

Telling History in Public: Loyola Project for the Innocent Oral History Project

Joe Trigilio

December 10, 2020 (interview conducted on Zoom)

Interviewed by Michael Aguilar & Daniel Buskett

SUMMARY:

Two students in the Loyola Marymount University History Department interview Joe Trigilio, Federal Public Defender, about his experiences working with inmates on death row in the Capital Habeas Unit. We discuss the unique challenges of his position, the emotional connections and toll such a job can take, and ways in which the justice system may be reformed in the future.

TRANSCRIPT

Michael Aguilar (MA): Today we are interviewing Joe Trigilio, a federal public defender working with a capital habeas unit representing people on death row, for the Telling in History Public, for the Telling History in Public Loyola Project for the Innocent Oral History Project. It is December 10, 2020, and we are conducting the interview using Zoom. I am Michael Aguilar, one of the project interviewers.

Daniel Buskett (DB): And I'm Daniel Buskett, another project interviewer. And I was just gonna start us off, ask if you to give us a little bit of background, maybe what happened or what was before you ventured to San Francisco, you know, that got you involved, whatever you want to speak on.

Joe Trigilio (JT): Yeah. As you guys mentioned, I'm, I've been with the Federal Public Defender's Office since 2008. Um, I, before that I was with the Habeas Resource Center in San Francisco for about a year and a half, right out of law school. But I went into law school, really wanted to do this work, wanting to represent folks on death row. Because I, uh, I'm from Texas, I'm from San Antonio, Texas. And around 15 or 16 is when I really got involved in the movement against the capital punishment. I just started organizing students like myself, with marches and going up to Austin to lobby, that continued through college in San Antonio and in Austin. And, you know, as you guys can imagine, it was frustrating, I got laughed out of the room in many state legislator's office in Texas, because I was asking them to not execute people who were mentally retarded, or intellectually disabled, or the juvenile, which was not, which was allowed back, back when I was in school. It's unconstitutional now, but that wasn't until, like, 2006. So when I was in, they're still doing that pretty, pretty often. And they would just like laugh at me and patronize me, and it was frustrating. And we'd get yelled at doing our

marches and protests and you know. It all made me more certain, this is cause I wanted to fight, but I wanted to do it at an individual level. And we can talk more about that, because I have specific reasons for, because I started working with victims' families and people who suffered violence that really led me to want to do this work on an individual level. That led me to law school. I went to a law school that had a death penalty clinic that allowed me to work in the South, in Mississippi, for a summer and get some experience. And I was fortunate enough just to continue on that work ever since. And it's expanded since then, it's expanded my my view of what I am passionate about beyond the death penalty. And since 2012, I've been working with Loyola's Project for the Innocent as a supervising attorney there, and teaching a class there on just general post-conviction, wrongful conviction work. Because you realize, the people who don't have lawyers who aren't on death row are in, you know, almost as bad a shape, you know. So it's a long answer to your question, but that's kind of.

DB: Beautiful.

MA: So, um, what made you decide to pursue law rather than maybe the policy side?

JT: Yeah, it's a, it's a good question, because I've, you know, the policy side is really where it's at, and I think there's a real intersection there. And I'm able to, now I've now, you know, 12 years into being a lawyer, I'm able to see how I, we can impact policy, I think Loyola's done that. But initially what led me to want to go into law is just a desire to, a better ability to give a voice to the people on death row, the people who are really the center of the anti-death penalty work. I think too often, in my period, in my opinion, these advocacy groups, it's easy to lose sight of the individual, it's easy to lose sight of the the the the man or the woman sitting on death row for this bigger cause, and they got lost in that in that advocacy too often. And I wanted to use the law or use the ability of being, or the skills that come with being a lawyer, the access, frankly, that comes with being a lawyer to force people in positions of authority to listen to people like my clients who never have been listened to. And so I really enjoy walking into a courtroom, going into the Ninth Circuit, and those judges have to, are listening to my client through me, through my advocacy, my client's claims of constitutional violations, and they have to, they have to take those seriously and have to give those consideration. Now, you know, oftentimes there's a lot of injustice but just that ability to make the system finally hear our clients is really what made me want to do it and is what's made it worth it ever since, I think.

DB: What, um, what really drew you to pursue your occupational and collegiate endeavors in California, as opposed to your home state or anywhere else?

JT: Yeah, great, I mean, that's a big question I get a lot, right, why aren't you in Texas? I mean, I, fortunately, I do work in a big FPD office, we're the biggest in the country. So I actually do represent a client on Texas's death row. He came about a week away from getting executed, and, his name's Clinton Young. There's, there's, it's, uh, it's, we filed a new writ, stopped it from being executed, we have a hearing there in Midland, Texas, and so I'm able to do some work. But no, I, I moved to California just because I wanted (a) a new experience, I wanted to get out of Texas, total personal reasons. California had the largest death row, so, you know, I could tell myself, rationalize, I'm still able to do the work. And I didn't, you know, I didn't want to have that horrific experience of seeing so many of my clients die, right. Like I could have gone to the belly of the beast and done that in Texas or Mississippi or Alabama, but I wanted to do it in a place that had more institutional knowledge. There isn't, in California the Habeas Resource Center and the FPD's office are well funded and can do the job the right way, and I wanted to do it that way and learn that way, from the best. The HCRC is really the flagship, the Habeas Resource Center is the flagship of habeas corpus litigation, and I wanted to learn from the best. But yeah, I did, but it really is a personal choice, of seeing a new place, going to San Francisco, you know, justifying it to myself that they have a death penalty program there so I can do it.

DB: Understandable.

JT: Yeah, so it was, yeah, but it was it's definitely been something that's been tearing at me, it's a tension there of going back.

DB: When you were advocating for the murder victims and the families that have family members on death row and, and the futility of the death sentence as a matter of policy in Texas, did that sort of push you further away from your home state and working there or did it draw you closer to wanting to work somewhere else?

JT: I, no, I don't think that had had an impact.

DB: Not much influence.

JT: Yeah, I mean, what what was frustrating about Texas was just the consensus around the death penalty, right? There is little movement there and everyone believes in it. But the murder victims family part really solidified my view that the death penalty is always a bad idea. Always, period.

DB: No matter what state, yeah.

JT: No matter what, who it is, no matter what state, because, you know, working with those families. I I went to a hearing once in San Antonio, we were trying to get the city council to pass a resolution against the death penalty, San Antonio's a little bit more progressive. And we were with the victims families who were opposed to the death penalty, and they'd suffered horrific loss that I've never been through, family members who have been killed, murdered, can't imagine, they've been through, it lived it. And but you, you talk with them, you meet them, you work with them, and there is a sense of a peace there. There's a sadness, but there's a sense of peace, and a sense that their lives, you can just tell from meeting them and talking with them that their lives had some meaning. And I wouldn't say resolution, there's still a hole in people who, you know, that I haven't, fortunately, had to go through. But then you you talk with families who were really opposed to us and who came in and said, no, I want the death penalty for my clients. And I saw where they were at emotionally and it was a lot of anger, a lot of, of just just paralysis in where they were and I empathize with that, and I could see how I would feel that way maybe. But it also wasn't a place where I would want to be. If I could aspire to be one of those two groups, I'd want to be in a place of peace, and I think that requires, on some level, being okay with with the perpetrator not getting killed. And that's, so that's really where the families came down for me.

DB: Mm hmm. Interesting.

MA: As far as the, like professional aspects of what you do, from, from what I understand, oftentimes the prosecutor is much more intimately acquainted with the, the judges or, I mean their offices are next door to each other that, you know, the parties that they attend are usually, you know, the FPD doesn't get invited to some of them. How would you, how would, how do you think you would change structurally the like, the relationships between the federal public defender, the federal prosecutor, the judges, like, would you cause, would you make them be more separate? Or would you make them be more close? Like, what do you think you would do?

JT: Yeah, that's a good question. I think there's a real distinction in the federal system versus the state system for stuff. I think there is definitely a revolving door in a relationship in the federal system between U.S. attorneys and judges, a lot of U.S. attorneys become judges or aspire to be judges. But it's a little bit more, more distanced and professional, I think, than in the state system. The state system is really where I have seen the old boys network really have

an impact on our clients, and they feel it when they walk into the courtroom and see everybody being chummy except for the defense counsel, and sometimes even the defense counsel right. That's really where I see it more often than the federal system. I think there is, in terms, you asked what I would do differently, I think, I wish the federal judiciary, and this comes down to who's the president unfortunately, would appoint more people from other backgrounds, other than prosecutors. It's just a fact that many prosecutors get appointed to be judges, but folks from our office have been appointed, you know, numerous, I think, three in the past couple years, to be judges as well, at the state level and when Obama was in office, obviously, federal judges. But more of that, and I think at the state level, it's the same thing, getting a judiciary that's not just prosecution oriented or former prosecutors is huge. Now, in terms of the intersection, I mean, the most stark example that I think you guys will have ever heard of, that I've ever heard of, is my case in Midland, in Texas. And I know you guys are working in California doing a project based on California's system, but I just got to tell you in Midland, we discovered, it wasn't disclosed to the defense counsel, that our client during his capital trial in Midland, Texas in 2002, so not that long ago, you know, in the 2000s. He was prosecuted by the Midland DA, right. Um, the prosecutor, one of the prosecutors who was working at that trial was simultaneously, at the same time as he's working as a prosecutor trying to get our client, working as a law, judicial clerk for the trial judge. So literally getting paid for work for the trial judge while he's getting paid as a prosecutor. And so the prot, so the trial judge, obviously, is looking at one of the parties as basically his own employee at that point. And that continued in the habeas, you know, when we litigated the case and post-conviction, he, the, this, this, this prosecutor would be writing briefs and sending briefs to this judge, and getting. He got paid by the judge for working on our client's case, while he was simultaneously opposing that case. You can't get a more stark example of a breakdown in the separation of powers than that. And I think that's an extreme example, but what folks in Texas will tell you and what I've seen in California and in Texas is that judges will very often, putting aside this extreme example, sign off on what prosecutions file in court. Now in our case, they were getting paid for it, right, and there's a real relationship. But it's routine in Texas that a judge will sign off on a prosecutor's proposed brief or proposed order. And you see that in California a lot, to a lesser extent in California, partly because there's so many lawyers, and so the old boys network is harder, but if you go to San Bernardino, Riverside, or some of these counties, you see that more often.

MA: Yeah, not to mention clerks often write the opinions that judges just sign off on, right, I mean.

JT: Totally, yeah.

MA: In their name, um, so yeah, there's there's certainly a conflict or potential conflict there.

DB: Other than navigating all these conflicts of interests and favoritism, what does your work really entail? Because in all honesty, I'm not too familiar with what a federal prosecutor on the habeas corpus unit, you know, is responsible for other than a human life, I, I'm not sure.

JT: Well, yeah, I mean, that's a, it's a really evolved question, I don't know how much in the weeds we want to get. But it's, so, so when a guy is sentenced to death row, he gets an automatic appeal. That appeal is going to be based just on different stuff that might have happened during the trial itself, right. Literally what happened in the courtroom, that everything the court reporter took down, that's just the appeal. It doesn't talk about whether the lawyer was, you know, on crack during the trial. It doesn't talk about whether the jury was looking at, you know, extrinsic evidence. It doesn't talk about if the prosecutor was hiding evidence. It doesn't talk about if a witness was lying. An appeal does not get into any of those issues, because none of those issues can be found out by just reading the transcript, that's all an appeal is. Habeas corpus, postconviction habeas corpus, when you hear that term, when you when you look at podcasts like Serial or, what are some of the other ones, Making a Murderer or whatever, these, these, these sort of publicized, that's all habeas corpus. And that's a, that's not an appeal. That's a collateral attack on a conviction. And its collateral, meaning stuff from outside the case is, we are putting into the record and saying, look, it didn't come out to the, in trial, the court reporter didn't know that this, that this witness was getting all sorts of benefits from the prosecution, or that the prosecution or the police hid this piece of evidence, or that this juror was related to the crime, the victim, right, or that the trial lawyer had 18 other cases during this trial and wasn't doing, none of that was known. We're bringing this in on the outside, kind of attacking the judgment from the outside, and that's habeas corpus. And a death row inmate gets a right to a habeas corpus lawyer, statutorily, in state court and in federal court. And in California, traditionally, 90% of death row inmates get no action in state habeas corpus proceedings, regardless of what they present. The CS, the California Supreme Court has rubber-stamped those convictions and not given any hearings even. So that, so often our job in federal court is saying, look, the state court messed up, they should have granted us a hearing. So that's procedurally what, what's happening. We are now in federal court saying that the state habeas courts got it wrong and that the federal viol, the federal constitution was violated based on outside evidence that came in against our client. Now, what we do day to day, what that practically means for our work is we have to do two things. We have to reinvestigate the crime, the facts, the witnesses, all the stuff you have seen in, in, in a bunch of different popular shows that are out now, like all that kind of fun stuff, that's great. But with

death, with death row inmates specifically, and this is something the Innocence Project doesn't do, the Innocence Project, does that work, all, reinvestigating the case. What capital representation involves and what our office does capitally, we also have to simultaneously investigate our client's social history and background. Because the other half of our job is trying to explain why a jury, had they known about our client as a human being, would not have wanted to kill him. And really what that comes down to, it's not that complicated, it's not that much legalese, it's really, is, is this client worthy of living, or is this really a monster that the prosecution painted him as? And so we go back generations to see where did this person come from, what genetic impairments could he or she have, what's their background, where did they grow up, what brain damage are they suffering from, what substance issues are they dealing with, what trauma were they dealing with? All of that is investigated. We use experts, social historians, psychologists, neuropsychologists, all to explain that, yeah, this guy, even if he did commit this crime, even assuming he's guilty, maybe he just needs to spend the rest of his life in prison and not get killed. Because his culpability, he's not some cold blooded murderer you see on, he's not a some psycho, you know, Jeffrey Dahmer type, there is something that happened that in some way doesn't excuse the crime, but explains it, or at least makes it less culpable. It's like, okay, if he had, you know, I had a client who, who undisputedly walked up, got into a fight with a former landlord. The former landlord said something to them, and my client pulled a gun and shot him, killed him. He did it, there's no question. But we found out the client has really significant Post Traumatic Stress Disorder from a really horrific amount of abuse. And even hearing that you might, a lot of people say, oh, brother PTSD, but when you look at the actual abuse he suffered and who inflicted it, one of the symptoms there is a little bit, is his exaggerated startle response, and he was a little jumpy. And yes, he he's guilty of a crime, but was it premeditated murder, or was it something a little bit more spontaneous, where maybe it's not premeditated, maybe it's something a little less than that? Maybe instead of doing, having a death sentence, maybe it's a life sentence. There are a lot of examples of that, of how, you know, trauma and background makes it a less of, a less, less, either less heinous crime or a lesser even offense. And so we investigate that.

MA: Do you feel as strongly or at least nearly as strongly about life sentences, as well as death penalty cases? Do you think those are as appropriate as there, you know, as often as they're given, is it appropriate?

JT: Um, I think they're given too often in California, and I'm talking about life without parole sentence. I mean, life without parole is basically you just, you know, it's death by imprisonment, right, you're just sentenced to die in prison. I think it's, the problem with that is, you know, in death cases, you get a right to a lawyer. So you get our office investigating, and there's so

many wrongful convictions out there, at least when you have a lawyer, you can do it. But when you're sentenced to life without parole, you have no right to a lawyer. So these guys are going to die in prison, and nobody is going to help them review their judgment, unless they win the lottery and get the Innocence Project to take on their case. But you guys know how limited the resources are of the Innocence Project. You know, there's only a few lawyers there. And so there's hundreds of guys, maybe a thousand, maybe 1000s, hundreds of guys in California who don't have a lawyer, who have no resources to investigate their case, to hire an investigator to go out and talk to the witness who he knows lied about it, you know, and figure out what happened. It just, they can't litigate it. And so in that situation, you know, life without parole is pretty drastic not to give these guys another chance. I think that I'm also against it just because I think there's too much science behind the fact that people can be rehabilitated or can change. And so giving them a chance to do that is, I think, is an important thing for people, and I think as a society, personally, I have a personal view that as a society, we should encourage that and not just want to throw away the key. So for all those reasons, yeah, but initially, when I started doing this work, death penalty work, I'm like, dude, I'm all for life without parole, I just keep my guys from getting killed. But as you do this more and more, it's like, and in California, as the death penalty is starting to go away, frankly, it's like, well, life without parole is also pretty bad, and we should look at it. But across the country nationally, shoot, let's get death off the table first and stop killing these guys, then let's have that conversation about life without parole. What do you think that, that sort of rehabilitation should entail? Like what kind of reform should be involved? From what end do you think?

MA: So for the, the client, say, if your clients, you know, could rehabilitate and have a sentence of only say, you know, 10 years, what kind of rehabilitation do you think? Would it be just hard work? Would there be a lot of, you know, therapy involved? Would there be group, or what do you call it when they, when they kind of go out into the public and tell their story, you know, what do they call that, like when they have kids come and they scare him straight, like that sort of?

JT: Yeah, I know what you're talking about.

MA: Thing, know what I mean? Like what does rehabilitation look like to you?

JT: Yeah, great, I think it really depends on each client, obviously. But I think there's, you know, one end you have a lot of these crimes are committed by people who are seriously mentally ill. A huge amount, I would say, you know, the vast majority of my clients have significant mental illness. So addressing that, first off, which is just sometimes clinical, right, it's just clinically

addressing those underlying mental health issues, so that this person has that treated and won't reach some sort of tipping point, and also won't turn to substance abuse, because substance abuse is behind so many of these crimes. And that's not a defense at, you know, very often to a crime. But substance abuse is a real thing when people have trauma, and people have mental issues. They self medicate, right, and so dealing with that underlying substance abuse on that side. In terms of just rehabilitation in the traditional sense, and sort of understanding what you did, I think, yeah, that, a big part of that is acknowledging what led you to be in the position to either be accused of the crime if you didn't, if you feel like you're innocent, or to have to have committed that act. What led you to be pushed into a gang? Or what led you to make these poor decisions? I mean, people do commit that extra bad reasons, right, and so they have to acknowledge that. And, you know, I had, I just represented a client who on, during a parole proceeding, where this is the whole question, and they granted him parole, but he was just, he was insightful on what caused him to commit the crime and realized what his triggers were, expressed true remorse for the pain that he caused the family, all of that's important. But I think if you can just deal, if we can just deal with the mental health side of it, the rest of that's going to come if there's resources to give these guys some tools to get that sort of insight. I mean, we're talking with people who, by and large, don't have supportive families, you know, there are exceptions, right, but they're, but by and large don't have supportive families, don't have communities that have given them the kind of tools to engage in the kind of work that I think we do, we work on just implicitly, without even thinking about it, they've, they've lacked those tools, and so we have to really work from from the back.

MA: I mean, they're, they're often the victims of abuse themselves, right, like the majority of them are, right?

JT: Yeah, especially in our murder cases.

MA: Sorry, Daniel, go ahead.

DB: No worries. How would you describe your average relationship, counsel-client relationship? Yeah, how would you describe that exactly?

JT: Yeah, in postconviction, unlike, you know, the public defender at trial, the relationship is a lot closer and a lot more long term. You know, my, I've had clients since I started this job, since 2008, same client.

DB: Really?

JT: Yeah, so these cases last a long time. As I mentioned, I have to dive into my client's social history, right. So I have a lot of intimate details about my client. And it's just, it's not about being a lawyer anymore, it's about being a human being, trying to get them to trust me, to give me those details about their lives, or to be okay with me exploring those details about their lives. So I have to share some of myself and every post-conviction lawyer you talk to is going to give you a different line of how much personally they share with their clients. Everybody has a different line of what they're comfortable with. But I think to some extent, you have to give a little bit just on a relationship level, right, to get back that kind of trust, and so you develop a strong relationship with these guys. I think, it's, it's, I always stress to my clients, I'm going to be the guy, I got to give you bad news sometimes, I got to tell you the pitfalls and play devil's advocate, and that's created tension with a lot of clients. Because I'm, I don't want to be someone who just says yes, or, or sugarcoat things for my clients. But that's hard, and it's hard to hear, and so it creates, it results in me really needing to build trust over time. And you got to do little things, like if you promise to send the book of stamps, you better do it, because if you don't, that trust goes away, especially in prison where everything is, it's like a long distance relationship with a girlfriend, you know, if you, everything gets blown up. So there's gonna be drama for the littlest things. And it's the same with, you know, what's even more extended, like someone in prison. Those little things that you might think, oh, whatever, I forgot to do this letter, huge deal, you got to build up that trust, you know,

DB: Would you think, do you think that sort of level of intimacy works to your benefit or detriment in majority of cases?

JT: I think always to our benefit, again, you got to be careful not to share too much. Like I don't want you know, they're not my friends, I care about them, I love them on a certain level, but you got to be careful what you share, just because, um, you know, these people do have mental impairments sometimes. And also, I don't know what other inmates are going to see from what they have. You know, I'm not going to send a picture of my daughter to somebody on death row, you know, that kind of thing, just because I don't know how it's going to go around.

DB: Yeah, of course.

JT: It'd be wise not to create a situation where, and this happens sometimes, you wouldn't believe it, where you overshare and the client's comforting you for the stuff you're dealing with. Like, I don't want to make them, you know, feel like, oh, man, my lawyer's got a bad, he's

sharing all this stuff with me. You got to, it's got to be, that relationship needs to be clear. I am your attorney

DB: Moderation, yeah.

JT: So it's a, it's a tricky balance sometimes. But, you know, if you just treat them with respect, and you have real love for them, it's not that difficult. You know, but I, you know, I have had, I had a client commit suicide 20 in 2015, soon after my daughter was born, so I was on paternity leave. And it was, it was because the court issued a really bad decision in his case, and it was too much for him. And he just couldn't take, he's on death row for a long time. Innocent client, a lot of evidence of innocence, and he was denied on a procedural issue, and he's just tired of fighting it. And dude, it was, I knew this guy for a decade, and it was devastating, man, it was just, it was the, I don't, I can't describe the feeling. It's like someone punching you in the gut, this is awful. And, and that kind of close relationship, you really feel in those moments.

DB: Yeah.

JT: On the other hand, I, you know, I got a guy off of death row in 20, a year later, and that closeness was a whole different emotion for the same reason. It was wonderful, you know, to go and pick up a guy from prison and walk them out is an amazing feeling, especially when you have that, that relationship with them, you know.

MA: Do you feel that you're, well, so I worked for the medical examiner in, in Maricopa County, and the mental health supports were almost laughable at times. Does the federal system supply anything approaching adequate, you know, mental health care? Or do you think that there's a lot of room, or what room is there to grow for you for?

JT: Yeah, you know, I can't speak to that, unfortunately, because my clients are not in federal prison. I have like two, I have two, two federal trial cases right now where my guys are facing federal charges in federal detention.

MA: Okay.

JT: And it's not that bad. But it, most of my clients are, were convicted in California and went through the California system and are now appealing in federal court. So I don't have much, as much experience in the federal mental health system. Our office generally does, and we have a lot of programs to help our clients get better plea deals based on mental impairments, but I

couldn't tell you how that system works compared to California's. I think in California, you are right, like in Arizona, maybe, it sounds like, it is laughable too often. You have fly by night psychologists giving opinions that are not really based on our on valid clinical factors, and are really looking for the worst in our client. And that seems to be reflected in the prison records too often.

DB: You, you seem to have a, you seem to strike a good balance with your clients, and you're very optimistic about all the research you do. What is the most challenging thing to you about your job? What is what you find most difficult?

JT: Yeah, I mean, I don't know, it's a constant struggle in balance. So I don't know that I'm successful at it. But the hardest part of the job, honestly, is the arbitrariness of where my cases are going to end up, how they're going to get resolved. You know, I've gotten, I've gotten relief and I've won in the Ninth Circuit on cases that I'm shocked about, because and that are iffy, because I pull, I got three judges who happen to be good judges and give me the time of day. And I have lost cases that I believe in 100% and I'm convinced are innocent, and the judge, I got just bad judges that time, I got a bad court that time, gave me a bad decision. And it's, it's honestly, the luck of the draw too often, especially on, on appeal. But even with the judge you pull, you know, at the district court level, and that arbitrariness is is is heartbreaking, and frustrating. And the law in federal, in federal court, the law is every presumption is against our client. Um, I won't bore you with the standards, but it's a very high, hard standard to get relief anyway. And so just, you're pushing a boulder uphill, and then they have it come down to what, you know, if you pull a, you know, a Trump judge versus someone who was appointed in a prior administration, it could change your client's life forever, something like that. That's a tough reality to deal with. And that's, that's why policy is so important, right? And systemic change is so important.

DB: And it's one of the few things out of your control, I would say, right.

JT: Yeah, and, you know,

DB: Which makes it all the more important.

JT: We hate not being in control, exactly. It's completely out of our control. Yeah. I mean, there are times, every lawyer will tell you there things we wish we did differently, and that's heart, heartbreaking as well, right, things that are in our control that didn't go well. But that that arbitration is tough.

MA: Um, do you see yourself staying, basically doing what you're doing? Would you ever consider going to private practice? Do you think there's like, basic, I'm guessing, do you think, feel like there's like a mental and a physical expiration date, for, for an FPD or for someone working in the highest stakes that you work in?

JT: Yeah, I don't know, because I tried to be in the moment with the job. And I know, that's not smart, because people will tell you, you need a 10 year plan. You know, I listen to Jay Z or somebody, that like, you know, you gotta plan 10 years ahead. I listened to him to give like a podcast, and it was like, you got to have. I'm happy with the work I'm doing, I'm fulfilled, I find it challenging and satisfying and rewarding, and I haven't thought about next steps. Um, I don't think I would enjoy private practice because it requires some business acumen that I don't have, and I'm not interested in learning, just to run a business, and to run, you know, to brand yourself and to get cases in and all that stuff is something I'm never done and have don't have much interest in right now. But man, circumstances change all the time. Like next year, God knows where things are going to be with the world. So I'm open to new experiences, but I love where I'm at, and I love the work I'm doing. I haven't felt, I don't feel less fulfilled or energized now than I did 15 years ago. And I know people do get burned out with this work. I think teaching has helped with that honestly, working with people who are not as cynical and as jaded, with students and with Loyola, my work with Loyola, that keeps me invigorated and from falling into a trap of being too cynical. Because if you just fall into that trap, yeah, you're gonna get burned out, you got to stay positive and approach every case, like you're gonna win it, brand new, regardless of the arbitrary factors that I just mentioned. It's a battle, but if you say, that's why I really try to stay in the moment and just focus on what I'm what's in front of me. And that might be a mistake, because maybe I should be planning, we'll find out, you know, but that's my approach right now.

MA: What would you, so if you were giving advice to law students who are just just about to graduate or to pass the Bar or whatnot, and they say they want to be in public defense, um, you know, like, what's your best advice for them going out as young, you know, brand new starting their careers as a lawyer?

JT: Yeah, I think my advice would be to make relationships with people who are in the field, just ask ask them to go to coffee. Even cold calls, if you don't know, I didn't know any lawyers, you know, going into an undergrad or law school even, but just call them up, go there, say you want to learn about their work. People love talking about themselves, look what I'm doing, so it's like, people love doing that. So just you know, have those relationships even if it's not in

the context of applying for a job so that you (a) understand the work but also form that that relationship because, sadly, it is about networking too often. You know, I think I've benefited from privilege and so it's hard, you know, that's changing hopefully a little bit, but I think you got to be able to be creative in how you get into these positions because they're they're difficult to get into, there's there's not a lot of funding for for this type of work. So you got to prove and show your commitment. I would say don't, personally and this might controversial and a controversial opinion, but I would say don't go and work for the DA's office for a summer just to see what it's like. Because that's, you know, a lot of public defenders, rightly or wrongly, are gonna hold that against you. I know the reasons to do it, you know, they're great reasons to do it right. And we need good prosecutors, but the pool is so competitive, I think it comes down to someone who has a demonstrated commitment to a certain type of work, that might be a bad thing for you, if you if you don't have that demonstrated commitment in your resume, and you're kind of feeling things out a little bit. So I would recommend to folks to stay on track with with your goal. Now it works out for people who don't, all the time, so it's, you know, and same with going to law firms. We hire a lot of folks from private law firms, and it works out fine. That is not the route I took. A lot of my colleagues did take that route to pay off loans, so it's hard for me to fault them. But just from my personal experience, I would just say, you know, really make decisions in your career that are not based on money to the extent possible, but are based on what your, your guiding principles are, you know, and that should guide you.

MA: I don't know if he's the first, but Joe Biden was an FPD, so.

JT: Really?

MA: Yeah. So what do you think, I mean, do you think the appointment of judges like regardless of their provenance, do you think that like, from the standpoint of an FPD, do you think that's going to be his greatest contribution? Or how do you think because, since he is the going to be the top of the food chain, like what is it about being a federal public defender that Joe Biden should bring to his policies or his appointments or whatnot?

JT: Yeah, I'm shocked to hear that. That's great. Yeah, I think it's, I think, representing indigent clients, you, I think you hopefully, you know, the prosecution has to view a case black and white. It's did he do it or not do it, and they don't look at the nuances and the shades of grey, that every human being has. But a public defender has to. And so I hope that as someone who was a defense, someone representing folks who who don't even have money to pay you, that he will have the ability to see the complexities surrounding individual cases. And just criminal justice issues, period, I'm hopeful that he will have a Justice Department who investigates

some some local law enforcement that are doing some things that are, that they've gotten away with the past four years. You know, and that will, he'll take, he'll be able to, be more willing to see systemic areas that can be reformed federally, with federal money or federal policies, right. I hope that he can see sentencing, it can be reformed. And, and fund that. You know, Obama did a wonderful report on forensic sciences, it's, it's called the PCAST report. And it's, it walks through, with the FBI, all the different types of Forensic Sciences, and how to make them more reliable: hair, DNA, gunshot residue, bite marks, foot marks, all this stuff that had been used to convict people, but have turned out to be completely bogus and unreliable. You know, this report came out and really gives some standards and helped the prosecution and the defense, and that went away the past four years, and I hope that comes back, just to see a little more nuance. Obviously, practically appoint more FPDs, I'm biased. But I think the bigger picture, you know, look at the shades of gray in life would be great.

MA: Great. Great. And do you have any other questions, Daniel?

DB: I'm just two real quick ones. I guess. Although you think there might be some preconceived notions, if you go in and, you know, intern for a prosecutor, and then you try to become a public defender, but you don't see even like the slightest bit of benefit from working on both sides?

JT: I do. Yeah, yeah. I want to make that clear. There is a lot of benefit. I'm giving my, if I were advising someone, I think the potential risk outweighs the benefit. But I definitely think there's a benefit to seeing how that up. Now, I do think that unless you're the elected DA, unless you're Mr. Gascon, who's, your ability as a prosecutor to do good is very limited to it, at the local level. You are bound by the policies and if people get, I had a friend, a good friend in law school who became a prosecutor, she's an awesome person. But she, for Contra Costa, I think, but she ended up quitting because they wouldn't let her decide not to prosecute someone for shoplifting, and she didn't want to do it, she didn't have that discretion. But that's, we need good prosecutors, and there are a lot of good ones. I've worked across the aisle with ethical, fair, especially at the U.S. Attorney's Office. I mean, these people are people I think our heroes, to be honest, a lot of them, you know, they come from the military, they've done things I don't have the courage to do, they have served, they continue to serve in the National Guard, I called one prosecutor up some AUSA, he's over in New Orleans doing work, got pulled up. Those guys are good people, I've no doubt. But just the way the system works and to prosecute a case, you have to look at it a certain way, that precludes you from using the amount of empathy that for me personally, I think is, I think is, it should be applied to the situation. And that empathy and that nuance and that looking at shades of gray, I think, is

important and necessary as a public defender. You can't necessarily do that as a prosecutor until you're at the top to make real big decisions.

DB: Yeah.

JT: You know. But no, I think we need fair ones that're good ones. And it's, you will learn a lot there, a lot of intel.

DB: Yeah.

JT: But there's, I think, yeah, the cost outweighs it.

DB: Building off that empathy, you feel is necessary, you ever you stay in contact with previous clients, if you can?

JT: Oh, dude, all the time, absolutely, all the time. Yeah, I have one guy, he wrote, I'm a character in his book. He put out a book, it's on Amazon, he didn't even pay for a name. It's Joseph Anthony Trigilio, and I'm like, oh my god, what are you doing. But yeah, but he was a former client, I, we write to each other all the time. You can't help but keep in touch with these guys. It's a deep, close relationship, you know. And I lost that guy's case, by the way, I didn't know, I didn't even lose it, I didn't lose it, I, worse than that, I convinced him to drop his appeal. Which is like, what the hell like, you know what, I did it by, I went up there and to visit him, knowing no lawyer had ever visited him in prison. And the issue was like, if you, if basically if he had won his appeal, which I thought we would, the prosecution could have retried him, and he had gotten a worse sense. And so I was like, dude, drop your appeal, just serve your time and get parole. But he appreciated that. But it's like, dude, I can't, you know, I felt kind of, you know, it's hard to tell someone to drop your case.

DB: Yeah.

JT: But still, we stayed in contact, and we, we're always in touch. And I, you know, I have one guy who like, texts me. I have a couple who talked to my class every year. And so yeah, it's, it's a great part of the job to be able to stay in touch the. It's bad if you don't stay in touch, that means they might be up to something and maybe they're not going through the best of times, because. On the other end, I had a client who got out, who deserved to get out, just not based on his mental state or based on who he is, but just based on the crime was BS. He got 20 years in prison for swiping a \$20 bill, under the three-strikes law. And we were able to get, to

negotiate with the DA to get him out. But, dude, he got back on the, he started using, you know, and that's like, that's heartbreaking. And he didn't want to tell me that because it's embarrassing, you know, and it's hard. And it's, I don't want to lose contact with him, but that's harder to keep up, because, you know, they don't want to acknowledge it, sometimes it's they're dealing with a lot of stuff. So I hope to be in contact, I will feel like I didn't do the best I could do if I, if I'm not staying in contact with my clients.

DB: Well, that's, that about does it for me. I have no, I have no further questions for you.

MA: Nope. Yeah. We really appreciate you for sharing your time and experience.

JT: Yeah, great questions. Thank you, guys.

MA: Thank you and you have a great day.