Conversations with Frank K. Richardson

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On September 17, 1992, Justice Richardson and I talked about his experience on the California Supreme Court. A statement by Justice Richardson constitutes this oral history:

During my nine-year tenure with the California Supreme Court (from 1974 to 1983), I found myself quite frequently in a dissenting position *vis-à-vis* my colleagues. Doubtless this resulted from our varying backgrounds, experiences, and philosophies. Particularly in the criminal field, I believed my colleagues often were basing reversals of judgments upon claims of error that were so minor as to constitute clear harmless error. On more than one occasion, I cited the familiar theme that although a criminal defendant is entitled to a fair trial, he is not entitled to a perfect one, for there are no such trials. (See, e.g., *People v. Easley* (1983), 33 Cal.3d 858, 890 [dis. opn.].)

With the retirement of Chief Justice Wright and the appointment of Chief Justice Bird in 1977, and the appointment of other court members following the death of Justice Manuel and the retirement of Justice Clark, the tradition of Justice Tobriner generally prevailed on the Bird court, a tradition one might fairly describe as "liberal" in approach, both in the civil and criminal fields. This approach invited my frequent dissents, and though difficult to generalize, a few cases and issues are illustrative.

Following the restoration of the death penalty by the legislature in 1977, and by the Briggs Initiative in 1978, the court's review of death penalty cases resulted in an inordinately high rate of reversals. I believe that the Bird court reversed about 64 of the 69 judgments of death it reviewed, and as I recall, the chief justice voted to reverse all 69 cases.

The *Easley* case, *supra*, is a good example of the differing approaches taken in criminal cases. In that case, the six-member majority found that several supposed errors combined to require reversal in a death penalty case. Among other grounds, the majority suggested that improperly telling the jurors about the defendant's prior counterfeiting conviction might have influenced their decision to impose the death penalty. In

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dissent, I doubted that the jury paid much attention to the counterfeiting prior, observing that defendant was "a convicted double murder for hire and arsonist" (34 Cal.3d 890).

In noncapital cases, I also frequently dissented to the majority's holdings. Illustrative cases were *Bailey v. Loggins* (1982), 32 Cal.3d 907, 923, limiting the discretion of prison officials to regulate the content of prison newspapers, and *In re Delancy* (1982), 31 Cal.3d 865, 879, restricting the routine monitoring of jail inmates' conversations.

On the civil side, in *City of Los Angeles v. Venice Peninsula Properties* (1982), 31 Cal.3d 288, 303, the court confronted the issues of Los Angeles tideland properties that had been held by Mexican ranchos, subsequently acquired by private owners under a federal patent. Our court, by an expansive interpretation of the public trust doctrine, rejected the interests of the holders of the patent. I dissented.

In *Marine Point Ltd. v. Wolfson* (1982), 30 Cal.3d 721, 745, the court compelled an apartment owner to rent to families with children, even though the trial court had found the exclusion of children "is rationally related to the lack of facilities provided for children." The apartments were designed for adult rental housing. Again, I dissented.

In *City of Oakland v. Oakland Raiders* (1982), 32 Cal.3d 60, we upheld an opinion upholding a city's exercise of eminent domain against intangible personal property in the form of a professional football franchise. We concluded that the taking was authorized by the laws of eminent domain (and particularly, the broad "any property" clause of the applicable statute). The action furthered a valid public use entitling the city to a trial on the merits.

During my tenure, the court was asked to review the validity of several initiative measures touching on both civil and criminal matters. *Amador Valley Joint Union High School District v. State Board of Equalization* (1978), 32 Cal.3d 236, involved an initiative measure (Proposition 13) that added Article XIII A to the California Constitution. We confronted multiple challenges to the measure, ultimately concluding it was not an improper revision of the constitution, did not infringe upon the "single subject rule" (being "reasonably germane" and "functionally related" to the subject of property tax relief), nor did it offend equal protection principles.

On the criminal side, the court faced multiple constitutional challenges to an anticrime measure (Proposition 8, the so-called "victims' bill of

rights"), *Brosnahan v. Brown* (1982), 32 Cal.3d 236. This multifaceted measure included provisions governing restitution to victims, safe schools, bail, prior convictions, and the state exclusionary rule. The 4-3 majority concluded the measure was valid and that its provisions were reasonably germane to the single subject or common purpose of promoting the rights of crime victims.

Several reapportionment cases reached our court during my tenure, but unlike the court's experiences in the 1970s and 1990s, we were not required to draft court-ordered reapportionment plans. In two cases submitted to our court, I dissented, believing the popular will was being subverted by the majority's holdings. (See *Assembly v. Deukmejian* (1982), 30 Cal.3d 638, 679 [dissenting to use of legislative reapportionment plan for 1982 elections despite pending referendum challenge]; *Legislature v. Deukmejian* (1983), 34 Cal.3d 658, 681 [dissenting to removal of reapportionment initiative from 1984 ballot].)

Although, as in the 1970s and 1980s, the court occasionally had to assume the reapportionment task, the court's role has been one of a very unwilling participant. The court has entered the fray only because the legislature and governor were unable to agree on a common plan. In each instance, the court has made it clear that it would dismiss the proceedings if the other branches could reach agreement. The court's response to a deadlock by delegating the reapportionment task to a group of neutral special masters and their professional staff seems appropriate.

During the period from 1978 to 1979, the court was subjected to a very distracting episode when an investigation was invited into its own internal procedures. The inquiry was directed primarily at the question whether the court or its justices purposefully delayed filing the decision in *People v. Tanner* (1979), 24 Cal.3d 514, involving the so-called "use a gun, go to prison" statute. The Commission on Judicial Performance and the Judicial Council selected special counsel to conduct the investigation, and hearings began in June 1979. The proceedings were highly controversial, extended over many weeks, and involved very extensive testimony. The results were inconclusive.

The court years from 1974 to 1983 were not without tension. In fairness, however, it must be said that the relationships between the court members and their respective staffs were marked by civility, friendliness,

and patience. My recollection of the justices during my tenure was that they were hard-working, industrious, and productive jurists. My general feeling for my colleagues remains one of great respect.