III. Oral History

Justice Frank K. Richardson

William Gallagher

Frank K. Richardson served as an associate justice of the California Supreme Court for nine years during a tumultuous period in the high court's history. Richardson's judicial tenure during 1974-1983 witnessed, among other things, the controversial appointment of Rose Bird as the court's chief justice (and as the first woman appointed to the Supreme Court of California), the extraordinary public investigation by the Commission on Judicial Performance into allegations of high court improprieties,[1] and decisions on such highly charged issues as the death penalty, public funding of abortions, property tax reform (Proposition 13), and a "victims' bill of rights" (Proposition 8). Throughout this period, Richardson remained a strong supporter for the principle of judicial restraint, an often lonely position for a justice of what once was one of the nation's most liberal and activist appellate courts.

Born in St. Helena, California, in 1914, Richardson earned both undergraduate and law degrees from Stanford University, graduating from law school in 1938. These were lean times for lawyers, and, after trying unsuccessfully to obtain a legal position in various cities in the state, in 1939 Richardson finally established a private law practice (" . . . desk space in a second floor office over a clothing store on a side street . . . ") in Oroville, California.[2] Except for a three-year break for military service between 1942-45, Richardson remained in private law practice until 1971, when he was appointed as Presiding Justice of the California Court of Appeal for the Third District. Richardson was subsequently elevated to become an associate justice of the California Supreme Court by Governor Ronald Reagan in 1974.

As a justice, Richardson is perhaps best remembered for his role as a staunch judicial conservative on a decidedly liberal court. Yet in both dissents and majority opinions, Richardson's was an eloquent and persistent voice for the principle of judicial restraint. Two important decisions authored by Richardson illustrate this well. The first, *Amador*

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Valley Joint Union High School District v. State Board of Equalization, (1978) 22 Cal.3d 208, upheld the constitutionality of California's landmark voter-enacted tax revolt amendment, Proposition 13, which dramatically altered the structure of both state and local taxation and also inspired popular emulation nationwide. Articulating a theme that was to be repeated in other cases, Richardson stressed in *Amador Valley* that it is not the court's job to question the "economic or social wisdom or general propriety" of an initiative but rather it is the judge's duty to "jealously guard" the initiative process as "one of the most precious rights of our democratic process."[3]

Similarly, in *Brosnahan v. Brown*, (1982) 32 Cal.3d 236, Richardson led the court in upholding California's Proposition 8, the "crime victim's bill of rights" initiative. As he had in *Amador Valley*, Richardson emphasized the need to allow the "sovereign" people to manifest their will through the initiative process, absent any "compelling, overriding constitutional imperative," regardless of the court's assessment of Proposition 8's wisdom.

It is, however, in the role of a judicial dissenter that Richardson was often most prominently cast during his tenure on the high court. His was the sole dissent, for instance, in a case disallowing a Republican reapportionment initiative on the ballot that would have potentially replaced a controversial reapportionment scheme drafted by Democrats.[4] Richardson also dissented from the majority opinion in cases supporting state funding of abortions for poor women and extending the scope of manufacturers' liability in tort law. Moreover, despite his stated personal reservations about the propriety of the state's power to take a life, Richardson vigorously and persistently dissented in various decisions reversing a death sentence. He argued that the majority's propensity to require what (in his view) was bound to be an elusive and infrequent "absolute perfection" in death penalty cases both undermined the court's legitimate role and the express will of the people.[5]

Justice Richardson, while frequently at odds with the court's majority of his time, earned a reputation as a likeable and thoughtful justice and one whose views would have a strong impact in the court's subsequent history.

NOTES

[1]For a comprehensive account of this investigation, *see* Preble Stolz, *Judging Judges: The Investigation of Rose Bird and the California Supreme Court* (New York, 1981).

[2]*See* Jonathan Maslow, "Honorable Frank K. Richardson," *California Lawyer*, 4:38, 40 (1984).

[3]22 Cal.3d 208 at 241, 259 (quoting *Associated Home Builders, Inc. v. City of Livermore* and earlier cases).

[4]*See Legislature v. Deukmejian*, 34 Cal.3d 658, 681 (1983).

[5]*See*, e.g., *Carlos v. Superior Court*, 35 Cal.3d 131, 155 (1983).

Conversations with Frank K. Richardson

Gordon Morris Bakken

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.