ORAL HISTORY

DONALD R. WRIGHT

CHIEF JUSTICE OF CALIFORNIA
(1970–1977)

Introduction to the Oral History of DONALD R. WRIGHT

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Donald R. Wright served as chief justice of California from 1970 to 1977. As successor to Chief Justices Roger Traynor and Phil Gibson, he was the third chief justice leading and maintaining the California Supreme Court as the preeminent state supreme court in the nation for more than a half century. Such a heritage should not be cherished, but it should be analyzed to determine how such leadership came about.

At the outset, we must acknowledge that in Donald Wright we did not have a jurist with the unparalleled judicial craftsmanship or literary skills of Benjamin Cardozo, Learned Hand, or our own Roger Traynor. Among

* Remarks presented at the The Chief Justice Donald R. Wright Memorial Symposium on the California Judiciary at the University of Southern California, November 21, 1985, sponsored by the Judicial Committee of the California State Senate, et al. Published in Proceedings and Papers, Timothy A Hodson, ed. (Sacramento: Senate Office of Research), 15–25 (abridged); Appendix (complete). The late Julian Levi was introduced by the moderator, UCLA Professor of Law Daniel Lowenstein, as follows: "Professor Levi has had so many very distinguished careers that it would be quite tedious to recount them in any detail, but he was a successful lawyer for many years in Chicago, was a professor of urban studies at the University of Chicago for a couple of decades or so, and since 1978, has been a professor of law at the Hastings College of the Law in San Francisco."

Judge Wright's opinions we do not find a *Meinhard v. Salmon*.[1] What we do find is a chief justice who in fact was chief by force of character, intellect and personality, and who at the same time would be referred to repeatedly by his colleagues as a "warm, compassionate, and caring human being."

Donald Wright came to the office of chief justice with superb credentials.

Following an undergraduate education at Stanford University culminating in a *cum laude* degree, he earned his law degree at Harvard and then at the University of Southern California, both with distinction.

For a decade he engaged in the general practice of law as a private practitioner in Pasadena, and then, in World War II, entering the armed services, he rose to the rank of lieutenant colonel, squadron commander, and chief of intelligence of the 11th Air Force Service Command. After World War II, he returned to the practice of law in Pasadena.

Then in 1953, he accepted appointment to the Pasadena Municipal Court and served until 1960 when he was elected to the Superior Court of Los Angeles; and in 1967 he became the presiding judge of that court.

Governor Reagan appointed him to the state court of appeal in 1968, and then in 1970 appointed him chief justice of California.

Hence, Chief Justice Wright came to the chief justiceship after twenty years of experience as a private practitioner of the law, after fourteen years of experience as a trial judge in a busy metropolitan court of general jurisdiction, and two years of full experience as an appellate judge. His opinions demonstrate that he understood the difficulties and the frustrations of private practice; that he knew at first hand the responsibilities and problems of the trial judge made evident by his own practice of laboriously reading trial court records time after time; that he understood both the limitations and opportunities of appellate and Supreme Court service.

More significantly, bench and bar as well as the general public understood that here was a chief justice who had earned that title. As one of his colleagues remarked from the very beginning of his term, "the Chief fit in well."

Chief Justice Wright, in accordance with the Constitution and statutes of California, had major responsibilities in the administration of the judicial system of the state. His skill as an administrator was a bright point of his tenure. The Chief has been described as a politically moderate justice

[1] 164 N.E. 545 (N.Y. 1928),

with high intellectual abilities, but even greater administrative skills. He was a judge's judge. Professional, quiet and undramatic in demeanor, he seemed to exude dignity, open-mindedness, fairness and compassion.

The Chief understood that he administered best by persuasion, rather than by force of will or the powers of his office. He was an experienced and tactful administrator who maintained the traditions established by Chief Justices Phil Gibson and Roger Traynor. Retired Associate Supreme Court Justice Raymond Sullivan has described Wright's administration of the judicial branch as "masterful." According to Justice Sullivan, the Chief's leadership was uniquely effective because of his warmth in dealing with his colleagues and with those outside the judiciary. Of course, the fact of years of prior skill and experience and service was all important. In most cases, the Chief was working with judges whom he knew in prior years, and who themselves knew that the "Chief had been there himself and understood their problems."

During Judge Wright's tenure, the courts of appeal were in trouble as their workload had increased repeatedly. The traditional means of dealing with a growing backlog is to add judges. With the appointment of more appellate judges, however, it is difficult to maintain the quality of appointments and uniformity among decisions. To avoid appointing numerous appellate judges, Judge Wright instituted several important administrative reforms. For example, he created a central staff which could relieve the justices of some routine work. Judge Wright introduced the use of memorandum dispositions for routine cases. The criteria for publication of opinions of courts of appeal were also changed so that less opinions would qualify for publication. The success of these reforms is demonstrated by the increased productivity of the justices and the consequent elimination of the need to add authorized positions to the courts of appeal for ten years. While the number of dispositions per judge in the courts of appeal increased by approximately three percent during Judge Wright's tenure, the percentage of published opinions dropped steadily: 39 percent were published for the 1969–70 term, and only 16 percent were published for each of the last two terms during Judge Wright's tenure. Judge Wright instituted this structural reform by quiet persuasion and coaxing his fellow judges into acceptance.

During the tenures of Chief Justices Gibson, Traynor, and Wright, the power to select judges for the appellate department of the superior court, for all practical purposes, had been transferred from the chief justice to the presiding judge of the superior court in the larger counties. Justice Wright reformed the existing process of assignment to the appellate department by meeting periodically with the presiding judges and suggesting to them that assignments to the appellate department be rotated with a new judge added each year who would serve for a total of three years and then return to other assignments.

Removing Associate Justice Marshall McComb was one of Justice Wright's most sensitive administrative accomplishments. In light of the fact that Justice McComb was conservative and the Court at the time was liberal, Justice Wright did not want his removal to appear to be politically inspired. Therefore, he helped engineer a constitutional amendment through the Legislature that provided an avenue whereby Justice McComb's removal would not appear political. The amendment provided that, if a justice of the Supreme Court was involved, the recommendations of the Commission on Judicial Performance would be referred to seven randomly selected court of appeal judges. As a result of the creation of this special tribunal, Justice McComb's removal did not appear to be politically inspired.

Justice Wright is remembered for being accessible and thoughtful. He returned phone calls from other judges and from the press. He put out a press release on every case in order to establish a public information office. He made special efforts to ensure that research attorneys were treated fairly. He made their pay comparable to civil service lawyers of equal seniority. As it has become evident, his administrative reforms were acceptable because he instituted them after consultation and in a way that was acceptable to the majority of judges and his colleagues.

With the petition for hearing system, the California Supreme Court under Chief Justice Wright retained control over its docket. From 1970 to 1977, the total number of filings increased by less than two percent. The percentage of petitions for hearing granted of cases previously decided by the courts of appeal steadily decreased during that time: 9.3 percent of the petitions for hearing filed were granted during the 1970–71 term, while only 7.9 percent of the petitions for hearing filed were granted during the 1976–77 term.

The quality and depth of opinions written by justices of the California Supreme Court are especially remarkable in the number of cases per justice on the merits. For example, during the terms of 1974–75 and 1975–76, each justice of the California Supreme Court wrote 27 opinions for cases decided on the merits. This ratio becomes more meaningful when contrasted to the fact that, during those terms, each United States Supreme Court justice wrote only 17 opinions for cases decided on the merits.

During his eight years of service, Chief Justice Wright wrote the opinion for the majority of the Court in 196 cases. These opinions throughout are remarkably consistent. There is always the meticulous and even methodical exposition of fact so carefully done that while policies or statements of law might be questioned in dissent, the accuracy of fact summaries were largely unchallenged. There is always the careful exposition of law and prior case authority plainly and clearly stated. Throughout there is the insistence on judicial duty and function expressed by the chief justice himself in his landmark opinion in *People v. Anderson*,[2] dealing with the constitutionality of the death penalty under the California Constitution:

> (5) Our duty to confront and resolve constitutional questions, regardless of their difficulty or magnitude, is at the very core of our judicial responsibility. It is a mandate of the most imperative nature. Called upon to decide whether the death penalty constitutes cruel or unusual punishment under the Constitution of this state, we face not merely a crucial and vexing issue but an awesome problem involving the lives of 104 persons under sentence of death in California, some for as long as 8 years. There can be no final disposition of the judicial proceedings in these cases unless and until this court has decided the state constitutional question, a question which cannot be avoided by deferring to any other court or to any other branch of government.[3]

I suspect the subsequent comment by then Governor Ronald Reagan, who had appointed the chief justice, that this was his "worst appointment" came as no surprise to the Chief. Whether a particular decision would be a

[2] 6 Cal. 3d 628 (1972).

[3] *Id*. at 640.

popular decision or not was irrelevant when measured against the core of judicial responsibility.

Analysis of those decisions of Chief Justice Wright most widely cited reinforce these observations.

In *Vesely v. Sager*,[4] Chief Justice Wright, speaking for a unanimous Court, permitted third persons to sue vendors of alcoholic beverages for serving alcohol to an obviously intoxicated customer who, as a result of intoxication, injured the third person. That ruling overturned prior California judicial precedents based upon concepts of proximate cause. The defendant in *Vesely* argued that in light of these precedents, changes in judicial doctrine should be left to the Legislature. The Chief responded that the precedents were judicially created and were patently unsound and totally inconsistent with the principles of proximate cause established in other areas of negligence law. *Vesely* was controversial and was eventually overturned by the California Legislature after a wave of public protest.

Similar is the opinion in *People v. Beagle*[5] where Chief Justice Wright, again speaking for a unanimous Court, imposed severe restrictions on the ability of prosecutors to discredit a defendant by referring to prior felony convictions. Before *Beagle*, the majority view in California was that a trial judge had no discretion under the California Evidence Code to exclude evidence of a prior felony conviction offered for purposes of impeachment where the lawfulness of the conviction was established or uncontested. In a methodically written opinion, the Chief rejected the majority view and held that by reading several sections of the California Evidence Code together, the trial judge had discretion to exclude evidence of prior felony convictions where the probative value of the evidence is outweighed by risk of undue influence. This year *Beagle* was overturned by the California Supreme Court in a decision holding the 1982 Victim's Bill of Rights had introduced an easier rule for the admission of such evidence.

In 1973, in *Legislature v. Reinecke*,[6] the chief justice led a unanimous Court in laying down a blueprint for reapportionment after then Governor Ronald Reagan and the Legislature could not agree on a single plan. The Court appointed several special masters to devise and recommend

4 5 Cal. 3d 153 (1971).

5 6 Cal. 3d 441 (1972).

6 19 Cal. 3d 396.

a reapportionment plan, which recommendations were adopted by the Court. These recommendations avoided preserving the status quo and gave non-incumbent candidates a fair chance at election.

Finally, the chief justice in *Birkenfeld v. City of Berkeley*[7] wrote the opinion again for a unanimous Court upholding the legality of residential rent controls.

During his eight years of service, the chief justice wrote the opinion for the majority of the Court in 196 cases. Of these 196 opinions, dissents were filed in only 54 cases. In these 54 cases, 16 of the dissents were filed by lone dissenters. Thus, in only 38 cases out of 196 was there significant disagreement among the justices.

On this data alone, it is thus clear that here was a chief justice who led his Court.

Closer examination reinforces this conclusion. Of Wright's 196 opinions, 126 were criminal cases and 70 were in other areas of the law. The latter figure may be subject to some adjustment in that some matters such as juvenile criminal issues or habeas corpus proceedings are classified as non-criminal. Of the 54 dissents, 46 were in criminal cases and only 8 were in civil cases.

During Wright's tenure as chief justice, eight justices served with him. The dissenting activity among these justices can be broken down into categories.

Justices Clark, McComb and Peters dissented along lines of ideology and broad policy.

Justices Mosk, Richardson, Sullivan and Burke, when they disagreed, did so on specific factual determinations or on narrow technical grounds.

Most remarkably, Justice Tobriner, who served throughout Wright's tenure, never wrote a dissent to an opinion authored by his chief justice. This record from a justice of Tobriner's competence and deeply felt convictions is a strong indication of how the chief justice time after time found a basis upon which he could unify the Court.

During these years Justice Clark was unique in the vehemence of the language of his dissents. Clark evidently believed that the California Supreme Court was too liberal and too favorable to defendants. He believed

[7] 17 Cal. 3d 129 (1976).

that the California Supreme Court not only was not following the United States Supreme Court precedents as to defendants' rights, but on occasion intentionally attempted to avoid review by shifting the ground of its decision to provisions of the California state constitution rather than the federal Bill of Rights.

Justice Clark, during his years on the Wright Court (1975 to 1977), wrote 16 dissents to the 75 opinions of Chief Justice Wright on behalf of the majority of the Court. In these dissents, Justice Clark charged his colleagues with incompetence, being "altogether unreasonable," their rulings "completely unrealistic," their conclusions "inexplicable" and "[un]supported by reason or authority." On one occasion, he charged that the judiciary is "developing a messianic image of itself."

In contrast to Justice Clark, Justice Peters was more liberal than the Wright Court. He wrote six dissenting opinions; one of these dissents opposed extension of the felony-murder rule; two dissents concerned procedural rules of the Court regarding acceptance of guilty pleas; the other three dissents turned on search and seizure issues.

Justice Richardson wrote dissents in four cases. Two of the cases reflect disagreements on narrow, technical points of law. In the other two cases, he felt the majority was limiting unnecessarily the discretion of the trial court. In all four dissents, Justice Richardson was joined by Justices Clark and McComb. Additionally, Richardson concurred without opinion in the dissents in four other cases.

Justice Sullivan wrote only four dissenting opinions, all involving criminal law issues. Two of the cases concerned his disagreement with the majority's application of the exception to the hearsay rule in cases of co-conspirators charged with premeditated murders of spouses; in the third case, Justice Sullivan was outraged by police conduct which he saw as an attempt to circumvent rules of criminal procedure requiring the presence of defendant's attorney at a lineup; in the fourth case, Justice Sullivan felt the majority had unnecessarily addressed a constitutional issue. Additionally, Justice Sullivan concurred without opinion in dissents in six other cases.

With the exception of the opinions of Justice Clark, the dissents throughout were characterized by civility and respect among the justices. These justices were strong men with deeply held convictions, but their

Chief held them together in mutual respect for one another and the institution of the law which they served.

In the final analysis, the chief justice's colleague, Justice Stanley Mosk best summarized:

> Perhaps his most noteworthy characteristic was a fierce independence. Don Wright bowed before no master: not the bench, the bar, the Governor, the press, or public opinion. He marched to the beat of no drummer, only to an ethical and compassionate conscience.[8]

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[8] Stanley Mosk, "Chief Justice Donald R. Wright," 65 Cal. L. Rev. 224, 225 (1977).

Oral History of

CHIEF JUSTICE DONALD R. WRIGHT

EDITOR'S NOTE

The oral history of former Chief Justice Donald R. Wright was recorded by Professor Harvey P. Grody of California State University, Fullerton in two interviews held at Justice Wright's home in Pasadena, California on May 12 and June 1, 1982. It is presented here in slightly condensed form, intended to focus on matters directly related to Justice Wright's life and judicial career. It has received minor copyediting for publication. Insertions in square brackets are from the original transcript.

The oral history is reprinted by courtesy of the Center for Oral History and Public History, California State University, Fullerton. The interviews were conducted for the Fullerton branch of the California Government History Documentation Project and as part of the Oral History Program sponsored by CSU Fullerton. The original transcript indicates that copies are available for research use at the CSU Fullerton Library, The Bancroft Library at UC Berkeley, the UCLA Department of Special Collections, and the State Archives in Sacramento.

— SELMA MOIDEL SMITH

DONALD R. WRIGHT
CHIEF JUSTICE OF CALIFORNIA, 1970–1977
Courtesy California Judicial Center Library

FIRST INTERVIEW: MAY 12, 1982

GRODY: Chief Justice Wright, we'd like to start with some general biographical data. You are a third generation Californian?

WRIGHT: That is correct. Yes.

GRODY: And you were born in Orange County?

WRIGHT: That is also correct.

GRODY: Would you like to take us from there?

WRIGHT: Well, I was born in what is now the city of Placentia, but it was county territory at the time of my birth back in 1907, over seventy-five years ago. My folks were orange growers in that area. One of my older uncles was the first man in the area to plant Valencia oranges and, eventually, he and his wife succeeded in getting all the relatives into the business, which was fortunate for everyone involved, frankly. In 1912, my family moved to Pasadena because of the school situation. My two oldest brothers rode horseback into the little school in Placentia, but there were four more younger children coming along and it didn't seem practical to remain out in the country. For that reason, my father, who was brought up in Pasadena back in the eighties and nineties of the last century, decided to return to Pasadena to live. So as I indicated, we moved back up here in 1912 and I have lived here ever since, excepting times when I was away at college and law school and times when I served in the Army Air Corps and times when I was on the Supreme Court sitting in San Francisco.

GRODY: That's concise. Did you go to the public schools in Pasadena?

WRIGHT: Yes. I went to the local grammar schools which were in our area and then to Pasadena High School graduating in 1925. Then I enrolled at Stanford University, entering that fall of 1925, and graduated cum laude, I might mention [chuckle], in 1929. This was at the time when the country was at its most buoyant, and it was almost promised that all you had to do was to graduate from Harvard Law School and you would be assured of a job. So in the fall of 1929, I went to Cambridge to attend the Harvard Law School. Things were not quite as they had been predicted because when I finished the law school in 1932, the situation was such that I was lucky to get a job working for almost nothing. I continued in the practice of the law here in Pasadena and, eventually, I was modestly successful.

GRODY: What kind of influence did you have toward selecting a legal career? Did you decide that before you went to Stanford?

WRIGHT: Not at all. I was not at all directed that way. In fact, in college I had been a major in the political science field and had a professor I thought a great deal of, Professor Tom Barkley, who is now in his ninety-second or ninety-third year. He had a great influence upon me and many other individuals who were at Stanford, not only then but later. At least three or four United States senators entered the political field largely because of Tom Barkley's effect on them. I had determined that I was going to go to Columbia University, which was his alma mater, secure a Ph.D. degree, and then become a professor of political science. A good friend of mine came down on July 28, 1929, and asked me why did I want to go to Columbia, and why did I want to study political science? He said, "Why don't you go to Harvard Law School? Everybody's going to law school back at Harvard," which was slightly an exaggeration [chuckle], but a goodly number were. So I said, "Well, just a minute, I never thought of it." I did give it a few moments thought, and I said, "I'll go ask my father." My father simply hated lawyers. He had several nasty experiences with some, I understand, and so when I told him what I wanted to do, he paused for a while, and he said, "Well, so far, you haven't really done too bad a job. If that's really what you want to do, why, it's all right but, personally, I would prefer that you do something more honest." [laughter] So I sent a telegram to the Harvard Law School saying, "This is my application; transcript will follow." Had I applied three days later, that is on August first or after, I would have been too late to have secured admission.

GRODY: That really was literally a last minute choice on your part.

WRIGHT: It was absolutely a last minute choice. But I might admit that once I got there and got into it, and from then on to this very day, I have never regretted my choice of profession.

GRODY: How about your father? Did he ever say anything more about it?

WRIGHT: Well, unfortunately, he died while I was at law school, after I had finished two years, and so he never had a chance to reflect on it, at least not with me. He might have reflected, but not with me. [laughter]

GRODY: What kind of practice did you have?

WRIGHT: I practiced here in Pasadena. The firm I was with was a small firm at that time, and we were primarily involved in probate work, trust work, preparation of wills, and domestic relations. There was no corporate law in Pasadena, to speak of. There was no tax law because taxes weren't even a problem in those days, or they were a minor problem, I should say. So that's what went on here, that type of practice. It's greatly changed, now, of course.

GRODY: You practiced for close to eighteen or twenty years then, before you were first put on the municipal bench.

WRIGHT: No. I practiced from 1932 to 1942, ten years, and then I joined the Army Air Corps. I was in the Army Air Corps exactly four years.

GRODY: Did you practice law in the service?

WRIGHT: No. I sat on a goodly number of courts-martial, but I was not assigned to the legal section. I was in the intelligence section, largely, and then the last year or so I was a squadron commander, non-tactical. I'm not a flyer, but it was a non-tactical support group. Then after my completion of the time in the service, I returned to Pasadena and picked up with the same group of people I had practiced with before and continued with them until 1953. In the fall of that year Governor Earl Warren, an individual I had never seen in my life — I didn't know that he even knew of my existence — called and talked to my wife. I was in court that day, and when I got home she told me that I was supposed to call Governor Warren. I said, "Well, that's nonsense. He doesn't even know who I am." She gave me the number to call, and I called the governor's office, and he told me what he wanted. He wanted to put me on the municipal court here in Pasadena. There was a vacancy at that time. I said, "Well, Governor, thank you very much, but I really am not one bit interested in the job," and frankly I wasn't. He said, "Well, I don't think you should turn it down quite that quickly. I think you should give it a little bit of thought." I said, "I surely will, sir. May I have about two weeks to think it over ?" He said, "Well, no, I can't give you that much time because things are happening here very quickly." It was at the time when [U.S.] Attorney General [Herbert] Brownell from the Eisenhower administration was in Sacramento and had offered him the chief justiceship of the United States, although no public announcement at that time had been made. He said, "Can you let me know by tomorrow night?"

I said, "I surely will, sir." Whereupon that evening I went up to my senior partner's home with my wife, and we talked it over. They and I — and I mean a bunch of us — changed my mind back and forth about ten times. Finally, my senior partner said, "Well, Don, I think you ought to take it. The governor does not call up and offer these jobs without good cause of some type. So why don't you go and try it for six months. If you don't like it, well, then come right on back and we'll just go on as it was before." So I called up the governor the next day and told him that I would take it. I did not tell him, however, that it was only on a trial basis. But I stayed twenty-four years, so obviously I liked it.

GRODY: Did you ever get any inkling as to what had brought your name to his attention?

WRIGHT: Yes, I did. I didn't know at the time, and I didn't know, as a matter of fact, until I was appointed chief justice of California. Then one of the senior attorneys in town, Herbert Hahn, of the law firm of Hahn and Hahn, sent me a copy of a letter which he had sent to the governor at that time. He was a close friend of Earl Warren. They had served in the service together in World War I, and I guess the governor relied upon him a lot for advice for appointees in this particular area. The copy of the letter which I had, said, "Dear Earl, the vacancy, as you know, in Pasadena, has to be filled soon. If I was in your position, here are the ones I would pick." For some reason, and I never knew why, he put my name at the head of the list. So I take it the governor just started down the list, and the first person he called was willing to serve. That's how I was selected.

GRODY: In 1953, of course, the municipal court was relatively new with the reform legislation.

WRIGHT: Yes. It seems to me the reform went in about 1949, if my memory's correct, and I liked it right from the beginning. I had no experience whatsoever in the criminal law field, and in the municipal court that is a good deal of the type of law you have to deal with. It was a good deal like teaching school; you just stay one jump ahead of the class. So that's the way I handled it, and the years on the municipal court were among my very happiest.

GRODY: Was there any kind of political, partisan or nonpartisan, activity in the community in which you'd been involved?

WRIGHT: No, no. I have never been active in political matters at all. I've never been involved in partisan politics. I think the only time in my life [that could be considered at all] was when Alf Landon ran against [Franklin D.] Roosevelt. It would have been the 1936 battle. Republican friends of mine asked me if I would go and pick up some voters and take them to the polls. Pasadena was such a very — I hate to use the word — "stuffy" community at that time that around the University Club luncheon table everyone was certain that Alf Landon was going to just trim Roosevelt in a glorious fashion. That was not what came about. So that one activity of running some nice little old ladies from Pasadena up to the polls, that does it as far as political activity on my part.

GRODY: Did Supreme Court Justice Stan Mosk pick that up from you, or did he use the "little old ladies in tennis shoes from Pasadena" before he met you?

WRIGHT: He used it before he met me and, as a matter of fact, later on we became good friends when I was on the California Supreme Court. He used to love to introduce me in places by saying, "He was born in Orange County and lived in Pasadena. As far as Republicans are concerned, he can do no wrong." [laughter]

GRODY: I noticed in looking at some biographical statements, that you went to the superior court in 1960.

WRIGHT: That's correct.

GRODY: Now, the record says that you ran for election. Were you not appointed to a vacancy? Did you ever run for reelection on the municipal court?

WRIGHT: I ran for election in this fashion: while I was on the municipal court, I frequently sat on assignment to the superior court. Some of the time, I would say probably one-fifth of the time, I would be on assignment there appointed by Chief Justice Phil Gibson at that time. Kenny Newell, or Kenneth Newell, who was a superior court judge — is now ninety-one years of age and, strangely, lives right across the street from me — called Louis Burke, who served on the California Supreme Court later with me. Burke was the presiding judge of the superior court in Los Angeles. Kenny said to Louis, "I am not going to run for reelection this year. Do you have

any municipal court judges who have done a particularly good job for the superior court on assignment?" To which Louis replied, and I owe him a debt for that, too, "Well, I think Don Wright, who's over there in Pasadena, has done the best work for us of any of them." So based upon that, Kenny Newell called me. He was upstairs, and I was downstairs, and he said, "I would like to talk to you for a moment." He told me that he did not intend to run for reelection. However, he was going to sign up to run for election, and he wanted me to go in at the last minute or so and also sign up. Then when the time came to pay your money, your fees, he was going to default, in effect. I said, "Well, that doesn't seem honest to me." He said, "Well, there are a great number of judges on the court who are here by just that same fashion." Since I had not been active politically, [Governor Goodwin] "Goody" Knight was not about to elevate me, nor was Pat Brown. So, I talked to several older attorneys in town and said, "Is that really honest to do it that way?" They said, "Well, surely. That's the way the law permits it," and they named a whole group of judges who had got on the superior court in that fashion.

GRODY: Naming your own "heir apparent" in the process.

WRIGHT: Yes, that's right. So I proceeded that way and signed up at two minutes before five on the last day of registration. So, of course, I appeared on the ballot as unopposed. So I was elected, but I was unopposed.

GRODY: You never stood, then, for election as a municipal judge?

WRIGHT: Oh, yes, surely.

GRODY: Just initially?

WRIGHT: Well, you see, you inherit the terms of your predecessor. Now, I'm not certain how the election to the municipal court operates, but I stood for election in the municipal court and had no opposition. I had no opposition at all on the superior court, initially, nor when I was up for election six years later. I didn't have any. The same was true all the way up. I was fortunate. In 1960 I was elected to the [Superior] Court of Los Angeles County, and in 1961 I was sworn in and was assigned to the Burbank Department of the [Los Angeles] Superior Court, the Burbank-Glendale Court.

GRODY: That leads us, then, to your next two appointments which, of course, were gubernatorial appointments to the appellate bench, the California Court of Appeal and the California Supreme Court.

WRIGHT: I was very lucky on the superior court. I was the head of a branch department first, and then I was only in that job for about one year, I guess, when I was brought downtown. Judge McIntyre Faries, who had become the presiding judge upon Louis Burke's appointment to the California Court of Appeal put me in charge of the criminal departments, Department 100, which at that time was the largest criminal court in the country. I served in that capacity for a year and also served a year or so in the trial criminal courts. Then I was made the head of the probate department. During that time I was lucky enough to be given the authority to completely revamp them [the courts]. They were greatly in need of it. Very frankly, the court to this day operates completely in the way I revamped it way back in the early sixties. Based upon that, I was made the assistant presiding judge, and before I knew it, I was presiding judge. It all happened in a very short span of time. I went on the [superior] court in 1961 and then seven years later went on the court of appeal in 1968.

GRODY: That would have been how many terms?

WRIGHT: Well, I was at that time the presiding judge of the Superior Court of Los Angeles. Strangely, I had been elected and reelected a total of three times, as it turned out, because I inherited the balance of the term of my predecessor, Lloyd Nix, who retired because of age. I was elected to his unfinished term, and then I was elected to a whole year of my own. Then I was reelected for another year, 1969, but by that time Governor Reagan had appointed me [to the court of appeal]. So even though I only served a year and three months, I was elected and reelected three times!

GRODY: In that period, in reading some of your background material, I found that while on the Superior Court of Los Angeles you had been active in advisory committees for other appointments to the bench.

WRIGHT: That is correct. In other words, the way the governor operated was that he had committees set up all through the state, perhaps not in each county because some of them were too small and they only had one or two superior court judges and no municipal court judges. He picked the presiding judge of the Los Angeles court to be chairman of one of these committees of six. My predecessor, Lloyd Nix, had served in that capacity, and then upon his leaving the court, I was asked to remain and be chairman of the new group. The group was composed of two judges, two

lawyers, two lay individuals, and names were submitted to us for evaluation. There was also another group, and I don't know how many were in it, but I assume it was a comparable number of individuals who selected people whose names went to the governor, and the governor would submit them to us for evaluation. It worked very well. I will have to say that it was a little more idealistic than it turned out to be practical, for this reason: either Harold Schweitzer, who was the other judge with me and who is now a retired justice, or I could call up any attorney or any judge, say, in Long Beach, and say, "Tell me, how is John Doe? What kind of an attorney is he? Is he ethical?" Or there were many other questions I could ask. As a judge, I could get the answer. But if a lawyer tried to call and ask those same questions, he would get few responses, and lay individuals would get even fewer responses. So in the end, it turned out that Harold and I did practically all of the work. That isn't because of lack of desire to do the work by the other four members, but it was just that the makeup of the committee dictated the way it had to happen.

GRODY: Your first appointment then, by Warren, is not too different from your appointment by Reagan to the appellate bench. You had not met him or had contact with him?

WRIGHT: That is correct. When I went on the court of appeal I had only seen him. At that time, I believe, I'd seen him twice in my entire lifetime. Lloyd Nix, my predecessor as presiding judge on the superior court, had invited him to come down to Los Angeles to swear in the first group of appointees he appointed to the court. As I had been elected the presiding judge [in the meantime], I quite naturally stood in for my predecessor, and that was more or less just a handshake. There were about seven or eight judges being sworn in. That was the second time I had seen him. The first time I saw him was when I was sent up with the committee of three to find out what the governor's attitude was about additional judges on the Los Angeles Superior Court. Again, it was my predecessor, Lloyd Nix, who sent me up to Sacramento to ask Governor Reagan. There were three of us and we waited all day, to almost five o'clock, to get in to see him. When we did get to see him, he was so tired that we all felt embarrassed to take any time at all. We had nicely prepared a resume of what the bill was we were going to present or have presented on our behalf and he had had his staff

review it. He's very good, as you know, at gleaning material very quickly off short cards. So he responded that he saw nothing wrong with it, and he would not veto the measure. We were going to take the position that if he was going to veto it, we were not going to introduce it. That was probably a meeting that lasted three minutes. Those were the only two occasions when I had ever seen the man.

WRIGHT: When the governor called and told me that he was going to appoint me to the court of appeal, five vacancies had been created. I answered a few questions and thanked him for the appointment and told him that I'd be happy to accept. The evening before the appointments were to be made public, I got a telephone call from his secretary, and she told me the governor was going to make the appointments the following day; however, she did not know to which political party I belonged. She wanted to know whether I was a Republican or a Democrat because she knew and the governor knew those questions would be put to him at the time he made the announcement. I told her I was a registered Republican, although not active in Republican affairs. She thanked me, and that was all there was to the conversation; but it's an indication how, at that time, there was little or no concern about political background.

GRODY: However, when you were appointed to the California Supreme Court there was an exchange which took place between you and the governor in those few minutes when you saw him. Perhaps you could recall the little card that was shown to you. These were going to be his remarks, and you were asked for agreement.

WRIGHT: Yes, the card was shown to me by Ed Meese and Herb Ellingwood. Ed Meese was then in some capacity.

GRODY: He was the executive secretary.

WRIGHT: He was the executive secretary, and Herb Ellingwood was the legal affairs secretary. It's all so long ago — twelve years ago or more. As I recall, when we, I mean my wife and I, arrived in Sacramento and went to the governor's office, we were told that he had appointments and that the press conference was not to be called until eleven o'clock. We were told to walk out into the Capitol gardens there and enjoy ourselves and to come back around twenty minutes before the hour. So we did. When

we got back, either Ed or Herb handed me a little card on which there was a short biographical sketch and some other items about judicial attitudes and so forth, and I was asked a question: Did I agree with everything that was on there? To which I replied, "Most of it is correct, but I don't agree with all of it." The answer I got was, "Well, it's too late now to make any changes," and it was because the press conference took place within the next ten minutes or so. The governor read off the remarks that were on the little card, or I should say, even better, he spoke them from memory as it appeared to me, and then turned the questioning over to the newspaper reporters and the television people and left me standing in the [laughter] dock!

GRODY: I guess the main point of his remarks, as you indicate, weren't really partisan politics.

WRIGHT: No.

GRODY: Were they philosophical in that he placed some emphasis on judicial restraint as a judicial philosophy?

WRIGHT: I really can't remember. I don't like to use the word frightened, but for one of the few times in my life, I think I was frightened by all of the glare of the television lamps, lights showing on you, and so I really can't remember, at this time, what the gist of his remarks were.

GRODY: Essentially, when he appointed you, the remarks were that there was a need for judicial restraint, and you were quoted in the *Los Angeles Times* article as saying, "I'm an advocate of judicial restraint, and one who does not believe the court is to legislate." That was about the extent of the quote.

WRIGHT: I could have said that.

GRODY: So that would fit, certainly, into what at that time would have been an expected view of a conservative governor and the kind of a judiciary with which he'd be interested. That would especially track with Nixon's presidential campaign in 1968 and the great deal of comment about the need for judicial restraint.

WRIGHT: Restraint, right.

GRODY: As a matter of fact, that even goes back to Nixon's gubernatorial try some years before in California.

WRIGHT: You mean against Pat Brown?

GRODY: Yes. When Brown ran for reelection in 1962, Nixon campaigned a great deal as the first in a long line of "law and order" campaigners in California.

WRIGHT: You have a better memory than I, number one, and number two, that's your profession, political science [laughter].

GRODY: Is it fair to say your appointment to the California Supreme Court may have come about in some measure from the previous association with Ned Hutchinson? Or is it unknown to you, or not really clear?

WRIGHT: To this day it is completely unknown, because I made no application to be put on the Court. I'd only been on the court of appeal for a year plus three months or so. I had no expectation in the world of ever being considered for such an appointment, and I would permit no one to write a letter on my behalf. Several individuals who were interested in becoming the chief justice not only wrote many letters themselves, on their own behalf, but had files on the governor's desk which were anywhere from four inches to eight inches thick. When I appeared there, Ned Hutchinson showed them to me. I won't mention any names, but he said, "Now, this is the application from So-and-So, and here's the application from So-aud-So and So-and-So." I said, "Where's mine?" He opened it, and there was one piece of yellow paper in there, and it simply had my name and the dates I'd been appointed to the court. That was the only paper in there. That I remember very clearly. Looking back on it, I think maybe I was appointed because, very frankly, I had had as much experience in the judicial system as any judge in the state of California. Having served on the municipal court, and as presiding judge of the municipal court, and having served on the superior court and as the presiding judge of the criminal court, of the probate court, the domestic relations court, civil court, and the whole court, I think that was largely the reason I was selected.

GRODY: Well, it's interesting that there had been some speculation at that time that Louis Burke would be elevated to chief justice.

WRIGHT: I assumed that he would be. I think most of us on the court in Los Angeles Superior Court and the [Second Circuit] Court of Appeal rather expected that and, frankly, I know that Louis himself did [chuckle].

GRODY: Did you ever talk about that with him, or was there any discussion?

WRIGHT: No, no. We never had any discussion, but I know my other colleagues told me that they expected him to be promoted to that position and were frankly, surprised when I was named. I didn't know any one of them except Justice Burke. The others I didn't even have a knowledge of. If I saw them in person, I wouldn't have known them.

GRODY: You succeeded Roger Traynor?

WRIGHT: That's correct.

GRODY: After your appointment to the Supreme Court, the governor continued to make other appointments to the appellate bench which you now perceived from a different role as chairman of the Commission on Judicial Appointments. Did you perceive a change in the quality of appointments, because you made at least one press-noteworthy vote when you voted against the appellate appointment of Herbert Ashby, who was also from, I guess, the Alameda County area?

WRIGHT: No, Ashby was from Ventura.

GRODY: Ventura, right. Yes, as a matter of fact, Bruce Thompson, who is the former D.A. in Ventura County had strongly come out against Ashby's appointment. But that was, I guess, your first occasion to vote against a confirmation.

WRIGHT: Well, I figured, and very correctly I think, that if you were going to be the chairman of that appointments commission, it was incumbent upon you to do your duty and not just automatically put a rubber stamp upon every individual the governor named. The appointments commission, in my opinion, is very, very poorly designed. First of all, in my opinion, the attorney general should not be a member of it, because in more than half the cases that appear before the appellate courts and the Supreme Court, the attorney general is one of the parties before the court. It's almost ludicrous to think that an individual such as that should have one-third of the veto power.

GRODY: You anticipate me. That was certainly a question that I was going to get to.

WRIGHT: I think it's very, very poorly planned. I took my job very seriously. When Herb Ashby's name came up, I called and said, "You have no staff on the appointments commission, no staff at all," so I personally took my time as chief justice and called probably twenty to twenty-five lawyers in the Ventura area and asked them their frank opinion of what his qualifications were. Not a one, as I recall, rated him as having any qualifications for the job at all. He was simply named because he was a very close friend of Herb Ellingwood, and that was not sufficient in my mind to constitute voting "yes" on his appointment. I do want to put this in right now that he's turned out to be a very good court of appeal justice, and I'm very happy that he has. But that's how I felt at the time, and that's how I voted which, of course, shook everybody because beforehand nobody did anything but rubber stamp them.

GRODY: Do you think that Attorney General Deukmejian's role on that commission in recent years has heightened any interest in changing that role?

WRIGHT: I really couldn't answer that. These are subjects that I don't discuss with members of the bar or other friends of mine. Friends who are not lawyers would not know what I was talking about, and most lawyers pay little heed to it, to be very honest.

GRODY: Well, you had voted "no" on an appellate appointment, and we will get to your even more celebrated "no" vote on William Clark's nomination to the California Supreme Court. Deukmejian has voted "no," probably in record numbers, I would think.

WRIGHT: He's voted "no" on everyone, I believe, except Otto Kaus.

GRODY: Right.

WRIGHT: There may have been one other appellate justice in some northern part of the state, I don't know. There will be three more up for confirmation next Friday [May 21, 1982], and we'll see then what he does, but I'm sure that he'll carry out the same pattern.

GRODY: Well, some would say that footsteps in voting "no ," Deukmejian is just following in your [chuckle] —

WRIGHT: But I voted "no" for very different reasons! I dug into the scholastic records. I don't like to pin things in these kinds of interviews on

individuals, but Herb Ashby had a dismal academic record and a very, very mediocre success as a lawyer and as a public servant of any kind. There was really, at that time, no reason why he should have been elevated. Bill Clark had a miserable academic record. He had flunked out of Stanford. He went for six quarters and only barely got four quarters of credit out of the six quarters he was there. Then he joined the service, and when he came back to Loyola Law School nights, he flunked out of the place. Finally, he studied for the bar while working for a lawyer. So there were many other things in Bill's case that caused me to vote "no." I did do it in what I thought was a dignified way, saying that I thought there was nothing in his education or his training "at this time" which would say he was qualified to sit on the California Supreme Court, and I don't have any doubt in the world that I was correct. I was just inundated with compliments from all over the state, law schools, and everything else because it was, frankly, true at that time.

GRODY: As in the case with Ashby, Clark was confirmed and became your colleague, and it may or may not be a proper question, but I'll ask, and then you can constrain —

WRIGHT: As a judge I am used to ruling on improper questions! [chuckle]

GRODY: You had offered the comment that you felt that Ashby had turned out to be a good appellate jurist, and when you had voted "no" on the Clark appointment, you said that you hoped that you would prove to be wrong. Do you feel you were proved to be wrong?

WRIGHT: That's a rather hard question to answer, because during the years that Bill and I served on the Court together, he was not a leading member of the Court, shall we say. In fact, I don't recall ever hearing him express an opinion on much of anything. In fact, it was difficult to get a vote out of him. When we would have discussions after our hearings on cases and we were making the final vote, Bill's response would usually be, "Well, I'll have to make more study of that. I don't know." So I couldn't put a "yes" or a "no" as to how he was going to vote. In all fairness to Bill, I can indicate or say that I'm sure it wasn't the happiest time of his life. I had voted against him, and when he came on board I welcomed him. I said, "I know it's going to be kind of hard, Bill, but let's make things work." But nevertheless, I could always feel that the hurt was probably there, and so that brought out in him a very, very quiet manner. Maybe that's his manner anyway. He

would never, for example, go with the rest of us to lunch. Occasionally he would get talked into it following a Wednesday conference, but the rest of us used to all go out to lunch together.

GRODY: I remember reading a profile on him saying that if he did go to lunch sometimes it would be with Justice Marshall McComb.

WRIGHT: That is correct.

GRODY: Then there were bets on whether or not anyone would say anything at all during the course of the lunch! [laughter]

WRIGHT: Well, that's a very accurate observation. Also on the Court with us at that time was Ray Sullivan who went off the Court just about the same time I did. He had the most completely analytical mind of any human being I have ever run across in my life. I would never want to be cross-examined by him. He was a perfectly fabulous attorney and a wonderful person, but if Bill Clark thought in the early days that his statements would go unchallenged, he was in error because [chuckle] Ray would listen to what he said and then give simple devastating answers or arguments contrary to him. It was a very belittling experience to go through that. Bill got so that he just never opened his mouth at all at a conference except maybe to say "yes" or "no" on a vote. So you asked me the question, "How did he finally work out?" During the time that I was there, he didn't. But I've been told by others that later, after Ray and I left — perhaps a little bit of fresh air came in [chuckle] — that his opinions thereafter were better and he contributed more on the Court. I can understand why he behaved in that fashion.

GRODY: The record for your period of time as chief justice indicates a fairly high rate of unanimous or, let's say, 6–1 votes on the Court.

WRIGHT: Far more than they've had in recent years! [laughter]

GRODY: Yes, not only in the period after you, but even in the period before you. I found in looking at the record that Clark was not the lone dissenter or did not join the dissent that often. McComb seemed to be more the lone dissenter when there was a lone dissent.

WRIGHT: Yes. McComb, of course — you probably know the history as well as I do — was totally incompetent the whole seven years I was there and had been for many years before. He had no idea what was going on.

There was no way of removing him; he was the "darling" of a great group of individuals in California, and upon his name coming up for election to being given another term, he got a tremendously high percentage of the votes. I attempted to get him to leave the Court, unsuccessfully. I attempted to get his family to use pressure on him, and I was not successful in that. I even explained to them what a really ridiculous figure he had become. He would go to sleep all the time on the Court and lean back in his chair with his mouth open, and I could see people in the audience pointing to him. But there was no way you could get him off the Court unless his family could succeed in talking him into leaving, or unless you could, yourself, succeed in that. Fortunately, scandals arose in the Florida Supreme Court in which three members of the court had to be removed, and that got a group of people in California together, including Seth Hufstedler, Bob Thompson, myself, and others, to find out how they would get rid of us if a scandal broke out on the California Supreme Court. The weakness in the system, you see, was who could explain Marshall's behavior on the Court except the other six of us who served with him? And each one of us would be disqualified then from voting. There was no way that any group other than the Supreme Court, except the voters or the Legislature by impeachment, could remove him. There was no effective way of doing it. So then we devised this system — I was not the author of it; however, I wish I had been smart enough to have been the author — where if a Supreme Court justice was involved, then a "rump" Supreme Court would be created, seven of them drawn by lot from the court of appeal, to sit and that was the way we finally had Justice McComb removed off the bench.

GRODY: Was that a change in the rules of court?

WRIGHT: Oh, no, it was a constitutional amendment. It could not be accomplished by a rule of court, and I have a feeling that had we not done so, he would have been sitting there until the day he died.

GRODY: Yes. Well, that's sad.

WRIGHT: It finally got in the last three years or so that I didn't assign him any cases.

GRODY: If I may go back to Clark for just a moment?

WRIGHT: Sure.

GRODY: I'll ask the same question as I did with Ashby. When you did cast a negative vote, though again Clark was confirmed, did you get any reaction out of the governor's office?

WRIGHT: No.

GRODY: As you say, Ellingwood had close ties to Ashby, and in this case, of course, the governor directly had close ties to Clark. Clark had been his executive secretary prior to his brief stay on the superior court and appellate court. You didn't have any reaction from anyone?

WRIGHT: No. As a matter of fact, there was no response at all. In fact, I didn't expect one, and I don't think it would have been proper for anybody in the governor's office to say anything. I'm sure they weren't very happy with my vote.

GRODY: I think we have pretty well covered the history of the appointments and the kind of appointment process, or style rather, that the governor had. Most records that I have seen on Reagan's terms as governor have given him relatively high marks for the quality of judges he appointed to the bench.

WRIGHT: I would say that would be a proper assessment. I think those appointed in the later years were philosophically different from the ones appointed in the earlier years. In other words, I think those appointed in the earlier years didn't have any philosophical direction, I mean sole direction. Some of those appointed in later years were definitely hard-boiled "law and order" type individuals, and I know they were not selected by the governor but by the people who were in the appointments system who felt that way themselves. I'm sure Ed Meese feels that way and Herb Ellingwood feels that way.

GRODY: As you reflect on that, too, I suppose, you were aware of that as you reviewed these people for their appointments. Yet, it was something, apparently, which you didn't consider as significant in your judging them one way or the other.

WRIGHT: No, not at all. I knew that Justice [George] Paras and Justice [Robert] Puglia and several others were rabid "law and order" people, but I felt that every individual is entitled to his own philosophy, and that didn't deter me from voting for them at all. Their records were outstanding. They were well-educated individuals and had performed, I won't say totally

brilliantly, but at least adequately as members of the bar and as members of the lower courts. So their philosophy wouldn't affect me at all; unlike George Deukmejian, for example, who won't vote for anybody unless they philosophically agree with him. That I did not think was our business. It's for the governor to make those choices, and I did not vote against either Herb [Ashby] or Bill [Clark] for philosophical reasons. In fact, I didn't even know what they were!

GRODY: Well, when your successor as chief justice was confirmed, Rose Bird, Attorney General Evelle Younger cast the critical vote in her favor. He has since said that he has had more than some second thoughts about it. He regretted it, but he apparently saw things differently than Deukmejian, too. That is, he felt that the philosophic view really wasn't what he was there to review. He was there to review other kinds of qualifications and make the judgment based upon that.

WRIGHT: Also, you must not forget that "Ev" Younger was and probably still is a very ambitious individual who expected to be governor and had good reason to think that he might be governor. He did not care, I believe, to have commission members set a precedent of "knocking off" [laughter] the governor's nominees. Now, he never mentioned that, but if you'll look at his record, he never voted against anybody, not a single one, until this court of appeal justice who was confirmed and then later retired from the court.

GRODY: Halvonik.

WRIGHT: Paul Halvonik, after his involvement, or his wife's involvement, with growing marijuana. That was the only individual he ever voted against. I will tell this since it's for history. It's true. During the proceedings in the Rose Bird nomination, I got a telephone call from Ev, and he said, "Well, Don, aren't you going to appear up here and speak on this matter?" I said, "Well, no. Why should I?" I said, "When I was named, nobody appeared at all to speak either for or against me." As a matter of fact, when my name was brought up, I wasn't even there. The only thing before the commission was one letter which said, "I don't know a thing about this Judge Wright, but if Governor Reagan appointed him, he can't be any good." [laughter] That was the sum total of letters in the file, just one letter! So if they used that as a basis, they would have voted "no." But I said, "No, I'm not going to appear. First of all, I haven't heard any of the testimony. I

haven't heard anything. All I know is from the brief accounts I read in the paper." He said, "Well, aren't you going to write a letter and express your views?" I said, "No, I have no intention of doing so, Ev," He and I had gone round and round on several other matters, and I said, "For once, Evelle, use some guts and vote how you think this matter should come out." He was very troubled, I knew. He said, "I don't think she's qualified." And I said, "If you don't, then that's the way you should vote." But then, to my amazement, he voted the other way.

GRODY: And his was a critical vote.

WRIGHT: It surely was.

GRODY: His was apparently the central vote. I think that Parker Wood voted against her.

WRIGHT: He did.

GRODY: By the way, there was some interesting speculation in the press on that. When you named the acting chief, he then cast the vote on Bird in that position because you had left. The acting chief was Mathew Tobriner, and the speculation was that if you had named someone else, perhaps Stanley Mosk, Rose Bird would not have been confirmed.

WRIGHT: I really don't know. I didn't intend to name Matt Tobriner and, of course, under the law, I had no authority to name anyone, anyway, which I was not completely aware of at the time. But what happened was, on the last day in January, at the Court [sitting] down in Los Angeles, I made a brief announcement at the conclusion of the session to thank everybody and say this would be the last session of the Court that Justice Sullivan and I would be sitting on as we were both leaving the Court within the next week or so. With that, Matt Tobriner, who was a dear friend of mine, took over. He was the senior member of the Court because Marshall McComb wasn't sitting then. Charges had been made against him, and he was not permitted to sit under the law. Tobriner took over and eulogized — I use that word not properly — both Ray and myself, and he said, "Now, as the senior member of this Court." So I felt there was nothing [that could be done] the way he took over. He said, "I'll be the acting chief justice." Well, the law was such that really the remaining six themselves, or five is all there were because Marshall was no longer sitting, should have chosen who would

be the acting chief justice. But not one of them took the trouble to look up what the law was.

GRODY: Actually, your responsibility for appointing an acting chief was only in the event of your absence or when you were temporarily away from the Court.

WRIGHT: Yes. That's right. Only as long as I was still in the position. Under the law I had no authority. So the result might have been different. I'm sure it would have been different if I'd appointed Bill Clark [laughter] as the acting chief justice, and he'd been able to act!

GRODY: Did you become to Reagan what Holmes became to Teddy Roosevelt or Earl Warren became to Dwight Eisenhower?

WRIGHT: I suppose it appeared that way to many. [chuckle] I don't know whether it's a compliment or an insult, but I'll take it as a compliment. You are correct. By reason of the fact that the headquarters of the California Supreme Court are in San Francisco, while the legislative and executive groups are in Sacramento, there is little contact between the two, between the Supreme Court and the executive, or the Supreme Court and the Legislature. As I indicated to you, we went to Sacramento twice a year for one day, two days at the most, but very rarely three days. During that entire seven years, I don't suppose that I saw the governor but once that I can recall. That was when I dropped into his office for something to do with some appointment that was coming up, and I spent a very short time with him. I only recall that because I saw on the couch a great number of needlepoint pillows with "jellybean" written on them and jellybeans in compote dishes and such. [chuckle] There was no contact, at all, between the Court and the governor's office.

GRODY: I raised the question of an analogous relationship to T. Roosevelt and Holmes or Eisenhower and Warren, in that, at least in terms of press accounts, there were on a couple of notable occasions of public statements by the governor himself regarding the substance of some of the decisions that came out of your Court. I guess you were in the position, as every justice on the California Supreme Court suddenly discovers if he didn't know it before he got there, that you get nothing but the hard stuff!

WRIGHT: That's probably our own fault [chuckle] because we are the ones who vote to take over the cases, and we have no mandatory cases that we

have to take over with the exception of death penalty cases. On the rest of them, we can all say, "no." In fact, if we followed Justice McComb's record, we would have had no work to do at all because [chuckle] he voted "no" on almost all of them.

GRODY: Well, I think the first public record that I was able to find of the governor's commenting critically on a Court opinion was the death penalty case in *People v. Anderson*.[1] But you had a series of cases that from a philosophic point of view, if we can presume to understand what Governor Reagan's philosophic view was, would have run counter to the governor. There was the death penalty case, and there was *Serrano v. Priest*,[2] the school tax equity case.

WRIGHT: Justice Sullivan wrote that opinion.

GRODY: Yes.

WRIGHT: I think that was a 6–1 vote, or it may have been a unanimous decision. I'm not sure.

GRODY: Then you had the reapportionment opinion.

WRIGHT: I'm very proud of that one. I wrote it.

GRODY: Yes! So I guess there were enough of those kinds of opinions where you could see some reaction. Two things I notice is that there was not only a reaction from around the governor, but there was reaction and the governor was highly critical of the death penalty case.

WRIGHT: I guess so. As a matter of fact, the San Francisco papers, to my recollection, printed no comment that the governor ever made, and it was only sometime later that I found out that he was madder than a wet hen about that decision. He never expressed the same to me. He never expressed any opinion about any opinion that I ever wrote or that I was coauthor of or that I had joined in the decision. So I was completely in the dark on that. He made no attempt whatsoever to indicate his disapproval of any opinion to me or to any other member of the Court.

GRODY: The death penalty opinion was, in fact, a 6–1 opinion, with McComb voting "no." And if I remember correctly, I think Burke had written a prior

[1] 6 Cal. 3d 628 (1972).

[2] 3 Cal. 3d 580 (1971).

opinion a few years before upholding the death penalty. He had written the earlier majority opinion, and was in your majority.

WRIGHT: That's right. He had written the opinion upholding it, and Mosk joined it. If you want a brief history of that case, what had happened was we had waited for two years for the United States Supreme Court to come down with a definitive opinion on the death penalty. In the meantime, the people on death row were just being stacked up. There were 108 or 110, around that neighborhood, and I finally said to my colleagues, "Well, thank God, this fall the Supreme Court will be deciding this issue." The very first case on the calendar to be argued at the October term was the death penalty case. However, Justices Black and Harlan both became ill and left the Court before the October term began. Then the difficulty arose over the appointment of their successor with the [G. Harold] Carsweil and [Clement] Haynsworth appointments first, to be followed by Rehnquist and Justice Powell. So the death penalty case was put off indefinitely. I said to my colleagues, "This is becoming intolerable. We have people stacked up there awaiting the death penalty." I also brought to the attention of my colleagues, [something] which possibly they already knew: I said, "Even when they come down with a decision, what effect is that going to have upon the California situation? Our state constitution reads that it [punishment] cannot be either 'cruel or unusual,' the disjunctive. The federal constitution reads 'cruel and unusual,' so it has to be both, conjunctive." I said, "We're still going to have to face up to it, because an argument can be made that this [death penalty] is 'unusual.'" And a good argument can surely be made on that, even if you don't find it "cruel" so that it wouldn't apply at the federal level. So we decided to go forward with it. Then when it came time to decide who would be the author, I wasn't particularly looking for the work, but Louis Burke said, "I think this should come from you. You're the Chief." I said, "All right, I won't shirk it. I'll take it, but I want you people to help me." So I would have matters drafted; I would draft it myself, and then I'd submit it to all my colleagues, and they would object to some portions of it. It really was a work of all six of us. Each one of us contributed something to that opinion, and I am not one bit ashamed of it to this day. The odd part of it is that, to this day, they always say the California Supreme Court tossed out the death penalty, which we did in the *Anderson* case. However, shortly

after that, the United States Supreme Court did act in *Furman v. Georgia*,[3] and, as you probably know, they declared every death penalty in every state in the United States to be unlawful, unconstitutional. Every single one of them was, so everybody had to start back on the drawing board, including the State of California. So the *Anderson* case really only had a temporary effect but no permanent effect.

GRODY: There were two things about *People v. Anderson* that really may be of particular interest here. One is the reaction of Reagan to it. The other aspect has to do with the general judicial direction of the Court which various news articles have connected with you, and that is a view of using the California Constitution as a basis of decision regardless of the federal constitution's standards, if you felt that the California standards were greater. Perhaps Justice Mosk initially held that view most strongly.

WRIGHT: I think you are correct in that Justice Mosk was the one who felt the most ardent about that and was the first one to acknowledge it and make a public speech on that particular subject. I think he delivered a lecture or a talk to the Chicago Law School alumni on the independent state authority to overrule matters that the federal constitution would not permit being overruled. You are correct and we did apply that, but not on any great number of cases. Perhaps in the last five years they've extended it. I don't follow the Court as closely as I did then, because I know I'm never going to be in a position where I'll be doing any ruling on it. So when the opinions come down in the advance sheet, I simply glance at them. Some I remember, and some I don't even try to remember.

GRODY: As to that second point, if you were to be viewed as a judicial restrainer or as a conservative when you first went on the Court, whatever those magic terms mean, then the substance of your opinions, for instance, the death penalty case in which you opposed the death penalty on the basis of the California Constitution, was in direct opposition to the governor's strongly held views about the death penalty. "Judicial activism" is more likely to be the term attached to saying, "Well, we're going to read our constitution to see if it requires harder, greater standards than the national constitution." So I think that's the context in which I remember picking up on this particular theme.

[3] 408 U.S. 238 (1972).

WRIGHT: I suppose we did. I don't know how many cases we used that criterion in. It had been used in several cases before I went on the Court. I remember one particular case, and I did not concur in the reasoning of it at all, although, as I said, it happened before I came on the Court. It involved an individual who was riding in the car of a person who was stopped with contraband, and there was every reason, you'd think, to believe that the man sitting in the front seat might also have some and, yet, you couldn't touch him. That seemed to me to be a totally false way of looking at it. That was the first case I remember being based upon the California Constitution, a search and seizure case. Then there were several that came in. One I remember was *Disbrow*,[4] which had to do with *Miranda*. It seemed to me to be almost a perversion to permit the police officers — and they were doing it in increasingly great numbers — to refuse, or fail to give the Miranda case warning, and then wait until the defendant, lulled into a sense of false security, took the stand and then made some slip or told a little bit different story from what they remember him telling. Then it [evidence obtained in abeyance of the Miranda warning] was permitted by way of impeachment. So the officers were violating the rights of the individual by just laying low. Of course, they didn't really affect any of the sophisticated criminals because they wouldn't open their mouth anyway, but the poor and the ignorant would.

GRODY: Did you dissent in *Disbrow*?

WRIGHT: No. I wrote a concurring opinion. Mosk wrote majority.

GRODY: Did that permit impeachment of testimony?

WRIGHT: No. We ruled it out. That was when we relied upon independent California grounds.

GRODY: Oh, even though the federal ruling allowed the impeachment, you ruled it out by reading the California Constitution. Do you think it was a violation of rights?

WRIGHT: Yes, that's right, and I still think that our reasoning was correct, because it could become a way of completely doing away with the rights that *Miranda* granted. One of the other cases that I remember was *People v. Robinson*.[5] I don't recall the name of the other one [the companion case].

[4] 16 Cal. 3d 101 (1976).

[5] 62 Cal. 2d 889 (1965).

There were two of them which came up at the same time before the United States Supreme Court. One involved a student in Florida. The young man crossed over a double line on his way to school, if I remember the facts correctly, and he was stopped by a police officer. They wanted to see his driver's license. He said that he was sorry, he didn't have it, he had left it at home. He just lived a short distance down the road, and he would go back and get it, or they could go with him. They said, "Not at all," and they gave him a complete body search and found a marijuana roach, or something of that nature. To me I just couldn't conceive of this kind of a law whereby you get stopped for a little traffic [infraction] and the police officer is permitted to give you a complete body search. I said [in *Robinson*], "That far, I just can't go." I still think it's a better decision than the United States Supreme Court came down with. You don't have to express yourself! [chuckle]

GRODY: Well, I think that the point of the original question is that at best the appointer is guessing at the direction to come from his appointments no more or less than any other jurist who is appointed to the bench. But the reaction of Reagan to the death penalty case, again, was pretty direct.

WRIGHT: To this day I don't even know what he was supposed to have said. I believe he said something [to the effect] that I had told him I was in favor of the death penalty.

GRODY: Yes, one matter that I'd like to clear up is the business of Governor Reagan's response to the death penalty case. The newspapers quoted him as saying, "The court is setting itself up above the people and their legislators." There was a lot of legislative reaction, state assemblymen and state senators. It was mostly Republicans who were critical in the press. They were pro death penalty. Anderson's attorney was Amsterdam from Stanford Law School.

WRIGHT: Tony Amsterdam, the professor there.

GRODY: He criticized Reagan's comments as being the "rhetoric of a demagogue." So we had this kind of exchange! This was in February 1972. In September of that year, you published in the *California Law Review* an article entitled "Role of the Judiciary: *Marbury* to *Anderson*," in which you made some comments that the critics of the death penalty case disturbed you as critics because their criticisms went beyond the merits of the case.

Some newspaper accounts of your article interpreted those comments to be, without naming the governor, a response to his criticism. Do you recall any intent in that regard?

WRIGHT: No. As a matter of fact, I do not know what the governor said. I may appear a little naive; I don't recall even reading in the San Francisco papers any comment that he might have made. I can't say that I recall definitely what you read, but I have no doubt that's what I said. But it most assuredly was not directed at all at anything Governor Reagan might have said. I'm [feeling] a little like the scene from "The Barrets of Wimpole Street," starring Katherine Cornell, in which Robert Browning first calls on her [Elizabeth Barrett]. She hands him a copy of *Pippa Passes* and says, "There are some lines in there I don't understand, Mr. Browning. Would you please read them through?" He reads them, and they don't seem to make any sense at all. So he says, "Well, Miss Barrett, when I wrote that, God and Mr. Browning knew what they meant, but now only God knows." [laughter] So maybe these things will have to be considered in that fashion.

GRODY: Well, about a week after the *Law Review* article came out in September, you addressed the California State Bar, as did Governor Reagan. In his address the governor indicated there was a crisis in the courts. You followed the governor's address with your own, which obviously was prepared before the governor said anything, so you couldn't have written a speech on the spot to respond to him! Nevertheless, it was reported in the press that in your speech you suggested that criticisms of the Court were, perhaps, politically motivated. You were quoted as saying, "Certainly some reform is needed; it will come in time, perhaps, in a nonelection year." Everybody picked up on the phrase "perhaps in a nonelection year," interpreting you to suggest that the criticism of the Courts now are more politically motivated than anything else.

WRIGHT: Was that in an election year?

GRODY: Yes, 1972.

WRIGHT: But, of course, he wasn't running again for reelection.

GRODY: No, it was a presidential election year. But it was an election year in terms of the state legislature.

WRIGHT: Yes, when I wrote that, it was all done, as you mentioned ahead of time. To be very honest, I do remember some of the comments that Reagan made at that time. Some of them I did not think were justified at all, but I did not mean in my speech to refute them. I didn't believe this to be a place for open debate, and I wouldn't be very good at that, anyway. So there was nothing intentional about that, and why I put in "even in an election year" is pretty sound, because I find that in election years you do find the most absurd statements being made by candidates from both parties.

GRODY: This is ten years since you made those comments. Would you find that your observations were still applicable?

WRIGHT: They would be absolutely the same. I don't remember on the death penalty case any comment made by Mr. Reagan, except it was reported to me that he did mention that he had asked me if I believed in the death penalty. I have no recollection of that question being put to me at all by him. I don't wish to contradict him; he has memory one way, and I have it another. I do know the subject was brought up at the press interview when one of the press persons, an individual, simply asked me about the death penalty. My reply, as I can best recall, was to the effect that it is a law of this state and that I would be obligated to follow it. However, I further added that I don't believe it has ever proved to be much of a deterrent, if any. That's my best recollection.

GRODY: In your other interviews, which you've kindly given in the past, you didn't recall being asked directly by Reagan, and your response to the press was: "It's the law, and I enforce the law." That, of course, didn't raise the constitutional question at all at that time. I don't mean to belabor the death penalty case; it is just that it was one of those occasions then that appeared to be unusual, that is the governor of the state making a direct comment on the Supreme Court's finding. Today, it is not at all unusual to find governors or candidates for governor, or any other elected or election-seeking officer using the courts as a "whipping boy." Perhaps, that is also one of the things we can talk about in that last part of our interview, your view of an apparent increase in the politicization of the courts in the last decade. Let me move to one last aspect about appointments before moving to the second major phase of the interview. It really isn't a matter of your appointment as much as your "non-resignation," which was the other

major cause célèbre that got into the newspapers. The *Los Angeles Daily Journal* had a story that Ned Hutchinson wrote to you and indicated his great dismay at, among other things, your deciding not to resign. Reagan later, in interviews which I picked up in the *Los Angeles Times*, said that you had indicated that you would retire prior to his leaving office so he could appoint a successor. You had intended to retire when you were sixty-eight? You were sixty-five when you went on the California Supreme Court?

WRIGHT: Sixty-three!

GRODY: Your response was printed in the paper. But Hutchinson was supposed to have said two things. One, in the *Los Angeles Daily Journal* article he indicated that you had made a promise to resign. Second, he was quite dismayed that you had "demeaned all of Reagan's appellate appointees and made hateful remarks toward the governor." That was the quote that came out of the *Daily Journal*.

WRIGHT: I well remember that, and I haven't the foggiest idea how, or where, or from whom, he ever got such an impression. I don't remember in public, and in private either, ever making derogatory comments about the governor, and so I have no idea. I think Ned was simply mad over something and blew his top.

GRODY: Perhaps your failure to retire.

WRIGHT: I had intended to retire because I had had open heart surgery, and it took me a time to recover from it. Although, oddly enough, I never missed a Court session or even a work day. I missed that Wednesday that I was operated on, but the State Bar was meeting in September, so the Court did not hold a conference that day. I did all my work in the hospital but I never, in effect, missed a single day. The source of Ned's comments — to this day — I don't understand. I do remember them now, although I'd long forgotten them.

GRODY: Do you recall if you got a letter from him which had those comments in them?

WRIGHT: No. Not that I have any recollection.

GRODY: I think the *Los Angeles Daily Journal* indicated that he had written these remarks to you.

WRIGHT: He could well have done it. That was so long ago that I have no recollection of it at the present time. I do remember reading the comments you mentioned, now that you refresh my recollection, but if you had asked me out of the clear, "Did he ever say anything?" I would have had to say, 'no,' because it has just completely left my memory. And he could well have written a letter. If he said he wrote a letter, I'll go with that, but I don't have any recollection of it.

GRODY: The other question for our record here, although you have responded to it in other interviews, was where did the governor get the impression you would retire while he was still governor?

WRIGHT: I think the basis of that came when I was put on the court of appeal. I was not particularly happy there. It was not a very congenial group mainly because of one justice whose name shall remain anonymous, but that individual was able to make everything uncomfortable in our division of the appellate court. I had been on an active court. I had been very active on the trial court level serving as presiding judge of all the courts I've mentioned, so I was always in the action. To all of a sudden be put in a monastic setting was not in keeping with the kind of life that I liked. In fact, I used to say if I didn't have a wife, I could die here some Friday and nobody would even find me until the janitor came around in another four or five days. That's the way it was, and I had envisioned that the Supreme Court would be very much the same. Indeed it was not, but I had envisioned that. So I had let it be known that when my twenty years were put in — I think I would have had to have been sixty-six or something like that — I intended to resign. I did intend to resign, but when I got on the Supreme Court, I found it was such a stimulating life that I had no desire to leave. In fact, I wish I was there now!

GRODY: Well, you are retired, but from what you said to me earlier, you're really not retired because you're keeping fairly active with assignments.

WRIGHT: I do a great deal of arbitration work, and I am on a great number of boards. There's scarcely a day when I have a day off completely, and that's the way I like it. Otherwise, I'm afraid I'd rust more quickly than I am. That's where the impression came from. The day the governor had me come up to Sacramento — this is one little thing I guess I should tell you — to indicate he was going to offer me the job, I went into his office

together with Herb Ellingwood and Ed Meese, I never was able to see the governor alone at any time. He always had a couple of his people with him, which is quite common of people in that position. So we had a very brief discussion, and he offered me the job, and I said, "Well, since I'm in the judging business, I don't know why I shouldn't take it." Then on the way out, I jokingly said to him, "Governor, I forgot to ask you one question. What does the job pay?" He laughed, and he said, "Well, if you'd asked me that question first of all, I wouldn't have offered the job to you." He is, as you know, a very quick wit. Also, I indicated to him, in response to a question put by either Herb or Ed, that it was my present intention, at that time, to leave after I had got my twenty years in. I just said it was my intention. There was no flat promise. They didn't extract a promise or say, "You can't have this job if you don't [promise to retire at a certain time]," Nothing like that ever happened. I simply assumed that I would be happy to get out of the job.

GRODY: Did the governor in his legislative program solicit from you or the judicial council recommendations for legislative action on judicial reform? Or did the governor respond favorably or unfavorably to the judicial council in that regard?

WRIGHT: To be honest, I don't recall any reaction one way or the other because we never went through the governor's office in our approach on those problems. We went through the Legislature. Traditionally, and for years before I came on board, the Judicial Council and the State Bar both made recommendations, but they were always to the appropriate committees within the Legislature for future matters to be enacted into law. They never went to the governor's office. We just carried on the same way. I will say that as far as budgetary matters were concerned, we were treated very fairly. In fact, I was the first chief justice who had the real privilege of streamlining the Court in the staff structure and of giving the individuals the jobs they were reasonably entitled to. Before then, everything went through the state director of finance. A justice of the Court couldn't raise his chief research attorney one step up the ladder without getting the personal approval of the director of finance, who knew nothing about how the judicial system worked. That authority was all turned over to me when I came into office, and it still remains with the chief justice. So we never

had any budgetary problems. We tried to be reasonable and adhere to standards which were comparable to those enforced in the other branches of government. So I have no complaint at all. We were fairly treated.

GRODY: There was one reference you had made earlier about a proposed change in the Constitution.

WRIGHT: Well, that, of course, was by this [lunch] committee, and I mentioned the members of it [Wright, Seth Hufstedler, Bob Thompson, and Ralph Kleps]. They made the recommendation to the committee chairmen within the Legislature where those things originate. They don't originate with the governor. I suppose the governor can, if he wishes, ask somebody within either house to introduce a constitutional amendment, but I don't believe that is usually the way that is handled.

GRODY: And you never had any reaction or reason? You never heard why the governor's office indicated why they were opposed?

WRIGHT: Never. Never a word.

GRODY: One legislative reaction that comes to mind is the death penalty case immediately after which the governor's office suggested that they would, in fact, legislate a constitutional amendment to change the court's view.

WRIGHT: Well, there's no question, that is the political thing to do. Strangely enough, at the time of *Anderson* or prior thereto, the majority of people in this state were against the death penalty. Now I don't think there's any doubt. It's probably 75 percent in favor of it.

GRODY: Yes, we've had an amazing cycle. Some years ago there was a study of popular opinion on the death penalty, and the farther you got from the last execution, the more pro-death penalty public opinion was, and it swung the other way the closer you got to or immediately following the next execution. It's sort of the Court's conscience being carried over to the public conscience.

WRIGHT: Well, when I talk with friends of mine, I find that it comes as a great surprise for them to realize that in all of the Americas, excepting the United States, in all of Europe west of Russia, there is no death penalty with the exception of Greece. Greece has one that is seldom if ever carried out. In all of Western Europe and all of South and Central America, none

of them has the death penalty. We're the only country in the world, practically, except those behind the "Iron Curtain."

GRODY: And the Middle Eastern countries.

WRIGHT: Yes, Middle Eastern and African countries. But they simply can't believe it.

GRODY: Let me ask a question that I think would be appropriate now. Certainly, in contrast to earlier years, the bringing of the courts and particularly some judges into the political scene has certainly increased a great deal. It is not uncommon at all, now, to see attacks on courts and judges from the Legislature or from those running for governor. Of course, Governor Brown has not been critical of the courts. Most of the criticism has been from his opponents and from people now seeking his office who attack these judges as "Brown appointees."

WRIGHT: Surely. It's done to get at the governor by pointing at Rose Bird and saying, "Well, that's the kind of person he appoints to the Court. The rest of them are that way, too." There's no question that it's a rather effective way of campaigning, and it's carried on by all of them, I guess. In fact, sometimes I read what [Lieutenant Governor] Mike Curb has said, and I almost could come to the conclusion that he's running for chief justice, that Rose Bird is his chief opponent.

GRODY: Republican State Senator H. L. Richardson is prominent in the attacks. The Republican party, especially Curb and Deukemjian have made the courts a particular target of attack. Do you perceive that the courts themselves have changed or that the issues have changed? Certainly nothing could have been more dramatic than the death penalty opinion when you wrote it. We saw a response, but it was nothing like the response we see now. Do you have any thoughts on that?

WRIGHT: No, I can't understand it. The next time [after the death penalty case], I came up for confirmation by the voters, I still got over 88 percent of the vote. So the voters didn't feel so strongly as some of the individuals who spoke on it did.

GRODY: Rose Bird was confirmed by a 52 percent or smaller "yes" vote. It was a relatively narrow margin, and there was a campaign waged against her.

WRIGHT: That's correct.

GRODY: Is it just the ambitions or the ideologies of certain political actors which have found a ripe target, or have the courts themselves been doing things that might be encouraging this kind of attack?

WRIGHT: I really can't answer that intelligently. I can't see that the courts are behaving in any different fashion, or in a very much different fashion from what they have always. I think that Chief Justice Bird has made several dramatic mistakes, and I'm sure she would [think so], too, upon reflection. I think, for example, that investigation which she made was poorly planned. If she had talked to her colleagues, I'm sure they would have all said, "Let's not go that way." It held the California Supreme Court up to ridicule. It held the Court up to the public as being a group that fought among themselves the whole time, which simply wasn't true when I was there. We didn't fight. Perhaps, they do now; I don't know. It took a lot of the luster and the glamour off the Court, and I think that hearing [by the Commission on Judicial Performance, at Bird's request, on allegations that the Court had withheld opinions until after the judicial retention election in November 1980] was largely responsible for that.

GRODY: I faithfully watched those hearings until two or three o'clock in the mornings.

WRIGHT: We were in Europe then, and I'm glad I was.

GRODY: One of the interesting things from those hearings was that William Clark emerged as a very different character from the way you depicted him in your relationship when you were chief justice. Obviously, he was the prime antagonist to Bird.

WRIGHT: I told you that he was clearly operating under wraps when Ray Sullivan and I were on the Court, and I can easily understand this, as I explained earlier. I do know that he was much more open and much more talkative and commented on many more things in conference than was true in the earlier days. I have no doubt of that. I read Preble Stolz's book *Judging the Judges*, and so I have a pretty good picture now of what went on.

GRODY: Of course, Stolz's views themselves have drawn criticism in terms of how he depicts what went on.

WRIGHT: Yes, that's right.

GRODY: The Reagan appointee, Clark, who may have stayed under wraps while you were on the bench, seemed to shed some of that shyness when he had a clear ideological opponent to face on the bench.

WRIGHT: I don't know that he alone felt that way. I think it's reflected in Stan Mosk's actions, too; and, yet, Stan Mosk and Bill could not be in any way accused of having the same philosophical point of view. I don't think that's what tied them together. I think that they were both unhappy about the way the Court was being run.

GRODY: There was also comment in some reviews of the Court that Frank Richardson felt a greater sense of freedom and dissent and criticism with Clark on the bench and that Bird's appointment was far enough away from Richardson's ideological or philosophical orientation to encourage jointly with Clark a greater split on the Court than had been apparent under your tenure.

WRIGHT: Yes. As you mentioned earlier, we had dozens and dozens and dozens of opinions that were unanimous or 6–1 there for long periods of time, month after month after month. The whole Court felt the same. That was done, largely, I think, through the way we worked. For example, I became a great peacemaker on that Court. For example, if there would be some little point submitted in an opinion, say, by Justice Tobriner, and it greatly offended Justice Mosk or Sullivan or someone, I would go to Stanley Mosk and say, "Now, what is it? What's wrong with this?" And he would say, "Well, if you just take out that so-and-so in there, I would sign this, but I cannot sign that opinion with that in there." Then I would go to the other man who was the author of the opinion and say, "Look, if you remove this, is it important to the decision?" and he would say, "Well, no. It really adds very little; it isn't really important at all to the opinion." And I would say, "Why don't you remove it, and you'll get another vote?" With a lot of that fine embroidery work, you'd end up with a unanimous opinion, which is the way I liked it! It spoke for the whole Court. I don't like these 4–3 opinions. I don't like these 5–4 opinions from the United States Supreme Court, when one individual changing his mind, or her mind, now, can make the whole Court go the opposite way. I don't like those, so I tried to avoid them if possible. It was possible, but that takes someone who is willing to be an errand boy on occasion.

GRODY: I think that speaks to an important impression that we have. We think that if the governor or the president appoints someone to the supreme court of the state or the nation, that he's really making a lasting impact. These people usually serve longer than he serves in the office as governor or president.

WRIGHT: That's very true.

GRODY: However, if that had been so significant, Clark or Richardson, Reagan's other two appointments to the bench other than yourself, would have been out rallying the troops, but that didn't happen. The Court has a role, and the chief justice sets a certain tone and direction. In that sense, the Court is really your Court. When Nixon first started making appointments to the United States Supreme Court, it wasn't called the "Burger Court" for the longest time. It was called the "Nixon Court."

WRIGHT: Right, the "Nixon Court."

GRODY: Reflecting on Reagan's impact and Jerry Brown's impact on the Court, is the impact, perhaps, more from Rose Bird? As chief justice she has a different style and way of conducting business than you did, and the same actors, Richardson and Clark, appear to be much more the conservatives, much more the Reaganites than they did under your direction.

WRIGHT: Much more rigid. I think your observation is entirely sound. Rose Bird, and I know her very slightly, has a very different personality. She doesn't operate in the fashion I did. For instance, everything up there now consists of all doors being closed. We had an open door policy, and if I wanted to go down to see Matt Tobriner, Ray Sullivan, or Louis Burke, I thought nothing of just picking up the phone and saying, "You free, Louie? I'll be right in." It could be on some minor matter or an important matter. That doesn't happen anymore, and the kind of feeling that was generated by that, I realize now, was terribly important. Staff also felt that way. If they wanted to see me, they'd call up and say, "Can you see me right now, Chief?" and I'd say, "No, can you come in about fifteen minutes and I'll see you." But I never forgot that one of them had called, and I always arranged to see them, or I said, "Well, I'll be back that way in a few moments anyway to see somebody else." So I'd go in and sit on the edge of the desk and "shoot the breeze" with him and find out what it was that troubled him. It's very conducive to a happy Court.

GRODY: Is it either style or personality or what label do you want to give to it?

WRIGHT: I think it's personality, because I was never even conscious of any style. [laughter]

GRODY: Were you conscious, though, of the way you ran the Court?

WRIGHT: I was conscious that we got things done, and I was conscious that there was great rapport among all the members of the Court and with all of the staff.

GRODY: Your relations with Clark were at least cordial, then?

WRIGHT: Cordial, and as I mentioned, he did not join us frequently in social gatherings of any kind — for lunch, I mean. That would be all we ever had. But that was not unusual, because Justice Thompson, who served on the court of appeal with him for around two years or more, said that he only ate lunch with him once that he could ever remember. So it was nothing unusual. That was by his own choice.

GRODY: Reagan's impact on the bench may be felt for a period of time after he's gone, but here we're talking about your administrative inclinations rather than your substantive legal views that may have had the greatest impact on making that Court work.

WRIGHT: I think probably it did. I hope some of my legal ideas had some impact, too. [laughter]

GRODY: Oh, yes! I would certainly not want to demean them at all. But we have this notion that the judicial appointments by a governor or the president, and especially to the court of last resort, live long after the president or the governor. Yet, I sometimes think that we may exaggerate that because we forget that the Court takes on its own identity as well.

WRIGHT: Of course, certain governors and certain presidents have suffered just by the calendar. For example, Earl Warren was governor of California longer than any man in California history, if my knowledge is correct; yet, he only named one man to the California Supreme Court, only one in all those nine or ten years or so. Pat Brown was on eight years, and he appointed eight or nine members. I mean, we went around the Court once, and two or three [appointments] more, if you'd list them all. Jerry Brown has done the same. So it's hard to tell. As you know, from the turn of the century up to and including

President Reagan, every president has made at least one appointment to the United States Supreme Court with the exception of President Carter.

GRODY: Even Ford, with two years. [laughter]

WRIGHT: And Harding with a very short time. Kennedy, with a relatively short time, made appointments, but Carter served the four years without an appointment, and so the same thing happened, in a lesser way, to Governor Warren and Governor Reagan.

GRODY: One last thing on appointments and retirement. Did you ultimately decide to retire when you did in part to avoid Reagan's naming your successor?

WRIGHT: No, it never entered my head.

GRODY: You know, there's always conjecture.

WRIGHT: There is nothing that goes on in this world that a newspaper reporter cannot conceive of. I found that out long years ago. Some of them are terribly reliable; some of them I wouldn't tell anything to, even though it was favorable information, because I couldn't tell how it would come out. Fortunately, they are some rare ones. Most of them are dependable. Some can conceive of everything and can twist everything in ways that would surprise you at the time. How could they ever think that?

GRODY: I suppose that if you wouldn't hold up your retirement in order to keep Governor Reagan from appointing your replacement, you might also have thought it as improper to retire in order to allow him to make your appointment.

WRIGHT: No question about it.

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GRODY: As we ended the last segment of our interview, we were talking about your style of operation as the chief justice. We talked about your role as the peacemaker or, as you put it, your sometimes being an errand boy. Did you have a conscious style of operating or a conscious approach to your job? Was is something you saw the chief justice as having a particular function to perform?

WRIGHT: I believe that I didn't even think of it at the time. You just rose to the occasion, and if something demanded that you take a certain course of action, that was the way you proceeded. There wasn't any conscious effort on my part, but I'd had a lot of experience, having run the Los Angeles Superior Court and the criminal courts and many others. I knew that you had to deal with people in the only way that you could effectively deal with them, and that was fundamentally on a one-by-one, one-to-one basis. So I continued to use that approach in my capacity as chief justice.

GRODY: You found, then, that your administrative experience on the Los Angeles Superior Court was a useful experience to have when you went to the California Supreme Court?

WRIGHT: Very much so, because otherwise, I think, I would have been frightened to death. Looking back on it, even shortly after the moment of being sworn into office in Monterey in 1970, I was required to take over the Court instantly, to preside, and it presented no difficulty to me at all. My wife, who was in the audience on that occasion, whispered to her neighbor, "I think he already likes the job." I hadn't been on duty for more than half an hour. So it was an easy transition to be very honest about it.

GRODY: Is that a good criterion to be included amongst other criteria? Should a governor or president, as the case may be, take into account some kind of administrative experience in appointing someone to a presiding judgeship or to the chief justice position?

WRIGHT: Yes, I would think it is almost essential for the chief justice or the presiding officer of any court to have had some experience in an administrative field. To go in there without any background at all would be a devastating experience, in my opinion.

GRODY: Continuing on the subject of leadership, I would like to ask you some questions about your chairing the Judicial Council of California. Although the Judicial Council is not unique, in California it is a rather important judicial institution, and it affords the chief justice a leadership role which I think is not the same as that of the United States Supreme Court. Although the chief justice of the United States may head up the Judicial Conference, it doesn't meet as frequently and it doesn't have as extensive a

charter. How did you find that role as the presiding officer or chairman of the Judicial Council of California?

WRIGHT: Frankly, I had served on the Judicial Council as a member by appointment from Chief Justice Traynor, and so I was aware of how it performed its duties. Taking over the leadership of that was not a particularly difficult job, I found. It necessitated getting a cross section of the judiciary within the state, and I was always looking for the most able individuals I could find to serve on the council. I did not use it as a vehicle to appoint my friends and associates. Most of the individuals who came on were unknown to me except by name. You know the structure of it: there are several Supreme Court justices, a few court of appeal justices, superior court judges, municipal court judges, even several justice court judges, members of the State Bar which are selected by the State Bar Board of Governors, and also representatives of the Legislature, one from the Senate and one from the Assembly. It proved to be a very, very well organized group through the years I was there. I don't think the present chief justice, and this is not meant in criticism, uses it at all in the fashion that it was used by myself and my two predecessors. She is much more prone to appoint her own committees, which are called "chief justice's committees," than to rely upon the Judicial Council.

GRODY: Maybe it's a little tangential from the council leadership, but what are your observations about the use of the lay member, the non-attorney member, on some of these advisory, policy recommending bodies?

WRIGHT: I would say that a limited number of them is healthy. I wouldn't want to see too many, because you would waste so much time explaining to them in sometimes great detail what their functions are and what even the function of the particular group might be. But a few members might serve to bring you down to earth and realize that it isn't an ethereal experience being a lawyer or a judge.

GRODY: Did you find that the legislative members from the Assembly and the Senate who were on the Judicial Council behaved more as attorneys, or did they behave more as the political representatives that they were?

WRIGHT: To be honest, and that's what I want to be, most of them were of little or no value at all. They showed up at the dinners, occasionally attended

the committee meetings, and made contributions only occasionally. There may have been one or two exceptions, but I can't even remember them at this present time.

GRODY: Other than when the council was meeting as a whole, how much of your time was devoted to meetings with or contact with the administrative officer of the courts? That is, in your capacity as chair of the council, but not in the sense of the council actually meeting.

WRIGHT: Well, I would say approximately 33-1/3 percent. Roughly one-third of my time was spent in administrative problems dealing with them. That would include working with the Administrative Office of the Court as well as running the administrative portion of the Supreme Court itself, assigning the cases and working with the clerk's office to see that work gets out. Someone has to do that, and it has to be the chief justice because nobody else has the responsibility but that person. So roughly one-third of my time was spent with administrative details. Of that one-third, probably a major portion of it would be working with the administrative officer of the Court and the other individuals who were employed in that office.

GRODY: One of the aspects of the council's role is to make recommendations to the Legislature. In this regard I'd like your comments on a couple of items relative to Reagan's role as a legislative leader. For instance, the council made recommendations on a few items, and the Legislature responded positively, but the governor responded negatively. For example, there was the council's recommendation for the creation of a state public defender's office, and this actually passed the Legislature, went through both houses, and Governor Reagan vetoed it.

WRIGHT: Yes, I know he vetoed it once, and then on the second time around, I believe, he allowed it to become law without his signature. I don't recall, actually.

GRODY: I don't recall, either. It did become law. I think they may have waited until he left office.

WRIGHT: I couldn't be sure as to when that office was created. It could have been in the first years of Governor Brown's administration.

GRODY: The proponents of the public defender's office, after the governor vetoed it that first round, made statements to the effect that they would just wait until there was a more friendly governor in office.

WRIGHT: Now that you have refreshed my recollection, I recall very clearly that we did try to get the measure through during one of the last years of Governor Reagan's second term. You were correct in that he did veto it, and we then came to the conclusion that it would be futile to try again as long as he was the governor. So early in the Brown administration, we felt him out as to how he viewed the situation and got encouragement from him, and my recollection was it was then passed, and he signed it without any question.[6]

GRODY: Here's an important piece of legislation, something that comes from the judiciary itself, at least through the Judicial Council of California, and it goes through the whole legislative process only for the governor to veto it. Was there no communication between you and the judicial council and the governor or governor's staff, principally through you or through the administrative officer? Wasn't there some contact that they would know that the governor was in opposition to this bill?

WRIGHT: It's hard for me to answer that. I do not recall, at this time, that there was any effort made to find out how the governor felt about that issue. Looking back on it, we were, perhaps, a little naive, knowing that Ed Meese was number one man in the office at that time. Having been an old-time prosecutor, he did not particularly view with any great degree of interest a separate public defender's office. He had, of course, dealt with them at trial level in Alameda County, not with the state public defenders, but with the county public defenders. I'm sure that he probably thought it was not worth carrying to the state level. But we did not try to find out from him what the governor's views were, and I'm sure that the governor, very likely, depended upon Ed Meese to advise him and followed his recommendations.

GRODY: Did you change your style after that, or did the council not come up with other recommendations?

WRIGHT: Well, after that experience, in dealing with the new governor, we did deal differently. We tried to find out in advance what his views were on it, and having more or less a green light, we proceeded accordingly.

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6 Ch. 1125, Statutes at Large (1975).

GRODY: Did you also rely on the State Bar to do the lobbying, as it were, for the council?

WRIGHT: We kept a man in Sacramento, and they kept one in Sacramento. They worked together and generally we could see eye to eye. When I was chief justice we met with the California State Bar Board of Governors several times a year, and the proposed legislation would be brought up before us after it had been screened by committees. We tried to work out measures that we would both approve. Occasionally, we would be at complete loggerheads, and you knew you were never going to be able to resolve those, so you'd have to let the battle take place. For example, the questioning of jurors. As you know, in English courts the judge does all the questioning of jurors, allowing the attorneys, as best as I could observe, to ask no questions. In this country, in this state in particular, the attorneys like to use that as a method of softening up the jury, of selling their personalities to the jury, to become even kind of chummy with them. It was something that I always disliked but had no control over, because attorneys were allowed to question at length. On the Judicial Council we attempted to pass a rule which would allow the judge to do all the questioning and turn it over to the attorneys at the last minute and say, "Now, are there any questions that you would like to present to the jury?" We found it worked very well, but the Bar did not like it. So they went to Sacramento, and they have a lot more power with the Legislature than we do, and got that measure changed. So it paid if you worked together, but if you were at loggerheads, you had to fight the battle out, as I mentioned earlier.

GRODY: Returning, just for one moment, to Governor Reagan's opposition to the state public defender legislation, do you have any recollections as to why he was opposed to it, other than Meese's influence?

WRIGHT: I think he was opposed to it philosophically, and he may have been opposed to it because it was going to cost the state additional money. But I don't recall the content of his veto message.

GRODY: I recall seeing one news item about it. I think the opposition was to the effect that this would deny a defendant the right to have the same attorney from beginning to end and, consequently, they were opposed to it. That was the only word I remember seeing on Reagan's opposition. Does that ring a bell at all?

WRIGHT: It doesn't, and if that's so, it isn't particularly good reasoning, because the appellate practice and the trial practice are entirely different fields. The appellate lawyer can look upon what the trial lawyer did and find out all the errors which had been committed. You don't find those out if you're looking at your own record, or not likely to.

GRODY: I suppose it might even be an advantage to have a different appellate attorney than to have your same trial attorney carry you on appeal.

WRIGHT: I think it would be and generally is. As you well know, the prosecutor, the district attorney, does not go to the Supreme Court or the courts of appeal, but the attorney general handles the matters. So you have a whole different office handling the appeals from those who were at the trial level. The same thing ought to be true and generally is true from the defense point of view.

GRODY: They also do that at the national level. The solicitor general is the one who handles appeals to the United States Supreme Court. Also along the line of relations between Governor Reagan and the Judicial Council, we had earlier talked about the council's proposal to revise the composition and manner of operation of the Commission on Judicial Appointments. This was a constitutional amendment proposal which got through, I think you said, up to the Senate Finance Committee.

WRIGHT: That is correct. My recollection is that it cleared all the committees excepting the final one, which was the Senate Finance Committee.

GRODY: But the reason it failed there was apparently because they had received word from the governor.

WRIGHT: It was no question. Word came down from the governor's office that he did not favor it.

GRODY: The question again is about the relationship between the governor and the administrative arm of the judiciary, the Judicial Council. Here was a case where the council made a recommendation which did not depend upon the governor.

WRIGHT: My recollection was that it was not the council which made the recommendation. Actually, it arose from a luncheon with Seth Hufstedler and Justice Robert Thompson, an appointee of Governor Reagan who was on the

court of appeal at that time, Ralph Kleps, who was the administrative officer of the court, and myself. Seth, who was the California State Bar president, approached the problem, and so we hammered out this solution. Of course, the work on the drafting was done in the Administrative Office of the Court, but it was not something that arose from the Judicial Council, itself, that we in our meeting debated and said was a good thing to pursue. It came the other way, from the ones who were running the show, Ralph Kleps and myself. There was no opposition to it, however, from the council members.

GRODY: There's an apparent failure, once again, to perceive what the governor's position might be, which could short-circuit a bill or proposal. Interestingly, the governor had nothing to do with constitutional proposals, but it was merely his influence in this case which was adequate enough to have the Senate Finance Committee kill it.

WRIGHT: It was adequate because it was, of course, before the budget had been approved, and the governor in this state, as you know, has the right to blue pencil any item he might want to. So he has a tremendous power up until the time the budget has been adopted, not that he doesn't have considerable power after that, too, but you don't know, if you're a legislator, how you're going to be treated by the governor and his staff if you vote contrary to his wishes prior to the adoption of the budget. So by the governor sending down word, "Do not pass," you tread on a shaky bridge if you try to go against that.

GRODY: Again, I assume there had been no communication.

WRIGHT: No. I'm sure we had none, and both Seth Hufstedler and I always felt that it got the shaft because of personalities. In other words, Mr. Hufstedler had appeared at the Clark [confirmation] hearing and had given a very lengthy and detailed report on behalf of the State Bar, which, frankly, was not a bit favorable to Justice Clark. I had voted against his confirmation, and so I think we felt that perhaps this was a way of getting back at two individuals with one blow. I may be in error, but that's how we felt, anyway.

GRODY: Well, I wouldn't want to accuse you of any sort of paranoia!

WRIGHT: No, no! [laughter] It appears reasonable. However, I venture to say that essentially some plan similar to that will come about in California.

GRODY: As to the relations between the governor and the council or you, the impression I get from our discussion so far is that there is a pretty complete separation there.

WRIGHT: Between the governor's office and ours?

GRODY: Yes.

WRIGHT: Oh, very much so, and we found that to be true historically. Chief Justice Gibson, one of my predecessors, had absolutely no contact with the governor's office. Phil Gibson might have had some close contact with the governor during Pat Brown's administration. I would not be a bit surprised.

GRODY: What about Roger Traynor?

WRIGHT: Oh, Traynor had none with them, absolutely none. I had more than Traynor. Traynor was completely a nonpolitical individual, and I was too, essentially. Phil Gibson, Traynor's predecessor, had been a politician himself and had that approach to getting matters solved.

GRODY: Might that then be more a matter of style that we were talking about before?

WRIGHT: It could well be. I have no idea what the present relationship is between Chief Justice Rose Bird and Governor Jerry Brown on matters such as this. Whether they talk things over, converse or not, I have no idea, but I know it was not done in my time nor was it done in Roger Traynor's time.

GRODY: I think it was in 1971 that you made a recommendation for a special panel to be appointed to study court delay, and one of the articles that I read indicated that Governor Reagan also had made a strong statement about the need for such a panel. Did this just happen, or was that one of the occasions when you had had some conversations with him about the matter?

WRIGHT: Frankly, I don't remember from whom the impetus came, whether [or not] it was from our administrative officer of the Court. In any event, we were both very enthusiastic about it, and a commission was appointed. There were six members appointed, if I remember correctly — this is at least eleven years ago — two by the chief justice, two by the governor, and two by the State Bar. That's the way I recall it. They did a tremendous amount of work and submitted a very fine report. However, as happens in

so many incidents like that, the reports end up in the filing cabinet, and no one recalls it until many years later. Someday they may dig it up and say, "Look, we have the blueprint already here." But I did get substantial support from the governor's office on that.

GRODY: Was there any actual contact between you and the governor's office, or was it just that there were public statements being made in support of it?

WRIGHT: That's right. There were just public statements being made. The distance, you see, between Sacramento and San Francisco clearly prevents any close contact between the two offices, and unless you rely upon the telephone, which I didn't, it was rare that you would ever encounter one another. As I mentioned in my previous interview, I only saw Governor Reagan a very few times during my seven years as chief justice.

GRODY: Your last comments anticipate a question concerning the location of the California State Supreme Court in San Francisco and in Los Angeles for some of its sessions. I gather that you take that physical setting and location as a very significant element in determining the relationship between the California Supreme Court and the governor's office.

WRIGHT: There isn't any question that it has a substantial amount of influence, because if you lived in a rather small city, as Sacramento must be termed to be, you could not help but run across the governor or his aides, members of the Legislature, lobbyists, and all the rest, almost on a daily basis. The Court met in Sacramento for two sessions a year. The members of the Court generally stayed at the Sutter Club, which is a large men's club in Sacramento, and it was full of legislators, lobbyists, and members of the governor's staff. You'd see them every day. They'd be over to your table to speak to you and invite you to stop by and have a drink or something. They would be very friendly. I'm sure that would be the way of life if we were in the same city with them, but several hours away you don't run across one another. The governor has an office in San Francisco, but it was not his [Reagan's] practice, nor was it the practice of Governor [Pat] Brown, to use that office except on very, very rare occasions. My recollection is that it was used only when the governor, himself, was coming down to make a speech for some group in San Francisco, and I don't know that Governor [Jerry] Brown uses it any more frequently.

GRODY: I think he uses his Los Angeles office more frequently.

WRIGHT: Los Angeles, you see, was his home previously, but I don't know that that's what brings him down here. Maybe that's where the large bulk of the population is.

GRODY: Do you find that physical separation to be an advantage to the Court?

WRIGHT: I think it is a great advantage. During the time I was on the Supreme Court, I became well-acquainted with many of the chief justices of many states, and almost without exception they regretted the fact that they were located in the capital city of the state wherein the executive branch and legislative branch of the government were located. They all envied us and said, "My God, how we wished we were separated by miles and miles from the other two branches of government." I think it was a great advantage. There were moves, or talk more than actions, to bring the Supreme Court back to Sacramento; however, there never was the money available to construct a court building with offices, a courtroom, and all the additional facilities that would be needed. It would have taken many, many millions of dollars to build such a structure, and no governor was willing to recommend it. Of course, you know, at one time the Supreme Court was located in Sacramento.

GRODY: Do you know anything about that history?

WRIGHT: Well, I don't know anything about the history between the governor's office and the Supreme Court, no. At that time the Court was a very small group, three members in the early days as I recall. It's a very vivid part of California history, almost livid, I should say. We had some of them who were complete alcoholics; one even who got involved in a duel, and so it was really a very lusty time.

GRODY: I suppose that this helps to explain or at least to clarify your point that you were really relatively unaware of the kinds of positions the governor's office was taking or public statements coming from the governor's office on matters which affected the judiciary.

WRIGHT: Well, actually, there weren't too many occasions when the governor was in disagreement about the judiciary. The several you have already mentioned stand out, but on the increase in the number of judicial positions

and such, I recall no time when the governor's office during the Reagan administration attempted to interpose an objection. They went along very much with what we would decide was necessary. On budget matters we had no difficulty whatsoever. We never had any of our budget items challenged at all. So if you want to include those kinds of things, it was a very good, close relationship.

GRODY: Perhaps I can call upon your paranoia here. Did you note any "before and after" effects with regard to your relationship with the governor's office, let's say, before and after the *Anderson* case and before and after Clark's appointment to the bench?

WRIGHT: No, I never noticed any difference in the relationship between the two offices. I do know that prior to my coming on the bench, the governor had always entertained the Supreme Court during the year at a dinner held, in the old days, in his home. The last one they had occurred a year or so before I went on the bench. Apparently, it was not a very happy occasion, from what I later heard. One of my colleagues, now deceased, Raymond Peters, was, I believe, the one who brought the dinners to a conclusion. The governor tried to be friendly. He [Reagan] came up to a table where some of the members of the Court were seated together with their wives and others and asked if he could join the crowd. Ray, who was a very blunt individual, said, "I'm sorry, these seats are taken," which greatly offended the governor, and I think properly so. Consequently, the Court was never invited back, so I can't be blamed for that! It was bad manners before I came aboard.

GRODY: If I'm not mistaken, Peters was probably at that time one of the more liberal members, if not the most liberal member of the court. Is that right?

WRIGHT: I would say that he probably, together with Matt Tobriner, constituted the very liberal wing of the court, yes.

GRODY: So he did not care "to cotton up" to a conservative governor?

WRIGHT: Well, that could be it. He [Peters] was a rare individual. I had great affection for him, although he and I didn't always see eye to eye. In fact, one of the few times — and I say that without being smug — that I was ever reversed as a trial judge was by an opinion written by Ray Peters. In it

he said, "And what Judge Wright did was atrocious." Well, I never had been accused of doing something that was atrocious before. So when I went on the Supreme Court, I was a little apprehensive as to how I might be treated. The first day of our conference, I was stating rather firmly my opinion on one particular case, and Ray looked at me and said, "Don Wright, you are dead wrong" in the most severe terms you ever heard. I was kind of taken aback. Then I looked, and I saw his eyes had a twinkle in them, and a smile on his face, and from that day on we became great friends, but battled like hell on occasions!

GRODY: I keep coming back to this point, but it seems hard to imagine that you were so thick-skinned as to not be aware, for instance, of what the governor was quoted as saying after the *Anderson* case: "The court is setting itself up as above the people and their legislators." Anthony Amsterdam said the governor was being a demagogue with his remarks. Did none of your colleagues, even off the bench, at lunch, or whatever, ever comment about "that man" in Sacramento?

WRIGHT: No, as a matter of fact, it just had no impact on us at all.

GRODY: That's really interesting that some of the textbook views are in a sense substantiated by what you say, that there's a certain insularity in the judiciary. Its sense of independence may really make it, if not entirely impervious, at least relatively so, to these kinds of political attack.

WRIGHT: Well, we were aware that he was not happy with the decision, but it didn't greatly upset us. The decision was 6–1, as you recall, and Justice Burke, who was in the majority and, in fact, one of the prime instigators of putting this matter at an end if that's the proper word, voted with the majority. So I don't recall that we were particularly surprised or angry. I know that we were not angered, and we felt it was just his personal reaction to it.

GRODY: In your individual case, I imagine that the amount of experience you had had on the bench also made it easier to be somewhat oblivious to this kind of outside comment.

WRIGHT: Yes. I think in my sixteen years' experience on the bench which I had had when I went on the Supreme Court, I had had other people hurl accusations against me. I can't take them seriously or life isn't worth living.

GRODY: Governor Reagan not only criticized the Court, but he also commented to the effect that, "Well, Wright was in favor of capital punishment before." In William Boyarsky's book, *Ronald Reagan: His Life and Rise to the Presidency*, published just last year on Reagan, he cites Reagan as saying that you were questioned for hours about your philosophy and that pro–capital punishment was one of the things that they had assumed. You have said, not only to me but elsewhere, that you had hardly ever talked to anybody before you were appointed as chief.

WRIGHT: That is absolutely correct. I was not questioned at great length, or at any length, about my philosophy. The subject was not even mentioned, and as I think I related earlier, the only time the subject came up was at the press conference. I am sure my recollection is correct, and if the tapes were available, they would prove me to be correct.

GRODY: I think, perhaps, without accusing the governor or his staff of fabricating, the explanation is simple enough: Reagan perceives sometimes what ought to be or assumes that things were done the way they are usually done. Perhaps, this is an explanation of why he would make a blunt statement that you had been questioned for hours when, in fact, you say it never happened.

WRIGHT: Well, he has a right to stand by his recollection, but my view is that he is not correct.

GRODY: The Reagan administration did have interviews with people, and they had these screening committees, and they did proceed in some manner to examine appointees carefully. At least, that's the impression that we've had about some of them. So it might not be unreasonable for him to assume the same had happened with you, and he misspeaks himself in the fact that it didn't happen actually in this case, but there's really no reason to pursue it.

WRIGHT: No, as we mentioned earlier, the governor did rely a lot on staff work, and his staff were very able individuals. My observation of them would lead me to believe that the governor generally accepted the recommendations of the staff. I don't mean to say that he didn't give it an independent review. I'm sure he did. But if one of his high ranking staff members recommended something, he would certainly be inclined to go

along with it. I think that's probably still true as president; he operates in that fashion.

GRODY: Perhaps we could now get a general assessment of the Reagan impact on the judiciary in California. Are there some general or specific points that you might like to note that I've overlooked?

WRIGHT: Well, it would be hard for me to answer that in some ways. I will say that the appointments that the governor made on the whole were of the highest caliber, and the trial judges and the court of appeal justices were very, very capable individuals. In that way, they have made a great impact on the state, but had very little impact upon the Supreme Court, of course, because he was never able to appoint but three of us, and I was not, shall I say, a close disciple of the way he would have liked to have had me be. Justice Clark was not a forceful individual on our Court. As I mentioned earlier, he did continuously vote along one particular way. That leaves us, at this date, only with Justice Richardson, who, if you notice, is practically a minority of one or sometimes two on the present Court. So Governor Reagan never had an opportunity to put his stamp upon the California Supreme Court in the way his predecessor, Pat Brown, had or the way his successor, Jerry Brown, has had. At the present time, six of the appointees on the state supreme court are Jerry Brown's appointees or Pat Brown's. Stan Mosk was appointed by Pat Brown, but the others were all appointed by Jerry Brown.

GRODY: Richardson is the only Reagan appointee on the court at the moment.

GRODY: Has the impact of current attacks on the Supreme Court been reflected in something other than public opinion or popular image? I mean, do you think it has affected the way in which members of the judiciary have responded to their jobs?

WRIGHT: No. I don't think the members of the judiciary, as a whole, have been intimidated, if that's the right word, but I think the members of the public have been greatly misled. Individuals running for the office of governor and from that position on down make these attacks, and if the views they state were absolutely studied, you'd find that they were either trying to deceive the populous or they didn't know what they were talking about. For example, the attacks that say, "These judges are soft on crime," and such are entirely false, because under our determinate sentence law, the

judge has practically no authority at all in the sentencing. If an individual is found guilty of robbery, the law prescribes exactly what the sentence shall be, and there's no way the judge could be soft. It's written right in the penal code what the penalty is going to be for the man or woman. So it makes good speech material and press reviews, but it simply isn't true.

GRODY: You don't see any legitimate purpose except, perhaps, the purpose of getting elected for these attacks?

WRIGHT: That's the only possible purpose. We have at the present time a problem which seems to be so great that we can't cope with it, to wit, the problem of crime. So the easy way to face it is to say, "The courts are to blame for this." The courts are in the position of not being able to respond.

GRODY: There were two other items relative to your time as chief justice that I'd like to ask you about. One we've covered in pieces here and there, but now I would like to cover it more directly. You were chief justice in a transitional period, under two governors.

WRIGHT: Yes.

GRODY: We'd earlier made some comments about Governor Jerry Brown's appointments to the bench. By way of comparing his appointments role and his non-appointments role in relationship to the judiciary, were there things about Reagan that became more apparent when Brown became his successor as far as the judiciary was concerned? For instance, when we weren't on the tape, you mentioned something about the promptness of filling vacancies.

WRIGHT: Yes, in that field, the Reagan administration was infinitely better behaved than the Brown administration. I'm talking about Jerry Brown's administration. As best I can remember, vacancies throughout the court system were promptly filled under Governor Reagan. I don't mean that they were filled just overnight, but there was a reasonable delay, and then the spot was filled. With Governor Brown, when he first came into office, he didn't fill a single vacancy in the first six months. I may have mentioned that the last time; I believe I did. Even in this primary election, the one that is going to take place next week [June 1982], several positions were filled on the very last day before the position would have gone to an open vote of the

people. I don't know how that occurs. It seems almost incredible to me, but that's the way that the present governor operates. It does make it very hard upon the Judicial Council and upon the chief justice, who have the duties of filling in those vacancies with appointed personnel to aid the court. You cannot permit, for instance, a court of any size, even a large one like Los Angeles County, to have eight or ten or twelve vacancies existing and unfilled other than by appointment. I like the way the Reagan administration performed much better than I do the current governor, but that is part of the current governor's philosophy, and there's no way you can change it. I have talked it over with him many times, and he said, "Well, there are other problems that take priority. That's all there is to it." So I don't think he allows it to disturb his thinking process at all.

GRODY: Did you have any greater contacts with Governor Brown than you did with Governor Reagan?

WRIGHT: Oh, yes. Governor Brown was much more available and accessible, frequently at his own instigation. I don't know if in the last interview, either on the tape or off the tape, I recalled one day getting a call from him. He just said, "There are problems involving the judiciary that I'd like to talk over with you." I said, "Well, fine, Jerry." I always called him Jerry because he was young enough to be my son. But I said, "I am not coming up to Sacramento, because all I have to do is walk into your office where there are always press persons around, and then the papers will say, 'What's the chief justice doing up here? There must be something going on, and we have to find out what it is.'" I indicated, "You come to San Francisco frequently. The next time you're coming down, just give me a call, and we'll get together." So on one occasion he telephoned and said he was coming to San Francisco and could he see me, and I said, "Well, of course, you may." He said, "We'll be there by three o'clock." Well, three o'clock came, and he was not there. The telephone rang. He was going to be there at four. It went on until, finally, it was time to close up the office, and he called and said, "I'll surely be there, and I'll be there by eight o'clock. Can we go out someplace and have dinner together at a place where they have Chinese food?" He is very fond of Chinese food, as you know. I said, "Well, I think maybe my secretary has already cleared with your secretary that you should go to the Chief's house. That's as quiet a place as you can find in town," and it

was [laughter]. Knowing that he wanted Chinese food, I went to one of my colleagues, Justice Stanley Mosk, and asked him what I should do. He gave me the name of some caterer to call. They served Chinese food. So I called up, and I was never one to try to pull rank of any kind, but I said, "I really want a very good dinner because the governor's coming to dinner, and I want it to be good. " The man on the other end of the line said, "Well, do you want the eight dollar dinner or the ten dollar dinner?" and I thought to myself, "Oh, thunder, it's the governor. We'll have the ten dollar dinner." I said, "There will be four of us," and he knew that, so when I was about finished talking to him I said, "Now, when the man brings the food, that will be forty dollars I owe for the four dinners?" He said, "Oh, no, no. It's just ten dollars for four!" [laughter] So the food arrived about two minutes to eight, and the governor arrived at eight, and we had a very long and heated argument the whole evening through, and the governor finally got sleepy and went home about one-thirty in the morning. But it was really quite an evening.

GRODY: Well, this is notably different from your contacts with Governor Reagan.

WRIGHT: Oh, yes.

GRODY: In this one evening, you probably spent more time with Governor Brown than you did in the whole time you were chief justice under Reagan.

WRIGHT: I spent many times a longer period of time with him.

GRODY: Without breaching confidentiality, what was the general nature of the things with which you were interested? Also, you said he initiated the call.

WRIGHT: He initiated the call, yes. He also initiated another one when he was appointing the new chief justice — I had already left the court. On that particular morning, a Sunday morning, Tony Kline, his legal affairs secretary, called and said, "The governor is going to make an announcement on Monday as to who the new chief justice will be." He said, "He wanted you to know first." I said, "Well, fine. I'm glad to know. Who is it?" He indicated that it would be Rose Elizabeth Bird, whom I did not know, and I said, "I don't think that's a very good appointment for the chief justice spot." Don't forget there were two vacancies on the court, Justice Sullivan's

and my own. We had both retired. Kline said, "I'm sure the governor will want to know that. Where are you going to be?" I said, "I will be over in Marin County." A colleague of mine and an old, old friend, Justice Sims, was giving a farewell party for Justice Sullivan and myself. I said, "I will be home, however, this evening." He said, "Well, the governor is down in Los Angeles. I know he'll want to talk with you." That evening no response came from the governor. I had on my dressing robe and my pajamas and my feet propped up listening to "Upstairs, Downstairs," and the telephone rang. It was the governor, and he said, "Don, Don, I want to talk to you.'" And I said, "Well, go ahead." I assumed he was still in Los Angeles, but he said, "No. When Tony called me I decided to fly up to see you in person." I said, "Well, come on out, Jerry," so I received the governor in my bedroom slippers, bathrobe, and pajamas! I tried to tell him you should have someone on the Court who is more experienced to take over as chief justice. I had nothing against Rose Bird as a person at all, or against her being named to the Court, but I did think that it was not a good idea to have an outsider take over who had never had a single day in her entire lifetime in a judicial spot. He listened very courteously. I'm not saying that correctly; that's not the right word. He listened very patiently is what I meant to say. He said, "Well, I will give it some thought." I suggested that he appoint either Justice Tobriner or Justice Mosk to the chief justiceship, and put her on as an associate justice. A week later, I guess, he telephoned, and said that he'd given it a lot of thought, but Rose Bird was such a fine administrator that he simply felt he had to appoint her. I said, "Well, you're the governor. You can, of course, do just as you wish." So there was a lot more interplay or interaction between Governor Brown and myself than between myself and Governor Reagan.

GRODY: Were there other times when you had contact with Governor Brown's office? In your role as the chairman of the Judicial Council, was there anything in terms of Brown's legislative leadership or concern which was noticeably different from Governor Reagan's?

WRIGHT: I suppose the fact that he used to work for the Court, and the fact that he was on such close terms with Justice Tobriner and Justice Mosk, made him seem much more approachable than Governor Reagan. That may have been partly responsible for it.

GRODY: Did you initiate some contacts with him?

WRIGHT: Only a few that I recall, and that was the necessity of filling vacancies where we were having difficulty getting the courts of appeal at full strength. It's not very healthy to have pro tems sit and constitute the majority of the Court. I've been very unhappy recently with the great number of pro tems we've had on the state supreme court, and some decisions with two or three members of the Court pro tems. Decisions have been made with maybe one or two of those members being the swing members, the ones who decided the final way the Court went. It's not a healthy position for the Court to be in, and so I wanted to see those positions filled as quickly as possible on the courts of appeal rather than just having people assigned for the particular case or two.

GRODY: You wouldn't have had occasion to do that with Reagan because that didn't present a problem?

WRIGHT: That's right, and I'm sure if it had presented a problem, I would not have hesitated to call Herb Ellingwood or his predecessors about it, but it did not occur.

GRODY: We've talked more or less about Reagan's impact on the judiciary in California. What is Donald Wright's legacy to the courts?

WRIGHT: Well, [laughter] I suppose when I was chief justice, I thought it was going to be quite important. But as time goes on, I realize, as Dean Pound, my dean at law school, said, "Don't ever forget that you're immortal but only for a while." I have been aware of that ever since I left the Court. As I may have mentioned to you earlier, my life has always seemed to be made up of little compartments: the time I was in college, the time I was in law school, the time I was in practice, the time I was in the Air Corps, the time that I was on the trial court, and the time I was on the appellate court. As I get further away from each of those particular boxes, it's hard for me to believe I was ever part of it, that I was ever even in that box, and I feel that way about the Supreme Court. It just could have happened to somebody else. I think during my period on the Court we wrote some opinions which were important opinions and will have a lasting impression upon the legal system in California.

GRODY: There are at least two aspects of your role. First, there is your role as jurist, your legal views as recorded in majority opinions or otherwise.

Second, there is your administrative role regarding reform of the courts, the use of the Judicial Council to assist efficient operation, et cetera.

WRIGHT: That's what the Judicial Council is responsible for: the making of rules for the administration of all the courts in California, a duty they take very seriously. The Legislature so relied upon us that they frequently would pass as law what we promulgated. For example, when all the changes were made in the domestic relations field under the no-fault divorce laws, the Legislature gave us a "just write your own ticket." They said that these things shall be carried out in accordance with the rules as promulgated by the Judicial Council. I don't know if that still goes on, but they frequently did that. We were almost a junior grade legislature because our rulemaking had the force of law.

GRODY: Well, perhaps I could then ask a few questions which are not so much related to Governor Reagan but to your general impressions of the Supreme Court and the judiciary. The California Supreme Court for some time had high stature as a prestigious court in terms of other courts around the country. The California Supreme Court is cited; it is relied upon as authority, or if not as authority, certainly as support. The California Supreme Court, initially under Stanley Mosk's impetus, had taken the position that California's constitution may have higher standards on some matters of rights than the United States Constitution. In another entirely different area in which California apparently had some considerable prestige, the Court developed new doctrines of tort liability before you came onto the Court. Was there a conscious effort to continue to develop in these areas in which the California Supreme Court had developed particular prestige?

WRIGHT: I can't recall that there was a conscious effort to do so. I wasn't even aware for a considerable period of time that the Court had such a universally accepted rating of being excellent; I wasn't until I read an article in the *Wall Street Journal*, in which the author of the article said that the California Supreme Court was to other state courts what the then UCLA basketball team, which had won four or five national championships in a row, was to other college basketball teams. That was the first time I was aware that we had such national importance. I did realize, reading the *American Bar [Association] Journal* column, "What's New in the Law," I found that

repeatedly California Supreme Court cases were set forth in there in some detail. In several pages they covered maybe eight or ten cases of national importance, and there was scarcely a month went by but what a California Supreme Court decision would be one of those that was covered. So I became aware of it. I was aware, of course, that Roger Traynor, a very brilliant jurist, had developed the new procedures in tort law or the new type of tort law which is accepted law in every state in the country. I'm talking about products liability, integrated insurance contracts, and such. There was no conscious effort on our part that I was ever aware of that, "Well, let's go out and try something new!" Such an approach was never even hinted at. I mentioned last time, perhaps, and I won't go through it again if I did, how we happened to decide *People v. Anderson*. It was just such a troublesome problem. The prisons were getting so full of death penalty inmates that we finally had to do something. As I indicated earlier, we were confronted with that conjunctive "cruel *and* unusual" that the United States Supreme Court had to deal with, and we under the California Constitution still had the disjunctive "cruel *or* unusual." So regardless of how the United States Supreme Court would determine a case, we would have to resolve it on our own. That was what prompted us to go ahead with it. It was not a pose on our part that we were going to go out and do something heroic.

GRODY: Well, I wouldn't mean to suggest it as a pose. I would envision it more as a sense of responsibility. That is, was the California Supreme Court aware that it was a leading court?

WRIGHT: Yes, we were.

GRODY: And that it had a certain responsibility, as it were, to maintain that leadership?

WRIGHT: We not only were aware of that, but you do have, of course, the doctrine of *stare decisis*, and if your predecessors have decided a case in one way, you'd better have very good ground for changing the rules, and there was no reason to change the rules which had been enunciated by Chief Justice Traynor, Chief Justice Gibson, and others. You must remember also that the Court doesn't go out and look for business. We decide those cases only because they are presented to us. They are put at our front door, so there is no way of brushing them aside. Of course, we do have in

California the system where, other than death penalty cases, we only take over those cases that we wish to dispose of. We have discretionary right to review them. If the case presents a novel point of law, you aren't doing your duty, carrying out your responsibilities, unless you take it and resolve it. I'm sure we were aware of that, and being a huge state, the largest in the country, we had more problems than the others. You're not talking about a state like Maine or Vermont.

GRODY: Presently we have attacks being mounted on the California Supreme Court and its decisions by people who are running for public office. Responses to the Court indicate that it has done something particularly striking. For instance, after the death penalty case the California Constitution was later amended. We have before the voters this next week [June 1982] Proposition 8, an initiative constitutional amendment to change or eliminate the exclusionary rule, the so-called Victim's Bill of Rights. It's a political response to the leadership this Court has taken, because the exclusionary rule was something the California Supreme Court developed from our state constitution before the United States Supreme Court developed it in *Mapp v. Ohio* [367 U.S. 643 (1961)]. The California Supreme Court has this history and reputation to which we now see certain political responses. Was there a consciousness of that leadership in the area of constitutional law?

WRIGHT: If there was, it was never discussed. Let's put it that way.

GRODY: That in itself is interesting.

WRIGHT: Yes. Back to the exclusionary rule, the federal government [United States Supreme Court], first wouldn't allow certain types of evidence to come in. They had the exclusionary rule as it applied only in federal courts. It didn't apply to the state courts at all. Then, as you mentioned, the California Supreme Court finally adopted it in California. We used to have the system where you could be tried and convicted in the state court and then be tried for the same offense by a federal court if it was a federal offense. This process was called "The Silver Platter Doctrine." Justice Traynor and the Court decided that the exclusionary rule should apply in California. Then in *Mapp v. Ohio*, the United States Supreme Court made it apply to all the states in the country.

GRODY: About leadership on the Court, there can be intellectual leadership, social leadership, and, I suppose, other forms of leadership within the Court. Was there any particular intellectual leader on your Court? Was there someone to whom the Court looked, for instance, when you got down to some of the really tough stuff?

WRIGHT: Well, I think Justice Sullivan would certainly serve in that capacity. Justice Sullivan was a brilliant jurist, number one. Number two, he was not emotional. Justice Tobriner was a very, very brilliant individual, exceptionally bright, but he also would approach problems in a very emotional manner and sometimes get carried away because of that. That could never happen to Justice Sullivan, and so I think in the end most of us would have looked to Ray Sullivan for that type of leadership, and I think he had a tremendous impact on the Court. I was lucky to have him there the whole time I was on the Court. He and I left the same month. He would meet that criterion. Before him, of course, Justice Traynor did, although Justice Traynor was not the outgoing, friendly person that Justice Sullivan is.

GRODY: Perhaps there are different leaders for different occasions.

WRIGHT: That's right.

GRODY: For instance, I remember reading an article about the California Supreme Court's aggressiveness in interpreting its state constitution regardless of the federal standards. The example was that California found its standards to be higher regarding the exclusionary rule. The article referred to this approach to the California constitution as the "Mosk Doctrine."

WRIGHT: Well, one reason was that Stanley Mosk did first introduce it, to the best of my recollection. Although . . . that isn't an accurate statement, because Justice Traynor had done it earlier. But he [Mosk] was the one who used it as the subject for a speech at the University of Chicago where it was published in legal journals. I think that's probably the reason for Mosk getting the credit or the blame for it, whichever way you want to interpret it. Surely, Stanley Mosk would be one who believed in that doctrine. He made many speeches on it, not only the one I mentioned, but also to state bar associations and to other groups. Actually, the standards which have been imposed by the United States Supreme Court and the California Supreme Court are not that different. There are only a few areas where we have

required a higher standard, and I think most people, if they really understood what's involved, would agree with us. But that's something that politicians never mention. For instance, in the United States Supreme Court case from Florida, in that opinion written by Justice Rehnquist which I mentioned last time, you could be given a pat-down search and, perhaps, even a body search just for a jaywalking ticket. I don't think that most of the citizens of this state would want to submit to such or want to have such to be the law, but it is good campaign rhetoric to accuse the Court of being soft on criminals because of the expansion of the exclusionary rule.

GRODY: Was there any kind of political leadership on the Court? You had mentioned to me last time that Justice Burke had strongly urged that you write the opinion in the *Anderson* case because you were "the Chief." Were there other times when someone was chosen to write an opinion, not because you would get more of a vote, a 6–1 or unanimous vote, but because it was felt that there was something significant about that person's intellectual or legal leadership?

WRIGHT: No, not that I can recall. The manner of assigning the cases is something that the Chief and the Chief alone determines. My way of assigning them, I was told, was very different from the way my predecessor assigned them. If the subject matter was something that was of great interest to my predecessor, he would assign the case to himself, even though all the preliminary work may have been done by one of the other justices. I felt that that was a complete waste of good judicial time. Before I would ever take a case away from a justice who had done all the groundwork, who had looked up the authorities, who had prepared the memo for us to discuss in our conference and for the argument calendars, and who had voted for the result reached, I would always get that justice's approval before I would assign it to someone else. Consequently, it wasn't a way that I would operate, as you mentioned, by saying, "Well, I should assign that to Justice Tobriner because he's had more experience in workmen's compensation cases." We didn't function that way. It was the luck of the draw how you got the cases.

GRODY: It wasn't a sense of specialization, then?

WRIGHT: No. I wrote more criminal cases than would have been my desire, but because the way the Court was set up, all the criminal cases were assigned to the Chief and his staff. So we did all the groundwork on them

and none of the civil cases. The civil cases were parceled out among the other six justices. I felt I should ask the justice who had done the preliminary work, "Could I assign this case to myself?" I wouldn't have to, but I did. Or if the justice to whom it was assigned may not have voted to take the case over, then I would, of course, feel free to take it over for myself.

GRODY: Did you have a social leader? Was there someone who put together the dinners or who smoothed out the arguments or anything like that?

WRIGHT: Well, there wasn't any social leader. We, in the Court, had a friendly relationship in that I was frequently at Justice Sullivan's, or at Justice Tobriner's, or at Justice Mosk's, less often at Justice Burke's, and one reason being that he lived way out in Nicasio, which was a thirty-five or forty mile drive [chuckle]. Only rarely were we at Justice McComb's, I think only once in the entire time. Justice Clark did not maintain a home in San Francisco. I was never in his home. Justice Richardson maintained a home in Sacramento, so when we went to Sacramento we would occasionally have dinner out at his place. It was all very friendly.

GRODY: Did your role as a peacemaker within the Court carry over to any kind of personal things. For instance, one of the reasons you thought you were going to retire early was that you had an unhappy experience on the appellate court, and it was more of a personal unhappy experience rather than a professional unhappy experience.

WRIGHT: Well, I was probably not quite accurate. It was primarily a personal unhappiness, but it was also the fact that I had been in an environment where everything was busy, lots of work going on, lots of communications, and then I ended up in a monastery.

GRODY: You mean from the Los Angeles Superior Court to the appellate court?

WRIGHT: Yes. Before then, I had been the presiding judge of the criminal court, the probate court, and the civil court, and so I was in the midst of activity at all times. Then to fall into this other court where several of the justices wouldn't even speak to one another, and where you were just cemented in with three other individuals, it was not a particularly pleasant experience.

GRODY: You mentioned, without naming names, that there was one judge who just sort of made life miserable. What kinds of things went on, and how did you resolve that situation?

WRIGHT: I just listened. Frankly, he was not a well individual. He had had several difficulties with his health, and then he would like to come into my chambers, and he would come in sometimes day after day and take an hour or two of my time telling about his experience with the presiding justice of our court, who was a fine, outstanding gentleman. I would have to sit there and listen, and the next day he would be back with the same message again, and I would frequently want to say, "Look, you told me all that yesterday," but I was low man on the totem pole, so I just sat and listened. It was not particularly pleasant.

GRODY: That's why I asked about a social leader or one who smoothed things out, because you were sitting on a Court with six other members.

WRIGHT: Well, if there was any such person, I guess I would have played as big a part as any of them. They were all at our home repeatedly, or often, and we had a wonderful relationship with most of the members of the Court.

GRODY: Well, we get the impression, I suppose, from the Commission on Judicial Performance hearings that the "Bird Court" has not been quite so amiable.

WRIGHT: I think that's probably a bit of an understatement.

GRODY: I was asking about leadership and prestige. Did the Supreme Court perceive any of the district courts of appeal as particularly a leader? For instance, did the second district or the first district have a reputation in any particular areas so that the Supreme Court was especially aware of that district court's status?

WRIGHT: Not particularly within a district. The second district, for example, has five divisions in it, and there were two divisions from which opinions came that were of a higher caliber than those which came from the other divisions. In both instances it was done, primarily, because of the character of the justices who were the presiding justices of those divisions. One was Justice Gordon Files and the other was Justice Otto Kaus, who is now a member of the Supreme Court. Because of their intellectual lead-

ership, the opinions from those divisions were of higher quality than from other divisions in the second district. In Sacramento, Judge Leonard Friedman was a brilliant member of the court, and we had those types of individuals sprinkled throughout the entire state. Others were what we might call very mundane.

GRODY: You had said that you had recently finished reading *The Brandeis/Frankfurter Connection*. In reflecting upon your own experience, or that of any of your colleagues, were there any similar kinds of efforts to have that kind of influence?

WRIGHT: I certainly had no such influence with anybody in the executive or the legislative branch of the government, such as in the case of Frankfurter and Brandeis. I might mention that at one time Justice Tobriner was able to exert influence in the Jerry Brown administration. That was based upon the fact that Jerry Brown worked for him as a research attorney when he was first out of law school. I think that Governor Jerry Brown considered Justice Tobriner almost in the same light, and might possibly be more influenced by him than he would be by his own father. Justice Tobriner was a father figure. Justice Mosk at one time had considerable influence with the Brown administration. Beyond that, I don't know of anybody who had any type of direct relationship or any influence with the executive branch of the government. Certainly, I had none. Justice Burke had none; Justice Sullivan had none; Justice Clark, I'm sure, had great influence with the Reagan administration, but what it was, we never knew. I'd have to answer that I'm not aware of any such relationships existing between any of the members of our Court and the two branches of government located in Sacramento as you find in the Brandeis and Frankfurter papers. Those two men, especially Justice Frankfurter, were into almost every act.

GRODY: I suppose we often just don't know, because it's not something that gets publicized until, as in the Brandeis–Frankfurter case, so many, many years later.

WRIGHT: Also, most of us on the Court, and I feel this is true, would have had a repugnance against trying to influence any other branch of the government or to have them try to influence us. It was something we would not have tolerated.

GRODY: I suppose the closest to that, that I can think of recently, and it may not really be applicable, is the little flap about Stanley Mosk's drafting of a state constitutional amendment proposal for some people.

WRIGHT: Yes. I will be honest and frank with you. I would have never been party to that. Stanley is a very close friend of mine, but I think he was ill-advised to accept that assignment. I'm sure there was nothing at all about it that was improper. He was trying to set forth the ideas which he expressed so forcefully in the original *Bakke v. Regents of the University of California* case.[7] Of course, that decision was later reversed by the California Supreme Court in a 4–3 decision. Stanley was trying to get his views across.

GRODY: I suppose it is a matter of apparent impropriety being as evil as real impropriety as far as a justice of the Supreme Court is concerned.

WRIGHT: You not only have to avoid evil, but the appearance of evil. That's correct.

GRODY: I suppose it is hard to draw that line for a layman. For example, one doesn't criticize the justice for making a speech before the bar association, or for writing a law review article such as you did while you were chief, or for delivering addresses at law schools, but if the same ideas and the same points of view are expressed in a different forum or in a different format, such as in the case of Mosk drafting a proposed constitutional amendment, everybody raises his eyebrows.

WRIGHT: There's no question that you're correct. [laughter]

GRODY: The California courts are presently receiving a great deal of heat from some elected public officials, including the incumbent lieutenant governor and the incumbent attorney general. The leading court attacker in our midst is Republican State Senator H. L. Richardson from our area here in southern California, in Arcadia. How do you see all that?

WRIGHT: I think that the people of this country are absolutely frustrated about the situation of crime, and they feel impotent. There seems to be nothing that they can do about it, so they then turn to the courts and say they must be to blame for the present situation. If you would hear some of the remarks made by our lieutenant governor, you would have thought

[7] 18 Cal. 3d 34 (1976).

crime was created by the courts, and that the crime situation is primarily a result of lenient treatment by the judges of this state. I know it is not true, and if it wasn't for this great amount of frustration, the arguments simply would not sell. But people are longing to have something that they can grab hold of that they can say, "That's the cause of this great crime spree that we're having." I might indicate some figures for just a short time ago, 1979. For every one hundred crimes committed, only thirty of those are reported to the police, and on the average only six persons are arrested. So you only have six percent of the people arrested who commit crimes. Eighty-five percent of the criminal cases which were processed in California Superior Court resulted in convictions. Now, 85 percent of them went to trial, and the courts convicted. Ninety percent resulted from guilty pleas which were negotiated, of course, by the prosecutor, and nine out of the ten convictions were upheld following an appeal. So there's just really only a mere pittance of them that come along that are ever treated by the courts. Nonetheless, the judges seem to be to blame for all of it. In California, in particular, this state imprisons more individuals than any other advanced nation in the world, excepting the USSR and the Union of South Africa, if that country can be called an enlightened country.

GRODY: I suppose there's a habit of scapegoating when times get difficult. Unfortunately, for the courts, your successor, Rose Bird, seems to be getting the greatest end of the attack as an individual.

WRIGHT: No question that she's getting the kind of heat that neither I nor my predecessors ever felt. In fact, with very few exceptions, I never read an editorial about my performance or the performance of my predecessors that was anywhere near the type that are written about her almost repeatedly. I was never, that I recall, an object of publicity for anybody running for public office to say, "We've got to remove this man. We've got to remove this chief justice." In fact, just the contrary. I can't believe that the law isn't being carried out under the present Supreme Court "almost" as well as it was [chuckle] in the times when we were there. I think it's been an unfair attack.

GRODY: I recall your response to criticisms of the death penalty case, the *Anderson* case, in your speech before the State Bar. You said, "You know, to criticize the substance is one thing, but to criticize other things is really

not fair." I suppose Chief Justice Rose Bird is being attacked not so much because anybody is really reading or knowing the substance of what she has said as much as because there are outcomes that people don't like.

WRIGHT: I venture to say that 90 percent of those who are attacking her have never read a complete opinion that she's written. I happen to read them. They are, on the whole, very well done. I don't always concur with the results she reaches but, nevertheless, there were many who did not concur with the opinions I held, to wit, the governor, as you advised me.

GRODY: Do you think that some of this was inadvertently brought on by the chief justice herself, by inviting the Commission on Judicial Performance to investigate the Supreme Court?

WRIGHT: I think that there is no question that that was a horrendous mistake on her part, and everyone with whom I've ever talked feels the same way about it. I think she was ill-advised to present the matter to the commission without even consulting her colleagues. I am told that that is what occurred, and it turned out really to be more of a circus than anything else. As I may have mentioned to you earlier, I was fortunately not in the country when that occurred, and so I did not get the full show which was on every night here on television.

GRODY: Do you think there is any long-term impact from that investigation?

WRIGHT: I really can't answer that one. I don't know. I think it is going to be some time, if ever, before the Court again gets in the position that it once had in this state and throughout the country. I mentioned earlier that the *American Bar Association Journal* used to carry almost month after month some opinion from the California Supreme Court. No such thing occurs, now. It's only rarely that a California opinion is even mentioned by the *Journal*.

GRODY: Do you think that's because the quality of the opinions have changed or because the *Journal* doesn't want to touch the controversial court with a ten-foot pole?

WRIGHT: I don't really know what controls their decision-making process, but I would venture to say it's a little of the latter. They are aware that the California Supreme Court does not occupy, nationally, the status it once held, and for that reason they have just preferred to leave it alone.

That's my own personal opinion; I may well be wrong. I will someday ask a friend of mine who was president of the American Bar a year ago and inquire of him why this has occurred.

GRODY: I would imagine that the Court's first problem after the hearings would have been to solve its internal relations problems.

WRIGHT: Of course, in fairness to the present Court, I can't recall any time in the immediate past history where there's been such a turnover. Very few judges on that Court, excepting Justice Richardson and Justice Mosk, have any lengthy term on the Court at all. They're all recent appointees. In fact, three of them have come up in this year's ballot, indicating that they have been appointed in the last year or so. Until they get the feel of one another's work, until they have been together for a goodly length of time, it's going to be hard to know how the Court's going to perform.

GRODY: Perhaps that is what will pull the California Supreme Court out of its problems, the fact that it has had an unusually high turnover most recently, and you have practically a new Court, again with the exception of Mosk and Richardson. Bird has also been there for a little while.

WRIGHT: Five years now she's been there. Until the members of that Court work together for a longer period of time, we don't know which way they are going to go. There may be a change in direction. I have an idea that Justice Kaus will emerge from that Court as very much a leader, and he'll be to that Court a good deal what Justice Sullivan was to ours.

GRODY: I imagine he must have his work cut out for him, then.

WRIGHT: When you first go on the California Supreme Court, don't forget, you still are something of a neophyte, even though you've had long judicial experience. You always had before then, if you made a mistake, the safeguard of the court of appeal, or the Supreme Court would see to it that it was corrected. When you're on the state supreme court, that isn't true, except in cases where you are dealing with federal problems. It's a good deal like the old trite motto, "The buck stops here." And it does!

GRODY: Do you see the possibility of any of these attacks on the Court becoming more than rhetoric? For instance, was it not too long ago that

there were some efforts to hold up the pay of the Supreme Court justices if they didn't abide by the time limits of getting out a decision?

WRIGHT: Yes, on the ninety-day rule. That is correct. That's something that should be legally corrected. There's no question that the law requires that your opinion come out within ninety days from the time it's submitted, but as a matter of practical operating procedure, it's all but impossible. You have the majority opinion to be written; if there's a dissenting opinion, it has to be written; they have to then make the rounds of all the members of the court for additions and corrections. It just cannot be done in the complicated cases in ninety days. We were accused of using a despicable subterfuge by not submitting the case until we were ready to file it. That procedure was started by Justice Phil Gibson and followed by Justice Traynor and followed by myself. I will say that in most instances we did get the cases filed within the ninety day period.

GRODY: Maybe you could clarify what you mean by "submitting."

WRIGHT: Well, submitting means, in effect, that the people who are presenting the case to you, the plaintiff and defendant or the people and the defendant accused of a crime, have completed their entire case. They have put it in your lap, and they say, "We have nothing further. There are no further briefs. There are no further arguments. It's yours now." So at that point the case stands "submitted" to the Court, and normally they will say, "Your Honor," or "Your Honors ;" as the case may be, "we now submit the case." But the presiding judge, the chief justice, will simply say, "We will recess now;" instead of saying, "All right, the matter is submitted." If the Court made such an order as that, then submission time would start to run. But there's no question that when the law was drawn up that they intended the submission to be at the moment I mentioned earlier, that is when all matters are concluded before the Court. Of course, trial judges have always been faced with that. A trial judge has no alternative but to dispose of the matter, and he should dispose of a case in a lot less than ninety days. Is it ninety or sixty? I really have forgotten; it has been so long since I've dealt with those problems. As the presiding judge of Los Angeles County, I got the reports of all the cases outstanding every month. There was only one judge of the 132 judges we had who ever had any cases over the statutorily prescribed period of time. There were some once in a while.

Few would have a case over the time limit, because the judge had to sign an affidavit stating "I have no matters submitted" in order to get his pay. You couldn't get your paycheck unless you had that on file.

GRODY: I raised the question before that a lot of this is political rhetoric, but it may turn into more telling attacks on the Court. The only sign of this was what I considered to be a rather petty effort to withhold the salaries of the justices.

WRIGHT: That's another case where the public actually does not know the way the Court functions. To get around that ninety-day rule, other than the way I mentioned that it was done under my predecessors and myself, is you don't put a case on the calendar for argument until you practically have everything done, until you've written the opinion almost in its final form. But this causes tremendous delay before argument. There's nothing that compels you to put it on the Court's calendar, whether you've had the case one week or two years, so it's just another way to skin the cat.

GRODY: Do you see any other real significant damage that could be done to the Court by these attacks?

WRIGHT: I suppose I am hopeful that we can just say, "This, too will pass." I think that after the June primary some of it will disappear. Several of the more blatant ones will pass into obscurity. We'll undoubtedly have such attacks come the November elections, especially on the governorship, because regardless of whether Deukmejian or Curb ends up with the nomination in the Republican party, they will probably direct such attacks at Mayor Tom Bradley, who undoubtedly will win the nomination for the Democratic party. However, it is going to be a little hard to direct attacks at a man who served many years as a policeman, and who, as well, is very knowledgeable in the law enforcement field. I don't think there's too much that you could say in this battle that will come up then, but believe me, that won't keep them from saying it.

GRODY: Well, in closing I could ask you whether you have looked into the crystal ball as to the future of the courts, but in a sense you've already answered that. Hopefully, the life of the Court as we've known it will continue. Maybe one last question would be appropriate with regard to Governor Reagan, now President Reagan, and that is, do you have any reasons to believe

that his relationship with the judiciary and his whole approach to judicial appointments and other contacts with the judiciary will have changed from how he operated as governor to how he now operates as president?

WRIGHT: I don't know that I'm prepared to answer that because I don't know how the [federal] system functions. I don't know how district judges are selected. I know senators of each state have a tremendous amount to say about the individual who is going to be named. I do know that in a state such as California, where you have a Republican and a Democratic senator, there has to be a division between them as to whether Democrats or Republicans get the nomination. I think when the Republicans have a president that one Democrat is named for every three Republicans. When Carter was president, just the reverse was true.

GRODY: I believe it's actually an even higher ratio.

WRIGHT: I don't know, actually, what it is, but that type of arrangement is made. I also know the American Bar has a strong voice in this. If they appear before the United States Senate Judiciary Committee and claim that someone is not qualified to be a judge, that carries a lot of weight. You're talking about a field that I really know nothing about. I'm sure that the president and William French Smith, the attorney general, especially at the higher court level, try to pick individuals who will very closely carry the same philosophy that those two men presently hold.

GRODY: One thing which is quite different at the United States Supreme Court is longevity. Although we have some longevity on our state supreme court, even so, the turnover there is at a greater rate than at the United States Supreme Court. For instance, although Traynor was on the Court for many, many years . . . .

WRIGHT: Almost thirty years.

GRODY: His tenure as chief justice was relatively short.

WRIGHT: Not quite seven years.

GRODY: A relatively shorter period of time. Similarly, your tenure as chief justice was seven years?

WRIGHT: Seven years.

GRODY: Maybe the effects of the governor's appointments, in that sense, have relatively less impact than when the president appoints the chief justice of the Supreme Court.

WRIGHT: Of course, some of that is caused by the fact that in California you dare not remain past your seventieth birthday because of differentials in retirement benefits, unless you are a pretty wealthy individual. Justice Tobriner stayed beyond seventy years, but Justice Sullivan felt he could not afford to remain on the Court in fairness to his wife, and I could not, either. I have always been an advocate of mandatory retirement at seventy for all judges. Then let them be brought back by way of assignment should their services be needed. You have no such problem in the federal system where they are appointed for life, and I feel certain that two or three members of the United States Supreme Court will stay on that court as long as they have breath. I'm sure that Justice Brennen and Justice Marshall will still be there three years from now or until after the next election for president. I don't know about any of the others. Those two are not particularly well men, but I feel they won't retire.

GRODY: Is it fair to sum up Reagan's impact on the state judiciary as not so unique or different from his predecessors or even his successors? Each has his own style and does what he does, but is there any great significant impact to point him out as different from either his predecessor or his successor?

WRIGHT: Upon the whole judicial structure of California, you're absolutely right, and I think he would measure up well against any of the other governors looked at on a statewide basis. I've repeatedly said that his appointments, generally, were outstanding. He tried to pick individuals who had good legal backgrounds, who had experience, and I would say, overall, that he can no way be faulted on that. On certain individuals, yes, [the appointments were not outstanding], but that happens in any administration. There were, frankly, very few of them in his administration.

GRODY: Do you think there is any ground that we haven't covered?

WRIGHT: No. I think we've pretty well covered the field.

GRODY: Well, thank you very much.

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