Everest. He's begun the ascent. And if leaders are people who look to the next generation and not to the next election, I think that his role in attempting to provide universal access to health care fits that description. I have serious reservations about him as well, but I just don't think we know yet whether he's going to be one of the great leaders that we all hope will arrive on the scene.

HICKE: And we need.

KEENE: Well, if you think about it, here we are, a nation of a quarter of a billion people, and in the 1770s and 1780s we were a nation of a few million people, not quite a nation, but about to become one. We produced a constellation of luminaries, political luminaries, that are continuing to light up the world with notions of democracy and public involvement in decision-making as an inalienable right. We admire that leadership; we sometimes hold it too sacred. We're reluctant to tamper with anything that they've done, which I believe is a mistake. But it's impossible to imagine that we don't have people in this country who are equally talented intellectually, who are at least as well-read and informed as the Jeffersons and the Madisons and others, and yet they don't seem to be on the scene in places where leadership can be exercised, nor easy to identify.

Obviously, leadership is a quality that's not easy to identify until after the fact. Someone who is a failure after the fact may have been a person who had enormous leadership qualities but took a risk in a situation that didn't pan out. Or someone may be thought of as crazy and too far out of the mainstream to be regarded as a leader in advance of a situation, but later turns out to be a terrific leader.

So where are these people? What happened to them? If in fact they're here, and statistically they've got to be here . . .

[End Tape 5, Side A]

[Begin Tape 5, Side B]

KEENE: . . . what must be happening is that we don't have a system that can identify them, and/or we don't have a system that creates incentives for them or rewards them, or we have a system that is perverse in terms of the creation of an environment in which leaders can thrive and make themselves felt.

That kind of thinking is what led me in the last quarter of my legislative career to turn to questions of institutional reform of government.

HICKE: OK. I'm just making a note so we'll be sure and talk about that. Well, let's go back to 1972, and you told me about election night.

KEENE: Yes.

HICKE: And after that, you went to Sacramento. Tell me how that went.

KEENE: Yes. I went to Sacramento, and commuted to Santa Rosa, which was where our home was. It was about a two-hour drive, almost two hours of driving. Then I would stay over in the middle of the week, and then I would stay over a couple of times during the week, and

pretty soon I was staying over more than I was going home, at least during the week. Well, that might not have been the end of the world in terms of the stability of the family, but the weekends in that district made exorbitant demands. There were endless parades in which each community expected you to be participating, huge drives. It took nine hours to get to Crescent City, for example, from Sacramento.

HICKE: Not like representing Los Angeles, where you just have to go across the street.

KEENE: No. Nine hours of actual driving time. And places in between were fractions of that nine hours, five hours to the Mendocino coast, and six and a half to Eureka, and so forth. I forgot where I was headed with that.

HICKE: It was a question of how you were spending your time, is that what you were talking about?

KEENE: Oh, I was spending more time in Sacramento, and to be totally frank, it was a combination of well-spent time and looking for things to do. Well-spent time in the sense of answering constituent letters very personally, evenings in the office, and then heading down to the local watering hole to sit with other legislators, lobbyists, people on staff and others who were involved in the political process.

HICKE: Was that Frank Fats?

KEENE: Places like that, yes. There were several. Frank Fats, a place called David's, and part of the script was to close down the Torch Club in the wee hours of the morning. The deficiencies and the--deficiencies is the wrong word--the ill effects of that sort of thing are so obvious that I won't go into them. [Laughter]

The beneficial effects are less obvious, and that is that there was a great deal of personal contact with other legislators, with lobbyists, who never felt free to pursue their issues unless a legislator raised those issues first. That was part of the unspoken understanding. And close relationships with staff on a personal level, all of which was very beneficial to the policy-making process. It was also an enormous sacrifice for some people in terms of health, for others in terms of family, and for still others who let their discipline erode to the point that they were no longer effective as legislators. They were there to have a good time. [Interruption]

HICKE: Do you have some anecdotes as we go along?

KEENE: I have a couple that came to mind about that period. One involved a legislator who lived near me in Sacramento and typically picked me up in the morning to go to the Capitol. We were very close. He had apparently been out the night before, was developing somewhat of a reputation for late evenings in watering holes around town. In any case, he picked me up and said, "I have to get my wife at the airport." I said, "OK. Why don't we swing by the airport?" I lived out in the South Natomas area at that time. "Why don't we swing by the airport and get her? It will only take a few minutes." "Fine."

So we get his wife; I get into the back seat of his convertible. When he left the freeway, he came to a sudden stop, and a woman's high-heel shoe slid out from under the seat, right under where his wife was sitting. He was kind of nonplussed and caught off guard, recovered quickly, turned around to me and said [speaking deliberately], "Oh, Lucie"--who was my wife at the time--"must have

dropped one of her shoes here, the ones that she was taking to be repaired." [Laughter]

HICKE: [Laughter] He was fast on his feet.

KEENE: Obviously; I went along with it.

There was another legislator who was arrested for driving with excessive alcohol in his system and a woman other than his wife at his side, and it made the newspapers, which relished those kinds of stories. When his wife confronted him, he said, with all the passion he could muster, "Oh my darling, I become so wild when you're gone that I just can't help myself." [Laughter]

HICKE: [Laughter] I have to ask: do both of these anecdotes have happy endings?

KEENE: Yes. But that's the kind of place that Sacramento was. Being a legislator could be a lot of fun, and it also could be precarious. There were elaborate gourmet feasts that were set up by lobbyists regularly. Some of them were weekly. One known as Moose Milk was probably the most famous. On a certain day of the week, it may have been Wednesdays, I believe, we all went to Moose Milk and ate well, drank well--good wine and all the rest. That was part of the culture at the time. And as I say, this would probably be shocking to most lay people, but it lubricated the process. When people knew people, things were accomplished much more easily. A lot of the frictions and rough edges that can constitute impediments to problem solving were eliminated. So there was a good and a bad. The excessive influence of people who could afford to put on those kinds of events was a real risk to the public interest. And it continues to be in the form of campaign contributions today, without the benefits

of social interaction among legislators. What was lost in that is the close relationships that grew among people who had different views of the world and different positions of interest getting together in reasonably informal settings.

HICKE: Yes, with campaign contributions, you don't get that kind of back-and-forth.

KEENE: The down side, again, was the excessive influence, and also the risk to marriages, to families, of legislators, and the risk to health. Legislators became alcoholics; some did. Others became grossly overweight, which sounds humorous, but in fact overweight to the point where it created risks to their health. Jesse Unruh became known as "Big Daddy." There are others that also began to fit that description.

HICKE: Not to mention probably cholesterol and a few other . . .

KEENE: Yes. And we used to lose a legislator a year to a heart attack.

HICKE: Really? Is that right?

KEENE: Part of that, we think, was eating habits, and lack of exercise probably, but a big part of it was the stress that has been somewhat relieved by rules changes, by changes in the rules that don't create as much pressure as used to be the case.

HICKE: Good. OK, well let's go back and let me ask you, do you remember, say, your first day walking into the Capitol building, or maybe the first week, where your office was and how you met people?

KEENE: I remember a few things. Our class, the people that were elected that year, met as a group, both immediately before and after we were sworn in. There were some people in the group who appeared to have a far better handle on things than the rest of us, who name-

dropped and threw first names around of so-and-so, and you have to do this, and this is the way you get something done. They knew it all. We were a little bit in awe of those folks. I don't know whether it was sheer coincidence or not, but it turned out that the people who thought they knew the most got into the most trouble early, and wound up not being nearly as successful as some of the rest of us.

The assembly was run by a man for whom I have high regard, he's deceased now, Bob Moretti. He had both a strong policy orientation and a sense of power. He was very well liked by most people, but hated by the few who crossed him, and there were some who did. He got into an enormous battle with a black legislator from Berkeley--[Assemblyman] John Miller. And never forgave John Miller for agreeing to serve as acting speaker and then refusing to relinquish the position. Moretti, who was very strong on commitments, believed that Miller had made a commitment to relinquish the position, and then decided to keep it. That act, in Moretti's eyes, labeled Miller an enemy for life.

The assembly was a place where pals hung out. One might say--old is the wrong word--it was the young boys' network, but it was that. If you were on the inside, you did well. If you went along with leadership, you did OK. And if you didn't, you were on the outs, ineffective, not taken care of, in ways in which leadership can take care of people.

HICKE: So how do you get on the inside? Going along with the leadership?

KEENE: Well, Moretti was very adroit at using other members as lieutenants, people that he trusted. Commitment and trust were big things with him. That was his style. There are some very different leadership

styles, but that was his style. So he trusted people like [Assemblymen] Jack [R.] Fenton, [Walter] Wally Karabian, John [L.] Burton, Ken Meade, Joe [A.] Gonsalves, and especially Willie Brown. They were like brothers.

HICKE: You mean he and Willie Brown, or all these?

KEENE: He and Willie. That was the closest relationship in this network.

HICKE: And how did you find your way about? What did you start out to do?

KEENE: I was on the outside of the inner circle, on the edge of it, as a freshperson, freshman. Things were moving, the political environment in the assembly was changing. Moretti had gubernatorial ambitions. He ran for the Democratic nomination for governor in 1974. I hope I'm right on the year. He ran against some well-known names. [George] Moscone was running, and [Joseph] Alioto was running, and it was [Edmund G.] Jerry Brown [Jr.] who eventually captured the Democratic nomination and the governorship. He knew that in 1974, he would have to turn over the leadership and was determined to hand the crown and scepter to Willie Brown.

A group of us had formed our own caucus, and by that I mean we were freshmen who met together. There were five of us who met together and who ultimately held the balance of power in a speakership contest between Willie Brown and [Assemblyman] Leo McCarthy, in which Willie was perceived as the certain winner, because if the speaker, Moretti, couldn't deliver the speakership, who could? It was a certain thing that Willie Brown was going to win. We were all liberals, almost all liberals. [Interruption]

HICKE: We were just talking about this group of five.

KEENE: Yes, the group of five, and it consisted of [Assemblymen] Howard Berman, Bill Lockyer, Walter [M.] Ingalls, who I think was the only nonliberal in the group. . . . Oh my goodness, a black congressman from Los Angeles, Julian Dixon.

HICKE: And you.

KEENE: And myself. Is that five?

HICKE: That's five counting you.

KEENE: We made a commitment to each other that none of us would commit to either side before discussing the issue and deciding as a group. It turned out that two members of the group had been negotiating outside the circle. Howard Berman, who was being coached by [Assemblyman] Henry [A.] Waxman, who was very much a political insider. He negotiated Howard into the position of majority leader with the next speaker.

HICKE: I don't know what you mean.

KEENE: Well, into getting a commitment to have Howard made majority leader by the next speaker, but he could not get that commitment from Willie Brown, because Willie had the inside group and certainly couldn't run the risk of vaulting over the ambitions of all those others by putting a new person in as majority leader. So with all but the smoking gun, it appeared that Henry had negotiated with Leo McCarthy on Howard's behalf, that Howard would become majority leader.

It made sense from a lot of standpoints. Howard came from a safe district. He was from the southern part of the state; McCarthy

was from the north. It seemed a good deal for both Howard and Leo. But it violated a commitment to the group of five.

[End Tape 5, Side B]

[Begin Tape 6, Side A]

KEENE: Part of the origins of the so-called westside machine in Los Angeles, which later included a number of state legislators, was the ability to put someone into a leadership position, high leadership position, in the state legislature. That was Howard. The success of Henry had a large component of luck in it in the Congress. It arose from the fact that the congressional class as a result of redistricting was nationally the largest class in the history of Congress, or one of them. They drew lots, and from among between 100 and 200 new congressmen, Henry was number one. So with remarkable luck and also good strategic thinking, Henry in Congress, Howard as majority leader in the state assembly, with the prospect of becoming speaker.

The other person in the group that had developed independent attachments was Bill Lockyer, who had decided that Willie was going to win--well, I shouldn't draw that motivational conclusion--but who decided to go with Willie Brown, whatever his reasons were, whether it was friendship or political advantage or dislike of McCarthy, or it could have been any one of a number of things. But he went with Willie Brown. So here were two people who had negotiated outside the group.

HICKE: One on each side.

KEENE: One on each side, and the rest of us were naively talking to each other, and one of the people saying, "Well, maybe we should do this,

maybe we should do that," knowing that he had made up his mind, and the other saying, "Maybe we should do this, maybe we should do that," knowing that they had already, but not revealing it to the entire group.

Well, we wound up going with McCarthy. This, even though McCarthy was less liberal than Brown. The thinking (of those of us who were still thinking independently) was that this inner circle of pals would continue to rule the roost, and while they had a liberal inclination, we might not get very much done.

HICKE: If Willie Brown became speaker.

KEENE: If Willie Brown became speaker. That was prescient, is that the word? [Laughter]

HICKE: That sounds like a good one. [Laughter] Quite apt.

KEENE: Yes. So Ingalls and Dixon and I decided that we would go with McCarthy, who had made no promises, no advance commitments to us. We were impressed with his policy orientation, we were impressed with the fact that he seemed to be a reasonable guy who wanted to make things happen. We didn't like some of the people who were on the Brown side. In particular, we didn't like some of the pressures that were being put on us. There were some very direct threats that were made, if we didn't go along. And they were made at a time when they felt they really didn't need us except as insurance, that we weren't going to swing things, but that we were insurance, and that we better come over and wise up, because the new regime was not going to treat its enemies well.

HICKE: You're going to lose your parking place or whatever, your office and all your staff.

KEENE: Your future chairmanship, all of those things. So the three of us were tilting toward McCarthy for those reasons. We would not have to deal with this clique. We didn't like the threats that were being made. Willie Brown and Moretti prevailed on Randolph Collier, who was my senator, and a very powerful institution both in the legislature and in the district, to get me to vote for Willie. He walked in one day very visibly into an assembly committee, and made a motion to me to come here, like I was his handmaiden or something. So I walked out and we talked, and he told me all the reasons why I ought to vote for Willie Brown. It was a form of pressure that I didn't appreciate. I didn't want to run afoul of Collier, but my own thinking was: this is exactly the sort of thing I don't want to have to deal with, and I didn't get elected to be told what to do to this degree.

HICKE: What was Collier's stake in all this?

KEENE: They were poles apart in many ways. Collier was very conservative, Willie liberal; Collier's origins were in the South, and Willie, being black, they were people that you wouldn't see as a team. But I think it demonstrated to some extent Willie Brown's ability to work with opposites, to appear before the Cattlemen's Association in a ten-gallon hat and tell them how he admires the cattle industry and is really an urban cowboy. So with Collier, he had worked out an understanding or some deals, and Willie prevailed on him to get my vote, thinking that might also tilt the vote of the others.

So I told him, I said, "I'm committed to this group, and we're going to make a decision independently. I'll certainly give great weight and importance to what you tell me, Randy, but I can't

commit to him right now," something Collier never quite forgave me for.

So there were the five of us, two of whom were committed to opposite sides. If I'm right about that, Howard wanted the five to go with McCarthy, because he needed the five votes to get over the top, or remain in competition. Lockyer would have wanted the group to go with McCarthy, with one exception: himself.

HICKE: Oh, really?

KEENE: Because he would have been the savior, the hero. Willie didn't need all of the votes.

HICKE: Oh, that's an interesting twist, isn't it?

KEENE: Yes. We wound up going with McCarthy. Lockyer was ejected from the group. [Laughter]

HICKE: I get this picture of him being tossed out the door.

KEENE: With a great deal of moralizing by the rest of us, unbelievably led by Berman. [Laughter]

HICKE: [Laughter] Hindsight makes for an interesting story.

KEENE: It was a grand adventure, but that's how the speakership was determined in 1974, and Leo McCarthy became speaker. Shortly thereafter, it was announced that Howard Berman was majority leader. I said, "Gee, Leo, how did you reach that conclusion so quickly; you told us you weren't making any commitments?" He said, "I think it's the right job for him, I had him in mind," and so forth. Henry Waxman, who was chair of the assembly health committee [Committee on Health], knowing that I was very disenchanted by some of the shenanigans, was leaving to go to Congress, and agreed

to resign as chair of the assembly health committee so that I could take it over in my freshman term. And I did.

HICKE: Were you on the committee to start with?

KEENE: No.

HICKE: OK. Just came in as chairman?

KEENE: Came in as chairman for political reasons, knew as little about health care as you can imagine, and had to become a quick study on the economics of health care, medical malpractice, problems of perinatal care, all kinds of things. But it was a vast field and a great challenge for me, and it allowed me to sink my teeth into something without having to pay my dues in the subject matter field. In other words, I was launched into it as chairman, and didn't have any relationships. The doctors were saying, "Who is this guy? We don't know anything about him." The hospitals, "Who is this guy? What's he going to do?" So it was a very fortunate situation for me, and I don't know if--maybe things will change with term limits--I don't know if anyone has ever become a committee chairman as a freshman. It wasn't my skill in the field that gave me the chairmanship, it was a set of political circumstances, and I thank Leo McCarthy for having had sufficient confidence that I could do a good job in the area, and Henry Waxman for his role in putting me there at so early a stage.

It was a great committee.

HICKE: Are we done with the speakership now?

KEENE: Well, there was a last Democratic caucus in the assembly in which Willie made a brilliantly impassioned speech to all the members, and concluded by saying, "Willie Brown is not finished. You haven't heard the last of me. I can take this, and I'll be back." There was

also a lot of bitterness, and a sort of growing resistance among Willie Brown Democrats--Moretti-Brown Democrats, let me call them that--to accepting the outcome and cooperating with the new speaker. It was like an underground and sometimes overground resistance.

Ken Meade, a brash young legislator at the time, although he was in his second term and very much a part of the inner circle, took it very hard, and treated the new speaker with enormous disrespect. Stopped wearing a coat and a tie, appeared on the floor in a moth-eaten sweater when he appeared on the floor. Got up regularly to challenge rulings by the speaker or whoever was presiding on behalf of the speaker at the time. Finally got into a physical confrontation with [Assemblyman Louis] Lou Papan, who was one of McCarthy's chief and early supporters, and wound up in the hospital. Meade allegedly threw hot coffee at Papan in an office confrontation, and Papan came across the desk and knocked him cold.

Meade was my seatmate at the time. We sat together in the chamber. Moretti had designated him to teach me the ropes, which also meant compliance with the dictates of leadership.

HICKE: Did you have to wear a moth-eaten sweater? [Laughter]

KEENE: Well, no. By that time, Moretti was essentially gone. And Meade was carrying out his battle against the new speaker, McCarthy. Meade had decided that it was not worth staying around any more, that he had lost his political opportunities and he eventually left the legislature. Now remember, he was the guy who got the money, the Democratic support, the year I lost by a few votes.

HICKE: Somebody told me that they thought that the loss Willie Brown suffered at this point really gave him the sense that he needed to

keep all the friends that he could, and that in fact maybe--I don't know if I have this right, but something to the effect that although it looks like he tries to dominate people, in fact he really tries to enlist them. Does that make any sense to you?

KEENE: I can't say either that it does or it doesn't. I do think he doesn't go out of his way to make enemies. Which, given the magnitude of his ego, is rather remarkable. And there are exceptions to that, where the ego has overridden that possible resistance to creating enmity. I'm sorry to give you a mixed answer, but I don't . . .

HICKE: No, that's what I wanted to know. Sounds like it may have had some effect, but didn't make him very subservient.

KEENE: The biggest effect that it may have had was a decision on his part to never lose again, to never allow himself to be vulnerable, to always count the votes and allow some room for double-cross, which leads to an endless quest for power. You can never be too secure, you can never have enough power, you can never have enough strength to be sure that somebody won't turn on you or events won't cripple you. Leaders who continually plow back their political capital into their power base don't do very much else.

HICKE: So a little bit of insecurity here influences his methods.

KEENE: I think that when a speaker told him that he, Willie, was going to be the next speaker; that the speakership would be handed down; that it was all packaged; and when it didn't happen because there wasn't enough security in the amount of power that the speaker had to guarantee the outcome, the message seemed clear: you can never have too much power. You needed enough power to maintain yourself and survive and maybe do more. But the "doing more" is

the part that he never got, and that's the issue of Willie's legacy. The investment of political capital may weaken your power base. However, you must take risks in order to achieve substantive change. Making things better than they are is not without political cost.

HICKE: That goes back to what you were saying at the very first, risk-taking.

KEENE: Yes. Willie's not a risk-taker when it comes to his own political survival.

This gubernatorial election is fascinating because [Treasurer] Kathleen Brown is now forced to campaign on the crime issue-- [Governor Pete] Wilson's issue--instead of the budget issue and Wilson's failure to adequately support education. She's claiming that Wilson is letting parole violators go free and not putting them back in prison. She can't talk about the budget because the budget has presumably been solved even though in reality it hasn't. The insiders know that it's been papered over, that it's in tatters, and it's a permanent kind of problem until the will is there to do something about it institutionally, which is going to cost a lot of political capital. But an apparent, albeit temporary, solution has really undercut Kathleen Brown. That's Willie's doing.

If Willie had gone the other way and held up the budget, and not given in to Pete Wilson on the budget issues and essentially the Republican party, he would have placed at risk not only Wilson but all of his Democrats who are in contestable seats. The public, based on the '92 result, grows angry at the governor and at the party that presumably controls the legislature, even though they don't have actual budget control because of the two-thirds vote. So he decided not to risk those seats, because if you start losing seats, you don't

stay on as speaker. And you don't have to lose your majority, you just have to be on the way to losing your majority, and people spring up who start to question your leadership abilities and your capacity for retaining the majority. That was a risk he was not willing to take.

HICKE: That's a good illustration of what you were saying.

KEENE: He tried to take care of his major constituencies and as many of the liberal Democrats in his caucus as possible, but may have turned the governorship over to the Republicans. That's why party leadership is too important to turn over to entrepreneurial legislators with conflicting agendas.

HICKE: Well, I know we want to get into budget issues in more detail, but I just heard this morning that the Ninth Circuit Court has now held that welfare cuts are illegal and cut off federal funds. . . . You heard that too?

KEENE: Yes. I don't know what the numbers are, I don't know what that means in terms of additional problems. It appeared to not be a retroactive decision requiring the state to pay back, but even so, even if it's a prospective decision only, it's going to increase what the legislative analyst calls the structural deficiency.

HICKE: Yes, the federal funds have been cut off, so that unbalances this "balanced" budget.

KEENE: Yes.

HICKE: OK. Well, we'll get into that when we get maybe closer to the budget debates. And you didn't have that problem in the early seventies, I guess, so much?

KEENE: We didn't. In fact, we had what Unruh was calling an "obscene surplus." Maybe I'm getting ahead of myself.

HICKE: No, that's OK. As long as we're on this, let's do it.

KEENE: What Unruh was calling an obscene surplus Jerry Brown hoped would carry him into the White House. The surplus was regarded by Brown as a positive feature, because California was flush and New York City was going broke. And Brown believed the last thing legislators would want is having to vote for a tax increase. The surplus, he opined, shielded them from that.

HICKE: Those were the good old days.

KEENE: The good old days. Only politically, they were not so good. Unruh sensed that, and from his power base as treasurer was beginning to play to a different constituency, and that constituency eventually became very extreme and became the [Howard] Jarvis-[Paul] Gann Proposition 13 people.

HICKE: I see. So that's why he called it obscene.

KEENE: Unruh began describing it as an obscene surplus. You had people whose property taxes were increasing as the valuation of their property went up, and could ill afford to pay them. There was a real core of a problem there that later became a massive political problem, because it was allowed to degenerate, and because it became very, very hard to solve for other reasons--primarily the Serrano decision on school finance.¹

HICKE: That's interesting, and Jerry Brown saw this as a big plus for him?

1. Serrano v. Priest, 253 Cal. Rptr. 1 (1971).

KEENE: Yes. Jerry, on the other hand, began running for president very early. Some of his advisors were thinking to themselves, and thinking out loud, "Look at New York City. They're going broke. But in California, we are blessed with a surplus of funds." He opposed Proposition 13 when it was put before the voters and said, "This is terrible; it is going to deny the public enormous revenues and do some very, very bad things." He opposed it, and the day after it passed went on television with his arm around Howard Jarvis. "This is the wave of the future," he declared. "Actually, my philosophy has been consistent with it. I've talked about lowered expectations and growth limits, and government can't solve every problem."

HICKE: Small is beautiful.

KEENE: Small is beautiful. But early on, the surplus that politically generated Proposition 13 was viewed as a very positive feature, because it underscored California's fiscal responsibility to have a surplus at a time when the Big Apple was going broke.

[End Tape 6, Side A]

[Begin Tape 6, Side B]

HICKE: OK, let's go back to the health committee, and tell me some of the major things that were happening there, and how they evolved, what your concerns were.

KEENE: One of the people who contacted me very early was a Republican who could have been named chair of the health committee had the Moretti-Brown people been successful. His name was [Assemblyman] Gordon Duffy. Gordon was, as a legislator, a moderate Republican who developed enormous expertise in the health field, and did a

number of very good things, including the creation of the Nursing Practice Act,¹ which provided for nurse practitioners.

He saw that my selection as chairman of the health committee was a political selection, and presumed that I was selected to deliver special interest support to the new leadership, and warned me that the Republicans would be on my back, that he would be publicly outspoken if I developed close relationships with the special interests and tapped them for campaign contributions, sold out consumers and others in the health care area in order to secure contributions from these powerful special interests.

HICKE: Such as the California Medical Association?

KEENE: California Medical Association, California Hospital Association, pharmaceutical manufacturers. I had no intention of doing what he warned against, because I had not been part of that kind of operation. I had not developed the cynicism or practical political role that was obviously being played by some committee chairs, ensuring that the special interests were never roughed up excessively and were taken care of, that the status quo was not messed with, the status quo that made those special interests powerful. And it's not that Duffy was antagonistic to them, but he had a strong sense of health care policy.

There was another Republican on the committee who was an institution in the legislature, and whose main interest was in mental health. His name was [Assemblyman] Frank Lanterman. He, like Duffy, was a member of the committee. And I sat down early with

1. Original act passed in 1939. A.B. 620, Reg. Sess. 1939, Cal. Stat., ch. 807.

him to encourage him to develop a positive agenda for mental health, which largely involved implementation of the Lanterman-Petris-Short Act,¹ LPS, that provided for community placement of people with community-level facilities to maintain them. It became a huge struggle in which Lanterman had wrestled, figuratively speaking, [Governor] Ronald Reagan to the ground. Reagan wanted to close all the state hospitals, and Lanterman beat him on that. You need some. What Lanterman never got, and it was the strategic flaw in LPS, was the Republican support for funds sufficient to provide the community facilities, which is one of the reasons that you see people walking the streets today who are cursing at phone booths and fire hydrants and not receiving any attention; the promised facilities are not there to treat them. In California, it was easy to prevent the funding, because you have the two-thirds budget vote. Whenever a squeeze came, there was no impetus to fund community mental health. So that was Frank's agenda.

Then, among the Democrats, we truly had the best and the brightest. We had [Assemblyman] Gary Hart; we had [Assemblypersons] Art Torres, Walter Ingalls, Leona [H.] Egeland, John Garamendi, and Herschel Rosenthal. I haven't mentioned all of the members of the committee, but I've mentioned most of them, because there were a couple that did not play major roles or, in my judgment, constructive roles on the committee, two of whom were very involved with the California Medical Association to a point that they were not exercising independent judgment.

1. S.B. 677, 1967 Reg. Sess., Cal. Stat., ch. 1667.

HICKE: How would you know that?

KEENE: Voting patterns, arguments to justify their votes, disappearing during key votes, contribution patterns, observable relationships with certain lobbyists.

We did wondrous things. Over a period of a couple of years, we produced good legislation more prolifically than any committee in recent times. We shell-shocked the senate. They must have felt like they were under mortar fire. We put out legislation right and left that was very consumer-oriented, and the only time I found myself, although it was a definitive period, squarely on the side of the California Medical Association was on medical malpractice, which requires some separate consideration.

HICKE: Yes, I want to get into that.

KEENE: But we passed the right to die legislation--very controversial. It was the first of its kind in the world.

HICKE: Was that A.B. 3060 [1976]¹

KEENE: Yes, the Natural Death Act. The opposition was enormous. It foreshadowed the abortion debate. It was an historic battle. And we put out perinatal care programs; we put out Indian health programs; we put out, later, durable power of attorney. One of the biggest and most important was generic drug substitution, where pharmacists were permitted to fill prescriptions on a much cheaper generic basis than the brand-name drugs that were prescribed.

[Professor William K.] Sandy Muir, a political scientist at [University of California] Berkeley, was present in the legislature

1. A.B. 3060, 1975-1976 Reg. Sess., Cal. Stat., ch. 1439 (1976).

during that period, which was basically '75, '76, and wrote a book called Legislature: School for Politics. He mentioned a number of pieces of legislation that he followed, and most of those bills--am I correct, a majority?--of those bills came out of the health committee. Almost all of them came out of the assembly during that period. Whether it was intuition on his part, or fortuitous, he took a snapshot of what was voted the best legislature of the country, and it's like a permanent benchmark so that when people who are currently serving in the legislature and people who are critical of the legislature wonder if the legislature ever worked, this is evidence that it did. It's also unfortunate testimony to the current condition of the legislature, with its gridlock and loss of credibility.

HICKE: Could you pick out which of these that you think are the most significant?

KEENE: Medical malpractice and the right to die. The latter more as an issue than the bill itself. Durable power of attorney, which I carried later, was better than the Natural Death Act and more useful than the Natural Death Act, but the barriers had been broken down by then. It was the Natural Death Act, however, that broke down the barriers. I've got some old newspaper clippings that I'll drag out just to show you the magnitude of the issues.

Let me see if I can pick up a couple of things.

HICKE: That would be great. [Interruption] We're looking here at the Los Angeles Times, and it says, "Brown signs right to die bill," and the first paragraph says, "Governor Brown, waiting until minutes before the midnight constitutional deadline for acting on legislative bills, signed into law landmark legislation," et cetera. Well, "permitting

terminally ill patients to order an end to artificial life-sustaining efforts." This is October 1, 1976.

KEENE: Here's Abby Van Buren. [Laughter]

HICKE: Yes.

KEENE: Abigail Van Buren, leaping to my defense. I guess that's why I saved it.

HICKE: Well, this one deals with probably what was a misunderstanding about what the bill would do, which is not give other people the right to decide, but the patient him or herself the right. So that must have been one of the problems?

KEENE: Yes. The underlying orientation was that people who are terminally ill are not rendered incapacitated by virtue of that in terms of their future, which may be very much a medical future, long or short, that they retain the right as citizens to determine. The other side took the position that people should not be permitted to commit suicide, that people would be influenced, and that we're entering the slippery slope of euthanasia, and so forth. It became a national issue.

I appeared on "Good Morning America" debating the head of the pro-life organization in the United States, who was a physician from Arizona. It was quite the thing. I made all the morning shows, and it became a very big issue.

HICKE: No other state had any such legislation?

KEENE: No. I was on a panel with a fellow named Paul Armstrong, who was the attorney for Karen Ann Quinlan, whose condition spotlighted the issue. I was denounced in the Vatican newspaper. It received attention from the Philippines to Europe. It was quite a commotion at the time.

HICKE: Headlines from everywhere.

KEENE: The Chronicle was continuing to cover it, and the Sacramento Bee.

HICKE: "Natural death bill signed by Brown, others vetoed." This is the Sacramento Bee. Let me ask you what motivated you to propose this.

KEENE: There was the Karen Ann Quinlan situation, and I guess I mentioned to you that I appeared on a panel with her attorney at Notre Dame University. The position of the Catholic church was very interesting, and I'll go into some of that in just a moment. One of the people who helped me draft the bill was a bishop in Santa Rosa, and there was a lot of sympathy within the Catholic movement, including a papal nuncio that goes back to Pope Pius XIII that says extraordinary medical treatment isn't always required to continue life, even where it will prolong life.

HICKE: What motivated you at the outset?

KEENE: In addition to the Karen Ann Quinlan tragedy, there was a personal situation. We had neighbors in Santa Rosa, a young couple. The wife had a history of cancer in the family. She slipped on a stool or ladder, developed a pain in her back. A tumor was found, and because of the family history, she became concerned and told her husband--he was a very good friend of mine--"I don't know where this is going to lead, but I want you to promise me one thing, and that's that you're not going to let them hook me up to the machines if I reach a point where I'm terminal and I can only live with the machines, and the machines serve only the purpose of prolonging life." That kind of conversation. It was a very solemn commitment that he made in response.

Later, when it became evident that she had cancer and it had metastasized, he went to visit her at a tertiary care hospital. They were doing all that they could, providing the best medical care possible, to see if there was anything that could be done for her. My friend went to see her, walked into the room, and her arms were tied down to the sides of the bed. She was loaded down with tubes for pain medication, for feeding, and for antibiotics. She was on a respirator; she barely had the strength to talk; and he came close to her to talk to her. She looked up at him and said, in colorful terms I'm told, "You promised me that this would never happen." He tried to get her unhooked. They said, "We can't do that, she'll die. There are liability problems. We need a court order, we need an OK, we need this, we need that. We have to check with all the relatives, not just you."

So what occurred to me is that there's something wrong here, that one of the fundamental principles of medical care is that the patient gets to decide whether to accept medical treatment or not, whether to refuse medical treatment. Here is a person who is in the final stages of life, the most precious piece of life left, and unable to make decisions about it. Everybody else can make those decisions-- hospital administrators and doctors and nurses and clergymen and relatives, but we never get to hear from the person, who may not want any part of what's going on. It's easy for us to say in the abstract, "Well, this is going to create tremendous mischief in society if a policy is developed that allows people to have their plugs pulled." But it's not so easy when you're in that situation, and when your last days are in potentially intractable pain.

Keene: So that was the basis for it. That was the basis for the introduction of the legislation. It was a very tough road, as you can see. We didn't get too much operationally accomplished, because it was restricted to certain kinds of individuals who were in a state of physical decline, cancer-type cases. It didn't apply to the people who were vegetables, which my later durable power of attorney did. It let physicians, in a sense, off the hook, because unless they concluded that the person was going to die within a relatively short time and that the only purpose of the machinery was to prolong life, unless they decided that, they didn't have to pull the plug when ordered to do so. Now, presumably, doctors will obey the law, but there was no enforcement of that so a doctor could probably get out of it if he or she wanted to.

So it was limited in certain ways, and operationally not all that effective. But the underlying principle was of such enormity that it catalyzed similar legislation throughout the country. Because of its operational limitations, people began looking at some other possible solution that made the same assumptions about the direction of health care for terminally ill people, that either they can through the Natural Death Act say what they don't want, have a veto power over continued medical treatment even if it results in death, but also can designate someone whom they trust to make those kinds of decisions should they become incapacitated and unable to do so, and that second was much more operationally effective. The political resistance was one-tenth.

HICKE: Yes, because the debate had already taken place.

KEENE: Yes. And the opponents to the Natural Death Act had overextended themselves. They'd said, "This is going to reopen Hitler's gas chambers, this is going to--" really extreme kinds of statements. "We're going to see the murdering of the elderly." None of these things happened. Things went very smoothly. Directives were made available at hospitals and doctors' offices and in other ways (directives were the forms that you signed that said, "I don't want certain kinds of medical care should I become terminally ill.").

HICKE: Who was against it? Other than the Catholic church.

KEENE: The Catholic hospitals. The anti-abortion people, the California Pro-Life Council. Some thoughtful commentators who were concerned about the slippery slope issue, that this was the beginning of legal suicide. And well, you look at it now, and here is Dr. [Jack] Kevorkian, who is pushing for assisted suicide, but that's probably the frontier of the issue. That's what people ought to be discussing. Because people in nursing homes, for example, who don't want to continue with dialysis, by way of example, can't terminate their lives. They don't have the strength to do it, and an assisted suicide, assistance by a physician, would probably be OK in those cases. But then people say, "Yeah, but what about other cases? What about the individual who's depressed? What about the individuals who feel they're a burden on the family? What about the individual who is put under enormous pressure when in a weakened condition? Are you saying that assisted suicide is OK there?" Well, these are ethical questions that are very tough.

But we moved the frontier to an area in which those are the issues being discussed, not whether a person has the right to make decisions about the character of his or her final days.

[End Tape 6, Side B]

[Begin Tape 7, Side A]

HICKE: It strikes me that the slippery slope theory is kind of like that foot-in-the-door theory, and people don't realize that you're facing one issue at a time, that just because you cross one doorstep doesn't mean you're going to open the floodgates to everything else.

KEENE: Yes. "If we withdraw from Vietnam, Southeast Asia is lost; if Southeast Asia is lost, Asia is lost." [Laughter]

HICKE: Yes. So was there a debate in the legislature itself over this?

KEENE: Oh, yes, very extensive debate, and some very personal discussions. There was an extensive debate within the legislature. It's the kind of issue that is very seriously debated. Part of the motivation is that people feel very strongly about the issue.

HICKE: Yes, it's emotional.

KEENE: It's emotional, and they've had people that have been in that situation. And partly because the political spotlight is on that kind of issue, and it's an opportunity for people to get up and talk and tell why they're for or against something. So it was a heavily debated issue, and I had a lot of personal meetings with a lot of legislators who were on the fence on the issue. David Roberti, the senate president, was opposed to the legislation. But I'm grateful for the fact that he accorded me fairness in debating the issue and felt that I was pushing it as a matter of sincere interest, and that it was a

legitimate issue, and I tried to work out the problems. As I say, there were a lot of prominent folks within the Catholic church who supported my position, some with concerns, but a number who supported it.

One very active administrator of a Catholic hospital, who had a very open mind on the issue, came out deciding that she would be supportive, and I think she had a lot of influence. The bishop in Santa Rosa, Mark Hurley, took a risk, because I was denounced by a lot of the more conservative church, including the archbishop in New York. I debated a conservative rabbi in southern California on the issue, who was very much opposed to it, and had visions of another Holocaust. I did the grand rounds at University of California San Francisco, at the medical school there, and spoke to the residents and medical students and faculty about it.

It was an exciting experience. It was a very heady experience. It also made a permanent change in the way people think about the problem. If not that, it forced them to think about the problem. It virtually created a new discipline called bioethics, which is a term that we're much more familiar with now. When we look at recombinant DNA, they talk about the bioethical implications of certain procedures. So I think that was a valuable thing, and it's something I feel very good about when I get depressed about the condition of the legislative process. I hark back to some of these things and say, "Well, there was a difference that was made there." It makes me feel better about having invested most of my productive life in this process. It was not just a game of politics and ego.

HICKE: Would you say that most legislators' stand on the issue was based on their personal preferences, or what they thought their constituency wanted?

KEENE: I think because it would have been very difficult to know what your constituency thought on an issue of this kind, most of them felt free to vote their opinions and judgment on the issue. I don't believe that there was any partisanship involved in it. The leader of the assembly, Leo McCarthy, a Democrat, Catholic. . . . It was a fair and remarkable expression of public decision-making, the kind that we ought to try to restore.

HICKE: Was it a close vote?

KEENE: I believe it was, but I'd have to check. [Reading] "Clearly the most emotional of the more than 6,000 issues that come before the California Legislature in a session."

In addition to a remarkable committee, the assembly health committee, I had a remarkable staff to go along with it, who helped me write articles that were published in the New York Academy of Sciences journal, who helped me prepare for the University of California School of Medicine, who responded to the committee analyses of the measure and the questions that were asked. They all had different skills. Steve Lipton, a young lawyer, had an incredible range and depth of scholarship.

On medical malpractice, there was a young intern, Denise Ferguson, a woman who had a photographic memory.

HICKE: Really?

KEENE: Yes. She just dazzled the various committees with precise pieces of information. Some senator would say something, and she would

gently correct them. [Laughter] She'd be able to cite the section. So here was a young intern who was in a dialogue with some senior legislators. And Lipton, whose scholarship was extraordinary. And then the leader of the staff, Ken Wagstaffe, who later headed the medical board. They were all very, very good, and I was very, very lucky. Additionally, my district concerns were well attended to by a smart and competent young woman who moved to Sacramento from [Washington] D.C. Her name is [Antoinette] Nettie Sabelhaus. Her political acumen freed me to do long-range policy.

HICKE: Well, how about the medical malpractice act? That was A.B. 1XX,¹ called Medical Injury Compensation Reform Act (MICRA).

KEENE: A.B. 1XX. The California Trial Lawyers Association called it One Double-Cross. [Laughter]

HICKE: [Laughter] Oh, dear.

KEENE: The politics of that are more fascinating than the merits. On the right to die, I think it's more the merits of the issue. On medical malpractice, it's probably the reverse. But we ought to begin with the merits.

HICKE: And also how you got started into this.

KEENE: Yes. I chaired the assembly health committee. There was a breakdown in the delivery of health care in California. Like property taxes later, medical malpractice insurance rates skyrocketed. Physicians were leaving the state. They were leaving high-risk practices. They were practicing without insurance. They were refusing to perform certain kinds of procedures. Some essentially

1. A.B. 1XX, 1975 2d. Ex. Sess., Cal. Stat., ch. 1.

went on strike and refused to perform at least elective procedures, and took themselves out of commission entirely in some areas, particularly in southern California. The rates were by far the highest in the country, justification for which is still in dispute by the trial lawyers. They first took the position that the problem is not in judgments and awards and settlements against physicians, the problem is that there's too much malpractice in medicine. They weren't succeeding all that well in turning doctors into villains. Especially when some of the most prominent suits were among some of the best doctors, who headed departments in teaching hospitals and were nationally renowned in their fields.

The next strategy was to grab hold of the insurance companies and to say that the reason for the rate increases has nothing to do with the practice of medicine, or the practice of law, but has to do with the fact that the insurance companies invested heavily in the stock market and lost a lot of money, and that that's what precipitated the crisis.

HICKE: And this was because the lawyers were under fire for these huge malpractice suits, is that correct?

KEENE: Yes.

HICKE: This was their best defense: a good offense?

KEENE: Yes. And they were confident that they controlled the issue in the legislature, and that no bill of this type could pass. So they were not willing to compromise very much. Unlike the original Natural Death Act, the medical malpractice bill, once it passed judicial muster, was operationally very strong and very effective. The trial lawyers were convinced that if for some reason unimaginable to them at the time

they couldn't control the issue in the legislature, they still could win in the courts. For ten years, the statute was not implemented, at least not directly. It influenced settlements, but it was not directly implemented for ten years, until the supreme court approved it.

HICKE: Because it was being litigated?

KEENE: It was being litigated. So during that period, the lawyers were mad at me because of the act, and what it purported to do, and the doctors were mad at me because they didn't get instant relief.

[Laughter]

HICKE: [Laughter] I trust you had a dog or a cat that still loved you.

KEENE: It was an interesting situation.

HICKE: How about the insurance companies? Where were they on that?

KEENE: They generally approved of it, because it modified the tort system. It was one of the first substantial statutory modifications of the tort system in several hundred years. It regulated attorneys' fees and limited the amount of money that could be received for pain and suffering--things which had never been done before--and made a series of other changes. The ability of a person to collect an amount already collected from another insurance company--called the collateral source rule--was eliminated as double recovery. At least juries could regard prior reimbursement as such.

It modified the statute of limitations. It provided for the periodic payments of awards. All of these things were horrendous to the trial bar, as you might imagine. The issue is still heavily debated, whether the limitation on pain and suffering was necessary and whether it is a good idea.

The trial lawyers arrived at a truce with the doctors for five years after MICRA was rendered effectual by the supreme court: The trial lawyers agreed not to try to repeal MICRA if the caps on attorneys' fees were allowed to be liberalized. That says something cynical about the politics of the situation, because the trial lawyers could have negotiated a change in the cap on pain and suffering on behalf of the clients who they say are severely hurt by the enactment of this law.

HICKE: But instead . . .

KEENE: Instead, they negotiated something for themselves. So that's why I say the politics of it is more interesting than to some extent the merits. The merits, reasonable people on both sides could argue about. From a policy standpoint, it didn't do patients any good to not have access to medical care in inner cities and rural areas. It didn't help for babies to be delivered by people of limited medical education and for high-risk pregnancies to be avoided altogether. It didn't help one's legitimately injured client to have had a doctor who had no insurance. People were actually dying, one of them in my district, and the media came after me originally and said, "How can you justify this kind of behavior?"

What they were talking about, and I remember it was covered by channel 7 in San Francisco, was a situation in Lake County. It involved a high-risk pregnancy of a woman who lived at the far end of Clear Lake. Something started happening as she was about to go into labor, and she went to the local hospital. They wouldn't take her. The ambulance went to another hospital along the lake; they wouldn't take her. The ambulance went to Ukiah; they wouldn't take

her. They finally got her to a hospital in Santa Rosa, and the baby had strangled on the umbilical cord. "How can you justify this kind of behavior by hospitals and all the rest, isn't this terrible?" And I said, "It is, but you have to understand that this is happening in many parts of the state of California because hospitals don't have adequate liability insurance, and a case of this type could put them out of business. So it's OK for us to say yes, there's a moral duty to deliver care, if you've taken the Hippocratic Oath or you're a hospital, but the reality is that the risks are so great that one judgment against them and it's over."

That was somewhat typical of the ongoing events and the reasons for taking pretty drastic measures in holding down the cost of litigation. Today, medical malpractice rates in California are about a third of what they are in comparable states.

HICKE: Thanks to you.

KEENE: Thanks to MICRA. If a trial lawyer representing that organization were here, he would say, "Yes, but what about these individuals whose main loss is that they're in a state of pain and suffering for the rest of their lives? They're limited to \$250,000. How do you justify that?"

There are interesting political aspects to that, because part of the answer is that the trial bar could have negotiated a higher cap on pain and suffering when the bill was going through the legislature, but they reached a point where they figured if they improved it, it would enhance its chances of passage, and if they didn't improve it and it passed, that they'd have a better shot at it in the supreme court, if it were more limited and not more liberal. So in instances

where I've debated trial lawyers and they say, "How could you do this? How do you justify this as a matter of policy?" I say, "Well, first off, your organization didn't want to negotiate any more liberal cap when it was in the legislative process, and you had some very strategic reasons for not wanting to. And second, you could have done it in 1988, when you instead negotiated an increase in attorneys' fees." That's why I say the politics is more interesting than the policy.

If you deny access to people in high-risk situations, if you limit the kind of care that's available, and if you have a lot of physicians running around who don't have insurance and people can't be compensated beyond a very limited amount for that reason, how is that good? That's the question that I put to them: how is that good? How is an interruption in services, the loss of medical specialists, the fact that physicians are judgment-proof, how was that a good situation that helped people? It didn't. Well, what we've done here arguably causes some problems for a few people, and I don't like that any more than they do. But there were trade-offs. In order to stabilize the legal situation for physicians, we had to do that. My wife's OB/GYN, who delivered our baby, said he was about to leave California, until MICRA passed. He moved to California from Massachusetts, and he was going to go back to Massachusetts, and he said, "I almost left, and then MICRA passed, and I decided to stay."

HICKE: You've stemmed the outflow of doctors!

KEENE: [Laughter] Yes, probably.

HICKE: How did the legislature line up on this, and the special interests behind them?

KEENE: The John Miller that I mentioned--who was Moretti's least favorite--had supported McCarthy in the speakership battle and became chairman of the assembly judiciary committee [Committee on Judiciary]. One of the things most offensive to Willie Brown in that speakership race was that the African Americans in the legislature didn't go with Brown, they went with McCarthy. Bill Greene, John Miller, and Julian Dixon. Willie found that very difficult to deal with, as you can imagine.

John Miller was very close--this is a generous use of the language--to the California Trial Lawyers Association and was determined to kill the measure in his committee. Speaker McCarthy was determined to get the bill back to John's committee, and had committed to Miller that he would. He was also committed to giving the bill a fair hearing. The bill passed out of the assembly in a very mild form.

It went into the senate, and by that time, the public was in a state of foment. The public demand that something be done was enormous. All of that pressure was felt when the bill hit the senate. Instead of being referred to the judiciary committee, the Rules Committee referred it to the Insurance and Financial Institutions Committee, which was chaired by Senator Peter Behr, who felt that something had to be done about medical malpractice. Peter was a lawyer and a very good one. The bill was beefed up and put back into its original form plus some. Public support was so great that it passed out of the senate with only two dissenting votes. I believe I'm

correct in this, in the fact that there were only two. The two dissenting votes were George Moscone and George Deukmejian.

[Laughter]

HICKE: Do you have some explanation for that?

KEENE: Both lawyers, and both sympathetic to trial lawyer causes.

[End Tape 7, Side A]

[Begin Tape 7, Side B]

KEENE: The trial lawyers are very influential in the Democratic party, and Moscone was senate majority leader. Deukmejian had aspirations to become attorney general, and the trial lawyers would obviously have a major role in that. At least he didn't want them totally in opposition to him. So the bill passed the senate overwhelmingly, went back to the assembly, and the temperature had increased by that time. Here is McCarthy in a hell of a pickle, because he had a commitment, a solemn commitment, and your word is your bond in the legislature. It's a kind of currency, and if you devalue that currency, you can't cut deals, you can't negotiate solutions. For a speaker to go back on his word is unimaginable. He wouldn't survive if it became known that there were a specific and provable lie.

The politics were all in the other direction. The public and all of these legislators at risk in the assembly, from Garamendi in the north to [Bill] McVittie in the south--McVittie eventually became a judge--all wanted to vote for MICRA. The Republicans were all pretty much supportive of MICRA. But the most powerful piece on the board, the speaker, was trying to prevent it from happening. In an historic moment, which was a source of confusion for me, and I'll

explain why in a minute, the speaker could not effectuate his promised re-referral to the assembly judiciary committee, and the house, including a majority of Democrats, voted against him on the re-referral motion. It must have happened at some other time, but I don't know when something like that happened ever before, where a speaker, a powerful speaker, takes a position in one direction, and the house membership, including his own party, votes in the other direction.

HICKE: Did he just totally lose control?

KEENE: Well, he did. He came to me before that, and here I am, an early second-term legislator who was just made chair of the assembly health committee. I've got the most prominent issue around. It's throughout California. He sits down and he says, "I have made a commitment to get this bill back to the judiciary committee, and you've got to help me do it." And I'm saying, "Leo, they're going to kill the bill in the assembly judiciary committee. Miller has this targeted for death. That committee is made up of trial lawyers, and it will die there."

He said, "I'll see that it won't die. We'll make some changes in it, make it look more like the bill that left this house. But we won't let it die." I said, "You're asking me to get up on the floor and oppose my own bill, the passage of which in my judgment is inevitable; the votes are not only there, but they're there so strong that this is going to go, whatever happens." He says, "They won't reject you if you ask for it."

Well, I got up and I said, "In accordance with the wishes of the leadership, I am requesting that this bill be re-referred to the

assembly judiciary committee for additional consideration because it reflects the senate far more than the form in which the bill left this house. I'm asking you to vote for re-referral." [Laughter] Terrible dilemma, for him and for me.

I was accused later by Miller and some others of damning the motion with faint praise, that my reasons rang hollow and I sounded as if I didn't want to happen what they were asking me to do, and I was a victim of coercion, and all the rest. He kind of laughed, saying, "Right, sure, you try to move the bill back to my committee like. . . ." I forget what his metaphor was, what his analogy was. He didn't believe that I tried, and for a while, the people who were watching the situation literally, including the medical association, said, "What the hell are you doing? He's going to kill the bill." I said, "No, McCarthy's promised me he won't kill it. We may not get all that we want, but McCarthy has promised me that we won't kill it."

He said, "Well, look. We understand the situation, and we think we've got the votes to beat it." I said, "You're going to beat the speaker?"

HICKE: Who is this you're talking to?

KEENE: Well, the group supportive of MICRA.

HICKE: Oh, the medical . . .

KEENE: It wasn't just medical. By that time, there was a large coalition. It was medical and hospitals and all the people associated with health care that were behind it at that point, and more. I didn't believe that the speaker would lose, and yet I thought, it was like irresistible force and immovable object. I thought, well, he's an immovable

object, and here we have this irresistible force. Who the hell knows what's going to happen?

Well, they voted it out. Some of the people who had been part of the anti-Leo movement, the hard core folks who remained, thought that it was the beginning of the end for McCarthy, which it turned out not to be, I think fortunately.

HICKE: A one-time. . . .?

KEENE: Yes, people treated it as a one-time issue. But it was remarkable for a number of reasons, and that was one of the reasons, that they overrode the speaker and in a sense overrode the committee chair and the author of the bill. [Laughter] And it was a terrible dilemma for me, who owed the speaker, if not my political survival, at least the committee chairmanship and a great placement of trust and confidence in me, because as I say, I knew nothing about health care going in. I later became the expert in health economics and everything else. But at the time, I didn't know anything. He placed all that trust in me, and he's asking me, not unreasonably, not for his own personal advantage so much as to fulfill a commitment, which was an issue that I understood.

The issue of commitment is a very, very powerful issue that decides whether a legislator is going to be trusted within the system and therefore be allowed to advance in leadership and in other ways. So your word has to be like money in the bank, if you're going to be effective. And he's asking me, this guy who has just been my benefactor politically, who I find to be a fair-minded guy dealing with tough problems, issue-oriented as I would have it, has made the house very issue-oriented, and is asking me to help him fulfill a

commitment. And then I've got these people that I have worked with through a very difficult process to produce a product, and we're down to the last stage, and they want the thing to go. So it's a classic situation.

And the other classic part about it was what followed, which I described to you already, and that was that the trial lawyers regarded me as the Greeks regard the Turks.

HICKE: Anathema?

KEENE: Anathema, and the doctors are saying, "Why aren't the rates going down yesterday?" It got tied up in the courts. Fortunately, over that ten years, there were a number of lawyers on the plaintiffs' side who said, "I better not wait around, this might turn out to be constitutional, in which case I'd better settle it for something less than I wanted." So the experience was that settlements were beginning to drop. But it didn't have the real effect, the potent effect, until the supreme court declared it constitutional, which took a decade. The California Supreme Court approved it by a four-to-three vote. [Laughter] And it was a very liberal court, it was the
[Pause]

HICKE: [Justice] Rose Bird?

KEENE: Yes.

HICKE: Well, it brings up another question that I wanted to ask you. Did you study how many of these cases were actually settled for lesser damages?

KEENE: Yes, there were some studies that were made that showed that it was having some effect in advance of its being OK'd by the supreme court.

HICKE: What I've read is that the damages asked for aren't always what they can get, because they settle out of court. Newspaper headlines make it sound maybe a little worse than it might end up being.

KEENE: Well, if you show a willingness to settle too liberally, you encourage more suits and more liberal settlements, so you can't settle too willingly. On the other hand, if you resist and allow it to go to jury trial every time, you run the risk of an enormous judgment against you. So there's both an inducement to settle and an inducement not to settle. Somewhere the balance is reached, and the case settles, or it's not reached and they allow it to go to trial. In medical malpractice, multimillion-dollar verdicts were on the increase, and California had many more million-dollar verdicts than any other state by far. So that was part of the problem.

And that then reflects back on the settlement environment, because if you place the insurance companies in more jeopardy by going to trial, they're going to settle more. That incentive to settle more bottoms out when they begin encouraging more cases and more demands for settlement. It's almost like a market process.

Malpractice costs have actually gone down in California; but not health care costs overall. The trial lawyers like to come in and say, "Well, health care costs haven't gone down. They've continued to increase in California, and one of the assumptions of MICRA was that medical malpractice and defensive medicine was one of the major contributing factors to increased health care costs. Why haven't health care costs gone down?" And the answer is that while they haven't gone down, they've increased to a far lesser degree in California than other places. That has saved consumers substantial

amounts of money in California through their insurance premiums and direct payouts by consumers, where you have direct payouts. So the debate goes on, but the politics was very fascinating.

HICKE: But also as you've indicated, more physicians are happier here in California.

KEENE: Oh, yes.

[Interruption]

HICKE: There is one more issue on the health care committee that you dealt with--generic drugs.¹

KEENE: [Philip] Phil Lee is now assistant secretary of the Department of Health in the Clinton administration. Lee had co-authored a book on the high cost of drugs. He pointed to the fact that you had biologically equivalent drugs being marketed at very different prices; that it was a racket that made pharmaceutical manufacturers rich and needed to be changed; that the market should not be in brand-name drugs but in generic drugs; and that pharmacists ought to be able to fill prescriptions with generic equivalents of brand-name drugs. Now, why did doctors prescribe brand-name drugs? Because the pharmaceutical manufacturers sent out sales representatives called detail men, who would give them free samples and also arrange for travel, golfing trips, dinners, every sort of thing imaginable that we would regard as a kickback today. So doctors would put down the brand-name prescription, and the cost to the patient would be much higher.

1. A.B. 193, 1975-1976 Reg. Sess., Cal. Stat., ch. 1144 (1975).

We are talking about, and this is no exaggeration, in the Medical program alone, which is California's Medicaid program, billions of dollars. Billions of dollars. And this was reflected throughout the entire health care system. Now, when you talk about billions of dollars, you also have to talk about a period of time. Well, for people who are on maintenance medication, it would not take a very long period of time until you were talking about billions of dollars. So the potential for money saving was enormous; the potential loss of profits for the pharmaceutical manufacturers was also enormous. That was the political battle.

Now, some of that was offset, some of the political power of the pharmaceutical manufacturers was offset by the political power of individual pharmacists, and the pharmaceutical association, not the manufacturers, but the drug store people.

HICKE: Retail.

KEENE: Yes. The doctors were opposed, but it was sort of a second level of opposition, it was not a priority issue with them. It was a priority issue for me as the new chair of the health committee, and I publicly burned the doctors a few times by saying, "If you don't care about the skyrocketing cost of health care, who is going to care about the skyrocketing cost of health care, and if you don't care about it even when the profits are being made by someone else, how are we going to make any progress in this area?" So they backed off to some degree.

The pharmaceutical manufacturers were in it tooth and nail. It became a national battle, because no state at that time had generic

drug substitution, and obviously it was going to spread like wildfire if it passed.

HICKE: That's why everybody always says California was in the advance guard of everything that happened.

KEENE: Oh, it was true, and it was why. . . . As it turned out, there was a woman who was carrying the same year a similar piece of legislation. She later became speaker of the house of representatives in Oregon. Her name was Vera Katz, and hers was the first bill in the nation. Oregon is marvelously progressive, particularly on health issues.

HICKE: I've read about their plans.

KEENE: Yes. John Kitzhaber, now governor, was senate president when Katz was speaker. So they called them Kitz and Katz. [Laughter] But they were doing good things. He authored Oregon's pioneering comprehensive health delivery plan. She was a young representative, and her bill was the first in the nation that was signed into law. Mine was the second. But when it passed in California, it really was much more a prototype for the rest of the country than Oregon, which the pharmaceutical manufacturers didn't think was all that important. They thought it was important, but California was really important. So I was on their death list as well for a long time. [Laughter]

HICKE: [Laughter] I hope you had a bodyguard.

Tell me, did somebody bring this to your attention, or this was just part of your . . .

KEENE: Yes. There was a book written called Pills, Policy, and Profits, and it was written by Phil Lee and somebody else; can't remember the other guy's name. It's what interested me in the issue.

HICKE: And the book had just came out at that point?

KEENE: Yes. Both Lee and the other author of the book, who I think was a journalist, presented themselves very well. They had all of the information when they appeared before our health committee. Once it got out of the health committee, which was my committee, it was on the public agenda as a major issue. Controlling the agenda is often the biggest part of getting something enacted in the policy arena. The battle lines formed quickly. The doctors and the pharmaceutical manufacturers lined up on one side; the pharmacists, overpowered but still a force, on the other side, joined by government for which this was a major cost issue. It was supported by the Brown administration as a cost-saver, and by a lot of progressive people in the health care field. I probably couldn't have passed it in a Wilson or Deukmejian or Reagan administration. Or gotten it through a less motivated or distinguished health committee.

HICKE: What did the pharmaceutical companies do about it?

KEENE: Showed up in force, invested enormous amounts of money in attempting to defeat it. We fought tooth and nail and got it out. It was a much better legislative environment for the passage of that kind of legislation than exists now.

HICKE: Did you have a lot of consumer support?

KEENE: Yes, enormous consumer support.

HICKE: I would think so.

KEENE: Particularly from the elderly, who are on maintenance medication. From people who had epilepsy. I'm not sure about hospitals. They may have supported it, I don't know.

HICKE: In the legislature, was there a political battle?

KEENE: A very big battle. Oh, yes, there was a very big battle. Phil Lee was just elated. He never thought that it could ever pass. It was quite remarkable, but as I say, again, the opportunity was defined by the times. It goes back to that leadership question. Most of my productivity in the legislature was during that period. Later, I don't think I became any less productive. If anything, I became more skilled and my rise to leadership gave me more power. But the system had broken by then. I reached the point where I decided to leave the legislature, because I didn't think I was making a difference--enough of a difference--to justify staying.

HICKE: You had already had enormous successes.

KEENE: Well, you're reminding me of that. That's why this process is so nice for me. You're reminding me of that now.

There were two bills that were not of the greatest public interest, although they were interesting enough to capture headlines, that probably were two of the largest cost-saving bills that were enacted during my period in the legislature. One of them was the generic drug substitution bill, and the other was the low-flush toilet bill. The low-flush toilet bill emanated from the debate over a dam on the Eel River.

HICKE: Honestly? I thought that was probably a drought issue.

KEENE: Well, it was a drought issue. I mean, it passed because it occurred during the drought. But the interest arose because instead of spending X hundreds of millions or billions of dollars to construct a dam to produce a certain volume of water, you could produce that same volume of water or much more by simply changing people's habits and the devices that they used. So by forcing manufacturers

to offer low-flush toilets, and requiring that developers use them in new construction . . .

[End Tape 7, Side B]

[Begin Tape 8, Side A]

KEENE: . . . meant that you didn't have to develop as many new sources of surface water through dam construction as you did otherwise. It really was a low-key bill in its cost-saving aspects. People think about toilet flushing as part of their human experience each day, but the notion that it saves enormous amounts of money was the hidden benefit in that particular policy development.

The same thing was true with generic drug substitution, where people were saying, "Well, are these drugs going to be really as good? Are they . . ." Because what they think of is in terms of their daily experience. But the cost savings were enormous to taxpayers, to consumers, to others, with both bills. You don't have to build dams, you don't have to fight about dams, you can save a lot of water by doing small things.

HICKE: Do you want to just elaborate on that water-saving device, and then we'll finish that one off too?

KEENE: Yes. It did occur during the drought period, but the drought period was also a period when they wanted to build dams. So here we were saying, "Wait a minute, that's the conventional solution, that's the old way of operation. We have a new environmental sensitivity; let's do something that not only makes more sense environmentally, but is a lot cheaper than dam construction."

The issue arose not so much directly as the issue of a major dam on the Eel River, which was really not a local issue but a statewide issue, because it was the next available water source for the California water system. It was part of a larger water battle that had to do with the recharge of ground water in the Central Valley, where people were mining ground water, actually collapsing the containment cells for ground water, and indirectly the construction of the Peripheral Canal.

Now, you probably know a fair amount about the Peripheral Canal, but it was essentially the pipeline to move things around the Delta to southern California. Because if you allow things to remain in the Sacramento River system, the largest river system in California, much of the water is pumped out along the way for municipal use and agricultural use, but the vast majority of it goes into San Francisco Bay, to flush out the bay and retain an environmentally rich delta system in California, for people who are concerned about the environment. It's the largest natural source of anadromous fish, of salmon and striped bass and other kinds of fish in California. The delta smelt has now become an issue.

Jerry Brown worked out a compromise measure that would have constructed the Peripheral Canal. Northern legislators were largely opposed to it. I was one of them, because I thought once you had the pipeline in place, we were going to lose our wild rivers in the north. I argued strenuously against it on the floor, condemned the Brown administration for yielding to the water interests of southern California. It was very much a regional thing, but I was probably on that side anyway. Even if I weren't a northern

representative, I would have come down against the construction of the Peripheral Canal.

That was the background. A dam on the wild rivers and a Peripheral Canal to move water around the Delta was the background within which the low-flush toilet bill passed, assisted by the drought; but the drought could have cut either way. The drought could have cut in favor of the Peripheral Canal and dams, or it could have cut in favor of some new option. So that was the first measure of its kind to require low-flush toilets, to intrude into the personal habits of people to that degree, not to mention the cost of housing and other oppositional type issues.

HICKE: Was this a partisan lineup?

KEENE: Mostly. Although the second phase was carried by an assembly Republican from Marin County--the man who defeated Michael Wornum, the fellow whose house I was at talking about redwood trees. Because of Marin's environmentalism, he carried legislation as a follow-up to my bill. It was inspired by a new generation of really low-flush toilets. But the Republicans generally took the position that this was an added burden on business, and an unnecessary governmental intrusion into people's lives. Government had no business telling them how much water they should use in flushing their waste. The developers were opposed. Besides, they liked dams.

HICKE: Real estate?

KEENE: Yes. Those folks were generally opposed. [State Senator] Lucy Killea fairly recently tried to require low-flush toilets, that all homes be retrofitted to have low-flush toilets, and that's been politically uphill. She hasn't succeeded yet with that one.

The only kinship between low-flush toilets and generic drugs is the fact that the hidden benefit of both, the most important benefit, was the enormous money that was saved by both of those enactments.

HICKE: OK, let's stop here.

[End Tape 8, Side A]

[Side B Not Recorded]

[Session 3, August 8, 1994]

[Begin Tape 9, Side A]

HICKE: I thought we'd just start this morning about where we left off, and the next topic would be the Omni Rex hearings; 1976 is the date I have for that. I wondered if you could explain what Omni Rex is, and how this all came about.

KEENE: Yes. Just to lay a little foundation, this was a period of time that was very stressful in terms of my personal life because of the instability of the district and the perceived necessity for spending a great deal of time in the district. It consumed most of my weekends and even had me going back and forth for special events of political significance during the week. All of those negatives were offset by the tremendous policy production we were engaged in. The Health Committee was one of the best constituted committees ever in the legislative process, and that was true not only of the committee membership but also of the staff.

In addition to medical malpractice, the right to die, and generic drug substitution, we were putting out a lot of stuff on perinatal care and rural health and Native American health programs. A policy generator was at work in that Health Committee, and we were passing out assignments to different people to pursue certain areas.

John Garamendi, who was a relative newcomer and very policy-oriented, worked on a lot of rural issues.

One of the health care innovations being implemented had been hatched by the Reagan administration to contain costs for Medi-Cal recipients. It involved extensive catalyzation of prepaid health plans. The idea came from [Secretary of Health and Welfare Agency] Earl Brian, who was regarded as a genius. He was a brilliant guy, and Reagan told him to get a handle on Medi-Cal costs.

What he did was to encourage the creation of entities called PHPs [prepaid health plans] which would take care of the health needs of low-income people for whom the state was medically responsible. This included people on welfare, for whom the state was responsible under federal law, and the medically needy working poor. PHPs promised to provide a level of health care sufficient to satisfy federal requirements for a fixed price per person--on a so-called capitation basis. In other words, they would take an individual and say, "We will provide for this individual's health care costs for X dollars for the year."

The state put out requests for proposals from various entities. It induced a great deal of entrepreneurial activity in the prepaid health area. People wanted these contracts. But it became evident that the system was subject to abuse in two areas. One was overly intensive recruitment with some very heavy-handed tactics at the neighborhood level. PHPs would employ some very rough characters to go door-to-door in the poorer neighborhoods and say, "How many folks are in the family? Well, do you know you're entitled to health

care? We're here to provide it, just sign up here." There were pretty well-documented instances of intimidation by PHPs and their agents.

It satisfied the state's need, because from a budget standpoint, there was stability, known costs, and since these entities were competing against each other, the capitation costs would be quite low. So it appeared to be very cost-effective until the complaints started coming in on the recruitment.

HICKE: From the people being recruited?

KEENE: The people being recruited.

Then there was another level of complaint, and that is that promised services were not being provided. So the competition among these plans for state contracts caused heavy-handedness in the recruitment and an effort to fulfill the contract at the lowest possible level, or not to fulfill it at all. For example, there were instances where they promised transportation to seniors who could not get around, and there was no transportation system. There were no buses or vehicles to take them to the medical facilities.

But the worst cases--and we had just come through a malpractice crisis in California, and it was fresh in our minds--were that these health plans, in order to remain cost-competitive, were hiring incompetent physicians and pharmacists and others. So people who had been driven out of other states, virtually, in the worst cases, and committed malpractice all over the place, were coming to California to get involved in these PHPs. They were hired at minimum cost, and then placed PHP members at risk.

Well, we put together a team, a subcommittee which included a liberal Democrat, [Assemblyman Herschel] Hersch Rosenthal from Los

Angeles, the only physician in the legislature, a conservative Republican from Orange County, and myself. We hired some very good staff, one of whom had, I'd say, kind of a law-enforcement mentality and was out to uncover things. He recognized that we were dealing with some tough customers with intimations of underworld involvement.

HICKE: Yes, it sounds like fraud at the most superficial level, and probably something worse if they were willing to do that.

KEENE: Yes. And the other staff person, who is still with the legislature now, Paul Press, was a human microscope. He could look at figures and spot everything that was out of order and find things and raise questions and provide explanations. He was very thorough and scrupulously watchful of the information that was handed to him. We had the power of subpoena, and we used it. We served subpoenas on people, which is rare for legislative committees. Usually the Rules Committee, which gives authority or not, denies it to legislative committees that ask for it, because people use it to subpoena prominent individuals in order to get publicity on some issue.

But we were dead serious. There were a couple of great investigative reporters with the Sacramento Bee--Jim Lewis and John Berthelsen--who covered health care issues, and they were very interested in all of this. But from a general public standpoint, it was pretty obscure. So the Rules Committee and the speaker decided that we were on the level and were not attempting to secure publicity on some issue of great interest. It was of interest only to people who

cared about government and the intricacies and costs of serving poor people. So they gave us the subpoena power, and we used it.

HICKE: Was Lou Papan the head of the Rules Committee at this time?

KEENE: Lou probably was. I'm fairly certain that he was.

Now, what we didn't realize was that there were some very prominent people involved, and some very large givers to Democratic as well as Republican political causes.

HICKE: Involved in these entities?

KEENE: They were making lots of money and they were giving lots of money. They were politically astute. One of the individuals was very well paid by a group called Omni Rex, which was a prepaid health organization that contributed heavily, probably to Republican as well as Democratic, but I know the Democratic politicians for sure, because the governor was a Democrat and the leadership of both houses were Democrats at the time. He was the husband of a prominent and rising congresswoman, Yvonne Brathwaite Burke. Her husband was a man named [William] Bill Burke. Now, we didn't focus on Bill Burke. He was one of a number of people that got called, but the press certainly gave a great deal of attention to it when he testified.

Well, that was the first public visibility of these issues, when he was subpoenaed. [Governor Edmund G.] Jerry Brown [Jr.] was in the process of running for president at the time. At the convention, he was to be nominated by Cesar Chavez. The seconding speech was to be given by Yvonne Brathwaite Burke, an African-American woman legislator. So he was convinced that we were trying to somehow disrupt his presidential campaign, and he got involved.

I don't know the inside of it all, but pretty quick, the guys who ran Omni Rex started to put together a political bandwagon to try to head off our efforts. They got a black physician group from southern California to come up and protest to Leo McCarthy, who was speaker, about the fact that we were discriminating against black physicians, and that this was obviously an attempt to lynch Burke, and all sorts of other outrageous accusations. We had a face-to-face confrontation in the speaker's office, and one at a time, we knocked down all of their assertions. We said, "Wait a minute, we're attempting to be responsible with respect to the provision of health care to poor people, and most of the poor people in the low-income neighborhoods that you serve are black. So we're trying to do the right thing, not the wrong thing." We went down it all.

They went into my record, and my record was spotless; I had been an outspoken advocate of the Martin Luther King [Jr.] holiday and all. I think they went away realizing that they had been had by the Omni Rex people.

Leo was not certain that I had not overstepped my bounds. He was a little bit uncomfortable with the situation, and wondering if we were doing something positive or just stirring up a hornet's nest politically without any policy implications.

HICKE: Did he talk to you about this?

KEENE: Yes, he did. Shortly after that, as part of a pattern of staff cuts, my Health Committee staff got cut. The problem was not a numerical reduction in staff. We had a generous staff. The problem was that they were all good, and I didn't want to get rid of any of them. To get rid of any of them for insufficient reason would demoralize the

whole staff. My attempts to cope with that were viewed very foolishly. I said, "Here is what we're going to do. We're going to assign ranks in terms of responsibility and seniority and other things that are important, but I'm not going to make the lowest on the ladder in terms of seniority leave. We're not going to make it that automatic." What we did was we flipped coins. [Laughter]

HICKE: Oh, my.

KEENE: It was like being on the lifeboat and deciding the lifeboat will carry four and we've got five, and somebody's got to go over. So we essentially drew straws, but it was the end of a very good staff. It demoralized the whole group.

HICKE: It really crashed?

KEENE: Yes. And made a mini-laughing stock out of me for having openly admitted that that was the way I was going to handle it. Because I had high regard for all of the staff, and didn't feel that I should be required to fire any of them. So that was an area of conflict, one of the few areas of conflict that developed between Leo and myself, because on the whole, he gave me these very good opportunities, from the beginning appointing me as chair of the Health Committee, to letting me push all of this legislation, which was not without political cost. We had to beat off the pharmaceutical manufacturers in passing generic drug substitution. We had to beat off the trial lawyers on medical malpractice. So there were political costs associated with all of these policy efforts, and he let me have pretty free rein on all of those.

HICKE: Those are fairly powerful groups.

KEENE: Oh, yes, they're very, very powerful groups. We began taking on the physicians, to their surprise, because I had helped them on the medical malpractice issue. But in areas of cost containment, we were on a collision course with the physicians. That committee was never controlled by the doctors. It was always willing to take them on. This was unusual, because sooner or later major interest groups that deal with a committee tend increasingly to capture that committee-- the trial lawyers and the judiciary committees, labor and the labor committees, and so forth. Health was never captured by the doctors. Although medical malpractice was a big issue with them, on some other issues we pulled the rug out from under them.

We attempted to allow hospitals to hire physicians, which would have been very cost-saving in the areas of radiology and pathology. We created something called PPOs [preferred provider organization], as distinguished from PHPs, prepaid health plans. That was the age of acronyms. Still is.

PPOs allowed insurance companies to create panels of physicians for whom they would pay all or most of the costs, and if you selected outside the panel, you would have to pay more of the cost. That distinction was resisted as a matter of fundamental philosophy by the California Medical Association, who said Physician A is as good as Physician B, and you're going to cause conflicts in the ranks. You're going to force doctors to be too cost-conscious and not sufficiently conscious of their medical obligations.

HICKE: What was the advantage in creating these PPOs?

KEENE: The advantage was cost containment, that companies who were trying to provide health insurance and attract customers, provide it at

the lowest possible cost, attract customers, could go to physicians or physician groups who were organized in a cost-effective way and contract with them, and say, "We'll pay you such and such if you. . . ." And these physician groups would respond by saying, "Well, if you guarantee us a certain volume of patients, we can do that."

HICKE: At a lower cost.

KEENE: Yes. Cost-efficiently.

HICKE: I see, OK.

KEENE: So it was changing the configuration of health care delivery in California, and these organizations are very watchful because what happens in California tends to spread.

HICKE: Was this the first PPO system?

KEENE: I think so. I think it was, I'm not positive of that, but I think it was.

HICKE: So you worked with the insurance companies to do this?

KEENE: Yes. The health care insurance companies.

HICKE: Yes. Did you have meetings, or were these the hearings that I read about?

KEENE: No, these were not the Omni Rex hearings.

HICKE: Oh, that's right. This is after that.

KEENE: This was after that. I didn't order it very well. I didn't really finish up with Omni Rex.

What happened with Omni Rex is we put Omni Rex out of business. Yvonne Burke's husband, Bill Burke, left the health care area, and threatened a lawsuit against us, against the three members of the committee. He and she threatened a lawsuit against us, and for whatever reason, finally decided it was not worth pursuing, either not legally pursuable or whatever.

The prepaid health plan system in California broke down as a result of that. We passed legislation that restricted activity in the prepaid health field to large, federally qualified entities like Kaiser [Permanente], of which there were less than probably half a dozen that could qualify at the outset.

Well, it was not a satisfactory situation, because if you believed in the HMO [health maintenance organization] style of delivery of care, or at least wanted to experiment with it, you had to open up the process to some innovative and new entities. We did that by creating something called the Knox-Keene Act.¹ Assemblyman [John] Jack Knox and I and a very able staff person of his, Martha Gorman, put that legislation together.

Its objectives included assuring the fiscal solvency of HMOs, so you didn't have a whole host of people signing up with HMOs and then losing their money when they went belly-up. Beyond that, assuring that the level of care that was provided was adequate, and that it was actually provided.

Well, the only agency at the time, the only state agency, the only state entity that had jurisdiction in the area was the attorney general's office. They were very obviously ill-suited to do the job, because they're not really an auditing agency, nor do they know much about health care. So we needed to put it somewhere else. The Department of Health was in such disarray at the time that if I had wanted to put it there, I couldn't have gotten the political support for it. The Department of Health's reputation was quite low

1. Knox-Keene Open Health Care Service Plan Act, 1973-1974 Reg. Sess., Cal. Stat., ch. 941 (1974).

at the time, and it was in the process of reorganization. In his inimitable way of capsulizing ideas, Jerry Brown once said, "We don't know how to make this agency work, so what we think we ought to do is break it down into bite-sized pieces."

[End Tape 9, Side A]

[Begin Tape 9, Side B]

KEENE: Similarly, the auditor general was not an appropriate agency, and obviously it knew nothing, not much about health care.

Strictly through the process of elimination, we struck organizational pay dirt. We gave it to the Department of Corporations, which accepted it very reluctantly, and then decided to set up a whole new unit to process the qualification of HMOs in California.

HICKE: Another bite-sized piece? [Laughter] Or was it more than bite-sized?

KEENE: It was a pretty substantial undertaking. Corporations was regarded as a well-run, efficient operation, and the fear was that we were going to screw it all up by giving them duties that they couldn't handle. It turned out that they handled them very well. We get occasional complaints from entities seeking to qualify who talk about the red tape and the bureaucracy, and the difficulty of putting together the financing when you're not sure you're going to get certified, but on the whole, it's worked out very, very well. You have numerous HMO-type operations in California that are qualified by the Department of Corporations that provide health care for lots of Californians without tremendous problem, the kinds of problems that

they had with the PHPs. However, I should add a footnote now that virtually all health care delivery in California is moving toward HMO-style "managed care": while Department of Corporations was adequate for what it was asked to do, it is now being asked to do a lot more that is also a lot different. We will certainly need some legislative review and oversight.

HICKE: That's quite a story. Did they write the qualification requirements, or did you?

KEENE: They wrote the regulations, and we participated, I can't recall at what level, but we wanted to assure that the implementation was going to be successful, and we did not know that it would be for sure. To move the bureaucracy--change its culture--is very difficult; to get it to do new things is very difficult. There's this notion that all bureaucracies want to expand. It isn't necessarily true. A lot of them avoid duties that are inconsistent with what they regard as their task and their mission. They accept responsibilities, particularly difficult ones, sometimes with a lot of foot-dragging and all of the rest. To the credit of everybody, Department of Corporations made the system work, and we were lucky that we did it. We can't claim a lot of credit; it was really process of elimination. There was nobody else.

HICKE: Do you recall whom you worked with in the Department of Corporations?

KEENE: I recall one fellow who played a very prominent role, who was a class-one managerial bureaucrat, in the good sense of the word. His name is Bruce Yarwood. He was tremendously helpful in explaining the organizational situation and advising the committees what the

realities were, and why something might work and something might not. Most legislators do not have a great deal of insight into the bureaucracy, because there's not a lot of political pay dirt there. Passing legislation that appears to solve a problem and is publicly significant provides lots of rewards, even though in the implementation, it may bog down. Then legislators can go back and thrash bureaucrats, if they want to. But the interest level is much less in implementation than in the passage of legislation, which is too bad. There ought to be courses required for legislators to understand what the bureaucracy does and why it does it.

HICKE: Well, that actually gets back to one thing I wanted to clarify: what specifically did the Knox-Keene Act call for?

KEENE: It called for the Department of Corporations to set up a system of checking the fiscal solvency and the level and reality of the provision of service to people.

HICKE: So you worked with the Department of Corporations to get them to agree to handle it, then you proposed the legislation?

KEENE: Yes. I'm not sure we had agreement at the outset. [Laughter] I'm not sure how much agreement we had, because they wanted to please legislators. The bureaucracy tends to be responsive because you control the purse strings. So they wanted to please the legislature; at the same time, they didn't want to undertake unrealistic tasks. I'm not sure how much they wanted to do it, or agreed to do it, but they were up front about their concerns, which was something that was quite different from the beleaguered Department of Health.

HICKE: Was there a budget provision necessary?

KEENE: Yes, we had to make sure that the budget contained adequate resources for them to carry out their tasks, and we had to make sure that the initial regulations, the rule-making that they engaged in, was consistent with legislative objectives, the three objectives being the access to care, the quality of care, and the fiscal solvency.

HICKE: Now as far as the Health Committee, is there anything else we should talk about?

KEENE: Yes. The committee began to get heavily into health care-economics-- issues of cost containment. One of the areas where we did not have success was the imposition, over the objection of doctors and hospitals, of certificate of need requirements. These are called CONs, as you might imagine. There was a good example of the conflict in my district, which included Marin County at the time. There was one hospital which had a full body scanner, and another hospital in eyesight of the first hospital that also wanted one, and said, "In order to be competitive, we deserve one, too."

Well, there weren't enough people--unless you pulled them off the streets in a random fashion--there weren't enough people to scan. Hospitals were purchasing this equipment, and of course, doctors loved it because it was high-tech stuff, and they could put their patients through things that made the patients feel that they were being well cared for.

HICKE: That's easier than cultivating a bedside manner.

KEENE: Yes, it is. And it generated a lot of overuse, which included some risk to patients in the overuse, in order to generate payments to pay for the machines. So we put in these CON requirements which were quite rigid. We worked with a piece of the Department of Health on

this, and gave them authority to deny requests by hospitals for additional beds, because then they'd have to fill the beds, and again there would be more hospitalization and less outpatient activity.

All that we could think of, and it was state of the art at the time, was to regulate directly in order to contain costs. It was heavily resisted, there was a great deal of foot-dragging and a great deal of hostility that arose from it, and in the final analysis, the system of direct cost containment by regulations seemed not to work.

The only remarkable thing about it was that in a state that was as politically sophisticated as California, where interest groups were increasing their power, we could get this by the doctors and the hospitals and put it into law, and try it out for a few years. Eventually it was repealed, and I could muster little political opposition to its repeal, because it just seemed to everybody not to work. But it was part of the system that [President James Earl] Jimmy Carter embraced, and his health secretary, [Joseph] Joe Califano, whom he eventually fired--the direct regulation of health care costs by controlling investment in medical technology and hospital expansion.

HICKE: Well, it's certainly coming into its own again now.

KEENE: And they still haven't figured out how to do it.

HICKE: These hospital mergers, is that one of the ways of solving this?

KEENE: Sometimes. In a small community, you don't need three emergency rooms. You don't need specialized cancer services in each of three hospitals in a community. Or intensive care, or lots of other things. So coordination among hospitals is essential, but that won't occur without cost containment pressure from the people that supply the

money, that pay the bills. It isn't individuals who pay out of their pockets; it's paid by larger groups of people through insurance or taxpayers. So unless there's pressure coming from somewhere, from government, from authorizing insurance companies, as we did with the PPOs, to begin to intrude on the delivery of health care, something which doctors regarded as their personal prerogative, to order Cadillac care when the taxpayers say, "Well, we can't afford it," or when consumers complain that health care policies are too expensive and beyond their means. I've probably given you more . . .

[Laughter]

HICKE: No, no. I want to explore this thoroughly. But I also have in '77 and several years after that, genetic engineering and DNA research. Did that come under the Health Committee?

KEENE: Yes, yes. I'd almost forgotten that. That was also something that in retrospect looks like a miscue, but at the time, we had very serious concerns about the risks associated with genetic engineering, particularly with respect to the open-endedness of research, the possibility of the creation of an organism that would be dangerous to human beings, and the very limited controls that existed at the university level where these experiments were then taking place. Added to that was the slightly down-the-road prospect of commercialization, where the profit-motivated inducement to avoid restriction would result in an activity that was potentially a public health hazard to people. I mean, we knew very little about bioengineering at the time.

We still do have concerns, but we then felt that there might be real immediate risk. We challenged the University of California in

particular, with whom I had had a relationship based on my right to die legislation, and which after that legislation had developed a specialty in bioethics. We sought their advice, and said, "We know you guys want to research this. We're certainly not Luddites. [Luddites were people who wanted to destroy all machines.] We're not attempting to reverse the course of scientific and medical history. We want it to progress, but we want it done under appropriate constraints, and we need to know what the risks are."

So these hearings were conducted that were very valuable and very beneficial, and as a result of them, we decided that it was the wrong time for government to try to intrude in this area. The bottom-line decision to do nothing except be watchful was probably the right decision. We could have, if we had been politically irresponsible, painted these terrible pictures of plagues. After all, AIDS was beginning to come onto the scene, and someone could have grabbed on that and said, "Well, how do we know that this wasn't something that escaped from a biogenetic laboratory?" So there was a lot of opportunity for exploitation. We didn't do anything that was worthy of notice except exercise restraint. We said, "Go ahead. We'll be watching, but we're not going to play political games with you, we're not going to impose the heavy hand of government on research activity."

HICKE: But once again, you provoked discussion so that people became aware of both sides of the problem.

KEENE: Yes, and there was a further issue in that new strains were being developed with public funding at the university level, and were being patented by academics, and then exploited for commercial purposes.

So there was another issue there that had to be dealt with, and I don't know whether it has been.

HICKE: There were at least two lawsuits over materials developed by University of California--I think one was UCLA--as to who owned it.

KEENE: Yes. It seems to me that it should bring some money back to the university system and to the public, but it's another public issue area. The whole question of intellectual properties is now becoming an active area of the law.

HICKE: OK, well, let's continue with what we haven't talked about in your assembly career.

KEENE: One of the advantages to my district of my having had a committee chairmanship in health care was that rural areas were tremendously underserved in California. The physician distribution was based on concentrations of people, and that's where the money was as well. Rural areas tended to be poorer, less dense. Doctors wanted lots of specialized experience, and medicine was becoming increasingly an area of specialization. We tried to reverse that. In fact, for a time I chaired a joint committee on teaching hospitals that attempted to compel universities who received state funding, particularly branches of the University of California, to provide more family practice slots and fewer specialties, which ran counter to the medical culture of the time. It's beginning to turn around now with recognition of the need for general practitioners and people who are in basic practice specialties--pediatrics and internal medicine and others--and away from the more glamorous surgery.

I've digressed quite a bit, but the main point was that inner cities were a problem, in part having to do with the welfare

populations who were poorly served by a Medi-Cal program that wasn't working and was subject to a great deal of budget-cutting, but also the rural areas where you couldn't get health care. I represented a lot of those remote places--the Mendocino coast and Del Norte County, and the Indian reservation in Humboldt, and so on and so forth.

Well, we did a couple of things. One is we increased the autonomy, against the resistance of the California Medical Association, of nurse practitioners. We attempted to qualify lay people to deliver babies.

HICKE: Midwives?

KEENE: Yes. Not nurse midwives, but lay midwives. That effort failed by one vote. It was one of the initiatives of the Jerry Brown administration. I got behind it at some political risk. But it was killed by the California Medical Association.

The attempt to allow lay midwives to deliver babies failed, but it's still happening. It's still happening throughout California. There were some prosecutions in those days. I don't know if there still are.

HICKE: Probably six, eight years ago, I had a friend whose son was a lawyer and was defending some midwives up in the foothills.

KEENE: There was a prominent case here in the foothills.

HICKE: Yes, must have been part of it. But it's still illegal, according to state law?

KEENE: I'm sure it is. The reality is, if you're about to deliver, [Laughter] the push of nature is stronger than the legislative push, and if you don't have access to the legally prescribed facilities, or don't want to deliver under the constraints of conventional medicine, you might be

subject to prosecution. The increase in crime has probably diverted attention away from it.

Another thing that we did was to provide state funding for rural health clinics. And again, this was outside mainstream medicine and therefore resisted by the conventional medical establishment. The state was funding rural clinics, not hospitals and not doctors' offices.

HICKE: Not staffed by doctors?

KEENE: Yes, they were staffed or at least supervised by doctors, but it was very much a people operation.

HICKE: Who was supervising the program?

KEENE: Department of Health, I believe, was deciding which clinics should be funded.

HICKE: Was this a controversy for the Health Committee, or was it just one of the things that you thought the health committee was doing that was really worthwhile?

KEENE: Well, the state budget was in pretty good shape at the time. To try to do something that benefits underpopulated portions of the state today would be very difficult. To say, for example, "We're going to create special programs for rural high schools," politically, would be dead on arrival.

HICKE: So you started doing this, is that what you're saying?

KEENE: Yes.

HICKE: I see, OK. The way you'd put it, it sounded like it was an ongoing thing.

KEENE: Oh, no. We started a program of subsidizing rural clinics, and among the critics were those who said, "You're giving money to hippies,

these places are not going to have any standards, and we don't know where the money's going and what good it will do." So there was a lot of suspicion of it, but it was a good program.

HICKE: You sound as if it's in the past.

KEENE: Well, I believe it's ongoing. A lot of these clinics are now self-sufficient. Some of them are still receiving public assistance, so I think we established a precedent that's ongoing.

HICKE: Maybe some counties are funding part of it?

KEENE: Well, I think to the extent that they're able. I haven't heard of these clinics closing their doors. Oh, I know where they're getting money now: they're getting Prop. 99¹ funds, they're getting cigarette tax funds. A lot of them are funded through that. They hired a lobbyist in Sacramento.

HICKE: Yes.

KEENE: So it's a program that's continuing, and I think these clinics are finding ways to survive. But we did seed all of that back in those days of the Health Committee.

The mental health issue was an issue that was always present, because Reagan and the Democratic leadership got together and decided to close a number of the state hospitals. There was a lot of resistance to it among some Democrats, like [Senator Alfred] Al Alquist, who felt it was a terrible mistake. One of the big hospitals that was closed was a hospital for the mentally ill in Mendocino County. It was Mendocino State Hospital in Ukiah. It was as I began running for office that Reagan was shutting down that

1. Proposition 99 (November 8, 1988).

hospital. The reason it could be done was the advent of drug technology and the ability to have people take drugs to contain their antisocial behavior.

[End Tape 9, Side B]

[Begin Tape 10, Side A]

KEENE: The threat of it is what had necessitated a lot of the hospitalization. So a lot of these people could, if they took their medication, be out on the streets and they would be OK.

That appealed to liberals, because they always felt that the state hospitals were warehousing a lot of people unnecessarily. It appealed to conservatives, because hospitalization costs so much more than dealing with these problems in other ways. So there was a commitment at the time that community programs would be funded, but they never were. They were never funded to an adequate degree. Part of the reason was that you have a two-thirds budget requirement in California, and the conservative side always said, "Well, sure we took this step, but we did it to save money. If we fund these community programs, we're not going to be saving money." The liberals said, "Wait a minute, that's a double cross, because you promised that there would be some cost saving, but in lieu of this, you'd support funding for community programs."

Well, the guy who was caught in the middle was the lead author on most of the mental health legislation in California for quite some time, a guy named Frank Lanterman. His name is on the

Lanterman-Petris-Short Act,¹ LPS, which is the primary law that governs mental health in California today, the rights of individuals and extent of hospitalization, and a lot of other rules that govern mental health today. He was mortified at what happened, because he went along with the closure of some of the hospitals, and did it on what he thought was the Reagan promise to support the community effort, and that support was never forthcoming. It's been a problem in California until the present. We see people who are not adequately cared for walking the streets of California, and engaging in antisocial behavior, or unable to care for themselves. As we put it, a danger to themselves and to others. We never lived up to the promise.

HICKE: So that was an ongoing difficulty?

KEENE: Yes. It was an ongoing difficulty, and a real human tragedy. A real human tragedy.

HICKE: Were there efforts made to correct the situation?

KEENE: There were efforts, but I don't recall a great deal of success.

HICKE: Well, that's obvious, I guess. OK.

KEENE: And you had, in fairness, a lot of the, it wasn't called NIMBY [not in my back yard] in those days, but a lot of community resistance to having facilities located in mainstream communities.

HICKE: Such as mental hospitals, you mean?

KEENE: No, small facilities, clinics.

HICKE: Oh, these small ones, OK.

1. S.B. 677, 1967-1968 Reg. Sess., Cal. Stat., ch. 1667 (1967).

KEENE: Service provision areas, maybe places to provide for the homeless. People didn't want these things in their communities. Well, the whole purpose was to get these people out of warehouses and mainstream them. You couldn't mainstream them if the mainstream rejected them. So there was that, the politics of that, as well as the politics of the budget that prevented it from happening.

We should have known that. [Laughter] I mean, it was like when the state hospitals were closing and reducing their occupancy, we should have known that the political dynamic was going to be for the worst and not for the best.

HICKE: Well, hindsight is twenty-twenty.

Maybe we can start to talk about why you decided to run for the senate.

KEENE: First, there is something that emanates from pure mathematics, and then translates into some very practical advantages. If you're in a district that is somewhat unstable, you're going to be contested in every election, and it's going to consume a lot of your energy. For people who are not productive legislatively, it's probably good, as a matter of public policy, that those people be challenged. For people who are very productive from a policy standpoint, there is eventually a desire to extricate oneself from the political risks--read in "accountability" as well--[Laughter] but somewhat insulate oneself from political risks.

Mathematically, a senate seat is twice as long as an assembly seat, but the reality is that you have three years where you don't have to look over your shoulder in a senate seat, and you only have one in an assembly seat. So a senate seat is really approximately

three times as insulated as an assembly seat from the requirement that you attend to your political needs.

I increasingly wanted that increase in autonomy. The person who through redistricting held that seat was a very skillful legislator and a progressively moderate Republican named Peter Behr from Marin County. He got beaten up regularly on the North Coast, where because of his environmental credentials, there were people who absolutely detested him.

There's one story that I recall when Peter sent a press release to the Humboldt Beacon announcing something that he did, and the crusty editor of the Humboldt Beacon, named Dwight O'Dell, who is deceased now, but who ran the Humboldt Beacon, wrote back saying, "The next press release I want to receive from your office is your obituary, and nothing until then." [Laughter]

HICKE: A macabre sense of humor, if it was humor.

KEENE: Well, Peter Behr retired, and it was a loss to the district, while many in the north would disagree with that and felt that he tilted far too heavily to the environmental side. And the person that they admired was their previous senator prior to redistricting, who was a conservative Democrat and stood up strong for the timber communities and the fishing industry and was regarded as an anti-environmentalist. Behr was regarded as a preservationist.

HICKE: That was Randy Collier?

KEENE: That was Randy Collier, yes, who was elected the year before I was born. And until '74, we shared the North Coast district, and then Behr was brought in along the coast.

I was friendly to both, worked with both, was determined to get stuff done, was never in a politically competitive aspect with any of the legislators that I shared a district with, which was kind of nice. We always had enough problems that we both had to pitch in. We were outnumbered by the more populous portions of the state, so we had to pitch in and work together, and we did work together. That's not true in many other, if not most other, areas where there is a great deal of competitiveness to claim credit for things.

HICKE: Is that right?

KEENE: Yes, and to not share credit. But we did not have that problem on the North Coast. In any event, he retired, and I decided to run for the office.

HICKE: That was '78, when you became the senator?

KEENE: Yes, that was '78. The election was kind of interesting for a number of reasons. One is that the Farm Bureau, agriculture, which had not taken very kindly to my initial candidacy and my occupancy of the assembly office, committed to support me. The state Farm Bureau and the Sonoma County Farm Bureau and the Mendocino Farm Bureau representatives all agreed to see that I got agriculture's support that year. The reason that they did it was they didn't want me to run against the congressman, who was a Republican incumbent who had been in office for about twenty years. They were fairly certain, as I was, that if I got into a race with him, that I could defeat him.

HICKE: Who was he?

KEENE: Don [H.] Clausen.

HICKE: And you were considering this move, I take it?

KEENE: I was considering it, but was not thoroughly attracted to the prospect because we were having family problems. There was instability in the family. For eight years by that time, I had been running up and down the district, been away from home, been in Sacramento most of the week, attended the district affairs on weekends, and things were not all that good. I thought it would not be a good move for me and that it would mean essentially the end of the family, because if you're a North Coast congressman, you not only had that five-hour trip each way to Washington [D.C.] and back, but once you fly back to San Francisco, you've got another five hours, six hours, to get up to Eureka, and eight to Crescent City, and on and on. So I saw it as kind of the beginning of the end.

On the other hand, from a partisan standpoint and from a career standpoint, it was of interest to me.

The Farm Bureau said--and I don't know, this whole thing may be illegal, looking back on it--[Laughter] but they were essentially saying that, "We'll support you for the senate seat, and we'll oppose you if you run for the congressional seat," and I think there's some law out there that says it's against the law to induce somebody to run for something else. So I don't know what the situation was.

HICKE: Does the Farm Bureau represent the timber interests?

KEENE: No, they represent agriculture, crops. They are closely aligned to the timber industry, but . . .

HICKE: Not exactly.

KEENE: Not exactly, yes. The timber industry is essentially an entity apart.

HICKE: So the Farm Bureau would be like vineyards and apples and things like that?

KEENE: Exactly. The people who grow apples in Sebastopol and prunes in Mendocino and vineyards in Sonoma, and on and on. Dairy on the Mendocino coast and in Marin and Sonoma Counties and up in Humboldt County. Most of the people who own timber lands also belong to the Farm Bureau, but that's not the timber industry as such. The timber industry moves through other political channels than the Farm Bureau. The Farm Bureau is essentially agriculture. They love Republicans much more than they love Democrats. [Senator] Dianne Feinstein is attempting to get Farm Bureau support against [Congressman Michael] Huffington.

HICKE: But they are apparently a fairly powerful group?

KEENE: Very powerful. They are agriculture in California. Most powerful in the Central Valley.

So here was this prospect of a fairly easy election with one of the biggest potential opponents agreeing to support me if I took that channel. I had concerns about taking the other road, because of the additional pressures it would put on the family. I had developed a relationship with the timber industry where they trusted me. They knew it was a no-gain situation, that I'd be against them sometimes, that I'd help them sometimes, but that I wasn't ideologically against them, that I would try to work things out if there were conflicts, that I would try to balance interests, and so forth. So we were OK. We were not the warmest of friends. And there were still some elements of the industry that considered me a Communist or something, or worse yet, an environmentalist. [Laughter]

HICKE: What you're saying, though, is that if the Farm Bureau backs you, that's kind of it?

KEENE: Yes. All I had to worry about at that point was the organized Republican party, and the parties are not that strong in California, which is something I'm sure you've encountered. Some of the mainstream business folks are hard-core Republicans and won't cross over. But most people in California say, "I vote for the person, not the party." Which further weakens and erodes party discipline, but that's the way it is. So I would not have had very much to worry about.

Now, the Marin Farm Bureau had a very attractive candidate of their own, a guy named Gary Giacomini, who came from west Marin, who was a moderate Republican, the kind the district likes, and who was very popular in Marin County as a supervisor. I had some good support among the Democrats, and there are some deep-rooted Democrats in that area, including Barbara Boxer who was a supervisor, and courageously endorsed me wholeheartedly against one of her colleagues on the Marin board.

But this guy was popular among Marin Democrats as well as among Marin Republicans. He was regarded as pro-business and pro-environment, which created some real problems for me. He moved north, and he told the timber people in the north what they wanted to hear. He told the environmentalists in the south what they wanted to hear. My job was to point out the inconsistencies.

So we started tape-recording his public appearances in the north and the south, and I'd go north, and I'd say, "Well, here's what he said in Marin County to the young progressive Republicans about his commitment to the environment." And then I'd go down to Marin County and say, "If you think this is a guy with stronger

environmental credentials than me, listen to this," and we were quoting from an appearance that he made before the timber truckers up in Humboldt County. So my job was to point out the inconsistencies and to create some stress in his campaign and to project myself as a person who was knowledgeable and balanced in my approach.

HICKE: Was that effective?

KEENE: It was effective. I guess I had developed a certain amount of trust among many of the people in the district and was able to point out inconsistencies in his approach which projected either as a lack of knowledge or a lack of integrity, a lack of awareness of the conflicts or a willingness to gloss over them.

I'm trying to remember if that was also the year of the split-the-state movement, if it was that election.

HICKE: Let me see. I have in 1978, there was a bill to divide the state. And then I expect Prop. 13¹ was around about that time. Was that a campaign issue?

KEENE: I think I recall correctly that Prop. 13 was not an issue in our campaign, at least not a litmus issue, because he was a county supervisor who therefore opposed it, and I opposed it. The only difference may have been, and I don't recall this specifically, but there's a little buzz back there that says there was something about his blaming the legislature for not dealing with the property tax issue.

1. Proposition 13 (June 1978).

On the splitting the state, I introduced legislation to split the state, and my self-serving reason is that my constituents were disgusted at some of the vicarious decision-making being made in other parts of the state over resources that affected their livelihood. So the positive side is I was being responsive to that. Also, it raised an issue that is of some merit, and that is whether the differences in different parts of California are so great that it would be better served by two or, as [Assemblyman] Stan Statham proposes, three governments, than by one. And I wavered back and forth on the whole issue.

I didn't expect it obviously to happen all at once, or maybe to happen ever, but it certainly was a way of making the point that there was stress in my area over the state's decision-making process, and the bill bundled up all those emotions in a symbol. There were people who may have been largely Republican who came over to my side, because they felt that I was out there for a legitimate cause. There were people who were on my side anyway, Marin environmentalists maybe, who also felt that they didn't like southern California or its ethic, and that they could do better in a state of their own. So it appealed to a large political base in my district.

The self-serving interpretation is that it helped me out politically to win that election, which was an important crossroads, because moderate Republicans are very well liked in that district, and conservative Democrats are very well liked in that district. But I didn't fit either description. [Laughter]

HICKE: So this was of importance in that election?

KEENE: Yes, it was. We developed names for the different states. The northern part was going to be called Alta California, Spanish for Upper California. We had a theme song. Forty-five [r.p.m.] records were popular in those days. We had it recorded on a forty-five record. Now we've transferred it, I think, to tape. It was called "Alta Libre," free the north. [Laughter]

HICKE: Terrific.

KEENE: And it became very popular. There was a watering hole called the Torch Club in downtown Sacramento which had a jukebox on it, and everybody who indulged and imbibed a bit wound up at the Torch Club late in the evening. Here was this "Free the North," "Alta Libre," being played on the jukebox. [Laughter] Conservative Republicans were out there shouting, "Alta Libre!" Southern Californians were shouting, "Alta Libre!" They all got in the mood. It's very well done. It was by a fisherman in Bodega Bay--Deke Nelson--who played the guitar, and he wrote it. So that was the movement.

I got the bill out of one committee, which was quite remarkable, and I had to persuade a southern Californian to vote for it. It was [Assemblyman] Frank Vicencia. He was the swing vote. He got such enormous heat from his district [Laughter] that he then worked for its defeat in the next committee or on the assembly floor. I can't remember, but it bogged down.

HICKE: He swung the other way.

KEENE: Yes. It bogged down somewhere along the way. So that was a fun and interesting election.

[End Tape 10, Side A]

[Begin Tape 10, Side B]

KEENE: I think it was fairly close, not as close as the early assembly elections, but fairly close.

HICKE: What differences did you find when you went into the senate?

KEENE: I got over into the senate, and I found it to be a more formal place, the members more restrained. There were certain norms that were not challenged. Seniority played a major role. There were certain formulas and prescriptions and etiquette that didn't exist over on the assembly side.

HICKE: Can you give me an example?

KEENE: It can reach 110 degrees in Sacramento, but you never take off your jacket on the senate floor. Never. In the assembly, there were some standard requests, "Request permission to remove our jackets." Originally it started out with "Request permission of Assemblywoman. . . ." Yes, request permission of the women, which was certainly a level of formality that is different. "Request permission of Assemblywoman Pauline Davis, request permission of Mrs. Davis," who was the only woman at the time, "to remove our jackets," and she'd jump up and say, "Permission granted."

HICKE: [Laughter] Oh, that's great. I never heard that.

KEENE: So I think I was the first one to violate that, to stand up on the senate floor and say, "Mr. President, it's 112 degrees out there, request permission to take off our jackets." There was an uproar on the floor! [Laughter]

HICKE: Oh, really?

KEENE: There was this giant uproar, and [Senator] Ralph Dills, and Al Alquist, and some others jumped up and protested. Jim Mills, who was the president pro tem at the time, enforced these formalities, but was a kindly person and said, "Well, we need to provide sufficient awareness for the freshmen members who are coming over from the assembly in increasingly larger numbers, but there's no need to condemn them for their lack of propriety. Permission denied."

HICKE: Permission denied? Oh, dear.

KEENE: Yes.

Mills was pushing the refurbishment of the Capitol in an historically responsible way, and was doing an excellent job on that. He was supporting the efforts of Sacramento legislators, Assemblyman Z'berg, who passed away, and others who were trying to create an historic railroad district for old Sacramento, and in fact create old Sacramento around it. He was very interested in fairness of procedure. He was very process-oriented, much more so than policy-oriented. Other than projects that he happened to take a great interest in, he tended to view his role as that of a referee. He was a very intelligent person who tended to shy away from the rough-and-tumble of politics.

He had a majority leader at the time, [Senator] David Roberti, who was politically ambitious and also much more willing to get into the rough-and-tumble of politics than Mills was. There were others on the senate Republican side, principally [Senator H. L.] Bill Richardson, whom we used to call "Wild Bill Richardson," or "The Gunner," because so much of his support came from and went to the National Rifle Association and related political entities.

Bill was successful in mounting some very partisan campaigns that threatened the Democratic majority in the legislature, and the straw that broke Jim Mills's back was the loss of [Senator Albert S.] Al Rodda. Now, others had lost. If I recall correctly, they include liberal Democrats like [Senators] John Dunlap and Arlen Gregorio, maybe some others. But the loss of Al Rodda was regarded as a terrible loss, enough to require a redirection of leadership into a more politically protective mode.

David Roberti sensed that, and organized a group of basically liberal legislators, and Mills was a liberal in most senses of the word, to replace Mills. I was in that group, and it was something for which Mills I think has never forgiven me. We've not seen each other and talked since his departure. Others in the group were [Senators] Alan Sieroty, one of the most liberal legislators from southern California; Bill Greene, an African-American legislator from Watts; John Garamendi, who became Roberti's majority leader; [Nicholas C.] Nick Petris, a liberal Democrat from Oakland; and I'm probably forgetting one or two others.

We used to meet for breakfast at a little restaurant called the Incredible Edible here in Sacramento on Alhambra Boulevard. They'd give us a private room, and we'd sit down and discuss the future of the Democratic majority in the senate. I doubt that anybody there disliked Jim Mills, but we felt that his style did not lend itself to protection against the Bill Richardsons of the world.

Al Rodda was a very loved liberal Democrat. Nobody disliked him. He was the expert on education policy in California. He was a very kind-hearted individual who would almost be moved to tears

KEENE: when he'd get up and debate issues that were dear to his heart. He cared a great deal about people. He never would cross, never even challenge ethical boundaries. He was an exceptional individual, even his opponents would agree. He apparently didn't have a political clue as to what was happening, and what was happening was every trick and potential for negative campaigning. Last-minute stuff was being prepared to knock him off, and he was defeated.

HICKE: Who took over his seat?

KEENE: None other than John Doolittle, who was a protege of Richardson's and one of the most conservative members of the state senate, and now one of the most conservative members of the House of Representatives.

HICKE: Yes. So that was, as you said, contributing to this need for the change in leadership?

KEENE: Yes, it looked like there was a real threat to the Democratic majority, and that we were going to be shot down one by one like the buffalo hunters did to the buffalo. I use that analogy because Richardson was such an avid hunter. [Interruption]

HICKE: We were just talking about the change in leadership, and the group that met at the Incredible Edible. What did you eventually do? How did you go about effecting the change?

KEENE: I can't recall the numbers, but Roberti had snowballed that group into sufficient numbers to overcome the support that Mills had in the Democratic caucus. The leadership change occurred.

What changed for me at the time? Oh, the senate, unlike the assembly, is governed by a five-member Rules Committee, so the equivalent of the speaker on the senate side is not the president pro

tem in most respects, it's rather the Rules Committee, of which the president pro tem is chair, but only one of five. So you have a dispersal of power, a decentralization of power, in the senate, unlike the assembly where the speaker, as Willie Brown has described himself, is Ayatollah. [Laughter] Has all the power of an Oriental potentate. In fact, the California Journal did an article comparing Brown and Roberti early on, and it was called "The Ayatollah and the Traffic Cop."

HICKE: Oh, very good. [Laughter]

KEENE: So the Rules Committee not only distributed power in the sense of dividing among five people the major decisions in the house, but also in dividing it between the parties in a more formal and indeed practical way than power is divided in the assembly today. Three of the members are Democrats, and two are Republicans. That's the formula when there's a Democratic majority. Now, if the Democratic majority were to increase to 80 percent, or there were to be a Republican majority of 80 percent, I don't know if the Rules Committee would go to four to one, but three to two has been a general range. The only shift is if there's a shift in party leadership in the house, and then the three to two goes in the other direction.

So power is limited and divided in the senate, unlike the way in which it is in the assembly, which means that the assembly is capable of greater policy leadership when it's policy-inclined than the senate, and is capable of causing greater gridlock when it's not policy-inclined. So these were differences that I'd noted.

There are fiefdoms, subject matter fiefdoms in the senate that tend to be less responsive to leadership than in the assembly, by

people who have held positions for long periods of time in certain subject matter areas, chaired certain committees, and because of this, there is a greater percentage there that are less dependent on the leadership for survival.

HICKE: In the senate?

KEENE: In the senate. They only have to run every fourth year. Senate seats tend to be more stable than assembly seats, because the constituency becomes increasingly acquainted with the incumbent over a period of time, and they tend to be more stable.

Roberti told me that he needed me on the Rules Committee as someone who was loyal and would support his efforts to organize the house and make it both politically secure and help put together a program, a Democratic program, in the house. So I would be one of the three Democratic members of the Rules Committee, along with Nick Petris and Roberti. The two Republicans were [Senator Robert G.] Bob Beverly of Manhattan Beach and [Senator William A.] Bill Craven of Oceanside, both moderate Republicans.

I found service on the Rules Committee both interesting, from the standpoint of the internal dynamics of the house, and painful, because a lot of housekeeping decisions had to be made which were of no particular interest to me. Who got which office, and how many requests for staff should be granted and denied. It was a political decision-making process as well as a legitimate housekeeping process, but it was one that didn't interest me. I found myself with a certain amount of political clout by virtue of my position on the Rules Committee, but I really thought I was out of the policy

mainstream, and I didn't feel that the Democratic leadership was terribly programmatic under Roberti and Garamendi.

Why? Because Roberti was attempting to consolidate and had to prove his mettle as a person who could maintain the Democratic majority. I mean, the first rule of leadership is that if you lose the majority, you're no longer a leader. You don't become minority leader, you're out the window. So maintaining the majority becomes very important to the leadership. So Roberti was in that mode.

Garamendi was in a different mode. Garamendi was beginning to run for statewide office and using the resources of his leadership position, both fund-raising capacity and staff, to assist his political efforts at statewide office. So I was not satisfied with the way things were, and I was personally out of the mainstream policy arena. I was not in health care; I was not chairman of the Resources Committee. The chairmanship of the Judiciary Committee opened up, because Garamendi's predecessor as majority leader was [Senator] Omer Rains, who decided to run for attorney general and was defeated. He lost his spot in the senate because his senate term ended at the same time as the race for attorney general. Half the senate seats terminate at the same time as statewide elections and half don't. If you have one that doesn't, you have a distinct advantage in running for statewide office, because the people who contribute know that even if you lose, you're going to be back.

Well, Omer was not in that category, nor was I. My senate seat also terminated during gubernatorial elections, statewide elections.

KEENE: So Omer ran and lost. He was chair of the Judiciary Committee after Garamendi came in as majority leader. When he lost, the judiciary seat opened, and as a lawyer I was interested in it. It had a potential for policy that I thought I would like. I was distressed by the direction leadership was taking and the housekeeping tasks of the Rules Committee. It was not well suited for me, I thought. So I took the chairmanship of judiciary in 1982.

HICKE: So there were four years there when you were not too involved with policy?

KEENE: No. Mills gave me the chairmanship of the Elections and Reapportionment Committee, which is a peculiar committee that doesn't do anything except every ten years. [Laughter] It's like Halley's Comet, every ten years. Over a time it becomes important.

HICKE: Ah, yes, there comes the Elections Committee again. [Laughter]

KEENE: Yes, it's redistricting time, so you get to do redistricting.

Well, the politics of redistricting was fascinating, and it was coming up, but it was not really my cup of tea. Having power over the survival of lots of legislators by drawing districts is a source of great power, but it's also not where I wanted to be. I wanted to be back in substantial policy, and the Elections and Reapportionment Committee, the E and R committee, was not the place for it.

Now, I did have one stroke of interesting luck, and that was that I went back to Washington to discuss redistricting with [Philip] Phil Burton, who was the congressman from San Francisco, and the genius behind the Democrats' redistricting. It was a learning experience, working with him on these issues, his thought processes, his maneuvering and all the rest. He was truly the consummate

politician. He missed becoming speaker of the House of Representatives by one vote.

HICKE: Did you propose redistricting by computer, or was that just something that happened?

KEENE: Yes, I did. I've always felt that redistricting more than anything else poisoned the well in the legislature, particularly the assembly, where Republicans felt that they would never be permitted to become a majority, and decided that they would throw bombs within the institution and bring the institution to a halt. They were probably correct in their judgment on the first part, that under redistricting by Democrats they would never be permitted to become a majority. Even with a Republican governor it was a standoff. And it would go to the courts, or to special masters, and they would have to take their chances. But the previous redistricting put them so far from a majority that the likelihood of their being successful at pulling off a majority in a post-reapportionment election year, even when it was done by the courts, was very minimal.

So they became very bitter. That caused a lot of the partisanship and breakdown and gridlock, particularly in the assembly. Now, because assembly districts are smaller, the amount of maneuvering is much greater in the assembly. It's like having a jar of eighty marbles rather than a jar of forty marbles; the combinations are many more, and so you can manipulate district lines a great deal more in the assembly than you can in the senate.

But my policy reason for opposing incumbent redistricting, and you can imagine this is not very popular, was not so much that it would give . . .

[End Tape 10, Side B]

[Begin Tape 11, Side A]

KEENE: . . . a fair shake to Republicans as it was to avoid the political concrete that was being created.

Here's the situation: in order for a legislature to act, you have to have a sufficient middle. You have to have something that approaches a bell-shaped curve, with a large middle and the reduction of the extremes. Several rounds of redistricting had created exactly the opposite, where you had a growing number of people at the extremes and fewer and fewer in the center.

Now, why did that happen? Every time you create a safe Democratic district, you create a safer Republican district, because what it means is you take Republicans out and you pour them into Republican districts. That satisfies the Republicans who are in office, because they personally are in more secure districts. So you increase the percentage of Republicans in Republican districts, the percentage of Democrats in Democratic districts, you make incumbents less defeatable, and it tends to place people at the extremes. People in intensely Republican districts tend to be extremely Republican people, and intensely Democratic districts the same. So you're bringing in these people who can get reelected and be as stubborn as they want to be. The more partisan they are, the better their chances of getting reelected, because the districts have been set up to be more partisan.

And so they begin not talking to each other, not having to move toward the middle, not having to justify their reelection by solving problems, because they're going to get reelected anyway,

because the districts have been set up to do that. One of the other results is that people feel that their votes don't make a difference, and indeed their votes don't make a difference, because they can't knock the incumbent out. They can protest and complain, but the incumbent doesn't have to listen because the districts have been set up to reelect them, and that causes people to drop out of politics, out of more active participation in government. They don't run for office and they don't vote.

So reapportionment sets up another incumbent advantage, in addition to fund-raising capacity, and being a person whose name is known. It sets up another incumbent advantage in that it drives people away from the public arena. It gives people the feeling that they don't count.

People didn't like commissions, because they always figure that no matter how much you try to balance commissions, there's always going to be that odd vote that's going to be the deciding factor, and all the pressure will be on that person. If you get six Republicans and six Democrats and six this and six that, you've got to break the tie, and that tie-breaker is going to have a lot of power and not be subject to political accountability or political constraints. So commissions are poorly thought of.

So I said, "What else can we do?" And maybe borrowing on my--why I borrowed on it, I'll never know--on my coin-tossing experience as a way of producing staff reduction, [laughter] we were going to create redistricting by computer, and use something called a random number generator to resolve differences. So after all of the criteria had been applied, the criteria of equal numbers of districts,

KEENE: the criteria of minority representation--there's some federal criteria on that--after all of the attempts to consolidate areas of interest and not cross too many jurisdictional boundaries, you would still be faced with the capacity to create an infinite number of districts. It would just be a smaller infinity than you had before.

So how do you resolve that? You do it with a random number generator. Well, nobody understood this business. I shouldn't say nobody. Most legislators said, "Well, we can't turn redistricting over to a computer, it's not politically good for us, and we don't understand what it is that you're proposing." John Garamendi, I believe, in one of his moments of appealing to the television spotlight, got up and said, "You know the old saying, Barry: it's garbage in, garbage out."

Well, it died a fairly uneventful death.

HICKE: It did?

KEENE: With only a few people interested in it as a possibility. So then I went back to a commission mode and said, "Look, we can't create a perfect commission, but we can do the best we can. What we need to do is have a commission to which we present the additional criterion that the districts have to be as competitive as possible. So they have to create as many competitive districts as possible." You can imagine how popular that was politically. [Laughter]

HICKE: Yes, because anything you did to go against the system that was, was against the incumbents.

KEENE: Yes. And even the minority incumbents would rather retain their seats without the possibility of ever gaining majority, than running the risk of losing their seats with the possibility of their party gaining

the majority. The survival instinct is powerful. The survival instinct is stronger than the partisan instinct.

HICKE: I guess that proves it. Is that the Keene theory of government?

KEENE: Yes. So that battle was lost. Later on, I proposed that that be adopted as a reform by the people in a constitutional convention, and the political trade-off that might make it appealing to Democrats, which I thought was a fairly logical trade-off, was that the Republicans would give up the two-thirds vote. The reason I thought there was a logical link, as well as a political link, was that if you have a prospect of becoming a majority, you don't need to retain minority power given by the two-thirds vote, that the obstructionist possibilities that the two-thirds vote allows, where one-third plus one can prevent anything from happening, is something that you give up because you have the opportunity of actually becoming a majority. So I thought there was a logical connection there, and I thought politically it might be an appealing connection, where the Democrats trade off their reapportionment advantage to the Republicans, who trade off their two-thirds vote power.

But it never came to be. I pushed those as two aspects of consideration for a constitutional convention, reforming government.

HICKE: That was another newspaper headline I saw, that you proposed a constitutional convention.

KEENE: Yes. That was later on. At this point, I was negotiating within the legislative process, and later said, "This is not going to happen legislatively, we've got to go outside the legislature to do it."

HICKE: Is that what you wanted the convention for?

KEENE: Those were two things, and the third was campaign finance reform. And the fourth was to look at the prospect of concentrating power within state government by looking at a parliamentary system and a one-house legislature.

HICKE: Yes, I saw where you were interested in that, too.

KEENE: I was not interested in it at the federal level, but I felt that stronger state governments and a reduction in the checks and balances at the state level would be a good thing, because it would advance federalism by creating a more equal partnership, giving the states greater responsibility, and greater power to reduce the federal government's expansion into areas that could be better handled at the state level. We're way out now, I know.

HICKE: How do we get back to land? So those were four things that you proposed for the convention, and maybe we can go into a little more detail later, especially campaign finance reform.

KEENE: Later, yes. In a sense, the genie is out of the bottle, and what it is, is I was spoiled by the policy productivity of the seventies. When we reached the eighties, I was so distressed with what was happening to the institution and my personal role and investment of life in the legislative process that I began to see that there needed to be fundamental reforms, and that this process was headed for disaster, and that the institution would be mangled and might not recover, at least in our lifetimes.

All of that, the nightmare of institutional and societal failure, increasingly became a reality. That increased my efforts to go for reform, to go for governmental reform, and that absorbed my energies. My sense of hopelessness about the condition of the

process without those reforms drove me from the political scene. So that's the genie that's out of the bottle. That's the whole thing.

HICKE: Did that have anything to do with going from the assembly to the senate?

KEENE: In an indirect way. Leo McCarthy, after he was unseated in the assembly in a very vicious kind of internecine warfare, told me that he wished I had stayed in the assembly, and that I could have helped prevent what occurred. I'm not sure that he's correct in that assessment of things. But he cared about the institution and felt that I was an ally of his in that respect, and that some things would have been redirected to prevent what happened. It was like the Civil War, where policy makers were killing policy makers, and building an indebtedness to special interests, because all of the combatants had access to their own set of special interests and called upon them for support.

At one election period, and I can't tell you exactly which one it is--maybe it was '78--the litmus test for leadership in most of the members was who could control the newly elected members. That meant finding financing in election races for your candidates, and it pitted in Democratic primaries Berman candidates--Howard Berman was McCarthy's rival--against McCarthy candidates. After the election, the outcome was still uncertain.

Finally, a number in the middle had enough. You'll hear different versions of this, but from my vantage point, this is the way it appeared. Enough people in the middle had enough that they agreed on a compromise candidate, and the compromise candidate was Willie Brown. So the McCarthy people were assured that

Berman would not get it, and Berman was assured that McCarthy would step down, and Willie came into it as a compromise, but would not have made it without Republican support.

Now, why did he get Republican support? He got Republican support because they saw him as a leadership disaster for the Democratic party. Liberal, San Francisco, black. They saw him as a leadership disaster for the Democratic party.

So that's what happened, but the damage that had been done in the assembly was just terrible. And the damage was mainly to the Democrats by reducing their sense of solidarity in the face of the election of Republicans, who were solidly anti-tax and solidly pro-Prop. 13 and solid, solid, solid. The Democrats were coming apart, they were crumbling. That's what Willie Brown started with, and that's how he rose to power.

So the Republicans saw the Democratic internal division and rivalries, and they saw this leadership symbol as a big deficit for the Democrats. They guessed wrong. They didn't understand Willie's political genius and his ability to consolidate. They underestimated the power of his ability to divorce himself from policy, and at the same time, maintain liberal support, maintain the support of policy-oriented liberals, because of the advantage of being African American.

HICKE: That is interesting.

KEENE: The liberals, who would have taken on someone who allied himself as much with the special interests as Willie did, were unable to create a political force against him, because no liberal wanted to be responsible for knocking off the first African-American political heavyweight in California. Certainly that was true after he became

one of the most powerful African-American leaders in the country. I don't know whether this has been written about anywhere, it probably hasn't, because it makes liberals uncomfortable to even discuss that. It's difficult for me to discuss it now, but I'm motivated very much by what I see as Willie's contribution to the destruction of the institution to point out that I believe that that dynamic prevented his being challenged by some of the liberals in the house. And the others who were more motivated, not by policy and ideology, were quite happy to have someone who would work the special interests on behalf of their political security.

HICKE: Fascinating.

KEENE: Yes, I think it is.

Now, to grant the speaker his due, he's a remarkable individual, he is intellectually brilliant, he is politically without peer. I have no doubt that when his biographers describe the harsh conditions that he was born into and the social situation that he was confronted with, that it's all accurate. He drew himself up by his bootstraps and his remarkable abilities and his persistence and all of those things. But when he should have been compelled to devote some of the extraordinary political capital that he was building into policy efforts, which included governmental reform that might have undercut some of his power, he was not compelled to do so, because those who were most likely to do that were cowed by this reality that here was one of the most important people of African-American descent in the country who had acquired real power, and they were not about to be part of anything that would destabilize that. I think some of them were motivated by African-American constituencies in their districts,

but far more were motivated by the feeling that it was ignoble, that it was not the right thing, the right role for a liberal. So he had free rein, at tremendous cost in my judgment, to the institution as well as to his place in history.

His response to that is, policy was shared. He says he could have authored lots of bills, but he let those bills be authored by other people, other Democrats, other people with whom he was in agreement. But I think if you look at the policy productivity of the assembly during that period, it was very, very limited. He's very sensitive to this particular criticism, but I think it's a valid criticism.

HICKE: The lack of policy direction?

KEENE: The lack of policy production; the lack of problem-solving at a time when there was a public perception of a growing list of problems and that government was not powerful enough to handle them. In fact, government is powerful enough to address many of those problems. There are structural limitations and structural constraints, but this was a political constraint, this dynamic that I'm describing was a political constraint. The people who were most interested in policy production were least able to cause it to happen.

HICKE: Well, I don't want to put words in your mouth, so let me just state what I think I'm hearing and see if it was about what you were saying: I guess we can speculate that he understood his power as an African American, and the fact is that he didn't use this power for policy making, but he used it for politics, or aggrandizement of his own . . .?

KEENE: Reinvesting in further increasing his power, and--this is really tough--and an ability to more fully express himself as an individual than

many legislators would have the luxury of. The more flamboyant characteristics, which also display a defiance of cultural constraints in the leadership, could never be criticized by a [Assemblyman] Lloyd Connelly or a [Assemblyman Thomas] Tom Hannigan or a [Assemblyman Philip] Phil Isenberg or a [Assemblyman] John Vasconcellos, or others who are among the people that have been closest to the speaker over the years--including Lockyer and myself--because they would feel that they would be regarded as engaging in a form of racism, or aiding and abetting the cause of racism. We all felt very constrained.

So part of the whole problem was that he was not getting signals from his friends that he needed to exercise some personal restraint and commit himself more to coordinating policy production in his house. Our failure was a disservice to him, but more importantly to everyone.

He just announced today that there would be no bill creating a regulatory commission for gambling in California, that no bill would pass to create a regulatory commission for gambling in California. Now, if you read behind the lines, you just know that there is maneuvering with special interests that might well be objectionable to the liberal contingent in the assembly. But the thermostatic monitor that would ordinarily be there and impose some constraints is not there.

HICKE: That's a good example.

[End Tape 11, Side A]

[Begin Tape 11, Side B]

KEENE: The reason I know that he's very sensitive to this kind of criticism is that one of the few times it's arisen publicly, it's come from Sherry Bebitch Jeffe, who's a political scientist at the Claremont Colleges. It provokes a very bitter rebuke from the speaker's office. So it certainly won't be forthcoming from the public universities, because they're too dependent on the budget.

But I think when the history is being written, that a lot of this will come to light, and it's a kind of tragedy for everybody concerned, because I think that he had the capacity for doing so much, for setting such examples for developing, for increasing his policy reach far beyond that of Jesse Unruh, who is the only other one to hold power of this magnitude. But it didn't happen, and I think this is the reason that it didn't happen. I think that the people who could have made it happen did not feel they were in a position to do so.

And it makes me uncomfortable to talk about it, but I believe it's a reality. I believe it's an unfortunate reality of the last political decade.

HICKE: Well, I think that's an analysis of the events and action that will be appreciated by future scholars.

KEENE: I hope so. I expect they'll take a much more objective look than is possible now. [Interruption]

HICKE: OK. Well, I just thought maybe we ought to go back and pick up a couple of things that we didn't talk about, which was the 1976 A.B. 3875, and I just have "coastline bill," so maybe you can tell me about that, and also about other coastline access. I know you had that handbook printed, and some things like that.

KEENE: One of the reasons I almost lost the election in 1972, in a background of having almost succeeded in knocking off a twenty-two year incumbent in 1970, was that I supported the coastal initiative which was on the ballot.¹ It provided for a coastal commission that would make determinations that would affect local property development, and a number of the people that were against me would have been against me anyway, because developers tend more toward the Republican party, and large coastal landowners would tend toward that anyway.

But what hurt me was that it was also an issue of state versus local control. The people on the North Coast were very sensitive to being overrun by other parts of the state. They perceived that any state or regional commission would cause problems for them, that they weren't being trusted with the protection of their resources, and how could people in southern California tell them what they should do, when you look at southern California with its traffic congestion, air pollution, and abuse of the coastline? How do these people have the nerve to tell us how to run our affairs? We've got a beautiful coastline.

Well, it was obvious to me that the coastline wasn't going to stay beautiful. The Sonoma supervisors had just given away twelve miles of some of the most beautiful coastline in California to Castle & Cooke, a large development corporation, for the construction of Sea Ranch. Now, I have to say that in retrospect, Sea Ranch is one of the best developments on the coastline, but it was given away for

1. Proposition 20 (November 7, 1972). This is known as the California Coastal Zone Conservation Act of 1972.

nothing because that portion of the coast was fog-laden and had no real undeveloped value in the minds of people and in the values that prevailed in those days. The prevailing values favored development, and environmental sensitivity was just beginning to come into vogue.

But I supported the coastal commission, and my 1972 opponent, Lawrence G. (Gary) Antolini, opposed it. There was some political cost, I am convinced, associated with my position. I can't document it empirically, but I know it was there.

Well, I never failed to get battered by the position that I took in favor of the coastal commission. With the introduction of 3875, I attempted to redress the political imbalance and the difficulties that it was causing me as well as my sense of obligation to the district. Increasingly, the coastal commission staff was taking on an independence that prevented virtually any development, and I didn't want to see that kind of unchecked bureaucratic power. The initiative had to be implemented. It had its own self-executing set of provisions for a while, and then the legislature would have to come back and implement it.

My version was a diluted implementation, and not strictly consistent with the self-executing implementation of the original initiative. So it was a balancing act for me, where I still wanted to be supportive of a coastal commission and regional commissions, but to balance it with a little bit more local input and not to give the state and regional staff the kind of power that the original enactment did.

I think it may have helped shape the final outcome.

HICKE: What happened to the bill?

KEENE: It didn't pass.

HICKE: But it helped shape . . . ?

KEENE: I think so. And Leo and I were at friendly odds, I guess, over it. He didn't like the introduction of the bill because it undercut movement of a purer, from an environmental standpoint, a purer form of the bill, which served to placate environmental interests from southern California and other places where the environmental movement had a lot going for it, and San Francisco, where he came from. So there was a little bit of stress in our relationship there.

HICKE: Well, since we're talking about the coast, let's go on and pick up a few other things.

KEENE: Sure. I'm sorry, the first one that you mentioned?

HICKE: The first one was the Coastal Access Guide.

KEENE: Oh, yes. Once the coastal protection act was a fact, and the means of implementation had been legislatively worked out, it seemed not to be terribly useful to have these additional areas of access unless the public knew about them. So the promise of coastal access might encourage--this was the appeal to the conservative side--might encourage trespass on the lands of coastal property owners because the public was increasingly aware that it had a right to get to the ocean. Unless it knew where the areas that were set aside for access were, it might tend to trespass on coastal property owners. So that was the appeal to the elements that didn't want to have anything to do with additional coastal stuff, any additional intrusion by the state into coastal stuff.

HICKE: Well, it was a great idea, though, to get their support.

KEENE: And it did. Then to the environmental side, we said, "Well, what use is it in having these restrictions on coastal development and guaranteeing the rights of people if they didn't know how to exercise those rights and where to go?" So it was a very popular cause. The governor embraced it, and we produced this Coastal Access Guide. I carried the legislation to do that. It was a nice piece, because it appeared in book stores, and a hard-bound version was a gift that people would give to each other, and the soft version eventually came out. I think it's still a pretty popular book. I don't know if it made the best sellers' list.

HICKE: [Laughter] New York Times Review of Books certainly would have picked it up.

KEENE: Yes, yes.

HICKE: You showed it to me when I was here before. It's a nice description of how to get there and what the limits are and what you can see and do on each one of the beaches in the coastal area. Very nice.

KEENE: And some cautions, because we lose a certain number of people each year, who are not accustomed to coastal conditions, to what are called killer waves. There was a tragic. . . . Maybe I should tell this story.

HICKE: Yes, do.

KEENE: It's sort of out of order. But when I first took office as an assemblyperson, I had a woman come into my office, and she appeared to me to be very angry. As it turned out, she could hardly contain herself. What had happened was, on the Mendocino coast, she and her husband and their teenage son were walking along the coast, and they were out on a point looking at the ocean. The three

of them were talking, and then there were just two of them talking. The son had been swept away by a killer wave. She said, "How can the government of California let this happen?" Well, we can't fence the whole coastline.

So I carried legislation that required motel owners, bed and breakfasts, which were not that common then, but motel owners along the coastline to carry brochures indicating that there was a safety problem. I don't believe the legislation passed; I can't recall for sure. But I think the Hotel and Motel Association agreed to do it as a matter of volunteerism, and as a courtesy, safety feature for their guests. It was an emotionally tense thing.

"Well, you should have signs up, you should fence off areas that are dangerous." All of this would have detracted from the natural beauty that people were trying to preserve in the coast.

HICKE: How old was her son?

KEENE: A teenager.

HICKE: Sounds like she needed somebody or something to blame.

KEENE: Yes. But you do get these situations where you get a killer wave.

We lived at Elk, and there was a beach down there. When you were on the beach, you could look up to the bluffs above, and there would be large pieces of timber that had been deposited up there, that had drifted for some period of time. So you know that there are waves and storms and things that put these huge pieces up there, up that high. So I always told my kids never to turn their back on the ocean, to always keep an eye on what's going on out there. But tourists generally are not acquainted with the risk.

So we couldn't fence it, we couldn't post it, and there's also a liability risk once you start posting, because then if anything happens to people in areas that aren't posted, they sue and say, "This area should have been posted." It increases the responsibility of local government, the ultimate deep pocket in lawsuits. [Laughter]

HICKE: Once upon a time.

KEENE: Yes, that's right. They're not deep pockets any more.

HICKE: Well, just to carry on with the coast, in 1981 I see something in my notes about the navy developing plans to dump nuclear subs off of the coast.

KEENE: Yes. The issue presented to the navy was how to get rid of obsolete nuclear submarines. The navy was rapidly becoming, thanks to [Admiral] Hyman Rickover, a nuclear navy, and the number of nuclear submarines being built was considerable. The older ones were becoming outmoded and needed to be disposed of, but they were still radioactive. The "out of sight, out of mind" philosophy was about to prevail, and they were going to scuttle them in the ocean off the California coast we had just saved.

HICKE: How did you find that out?

KEENE: I had a very good staff person named Greg DeGiere who heard it through--I don't know, we worked very closely with local fishermen, and I think someone got wind of it somehow. I can't recall the exact way. Greg was also a former journalist who took a great deal of

interest in the Freedom of Information Act,¹ unlocking government information. I carried legislation known as the Bagley-Keene Act.²

HICKE: Yes, I wanted to ask you about that.

KEENE: That was promoted essentially by Greg, who found that the Brown Act,³ which applied to legislative bodies and required a certain amount of openness and notice and so forth, did not apply to state administrative agencies. So the Bagley-Keene Act extended it to state administrative agencies, requirements of notice and openness and access to the records and so forth, and where the limits of it are.

So we used the Freedom of Information Act to get access to records about the proposals to dump, and required that hearings be held, and built quite a political constituency against it, because of the prospects for damage to the marine environment and the commercial fisheries and potential health risks, and defeated the navy effort to do that.

HICKE: Where did they take their subs after that?

KEENE: What did they do with their subs? I don't know. I suspect they were decommissioned and put into someplace like Hanford, the facility off the Washington coast.

HICKE: A nuclear dump of some kind?

KEENE: Yes. But they didn't ocean dump, at least not off of California they didn't.

1. Public Law 89-487, 1966, 80 Stat. 250.

2. Bagley-Keene Open Meeting Act [# unknown], 1967 Reg. Sess., Cal. Stat., ch. 1656.

3. A.B. 339, 1953 Reg. Sess., Cal. Stat., ch. 1588.

HICKE: That's what I was wondering, if they dumped them someplace else.

KEENE: Maybe off of Guam or something. Although the Pacific islanders are, if anybody, very cognizant of the problems of becoming a nuclear dumping ground.

There was a successor issue that became even more politically volatile than this one, and it was the attempt to engage in offshore oil drilling in northern California. It became a major political issue in the presidential campaign in California, in the [Michael] Dukakis-[George] Bush campaign, and also the election of Barbara Boxer from Marin County to Congress. It was a big issue, because the northern coast is so pristine that it captured the imagination of not only hardcore environmentalists but people who visited and loved the Mendocino coast and other portions of the North Coast, the Sonoma coast, and they were determined that offshore oil drilling would never occur. And indeed, legislation was passed that makes it not impossible but there would have to be a major national emergency for them to intrude into California waters.

HICKE: Is there a lot of oil off the North Coast?

KEENE: They don't know.

HICKE: They wanted to investigate?

KEENE: Yes, and the political notion was, if you investigate and you find it, you have a hell of a time shutting it off at that point.

HICKE: Chevron?

KEENE: I think it was Chevron and Exxon.

And the third coastal issue involved mineral exploration offshore other than oil, in an ocean bank off of Del Norte County. It turned out not to be economically feasible, so that never went ahead.

But then the big one was the prospects of an offshore oil catastrophe, a supertanker overturning off the California coast and doing what happened in the Exxon Valdez incident.

So that was kind of the succession of coastal issues: land-use planning, the subs, mineral and oil offshore, and finally the tankers.

There was another major coastal-related issue that I can think of, and it involved Indian rights to gill-net anadromous fish, salmon in particular, in the Klamath River. Now, the Klamath and the Sacramento are the two great anadromous fish production systems. There is an Indian reservation that encompasses a portion of the Klamath River and other Indian rights that were claimed along the Klamath River, some of them based in treaty, some of them traditional, and relying on some very favorable court decisions in the state of Washington and maybe Oregon. It became a major conflict that we had to resolve with competing constituencies of commercial fishermen, sport fishermen, and Indian fishermen. It's still a source of some difficulty, but all of the predictions of violence and shootings and the rest didn't happen to any great degree. There was some violence, but not a lot.

HICKE: How did you resolve it? With legislation?

KEENE: Yes, mostly at the congressional level. The person who had been assemblyman ultimately ascended to the congressional seat, [Douglas] Doug Bosco, and he came up with some legislation resolving the issue and creating certain parameters of gill netting. You couldn't sell commercially, and you couldn't do certain things, but you could do other things, and you could catch certain volumes of fish, and so

forth. It was a compromise, but it prevented what could have been a really difficult situation.

HICKE: I saw something in one of the newspaper headlines about radioactive fish.

KEENE: Yes, how did that happen? Oh, we got the Department of Health. . . . Yes, yes, you're triggering stuff. This was at the time that the coast guard unpropitiously sought to scuttle the nuclear subs. What it had to do with was the discovery there had been major dumping of radioactive barrels that were leaking near the Farallon Islands off of the San Francisco-Marín coast. There was concern that the commercial seafood catch, as well as the sports catch, was radioactive, and that the leaky barrels were causing a problem. Indeed, they were leaking radioactivity; there's no question about that. It was just state of the art at the time: you dumped and you forgot about it, and the barrels were going to last forever, they were big, heavy barrels. Well, they didn't, and you had some radioactive contamination of fish. We required the Department of Health to go out and monitor the fish to see if the radioactivity reached dangerous levels, and fortunately it didn't.

HICKE: And you prevented further encroachment?

KEENE: Yes, further dumping.

HICKE: OK, there's one more thing that we could cover today, and that was the oil embargo. I don't know how seriously that affected you.

KEENE: Well, in addition to the inconveniences that everybody suffered, my problem was how to get around the district and get into the district, because there's no commercial air transportation, and gas stations between Sacramento and, say, Eureka were few and far between in

the most intense days of the energy crisis. So I doubled the capacity of gasoline that I could carry in my car, but the weight of the gasoline then became dangerous, and the car wasn't responding properly, so then we had to go to the additional expense of putting extra air shocks in that you could increase by pumping air into them. So it was over and above what normal people were experiencing.

It didn't do any good to leave Sacramento and get stranded in Miranda on the Eel River, or not be able to get back to a legislative session on Monday. So there was a little bit of a personal . . .

[End Tape 11, Side B]

[Begin Tape 12, Side A]

KEENE: There was a little bit of a personal hardship there, and it probably made me a little less accessible in the district than I otherwise might have been.

The other effect, which was a more direct one in terms of the district and of policy issues, had to do with the growing mentality that the crisis of our generation was going to be the energy crisis, that it was going to be the equivalent of World War II to that generation, and the Depression to the earlier generation, that, as Jimmy Carter put it, "It's the equivalent of war." Did he call it the moral equivalent of war, is that the energy crisis?

HICKE: I don't remember.

KEENE: He said so many things that didn't fly! [Laughter] Anyway, whatever it was. Everybody thought that that was going to limit the human race and cause all kinds of terrible dislocations and problems, and maybe it will yet, but it seems to have diminished in people's

eyes, minds. But the mood of the day was, "Develop all of the domestic oil possible so that we don't become captives of oil importers and the OPEC [Organization of Petroleum Exporting Countries] cartel."

The area that had not been developed was the northern coast of California. Santa Barbara had been pretty well developed. Obviously the areas in the Gulf of Mexico had been well developed, portions of the East Coast had been well developed, but here you had this pristine area on the North Coast, and the issue was whether offshore oil development would occur.

It became a very emotional issue and attained national prominence. Dukakis opposed it and took George Bush on on the issue. Ultimately the oil companies retreated, the California legislature passed legislation to prohibit development for a certain period of time along the North Coast, and it's unlikely that it will take place within the foreseeable future. But eternal vigilance is the price of assurance that it won't happen.

[End Tape 12, Side A, End of Session]

[Session 4, August 26, 1994]

[Begin Tape 13, Side A]

HICKE: I'd like to ask you this morning to start with Proposition 13.

KEENE: Yes.

HICKE: Maybe you could tell me a little bit about what led up to it and what your involvement was, how it impacted on your career.

KEENE: Yes. In terms of the setting, by my sixth year in the state assembly, I had a pretty strong position as chair of the Assembly Health Committee, and although I wasn't technically in leadership, I was at a point where I could accomplish a great deal within the assembly.

Then, I ran for the state senate in 1978, and in doing so, I was starting over virtually as a freshman in the state senate. The point that I'm trying to make is that I went from a relative peak into a political trough. When I came over into the senate, I wasn't at the highest levels of deliberation. While our caucus discussed Proposition 13, I was on the way out of the assembly and moving into the senate, I think, when the issue was before the public.

I took a strong position against Proposition 13, and although I can't recall specifically, evidently it didn't hurt me in that particular election.

HICKE: This is in your campaign for senate?

KEENE: The state senate, yes. And I received a great deal of strong support from local government people, including Marin County, Barbara Boxer in Marin County, which was important because I was running for the first time in Marin County and running against the Marin County supervisor, Gary Giacomini.

Now, the other thing that neutralized it as an issue was that Giacomini, as a local government person, also took a position against Proposition 13, so that did not become the issue that one would have expected in a campaign, with the Republican taking a position in favor of reducing taxes, and the Democrat being cast as the liberal, doesn't-care-about-holding-down-government person.

HICKE: Do you know how your district voted on Prop. 13?

KEENE: I suspect that, at least in the north, they voted for it. Marin probably voted against it, but I don't recall specifically.

HICKE: But it wasn't so much of an issue that affected the election?

KEENE: No.

HICKE: They didn't have a lot of choice, I guess.

KEENE: Right. Our positions were the same. I do recall a group called the Marin Taxpayers Association, something like it, that was a very vocal, conservative taxpayers association that took a position in favor of it. In fact, one of the leading individuals in the state in terms of leadership in favor of Proposition 13 was head of that Marin Unified Taxpayers Association or something like that. It was a pretty well-known group at the time. But it did not become an issue in the campaign.

Now, back in the legislature, the liberals in the Democratic party tried to support a version, tried to create and have passed a version of property tax relief that would have included a means test, where you would have gotten more property tax relief if you were a lower-income person--if you need it, you get it, and if you need it less, you get less. The concept never took hold among the moderates, and certainly not among the conservatives, and you had, I wouldn't call it a gridlock, but you had a delay in the legislature's response to the public clamor for property tax relief. Everybody agreed that things were pretty outrageous the way property taxes were jumping based on increases in the value of the property, and the burden it was putting on people, particularly those of fixed income, elderly people and so forth.

Jesse Unruh played an interesting role. He had just taken over as treasurer of California and was beginning to make a name for himself in bond circles, appeared to be making a political comeback of sorts, and took on Jerry Brown, the governor, and pointed to the obscene political surplus that the state of California had. That phrase, "obscene political surplus," which I think he may well have invented, then became the definitive description of property tax excesses in California that had somehow to be remedied.

Now, Jerry Brown opposed Proposition 13, and I'm told had it in mind that the surpluses that were building up were a very good thing, because it gave California a cushion and allowed it to fulfill all its promises without having to force people to vote for property tax increases. At the same time, New York City was in disastrous shape. The Big Apple had gone broke. The dominant state political news

KEENE: item was that New York was in deep, deep trouble, and the great city of New York was bankrupt. And California was flush.

So here was Jerry Brown wanting to ride into the presidency on this "California is in good fiscal shape," and here's a Democratic treasurer, Jesse Unruh, shooting cannon at California's leadership for creating an obscene fiscal surplus at the time that people were experiencing the burden of excessive property taxes.

HICKE: How do you see it? Was it an obscene excess, or was it financial astuteness?

KEENE: I think it was the difference between a political master, which Jesse Unruh was--he was a great political strategist, although he could never get himself elected governor for all kinds of reasons, in part his reputation as a political insider, as opposed to Ronald Reagan, whom he ran against for governor--and Jerry Brown, who had a good sense of crowds and mass appeal, and thought that this would be very appealing to the public, and misjudged the kind of issue that it was, and miscalculated the energy in the antitax rebellion, which was just beginning, taking root in California in those days, and then went nationwide. But it was a very critical juncture, and things might have been different had Jerry Brown gone to the legislature and said, "We need property tax relief now. You guys better pass it, or there's going to be an explosion." So he didn't see that. Unruh saw it.

Jerry became a very astute politician in certain ways, but he was not the political strategist that Jesse Unruh was at that point.

HICKE: Is there some way to attain the fine line between having a huge excess and thereby having to tax people a lot, and achieving a balanced budget with more fair distribution of the burden?

KEENE: There were several factors. One was that you could pretty well demonstrate objectively that the increasing burden of property taxes was disproportionate to the ability of people to pay, the ability of property owners to pay. Second, you had a Democrat attacking a Democrat, which gave the attacking Democrat a certain amount of credibility, appearing to be an elder statesman who was willing to cross over and attack a Democratic governor, and with this very clever phrase, "obscene surplus." So the answer to the political question is, Unruh anticipated the strength of the new movement and was the only one that had some measure of control over what was taking place. All of the other legislative leaders and Jerry Brown lost control of the situation.

In terms of the public policy and underlying fiscal issue, the kind of relief that 13 provided, as initiatives tend to do, was extreme, kind of "winner take all," and squeezed God knows how many dozens of billions of dollars out of the public sector over a period of the last fifteen years, the last decade and a half. So in my judgment, it was a true disaster for California, and public services in California, and in fact the growth of the economy in California because of lack of investment in public services.

Higher education is taking it on the chin, in part because it's not protected. Almost all of the other large fiscal consumers in the California budget are protected. K-12 education is protected by Prop. 98.¹ The prisons are going to be protected, they have their Prop. 98

1. Proposition 98 (November 8, 1988).

coming, it's "three strikes and you're out."¹ So the prison guards-- they don't like to be called prison guards--the correctional officers are going to be protected like the teachers are by Prop. 98. They'll have their Prop. whatever it is, "three strikes and you're out." Health services are largely protected by federal matches. So you've got welfare, and they've been squeezed about as much as they can be, I think, without causing a revolution in this society.

So what's left? What's left are the counties who will be asked to do more, and ironically have their police squeezed, because again, they can only cut other services to a certain degree: mental health, which has a relationship to the crime rate, and police services, and all the rest. The counties are at risk, and higher education is at risk, and that's about it. That's the only place we can get money to balance a budget. So those are the two entities that are at grave risk in California, given the fact that you've got a structural deficiency that causes unbalanced budgets year after year, and they have to look someplace to balance it.

HICKE: What's the structural deficiency?

KEENE: It's an inability to create new revenues and growth principally in population and service needs on the part of Californians. One of the things that Prop. 13 did was to require a two-thirds vote not only for the budget but for any new revenues. So it is almost impossible to secure new revenues, a tax increase, in California's state government. At the same time, you have the rug pulled out from under the defense industry, people going on public assistance in larger numbers,

1. Proposition 184 (November 1994).

and increases in population. Notwithstanding people leaving the state, you've got still more coming in than leaving, so you've got growth rates, both in public services and in population that exceed the ability of the state to increase its revenues.

So then, they've got to look for either quick fixes, like borrowing to get by an election, which is what they've done this year, or rolling over amounts of money which they're not supposed to do constitutionally. But the constitution is not self-executing in that respect, and squeezing sectors of consumers, like college students, as I say, who are one of the largest groups at risk, and welfare parents and kids, another group at risk, and the counties, and the people for whom they provide services, by continuing to mandate the services without picking up the costs, then the counties are forced to make cuts, either in police, which reduces crime protection, the sheriffs and police, mental health, and other crime-related things, or in direct services to people, like public transportation.

HICKE: Libraries.

KEENE: Oh, libraries, yes.

HICKE: I noticed in this crime bill that in order to get it passed, one of the things they did was take out money for what I would consider crime prevention, and put it into prisons. Isn't that about what happened?

KEENE: Yes. There's a certain irony, though, in all of that stuff--people fighting for guns at the same time that they're trying to reduce crime in the streets. Somebody from Mars will come here and look at this society, and the decline and fall, and they'll be amazed that something like that can happen.

HICKE: I was wondering how your constituency reacted to the effects of Proposition 13. Did you get any . . . ?

KEENE: Let me describe to you what happened. We met in caucus, and there was this debate between the liberal and more moderate wings of the Democrats, the moderates saying, "We've got to pass property tax relief," the liberals saying, "We have to do it right, and it has to be with a means test."

HICKE: This was in '78?

KEENE: Yes. The harm that was done was not so much that there was permanent gridlock on the issue. Eventually, a bill by Peter Behr, who was the outgoing senator from Marin County and the North Coast, whom I succeeded in office in that election, emerged as the legislative relief vehicle, S.B. 1.¹ Peter Behr and Leo McCarthy together promoted Proposition 8. But, though it was enacted, it was too little and too late. So the harm that was done was in the delay and underestimating the magnitude of the taxpayers' revolt. Behr was less prone to underestimate, because Marin County was one of the places where you had this very powerful antitax group. It was too late, and Prop. 13 was on the ballot.

I always thought that the liberal Democrats were to blame for the failure to pass property tax relief, and when 13 passed, the public mood was, "You guys asked for it." Now, they didn't realize at the time that the main impact was going to be on local government and not on the state directly, that it was going to be on local services, but they sort of said, "You guys deserved it because you didn't give

1. S.B. 1, 1977-1978 Reg. Sess., Cal. Stat., ch. 24 (1978).

KEENE: us the property tax relief we needed." I said, "Well, there was probably a miscalculation on the liberal side." As I say, I wasn't in the leadership at the time. I was watching this debate and participating as one of the people who had a handle on one of the oars on the galley, but I wasn't beating the drum or ordering the people to row. So I didn't feel in control of the situation, but my calculation was that the liberals should not have held firm for the means test.

I later learned that there was a lot more to it than that, and that one of the principal problems--and I don't think this is generally known to very many people--but one of the principal problems was a [California] Supreme Court decision that came down requiring that there be greater equalization between high and low wealth districts in education. There was an equal protection decision called the Serrano decision--a California case [op. cit.]. It was decided on grounds of a denial of equal protection, that people from low wealth districts would have inferior schools, and the kids would suffer and so forth.

So they were faced with the problem of reducing property taxes. The equation was approximately this: the decision makers were faced with the problem of reducing property taxes in the face of having developed an obscene--meaning unnecessary--surplus of state funds in the treasury. That was one problem, that they had to reduce the inflow of revenues and maybe even give some money back. But it was at the same time as they were faced with this command by the judiciary to equalize school districts.

Well, the people that were from high wealth school districts obviously did not want to transfer their money to the low wealth districts. So they wanted the standard to be the high wealth standard, not the low wealth or some median level of support for education. So at the same time as you had one vacuum cleaner--the taxpayers--trying to suck up these excessive revenues, you had another vacuum cleaner--which was the schools and school districts--trying to go for the same funds. It was virtually impossible to get a consensus that dealt with both issues: the issue of who should get property tax relief and in what proportions, which was a liberal-conservative type issue, and the other issue of how to deal with the low wealth/high wealth debate over what standard should be set for support for schools in California. The second was a major complication in resolving the first.

Fortunately, I came across an article by Al Rodda, who chaired the senate Education Committee, about this whole issue, because I didn't find it anywhere. I never knew about it, hadn't read about it, and as they call them now, the "policy wonks" in education knew about it and were present in providing information in the Prop. 13 debates, but that was a very limited, inside group. Many academics who have reviewed Proposition 13 and the Proposition 13 phenomenon never speak of the fact that the legislature was confronted not with one major problem but with two major problems, in an area where consensus is very difficult anyway. I mean, there's nothing more explosive than taxation and schools.

HICKE: They affect just about everybody.

KEENE: Yes, they do. So the fact that the legislature couldn't get a consensus in time is more comprehensible, and the fact that they didn't get one in time is what triggered the explosion. So if you hadn't had Serrano, a legislature that was required to deal with really the second Serrano decision at the same time as it was dealing with this property tax problem, you might never have had a successful taxpayer rebellion in California. You might never have had the ripples throughout the country that it produced, and a conservative backlash of major proportions.

HICKE: How did the legislature deal with Serrano?

KEENE: Ironically, it became easier when the state took over responsibility for funding education after Prop. 13. There was no longer an inequality in the power to fund. All districts were funded by the state. The post-Prop. 13 funding formulas achieved enough equality to satisfy the courts. It was accomplished at a higher per-pupil level than existed previously.

HICKE: And that had to come out of state budget, I assume?

KEENE: Yes. Ironically also, the last thing the people who supported 13 wanted was a centralization of government power at the state level. They wanted to take away, they didn't want to give. Well, what they did was take power from the school districts to support themselves, and from local governments to support themselves. The cities managed to bounce back because of all the fees that they were able to impose, but schools and counties became almost totally dependent on the state.

[End Tape 13, Side A]

[Begin Tape 13, Side B]

KEENE: Well, what happened next, the day after Prop. 13 passed, was that people were camped on our office doorsteps from the counties, from the cities, from the schools, demanding that the lost funds from property tax revenues be replaced with the surplus, and that the surplus be distributed to local government. Well, people like Dan Walters, the political journalist, can fairly cavalierly say that the legislature should have stood up to the locals and said "No." But politically it was virtually impossible. It was the Johnstown flood. We had teachers pounding on our doors demanding that education not go down the drain in California; we had county supervisors talking about everything from Meals on Wheels to libraries and law enforcement, and we had law enforcement personnel on our doorstep, police and fire, saying, "You've got to bail out the locals, and you have the means to do it. Why wouldn't you do it? You've got the means to do it."

Well, it created a dependence that exceeded the means to do it, and increasingly, the legislature would have to begin backing off the commitment to local government. Now, why did that happen? It happened because not only were property tax revenues reduced, which affected the locals, which could be made up by state revenues, but the spirit of 13, the political mood of the day, dictated in the minds of Sacramento legislators the passage of other measures to reduce revenues. The first one that I think we passed was the inheritance tax elimination. Another one was elimination of the tax on inventory. But the biggest of all was the anti-bracket creep tax, as it was called, which meant in a period of inflation, that income

tax dollars would flow in at a geometric rate because of progression in the tax tables.

HICKE: People moving up to higher brackets?

KEENE: Yes, people would be moved into higher brackets simply as a result of inflation. So that was eliminated in the "spirit of 13," and state revenues were sharply reduced.

HICKE: Was this done with general consent in the legislature, or were there big battles over these things?

KEENE: By that time, anyone who wanted to preserve sources of revenue was fighting a very uphill burden. They had to overcome a great deal. So elimination was "the thing," and it had leadership support in some instances, and a lot of Democrats had gone over to the antitax side and were willing to support those measures. People were saying, "Well, we'll have to deal with it down the line," not realizing that Prop. 13 also did something else, and that something else was the two-thirds requirement for new taxes.

Now, in California, if a special interest comes in and wants relief, a so-called tax loophole, that can be passed by a simple majority. But in order to be repealed, it requires a two-thirds vote.

HICKE: Yes.

KEENE: So you've got twenty-plus billion dollars each year in tax loopholes, some of them worthwhile. I mean, some of them are matters of public policy. A lot of them, however, benefit only narrow interests; they are very questionable and have been retained long past the public policy they served when they were enacted. But you can't get them repealed, because it's regarded as increasing taxes by the people who would have to supply the votes to create the two-thirds to

eliminate it. So the people that have those tax benefits, which are called tax expenditures by the legislative analyst, because it's every bit a public expenditure to grant somebody relief from taxation that others then have to provide, tend to keep them at great cost to the rest of us.

Meanwhile, any increase in revenues is politically virtually impossible in California, unless it's part of some big negotiated deal, which is what happened finally in 1992.

HICKE: So this all kind of stems from Prop. 13?

KEENE: Yes. Then something called Prop. 4¹ passed, which put a lid on the ability of the state to spend money that it collects. It capped growth in state expenditures. The year 1978 was regarded as the golden balance of relationships among the various interests, and therefore state expenditures should not increase except as population increased or inflation increased. So here was this period in time that was used as the base, and you couldn't spend more than that.

Well, no one knew about AIDS in 1978. Nobody knew about the immigration explosion that we were going to have in California. No one knew that the defense industry was going to collapse and that you were going to have all kinds of people put on public welfare. These are the kinds of things that are sending California down the tubes.

Then a governor like George Deukmejian, who just didn't believe in infrastructure investments, felt that the smaller government was, the better off we'd all be. He finally caved in to the

1. Proposition 4 (November 1979). This is officially cited as California: Constitution, Art. XIII B.

transportation establishment in California in passing a bond issue that put money into public investment in transportation. That was the singular act of leadership during the Deukmejian administration that I can recall, other than building more prisons. That was infrastructure investment that he approved of. Higher education was not high on his list.

What was the point of all this? California was undergoing a sea change in the attitudes toward public investment, and the kind of leadership that the Pat Brown administration had generated for California, as well as other progressive governors, was going by the wayside. And people were believing that they could put less into public services and public infrastructure, both physical and human infrastructure, and that California would do just fine. It hasn't been doing just fine.

HICKE: Since we've happened onto this, maybe you could talk a little bit about the change in administration from Brown to Deukmejian.

KEENE: Jerry Brown talked about the era of limits, saying that government was not the key to unlock solutions for everybody's problems, which philosophically made sense to a lot of people, including myself, and that bigger was not necessarily better, and building dams was not necessarily the way to go, and more freeways, and all of the rest. That we had to look to limits. But Jerry Brown was reasonably supportive of public efforts when a clear case could be made, and he was certainly, though questioning, very supportive of public education.

In many ways, he was a disaster for Californians and for liberal viewpoints. He reacted very bizarrely to many public policy issues.

He caused a loss of confidence in leadership, particularly Democratic leadership. He did things that made people lose confidence in government. The initial failure to spray for Medflies [Mediterranean fruit flies], for example, which ultimately resulted in a policy of spraying populated areas when things got out of hand, because he didn't want to upset a cadre of people who supported integrated pest management. This was a very fine idea, but it had not yet proven its effectiveness, and in light of the potential consequences of the Medfly establishing itself on California agriculture, the prudent thing would have been to push integrated pest management on the one hand but recognize that you've got a serious potential problem on the other hand.

In the health area, which I was involved in during the Brown administration--I was chair of the assembly health committee--rather than putting the administrators in charge of this huge enormous Department of Health with all sorts of problems, he put people in who prided themselves on--it was always the manipulation of symbols--prided themselves on a healthy lifestyle and lots of good things, things that we all subscribe to. But at the same time, the delivery of health services was a disaster area, and the political predators in the health area were ganging up on the good guys, and things were not going well. I hesitate to name names.

HICKE: That's OK.

KEENE: And some of them were very nice people, but they just didn't get it. They didn't understand administration, let alone politics.

HICKE: And they were healthy themselves, and they didn't understand the difficulties of not being healthy? Is that kind of what you're saying?

KEENE: They were people who were selected for symbolic reasons, and not for reasons of good administration. Jerry was a master of manipulation of symbols, and posturing. The blue Plymouth that he drove.

HICKE: Yes, the image is the message.

KEENE: That's right. The image was always the message with Jerry. He selected a director of Transportation who didn't believe in freeways. Well, understandably, public transportation was neglected. Certainly could have and should have been supported in populous areas. But in the rural, outlying areas where state transportation doesn't lend itself to public transportation, and you have uncompleted projects that prevent people from getting from place to place, you would think that there would be some adjustment and fine-tuning there. But she was rabid: no new freeways. No new freeways.

So that was what his administration consisted of: appointing people to the supreme court that satisfied symbolic things that were consistent with his instincts, but who, in one of the worst things to happen in California, were removed from office. The first time any appellate justice, let alone supreme court justice, was ever rejected in California's history, three including the chief justice of the supreme court were thrown out.

HICKE: They were not reelected, you mean?

KEENE: They were rejected. By the people. In an election in which the only vote was, "Affirm or reject," and they were rejected. So the chief justice of the California Supreme Court and two other justices were dumped, a real tragedy in terms of the independence of the judiciary in California, which I think probably had a lot to do with the recent

tendency to just ignore the principle of judicial independence and inject politics in at every step along the way. Clinton did it on abortion. In order to get the PORAC [Peace Officers Research Association of California] endorsement, Kathleen Brown did it recently, by saying that she's going to let the peace officers comment on any judicial appointments that she makes. I mean, some years ago, as a matter of principle, that style would have been rejected. People would have said, "An independent judiciary is critical to a democratic society." These people are not to be chosen for partisan reasons or elected, and if partisan or ideological reasons entered into it, it was never discussed, it was never admitted to by the appointing authority.

But when Clinton promised the women's groups, "I'm going to appoint only pro-choice people to the [United States] Supreme Court," it's an invitation to the other side to do exactly the same thing. I am really rambling today! [Laughter]

HICKE: And that came out of Proposition 13 and Jerry Brown. That's very interesting.

[Interruption]

KEENE: Jerry Brown could have been a great governor. The fact that he appointed a woman to head the supreme court I thought was a great act, but there were many qualified justices in California and practicing attorneys from whom he could have selected. Now, Rose Bird had the intellectual qualifications, she had the skills, she was qualified in most ways except one, and that was that she came in with an extensive policy agenda that expressed itself in the judicial

decision making. I was probably the only Democrat in a contestable district up for election that opposed the recall of the justices.

HICKE: Were you on the Judiciary Committee at that time?

KEENE: Yes. And there were these billboards up and down Highway 80 and up and down 101 saying, "Barry Keene supports Rose Bird." And, "Dick Brann opposes Rose Bird." So it became almost a litmus test campaign issue, and I think probably made me fairly vulnerable in an election in which otherwise I would not have been. But my point is that Jerry put us in a very difficult position by appointing Rose Bird when he could have appointed a woman and insisted that they not have a political agenda going in, because there's no question that that court was in a state of policy making far in excess of what's prudent for a judiciary. The judicial branch, everybody admits, engages in a certain degree of interstitial policy making, but not to the degree that the Bird court did.

HICKE: What was her policy agenda?

KEENE: It was pretty much pro-plaintiff and anti-business. It was pretty much pro-environmental and anti-development. It was essentially a liberal agenda, the kind of thing that someone like me might have approved of in a policy arena but that in a judicial arena created grave risk for the credibility of the court. I think that that's what happened. You had this conservative backlash, originating with Proposition 13 and increasing. It swelled to the point that that knocked off not only the first three appellate justices in California's history, but three supreme court justices, and not only associate justices but the chief justice herself.

So that was the kind of thing that Jerry Brown did, and it just didn't make a great deal of sense. Now, when his administration took over, he said, "California is very centrist. What you have to do is paddle your canoe to the left a little bit, then paddle it to the right a little bit." Well, the day after Proposition 13 passed, which he opposed very vigorously, there he was on television paddling to the right, embracing Howard Jarvis, in a scene that I still remember, and he's the born-again anti-taxer, the guy who was going to go riding into the presidency on this surplus.

Then, he did the same thing with the Medfly, first offending the farmers by not appreciating the magnitude of the risk, then offending the environmentalists by having to spray in the Bay Area and Los Angeles area. And the same thing as leader of the Democratic party, where he decides that he's going to commit himself to serious fund raising for Democratic candidates, and then leaves without a great deal of success and condemns the system of campaign financing.

HICKE: Yes, what ever happened to him? I heard that he took the job, and after that, nothing. Never heard anything from him again.

KEENE: He didn't succeed. He held fund raisers and he courted the special interests, but less successfully than some others had done, and then denounced the special interests, and is a born-again campaign reformer. So there he was born again twice.

HICKE: Again and again.

KEENE: Yes. A supporter of campaign reform who is going to go out and squeeze the special interests on behalf of practical politics and the Democratic party, and his commitment to the party, and then is reborn as a campaign reformer. He came into California on a

campaign reform platform. Proposition 9¹ was passed, which Jerry said would limit lobbyists to two hamburgers and a coke. They could still take legislators to lunch, but they'd be limited to two hamburgers and a coke, and then [he] became the principal fund raiser for the Democratic party in California. [Laughter]

So he was endlessly fascinating, but very destructive to the party, and I think to California politics in general. They lost confidence in liberal leadership in California.

HICKE: And so we arrive at Governor Deukmejian?

KEENE: We get Governor Deukmejian, whose sense of leadership was, "The less, the better." And California is stuck in neutral for eight years with almost nothing happening, except the construction of prisons. Then, at the end of his administration, he is dragged kicking and screaming into providing support for transportation, because at least that special interest political consensus existed. You couldn't get him to do the same thing for schools, for example, or for health care, or for some other issue. But the folks in transportation, from the oil companies to business generally to Orange County, where they were having these huge traffic jams and so forth, the automobile folks and all the folks who help promote freeways in California and rip up public transportation in California were there to encourage him.

HICKE: He didn't do much as a senator, did he?

KEENE: No. He didn't demonstrate a great deal of leadership as a senator, but it was consistent with his philosophy. He felt that government

1. Proposition 9 (June 1974).

shouldn't do much, and that his job was to protect the business community against the excesses of government.

HICKE: Why do you suppose he was elected as senator and then as governor?

KEENE: Well, I don't know that much about the Long Beach district that he was elected from, but he was elected principally as a law-and-order candidate. He was then elected attorney general of California as a law-and-order candidate, and he ran as governor on a conservative platform in a conservative time, and was successful, I think, for that reason. The same electorate that elected a Ronald Reagan elected a George Deukmejian.

HICKE: I have this article here that says you took him on without any qualms when you felt like you had to.

KEENE: Well, I was hopeful that he would begin to exercise some leadership. I was in a leadership position at the time. My quarrel with him was not that we were on different sides of the political spectrum.

[End Tape 13, Side B]

[Begin Tape 14, Side A]

KEENE: Obviously we would have debated policy with the administration. I was looking forward to a constructive relationship with the Deukmejian administration. The first crisis arose with the appointment of Deukmejian's director of Finance. He selected someone who was his assistant in the Attorney General's Office named Michael Franchetti. Mike Franchetti was once upon a time a Democrat, a guy who had lobbied on behalf of the Attorney General's Office and whom people had pretty high regard for.

A former lieutenant governor of California, an African American named Mervyn Dymally, who had also been a state senator and congressman once upon a time, was accused in a leakage from the Attorney General's Office of being involved with something akin to organized crime, and that some relationships that he had were suspect, and so forth. Dymally was very deeply offended by it and felt that the charges were outlandish and not proved, and went to his colleagues in the senate and said, "You should not confirm this appointment."

Now, the starting pistol had gone off. We're just out of the starting gate and attempting to establish some relationship with the Deukmejian administration.

I went to Steve Merksamer, who was Deukmejian's chief advisor, and said, "Look, let's try to negotiate this thing. If Franchetti is willing to indicate that the leakage was unintended, or that it was based on insufficient information, and maybe issue a little apology to the guy, I think I can get him confirmed." And Merksamer said, "It's out of the question. He would never apologize to Dymally." I said, "Have you asked him?" "Well, I just know he would never make an apology to Dymally."

I said, "Look, this is going to be a major rift in the relationship with our house, and I can tell you he won't get confirmed." "If he doesn't get confirmed, that's the way it is. But there will be no apologies."

Well, he wasn't confirmed, and the friction started to build.

The next thing that happened was Senator Alquist led an attack on private efforts to construct a governor's mansion for Deukmejian.

KEENE: He insisted that a residence that had been purchased by private funds, by supporters of Ronald Reagan on the American River, not be occupied by the governor and not be declared the governor's mansion, that the governor's mansion should remain downtown, that there should be housing constructed in the downtown area for the governor, and that we shouldn't be taking this private money and all the rest.

Well, Deukmejian was fit to be tied. He felt that his friends in the legislature were intruding almost into his personal business, attempting to make life uncomfortable for him. He never forgave legislative leadership for that, assumed that it was a move that was orchestrated by Democratic leadership. Which it really wasn't, although I admit we went along with Alquist, who was regarded as one of the senior people in the Democratic leadership and the fiscal expert in the senate and so forth.

Well, the mansion was turned down, and that was the second shot fired around the Capitol. Deukmejian's response was to increase his hard-nosed attitude. Alquist referred to him as the Iron Duke. And the rhetoric built, the friction increased, relationships deteriorated. Deukmejian began using his veto to prevent anything from happening, took no initiatives other than prison construction, which really came a little later.

I was looking forward to some serious policy initiatives and a constructive relationship, and wasn't getting any response out of them, so I turned up the heat and started issuing a series of press releases criticizing the governor for being a do-nothing governor. Instead of causing them to respond constructively, as I should have

guessed, or causing them to respond at all, as I hoped for, they just kind of wrote me off and said, "This guy's not welcome down here, we don't care if he's the majority leader in the senate. He has no credibility with us, and we're not going to do anything. We think that government should be less active, not more active."

HICKE: Actually, we should go back a little bit and pick up the beginning of the time when you chaired the Judiciary Committee. I think we talked about your time on the Rules Committee. So then by 1982, you became the chair of the Judiciary Committee. Can you talk about how that happened, and then where you went with that?

KEENE: The Rules Committee is truly a place where power can be exercised, because you have a great deal of control over the environment within which legislators function. The pro tem needs your support on the Rules Committee, because there are only three of you, and it takes three votes out of the five to pass anything, and if a Democratic member of the Rules Committee deserts the leadership, it can be a problem. So you're taken care of, in a sense, by the pro tem. You can get things accomplished by threatening your colleagues with losing their office or denying them requests, or things like that, but there are no direct policy implications, and I was too far removed from policy to like it. There are a lot of housekeeping tasks that go on there that I didn't particularly enjoy. As I say, how you take care of things can increase your power with your colleagues, if they have some request in there. "Gee, the car that they got me this year is a real lemon. Can you see about getting me another one?" Well, if you process that slowly enough, they get a certain message.

[Laughter]

HICKE: Meanwhile, they're broken down in San Diego.

KEENE: That's right. Or, "I need another staff person to help me in this subcommittee on teachers' rights." "Well, you've got a pretty good staff. If we give you staff, we have to give staff to others who make the same request." So again, you process it slowly and with difficulty, and you can get some affirmative responses on the policy side. But you're removed from policy.

I felt that I needed something to sink my teeth into, and the Judiciary Committee seemed to be a good place to do that. So I was one of the few people ever, I think, to ask to get off of Rules Committee. [Laughter]

HICKE: Having already secured your office and staff!

KEENE: That's right. I got off of Rules Committee and was very happy on Judiciary, enjoyed the subject matter tremendously, had a good staff, and so forth.

[Discussions deleted]

HICKE: You indicated that the durable power of attorney legislation passed at about this time?

KEENE: Yes. With the Natural Death Act, we had a national, almost international debate over the issue, because of the concerns of pro-life people and the Catholic and some other churches, and concerns about euthanasia, and that people's lives would be too easily taken, and that we were attempting to empower them, but really others would be making the decision.

Well, something called the durable power of attorney was much more effective. It was about ten times as effective. But the amount of controversy was far less, and I think one of the reasons was that

we had the track record on the Natural Death Act, and all these terrible predictions never came true. The other reason is that I had acquired some leadership authority as chair of the Judiciary Committee, and it made life much easier to pass something that would have to go through the Judiciary Committees of the two houses.

HICKE: How did the topic arise?

KEENE: Because the Natural Death Act was limited, and this new design was available borrowing on an old idea. The old idea was that of conservatorship, where someone who became incompetent would have someone else appointed to make legal decisions for them. So we said, why not key medical decisions, particularly for someone who is in his or her final days and is unable, for reasons of physical incapacity, to make important medical decisions about the removal of life support, for example? Why shouldn't they be able to designate their own person, someone in whom they had confidence and whom they trusted, if they wanted to do so? So we enabled them to do so through the durable power of attorney, which is a much more widely used format than the Natural Death Act.

HICKE: I see. Is this something you can do yourself?

KEENE: Yes, in your lifetime at any point you can sign it.

HICKE: I mean without a lawyer, you can get the forms and fill them out and file them someplace?

KEENE: Yes. You can appoint a spouse or sibling or anyone you like, a friend whom you might trust, to make those kinds of decisions with your interests in mind.

HICKE: Did this go through the legislature without any problem?

KEENE: There was a little bit of problem, people making the same argument that this is a slippery slope, and that it's going to lead to massive euthanasia, and all of the rest, which hasn't happened. It's made life a lot easier for the health care professionals who have to deal with terminally ill people, who may not have the slightest clue as to what they would have wanted to have happened in a certain situation and a certain set of circumstances, or whom to ask, whom to consult. And here the person has designated someone to make those decisions. It gets them off the legal hook, and the medical decision-making hook, because then that party makes the decision.

HICKE: Did assisted suicide ever come up?

KEENE: Yes, in that there were those who argued that this would lead to assisted suicide. The Beverly Hills Bar Association came to see me and wanted me to endorse an initiative that they put on the ballot that would have allowed for assisted suicide. I said I wasn't prepared to do that, to go that far, that we should wait and gain some experience with durable power. They said, "Well, the real problem is people who are in nursing homes and have no one whom they can name." I said, "Well, they can do the Natural Death Act. They can make out their form." "Yes, but there may be no one to implement it. So we need to enable them to allow doctors to[pause]"

HICKE: Appoint attorneys?

KEENE: Yes. And I said, "No, we're not ready for this yet." I didn't oppose it, but I didn't support it.

HICKE: So they wanted to allow doctors to assist a suicide?

KEENE: Yes, essentially assist a suicide.

HICKE: When you went from the nonpolicy area in the Rules Committee to the Judiciary Committee, what policies did you have in mind that you wanted to work towards?

KEENE: I didn't have that strong a policy agenda in the legal area. I wanted to develop one, and I got into a few things, but not any major policy effort. Chairing the committee was a massive burden in and of itself, simply because of the volume of legislation that came to that committee. The reason for that was two-fold. One is that unlike the assembly, where criminal issues went to one committee and civil litigation and other civil matters went to a different committee, in the senate they both came to the same committee. You also had twice as many assemblymen as senators conceiving legislation. So you had virtually twice the number of bills coming out of the assembly and hurled at the senate, and the smaller senate committee dealt with both kinds of legislation.

It was the committee with the largest workload in the state legislature, with the exception of one other committee probably, the senate Finance Committee, which at that point was split up into two committees, one a Budget Committee and the other a senate Appropriations Committee. So then there was the Judiciary Committee with the largest number of bills of any committee, because the bills were assembly-generated bills for the most part, coming over from the assembly in roughly twice the number as were being originated in the senate. Then, it was the receptacle of all the judiciary-related bills, not just the criminal or just the civil but both. So we would work until two, three, four in the morning sometimes.

HICKE: Did you consider splitting into two committees?

- KEENE: We thought about it, but I'd have to give up the chairmanship to another chair, would lose jurisdiction, which might not have been a bad idea! To actually surrender some of that jurisdiction. But then it would have also reduced the authority of the senate Judiciary Committee, which historically would not have been approved of by some of the old-timers.
- HICKE: Did you have to deal with the appointment of judges?
- KEENE: No. Unlike the U.S. Senate Judiciary Committee, judges in California don't require any legislative or senate confirmation.
- HICKE: Because they are elected, for the most part? I mean, they're appointed first, and then they're elected, aren't they?
- KEENE: Yes. But the elections are basically up or down elections, and they're usually re-approved. Some trial judges are contested. Although we're not heavily into judicial elections in California, it's more so than at the federal level, where judges are appointed for life.
- HICKE: Were there any bills that you dealt with that stand out in your mind?
- KEENE: I'm trying to distinguish between when I was chair of Judiciary and when I served on Judiciary.
- HICKE: OK, well, let's not distinguish. Just pick out.
- KEENE: OK. There was one that became fairly controversial, in that there were some episodes of people who had been institutionalized in mental institutions who acquired guns and committed acts of violence. So I carried some legislation to create a central index whereby the attorney general would be contacted when someone was purchasing a gun and would be able to provide information within a relatively short period of time as to whether that person had been institutionalized.

Well, it was a major explosion, because some people had been institutionalized voluntarily, by themselves, and did we want that information on, and if we did, was it an invasion of the privacy of those people? And did we want to discourage people from institutionalizing themselves when they thought that they were a danger to themselves and others? And did we really want a central index of people who had been at one time or another mentally ill, and what about their right to privacy?

So it got into a pretty big hassle with hospitals and civil liberties groups and organizations for the mentally ill on the one side, and the victims of crime and anti-gun people on the other side. It was sort of an interesting alignment: law enforcement and victims and anti-gun people on the same side.

HICKE: Yes, that is unusual.

KEENE: And I think the National Rifle Association may have been on that side as well.

HICKE: Along with the anti-gun people?

KEENE: Along with the anti-gun people, yes. Yes, there's a slight area of overlap where the anti-gun people do want to punish people who use guns in crimes, and the NRA goes along with it, on the theory that it's an alternative to punishing people who own guns, or restricting people who own guns. So anyway, there was that side, and then the other side were the civil libertarians and the organizations for the mentally ill.

So there was a big brouhaha about that that we ultimately resolved with constraints on access to the index.

HICKE: You did do the index, but there are constraints on its use?

KEENE: Yes.

HICKE: Isn't there always, in this kind of legislation, a line to be drawn between the public good and the right to privacy?

KEENE: Yes.

HICKE: And do you just resolve that by power struggles?

KEENE: Yes, political power struggles, hopefully with some concern for a greater public interest than is represented in the power struggle. There is always this philosophic debate among academics and people in the political sciences, and some astute people on the political scene, about whether there is a public interest that is not represented by the various special interests that participate. It's kind of a nonutilitarian theory of public interest. The utilitarian theory is that all these people come in and know their own interests best, reflect those interests, and that the ultimate vector force that emerges is the public interest.

And then there's another theory that says no, people are not represented proportionate to their relationship to some public interest ideal. There are some people who are not represented at all, and the general public interest is never represented at all to the degree that special interests are. You have to look after that something out there that is a general public interest.

HICKE: And that would be the responsibility of the legislature?

KEENE: Yes. Ideally. In reality, if the special interests, particularly powerful ones, come in and say, "Hey, we've got a deal, we've cut this deal, and this is it," the thing is likely to pass.

HICKE: Which side of these theories do you stand on?

KEENE: The nonutilitarian side. I think that there is a larger public interest. You have to ask yourself not only whether the particular solution or proposal or program works and is cost-effective for those who are powerful players, but also whether it delivers for and concerns itself with people who may not be able to express themselves through the special interest mechanism. I think that there is a responsibility there. But the institutional incentives are all the other way, where if you maximize satisfaction of the special interests, that's enough.

[End Tape 14, Side A]

[Begin Tape 14, Side B]

KEENE: The political rewards are less to look out for a larger public interest. That perverse incentive asserts itself in two ways. One is where you have a contest between the special interest and a more generalized public interest; the other is where you have a turf battle between or among special interests. The latter not only consumes a great deal of legislative energy, which is then not consumed on behalf of the public, but the bigger interests beat out the smaller ones.

Even if the special interests come in and say, "This is what we want; we've cut a deal amongst ourselves; we're the antagonists in all this and we've come together; please pass this," the rest of the public is overlooked or may be designated the losers. But involved legislators win because they will receive benefits from both sides of what had previously been a "problem" for them, because they would have had to declare for one side or the other and receive benefits from only one side. So the public interest is squeezed out of that

kind of thinking, that kind of equation. It tends to explain all the tax loopholes and other special privileges in the law.

The institutional incentives reward people who do that, as opposed to people who look after the public interest. So why look after the public interest, when the rewards are in looking after and advancing the special interest causes? The political rewards are there. It's all backwards.

HICKE: Could you pick out a couple or three of your colleagues at that time whom you think perhaps did the most for the public interest, or had the public interest in mind?

KEENE: Well, in the senate, I think people like [Senator] Gary Hart, Hersch Rosenthal, [Senator] Dan McCorquodale in an erratic sort of way, Nick Petris, are examples of people who would look much more carefully at a piece of legislation if it were advanced or supported by obvious special interests. They would tend to look to the other side and say, "What's going on here?" And look at it very, very carefully. Others might say, "Are the trial lawyers OK with this? Are the contractors OK with this? Are the so-and-so OK with this?" "Yeah, there's no objection." "Is agriculture for this?" "Yeah, they're all for it, so there's no problem." "Oh, no, there are no problems." And the thing would go through.

But there was a certain cadre there that said, "Wait a minute, let's really take a look at this." And I wouldn't say that that was true of these people on all issues, but on most issues. On the Republican side, a [Senator] Marian Bergeson might, or Democrat [Senator] Diane Watson, might say, "Wait a minute, is this really on behalf of school kids, or is this a teachers' thing?"

HICKE: Yes. "Where is it coming from?"

KEENE: Yes.

HICKE: Well, maybe we should go on to, I have 1985 when you became Democratic senate floor leader.

KEENE: Yes. Basically what happened is there were no policy initiatives from either house. The assembly was in a mess, in a turmoil, because of successive leadership contests, and the senate was not program-oriented. The difficulty, I thought, was that Roberti, who I felt had a strong policy orientation which was subordinated to politics, unless he was pushed, was not being pushed by Garamendi. And the reason was that Garamendi's natural policy orientation was subordinated to his political ambitions. He was seeking the governorship. I supported him very strongly in his first outing for governor, but it became increasingly apparent to me that the leadership of the caucus and the senate majority was being sacrificed to his political ambitions, that he was using staff and staff resources, his ability to raise funds, his leadership position, and the media attention that it commanded, for his own personal gains and not for the interest of the caucus. Also as a practical matter he was alienating most of the caucus, and he seemed to be unaware of that fact, that they were resenting all of that.

So I decided to undertake a program of moving him out as majority leader, letting him pursue his political ambitions, and attempting to create a programmatic caucus as majority leader, and to urge Roberti to take more policy initiatives than he was willing to do. The first issue for him was maintaining his political base, and

the second issue was policy initiative. Unless he had a majority leader that would push in that direction, we would never get there.

HICKE: Is it the major role of the majority leader to push policy programs?

KEENE: It's a possible role, à la [Senator George] Mitchell in health care in the U.S. Senate, although the U.S. Senate doesn't have an active president pro tem. They don't have a president pro tem equivalent there, so the majority leader is really the head of things in the U.S. Senate. But the majority leader can either be basically a fund raiser, squeezing the special interests, or the majority leader can be programmatic and require the members to participate in a leadership program. So that's what I wanted to do.

Garamendi, in going out, complained that the reason he was being forced out was that he wouldn't be a "bag man," which obviously I found very offensive, and by then we had kind of parted company.

I was in a parade out on the Russian River once and got a phone call from John Garamendi. I was asked to return it, and I returned it to his house. I got Patty Garamendi on the telephone. She said, "You're running against John." She read me the riot act. I had never been spoken to in that fashion by virtually anyone that I could think of. I said, "Look, this conversation is out of place; it's inappropriate; your facts are wrong. John does not have a vote to sustain him in the caucus except his own. I returned John's call, I didn't call you." So that was the end of our personal relationship, I think. John and I have smoothed over some of that since, but our personal relationship we've never restored to what it had been before.

The up side of my decision to do that and my decision to push the caucus into taking policy decisions was that the senate did a great deal, including legislative reform, that was far beyond what it thought itself capable of. We had an "era of good feeling" with the Republican minority and its leadership. The condition of the house improved in the sense that people increased their respect for each other, the floor debates got better, people didn't lose their tempers. There was an amazing contrast between the senate and the assembly that developed in that respect. People would go onto the assembly floor and they couldn't believe it.

HICKE: How did you do that?

KEENE: By telling people that we should treat our adversaries well, by intervening when things got heated on the floor, by creating an esprit de corps that contrasted, and I would comment on it publicly in the media, contrasted favorably with what was going on in the assembly, where they were using foul names for each other and just the worst sort of diatribe. So a civility was brought about that was beginning to be lost.

Also, I believe they did become more policy-oriented. We asked the committee chairs to identify key areas of legislative agenda, to tell us what they could accomplish realistically and reasonably this year, and we would sit down in caucus and we would discuss it. We had leadership meetings between the two houses. Lunches in my office that I hosted brought the Democrats in the leadership of the two houses together, not the Republicans. But we had a good relationship with the Republicans in our house. So all of that was on the positive side.

However, as the central Democratic leadership urged policy initiatives by the chairs, a few committee chairs began to function as individual entrepreneurs. It included the [Senators] [Alan] Robbinses, the [Joseph B.] Montoyas, and the [Paul B.] Carpenters.

The lesson appears to be that any movement of central leadership out of a fund raising role invites individual members to cut deals with special interests. The lobbyists used to say, "There's only one vote in the assembly that counts: the speaker's." So their sense of things was that they had to cut deals with the speaker.

In the senate, when we moved away from concentrating on the most efficient fund raising in order to encourage policy initiatives, some of which were inconsistent with the optimum special interest position, we created a vacuum into which moved people who did not have the public interest in mind but had their own fund raising, or in some cases, as it turned out, lining their own pockets in mind. It left them free to operate, as I said, as individual entrepreneurs, to cut deals with the special interests, who then had their friends in key committee places.

HICKE: Would there have been any way to avoid that? Looking back on it, of course.

KEENE: I think again, the institutional incentives tend to dominate. And if you have a system where the political rewards are principally in campaign contributions, and that's how you secure your place in the house, that's how you secure your position in your district, when the principal currency is campaign contributions, you've got a system that's very hard to control. It's really out of control. So my great notion that we were going to push policy was only partially

successful. We would send bills over to the assembly where they would die, where the interests would overpower them. And as I say, we lost control of our own operation to some of these folks.

Here we were attempting to do the right thing, we felt, or I felt, and the result was to free up others who had no compunction about trade-offs with the special interests. So the special interests, in a sense, said, "Look, if we can't deal with you, we'll go to the source. We'll go to the committee chairs or key members and we'll cut our deals there." So those committees that they could successfully compromise through the committee chairs, or members in decisive spots, were to the advantage of those particular special interests. The others had to wait for the assembly to cut their deals.

But it was discouraging to me in both ways. It was discouraging because of what was happening in our house, which wasn't fully evident until the indictments came down, although we heard rumors. And a couple of lobbyists came up to me and said, "Hey, you guys better take charge, or somebody's going to go to jail." I said, "Can you tell me who, and what's happening?" "No, I can't tell you." So we sort of knew that there was stuff, but we couldn't put our finger on it enough to do something about it. Whether we could have done more, I don't know. Maybe we could have.

HICKE: You'd have to set up your own investigative forum. Didn't you say that you did get some legislative reform accomplished?

KEENE: Yes, remarkably. We eliminated the two-thirds vote. I say eliminated; we passed legislation that would have eliminated the two-thirds vote on the budget, which had to pass by two-thirds. It seemed impossible, but we got it out of the senate, with the help of

Senator [Ken] Maddy and the Republican leadership, simply because the process itself was deteriorating and we were saying, "Respect the institution. What good does it do for all of us to get reelected if the institution goes down the tubes, what good does it do?" To their credit, they bought into that argument.

We passed out legislation that would take redistricting away from the legislature and put it in the hands of a commission, which is remarkable for incumbents, and again requiring a two-thirds vote, to vote to give up the power over redistricting.

HICKE: Wait a minute, what happened to these two bills? They got killed in the assembly?

KEENE: Yes. And the third bill was a bill of mine that would have required public financing of campaigns, which the Democrats wanted, and would have prohibited transfers from leadership to members, or among members, of campaign funds, which the Republicans wanted. All of those bills died without the speaker's support in the assembly, and with Republican leadership opposition in the assembly.

And I tried to convince the assembly Democratic leadership. I said, "Look, you can really make it hot for the very conservative assembly Republicans by passing this stuff and letting them withhold the final votes, and either they feel the pressure and it passes, or it doesn't pass and they get blamed for it." But the assembly leadership said, "What if they do pass it? They're liable to pass it just to screw the speaker. They're liable to pass it and we'll lose our ability to control the house."

HICKE: And the Democratic leader of the assembly at this point was . . .

KEENE: Willie Brown, the Ayatollah. He declared himself Ayatollah once upon a time. He said, "I am the Ayatollah of the legislature."

HICKE: Who was the Republican floor leader in the assembly?

KEENE: It was the fellow who is now serving time, Pat Nolan.

HICKE: Well, I have a whole bunch of other bills down on my list. There was a marijuana eradication bill?¹

KEENE: Yes, no big deal. Most of the marijuana cultivation took place in my district, up on the North Coast, and I was never all that excited about prosecuting marijuana cases. But the cultivation was getting to be a problem for two reasons: people would wander into cultivation areas and be threatened by dogs and traps and people with guns. So that became a problem. We participated in supporting the eradication program, got some funds for the eradication program, which has always been a difficult proposition, because then we were getting letters from people saying, "There are these planes buzzing over our heads, and they're using chemicals to get rid of marijuana crops." It was just a hassle and a constant hassle of an issue, but in terms of policy, it was no big deal.

HICKE: Closed circuit TV for child victims in the court?²

KEENE: Yes. I didn't carry the legislation, the legislation was carried by [Senator] Art Torres. It was legislation to allow a child victim to not have to appear in court where the defendant was. There's a constitutional right to confront your accusers, but the idea was that kids get very upset when they're faced with the person who

1. S.B. 1139, 1985-1986 Reg. Sess., Cal. Stat., ch. 1563 (1985).

2. S.B. 46, 1985-1986 Reg. Sess., Cal. Stat., ch. 43 (1985).

committed the acts on them. Shouldn't they be allowed to respond over camera, in a room where they're seated with a parent or other advisor? What I did was amend it so there had to be two cameras, so that the jury could see whether there was any coaching by the parent or counselor. So that you weren't getting the testimony of the parent or counselor, whom you couldn't cross-examine, but you're at least getting testimony from the kid.

HICKE: Were there any problems with that one?

KEENE: No, it went through in that form, with the two cameras.

HICKE: And then there was the idea of taxing mail-order sales?¹

KEENE: Yes, to try to capture additional revenues from people who were selling in California but avoiding the sales tax, and creating an unfair competition with people who were based in California who had to pay the sales tax.

HICKE: I think that must have passed, didn't it?

KEENE: Yes.

HICKE: Add 6 percent if you're from California.

KEENE: Yes, it did pass, and we were afraid there was going to be a constitutional challenge, that it was an interference with interstate commerce and exclusively within the purview of the federal government, but I think it may have survived a constitutional challenge.

[Discussions deleted]

[End Tape 14, Side B]

1. SJR 68, 1985-1986 Ex. Sess., Cal. Stat., r. ch. 152 (1986).

[Begin Tape 15, Side A]

KEENE: There was prescribed burning legislation,¹ innovative for its time, which they're now renewing an interest in with all the wildfires they're having. They're saying, "We've got to take care of this stuff before it happens, and we're really going to begin implementing prescribed burning," which is a cultural change for those organizations which are mostly fire-suppression organizations and not interested in management of brush. Brush management is not politically sexy; putting forest fires out is.

HICKE: Yes, but they've lost a few too many of those fights.

KEENE: That's right. Exactly. So those were always my interests in carrying this bill. Recreational trails was another of them, that the state should get involved in bike trails, recreational riding and hiking trails. I introduced the first legislation to do that, and since then, the state has acquired a number of trails that fit that description.

[Discussions deleted]

KEENE: To stimulate aquaculture, we created in the Department of Fish and Game an aquaculture development unit and tried to assist its development in California. The domestication of species and the raising of abalone and sea urchins and various kinds of fish, catfish, sturgeon, are now very popular in the state.

HICKE: Oyster beds I've seen.

KEENE: Yes, the oyster beds in Marin. It was a very active guy named Charlie Johnson who fought hard for his aquacultural investment. We tried to get Fish and Game to support aquaculture. They were

1. A.B. 1006, 1977-1978 Reg. Sess., Cal. Stat., ch. 1118 (1978).

into natural systems more than the creation of an unnatural environment for commercial purposes. They were not so much into that, and we had to get them into that.

HICKE: So you carried legislation to do what?

KEENE: Well, to get them to be supportive.

HICKE: Oh, directed Fish and Game to do whatever was necessary?

KEENE: Exactly. To participate in helping aquaculture rather than restricting it, creating some balance. They do have an interest in preventing natural systems from being polluted by artificial systems; but we wanted them also to have an interest in promoting aquaculture as a commercial enterprise in California because we thought it had good potential within limits, without injuring natural populations.

We're managing sea urchins in California now. A very big delicacy in Japan. We created a new industry with divers in the Fort Bragg area and Mendocino area diving for sea urchins. It became a million-dollar industry in a very short period of time, and they proceeded to overfish, so we had to put management limits on that. But aquaculture was brought to the fore as a legitimate occupation in California that shouldn't be suffocated by Fish and Game. Rather they should try to balance and cooperate with the development of aquaculture.

HICKE: Almost seems like it could come under agriculture.

KEENE: Well, there was a problem with that in that Fish and Game didn't want it under agriculture. They didn't want the Department of Agriculture . . .

HICKE: Fishing in their waters? [Laughter]

KEENE: That's right. You know what happens when you divide management responsibilities for a fragile and limited resource.

We also set up a series of rearing ponds, principally on the North Coast, for the return of salmon, anadromous fisheries. The fish were raised to a certain age where they were more viable, and then permitted to go into the stream and out to the ocean, attempting to restore the natural system. So Fish and Game was very supportive of that, as opposed to hatcheries, which are quite unnatural, where you breed them, you release the eggs, and you're into a program where the natural systems don't restore themselves. You have to constantly supply the eggs at a fishery, and they are always subject to disease. Hatcheries are enormously expensive as well.

So the rearing ponds was an approach that Fish and Game approved of, and we got funds from fish stamps, from commercial fishermen, to whom we said, "Look, you'll have more fish supply out there in the ocean if you support this program." So they supported the rearing ponds, and it became a very successful program in California.

HICKE: How about trout farms? Do we have any of those?

KEENE: Yes, we do, mostly inland. And catfish are doing well. They may be a principal protein source in the future.

HICKE: I know they had started them in Texas. I didn't know there were very many in California. I think that's a very interesting area for agriculture to go.

KEENE: This guy at Davis, a Russian biologist who came over, was participating with the Bodega Bay Marine Lab in developing a sturgeon fish farm. They are huge, prehistoric creatures. You would

have thought they would be an unlikely prospect for fish farming, but the project is very successful. You can get them on a restaurant menu now. Pond-reared sturgeon, released into streams and raised for commercial use.

HICKE: Do these fish-raising businesses get any financial support?

KEENE: Encouragement through the university, some of the obstacles removed on the part of Fish and Game, but mostly coordination type efforts. Some funding through the university. Then private investment.

HICKE: Great. OK, well here's this: "Supreme Court OK's the Justice Department's Labeling of Certain Canadian Films as Propaganda."

KEENE: Oh, yes.

HICKE: Is that worth talking about?

KEENE: Yes. [Interruption] That's an interesting story.

We were becoming concerned about the damage to the tops of old growth redwoods that were no longer vegetating at the top, and therefore in a diseased, weakened condition. Now, these are trees that resist fire and have survived through the Ice Age and thousands of years in some cases. We thought that it might be attributable to acid rain, not coming from vehicles in the area so much as winds moving out of the Bay Area or other places and carrying things that would injure the forests.

The Germans had done a great deal of work in acid rain, and I got something called the German Marshall Plan to finance a trip to Germany for me.

HICKE: They sponsor KQED also.

KEENE: Yes. I visited some of the German forests, and got a sense of their forestry techniques, which are far better than ours, and the respect

that they have for sustained yield. They've managed their forests for many, many hundreds of years, much longer than we have.

I went to Sweden also, because they're very far ahead of us on acid rain type issues. They were losing forests as well, and blamed it on other countries, but soon figured out that they were part of the problem.

So I took this trip trying to find out about the risk of acid rain to our forests, because in some places, major portions of forests are going out of existence. A third of the trees in the Tahoe basin are dead, another third are infected, infested, and another third are OK, which is a high casualty rate.

There was a film on acid rain that had been put together by the Canadian Film Board, which is a very reputable, distinguished operation. There also happened to be another Canadian-developed film by an Australian physician named Dr. Helen Caldecott, which was essentially an antinuclear film. This was at a time when the Soviet-American relationship was a very hostile one, and she was very effective in making the case for nuclear disarmament. There was a third film, I forget what it dealt with. I can't remember.

But I got interested in showing the acid rain film, and quite coincidentally I had met Helen Caldecott and wanted to show her film. I wish I could remember the name. It was put together by Physicians for Nuclear Responsibility or some group like that, but also through the Canadian Film Board.

So I announced that I was going to show both films at the Capitol. I invited people to come. Then I was advised that if I showed them at the Capitol, I would have to register as a foreign

KEENE: agent under the Foreign Agents Registration Act, and the films would have to be labeled as propaganda, because they were made by a foreign country. Well, I was chairman of the Judiciary Committee at the time. I challenged the constitutionality of the Foreign Agents Registration Act. The case was heard in the federal court here in Sacramento, and we won.

One of the committee consultants handled the case. I testified that I was a legislator, and public information was a part of my business, and I wanted to carry it out. If I had to register as a foreign agent, it would be used against me in a political campaign by a political opponent who would say, "He is a foreign agent," and there was all sorts of mischief that would result. The judge threw the government's case out.

The government finally said, "Well, we won't make him register, but they'll still have to put on the propaganda label." We said, "No. We're going to push it. We think you're wrong, we think this is off base."

What we also had going for us was the fact that Canada had just rescued American diplomats in Iran. Remember, Iran was seizing hostages?

HICKE: Yes.

KEENE: And the Canadians had rescued about a dozen American diplomats who would have been seized by the Ayatollah Khomeini. Great payback for the Canadians: "Your films are propaganda." So it's a restriction on my First Amendment rights, particularly as a legislator, who has the duty of informing his constituency and raising these issues, and I come from a forested area, and acid rain is a big issue.

Well, the federal government, under federal statute, could appeal directly from a court order declaring any statute unconstitutional to the United States Supreme Court, and they did. The case was set for hearing before the United States Supreme Court, and it was Keene v. Meese. [The Supreme Court appeal was Edwin Meese III v. Barry Keene.]¹ And Lawrence Tribe, who was the foremost, preeminent constitutional scholar and Supreme Court advocate offered to take the case.

HICKE: From Harvard, right?

KEENE: Yes. He is a law professor at Harvard, whom my cousin is clerking for right now. Unfortunately, Tribe got into a battle with my consultant over how the case should be handled and withdrew from the case. In any event, I was still excited that the case was going to come up before the U.S. Supreme Court, and I was rubbing my hands, saying, "Boy! I want to argue the case before the Supreme Court." This is really something for a lawyer who doesn't practice before the Supreme Court, to have a case before the Supreme Court.

HICKE: You were going to argue it yourself?

KEENE: I wanted to argue at least a portion of it myself, especially after Tribe had backed out of it because of a disagreement with this young attorney who was on my staff and whom I didn't want to discourage because he'd done such a good job at the trial level.

As fate would have it, the vote for majority leader was on the same day as the case was to be heard before the Supreme Court, and I had a choice. I didn't go to Washington to argue the case. I did

1. Meese v. Keene, 481 U.S., 465 [1987]. Also see 95 L. Ed. 2nd, 415 [1987]; or 107 S. Ct. 1862 [1987].

win the majority leadership. I felt that the long-term consequences would be worse if I took my ascent to majority leader for granted and asked people to vote for me in absentia. It would have been arrogant and inappropriate and given my detractors a chance to say, "He isn't interested enough to be here for the job." So I was in Sacramento making my case to become majority leader while we were losing our case at the Supreme Court.

HICKE: And did you show the film?

KEENE: Yes.

HICKE: Labeled propaganda?

KEENE: No, we didn't label it.

HICKE: Oh, I won't tell. [Laughter]

KEENE: So every once in a while I'll hear from someone who cites Keene v. Meese, because the Supreme Court overturned it on grounds that didn't overturn all of the trial court's decision, but overturned enough that the government won its case.

HICKE: Who was the federal judge, the trial judge?

KEENE: Raul Ramirez of the federal district court in Sacramento.

[End Tape 15, Side A; End of Session]

[Session 5, September 16, 1994]

[Begin Tape 16, Side A]

HICKE: I'd like to start this morning with something that you said before. You said there was a growing policy desert between the time that you left the assembly and the time that you took over the senate majority leadership. I wonder if we could explore that a little bit.

KEENE: Yes. I meant it in a couple of ways. One of the ways was very personal. Strive as I might, it was very difficult to reorient people toward the prolific policy making of the mid-seventies. What had happened, in my opinion, is that the currency of the legislature in the mid-seventies was knowledge. By the mid-eighties, it was money. That was my concept of the power of money driving out the power of ideas. It was advantageous in the mid-seventies to acquire knowledge. The respect and position that went along with it, a committee chairmanship, sitting on a good committee, your colleagues becoming dependent on your specialized knowledge in an area, all of those things made knowledge a valuable commodity.

Lobbyists, those who were good teachers, who had information that was valuable information, would not provide that information to people who had no influence and people who were not respected.

They would go to the people who could influence a lot of votes if they were persuaded to adopt the position that the lobbyists sought. There was an incentive to provide information to influence an outcome, if you were a lobbyist or if you were a bureaucrat or if you were someone who was concerned with influencing policy.

So instead of bringing bags of money, they would bring information and try to persuade legislators to do something. Legislators grew more knowledgeable and the best legislators began to rise in a system of peers. There was no wonder, I think, that the legislature was very productive during that period in the resources area, in the labor law area, in the health area. In very many different areas the legislature was really very productive during that mid-seventies period.

By the mid-eighties, it was a money game. I think what had happened in part were the several leadership struggles over in the assembly, in which the people striving for leadership had to prove that they could elect members of their party, and in doing so, put extensive pressure on lobbyists to provide campaign resources. By the time the leadership battles were over, by the time those wars were over, there was a lot of indebtedness to special interests and a new set of relationships had arisen. Competition was for increasing campaign war chests, so that you could stabilize your own position but also provide assistance to colleagues who were in need, and to the leadership that needed to elect colleagues of their own party.

So the people who rose in that sort of system were people who could raise money, the good money raisers. Committee positions were then used for purposes of raising money, and there was a

Keene. rearrangement of institutional incentives that prevented the public interest from being served. Most of the interests who could provide money were people who wanted to protect the status quo. Why? It was the status quo that made them powerful. They wanted not to cause things to happen but to prevent things from happening.

The system lent itself very well to that: the political competition between the houses; and the extraordinary vote requirements; the campaign fund raising from those interests. Leadership then became increasingly dependent on campaign contributions. So the whole system changed and deteriorated, and nothing was happening.

HICKE: This impetus came from the legislature, is that what you're saying? Not from the lobbyists? The need for money arose with the legislature?

KEENE: Well, it was a combination of things. It was the pressure to win the leadership of the assembly. You're talking about the speaker's position, the second most powerful position in state government, and sometimes first, sometimes the most powerful position in state government. Pressure being put by legislators on lobbyists to raise funds to elect candidates who will support a particular leader. It was McCarthy against Brown, followed by Berman against McCarthy, followed by a takeover by Brown in alliance with the Republicans.

But those three successive waves produced enormous pressure on the Third House, on the lobbyists, by the legislature to raise funds to elect people who would vote for the right speaker, so that the leaders could demonstrate that they could elect people, which also

swayed some of the undecideds in the caucuses. So that was the process, mostly over in the assembly.

In the senate, things were run by a leader who felt his main job was to maintain a level playing field.

HICKE: Roberti?

KEENE: Mills. Jim Mills. Some key Republicans, particularly at the conservative end of the spectrum, were heavily into the money game, and defeating Democrats. They succeeded; Mills was replaced by Roberti, who adapted himself to the new system, which was the system of fund raising as a means of commanding positions of power in the legislative process. And that system had a lot to do with the deterioration of the legislature.

Now, the other side of it is that, and this is a chicken-and-egg situation, it's hard to know what came first, but the new electronic technology was being rapidly adapted to politics. That technology included not only television, which was very costly, and the management of television production, which became quite an art, but also involving highly paid hired guns, people who had no allegiance to party or issues or candidates but were up for the highest bidder.

HICKE: We're talking about campaigns now?

KEENE: Campaign managers, yes, who came in and made use of this new technology and created a market for even newer technology. You had phone banks, you had targeted computer mailings, and all of this was very, very costly. So the people who had the most money had the largest technology advantage, the best campaign managers and campaign strategies. And where did they get the money from? They

didn't get it from small contributors, they got it from large special interests, from the lobbyists.

So these several events conspired to create a legislative industry that was dominated by money and no longer by knowledge and the development of policy.

There's a very good snapshot of that mid-seventies period by this guy at Berkeley, Sandy Muir, who was there for two years, the '75-'76 session, and interviewed lobbyists, interviewed legislators, interviewed bureaucrats and staff and so forth, and developed some theories on why things were working well in California.

HICKE: You observed the process during the period you describe as a "policy desert." How did you take up arms against it?

KEENE: Well, it was an attempted breakout with some temporary success. I turned the heat on a lot of people. For example, with the oil spill legislation.

Earlier, what made my Natural Death Act possible was Karen Ann Quinlan and public attention being drawn to the issue of when the plug should be pulled. Later, what gave impetus to the catastrophic oil spill legislation was the Exxon Valdez up in Alaska, a ship which, had it safely left the Prince William Sound, would have come along the California coast and down to the refineries in southern California, principally in southern California. There are ships that are the equivalent of the Exxon Valdez supertanker, some even larger, daily making their way down the California coast. A catastrophic oil spill, one of those capsizing in a major storm, is a very real possibility, and there would have been no capacity to deal with it.

I thought there was potential there for getting the oil companies and the environmentalists together to create a response. I hoped I could put enough heat on enough of my colleagues by telling them, "Hey, we're not doing anything, we've got to start dealing with some of these problems; we have to start restoring public confidence." They were feeling the pressure of criticism from the public, and the legislature was being treated almost tragi-comically.

We were about to go through the very severe budget crunch where the state had an enormous deficit even after the governor raised taxes by \$7 billion. The legislature was really being battered. One would have expected some motivation to accomplish some substantive things.

The oil companies felt that bad things would happen to them unless they cooperated, and indeed they wanted to reduce the prospects of damage in any kind of an oil spill. The environmentalists had a clear interest in wanting to protect the California coastline, that in theory was protected by law but not in reality, because if just one of these supertankers capsized, it could be a real disaster for California.

We were involved in a situation in which the environmentalists demanded the world. They said, "After all, these are the oil companies, the richest corporations in America, and they're all multinational corporations, and they could come up with some real money." The oil companies were saying, "That's a nice theme, but when the price of gasoline at the pump goes up, the consumers, who are going to be these same folks, are going to be complaining about the huge profits of the oil companies."

In any case, we gradually resolved those issues. The trial lawyers got involved; even though they had a minor interest, they became a very major player. The reason they're a major player is that they're an enormous source of support for the Democratic leadership of both houses. So if they want something, they can pretty well get it.

HICKE: You're talking about the California Trial Lawyers Association?

KEENE: Yes. What they wanted was no limitations on liability for the clean-up of the spill. We're not talking about the spill itself, for which there were no limitations on liability, nor should there be. In fact, it's strict liability. There doesn't have to be negligence. If there's an oil spill, the activity is ultra-hazardous, and it's strict liability. Whatever damage is done, the person who transports the oil is responsible for it.

HICKE: Does that include triple damages?

KEENE: No. But there is strict liability, absolute liability, without regard to negligence. You never had to prove negligence. So that wasn't the issue.

The issue was in the clean-up, and these clean-up operations that said, "We will form, with capitalization from the oil companies or without it, but we will form and we will respond. However, if you expect us to be there in the middle of the night in a storm, we can't get sued every time we respond. We can't afford the litigation involved every time we respond and there's damage. We're constantly going to get charged with negligence, and we can't afford that. We're not oil companies, we can't afford that."

HICKE: Why would they be charged?

KEENE: Because, in a lawsuit of that kind, you sue everybody.

HICKE: Just as a matter of course?

KEENE: Yes. So you have the oil spill, the oil is moving toward San Francisco Bay, and you've got the clean-up crews out there attempting to contain it. They contain 90 percent, and 10 percent reaches the marina in San Francisco and causes damage to wildlife and boats and yachts and so forth. The clean-up folks, who can't operate with perfection under the best of circumstances, let alone under adverse weather conditions, find themselves in a lawsuit that can wipe them out. Can't wipe out an oil company probably, but it can wipe them out. So they're saying, "We need some limitations on liability, and the limitation we're seeking is, if we're grossly negligent, we'll be prepared to respond. But since there's strict liability on the part of the oil companies, you don't need to have us there. They're the folks who will foot the bill."

The trial lawyers wouldn't go along. They were concerned about precedent-setting in limitations on liability, that there would be limitations in other places where people engaged in rescue or clean-up work.

HICKE: It's the old slippery slope.

KEENE: Yes. So we got hung up on that for a very, very long period of time. There were editorials in the press about how the trial lawyers were holding the thing hostage, and we went around to some of the editorial boards and said, "This is outrageous, we've got to do something here. We've got to create entities that can live without fear of being wiped out once they get started, and with the oil

companies on the hook, it doesn't matter, because they have virtually unlimited capacity to respond in the event of a major spill."

So we finally got by all that, and we got a bill out.¹ There was another problem. When I introduced the bill in the senate, there was a freshman assemblyman [Ted Lempert] who introduced a bill on the same subject over in the assembly. I don't know how to do this delicately. He created a dynamic that was very unfortunate, because when you had one set of negotiations and one forum within which to bargain, everybody has to come to the table, and the compromises and concessions and negotiation and bargaining take place all at once. The losers, if they feel like losers, have to accept what they get out of that process.

Well, what would happen is, we would negotiate something, and anyone who later didn't like it would go running to the assembly, and Lempert's bill would be changed to incorporate their particular interest. It became an amateurish type of operation, and pretty soon the major players didn't want to play, the large environmental groups and the oil companies, because anyone that didn't feel they had gotten as much as they should have gotten out of the negotiations--which is almost always the case with everybody; you don't get a whole loaf when you negotiate--would go to the other side and say, "Hey, put us in your bill, take care of us. We got hurt on the other side."

There were conflicts, for example, within the oil industry, between the majors and the independent producers. There were

1. Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. S.B. 977, 1991-1992 Reg. Sess., Cal. Stat., ch. 1115 (1991).

KEENE: conflicts between the land-based oil companies, who transported oil by pipeline, saying, "Why should we contribute as much per gallon when we don't constitute as much of a risk? And what you're talking about is providing a response clean-up not when a pipeline breaks but when something happens at sea. We don't transport by sea." So Shell was opposed to ARCO, for example. It was the ARCO group and the Shell group, and whoever would lose, saying, "They're charging us too much," would go over to the other side.

HICKE: How did you resolve this difference between the senate and what was going on in the assembly?

KEENE: We had a hard time, and it caused a lot of friction. Pretty soon everybody was discrediting the assembly operation. We brought the assembly person who was involved in and said, "Look, become part of the negotiations, but don't do this independent thing. You're not doing the process any good." And finally, what it came down to is he wanted his name on the bill. Willie Brown came to see me and said, "He wants to either author the bill or be tombstoned into the bill." I said, "As far as I'm concerned, he can do both if we can just get a decent bill. I don't care which it is."

So he said, "Well, tombstone the bill with his name first, and you author the bill, because you know how to carry a bill and he doesn't. I need to keep him happy, and I'll make sure that he acts responsibly from here on in." So that was the deal. He got equal publicity on the thing, which was OK, it was fine, and sort of stayed on the sidelines, and we negotiated the bill out.

HICKE: I wanted to ask you just how you dealt with this problem.

KEENE: Well, it became a real problem, having two sets of negotiations. The situs of negotiations desired by most of the major parties was the senate and the senate bill, basically because my staff and I knew how to negotiate a bill. They felt that the assemblyman was not up to speed yet. He was a very smart guy and very capable, but not up to speed, and also did not have a good sense of substantive policy, because he was a person who came in during this "desert period" when not much was being accomplished, and basically wanted his name tombstoned onto the bill. I had never even considered the thought of a tombstone.

Tombstones were basically out of vogue. That's when the bill is called by the names of the authors. But I did think it would be my legislation that would be passed, and not competing legislation in the other house, simply because we were ahead of the game and we had the skills and the knowledge of how to put a difficult bill together. A freshman assemblyman of whatever competence and capacity would not have that. So we had to try to kind of shut things down, but do it in a way that was diplomatic and not offensive.

What Mr. Lempert did, I may as well use his name, what Assemblyman Lempert did was to do whatever was necessary to shape his bill to get it out of the assembly as a vehicle and over to the senate, and he would then put his bill into exactly the same form as my bill in order to get it by the senate committees. Some of the major players, particularly the oil industry at that point, which also had a friendly committee in the senate Governmental Organization Committee, members who were friendly to the oil industry, said,

"We've got to stop this two-forum process. If we're going to get anything accomplished, we have to stop this two-forum process and negotiate with each other over the same table." They killed the Lempert bill in the senate Governmental Organization Committee.

Lempert went screaming to Willie Brown that he'd been unfairly treated by the senate, because he indicated he was willing to put his bill into exactly the same form as my bill, and they still wouldn't pass it out. So Willie essentially asked me, "Why did you kill the Lempert bill?" I responded in writing that I didn't kill the Lempert bill, but that the process had gotten out of hand, and that we needed to negotiate a single bill, a single legislative response that would then go into a bill.

[End Tape 16, Side A]

[Begin Tape 16, Side B]

HICKE: One of the things you did, though, was to lay this out in writing in the letters to Willie Brown.

KEENE: Yes. I laid out pretty well in writing what I thought the problem was, my analysis of the situation, and why we had to stop dual negotiations. He responded orally that Lempert wanted to be a player, that he would be satisfied with having his name tombstoned on the bill.

I said, "The issue of tombstoning doesn't trouble me at all. I really don't care much. What I'm looking for is a serious solution to the problem of adequate oil spill response, and if he wants his name tombstoned onto the bill, that's fine. Call it the Lempert bill if you want to, but we've got to get a good bill."

HICKE: Why did he have Brown's support?

KEENE: Oh, in the assembly, you pledge allegiance to the speaker in return for which you get protection from the speaker. The speaker has virtually unlimited power but has to respond to protect his people. The shepherd protecting his flock.

HICKE: OK, that's a good explanation.

KEENE: There was another thing, though, that I think motivated Willie to slow down my bill, and that was the trial lawyers, his close relationship with the trial lawyers, and their resistance to any form of limited liability, not for the oil companies, but for the clean-up corporations, the people that were engaged in the clean-up. The Lempert situation gave him an excuse for slowing down the movement of my bill. He might have been just as pleased if a bill had not passed and he could take credit with the trial lawyers for killing it, and with Lempert for derailing this "outrageous senate co-opting of the assembly's prerogatives," or something. The art of politics is the art of taking credit.

So Willie responded that he would, as long as Lempert were happy, as long as I was willing to tombstone and Lempert was happy with the tombstone, that would solve that problem. I should work out the problems with the trial lawyers. Well, that turned out to be not so easy, because they didn't want to give up anything.

HICKE: Who were you dealing with? Were you dealing with specific people in the trial lawyers?

KEENE: I was dealing with specific legislators, and the trial lawyers were represented basically by Don Green and Nancy Drabble.

HICKE: Who were the legislators?

KEENE: Willie had set up a three-member subcommittee. He double-referred the bill, meaning it went through the Natural Resources Committee. We had to resolve all of the problems of [Assemblyman] Byron Sher, who was sympathetic to the environmental side. And that was fine, we worked all of that out. So the oil companies and the environmentalists were together, one of those rare situations, a blessing. We could really do something. But now the trial lawyers were sitting in the middle of the road.

HICKE: That's funny.

KEENE: The legislator who espoused their cause was none other than [Assemblyman] Lloyd Connelly, a guy with an excellent reputation who prided himself on being anti-special interest, except when it came to the trial lawyers. He represented the trial lawyers in this subcommittee, which consisted of three members, two of whom were trial lawyers. The bill was stuck there for many, many weeks, and we built editorial support, public support. The environmentalists were supporting it, the oil companies were supporting it.

Finally, under enormous pressure, the trial lawyers yielded, and it was called the Lempert-Keene bill, which didn't trouble me except that I hated to reward somebody who I felt was not responding amicably in the process. We got the bill, and that's what was important, and it was one of the few achievements of the legislature in that period, and one of my few policy achievements in the senate.

HICKE: What year was it passed, do you recall?

KEENE: Ninety-one, maybe.

HICKE: OK. That's close enough. And you just gave me a beautiful brochure on the Marine Spill Response Corporation. I still have the card, but you said it was a corporation formed in response to this bill.

KEENE: Yes. And the best part was that all of the states who had offshore oil situations began passing similar legislation. So it became a model for the rest of the country, and then finally national legislation was passed, but I can't tell you exactly what was contained in the national legislation.

HICKE: Tell me how this MSRC works. What did the bill actually require?

KEENE: The MSRC was set up by a nonprofit corporation whose members include oil companies who are required in California to pay a certain amount of money per barrel of oil shipped. The money would be put into a fund that would guarantee the capability of a financial response for any damage caused, and also to pay for the state-of-the-art facilities for containing and cleaning up the effects of an oil spill.

HICKE: Is this then in competition with private oil clean-up companies?

KEENE: No. It would contract with private companies as well, of which there are several in the Bay Area, in other ports like Seattle, down in Los Angeles and so forth. So it was an effort to coordinate, utilize available facilities, but improve the overall response through supplementation and coordination. I noticed in the map here that California would have available to it facilities in San Diego, Port Hueneme, Richmond, and Eureka, and also in the Northwestern states: Astoria, Oregon; Port Angeles, Washington; Everett, Washington; Bellingham, Washington. So there would be quite a good West Coast response capacity. But it all came out of the California legislation.

- HICKE: Did you hear anything about the impact that it had? Do you know anything about that?
- KEENE: Well, there haven't been any major oil spills. Hopefully, the test will prove successful.
- HICKE: They only deal with major ones, or if there's a leak someplace . . .?
- KEENE: Really major ones. There was a leak in the Bay Area at the Shell refinery in Richmond, and it caused some problems in the Bay, but they didn't need to invoke this major capacity.
- HICKE: How long did it take when you started this, when you came up with the idea and began trying to get this bill passed?
- KEENE: It took us, I think, between one and two years.
- HICKE: So you had to go at least two sessions, probably.
- KEENE: Oh, and we had negotiation sessions in which one side or the other walked out. We had all kinds of difficulties. We had to go through a process that evolved slowly until people began trusting each other, and until they had enough investment in the outcome that there was an increased probability of success. Then we had obstacles, as I say, like the trial lawyers, that presented a real problem.
- I had some people on my staff who were sort of head-knockers, tough negotiators. I sent them out and I said, "You sit down with so-and-so," what may be one of the oil company representatives or the Planning and Conservation League guy, I said, "you tell them that we're going to hold them responsible if this thing goes down. They've got to start being straight with us." So having that kind of staff capacity was very, very useful.
- HICKE: Who were they?

KEENE: Well, unfortunately, one of them is about to go to prison--Terry Frost.

HICKE: Oh, wonderful.

KEENE: Yes. But not for anything that he did for me. In fact, it was involvement in--if you can imagine how bizarre this is--while he was working for the senate majority leader, helping out the Republican leadership in the assembly, Frank Hill and [Patrick J.] Pat Nolan, the two Republican legislators from the assembly who are going to prison.

The guy who was working for me, the Democratic majority leader, was wheeling and dealing with the Republicans over in the assembly. It was a sting operation by the FBI [Federal Bureau of Investigation], and in the course of the transcripts, the person who was the FBI informant says, "Who should we get on board? We've got to get Republican votes over in the assembly in order to get a signature on the bill by the governor, and we've got to get the bill through the senate, and we've got to get Democrats and so forth. Can we get Keene on board?" And my staff guy replies, "Never." [Laughter] "He doesn't deal in these kinds of things. He's not a part of this kind of action."

HICKE: Not available.

KEENE: And I said, "Thank God," as I read the grand jury transcripts. Fortunately, he gives me a clean bill of health. Says a couple of unkind things about how I'm not in that sense a mainstream player.

HICKE: Oh, good. [Laughter] Another compliment.

KEENE: A compliment.

Anyway, Terry Frost and Rick Dunn, on loan from Roberti's office, were the two "tough guys."

As for Terry, I had him on board because he was a savvy guy in the sense that he knew who the players were and he could talk to legislators and he could negotiate and so forth, but those were the same capacities that got him into trouble. He never lined his own pockets, but he engaged in a lot of muscle-flexing and took credit for some outcomes he probably had little to do with.

HICKE: Power?

KEENE: Power game.

Well, OK. Oil spill, that was a nice success, but we bled and died many times over the course of making it happen. It was not an easy job. We had support from the lieutenant governor, Leo McCarthy, and he was very helpful throughout.

HICKE: In what way would he have been able to help you? Talking to people?

KEENE: Among the Democrats, he was respected as kind of an elder statesman. The policy orientation that I referred to in the mid-seventies was partly when he was speaker of the assembly. So he had a real policy orientation, and he wanted to get something accomplished and help us in the negotiations and talk to some of the parties.

HICKE: Does the lieutenant governor have any power to speak of?

KEENE: Not a lot. But based on his previous friendships and contacts, he does have some visibility, but it's not a lot.

HICKE: OK. Well, the other thing that you were not quite so successful with, as you've said, was the forestry legislation. Can you start at the beginning on that?

KEENE: Yes. This was going into my nineteenth year in the legislature, and when I started as an intern, part of my assignment was with a committee that was chaired by a Sacramento assemblyman named Ed Z'berg. He chaired the assembly Natural Resources Committee and came out with a report called "Conflict in the Redwoods." He and a Republican senator, [John] Nejedly (Z'berg was a Democrat), passed something called the Z'berg-Nejedly Act,¹ which provided the first real restrictions on logging in California. They were state of the art at the time. California had the strongest forest practices act, the Z'berg-Nejedly Act, for a very, very long period of time.

It became apparent that there were things that the Z'berg-Nejedly Act did not deal with, which may not have been a problem in the mid-sixties so much but came to be a problem, and that was the volume of cut. There was no limitation on the volume of cut, and there was no special protection for old growth trees at a time when people were becoming aware of "biodiversity" as a value.

[Interruption]

KEENE: People began thinking, in part tactically but in part because the science was improving, in terms of biodiversity in watersheds instead of timber value in logging units. Their belief was that you couldn't treat timber as if it were a harvestable crop.

1. A.B. 227, 1973-1974 Reg. Sess., Cal. Stat., ch. 880 (1973). (Z'berg-Nejedly Forest Practice Act.)

So we wanted to come up with a set of bills that allowed logging to continue but would protect specially sensitive areas and also reduce the excessive volume of the cut and build in a standard of sustainable yield in California. There were four legislators at the outset that got together: Byron Sher, who chaired the assembly Natural Resources Committee, and would regard himself as an environmentalist and be generally regarded as an environmentalist; Dan McCorquodale, who represented the Santa Clara Valley and chaired the senate Natural Resources Committee, who would I think be regarded as a moderate with an environmental tilt; myself; and Assemblyman Dan Hauser, who would be regarded as attempting to accommodate both sides. Because we had a lot of "both sides" in our district, a lot of communities that were timber-dependent, working people whose jobs were depending on continuing to harvest timber, and a lot of environmentalists, particularly along the Mendocino coast and Santa Rosa area and Russian River, and up in Arcata, where Humboldt State University is. It was so polarized a district, as you know.

HICKE: How about other agricultural interests? Were there any involved in it, other than timber?

KEENE: Forest land owners were involved. Our districts had a lot of other agricultural interests, sheep growers and cattlemen and dairy and vintners, wineries, and . . . [Pause]

HICKE: Apples?

KEENE: Apples, yes. So we had a lot of agriculture--pears, prunes--we had a lot of agriculture, but it wasn't basically interested in this particular issue.

Having had the success in the oil spill area, I wanted to build on it.

We successfully passed good timber legislation in 1991; but in a tragic error of judgment, the governor vetoed it. It was Assembly Bill 860. It contained 90 to 95 percent of what he wanted. But he stubbornly vetoed the bill, on the theory that we'd introduce another piece of legislation, which he could then claim was fully sponsored by his administration. After we did, satisfying the governor, the new bill was killed by Willie Brown, who did not want to give the governor a success. That's an overview of the process that got me so disgusted that it, and a few other things, made me feel it was time to leave. Pete wanted his bill. Willie didn't want a bill that was Pete's. Policy was caught in the crossfire and was killed. Murdered.

HICKE: Let's go back and start at the beginning.

KEENE: Yes. It was called the California Accord. All four legislators acted very responsibly, in my judgment, in negotiating this, and took political risks, the appropriate political risks. It had several parts to it. One was sustained yield, requiring long-term management plans for sustained yield. There was to be watershed protection against not only obvious and direct damage, but also "cumulative effects." These were lots of little wounds to a watershed. The Accord limited the percentage of a watershed that could be clear-cut, and the percentage that could be removed over a ten-year period. It was a very finely tuned piece of legislation.

Clear-cutting was limited to twenty acres. There had to be buffers between clear-cuts that were at least as large as the clear-cuts, and they couldn't be in certain sensitive areas.

Ancient forests were afforded special protection. You had two kinds of ancient forests: unentered ancient forests with no previous roads or harvesting, and those which had been partially logged but still had intrinsic value as ancient forests. Actually, there were several bills; it was a package of bills.

[End Tape 16, Side B]

[Begin Tape 17, Side A]

KEENE: The Board of Forestry was rebalanced to add environmental participation. The package was approved by virtually every environmental group and 70 or 80 percent of the affected timber industry.

HICKE: Wow, that's amazing.

KEENE: It was amazing. Yes, this, what I'm looking at here, is a report that the Planning and Conservation League put out.

HICKE: Was this where the spotted owl came in?

KEENE: This contained wildlife protection that might have satisfied the federal Endangered Species requirements; I can't say for sure that it would have.

Sher and Hauser, the assembly people, carried a piece of it, and we were principal co-authors: myself and McCorquodale. I'll let you have this PCL report, because it's a very good summary.

Now, you will recall I mentioned Karen Ann Quinlan as giving impetus to the Natural Death Act, and I mentioned the Alaskan oil spill as giving impetus to the catastrophic oil spill response legislation. What gave impetus to this was a situation that occurred in the redwoods where the company which had the largest inventory

of old growth redwoods was taken over by a Texas oil billionaire and his company, called MAXXAM [Corporation]. The takeover was paid for with junk bonds. It was "Milkenized."¹ In order to meet the debt requirements, they doubled, and some say tripled, the intensity of harvest of old redwoods.

I held a hearing on it. I had a Select Committee on Forest Resources, and held a joint hearing with Byron Sher, who chaired the assembly Natural Resources Committee, and it was called "The Redwoods and the Raiders."

HICKE: That is an interesting problem, the fact that they exploited this resource to pay for the junk bonds.

KEENE: Oh, very interesting. In fact, they had it on channel 6 the other evening. It was a five-year-old story, I don't know why they were repeating it. Oh, I know why, because they've elected a congressman who's very much an environmentalist from that area [Dan Hamburg], who introduced a bill to acquire 44,000 acres, which includes like 6,000 acres of old growth that everybody agrees should never be cut, but also a lot of surrounding area under this new theory of biodiversity. And the cost of it is quite enormous.

But at the time that MAXXAM took over Pacific Lumber Company and started intensifying the harvesting, there were no California laws to prevent them from doing it. It was felt that what had been passed some twenty-five years before was inadequate for this day and age and current thinking about the environment and biodiversity.

1. Refers to Michael Milken, the so-called junk bond king.

HICKE: But there weren't any specific provisions to prevent raiders?

KEENE: Oh, yes, there were--the ancient forest and the clear-cutting provisions.

HICKE: Those were specifically aimed at raiders?

KEENE: Yes. So that there would be an inability to liquidate. It was anti-liquidation, that's what it was. It eliminated the ability to acquire with junk bonds because the debt couldn't be paid through liquidation.

The raiders looked at the inventory of old growth that Pacific Lumber Company had and saw dollars. They used those dollars to pay back, at high interest rates, junk bonds used to buy the company.

We held hearings and demonstrated that California law was not adequate. There was a political threat produced by a very wealthy individual on the San Francisco peninsula, Hal something, whose name escapes me now, an environmentalist who was so outraged by what happened that he threatened an initiative.

HICKE: Just a private individual? Not in politics?

KEENE: A private individual, who had put millions into Big Green and was willing to put millions into another initiative on old growth forests, because he was so outraged by Pacific Lumber Company. That threat brought some of these folks to the table. When we passed the legislation, the threat was essentially removed. The timing of the initiative was such that he had to make a decision about whether to commit millions of dollars to an initiative or take the legislature at face value. The bill had passed, the governor vetoed the bill, and the four of us, the four legislators, said, "We'll put the bill back and fine-tune it for the governor and probably get a signature." He said,

"Well, on that basis, I don't want to waste millions of dollars. I'm not going to launch the initiative effort."

The timing passed for the initiative, and when Willie Brown finally killed the timber legislation in the assembly, and I'll get to how all that happened--I know I'm jumping ahead--these timber companies said, "Well, the initiative threat is gone," and didn't care. We had invested close to two years in the process, and it went down.

We got caught effectively in a whip-saw where the governor was cool but not hostile to legislation that was carried by four Democratic legislators, and wanted his way completely, even though we gave him 90 percent of what he wanted. And I think that's not an unfair expression of reality. What he really wanted was his imprimatur on the legislation.

HICKE: Here we are again.

KEENE: Yes. And we said, "OK, we'll go back and we'll try to do it again." We went back and some of the impetus was lost, because the timber companies were no longer threatened by the initiative. And the Sierra Club took tremendous offense at our trying to please the governor, unreasonable offense. I suspect what happened is they entered into an alliance with Willie Brown, who was having some political troubles in some of his legislative districts in which Democrats were under pressure--because they had voted too much with business interests or something--and needed environmental support. They were eager to please Willie because Willie could stop some other legislation, which I can't recall the nature of, which was moving at the same time, that was pro-business.

Anyway, they cut a deal. Willie pulled the plug on the timber legislation, got the Sierra Club to oppose it, even though all the other environmental groups were still for it. He got the Sierra Club to oppose it, and some of the timber industry that had previously supported it stopped supporting it. Willie got his shot at the governor by killing the legislation, and I was absolutely disgusted with the process.

I can remember the moment that I decided to retire. I was talking to a legislator in the assembly who was close to the speaker, a freshperson legislator, and I was lobbying for the bills which were on call. Do you know what I mean by "on call"? They had a certain number of votes but not enough to pass, and you had the rest of the day to go out there and work the members. So I was out working the members.

I went over to this legislator and I said, "Look, this is really very close to the legislation that passed last time that the governor stupidly vetoed. It's a very good compromise. We haven't had legislation in a quarter century on this subject. It will help the environment, it will keep industry alive, it's a good compromise. It's the kind of thing that we need. Look who supports it, Byron Sher on the one hand, those of us who live in the most forested portion of California and representatives of environmental groups and the timber industry. Can't you give us a vote on it?"

The legislator looked into my eyes and repeated something that Willie Brown had said in the assembly caucus several days before, "I don't see why we should give the governor a god-damned thing." I said, "Well, we're here to make policy. We're here to solve some of

KEENE: these problems, and we're here to restore public confidence." It was like it did not register. It just didn't register. It was only a straw, but it was the one that broke my back, and I said to myself, "I don't want to stay around here any more." I had the emotional equivalent of nausea. I screamed inwardly, "I don't want to stay around here any more."

HICKE: So the defeat of this legislation was a personal-political case rather than something for the public good. Had nothing to do with the issue.

KEENE: Oh, it had nothing to do with the issue. It had to do with personality and it had to do with politics. It had nothing at all to do with the issue. There was another irony: the person who took it on and provided cover for Willie Brown was once again Lloyd Connelly, who became a spokesperson on the floor against the legislation ostensibly on behalf of the Sierra Club. Lloyd and I had been quite close, because I had always regarded him as a reformer, and I think deep in his heart he was. But we parted company at that point. I said to myself, if it's come to this, I don't want to stay around here.

Here is a letter I just came across--a letter to Byron Sher in response to a letter of his that I don't have right now. It's dated August 19, 1991, and copies went to Dan Hauser and Dan McCorquodale, because the four of us were essentially a group that was dedicated to the passage of legislation.

[reading] Thanks for your letter of August 15. I agree with its objectives but have a somewhat different view on strategy. In my view, the competing sides have been given about as much as they will or possibly can. A wide gulf continues to exist. There may have

been earlier opportunities to negotiate a narrowing of that gulf. Those were certainly lost when we could not join our efforts with those of the administration in a timely manner and bring needed pressure on the parties. Given the overriding, though not exclusive, interest in a legislative solution, we need to capture what opportunities remain. As policy leaders, we need to transcend the relentless assertion of individual interest by the parties, and we need to remove ourselves from the technical focus provided by staff analyses on a provision-by-provision basis. Our object is not to capture pieces if we sacrifice position; our object is to win the game. Therefore, I propose for strategic reasons, not because it feels good, that we join hands with the administration and embrace their proposal, at least for the time being, pending further negotiations and a probable conference committee process.

Here are my reasons. Number one, it turns the current weakness of the divided center into a unified central position that makes all holdout positions look selfish and extreme. Number two, it gives the package a distinctively bipartisan character in terms of further legislative maneuvering in attracting public and editorial support. Third, it puts the power and prestige of the governor on the line in terms of legislative passage and in terms of ensuring balance in further negotiations with the competing political constituencies.

I realize these proposals place us in difficult political positions. I view that as the price of constructing a real solution in this volatile area of conflict. Very truly yours, Barry Keene.

HICKE: I think that sort of succinctly summarizes your strategy and the goals of your political life.

KEENE: I think so. I think it does. I had high hopes that we would make it, and we did make it most of the way.

HICKE: What were the reactions of the other three to Willie Brown's killing of the bill? They must have been pretty discouraged, too.

KEENE: I would say disgust. They were disgusted. We did it right. We got together and we sat down and we identified the problem, we correctly evaluated the various positions, we had a strategy for moving ahead, we involved all of the interested parties, we negotiated in good faith, there was no political exploitation of any of the issues. Never have I enjoyed working so much with a group of people. Dan Hauser was absolutely courageous throughout. His political survival was very much on the line.

Outside of the elected officials, we had two women from the Planning and Conservation League, one who had previously represented the Sierra Club, Gail Lucas, and Jennifer Jennings. They were just wonderful, and worked very well with the Board of Forestry, which was represented by Terry Gorton, who at that time was the wife of George Gorton, one of the governor's chief advisors. She operated in very good faith and was very eager to come up with a solution and was negotiating with us on behalf of the administration and with the administration on behalf of us. So we had a lot of good people.

We had leadership in the private sector. There was one of the principal then-independents who has since grown in size, from Sierra Pacific Industries, [Archie] Red Emerson, who was becoming increasingly a major timber land owner and is very conservative politically but had a very progressive attitude about constructing a

compromise. So we had people on both sides of very good will. We had [Timothy] Tim Treichelt of Georgia-Pacific. We all sat down together and there was no game-playing, there was no name-calling. The zealots were sort of suppressed, or kept out of the picture. I mean, they had their say, but then we tried to create a center, tried to create a mainstream.

It was all the right thing to do. We did it all right. The governor screwed up in the first instance by vetoing the legislation. He shouldn't have done that. And then when we tried to fix it, Willie Brown very callously killed the bill.

It was at the same time, incidentally, that he was killing government reform bills over in the assembly. We remarkably, remarkably passed campaign finance reform, reapportionment reform, eliminating the two-thirds vote requirement, and all of those bills sat and died in the assembly.

HICKE: You mean the senate passed these bills?

KEENE: The senate, yes. So that was another reason my anger with the speaker was building up. I felt that he had become so consumed with power that he was destroying the institution. And nobody around him would tell him that. He suffered from a vacuum of critique of people who were close to him.

HICKE: Are things changing any? Or has this been continuing?

KEENE: The last session didn't produce anything of consequence. The Sacramento Bee did an assessment the other day, and I think the title was, "Another Legislative Session Wasted." The only thing that it credited the legislature with was doing something about tobacco by

passing legislation that limited the use of tobacco in public places. But other than that, nothing had been accomplished.

HICKE: So this desert actually turned into a wasteland. The desert was when no policy was forthcoming. Now, the policy is being suppressed, almost.

KEENE: The political dynamic is such that the net result is paralysis. And it's tough, because California is heading downstream. It's like the boat that's headed downstream, and you can hear the waterfall coming up.

HICKE: Are there other states that are taking up the position that California once held, do you think?

KEENE: I think there are other states that are doing it correctly, but I don't have enough insight at this point to know. They all have fiscal problems. They're continuing, in New Jersey, to put 40 percent more behind each school student than we are in California. The prison systems are working in some states much better than they're working in California at lower cost. So there are places where they're doing it right, but California's not going to be one of those. California has done some terrible things to itself, starved the public sector post-Proposition 13, forced spending priorities on the legislature that give it no flexibility. We're about to see a full employment act for prison guards, at the expense of higher education and welfare.

HICKE: Before we get you actually retired, let's think if there are any other things that we want to discuss. Oh, I know one thing we haven't covered thoroughly. You were part of the Dukakis campaign.

KEENE: Yes, you're right. I took a year and devoted myself, I would say 80 percent of my activities, to the Dukakis campaign, and used fundraising leverage that I had to raise funds for Dukakis. I believed

that he had a good chance of capturing the nomination and was correct in that assessment; I also believed he had a good chance of winning the presidency, and I turned out to be incorrect in that assessment. I now believe he was too much of a technocrat to have mass appeal.

[End Tape 17, Side A]

[Begin Tape 17, Side B]

KEENE: I had met Dukakis at the [John F.] Kennedy School [of Government] at Harvard [University] where I took a couple of summer courses from him, and felt that he was a very competent, balanced individual, and that he had a lot that Jerry Brown lacked as governor of California. Jerry was all vision with no direction. Dukakis seemed to have a lot of direction, which was a welcome contrast for me, and I thought, "This guy can go; this guy can really take off."

I encouraged him as much as I could. Met with him personally at the state house in Boston, put together precinct organizations for him, walked precincts myself in Des Moines, Iowa, which was the second and most significant primary

HICKE: Because of the early date?

KEENE: The early primary. Yes, it was actually called the Iowa Caucuses, in which interested people sign up and register their votes. We went around and we worked precincts. I worked with Phil Angelides, who was Democratic party chair in California, and is now running for treasurer. He defeated David Roberti in the primary.

It was a heady experience, because I got to meet a lot of people. I impressed my daughters, my older daughters, a lot, with all

these movie stars, and some of the national press commentators, and lots of political folks at the national level.

The moment of truth for Mike was the debate in Los Angeles when an African-American journalist whose name escapes me now asked him a question. It was the Los Angeles debate, and I was sitting next to Kate Michelman, who was the chair of the National Organization for Women, at the debate, and that was where the journalist said to Dukakis, "What if your wife were raped and da da da," you know, a long list of things, "and murdered. Under those circumstances, do you think the death penalty should be imposed?"

And I thought to myself, This is a softball pitch. I mean, he's going to hit this one out of there, and he's going to say, "Well, whoever did that, I'd want to kill them with my bare hands. I'd want to do to them what the constitution doesn't permit us to do. There would be no punishment that would be too cruel or too unusual to inflict on those kinds of murderous thugs."

Instead, very calmly and very analytically, he said, "Well, my position on the death penalty is well known, and I've had that position for years, and it emanates from the fact . . ." This cold, calculated, antiseptic, ultrarational approach. Kate and I looked at each other, "It's over. It's over." And I think it was over at that point. Because up until then, I thought he could win in California.

On election night, I rode the plane with him. We made a couple of stops in California. He had all sorts of celebrities on it. Sam Donaldson threw a fit on the airplane, because he was getting hungry and they hadn't passed out the lunch or something. He thought he owned the whole operation.

KEENE: Anyway, who was my seatmate? Rob Lowe. And later I was standing outside the restroom in the airplane, waiting to get in, and this guy walks up to me and said, "Are you waiting for the restroom?" I said, "Yeah, but it's no emergency, if you need to go, you can go first." We introduced ourselves, "I'm Barry Keene, a friend of Michael's from California." He said, "Oh, my name's Kris."

"Kris? Kris what?" "Kris Kristofferson." It was a heady thing, is the only point I'm trying to make. Not to name-drop, but it was a heady kind of thing, but it was also somewhat tragic, because I had high hopes that I could go to Washington with Dukakis, and we'd see a Democratic administration which we hadn't seen for a while. And those hopes were dashed. I think probably that also played into my mood and negativity, particularly with the kind of campaign that Bush ran, the Boston Harbor thing, especially the Willie Horton thing. There was something else--oh, saluting the flag, or something. I mean, it was a below-the-belt campaign from the word go, and Dukakis wouldn't engage in that kind of stuff. He regarded it as beneath him.

The tactical error that he made, I think, was in not better defining himself and allowing the Bush people to fill in the blanks, to connect the dots and say, "This is what Dukakis is. He doesn't do what he says he did, he's a soft-hearted liberal, he's soft on crime, he's not patriotic." He vetoed some bill that required flag-saluting or something. Something.

But that was a profound experience for me. It was exciting, it was fun. I exhausted a lot of my political resources in that campaign, and it came to nought. And as I say, I was disappointed

in the reasons that he lost. He didn't do as well as he should have, and they did a hatchet job on him, which left me feeling poorly about the process and about the prospects for the process.

Yet I plunged back into the legislative process at that time.

HICKE: Did you work on the last campaign at all, Clinton's?

KEENE: No. I was absolutely burned out. I met Clinton during the Dukakis campaign in a hotel room at the Democratic convention in Atlanta, and he had a certain aloofness about him that I didn't like at the time. I think I've never been able to get that out of my system.

[Interruption]

KEENE: In a rare moment of exhilaration after huge crowds supported his position against offshore oil drilling in California, Dukakis said, "Wouldn't it be fun, Barry, to get the Democrats back in Washington? Of course, you'd have to come with me. You've got a great reputation on these resource issues." I said, "Rumors are that [Governor of Arizona] Bruce Babbitt wants [to be Secretary of] Interior," and he said something very complimentary about Babbitt, "Bruce Babbitt is a fine individual with a lot of talent." [Laughter]

Yes, I didn't have any role in the Clinton campaign at all, didn't seek any, felt very burned out, and just didn't want to get involved. Just didn't feel ready to get involved.

HICKE: How about the change of administration in California, with Pete Wilson?

KEENE: I felt that he had more potential than either Brown or Deukmejian. I had overlapped for two years with Ronald Reagan, who from a leadership standpoint was the best of the three governors. Wilson came along, and I thought he had some potential, but he's got a

terrible problem in his own party between the ultraconservatives and the more moderate Republicans. He can't afford to alienate the ultraconservatives, so he has not established himself as a mainstream leader. California is not really moving very much.

Last session, there was some applause over an improvement of the business attitude of government in California. Supposedly, the workers' compensation issue was mostly resolved. The truth is, it hasn't made any difference. The statistics look a little better because the number of claims have leveled off, but there wasn't very much actual reform. There were some major corporations that got pretty massive tax breaks, which may demonstrate a more favorable business climate but, in my opinion, is outrageous in light of the budget deficits that we have. Regulatory reform was mostly an illusion, I think, that hasn't occurred.

When they list his accomplishments, I don't think there's going to be very much to list, with the exception of positions he's taken on diversionary and divisive issues like the death penalty, immigration, and now affirmative action--hot-button issues.

[Interruption]

KEENE: The gubernatorial campaign and Clinton's troubles seem to me to lend support to the theory that there are not many very good policy advisors on the scene, nor are there very many schools that cultivate those tactical skills. That's one of the things that I'm hoping to pursue in my teaching career: how do apparently bright people with access to substantial resources get themselves into such awful difficulty in their decision making?

HICKE: Is there something about the offices of governor and president that sort of preclude getting the kind of person we really need in there? I don't know if I'm making myself clear, but . . .

KEENE: It seems to me that the system doesn't nurture the kind of leadership that we need. It doesn't promote to high electoral candidacy people who are willing to take political risks, willing to opt for the long run rather than the short run.

HICKE: It doesn't reward those kinds of decisions.

KEENE: It doesn't reward those kinds of decisions or those kinds of people. Interesting, that. Maybe it's a problem with a remedy. We'll find out.

HICKE: Yes. I'll come back again in ten years and see which of your students is heading for the top. [Laughter] When you announced your retirement, what was the reaction, both among your colleagues and your constituents?

KEENE: The reaction was very mixed. On the positive side, a lot of people said, "We're losing a good one. It's further evidence that the process needs reform, and we're going to have many more casualties from term limits." On the negative side, people said, "You shouldn't have left in the middle of the term," which I did. That "you had a responsibility to finish out the term, even if you felt nothing was happening and that you were wasting your efforts."

HICKE: So it was business as usual?

KEENE: Yes.

HICKE: I mean, some were for and some were against, no matter what you do.

KEENE: Some were against. And then some said, "You shouldn't be taking a lucrative position. It appears or it is the reality that you left to feather your own nest." I said, "Well, if that were the case, I could have done that ten years ago. If we're going to add up income loss and options in the private sector, it wouldn't make any sense that I would be doing it now for that reason. It would have to be something else, and there's something else I've tried to outline for you." I did a paper on the need for government reform. [Gets paper] Here.

HICKE: I have here Occasional Paper Number Four from the Center for California Studies, it's called "The Dangers of Government Gridlock and the Need for a Constitutional Convention." Ah, yes. I knew that you had proposed that.

KEENE: Yes. It became a principal document for state government reform. Governing magazine excerpted portions of it. A number of universities held conferences around it. The National Conference of State Legislatures recently, in New Orleans at their national convention, did a panel on the recommendation for moving to a parliamentary system of government in California. It's received attention on that count, and with specific recommendations for reform that are contained in it.

HICKE: What prompted this, other than your general feelings?

KEENE: Well, at the time, I had some high hopes that the legislature would move toward reform, and I actually introduced a resolution calling for a constitutional convention. I think I could have gotten it out of the senate. It was debated on the senate floor, and I was up to fourteen votes. I actually had eighteen votes that I could have gotten up to,

and on another day, on a second try, I think I might have gotten it passed. But it was also the same time in which substantive reform was dying in the assembly, so I knew it could never pass the assembly.

But there were people who were afraid of the fact that the convention might become a runaway convention, that society had grown so self-indulgent that it was not a good time to have a constitutional convention. To which I responded, "There's never a good time." You hold them at bad times, when things are not going well and you need major structural change.

HICKE: When things are going well, you don't need them.

KEENE: Yes. Anyway, then, when it became evident that reform wasn't going to happen one way or another in the very near future, it sealed my commitment to leaving. I reiterated the arguments in the paper in a departure statement, saying, "You better do some of these things, because if you don't, we're going to remain paralyzed, and things are going to continue to fall apart. You can't have a society with a nonfunctioning government."

HICKE: OK, and then you joined the California Tort Association for a year.

KEENE: Yes. About a year and a half. My mood was not good when I left. I was pretty discouraged about government. I also realized that I had sacrificed a lot. I had a daughter in college who wanted to go to graduate school, ran out of money, I was not in a position to help her, and so I started looking for a real job. In the sense of financial recompense, this was a real job. It challenged my strategic abilities, because it was essentially doing battle with the trial lawyers, and that meant doing battle with my former leadership colleagues, Willie

Brown and David Roberti, Bill Lockyer as about-to-become senate president.

I came up with a strategy that I thought would work, which involved using the initiative process, which I deplore [Laughter]. It was fighting fire with fire, using the initiative process to threaten tort reform that could not occur through the legislative process, as a hammer to get some legislation, and relying to some extent on my experience with the forestry legislation and other things, believing it could happen. It got derailed along the way in part because of the hardball tactics of the Trial Lawyers Association and their very potent allies, but in part also because of the kind of "fifth column" that had grown up in my ranks. I didn't recognize there were so many people for whom tort reform was a priority but not the number-one priority. They were willing to sell it out for other items on their agenda, or in the case of lawyers, other clients of their firm. They didn't want to make enemies of the speaker and the senate president, with whom they would have to deal on other days on other causes.

So I decided it was not a good situation, that I didn't want to get into collecting a paycheck--even a big one--and not accomplishing very much. I wanted to get something done. The ultimate desire to matter. [Laughter] And not be on the sidelines.

HICKE: That's a good goal. Of course, you had already accomplished enough to satisfy most people for a lifetime.

KEENE: Well, I had fun. I had fun. And the fun was in the accomplishment.

HICKE: And so now, you're teaching at [California State University at] Sacramento, is that right?

KEENE: Teaching in the graduate program in public policy and administration.

HICKE: Did you ever think about practicing law again?

KEENE: It's like Robert Hutchins used to say about exercise: "When I do, I lie down in the middle of the floor until it goes away." [Laughter] I have thought about it. What I've thought about specifically is developing a practice around policy mediation. Now, it would be different than lobbying in that it would not be advocating before legislators or communicating with legislators. It would be bringing the parties together and trying to create a compromise product, trying to negotiate an outcome, and then presenting it to the legislature or interested legislators and saying, "Here it is, as far as the major concerned interests. You've got to inject the public interest, but the forces that are intimately involved and interested are together now, so your job is to project and protect the public interest."

Well, mediation is a fairly efficient and successful way, it appears, of resolving individual disputes, but whether it can resolve broad policy issues has not to my knowledge been really tried. Some people say any good legislator is a good negotiator. I mean, negotiation and bargaining and mediation are tools that legislators use, good legislators use well. What's new here?

What's new is it takes it outside the political vagaries of the capital, and into a . . .

[End Tape 17, Side B]

[Begin Tape 18, Side A]

KEENE: . . . calmer, detached, apolitical environment. It tries to put together solutions as much as solutions can be put together among interested parties. But the larger public interest still has to be looked after, and

that's the job of legislators. I hold the considered view that reconciling all of the individual interests is not the same as the public interest.

HICKE: Does not equal the public interest.

KEENE: Right, and that the legislative process could be pretty good at determining that. It's not very good at it right now, but it could be pretty good at finding it.

HICKE: That sounds very exciting, and it's probably one of the few ideas I've heard that might actually offer a solution for some of the gridlock.

KEENE: Well, waiting around for a constitutional convention might be a long wait.

HICKE: Don't hold your breath, eh?

KEENE: Yes, it's a don't-hold-your-breath thing. So you start to look for other things. I set up a center at [California State University at] Humboldt State University for the resolution of environmental disputes--I forgot all about this--called CRED, Center for the Resolution of Environmental Disputes. I thought that that would be a good place to start, because most of the issues are broad-based, and if you successfully resolve an issue between two parties over logging, or fishing, or something environmentally controversial, you've set a pattern in place. And whatever reasoning and whatever result you've achieved can be used in other places and begins to take on a life of its own. So it's in a sense using that process to make policy.

That's working out fairly well. I chair the board of directors of that entity up there. It's still in the formative stages, but they are doing quite a bit of mediation, and some of it has been successful. Some of it has not.

HICKE: When did that start?

KEENE: A couple of years ago. Very skimpy funding at the time. Now people are beginning to appreciate it and support it. I am hopeful that that will test the possibility of whether tools of mediation being developed as an alternative to expensive judicial proceedings can also be used for policy issues that are controversial and stumping legislatures.

HICKE: Well, those are two good ideas for the future. What else do you see as possible solutions?

KEENE: I think we should--to be in style--reinvent government, including the structural incentives that influence behavior within government, and ultimately the kind of people that we're getting and the kind of people that are being forced out or kept out of the process. I think we're going to reach a point where society is going to be in such bad shape without adequate governmental policy making that there will be some demand for that, and that we'll have an opportunity to restructure our government. We have to remove the mantle of sanctity that we've placed on our governmental structures.

HICKE: On the constitution and things like that?

KEENE: Yes. At least at the state level. Part of my thesis has been that the states unnecessarily copied the federal governmental structure, and in doing so, weakened themselves. They weakened themselves and didn't have to. By weakening themselves, they undercut the principle of federalism, which was a planned conflict between the states and the federal government that ultimately turned into a real conflict during the Civil War but was a planned conflict where the states were to provide a check on federal intrusion into areas that they

didn't handle as well as the states could handle, if they were to handle them properly.

So the states tied their own arms, and didn't have to do that. The states had no reason to be concerned with being taken over by a king or a tyrant or all of the things that the founders were concerned about. So what I've tried to project is that the states have an opportunity to strengthen their hands. If California could do it, it would be copied in other places, because California is such a large entity and large part of the union. There are things that the states can do much better than the federal government, with an appreciation for diversity in different parts of the country.

The states were supposed to be, not fifty, because there weren't fifty at the time, but laboratories of democracy. But where are they experimenting? The one example we had was almost suppressed, the Oregon health plan, which has fortunately been permitted to go ahead. Whether it succeeds or fails, at least it will have been tried. So those kinds of things ought to be taking place, and the best ideas would then surface, rather than the lowest common denominator. When the federal government moves in, they're in a sense adopting the lowest common denominator. They have to accommodate all of these differences, because otherwise, things won't operate in the different areas.

Whereas, if something were demonstrated to work, the federal government could pick out the best of the examples, and not something that has to be spread across the country that can't be shown to work if people don't trust it.

HICKE: That actually sounds rather encouraging, if we could get something like that to happen.

KEENE: Yes. It's a possibility. Why shouldn't one of the industrial states, for example, adopt a unicameral form? Why shouldn't one of the states adopt a parliamentary system?

HICKE: And just see if they work?

KEENE: Yes. I can understand the federal government going for the separation of powers, for example. Because we don't want a centralization of power at the national level. But at the state level, maybe it makes more sense to have compatible institutions making policy and implementing policy, rather than an institution that designs it in one direction and implements it in the opposite direction, like a Democratic legislature on forest policy and a Republican governor on forest policy.

HICKE: Or two different houses in the legislature.

KEENE: Or two different houses, yes.

HICKE: Cancel each other out.

KEENE: Yes. The diffusion of power at the federal level may be appropriate, but is it appropriate at the state level?

HICKE: Are these things that you're bringing up in your classes?

KEENE: Yes, to some degree, when I can. When I can fit them in.

I can't think of anything else. Seems to me I should have some anecdotes or something that I ought to inject. I was thinking about Z'berg as I was driving yesterday. I sat on his assembly Natural Resources Committee. California had just passed what for that period

was a large park bond.¹ I was either a freshman or sophomore or something at the time, not very far along. [Assemblyman] Howard Berman was a very good friend. He's now a congressman. He was an assemblyman in my class in the legislature. He was carrying a bill to allow the use of park bonds for the Santa Monica mountains, and the cost was enormous, because land down there is so much more costly than it is up in the redwoods or in northern California.

I was the swing vote, and voted with Howard. Z'berg exploded. He hit the roof, hit the ceiling. He cornered me at the elevator and poked his finger into my chest and lectured me about how I was a traitor to northern California and was yielding to the power of southern California, and that the money would be used much less cost effectively, that the public wouldn't continue to approve park bonds for these southern California semi-commercial projects, where some wealthy people could look out their window and see that the Santa Monica mountains were undeveloped . . .

HICKE: Protect their view.

KEENE: Yes. And I said, "Ed, I've thought about all of this. I'm going to need Howard for some of my projects up in the north, and I think we need to take care of all of California."

He regarded me as very naive, and he was very angry, and he went out to dinner. I think it was at Leo McCarthy's house, if I'm not mistaken. Had a heart attack and died. Guilt-prone as I am.

[Laughter]

1. Z'berg-Collier Park Bond Act. A.B. 392, 1972 Reg. Sess., Cal. Stat., ch. 912 (1972). Also called State Beach, Park, Recreational, and Historical Facilities Bond Act of 1974.

HICKE: Oh, dear. But maybe he got so upset because he was already biologically depleted.

KEENE: Yes, he was overweight.

HICKE: And maybe even his heart was beginning to fail. Before he came up to talk to you, maybe he was feeling pressure.

KEENE: Yes, could be.

HICKE: What I'm saying is, you might not be the cause, but just the effect.

KEENE: But that's something that I've lived with for a lot of years, because he really must have thought I was either incredibly stupid or ill-willed, and he was a senior legislator whom I respected tremendously. I was upset that he was so upset, but he was really angry. I think he kind of liked me, so I wouldn't be surprised if he internalized a lot of that anger and, clunk.

Anyway, that's one little inside piece. I'm sure there are more.

HICKE: I'd like to thank you very much for the time that you've spent doing this.

KEENE: Thank you for your time and your willingness to come here. You've driven a long distance.

[End Tape 18, Side A]

BANC
MSS
2002/339
c

U. C. BERKELEY LIBRARIES



083039139

