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ORAL  
HISTORIES

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JOHN R. WIERZBICKI

# Knowing Bernie:

## The Witkin Oral History Project

Despite the many entreaties for him to do so, Bernie Witkin never agreed to be interviewed for an oral history about his life. One oral history came perilously close – the time Dorothy Mackay-Collins interviewed Witkin about his friendship with Chief Justice Roger Traynor for the Roger J. Traynor Memorial Collection on September 3, 1986. During the interview, in which MacKay-Collins got Witkin to begin talking more about himself than he liked, Witkin grumbled: “If we don’t get on to Traynor pretty soon I’ll think that you are coming here under false pretenses.” He later refused to allow the interview to be published. Whatever Witkin’s motives, his reticence left a significant gap in our understanding of his life and role in California law.

In January 2020, following the 25th anniversary of Witkin’s death, the California Supreme Court Historical Society launched an oral history project focusing on Witkin’s influence on California’s legal system from those who knew him best, especially during the 1970s until his death in 1995. The primary goals of the project were to:

- Identify and record interviews with those who have the most extensive information about, and connection with, Bernie’s life.
- Collect stories, anecdotes, and other personal remembrances of Bernie.
- House and preserve this material and make it available for scholars.
- Increase public awareness of Bernie’s life and his contribution to California law.

The initial project team consisted of retired California Supreme Court Justice Ming Chin, legal historian and former *L.A. Times* staff writer Molly Selvin, and Witkin scholar John Wierzbicki. It also partnered with other organizations, such as the California Judges Association, in getting word out about the project. Major funding for the project was generously provided by the Bernard E. and Alba Witkin Charitable Foundation ([witkinfoundation.org](http://witkinfoundation.org)).

Many of those who knew Witkin well had passed away in the quarter century since his death. Despite this, the project was able to identify and obtain interviews with sixteen individuals, each of whom had significant personal knowledge and experiences to relate about Witkin. The youngest of these were in their late 60s and the oldest was 99 years old at the time of the interview. Most were in their 80s. The interviewees had known Witkin in many capacities, including as the following:

- His co-author on *Criminal Law*.
- His personal advisor in the last years of his life.
- Two justices of the California Supreme Court.
- Four California Court of Appeal Justices.
- The judicial appointments secretary for Governor Deukmejian.
- Two trial lawyers, including a former state bar president.
- Three legal editors with the Witkin Department of Bancroft Whitney.
- A collaborator on his treatises in the 1970s.
- Two brothers whose family had known Witkin since the 1930s.
- A legal journalist for *California Lawyer* who profiled him.
- Witkin's attorney during the 1970s.
- The son of Chief Justice Roger Traynor, a close friend of Witkin since the 1940s.

The major topics discussed during the interviews are listed below.

Because there exists little scholarly work about Witkin, research emphasis was almost exclusively on primary material. The Witkin Archive at the Judicial Center Library in San Francisco was the primary source of documents for research, supplemented by those provided by individuals and Witkin personal papers that were housed at other locations. From these, outlines were created, and documents selected, for the interviews.

The project adopted a set of interview protocols. The interviews were orally recorded and an initial transcript prepared from the recording, which was edited for accuracy and readability. The interview candidates had 30 days from receipt of the initial transcript to make edits or alterations. The final

transcript was then created from the initial transcript and incorporated edits. None of the interviewees were paid for their interviews, and the CSCHS owns the copyright to the final transcripts.

Interviews were conducted with the sixteen interviewees. All but one were with a sole interviewee – the exception was a combined interview with the three editors in the Witkin Department. The pandemic proved to be a barrier, but one that was overcome. Although we conducted in-person interviews where possible (with appropriate protocols), several took place using online video conferencing. Over 37 hours of recordings were obtained, with the longest interview lasting 5 ½ hours and the shortest 41 minutes. This resulted in a final transcript of about 368 printed pages (at 350 words per page).

The core mission of the California Supreme Court Historical Society is to recover, preserve, and promote California’s legal and judicial history, with a particular emphasis on the State’s highest court. This project fulfilled that mission through preserving knowledge about one of the most influential individuals in California history on the state’s legal system. The criticality of the project was recently highlighted by the recent passing away of Witkin’s co-author, Norman Epstein. Thankfully, we have maintained for future generations an important piece of California legal history, in the words of those who participated in it.

## INTERVIEW TOPICS

The following are the major topics that are covered in the interviews.

- Treatises
  - Citations to
  - Influence of
    - on law students
    - on lawyers
    - on judges
- As writer
  - Style and content
  - Coauthoring *Criminal Law*
  - Writing process
- As public speaker
  - Qualities
  - Engagements in Fresno
- Publishing activities

- o Witkin Department at Bancroft-Whitney
  - o Continuing Education of the Bar
  - o Bill Rutter and the Rutter Group
  - o Center for Judicial Education and Research benchbooks
- As Employer/Collaborator
- Influence on judicial appointments
  - o Under Jerry Brown
  - o Under George Deukmejian
  - o Under Pete Wilson
- Criminal law views
  - o Controversy regarding
  - o Influence on Proposition 8
- Legal Reform
  - o Futures Commission
  - o Judicial education
  - o "Media speech"
- California Supreme Court
  - o Relationship, generally
  - o Advisor to Judicial Council
  - o Roger Traynor
  - o Rose Bird
  - o Malcolm Lucas
- Other relationships
  - o Ralph Klepps
  - o S. I. Hayakawa
- Marriages
  - o Gladys Witkin
  - o Jane Witkin
  - o Alba Witkin
- Personality
  - o Generally
  - o Sense of Humor
  - o Science Fiction
  - o Roller Derby
- Death and legacy
  - o Generally
  - o Renaming of State Law Library

## INTERVIEWS CONDUCTED

### **James Ardaiz (Interviewed July 27, 2022)**

James Ardaiz is a former Administrative Presiding Justice of the Fifth District Court of Appeal. A graduate of U.C. Hastings College of Law, Ardaiz joined the Fresno County District Attorney's office, and went on to become Chief Deputy District Attorney. He was elected a municipal court judge at age 32, and then was named as one of the youngest appellate court judges in California history. Ardaiz was the principal author of the California Three Strikes Law and created the Adult Offender Program, resulting in significant changes in criminal punishment as an alternative to incarceration. He was named California Jurist of the Year by the Judicial Council and is a four-time recipient of the Kleps Award for Judicial Administration. He retired from the judiciary in 2011 to enter into private practice.

*Ardaiz on being with Witkin:*

Bernie could be a very social guy and there was no pretense to him that I ever saw, even though he was always treated very deferentially. Which I think he felt was his due. <Laugh> But among a closed circle of people, he was very much an average guy. When he walked into a room, he would know everybody and he would tell the same jokes. There were never any new jokes. But they were always funny. I don't know why. I'd heard the joke, maybe 50 times. And it was always funny.

*Ardaiz on Witkin's influence:*

Bernie was a guy that, well, he made careers. I don't know that he broke anybody, but I know he definitely made careers. If you were going to go up in the judiciary, Bernie Witkin was the guy whom governors called. I know he did it for other people. There are a lot of people who owe the advancement of their careers to Bernie and probably don't even know it. He never talked to you about it. He never said, I'm going to go call so and so. He never did that.

### **Marvin Baxter (Interviewed November 19, 2021)**

Marvin Baxter is a former associate justice of the Supreme Court of California. A graduate of Hastings College of the Law, Baxter joined the Fresno County District Attorney's office. After two years, he went into private practice in Fresno. He served as president of Fresno County Young Lawyers and the Fresno County Bar Association. Governor George Deukmejian named Baxter as Appointments Secretary and his principal advisor on all

gubernatorial appointments made to the executive and judicial branches of government. Baxter served in that capacity for six years and assisted in the appointment of more than 700 judges. He was appointed as an Associate Justice of the Court of Appeal, Fifth Appellate District, and then served as an Associate Justice of the Supreme Court of California for 14 years, until his retirement in 2015.

*Baxter on replacing Chief Justice Bird and two other justices after the 1986 retention election:*

I did reach out to Bernie in that case, and I did receive his input. Another area where I thought Bernie could provide help, or at least the possibility of help, was in terms of administrative abilities. I certainly reached out to him when it was time to consider the replacement of the chief justice. Of course, the Governor himself had personal knowledge of Malcolm Lucas's abilities. But Bernie certainly confirmed that. That would've been an instance where I recall a specific conversation with him and I thought his input was very helpful.

**Dave Bonelli, John Hanft, and Lee Nicolaisen**  
(Interviewed March, 3 2023)

Dave Bonelli is a former co-director of the Witkin Legal Institute. Bonelli worked for Bancroft Whitney as an attorney editor, and was transferred to the Witkin Department, which Bancroft Whitney had created in 1981 to support Witkin in writing his treatises. After Witkin's death in 1995, Bonelli was named founding co-director of the Witkin Legal Institute.

John Hanft is a senior principal attorney editor with Thomson Reuters. Hanft was an attorney editor at Bancroft Whitney. He was an original member of the Witkin Department and was later named founding co-director (with Bonelli) of the Witkin Legal Institute.

Lee Nicolaisen is a former attorney editor with Bancroft Whitney and was also selected as an original member of the Witkin Department at Bancroft Whitney. She and Dave Bonelli are married.

*Bonelli on working in the Witkin Department:*

At Bancroft Whitney, working for Bernie was the pinnacle of the kind of work you could do in legal publishing. It was the most prestigious publication for California attorneys. So I felt like the daily work was really important for the bench and the bar of California, and I couldn't let them down.

*Hanft on being edited by Witkin:*

He wanted things to be clear and concise from the beginning. But he had many style rules and peculiarities. Sometimes he would get quite agitated reviewing the manuscript because we would keep doing something that he didn't like in trying to follow the rules and hoping to be consistent. So you can see him looking at a chapter and getting more and more anxious. On page one, he would correct something you did and by the time he got to page 25, he'd be fuming: "Why do you continue to do this?" <Laugh>

*Hanft on Witkin's humor:*

Bernie liked to tell jokes. He liked to be the center of attention. And his humor was appropriate for the Borscht Belt in the thirties and forties, not for the corporate environment in the eighties and nineties. Certainly not the two thousands, certainly not later. There were many circumstances where Bernie would tell a joke that was either a little off color or not politically correct. I think the tendency of all of us in the department was to let it go because he was well-intentioned.

**James Brosnahan (Interviewed November 30th, 2021)**

James Brosnahan is a Senior Trial Counsel at Morrison & Foerster in San Francisco. A graduate of Harvard Law, Brosnahan has more than half a century of trial experience, having tried more than 150 civil and criminal trials to verdict. He has been named among the top 30 trial lawyers in the United States, was inducted into the State Bar of California's "Trial Lawyers Hall of Fame," and received the Samuel E. Gates Award by the American College of Trial Lawyers, the American Inns of Court Lewis F. Powell Award for Professionalism and Ethics, and the California Lawyers Association Bernard E. Witkin Medal.

*Brosnahan on Witkin's personality:*

With all of his erudition, all of his scholarship, and all of his writings, he was a party person. People really admired him, not just for his scholarship, but for his camaraderie and his jokes. I saw this for years. He could tell jokes and get a crowd going. He'd tell a funny joke about *res ipsa loquitor* and they'd be falling out of their chairs. He had that ability.



*Brosnahan on citing to Witkin as legal authority:*

I have no memory of citing Witkin and then losing. That's an exaggeration, but you get the idea. The gravitas of the name was in some ways more important than any other judge whom you could cite. I would always try, as lawyers do, to cite a judge that held this, that really is well respected. Witkin was above all that in his persuasive gravitas, when judges heard what Witkin said. The case might not be decided. He would say that certainly. He might even say, maybe it's going to be this way or that way. But when he said it was this, then it was that. Trial judges, especially where I spent a lot of my time, didn't want to go up to the California Supreme Court against Bernie Witkin.

### **Ming Chin (Interviewed December 16, 2022)**

Ming Chin is a former Associate Justice of the Supreme Court of California. A graduate of the University of San Francisco, School of Law, Chin served two years as a Captain in the United States Army, including a year in Vietnam, where he was awarded the Army Commendation Medal and the Bronze Star. He then served as a deputy district attorney for Alameda County, then felony trial deputy, before leaving for private practice. Chin was also the first Asian-American to serve as President of the Alameda County Bar Association. Chin served as a judge of the Alameda County Superior Court, and then was appointed an associate justice of the First District Court of Appeal, where he became Presiding Justice of Division Three. Governor Pete Wilson later appointed Chin to the California Supreme Court, where he served for 24 years. He is an author of treatises on employment litigation and forensic DNA evidence.

*Chin on Bernie recommending his elevation to the California Supreme Court:*

I was astounded, frankly, that Bernie would call me at all. It was after we had a dinner in San Francisco with Bernie and Alba. That was the last day that I spent with Bernie. I was surprised that, number one, that he would call me and ask me, and number two, that he would even think of calling the governor and recommending me. He was such a good friend. I don't know how I deserved it. He was a hero to me.

### **Norman Epstein (Interviewed October 26th, 2021)**

Norman Epstein was the former presiding justice of the Second District Court of Appeal, Division Four. A graduate of U.C.L.A. School of Law,

Epstein was a deputy attorney general with the California State Department of Justice, then the first general counsel of the California State University System. He was appointed a municipal court judge for Los Angeles County, then a superior court judge. Epstein was appointed associate justice for the Second District Court of Appeal, Division Four, and later became presiding justice for that division. He served on the Court of Appeal for 28 years and as a judge for 45 years. He was a consultant to Witkin on his two criminal treatises, then became Witkin's co-author on the combined *California Criminal Law*. He also wrote the *Digest of California Cases* and co-authored *Civil Trials and Evidence*. He received the Jurist of the Year Award from the Judicial Council, The President's Award from the California Judges Association, and the Bernard Witkin Medal from the California State Bar. Epstein passed away on March 24, 2023.

*Epstein on getting a call from Witkin proposing they collaborate:*

I was told that Bernie was going to call, and he called and said "I'm going to talk for 15 minutes. Do not interrupt. When I finish, you can say anything you want." So he spoke for exactly 15 minutes. He laid out what he had in mind, and how things would work, and said "All right, now you can say whatever you want." I said, "Well Bernie, could I come up to Berkeley? Could we sit down and talk together?" That's how we left it. I was so overwhelmed, even though I was tipped off about it. My wife and I went up to Berkeley and stayed with the Witkins. I was just delighted to be working for Bernie Witkin, so I really didn't expect much by way of compensation. At one point I asked what it was, and I don't remember what it started out as, but anything would have been wonderful.

*Epstein on the uniqueness of Witkin:*

I know of no one in any other state that is similar to Bernie. I can't say there aren't any, or weren't any, and probably is somewhere, but not that I've heard of. Some judges, perhaps, but Bernie wasn't a judge and he never practiced law except for about a year after he graduated. But he had such a total command of the whole field of the law. The four treatises are just amazing. So it was a privilege to work for him. And we got along just wonderfully, everything about it. And with Alba as well. Looking back on it, it was probably, if not the most wonderful thing, one of a couple that ever happened to me or that I was associated with.

**Arthur Gilbert (interviewed June 18, 2022)**

Arthur Gilbert is Presiding Justice of the Second District Court of Appeal, Division 6. A graduate of University of California, Berkeley Law, Gilbert served as a deputy city attorney for the city of Los Angeles before entering private practice. He was appointed a municipal court judge and then a superior court judge for the county of Los Angeles. He then was appointed as Associate Justice Court of Appeal, Second District Division 6 and later presiding justice for that Division. He has served on the Court of Appeal for over 40 years. He has received the Kleps Award from the Judicial Council and the Bernard S. Jefferson Award from the California Judges Association. He writes a monthly column for the Los Angeles Daily Journal entitled “Under Submission.”

*Gilbert on Witkin at conferences:*

Bernie would go to conferences and he'd be a character. He'd put a glass on his head, balance it, and walk around and tell stories. He'd ask me, “What's your latest joke?” So I would tell him a joke and then he'd be telling the joke to other people, like it's his joke. <Laugh> So I would kid him and say, “Bernie, are you going to tell me one of my jokes now?”

*Gilbert on attending a Witkin lecture:*

I knew from his books how he clarified legal concepts in plain English. His exposition of the law was readily understandable to me. When Bernie gave his lectures, he had an ego and liked to be center stage, but it was wonderful. He would have little clever phrases that he would use to describe what was going on. They didn't appear much in his writing; there he was a little more restrained. He was a compelling speaker. He'd be talking at the microphone and we're just scribbling, and listening, and watching him. Anytime Witkin was speaking on anything, the place was packed and I'd be there. You just had to go to hear Witkin.

**Seth Hufstedler (interviewed January 6th, 2022)**

Seth Hufstedler is senior of counsel to Morrison & Foerster in Los Angeles. Before graduating from Stanford Law School, Hufstedler served in the US Naval Intelligence during World War II. After graduation, he went into private practice and represented clients before California appellate courts, the Ninth Circuit Court of Appeals and the United States Supreme Court. Hufstedler also represented the California Commission on Judicial Performance in its televised investigation of the California Supreme Court. His spouse, Shirley

Hufstедler, was the first U.S. cabinet-level Secretary of Education under President Carter and the second woman named to the federal appellate bench. At the time of the interview, Hufstедler was 99 years old.

*Hufstедler on Witkin's personality:*

This probably will be misunderstood, but to some extent Bernie Witkin was a clown. He wanted to be the centerpiece, and he wanted to perform, and he wanted to entertain people. That was true from the beginning.

*Hufstедler on Witkin and Roller Derby:*

One of the great stories of Bernie, and you probably know parts of it because I've told it on various occasions, but Bernie was one of the world's great intellects. And yet he was interested in ladies roller derby. Who would ever connect Bernie with roller derby? But he did. It didn't ever become a terrific attraction, as you would suspect. At an early age, he got acquainted with it and Bernie would go through the newspapers and the listings of every place he could find to go watch roller derby. The night Bernie died, in fact, Bernie found a roller derby, had a great time watching it, went to bed, woke up, decided he had to go to the bathroom, and fell over dead on the way. He died happily, doing exactly what he wanted to do. At 94, and he got to watch his roller derby.

### **Jack Leavitt (interviewed October 18th, 2021)**

Jack Leavitt is a former collaborator on Witkin's *California Evidence*, *California Crimes*, and *California Criminal Procedure* treatises. After graduating from the University of Illinois, College of Law, Leavitt received his masters of law from University of California, Berkeley Law. He then worked as a legal editor and in private practice. After meeting Witkin, they began collaborating, and he worked on the treatises while accepting death penalty appeal cases for indigents. After their collaboration ended in 1979, Leavitt served as a deputy district attorney for Alameda County and then a staff attorney at the 6th District Court of Appeals.

*Leavitt on writing with Witkin:*

We were two bright people. The reason that he cared for me is that I did not give him tired work. But I have a self-image which is pretty strong, still is. So he and I would quarrel. We would quarrel furiously over the proper use of a semicolon and whether to begin a sentence with "however" or to have "however" after the first phrase. So yeah, we butted heads together. And he liked that.

*Leavitt on Witkin's humor:*

I remember him saying: “here we are, the two of us. You are one of the greatest minds in California law, respected by thousands. And just the second smartest in this room.” Did I say to you his comments about me? “Leavitt, I tell everybody that your work is excellent. Excellent. Which is far below my usual standard.”

**Clyde Leland (Interviewed January 17, 2022)**

Clyde Leland is owner of Leland Communications, Inc., which trains lawyers on how to improve their writing. C. Leland's uncle, Henry Robinson, was a classmate of Witkin at U.C. Berkeley and they remained close friends until Robinson's death in 1973. Witkin was also a family friend of the Lelands; C. Leland grew up knowing Witkin. C. Leland interviewed Witkin in 1989 for an extensive profile published in *California Lawyer* entitled “The Ineffable Bernie Witkin at 85,” and in 1994, he produced a short film about Witkin on his 90th birthday on behalf of the *Continuing Education of the Bar*. C. Leland is the younger brother of Marc Leland (also interviewed).

*C. Leland on Witkin and the California Lawyer article:*

I had pretty good access. It was after that, that we really had more of a relationship. I had sent him the article for a fact-check right before it was published. He was so put off about that opening line about the fool, that he said, “I'm not going to let you publish it.” I was telling him, “Well, you can't stop it.” Then the Loma Prieta earthquake happened and Bernie almost lost his life. I think then he decided it's not worth fighting with people. He called me and had me come over. From then on, we were good friends.

**Marc Leland (Interviewed January 20, 2022)**

Marc Leland is president of Marc E. Leland & Associates, an investment advisory firm. After graduating from Harvard Law School, he joined Cerf, Robinson & Leland in San Francisco, where his uncle Henry Robinson was a partner. On Robinson's death, M. Leland became Witkin's lawyer and worked on both Witkin's personal affairs and establishing the Foundation for Judicial Education, which funded the writing of benchbooks for judges. Thereafter, Leland served as General Counsel of the Peace Corps and then Assistant Secretary of the Treasury for International Affairs under President Reagan. He presently resides in London. M. Leland is the older brother of Clyde Leland (also interviewed).

*M. Leland on Witkin analyzing a case:*

It was something to watch him, how he did that, how he would take a case, and just take it apart within two seconds and decide this was what you did with it. It came out fluidly. Who could explain it?

*M. Leland on Witkin's promoting judicial education:*

His view of judicial education was really far-sighted. He thought ahead on that issue, in the 1970s, that judges should have some understanding of what they're doing. Now it's accepted everywhere, same thing with congressmen, but it wasn't then.

**George Nicholson (Interviewed August 30, 2022)**

George Nicholson is a former Associate Justice of the Third District Court of Appeal. After graduating from U.C. Hastings, Nicholson joined the Alameda County District Attorney's Office and rose to Senior Trial Deputy District Attorney. He left to become Executive Director of the California District Attorneys Association. He then became a special (later senior) assistant attorney general. He served as a municipal court judge for Sacramento County, then a superior court judge. He then was elevated to the Third District Court of Appeal, where he served for 28 years until his retirement. Nicholson was the statewide co-chair and principal author of Proposition 8, the "Victims' Bill of Rights," which California voters adopted in 1982. That year, Nicholson ran as the Republican candidate for California Attorney General.

*Nicholson on the Witkin treatises:*

Counsel often focus on what the cases say about a statute, but invariably, you've got to ask counsel, not only "What does the statute say?" but "what does the statute mean?" Witkin's treatises are kind of like that. "What does Witkin say?" and then, "What did he mean?" But, you don't default to Witkin. I don't think he expected that. Maybe he did <Laugh>, but I don't think so. He wanted you to do your own work, your own thinking. He was merely trying to help you do that.

He got you into the right county when you're traveling along on a specific legal problem. He grounded your research in such a way that everything was contextual and understandable. Bernie was at the elbow of every judge and lawyer in California, just as he is still.

*Nicholson on Witkin's personality:*

He was so childlike in his joy.

### **Winslow Small (Interviewed December 13th, 2021)**

Winslow Small is a solo attorney and former advisor to Witkin on publishing matters. After graduating from U.C. Hastings, Small first went into private practice and then served as counsel in the anti-poverty program. From there, Continuing Education of the Bar (CEB) hired him as a legal editor and writer. He then joined the Center for Judicial Education and Research (CJER) as an assistant director. During that time, he worked closely with Witkin, who was a co-founder of CJER and a member of its governance board. After Small's retirement from CJER, Witkin hired him as an advisor with primary responsibility to represent Witkin to the publisher of Witkin's treatises. Small was instrumental in establishing the Witkin Legal Institute, which came into operation on Witkin's death.

*Small on Witkin's relationship with CEB:*

Bernie and Curt [Karplus] became very close. Every time CEB wanted to launch a new idea, like a simulcast, or a video presentation for rural counties, they would kick it off with a presentation by Bernie. Everything that CEB did for many years, it was almost always launched by Bernie.

*Small on how Witkin organized his work:*

Bernie had his famous shoe boxes and that's how he organized, he organized around shoe boxes and piles. Alba thought that was wrong. She thought it ought to be in filing cabinets, filed alphabetically. And her extensive files on their trips and other matters were amazing. So, I said to Alba, these big piles are processing piles. He goes down that pile and he just processes it that way. It's his style and it works. That was my guess about what he does, because that's the only way you can do it when you have a big pile. But the piles did have adequate organization and the end product was always meticulously organized. That's what you do with a book. The processing and organizing are more or less done at the same time. Bernie could do both. We're talking about lectures, written materials, and the books.

## Michael Traynor (Interviewed December 7th, 2021)

Michael Traynor is the son of Chief Justice Roger Traynor and Madeleine Traynor. Both were early friends of Witkin (Madeleine from high school and Roger from law school) and their friendship continued throughout their lives. Michael Traynor is senior counsel at Cobalt LLP in Berkeley, California. After graduating from Harvard Law School, he joined the California Attorney General's office, then went into private practice. He has served as president of the San Francisco Bar Association, President of the American Law Institute, and Chair of ALI's Council. He received the John P. Frank Outstanding Lawyer Award from the U.S. Court of Appeals for the Ninth Circuit. He is an honorary life trustee of the Lawyers Committee for Civil Rights under Law and of Earthjustice.

*Traynor on Witkin and Chief Justice Traynor:*

He was a friend of both my parents and they respected and liked him. I don't remember seeing him in the house. They did entertain a little bit, and probably exchanged dinners and saw each other that way, and certainly professionally. When my dad put Bernie on the Judicial Council, I think that was out of great regard for him.

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## About the Author

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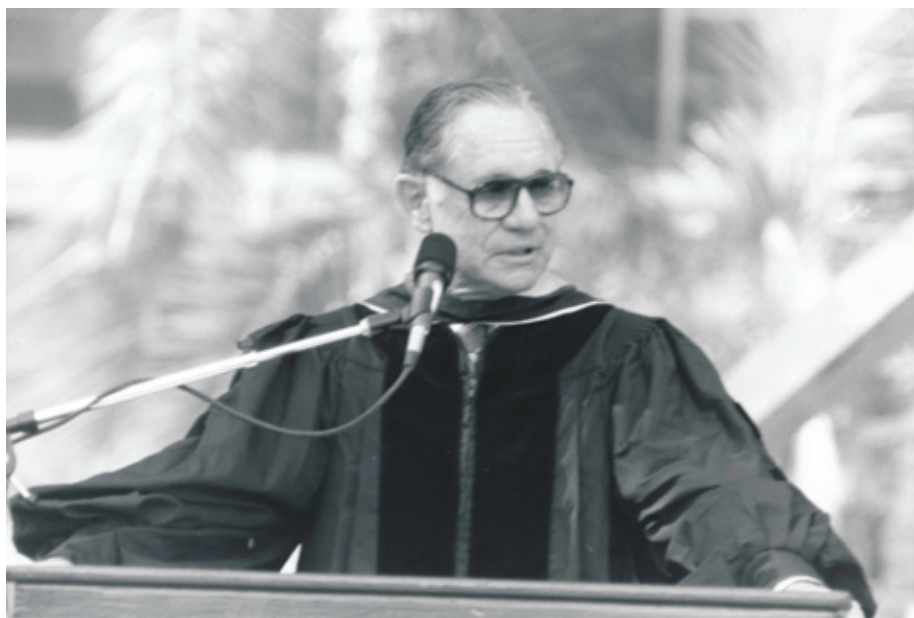
John R. Wierzbicki is a legal writer, historian, and intellectual property lawyer. He is lead publication editor for the Witkin treatises, which are published by Thomson Reuters. He is also a member of the Board of Directors of the California Supreme Court Historical Society (CSCHS). He recently published a series of articles in the *CSCHS Review* on the early life and career of Bernie Witkin. He is working on a Witkin biography.



ORAL HISTORY BY LAURA MCCREERY  
WITH AN INTRODUCTION AND CONCLUSION BY RYAN CARTER

# From the 'People's Court' to the Supreme Court

Remembering The Legacy of  
Justice John Arguelles



John Arguelles  
Associate Justice, California Supreme Court  
1987-1989



*John A. Arguelles (Photo courtesy of the UCLA School of Law Image Archive and Jeanine Arguelles.)*

## AN INTRODUCTION

John A. Arguelles' life as a judge, and ultimately a justice who played a pivotal role on the California Supreme Court, was anchored in a civility that among attorneys long earned him the nickname "The Cardinal."

It was a moniker inspired by Arguelles' gentlemanly disposition, forged through decades of jurisprudence and leadership. His journey culminated in two crucial years in the late 1980s, when he was called upon to help "rebalance" the Court amid a turbulent time in California politics.

Fast forward nearly 40 years to now: An era of relentless polarization and incivility in society - enough so that even the state's own Bar has taken steps that take effect in 2024 to promote more "dignity, courtesy and integrity" among attorneys.<sup>1</sup>

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<sup>1</sup> Justice Arguelles' approach is much needed today in an era of incivility in the practice of law. A 2021 report said the legal profession suffers from "a scourge of incivility." It was pervasive enough to persuade the State Bar of California Board of Trustees, as noted above, to "approve measures to improve civility in the profession." "State Bar of California Board of Trustees Approves Measures to Improve Civility in the Legal Profession," State Bar of California, press release, July 21, 2023, <https://www.calbar.ca.gov/About-Us/News/News-Releases/state-bar-of-california-board-of-trustees-approves-measures-to-improve-civility-in-the-legal-profession>. See also "Beyond the Oath: Recommendations for Improving Civility - Initial Report of the California Civility Task Force," pg. 2, California Lawyers Association and the California Judges Association, September 2021, <https://caljudges.org/docs/PDF/California%20Civility%20Task%20Force%20Report%209.10.21.pdf>. For related information, "Attorney Civility and Professionalism; Civility toolbox; California Rules of Court, Rule 9.7 - Revised Attorney Oath; Guidelines on civility and professionalism, Bar Associations, Courts, Articles," <https://www.calbar.ca.gov/attorneys/conduct-discipline/ethics/attorney-civility-and-professionalism>.

In this context, Arguelles' approach, his understated tone, and his story – whether one agrees or not with his politics – become a much-needed beacon in a fractious time.

Arguelles' journey has its roots in the Depression-era working-class suburbs of East Los Angeles.

It is from there, where from modest beginnings rooted in Depression-era American life, Arguelles' journey in the law ascended from a small private practice and civic elected life to the highest court in the state.

All the while, the man who once considered becoming an optometrist before changing course, was developing a judicial philosophy and administrative style that would make him a coveted pick for the bench among governors of differing political stripes.

In Laura McCreery's<sup>2</sup> expansive, 4-part series of Q&As with Arguelles in 2006, an excerpt of which we publish in part here, a picture emerges of a man who embraced a “no-nonsense” approach to his jurisprudence, which played itself out in a pivotal moment for the California Supreme Court.

As Manuel A. Ramirez – presiding judge of the Fourth District Court of Appeal – noted in a preamble to McCreery's Q&A, Arguelles' judicial career is noteworthy, in part, because he served on four court levels: the Municipal Court, the Superior Court, the Court of Appeal, and the California Supreme Court.

“Even more telling, though, is the fact that he was appointed to the bench four times by three very different governors—of both major political parties. Indeed, we could say his career is *sui generis*,” wrote Ramirez, who paid tribute to Arguelles as his friend and mentor.

Arguelles would come to be known as a steady, even-handed and conservative judge, and one who took a certain pride in the fact that his ascent was propelled by forces on both sides of the political spectrum.

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<sup>2</sup> John A. Arguelles, “Stepping Up to the California Supreme Court: Twenty-Six Years of Judicial Service at Every Level of the California Court System, 1963-1989,” an oral history conducted in 2006, Institute of Governmental Studies, University of California, Berkeley, 2009. McCreery conceived of the *California Supreme Court Oral History Project*, initially, with but four justices in mind, who by 2005-06 had retired from the bench: Arguelles, Chief Justice Malcolm Lucas, Armand Arabian and Edward Panelli. The idea, she noted, was to produce interviews with justices who served overlapping time periods with a goal of offering a richer historical account of the lives and careers of justices who were pivotal at a historic time for the Court in the mid to late 1980s. Arguelles would be the second interview in the initial series - Panelli, Arguelles, Arabian, Lucas. Her work would go on to span her oral histories for nine justices. For more, see [https://www.worldcat.org/search?q=au%3ACalifornia+Supreme+Court+Oral+History+Project.&qt=hot\\_author](https://www.worldcat.org/search?q=au%3ACalifornia+Supreme+Court+Oral+History+Project.&qt=hot_author) and “California Leads in Oral Histories of State Supreme Court Justices,” California Supreme Court Historical Society Review, Spring/Summer 2020, <https://www.cschs.org/wp-content/uploads/2020/06/2020-CSCHS-Review-Spring-Oral-Histories.pdf>.

It was that steady hand as an efficient administrator that made him a key figure in rebalancing the California Supreme Court after the unprecedented rise and fall of Chief Justice Rose Bird,<sup>3</sup> whose controversial tenure from the late 1970s to the mid-1980s was marked by an ardent liberalism that weighed heavily on voters of the era. It was an era when the electorate was more sympathetic to more conservative policy platforms, among them capital punishment.

As we'll see in Arguelles' own words, while Bird's liberalism propelled much of the swift reversals of death penalty cases from the lower courts, he'd been troubled from the start in Gov. Jerry Brown's decision to appoint a chief justice with no experience on the trial or appellate benches, let alone administering the state's highest court and its judicial system.

While we shine a spotlight here on Arguelles' elevation to the California Supreme Court, a focus solely on Arguelles' pivot to the Supreme Court and any of his assessment of the Bird era would do little justice to the journey he forged on his own path to the bench.

He was the court's second Latino justice. From working-class origins, his journey to the highest court in the state was not at all foreseeable at the beginning.

"I just personally had a wonderful career, and I happened to be at the right place at the right time, when the wind conditions were such that good things happened to me in all those years along the way," the humble jurist tells McCreery.

So, to get to his California Supreme Court moment, we need to set the table, with help from McCreery's oral history<sup>4</sup> to better understand Arguelles' roots and public service, which coincide with a growing post-World War II Los Angeles, a burgeoning UCLA Law School and a cascading court system.

<sup>3</sup> Chief Justice Rose Bird was the first woman appointed as a justice of the California Supreme Court and the first woman to serve as Chief Justice of California, and chair of the Judicial Council. Appointed by Gov. Edmund (Jerry) Brown Jr., she led the Court from 1977 to 1987. She died in 1999, after a battle with breast cancer. (<https://www.cschs.org/history/california-supreme-court-justices/rose-elizabeth-bird>)

<sup>4</sup> McCreery's oral history interviews with Arguelles were recorded over four days in the fall of 2006 at the law firm, Gibson, Dunn & Crutcher, in Irvine, where by then he was working as Of Counsel. As McCreery notes in the preamble to the full Q&A, he was "charming and distinguished, he addressed each topic with candor and insight. Through it all, he made certain our time together was both productive and pleasurable. He later chose to edit his draft transcript thoroughly, changing or eliminating words and phrases and excising selected passages. The final transcript is a more abbreviated and formal document than the draft." For brevity, we use portions of McCreery's oral history to focus in on Arguelles' elevation to the Supreme Court and the context around the moment. For a closer look at Arguelles' life and times, UCLA School of Law paid tribute to him in a virtual panel discussion on March 22, 2022. The video of the presentation, linked here, offers up not just a discussion of his impact but also shares audio recordings of Arguelles speaking about his life and times. "Celebration of California Supreme Court Justice John A. Arguelles '54," <https://www.youtube.com/watch?v=eZAVCR3bp1c>. A UCLA Law audio interview with Arguelles is also at <https://www.youtube.com/watch?v=VcbFpRKOoRQ>

## A 'HAPPY CHILDHOOD'

Arguelles' story aligns with the explosive growth of the L.A. suburbs following World War II, including the emergence of UCLA Law School and the rise of a generation of judges who as leaders would further develop the state's court system and its jurisprudence.

Despite the heights he would reach as a civic leader and jurist, it was a legal career that was anything but a given for a young Arguelles, born in working-class L.A. and raised amid modest means in an era shaped by the Great Depression and World War II.

Even with the extraordinary challenges of his era, as Arguelles describes it, his was a "happy childhood," where his and his sister Gloria Jean's father - an accountant by trade, and a Mexican immigrant - and their mother, herself trained in secretarial skills and from the Midwest - shielded their children from the harsh realities of the times.

"We were just normal happy little kids attending Winter Gardens Elementary School with our playmates," he tells McCreery. "In those difficult days, all of the neighbors in the area would help each other. We were all in the Depression together."

But it was an early life devoid of many mentors who could see him through something like a legal education.

Not that he would necessarily see that as a liability. Indeed. In a full read of McCreery's Q&A, Arguelles seems to embrace his self-made career journey.

In an interview with UCLA Law School a month before his death<sup>5</sup>, in April 2022, he recalled his early years at L.A.'s Garfield High School, where a quote from President Garfield inscribed along the school's proscenium archway stuck with him.

"The inscription read," recalled Arguelles, "There is no American youth, however poor, however humble, orphaned though he may be, who may not rise through all of the grades of society and become the crown, the glory, the pillar of his state, provided he have a clear head, a true heart and a strong arm."

"It's a wonderful quote, and I tried all my life to live by it."

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<sup>5</sup> UCLA Law News, "In Memoriam: Former California Supreme Court Justice John A. Arguelles," April 21, 2022, <https://newsroom.courts.ca.gov/news/memoriam-former-california-supreme-court-justice-john-arguelles>. For a closer look at Arguelles' life and times, UCLA School of Law paid tribute to him in a virtual panel discussion on March 22, 2022. The video of the presentation, linked here, offers up not just a discussion of his impact but also shares audio recordings of Arguelles speaking about his life and times. "Celebration of California Supreme Court Justice John A. Arguelles '54," <https://www.youtube.com/watch?v=eZAVCR3bp1c>. A UCLA Law audio interview with Arguelles is also at <https://www.youtube.com/watch?v=VcbFpRKOoRQ>.

While he would come to value getting an education and learning a skill, just how his career would manifest was not a foregone conclusion, even by the time he enlisted in the U.S. Navy, in which he served at the end of World War II.

But buoyed by the \$75 each month he received from the G.I. Bill, Arguelles would find himself at UCLA, a choice of university that came down to following a cousin's footsteps into school and the modest cost compared to a private institution such as USC.

As an undergraduate he would start carving out a path, making the daily commute in an old 1940 Chevy to campus from East L.A. to Westwood and back.

It was a winding path, to be sure, and certainly one that did not foreshadow becoming the first UCLA alumnus to serve on the state's highest court decades later.

"In 1946 I didn't know what I wanted to major in. All I knew is that I wanted a college education," he said.

While taking science classes to become an optometrist at the rapidly growing UCLA, he found that courses such as political science, government, economics and history were the ones that stirred his passion.



*John Arguelles and Martha Rivas-Sanchez (center) on their wedding day on May 3, 1958, in Palm Springs, along with best man Dr. Jose de los Reyes and his wife, who was made of honor. (Photo courtesy of the UCLA School of Law Image Archive and Jeanine Arguelles.)*

## THAT PASSION LED TO A SWITCH TO MAJORING IN ECONOMICS.

As he tells McCreery, “My grades picked up immediately. I scored As and Bs in all my courses in economics, whereas I had been a C student in physics and chemistry. I graduated in 1950 with a bachelor’s degree in economics.”

And so, the course for a future that may have led to medicine instead began to shift toward law.

Graduation would lead to a low-rung job at a downtown L.A. securities firm. That would lead to a then-still nascent but growing UCLA Law School, where he was propelled by a sense that a career in law would enable him to be “in charge of my own destiny.”

It was at UCLA Law<sup>6</sup>, from 1951 to 1954, where a young Arguelles would be exposed to great legal minds of the day.

In McCreery’s interview, Arguelles’ recollected the faculty at the then young Westwood law school<sup>7</sup>: There was Roscoe Pound, by then a “legendary” legal scholar who had been dean of the Harvard Law School but in Arguelles’ first year was visiting professor at UCLA, where he taught a course in equity. There was Roland Perkins, who taught criminal law. Harold Verrell<sup>8</sup> taught first-year property law. Richard Chadbourne for evidence. There was Ralph Rice, who taught taxation. And there was the dean of the law school, L. Dale Coffman,<sup>9</sup> who taught first-year torts. The young Arguelles liked him. But even Arguelles acknowledged that his confrontational style would “scare the hell out of you.”

Of course, it was a very different era socially. Arguelles’ graduating class in 1954 – just the third to graduate from the new school – reflected that. As he recalled – the class had 98 men and two women, and was devoid of the kind of diversity schools strive for now.

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<sup>6</sup> The Arguelles oral history also offers enlightening context and insights on the beginnings of UCLA Law, which opened in 1949 in temporary barracks behind Royce Hall. Eventually, the law school building was completed in 1951, and founding Dean L. Dale Coffman (whose deanship spanned 1949-58) presented the 44 members of the inaugural graduating class with their degrees in 1952. Source: “History of UCLA Law School,” UCLA Law, <https://law.ucla.edu/about-ucla-law/history#:~:text=On%20July%2018%2C%201947%2C%20California,1951%2C%20and%20founding%20Dean%20L.>

<sup>7</sup> For a great history on UCLA Law, check out “History of UCLA School of Law: A History of Innovation,” by Dan Gordon, UCLA Law Magazine, Volume 27, Fall 2004: [https://law.ucla.edu/sites/default/files/PDFs/Publications/UCLA\\_Law\\_Magazine/UCLALawMag\\_Fall2004.pdf](https://law.ucla.edu/sites/default/files/PDFs/Publications/UCLA_Law_Magazine/UCLALawMag_Fall2004.pdf).

<sup>8</sup> An oral history with Verrell can be found in California Legal History, 11 Cal. Legal Hist. 1 (2016), <https://www.cschs.org/wp-content/uploads/2014/09/Legal-Hist-v-11-Oral-History-Verrall.pdf>.

<sup>9</sup> Winston Wutke, “From the Oral History of L. Dale Coffman, 11 Cal. Legal Hist. 1 (2016), <https://www.cschs.org/wp-content/uploads/2014/09/Legal-Hist-v-11-Oral-History-Coffman.pdf>.

Among the women were Bonnie Lee Martin,<sup>10</sup> who later became an L.A. County Superior Court judge, and Joan Dempsey Klein,<sup>11</sup> who went on to become a celebrated champion of women's rights and the first woman to become presiding judge of a California appellate court.



*John Arguelles (right) poses with (from left) his father, Arturo Leopoldo Arguelles; his wife, Martha Arguelles; Gov. Edmund G. "Pat" Brown; and his mother, Eva Powers Arguelles, upon announcement of his first judicial appointment to the East Los Angeles Judicial District of the Los Angeles Municipal Court, in November 1963. (Photo courtesy of the UCLA School of Law Image Archive and Jeanine Arguelles.)*

<sup>10</sup> Martin was the first woman selected as outstanding trial judge of the year by the Los Angeles County Bar Association. Times Staff Writer, "Bonnie Lee Martin, 74; Judge in L.A.'s Municipal and Superior Courts for More Than 2 Decades," L.A. Times, April 9, 2005.

<sup>11</sup> Deborah Netburn and Anh Do, "Joan Dempsey Klein, a California appellate court judge and a champion of women's rights, dies at 96," L.A. Times, Jan. 3, 2021, <https://www.latimes.com/california/story/2021-01-03/justice-joan-dempsey-klein-obituary>.



## ARGUELLES' WORKING-CLASS ROOTS WEAVED THROUGH HIS TIME IN SCHOOL.

In the summer of 1953, he was a swimming instructor for the City of Montebello, heading a team of instructors. He'd work swing shifts on the assembly line at the Chrysler Motor Company in Maywood at night.

We learn that his early jobs included: shoe salesman for J.C. Penney on Whittier Boulevard, a salesman for Thrifty Drug Store in liquor and tobacco.

A “man of the people” persona begins to emerge.

“You quickly learn to identify with the people that are out there doing those kinds of jobs,” he tells McCreery. “I was not an elitist.” All the while, his mother worked as a typist, paying rent, buying the groceries – a fact that Arguelles did not take for granted when all those years later he would sit down with McCreery in 2006. “She carried me,” he said.



*Judge John Arguelles (left) with Gov. Ronald Reagan at the time of his elevation to the Los Angeles Superior Court, September 1969. (Photo courtesy of the UCLA School of Law Image Archive and Jeanine Arguelles.)*

It wouldn't be long though until he was making a name for himself. And that name would travel well, catching the attention of governors and earning a robust career.

- 1955: Admitted to the bar
- He'd soon start a private practice with his cousin, becoming a registered legislative advocate in Sacramento.
- He became president of the East Los Angeles/Montebello Bar Association.
- 1957: He was one of the founding members of the Mexican American Bar Association of Los Angeles
- 1963: He was elected to the Montebello City Council.
- Just before he was to begin serving as mayor, he was appointed to the Municipal Court, East Los Angeles District, by Gov. Edmund G. "Pat" Brown.
- 1969: He was appointed to the L.A. County Superior Court by Gov. Ronald Reagan.
- 1977-79: He was appointed by the Chief Justice to be a member of the California Judicial Council.
- 1984: Appointed to associate justice for the Second District Court of Appeal by Gov. George Deukmejian
- 1987: Appointed to the California Supreme Court by Gov. George Deukmejian

## THE SUPREME COURT BECKONS

Flash forward to 1986. By then, Arguelles' judicial career, which began at age 36, was nearing a horizon. Nearing 60, the then associate justice at the Second District Court of Appeal was within a year of retirement.

But even as he envisioned more time with family, the ever-changing political zeitgeist in California at the time was beginning to play to Arguelles' more conservative brand of jurisprudence.

The rise of a Republican governor – George Deukmejian (from Southern California no less – like Arguelles) exemplified a California whose politics at the executive state level had shifted from Brown's liberalism leading into the early 1980s to Reagan-era conservatism.<sup>12</sup>

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<sup>12</sup> Kevin Starr, "The Southern Californizing of Our Politics," July 6, 1986, Los Angeles Times, <https://www.latimes.com/archives/la-xpm-1986-07-06-op-23269-story.html>.

By 1986, Deukmajian's re-election only affirmed a brand of conservatism that contrasted with the foundations of the Supreme Court that Jerry Brown – Deukmejian's predecessor – had created.

After all, Deukmajian had built his campaigns around fighting crime, doubling down on the state's criminal-justice stance and shoring up its leaky finances.<sup>13</sup>



*Gov. George Deukmejian and Justice John A. Arguelles, whom the then governor had nominated to serve on the California Supreme Court. (Photo courtesy of the UCLA School of Law Image Archive and Jeanine Arguelles.)*

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<sup>13</sup> Claudia Luther and Richard C. Paddock, "George Deukmejian dead at 89, public safety and law-and-order dominated two-term governor's agenda," *Los Angeles Times*, May 8, 2018, <https://www.latimes.com/local/obituaries/la-pol-ca-george-deukmejian-dies-20180508-story.html>.

It would not be long before Arguelles would soon find himself on the forefront of a historic moment for the Supreme Court: A retention election, in which the Bird Court's very survival was at stake.<sup>14 15</sup>

It's in this historic moment where we pick up with McCreery and Arguelles.

We find a “no-nonsense” jurist who eschewed partisanship, proud of hard-fought tenures as a trial lawyer, a Montebello city councilman, becoming a judge at the municipal court, Superior Court and appellate levels – but ready to leave it behind.

History, it seems, would have another idea.

He was one of a fresh slate of jurists to emerge after what would ultimately be the departure of Justices Rose Bird, Cruz Reynoso,<sup>16</sup> and Joseph Grodin,<sup>17</sup> at a defining moment for the Court. Here, we find an Arguelles who could almost see the moment coming: “The governor put her in a very, very difficult position, and it didn't work out too well. It almost had disaster written all over it from the inception.” In the excerpt below, McCreery dives into this moment, probing Arguelles' perspective on the rise of Rose Bird and her court. Here, we find Arguelles wary of impending “disaster,” concerned that the court's integrity would be strained by an activist chief justice, appointed as a change agent, bent on overturning death penalty cases.

And from there, we go on the adventure with Arguelles, who had to make a big decision: Do you retire, or do you take up the historic task of being a justice of the highest court in the state?

**Editor's Note:** Please note that portions of the original Q&A were edited for brevity. We also added footnotes, for added context. For a full version of McCreery's Oral History with Arguelles, and others, and for more information, visit the UC Berkeley Library at <https://www.lib.berkeley.edu>.

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<sup>14</sup> In California, every four years, more than a third of California's 99 court of appeal justices face California voters for retention. Also, several of the seven justices on the California Supreme Court face retention elections every four years. The voters simply decide whether the justice shall continue to serve. If a majority of voters cast “yes” votes for a particular justice, that justice remains for another term, which is 12 years. The retention vote for Supreme Court justices is a statewide vote. “Appellate Retention Elections,” <https://www.courts.ca.gov/7426.htm#:~:text=Every%20four%20years%2C%20more%20than,may%20run%20against%20the%20justices>.

<sup>15</sup> Today, and for the past 10 years, the California Supreme Court has hit a stride. Since 2011, for instance, 85% of the court's decisions have been unanimous, according to data from the California Constitution Center. That has coincided with relative calm among the justices, and the public. But in 1986, the Court was a lightning rod for public ire over capital punishment in a very different political climate: Byrthonda Lyons, “Four justices vie to keep spots on ‘collegial’ California Supreme Court,” *CalMatters*, Oct. 25, 2022. (<https://calmatters.org/justice/2022/10/california-supreme-court-ballot-collegial>)

<sup>16</sup> Cruz Reynoso was the first Latino state Supreme Court justice in California history. On the Court, he is perhaps most known for authoring the landmark *People v. Aguilar*, (1984) 35 Cal.3d 785, where the court found non-English speaking people accused of a crime have the right to a translator during their entire court proceeding.

<sup>17</sup> Merrill Balassone, “In Memoriam: Justice Cruz Reynoso,” June 14, 2021, <https://supreme.courts.ca.gov/news-and-events/memoriam-justice-cruz-reynoso>.

## An Oral History | An Excerpt

### THE BIRD COURT, THE DEATH PENALTY AND 'AN OVERNIGHT CHANGE'

#### McCreery:

Justice Arguelles, let's return, if we might, to the subject of the overall California court system. We had spoken yesterday about Chief Justice Don Wright<sup>18</sup> and the extent to which you knew him and worked with him and so on. Of course, going back to before your time on the Court of Appeal, he had retired from the California Supreme Court, and Governor Jerry Brown had appointed Rose Bird his successor as chief justice. Can you just reflect for a moment on that event, as we said, occurring when you were on the Superior Court, and what sort of impression that made upon you?

#### Arguelles:

It was a remarkable appointment and very unusual.

In my experience, members of the Supreme Court had worked themselves up through the judicial ranks, and I felt that that was the best way of preparing oneself for an eventual role on the appellate courts.

I knew that my own years on the trial court were invaluable in preparing me for the appellate court.

But Gov. Jerry Brown was unorthodox in many of the things that he did. As I recall he had a personal friendship with Rose Bird<sup>19</sup> that stemmed back to their college or law school days.

She had been a former deputy public defender and civil rightist. For the governor of California to appoint someone to the Supreme Court without

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<sup>18</sup> Wright was chief justice of the California Supreme Court from 1970 to 1977. 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. Gov. Ronald Reagan appointed him to the state court of appeal in 1968, and then in 1970 appointed him chief justice of California. Julian H. Levy, "Introduction to the Oral History of Donald R. Wright," From remarks presented at The Chief Justice Donald R. Wright Memorial Symposium on the California Judiciary at the University of Southern California, November 21, 1985, sponsored by the Judiciary Committee of the California State Senate, et al, <https://www.cschs.org/wp-content/uploads/2022/01/Legal-Hist-v-9-Oral-History-Chief-Justice-Donald-Wright-full-text.pdf>.

<sup>19</sup> Bird was known as one of Brown's most trusted advisors. She was the first woman to serve on the California Supreme Court and only the second woman in the nation to lead a state court, following Susie M. Sharp, chief justice of North Carolina. In 1975, before her elevation to the Court, Brown appointed her secretary of Agriculture and Services, an agency of state government that employed 18,000 persons in 11 departments. It was known as a demanding job. She became one of two women to be named to a cabinet-level rank in the Brown administration, the first in California history. Robert P. Studer, "Rose Bird Immersed in Controversy," San Diego Union-Tribune, March 1, 1977, <https://www.sandiegouniontribune.com/news/local-history/story/2020-03-01/rose-bird-immersed-in-controversy>.

that person having had a day of trial experience or a day of experience at the intermediate court of appeal level was extraordinary.<sup>20</sup>

Now, all of a sudden that person, a stranger, was coming in as the head of the California justice system. It was very interesting, to say the least.

**McCreery:**

What sort of tone did she set as you recall it from the Superior Court bench?

**Arguelles:**

With her own appointment and the addition of other Jerry Brown appointees to the Supreme Court, it was a whole different ball game. Bird was chief justice. She would preside over the Supreme Court and the meetings of the Judicial Council. She would select the members of the various committees of the Judicial Council. She would determine who would sit as pro tems on the Supreme Court if there were any reasons for certain sitting justices to recuse themselves or be absent.

The Supreme Court had always had a moderate-to-conservative approach on all matters, both criminal and civil, and she brought a more liberal perspective to the Supreme Court.

Statistically, in the area of criminal law, there was an abrupt change in the philosophy of the Bird Court towards criminal proceedings, particularly in the area of the review of death-penalty appeals.<sup>21</sup> Her arrival brought extraordinary change.

**McCreery:**

As we know, nationwide there was a fresh look being taken at the death penalty, with it suspended at a national level for a time, and then the states were free to reinstitute it as they saw fit. How did California's situation, in your view, tie in with what was happening nationally in that regard?

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<sup>20</sup> While she had never been a judge, what Brown did like was Bird's reputation as an innovator as he sought a successor to Wright. Earning her law degree from Boalt Hall at UC Berkeley in 1965, she became the first woman in the Santa Clara County Public Defender's Office. She had also clerked at the Nevada Supreme Court. By the time she was in the Brown administration, she had her critics who knew her as a tough bargainer. While she was serving in the public defender's office in Santa Clara, she prepared a brief that persuaded the U.S. Supreme Court to refuse to hear a case that had been appealed by the attorney general of California. The case, *People vs. Kriwda*, involving a search of a garbage can, developed the concept of independent state grounds. While at the public defender's office, she founded the public defender's appellate branch. (Robert P. Studer, "Rose Bird Immersed in Controversy," San Diego Union-Tribune, March 1, 1977; but see, *California v. Greenwood* (1988) 486 U.S. 35, 38, 43.

<sup>21</sup> For a piece arguing that it was Bird's ardent opposition to the death penalty that was a catalyst for the vote against her, see Patrick K. Brown, "The Rise and Fall of Rose Bird: A Career Killed by the Death Penalty," [http://www.cschs.org/wp-content/uploads/2014/03/CSCHS\\_2007-Brown.pdf](http://www.cschs.org/wp-content/uploads/2014/03/CSCHS_2007-Brown.pdf).

**Arguelles:**

All I can recall about that turbulent period was that it became apparent in the months and the years that followed that the Bird Court was not disposed to carry out any of the death-penalty convictions, that there was a feeling by a majority of the members of the court that the death penalty was something that should be scrutinized carefully in our court and rarely applied.

One way of scrutinizing it was to determine whether there had been errors in death-penalty convictions of such a magnitude that the penalty should be set aside and the matters remanded for a new trial.

The Bird Court was very prone to do just that, finding prejudicial error warranting reversal that I myself felt was harmless error.

**McCreery:**

But you're saying the change was fairly dramatic during this period?

**Arguelles:**

Oh, it certainly was, extremely dramatic. It was just an overnight change.

**McCreery:**

What did you personally think of that, may I ask?

**Arguelles:**

I was always a conservative judge.

I felt that the death penalty was appropriate in certain extreme cases.

I had no quarrel with the law as it existed then. I sat as a trial judge on many death-penalty cases. I too heard the testimony in all of the trials that I presided over, when twelve citizens just like you and I, of diverse backgrounds and temperaments, unanimously, twelve to nothing, concluded that a person had committed a murder and that the circumstances of the murder were so extreme that the death penalty was warranted.

**McCreery:**

As a practical matter, what tangible changes did she make in the court administration system that might have affected you on the Superior Court? Or as time went on, you were elevated to the appeals court, of course.

**Arguelles:**

The big thing in those days that everybody seems to remember was the new approach that the California Supreme Court was taking to the resolution of death-penalty appeals and the number of reversals.

It was not leaving a good taste in the mouths of the California electorate. It was a subject of ongoing wonderment by the trial judges of California as well, including myself.

We trial judges were struggling to handle these very difficult cases, to see a trial through to its conclusion, to avoid error, to assure defendants the fairest trial we could give to them under the totality of circumstances.

It was disheartening to have our well-intended, best-effort results reversed on appeal because of perceived trial error, particularly when trial judges felt that there was an overreaching to accomplish that result. It was disheartening.

**McCreery:**

When you say overreaching, can you expand on that a little bit?

**Arguelles:**

A majority of the California Supreme Court members finding prejudicial error, when as the trial judge we had coped with the same arguments during post-trial motions and had concluded otherwise.

A lot of their decisions almost seemed to have been result-motivated. A trial judge couldn't help but feel a certain amount of resentment when the Supreme Court members reading cold transcripts weren't actually there at the trial listening to the testimony, seeing and hearing the witnesses, evaluating credibility, listening to arguments and so on.

I just felt that the trial judges were in a better position to have understood the totality of the drama that was being played out before us, to field and consider the various motions, and to have been able to evaluate whether they were sincere motions that had some meritorious muscle to them or whether they were just perfunctory arguments without basis.

Reading a cold transcript many years later, four hundred miles away, is different than having been at the actual trial scene. And to have one death-penalty case reversed after the other—a pattern emerges, and you begin to wonder. Maybe I was wrong in one particular case, maybe. I don't think so, but perhaps I was. But were all of the other judges wrong too? All of us?

**McCreery:**

Was this much discussed among you and your colleagues?

**Arguelles:**

Probably, to some extent. Yes. It just seemed like we had a Court where the majority of the members were result-oriented rather than issue-oriented and approaching death-penalty cases with a certain agenda.



**McCreery:**

We know that only about a year and a half later after Rose Bird was appointed, in the fall of 1978, she faced her first retention election, and a couple of others would have also been up for retention at that time. By then there was already some move afoot on the part of some persons to try to unseat her.

**Arguelles:**

Is that right? That early? That could also have been partially based on the fact that it was a referendum on the wisdom of Jerry Brown's appointment of a woman to head the California justice system without her having had any experience on the court.<sup>22</sup>

Maybe it wasn't so much the decisions that were being rendered, although that might be part of it, but also a review of the wisdom of having selected one that didn't look like she was prepared for that position.

But you tell me. Was that the basis of the opposition in '78? I wouldn't be surprised.

**McCreery:**

There was some at that time, and then, of course, by the time the other election came along—there was an intervening one in 1982—but by the time the '86 election<sup>23</sup> came along, there was quite an organized opposition and had been for some time, targeting, of course, both Chief Justice Bird and then the two of her colleagues, Justices Reynoso and Grodin.<sup>24</sup> But I just wondered if you remembered hearing much about attempts to make her a target at election time, . . . .

**Arguelles:**

There might have been, but I don't recall that earlier effort to unseat her. I didn't play any role in that. Judges did not get involved in that.

<sup>22</sup> Friends reportedly said Bird confided in later years that she wished Brown had made her an associate justice, rather than chief justice. Brown said in an interview that she never objected to the appointment. Many believe she might have remained on the Court if she'd been an associated justice. Maura Dolan, "Ex-Chief Justice Rose Bird Dies of Cancer at 63," Dec. 5, 1999, Los Angeles Times, <https://www.latimes.com/local/obituaries/archives/la-me-rose-bird-19991205-story.html>.

<sup>23</sup> Note that the three other justices on the Court who were on the ballot did not face organized opposition, and retained their seats easily: Justices Stanley Mosk, Malcolm M. Lucas and Edward A. Panelli. Frank Clifford, "Voters Repudiate 3 of Court's Liberal Justices," Nov. 5, 1986, Los Angeles Times, <https://www.latimes.com/archives/la-xpm-1986-11-05-mn-15232-story.html>.

<sup>24</sup> Gov. Jerry Brown tapped Grodin as an associate justice for the California Supreme Court in 1982. He had been sitting on the Court of Appeal, where he authored the decision in *Pugh v. See's Candy* (1981), a landmark opinion affecting worker's rights. But his tenure on the Supreme Court would meet the same fate as Bird's in 1986. Faculty, UC Law San Francisco, "UC Law SF Celebrates Joseph R. Grodin's Legacy on 90th Birthday," Aug. 28, 2020, <https://uclawfsf.edu/2020/08/28/joseph-grodin-legacy>.

**McCreery:**

No, I understand.

**Arguelles:**

Elected officials would pick that up and make it a political issue. They would have had a lot to work with in those particular days. There undoubtedly were many anti-Bird people, and outspoken pro-Bird people as well.

By the way, you just mentioned Cruz Reynoso and Joe Grodin. Have you interviewed them?

**McCreery:**

I have not, but they have been interviewed by others of my colleagues, yes. Both were just interviewed in the last couple of years.

**Arguelles:**

They'd have a lot to add to this. I'm sure that their experience on the court was not particularly pleasant. No one wants to be defeated at a retention election. It's just a horrible slap in the face when you go down to defeat, particularly since no California Supreme Court justice in the history of California since retention elections were instituted had ever been defeated, let alone three of them in one election.<sup>25</sup>

**McCreery:**

Let me ask you to recount your version of events in that 1986 election. Just how do you remember what transpired that resulted in the three justices losing their posts?

**Arguelles:**

There was a statewide hue and a cry about the Bird Court. There was a general perception by a majority of California registered voters that the Bird Court had indicated rather clearly that it was adverse to the imposition of the death penalty, despite the findings of trial jurors, and contrary to the overall sentiment of the California electorate that was in favor of the imposition of the death penalty in the extreme cases where it was warranted.

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<sup>25</sup> Despite their fate in the retention election, Both Reynoso and Grodin would be known for distinguished careers, even after their tenures. In 2000, President Bill Clinton awarded Reynoso the Presidential Medal of Freedom, the nation's highest civilian honor given to leaders who "have helped America to achieve freedom." Kevin R. Johnson, "Justice Cruz Reynoso: The People's Justice," <https://www.cschs.org/wp-content/uploads/2022/01/Legal-Hist-v-10-Oral-Hist-Section-Peoples-Justice-full-text.pdf>. In 2020, on his 90th birthday, UC San Francisco Law celebrated Grodin's legacy of scholarship and his mark on law and public policy.

The hue and the cry was apparent. Radio talk-show hosts, magazine articles, newspaper articles, the op-ed sections of newspapers where citizens can voice their concerns, editorial policy, the rantings of public figures and members of the Republican Party from the governor on down. It was a turbulent period leading right up to the retention election itself.<sup>26</sup>

I imagine that Rose Bird and the two other members of her court who were up for retention that year were sleeping a bit fitfully. And then, of course, we know the election result in 1986. As I earlier said, it was a historical event to not only have the chief justice of California fail to be retained by, I think, a rather substantial margin. She not only lost her own position, but she took two of her colleagues with her.

As I recall that was the first time in California's history since the retention elections had been enacted that a member of the court had ever failed to be retained, let alone three of them at one time. It was a significant statewide rebuff of the supreme court. It was an indication of great dissatisfaction with the court. How else could it be characterized other than that? The voters had spoken and the results were quite clear, weren't they?

### **McCreery:**

The '86 election was unusual in that six of the seven justices were up for retention that year. That's something we don't think of in recalling it. We think of those who lost their positions at that time, but even the newest justices, Malcolm Lucas and Edward Panelli, were retained that year. But, of course, for them it was not a problem.

### **Arguelles:**

Thank you for refreshing my recollection. Lucas and Panelli were on the court at that time. They were appointees of George Deukmejian, and they had probably written dissents to some of those death-penalty reversals. So being appointees of a governor that was leading the attack on Bird and those others that had joined her in wanting to reverse death-penalty convictions, I'm not surprised one bit that Justices Lucas and Panelli were able to avoid the wrath of the California electorate. Editorially, they probably were protected as well by the newspapers who urged their retention.

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<sup>26</sup> One major emotional appeal in the media campaign against Bird and her colleagues was that of Marianne Frazier, of Huntington Beach. One 30-second spot showed Frazier, the mother of a 12-year-old girl, sitting next to a framed photo of her daughter, who had been kidnapped and murdered. "But the man who kidnapped and killed her is still alive," Frazier lamented in the spot, urging voters to unseat the justices who overturned the killer's death sentence. Excerpt from Kathleen A. Cairns, *The Case of Rose Bird*, pg. 212, 2016, The University of Nebraska Press.

In the case of Stan Mosk<sup>27</sup>, he had been such a veteran member of the Court that I think he was probably viewed by editorial commentators on his entire record, which was a very fine record of judicial service. He was likely viewed as a statesman whose steady hand was needed on a new court if others were to leave. You have to remember that those that were not retained had all relatively short tenures on the court, certainly not of the duration of a Stanley Mosk.

**McCreery:**

Just as a general principle, what did this call to your mind and that of your colleagues, the whole idea of sitting judges being targeted by people who want to see them out, and also the idea of the electorate getting to decide whether judges stay or go?

**Arguelles:**

I can't speak for other judges. I can give you my own reaction. It's part of the Constitution.

We have retention elections for an important purpose. California state judges are not like federal judges. We are not appointed for life. We have to face the electorate periodically, but unlike members of the House of Representatives we don't face them as often as every two years. We have longer terms of office.

I think it's appropriate that our appellate justices come up for retention elections periodically, and with very rare exceptions they have nothing to fear.

I myself came up for several elections when I was on the trial court, the court of appeal, and on the supreme court, and people were taking a look at me, too. I think that's fine, frankly. I can't see anything wrong with it. I believe it can be therapeutic.

**BIRD ERA ENDS, ARGUELLES ELEVATED**

**McCreery:**

After that particular retention election in November of '86, when the electorate decided not to retain Chief Justice Bird nor Associate Justices Grodin and Reynoso, do you recall your immediate response to that outcome?

**Arguelles:**

I accepted the election results like every other Californian.

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<sup>27</sup> The Los Angeles County Courthouse was renamed in 2002 in honor of Mosk, who was the longest serving justice on the California Supreme Court and earlier served as attorney general of California. <https://live-laconservancy-wp.pantheonsite.io/learn/historic-places/stanley-mosk-courthouse-los-angeles-county-courthouse/>.

**McCreery:**

With no idea it would affect you so directly, as time went on?

**Arguelles:**

I may have had some vague idea, but that was not of particular importance to me at the time of the election.

**McCreery:**

Can you expand a little bit?

**Arguelles:**

In 1986, I was within a year of retiring. By then I had been on the court for 23 years. I was a veteran trial judge and to some extent an experienced intermediate Court of Appeal justice.

I was nearing my 60th birthday. I had been on the California courts since I was thirty-six, the best years of my life as a professional, so to speak.

Although I was sitting on the Court of Appeal and enjoying my work there, I was traveling long distances every day through the heart of California traffic. I was intending at that time, I thought, to probably retire when I reached age sixty.

The governor had been kind enough to appoint me to that appellate position. Upon retirement I would open up my position to someone else that he could choose to fill my spot. I'd return to my family and Orange County. I wasn't quite sure what I would then do, but I knew that there would be many options open to me. That was my general intention.

A lot of names quickly began to surface, and mine was one of them. I knew that the work was challenging, and it was a seven-day-a-week commitment, because there's an additional component to sitting on the California Supreme Court. It's not just working with staff and getting out opinions. A justice is a very visible person. You are in demand all over the state, from a speaking standpoint.

There are certain personalities that thrive in that kind of atmosphere, the public prominence and adoration. I'm not one of those persons.

In the years that followed, after I was one of the three that the governor selected, along with Dave Eagleson<sup>28</sup> and Marcus Kaufman<sup>29</sup>.

It was my informed belief that the thinking of Governor Deukmejian at that time was that the California Supreme Court, as one of our venerable

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<sup>28</sup> Eagleson would serve from 1987 to 1991. In 1981 and 1982, he served as presiding judge of the Los Angeles Superior Court, and was elevated from the Superior Court to the Court of Appeal for the Second Appellate District.

<sup>29</sup> Kaufman served from 1987 to 1990, after 17 years as an Associate Justice of the California Court of Appeal, Fourth Appellate District, Second Division

institutions in California, had been crippled as a result of the 1986 retention elections. It was just like this big, magnificent battleship that had taken a torpedo, and it was floundering in the water.

It was important that he replace the members quickly, and he decided that he could stabilize the situation quickly by selecting replacements that had not only trial experience, but had also served on the intermediate court of appeal. Persons who could step in almost immediately and acclimate themselves to the responsibilities of office.

If this was George Deukmejian's thinking, it made perfectly good sense to me.

All of us were quite experienced, yet getting close to retirement. The governor put all three of us on the court at the same time, knowing that fact. His expectation was that we would each serve a sufficient period of time to, hopefully, stabilize the court. But I don't think any of us could guarantee the governor that we would remain on the court for the long haul.

I retired in 1989, Marcus Kaufman in 1990, and Dave Eagleson in 1991, if my memory serves me correctly. Governor Deukmejian was able to name all of our replacements.

**McCreery:**

Because the three of you were appointed at the same time under the circumstances you describe, how was it decided what your seniority would be?

**Arguelles:**

Straws were drawn up in San Francisco. Representing each one of us was the attorney that was going to be the head of our individual staffs. The three staff attorneys got together, and they drew straws.

**McCreery:**

And you came out first?

**Arguelles:**

I came out first.

**McCreery:**

That made you number 101 of the cumulative appointees to the California Supreme Court.

**Arguelles:**

That's what they tell me. [Laughter] I would like to think that my seniority was based solely on merit, personality, and all of my other sterling qualifications, but it occurred simply as a result of a random draw.

**McCreery:**

You've described the kinds of conversations you had with Governor Deukmejian ahead of time with regard to your being near retirement age, possible length of service. Was there anything explicit arranged in that regard about how long you'd serve?

**Arguelles:**

No, it was very general and only after he had winnowed down the number of persons that he was considering. He had to be assured that I was willing to take the position, and I at the same time wanted to be completely candid with the governor.

He expressed what he wanted to accomplish with his appointments as to stabilizing the court, and I understood and agreed. My only comment to him was that I could not commit myself to being on the court for a long duration. I shared with him what my original plans had been. That was the extent of our conversation.

I believe Governor Deukmejian felt that he had known me sufficiently over the years that he felt comfortable with my appointment.

Knowing what a principled man he was, he certainly would never ask me to commit to a particular agenda or anything like that. I have to make that perfectly clear. Nothing even remotely approaching that type of subject matter ever came up in my conversations with him.

**McCreery:**

But you're saying that there were some things that clearly the court needed to take on for whatever reason?

**Arguelles:**

There are so many examples. The current court right now that is wrestling with such issues as same-sex marriages, abortion issues, environmental concerns.<sup>30</sup> It is reviewing the constitutionality of legislative enactments.

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<sup>30</sup> Two years after McCreery's interview with Arguelles, on May 15, 2008, the California Supreme Court held that California marriage laws' exclusion of same-sex couples violates State Constitutional rights to privacy, liberty and equal protection. But later that year, voters approved Prop. 8, a constitutional amendment to ban same-sex marriages, and the Court upheld it. It made its way to the federal courts, where in 2009 a U.S. District Court held that Prop. 8 violated the U.S. Constitution's 14th Amendment. Ultimately, a U.S. Ninth Circuit panel affirmed that Prop. 8 violated the U.S. Constitution. On June 26, 2013, U.S. Supreme Court's majority opinion in *Hollingsworth v. Perry* held that proponents of California's Prop. 8 lacked standing to appeal the lower court ruling invalidating the measure as unconstitutional, restoring marriage equality for same-sex couples throughout California. San Francisco City Attorney's Office, "San Francisco's Legal Fight for Marriage Equality," June 26, 2014, <https://www.sfcityattorney.org/2014/06/26/san-franciscos-legal-fight-for-marriage-equality-2>. A year later, the U.S. Supreme Court decisively resolved the matter in *Obergefell v. Hodges* (2015) 576 U.S. 644, a 5-4 decision, with the majority opinion authored by Justice Anthony M. Kennedy.

There are certain matters reflected in case opinions that the court feels it's compelled to take to establish or settle California law.

In addition, there is a vast number of cases that the court would also like to take, strictly from an interesting, academic standpoint, but time just does not permit the court to do so. Even though you might like to take them you feel the necessity of denying review and letting the court of appeal opinion stand as an expression of California law.

You are also aware that the Supreme Court has the ongoing decision to make as to whether published opinions of the intermediate courts of appeal, which become California law by virtue of their publication, are a proper expression of what California law should be or whether they should be depublished so they cannot be cited. Then, there are some instances when we have two courts of appeal in the state that might come up with a different result on the same issue.

**McCreery:**

And then you have to resolve that.

**Arguelles:**

Under those rare circumstances we have to step in and resolve that. And then, to add to the mix, there are emergency writs that are filed, in addition to just reviews from courts of appeal decisions, that we have to quickly act on. It's a fascinating variety of legal matters, substantively and procedurally, that come before the Supreme Court. I had to decide where and how I would perform my new duties on the court, which is physically located in San Francisco.

Because I didn't want to be separated for long periods from my family in Irvine, I became a commuter from Orange County. At about seven o'clock every Monday morning I would be at the John Wayne Orange County Airport, flying to San Francisco to start my work week. Like Dave Eagleson and Marcus Kaufman, I had rented a small apartment within a few blocks of the San Francisco courthouse so that I could walk to and from work without being concerned about public transportation or needing a car in the Bay Area.

I furnished the apartment rather sparsely. I purposely did not include a television set. I didn't want any of the distractions of TV. I spent my daytime hours at the court building, then walked back to the apartment. Most of the time I'd have dinner alone in my little apartment, mostly packaged market-bought frozen dinners that you could pop into the microwave oven. I would have my dinner by myself while I was reading briefs. I would do that until ten or eleven and go to bed.



Five days later, at the conclusion of the work on Friday, I would catch a flight and I would head home to Orange County. My wife would pick me up at the airport, we'd run off to the dentist or to the bank, quickly catch up on things. Then we'd usually have dinner together on that Friday night, and I would ask, "How was your week?" She'd say, "Fine. How was your week?" I'd say, "Okay. I don't have too much to report. How did our kids get by? What's new with Evan or Cathy or Jeanine?" or something like that.

**McCreery:**

It's a very different life.

**Arguelles:**

Taxing, but necessary. My wife had her own business in Orange County that rooted her there, and we adapted to our new schedule of my being in San Francisco most of the week. But we would have our get-togethers on Friday evenings, going out to dinner after we had run some errands that could only be done when I was there. Then on Saturday morning at about, oh, nine or ten o'clock, Federal Express would arrive with the copies of the petitions for review calendared for the following Wednesday morning's review.

**McCreery:**

You're indicating with your hands a stack about a foot high, I see.

**Arguelles:**

I'm exaggerating. The first Lucas calendar that we had after the retention elections, with the court floundering for months, I remember the stack was quite high. But after a while it became manageable. Nevertheless, there was enough there that required my spending most of Saturday and Sunday reading the petitions.

Frequently I also had speaking assignments on the weekends as well. I considered that an essential function of my office, to get around as a visible representative of the court. I felt that public officials that are holding office owed it to the electorate to make themselves visible and accountable. But I could only take on a certain amount of outside appearances because the work of the court came first.

I was able to balance that pretty well. My weekends were occupied with reading petitions and attending to professional assignments wherever they were occurring. On Monday morning, I was gone again. I'm on that plane to San Francisco to start the next week.

That was a very rough outline of how I spent the time that I was on the court. And, you know, one-week folds into the next week, and one-month folds into the following month, and one-year folds into the one after. It was certainly an interesting and busy time in my life.

**McCreery:**

In the aftermath of the '86 election and the fact that Chief Justice Lucas was elevated to lead the court, and then three of you were new, what approach did he take to leading this court in this time of great change?

**Arguelles:**

He did what he had to do. He took over as chief justice. I had no basis of comparison as to whether he was doing things differently—

**McCreery:**

I'm recording again. I'm sorry, I turned that off accidentally on you. You were talking about Chief Justice Lucas taking over as leader of the court.

**Arguelles:**

Yes, and you were asking me about how he handled that. I think he handled it very well. Malcolm Lucas<sup>31</sup> had served with Rose Bird as one of her associate justices. He was a member of the court during more turbulent times and had probably been an observer of a lot of things that could be done better. His tenure as chief justice was relatively smooth by comparison. Malcolm was a very competent man, a very professional man, both in appearance and in demeanor and approach. He had all of the credentials. He had started his judicial career as an L.A. County Superior Court judge and was there for several years. Then he went on the federal district court and was a fine, respected federal judge for additional years.

Then he was an associate justice of the Supreme Court. When he became chief justice, the bench and the bar had respected his credentials from the very beginning, and he was well received.

When he spoke, he spoke from a background of experience. That background had an element of authority that the bench and the bar could

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<sup>31</sup> Lucas served on the high court for 12 years, nine as chief justice after Bird. He was known to have steered the court to the right. Lucas vowed "to heal the wounds" when Gov. Deukmejian elevated him to the chief justice after Bird's departure. He was known for being approachable by other justices and easing tensions on the Court after a historically tumultuous period. Under his leadership, the court reportedly began upholding death sentences at a higher rate than any other supreme court in the nation. Maura Dolan, "Former Chief Justice Malcolm Lucas, who steered state's top court to the right, dies at 89," Sept. 29, 2016. <https://www.latimes.com/local/obituaries/la-me-ln-malcolm-lucas-obit-20160929-snap-story.html>

identify with. In addition to his professional credentials, he was a gracious man, a kindly man, a friendly person. As chief justice he went out of his way to encourage and develop camaraderie among the seven members of his court. He engaged all of us in a number of activities where we could do things together, attending functions en masse. We didn't break up into little subgroups.

He was a fine chief justice, in my opinion. He was very concerned about taking over a court that had been wounded in the eyes of Californians, and dedicated to righting the ship, so to speak, and processing the important work of the court.

Doing it in a very efficient, professional way. I had a lot of regard for Malcolm and still do. We remain good friends.

**McCreery:**

Were there other specific steps that Chief Justice Lucas took to remove the court from the spotlight in the state, following that election? How did he right the ship, to use your phrase?

**Arguelles:**

I can't recall any of the things that he specifically did, in direct response to your question. There were probably a number of things that had that result.

My general impression, as we sit here and I think about your question for the first time, is that he led by example and that the ship was righted because experienced people filled the void. The court stabilized and once again starting generating opinions and getting the workload out.

The justices of the court were individually making public appearances representing the court, hopefully making favorable impressions by what they said to reassure the audiences that the court was alive, well, and functioning properly. The backgrounds of the various individuals that were serving on the court I felt were impressive. There was nothing to indicate that the court was operating in any way other than efficiently and productively.

One answer to your question was the chief justice felt that it was imperative that we start vigorously attacking the great backlog of death-penalty cases. The inventory of death-penalty appeals was increasing and increasing. The chief felt they should receive priority.

You know the old adage of "justice delayed is justice denied," and I feel the chief justice was aware that the results of the 1986 retention election were due in great part to the feeling by Californians that the death-penalty cases

were not being handled properly by the Bird Court. He felt that we should concentrate primarily on the oldest of those cases, even though it meant that we had to put on hold important civil matters.

**McCreery:**

Thank you very much. With respect to those death cases and the great backlog that you've described, within this group now of seven justices, three of you brand new and Mr. (sic.) Lucas being newly elevated, what was the nature of, or what was the range of, approaches to the death cases? How contentious was that within your circle?

**Arguelles:**

I don't recall any contentiousness.

There might have been some cases where there was a disagreement, and there might have been some dialogue among the justices that disagreed with each other.

But that didn't occur often, and they weren't that contentious. A lot of times the ironing out of differences might have occurred at the staff level, without the justices necessarily becoming involved themselves.

**McCreery:**

Did your own views of the death penalty and all the associated issues evolve at all while you were on the state Supreme Court? Did anything happen to change your own opinions?

**Arguelles:**

I had developed a viewpoint gradually over all of the years that I had served on the bench. I think I carried to my role on the Supreme Court a certain philosophy about the area of criminal law in general, and death-penalty cases in particular, as a result of a vast accumulation of personal experiences that I had had in presiding over homicide cases and serving on the criminal courts for so long.

Whatever attitudes I had towards cases that came before me on the Supreme Court was just a reflection of the universe of experiences that I had had on the court up until that time. By that time we're talking about twenty-three years.

**McCreery:**

You've spoken briefly of each of your colleagues on the Supreme Court. Where was the center of this court, as it was newly reconstituted?

**Arguelles:**

Center of the court?

**McCreery:**

We always—at least the court watchers—think of it in terms of left, right, and center, but where was the middle?

**Arguelles:**

I don't believe we had any justice that was categorized as a "swing vote."

They talk about swing votes on the United States Supreme Court, which has nine members. People ask, who are the centrists? Who is the swing vote that's going to make it five to four one way, or five to four the other way?

When I was on the court, I didn't discern that any justices occupied that position. If anything, perhaps I did. There were some cases where I would split with the chief justice and Panelli and Eagleson, and I voted a different way. I think there were a few instances when that occurred.<sup>32</sup>

But more frequently, if we didn't have a seven-to-nothing opinion, we would have a 5-to-2 opinion, with Mosk and Broussard in the dissent and the five Deukmejian appointees agreeing with each other. If you were able to go back and study the many opinions that were rendered by the court during the years that I was on the court, I think you would perceive that pattern. But there were a few instances when the majority, so-called conservative Lucas Court didn't quite break down that way. I myself might have been as close to a swing vote as anyone. But that didn't occur often enough for any of us to be labeled as centrist swing votes, if you follow me.

**McCreery:**

We've been talking about your time on the California Supreme Court, and you made passing reference to the fact that Chief Justice Lucas had previously been a federal judge, as well as serving in the California court system. But the federal system in particular is not the usual path to the California Supreme Court, and it's a bit of a different system. Do you feel that experience had any particular effect on his leadership of the California Supreme Court?

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<sup>32</sup> Arguelles usually voted with the more conservative, Deukmejian-appointed bloc on the Court, and that was evident in his death penalty and tough-on-crime approach. But he did part ways from the conservative majority in notable cases, showing his more judicially centrist colors. For example, as L.A. Times Legal Affairs Reporter Philip Hager noted in a 1991 article, Arguelles joined two liberal dissenters when the court abandoned a constitutional prohibition against unlawfully obtained confessions. Philip Hager, "Arguelles Back in the Middle," March 31, 1991, L.A. Times, <https://www.latimes.com/archives/la-xpm-1991-03-31-me-2393-story.html>.

**Arguelles:**

I don't know, but I do think that any experience that one acquires at different levels of our court system is valuable. He may have had experiences on the federal court that were unique and different than those that he had experienced as a state trial judge and as an associate justice of the state supreme court that he could bring to this new role as chief justice of California. I would think that his tenure on the federal court would have been a positive rather than a negative. That's just my general reaction.

**McCreery:**

You also talked about the fact that some decisions the group of you made unanimously, a seven-to-zero decision. Others were a bit more split up. But in general, what was this court's view of the importance of unanimity in some instances? Was that thought to be something to be sought after?

**Arguelles:**

You have to understand you have seven separate, distinct individuals that are all strong-willed men. There wasn't a single one of us that was going to subjugate his individual thinking about issues or results just because it would be nice to have a unanimous opinion. It just doesn't work that way. Desirable, but not essential.

**McCreery:**

But recognizing that all the justices had their different styles, were some of them more likely than others to lobby their colleagues for a certain result?

**Arguelles:**

I would call it discussion about issues. Once again, I want to bring out that sometimes unanimity occurs as a result of discussions with the justices and their staff members, the justices just among themselves, or the staff members just among themselves. The wordings of opinions that are not clear can be smoothed out.

I think that one of the objectives in our opinions—and I'll give credit to Justice Eagleson for having stated this objective—was that our opinions should be clear and should set forth “clear, bright lines.” We should try to avoid equivocating or sending out mixed signals.

**McCreery:**

On what occasion did Justice Eagleson articulate this, do you recall?

**Arguelles:**

Probably just in passing. Maybe we were traveling on the plane or something like that. Dave's opinions were always clear and crisp, and maybe he was expressing his own philosophy. But if he expressed it in that way, it made sense to me. I'm using his words. If I had been called upon to indicate my own thoughts as to what should go into an opinion, I probably would have come to the same bottom-line recommendation, perhaps expressing it a bit differently. Dave had the capacity to reduce a concept to one or two words, but I recall his saying that opinions are more valuable if they set forth the reasoning in "clear, bright lines."

**McCreery:**

I wonder, who in this group of colleagues were you close to, and who could you talk things over with in a personal way?

**Arguelles:**

Every one of them. I never had a problem in approaching any of my colleagues. I also was very close to the head of my staff, Harold Cohen, known as Hal Cohen. He was brilliant, was well balanced, a superb writer, a clear thinker, a consummate gentleman. I developed great respect for his abilities.

He realized that it was my name that was going to go on the opinion, not his, and that it was his function to assist me in resolving the issues as properly as was possible, but with the clearest expression of the reasons why I had reached an opinion as possible. We were on the same wavelength in every respect.

Years later, when my friend Ronald George<sup>33</sup> became a member of the California Supreme Court, he was asking for my recommendations as to how he could best assume his new role. My first suggestion to him was, "Try to get Hal Cohen as a member of your staff." I understand at the present time that Harold Cohen heads the chief justice's staff and has for a number of years. So Chief Justice Ron George owes me a great debt of gratitude for making that recommendation, in my opinion. [Laughter]

Getting back to answering your original question, I probably spent more time with the chief of my own personal staff in dialogue than I did with other members of the court.

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<sup>33</sup> Ronald George was appointed to the Court in 1991 by then Gov. Pete Wilson. He was chief justice from 1996 to 2011, when he retired. Gov. Ronald Reagan appointed George to the Los Angeles Municipal Court in 1972, and then Gov. Jerry Brown appointed him to the Los Angeles County Superior Court in 1977. Gov. George Deukmejian appointed him to the California Second District Court of Appeal in 1987.

I also wanted him to sell my thoughts as reflected in the opinion to the staff members of other justices. When I had fault with some of the things that I had read in prepared bench memoranda from other justices, Hal would be the one that would negotiate with the staffs of the other justices. He would say, “Now, Justice Arguelles has a problem with this particular portion of your opinion,” and we’d see if we could smooth it out.

**McCreery:**

Was that staff-to-staff contact, then, more usual than justice-to-justice?

**Arguelles:**

Probably, because there were more staff members than there were justices. I didn’t do head counts, but my general feeling was that there was a great deal of dialogue among the various staff members, probably to a greater degree than between the justices themselves. But I guess it depended upon the justices.

**McCreery:**

Their own styles?

**Arguelles:**

In general, if philosophically I was in agreement with the majority of the justices on the court, there wasn’t much reason for me to be dialoguing with them. If I was in disagreement with some of the other justices, but it was black and white and set in stone, I would probably have concluded that it would be a waste of time to try to see if the resolution of the difference could be achieved, and it would be easier to spend my time writing a dissent. That’s my recollection of my experience on the court.

I don’t recall having any strong differences of opinion with, say, Justices Mosk and Broussard that would have required my going in and pounding tables or desktops, as in many instances the two of them were in accord with the other five Deukmejian appointees. I probably had as much dialogue with the other Deukmejian appointees as to how we could best smooth out a majority opinion. Then there were occasionally cases where we just frankly disagreed as to a result.<sup>34</sup>

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<sup>34</sup> See Footnote 27. In another example of Arguelles’ judicial centrism, he dissented when the Court, in a 4-3 decision, upheld the capital sentence of the killer of a Riverside high school coach, *People v. Boyd*. Arguelles said the Court went too far when it decided that procedural errors did not warrant overturning the death penalty. Arguelles argued the case should be set aside and a new penalty trial held because jurors had been improperly led to believe that their personal views of the case should play no role in deciding whether Boyd should receive the death penalty or life without parole. Under Chief Justice Malcolm M. Lucas’ leadership (post Bird Court), the Court’s Deukmejian-appointed bloc had been united on affirming and reversing capital verdicts, until this case. Philip Hager, “Death Penalty for Killer Narrowly Upheld by Court,” Aug. 12, 1988, L.A. Times, <https://www.latimes.com/archives/la-xpm-1988-08-12-mn-210-story.html>.



**McCreery:**

That's where you would write separately?

**Arguelles:**

Yes, I'd write separately. I might even swing over to the other side in a few instances, according to what Bob Egelko<sup>35</sup> tells me I did.

**McCreery:**

Just in terms of broad issue areas, the California Supreme Court had over many years been thought a leader in the development of new law, for example in environmental law and that sort of thing. Recognizing that you were on the court a relatively short time, did you take a particular interest in any of these broad areas of developing law?

**Arguelles:**

I'm sure I did. I was restricted to evaluating and considering the cases that were before the court at the particular time. I couldn't reach out, for example, to pluck out of the vast collection of undecided cases that were waiting to be resolved, and say, for example, "I'm going to take this case, and I'm going to advance it ahead of all the others so that we can work on it right now."

That's not the way things were done. We took the cases pretty much in chronological order, although there was a concerted effort made to address the large backlog of death-penalty cases that had not been resolved. The record on appeal in those cases was very voluminous; they took a great deal of time.

**McCreery:**

I was just wondering if you had particular interest areas that you wanted to work on.

**Arguelles:**

I had an interest in everything that was before the court at that time. But I can't recall that I went into the position with a thought in mind that, I want to become an activist in selecting cases in a particular area.

**McCreery:**

I don't mean to suggest an agenda, but I just simply wonder if the things that did come before you ever sparked a particular interest or emphasis for you.

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<sup>35</sup> Bob Egelko is legal affairs reporter for the San Francisco Chronicle. His coverage includes state and federal courts in California, the Supreme Court and the State Bar. He has a law degree from McGeorge School of Law in Sacramento and is a member of the bar. (<https://www.sfchronicle.com/author/bob-egelko>)

**Arguelles:**

Every case that came before me sparked an interest as to the issues in that particular case at that particular time. I don't think I was on the court long enough to say that, "I developed an interest in this unique area of law as a result of my participation in this case, and I now would like to be the author of this new case that's come along that gives us an opportunity to expand on its predecessor." I was not on the court long enough to have experienced that phenomenon. Had I stayed on the court for a longer period of time, I suspect that would have happened.

**McCreery:**

Do you have any knowledge of Chief Justice Lucas' views on the matter of interpreting the state constitution versus the federal, and to what extent the state constitution should be consulted first and foremost; that is, the matter of state constitutionalism?

**Arguelles:**

No. My guess is that Malcolm Lucas, particularly by the time I joined him, was very conversant with California state law as a state Superior Court trial judge, and as an associate justice of the California Supreme Court. His federal days were behind him, and I think he realized we had a state constitution. That was the primary bright-light guide to the manner in which conduct in California was to be viewed. I don't believe that his years on the federal court resulted in his feeling that the California constitution should have a second-place status.

**McCreery:**

I'm not suggesting that his service as a federal judge would have any bearing on that. I was just wondering philosophically how he stood on that.

**Arguelles:**

I don't know, but it doesn't make any difference how he stood, because he had six other justices working with him, and the staffs of all of these justices. If he wandered far afield in that area he'd quickly be brought back to center.

**McCreery:**

All right. Your own thoughts about independent and adequate state grounds?

**Arguelles:**

No profound thoughts. It depends upon the issue. We'd take a look at it at that time. I don't want to generalize.

**McCreery:**

Of course, there are certain times when you must go to the U.S. Constitution.

**Arguelles:**

There are times when that was necessary, of course.

**McCreery:**

I was only thinking that there are those who would say that the reliance on the California Constitution was somehow falling by the wayside or becoming less important than it once had been in the court's history.

**Arguelles:**

I don't think that that was the feeling of the court that I served on. It wasn't my feeling.

**McCreery:**

I wonder if—again, recognizing your relatively short service—were there other changes to the court system in California that Chief Justice Lucas was working on, that seemed of burning importance in light of the great changes in the court itself?

**Arguelles:**

I'm sure that there were, unique to his role as chief justice.

We have to understand that the chief justice of California wears many hats. One is to preside over the work of the California Supreme Court, which means processing its workload in every sense of the word. Another hat he wears is as chairman of the Judicial Council, which requires a great deal of interplay with the judges all over California, at every level, and with the California state Legislature.

He's concerned as chief justice with a multitude of things that don't ever touch the desks of his associate justices, who are principally concerned with getting the supreme court caseload processed.

As chairman of the Judicial Council, the chief justice must make sure that the infrastructure of the California justice system is preserved. Through him, the legislature has to understand the importance of adequate physical facilities all over the state to house judges, the comfort of the jurors, sufficient judicial compensation and benefits to retain and attract the best. These concerns are just for starters.

The chief justice has to be concerned about the burgeoning caseload of the California judiciary at all levels, in view of California's increasing population.

He has to make sure that the legislature understands the need to provide the funds to increase the number of judges in California to meet that workload and the facilities that they occupy. He has to be concerned about the access of justice to the courts on the part of all the citizens of California.

**McCreery:**

I just wondered, administratively, if there were other things that he was trying to change or accomplish, given that he was taking over a system that had really undergone a lot of change.

**Arguelles:**

He was doing a lot through the Judicial Council, administratively, and the Legislature, to address those concerns that I've just touched upon, and others, that were a necessary corollary to the work of the Supreme Court.

**McCreery:**

But those were removed from your day-to-day responsibilities?

**Arguelles:**

Yes. As an associate justice, I was just concerned about processing the work of the Supreme Court. But I was acutely aware at that time, having served on the Judicial Council, that he had all of those additional responsibilities.

Attorneys go to the court to redress grievances. They want trial departments that are open to them. They want trial judges that are willing to listen. They need jurors that are willing to serve. They have to have access to interpreters that can interpret for their non-English-speaking clients, and they're looking to the court administration to provide them with all of those services that are required so that they can best serve their clients. That can only be achieved if you have cooperation between the judiciary and the legislature.

The legislature has to provide the funds to assure all of those things are being provided, and sometimes that's hard to come by. The chief justice is our most effective representative appearing before the legislature, whether it be his annual state-of-the-judiciary address, or on other occasions. I think that Ron George<sup>36</sup> has currently done a wonderful job as chief justice in establishing good rapport with the legislature.

Malcolm Lucas was very effective as chief justice in those areas as well. He was well regarded. Even though many liberal members of the Legislature

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<sup>36</sup> McCreery's oral history with former Chief Justice Ronald M. George, "Chief: The Quest for Justice in California," was named a California Book Award winner by the Commonwealth Club for 2013.

might have disagreed with some of the rulings of the California Supreme Court, nevertheless on bread-and-butter subjects they were being asked to address by the chief justice, I think he had a good rapport with them.

**McCreery:**

Yes, earlier this year. Thinking back now, how do you evaluate your time on the California Supreme Court?

**Arguelles:**

I gave it my all during the time that I was there. I hope I was viewed as a productive member of the court.

Most of the opinions that I wrote were not landmarks in California law. As an average associate justice of the California Supreme Court, I don't feel that I made my mark on the court as having authored many landmark decisions that will be cited by generations of California lawyers and judges as brilliant works of art. But I am content in the belief that I was a solid justice of the Supreme Court who, although there for a limited period of time, helped stabilize the court.

I would hope that whatever short legacy that I might have established on the court would be characterized as a man trying to do his best to come up with measured opinions, trying to achieve the right answer to complex issues before the court. I hope that I would be remembered as someone that was collegial and enjoyed a good camaraderie with his colleagues, held in respect by them and the members of his staff.

I certainly never did anything, to my knowledge, that would embarrass the judiciary or any of the people that I worked with, or the governor who had appointed me.

Even though my tenure on the court was relatively short, it was a marvelous chapter of my life, one for which I'll always be indebted to the governor for giving me an opportunity to experience.

This almost sounds like a closing statement as we're getting near the end of our interview, but in answer to your general question, these are the feelings that I have about the time that I spent on the court.

If my opportunity to serve on the Supreme Court had come to me when I was in my forties or my early fifties, or mid-fifties, rather than at, in effect, almost the end of my judicial career, I would have enjoyed a much longer tenure. I would have been able to make more of an indelible mark on California law than I did.

But that's the way things worked out. Sometimes you become the father of a child when you're in your mid-twenties, and sometimes when you're in your late fifties, and your approach to fatherhood and the responsibilities of office is a bit different, [Laughter] depending upon when this happens. But I look back as having had the great fortune of serving for twenty-six years on the California bench at four different levels, and I enjoyed them all. My relatively short experience on the California Supreme Court came at the end of my career, but it did come. I enjoyed those years, as I'm enjoying my work with Gibson, Dunn & Crutcher now as well.

### **ARGUELLES: A NEW CHAPTER, AFTER THE COURT**

Flash forward to 1986. By then, Arguelles' judicial career, which began at age 36, was nearing a horizon. He'd gone from the municipal bench in East L.A. - a place he called "a people's court"- to associate justice of the Second District Court of Appeal. Nearing 60, he was within a year of retirement from what was already a robust and distinguished career.

Along the way, he would lead commissions formed to address crucial problems in policing and access to justice: There was the blue-ribbon committee of judges and other legal figures to assess the language needs of non-English speakers who faced the California legal system. The commission's recommendations became a model state for interpreter and language access in the state's court system, with court interpreters representing spoken languages such as Spanish, Vietnamese, Mandarin, Cantonese, Korean, Punjabi, Russian, Arabic, Farsi, and Tagalog, along with more than 50 court-certified and trained sign language interpreters.

A steady disposition. An even-handed approach to trials and sentencing. An efficient administration of his courtroom. These were hallmarks of his work.

And while he was modest about the legacy of his rulings, he made his mark as a key player in stabilizing the Court in the wake of the Bird retention election.

But it was time to step away.

As he would go on to tell McCreery: "My own ego wasn't so great that I was obsessed with the idea of holding onto a very important position forever. I didn't want to do that, as I knew that there were several good people in the wings that could do just as good a job, and they have."

And so, at 62, after 26 years as a judge, he started a new chapter. He joined Gibson, Dunn & Crutcher, where starting in 1989, he would work Of Counsel. By the time McCreery spoke with him he'd be been at the firm for 17 years.

As you might expect, with such a robust judicial career, he immediately brought an understanding of how the judiciary functions. And he brought a wise perspective on what judges are seeking to help them properly resolve cases.

“It’s been a good marriage, and the fact that they’ve been willing to put up with me for seventeen years I guess is an indication that it’s worked out,” he told McCreery. “There’s no indication that they’re anxious for me to leave.”

Just a few years into this new role, history would come calling – once again.

On March 3, 1991, George Holliday’s video camera<sup>37</sup> captured four Los Angeles police officers beating Rodney King during a traffic stop in the San Fernando Valley, its shockwaves rippling from L.A. to the rest of the globe. Its impact would roil L.A. Tensions boiled over a year later, when a Simi Valley jury acquitted all four officers of assault and acquitted three of the four of using excessive force. The beating would spur immediate calls for major reform. And once again, Arguelles found himself as a needed presence.

L.A. Police Chief Darryl Gates appointed Arguelles to lead a commission to examine department policy. But L.A. Mayor Tom Bradley would also name his own panel, determined to get a full accounting of the operation of the LAPD, its recruitment and training, its internal disciplinary systems, and citizen complaint system. And then came a request from Warren Christopher, the former Clinton Administration secretary of state, who led Bradley’s much larger commission.

“It was suggested by Warren that we merge the two groups into a single investigative body,” Arguelles told McCreery. “I gave it a great deal of thought and concluded, ‘He’s right on this.’” So, in the spirit of representing all sides in a fractious time for L.A., the two merged their commissions, despite any possible misgivings from Bradley and Gates, who operated on opposite sides of the political spectrum.

Arguelles sensed tension with Bradley in a moment when the mayor, Christopher and Arguelles were face to face for the first time. “Whereas the mayor was very solicitous and cordial to Warren Christopher, he appeared to be distant and cool to me,” Arguelles told McCreery. “So I don’t think he was too happy with my participation in it.”

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<sup>37</sup> For a good timeline of the chronology in this chapter of Los Angeles history, see this one, from the Los Angeles Daily News, on the 25th anniversary of the L.A. Riots: [https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1SSVmpH81l8GSbDnLn5a9lEgrLHsK\\_dtxvk3Lv2SErVI&font=Default&lang=en&initial\\_zoom=2&height=650](https://cdn.knightlab.com/libs/timeline3/latest/embed/index.html?source=1SSVmpH81l8GSbDnLn5a9lEgrLHsK_dtxvk3Lv2SErVI&font=Default&lang=en&initial_zoom=2&height=650).

But together, Christopher, and Arguelles as vice chair, and their now merged commission, would proceed.<sup>38</sup>

Four months after the beating, the Christopher Commission, with Arguelles as its vice chairman, would go on to find major gaps in the LAPD's use-of-force policy and in the department's ability to follow it.<sup>39</sup> It found that a significant number of officers repetitively misused force, ignored written policies and guidelines, underpinned by a "code of silence" that protected officers from accountability. And it pointed to the department's leadership for letting it happen. It found that racial and gender bias underpinned police interaction with the community and within the department. Such racism showed itself in routine stops of young African-American and Latino males, seemingly without "probable cause" or "reasonable suspicion," the report found. And its community relations were behind the times, spurred by the department's collective resentment of the public that fueled confrontation.

The 228-page report<sup>40</sup> would go on to recommend a series of reforms, from a police oversight panel with more oversight capacity, to command accountability, to a shift toward community-based policing, which emphasized more interaction with the public, problem-solving, and crime prevention over rote arrest statistics.

To this day, in an era of body-worn cameras, cell phones, and continued calls for police accountability, the report has stood as a template in which to measure progress in gaining trust with the public.

Christopher died in 2011, but Arguelles would live to see such reforms play out,<sup>41</sup> a process that continues.<sup>42</sup>

"It was an interesting experience and period in my life," he told McCreery. "I think it was a good job, another one of the many things that I've attempted to tackle in my life that I look back upon with pride as having been well done."

<sup>38</sup> While the merger of Arguelles commission with Christopher's prompted its share of praise, reflecting his reputation as a no-nonsense adjudicator, it is worth noting that the Arguelles pick came with pushback from other voices. Ramona Ripston, then executive director of the American Civil Liberties Union of Southern California, publicly questioned Arguelles' role, among others. Philip Hager, "Arguelles Is Back in the Middle," March 31, 1991, *L.A. Times*, <https://www.latimes.com/archives/la-xpm-1991-03-31-me-2393-story.html>.

<sup>39</sup> Sheryl Stolberg and Andrea Ford, "Investigation Was an Eye-Opener for Christopher, Arguelles," July 10, 1991, *Los Angeles Times*, <https://www.latimes.com/archives/la-xpm-1991-07-10-mn-1977-story.html>.

<sup>40</sup> Report of the Independent Commission on the Los Angeles Police Department, Summary, July 9, 1991: <https://libraryarchives.metro.net/dpgtl/publications/1991-ChristopherCommission-LAPD.pdf>.

<sup>41</sup> Report from LAPD Chief of Police to the L.A. City Council, March 30, 2021: [https://ckrep.lacity.org/online/docs/2020/20-0764\\_rpt\\_bpc\\_4-26-21.pdf](https://ckrep.lacity.org/online/docs/2020/20-0764_rpt_bpc_4-26-21.pdf).

<sup>42</sup> "LAPD - 30 Years After Rodney King," LAPD, <https://www.lapdonline.org/newsroom/lapd-30-years-after-rodney-king-nr21061ml/>.



Arguelles' blue-ribbon career would lead to many accolades, even in retirement. Among them, he was honored twice by his alma mater, with the 1987 UCLA School of Law Alumnus of the Year award, and, in 1989, UCLA's Professional Achievement Award.

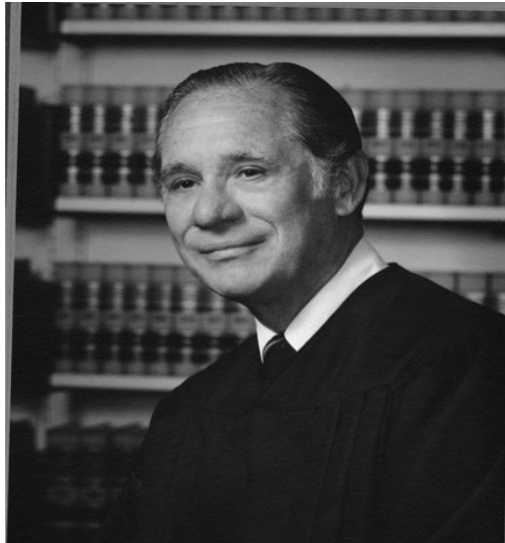
In 2003, Arguelles was honored as Judge of the Year by the Orange County Hispanic Bar Association.<sup>43</sup>

He died at his home on April 10, 2022. He was 94 – preceded in death by his wife of 58 years, Martha, and leaving a long list of survivors and admirers grateful for his mentorship.<sup>44</sup>

In a memorial for Arguelles later that year, former California Supreme Court Justice Marvin R. Baxter<sup>45</sup> said it was clear that the late jurist's background fueled a “proven ability to relate extremely well with others.”

“Simply stated,” he added. Arguelles was “a man of the people.”

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<sup>43</sup> UCLA Law News, “Former California Supreme Court Justice John. A. Arguelles ‘54 Dies at 94,” UCLA Law, April 19, 2022: <https://law.ucla.edu/news/former-california-supreme-court-justice-john-arguelles-54-dies-94>.

<sup>44</sup> In the preamble to McCreery’s full Q&A with Arguelles, Manuel A. Ramirez, Presiding Justice, California Court of Appeal, Fourth District, Division Two, celebrated Arguelles: “His soul has engaged friendship as he touched my life, and the lives of many others, whom he has personally encouraged, mentored, and inspired.”

<sup>45</sup> Associate Justice Marvin Baxter served on the California Supreme Court from 1991 to 2015, a tenure that began two years after Arguelles retired.

## About the Authors

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Laura McCreery is a former researcher in residence, now visiting scholar at Institute for the Study of Societal Issues, Berkeley. She uses oral history methods to study California politics, government, and public policy. In addition to local and regional issues such as transportation, water policy, and land use, her interviews span all three branches of state government, including an oral history of Governor Gray Davis (sealed) and oral histories of nine justices of the California Supreme Court, including Armand Arabian, John A. Arguelles, Marvin Baxter, Ming W. Chin, Ronald M. George, Malcolm M. Lucas, Carlos R. Moreno, Edward A. Panelli, Kathryn Mickle Werdegard. Her oral history of Chief Justice Ronald M. George, "Chief: the Quest for Justice in California," was named a California Book Award winner by the Commonwealth Club for 2013. She serves as oral history adviser for Black Lives at Cal (BLAC) and assists with research, writing, and editing. She holds a B.A. in Speech Communication from San Diego State University and an M.S. in Mass Communications from San Jose State University. McCreery explains the context for this oral history in her previous work, "Preface to the Oral History of Justice Edward A. Panelli," *California Legal History*, at p. 406 (2022), <https://www.cschs.org/wp-content/uploads/2022/09/Legal-Hist.-v.-17-Oral-Hist.-Justice-Panelli-.pdf>.

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Ryan Carter graduated in 2022 from UCLA Law School and its Master of Legal Studies program, with a specialization in Public Interest Law & Policy. His Capstone paper was awarded second place in the California Supreme Court Historical Society's 2022 Selma Moidel Smith Student Writing Competition in California Legal History. He is also an editor at the Southern California News Group. <https://www.cschs.org/wp-content/uploads/2022/09/Legal-Hist.-v.-17-Student-Writing-Valley-Secession.pdf>.