

Oral Histories Explore Supreme Court in Changing Times

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Legal historians often characterize the California Supreme Court as a leader among state courts in the development of American jurisprudence. As is perhaps inevitable in such a geographically large and heavily populated state, California's highest court confronts an unmatched number and range of legal matters. Whether one takes the view that the California Supreme Court has, over the course of its history, actively shaped or merely responded to the issues of the day, the matter of leadership—by individuals and by the court as an institution—is one of great historical interest.

Some eras in the California Supreme Court's history were notable for stability of both the leadership and the membership. But unlike the "Long Court" of 1945 to 1956—so dubbed by longtime research attorney Don Barrett because the court's composition did not change during that time—more recent periods were decidedly different. In only six years, from 1977 to 1982, Governor Jerry Brown made seven appointments to the Court, which operated under the leadership of Chief Justice Rose Bird.

As is well known, California voters in November 1986 unseated Chief Justice Bird and two of Governor Brown's other appointees, Justices Cruz Reynoso and Joseph Grodin—largely over the death penalty—setting in motion the greatest turnover of membership in the Court's history. The succeeding governor, George Deukmejian, made eight appointments to the California Supreme Court between 1984 and 1991 (including three seats he filled twice). Early in 1987, he elevated his first appointee to succeed Chief Justice Bird. Although Chief Justice Malcolm Lucas provided continuity of leadership until his retirement in 1996—terming the 1986 election a "hundred-year storm" unlikely to be repeated—the California Supreme Court during this period was, if anything, a "Short Court." Changes to the membership were the rule rather than the exception.

This backdrop of frequent change amid legal complexity provided the inspiration for the *California Supreme Court Oral History Project*, launched three years ago to conduct in-depth oral histories with retired members of the California Supreme Court during this unusual period. Justices Reynoso and Grodin had already recorded oral histories, so the project centered on justices appointed to the Court by Governor Deukmejian.

The plan took shape with scholarly guidance from Professor Harry N. Scheiber, director of the Institute

for Legal Research at Berkeley Law School (and editor and co-author of the forthcoming Society-sponsored book on the history of the California Supreme Court). The goal was to interview four eligible retirees (Justices John Arguelles, Armand Arabian, and Edward Panelli and Chief Justice Malcolm Lucas) and place their completed oral histories in the permanent research archive of the Bancroft Library, the primary special-collections library at UC Berkeley, for the use of scholars, students, and the bench and bar in perpetuity.

Administered by the Institute of Governmental Studies, Berkeley's premier research center on politics and government, the project builds upon a tradition of conducting archival oral histories on the California Supreme Court. Although interviews have been carried out by others over many years—the earliest was a 1959 interview with Justice Jesse Washington Carter—this project was the first to interview several former justices who were appointed by the same governor and who served overlapping terms. The project design reasoned that, while any single oral history would provide a rich resource, a series of coordinated interviews might yield still more historical depth. Each justice would, however, document his own career, including judicial philosophy, goals, motivations, and decisions, independently of the others.

All four eligible justices agreed to participate. Interviews commenced in 2005, and by late spring of 2008, the interview phase was complete, yielding sixty-two recorded hours of high-quality digital audio. The oral histories were professionally transcribed, and four justices have reviewed their draft transcripts.

As a separate and critical archival matter, the director of the Institute of Governmental Studies Library, Nick Robinson, negotiated deposit of the digital audio recordings, at no cost to the project, into the state-of-the-art Digital Preservation Repository maintained by the University of California libraries. This arrangement assures permanent, safe storage of the original sound files. The IGS Library also is designing a project Web page, which may be available as soon as the spring of 2009. Meanwhile, editorial work on the oral history manuscripts continues and will culminate with deposit of the series into the Bancroft Library for research use. (Some material will remain sealed for a period of time before being opened for use.)

The oral history method differs from other types of interviews in several ways. First, the careers of judges

and many other public servants are documented already with a substantial written record. Oral history interviews aim to supplement and enrich that record by fleshing out details known only to those who witnessed or participated in historical events.

Second, oral history often produces relatively lengthy sets of interviews recorded over a span of time, a process that allows the narrator (interviewee) to answer questions in some depth, if desired, and to make thematic associations brought to life by anecdotes. As a general matter, politicians and other public figures accustomed to press interviews may at first offer familiar responses to issues they have addressed many times; the oral historian welcomes those responses and then tries to go beyond them into new areas of reflection and discussion. With multiple interview sessions, both interviewer and narrator can think about and possibly return to key themes, such as leadership or collegiality on the California Supreme Court.

After extensive preliminary research and planning, the oral history interviewer attempts to broach topics essential to the historical record while allowing the narrator to shape the emphasis and expand the discussion as memory and interest dictate. Because the aim is collaborative in the service of history, topics are approached through open-ended questions that are, it is hoped, relatively free of bias and of implied expectation of particular answers. While outlines and even specific questions may be prepared ahead of time, the discussions themselves often go in unplanned directions, requiring both parties to seize the moment. In the end, the oral history interview is simply a conversation, a spoken account that attempts to fill the lacunae of history using the imperfect tools of memory and opinion.

While it is premature to reveal the contents of the *California Supreme Court Oral History Project*, in general the interviews explored key events, such as changes wrought by the 1986 election, and also such themes as capital punishment, victims' rights, challenges to ballot measures, sentencing guidelines, alternative dispute resolution, and state constitutionalism. Each interviewee talked in detail about his own background, education, early career in the law (with an emphasis on judicial experience), and development of personal views, philosophy, and judicial methods. The conversations also explored each interviewee's interest in and views of California's political setting leading up to the time of his Supreme Court appointment and his relationship with the appointing governor before, during, and after his own Court service.

In keeping with the key research theme of leadership in changing times, each justice was asked to comment upon Court leadership prior to and during the service period and to recall details and events that might illuminate the working relationships among the justices.

Although the four interviewees varied in their exposure to and interest in leadership roles, details emerged about their own philosophies and skills, both administrative and judicial. All four had been trial judges, for example, and each touched upon the value of bringing trial experience to the appellate bench.

Each justice was invited also to talk about key legal themes, cases, and issues in California during his Court service, views of California's executive and legislative branches vis-à-vis the judiciary, leadership and decisions of the U.S. Supreme Court, the evolution of U.S. and California constitutional law (with comparisons to other states, where applicable), and recent developments at the California Supreme Court.

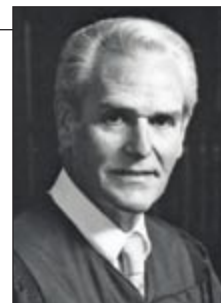
The legal and scholarly communities owe a debt of gratitude to Chief Justice Lucas and to Justices Panelli, Arguelles, and Arabian. Long ago, each of them was asked by Governor Deukmejian to give his utmost as a California Supreme Court jurist on the shifting ground of a "Short Court" environment. Years later, through the *California Supreme Court Oral History Project*, each generously and graciously recorded both a personal story and a professional view of leadership and key events in the Court's history. As the project winds down, the justices will gather next spring at the California Supreme Court chambers in Los Angeles to receive their completed oral histories.

Meanwhile, scholars continue to view the California Supreme Court as a leader in American jurisprudence, both through its opinions and through administrative innovation. (California led the nation, for example, in Dear and Jessen's study of "followed" opinions by supreme courts in all fifty states [41 *UC Davis Law Review*, 683, 2007].) Historians can only hope that—short or long be their tenure or their courts—current and future California Supreme Court justices will in time produce more fine oral histories for the benefit of all.

Although the oral histories are not yet publicly available, four justices interviewed for the *California Supreme Court Oral History Project* kindly agreed to publication of a biographical summary and a short quote from the early-career portion of their interviews:

**CHIEF JUSTICE
MALCOLM LUCAS**
(26 HOURS OF INTERVIEWS
TAPED IN 2007-2008)

Chief Justice Malcolm Lucas was born in Berkeley in 1927 and raised primarily in Long Beach, where he attended public elementary and high schools. He and his brothers also lived for two years at their mother's family



home in Montrose, Scotland. He served in the U.S. Navy at the end of World War II before taking both his bachelor's and law degrees at the University of Southern California. In 1954 he entered private civil law practice with his brother, the late Campbell Lucas, who became a trial judge and a justice of the California Court of Appeal. In 1962, George Deukmejian joined their law practice while serving in the state legislature.

In 1967, Governor Ronald Reagan named Malcolm Lucas a judge of the superior court of Los Angeles County. In 1971, President Richard Nixon appointed him to a newly created seat as a U.S. district judge for the Central District of California, where he served until 1984, also sitting pro tem on the Ninth Circuit Court of Appeals. Upon becoming governor of California, George Deukmejian in 1984 selected Judge Lucas as his first appointment to the California Supreme Court, elevating him to chief justice in 1987. In 1996, after more than nine years leading the California Supreme Court, Chief Justice Lucas retired and returned to private law practice and alternative dispute resolution.

In his oral history, Chief Justice Lucas recalled his first judgeship in the Los Angeles Superior Court in 1967, where he was assigned to Judge Emil Gumpert under the court's mentor system:

"I went to see him in his chambers.... Among other things I said, 'Emil, what's your best piece of advice you can give me in terms of being a judge and doing a good job?' [In his courtroom Judge Gumpert had] a desk blotter. He said, 'On the left-hand upper corner there's the letter K, and on the right-hand upper corner there's the letter Y, and on the lower-left-hand corner there's the letter M, and on the right-hand lower corner there's a letter S. K-Y-M-S: I said, 'I see, Emil. What does that mean?' He said, 'It's the most important thing I can tell you that you have to learn as a judge. K-Y-M-S means Keep Your Mouth Shut. Don't interrupt witnesses because you know you can cross examine better. Don't interfere with things. When you're asked to rule on something, of course you do. But once you start thinking that you know more about this than the lawyers, the truth is you'll never know as much as the lawyers do. They've been working on this case for months...and the more you intrude into it, the more opportunity there is to create error.... Always remember K-Y-M-S: I have, and it's stood me in good stead."

JUSTICE EDWARD PANELLI

(14 HOURS OF INTERVIEWS TAPED IN 2005-2006)

Justice Edward Panelli was born in Santa Clara in 1931. Before his first birthday he moved with his parents to their native Italy for



two years, but for the most part he grew up amid California's agriculture industry, where he too worked from the age of six. He was educated in public schools before completing both his bachelor's and law degrees at Santa Clara University. He rose to the rank of first lieutenant with the U.S. Army Reserve (1950-1962). As a founding partner of the private law firm Pasquinelli & Panelli in San Jose (1955-1972), he specialized in probate, personal injury, domestic relations, and general business practice. He served also as general counsel of Santa Clara University from 1963 to 1972.

Governor Ronald Reagan named him to the superior court bench for Santa Clara County, where he served from 1972 to 1983. Governor George Deukmejian elevated him to associate justice of the California Court of Appeal; there he served briefly in the First Appellate District (1983-1984) before becoming presiding justice of the newly formed Sixth Appellate District (1984-1985). Governor Deukmejian elevated him to associate justice of the California Supreme Court, where he sat from 1985 to his retirement in 1994. He continues today as a private judge and mediator.

In his oral history, Justice Panelli recalled the process for making judicial assignments at the Santa Clara Superior Court at the end of 1972, and he described how his own assignment altered his views of the juvenile justice system:

"They sent around a yellow pad, and it showed, let's say, twelve civil departments, twelve criminal departments, three criminal-legal departments. Then they had domestic-relations departments and juvenile. When it came to me the only thing left was the presiding judge of the juvenile court, and so that was my assignment. The good part of it was that I was the P.J. of the juvenile department, so I had a very nice chamber set-up. The problem was that it was probably the most difficult assignment that I ever had, because I went out there with the expectation that I was going to save all these kids. After six months I thought maybe I'd save half of them. At the end of the first year I said, gee, maybe one. So it was very, very difficult.

"...We had a program called the Foundry School, and that's where kids who would not go to school were sent. It was beyond a continuation school...I went out and visited this Foundry School, and I said, 'What's going on here?' The girls are putting on fingernail polish and combing their hair, and the boys are sitting there talking or reading a magazine. I said, 'What kind of a school is this? This is ridiculous.' Then the instructors got me aside and they said, 'Judge, do you realize that for some of these people to come to the same place for two days in a row is a major accomplishment? The fact that they're coming here and they're learning how to groom themselves might not seem important, but they come back every day. That is the first step for them to

get back to school.' I said, 'You've got a very, very good point about that.'"

JUSTICE JOHN ARGUELLES
(12 HOURS OF INTERVIEWS TAPED IN 2006)



Born in Los Angeles in 1927, Justice John Arguelles was educated in public schools and served in the U.S. Navy at the end of World War II before completing his bachelor's and law degrees at UCLA. His father came from a European ranching family in Toluca, Mexico, and was educated at Columbia University in New York. His mother, a graduate of Oklahoma College for Women, was raised in territorial Oklahoma before statehood; her lawyer father later became a county judge. After law school, Justice Arguelles entered private law practice with a cousin (1954-1958) and with Munnell Mullendore Peetris & Arguelles (1958-1963). He was a registered legislative advocate in Sacramento and also served on the Montebello City Council in the early 1960s.

In December 1963, Governor Pat Brown appointed him a judge of the municipal court of Los Angeles County. In 1969 Governor Ronald Reagan elevated him to the superior court, where he served until 1984. Governor George Deukmejian appointed him associate justice of the California Court of Appeal, Second Appellate District (1984-1987) and later—in the aftermath of the 1986 election—associate justice of the California Supreme Court (1987-1989). After retiring from the bench, Justice Arguelles returned to private law practice with Gibson Dunn & Crutcher in Irvine, California.

In his oral history, Justice Arguelles recalled trying a superior court case in 1963 when the trial was interrupted by a phone call, and the judge ordered a recess:

"The judge then followed up by saying, 'Mr. Arguelles, this call is for you. It's from the governor's office, and you may take the call in my chambers.... It was Governor [Pat] Brown personally on the phone. Here's the governor of California, with a multitude of important things to do statewide, and he is taking his time to personally call me. I listened carefully to his words. He impressed upon me that as a lawyer himself...he had a special interest in the California judiciary. Now that he was governor, he felt that appointing judges was one of his most important duties, and he put a great deal of thought into the selection process.... He asked me to give up my law practice to serve as a municipal court judge.... We must have talked for fifteen, maybe twenty minutes. I accepted the appointment.

"...They made the announcement from Sacramento one late November afternoon. I came into my office early the next morning...the news of my appointment having made the papers that morning...I sat back to enjoy what I thought would be one of the most pleasant days that I'd ever spent, just taking congratulatory calls. But in mid-morning the phone stopped ringing, and it never rang again. President Kennedy had just been assassinated in Dallas."

JUSTICE ARMAND ARABIAN
(10 HOURS OF INTERVIEWS TAPED IN 2007)



Justice Armand Arabian was born in 1934 in New York City, the first of five children of immigrant Armenian parents. His father, a master tailor trained in Paris, moved the family business from the garment district on the Lower East Side of Manhattan to Long Island, where Justice Arabian and his siblings grew up. He studied business administration at Boston University and then completed law school there. In between, he served two years in the U.S. Army, attaining the rank of first lieutenant and graduating from Airborne, Jumpmaster, and Pathfinder schools. Upon visiting relatives in Southern California after law school, he moved west and in 1962 became a deputy district attorney for Los Angeles County for one year. He then went into solo private practice in Los Angeles (1963-1972), emphasizing family law, criminal defense, and personal injury cases while also attending the University of Southern California to earn the LL.M. degree.

He was appointed a judge of the municipal court (1972-1973) and superior court (1973-1983) of Los Angeles County by Governor Ronald Reagan. Governor George Deukmejian named him associate justice of the California Court of Appeal, Second Appellate District (1983-1990) and also elevated him in 1990 to associate justice of the California Supreme Court. Since retiring in 1996, Justice Arabian continues in private practice and alternative dispute resolution in Van Nuys, California.

In his oral history, Justice Arabian told of pursuing a job in the district attorney's office for Los Angeles County in 1962:

"You interviewed for the public defender, the D.A., and the county counsel at the same time. There was a representative of every one of those in a room, and then you would come in. I had no interest in the county counsel's office. The public defender I could have done in a New York second. But I wanted that shiny badge of being a D.A. out there. Ted Sten, who was the head of the

Long Beach office, was a cutthroat kind of a character. This guy was tough. Don't mess with Ted Sten. He ran Long Beach with an iron hand. Well, my luck, he's in the room that day, so he starts in on me. I guess he saw the spark. He says, 'Mr. Arabian, between prosecuting and defending, does one side of the badge seem shinier than the other?' [Laughter] ...In effect, I told him I liked that one side a little better."

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NEWS OF THE
California Legal History
JOURNAL



2008 JOURNAL: As a benefit of membership, the current issue of *California Legal History* has been sent to all members of the Society. It is also available to the public in seventy-two libraries throughout the state. Journal contents include:

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- ◆ Preventive Tax Policy: Chief Justice Roger J. Traynor's Tax Philosophy, by Mirit Eyal-Cohen
- ◆ "Shall Law Stand for Naught?": The Los Angeles Chinese Massacre of 1871 at Trial, by Paul R. Spitzerri
- ◆ *The Development of Los Angeles City Government: An Institutional History*, edited by Hynda L. Rudd, et al., Reviewed by Volker Janssen
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