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University of California Black Alumni Series

Allen E. Broussard

A CALIFORNIA SUPREME COURT JUSTICE LOOKS AT LAW AND SOCIETY,
1964-1996

With an Introduction by
Carl B. Metoyer

Interviews Conducted by
Gabrielle Morris
in 1991, 1992, 1995, and 1996

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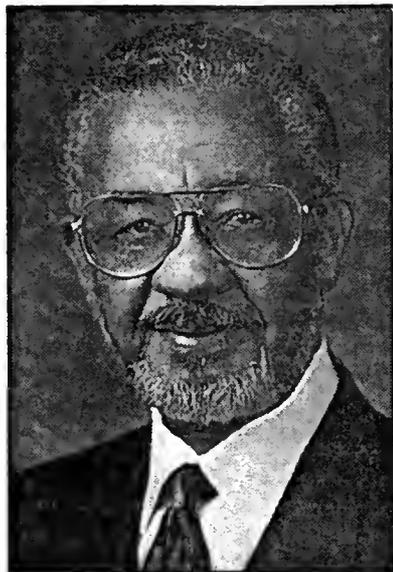
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November 6, 1996



Allen Broussard

Allen Broussard — Former California Supreme Court Judge

Allen E. Broussard, who as a liberal state Supreme Court justice in the 1980s wrote major opinions on subjects ranging from the death penalty to tenant rights, died yesterday, court officials announced. Justice Broussard, who died at his Oakland home, was 87.

Before the justice stepped down from the bench in 1991, he was the author of many of the opinions of the court's liberal majority under then-Chief Justice Rose Bird. After Bird and two other liberal judges, Cruz Reynoso and Joseph Grodin, were ousted by voters in 1986, Justice Broussard quickly found himself the court's most frequent and vehement dissenter.

As a dissenter, he voted against majority court decisions upholding police roadblocks for drunken drivers and sharply limiting workers' rights to collect monetary damages when claiming they had been unfairly fired.

As an African American growing up in Louisiana, Justice Broussard recalled once that he had to fend off dogs and rock-throwing white boys on his way to high school. He moved to California with his family in 1945, attended the University of California at Berkeley and then went on to earn his law degree at Boalt Hall.

He was admitted to the bar in 1954 and worked as a law clerk for Raymond Peters, then a respected state Court of Appeal judge who later served on the California Supreme Court. After Justice Broussard served 17 years on the Municipal and Superior courts in Alameda County, Governor Jerry Brown appointed him in 1981 to the state Supreme Court. He was the second black jurist, following Wiley Manuel, to serve on that court. Manuel died in 1981.

In 1982, Justice Broussard won a 12-year term at the polls and did not have to run four years later when a major campaign by conservatives and prosecutors unseated Bird, Grodin and Reynoso.

In 1983, Justice Broussard supported the state's right to protect the environment by restricting diversions from lakes and streams. The same year, he wrote the court's decision requiring proof of intent to kill in most death penalty cases.

Two years later, he wrote an opinion upholding a tenant's right to sue an apartment owner without having to prove negligence after the tenant was injured by a defective fixture. The same year, he wrote another opinion permitting strikes by non-safety related public employees.

In 1987, Justice Broussard penned one of his major dissents when the court overturned his earlier opinion and allowed death sentences without proof of the intent to kill. He wrote: "Periodically, when the political winds gust in a new direction, it becomes necessary to remind all concerned of the virtues of a steady course."

John Burris, an Oakland lawyer who described Justice Broussard as one of his mentors, said of

the former justice, "He was a giant, not only as a man but also as a lawyer. He never lost his touch with the community. You always knew that he thought about the human issues, about the common man."

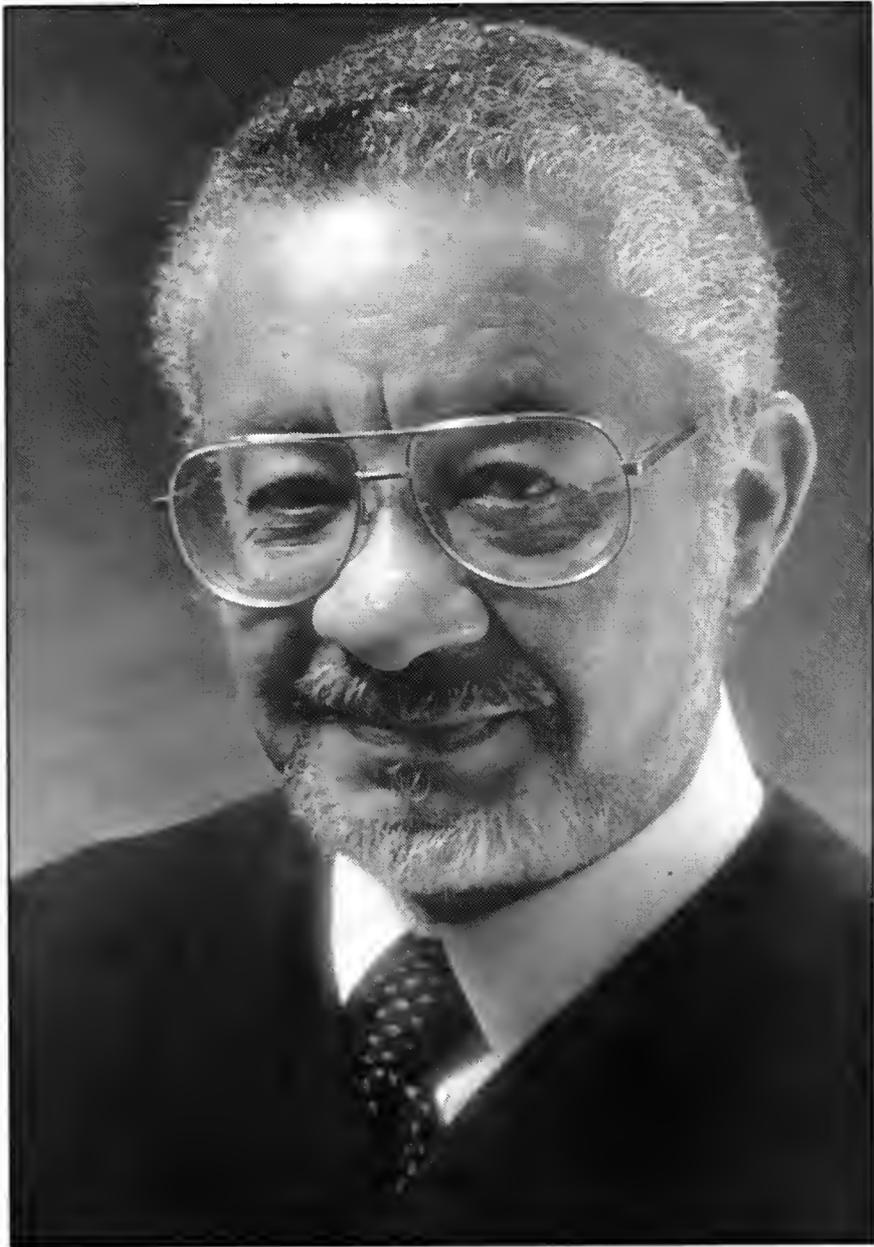
Stephen Barnett, a law professor at Boalt and longtime court observer, said Justice Broussard "survived the Bird court and became a lonely liberal dissenter on the court," headed by Malcolm Lucas. "He will be remembered more for his dissents than for his role as a pillar of the Bird court. He did much to keep the Lucas court from going overboard in undoing liberal precedents."

When Justice Broussard retired in 1991, Governor Pete Wilson replaced him with Ronald George, who is now the court's chief justice. Following his retirement, Justice Broussard became a partner in the San Francisco law firm of Coblenz, Cahen, McCabe & Breyer.

He is survived by his wife, Odessa, and their two sons, Keith and Craig.

Services are pending.

Staff and wire report



Allen E. Broussard, 1990.

Photograph by Paul Latoures

Cataloging information

Allen E. Broussard (1929-1996)

Judge

A California Supreme Court Justice Looks at Law and Society, 1964-1996, xii, 266 pp., 1997.

Boyhood in Louisiana; education at San Francisco City College, UC Berkeley, Boalt Hall (1950-1953), influence of Jacobus tenBroek; practising law; community activities: NAACP, Oakland Men of Tomorrow, Democratic party, East Bay Community Foundation; Bay Area African American political leaders; service on Oakland Municipal Court (1964-1975), Alameda County Superior Court (1975-1981), California Supreme Court (1984-1991), observations on fellow judges; work with Advisory Committee on Race and Gender in the California Courts (1991-1996), other judicial administrative bodies; as board member, Port of Oakland (1991-1996).

With an introduction by Carl B. Metoyer, former law partner

Interviewed 1991, 1992, 1995, 1996 by Gabrielle Morris for the University of California Black Alumni Project

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Staff and wire report

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- J. "The Death of a Friend, Colleague and Guiding Light," Harriet Chang, [*San Francisco*] *Sunday Examiner and Chronicle*, November 24, 1996 258
- K. "Justice Broussard, 'talented jurist,'" *California Bar Journal*, December 1996 260

The following volumes donated by Justice Broussard to The Bancroft Library have been deposited for scholarly use in the University Library Documents Department:

"1992 Public Hearings on Racial and Ethnic Bias in the California State Court System," Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1993.

"Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel," California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1994.

"Racial and Ethnic Composition of the California Courts," Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1995.

PREFACE

In America, education has long been an important avenue of opportunity. From our earliest years young people and their families have looked to the nation's colleges and universities to provide the knowledge and experience that will enable the new generation to take its place in the world of work and government and creative activity. In turn, one measure of the quality of American universities and colleges is the breadth and diversity of their students, including how well they reflect the mix of social, racial, and economic backgrounds that make up the communities from which they come and in which they will take part as graduates.

On the West Coast, the University of California at Berkeley has from its beginnings in the 1860s welcomed the sons and daughters of small farmers and shopkeepers, railroad workers and laborers, as well as the children of lawyers and doctors, corporate executives, from many ethnic and racial groups. By 1900, the first black students had enrolled at Berkeley, pioneers of yet another group of Americans eager to seek the best in higher education and to broaden their participation in the life of California and the nation.

Those first black students to come to Cal were indeed on their own, with few fellow black students and no special programs or black faculty to guide them or serve as role models. During the Great Depression of the 1930s a few more came, maybe a hundred at a time in all. The education benefits of the G.I. Bill for men and women who did military service during World War II opened the doors to many more black students to attend Cal in the late 1940s and early 1950s. A census taken in 1966 counted 226 black students, 1.02 percent of all the students at Berkeley. By the fall of 1988, there were 1,944 black graduate and undergraduate students, 6.1 percent of the student body. With changing population and immigration patterns in recent years, as well as active campus recruiting programs, for the first time there is not a single majority ethnic group in the entire undergraduate student body at Berkeley.

Looking back from the 1990s, those early trailblazers are very special. Though few in number, a large percentage of them have gone on to distinguished careers. They have made significant contributions in economics, education, medicine, government, community service, and other fields. It is fitting that a record of their initiative and energy be preserved in their own accounts of their expectations of the University of California, their experiences as students there, and how these experiences shaped their later lives. Their stories are a rich part of the history of the University.

Since 1970, the University has sought to gather information on this remarkable group of students, as noted in the following list of oral histories. In 1983, the UC Black Alumni Club and University officials

began planning an organized project to document the lives and accomplishments of its black graduates. In order to provide scholars access to the widest possible array of data the present series includes oral histories conducted for Regional Oral History Office projects on California Government History Documentation and the History of Bay Area Philanthropy, funded by various donors.

With the advice and assistance of the Black Alumni Club, the Chancellor's Office, and the support of other alumni and friends of the University, the Regional Oral History Office of The Bancroft Library is tape-recording and publishing interviews with representative black alumni who attended Cal between the years 1920 and 1956. As a group, these oral histories contain research data not previously available about black pioneers in higher education. As individuals, their stories offer inspiration to young people who may now be thinking of entering the University.

Material from the series has been used in numerous campus outreach programs to Bay Area schools and community organizations. Abstracts of the interviews appear in *Head of the Class, An Oral History of African-American Achievement in Higher Education and Beyond* (Twayne, 1995). Most recently, the East Bay Community Foundation has underwritten extensive distribution to East Bay libraries of selections from the oral histories in soft-cover format.

The Regional Oral History Office was established in 1954 to tape record autobiographical interviews with persons significant in the history of California and the West. The Office is under the administrative direction of The Bancroft Library and Willa Baum, Division Head. Copies of all interviews in the series are available for research use in The Bancroft Library and UCLA Department of Special Collections. Selected interviews are also available at other manuscript depositories.

Gabrielle Morris, Director
University of California Black Alumni Project

Willa K. Baum, Division Head
Regional Oral History Office

February 1997
Regional Oral History Office
The Bancroft Library
University of California, Berkeley

UNIVERSITY OF CALIFORNIA BLACK ALUMNI SERIES

Interviews completed as of March 1997

Allen E. Broussard, A California Supreme Court Justice Looks at Law and Society, 1964-1996, 1997.†

Lloyd Noel Ferguson, Increasing Opportunities in Chemistry, 1936-1986, 1992.

Walter Gordon, Athlete, Officer in Law Enforcement and Administration, Governor of the Virgin Islands, 1980.*

Ida Jackson, Overcoming Barriers in Education, 1990.†

John Miller, "Issues of Criminal Justice and Black Politics in California," in Legislative Issue Management and Advocacy, 1961-1974, 1983.*

Charles Patterson, Working for Civic Unity in Government, Business, and Philanthropy, 1994.*

Tarea Hall Pittman, NAACP Official and Civil Rights Worker, 1974.† *

Marvin Poston, Making Opportunities in Vision Care, 1989.†

Emmett J. Rice, Education of an Economist: From Fulbright Scholar to the Federal Reserve Board, 1951-1979, 1991.†

William Byron Rumford, Legislator for Fair Employment, Fair Housing, and Public Health, 1973.*

Archie Williams, The Joy of Flying: Olympic Gold, Air Force Colonel, and Teacher, 1993.

Lionel Wilson, Attorney, Judge, and Oakland Mayor, 1992.

†Also available in abridged form in the Black Pioneers at the University: 1920-1956 pamphlet series.

*Interviews conducted for other Regional Oral History Office projects, funded by various donors.

ACKNOWLEDGMENTS

The Regional Oral History Office wishes to express its thanks to the following individuals and organizations whose encouragement and support have made possible the University of California Black Alumni Series

Anonymous

Robert Beck, in memory of Catherine Harroun
Black Alumni Club, University of California
Boalt Hall School of Law Alumni Association
California Judges Association

Ruth C. Chance

Chancellor's Office, University of California, Berkeley

Coblentz, Cahen, McCabe & Breyer

W. R. Ellis, Jr.

Morley S. and Patricia Farquar

Wallace Alexander Gerbode Foundation

Dr. and Mrs. Marvin Poston

Mary and Norvel Smith

Morris Stulsaft Foundation

Ruth Teiser, in memory of James T. Abajian

Ernest D. and Eleanor Slate vanLoben Sels
Charitable Foundation

INTRODUCTION by Carl B. Metoyer

To Odessa, Craig, Keith, Mother Broussard, James, Rita, and the other member of Al's family: I extend my heartfelt sympathy in your loss of Al, a devoted husband, father, son, brother, and friend.

Knowing Al as we all did, I am sure that he would want us to gather today to celebrate his wonderful, productive life--not to grieve his death.

Al and I go back nearly fifty years to the day when we first met on the bridge at UC Berkeley's Sather Gate. At the time, we were both undergraduate students at Berkeley, pursuing prelegal studies. I went on to study law at Hastings College of the Law, and Al entered and graduated from Boalt Hall.

Al and I saw little of each other from 1949 until 1957 when we both started practicing law in Oakland. In 1958, Al, Lionel Wilson, Wilmont Sweeney, and I began to explore the possibility of joining our individual practices to form a law firm. In 1959, we decided to combine our practices into a law firm, purchased a lot at 60th and Market Streets in Oakland, built a new office building in which to house our practice, and we were off to the races.

Our new firm was known as Wilson, Metoyer & Sweeney, and we set out to provide the community with excellent legal services at an affordable cost.

In addition to practicing law, and participating in legal organizations, all of us were active in community and political affairs. Three of the organizations to which Al devoted substantial time were the 17th Assembly District Democratic Club, the Men of Tomorrow, and the Charles Houston Law Club. Al's contributions to these organizations--which then were in their infancy--were critical to their development as forces for change within the Bay Area.

Let me remind you that in the late 1950s and early 1960s, there were only a handful of black attorneys in the Bay Area, and we were not fully accepted within the legal and general community as competent legal practitioners. One of our firm's primary goals was to demonstrate to all that we were capable of performing any legal or judicial task which we undertook or to which we aspired.

In 1960--just as we were developing a head of steam--Lionel Wilson was appointed judge of the Oakland Municipal Court, and we had to seek out a replacement for him. At that time, Al became a full partner, and we hired an associate attorney.

Lest you should think that Al was all work and no play, let me assure you that in his youth, as in his more mature years, he loved to party, was an excellent dancer, played a tough game of table tennis from either the right or left side, and, as many of us know from being the brunt of his jokes, loved to play practical jokes on unsuspecting targets.

By 1964, the firm's practice had grown to the point where we were contemplating taking on a second associate. Suddenly, Al received that fateful call from the governor beckoning him to the municipal court, and the rest is history.

Al, I missed you then, and I shall miss you now.

Carl B. Metoyer

A former law partner, Mr. Metoyer's remarks were delivered at Justice Broussard's funeral on November 9, 1996.

INTERVIEW HISTORY--Allen Broussard

This oral history of Allen Broussard (1929-1996) adds greatly to understanding of the accomplishments of African American graduates of the University of California, of which he is a distinguished alumnus. His narrative documents the dedicated work as a citizen and as an attorney on behalf of fairness and justice that led to his appointment to the bench, where he came to have considerable impact on the affairs of California. "Judge Broussard's wise guidance," said President Clinton at a Western Center on Law and Poverty gathering in 1994, "has infused the state supreme court with both intelligence and compassion."

A dapper person of medium size with a friendly, humorous manner, Broussard addressed the interviewer's questions, based on an outline of topics sent to him prior to the recording sessions, thoughtfully. His answers reconstructed a hardworking life that was deeply involved in many critical issues of the 20th century.

From a boyhood in segregated Louisiana, Broussard came to San Francisco with his family as a teenager in the 1940s at the urging of an older brother. In 1950 he graduated high in his class at the University of California at Berkeley and in 1953 from its school of law. He immersed himself in the NAACP, Men of Tomorrow, and other organizations working for the betterment of black men and women in the Oakland Bay Area.

His narrative touches on friendships with Byron Rumford, Lionel Wilson, Elihu Harris, and other leaders with whom he forged the political base that brought Oakland significant governmental economic development programs and elected African American legislators and mayors in a period when other cities its size were experiencing racial unrest.

While still in his thirties, Broussard was tapped by Governor Edmund G. (Pat) Brown, Sr. for the Alameda County Municipal Court in 1964 and, in 1975, for the superior court, where he developed an interest in working to improve court administration and judicial education. As he liked to relate with a chuckle, Broussard became a Triple Brownie in 1981 when Governor Edmund G. (Jerry) Brown, Jr. named him to the state supreme court, notable at the time for the diversity of its members and independence of its decisions. As a member of Chief Justice Rose Bird's court, Broussard wrote the majority opinion on many significant cases.

When Bird left the court after her 1986 election defeat, she appointed Broussard acting chief justice. From 1987 to 1991, he served with Chief Justice Malcolm Lucas, who named Broussard co-chair of the distinguished Advisory Committee on Race and Gender in the Courts. In its work, the committee sought to ensure not only that the courts would be fair in their work but that they would be perceived as fair. "As a judge, I was

involved in matters bearing on equal treatment for our diverse population," he states in his oral history, "And I spoke out on these issues."

Many times in court and other judicial activities, Broussard notes, "I was aware that many judges were seeing or working with a Black judge for the first time in their lives." A person of conciliation rather than confrontation, he saw these encounters as opportunities "to set an example for a lot of people" and to suggest that "the court is well-served by having people who have different experiences and views in its membership so that they can have an impact on each other's thinking and conclusions."

Broussard left the court in 1991 to return to the practice of law. While on the first cruise he and his wife, Odessa, had ever had time to take, he was appointed to the Port of Oakland board of directors, a major real estate, transportation, and economic development engine for the Bay Area.

Taking up full-time duties as a member of the noted San Francisco firm of Coblenz, Cahen, McCabe & Breyer, he relinquished his status as a judge and embarked on the newly popular private practice of mediation. Carrying this load plus numerous civic obligations proved too much for the energetic and generous Broussard. He died in November 1996 after a brief illness, following surgery the previous year.

There was a rich outpouring of affection and admiration at the community memorial service in his honor at the Paramount Theater in Oakland. Speaker after speaker mentioned Justice Broussard's love of parties and practical jokes as well as his deep understanding of the intricacies of the law and its integral relation to the complexities of the society it serves. Remarks by one of the speakers, Broussard's former law partner Charles Metoyer, are included in the volume as an introduction.

"He was a great role model" for people of all ages and ethnicity commented William Rodarmor in the *California Monthly*, reporting on Broussard being named the Alumni Association's Alumnus of the Year in 1992.

The quality of his personality and his impact on those who knew and worked with him are perhaps best summed up in Broussard's own words eulogizing Wiley Manuel, a close friend who preceded him on the state supreme court. He "refused to allow himself to be victimized by race, poverty, or any other adversity, and he persistently refused to tolerate or to participate in victimization of any other person for any reason... realize and remember that his life was a great gift to all of us."

Broussard's oral history was recorded in six sessions. The first two were taped in June 1991 in his chambers San Francisco's Civic Center and focussed on his early years. The next two sessions dealt with his years on the municipal and superior court and his appointment to the supreme court;

these interviews were conducted in January of 1992 in temporary quarters in the Marathon Plaza building on Folsom Street while the courts building was being remodeled. When the justice finally had time to review the transcript of these four sessions in 1995, he suggested a further interview to consider matters subsequent to his retirement. This grew into two sessions, recorded in late 1995 and early 1996 in his law office, which are a valuable addition to the volume and reflect on Broussard's years as a judge as well as on his work with the Advisory Committee on Race and Gender in the Courts and other of his many *pro bono* activities.

Broussard made minor revisions and factual corrections in the transcript of the interviews, which did not change the sense of the text. He also provided a summary listing of decisions he wrote while a member of the supreme court, which is included in the appendix.

Associated Press legal affairs writer Bob Egelko provided helpful background information for planning of the interviews, which is much appreciated. The *Oakland Tribune* library was also a valuable resource for dates and other details. And special thanks are due to the justice's assistants, Janet Ellenberg at the supreme court and Ginnie Chan in his law office, for their friendly assistance in scheduling and rescheduling appointments, supplying documents, and tracking the progress of the interview manuscript. Photographs and additional appendix materials were provided by William Rodarmor from the files of the *California Monthly*.

Gabrielle Morris
Interviewer/Editor
Regional Oral History Office

The Bancroft Library
February 1997

February 1991

ALLEN E. BROUSSARD
ASSOCIATE JUSTICE
SUPREME COURT OF CALIFORNIA
 South Tower, Ninth Floor
 303 Second Street
 San Francisco, California 94107
 (415) 396-9430

Nominated as an Associate Justice of the California Supreme Court by Governor Edmund G. Brown, Jr., on June 25, 1981; confirmed by the Commission on Judicial Appointments on July 17, 1981; oath of office July 22, 1981. Elected to a twelve-year term in a statewide election on November 2, 1982.

Formerly Judge of the Superior Court
 County of Alameda
 1225 Fallon Street
 Oakland, California 94612

Appointed to the Alameda County Superior Court by Governor Edmund G. Brown, Jr., on October 1, 1975. Elected Presiding Judge of the Alameda County Superior Court for the year 1980. Re-elected for the year 1981 and served as Presiding Judge until appointment to the California Supreme Court in June 1981.

Formerly Judge of the Oakland-Piedmont Municipal Court
 600 Washington Street
 Oakland, California 94612

Appointed to the Oakland-Piedmont Municipal Court by Governor Edmund G. (Pat) Brown, Sr. in March 1964. Served as Presiding Judge in 1968.

Served as a Justice Pro Tempore on the Court of Appeal, First Appellate District, in August and September 1977.

Personal Background:

Resides in Oakland, California. Born April 13, 1929, Lake Charles, Louisiana. Came to California in 1945, residing first in San Francisco, then Berkeley and now Oakland. Married to Odessa. Have two sons, Craig and Keith. Member of Saint Paschal's Catholic Church.

Education:

Sacred Heart High School, Lake Charles, Louisiana - 1945.
 City College of San Francisco, Associate in Arts Degree - 1948. Elected to the Club Advisory Board and the Student Council.
 University of California, Berkeley, B.A. Degree in Political Science - 1950. Member, Varsity Debate Team.
 University of California School of Law at Berkeley (Boalt Hall) - J.D. Degree - 1953. Top 15% of class.
 Member of the Editorial Staff of the California Law Review.
 Vice President of Boalt Hall Student Association.
 Recipient of Arthur Newhouse and Arthur Gould Tashiera Scholarships.
 Member of Phi Alpha Delta Law Fraternity.

Military Service:

Honorable discharge from United States Army - 1956.
 Served 24 months, 19 months in Germany.

Legal Experience:

Admitted to the California Bar in January, 1954.
 Research Attorney for Presiding Justice Raymond E. Peters until 1956.
 Entered private practice in 1956.
 Vaughns, Dixon and White - 1956 - 1959.
 Wilson, Metoyer and Sweeney - 1959 - 1961.
 Metoyer, Sweeney and Broussard - 1961 - 1964.

Activities:**Board Memberships**

Formerly a Member of the Board of Directors of the following community and civic organizations:

- Oakland Men of Tomorrow
- Alameda County Council on Social Planning
- Bay Area Regional Hospital Planning Committee
- Children's Hospital of the East Bay
- East Bay Chapter of Big Brothers of America -- Vice President
- Berkeley NAACP
- East Bay Community Foundation
- Alta Bates Corporation and Alta Bates Hospital
- Member of the Berkeley Fellows

Activities (cont'd):

Formerly a Member of the Board of Directors of the following professional organizations:

- Charles Houston Bar Association
- California Association of Black Lawyers (Judicial Section)
- Judicial Council of the National Bar Association
- Alameda County Criminal Courts Bar Association -- President
- Boalt Hall Alumni Association
- California Judicial Council
- Governing Board of the Center for Judicial Education and Research (CJER) -- Chairman
- Continuing Judicial Studies Program -- Chair
- Member of the Faculty of the California Trial Judges College -- 1969, 1970, 1971, 1972, 1974, 1978 and 1979
- Commission on Judicial Performance
- American Bar Association -- Chair of the Judicial Administration Division's Task Force on Opportunities for Minorities and Liaison to the ABA Commission on Opportunities for Minorities in the Profession
- Chair, California Commission on Racism and Ethnic Bias in the Courts

Activity with the California Judges Association, the state-wide organization of California judges:

- Elected to the Executive Board in 1970
- Elected to the office of Secretary-Treasurer in 1971
- Elected to the office of President in 1972 (the first Black judge ever elected President of CJA)

Listed in Who's Who in the West and in Who's Who in American Law

In addition:

- Member, UC Task Force on Reproductive Technology
- Joined Coblenz, Cahen, McCabe & Breyer, 1991
- Appointed director, Port of Oakland, 1991
- Member, Western Center on Law and Poverty, 1994
- Received Charles Houston Bar Association Hall of Fame Award, 1995

Addendum to Resumé of Allen E. Broussard

Awards:

- 1980 Alameda-Contra Costa County Trial Lawyers Association: Award for Alameda County Trial Judge of the Year 1980
- 1981 Northern California Black Chamber of Commerce: The Charles Thomas Award for Contributions to the Judiciary and to the Community
- 1982 University of California Black Alumni Club: The Alumnus of the Year Award
- 1982 California Association of Black Lawyers: The Bernard S. Jefferson Award for Judicial Excellence
- 1982 The Boys' Club of Oakland: The Image Builders Award
- 1982 The College Bounders Committee, Inc.: Award for Outstanding Service to Education
- 1982 City College of San Francisco: Award of Achievement
- 1983 Council for Civic Unity of the San Francisco Bay Area: The Civic Unity Award
- 1984 United Nations Association of San Francisco: The Eleanor D. Roosevelt Humanitarian Award
- 1985 Wiley Manuel Law Foundation: Distinguished Service Award
- 1988 Los Angeles Trial Lawyers Association: Appellate Justice of the Year Award
- 1988 John Langston Bar Association: Jurist of the Year Award
- 1989 California Trial Lawyers Association: Appellate Justice of the Year Award
- 1990 California Law Review Alumnus of the Year

I BROUSSARD FAMILY MOVES FROM LOUISIANA TO CALIFORNIA, 1945

[Date of Interview: June 27, 1991]##¹

Morris: We usually start at the beginning. You were born in Louisiana?

Broussard: Yes, in Lake Charles.

Morris: And lived there until you were--?

Broussard: I lived there through high school. I graduated from high school just after turning sixteen years of age.

Morris: Really. That is very young.

Broussard: Well, in Louisiana then they had a seven-four plan. It was only eleven years. And I skipped the fourth grade. So I really graduated from high school in ten years.

Morris: Was that because you really enjoyed school, or you had good teachers--?

Broussard: No, it was a combination of things. My first two years at school were in the public elementary school. When my sister, Rita, was school age we started going to Catholic school. I went there my third grade, and then, because of the school's population, fourth and fifth grades were combined: they took two or four of us out of the fourth grade and put us in the fifth grade. Just to balance out the class sizes. And I was one of those who skipped the fourth grade. I just had do a little making up on the short division and some of those things like that that are basic to the fourth grade.

Morris: Great! Do you have lots of brothers and sisters?

¹This symbol indicates the start of a new tape or tape segment. A guide to tapes follows the transcript.

- Broussard: No, I'm the middle of three, an older brother, James, and a younger sister.
- Morris: Did you grow up a Catholic, or did your parents just choose to send you to Catholic school?
- Broussard: No, I was reared Catholic. There's quite a French influence in Louisiana.
- Morris: And there's some French ancestry as well?
- Broussard: Well, that's where the Broussard comes from. Don't ask me to trace it. As a matter of fact, this may be a joke, but-- [laughter]--somebody has done a book about the Broussards. It says that the first Broussard came to Carolina in 1695. Her name was Jeanne. There's just a whole genealogy. But I don't know how much the book will tell me about my background.
- Morris: Well, that's part of the story of America. There's been lots of people come from many places and settled down. Did your family think of coming to California before you graduated from high school? Or was that something that developed--?
- Broussard: Well, I can tell you exactly how that came about. My brother was two years ahead of me in school. He graduated from Sacred Heart High [School] in 1943; he was drafted into the army, and wound up in the Transportation Corps, and served in several West Coast cities, including San Francisco. My father [Clemire] was employed as a longshoreman in Lake Charles. A weekend barber and a longshoreman during the week. And my brother interested my dad in coming out because of the better working conditions and better pay for waterfront work in San Francisco.
- So in 1944 my dad came to San Francisco, as had some of his other longshore brethren prior to that. In Christmas of '44, my mother [Eugenia] came out and visited. And then when I graduated from high school in the end of May in '45, my mother, sister, and I came out and joined my dad. So it was my brother who initially interested my father in coming out. It's a rather typical story--better opportunities in employment, education, and often housing.
- Morris: They settled in Oakland rather than in San Francisco?
- Broussard: No, we were in San Francisco initially. We lived in apartments or flats in San Francisco until we were able to acquire a single-family home in South Berkeley. It was difficult in San Francisco to get any detached single family home if you were

Black. Almost all of the houses available to us were limited to certain areas, and none of them contained detached single family homes. That was in 1948 when we moved to the East Bay.

Morris: Was there less discrimination in Berkeley?

Broussard: Well, there was more available housing of the single-family type available in Berkeley. Berkeley just never was built up like San Francisco. We'd had a single-family home in Louisiana, and when we started looking for housing, we were able to find what we wanted in Berkeley. Or my parents were able to find what they wanted in Berkeley.

Morris: Were there already some friends or relatives in Berkeley?

Broussard: Probably not in the neighborhood into which we moved. I'm sure we had some friends and relatives in the East Bay, but I don't think that was a very large factor in the decision. It was really just the availability of the kind of housing that we wanted.

Morris: And your brother had settled here, too.

Broussard: Well, my brother had been separated from the service in either late '45 or '46. I've forgotten which. He was married by the time we moved to Berkeley. He was living in San Francisco and then later acquired a home in the East Bay, also. Eventually, all of us moved over to the East Bay.

Morris: And the longshoremen that had been friends of your father, did they continue to be people that he worked with and saw?

Broussard: My dad retired from the waterfront.

Morris: Had he been active in the union?

Broussard: Yes. Oh, yes. I guess Harry Bridges was the big person in my dad's life, because of all the work that he did on the waterfront.

Morris: Did he ever talk about the union trying to help sway public opinion when Bridges was being tried in court for supposed communist activity--they wanted to take away his citizenship and move him out of the country?

Broussard: Oh, I'm sure the union fought that all the way. I'm not intimately familiar with those events. See, Harry Bridges was primarily a CIO [Congress of Industrial Organizations] man. And Locals 6 and 10, Warehousing and Waterfront Workers, were

really his major unions. They were very supportive of him throughout all of the forties.

I worked a couple of summers as a warehouseman, at the old Central Warehouse out on Third and Townsend in San Francisco. Made me a little student money. And then at that time, if you were the son of a longshoreman, you could get a "B" card, I think--and work the waterfront occasionally when they had extra work.

Morris: Oh, that's a pretty nice perk.

Broussard: Yes. So, I spent some time--not an awful lot, but some time--working on the waterfront, also.

Morris: On through your college years?

Broussard: In the undergraduate years, yes. My brother worked several jobs after the service. He worked the post office, and then he wound up on the waterfront, where he still works. He's what you call a walking boss.

Morris: I've heard that term before, but I don't know quite what it means.

Broussard: Oh, you supervise a group of people. And I don't know the exact derivation of the term, but he works now for a maritime company, and supervises a group of men who are working loading and unloading ships. Most of his work is supervision, though. On-the-job supervising more than hands-on work.

Morris: So you and he know about the dock situation from the working end as well as from the management end.

Broussard: Oh, I had very limited experience and exposure where he's had a long experience. He's approaching retirement now, and he's worked at every level up to where he is now, including crane operator--a winch driver is what you call them.

II YOUTHFUL AMBITIONS AND EXPERIENCES

College Options

Morris: How come you decided to go to college, but your brother didn't decide to take up the G.I. Bill?

Broussard: After he came back from the service, he did not pursue any further education. He worked various jobs and then got married, raised a family.

Morris: Did the family always intend you to go to college, or was this a new idea that you brought home?

Broussard: Well, it was probably more my idea. The situation is that my family never really pushed me, but they always supported me. I knew--well, this is interesting. I'll just tell the story.

When I was graduating from high school and knew that the family would be coming to California, I went to--I called him my favorite high school instructor, he was the one male that I had instructing me in high school. You have to remember, I graduated from Sacred Heart High School; there were ninety-five students in the school, and there were fourteen in my graduating class--twelve girls and my first cousin and me. Twelve girls and two boys. And Mr. William Parker was the one male instructor; we were taught primarily by nuns. Some lay teachers, but the one male was Mr. William Parker. And so in that sense, he was my favorite high school teacher.

So I went to him and in essence I said, "Mr. Parker, when we graduate, the family will be moving to California. I know I want to continue with my education, but I don't have any definite career goals." He said, "Well, Allen." He says, "You've got a fine mind. I think you can do anything you want to do, but I think you'd make a good lawyer." And that idea remained with me, but it was not until I started upper division at Cal [University of California at Berkeley] that I made the

definite decision that I wanted to be a lawyer. But that's where the idea first came from.

Morris: What size town was Lake Charles when you were growing up?

Broussard: Under thirty thousand. About twenty, twenty-nine thousand is my recollection.

Morris: A farming town?

Broussard: No. Well, there was a lot of rice growing on the perimeters of the town, but it was a port town. My father worked at the waterfront. We had some manufacturing in the area, meat-producing, and there was some farming, primarily rice. It was --what--the fourth or fifth city in Louisiana at that time. I mean, we were not considered a farming or a rural city.

My mother and father had lived outside of New Iberia. New Iberia was a smaller city than Lake Charles. My mother lived in a place called Olivier, which is south of New Iberia, and my dad lived in Abbeville, which is a small city west of Olivier. They were both reared on farms. Met and married in New Iberia, and then moved to Lake Charles. And that was, in essence, moving away from the farm to town.

Morris: Into town, yes. Looking for more opportunities.

Broussard: And then my dad, I think--if my information is correct--I think he started working on the waterfront shortly after he moved to Lake Charles.

Morris: And did your mother work outside the home?

Broussard: My mother did sewing, but in the home. I don't think she worked outside the home in Louisiana. She did in San Francisco; she did alterations in several dress shops in San Francisco.

Morris: So they weren't surprised when you said you wanted to go on to college?

Broussard: No. But, you know, it was just almost assumed. I just knew I wanted to continue. My mother would have been elated if I had become a schoolteacher and not too unhappy if I had chosen to be a barber, which was the easier of my dad's two jobs. But I just had the determination that I was going to continue with my education. I was yet too young for the service. To me, it was just the normal thing to do. And the family was supportive of it.

An interesting story on that, too, though. You see, we lived right across the street from the public high school--segregated. Lake Charles, you have to remember, was de jure and de facto segregated at that time. And we lived right across the street from the public high school. But we had been attending Catholic school, all of us. And we had to walk some distance to go to school. And I guess there are two sides to that story, the one I started off telling you first is that Louisiana law required that everybody go to school through age sixteen. But if you went to the public schools you didn't have to get an education, you just had to be in school. [chuckles]

Anyway, I graduated in this small class that I was telling you about, and when we came to San Francisco, my cousin and I, the two boys in my class--we both applied to Cal Berkeley for admission. I was told that I had everything that I needed to get into Cal, except that I had to make up a "D" which I had gotten the old-fashioned way--I earned it. There was a class I didn't like, and although we later became friends, I didn't really like the teacher, and I made the one "D" that I made in my whole life. And Cal told me, "You make up that 'D' in the summer and you can come to Cal as a freshman in September." My cousin went to Cal as a freshman.

Morris: What was this dreadful subject?

Broussard: Algebra. And I have told this story before, so it's not new, but in a way I credit that "D" with maybe saving my life academically. Lake Charles was a town that I could only see a part of, but the town is smaller than the Berkeley campus. And at that time, there weren't all of the support systems and everything that students, especially minority students, have at the university now. And I still feel that if I had gone to Cal as a freshman I might have gotten lost. That's what happened to my cousin. By the end of the first year, he was back in Lake Charles.

Morris: Oh, that's too bad. His family didn't come with him?

Broussard: His family was out here--well, he had a split family, and his father was here. His mother and his stepfather were still in Lake Charles. So I looked at all the options, and instead of spending my summer going to school, my cousin and I worked at Central Warehouse that summer to make some money. And I opted to go to City College of San Francisco, intending initially to go there for a year and then transfer to Cal.

I wound up getting an A.A. degree from there. That campus was five thousand-plus. And I was able to handle that adjustment, eventually getting active in student government and functioning on the campus. Making it work for me was a very large transition--from a small Catholic school to a five thousand-person campus.

Morris: Yes, urban campus. Were you commuting from the East Bay?

Broussard: No, I was living in San Francisco then. I commuted to Cal initially. But that also probably influenced my parents to move to the East Bay. But not entirely, because then my sister was commuting to City College in San Francisco.

Morris: You must have been a pretty good student if all you needed to make up was algebra.

Broussard: My point is simply that that little school was giving us a good education. The Sisters of the Blessed Sacrament were the order that basically ran the school and taught us in the school. And they gave us a good fundamental education. You couldn't say that for a lot of the students in the public schools. You could, if you insisted on it, you could get a good education there.

Segregation in Lake Charles and San Francisco; the Comfort Zone

Morris: You said that there were just two boys in the high school. What was the mix of Black kids and white kids?

Broussard: Oh, well, I told you it was a de jure and de facto segregated. The law required strict segregation; it was all Black, it was all Black.

Morris: The Catholic school was all Black, too?

Broussard: Louisiana law at that time required segregation, even in the Catholic schools.

Morris: Even in the private schools. I wasn't clear about that.

Broussard: And by then, that was also de facto the situation. Even though we were Catholic, attending Catholic church and Catholic school, it was segregated. If we were ever downtown and went to the Catholic church downtown, we didn't go beyond the back pew or two. For example, the people who were working downtown,

Blacks who might be working in homes and stuff downtown, if they did go to the Catholic church--the white church--they were limited to the back pew or two. It was just a fact of life then. It was both accepted and required.

Morris: Did that pretty much change when you came to California? Or were there still some barriers in the forties?

Broussard: Well, the California situation was different primarily in that the law didn't require segregation. But, remember, the Black population in San Francisco-Bay Area before the war was quite small. And there was a tremendous influx in numbers during the war years. So most of us were new to an urban community. Segregation was not required by law, but maybe was still expected, both by us and by the dominant white community.

I can remember at City College, the Black students had a tendency to sit in one section of the cafeteria, for example. And Dean Brady used to walk around and talk to some of the students and try to get them to separate, to mix with others. That was sort of a natural coming-together, I suppose. And--oh, I don't want to get ahead of myself--there was no legal requirement, you could venture out--but I guess there was a comfort zone. But then it's more than that, because as you began to venture out, you began to get opposition. You know, San Francisco was not always "the city that knows how". We can get way ahead of ourselves if I don't get out of that.

Now, I want to go back to Lake Charles for a while. There were two things about going to the Catholic school. We would leave our home--when I say "we", there were about five of us, all boys, who worked in five downtown stores, retail stores. We'd get on our bicycles in the morning before school, ride past our school, through the white residential neighborhood, to the downtown area. We would all have to squeegee down the windows, sweep out the lobbies, you know, little, small Southern towns. We'd sweep out the lobby and wash the windows, get on our bicycles to go back to school. And by that time the white kids would be coming out of their homes to go to school, and we used to ride our bicycles with broom handles and billy clubs, because they'd sic their dogs on us, or chase us, throw rocks at us. Whatever.

And we always had to be prepared to defend ourselves as we were riding back to school from our morning work. Then at noon we would walk home for lunch. We didn't have any hot lunch program. And there was always a certain amount of rivalry; I'll be overly general here. Most of the kids in our school were Catholic, not all. Most of the kids in the public school

were non-Catholic, but not all. Well, as we were walking for lunch, they would be walking in the opposite direction, and we used to have turf battles--who was going to walk on the sidewalk and who--[chuckles].

Morris: It sounds like there was not much area of interaction that was acceptable in Lake Charles.

Broussard: I wouldn't say that, but there was certainly de jure and de facto segregation along race lines. There was a certain amount of competition, a rivalry between the Catholic school and the non-Catholic school. And that was largely, but not entirely, along religious lines. Also influenced to some extent, by whether or not there was a Creole concept. I mean, those who had a little French admixture back there tended to have a lighter skin tone. All of those elements played a part.

Morris: Was being Creole a different category?

Broussard: No, no. We were all Black. But within the Black race there was some--. We had Blacks in Louisiana who could be your sister--I mean, who had all the characteristics and features of a white person. But they were known and identified as Black. As a matter of fact, some of them would come to San Francisco, and they'd be what you call *pas en blanc*. Come to San Francisco and then live--

Morris: Pass into the white community?

Broussard: Yes, *pas en blanc*.

Morris: Were there any white children or white families that you did have any friendly contact with, as a boy growing up in Lake Charles?

Broussard: Yes and no. The neighborhood store was owned by a white family whose kid we played with until he got a little older. It was a family that owned the store just catty-corner from our house. The father drove the local bus, and the end of the bus line was right at that intersection--Mill and Shattuck. So he would park his bus in front of our house, go check on the store, and we'd be playing with little Charles, as I said, until he got a little older. Then that sort of stopped. But the bus, of course, was segregated. Except for that, I had no--. I worked in several downtown stores, for white storekeepers. And I primarily worked in--

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Broussard: --the most exclusive women's dress shop in town. Riff's Palais Royal, the Riff family. They were a Jewish family. In terms of the times--in the community, I mean--they were very supportive and very nice. But sometimes in the summer or on weekends you would have either high schoolers or young college students--we had a community college in Lake Charles; it was white--who would work in the stores. And you know, you could develop some rapport, but it was just two different worlds. The young white employees were working in sales, and I was working in stock and inventory; you'd never see me. I couldn't sell shoes or anything like that.

Student NAACP Chapter at San Francisco City College; Postwar Job Pressures and Intergroup Accommodations

Morris: When you came to California, were you looking for, or aware of, any civil rights activities or organizations?

Broussard: Yes. We formed a college chapter of the NAACP at City College. And I was sort of the perennial president. And this is a very important chapter in my life, because much of what I became really got started then. We formed our college chapter of the NAACP; we were very active and we had a clubroom in the Madam C. J. Walker home at 1966 Bush Street. We had that basement; we had a clubroom with a lending library with books and a whole schedule of activities.

I think maybe, for me, the most significant thing was that as the president of the college chapter, I was ex officio a member of the executive board of the senior branch NAACP. And I participated with them; I went to those meetings and I was exposed. At that time--I told you a minute ago that San Francisco was not always the "city that knows how"? Well, in those years, the late forties, we were about the business of teaching San Francisco how. And all of the great leaders like [Carleton] Goodlett, Cecil Poole and William McKinley Thomas, and Josephine Cole and--just so many I can't even name them all--Noah Griffin and--(I should have spent more time, really, trying to recollect some of those names) Terry Francois, Joe Kennedy, Audley Cole--were the nucleus of the NAACP, which was very much in the forefront in terms of integrating San Francisco.

And when you were asking me a minute ago about the difference between Louisiana and here, one of the differences is that I left a community where the law required segregation,

the law defined what you could do. We accepted it in the main, and the white folks accepted it, and insisted on it in the main. You come to a community like San Francisco where the law doesn't require segregation, where there hadn't been a lot of pressures and demands in a lot of areas before because there hadn't been the numbers. But then during the war [World War II] you got numbers, and when the wartime jobs started closing down, then we started running smack into problems of lack of job opportunities, lack of housing opportunities. And what we found was that--. See, in Louisiana, a young couple would get married and in two weekends their families would get together and build them a home. They have what we call "sharpshooters". You ever hear that term?

Morris: Ah, not in relation to housing, no.

Broussard: Some people call them "shotgun homes". The idea was you'd have a front porch, a living room, a bedroom or two--all in a straight line--and then the dining area or big kitchen and a back porch. And if you take a rifle and shoot it--

Morris: Your shot can go straight through from front to back, yes.

Broussard: --from front to back. But the fact is, though, that within the Black community you had carpenters, brick layers, cement finishers, cabinet makers, roofers. And they were working in those jobs in the South and then on a weekend--two or three weekends--would pitch in and build a home for a young couple.

Morris: Sort of like the pioneer community in cabin-raising.

Broussard: Yes. But the point I want to make is, then when you came to San Francisco, all of those jobs were union, and the unions were closed to Blacks.

Morris: In the forties.

Broussard: Yes. And the unions had closed shops and union shops and segregated membership. In the South, all the best restaurants had Black waiters. But you couldn't get a job as a waiter in San Francisco in any of the decent restaurants. You couldn't get a job in any of the craft industries that I was talking to you about. You couldn't get a job selling in a retail department store. I remember when the first known Blacks were employed in that downtown department store in San Francisco-- Jane Chambers and Jane Venable.

I'll tell you how it came about. The NAACP started negotiating with the Downtown Merchants' Association to get

them to open up retail selling jobs to Blacks--with no success. Ultimately, they identified the four major downtown department stores: Macy's, Emporium, and I think the other two were the White House, and I believe, Livingston's--I'm not sure about that--and began in-depth negotiations with them and making their demands--with no success. Finally decided that they were going to have to picket.

Now, mind you, I'm participating in all the executive board meetings and planning sessions. The decision was made that they wouldn't picket all four stores at one time because it might spread out our resources too thin. And they were going to picket two stores initially. And one was to be Macy's. So I seriously questioned that. I said, "Well, why Macy's?" Now, let me give you the setting. Macy's had just come to San Francisco, they'd bought out O'Connor & Moffat, which was a big department store. And Macy's position was: Look, we're the new folks in town. In New York, we have a healthy policy of employing, training, retaining, and promoting Blacks. We're willing to do that in San Francisco, we just don't want to be the first ones to do it. You get the other stores to go along and we'll be happy to go along.

So I said, "Why do you want to picket Macy's?" And I learned a lesson. They said, "Look, Allen, when you're picketing, it's like you're at war. And when you're in war you hit your enemy in his weakest spot." They said, "Macy's is number one because it is least able to withstand picketing and less opposed to our goals and therefore will be the first one to succumb and agree. And then we'll have a success."

Morris: And then the second level will fall.

Broussard: And that's what happened. That's what happened. As I said, ultimately the first two Blacks to be employed other than at Macy's were at Emporium, which, interestingly, was one of the most resistant of all of the stores.

Then you can go along to the public sector--it took pressure to get Blacks employed even in the public sector. You had to bring political pressure, threaten to picket and strike and editorialize in the paper and bring lawsuits and everything else. I remember when the first Black high school teacher, Josephine Cole, was hired in the mid-forties. The first Black firemen, the first Black police officer, first Black probation officer, first Black bus driver, and on and on. That was the public sector.

Morris: In each one of those, it took a campaign like you've just described for the department stores?

Broussard: They all took some kind of concerted effort, political, legal, you know. It just didn't come easy. These were all firsts.

And then, as I said, in the private sector, you couldn't sell cars. That came a little later with the mass picketing that developed when Van Ness Avenue was Auto Row. You couldn't get a job as an auto salesman until there was mass picketing. You couldn't, as I said, wait tables. You couldn't work in the craft unions. All of those barriers had to be broken.

Morris: But you could work on the waterfront.

Broussard: Well, if you'll remember, the CIO had a long history and tradition of open membership and involvement of Blacks and other minorities in their unions. It was the AFL [American Federation of Labor] that had had a much more restrictive policy. That's primarily the craft unions. The CIO is the Congress of Industrial Organizations. And Harry Bridges, I mean, even before 1934, had opened all of that up. That's why I said Harry Bridges was a big man in my dad's life, and, consequently, in my life. The real struggles came with the AFL unions and ultimately, through both litigation and legislation, it was all broken down.

We haven't talked about housing.

Morris: I remember in Berkeley, in the fifties, by then there was an interracial committee that was working on housing. Was there one of those in San Francisco?

Broussard: Ultimately, yes. There were several. Of course, out of the NAACP grew the Council for Civic Unity, which developed later. The Urban League was not primarily into housing. But there was another phenomenon that you have to remember when we talk about housing in San Francisco: to be true to history, we have to talk about the encampment of the Japanese Americans during the war. And one area where I wish some scholar would do some research and some writing would be in the history of the interrelationship between the Blacks and the Japanese Americans in San Francisco when they returned.¹

¹Yori Wada, *Working for Youth and Social Justice: The YMCA, the University of California, and the Stulsaft Foundation*, Regional Oral History Office, University of California, Berkeley, 1991.

Primarily, the new Blacks in San Francisco lived either in public housing or in housing that Japanese Americans had vacated in the Western Addition of San Francisco just this side of the Fillmore area. It was housing mostly which had been occupied by Japanese Americans who had then been sent to relocation camps [during the war.] It was available housing, and it was occupied by the Blacks who were coming in to work in defense plants during the war.

Morris: Did some of those Japanese families come back [after 1945] and want to rent or buy those houses back again?

Broussard: Well, that's primarily where the Japanese Americans settled when they came back. I mean, you return to your neighborhoods. That's the area I'd like to know more about. I lived through it, but I wasn't really aware of all of the intergroup accommodations. I know we had a Japanese-American Citizens' League, which worked with the American Friends' Service Committee, with the NAACP, with the Council for Civic Unity, with the Urban League.

You know, it was all of these various groups working on the accommodations that were necessary for the groups to coexist. My own impression is that there was a minimum of conflict between the Japanese Americans and the Blacks. In a situation where, I think, it would have been easy to have real, outright conflict. And you're a scholar; you might want to take a look at what has been published in that area, and what might need to be done.

I have good personal relationships with a lot of the Japanese Americans who came back from camp and went to City College. A couple of them I still see and relate to. But, then, we had good relations in what could have easily been a conflict situation.

Morris: Who were the fellow students with whom you've stayed in touch?

Broussard: Well, there's only one or two that I still see. Pete Ito was a Bay Bridge toll collector, and I see him now and then. He's retired now. His daughter is now a lawyer, and I've met her. But the group is largely dissipated. Vivian Ashigawa is always in New York. There were several other women in the group; most of them I have not seen for some time. Most of them have left the area. Katherine Miyou, M-i-y-o-u, I think it is, has left the area. Through Pete I just hear about some of the other people sometimes, but I remember them often.

Deciding to Be a Lawyer; Commitment to the Community

- Morris: That sounds like a lot of civic activity for a young college student.
- Broussard: Well, I guess I never even really thought of it that way. But my work with the NAACP, which started while I was at City College, not only involved me in all of this that we're talking about, but I think it was a large factor in my deciding that I wanted to be a lawyer. And it played a large part in something I've always exemplified in my life and that has been the commitment to the community and being involved and trying to make a difference. I think a lot of it really started right there, and I'm just grateful to have been a part of the change that we were making. It's not something that I planned, you know; it was there and I did it.
- Morris: It sounds like it was exciting, too. I'm really interested that the NAACP had the student chapter presidents on the senior board. Young people don't often have a chance to share in their elders' decisions that way.
- Broussard: Well, I don't know. My impression is that that was not uncommon in the NAACP, where you had a youth or a college chapter. I think that was probably the prevailing practice within the NAACP. I don't think it was something unusual with us.
- Morris: But other organizations tend not to have very active participation at the board level by their younger members.
- Broussard: Yes. Well, you see, through that linkage the NAACP had a resource, because they had a direct contact with the younger people in the youth chapter or the college chapter. And whenever they needed assistance in any of their mass work--passing out leaflets and doing door-to-door work, or picketing, or demonstrating, or whatever.
- Morris: They'd call on the student branch for volunteer help?
- Broussard: Sure. They'd call in all the resources they could. I mean, the churches and everybody. They'd call in all the resources they could.
- Morris: You mentioned Carleton Goodlett. Was he active in the planning, or was it more that he had the newspaper available to publicize everything?

Broussard: Oh, yes. I know Carleton was there and he enhanced the activities--a young, dynamic leader. Carleton, Cecil Poole, Terry Francois, William McKinley Thomas, and many others.

III POLITICAL ISSUES IN THE 1950s AND EARLY '60s

Oakland Men of Tomorrow and East Bay Democratic Club

Morris: Were you still a student when Terry Francois decided to run for the [San Francisco] Board of Supervisors? Were you part of that campaign?

Broussard: I wasn't a student, I was living in the East Bay, and I may have contributed to his campaign. I was not that intimately involved in it. Do you remember what year that was?

Morris: I would say it was in the early '60s. After we've got Byron Rumford in the state legislature.

Broussard: Byron was elected in 1948. Yes. And I graduated from law school in '53 and was admitted in January of '54, worked for Justice Raymond Peters, went to the army, came back, and went to work for Peters and then went into private practice in 1956. Terry was in private practice, and he was not on the board at that time. But I went on the bench in 1964. I think it must have been in the '60s when Terry went to the board of supervisors.

Morris: I guess the question more broadly is at what point did the NAACP and some of the groups you worked with start thinking about electing somebody to the board of supervisors?

Broussard: I don't have a good handle on that. Maybe I didn't do enough homework for today.

Morris: You probably were working on a lot of things in those days.

Broussard: I became more of an East Bay-oriented person. And I have more of a handle of what went on in the East Bay than I do here. I can get in trouble for saying it, but in a sense we were a little ahead and a little more cohesive in the East Bay than we were in San Francisco.

Morris: Really?

Broussard: Yes.

Morris: Even though dealing in a bigger area.

Broussard: Well, Byron's presence was significant, D.G. Gibson's was always important and, starting in the late '50s, a couple of things happened. We had, in the East Bay, an organization called Oakland Men of Tomorrow. It was an umbrella group to which most of the Black business and professional men belonged. It was a nonpartisan group; it was intended to build relationships, contacts, networks. We met weekly at lunch, with a speaker. Our organization was a little loose; we did have an executive board, but we had a rotating chair. We didn't have a president.

We did a lot of things, one of which was to develop within that group of men a sense of community, a sense of obligation, of responsibility, to be involved in community service and in the various organizations that served the community. We built the kind of relationships that carried over into business contacts. And, very significantly, out of that organization we built the East Bay Democratic Club. And people who knew talked to Evilio Grillo, Don McCullum, Lionel Wilson, Allen Broussard, Dolly Hughes. Then Viola Taylor, Ruby Dins, Fay Mitchell. And I'm not calling everybody.

Morris: There were women as well as men in the Oakland Men of Tomorrow?

Broussard: No, no, no. East Bay Democratic Club.

Morris: Okay. All right.

Broussard: No. The men that I named first were all members of the Oakland Men of Tomorrow. But that relationship carried out to the East Bay Democratic Club, which did include a lot of significant women. And we were the group that basically supported Rumford, that related to Rumford through D.G. Gibson. And they were about the business of trying to organize the Democratic party in the minority community. I mean, the Seventeenth Assembly District was what Byron had at that time. And the Eighth Congressional District was our congressional district. And we began to build a political base in the East Bay.

A lot of things came out of that. In 1958, members of the East Bay Democratic Club chaired the campaigns of all of the Democratic candidates who were on the ticket, that was with Pat

[Edmund G., Sr.] Brown, if you don't remember, Bert Betts and Alan Cranston, and that whole ticket.

Morris: A great Democratic sweep, yes.

Broussard: Except for one spot. Do you remember that?

Morris: Secretary of state.

Broussard: Henry Lopez was the one non-white on the ticket and the one Democrat who was not elected.

Morris: He was probably one of the first Hispanic guys at the state candidate level. But Frank Jordan, the incumbent, was sort of an--

Broussard: Oh, he was an institution. He was an institution in California, yes. The whole Jordan family.

Morris: I wouldn't blame anybody for not being able to unseat him.

Broussard: Yes. Well, we wondered whether or not if there'd been a different candidate the sweep might not have carried the whole way. I mean, there was a drop-off in the ticket. But you're right, Jordan was certainly an institution in California political life.

Electing Black Candidates at the Local Level

Broussard: Then, not only were we involved in the Democratic politics, but we started agitating at the local levels, in both Oakland and in Berkeley. And while obviously you operate differently when you're in the nonpartisan arena--. Remember, we joined alliances in Berkeley, and that led to the selection and election of Wilmont Sweeney as the first Black city councilman in Berkeley. Barney Hilburn was a product of our efforts when he first went on the school board in Oakland. Barney was a Republican, but, we felt, a responsible Republican. With him as a candidate we could get together some Republican and *Tribune* support.

Morris: Oh, really? Yes, okay.

Broussard: Yes. Well, remember that at time the *Oakland Tribune* and the *Knowlands* were dominant political factors in Oakland. At that time, the key to getting a Black elected in Oakland was to get

someone who had a good, basic support in the Black community, but who could also get some white support. And Barney became a perennial member of the Oakland school board for many years.

Morris: Was the school board an easier proposition to develop a viable candidate for with this kind of coalition?

Broussard: In development it was, yes.

Morris: Why is that?

Broussard: I'm trying to remember. I know in Oakland, you ran in the councilmanic districts, except for, I think, one at-large seat.

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Broussard: It's a little difficult for me right now to recapture that. I can't remember now who was the first Black to run for city council.¹ I mean, I know Lionel Wilson was the first to be elected mayor--not the first to run, but the first to be elected.² I can't remember whether it was Carter Gilmore or whether it was someone who ran before Carter. I did not refresh my recollection in that regard.

Morris: Would it have been somebody that came out of your Oakland Men of Tomorrow?

Broussard: Maybe not that candidate. I'm trying to remember now when the Black Panthers got active.

Morris: About '64, '65, in there. That's one of my questions: when do you recall the beginning of the more militant young activists?

Broussard: Well, you started in the early sixties with the Afro-American Association, which was not itself that militant, but was developing race and cultural awareness and Black pride. Don Warden was the head of that. Then came Bobby Seale and Huey Newton and the more militant Black Panthers. But then, remember, I went on the bench in '64, and that movement was still on the ascent at that time. So my involvement was a bit different because I was on the bench.

¹Attorney Thomas Berkley and others ran for the Oakland City Council in the 1950s. Joshua Rose, appointed in 1964, was the first Black person to sit on the council.

²In 1977. See Lionel Wilson, *Athlete, Judge and Oakland Mayor*, Regional Oral History Office, University of California, Berkeley, 1993.

Morris: I wondered if the early activities of the Afro-American Association and the Panthers might have caused some distress in the East Bay Democratic Club?

Broussard: Well--

Morris: For example, people taking action against the advice of the leadership?

Broussard: Not really. People adjusted pretty well. The Panthers were a very positive influence for a long time. They didn't operate, initially, in the mainstream political activity. They did a fair job at that time.

There's another phenomenon which has gone by the board. The Democratic party was so largely dependent upon the club movement for many years, and that's not nearly as true today.

Morris: Did the East Bay Democratic Club take an active part in the California Democratic Council?

Broussard: Well, certainly, yes. Yes, we were involved in the CDC.

Morris: How was that in terms of Black and white relationships? Were there any tensions there?

Broussard: No, not overt. I mean, we were all working for the same end. There were even some integrated clubs to go to. We had a modicum of white membership in the East Bay Democratic Club, but it was primarily Black. We functioned within the party as a unit that had some muscle, some strength, and ability to deliver. Insofar as CDC was concerned, you had representation based upon membership. So we were involved in that. No real friction. The real goal that we were working on was to be able to select our own candidates and to deliver within our own district, and not be dictated to or spoon-fed by Democrats from outside of the district.

Morris: Had that been the way it operated?

Broussard: Yes, very largely. This is what Byron and D. G. were committed to, that we would have our own political self-determination.¹

¹See "D. G. Gibson: A Black Who Led the People and Built the Democratic Party in the East Bay," Evilio Grillo, in *Experiment and Change in Berkeley, Essays on City Politics, 1950-1975*, Institute of Governmental Studies, University of California, Berkeley, 1978.

But in order to do that, you have to perform, you have to function, you have to deliver to the party.

Morris: To get the respect of Democrats at the other levels.

Broussard: So that even [Congressman] Jeff Cohelan owed his campaign victory to the Rumford-Gibson organization. And when Cohelan no longer had that base of support he was no longer elected.

Morris: When Ron Dellums ran against Cohelan [in 1970], he was a new kind of candidate from the Black community.

Broussard: Yes.

Morris: Did Dellums come through the Men of Tomorrow?

Broussard: No, Ron Dellums did not. Ron Dellums did not come through Men of Tomorrow; he did not come through the East Bay Democratic Club. He came primarily from a young, liberal, Berkeley base, and an interracial base of support. Young, active, liberal Berkeley people were the sources of his political base.

Morris: I always understood that his aunt, Frankie Jones, was active in NAACP and Democratic politics.

Broussard: Frankie was perennial president of the NAACP. But Ron Dellums, at least in the years that I was active in the NAACP with Frankie Jones, Ron Dellums was not active in that organization. I didn't know Ron until he ran. And as I said, his base of support, I think, came primarily out of students and young people who were not particularly involved in the NAACP or in the Democratic party as such.

Morris: Oh, yes. At that point, there was a whole collection of clubs in Berkeley. You might know that there wouldn't be just one Berkeley Democratic Club.

Broussard: No. [chuckles] No, never in Berkeley. That's right.

IV UNIVERSITY OF CALIFORNIA STUDIES, 1948-1953

Preparing for Law School

- Morris: Could we go back and talk a little bit about your student days in Berkeley?
- [interruption]
- Broussard: Thurgood Marshall just announced his retirement today, citing health reasons.
- Morris: He certainly has put in a long, long haul.
- Broussard: Yes, and he continued to serve at great personal sacrifice. I mean, his health has not been good for a long time. But with the stuff that's been coming out of the U.S. Supreme Court and with his obvious inability to sway the majority on any of the controversial things, I can't blame him. I would not be at all surprised if Harry Blackmun followed.
- Morris: Well, it's certainly a great difference from when they went on the bench.
- Broussard: Now, you wanted to go back to--?
- Morris: I wanted to go back to what it was like being a student at Cal after you'd finished up at San Francisco City College?
- Broussard: Okay. Well, as I told you, I made a big adjustment at City College. When I went to Cal, I was upper division. Consequently, my courses were all Monday, Wednesday, Friday courses. I worked Tuesday, Thursday, Saturday while I was at Cal. What was it like? Oh--.
- Morris: Didn't have much time for student activities?

Broussard: No, I didn't. But I did have some good friendships there, both Black and non-Black. It was an excellent school, obviously. It was a very large school. There was no supportive network for minority students. A very small Black enrollment at that time. Almost all of us on campus got to know each other; all the Black students got to know each other.

In my first semester of my junior year, I decided it was time for me to make a career choice, and I thought about it and I decided I wanted to go to law school. Then I started thinking about, well, what law school should I go to. I looked around, and I said, well, right here in Berkeley is one of the finest law schools in the country and certainly one of the cheapest law schools to go to, for anyone. And especially for me, when I'm living at home with my parents in Berkeley. So I said, "I want to go to Boalt."

Then I stopped to find out what it took to get admitted into Boalt. And I said, "Well, Broussard, you better start making some better grades." My grades went up almost a point. Because I then had a specific goal and I knew what it took to achieve it. So I just started producing some better grades. I'd been a sound student, but never really pushed for grades, you know, until I decided--. Boalt was the only law school that I applied to, and fortunately, was accepted.

Professor Jacobus tenBroek

Broussard: I did not box. I had boxed at City College. You can tell from my background that I had a lot of experience fighting.
[laughter]

Morris: Both physically and--.

Broussard: Yes. But I boxed intercollegiately at City. Started to at Cal. See, my size just virtually ruled out football, basketball, or anything like that. But, in boxing at least--

Morris: But you loved sports?

Broussard: Yes. One of the things I gave up because of the Monday-Wednesday-Friday, Tuesday-Thursday-Saturday schedule was participation in real athletic competition. Although I joined the debate team. That grew out of my enrollment in a class with Professor Jacobus tenBroek. Do you know tenBroek?

Morris: Ah, yes.

Broussard: Or anything about him?

Morris: He was chairman of the state social welfare board for a time in the 1940s.

Broussard: Yes. Well, he taught a class in the speech department, and it was intended for pre-law majors. The class consisted of reading and writing critical analyses of supreme court decisions. The classroom work consisted of tenBroek engaging students in a Socratic discussion of the cases that we were reading. And, of course, you know he was blind. And it was just--he was so brilliant. And then, he had overcome his blindness. People would try to come into his classroom late. And you just couldn't get away with anything in his classroom. If you were absent, he knew it. If you tried to get in late, he knew it. The only concession that he made to his lack of sight was that he required his students to be seated alphabetically in the classroom. You had assigned seats.

Morris: So he could match your voices with your name?

Broussard: Yes. He could learn his students, and he could engage in that Socratic discussion and turn from one student to the next; he knew where you were supposed to be seated. If you were not in your seat, he would recognize it. But that was the only concession he made to his blindness. [Richard B.] Wilson, who was the person who headed the debate team and later became a professor at Cal, was sort of his protege. The debating sort of grew out of the tenBroek class.

The only other concession, I guess, that he made to his blindness was that he had advanced students as readers for the written work. And I was very proud that I later became a tenBroek reader. I would read and grade the critical analyses of his students, and then meet with him and discuss the written work of his students. He'd, of course, give them the overall grade in the class.

Morris: Did you find this class in the catalog? Or was there any kind of a counselor at Boalt who said these kinds of courses would be helpful when you wanted to apply?

Broussard: No. I didn't have a counselor from Boalt. Frankly, I heard about tenBroek on campus, and I don't think through a regular counselor. I can't even remember who was my counselor.

Morris: Well, he was one of the great figures of his era.

Broussard: Oh, yes. Yes. And I think I just heard about him from students or other people. I can't identify a counselor at Cal. I can't remember any particular counselor. I can remember my counselor at City College. But I can't remember a particular counselor or advisor at Cal.

Morris: You majored in political science. Was there somebody in the poli sci department?

Broussard: I majored in poli sci.

Morris: You'd just stand there in line with the catalog and all the other students and take your chances?

Broussard: That's right. That's right. That's my recollection. Just going through the catalog, picking your classes. And standing in line to try get your classes. And through the catalog and some inquiry about the speech courses, I learned about tenBroek and I took that class. And it was probably my most significant undergraduate class at Cal.

I was so impressed with him in terms of his teaching. And because of his teaching, I developed some lasting friendships with other students in that class. There were five of us in the particular group; we'd leave his eight o'clock class and continue the discussion, because we all had the nine to ten o'clock time free. And we would continue that discussion. I think I'm correct on this, but out of the five of us, three of us got "A"s and the other two got "B"s in his class. And he didn't give out a lot of "A"s. But we were all motivated and would pursue his classroom discussions. And then, ultimately, several of us went onto the debate team where we continued this same kind of activity.

Friendship, Work, and Managing Personal Finances

Morris: Did any of the other four fellows--? I'm assuming they're all men.

Broussard: In that group, yes, there were all men. Although, we had some women in the class.

Morris: Did any of this group that you particularly liked and followed up the discussions with, did any of them go on into the law and into the judiciary?

Broussard: Donald Cahen is a lawyer here in San Francisco. Al Bendig was in that group. Ralph Hanley went into city management, city government. [snaps his fingers trying to remember] Bob Costello became a lawyer, he's down the Peninsula somewhere. Several of us went on to law school. And Ralph went into government. Then there were Herb Moore--let's find the list-- [looks through papers] Bob Dagget went on to become a lawyer. Harry Hanson went on to become a lawyer. Dick [Hofelt?] went on to become a lawyer. Herb Moore became a lawyer. Larry [Shostak?] became a lawyer.

Morris: And you're still in touch with these folks? You're reading off a current list.

Broussard: Well, I haven't responded to this letter, which I got last year from Herb Moore, who was trying to reconstruct all of the members of tenBroek's Speech 1A class in about a two-year span, '48, '49. This was a listing that he gave and to which I added a few people. He didn't have Bob Costello, who was in my class. Herb Moore was the year after me, I think, with tenBroek. Pat Christiansen, now Hawkins. She's, I think, in Hillsborough, but not in law. Interestingly, she's the only female who's included on this list so far. But all of these people--except Jack Jackson, I don't remember him, I think he must have been a year or so after me, also--we all remember each other because the impact of that class was so forceful.

Morris: Everybody I've ever known who's taken one of his classes has said it was a shining light in their experience.

Broussard: So then, my view of Cal was many large classes, because they tended to be the lecture classes with study groups. One of the major exceptions was tenBroek, which was a small class with intensive Socratic discussion. Other than that, it was--. I didn't belong to any undergraduate fraternity.

Morris: Did any of the Black fraternity groups invite you to join?

Broussard: Yes, but my motivation wasn't high. The Black fraternity groups did not have houses on campus. I was living at home. I didn't feel I really needed them for social exchange. And I just wasn't that motivated to join. Later on--I think I was actually in law school then--there was an interracial fraternity that was organized. Beta Sigma Tau, I think was the name of it. It was an interracial fraternity that was new, and they organized, and they had a house near campus. I already had friendships with some people who joined that fraternity, but I never did join that one, either. As I said, I was

actually in law school at that time. But I never did join any undergraduate or social fraternity.

Morris: The Tuesday-Thursday-Saturday job, did that continue to be working on the waterfront?

Broussard: No. That was C. H. Baker Shoe Store. Do you know C. H. Baker?

Morris: No. Did they move you up to salesperson?

Broussard: No. Always shipping, receiving, and stock. But I worked there three days a week during the school year. That was my undergraduate years at Cal. When I went to law school, I would spend most of my summers working at Del Monte cannery in Emeryville. That was interesting. I worked at Del Monte in the summers and made as much money as I could and saved as much money as I could.

I didn't put it in the bank; I'd give it to my parents and have them give me back so much a month. Then I had two scholarships which gave me money on the first of the month. I would look up when Cal would be playing UCLA, and then I would take a little out for a trip to Los Angeles. That's basically the way I financed my way through school. I was living at home. I saved what I could, scheduled it out.

Morris: You must have been a very well-organized young person.

Broussard: Well, I didn't think so at the time. I didn't think it was very unusual.

Morris: But, you know, college fellows usually can spend whatever is in their pocket.

Broussard: Well, I appreciated all that my folks were doing for me. But I wanted to help as much as I could. So I was pretty conscientious about my money and my fun. Did my share.

Morris: Was there time for occasional parties, and a girlfriend?

Broussard: Oh, sure. A lot of them. Yes. Certainly. And I managed to get a little car, and everything.

Boalt Hall School of Law

Morris: It sounds as if you didn't really have any doubts that you'd be accepted at Boalt. Or any anxieties about going? There's a report in a press clipping I read that your first semester at law school was really quite of a shocker?¹ Why was that?

Broussard: Everything was new and strange, I'll tell you. We started with three Blacks in my class and one woman. It was the first time there had been three Blacks in the law school at one time.

My class was the largest first-year class to be accepted by Boalt, because it was anticipated that, by the time classes started, (what I call the new) the present law school, would have been available for our entering class. Prior to that, Boalt Hall was housed in Boalt [now Durant] Hall on campus, right opposite Wheeler. It was a very small school, and it had a limited student body. Our first year of classes were held in a classroom in Wheeler Hall, because we started off--

Morris: So it was physically a transition.

Broussard: Yes. We started off with, I think, one hundred ten students in our first-year class. I know we had one hundred six at the end of the first semester. The first year we had our classes in Wheeler, we studied in Boalt Hall. It wasn't until the middle of our second year that we actually went into the new law school.

Morris: The building that's called the Law School.

Broussard: Yes, the building that is called Boalt Hall now, yes. Right. That was a brand new building when we occupied it.

This is a little interesting sidelight. I lived at home, drove my car, and generally had to park a little distance from campus.

Morris: Still do!

Broussard: Every time it would rain, my mother would give me one of her umbrellas. And I would come home wet because I didn't want to use a red umbrella or a woman's umbrella. And she wised up and bought me one of the first pop-up men's umbrellas that I'd ever

¹William Rodarmor, "A Conversation with Allen Broussard," *California Monthly*, February 1993.

seen. So I would stick my arm out of my car window and pop my umbrella, and get to Boalt real dry.

In the old Boalt Hall there was a big vestibule. All the law students would put their briefcases in that vestibule going into the library to study. When we would leave Boalt Hall to go to Wheeler, if it was raining, I'd pop my umbrella up and everybody else was--

Morris: Running to get out of the rain?

Broussard: There was a time when Boalt graduates were known to use umbrellas when it was not popular for men to do it. And I started that tradition, because my classmates started buying umbrellas. Because we had to go back and forth from Wheeler to Boalt Hall.

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Morris: After the legal discussions in Professor tenBroek's class, what was it like in the law school? Were the people there as impressive as he was in the subject, what you'd hoped?

Broussard: Well, to go back to that first semester. They seated us alphabetically in the first year of law school. Everything was new and strange. The teaching technique--while we had read excerpts from U.S. Supreme Court decisions in the tenBroek class, we were dealing with more of a textbook than a casebook. The whole casebook method, the concept that prevailed in most law schools and certainly in Boalt at that time, was that it was the students' job to read the cases and to learn the law. You had to operate pretty much on your own.

I had no exposure other than the tenBroek course to the law and to lawyers, to the concept, the terminology, the teaching methodology, the tools, the technique. And there was just so much self-doubt, because I didn't know whether I was learning what I was supposed to learn. They started using terminology that I had never heard, and I sort of glanced over my shoulder and looked at the rest of class, and I said, "I wonder if everybody else in here is as mystified as I am."

The saving grace was to get into a study group and not try to get through alone. Get yourself into a study group.

Morris: How are the study groups formed?

Broussard: Just informal.

Morris: You just sort of pick them out?

Broussard: You just pick people who you are compatible with. You drop in and out of them if you don't like them. You know, it's just self-match. No structure to it. I was in a couple of different study groups. That requires not only that you keep abreast with the work and brief your cases, but that you have the opportunity and the necessity of articulating the concepts that you're studying. And that's very important. You know, you read it and you think about it and then you say it. And that really cements the learning process. If you can't articulate a concept to your study group, you don't understand it well enough to do well on an exam.

Morris: Is part of what you're doing sharing the work? You brief some cases and present them to the group?

Broussard: No, we would all brief all of our cases. In the study group, you'd try then to develop an outline--a summary actually is what it is. We discussed the cases that we'd have in class, to try to understand their importance and their significance.

Professor [Richard] Jennings used to tell us all the time, "This ain't a spoon-fed law school. You got to read those cases." [chuckles] And the instructor would go through the cases with you, maybe five a day, or something like that. And then your job was to try to understand the essence of the cases and summarize them into a body of law. But the important thing was to process this all through your brain. And that was what was different.

It's not like reading a history book and trying to understand what's written on the page, and then you understand some history. They use some cases to help you to learn to think like a lawyer, in the process you learn some law. And so then in the study group, you'd sit down and say, "Now, what is it we're supposed to have learned out of these cases?" And you try to develop a summary of them and develop a concept of that area of the law.

Morris: That's not too far from the old days when people used to learn the law by reading law in an attorney's office.

Broussard: Yes, that's, I think, still legally possible. But nobody does it.

Morris: Were there some people in particular that you felt were really helpful in this study-group process?

- Broussard: One of the most consistent members of my study group would be Priscilla Rogers. Harold Farrow, F-a-r-r-o-w, was in a couple of study groups with me. Bob Barton was in--no [chuckles], he was the class phenomenon. He was not in a study group. He would do the briefest briefs of anybody in the classroom. He wouldn't mark or underline his books, because his girlfriend--his then-girlfriend whom he later married--was a year behind him in law school, and he wanted the books untouched for her.
- Morris: Good heavens! So, he held it all in his head?
- Broussard: He developed what we called "Barton briefs". Bob Barton's briefs were the briefest briefs, but he was either number two or number three in our class. A brilliant guy. Tom Ackermann, I had one study group with him. Harry Keaton, who is now dead, we did corporations courses together. That's about all I can remember.
- Morris: Were there mostly people that had come in from other schools, other states, or were there people that you already had some contact with at Cal? In that hundred and six in your class.
- Broussard: About the only people I knew were those whom I had met through tenBroek's class and through the debate team. Mostly other than Cal, which was a tremendously large university. We had students from all over the United States. I mean, Boalt was a magnet law school. So I didn't know too many of my classmates before we began developing relationships.
- Morris: Did you have time to keep up with some of the things that you were doing for the NAACP?
- Broussard: I don't think I did much until after law school. I was active in the Berkeley branch with Frankie Jones, as you were saying. And Lillian Pitts. But that was after law school as a young lawyer.
- Morris: Was Walter Gordon around at that point?
- Broussard: No, he wasn't. His family was. Well, I mean his children. I guess he was in the Virgin Islands at that time.

V U.S. ARMY, 1954-1956: ADVENTURES IN A REPLACEMENT DEPOT
IN GERMANY

Morris: Let's see. You took the bar exam and then went into the army?
Is that how it went?

Broussard: Yes. I was deferred from the draft through law school, and took the bar exam in the summer of '53. At that time, it wasn't until January that you got your results. The most significant single day's mail in my life was when I came back from the Rose Bowl. In the same day's mail, I had my notice of induction into the army and my notice that I passed the bar exam.

Morris: Which did you open first?

Broussard: I think it was the bar results, and then I had my draft notice. But I was working for Justice Peters then, as his research attorney, and he got my induction deferred a bit so that he could select a replacement for me.

Then I went into the army and spent the two years. I applied for a commission in the Judge Advocate General Corps, but if you will remember--you couldn't apply for a commission until you had actually been admitted to the bar. So I was sworn in on January 28, I think that's right. I applied for a JAG commission, but at that time, it took about six months to get the three security clearances that they did on you. So I was actually drafted before I got any response from my application.

I had a very, very unusual military career because I was a lawyer. I was sent overseas, I was picked up at the replacement depot in Zweibrucken, Germany. And when I say "replacement depot"--the mission of our post was to receive all of the enlisted men who were shipped to the European theater. We were to receive them, house them, feed them, classify them, assign them, and ship them, within seventy-two hours. All of the enlisted personnel who were going to be in the European

theater would come through us. Not officers and not the top three grades.

I mean, we had what you call a skeleton battalion--just a framework, and then we'd pick up the casual personnel who came through to fill up the battalion. I was the fifth enlisted lawyer picked up on that post. We had a situation on the post where the average level of education among the enlisted personnel was three years of college, which is very unusual in the service. The post commander was a bird [full] colonel who had gotten, I think, a battlefield commission. We had a very nice post; we referred to it erroneously sometimes as "the campus". [chuckles] We had the opportunity to pick up people who really were good-looking people, who had good attitudes, good educational background.

When I came through, the big fight was between the chaplain and the legal officer. The legal officer was a Black captain who wanted me as his assistant because he had had one year of law school. The chaplain wanted me as his assistant because he was entitled to two assistants and he had two requirements: the Protestant chaplain's assistant had to have a background in music, and the Catholic chaplain's assistant had to have enough brains to manage both the Catholic and the Protestant chaplain's funds. And also to assist Catholic G.I.s with problems with church or family. I don't mean counsel and stuff, but I was probably the only specialist third-class on the post who could pick up the phone and call the motor pool and say, "I need a jeep to go to Kaiserslautern" or wherever, because I had to talk with the Catholic chaplain. Or I would have to arrange for the Canadian Air Force chaplain across town or a German priest from downtown to say Mass on Sundays and stuff like that. So the chaplain wanted me, the legal officer wanted me; and the chaplain outranked him, and he got me. So I served nineteen months in Germany as the Catholic chaplain's assistant on a post where we never had a Catholic chaplain.

Morris: That must have been quite a change.

Broussard: And the other thing is that I was Seventh Army, assigned to the replacement depot on what we call temporary duty. And the skeleton battalion was a headquarters battalion, administrative battalion. And the reason that got important was that whenever we had an alert or field exercises, the theory was that the Seventh Army people on temporary duty with the headquarters battalion would stay and fight while the headquarters battalion moved behind the lines and set up a new operation.

So when we had an alert at three o'clock in the morning, I'd get my carbine and go over to my desk in the chaplain's office and go to sleep while the headquarters people had to load their field gear onto the trucks and move out and go set up tents and stuff like that in this exercise.

Morris: Heavens! Was there much of this kind of activity in the '50s?

Broussard: Oh, they pulled surprise alerts on us, of different kinds. Some of them were required for all of us. But, in the main, that was the way the line broke down. The concept militarily was that if there was an outbreak of hostilities, the Seventh Army people TDY'd [did temporary duty] with the headquarters, and would maintain the post and the operation, until the headquarters people moved out and set up a new operation behind the lines. See, we were in Zweibrucken, which is that traditional buffer zone between Germany and France.

Morris: It sounds like your military service was kind of an interruption in your life plan.

Broussard: It was. Well, back to what I told you. I ultimately was tendered a commission as a first lieutenant in the Judge Advocates General Corps. I was already situated in my post in Zweibrucken, and I decided that I did not want to accept it; I would have to have enlisted for three years and come back here and gone to military justice school in West Virginia. But I was in the army then, so I had to send my declination of commission up through the chain of command. And I'll never forget--I got a call from Seventh Army headquarters, Stuttgart, from the JAG office, trying to persuade me to accept the commission. And I told them, no, I appreciated and enjoyed being in Europe.

Fortunately, I had enough sense that I took advantage of my presence there. There were no real hostilities; there was no real fighting going on. So I traveled extensively in Western Europe, and I had enough sense to do some reading--you know, not do just typical G.I. traveling. A lot of the younger draftees and enlisted personnel missed a lot of the opportunities that existed over there.

I got tempted when Stuttgart told me that if I would accept the commission and go to military justice school, they would assure me that I would be stationed in Stuttgart, at Seventh Army headquarters. And I had this picture of myself, a single--. I'd start off as first lieutenant, and I'd probably have time to make captain before I would finish my three years. I could see myself being in Europe as a legal officer, but I

said, "No. This is an interruption in my life, and I want to get back." So I declined it.

Morris: In the Seventh Army and on your base, were there many minority servicemen?

Broussard: No, not too many. There were some. We were maybe only about five percent of the--let's see; this is interesting. We really had four categories of people on that post. We had the commissioned officers who were regular army people. We had the commissioned officers who were ROTC officers--college students. We had the enlisted men, mostly the top three grades, who were the career army people. And then we had the people who were drafted or had involuntarily enlisted in the army, over whom we had a lot of selection ability. And what was a beautiful assignment developing just a little problem, because there was a natural affinity between the commissioned officers who were ROTC to associate with the enlisted men, who, as I said, had an average of three years of college education. And then that began to create some resentment on the post with the regular army people.

But it was only in the enlisted personnel that we had any sampling of Blacks or minorities. None of the regular army people on that post were Black, except one--we had one sergeant. We had one ROTC lieutenant, first lieutenant. And then we had maybe about ten Blacks, and that's about it. And then I made one more when I came over.

VI BEGINNING A CAREER IN THE LAW

Clerking for Justice Ray Peters

- Morris: Going back to Justice Peters. What kinds of work were you doing for him?
- Broussard: I was his research attorney. He only had one. At the time I worked with Peters, he was the Presiding Justice of Division I of the First Appellate District. I think that I was the first Black research attorney hired by a Justice on the court at that time. I was his one research attorney for that fourteen-month period.
- Morris: Are you picked on the basis of your grades in law school?
- Broussard: That's a big factor, yes. Yes, that's a big factor. The judges just do their own selecting. Peters almost always hired someone from Boalt. Some of the other judges would probably want someone from Stanford. Peters was a great judge, and a true liberal. While I did have the Law-Review experience and a pretty good class standing, I think that that's one of the instances in which he kind of reached out when he learned of my availability, and gave me that opportunity. There's his portrait over there. [points to portrait in corner of his office]
- Morris: The one with the Santa Claus hat on? From here it looks like a Santa Claus hat.
- Broussard: No, no that's a flag. Come over and take a look. That's a flag.
- Morris: Oh, oh. Isn't that handsome?
- Broussard: It's faded a little bit now, but this is a photograph of a portrait of Peters that was commissioned by his former law clerks on his sixty-ninth birthday. We all thought of him as

our friend, and we got together at a meeting in The Faculty Club on campus. And we knew that Peters would, because of retirement laws, be required to retire by age seventy. So we got together on his sixty-ninth birthday and we commissioned Vincent Reyes to do a portrait of Peters. What we did not know was that Peters would die before he reached age seventy. So the portrait was finished posthumously. And the original of this photograph hangs in the VIP room at Boalt Hall.

Morris: I must go around and take a look, yes.

Broussard: And this is a photo that was enlarged and distributed to the former law clerks. The person who really put all of this together was Tony Kline, Justice Tony Kline, who had worked with Peters on the supreme court.

Working with Justice Peters was a great experience. He was a great man, and really helped to shape and develop some of my judicial philosophy.

Morris: What, particularly? What kinds of ideas impressed you most?

Broussard: Well, he was a brilliant scholar, but he never lost sight of the fact that law had to have a touch of humanity in it. And he was always mindful of the impact that his decisions might have on people. And that gave his work a real human quality. I tended generally to share his philosophy and his attitude towards life and towards issues. And he taught me how important it was to not just coldly and objectively analyze, but to think of the impact you were having on people and humanity, on society. And, in essence, that law is a social tool to be used to achieve appropriate goals.

Morris: Was this the general trend of the teaching at Boalt?

Broussard: Boalt didn't teach you much other than how to think like a lawyer. We didn't have the kinds of courses that would impact or develop your attitude or philosophy about the law. I think maybe that exists more in the law schools today. But then, I'd say, our teachers were more purists. You really took your student course material and didn't indulge that much in philosophy of the use of the law.

Realities of Wages and Race Relations

Broussard: Law school was an impractical education in some ways, although that's not a correct statement. Because I'll never forget reading the first chapter of a book called *Education for Freedom*. It was written by Dr. Robert Hutchins, who was then the President of the University of Chicago. And the first chapter of that book was "The Autobiography of an Uneducated Man." And he had, I think, three earned doctorates.

That first chapter was his own autobiography, in which he referred to himself as an uneducated man until he found law school. He said it was only then that he really achieved an education, because it taught him how to use his mind. And he referred to law as the most difficult education in the world to waste. So in that sense, it was a very practical education that we were getting. But it wasn't practical in terms of, you leave law school and you go out and you're ready to practice law. That's why, when I graduated from Boalt, the best law firms were paying Boalt graduates three hundred dollars a month if you were single and three hundred fifty dollars a month if you were married.

Morris: There was a differential if you had a wife to support. Interesting.

Broussard: That was exactly the prevailing pay. Three hundred dollars a month if you were single, three hundred fifty dollars a month if you were married. It was just clear recognition of the fact that you were getting sustenance compensation, and if you had a wife you needed more money to feed her. [chuckles]

Morris: It cost more to feed two than one. Was the theory that you would actually learn the law by practicing it?

Broussard: You didn't know how to draft a complaint. You didn't know where the courthouse was. We'd have a lecture series at lunchtime, and stuff like that. You know, the lawyers would come out and tell you, "Well, look. A young, a recent law school graduate is nothing more than a long-term potential for us. You're almost a liability when you come out of law school, because we have to teach you so much."

Morris: That must be kind of depressing.

Broussard: They didn't want you to feel too high and mighty.

Morris: Yes. Did you interview with some of the big law firms?

Broussard: No, I did not interview with any law firms, except a couple minority firms and a couple of minority lawyers. No, I didn't even realize that the interviewing process was going on, you know, that the law firms were interviewing my classmates. I was not into that at all. I didn't get--

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Broussard: I mean, it just wasn't done at that time. The law school did not refer me to any law firm. Fortunately--I don't know who initiated it--I did come to Peters' attention and he employed me. But when I graduated from law school, I couldn't join the American Bar Association.

Morris: Unbelievable.

Broussard: I didn't get any job referrals from my law school until after I had worked for Peters, gone into the army, come back, and was-- I was in the process of changing my association from Vaughns, Dixon and White, to Wilson, Metoyer and Sweeney, when the law school called me and asked me if I was interested in doing management-side labor law, because Kaiser was interested in having a Black lawyer in their labor management division in Fontana, California. And I told them, "No, thank you."

Morris: Did you talk with other minority students about these things?

Broussard: We started with--this gets a bit personal--we started with three Blacks in my class. It was the first time there had been three Blacks in Boalt at one time. The plan had been to admit two of us, Jim Goodwin and myself. Jim had gone to Cal and had been on the debate team. The other person, Charlie Turner, was admitted in an unorthodox manner. He had spent some time over the summer working with the chancellor, I think, and was admitted in an unorthodox manner.

Charlie didn't make it through when the first grades came out; my grades were exceptionally good, because that was before I lost my briefcase--that's another story--but at the end of the first semester I was number six out of one hundred six in my class. The other Black person was down a bit in grades. The law school encouraged him to stay, and told him that with a little adjustment, he'd probably make it through. Well, he left at the end of the first semester too. And you know why he left?

He said, "Allen, when they admitted the two of us, I figured only one of us was going to make it." He said, "And obviously, it's going to be you, not me. So I'm going." And

he went to another law school. And then--let's see--the class behind me, one black.

Morris: So you're the only Black person who graduated in your class.

Broussard: Yes. Goodwin didn't stay and Charlie Turner didn't stay. Goodwin went on to--I think he graduated from Golden Gate.

Morris: And there still wasn't any counselor or advocate on campus that you could take any feelings to?

Broussard: No. The whole concept of special admissions or special support programs or special counseling or anything hadn't developed yet. I mean, I was admitted competitively and had to perform competitively. There was nothing special. I had to operate pretty much on my own.

With the Firm of Vaughns, Dixon & White

Morris: But you did have friends in the legal profession in Oakland that you could go to when you were ready to look for a job?

Broussard: Well, again, you know, through my NAACP work I knew most of the Black lawyers in the area by the time I had graduated from law school. I guess the main person that I spoke with, though, was Tom Berkley, whom you probably know. But I decided that that was not where I should hang my shingle. And I went into practice with George Vaughns, Billy Dixon, and Clint [Clinton] White. Vaughns, Dixon, and White. Wilmont Sweeney and I were the two non-partners in that five-lawyer office. And I stayed there from '56 to '59. Sweeney left Vaughns, Dixon, and White; well, first he'd associated with Clint White, and then he took over the practice of attorney John Henderson. Then in 1959, Lionel Wilson, Carl Metoyer and Wilmont Sweeney formed a partnership and built that little law office building at 6014 Market Street in Oakland.

Morris: I noticed that, and I wondered if they built the building.

Broussard: Yes. They had that building built, and had offices for five lawyers. So I went in as an associate, as did Sidney Noel, N-o-e-l. Sidney's now dead. We went into that office in '59. In '61, Lionel Wilson went on the muni bench [Oakland Municipal Court], and I became a partner. And we brought in another associate.

VII BUILDING A BLACK POLITICAL BASE

Governor Pat Brown's Appointments

Broussard: Then in '64, Lionel Wilson was elevated to the superior court, and I went on at the muni court.

Morris: It's kind of a fast track you fellows had set up there.

Broussard: Well, you've got to remember that Lionel was the first president of the East Bay Democratic Club, and you know, a very experienced lawyer. And he went on soon after Pat Brown [Edmund G., Sr.] became governor, and Pat Brown started in '59. When Pat Brown was governor, he tended to appoint everyone to the muni court first. There were some exceptions; he had some people who had been very, very close to him, like Leonard Deiden and John Purchio and Monroe Friedman, who went directly to the superior court. But, in the main, Pat Brown would appoint to the muni court and elevate to the superior court almost in rotational order. You know, he'd just--.

Morris: In the order in which you'd been appointed to the muni court?

Broussard: Yes. Right. And that became an issue, because when Lionel became the senior-most Pat Brown muni judge, it was expected that he would go to the superior court when the next opening came up. And that was offered to him. But Byron and D.G. and Lionel and some others were interested in who was going to replace Wilson.

And Byron said, "We've got the man for you. Broussard." Some of our good Democratic friends started saying, "No, no. Don't appoint Broussard now. Because we don't want to create a Black seat. See, appoint somebody who's not black, and then you can consider Broussard later on." The position we took was,

and Lionel joined in with this, "If Broussard doesn't come onto the muni, I don't go to the superior."

And there was muscle in that, because for Pat Brown not to put Lionel Wilson on the superior would have meant he was passing over him. And that would not be politically wise. So, anyway, Lionel was the first Black muni judge in the [Alameda] county, the first Black superior court judge in the county. I was the second Black muni judge and then the second Black superior court judge.

But that all came out of the East Bay Democratic Club, as did a lot of other things. I mean, Charlie Wilson became counsel for the Fair Employment and Practices Commission. Al McKee became an inheritance tax appraiser. Evelio Grillo was appointed to the Metropolitan Study Commission, I forget the exact name of it. Don McCullum later became an inheritance tax appraiser. Wilmont Sweeney, Berkeley City Council. And, I mean, it was all a product of that political base that we were building.

Morris: Did Pat Brown need much convincing on this subject of appointing Black people to the bench?

Broussard: The problem wasn't Pat. It was just that as you consult in the local community--I mean, among your Democratic friends about who is going to go on the bench--the concern in that issue was well-intended, but they said, "We don't mind Lionel going up, he's been a fine judge in his term. And we don't mind Broussard being considered. But we don't want to create a Black seat." When my name went to Pat, he didn't have any problem. Byron Rumford and Pat Brown were very close.

As a matter of fact, there's another little interesting story that a lot of people don't know. When Pat Brown was elected and was forming his cabinet, he interviewed a lot of us. Including me. And including Cecil Poole, who had a different relationship with Pat Brown. Cecil Poole had been in the D.A.'s office with Pat.

Morris: In San Francisco.

Broussard: In San Francisco. Pat Brown wanted Cecil Poole to be his extradition and clemency secretary. And Cecil Poole wanted to be a superior court judge. This is true. Pat Brown offered Cecil the extradition and clemency secretary, and Cecil Poole turned it down. Pat Brown interviewed Lionel Wilson, Charlie Wilson, Evelio Grillo, me, Don McCullum, maybe a couple of

other people. And he interviewed me with the idea in mind that he might appoint me his extradition and clemency secretary if he couldn't get Cecil to take the spot. Well, Cecil thought about it and it was about a three-day hiatus when Cecil got back to Brown and said, "Okay. I'll accept it." So I didn't go into the administration then, and I'm not sure that I would have, except that I probably would have.

Morris: If it had been a firm offer?

Broussard: Yes. But Byron had that kind of relationship with Pat that he could say, "Here, we ran the campaign in the district." But, I'm not sure even that Cecil was aware of that. I've told him about it since.

Morris: Cecil Poole got to deal with the long, long Caryl Chessman clemency discussion. You were spared that.

Broussard: Indeed, I was. That was an interesting case.

Morris: This is a good stopping point for this morning.

Broussard: Well, I wasn't aware of the time. Let's stop now, and you'll be back at ten-thirty tomorrow.

Morris: That would be great. Thank you kindly.

Community Service; Evelio Grillo's Influence; Hispanic Participation

[Date of Interview: June 28, 1991]##

Broussard: You know, I was interviewed a while ago by someone from the university. We talked a lot about D.G. Gibson. I don't recall ever seeing a transcript.

Morris: That may have been done by my colleagues at the Institute of Governmental studies as part of their book on *Experiment and Change in Berkeley*. That was a series of essays by different people who'd been active in city politics in the sixties. It was just about the time that D.G. Gibson died. And people wanted to make sure that some discussion of Mr. Gibson's role was included in the book. Evelio Grillo wrote that chapter. It's not technically an oral history.

Broussard: Yes, I know he was involved.

Morris: Mr. Grillo is a very interesting person. I'd like to ask you to tell me a little bit about him. I met him some years ago when I was referred to him as someone who was a mentor in the Hispanic community. Is it unusual that one person should be equally important in both the Black community and Hispanic community?

Broussard: Well, he's been very important in both, and he's been important in my own life, personally. Again, I met him through the Oakland Men of Tomorrow, in about 1956. He was very instrumental in helping shape that organization and to direct some of its interests and talents and members into what we then called our community-service program. We had biannual retreats; the early ones were all at Asilomar. The first two or three of them were all devoted towards promoting the idea of being involved in community-service activities. It really got to the point where many of the community service organizations in Oakland would contact Men of Tomorrow, asking for recommendations for people to serve on their various boards and commissions. We really functioned as a clearinghouse for a long time, and we were educating and encouraging our members to get involved.

At our Asilomar retreats we would bring people from the Alameda County Council of Social Planning. We would get resource people who would come to our retreats, talk to us about the various organizations that were involved in community service, about ways to get involved, about things that needed to be done and could be done. So our members were getting motivated and interested. We were getting known by the service agencies in the community. They'd contact Men of Tomorrow and ask for recommendations for someone to serve on a board or a commission, something like that. And it just led to a tremendous involvement by a lot of our members and others whom we knew in that whole area of community service. And Evelio shaped that a lot; he has his social welfare background, see.

Morris: Did he go to the university for social welfare training?

Broussard: I am not positive. I know that he's trained in social welfare, but whether that was at the University of California, Berkeley, I'm not sure.

Morris: He came from Florida? Or the Caribbean? Or both?

- Broussard: I think maybe both. I'm not positive. You know, it's a situation where we had a good working relationship. I mean, I knew his family and everything, but I don't have a clear handle on his background. I think he may have gone to school back East. Columbia, or something like that? I'm not sure.
- Morris: Did he bring some Hispanic young men into the Men of Tomorrow, too? Was it cross-cultural?
- Broussard: No. No, it was not. We were a Black organization.
- Morris: There was also an organization called Community Services Organization.
- Broussard: Yes. The CSO is an Hispanic organization that he also was involved with and influential in.
- Morris: Did you do any work with that?
- Broussard: Not directly. It was primarily Hispanic. You know, I'm not saying they didn't have any non-Hispanics in their membership, but just as Men of Tomorrow was primarily black, with some exceptions, CSO was primarily Hispanic, and maybe with some exceptions. The unique thing about Evelio was that he had his foot in both camps and was very instrumental and had a significant influence in each of the two organizations.
- Morris: Do you remember the two organizations getting together on any activities?
- Broussard: Oh, we may have cooperated and coordinated with them on some of our community activity, and even to some extent, maybe more in the political arena. Because the East Bay Democratic Club did have a good contingency of support from the Hispanic community, as contrasted to the Men of Tomorrow. Jimmy Delgadillo and a whole group of Hispanics worked with us in the East Bay Democratic Club, but we all worked together in the East Bay Democratic Club. Again, largely Evelio's influence.
- Morris: How about Asian leadership or interest in politics?
- Broussard: Oh, I would think that came later--where there was any real coordinated effort reaching out to the Asian community. I would say that was considerably later.

Senator Nick Petris and Assemblyman Byron Rumford Coordinate Campaigns

- Morris: How about people like Nick Petris? Was he somebody you had contact with? He went into the assembly pretty early.
- Broussard: Yes. Nick was in the assembly and then in the senate. He was traditionally supported by our club, and even when we got a second senator in Alameda County, Nick and Byron coordinated so that they would not have to compete against each other. So we were in a position where we could support both of them. Nick traditionally had the support of the wing of the Democratic party that I worked with.
- Morris: Was there a question as to which seat Nick would run for and which seat Byron Rumford would run for when they both ran for the senate in 1962?
- Broussard: Obviously, you had two seats, one in the short term, and one in the long term. And if you had two people interested in running for senate, they would have to have some accommodation or some competition as to who would run for what seat. And they worked it out. If I remember correctly, I think Nick may have run for the short term because he did not want to have to run when the governor was running. And I think that's the way he worked it out.
- Morris: He didn't want to run with Pat Brown?
- Broussard: Well, it would leave Nick free to seek a statewide office without risking his seat. I think that's the way that was worked out. So that initially you would think that whoever was running would want the long term. I think Byron ran for the long term and Nick ran for the short term because it gave Nick the luxury of not having to run for reelection at the same time as the governor or other statewide officeholders were running.
- Morris: Was there some serious thought of running Nick for a state-wide office?
- Broussard: I think Nick has considered the possibility of running for a state-wide office generally at various times, and possibly even with the thought of running for governor. Where it wasn't anticipated that Byron would ever be running for a change; I know he wasn't a lawyer. And it wasn't anticipated he'd be running for governor. So I'm quite certain that's the way it was worked out.

- Morris: I remember that that was a disappointing campaign for Byron.
- Broussard: For Byron it was, yes.
- Morris: At the time, was there any thought there could have been changes in the way the campaign was run that might have made it a clearer victory? So that the result would not have been challenged in the courts?
- Broussard: Well, I don't know so much that it was the way the campaign was run. Byron was convinced that there was some chicanery involved in the election result. That's why he pursued that litigation. And I think Byron remained convinced that there was some unfairness in that election and it left him kind of bitter there for a while. I think it was more that than it was a concern about how the campaign was run.
- Morris: The controversy was over a fairly small number of votes.
- Broussard: Yes. Well, it was close, it was close.
- Morris: In your experience working on campaigns, was there much evidence that there were election irregularities? Was that anything that the Democratic Club was concerned about?
- Broussard: What year was this?
- Morris: '62.
- Broussard: Let's see. And Byron filed suit on that--. I'm trying to recapture that, because for some reason, I don't think I was as intimately involved as some of the other people. We had certainly been involved in Byron's campaign. And his opponent was--
- Morris: Lewis Sherman from Berkeley. It was Sherman's first try for elective office.
- Broussard: Lewis wound up being a fairly moderate Republican and a pretty popular guy, and was a surprisingly strong candidate. I can't add much more than that Byron undertook personally to explore the manner in which the votes were handled. And really involved himself in that very, very personally and very, very intimately and deeply, almost to exclusion of some of the rest of us. So I don't have any real in-depth knowledge or understanding of just what went on.

Thoughts on Justice Thurgood Marshall's Retirement; Race Relations

- Morris: I wondered if you'd like to maybe take a minute out of context and tell me if you ever worked with Thurgood Marshall, if your paths crossed at all in some of the bench and bar activities, since he announced his retirement today.
- Broussard: Well, we never really worked intimately together. I had met him at NAACP and other activities, but I would doubt that Marshall would know me personally other than his association of my name with some of the work that I've done on this court. Again now, because of the fact that I went on the bench as early as I did, I did not have many occasions to work with him personally. I was really saddened by his retirement.
- Morris: I wonder if his decisions on the supreme court had been of interest to you, and if they'd been useful to you in your thinking.
- Broussard: Oh, I've been very, very delighted by the fact that several national publications have sort of compared me to him. They called me "the Thurgood Marshall of the West," or something like that. No, I think that our views have been essentially similar. We have pursued the same goals and objectives in the main. Certainly his work is something that I would look to for guidance. I have a tremendous respect for him. He made just an outstanding contribution over a very long period of time. But I'm sure that, in addition to age and health, the sense of frustration with the direction in which things are going on the supreme court had to have played some part in his decision to step down now.
- Morris: The *San Francisco Chronicle* certainly gave him some fine coverage in this morning's paper.¹ I was looking for one quote. Oh, Paul Gewirtz, a law professor at Yale University, said, "Here's someone who grows up in a society with a ruthlessly pervasive racism and who imagines a radically different world and then goes about bringing it into being..." Would you say that kind of characterizes the way Justice Marshall went about things?

¹ "Marshall Was Isolated as Court Moved Slowly to the Right," Neil A. Lewis, June 28, 1991, A18.

Broussard: Well, he's the grandson of a slave, and certainly has lived the Black experience. And as Marshall himself said--if I can get it correctly--he was asked how would he like to be remembered. He said, "As someone who did the best with what he had," or, "the most with what he had." I think that that's an understatement, but a true statement. I mean, here's a man who just rose to the very top and made tremendous contributions despite having been rejected at the law school of his choice and having been reared the grandson of a slave.

An interesting thing is that, when I think of his life and I think of mine, sometimes I wonder why I never grew up to be a hater. And I wonder the same thing about him. There were many things in my background which could have caused me to hate white people. Growing up in Louisiana where everything was segregated in law and in fact, I had a lot of personal conflict because of my race and my religion. It would have been easy for me to hate people who were different from me, but for some reason that has not happened. I have race and ethnic pride, but I don't have bitterness and animosity. I have tried to work effectively for individual fairness and justice and equality. But not from a hate base.

And as someone said--Wilmont Sweeney, I think, on television last night--Marshall took the tools that society provided, to try to improve the society for people of color. And he worked entirely within the system in a most effective way. I have a tremendous admiration for that.

Morris: Do you think it was something maybe in your experiences in the Catholic church that gave you an alternative to hating?

Broussard: That's possible. Yes, that's possible. We did have---most of our instructors were white. They were nuns. The lay people were black. I've never really dwelled on trying to figure what prevented me from being a hater. But I can tell you that, in looking back on my own life, some of the things that I told you yesterday when we were talking--about having to fight my way back to school in the morning and fight my way home for lunch at noon, and the one I didn't tell you when you asked me about any whites in the neighborhood--could have made me a hater.

We lived at the corner of Mill and Shattuck. And Mill street was paved, Shattuck was not. Our home was right at the end of the pavement. And then for the next two or so blocks you had dirt streets with Black families. Then beyond that you had a little section that we called "Fisherville", which had a population of relatively poor whites. And when they would come

with their skates to skate on our sidewalks [chuckles], we'd put on our skates and run them back to Fisherville. I told you we lived right across from the public high school, and of course, we had cement walkways and stuff like on the schoolgrounds. So it was an ideal place to come and skate for people in the boonies, where you didn't have paved sidewalks or anything like that. But there was this whole air of hostility --"This is our sidewalk!"

We had a heck of a battle to try to get them to pave any street in the Black community. What they did, they paved it, and they paved it at an elevation that was so low, and they put inadequate storm gutters, so that any time it rained, we had to go to school with hip boots. At least knee-high boots, to walk across the street. Mill Street would flood because everything drained in the middle of the street; the drains were not adequate to clear away the water.

So it was an environment where there was a lot of hostility between one group and the next. As I said to you yesterday, some of it was within the Black race, and some of it was between Blacks and whites, and then some of it was between religious groups, and some of it was between fair-skinned and dark-skinned Blacks, and you know--.

Morris: Did you find the same sense of hostility when you got to the Bay Area in any of the communities you had contact with?

Broussard: No, as I indicated yesterday, you were not coerced into separation. But there was a comfort zone. When I went to City College, which was the first school that I attended here, I found comfort initially with the fact that there the minority enrollment, and the Black enrollment especially, was relatively new to City College. The school was a growing school because of what was happening in the Bay Area, and a lot of the growth was caused by Blacks who were relatively new in California. And it was easier to develop relationships and friendships, and we sort of clung together, and we partied together on weekends and stuff like that.

Morris: Black kids and white kids?

Broussard: Black kids primarily. Then as I began to get a little active in student government and stuff like that, I made other contacts, other friendships. You developed some in your classroom work. But it was always a little easier to develop a personal, friendly relationship with someone else who was black. And it was just a comfort zone; it wasn't any legal

obligation or requirement. We were all in the same school, but there's no question that the historical separation made it much easier to be comfortable with someone else who was more like you.

VIII PRACTICING LAW; OBSERVING OAKLAND

Attorneys George Vaughns and Thomas Berkley

- Morris: How about when you started to practice law? You mentioned something yesterday about it didn't seem appropriate to go to work for Tom Berkley, even though he was already established as an attorney.
- Broussard: Oh, that was just simply that to me Berkley had an operation which I didn't really think I needed. Tom had associates in his office. He generally produced the business, and he had people in his office who would do the law work. I had the roots in the Berkeley community and the East Bay community, which I thought would enable me to produce my own work and generate business. And that I would be better off somewhere else where there was a better opportunity and more of a need for me to make--
- Morris: Make your own name?
- Broussard: --yes, make my own name, generate my own clientele, rather than being an associate in Thomas L. Berkley and Associates. So it was just simply that. And Tom and I would talk every other day. We understood that. But he was such a dynamic person and had a whole vision about the law that he was out there generating business that no one person could handle. At the very beginning, Tom Berkley had Clint White, Terry Francois, Joe Kennedy, Hugh [Goodwin?], Charlie Wilson. And others.
- Morris: All those men worked with him?
- Broussard: Yes. Because there were only a couple of places where a Black law school graduate could go and have the benefit of an established office. One was George Vaughns and his operation, the other was Tom Berkley and his operation. But after a while, each of those people ventured out into their own

operation. And I don't say this critically, but Tom's office then became more of a place where the associates were people who were competent lawyers, but who perhaps did not have the same motivation or ability to go out and develop their own individual practices, their own clientele.

By the time I came out of the service, I was looking forward to going into private practice. I thought that I would be better off going somewhere where I would be expected to know my own clientele.

Morris: How did George Vaughns' vision of the law differ from Tom Berkley's?

Broussard: George was an older person, and a longer, earlier beginning in the law. I like to tell one war story. When I was in the office with George Vaughns, if Sweeney or I would complain about the financial arrangements or what we were being compensated, George says, "You shouldn't complain." He says, "When I started out in the practice of the law, I would come home from work, and my wife would say, 'Well, how did it go today, George?'" And he'd say, "Oh, I had a good day today. I had a five-dollar case and two small ones." [chuckles]

Morris: A five-dollar case and two small ones? Oh, my.

Broussard: Yes. George had an office in which there was almost always another lawyer or two. At one time, Tom Berkley. At one time, John Bussey. But Tom was just much more aggressive, much more of an outgoing personality. Much more aggressive in his effort to build his practice. He really set out, initially, to be a large personal-injury operation. And just pursued it aggressively, with a very outgoing personality and a lot of energy and drive, to develop sources of business.

Morris: Did he start the *Post* newspapers? Or were they already in existence and he bought them from somebody?

Broussard: I think he bought the *Post* newspapers. I think it was primarily for the press. I'm not positive. See, the *California Voice* was already in existence. E.A. Daly owned that at that time.¹ I believe when Tom Berkley bought the

¹See Daly interview on the Oakland Black community in the 1920s and 1930s in *Perspectives on the Alameda County District Attorney's Office*, vol. 2, Earl Warren Project, Regional Oral History Office, University of California, Berkeley, 1973. Interview recorded by Joyce Henderson in 1971.

Post, what he bought primarily was the plant. He put out the Post and then he started putting out different regional editions of it.

Joining Wilson, Metoyer & Sweeney Firm

Morris: Did you do much in the way of civil rights or pro bono law practice?

Broussard: I guess the traditional way for a young Black lawyer to make himself--and I say "himself" because there were only a couple of women at that time--known in the community was to get involved in what was going on in the community. And very largely, that was the NAACP, Urban League, and politically, and in the various organizations that serviced the community. There were your medical groups, if you got involved with them and got known by some of the doctors, that was a source of business sometimes.

But, frankly, the way to develop as a lawyer was to involve yourself in whatever was going on in the community and in the community outreach. The most effective community outreach was generally political, whether it be partisan--like in my case, a Democrat--or nonpartisan in the efforts we were engaged in, in both Oakland and in Berkeley to encourage greater minority involvement, or whether it would be through civil rights--the NAACP. So I think just about every young lawyer took part in something like that.

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Morris: Were you actually pursuing legal matters for the NAACP? Were there some cases that were being brought that your firm--?

Broussard: You remember how the NAACP worked primarily. I mean, you had local branches and then you had a West Coast regional office and then you had the legal defense part of it; it was the NAACP. And any major litigation would be undertaken by the national or the regional office and their own group of staff attorneys. You might file the legal briefs, or something like that, but at the branch level you wouldn't get involved in major litigation. You might get involved in protest work and stuff like that, but not much else, unless Franklyn Williams was out here on the West Coast at that time. So we were

involved with the NAACP, but not often directly litigating cases on behalf of the association.

Morris: Did you ever think about going to work for the Urban League or the NAACP?

Broussard: No, I was always more intent on doing my own practice. That's all my role was--being a private practitioner--until the opportunity to go on the bench came along. And that was a tough decision for me at the time. I never really pursued any job as a lawyer. I didn't work with the NAACP or the Urban League, and I told you when my law school did call to inquire as to whether or not I was interested in working for Kaiser--Kaiser Steel, I think it was, or Kaiser Aluminum in Fontana--I was not interested in being employed as a lawyer.

Getting Married, 1959

Morris: When did you feel secure enough as a professional person to get married and start a family? You'd done that earlier on.

Broussard: Well, I was married in 1959. I'll never forget the planning sessions that I had with Odessa, because I really was not making very much money, and we had to sit down and project our incomes and our plans to see whether or not we could afford to get married. Fortunately, we thought we could afford it, that we wanted to; and we did, and it's been a beautiful relationship. But, in 1959 I had just started with Wilson, Metoyer, and Sweeney. I had left Vaughns, Dixon, and White. And in the office arrangement with Wilson, Metoyer, and Sweeney, it was important that I generate money in order to make money, and we didn't have a very long history to look at, to see how my growth would develop. But I had enough confidence in my ability to grow and to develop. For the first couple of years or so she continued to work, until we started having children.

Morris: Had you met in college? Or through community work?

Broussard: We met largely because of the Men of Tomorrow. Odessa's family is from Cincinnati; she came here from Cincinnati. She came here with experience working in radio. When I met her, she was working at a radio station in San Francisco. I met her because the station offered the Men of Tomorrow some free air time. A committee from the Men of Tomorrow went over to the radio

station to explore that opportunity with them and to make plans as to what segment of time and when and how we would use it. Odessa was working--I think that was KSAY. Looking at all those station changes, I think it was KSAY. And she was working at the station at that time and was what was called a traffic manager.

Morris: I did that job once. You schedule advertisements into the day's programs.

Broussard: Well, it was a strange term to me. I never understood what a traffic manager would do at radio stations until she finally explained it.

But that's how I met her, and our relationship just slowly developed. We worked together on that committee and everything for a while. I learned that she was living in the East Bay, and we saw each other a few times, started dating. Our relationship just continued to grow.

Morris: She'd come out here because of a job offer? Or she'd come out with her family and then found a job?

Broussard: Odessa had been married before. She had a son. And I think she came out largely because of the overall job situation. She had experience in radio at Cincinnati. At that time I guess, in the Bay Area you had the phenomenon of one or two radio stations catering primarily to the black market, to Blacks as a market. And there was an exodus of people from Cincinnati. There was a whole bunch of people, many of whom I met but didn't know as well as she did, who came to the Bay Area in radio or in music and entertainment, many of whom she knew. She came out here with her son, and her younger brother joined her a little later. She essentially had him living with her while he was going through high school and later, after the navy.

More on Men of Tomorrow

Morris: If a San Francisco station was offering the Men of Tomorrow radio time, it sounds as if there wasn't a similar organization for young black professional people in San Francisco. Is that true?

Broussard: Well, you know, the Oakland Men of Tomorrow founded a chapter in San Francisco. Founded a chapter in Los Angeles. Founded a chapter in Sacramento. And that may be it. I think today the only chapter that's still functioning is the Oakland chapter. We founded a chapter in San Francisco, but for some reason there always seemed to be more of a spirit of community and cohesiveness in the East Bay than there was in San Francisco. The Men of Tomorrow didn't thrive in San Francisco as it did in Oakland. It didn't survive in Los Angeles. While it's a little different in terms of its goals and its emphasis now, it still exists in Oakland. It's primarily attractive to younger business persons who still want to network and develop relationships and contact and communications with each other and with the broader community.

Morris: Is there any parallel with the Junior Chamber of Commerce and the Kiwanis and other service clubs?

Broussard: What do I know about the Junior Chamber of Commerce or the Kiwanis? I've never belonged to any of them.

Morris: Well, that's kind of what I'm asking. They were not open to young black men in the early '60s?

Broussard: Well, I know the Kiwanis wasn't, and I would doubt that the Junior Chamber was. I was just never a member of the junior or senior Chamber of Commerce. I was being somewhat facetious, but I imagine, yes, in a sense that's almost what the Men of Tomorrow was. It's just an opportunity to network, to come together, develop rapport, communications, contacts, to know of each other's existence and what they're doing in the community. And it wasn't much more than that. I mean, we deliberately made that organization an umbrella organization, where Republicans and Democrats could feel at home. All the real estate brokers could come; they weren't competing with each other, they were networking. The lawyers were coming and the doctors were coming, the independent business persons were coming. We were developing relationships and network and communication.

Morris: How many members, roughly?

Broussard: Well, most of the time our average weekly attendance would be fifty, sixty people. If we had a little more distinguished or better-known speaker, we might get closer to seventy-five. I don't remember exactly, but, numerically, to have an organization that's going to have fifty people at a luncheon

meeting on a weekly basis, it'll include a couple of hundred in membership or something like that.

Business Clients; Impact of Fair Employment Legislation

Morris: As the law practice developed, what kind of cases did you find that you were particularly interested in or that were coming to you?

Broussard: Well, first of all, when we got together in 1959, we had an office which had five lawyers in it. Wilmont Sweeney had the best background in criminal law. Carl Metoyer had the best background in family. I tended to have a general business practice. We all did whatever personal-injury work we could get; personal injury sort of was the backbone for an office. You did not have the kind of client where, when you sat at the desk and opened his file you turned the clock on because you billed on time, you see. Which is what the big commercial law firms were doing--they were billing on time--while we couldn't bill like that.

Personal injury was a very sought-after type of business. You tried to develop an exposure and contact where you could get that kind of work. But what we did within the office was--never call it a specialization, I call it an emphasis. If I had access to a fairly heavy criminal case, Sweeney would handle it. I did routine criminal stuff, but the heavy stuff Sweeney would handle. I did small real estate people, small business, trying to develop some small corporate businesses.

Morris: Helping people organize a business?

Broussard: Yes, it takes some legal paperwork to start it, you know. Did family law stuff. If I had a complicated probate, I would either consult with or have Metoyer handle it. Then, within the office, we took one of our associates and referred to him all of the IAC--Industrial Accident Commission--workers compensation stuff, and all the bankruptcy that we could get. So that he became proficient at and knowing in that practice. So we just sort of emphasized within our practice. I tended not to want to do the very heavy criminal work. I tried a couple of Transbay Federal Savings and Loan cases for a couple of real estate developers, and would liked to have grown in the area of general commercial or business practices, had I remained in private practice long.

Morris: It sounds like that would give you a good view of how business was doing in the black community. Was it growing in those years that you were practicing law?

Broussard: I missed your question.

Morris: The growth of the black business community.

Broussard: Yes, there was growth, there was growth then. I mean, in various areas, real estate especially. I guess I neglected to mention we represented some of the professional people in the community, too--doctors and dentists and others. Yes, there was a period of growth, because you had new professionals and newcomers to the community. And there was quite a bit of opportunity to grow.

It's interesting, though; I remember that we used to sue Key System all the time.

Morris: Really?

Broussard: Oh, sure. They ran the transit system, and you had your slips and falls and people getting hurt on the bus, and accidents between buses and cars or passengers on the Key System bus or train getting hurt one way or the other. We were always suing them, but they'd never hire a black lawyer to defend them. None of the insurance companies who represented many of the people that we were suing, at that time they wouldn't hire black lawyers. There was no real place for a black lawyer except with other black lawyers, and certainly primarily a black clientele.

Morris: And not, as you say, on both sides of the case.

Broussard: That's right.

Morris: Did the passage of the Fair Employment Practices legislation [in 1959] make a difference at all?

Broussard: It made a tremendous difference, but not so much with professional employment. That made a difference with white- and blue-collar workers and laborers. I mean, the Fair Employment Practices Act was a very significant bit of legislation, but not because it impacted upon opportunities for doctors and lawyers. It impacted upon the work force.

Morris: Did that new legal framework bring much job-discrimination business into your office?

Broussard: No. Remember, the Fair Employment Practices Commission had its own enforcement system. It did not create legal work for us. As a matter of fact, they had their own enforcement mechanism, their own lawyers. Charlie Wilson of East Bay Democratic Club fame became general counsel to the Fair Employment Practices Commission.

By providing an administrative remedy, it tended, if anything, to take business away from the courts and put it in an administrative setup. Except that, before the enactment of the law, you didn't have the same legal remedy available to you. It was very hard to sue on job discrimination before the Fair Employment Practices Act was enacted. But when it was enacted, it had an administrative setup which was designed to resolve most of the cases without ever getting into court. Although, they could issue a right-to-sue letter, which meant that you had exhausted the administrative remedies and then you could go to court. So, those cases started coming along after the first few years.

Ford Foundation and Federal Government Grey Areas Programs to Develop Oakland's Potential

Morris: Some of the reading I've done suggests that some people thought that Oakland was going to be the next city in which there were race riots, like Chicago and Watts in the early '60s. Did Men of Tomorrow have any of those concerns, and how did it happen that Oakland went through that period relatively peacefully?

Broussard: It's hard to answer the question the way you put it. There were people--not Men of Tomorrow--there were a lot of people who viewed Oakland as a place where you might have a Watts-type experience. But as I was mentioning a minute ago, for some reason there was always a cohesiveness in Oakland that just prevented that from ever happening.

It wasn't our concern, as members of the Men of Tomorrow, that Oakland was a powder keg and was going to blow. But we do think that because of what we and a lot of other people were doing in the community it never did blow. There were other people saying that Oakland was a powder keg, "Don't buy there, don't live there, don't work there, because it's likely to blow at any time."

Morris: "Other people" being any Black people, or mostly white people?

Broussard: Oh, you'd read it in the newspaper.

Morris: Right. But, for instance, were the Knowlands and the *Oakland Tribune* among those who could have that kind of attitude?

Broussard: Well, I can't remember. My impression or recollection was that this was more a national kind of image and publicity. I don't believe that people in Oakland were running around doom-saying.

Morris: The reason I ask is that it looks like there have been several rescue Oakland campaigns. You know, the Ford Foundation put a lot of money into what was called the Grey Areas project to improve economic and social conditions in Oakland. And then in 1964, probably just before you went on the bench, the Economic Development Agency put in a huge job development program.

Broussard: Yes. Well, Oakland was just as often seen as a city that had potential; that's the way I viewed it. It's true that the Ford Foundation (and again with input from Evelio Grillo) put money into Oakland. The concept of coordinated community services was a new concept at that time, again largely a product of the mind of Evelio Grillo. Not him alone, but the whole concept of having combined community service centers. Ford helped fund that.

Then along came the War on Poverty, and Lionel took on the mantle of chairing that in the Oakland Economic Development Council. [There was] urban renewal and rehabilitation and John Williams and all of his work in Oakland. Those are the things that it took to develop the potential of a community. And we had the phenomenon of so many urban projects where the center of the community was getting old and needed to be rejuvenated so that you could maintain an economic base.

There's always been that big conflict about how much money you put in the neighborhoods as compared to downtown. But really, with the OEDC and with urban renewal and redevelopment, the feeling was that you had to preserve the core of the city, and rebuild the older housing in the city. And that older housing tended to be the housing that was closest to the core of the city. Fortunately, in Oakland we had the vision to attract some of the programs and to attract some people who helped to keep things going reasonably well and helped to keep the old powder keg from exploding.

Morris: As you describe it, it sounds more like the availability of funds was seen as an opportunity, and people in the community put together committees to go after those funds rather than

somebody from on high dropping them on Oakland like manna from heaven.

Broussard: Well, yes. I wouldn't imagine the Ford Foundation looking down from on high saying, "Oakland is a powder keg. We better put some money there." You look and you say, "Here is someone who has an idea that seems to have potential that would make a contribution to his community. If it fits within our guidelines, we'll invest in this community," because of some concept, some program, something that somebody wants to do. And I just think that's the way things get done.

IX OAKLAND MUNICIPAL COURT, 1964-1975

A Change in Life Style

Morris: When did you begin to think that you might be asked to go on the bench?

Broussard: Oh, I guess about the time we knew Lionel was likely to be elevated. There were several of us who were under consideration. I think we anticipated that when Lionel would be elevated from the municipal court to the superior court that there would be someone from the black legal community who would replace him.

I told you we had that little struggle there for a while. I had succeeded Lionel as the president of the East Bay Democratic Club when he'd gone on the muni bench, and had continued to work in that area. So finally Byron asked me if I was interested, and said he'd be willing to suggest my name to the governor.

And, really, I just was beginning to make money in my practice. I was thirty-four years old, just had never really made money, but was beginning to make money. And if I'd had my druthers, I would have wanted to wait ten, fifteen years. But that, obviously, was not a realistic option. So, I talked it over with my wife, my parents, my family. And with Lionel and with Byron and others, and decided that it was an opportunity that I shouldn't pass up, and that I should indicate my willingness to accept if it was offered. And so the governor offered it to me, and I accepted it. I made a commitment to a different lifestyle.

Morris: Was it Pat Brown himself, or was it Cecil Poole [his legal affairs aide] who talked to you about it?

Broussard: No, the governor called me at my office.

Morris: What kind of questions did you have or did he have?

Broussard: Nothing! He called me just to advise me that he was offering me the appointment. I think that Byron Rumford and whoever else the governor looked to for advice had persuaded him that he should appoint me. He knew who I was.

Unlike when I came on the supreme court, it was not a matter of sitting down with the governor and having him interrogate me and interview me. In 1964, I was alerted that I might get a call from the governor, and he called my office and offered the appointment. And I accepted.

Morris: You said it meant a change in your activities.

Broussard: A total change in lifestyle. I had to drop much of my law work, and I had been a very, very busy young man working with every organization that I felt I could play a role in. When I went on the bench, my days were so much shorter, initially. I think that's probably why I began to involve myself in judicial organizational activities, because I had that prior experience before going on the bench. But many of the things I had done as a lawyer I could no longer appropriately do as a judge.

Morris: Well, you mentioned Lionel Wilson taking on the chairmanship of the Economic Development. He was a judge by then.

Broussard: He got a lot of criticism for it, too.

Morris: Well, that was what I was going to ask you. And I think that Judge John Purchio chaired some committee for the Council of Social Planning.

Broussard: After he was on the bench?

Morris: It may have been right about the time he went on.

Broussard: He was on the Metropolitan Planning Committee, or something like that, before he went on the bench. But when Lionel did that, it was out of a real sense of commitment to Oakland and its future. It was rather unprecedented for any sitting judge to take on that kind of a responsibility. He was criticized for it by a lot of people, but he was determined to do it. So, it was a real commitment; he was tremendously involved. I mean, he made a real sacrifice to do both jobs, to work as a judge and as head of the War on Poverty. But it was not with the approval of everyone.

Morris: He seems to relish that kind of political controversy.

Broussard: Well, I think Lionel, from an earlier age, really had a sense of commitment to Oakland. While he went on the bench, I think that he nurtured the idea of being the mayor of Oakland or a significant leader in the Oakland community for a long time. And I think that--

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Broussard: And he'd get inspired to do something significant for Oakland, and that certainly was a real significant role that he played. And so he was willing to do it at some personal sacrifice of time, energy and effort, and at the risk of some criticism of his involvement while a member of the bench. See, Lionel Wilson had a realistic opportunity to be appointed to the Court of Appeals. And that may not have ended there. But, he opted out to run for mayor. He just had that dedication and commitment.

Morris: The War on Poverty committee put him in a position to really be working in an interracial setting.

Broussard: Oh, yes. Yes, he was involved in virtually everything that was going on in the city of Oakland, in the efforts to improve the quality of life for all of its citizens, primarily for those who were poor or black.

Morris: I hadn't heard before that there were challenges to his being chairman. I was aware that the committee took a lot of heat from Sacramento and from the federal Economic Opportunity Organization. There seemed to be serious differences of opinion as to how the money was spent and what the plans were.

Broussard: Oh, that's the internal things. I'm not talking about that, I'm just simply talking about for Lionel--. Remember, I made the statement that when I went on the bench I had to commit to a different lifestyle. You mentioned Lionel in that role that he played, and I'm just saying that there were those who thought it was inappropriate for him to assume that leadership role while a member of the bench. But I'm not going into the internal politics about where the funding came from and how it was used.

Center for Judicial Education and Research

- Morris: How did you go about preparing yourself to be a judge once you were appointed to the municipal court? Is there some kind of training or orientation for being a judge?
- Broussard: In California, we have admittedly the best continuing judicial educational program of any state in the country. It was not in place in 1964. The short story is that at the time I became a judge, and maybe even today, the best route to becoming a judge is to try to develop a reputation for being a good lawyer, and to have a good relationship with the governor or someone who is very close to the governor. I guess that's still the key to becoming a judge. As I say, I wouldn't have become a judge if Byron Rumford had not recommended me to the governor; at least, I wouldn't have become a judge at that time.
- What has happened in California is that we have now developed a good judicial educational system. I have been involved in that over the years. They have a whole range of educational opportunities, starting with a buddy system--when a new judge comes on, we tie him up with a "buddy" judge who has some experience, someone on the same court if it's a multi-judge court, but in any case someone close by. We have audio tapes on orientation that are available to the new judge. And we have a new judges orientation program, which is a one week in-residence kind of training.
- All of this now is under the aegis of the Center for Judicial Education and Research [CJER], which is a joint venture between the Judicial Council and the California Judges' Association. There again, another example somewhat paralleling what we were talking about with Oakland: the Center for Judicial Education and Research first started out with Ford Foundation money.
- Morris: Ford?
- Broussard: Well, they had started out with Ford money, then we got federal government money, and then ultimately were able to convince the legislature that they should fund our judicial educational program through the budget of the Judicial Council, administrative office of the court.
- Morris: How long did it take to develop? That sounds like quite a program.

Broussard: Let's see. CJER was organized late in '72. I was president of the California Judges' Association '72-'73. The governing board of CJER consists of eight people; four of whom are the designees of the California Judges Association, four are designated by the Chief Justice as chair of the Judicial Council. I designated the first four Judges' Association's representatives, so that was in early '73. I think we had three years of Ford Foundation support. LEAA was what I was trying to think of.

Morris: Oh, right. Law Enforcement Assistance Administration.

Broussard: Yes. I think we had three years of LEAA support. If my memory is correct, then we began to get the public financing through the legislature. The Judges' Association had started what really was a showcase of all judicial educational programs in the state then when that was the Trial Judges College. It's a two-week residency program where judges are taught by judges. And gradually CJER assumed a major role for staffing and planning and sponsoring that activity. And then, even beyond that--see that? [points]

Morris: That marvelous soft sculpture sitting on your window sill? I thought that might have a story.

Broussard: Yes, if you'll look at it, it says, "To Justice Allen Broussard, California Supreme Court, Founder of CJS Program." CJS is Continuing Judicial Studies Program. After our Trial Judges Colleges were established and recognized as doing an outstanding job--but primarily for judges within the first year, year and a half of their judicial career--we started trying a plan for what we called "mid-career" judges.

Morris: This is after people had been on the bench for five or ten years?

Broussard: After people had been on the bench for some years, and particularly if they were undergoing changes in assignments, like from civil to criminal or whatever. And then there was another competing interest, too. We all felt that after judges were on the bench for a while, they needed an opportunity to sit back and look at the forest instead of just individual trees. I happened to chair the planning committee that developed the plans for our continuing judicial studies program. One of the things that we wrestled with was whether the graduate program under the continuing judicial studies program should be advanced bread and butter courses, or whether it ought to be jurisprudence and the humanities.

There were those who said that counties wouldn't pay for judges to go to a school if all they were going to do was talk about philosophy and jurisprudence, and there were others who said that's what judges needed, and they could get advanced training and experience other kinds of ways. We recognized that there was a need for those, and what we really did was to develop a program that encompassed both. So we have, in the same time frame, advanced study in various subject areas, running parallel to the jurisprudence and humanities. The second thing that we did that has been very significant and has impacted upon our other educational programs was that, in the main, the teaching techniques which had been employed were lecture and small discussion groups.

Morris: Like law school.

Broussard: Sort of, yes. We really developed a participatory teaching-learning technique where judges were called upon to participate in the teaching and learning process, and to do peer review, and to do demonstrations, and to have mock proceedings, and to use audio-visual aids, to critique each other. We had some professional help to help teach judges how to teach, not in a lecture series, but in a demonstration participatory teaching-learning technique. That program has gotten a lot of recognition across the country.

Conference of California Judges, Leadership and Controversies

Morris: Did it grow out of your sense that you felt kind of at sea when you were first on the municipal court?

Broussard: No. I got involved in what was already a developing judicial educational program. I can't claim that much credit for any of this. All that I know is that when I came out of practice and went on the bench, I found myself in a situation where I was not as busy as I had been previously. And so after a little while, I got involved in judicial activities--organizational activities. And we go back a bit in history then.

You see, it was then the Conference of California Judges, which is now the California Judges' Association. It was an organization to which 95 or 98 percent of all judges in California belonged. I joined and then began activity on one committee and then another, and began to get more and more interested in and involved in the organization. There were

some other reasons, too. I developed the realization that in many instances, the judges that I would come into contact with through the Judges' Association had never had any exposure to a black judge before.

Morris: I was wondering about that, yes.

Broussard: Yes. And through the association, I was able not only to get to know them, but in essence, almost be a role model.

Morris: For other black judges or for white judges?

Broussard: Well, to give white judges the experience of working with a black judge whom they had to respect, who could achieve a leadership role, who could help teach, who could help to govern. And so I was elected to the executive board of the then Council of California Judges, and then became secretary-treasurer, and then became president. At that time, I think one of the real big issues that the conference was facing was the feeling of municipal court judges that they were being treated as second-class judges.

Morris: Why was that?

Broussard: Well, because almost all of the leadership of the association, almost all of its attention, was devoted to problems that affected superior court judges, and to some extent, appellate judges. Very few municipal court judges felt that they had a real opportunity to be involved, or that their interests were really primary. If you'll remember that in '72 or thereabouts, the Judicial Council had commissioned the Booz Allen Hamilton report.

Trial court unification was very much in the air then, as it is now. But it was a very controversial subject, with municipal court judges in the main being in favor of unifying the trial courts into one court, and with superior court judges in the main being opposed to it. And that issue was about to divide the Judges' Association.

A lot of this was during my time both as secretary-treasurer and as president. We had to fight hard to keep the association together. I was the forty-third president of the then-Conference of California Judges, but I was only the third municipal court judge ever to be president of the association. All of the other presidents had been either superior or appellate court judges.

Morris: Even though there are many times more municipal judges than there are--

Broussard: Well, there are not many times more. There were a lot of reasons for it. A part of it is that, I guess, the superior court judges in the main have been on the bench a little longer. That's a generalization, too; it's not always true. But there was a real unrest among municipal court judges, that they were not given a fair shake by the association in its organization and its internal politics and its external policies, and everything. It was significant that I was the first Black and I was the third muni court judge to be president. And while I haven't done any exact study on it, I think I probably was the youngest judge to be elected president.

A lot of my motivation--well, I've always been an organizationally-oriented person. I was mindful of the fact that in California you had about a half-dozen black judges in Los Angeles, two in Alameda County, a little later on one and then two in San Francisco. And that was about it. So it was pioneering in a lot of ways. I like to think that it was a lot easier for a lot of other Blacks not only to become judges, but to be accepted and respected as judges, because of some of the work that I was able to do.

Judicial Appointments and Evaluation

Morris: Is your sense that the existing body of judges in an area have a fair amount of input into who else is appointed to the bench in that area? Does the collegiality extend that far?

Broussard: Are you asking me whether or not I think the judges have a lot to say about who gets to be judges?

Morris: Right. Are they part of the process of making recommendations and consultation as to who gets appointed to the bench?

Broussard: No. I've told you, I think it's much more personal and political than that. I don't think that the superior court bench in Alameda County has a lot to say about who fills a vacancy on the bench in Alameda County. I think it's the political leaders, who are people who have rapport with the governor, who determine who fills a vacancy.

Morris: Well, I know that various governors have conferred with the bar association.

Broussard: Oh, sure, sure.

Morris: And kind of cleared their nominations through them.

Broussard: Oh, it's by law now. The governor has to submit any name to the Jenny Commission--the Judicial Nominees' Evaluation Commission. So by law there is input from the organized bar. But the process doesn't depend very largely on any organized opinion of the local bench. The names that the governor submits to the Jenny Commission--. Of course, so much of this has changed now. You know, when I first went on the bench, you didn't go through a process of applying. And right now, it's just known that with at least the last two or maybe three governors, that if you really want to be considered for a judgeship, you apply.

Morris: Including a resume?

Broussard: Yes. A PDQ--a personal data questionnaire--is what you're expected to complete and to submit. But then, from among the people who apply, those who get favorable attention from the governor are generally those who have some political clout going for them.

Morris: Is that better than the days when, if you really wanted to be a judge, you had to go to your local assemblyman or party committee and say--?

Broussard: Oh, I think it's still very much the same. I just think that the concept of the written application is--it is new, but it is just another rink around the system. Now, what I think is different is the legal requirement for an evaluation, where at all levels, the Jenny Commission has the opportunity to rate a candidate a potential nominee.

Morris: And that's as a committee of the Judicial Conference?

Broussard: No, it's a clone of the state bar board of governors. The membership of the Jenny Commission now, I think, is prescribed by law. And the law also requires that the governor submit the name of anyone who's being considered as a nominee to a judicial position to that commission, and they do a background study and evaluation, and report to the governor as to whether any person is viewed as not qualified, qualified, well-qualified, exceptionally well-qualified.

Morris: So it's the bar association that does that evaluation.

Broussard: Yes. Let's see. The genesis of this commission was with the state bar. The state bar had been doing this evaluation, and it was an imposition on them. Then the state bar created and appointed people to the Jenny Commission. But it became almost a clone of the state bar at that time. The legislature then stepped in and required the existence of the Jenny Commission, regulated the composition. I think the legislature makes some appointments, the governor makes some appointments, the state bar makes some appointments.

Morris: Technically it is freestanding?

Broussard: Yes, yes, it is. I was talking to the past Jenny Commission, and I should have explored that with them. I'm not 100 percent sure of the relationship between the state bar and the Jenny Commission now. But it was also intended to build in a time-gap in the appointment process, so that we wouldn't get a repetition of what happened when Jerry Brown left the state for a little while and Mike Curb made an appointment. A big question was as to whether or not the lieutenant governor had the authority to appoint in the absence of the governor. Ultimately, they said that he did, but the governor had the authority to withdraw the appointment when he returned to the state. And then in order to assure that there would be some delay in the process, the legislature ultimately required an evaluation by the Jenny Commission.

That's how the process got formalized. You see, the state bar had been doing evaluations before. They had created this commission, to which they appointed members. Then when the legislature stepped in to formalize the process and to build in the delay, they provided for the composition of the commission. It's all regulated by statute now, even though I'm not sure of the exact details.

Morris: Have the judicial committees in the assembly and the senate been helpful in developing these ideas for judicial organizations? Do you have to go and tell them what is needed? Or are they up with the issues and making suggestions?

Broussard: Well, the instance in which Mike Curb made that appointment was a *cause celebre*; it was widely known. And the legislature was obviously concerned with whether something could or should be done to obviate that kind of a situation in the future. Now, the way they operate, I imagine anybody could sponsor a bill and go out to various policy committees. And I'm sure it would

be the judiciary committees in the assembly and the senate; it would be the policy committee that would consider any of the various proposals that could be directed by that situation. But that one just was catapulted to the forefront of everybody's attention.

Spurgeon Avakian and Other Buddy Judges

Morris: Who did you look to on the municipal court in Oakland--when you were appointed--for some advice and guidance yourself in sitting on the bench?

Broussard: Interestingly enough, I looked more to the superior court. To Lionel and to Sparky [Spurgeon] Avakian, who was my buddy judge when I went onto the court. I was on the muni court, but Sparky was my buddy judge.

Morris: I see. So already when you went on the muni court, you were assigned a buddy.

Broussard: No, we hadn't developed the program through CJER yet. But I sort of adopted Sparky.

Morris: You adopted Sparky?

Broussard: Yes, right, right. And let's see. The presiding judge when I went on our court was Homer Buckley. The court was in a situation where several of its members were [Pat] Brown appointees and others were [Governor Earl] Warren appointees, and we were learning to work together.

Morris: Even though some of them had been on the bench quite a while?

Broussard: Yes. One of the things that happened to the muni court while I was there was that traditionally, each judge had an assignment, and that judge tended to take care of the court to which he was assigned. When some of the newer judges started coming onto the muni court, we started working almost like a law firm. If I finished my calendar early today, I would check and see if the court next door or on the next floor had a long calendar, and whether or not I could help. And we just started operating a lot differently, with much more of an interchange of work and willingness to help each other. It was almost like a law firm.

Everybody just chipped in to get the day's work done. One day I would have a calendar that would blow up, and I'd help somebody else. And they'd help me if the next day I had a calendar where everybody wanted to go to trial. I started out having traffic trials. The next day I'd have a calendar where everybody wanted to go to trial, and I would be so thankful when someone would phone and say, "Can we help you?" And I'd say, "Well, come to traffic trials."

Morris: Sort of on the spot, on that day?

Broussard: Sure.

Morris: Was the decision to move in this more cooperative way because there were several new people at the same time?

Broussard: No, I think we were just generally a younger, more aggressive group of people who just did things a little differently. I know--. Yes, I'll let it go at that.

Morris: Was Judge Avakian as interested as you seem to have been in finding some more effective ways to do business?

Broussard: Avakian was one of the most respected judges in this county and in the state. He was always a progressive, sound-minded person, and he did involve himself in activities both through the California Judges' Association and the Judicial Council. So he was always interested in improving the bench and the way things were done.

Morris: He had a reputation, before he was appointed to the bench, as being very much of a social activist. In Berkeley, he had been chairman of a big committee on school integration and things like that.

Broussard: He'd been on the school board.

Morris: Right.

Broussard: And had been active in Berkeley community politics, and viewed as a liberal.

Morris: Was that visible in how he handled cases on the bench?

Broussard: Well, you know, when you're a judge, you have to abide by the law.

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Morris: I was asking if one could tell that Judge Avakian was a liberal by how he handled cases on the bench?

Broussard: Well, that's just kind of a funny question. Sparky was a liberal, but he was an excellent judge. He was respected by the prosecution and the defense, and by the plaintiff and defense bar and civil society. He was a very respected judge. And a progressive judge in terms of his attitude about judicial administration and organization.

Trial Assignments

Morris: Were there any particular kinds of cases that you found more satisfying or more troublesome on the municipal court?

Broussard: Well, on the muni court, almost everybody is doing either traffic or criminal. Except for the time that I was presiding judge, I almost always sat in the criminal department or jury trial department. You would pick civil juries, civil law and jury. I guess the most challenging assignment generally was when you were in a felony court, where you have preliminary examinations on felony matters and you have the opportunity to maybe dispose of some of the cases and to deal in some of the more serious cases that the muni court judges are ever exposed to.

I liked to sit in the criminal courts. But I liked civil law the most when I had the opportunity to do that as a presiding judge. I've never been a specialist particularly. I would enjoy the muni court because I like people. While certainly you might prefer one assignment to another--almost all of us tried to get out of traffic arraignment as soon as we could. I liked the criminal side; I liked the civil side. But, as a muni court judge you spend most of your time doing the criminal stuff.

Morris: How did you find the district attorney's office and the police department to work with?

Broussard: I never had any particular problem working with the district attorney's office. I think in Alameda County we are blessed. Traditionally, we have had an outstanding district attorney's office, an outstanding public defender's office too. And I have not had any problems working with either one of them. I never was a judge who was challenged by either side. I think I

was perceived as being fairly even-handed, with a little twist. But, you know, nothing that created any problems for me in terms of being able to handle the cases or being challenged by either side. The Citizens for Law and Order were more active than they are now. I was sometimes a target of some of their criticism, but that didn't bother me particularly.

Morris: They're less active now than they were formerly?

Broussard: I think so. At least, I'm less aware of their activity now than I was then.

Morris: That's interesting, because in general we read in the papers that there has been a growing concern with law and order, more firm enforcing of--.

Broussard: Oh, but I was just talking about whether or not that particular organization is as active as it was. Now, at least I don't hear about it as much, but it may be that I'm not a sitting judge in Alameda County.

Responsibilities of a Presiding Judge

Morris: You were presiding judge in '68. Is that a fairly speedy rise to presiding judge, or was that normal?

Broussard: Well, at that time in the municipal court, you became a presiding judge in rotating seniority. It just depended upon how quickly the seats turned over. That practice has since changed. At that time, if you were the seniormost judge and you had never been presiding judge, then it was your time. And unless there was some reason why you might get rejected by the bench, it was expected that you'd be presiding judge.

And by the time I went to the superior court, we'd really switched from that rotational system that they had had, and we were actually electing the presiding judge based upon the judge's interest in administration and the perception of the judge's ability to do a good job. That was an idea that the Judicial Council had been pushing; that the presiding judges should not rotate, that they should be selected on the basis of interest and ability.

Morris: Does that mean that you would then serve as presiding judge of the superior court for more than one year?

Broussard: You could be reelected, yes, as I was. I served a term and then I was reelected for a second term, then I was appointed to the supreme court in the middle of that second term. But, yes, we've had presiding judges who have served more than one term. I don't think anyone goes more than two, but that's because there are enough people who are interested in the position.

Morris: What about people who stay on the superior bench for some time? Do a lot of people stay on the superior court until they retire?

Broussard: Oh, we have people--the most senior judge on the Alameda County superior court right now is Stanley Golde, who has never wanted to be presiding judge. And there are others who serve and who just don't have that interest in administration or in being the presiding judge of the court.

Morris: Does that mean that it comes around and some people are presiding judge two or three different times during the years that they are on that bench?

Broussard: I don't think we've had anyone who has served for a couple of years and then a couple of years later served again. We've had people who have served at least two years. I don't think there has been anyone who has served three. And I don't believe we've ever had a presiding judge who served two separated terms as presiding judge. Although that could happen. Normally there are enough people who are interested in this that when you've served a couple of years, you go on to some other assignment and then someone who wants the opportunity to preside gets it.

Morris: I would think it would add a lot to your workload, to be presiding judge. Is that true?

Broussard: Oh, it adds a lot to your workload; it adds a lot to your stress level.

Morris: Are you to some extent sort of mediating between differences of opinion or balancing out workload--things like that--between your colleagues?

Broussard: You're trying to see that the court system operates efficiently, that everyone is contributing. You have to deal with a lot of personalities; you have conflicts and differences that you have to try to deal with. In a sense, you're just a peer. You don't have any real clout or authority over anyone, except they've chosen you to be their presiding judge. It's up

to you to try to get everybody to chip in and contribute as much as possible.

I usually describe my role as presiding judge as sitting at the worktable in my chambers with my law clerk in front of me, trying to brief me on the afternoon law-and-motion calendar. Then the doorway to the courtroom would open, and my courtroom clerk would come in and say, "Judge, there are four lawyers out here with TROs [temporary restraining order] who want to talk to you." Then the doorway on the other end of the chambers would open and the court administrator or the jury commissioner would come in and say, "We've got a problem trying to set these jury trials, and we have a problem where we need your attention." And then the telephone would ring. And then the side door would open. The side door was a door that was used by virtually no one other than other judges. So, when the side door opened, in would come some judge who was mad about something. That's the way I pictured a lot of my days as presiding judge.

Morris: As presiding judge, are you also supposed to sit on individual cases that need to be heard?

Broussard: Well, you do more calendar management, where you sit on some short causes...All the motions were made in a calendar. You'd call the calendar in the mornings. So a lot of your time was spent doing administration. You wouldn't take on a two-week jury trial or anything like that.

Morris: The judge who comes through the special judges' door, would come in in the middle of hearing a case?

Broussard: This is when I'm in my chambers.

Morris: Oh. But while you're in the middle of hearing a case, something would come up that he needed?

Broussard: Well, that could happen. I mean, he'd just come any time he thought he wanted to get to you, and you were there.

Morris: So you have to be accessible as presiding judge.

Broussard: Well, as presiding judge, a lot of your work is done off the bench, in chambers. The job is defined in such a way that you spend a lot of your time doing administrative work and supervising the calendar, assigning cases out, handling all the law-and-motion matters, at least those that relate to calendaring. And dealing with temporary restraining orders, preliminary injunctions.

X REFLECTIONS ON SUPERIOR COURT, 1975-1981, AND THE STATE
SUPREME COURT

[Date of Interview: January 16, 1992]##

Looking to the Supreme Court for Guidance

Morris: Once you got to the superior court, did you find that the cases changed in complexity, or seriousness, or something of that sort?

Broussard: Oh, well, certainly. Yes. Sure. By definition, the municipal court is a court of limited jurisdiction. You're handling misdemeanor matters, and you're handling civil matters with a cap on what you can recover, presently twenty-five thousand dollars. And in a sense, some of the more serious matters that you're handling in the court are felonies at the preliminary examination stage. But when you go to the superior court, you're in a court of general and unlimited jurisdictions. You're dealing with death cases, and multimillion-dollar cases, and family law cases and juvenile cases.

It's a whole different ball game from that point of view. It's part of the reason I said I liked the muni court because, after a little while, much of the law became routine. You were dealing with people and on a volume basis. In the superior court, you're dealing, generally speaking, with less volume, but with longer and more substantial matters, and with at least the possibility that more complicated, complex legal issues are involved.

Morris: At both of those levels, to what extent are you looking to the state supreme court in terms of what they may do with your case, or what their rulings are that may affect what's coming before you?

Broussard: Well, I'll give you another war story. When I came to the supreme court, a lot of people would ask me what was the biggest difference, or the biggest adjustment, that I had to

make. I could tell it two ways. I don't know if you remember Abe Woodson, the football player?

Morris: By name, yes.

Broussard: Well, Abe Woodson was a great offensive running back with the San Francisco '49ers. And as he approached the latter years of his career, they switched him from offense to defense. And I'll never forget the Green Sheet¹ had a big picture of Abe, and someone had asked him a question--"What was the biggest adjustment you had to make in going from offense to defense?"

And this great running back said, "I had to learn how to run backwards." And I tell you that story to tell you this, that when you're a judge in the superior court, you look to the supreme court and its cases to tell you what to do in a given situation. The rulings of the supreme court will tell you whether you should sustain an objection, or admit some evidence, or how you should rule on a motion.

So you look to the supreme court for guidance. When you get on the supreme court, you're still working with the law, but you're working with the law to give guidance. It's the same tool, but approached from different perspectives. So as a superior court judge deciding a case, it's not that you worry about what the supreme court is going to do about your case. You worry about whether you are actively doing what the supreme court has told you ought to be done in a given situation. And up here, when you're deciding a case, you're trying to determine how it is going to impact upon all those lower-court decisions that are going to be made that affect the lives of people.

Morris: That's quite a difference. How do you deal with the matter that as an individual, you have your own experience and your own principles and philosophy, but you're expected to interpret the law, which is supposed to be above personal differences? As a lay person, one is instructed that the law is clear and objective.

Broussard: Who told you that?

Morris: Well, that's what you sense that one gets in school. But then, as you observe--.

¹ The San Francisco Chronicle sports section, formerly printed on green paper, now reduced to a green stripe on the front page.

Broussard: That's what we study in philosophy and jurisprudence courses: just what is the law? Is it natural law like--? No, I understand the question you're asking me. And there are a lot of answers to it. One of the answers is that, in California, the law is essentially what the supreme court says it is. Now, there are principles which are supposed to determine what a court says the law is. But we deal with many issues in which policy considerations are important. It is impossible either through the common law or through legislative enactment to resolve all of the conflicts and issues that have to be decided by this court.

By definition, when you are in an area where the law is not already clearly established either by statute or by common law, you have not only the opportunity, but the necessity, of bringing in to bear all of the training, the experience, the intellectual and analytical ability that you have to resolve the question, "What is the law in this situation?"

It is in that process that reasonable people can differ. That one is going to be influenced in one's analytical and evaluative judgmental approaches by one's own background and perception. And another person can be operating as intellectually honestly, and as analytically as well prepared, and yet reach a different result. And this is how you can have different opinions arrived at by different people, all of whom are well-trained, well-motivated, and doing the job to the very best of their ability. Because in reality, there is no one law that governs every situation and you just have to try to identify it. We are making it as we go along. And that's not to say we're legislating, because the parameters of judging are different from the parameters of legislating. But it is to say that at a court at this level, by necessity you're dealing with policy considerations that influence the growth and the development of the law.

Morris: Is one of the purposes of this process of judicial training and evaluation you were describing, to arrive at sort of a matrix in which judges working in the same environment will tend to consider the same factors and--?

Broussard: It starts in law school. And if you'll remember when we were talking about legal education, the primary thing that the law schools are trying to do is to teach you how to think like a lawyer. And that is to give you some parameters to your analysis of legal situations, of facts, situations and problems. To recognize the issues, recognize what are the basic tenets that should come to bear in resolving the issues. Teach you how to think like a lawyer; well, that's a continuing process. And then as lawyers mature and develop and grow into

judges, there are parameters to how judges are supposed to function. But when you're dealing with the kinds of questions that we tend to deal with at the highest court in the state, we can each be operating within the discipline, but arrive at different conclusions.

Morris: Thinking like a lawyer at some level seems to be that a lot of lawyers tend to be confrontational, adversarial, because that's sort of the nature of what goes on in the courtroom, if I understand it correctly.

Broussard: Yes, but that's role and personality. I mean, one lawyer may be soft-spoken, another may be aggressive. But to be effective, you've got to deal with the tools of the trade. I don't care if you're representing a plaintiff or a defendant. If you are trying to win a case in court, you've got to deal with the tools of the trade. You've got to know the issues in your case; you've got to know how to present the evidence; you've got to know how to handle the witness; you've got to know when to make objections; you've got to be able to persuade the judge that there is merit to your objections. You've got to work with the tools regardless of who you're representing and regardless of how aggressive or nonaggressive you may be in your personality.

Morris: That's true. But my object as an attorney is to prevail over the opposing viewpoint.

Broussard: Well, yes, we have an adversarial system at the trial of cases, but the role of the judge is not an adversarial role; it's a judgment role.

Morris: Right. I'm interested in what happens in the mind of an individual who, as an attorney, his aim has been to prevail over the opposing viewpoint. But when he becomes a judge, am I right that the object is to reconcile the conflicting points of view and arrive at some further wisdom?

Broussard: Well, the role of the judge and the role of the attorney are very different. As we said, the attorney is an advocate, and the judge's role is to try to judge--to resolve the differences that are being advocated. So the judge is supposed to be fair, supposed to be knowledgeable, supposed to listen well and decide well.

There is a transition involved in the process of becoming a judge that's very easily made by some lawyers and not quite as easily made by others. I think any lawyer who becomes a judge recognizes that at least his or her role and function is different, and they endeavor to discharge that new

responsibility. Just like some judges find it hard to make decisions and other judges can make decisions very easily.

Some judges may have been advocates for a long period of time and have a little more difficulty in relinquishing the role of counsel and just being the judge. There are judges who tend to inject themselves into the trial of the case more than some other judges. There are a lot of those kinds of differences. But certainly the function is different, and what is expected of a judge is very different than what is expected of a lawyer.

Uniqueness of the Court

Morris: Did you find it difficult to make that transition?

Broussard: Personally, I didn't, no. I did not find it very difficult to go from the practice of law to the muni court. I didn't find it very difficult to go from the muni court to the superior court. There was much more of an adjustment in going from the superior court to the supreme court. And you'll remember, I only served on the court of appeal within two capacities: as a research attorney for then-presiding Justice Peters, and then on a pro tem appointment--a temporary appointment to the court of appeals [in 1977].

When I went from the superior court to the supreme court, that was a fairly substantial adjustment. It relates to what I was talking to you about--instead of looking to the law for answers as to how you decide an issue or an objection, I was required to give direction. And that took some adjustment, combined with the fact that, when you're working in a collegial body with seven people, all of whom are involved in all of the decisions that you make, there is a tremendous paper flow.

It's a very unique place in which to work. The phenomenon of having input from seven people in each decision that you make, and especially in an environment where you tend to communicate very largely by the written word, means that there is a tremendous amount of paper flow that emanates from a lot of staff work that's done by a lot of very able and experienced staff attorneys who work for the various justices on the court. And just learning how to organize the paper flow so that you can function effectively in the decision-making process is a big adjustment. I'll never forget--we're going to have to end it in a minute.

Morris: Right. I'm keeping an eye on the time today.

Broussard: I came on the court at about the same time as Justice Otto Kaus.¹ Otto Kaus had sixteen-plus years as a court of appeal justice, and much of that as a presiding judge in the court of appeal. Our chambers were next to each other. In those early months, I'm sitting in my chambers envying Otto, because I'm trying to figure out how to organize my paper flow, figuring he had it all worked out because of his prior experience as a court of appeal judge.

And one day I hear this loud knock on my door, and the door was flung open, and Otto walks into my chambers and starts pacing back and forth with some paper in one hand and the other hand in his pocket. "What's the matter, Otto?" And he says, "I don't know! This job is something! I don't even know where to put the next piece of paper!"

So I said, "Well, Otto, I'm having that problem too. But for you, it ought to be easy." He said, "Why?" I said, "You had all those years on the court of appeal." He said, "There is no similarity between the court of appeal and this job!" So there was an adjustment in coming to this court, yes.

Morris: Why don't we stop here, because we're going to run out of time before you get to tell me about talking to Jerry Brown about coming onto the supreme court.

Broussard: Yes, I have to think about that and how much should be said and how much shouldn't.

[Interview 3: January 16, 1992]##

Broussard: Well, what are we going to do today?

Morris: I thought we'd pick up with the notes I sent you some time ago, and carry on with that original outline.

We had gotten to your going on to the superior court, and that was where I wanted to pick up with a couple of questions about that, and then move into some of the issues and procedures that you were addressing on the supreme court.

Broussard: You know, we might make some general comments about the supreme court, but we don't comment too much on our written opinions. That's a fundamental rule. We just let the opinions speak for

¹ Kaus took his seat on July 21, 1981; Broussard on July 22, 1981.

themselves. There are some observations about the process and the things about the decision that I can make.

One of those things is that you do a little and they come and go, and you're on to another set of cases.

Morris: So that part of the process of being on the bench is that you see cases come up that pursue the same issues or build on previous decisions?

Broussard: Yes, that's true. On the intermediate court usually what happens is that several courts of appeal will write on some aspect, some issue and then when it comes to us, if we [on the supreme court] do a good job, we should dispose of it in one opinion.

But now on the death penalty area, it's very different. We have cases that are coming directly to us involving unresolved legal issues, and so we might gradually define those.

Anyway, let's go and see what we can do.

Morris: Okay.

Presiding Judge, Alameda County Superior Court, 1980-1981

Morris: We haven't really talked very much about your years on the superior court. I was wondering if the superior court produced some surprises in how the courts proceeded, or if it was pretty much a continuum of your work on the municipal court.

Broussard: I usually like to answer, "Neither of the above." There weren't any real surprises, but it was not really a continuum of what I had been doing. The superior court was quite a different animal from the muni court. The muni court is really a volume court; you deal a lot with people, and except for occasions in felony arraignment departments and occasionally in the civil departments, you rarely deal with significant legal issues that you have to resolve at the municipal level. The superior court, there is less emphasis on volume and more emphasis on the individual cases. The trials are generally longer, the legal issues are generally more complex.

But there weren't any real surprises for me. I went onto the superior court, and my first assignment was criminal law and motion which is, almost, in fact a continuum of what I had

been doing in the municipal court, because you're dealing with the law of search and seizure and arrests, in the criminal law and motion department of the superior court. I did that for a while and then went into a criminal trial department, which again, is different in terms of seriousness and the length of the trial and the matters there are at stake. There's no substantial difference from the municipal court.

When I went from the criminal trial department into the presiding judge's department, now that was a big change. I'll never forget--Alan Lindsay was the presiding judge before me and, traditionally, the presiding judge-elect would be given some time to go into Department One as sort of a training measure. But Judge Lindsay would send Department One matters to me in my criminal trial department, so I never had the experience of sitting in Department One as a presiding judge until my term began.

And I'll never forget the feeling, the first Monday morning I was taking to the bench, and when I opened the door to the courtroom, the courtroom was crowded. They had lawyers standing out in the hallway, it was standing room only. That was the day we called the civil jury trial calendar. I was completely unprepared for that number of people, and I almost turned around and went back into my chambers. [laughter] But we worked our way through it, and it worked out fine.

Morris: Was this something that you did in rotation, or something that your peers chose you to do?

Broussard: I was chosen for that. The tradition of rotating into the presiding judgeship had been abandoned by the time that I was on the superior court, and the presiding judge was elected on the basis of perceived ability and interest in judicial administration and running and managing the courts and providing some leadership for the other judges. I was elected in 1980 as presiding judge, and reelected for 1981, and served as presiding judge until I was appointed to the supreme court in 1981.

Morris: What interested you about judicial administration? You've certainly done a lot of it, according to your vita.

Broussard: Well, that's just the kind of person I am. I'm always trying to provide some leadership. I thought I could provide some leadership for the court, effectively administer the business of the court, motivate some of the judges to maybe be a bit more efficient in terms of the way they applied themselves to their work. It's just part of the animal in me. I'm always

pushing to provide some leadership when I get into an organization.

Law and Order Sentiments

Morris: Some of the material I read said that while you were on the superior court, that your sentencing was too lenient. How did you deal with that kind of comment?

Broussard: Oh, I didn't really deal with it. Let me just say this, that certainly while I was on the superior court and in a criminal assignment, there was a lot of concern one way or the other in the community about sentences that were being meted out. But I can truthfully say this, that I have never been challenged by either the prosecutor or the defense for being unfair, being, you know, partisan to one side or the other.

The major criticism was coming from a group called Citizens for Law and Order, which was a real conservative group that was doing monitoring of the courts and criticisms of any judges who they perceived as being a little "soft on crime". Beyond that, I don't think that there was any real criticism of my sentencing; I think I was viewed as being a pretty fair and reasonable judge. And as I said, while some judges on the court were in disfavor either with the D.A.'s office or the public defender or the defense bar, I never had any problems along those lines at all. So the criticism didn't really concern me, because I considered the source of those criticisms, the Citizens for Law and Order.

Morris: Were there any particular people that stood out in that organization?

Broussard: Yes, but I don't even care to call their names now.

Morris: Were there any other indications that there was a growing "law and order sentiment" that was a change in public attitudes or something?

Broussard: I don't know how much public attitudes really changed across the board, but this was a group which had a voice and had the ability to command some media attention that would be critical of anything which they perceived as being a little lenient or soft toward criminal defendants. They had a newsletter and they would sit in the courtrooms and monitor [what went on.] But I guess that's part of the business of being a judge, you just have to be able to do what you think is right.

Morris: Were they just in the Oakland courts? Or were they elsewhere around the state?

Broussard: If I remember, they tried to go beyond Alameda County, but I don't think Citizens for Law and Order ever had any real presence. They certainly had a publicity presence. I don't think they ever really had any organizational presence of any consequence beyond Alameda County. There might have been comparable groups in other communities.

Morris: Right. But they weren't part of any kind of statewide organization?

Broussard: No, I don't think so. I ignored them as much as I could.

Morris: That's one advantage of being a judge, isn't it? You can rise above some of these--.

Broussard: I think you have to.

Superior Court Appointments in 1975

Morris: Once appointed to the superior court, did you have any contact with Governor Jerry Brown to keep in touch with what his concerns were?

Broussard: No, no. No, I think the governor advised me by telephone that he would appoint me. And certainly we didn't have substantive conversation about issues or how I should conduct myself as judge.

Morris: Had you and he known each other just in general political circles?

Broussard: Yes, right. When he became governor [in January 1975], I'd been a judge for eleven years, so I wasn't active politically. I knew him, of course.

Morris: Was it a surprise to you when--was it Jerry Brown himself or somebody in his office--talked to you about going on the supreme court?

Broussard: I got a call from then-Assemblyman John Miller, telling me that the governor would probably call me soon. And the governor called within a day or so and appointed me to the superior court. It was not really a surprise. I was the first Jerry Brown appointee in Alameda County.

If I can remember this, Lew Sherman was then on the Berkeley municipal court, and [it was announced in September 1974 that he was going to be appointed] to the Alameda County Superior Court. But Lew Sherman died before the November elections, and before his term was to begin. And there was a lot of speculation as to the duration of any appointment which the governor--it was then Reagan--would make to the Sherman vacancy.

Some thought that if the governor made an appointment it would only be to the unexpired term--the office that existed would be terminated at the end of the year. There was other speculation that it would go beyond that, at least to the next election, if not for a full six years. And in that context the governor appointed Carl Anderson to the superior court, and there was a lawsuit.

Morris: About a judicial appointment?

Broussard: Mm hmm. Judge [George] Phillips was the presiding judge of the Alameda County Superior Court, and after the first of the year he refused to assign any legal matters to Carl Anderson because of the cloud over whether or not he was validly appointed. And that resulted in the case of *Anderson v. Phillips*, which determined the questions of the duration of the appointment that Anderson had received. Anderson prevailed, and got work. But it had been made relatively clear to me that if that vacancy were not properly filled by Anderson, that the governor was going to appoint me. But Anderson won, prevailed in the supreme court.

Morris: This is your appointment to the superior court.

Broussard: Yes. See, I was on muni court. It was a question of whether or not as of the first Monday in January of 1975, whether or not Carl Anderson was validly appointed as a superior court judge, and that was resolved in *Anderson v. Phillips*, in Anderson's favor. But it was made pretty clear to me that had there been a different decision, that I probably would have gone on the superior court then. But then I didn't go on until later in the year, when Don Quayle, Judge Quayle, announced his retirement.

Morris: My goodness, that must have been interesting, watching the Anderson and Phillips debate.

Broussard: Well, it was not really a debate. The issue was so uncertain that there were municipal court judges who, had they been offered the appointment by the governor, they would have declined it, because once you accept the appointment, you've

given up your municipal court seat. And if you didn't prevail in the superior court, you were out.

Morris: You were off the bench completely.

Broussard: So there were people who just would not have accepted the appointment. But Carl Anderson had been in the Alameda County D.A.'s office, and had been representing the D.A. Association in Sacramento, so he was in a good position, he could return to the D.A.'s office if he did not prevail on the legal issue. He could afford to take whatever risk there was.

Morris: Was this something that people in the district attorney's office maybe were interested in challenging, judicial appointments in general? Or did they want one of their people on it?

Broussard: Oh, no. I think the motivation might be very different than that. First of all, there was a real legal issue, an unresolved legal issue as to the duration of that appointment, and some motivations really aren't that important. But you're operating in a context where you've gone from a Republican governor to a Democratic governor, and I suppose that anybody who was interested in seeing the vacancy filled would have been the Democrats. The D.A.'s office generally would have been supportive of Carl Anderson.

Morris: As one of their own.

Broussard: Well, yes.

Morris: And as the new governor, was Jerry Brown generally looking for new people to appoint in broadening the kinds of people that were on the bench? Looking for minorities and women at that point?

Broussard: I think Jerry Brown demonstrated a commitment to appointing a more representative group of people to the bench. How early it's demonstrated, I can't be sure. But certainly in retrospect, he appointed more minorities and more women, relatively speaking.

Morris: But if you were thinking that you were on his top, short list for appointment to the bench as soon as he became governor--?

Broussard: Oh, but that was because I had been on the municipal court bench for about eleven and one-half years and had served as presiding judge, and I had a good reputation within the community. It was not a surprise to me that he would be considering me high on his list. I don't want to sound

egotistical, but I mean, that's just the way it was. I had been eleven and one-half years on the muni bench, and had served eight years in the Reagan administration. I think it was just natural that I would have been considered strongly by any Democratic governor that would come into office.

Morris: While you were on the superior court, did any of the cases involving student demonstrators or anti-war demonstrators come before you?

Broussard: That's more a municipal court job.

Morris: Yes, okay.

Broussard: The Black Panthers were a superior group at it, but the demonstrations and the sit-ins, in front of the Tribune and all of that kind of stuff, the demonstrations in front of the military recruitment offices--that was all municipal court misdemeanor matters.

Morris: Did the Panthers' cases involve anything unusual in managing cases?

Broussard: Oh, certainly. I never tried any of the major Panther cases, and some of them were tried on the superior court before I was there. But if you remember, the Panthers created a problem for the establishment because when the trials were going on, they would stand there with their weapons and everything in front of the courthouse door. And had very much of a presence while the cases were proceeding in trial.

Morris: Separate from the issue before the court.

Broussard: Sure.

Morris: What do you do about a situation like that, where people come to make themselves visible?

Broussard: If you're a judge, you conduct your trial, and you leave the matter of maintaining the peace and control to others. I mean, the Panthers never presented a real problem within the courtroom. But the idea of seeing a group of Black Panthers lined up and with their weapons across the doors to the courthouse was something that really shocked, and was a new experience to a lot of people. And I'm sure that the Oakland police and a lot of others paid that whole matter a lot of attention, but as a judge, what do you do? You go in and you try your cases and try to do the best job you can and try and ignore what's going on outside of the courtroom.

Morris: It is unusual in America for people who are not police officers or military to be carrying weapons. I don't know what the legal standing is.

Broussard: You have the constitutional right to bear arms. And certainly you can't carry things like field weapons, but the Panthers were--

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Morris: --making a visual statement of their concerns rather than seeing themselves as any threat to the public order?

Broussard: I believe that's the way it worked out. There was a lot of uncertainty as to what their ultimate motivation was at the time, but it now develops that they certainly were expressing their concern about the whole judicial system, about the whole law enforcement mechanism. They were making a statement, and in the main doing it peacefully. Although obviously they did have some other contact with the police that was not so peaceful, in which even some deaths resulted.

Morris: So the social issues of the day were happening all around you while you were trying to run an orderly court.

Broussard: Sure. Very much so.

XI BECOMING A JUSTICE OF THE CALIFORNIA SUPREME COURT, 1981

Justice Wiley Manuel

- Morris: Were you close to Justice [Wiley] Manuel, as a fellow Oakland attorney? Had you worked with him before his death?
- Broussard: Yes, I've known Justice Manuel since undergraduate days at Cal, as a neighbor and a friend. We had a pretty close relationship.
- Morris: His tenure on the court was not very long. Did anybody realize that he was ill?
- Broussard: No, I don't think even he realized it very long before his death. His death was tragic and somewhat of a surprise to all of us. He went on the supreme court in 1977; he'd gone to Mexico in 1980, I think late summer or something like that. He began to have some problems after his return from Mexico, and I think he really just thought it was Montezuma's Revenge.
- Morris: Oh, dear, yes.
- Broussard: He ultimately was hospitalized. But I don't think that early on either he or his wife, Eleanor, realized the gravity of his situation. He was diagnosed as having cancer of the peritoneum.
- Morris: Good heavens.
- Broussard: I'll never forget, we were at an affair at Goodman Hall, which doesn't exist any more. I had just learned of that diagnosis, and I spoke with my own personal physician. I just told him Wiley Manuel had been diagnosed as having cancer of the peritoneum, and I said, "What do you think?" He said, "Oh, Allen, that's serious." I said, "Why?" He said, "Well cancer of the peritoneum is always secondary cancer. That's serious."

And Wiley's death came rather rapidly. He died January 5, 1981. None of us had really expected it. When he went into the hospital, we did not think that he was seriously or terminally ill.

Morris: What a shock, when you think somebody's got a long career ahead of them, and it gets cut short.

Broussard: Yes. He'd generally been very healthy.

Appointment to Justice William Clark's Seat

Morris: How soon did the governor talk to you about filling that vacancy?

Broussard: I didn't fill that vacancy.

Morris: You didn't? It was '81. Did somebody else retire in '81 that I missed?

Broussard: Yes. See, that's a commonly mistaken notion. I did not replace Justice Manuel on the bench. If you'll remember, Reagan had just--

Morris: Gone to Washington.

Broussard: --become president. And Justice William Clark left the state supreme court to join the Reagan administration as secretary of state.

Morris: Deputy secretary of state, yes.

Broussard: Yes. And there were really two vacancies that coexisted on the supreme court, the Bill Clark vacancy and the Wiley Manuel vacancy. And Governor Brown deliberately appointed me to the Bill Clark vacancy, and Justice Otto Kaus to the Wiley Manuel vacancy. But not for the reason that you're thinking of--I see that smile on your face. Not for the reason that you're thinking of. The governor knew that both Otto and I, or whoever he appointed, would have to run for election in 1982. And the governor knew that then-Attorney General [George] Deukmejian was already making a political issue of his judicial appointments.

Brown knew that both of us would be on the ballot in '82, but that the person who replaced Wiley Manuel would get an eight-year term, and would have to run again in eight years,

and that the person who got the Bill Clark term would get a full twelve years. He knew Otto Kaus was older than I, and would be likely to leave the bench within the eight years, where I might very well stay on the bench beyond the eight years. And that's the way it worked out; Otto Kaus got Wiley Manuel's vacancy and an eight-year term in 1982, and he left during that term. I ran and got the twelve-year term in '82, went beyond the eight years but left within the twelve years.

Morris: Interesting.

Broussard: So most people assume that I filled Wiley Manuel's vacancy, and I did not.

Morris: My apologies. I should have checked that out.

Broussard: No problem. Most people just assume. I've explained it a lot of times.

Morris: Right. Well one of the really startling things about the court in that period was how much turnover there was. You normally think of--

Broussard: No, more later than before. More later than then.

Morris: Right.

Broussard: Now, I'm quick to admit that if Wiley Manuel had not died, I probably would not have been appointed to the court.

Morris: At that time.

Broussard: Yes. I recognize that. It was very unlikely that the governor would have appointed me to the supreme court at the same time Wiley Manuel was sitting there. But it was not Wiley Manuel's vacancy that I was appointed to.

Morris: You don't think that Jerry Brown would have appointed two African Americans?

Broussard: I don't think I would have been considered for the supreme court at that time. No, I'm not saying that he never would have done it during his term of office. But Wiley had just been appointed in 1977. I just don't think that I would have been considered for that position had Wiley lived longer.

Morris: Were there pros and cons in your mind as to whether or not you would take the appointment to the supreme court?

Broussard: No, no. I mean, once you become a judge, I don't think that there are many people--I know very, very few people who, for example, have been in municipal court and had an opportunity to go to superior court and would not take advantage of it. Once you're a judge, there are very few people who do not accept an appointment from the superior court to the court of appeal or to the supreme court. So, no, I had no questions. It's not a situation where I had to leave home or have to commute any great distance. Ultimately, for me, I didn't even have to establish a new residence or a secondary residence; I just continued to live in Oakland and commuted to San Francisco.

The real problem is for those people, for example, who are from Southern California and got appointed to the court. They have to make a decision since the court is housed in San Francisco and the justices are generally expected to be in San Francisco during the week. They all have to make decisions as to whether they would commute, whether they would move their families, whether they would set up a secondary residence, and if so, were they going to buy or whatever. And I didn't have to do any of that; I was very fortunate.

Morris: By '81 the state supreme court was considered a "hot seat." Did the fact that there were controversial aspects give you any--?

Broussard: I never run away from controversy.

The Confirmation Process

Morris: How was the confirmation procedure? Was the attorney general--?

Broussard: It was very interesting. As you know, the process of appointment to the supreme court involves a nomination by the governor and evaluation by the state bar. Now we have a Jenny Commission--Judicial Nominees' Evaluation Commission--and then a confirmation by the Commission on Judicial Appointments, which is a constitutional body composed of the chief justice, the attorney general, and the senior-most presiding justice of the court of appeal in the state of California.

And in my case it was Chief Justice Rose Bird, Attorney General George Deukmejian, and Presiding Justice Lester Roth from the court of appeal in Los Angeles. On the day of our confirmation hearing there were four of us up for confirmation.

Justice Kaus and myself for the supreme court, Justice Elwood Lui and Vincent Dalsimer were for the court of appeal.

George Deukmejian had already set his sights on the governorship, and he began something which many of us criticize: he began submitting questionnaires to Governor Brown's appellate nominees, asking their views on various issues and cases. It put the nominees in a very difficult position because, on the one hand, we didn't feel that it was appropriate for the questions to be asked and, on the other hand, we didn't think it was appropriate to answer them with any specificity, particularly considering that the attorney general was the most frequent litigator of criminal matters before the supreme court and the questions that he was asking were on issues that had or would be coming up to the court, many of them on death penalty matters. Everyone had a difficult time of trying to frame some responses which were adequate from his point of view, but not overly specific or unethical.

Morris: Could that be considered a conflict of interest? If somebody who was going to bring a case before--?

Broussard: It was not a conflict of interest, it was just probably inappropriate conduct. But the attorney general had submitted questionnaires to all of us, and we had answered them in whatever way we thought was appropriate. Then when we went to the hearings, he began asking questions. Justice Otto Kaus was first, I was second, and then Elwood Lui and Vince Dalsimer would have followed.

And the attorney general began to ask Justice Kaus some questions and Kaus was giving him general answers. [laughter] It's true, so I'll say it. Finally the attorney general asked Justice Kaus, "Well let me ask you this. Are you going to be an activist judge?"

And Justice Kaus said, "General, I assure you, I will be as quiet as a mouse." And I just slipped down in my seat, I was sitting in the front row of the hearing room, and I said, "Oh, no." Well, Kaus was confirmed three to zip. I came up next, and the attorney general began to ask me questions and I gave him broad answers. So then he asked me the penultimate question. "Well, let me ask you this," he said. "Are you going to be an activist judge?"

And I said to the attorney general that I wasn't sure that I could answer his question because I wasn't sure that the words meant the same to him as it did me. I said something to the effect that I frequently think that judicial activism is in

eyes of the beholder. "I don't know whether you would have considered it judicial activism when the supreme court decided *Plessy v. Ferguson* or whether you would have considered it judicial activism in 1954 when the U.S. Supreme Court decided *Brown v. Board of Education*."

I don't think he liked that answer, and when the vote was taken, he voted against me. So I was confirmed to the supreme court by a 2-1 vote, and of course it created a big furor. And as I left the hearing room, all the press people came out in the hallway and wanted me to comment on the 2-1. The result was, I think--I'm speculating here; I don't know what was going on in the attorney general's mind, but I know that Elwood Lui came up for confirmation.

Elwood Lui was Asian American, a very respected superior court judge, former deputy attorney general, former president of the California Judges' Association, and a Republican, who had been nominated by Brown. And Deukmejian voted against him. And Vince Dalsimer was a twenty-two or more year veteran of the attorney general's office, had gone on the Los Angeles Superior Court, compiled a good record, came up next for confirmation--Deukmejian voted against him.

Morris: Really?

Broussard: So we laughingly referred to ourselves as the "2 to 1" Club. We're the charter members of the 2 to 1 club.

Morris: Had Deukmejian asked them the same question about activism?

Broussard: I wasn't in the hearing room, you see. I was outside. But I think what happened--this is just my own personal opinion--I think Deukmejian voted against me because he was a little angry and he didn't like my answer. But then I think he realized that he couldn't single-shot me because it was too powerful politically. So then he not only voted against Elwood Lui and Vince Dalsimer, but he proceeded in subsequent hearings to vote no on, oh, some seventeen or eighteen Jerry Brown nominees.

Morris: You know, that's useful. That puts it in perspective. What survived is that he voted against you.

Broussard: He voted against me and then he voted against Elwood and Vince, and then he voted no on virtually every nominee of Jerry Brown to the appellate court after that. And if my recollection is correct, it's about seventeen or eighteen. He was already making Governor Brown's judicial appointees an election issue. The way it was characterized in the community--derisively, I

might say--was that Deukmejian was critical of Brown for appointing too many Blacks, browns and babes.

Getting Acquainted; Volume of Work

Morris: What kind of orientation is there to the supreme court? How did Justice Bird introduce you to the group? Is there a process by which she made you a part of the team?

Broussard: Well, I can answer that at two levels. One, I would say, baptism by fire. But on the more personal level--fortunately, I think, I knew to some extent all of the justices on the court. I'd known the chief justice.

Morris: As an appointee in the Brown administration?

Broussard: Yes.

Morris: Before she went on the court?

Broussard: Right. So it was just a matter of being introduced to the court as an institution, and it's a very unique institution. There's nothing else like it in the whole country. That's just a matter, then, of working with the appellate justices and with your staff to begin to learn how the institution functions and how it operates. The chief justice and all of my fellow justices were very cordial and very open and very willing to assist in the transition. I had at least a couple of very experienced attorneys on my staff, who really knew how the court worked. So on the one hand, it was very new and there was no real institutionalized orientation, but on the very informal level there was a lot of willingness to assist in making the transitions, and it went pretty smoothly.

The major problem I had was handling the paper flow. There's a lot of paper that gets moved on the supreme court, and I can remember sitting in my chambers, just fretting over how to organize my office internally so that the paper flow would go smoothly. And one day I heard this loud, agitated knock on my door, and before I could even answer, the door was flung open. Otto Kaus stormed into my chambers with a few pieces of paper in one hand, the other hand deep in his pocket. He paced around the floor a little bit.

He said, "Damn, Allen!" I said, "What's the matter, Otto?" "Damn, Allen! I don't even know what to do with the next piece of paper!" I said, "Oh, come on, Otto. For you it

ought to be easy." He said, "What do you mean 'easy?'" I said, "Well, you've got more than sixteen years on the court of appeal and much of it as a presiding judge. You ought to be accustomed to the paper flow." He said, "Oh, come on! There's no similarity between the court of appeal and this job." I said, "Well Otto, I've been sitting here these past months envious of you, because I thought it was easy for you, and I'm fretting with the same problem. I just don't know where to put the next piece of paper." [laughter]

- Morris: How is the California Supreme Court different from the supreme court in other states?
- Broussard: Oh, I just think it's the size of the state, the complexity of the issues. The fact that we generally managed to have a supreme court that was very much in the forefront of state supreme courts and very much on the cutting edge of the law as it developed. Also, because not all state supreme courts are courts of discretionary jurisdiction. There are many of the smaller states where your appeal from the trial court is directed to the supreme court. And we are a court of discretionary jurisdiction, we have an intermediate appellate court that can take the volume of appellate work. And then we have the option in most instances as to whether or not the case was worthy or deserving of supreme court review. So it's an important court because of the size and complexity of the state that it serves.
- Morris: I came across, in our files, a memo that Justice Frank Newman wrote in May of 1981.¹ I don't know if this was something that he was accustomed to doing. He was concerned about the flow of work and the volume of work.
- Broussard: How did you get that?
- Morris: We've been doing an interview with Justice Newman, also.² He provided that to the person who was interviewing him. It's a very interesting and lucid summary, rather stuttering with indignation about how the case flow has gone up. With each chief justice there have been about fifteen hundred, two thousand more cases per year that the court has been ruling on. This figure here caught my eye. That under Justice Roger

¹Newman, J. to Bird, C.J. and the Associate Justices, "Where ARE we, as a Court," copy in supporting documents.

²Frank C. Newman, *Interview with Frank C. Newman, Professor of Law, University of California, Berkeley, 1946-present; Justice, California Supreme Court, 1977-1983* Sacramento: California State Archives, 1992.

Traynor there were about thirty-six hundred cases a year, and under Donald Wright forty-six hundred cases a year, and Justice Bird sixty-one hundred cases a year.

Broussard: Those are petitions for review.

Morris: Right.

Broussard: Or, at that time we called them petitions for hearing. That has more of a correlation to the number of trial courts and courts of appeal than it does who is the chief justice. If you were to draw a parallel as to the growth in the bar, the growth in the number of judges and the growth in the number of courts, then you would find more of a parallel between that and the growth in the number of petitions for review or a hearing. Those are the factors that influence that number. It's not a matter of who is the chief justice. Now the chief justice of the court has some discretion as to what they will grant review in, and that can be influenced by the composition of the court and the attitude of the court towards what is deserving of a hearing or review and what is not. But the petitions are not controlled by the court.

Morris: That more reflects how the whole legal and judicial machinery has grown?

Broussard: Oh, sure. I don't have the figures at hand, but certainly, if you were to just trace the growth of the number of judges, the growth of the number of courts, you'd find more of a corollary between that and the growth in the number of petitions for review on a hearing. I can remember being told that Justice Peters, former supreme court Justice Peters (for whom I had worked earlier as a clerk when he was presiding judge in the court of appeal) expressed great concern when the court got, if I'm correct, twenty-five matters on his Wednesday morning conference calendar. And, of course, while I was on the court we'd gone as high as two hundred forty or fifty matters on the Wednesday morning conference calendar.

Morris: In one morning's conference.

Broussard: Yes. See, each Wednesday the court sits in conference to review the petitions for hearing or petitions for review, and decides which it will grant and which it will not. There are a number of dispositions that are available, but the most important thing is what number of them are granted, because then it's heard in full by the court and decided as a cause before the court. This is interesting, I'm looking at the Newman memorandum. I may have seen this previously, although

it's dated May 14, 1981, which was just shortly prior to my going on the court.

Morris: Right. But it sounded like, skimming through it, he had issued similar memos in previous years. I therefore assumed that it was an ongoing concern of his that you would have heard about.

Broussard: Well, Justice Newman, I'm told, had an ongoing concern about the workload on the court, and I think maybe his concern about that contributed to his rather early departure.

XII CONTROVERSIES GATHER AROUND THE COURT

1982 Confirmation Elections as Precursor to 1986

Morris: I was also wondering how soon after you went on the court did you become aware that there was an organized campaign beginning to actually unseat judges? Was that kind of a disconcerting influence on trying to do your business as a justice?

Broussard: A disconcerting influence--maybe so. I went on the court in the middle of '81 knowing that I would have to run in '82, knowing that there was controversy being generated about the court, about Governor Brown's appointees, but never fearing that I would have any difficulty in being elected. It developed that we really had more of a problem than I had thought we would. Most people don't realize this, but 1982 was really a precursor to 1986.

In 1982 there were four of us on the ballot, four members of the supreme court were on the ballot for election: Justice Cruz Reynoso, Justice Otto Kaus, myself, and Justice Frank Richardson. And there was organized opposition to Reynoso, Kaus, and myself. No organized opposition to Justice Richardson. The people that were opposing us did not oppose Justice Richardson, and the people that were supporting us did not oppose Justice Richardson. Our concept was that we should have an independent judiciary. There was an organized campaign; the attorney general, who was a candidate for governor, openly opposed the retention of the three others.

There were really two major differences between the '82 campaign and the '86 campaign. The governor did not devote any time, energy, resources, or money in 1982 to our defeat.

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Broussard: --And Chief Justice Rose Bird was not on the ballot in '82. Now in 1982, you will remember that Tom Bradley ran a very strong campaign [for governor] and could have won it very easily. So George Deukmejian had his hands full in 1982. By 1986 everyone knew that Tom Bradley was a much less formidable foe--

Morris: Really? Because he had lost in '82?

Broussard: No, just the whole totality of the circumstances. Tom Bradley did not present in '86 the threat to George Deukmejian that he did in '82. And Deukmejian was then able to put time, energy, resources, and money into the campaign. Rose Bird was then personally on the ballot, and she, as you know, became sort of the lightning rod. We got the results which everyone knows about. But what most people don't realize is that virtually every one of the ingredients present in '86 were there, except for two that I mentioned. And in 1982 there was a real reduction in the retention vote for the three of us who had opposition.

Morris: There was a drop-off in that vote on the ballot?

Broussard: Yes, there was a drop-off. See in California, I'm told that traditionally, ever since we started retention elections, there was always about a 25 percent or 27 percent "no" vote. Just on general principles, I suppose. The first big deviation from that came after the California Supreme Court declared Proposition 14, the fair housing issue,¹ unconstitutional under the United States Constitution. If you'll remember, and if I remember, Assemblyman Rumford had gotten the Rumford Fair Housing Law through the legislature, and Governor Pat Brown had signed it.² Various political interests, I think largely the real estate and the chamber of commerce and others, promoted Prop. 14, which was an amendment to the California constitution, which would have invalidated the Rumford Fair Housing Law.

That measure carried. So we then had a California constitutional provision prohibiting the enactment of Rumford fair housing legislation. And the California Supreme Court declared the California constitutional provision unconstitutional under the United States constitution. In the ensuing retention election [November 1966], most members of the court who were on the ballot received a lower than normal vote

¹November 1964.

²A.B. 1240, enacted in 1963.

for retention. And that included Justice [Roger] Traynor. That was a great California court, I think.

Morris: Was that the first time there was evidence of a--?

Broussard: That's the first time, I think, that there was a real substantial deviation from the norm; the next time was 1982. And then in 1986 there were actually the three justices who were defeated.

Morris: So that the next retention vote after the Prop. 14 decision, was an indication that there was some kind of an organized campaign to--?

Broussard: No, no, no. They were completely unrelated. I'm simply saying that what the court had done was to invalidate a constitutional amendment that the people had voted, and that was expressed in the next election--dissatisfaction with the court. I don't think there was any real organizational carryover from that to 1982. Those were entirely different kinds of issues. In 1982 the concern already was primarily the death penalty, at least that was the articulated concern. There were a lot of other agendas at play, but the articulated concern was the death penalty.

Morris: And that combination of articulated and subliminal concerns, is that what made Rose Bird a lightning rod as a candidate?

Broussard: Oh, that's an oversimplification. It was much more complicated than that. While I was close to it, I don't pretend to understand all of it. But I do know this, that there were a lot of people who were not happy with Rose Bird's appointment, and not all of them were her enemies. There were people who did not approve of the fact that the governor was appointing as chief justice of the state someone who had no prior judicial experience. I'm sure at that time there were people who didn't approve of the appointment because she was a woman, there were people who didn't approve of the appointment because she was relatively young, there were people who didn't approve of the appointment because she was a liberal. So she had a tough row to hoe from the beginning. There were people within the judiciary and within the bar who were not very approving of her appointment.

Morris: Because her appointment went against the old-boy kind of traditions?

Broussard: That's one way to express it, maybe. I mean, her appointment certainly was not a typical kind of selection. There were people who advised Jerry Brown not to make her chief justice,

but he chose to do so, and for a lot of reasons, she just had a rougher time being accepted and functioning than a lot of other people would have had.

Morris: It meant some people's hopes were passed over.

Broussard: Well, yes. I'm sure that was a part of it, just really on a personal level, but also on an institutional level. I mean, the judiciary and a substantial percentage of the membership of the bar were not terribly pleased by the appointment, as I say, of someone who had not had any prior judicial experience.

Morris: They said that about Earl Warren, too, and he was appointed to the U.S. Supreme Court.

Broussard: Yes, right. But ultimately, I mean, there was this concern about the death penalty, which was the issue that was really pounced upon, publicized and utilized to create a kind of climate among the electorate which resulted in the 1986 election results. Although, in my own opinion, there was a lot more at stake than just that. I mean, I think the public issue was the death penalty.

Morris: As, again, a kind of a lightning rod for changes in public sentiments?

Broussard: I think there were financial interests in the state that were very desirous of seeing a change in the composition of the supreme court. I think agribusiness felt that the court was more consumer-oriented than it should be. I think a lot of the big money that went into the campaign that came from agribusiness had some concerns about the death penalty, but beyond that, had concerns about the decisions of the court in the civil arena.

And then I think even beyond that there were people who were concerned that the California Supreme Court had been a significant player in the last two reapportionments, and I believe that there was real concern that if, as it did, if the current reapportionment plan went before the court, there was a desire to see a change in the composition of the court that would act upon or be involved in the current reapportionment process. And I believe that that was on the agenda of many of the political people in this state.

Morris: Those kinds of concerns would indicate a politicizing of how various political, influential people viewed the court. That the court was something that could be manipulated, which is not what one is led to think about the courts in school. Is that a fair observation?

Broussard: You're right.

Working with Chief Justice Rose Bird

Morris: Interesting. What was Rose Bird like to work with on the court?

Broussard: I was close to Rose Bird on the court; we had no problems getting along. And over the period of time that I was on the court, I think that some of the difficulties that she had faced earlier on the court had dissipated, very largely.

Morris: They had disappeared?

Broussard: Dissipated, disappeared, yes. I always found it easy to work with her; some others found it not quite as easy. The interesting thing, you wouldn't believe this but, in the height of the '86 campaign, the court would meet in conference in the chief justice's chambers, and Rose Bird would come in with little goodies for everybody before we began working.

You wouldn't know that there was a turmoil and a storm and a campaign going on outside of that conference room. We didn't discuss the campaign, we didn't discuss the opposition, we didn't discuss the publicity. It really had created no discernible impact or effect upon the working of the court as an institution. I marveled at that.

Morris: Even though not only Rose Bird but two--

Broussard: We had three people on the ballot, and it just was not a part of the agenda of the court. There was no discernible evidence that it affected or impacted anything that we did. And it certainly was not a matter of discussion or anything when we came together as a court.

Morris: That's quite a feat of discipline.

Broussard: To me it's an amazing phenomenon.

Morris: Yes. If I remember correctly, at least at the beginning of that campaign, the chief justice's stance was that she was not going to run a campaign. That justices should be above politics. That sounds like what she was trying to do.

Broussard: I think that that's true, but she wished that everything would have just gone away. I don't think she intended to mount any real campaign. It became obvious that she had to, and there was a lot of advice as to how she should go about it, how it should be organized, whether the three justices should campaign together or individually, who should run the campaign, how

should you raise money. What was an appropriate method for raising money, what kinds of things you could say or do to motivate people to contribute money. I mean, it was virtually an unprecedented kind of experience.

I said there were similarities between '82 and '86. Each of us who was on the ballot in '82 raised a little money, but it certainly didn't rise to the proportions that the 1986 campaign ultimately demanded of the justices. And I think that Rose Bird was a purist at heart, and really had a distaste for the politics and the campaigning, and went into it, I think, reluctantly.

Morris: Had she had some campaign experience prior to going into Jerry Brown's administration as head of the Agriculture and Services Agency?

Broussard: She had never run for elected office.

Morris: Right. But had she worked on his campaign for governor back in the early days?

Broussard: Oh, before she joined the administration. I think, yes. She worked on Jerry Brown's campaign for governor the first time.

Morris: Right, in '74.

Broussard: I'm pretty sure she was very active in that. But I don't think she'd ever personally been a candidate for any elected office.

Morris: So that she would have had some contact with some of the Democratic party political operatives.

Broussard: Yes, sure. But that was seen as something remote and different.

Broussard 1982 Retention Campaign

Morris: When you were campaigning in '82, did you tap into some of the existing Democratic political talent to raise money for you or to do the kind of campaigning you did that year '82?

Broussard: Not as such. We had a little separate campaign committee that raised a little money, some friends would put on small fundraisers for us. But we, too, tried to maintain some distance from organized Democratic party politics. We were not campaigning for a partisan office.

- Morris: Where do you go for technical advice in running a judicial campaign?
- Broussard: Well, certainly you talk to a lot of people. And one of the things that did happen was that now-[Alameda County] Supervisor Don Perata gave us some assistance in terms of organizing and fundraising. We had a--it's funny how that's done. I had a little small group called "Friends of Justice Broussard." And there was an effort to organize "Californians for an Independent Judiciary", I think that's what it was. And that was largely the effort of Don Perata to raise some money and conduct a campaign in a nonpartisan way, but in a political way for the retention of the justices.
- Morris: In the technical sense, yes.
- Broussard: Right. And Don did that without compensation from us. He was on the staff of some legislator, maybe Willie Brown at that time, I'm not sure. But he was made available to work on our behalf and raise some money, and did some campaigning, brought some political moxie to it.
- Morris: Yes. And I've heard that people like Senator [Nicholas] Petris was also interested in this.
- Broussard: Well, there were people who individually spoke out in support of the court, and spoke out very strongly not only for the chief justice, but all the justices who were on the ballot for confirmation. There were other people who did that, I mean, political figures who were going around, speaking in support of the court and the chief justice and Justices Grodin and Reynoso. But in terms of a tie-in to the organized Democratic party and campaign, there was never that.
- Morris: Right. But it must be difficult to maintain an independent stance when you've got people who also have partisan political identification.
- Broussard: It created an unusual and rare phenomenon, no question about that. But I think all of us, in our respective experiences, just tried to rise above that, just stay above the partisanship.

Reviewing Cases and Preparing Opinions

Morris: Did I understand correctly that during the time you worked with Rose Bird on the court, you saw some development or changes in how she managed her job as chief justice?

Broussard: No, I was just simply talking about, you know, personal relationships. I think I saw an improvement. We always had a collegial court.

Morris: I understand that you came to write a number of the majority opinions during Rose Bird's period as chief justice.¹ How did you get to be the preferred opinion writer?

Broussard: Well, let's say that from the time that I went onto the court until the results of the 1986 election, I was generally in the majority. I don't know that there was any conscious effort to assign significant cases to me. The primary consideration of the chief justice in assigning cases is some equality of workload. The process is kind of complicated, but the prevailing mood at that time, the general guideline, was that if a particular justice had written the memoranda on the petition for review, that justice had one leg up in terms of being assigned the case if review was granted.

But there were other considerations. One is that the chief justice and her staff did not write petitions for review. So necessarily for her to get any opinion writing responsibility, she had to assign to herself some cases where someone else had written the memo. Then, secondly, you had to give consideration to what was the distribution of the workload among the other members of the court. And how much of it was luck of the draw and how much of it was discretionary, that the chief justice happened, during that period of time, to cause me to be assigned to the opinion-writing responsibility in cases that turned out to be important, I don't really know.

I would tend to think it might have been a bit of both: a little of the luck and a little of discretion exercised by the chief.

Morris: And to some extent, maybe, your interest or energy in having written some of these initial memos?

¹"Judgement Day for the Supreme Court," Richard Zeiger, *California Journal*, September 1986, 424.

Broussard: Well, that's what I mean by luck of the draw. You see, those memos are really assigned almost on a rotating basis. We would get, as I said, the court at that time was getting approximately five thousand petitions for review per year.

Morris: That's in addition to the death penalty cases, which are automatically reviewed?

Broussard: Right. That's in addition to the death penalty cases. The criminal petitions at that time would go to the criminal central staff. The civil petitions were just divided among the six justices and their staffs, and on a rotating basis. I mean, there was no effort to assign based upon issues or importance or anything at that stage. So each justice and his or her staff would be required to write memoranda on their share of the petitions for review.

And it could be the luck of the draw that I happened to get a lot of grants. As I said, that would be one factor in determining whether or not I would get--first of all, it would be not the opinion-writing responsibility, it would be the bench memoranda-writing responsibilities. Because once a case is granted, it's assigned to a justice for the preparation of what we called then the calendar memo. Many courts would call it a bench memorandum. That would be an analysis of the issues in the case and the recommended disposition. That went to all of the members of the court prior to oral argument.

Morris: A recommended deposition being a recommendation as to how the court would--

Broussard: How the issue would be decided, yes.

Morris: That's forward-looking.

Broussard: Well you've got all the briefs and everything except oral argument. So you analyze the issues and, for the benefit of your colleagues, you put out a memorandum with an analysis of all the issues and some recommended disposition. Do the issues have merit? So that would be distributed to all the members of the court prior to oral argument.

This process has changed a bit after the supreme court adopted a true ninety-day rule. But at that time, and for much of the time that I was on the court, we did not really formally submit a matter for decision until the case had been argued and the opinion was virtually ready to be filed. That's how we really avoided or got around the constitutional requirement that no matter remain submitted for more than ninety days.

After oral argument, the court would then meet and have a post-argument conference on each case. And each justice would indicate at least tentatively how he or she intended to vote. And based upon that indication, the chief justice would make an assignment as to who would write the opinion. Again, the basic understanding was that if the justice who wrote the calendar memo appeared to command a majority of the court, that justice would write the opinion. But if it appeared that justice was still of the same view and did not command a majority of the court, the case would be reassigned to someone else who appeared to be in the majority, to write the opinion, and the justice who wrote the memo would probably write a dissenting or a concurring opinion.

Morris: That sounds as if in many cases there's not an up or down vote, that it's a matter of there is a consensus and--.

Broussard: There is an up or down vote in the sense that you expect it to be prepared to indicate how you think the case should be disposed of. But you also should be prepared to consider other people's views or whatever else might be written. So we always considered it a tentative indication of how one viewed the issues. Usually at the time of the post-argument conference, all a justice has considered in addition to the briefs is the calendar memo and oral arguments.

Your views might very well be tentative, because someone else might write a dissenting opinion which you would read and consider for the first time, and it may make some points and make sense to you. So in that sense we always considered those votes indications of how one viewed the issues at the moment.

Justices' Work Is Never Done

Morris: You said earlier on that your first concern was to deal with the paper flow. It sounds as if you did devise some ways to stay on top of all this paper. How did you come up with them?

Broussard: Oh, it was a constant struggle. I mean, everybody has to deal with the paper flow and some internal organization. I had an excellent secretary who really coped with that for me. I had the same secretary, Janet Ellenberg, for the ten years that I was on the supreme court. I really had an operation that revolved around where she was the hub of my whole operation.

Morris: Trained as an attorney herself? She learned on the job?

Broussard: No, no. But there's a difference between being a secretary and organizing paper flow as being a judge or a lawyer. She was just an outstanding secretary, she was not legally trained. But my whole operation sort of revolved around Janet; she was the hub of it. And when I say my whole operation, ultimately on the court I had as many as six full-time student externs and five full-time staff attorneys, and a shared secretary.

We just all made Janet the pivotal point, and she sort of kept everything in order, flowing properly. The supreme court is a unique entity. Not replicated anywhere else as far as I know, as I said, I don't know of any other state supreme court that has the size staff that we have, or has the size state that we have, or which has to grapple with more complex issues of every kind than that court has to do. It makes it, I think, if second to anything, second only to the U.S. Supreme Court.

Morris: In terms of--?

Broussard: In terms of complexity, paper flow, the thoroughness of the analysis and treatment of the issues that come before it. And --I don't want get out of line--but maybe even in terms of the quality of the work.

Morris: That's certainly the historical reputation.

Broussard: But the thing is, from the point of view of justices, it is a very, very demanding job. It's difficult for two reasons which are not apparent to the public. Most of the time when I tell people that the supreme court is a very difficult and demanding job, they think that I'm referring to the difficulty or complexity of the issues, and I'm not. What makes the supreme court a difficult and demanding job is that first of all, the work is never done. You always have something else that should be dealt with, complicated by the fact that--

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Broussard: --we don't have terms as such.

Morris: Like the U.S. Supreme Court does.

Broussard: The California Supreme Court has oral argument ten months of the year. No oral argument, normally, in July and August, but no term as such. What it means is that for ten years as a justice on the supreme court, I was never once able to say, "I'm through. I do not have anything else that needs to be done."

Where, on the trial court, I don't care how difficult the case is or how long the case is, or if you're in calendar department as distinguished from a trial department--I don't care how difficult it is--there comes some point in each working day when you're through for the day and you can go home and rest up for tomorrow. Now I'm not saying the work isn't difficult, but that there's a closure; there's a point at which you finish each day. On the supreme court, you have to build in closure. At the end of the day you ask yourself, "Should I stay here another hour and one-half? Or take an hour and one-half's work home with me? Or come in an hour and one-half early in the morning? Or all three of the above."

Now that's one way it's demanding. The other is that the work doesn't go away. If you get a little tired and you plan to take a vacation, you know, most of us work hard to prepare ourselves, to get as current as we can on our work before we go on vacation. You take off two weeks, and when you come back, about 80% of what you would have done if you had remained on the job is waiting for you. That's because we do everything collegially; we do everything *en banc*.

I'll never forget, I really wanted to take about two weeks between the superior court and the supreme court, but that was made impossible by Rose Bird's schedule. She scheduled our confirmation hearings for July 21, and she scheduled a special calendar--as I indicated to you, the court does not normally have oral arguments in August; but the court had been without the services of Justices Clark and Manuel for several months, and there were cases which the court tried not to schedule for oral argument, where it was perceived in advance that the court might be divided. You didn't want to have two pro-tems come onto the court and join two regular justices in the majority when you would have maybe three regular justices in dissent. I mean, it's just not good for the stability of the law.

So when Otto Kaus and I came onto the court in July, we looked straight into the face of a special oral argument calendar that had, I think it was twenty-one cases, most of which were known to involve either rehearings or issues on which the court would be divided. And that was our initiation, a special August calendar with difficult cases. I couldn't take two weeks then. I looked ahead and identified two weeks in September when I would take off.

My staff said, "Fine, we'll carry on while you're gone." I took the two weeks off and I came back to my chambers. At that time I had a huge partner desk--do you know what a partner desk is?

- Morris: Yes. It's got slots on both sides for two people to work at.
- Broussard: Yes. Huge. As a matter of fact, I'll digress for a bit to tell you that during the State Capitol Restoration Project, the state made a very serious effort to locate and identify furniture and other things that had been in the state capital historically. And the desk that I had was identified as the desk that had been used either by the speaker pro-tem of the senate or the speaker of the assembly. And they wanted it. So we worked a trade. They got my desk and the furniture that was put in my chambers was paid for by the State Capitol Restoration Project. That desk now sits in Speaker Willie Brown's office.
- Morris: Oh, wonderful. How do you suppose it had gotten down the river to San Francisco?
- Broussard: Oh, over the years a lot of things have happened. I mean, yes, a lot of furniture had been displaced and was located elsewhere in the state.
- Morris: But anyhow, that's a double-size desk, in effect.
- Broussard: Yes. So when I came back after those two weeks, the whole perimeter of that desk was lined with boxes. And when I say with boxes, at that time on the court, when it was the justice's time to act on a case, either side on a majority opinion or side on a dissenting opinion, or write if you were going to write, when it came your time to participate, the box with the record of the opinions and everything came to you. The whole perimeter of that desk was lined with boxes.
- Morris: One box, one case?
- Broussard: Yes. Sometimes two or three boxes for one case. But this is the stuff that had come to me in the two weeks when I was gone. When I moved myself around my desk, I saw two stacks of papers in the middle of the desk, and I said, "Well what's this?" They said each stack was the three-to-three votes from the two Wednesday conferences that I'd missed.
- Morris: Three-three votes?
- Broussard: Yes.
- Morris: You were going to be the deciding vote?
- Broussard: I was the tie-breaker, yes. So in other words, the court had met in conference on the two Wednesdays that I was on vacation, and the only things that I didn't have to read and vote on were

the cases where they had four votes on it one way or the other, but the difficult ones, where they tied three-three, were sitting there waiting for me to participate in them.

That's all I'm saying: what makes the work of the supreme court so demanding is that the workload is ever-present; it's never done. You can go away, but the work doesn't go away. Because you have to participate in virtually everything that your colleagues participate in.

Morris: And a justice does not abstain from voting on a case, a justice does render his or her decision for this side or that side or reservations? You do express an opinion on every case?

Broussard: Well, you might have to recuse yourself on a case, where there's some reason you shouldn't participate in it. But let's make a distinction. When you say case, the term we use is cause. If you're participating in a cause, you have to vote one way or the other. You have to write in support, you have to sign what someone else has written, or you have to write and express your own views.

Now, I distinguish between a petition for a hearing or application for extraordinary relief or a writ or something like that, those things that we decide on what we call an ASAP [as soon as possible] basis. When we get a request for extraordinary relief or temporary restraining order and injunction, or some extra writ like that, that's circulated among the court, and as soon as there are four votes in favor, it's disposed of.

So if I happen to be working at home that day or making a speech somewhere and they get four votes, that's not a cause. It's just a matter that's come before the court. I don't have to participate in it. But if it's a cause, then everyone on the court participates in that, unless you are recused. So those boxes were cases where I had to participate one way or another. And so they just sat on my desk, waiting for me to come back.

The Ninety-Day Decision Rule

Morris: You mentioned a while ago a time limit in which a cause is disposed of--.

Broussard: Well, in California a judge has to sign an affidavit that no cause submitted to him or her has been undecided for more than

ninety days. Or that there's no matter pending before him or her for more than ninety days that has not been decided. We call that the pay affidavit. Your compensation depends upon your deciding submitted matters within ninety days.

Morris: Really?

Broussard: Yes. Now traditionally, the California Supreme Court has defined "submitted" differently than most other courts do. Usually a matter is considered submitted if it's tried and all the evidence is in and the briefing has been done. The matter has already been submitted and then you have to make your decision within ninety days. In the courts of appeal, traditionally a matter has been submitted when oral arguments have been either waived or completed if there's no further briefing to be done. If the court orders further briefing or something, the matter is not submitted until the briefing is completed.

In the supreme court, what traditionally has been done was that the matter was not ordered submitted even following oral argument. The court would go into the opinion-preparation process. And then when the opinion or opinions were virtually ready to be filed, a submit order would be filed. In essence, that sort of notified the press that an opinion was about to be filed in a particular matter. And it gave the press a little lead time in preparing whatever story they were going to write, preparing to understand the opinion in terms of the issues that were involved.

But all of that changed as of January, 1989 or 1990. My memory fails me. And the supreme court now operates on the traditional ninety-day rule. What it has done is to require the court to do more work before oral argument, towards a tentative disposition of the case. In the older system, about the only thing that each justice got on a case were the briefs and the bench memoranda prepared by a colleague. And then you prepared yourself for oral argument, you went into oral argument and you put a lot of time in the case afterwards. The court put a lot of time into the case after oral argument, preparing the opinion or the opinions that were going to be filed.

Under the present system, more work has to be done prior to oral argument. You have to be pretty much up on the issues, and have a pretty well-defined tentative view of the disposition, so that it can be assured that within ninety days of oral argument your opinion or opinions can be prepared and filed.

- Morris: I was thinking of probably a slightly different aspect of it. Was it the *Tanner* decision when there was a question about the court withholding an opinion until after election because it might have a bearing on--.
- Broussard: Well that involved the *Tanner* decision and the so-called *Tanner* hearings.
- Morris: Right. Is that the same kind of thing? That when you give out the decision, that has to be within that ninety-day period? The subtext of that is that was there--you know, the press made a lot about did the court delay an opinion.
- Broussard: No, no, no. Wait a minute. Sometimes it's hard for me to understand what you're driving at. At the time of the *Tanner* decision, the court was operating under the old rules, so there was no real concern about the ninety-day expiration. The charge then was the court had delayed filing the *Tanner* decision until after the election, and that there were political motivations for that. That was the charge.
- What I'm talking about when I talk about the ninety-day rule is, under the old system, the ninety days really didn't begin to run until the opinion was virtually ready to be filed. Under the present system, the ninety days run from the date of submittal. And the date of submittal now is usually the date of oral argument, unless the court asks for or grants permission to do some additional briefing or file some additional authorities. Then, upon the filing of those additional matters, the case would be submitted, and the ninety days start running.
- Morris: Okay. Was the change made because of the flap over the *Tanner* decision?
- Broussard: No. Actually, several reasons, one of which was a lawsuit concerning the constitutionality of the earlier practice.
- Morris: Why did the *Tanner* decision cause such a flap? Was there any reason that the opinion was delayed?
- Broussard: I was not on the court then, so I have no information other than what was made generally available to the public and during the actual hearings themselves, part of which were televised. I mean, I was a sitting judge then.

But the *Tanner* decision was perceived as one where the California Supreme Court was, again, being soft on crime. And it was accused of deliberately delaying the decision until after the election in November of '78--let's see, I think it

was the '78 election--because of concern that it might affect the vote in the election.¹ Then that became a *cause celebre* for accusations and recriminations by members of and people outside of the court. You know that whole history.

Ironies of Death Penalty Measures

Morris: It seems as if, in ways one doesn't expect, society's concerns do indeed impinge on the way the court operates in its decisions.

Broussard: What do you mean?

Morris: We had a period in which there had been feelings that the death penalty should be removed, and then the voters decided that it should be reinstated. It seems that the courts are right in the middle of society's confusion as to how it wants to treat its own members.

Broussard: That's not a very refined view of how things operate. I mean, the court is primarily guided by the law. And certainly there is opportunity and need for some interpretation, which gives rise to the possibility of different interpretations. But the period you're talking about on the death penalty was the period after the United States Supreme Court had said that most state death-penalty statutes were unconstitutional under the United State Constitution.

And so it's true that the supreme court had declared California's death-penalty law unconstitutional, but there was a hiatus period in which no state had a valid death-penalty law. And most of the states now went about the business of trying to draft death-penalty laws that would conform to requirements of the U.S. Constitution as announced by the U.S. Supreme Court. And California did that.

There is a real irony in this situation. California had enacted a death-penalty law in 1977. That was enacted by the legislature and signed by the governor. What's interesting about it is that the principal author of the 1977 death-penalty law was George Deukmejian, then senator. That 1977 law was written with, I think, a sincere effort to comply with all of

¹On Proposition 7, an initiative measure sponsored by Senator John Briggs, which expanded the categories in which the death penalty could be imposed.

the requirements of the U.S. Constitution as they were understood at that time.

That law had the benefit of committees, hearings, and drafting with care by the author and the legislative counsel's office, and it was designed to give California a valid, constitutional death-penalty law. Unfortunately, it lasted but about a year, because then-senator John Briggs launched his effort to become governor by sponsoring a death-penalty initiative, which was adopted by the people in 1978. California presently operates basically under that 1978 death penalty law.

Now the difference is that Senator Briggs and the people who were working with him set out to make the death-penalty law as broad and as encompassing as they thought it could be. And so, rather than carefully drafting it to be constitutional, they were drafting it to be as broad as they thought it could be. It did not have the benefit of the legislative process, it did not have the benefit of careful committee consideration. It was intended to be as broad in scope as they thought it could be. And it just presented a tremendous amount of legal problems. It imposed upon the supreme court a responsibility for resolving a whole lot of legal issues that were complicated and difficult, that would not have been present under the '77 law. They would have been much more easily resolved under the 1977 law.

The Briggs initiative imposed upon trial courts and upon trial prosecutors and defense attorneys the necessity of operating in an area where the law was not clear for a very long period of time. You see, it's true that there were many, many more reversals, at least in the penalty phase of death-penalty cases, in the Rose Bird years than there were later. But as sure as I sit here now, if the composition of the court had remained the same, there would have been more reversals of penalty phases of death penalty cases earlier on than later on. Because, under the '78 death-penalty initiative, there were so many unresolved issues that courts and prosecutors didn't really know how to try the penalty phase of a death- penalty case.

Morris: Regardless of what their personal or social views might be?

Broussard: I don't like to use this, but if the Rose Bird court was still sitting, that court would be affirming more cases now than it did earlier on. Because lawyers and trial judges have a better understanding of what's required. That's because of that whole evolution of decisions that came out of the California Supreme Court.

I'm also saying that if the Malcolm Lucas court were determining the propriety of the death penalty under the '78 law, that there would have been more reversals, relatively speaking, than there would be now. So all I'm saying is that as the issues presented by the '78 law became resolved by the court, then the affirmance rate went up. Now that's not to say that there are no attitudinal differences between the earlier court and this court, particularly in the area of what is perceived as prejudicial error.

Initiative Ballot Measures

Morris: Is this lengthy process of interpretation becoming a more common occurrence when you get the kind of initiatives that we have had in the last fifteen years, the really sweeping initiative like Proposition 13 and some of the others which have attempted to really redefine how government will operate and handle, raise revenues?

Broussard: Well, of course, number one, I think there is a fundamental difference between the legislative process and the initiative process. Essentially what I've said, in the legislative process you have committees and hearings and they have the opportunity to understand what the measure provides and to hopefully write it in a way that it's understood and doesn't create too many unresolved issues. In the initiative process you are dependent upon the ability of the sponsors of the initiative, because if it qualifies, it goes on the ballot. That's it.

The initiative process proceeds without the benefit of the legislative process. Any initiative sponsor can bring in whoever he or she might want to advise and consult, so there's a variation. But I'm saying here you don't have the benefit of the organized legislative process. You can have input from different people, but most of the time it's people who have interest and motivation to accomplish certain things. So when you get the complicated initiatives, they are more likely to present very difficult, unresolved issues than would be comparable legislation.

Morris: Do you have time this morning to talk a little about the Malcolm Lucas court? Or should we put that over to another day?

Broussard: Oh, it'd probably be better to put it over. There is one thing that I would like to add to the discussion that we were having

is one of the things which concerned me as a member of the court. I'll be watching the development.

One of the greatest protections that the electorate has in the initiative process is the requirement that an initiative measure should deal with only a single subject. And the courts traditionally have defined single-subject as narrower than broader. As a matter of fact, there's a similar requirement with reference to legislation: each statute should only apply to a single subject or deal with a single subject. The tradition in California is that a single subject is defined the same for the legislative process as for the initiative process.

My own personal view is that the need for protection for the electorate is greater in the initiative process. And there are some indications that the court may be reconsidering the definition of single subjects with reference to the initiative. There are those, for example, who think that Proposition 8 [June 1982]--you know, the first Victims' Bill of Rights--that Proposition 8 should have been eight propositions. So that each of the provisions would have been voted up or down by the electorate without having to buy the whole package. I think that there is more of an argument to be made for that view when you are dealing with the initiative than when you are dealing with legislation and the legislative process. But the courts haven't taken that view so far.

- Morris: Isn't there a review of the initiative before it goes on the ballot by the attorney general's office? Is that not one of the things the attorney general's office reviews?
- Broussard: No, no. Not for compliance with the single-subjects requirement or anything like that, no.
- Morris: Fascinating. More complicated, some of these issues, than you thought they would be when you started out?
- Broussard: Well, there are a lot of complex issues in the state, especially now. Even if they aren't complex, there's somebody trying to make them complex.
- Morris: Why don't we stop there for today. Before we meet again, I'll type up my notes on the decisions that I was asking about, so they're more legible.
- Broussard: I'd appreciate that. When do we meet again, in one week or two? I hope it's two.

XIII EAST BAY COMMUNITY FOUNDATION TRUSTEE, 1972

[Date of Interview: January 29, 1992]##

Morris: There was one civic thing I wanted to go back to before we got into court matters again. Could I ask you what you recall about being on the East Bay Foundation board back in the early '70s? It was then still the Alameda County Community Foundation.

Broussard: Oh, the East Bay Foundation, yes, right. I represented the bar association. The Alameda County Bar Association was entitled to nominate two people, I believe, to serve on the board of the foundation. I don't even recall who suggested my name or who the president was at that time.¹ But it was the kind of thing that I guess I've always had a penchant for doing. I had been quite involved in community activities in the city of Oakland, largely through the Oakland Men of Tomorrow, which we talked about. And so when I was asked if I was interested, I agreed.

It was an interesting period. The East Bay Community Foundation, of course, was very small in size as compared to the San Francisco Foundation, but yet we were doing some creative and innovative things, and we were working primarily--not exclusively but primarily--with the kind of a new, start-up group that had innovative ideas. I learned a lot about what was going on in the community. We would go out and actually do in-the-field investigation of most if not all of the applicants. For instance, try to make a determination as to, not only were they working, but whether they were likely to succeed. And so I learned a lot about the community, some of the activities that were going on, some of the work that was being done, and frequently wished we had much more money to

¹Otto Hieb was then chairman of the board of trustees.

give. Of course, all of that was pre-Buck trust fund days, you know.¹

Morris: Would there have been staff by that time? Or was it still run pretty much by the trustees?

Broussard: That's one of the questions you gave me that I didn't have a chance to go back and refresh my recollection. I think we had one staff person.

Morris: Would that have been when Bill Somerville was there?

Broussard: Yes, Bill Somerville. I think he was there all or part of the time.

Morris: The reason I ask is because I understand that he was the first staff person, and I wondered if there was much discussion about the need for staff people and the need to find someone.

Broussard: We just simply didn't have the resources at that time to retain full-time staff people. Most of our clients were small, and they were generally nonrecurring grants, too. We would not give a grant for more than three years. It would be nice to have staff on a full-time basis; we just weren't large enough to afford that at that time.

¹Disposition of a bequest by Marin county resident Beryl Buck led to a controversy in the 1980s that significantly affected giving patterns of Bay Area charitable foundations.

XIV SOME CASES BEFORE THE SUPREME COURT

Acceptable Bounds for Discussion

- Morris: Going back to some of the questions on the outline: I hope that when I typed up my notes on some of the cases I thought you might want to talk about, they became more understandable.
- Broussard: Yes, I reflected on that a little bit. I guess there are comments that can be made about having worked on a case within the acceptable bounds of propriety. Generally, we don't comment on the substantive issues in the cases that we decide. Let other people comment on them. But, no, I can talk about them.
- Morris: Good. I picked those because in my reading it seemed like those were the ones that were of interest to legal observers.
- Broussard: That's only a few of them. By the way, here is something I had done near the time of my retirement.¹
- Morris: Oh, this is wonderful. This is a listing of all your opinions.
- Broussard: Yes, it's as accurate as my then law clerk could make it. It's just a listing of the opinions, divided by majority opinions, concurring and dissenting opinions.
- Morris: That would be really valuable to include as an appendix to this document we're creating, if it would be possible to run this through a photocopy machine.

¹California Supreme Court Decisions by Justice Broussard, as of May 12, 1991, LEXIS compilation. Copy in supporting documents in The Bancroft Library.

Broussard: Oh, I can get a copy for you.

Morris: That's a very large body of work.

Broussard: That's never been published anywhere else. I used that for my own purposes and for a couple of speeches that I made. I just wanted to have that record before I left.

Morris: In considering your supreme court decisions, have you arrived at some conclusions as to the kinds of issues that were particularly significant that came before the court in those ten years? Have you commented on this in any speeches, for instance?

Broussard: Well, I probably made a couple of speeches where I referred to this. I was talking to a group that I've been a member of for a long time, and I was just sort of describing some of my work on the court, and it was helpful to be able to give them some visual indication of the quantity of work that I'd done.

Doctrine of Federal Abstention; Mono Lake Decision

Morris: That's a large single-spaced listing. Maybe we could run down this list and see if there were some general issues before the court, or procedural matters upon which it might be helpful for students to have some thoughts. This list was put together chronologically, and the first one was a decision in 1983 related to Mono Lake.¹

Broussard: You have a question or do you just want me to comment?

Morris: Yes. The phrasing in the decision was that rights to use and divert water could be modified to protect fish and wildlife and aesthetics. So what is that? Property rights versus environmental rights?

Broussard: No, no. Sometimes I do wish you were a lawyer. [laughter] Actually, the Mono Lake decision--that's the way we referred to it, although it was actually, I think, the National Audubon Society versus Los Angeles Water and Power District or

¹*National Audubon Society v. Superior Court of Alpine County; Department of Water and Power of City of Los Angeles*, 33 Cal. 3d 419 (1983).

something like that. That was an interesting case to work on. First of all, the case really started in the federal courts. Are you familiar with the doctrine which we call federal abstention at all? Well, the litigation was in the federal court. It was in Sacramento with Judge Carleton, I believe. I'm not positive about that.

During the course of the litigation it became apparent that there was a very important unanswered question about California water law. Under the doctrine of federal abstention, the federal court abstained from deciding the state legal issue, because its decision would not be final as to California state law. So they allowed the parties to institute an action in the state court to resolve the legal question which was raised in the federal litigation. I think Mono Lake is one of the most important decisions our court ever decided, in my judgment. It certainly caught the attention of all of the water law people, not only in this state, but in the country.

I enjoyed working on it because I can remember, before going to law school, I had never dreamed that water was something that people litigated over. And I can remember Professor Ferrier with his little specs hanging on the end of his nose, talking to us about upper riparian and lower riparian and the right of proprietorship and appropriation and so forth. You know, the concepts were all so new and vague and strange to me. I must have learned it well enough to get a passing grade, but all of it was just a foreign language to me. And here I had the responsibility of working on what I recognized early on was one of the more important issues to come before our court.

I liked the fact that it came to us from the federal court, which had kind of posed the question, "Is California water law this on the right of proprietorship? Or is it that? Is there a public-trust doctrine that the proprietors can rely upon?" They gave us an either-or question, and our answer was neither.

Morris: Oh, wonderful. [laughter]

Broussard: And frankly, there was a little language. The federal court inquired as to the relationship between the public-trust doctrine and the California water-rights system, asking us whether California water law was one or the other. And we said, "Neither." This was a real important sentence in that case, that the public-trust doctrine and the appropriative water-rights system are parts of an integrated system of law.

The public-trust doctrine serves the function in that integrated system of preserving the continuing sovereign power of the state to protect public-trust uses, a power which precludes anyone from acquiring a vested right to harm the public trust, and imposes a continuing duty on the state to take such uses into account in allocating water resources. So we said that it was one integrated system, that they coexisted, and a person could rely either on the appropriative system or on the public-trust system in challenging any water allocation or ruling by the court or the Water Resources Board.

That was a very important decision. What I was really pleased about, the federal court had asked us two questions. That was the substantive law question, and the second was procedural, whether or not the State Water Resources Board had exclusive jurisdiction. Well, we were unanimous as a court on the substantive law question. Then Justice Richardson didn't agree on the procedural issues; we were 6-1 on that. But the important issue was the substantive law issue, and we wrote an opinion, which I am pleased to have been able to participate in, which I think made a real contribution to the development of the law in this state.

Morris: Did it have an effect in other states also?

Broussard: Oh, I haven't made a specific study of it to follow it, but it's one of the widely-read and cited cases. I'm sure it's in the textbooks of many law schools and everything else where water law is studied in. It was an impact case.

Morris: Had this integrated system idea been discussed before?

Broussard: It was a new issue in California. I mean, that was what made the case important. [coffee break]

Morris: Was it a new issue because the environmental consideration had not been raised before in terms of water use?

Broussard: It had certainly never been addressed by the appellate courts in this state. So far as I know, this was the first time the issue had been presented in any litigation that was going to judgment in the state. And that's the reason the federal court abstained, because there was no answer in state law on this question. So rather than the federal court deciding it, they let the state courts decide it, and it ultimately went to the California Supreme Court, which then articulated the law for this state.

- Morris: And then did it go back to the federal courts?
- Broussard: Yes, it went back to the federal court to complete the trial consistent with the law as announced by our opinion.
- Morris: What did the federal courts do with it? Uphold the California decision?
- Broussard: No, no. That's not the way it works at all. I mean, the federal court is bound to apply the law. Now, what we just said was that it was one integrated water-law system. We didn't deal with the allocations that were being challenged with the specific rulings of the Water Resources Board as to how much the water level could be dropped at Mono Lake. Those were issues which were resolved at trial. But they had to be resolved consistent with the law as articulated by our court.

The real question was whether ornot the plaintiffs could rely upon the public-trust doctrine in challenging the water allocations that had been allowed by the water board. Or whether they had to rely simply upon the doctrines that exist in the appropriative water law system. And so the unique thing about our case is we said that there are not two separate water law systems; there's one integrated system and the plaintiff could rely upon the totality, including both public-trust and appropriation concepts, in challenging the allocation of water.

- Morris: I can see where that would have made a great difference in future allocations.

Interpretation of the Death Penalty; Importance of Precedent

- Morris: How about also in the same year, the decision regarding proof of intent to kill in cases where there was a sentence of death?
- Broussard: Yes, *Carlos* was an effort by our court to interpret the 1978 death-penalty initiative.¹ At an earlier time I told you that California had a 1977 death-penalty law that was enacted by the legislature and sponsored by then-Senator Deukmejian. That was a considered and very deliberate attempt by the legislature to draft a death-penalty law that would be consistent with all of the constitutional requirements as they understood it, as

¹*Carlos v. Superior Court of California*, 35 Cal. 3d 131 (1983).

contrasted to the 1978 Briggs initiative, which was an initiative and not a legislative measure, and raised a lot of very, very difficult interpretation questions.

The problem we dealt with in *Carlos* was that under one reading of the initiative, it would be possible for an unintentional killing, which involved one of the special circumstances, to be made first-degree murder because of the existence of a special circumstance. One could be made death-eligible if you found the special circumstance. And then when you started weighing aggravating versus mitigating, the special circumstance in some cases could in and of itself be sufficient to tilt the scale towards aggravating outweighing mitigating, which would mean that an unintentional killing, simply because of one special circumstance, could be made first-degree, death-eligible, and the death penalty could be imposed.

We wrote an opinion interpreting the statute to require that there be an intent to kill if the defendant was to be death-eligible. We did it based upon an interpretation of the statute and also based upon what we thought would be the requirements of the U.S. Supreme Court for constitutionality. Of course, you know that *Carlos* was short-lived, because that was an '83 opinion and after the 1986 election the court revisited *Carlos*.

Morris: That's what I was wondering.

Broussard: Yes. When the court revisited *Carlos* in a case which is called *Anderson*,¹ a couple of things had happened. We had had three additional new members appointed to our court by then-Governor Deukmejian, and there had been some indications that the United States Supreme Court was not going to require intentionality in order to uphold the imposition of the death penalty under state law.

So our court in *Anderson* overruled *Carlos* and said that no intent was required, and did so in another 6-1 opinion with everybody on the court except me going along. I kind of took a pot shot at the court, but I was very disturbed that a very recent precedent by our court (which was not a 4-3 opinion; it was a 6-1 opinion) was just simply being reversed largely because a change in the composition of the court, at least in my view.

¹*People v. Anderson*, 43 Cal. 3d 1104 (1987).

In my dissenting opinion--I think this is language which has been quoted everywhere--I said, "Periodically, when the political winds gust in a new direction, it becomes necessary to remind all concerned of the virtues of a steady course." As lawyers and judges we sometimes deliver our reminder in Latin, *stare decisis*.¹ And I went on to say that we thought that it was a disservice to the law to undermine or overrule an opinion so recently decided by our court, and quoted from an Illinois Supreme Court decision that arose in a very related context.

I mean, that court had upheld the constitutionality of that state's death-penalty law in a 4-3 opinion. And there was a change in composition on the court, and a couple of years later the same issue came up. One of the Illinois justices who had dissented in the earlier opinion wrote an opinion indicating why the earlier opinion should not be overruled even though there was a 4-3 majority for unconstitutionality. That he thought that with the court having made a decision as to constitutionality and his having expressed his disagreement earlier, he was now bound by that ruling, and he voted to uphold the constitutionality.

Morris: Isn't that interesting.

Broussard: And we quoted from him. All that he was saying was that the decision had been made by the court as an institution, and not by seven individuals, and that a change in composition of the court did not justify a change in result when nothing else had changed. He was not saying that the law is immutable, but that a change in composition on the court, with nothing else having changed, was no real reason to overrule or reverse an earlier decision.

Morris: Was that viewpoint discussed by the court in California?

Broussard: Oh, certainly. I mean, it had to be; I wrote on it. It had been discussed. Well, the court was just convinced that *Carlos* had to go. First of all, I think probably many of them began to question its reasoning, but one of the underpinnings of *Carlos*, as I said, had been some reading as to the direction that the U.S. Supreme Court was going in. We had had problems all along, of trying to make the '78 initiative conform to federal constitutional requirements as we understood them.

¹Let the decision stand.

Frankly, many of us were very surprised when the United States Supreme Court indicated that it would not require an intentional killing for it to turn out to be death-eligible. And that indication was apparent; it hadn't been specifically decided, but that indication was becoming more apparent at the time *Anderson* came up. And so it sort of removed one of the considerations that we had relied upon in interpreting our statute to require intentionality.

Morris: So that it sounds as if it is an important part of the work of the state supreme court to keep an eye on what is going on in the federal supreme court.

Broussard: Oh, certainly. We are part of the union. The process is kind of intricate. We're deciding California state law, but certainly, the question of the death penalty involves both state and federal law. We have a state initiative. We want to try to interpret it in such a way that it is not unconstitutional in the federal constitution, if the language permits that. And so whenever the court is faced with a choice of interpretations of state law, one of which would be constitutional and the other which would be unconstitutional under the federal constitution, the court would choose the one that's constitutional under the federal constitution. But then later on, if it becomes apparent that either interpretation would be constitutional under the federal constitution, then in this instance the court decided to change the interpretation of the state law, and eliminate any requirement that a killing be intentional before the defendant is death-eligible.

Balanced Budget Initiative, 1984

Morris: Then the next decision I came across that I recall as being especially significant in those years was the court striking down the initiative calling for a federal constitutional convention for a balanced budget amendment.¹

Broussard: That was an important case, I guess maybe for two reasons. It raised the question as to when, if ever, should a court determine the validity of a measure prior to election. That was one of the new things about that case. And, of course, the other was that there was a movement across the country to

¹*AFL-CIO v. March Fong Eu; Lewis K. Uhler*, 36 Cal. 3d 687 (1984).

require the calling of a constitutional convention to amend the federal constitution to require a balanced budget. That part I don't want to comment upon, because we didn't really delve into the merits of that; that's a political question. But we had to look at the contents of the California initiative to determine what it would require.

We read the initiative as requiring the California legislature to take some action and requiring the people to take certain action, and as being an improperly drawn initiative substantively under state law and also not conforming to federal constitutional requirements for the convening of a constitutional convention. In my mind, what was very important was that we articulated a concept that courts should rarely determine the validity of a constitutional measure prior to the election, and should never do so when the constitutional question related to the meaning or interpretation of the initiative substantively.

But in this instance, the constitutional question that was raised went to the power of the people to adopt that particular initiative. The question was, did the people have the power to adopt this initiative? And we concluded--and I don't want to go through all the legal analysis--but we concluded that that question could properly be decided before the election. We concluded the initiative was such that the people did not have the power to enact it, it was not a proper subject for that kind of an initiative. Therefore, we could order that it remain off the ballot. Without looking at its substantive provisions, it was not a proper subject for an initiative, and the people had no power to adopt it.

Morris: They had no power to adopt an amendment regarding a balanced budget?

Broussard: No, an amendment which would require the state legislature to do a certain thing, to adopt a particular resolution under pain of sanctions, and would require that the federal constitutional convention be called. The federal constitution requires that that action be taken by the various state legislatures.

Morris: Not by the citizens, the individuals.

Broussard: Not by the people, right.

Morris: What about the aspect that it was an advisory message, not a law?

Broussard: The initiative would not have changed California law at all. It was not a substantive measure in dealing with California law. It would simply have ordered our legislature to take certain action towards the calling of a federal constitutional convention. We said that it was not a substantive change in California law, and therefore not proper to the subject of an initiative. The people do have the power to legislate through initiative, but this was not really appropriate legislation.

Concerning Civil Liability

Morris: And also in '85, a decision allowing tenants to sue landlords for injuries caused by unsafe conditions?

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Broussard: Well, it's a little more than that. Although, when we wrote *Becker*,¹ I didn't realize it would create the furor that it did. Frankly, I thought it was merely an expression of rather established principles, where you had a landlord engaged in the business of leasing or renting property who was unaware of a dangerous condition at the time he leased it to the plaintiff, who likewise was unaware of the dangerous condition at the time that he leased it. And then later, the defect causes an injury to the plaintiff.

In my judgment at that time, it was sort of a typical application of tort principles, that you impose the burden of the harm upon the person who was engaged in the business and who had at least the ability to do something about the defect, conceded that there was no actual knowledge on the part of the lessor nor upon the part of the lessee. Tort principles require that the risk of danger, the risk of harm be borne by the landlord, and we basically said that it would be the landlord's responsibility to be strictly liable for injuries incurred by the tenant under those situations. If I remember correctly, there was some dissent. I think Justice Lucas dissented on that point.

But the case really created a stir, and if I remember correctly, I think there was even an effort to introduce legislation that would change its result. I don't believe it

¹*Becker v. IRM Corporation*, 38 Cal. 3d 454 (1985).

ever succeeded. But it was viewed as a much more important case, I think, in the community and in the field than I thought it would be.

Morris: Than at the judges' level?

Broussard: On my own personal level, at least. Theoretically, every case which our California Supreme Court decides is an important case, because we have discretionary jurisdiction. I keep saying, "we"--I'm not on the court now any more--but the court has discretionary jurisdiction. Generally, when it grants review of a case, it should be because there is some institutional importance to that case. But even within that framework of doing cases that are more important than others, I just hadn't viewed this as being as important as the profession or the public viewed it after it was decided. I thought it was more routine.

Morris: Not knowing the details, it would seem that if somebody is injured in a building owned by somebody else, it would be--.

Broussard: Basically we say that where the landlord is engaged in the business of leasing property, and he leases property with what we call a latent and nonapparent defect, with a latent defect which exists at a time the premises was leased to the tenant, that in order to be sure that the landlord who markets the product bears the cost of injury resulting from defects rather than the injured tenant, we apply the concept of strict liability. As I said, I thought it was a routine application of that doctrine.

Morris: So you were surprised when it created the stir that it did.

Broussard: Yes, it created a lot of controversy.

Morris: Amongst court observers.

Broussard: Yes. And in the field. Of course, when you're dealing with property owners and property users, you've got varying interests and anything affecting that relationship, I guess, will be controversial. But I was a little surprised.

Morris: There were comments at that time that the court appeared to have shifted to the center on questions of civil liability.

Broussard: Well, you know, we decided the cases, and we let other people do the commenting.

Morris: That's probably a good plan if you figure that whenever you make a decision that's choosing between A and B, somebody's going to object whichever--.

Broussard: Sure, and sometimes it's A, B, C, D, and E.

Morris: That's very true. [laughter]

Public Employees and Consumer Protections

Morris: Okay. How about the Long Beach case in 1986 allowing public employees to refuse lie detector tests?¹ Public employees being a category different from just private citizens?

Broussard: Again, I'm surprised that case made your list. It was important, but it was no great shakes, at least in my judgment. I mean, we simply said that a law which allowed employers to require--I think it was non-public safety public employees, to be required to take a lie-detector test during the course of their employment was unconstitutional under people-protection principles.

The law exempted public sector safety employees, but did not exempt non-public safety employees. At the same time, non-public employees cannot be required to take lie detector tests. We just said that it was an invalid classification under the equal protection clause to exempt just this one category of public employees. And, secondly, the results of the lie detector tests would not be admissible in any court of law, so we said there was no compelling state reason to justify the classification. And we, again in a rather traditional application of equal protections classification concepts, found that the statute didn't cut mustard, and invalidated it.

It was, on a relative scale of importance, not a biggie, at least not in my judgement.

Morris: Are there a few cases or issues that you did feel were particularly important or satisfying to you?

¹Long Beach City Employees Association v. City of Long Beach, 41 Cal. 3d 937 (1986).

Broussard: I didn't go back and try to answer that one for you. [Looks through list] There were some that I'm just going to touch on briefly because I didn't go back to review them.

Didn't you have something in here about children's TV? That was a case which never got a lot of publicity. That was a lawsuit brought to enjoin television advertising beamed to children promoting high sugar-content cereal. And it was knocked out at the trial level on a demurrer, which means the plaintiff couldn't even get to trial on the issue. And we ordered that it be overruled, that they had [not] stated a cause of action.¹

I think Consumers Union was involved in the background of the litigation. It went on later to trial; I'm not sure of the precise result. But I thought it was an interesting and unique question about the beaming of television commercials to kids in a manner that just caused kids to demand that their parent buy a particular product for the kids that was of high sugar content.

And, of course, one that is still very much in the news, so I don't want to say a lot about it substantively, but I am a little surprised that it's not on your list, involves the California insurance industry, Proposition 103.² That was probably one of the most challenging and interesting cases that I worked on. If you'll just recall a little bit about the environment within which that case came up--a sixty-five million-dollar campaign for and against various insurance initiatives which were on the ballot.

Prop. 103, which would have required some rebate of premiums to the California insured, was the one that prevailed at election and, of course you know, was substantially challenged, and it came up to our court. The case was assigned to me. It was a case where we ultimately got a unanimous court, but only after a lot of effort. I think the court worked harder as a court to resolve the issues that were presented by the Prop. 103 case than almost any other case ever decided by the court while I was there.

Morris: Why was that, do you suppose?

¹*Committee on Children's Television, Inc. v. General Foods Corporation*, 35 Cal. 3d 197 (1983).

²On the June 1990 ballot.

Broussard: Oh, it just raised some very difficult constitutional issues, and some very difficult issues of interpretation. And of course we were mindful of the fact that there had been some strong competing interests who were trying to determine what the appropriate interpretation of the measure was. It was just difficult to forge a consensus, which we ultimately succeeded in doing. As I said, I don't want to comment substantively on it, because the insurance commission is still wrestling with the application of the law as interpreted by our court. We know the whole sequel to that. I mean, we have a new insurance commissioner now, who's elected.¹ At that time we had an appointed insurance commissioner,² and there was a lot of concern about how she was interpreting and applying the law.

Morris: And all of that was part of considering the initiative itself?

Broussard: I don't understand your question. The court decided the constitutional validity of the initiative, and interpreted many of its provisions. But the application and implementation of the law is a matter for the insurance commission. Of course, any time the insurance commission is dealing with a new statute, even though the supreme court has said it's constitutionally valid, there are areas of interpretation and there are various choices as to implementation. And there was a lot of controversy around insurance commissioner Gillespie.

A lot of people with consumer-oriented interests were not satisfied with her interpretation or the hearings which she conducted or the rulings which she made, particularly with reference to premium rebate. There were a lot of other issues that were raised in that case and decided by our court. But basically, we upheld the constitutional validity of the initiative measure that had been adopted by the people. Highly, highly contested politically in an election.

Achieving a Unanimous Decision

Morris: So that there were times when you were comfortable being part of a majority with the new people on the court?

¹Former state senator John Garamendi.

²Roxanne Gillespie.

Broussard: This case came about at a time when I was already frequently writing dissenting opinions.

Morris: Writing dissenting opinions?

Broussard: Yes, writing dissenting opinions. And this was a measure over which I think most people thought our court would be divided. I tried to persuade the court that the view that we had recommended was legitimate, and as I said, we wrestled with the legal issues and the analysis and the case precedent and the meanings of the drafters of the provisions and of the electors. We did a lot of work inside in order to try to accomplish what we did.

Morris: A unanimity.

Broussard: Yes. I think it was significant.

Morris: Why does that work? Why is it possible to achieve unanimity on one issue and not on another?

Broussard: Because on one issue it's possible to get people to agree and on another, it may not. I mean, we just worked very hard on our view of the proper analysis of the measure and overcame some differing views and persuaded people to go along and to sign on to our opinion. It's a matter of reasoning with people; sometimes you can reason together and agree, other times you can reason together and not agree. It's a case by case matter.

XV PROCEDURAL AND PHILOSOPHICAL MATTERS

Malcolm Lucas as Chief Justice; Broussard as Acting Chief Justice

Morris: We haven't really talked about Malcolm Lucas as chief justice. Did you find him very different in the way he administered the court in comparison to Rose Bird?

Broussard: Let's just say the job of chief justice has certain responsibilities, and there's got to be commonality. I mean, anyone who is chief justice has to accomplish certain things or appear a failure. I think both Chief Justice Bird and Chief Justice Lucas succeeded, although their styles were somewhat different. I had a very pleasant working relationship with Rose Bird. But I must say, I think her style was a little less open than Malcolm Lucas.

After Rose Bird left the court, I served as the chief justice--I'm the only member of our court who served as acting chief justice--during a three-plus month period when we had no chief justice. We always have an acting chief who acts when the chief is out of the state or unavailable or recuses himself or herself. One of the members of the court is always designated acting chief, but that's acting chief with a chief justice in place.

But for the period from January 4--or whatever it was--1987, until March something when Malcolm Lucas became chief justice, I was the acting chief justice of the state of California by myself.

Morris: That must have been a strange experience.

Broussard: Well, it was a new and different experience. One of the things that was very interesting and challenging for me was that I sat on the confirmation hearing for Malcolm Lucas as chief justice. The Commission on Judicial Appointments, as we've said, consists of the chief justice of the state of California, the attorney general, and when the appointment is to the California Supreme Court, then the third member of the panel is the senior-most presiding justice of the court of appeal in the state of California. And that was Lester Roth, John van de Kamp, and me.

Morris: Were you acting chief justice by rotation? Or did the governor name you?

Broussard: No, the chief justice named me.

Morris: Rose Bird.

Broussard: Yes. Under Malcolm Lucas we had a more rotating acting chief justice system. I think each justice on the court had a rotating term as acting chief for about three months, I think that's the way it was later on.

Under Rose Bird, she had the power, and she designated me as the acting chief. There was some question raised about the duration of the validity of designation after she left office, but there was no real serious challenge to it, and I continued to serve as acting chief until we got a chief justice. An interesting thing about that, you'll remember that I told you that when I came up for confirmation to the supreme court, George Deukmejian, who was then the attorney general, voted against me and then proceeded to vote against virtually every appellate court nominee of then-governor Jerry Brown, very largely on the view that they were judicial activists.

That's a simplification but, very largely on the notion that Jerry Brown was nominating people who were going to be judicial activists and Deukmejian wanted nonactivist judges on the bench, he was voting against all the Jerry Brown nominees on what was, in my view, was an improper basis for voting against a judge who was otherwise competent, had integrity, character, ability. But because he didn't agree with his or her judicial philosophy, voted against him as a member of the court.

I was tempted, although I didn't do it, to make some comments during the Malcolm Lucas hearing, that if I were to do what the then-governor did when I came up for hearing, I would

vote against Malcolm Lucas, simply because I had a different judicial philosophy. And if he went about the business of joining majorities in the cases in which he had dissented when we were in the majority, he would be a judicial activist.

Morris: Lucas could be defined as a judicial activist?

Broussard: Yes. Lucas could be defined as a judicial activist if he started joining a new majority to try to overrule the cases on which he had dissented when we were in the majority. But I mean, I had served with Lucas, and I knew he was a very able judge and very well qualified to sit on the court, even though we disagreed on the bottom line. But it was sort of a temptation to make a speech, just sort of lecturing the governor, but I decided not to do it.

Morris: It's a good feeling sometimes to be able to, though.

Broussard: It would have been easy to do. If you recall, I guess most prominent in the testimony against the chief justice was attorney Nat Colley, a very respected Black attorney in the state of California, who testified against the chief, largely on the basis that he was a conservative and had minimum contact and exposure to people of color and to their problems and situations and life. Nat Colley took a lot of heat for coming forward and testifying against the chief. But I had just decided that I would not try to give the governor a lesson in civics. He was no longer on that commission, anyway.

Morris: Did Justice Lucas take that in good part?

Broussard: Yes, as a matter of fact, I think he and Nat Colley went on to develop a communication, a rapport, and a respect for each other.

Morris: Really?

Broussard: Yes, sure.

Diversity and Discussion on the Court

Morris: Is it possible that his service on the supreme court has broadened his outlook on some issues?

Broussard: Oh, I think so. In some way I helped to contribute to that. That's one of the reasons that a court is well-served by having some diversity on its membership, because it's not that you go and look at public opinion, but that if you have people on the court who have different experiences, backgrounds, and attitudes and views, but who have competency and professional ability, then you should be able to impact upon each other's thinking and analysis and conclusions. That's the reason we sit around the table, so that we can all give input to the ultimate work product report. Certainly there's room for give and take in that process.

Morris: Yes. It's fascinating to contemplate a discussion between seven men and women with your accumulated experience.

Broussard: Yes, but you see, that's why I put real importance on diversity on the court. In my judgment, when you get a monolithic court, you sit around the table and you're all inputting the same stuff. So there's very little challenge, there's very little give and take. If you all readily agree because you have the same background, the same experiences, the same attitude, the same philosophy, the results are rather predictable, easily achieved, and minimally challenged.

Morris: And the court is not going to expand the concepts--.

Broussard: Beyond the parameters of those seven people.

Morris: Right.

Broussard: One of the things I enjoyed, although dissent became a bit frustrating at a certain point, but one of the things that I enjoyed was being one of the people on the court who would challenge some of the earlier responses to issues. It was a delight to say, frequently, "Wait a minute. Let's stop and take a look." I will not be specific on this because it would be a violation of confidence, but there were some instances in which I was able to take a court which was going in one direction and turn it around just by the power of analysis and persuasion. That's very satisfying.

The frustrating thing about it is that the public knows the cases in which you aren't successful and you write in dissent. But the public doesn't know the cases where the court would have come out differently but for the fact that somebody on the inside [said], "Wait a minute. That's not the way to go."

And if you persuade a majority, then that becomes a majority opinion, But you don't go around saying, "Aha! I persuaded everybody." So there have been some instances in which I really just turned the direction of the court around. But nobody will ever know it except those who are privy to the confidentiality.

Morris: You could always write a little memoir of your own.

Broussard: And leak it.

Morris: The Bancroft Library is there for posterity, so you can put something under seal. And at some future time--.

Broussard: What is confidential is confidential.

Morris: But there's the factor of time, you know. What's confidential now because the participants are still active may not need to be confidential twenty-five years from now.

Broussard: Oh, that's not quite like the presidential papers, I don't think.

Social Context of the Law and Policy Choices

Morris: Is this is a matter of convincing people on points of law? Or more on social outlook?

Broussard: Those aren't different. The law deals with social problems. We don't have the law over here and a social problem over there. We have the law dealing with people in relationships that generate legal problems, living with social phenomena. It's one amalgam, it's not an either/or. It's a little like the California water law; it's not either/or. It's one composite body of law. In other words, the supreme court is charged with the responsibility of shaping development of the law in this state. We don't legislate and we don't administrate, but we try to interpret the law.

In order to make the law have meaning and vitality, we have to interpret it in a social context. The cases that come to the supreme court are important because there is no black-letter law saying this is it or that's it. There are legitimate requirements in considering or making policy choices. That's what makes the court important. We're dealing

in an arena where we have to make policy choices. We have to be governed by the law, and all of the principles and concepts that go into what determines the outcome of the case. We have to be governed by rules of statutory interpretation, we have to be governed by precedent, *stare decisis*.

The cases that are important are the cases which, when you consider all of those things, there's still a choice to be made. That choice is basically considered a policy choice. It's an individual decision as to what you think is appropriate. In that context, you try to influence each other. Sometimes you can succeed in persuading your colleagues to your point of view, and other times you aren't successful. So it depends on, you know, what the issue is of the day.

XVI PERSONAL AND PUBLIC COMMITMENTS##

Organizational Obligations

- Morris: The law as you describe it is very alive and evolving. What I hear is other people saying that there is one interpretation and that was set when the constitution was written.
- Broussard: Oh, sure. Then we could have a computer supreme court. No, the law is a living thing. And it has to be.
- Morris: Earlier you made the comment that you're not a hater. Does that apply to your work on the court or more your community concerns?
- Broussard: Oh, that was a description of me as an individual. It applies wherever I am. I was simply saying that with my upbringing in Louisiana, especially when everything was segregated in law and in fact, I had a lot of personal conflict on the one hand because of my race and on the other hand because of my religion. That I was in a situation where it would be easy for me to hate people who were different than me, either racially or religiously.
- And for some reason that I just can't answer, that did not happen. I'm not a bitter person. I have race and ethnic pride, but I don't have bitterness and animosity toward people who are different than I am. I just rejoice in that fact and recognize that it could have been different.
- Morris: Is that related to what you've also mentioned about feeling a commitment to be visible in community activities and set an example?

Broussard: Well, yes and no. I think if I were a hater I would not ever have been able to undertake a lot of the involvement in activities that I did. But even there I have to make some allowances that are a little more intricate than what you've just indicated. I was always a person, from City College on, who was a joiner, who was always involved in organizational activities. I'm repeating myself a bit, but when I graduated from high school, my family left Louisiana, and all of a sudden I'm in California, which is supposed to be the land of freedom and equality. I found it to be a little different than that, especially after the war was over.

Even at City College, which was the first school to which I went, City College of San Francisco, I was one of the early Blacks to be involved in student government. A man whom I've admired all my life and don't see too often any more, although I do see him occasionally, was Don Grant. Don Grant was a product of San Francisco schools, and was at City College. He was one of the first Blacks that I knew of ever to be involved in student government on the City College campus. And I followed him in a couple of his activities, on the student executive council and on the club advisory board. Don, by the way, had been a victim of polio, and he had knee supports on his legs, but he played interior lineman on the football team. He was a phenomenon.

Morris: Isn't that incredible!

Broussard: He played line guard or tackle, I forget which. And he was strong in his upper body, and he could run ten or fifteen yards, but then have to get back down on his knees. And it was a marvel to watch him play football with his handicap. He was effective. They weren't making exceptions for him, he was an exceptional person. He was an inspiration for a lot of us. But he inspired me or motivated me because he was active in student government, when I did that.

And then, as I told you before, I was the perennial president of the college chapter NAACP, and that really, I think, contributed a lot to my development as a person who had a sense of obligation, responsibility to the community. That's something that has stayed with me all the way through in terms of community involvement and organizational involvement.

Changing Times

Broussard: The other aspect of it that we talked about a bit, was that, if you stop to think about it, things move so slowly but yet they move rapidly. To give you a contrast, contemporary contrast-- look at what just happened over the weekend [January 1992] in Oakland and compare it with what the possibilities were when I went on the bench in 1964; it'll make my point.

Last weekend Governor [Pete] Wilson appointed three Blacks to the bench in Alameda County. He appointed, or elevated, Martin Jenkins from the muni court to the superior court-- incidentally, to fill a vacancy which was created when Sandra Armstrong-Brown, a Black woman, superior court judge, went to the federal court. He replaced Martin Jenkins on the municipal court with Brenda Harrin-Forte, a Black woman lawyer who had just been installed as president of the Alameda County Bar Association, becoming the first Black woman president of the Alameda County Bar Association. Then he appointed Gail Brewster-Hardy to the municipal court.

She is a dynamic and tremendously respected woman who had been engaged in private practice with her husband in Alameda County when they were involved in a private plane crash, which resulted in permanent disability for her husband, mental and physical, as I understand it. Permanent physical disability for her, she's confined to a wheelchair, but she has all her mental faculties. She was serving as a commissioner for the Oakland Municipal Court when the governor appointed her to the bench to fill a vacancy that was created when Judge Jim White, a Black municipal court judge, was killed in an auto accident.

When you have three Blacks appointed in Oakland at one time--and all the vacancies that were involved were held by Blacks--now that is some indication of where we are today.

Morris: Wow!

Broussard: I must say as an aside that it is my belief, I may be wrong, but it is my belief that while the governor did that, and I give him credit for it, that he undertook to do it in a way that it would not generate maximum publicity in the broader community.

You don't make judicial appointments at five o'clock, at five-thirty on Friday or on Saturday unless you want to bury it in the press. And it was Tuesday before the Oakland

Tribune ran a story on the three appointments, so it was page four. And one story covering three appointments. So you know, it didn't get the play that it might have in the broader community.

It's a little off the point, but Saturday night was the installation dinner for the Alameda County Bar Association president, for which I was scheduled to emcee. But I was fighting the flu and had to cancel out. The plan was that Brenda was going to be ceremonially installed as president and then just resign. Then Eric Behrens, the president-elect, would be installed in office as president.

The important thing is that this year you have three Blacks appointed in Oakland at one time, and all of the vacancies that were involved were created by Black judges. If you contrast that to 1964, when I went on the bench, there were so few Black judges in the state of California, that I was aware of the fact that as I got involved organizationally, many judges were seeing or working with a Black judge for the first and only time in their life.

I was aware of that. That helped to motivate me to get involved in judicial education and in judicial organizational activities. I was aware of the fact, and I think today many of the lawyers and the judges especially are aware of the fact that, over a long period of time I was in essence not only a role model for them, but I was setting an example for a lot of people who had never had any opportunity to work with, come in contact with, get to know, a judge who was Black. There were just Lionel Wilson and me in Alameda County, one or two in San Francisco, and maybe--oh, I know fewer than a dozen in Los Angeles. I didn't take the time to try count them, but certainly fewer than a dozen, maybe more like six or seven or eight.

Morris: Is your thought then that a Republican governor, or is it Pete Wilson particularly, has made a commitment to diversity in appointing people to the bench and other things?

Broussard: I don't want to over-generalize because all of this is just--. What we know is that he appointed three Blacks on one day, or I think maybe one of them got the call on Saturday, but I mean, in one weekend.

And think of the vacancies. In other words, when Martin Jenkins, a Black muni court judge, went to the superior court, he filled a vacancy that had been created when a Black women

judge went to the federal court. And when Gail Brewster-Hardy went to the muni court, she filled a vacancy that had been created when a Black judge died in office.

So I'm saying not only do we have three Black appointees, but the vacancies were created by movement of Black judges. And that's a phenomenon that was just not possible a few years ago. We didn't have the numbers. The rest of it now is just my own personal view that Pete Wilson was willing to do that. I think that he recognized that there might be some elements of the public or of the party that wouldn't view it with great favor, and it's my own humble opinion that it was done in such a way that was more or less buried in the press.

Morris: I'm surprised that the *Tribune* didn't make more--.

Broussard: Well, they may do a human interest or feature story on some or all of the people later, but you know how newspapers function, you get a press release from the governor when something like this happens, and you work from that. If you're going to do a human interest thing or something, it comes later. That's what I'm saying, that five o'clock, five-thirty on Friday is not a time to issue a press release.

Morris: Not if you want it on the evening news.

Broussard: And Saturday certainly is not a time when you're seeking maximum exposure.

California Association of Black Judges

Morris: There was--there still is--a Black judges association. Is that something that you helped to start?

Broussard: National?

Morris: I'd assumed there was a California branch of it, also.

Broussard: Well, in California we have a California Association of Black Lawyers, and within that organization there is a judicial affiliate, a judicial council. Really, what first started was the California Association of Black Lawyers, which was an umbrella group that most of the other ethnic bar groups belonged to. We have a Charles Houston Bar Association, a Wiley Manuel Bar Association, then a John Langston Bar

Association. They were primarily Black bar groups in the Bay Area and Los Angeles that then formed the California Association of Black Lawyers.

And the judges came together and said, let's belong to CABL, that's the acronym. But we would meet separately and just sort of develop an agenda that was more judicially oriented than CABL itself was. One of the main things that CABL did was to promote and encourage the appointment of Black judges, one of the major activities in it. It has an educational component and social component, but CABL was very involved in encouraging and promoting the appointment of Blacks to the bench.

Morris: More so than the NAACP or the Urban League? Or working together with them?

Broussard: Well, of course, in those efforts you work with whoever is willing to work with you. But at the time, let's say particularly during Governor Brown's administration, I think lawyers had more input into judicial appointments than many of the other organizations that were interested. I think it's just a group to which the governor looked and to which he responded. But it certainly was not the only organization that was interested in that cause.

Morris: How about working with the California Bar Association to get them to take an interest not only in African-American attorneys but Hispanic and other minority groups?

Broussard: Yes. But the California bar is an integrated bar. I don't mean in a racial sense. I mean every lawyer in the state of California is a member of the California state bar. And therefore the California state bar has real limitations on what it can appropriately do with its money and with its time. And so while the state bar could espouse a principle of diversity, it was not the effective organism for advocating appointment of this Black or other minority to this judgeship; it's a different entity.

Committee on Racism in the Courts

Morris: I'd also like to hear a little about this committee on racism in the California courts. I read that Chief Justice Lucas had appointed you to chair it?

Broussard: I'm tempted to quiz you a little bit, but I won't do it. I'll just give it. Let me give you--.

Morris: [reads] "To investigate racial and economic bias in the California courts."

Broussard: Let me give you a little lesson and a little history. Malcolm Lucas is not the chief justice of the California Supreme Court. Most people don't know that. He is the Chief Justice of California.

Morris: I had heard that, but I didn't understand the distinction.

Broussard: As Chief Justice of California, he is the chief justice of the California Supreme Court, but his power and his title is broader than that. He is the chief justice of the state of California. One of the most important additional responsibilities is that as chief justice of California, he chairs the Judicial Council of California, which is a constitutional body which has the basic rule-making authority for the courts in this state, all the courts of the state. The Judicial Council also has the responsibility for developing programs to make the courts effective, efficient, responsive.

Along those lines, under then-Chief Justice Rose Bird, the Judicial Council created a Commission on Gender Bias in the Courts. And that commission was continued by Chief Justice Lucas when he became chief justice. He just enlarged the membership some, and continued the gender bias commission, which completed its study and submitted a report with recommendations to the Judicial Council in the area of eliminating gender bias from the courts and from the profession.

At or about the time that that report was being developed, the chief, in response to urgings from some people and also in response to a conference that had been held of the various states--I think at that time only four states had race or ethnic-bias commissions--the chief in his capacity as chair of the Judicial Council appointed an Advisory Committee on Race and Ethnic Bias in the Courts. That committee was given the responsibility of doing a job similar to what the gender bias committee had done with reference to gender bias, and that is, to study the existence, or the appearance of existence, the attitudes of the people about race and ethnic discrimination in the courts.

We're doing studies, we're in the process of developing a group of consultants who will do various components of our work for us, and we are in the process of conducting public hearings in various areas of the state to make a determination on the various issues, as to whether or not there is actual prejudice or discrimination based on race or ethnic lines, whether there's a perception of it, what if anything can be done to eliminate it, to improve both the reality and the perception of fairness in the courts.

It's a very major undertaking; the committee will probably take three years to complete its assignment and then prepare its report. Something comparable to what the gender bias committee did. A lot of work went into trying to make an advisory committee of fewer than thirty people reflective of the vast array of diversity that exists in this state. A tremendous amount of work went into developing a pool of people from whom the chief justice could make some choices, and have a group of people who were interested and able to function on that, people who would be as diverse as we could make it within the numerical limitations that were involved.

I must say that we have a good committee; it's co-chaired by former justice John Arguelles and myself, and we're not quite midpoint in our work yet. There's a lot of work left to do.

Morris: And you've continued on that even though you've retired?

Broussard: Yes, I've continued on that, and hope to continue on it. I think it's important.

Morris: I should think it would be vital.

Broussard: But it's also time-consuming, and it takes weekend meetings and time away from home. With the hearings coming up, we've decided to try to divide that among the various members of the committee. Justice Arguelles and I will divide the responsibility of chairing the hearings so that we don't each have to be at all of them, because it's just very demanding.

Morris: How many hearings?

Broussard: We've only had one, actually, and I chaired that. It was up in Redding.

Morris: Was there a good response? What kind of response?

Broussard: Yes, we had a good response, and some very, very poignant and emotional testimony both from the Native-American community and from the Black-American community. We also had the involvement of two presiding judges from two of the counties up there. We learned a lot. We're still in the process of reducing the testimony to writing and studying it, but we learned a lot. There are some very, very deep feelings in the communities up there about the adequacy or inadequacy of police work, especially. One thing was that much of the testimony related to police-citizen contact more than to the court itself.

Morris: I noted that. Did you expect that kind of feeling?

Broussard: I think we're going to get that everywhere, because that's the seminal point. I mean, you can't separate police work from court work. In the eyes of the average citizen, it all starts with the police. And I think that while we want to encourage people who have specific experiences relating to the courts themselves to come forward and make those experiences known, we have to accept the fact that when you have public testimony, there will be many people from the public who will want to testify from the viewpoint of citizens and their contact with the police.

Morris: That, too, is part of the continuum of the interrelation between the courts and society.

Broussard: Yes. In other words, you will get that.

Morris: Yes. I'd be interested. Is there a contact point of information as to when the hearings are?

Broussard: Oh, yes. That will be made public. You call Arlene Tyler at the administrative office of the court. The phone number is 396-9128. She can send you a schedule or give you that information. We published a schedule, but now what we want to do is to increase the publicity tremendously in the area to which we will be going for hearings.

Developing Minority Interests in the Law and the Courts

Morris: You were also on an American Bar Association Task Force on Minority Opportunities in the Law. Were there things that you learned from that task force that you didn't expect or that have been helpful?

Broussard: I'll come back to that. That's different.

[water break]##

Broussard: [The task force has been working in several ways on activities related to the kind of issues that concern minority judges and lawyers. Some of these involve ways to bring more minorities in as members of the ABA; others include ways of encouraging young Black men and women to come into the legal profession. In order to] get more minority judges and lawyers to join in the ABA, you have to provide a welcoming environment and communicate that to them.

And the message is going to be a tough sell because the audience is already turned off against you. So basically what my task force did was to say we've got to go out and create some programs that are of interest to minority judges. We have to be concerned about minority law students in school, on the bar exams, placement, judicial clerkships, clerkships in law firms.

When we're involved in those areas then we can say to the minority judges that we want your involvement in the judicial administration division [JAD] because we are doing things that are important to you. And we welcome you and we will give you an opportunity to belong, to participate, to go up the ladders to become chairs. You know, we're in the process of selling that market, and it's proving to be kind of a tough sell. We don't go into a room with twenty-five minority judges and say, "The ABA welcomes you," and get twenty memberships. It just doesn't happen. It takes a little time to overcome attitudes that have been developed. But that's basically what our task force is doing. It's future history, but by the time this comes out, it will have been achieved, I think.

We're in the process right now, the JAD task force in conjunction with the ABA commission, of planning what we call a showcase of minority justices. A minority justices' showcase program, to be sponsored here in San Francisco in August of this year, when the American Bar Association has its annual meeting in San Francisco. When ABA meets, they generally attract some twenty thousand lawyers to a community. So it's a big meeting. We are planning to bring together all of the minority justices from the highest courts of each of the states. We had to work long and hard to develop that list, nowhere in the world did it exist.

Morris: Nobody's kept count of minority justices?

Broussard: No. There was no source to which we could go and say, "Give us all of the minority justices who serve on the highest courts of the various fifty states." We developed that list; we invited all of the justices to come to San Francisco. We want to honor them in an ABA setting. We've asked for an ABA presidential showcase standing; those are the programs that are highlighted during the annual meeting. We want to acknowledge and pay some tribute to each of these justices from the highest courts of each of the various states, and hopefully make them more aware of the ABA and its interest in them, and make the ABA more aware of and appreciative of their existence and their accomplishments and achievements over their professional careers.

Morris: Quite an undertaking.

Broussard: It's never been done. Now we're including all of the states, including Alaska and Hawaii, so our list will be more than we had originally contemplated. It will be twenty-five or twenty-six.

Morris: That's great. Do the state bar associations have the same resistance to welcoming minority members that you've found in the ABA?

Broussard: Well, that would vary from state to state. In a state like California where you have, as I said, an integrated bar--it's almost an unfortunate word, because we're not talking about racial integration.

Morris: I wondered about that.

Broussard: No, and I said it before. Just to clarify, the term "integrated" in this context means that in order to practice law, you have to be a member of the state bar. That's the situation in California.

Morris: It's a matter of state law.

Broussard: Yes. In California you have to be a member of the state bar in order to practice law. That's what we mean by integrated bar. So the problems of membership have not existed with the California state bar. There are problems of involvement and participation and care and concern. The problem in California has been more with local bar associations, in which membership was not required. That's what I'm trying to say. There's been a spotty pattern there.

I'll never forget when one of the partners in the first law firm that I worked with in private practice was one of the early Blacks admitted to the Alameda County Bar Association. His mother was one of the Black pioneers in California, and he went home and told his mother that he was a new member of the Alameda County Bar Association. She said, "You mean that white bar association?" And he said, "Yes." There was a time when there were no Blacks in the Alameda County Bar Association. And as I told you just a minute ago, recently they had a Black woman president for twenty-seven days or something like that.

Morris: What about the coming generation? Are there people that you look upon as really promising proteges? People that have clerked for you or that you've worked with?

Broussard: Oh, I just look at the bench and I see some real potential on the bench. I mean, if you're talking about minority judges. I don't want to start naming them, but I see some young people with real potential who are sitting on the trial courts of the state now. One of the unfortunate things in California was that under Governor Deukmejian's administration there were virtually no appointments to the courts of appeal in this state of minority people and of Blacks especially.

When Governor Deukmejian took office, I believe there were five Black court of appeal justices in the state of California. Three in Los Angeles, two of whom were presiding justices, and two in San Francisco, one of whom was a presiding justice. During Deukmejian's term in office, Justice Leon Thompson in Los Angeles died, and Justice John Miller in San Francisco died. To the best of my knowledge, Deukmejian didn't appoint a single Black to the court of appeal until the last few months of his administration, when he appointed his legal affairs officer to the court of appeal in Sacramento. As a result, we haven't had a lot of movement from the trial court to the court of appeal.

That was a factor that was very present when I announced my intention to retire from the California Supreme Court. We were certainly interested in having the governor [Pete Wilson] appoint someone who was African American to the court to replace me. And I guess the reality was that there was no person of African descent on the court of appeal that the governor found politically attractive. He expressed a preference for someone who had appellate experience, and there just were not--.

Morris: Even though you had gone from superior--.

Broussard: I had gone from the trial court to the supreme court, yes. Well, he was looking at a broad range of people from whom he could choose. It was impossible to persuade him that he should elevate a superior court judge to replace me.

Decision to Retire, 1991; Unfinished Judicial Business

Morris: Did you think of staying on the bench until a candidate might come along who would meet the governor's qualifications?

Broussard: Oh, sure, I thought of it among a lot of other things. I made the conscious decision to stay on the bench past the last election [1990], although I was eligible for full retirement before. The last gubernatorial election, I decided I would stay on past that. But if I were to stay on until the next election, I myself would have been on the ballot. I considered it, and I considered all of the prospects and possibilities, and decided that I would step down when I did.

Morris: Was the thought that if you had stayed and had to go up for confirmation you'd have the same kind of struggle that there was when--.

Broussard: No, no. Oh, you mean if I'd stayed and I had to run?

Morris: Right.

Broussard: Oh, I don't think so. That didn't bother me particularly. We'd had a couple of elections where we didn't have that kind of repetition of the 1986 phenomenon, and I had little reason to believe that that would be a factor in any race in which I ran--it was just simply that I didn't want to sit around until it was 1994 and run again.

Morris: Could we wind up, maybe, with any concluding thoughts you have on hazards or opportunities facing the judicial system in the '90s? What you see as unfinished business?

Broussard: Oh, there are so many things, many of them are in the works now. We have a lot of problems facing the judiciary in California that are general, wide-ranging problems. One of them is just inadequate resources. For some reason (and I'll limit my comments to California, but I think a lot of this is true of other states, too) despite the fact that the judiciary

is an important institution, it only commands a very, very small percentage of the state budget.

The task of getting greater resources, either in terms of the number of judges or any of the other facilities that go into the judiciary, is a very difficult one. And we are really tapped out at the trial level in this state. The state is growing, the complexity of the issues is growing, the volume of litigation is growing. A lot of work has gone into increasing the efficiency of trial courts and of trial judges, and that's all good, but I think it comes to a point when efficiency isn't the answer. It's just going to take more and better resources. That's a problem that's facing the state. Both Chief Justice Bird and Chief Justice Lucas were interested in state funding of the trial courts, and that's something which I think will materialize on a full scale system in a short period of time. But it will only bring certain solutions with it.

The thing that I'm really more concerned about is what I'm working with on the advisory committee. And that is that more than any state in this nation, California has racial and ethnic diversity, and it is growing and increasing rapidly. It presents a major problem of two proportions. One is to really assure that the courts are dealing fairly and equally with all of the ethnic diversity that comes before the courts, and secondly, that assuming fairness, that's there's also the appearance of fairness. Because the perceptions of the people are as important as the reality.

We're talking about racial and ethnic diversity, but you have to stop for a moment and contemplate the differences that various people are coming to California with. I mean, some monied, some poor, some with skills, some without, some with different religions, different cultural and social backgrounds, different languages, different educational backgrounds, different family relationships, cultural associations and ties that exist in some of the diverse groups and don't exist in others. Yet they're all here in California, and we have one court system. I think it's a tremendous challenge to maintain what we call a system of justice that's equally applied to all of the people.

Morris: Do some of the judicial education programs include some background on the changing population mix and recent immigration into the state?

Broussard: There is some effort to teach judges to be aware and sensitive and how to deal with diversity, but there's going to have to be

a lot more of it. We're going to have to understand more about the demographics of the state, the people that we're dealing with, and how to not only deal with them fairly, but to make sure that it's perceived that way.

Morris: How different are the legal systems that people have come from, say in South American countries or the Pacific Rim that we have so many people coming in from?

Broussard: It's a major challenge for the courts in this state especially because of the size of the state and the size of the ethnic population and the diversity in the ethnic population.

Morris: As a person who has now returned to the private sector, do you feel more comfortable talking about some of the issues that concern you than you did as a justice?

Broussard: In certain areas. I mean, there are some things as a justice that you would have exercised at least a certain amount of discretion in where, who, or what, you know, you were talking to or about. I feel some freedom, but on issues like this, I spoke out as a judge.

Morris: Do you see yourself as developing an advocacy role?

Broussard: Well, no. Not developing. I mean, I'd been involved as a judge even, in the matters of governance bearing on equal treatment for our diverse population. That rises above legal issues per se.

There are political questions and some legal questions that as a judge you don't talk about publicly. And some of them, even to this day, I feel a little reluctant to talk about.

Morris: Things that you've encountered as a justice yourself.

Broussard: No, things I was involved with. I'm not talking about encounters, that's a different concept from things that I was involved with.

Morris: I do thank you. You've given us some really good information, and I apologize for my shortcomings as a non-attorney.

Broussard: It's not a shortcoming; but you know, when you get into an intense interview situation--. It might be an advantage that you're not really an attorney, frankly.

Morris: That was kind of my thought; you'd have to explain it me.

Broussard: Yes, it might be an advantage.

XVII AFTER RETIREMENT FROM THE COURT

[Date of Interview: January 16, 1996]##

Travels to China and Japan; Observing Judicial Systems

Morris: We wanted to bring your activities up to date since our last interview session in 1992.

Broussard: Yes. In preparation for that I got out my desk calendars for those years. This is interesting: In 1993, I swore Willie Brown in on January 11 as speaker [of the assembly] in Sacramento. And I swore Steve Phillips in to the school board in San Francisco, and I installed the mayor on January 4 in Oakland. That was Elihu Harris. [pause] Reviewing these last two years sure brings back memories. [Reading to himself] I went to Maui in February. On a court [conference]--. I'm now on the National Judicial College, on their board. [pause] Oh, yes, on March 12, Charter Day, I received the [University of California] Alumnus of the Year Award for 1992. That for me was a real honor.¹

Morris: Was that a surprise? Did you know beforehand that that was coming?

Broussard: Well, I knew a little beforehand. As a matter of fact, I knew I'd been nominated. Yes, because they had taken pictures and prepared an announcement, things like that. But it still is a real honor.

¹See appendix for the text of this award.

And I got the Boalt Hall Alumni Award too.¹ That's a different award. Here's one of the things I wanted to include in this narrative. It won't take long. [reading] To New York for a legal defense fund meeting. I went to Russia in May of '93.

Morris: Was the trip to have a look at some of their judicial procedures?

Broussard: Yes.

Morris: How are they coming along?

Broussard: [shakes head] Actually, I had been to China when we talked.

I went to China in '87. That had an even more deep-rooted impression on me. We had a little longer trip and a little more exposure in China and saw things like the prisoners' cells in the courtroom and their three--they call them three-judge courts, but it's one member of the party and then two civilians.

Of course, they're on the European system, in which there is no presumption of innocence, no proof beyond a reasonable doubt, meaning really guilt is established by investigation, and when you come to court, the state--the whole concept is not an individual against the state. There's a paternalism involved. The state has ascertained that you have done something wrong, and the state wants to know what should be done. So the trial, so-called, is like a glorified sentencing hearing here, and don't lie, if you're the defendant. Don't lie. I mean--

Morris: Oh, dear.

Broussard: You're entitled to an attorney, but your attorney is of more assistance to you in the investigatory process than anywhere else.

Morris: Before it comes to the court?

Broussard: Yes. The attorney can be helpful in the investigatory process, but once you get in the court, there's very little the attorney does. We had attorney number one, attorney number two, two defendants in a robbery, and that was the main crowd we saw.

¹University of California Law School Association, 1991. See appendix for text.

We saw other court appearances in other cities in Russia, too.

Morris: That must be quite a surprise for someone trained in the Western judicial system.

Broussard: It's discouraging, yes. It's swifter dispositions anyway. But I'm surprised China didn't come up when we talked before, because China was '87, and that was the most interesting travel I've ever done in my life.

Morris: Would you describe it now.

Broussard: Russia paled in comparison. I led a delegation of lawyers and judges, and this is a people-to-people delegation. People to People was the name of the organization sponsoring this trip. [President Dwight D.] Eisenhower encouraged the group. The first thing they did was to advise me on a mailing that they intended to get a delegation of about thirty people, and in their experience, there would be about twenty-two professionals and the others would be spouses or significant others. We got 106 deposits, and seventy-two people made the trip.

Morris: Oh, my goodness.

Broussard: And People to People had no confidence that the Chinese would be able to accommodate us.

Morris: Well, that was early in Americans being able to travel in China.

Broussard: We were among the first Americans to go over as a group. We had contingency plans to split the delegation in two. We didn't have to do any of that; they handled it all there beautifully. It was just a great experience, really great experience.

Then, in 1993, we went to Russia. The interesting thing there was that our trip--again, I was the delegation leader. We only had twelve people on that trip. Our trip was sponsored by a Russian cultural exchange organization that's headquartered in Moscow, but the head of the office was an American who lived in Talinn, which is in Estonia.

While we were in Russia, when it was mealtime, we'd go into a restaurant, and the table would be ready. Generally, if it was lunchtime, the food would be ordered, and we'd sit down. We'd eat and we'd get up and we'd leave. When we got to Estonia, we were going into the nicest restaurants in town. We

had an Estonian woman, blonde, who was our local guide. She'd order champagne. Give us the menu; we ordered anything we wanted. We were just treated lavishly. The trip was really designed to have us enjoy Estonia more than we did Russia, although we saw some interesting things in Russia.

One of the most interesting things that happened on that trip was when we got to St. Petersburg. It was their national day of celebration of the liberation from years of domination by the Germans, and the main celebration was a gathering at a huge cemetery on the outskirts of town, and just masses and masses of people, but all very orderly. Anybody who had participated in the defense of the city was allowed to participate, regardless of their present political affiliation, so there was tension between some of the communist groups and some noncommunist groups, so there was a lot of tension in the air.

We were fortunate enough that our delegation was put into contact with the local host organization, and so we got through the crowd into a very prominent position, and there was resentment about that. But the main event was a series of presentations by different groups, usually in their tattered uniforms with their flags. There's a big center aisle, and these groups would walk down that center aisle up to this big statue, then place a wreath and come back.

We marched with the sponsor group, and when we were about halfway down the aisle, a shot rang through the air, this cannon shot, and at first some of our group were terrified. I mean, you could feel the ground shake and you could feel the air, and the sound was almost deafening. It was a ceremonial salute, but at first you didn't know.

We had just arrived that day, and Odessa, my wife, didn't feel well, so she stayed home and she watched us on local television. But it was a magnificent celebration. What it cost us, though, was that we were unable to visit the Hermitage museum, because it was closed on the holiday. We only stayed there a couple of days.

Another thing that made an impression was that we left St. Petersburg and rode to Talinn on the very train that Stalin used. And we had one entire railroad car to ourselves. We only had thirteen people in our group, and we had three people escorting us, so we had one entire car that was sort of separated off from the rest of the train for security purposes. But I actually had Stalin's cabin--it was huge, had a big partner desk in it, a double bed on one side, single bed on the

other side, and all this red carpeting and paneling and stuff. And then right in front of that was the dining room and a bar. We had three people who were there to both protect us and serve us. We had hors d'oeuvres and snacks in the bar, open all night long, if you couldn't sleep or whatever.

Morris: So you got the really VIP treatment.

Broussard: Yes, we did. that's how we left Russia and went into Estonia. And in Estonia, the most notable thing about their system of justice is that, first of all, they're developing all new codes of constitutions, and secondly, they have an inadequate number of lawyers. There's a shortage of both lawyers and judges, and law schools. They are just developing tremendously.

They're developing a second law school, they're training lawyers, and then lawyers are getting public positions very young, very early, because there's a paucity of lawyers and judges. Some of the older judges were purged. But they're very proud of the fact that they have a new civil code and a new evidence code.

Morris: Were the new codes more like what you're familiar with in this country? Had they made those kinds of changes?

Broussard: Yes. Well, we didn't even get into court there, but we got into the offices, like the deputy attorney general, a guy two years out of law school. We had more conversation there.

And, of course, they all tell you that they have a fair system. In China, they tell you the state takes a protective interest in even the misfeasance in their society, and that if a person is not guilty, they won't be punished. But if you are, punishment can be pretty rough in China.

Morris: That's what you read in the papers, that if somebody has been accused of a crime overseas, that he'd rather get extradited to this country or England.

Broussard: Yes. Maybe I need to let you put a little structure to these recollections. You had some questions for me.

Morris: One question that occurs to me is, if the legal systems are so different in other parts of the world, does that make for difficulties when you get into international legal questions? I don't know if that's a topic that you've gotten involved in at all.

Broussard: Well, not at the professional level, but obviously, when you take a trip like that, especially the China trip, there are people who are there who are making contact. We spent time going to several agencies that were in existence for the purpose of promoting international business. And at that time, China was going through a real joint-venture phase. They wanted foreign investments to come in and joint venture with local groups for the development of hotels and plants and apartment buildings and stuff like that.

Many of them really wound up not working out too well; some of them did, obviously. One of the sad things in China would be to see an old building standing up tall and straight, and next to it you'd see a new building going up, more modern-- they don't have a whole lot of equipment, but more modern type construction. There was one apartment building, for example, just a few blocks from where we were staying. And there were two things [we noticed] about it. When they are building a building, as they finish the lower floors, the building is occupied as they go, and they keep going up.

Morris: Oh, really? [laughs]

Broussard: But we could see in this building near us that, when they got to about the ninth floor, the windows were so out of square that you couldn't get windowpanes to fit. I mean, some of the joint ventures were just doing schlocky work, trying to make money [fast], make a quick buck.

Morris: Oh, that's too bad.

Broussard: But that goes back so far.

Responsibilities as Port of Oakland Board Member

Morris: One of the things that I wanted to ask you about is your service on the board of the Port of Oakland. Was that--

Broussard: Yes, there's a lot that we have not covered. There's an interesting story there--I had had some conversation with the mayor to the effect that after I retired, I would be interested in getting back into the civic life of Oakland. I said, "I don't want to get into the political arena, but I'd like to be involved in the civic life of Oakland, because basically, especially when I was on the supreme court, Oakland was something I saw from the freeway."

I retired on a Friday afternoon, and my wife, who does not like either motion or water, and therefore had never (we didn't even talk about that)--had never been willing to go on a cruise; but she knew I wanted to cruise and had told me that she had been building up, and she was willing to try a cruise on my retirement. So I retired Friday afternoon, and Saturday morning we were on a plane going to Miami for our first cruise.

While we were at sea, the mayor appointed me to the Oakland Port Commission. [laughter]

Morris: He sure didn't give you much time to relax.

Broussard: When I came back, I heard about it, and I called him. I said, "Is this true?" He said, "Yes. I guess I should have asked you first, though." [laughter]

If you'll remember, when Lionel Wilson lost the election for mayor [in 1991], he appointed himself to the port commission.

Morris: Yes, that was surprising.

Broussard: And there was a legal challenge to that. Lionel served approximately a year of the term, and then he lost the case in the superior court. Lionel was contemplating appealing, and actually when Elihu expressed some interest in appointing me if there were a vacancy, then Lionel said, "If you'll appoint Broussard, I won't appeal." So I was appointed to the vacancy that was created when Lionel lost the lawsuit.

In other words, he was considering appealing from the judgment against him in the trial court, but then he did not appeal because he was pleased that I was going to get the appointment.

Morris: So that you were kind of a peacemaker.

Broussard: Well, I didn't play any active role in it, but it was just that I was a friend of both Elihu's and Lionel's, and had been able to maintain good rapport with both of them, partly because I was on the bench and I didn't have to take any--[laughing]

Morris: Yes, you were removed from the day to day--

Broussard: So it was just that they were both interested in seeing me on the commission.

Morris: Has that taken a lot of your time?

Broussard: Yes, it takes a lot of time. It takes a lot of time. But I find it very important to the community. I find it very interesting. And I think we have a good commission and a good staff, and in my own humble judgment, we're doing a good job. So it's rewarding, but it takes a lot of time. The port in Oakland is quite an operation, because it's like three businesses.

Morris: Three? How is that?

Broussard: Well, we run maritime and seaport, the airport--

Morris: Oh, that's right.

Broussard: --and nineteen miles of shoreline, all of Jack London Square, and all that commercial real estate. So it's like being in the real estate business, in the aviation business, and in the maritime business.

Morris: And that whole business park out there by the airport is also under the jurisdiction of the port commission?

Broussard: Yes. From the Bay Bridge to the San Leandro line, along the waterfront. There are a few little parcels [that are privately owned, that have been] sold or otherwise. Otherwise, that's basically the jurisdiction of the port, so is the business park out by the airport, and the Jack London Square and that area there, all of that. It brings with it a myriad of different problems. I mean, environment, everything. From union to environment to governmental affairs and liaison to employment, to contract, to procurement, to development, to leasing and selling land--all.

Right now is a very, very--just a vibrant time in the life of the port; there's a lot that's going on. We are in labor negotiations, we're selling a big parcel of land that will be developed residentially.

Morris: Along the estuary?

Broussard: On the other side of Jack London Village, there is a big, roughly ten-acre parcel that actually, the people who built this building [that my office is in in San Francisco] want to develop, and they've entered into a contract with us, and we have to negotiate that. A lot of different views as to whether it ought to be mixed use, commercial, retail, or whatever. We have negotiations with the developer who wants to develop a Residence Inn by Marriott. I don't know if you know this or not, but Marriott is basically a nonunion operation, and

they've been anathema to the construction unions and the laborers. So we are in the middle of a lot of negotiations with the developer and laborers for that thing.

Morris: Does the port commission take a position on something like that?

Broussard: Well, you know what? Traditionally no, but the union put us in a position where we just about had to, to try to keep peace between the two of them, because they were going to picket the whole port. So we had to try to [keep that from happening.]

Morris: And you want to keep the port operating.

Broussard: We're trying to keep peace between the two, not so much in a partisan way, but we're just trying to be helpful in keeping them from going to battle with each other.

Morris: Sometimes, there has been a fairly activist position. I remember talking to Charles Patterson about when he was working first--¹

Broussard: With World Airways?

Morris: Well, with the port, and later with World Airways.

Broussard: He came with EDA.

Morris: Yes, the Economic Development Administration program. He described his job as being to--this was back in the sixties-- push the port and World Airways into hiring minority people, and creating programs in which African Americans could be trained.

Broussard: Yes, well, that was different. But that's true. Chuck Patterson came out here working for EDA, and that was an effort to do economic development with an emphasis on minority involvement, at least at his level.

Morris: Has the port continued that kind of a policy?

Broussard: Oh, we have a very strong diversity policy, very diverse workforce. Then Chuck went to work for World Airways, and of course, World was one of the biggest port customers at that time, and was very important to the port. I wasn't on the

¹See Charles Patterson, *Working for Civic Unity in Government, Business, and Philanthropy*, Berkeley: Regional Oral History Office, 1994.

commission at that time, but I'm sure that he was one who was trying to encourage the port to develop the airport... At that time, I don't know how aggressively interested the port was in terms of outreach and diversity, but I'm sure Chuck would have been [urging it.]

Morris: But am I right that the port, with all those activities you mentioned, is one of the larger employers in the Oakland--

Broussard: Oh, we're the economic engine of the East Bay, yes. Numerically, I don't know who has more employees there--we have approximately 600 employees, and that's not huge.

Morris: That's just the port itself--

Broussard: That's port employees. We're down from a high of 625 to about 600, and we're trying to get slimmer and meaner and more efficient. We're doing some--

Morris: But you are landlord to [a number of companies and the airport]--

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Broussard: --and the [airport] employs a tremendous number of people.

Morris: So is it a matter of the city telling the port what they want the port to do for the city, or the port telling the city what the city needs to do so the port can do its--

Broussard: Sometimes, I don't know how much you know or understand [about these things.] That's a very important and interesting question. See, the port is a department of the city of Oakland, but by a special charter provision, the port is independent. We have to remind the city frequently that we are a part of the city, but we are an independent agency, and we're supposed to deal with them as equals. So that the relationship isn't normally them telling us what to do, but of us trying to communicate and cooperate. And sometimes it gets fractious. Most of the time, it works well. We have a pretty good rapport and understanding with the city council.

But we have to continuously remind them that we are independent, and that we have to exercise our best judgment as to what's in the best interests of the port. Where there may be some conflict between the city's interests and the port's interests, we have a fiduciary duty to the port.

Morris: It's an interesting question in the whole Bay Area, since the different ports on the bay have to deal with the federal government, and the water quality and the air quality agencies. For the Port of Oaland, I understand, things like dredging have been a major issue.

Broussard: It's been a major issue.

Morris: And that puts you on opposite sides of the table with the Army Corps of Engineers.

Broussard: Well, no, not really.

Morris: Not really?

Broussard: No. As a matter of fact, the corps is very instrumental in our [development plans]. We have had problems with environmentalists and other groups, until finally we really came up with the genius of an idea that satisfied the environmentalists and the business community and the port and the city. Now the dredge material is going to three locations. See, we're dredging right now from thirty-eight to forty-two feet, and--

Morris: That's a lot of muck.

Broussard: A lot of silt. The problem always has been, what do you do with it? It's being classified in three different groupings. Some of it is going out to an environmentally approved ocean dump. Some of it is going onto Galbreath Golf Course. We had a real difficult community-relations problem with a lot of the citizens of Oakland, because we were going to close down Galbreath for all practical purposes.

Morris: Is it permanently?

Broussard: Well, it's going to be about seven years. But the commitment is to replace it with a much better golf course. Galbreath, of course, was built on a garbage dump, and it really was not a top-quality golf course. You could see tires and stuff like that coming through the greens. We're going to improve that, although there is an inconvenience; but we put in some programs to accommodate the people who use Galbreath.

But the genius was that the third quantity of the silt from the dredging is going up to the Sonoma wetlands, and it's being used to upgrade, restore, and improve wetlands up there and improve the natural habitat of a lot of the animals that are indigenous to that area. The environmentalists supported

that. The president [Bill Clinton] came out here and visited the Port of Oakland, and told the EPA [Environmental Protection Administration] and the Corps of Engineers and everybody else involved, "Let's get on with it, and deepen that channel to improve the economic situation in the area."

Morris: Really?

Broussard: Then the vice president [Al Gore] came out and said that all eyes are on Oakland, because it appears we've set the example nationally as to how you can accommodate your business interests and the environmental concerns in a way that's a win-win. So he was very laudatory and complimentary, and said that ports all over the United States were watching Oakland. Not every port has a dredging problem; some are natural deep harbors, but it is a precedent-setting kind of arrangement. [Oakland Congressman] Ron Dellums was very largely involved in that.

But we were able then to get labor and the business community and the chamber of commerce, the local political officials [together]; the president, all of our political officials in Washington were involved in the effort; and the environmentalists went along, BCDC [Bay Conservation and Development Commission] went along. It was just a coming together, in an arrangement where everybody had some interests that were being served..

Morris: Is there some kind of ongoing liaison with all of these agencies from the port's point of view?

Broussard: Communication maybe, not a formal liaison. We do have a Bay Area Dredge Coalition.

Morris: [laughs] Really?

Broussard: Oh, yes, we have one.

Morris: Oh, that's wonderful.

Broussard: We have a dredging coalition. Because you see, look, the day we launched the forty-two-foot project, we announced the forty-five-foot project, and we're looking to forty-eight feet. And we will ultimately probably have to go to fifty. That's because of the development of the ships. The capacity of ships is just being tremendously increased--well, at one time, the standard was, you couldn't build a ship bigger than could get through the Panama Canal. And then they started with what is called post-Panamax. Post-Panamax is a ship that, normally,

you couldn't have gotten through the Panama Canal, but what they do is they build the bottom to the maximum width [that will go through the canal] and then they go out [above that], so they can get more containers on them.

And we're going into ships now that will carry--I forget these numbers, but we use TEUs, twenty-foot-equivalent units. That's the way we measure containers, whether they're twenty TEUs or forty or whatever. But we're getting ships now that are carrying 6,000 TEUs. You line them up end to end, you've got fifteen miles.

Morris: On one vessel.

Broussard: On one vessel.

Morris: Good heavens. Does that mean ships that could get under the Golden Gate Bridge into San Francisco Bay?

Broussard: Well, it's not a matter of so much height. That hasn't been the problem. It's enough water to support the ship.

Morris: That kind of long-range dredging plan would seem to have a bearing not only on what happens in the estuary and on the Oakland side of the bay, but wouldn't it affect water movement in terms of San Francisco and Richmond and--doesn't Redwood City still have a port? If you're dredging that much silt out of the Oakland harbor, wouldn't that affect conditions for other ports on the bay?--

Broussard: Not particularly. At least, not within my understanding. And you see, the other ports in the area are not doing container shipping to any extent. Richmond does more bulk, and they don't have the real big container vessels calling on them. Some oil barges go into Richmond, but Oakland is the only one of the ports that has a market geared to worldwide container shipping.

Morris: Did I hear Willie Brown saying that one of the things that he thought ought to happen while he was mayor was that all the ports on the bay become one unified--

Broussard: He has expressed interest in a Bay Area transportation, harbor authority, something like that, yes.

Morris: Is that something that's discussed at all in meetings of port people around the bay?

- Broussard: We discuss it very little, because, actually, San Francisco is losing out to Oakland in terms of container shipping. Almost every shipping line that called on San Francisco doing container shipping has moved to Oakland. So [U.S. Senator] Dianne Feinstein had expressed interest in it, and Willie has expressed interest, in having a Bay Area Port Commission or whatever. Obviously, we are not highly motivated. We say to the mayor, "Let's have a transportation commission. You throw in your airport, and we'll throw in our airport."
- Morris: And what's the response to that?
- Broussard: Well, it hasn't gotten to that point yet. We haven't even said that to the mayor. But except when we were talking about it, it's his move. Willie Brown--Mayor Brown--
- Morris: The San Francisco--
- Broussard: It would be his move. Oakland isn't going to initiate anything like that.
- Morris: Well, I guess it's part of the larger question about public services: how much regional accommodations or regional government is desirable.
- Broussard: There's a lot of opportunity for regional cooperation, for regional marketing, for regional planning, even without having just one entity.
- Morris: And that's becoming a more comfortable subject for the people involved?
- Broussard: There has not been a lot of conversation about it. Willie Brown made a comment during his campaign for mayor, but that is not something that's been seriously discussed, to the best of my knowledge.
- Morris: Other than that there has been, as you say, BCDC, and there have been various studies in Sacramento and proposals for varieties of regional government, all of which have foundered.
- Broussard: Oh, I'm speaking more specifically about the port and the airport. Oh, certainly. I mean, you have all kinds of efforts at regional government. I wasn't speaking that generically.
- Morris: Right. But the port is a public entity, but you don't see it as a governmental entity?

Broussard: Yes, sure. I do. We're part of the City of Oakland, we're a governmental entity, and we're a public entity.

Morris: Do you relate at all to the adjacent property, the army base and things like that, and the coast guard? To what extent is the port going to be affected by base closings in this area?

Broussard: Oh, sure, that's very much an issue. We already have--I want to go back a little bit to tell you, no question that the port is public and that the port is government. The thing that's unique about the port, two things: one, its independence by charter, and number two, the fact that we are a business. We are not tax-supported, we're not tax-based. We generate revenue, and we can do public financing, bond financing in the way some businesses can't, but we are a public entity engaged in business. And that makes it unique. We're profit-driven.

Morris: It's a whole other kind of entity.

Broussard: Yes. It's unique. Now, what was your question?

Morris: Oh, I was asking about the base closing.

Broussard: Oh, sure, that's very much a part of what's going on now. We have had, Port of Oakland has been promised virtually all of the Naval Supply Center land, which is now called FISCO, Fleet Industrial Supply Center of Oakland. I don't know why they changed the name of the Naval Supply Center just as they were getting ready to close it, but we've been promised virtually all of that land, and it's very much a part of the port's planning on our economic development, because it's essential to our [ideas for the] terminals, and to the development of some additional berths.

Now, the army base is under BRACK, and we are interested in some of the army base land. But the mayor and the city have made it clear we have to go through the BRACK process like everybody else, so we don't know just how much of that we will get. But all of that land is very important to the development of the Port of Oakland.

Morris: Well, it would seem to have a great opportunity for--does port planning include residential and recreation and public access as well as--

Broussard: Not the port planning. What we are interested in doing is improving our joint intermodal terminal, the rail-truck-ship connection, warehousing, places for containers and for trucks, and some additional berths, on the water, on the land that is

appropriately related to the waterfront. Now, what happens beyond that on the army base land, we probably won't be involved with. That will probably go to someone else, or the city will develop it. But from the point of view of the port, if land has utility for commerce and shipping, that's what we want to do with it.

Morris: What's that, potentially double the territory that the port now occupies?

Broussard: The actual port territory, yes, it could. It could. It depends on how the army base goes.

Morris: It sounds as if the decisions on who gets the land will not all be made at once.

Broussard: I don't want to read the tea leaves on the army base. But I mean, we have to have contiguous land to make good use of it. If it's isolated parcels, you can probably store some containers or some trucks on it or something like that, but to really do integrated planning and development, you have to have a solid parcel.

Morris: When you said the port generates revenue, does the revenue go directly back into the port, or does it go through the City of Oakland?

Broussard: Well, it's complicated. We have by law a prioritization of the use of our money. We pay the city for general services, we pay the city for special services, and then there are other programs for paying the city money. We pay the city part of the funds for maintaining Lake Merritt, because the title--

Morris: It's water-oriented?

Broussard: Under law, we can transfer to the city surplus funds, funds that are not required--this is after we pay what we lawfully owe, for any police services and stuff like that. We can pay to the city surplus funds. But a port like Oakland is constantly trying to develop its infrastructure, its economic core. We have a very ambitious development program in place. We are a source of money for the city, but we have to be careful, because we cannot give away public funds. We can't give public funds; we have to have a lawful reason for transferring money to the city.

Morris: I gather that historically, it's caused woe sometimes in relations between the port and the city.

Broussard: Yes. We're a cash cow in the eyes of the city, and they are very creative in coming up with the formulas that require that we pay them money for something. But it's all watched by several agencies. The airport is carefully watched by FAA [Federal Aviation Administration], the State Lands Commission carefully watches the transfer of port or airport money to off-airport uses. Los Angeles is in the middle of a big problem right now, because when Riordan was running for mayor, he promised more policemen on the street, and he was going to get the money from the airport. And of course, the Los Angeles Airport is a cash cow.

They transferred \$30 or \$42 million to the city, and the airlines--They generate those revenues. The airlines were all upset with the transfer of funds to a non-airport use. The FAA was upset, there's litigation over it, the State Lands Commission is upset. They're under an order now to return the funds. I don't know the exact status of the situation, but no, there's a lot of concern about the transfer of port funds to off-port uses.

But as I say, on the other hand, we legitimately pay for a lot of services, and we are sometimes creative in developing legitimate opportunities to transfer money to the city. Like right now, we are paying the city interest on interest on original port bonds. [laughter]

Morris: Really? That's interesting. Do the commissioners have hands-on responsibilities, committees that they work with, or is it mostly advisory to the staff?

Broussard: Well, not advisory to the staff. We don't do the day-to-day operation of the port, but we are responsible for policy. We are like a board of directors. The commission meets twice a month. Each commissioner is on two, three, maybe even four committees, all of which meet at least once a month, maybe twice. So we are all pretty much informed on the big picture of what's going on, and we're involved in policy. But we have an excellent staff of people who take care of the operation of the port.

Morris: Am I right that there have been some new directions, new executives and things like that since you went on the board?

Broussard: Yes. Charlie Roberts was the executive director when I went on the commission, and he retired. Now Charles Foster, Chuck Foster, is the executive director.

Morris: So you got to help in the selection?

Broussard: Yes, we selected the executive director. We're in the process now of selecting new general counsel, because Stan Hebert was general counsel for the port commission, for the port, and he retired at the end of the year. And that's where I'll be this afternoon. We interviewed yesterday afternoon, and they'll be interviewing today for the position of port attorney. So the commission selects all of those people at the executive level.

Morris: The top people. What are your particular areas, in addition to selecting top staff?

Broussard: I am first vice president of the commission. I'm on the executive committee, I'm on the audit and finance committee, and I chair the maritime committee.

Morris: Compared with sitting on the bench, is this a more activist kind of a responsibility?

Broussard: Well, it's very different. The bench--and I'm not talking about one being more important or less important, but when I was on the court, you go one place and you do that job. Here, we are involved in the business world, you're involved in the community, we do traveling.

When you think about the fact that you can get on an airplane and in a few hours be in just about any country in the world, if those airports are not coordinated, you're not going to land safely. So we have worldwide airport organizations, have worldwide conferences, have national conferences--

Morris: It really puts you into community service in a big way, just that one responsibility.

Broussard: Yes. And then when you're in the shipping business, you've got to visit your customers. You want to encourage them to make more use of your port and your port facilities, so we occasionally travel especially to the Far East to visit some of the shipping lines there, and to let them know what's going on in Oakland.

So one of the attractions of being on the Port Commission is that you have an opportunity to do some traveling, although it's business-type travel. Three cities in six days or something like that. But it's important to the development and operation of the port that some of that be done. On the other hand, we serve without compensation, and it's an awful lot of work and responsibility.

Morris: And with no expenses or things like that?

Broussard: Oh, they do pay direct actual expenses, yes. But we are not compensated.

Morris: Now, that's a difference. If you were in the same position with the same responsibilities for a transportation corporation that had an airline and a shipping line--

Broussard: Oh, yes. If we were nongovernmental, if we were on the board of directors of Matson Line, we'd be compensated--

Morris: Handsomely.

Broussard: Probably handsomely. But the other comparison is the city council is compensated, but we are not.

Morris: Well, it's really interesting to hear your description of all the things the port is involved in.

Broussard: Well, I say it's like being on the board of directors of three corporations.

Morris: I can see that.

Broussard: Because we have the three revenue-producing divisions: maritime, airport, commercial real estate. But then we have a large engineering department, and then we have all the other things that businesses would have. We have a human resources department, we have an accounting department, chief financial officer, and we have a governmental affairs office, and everything that goes into the operation of a major business operation. So we have labor problems, and governmental affairs problems, and--

Morris: And your fellow directors are all Oakland residents?

Broussard: Yes. You have to reside in Oakland to be on the Oakland Port Commission.

Morris: Let's see, it's about eleven-thirty now and you have to go back to the East Bay. Maybe we could talk just for a few minutes about some of the other things that I thought you might want to talk about. If you have time to meet another morning, I would really like to hear about some of your thoughts about the work of the Committee on Race and Ethnicity. I did get the copies of the reports that you had sent, which I think say some interesting things about peoples' perceptions of the courts.

Broussard: Yes. We can certainly set another morning.

[Date of Interview: January 26, 1996]##

Varieties of Civic and Judicial Responsibilities

Broussard: I haven't done anything exhaustive or outreaching, but I've at least had time to reflect a little bit on the topics you suggested in your letter.

Morris: Good.

Broussard: And you're getting tougher now. You're not just asking me about me; you're asking me about thoughts and feelings and issues and contemporaries.

Morris: Well, I see you've made a few notes.

Broussard: They're not significant. These are primarily just some of the things that I've been involved in, and it is more to help me understand why I have more on my plate than I can handle.

Morris: [laughs] I remember your saying when you were on the bench that the work on the supreme court stayed there, if you went away to a meeting or something like that, nobody cleaned off your desk for you, that the cases waited for you.

Broussard: Well, that's certainly true of anything that was what we call a cause, anything that had been taken as a case before the court. But I normally said that about 80 percent of what you would do, would have done if you were there, would be waiting for you when you come back. They get rid of some of the petitions and some of the requests for emergency relief and extraordinary writs and stuff like that, where they're not yet a cause, so they don't have to be participated in by all of the justices. As long as they can get four votes for one disposition, then it's disposed of.

Morris: But you find that today, you've got even more responsibilities?

Broussard: It's hard to compare. Because I'm just involved in so many different things now. On the court, I'd go to work, and you're doing essentially the same kind of thing, although even there, I used to say a good day was a day when you didn't have to work beyond the fourth power. And all that meant was that if you went with a plan to do this series of tasks today, you often didn't go beyond more than four on that; in other words, with an interruption of an interruption of an interruption, that's about as much as you can do. Otherwise, it's a bad day. But

you were basically in the same place, working with the same group of people, doing the same thing.

[Nowadays, I am involved with]--and that's one of the reasons I was making this list--the National Judges College, the National [NAACP?] Legal Defense Fund board of directors, the tenBroek Society, the Judicial Administration Division's Task Force on Minority Opportunities, the Port of Oakland and all of its myriad meetings and committees and trips and travel, and the Lakeview Club board, and the McCullum memorial effort (which by the way will be launched on February 1.) We'll be dedicating a bust to former Judge Don McCullum in front of the federal building [in Oakland] on February 1.

Morris: Wonderful.

Broussard: And I'm on the UC Task Force on Reproductive Technology that was formed to give the university some assessment and some recommendations of how well it is handling its reproductive center activities, arising--we're not looking into the Irvine situation as such, but of course, the fact that that could occur created some concern, and they created a task force to try to look at what is being done and probably should be done to try to avoid that kind of situation recurring. So I've been on that task force.

Morris: Was that instituted by people at the university?

Broussard: Yes.

Morris: I know that's been an issue for some years, since the technology was first available to do these--

Broussard: Well, I'm sure that the top level administrators and the regents were concerned that something could get as far out of hand as it did at Irvine. So our task force has been asked to look at what is being done, what controls are in place, and what suggestions we could make to try to prevent--

Morris: For the university as a whole?

Broussard: Yes, universitywide, systemwide. As a matter of fact, the composition of the task force is essentially someone from each reproductive center in the university system, with a couple of people who are not in the California university system. I was the only nonmedical person on the task force.

Morris: So you're the only one representing the legal issues?

Broussard: Well, no, it's not representing the legal issues. I think they just wanted someone from a little different discipline, so that it wouldn't be totally loaded in favor of the people who are involved in the exact or related disciplines. There are people with different medical backgrounds, but all somewhat kind of related to that area. And I was the little stranger in the crowd. [laughs]

Morris: That must be a fascinating environment to sit in on.

Broussard: Yes, it was interesting.

Morris: Were you able to suggest some things that the medical people hadn't thought about that should be considered?

Broussard: Yes, but unfortunately, I was unable to attend the last meeting that we have held, which might be the last meeting to be held, I'm not sure. Our hope was to be ready to put together a report that would be pretty close to final, and I was unable to attend that meeting. But throughout the process, I could bring a little different vantage point. Of course, there's a lot of technical matters that I was not really well informed on and I didn't understand too well. But I still had a different perspective on some of the things, that I could share.

Advisory Committee on Race and Ethnic Bias in the Courts

Morris: Let's go back to the Committee on Race and Ethnic Bias in the Courts, which also has a lot of important implications.

Broussard: Yes. The history briefly is that Chief Justice [Rose] Bird created a gender bias commission when she was chief justice. That commission was in the middle of its task when Malcolm Lucas became chief justice, and he continued the commission, expanded the membership some. And then that gender bias commission rendered its report, and then Chief Justice Lucas created the task force, advisory committee is what it is, on race and ethnic bias. So while we have taken some look at especially the role of women of color, we have not been emphasizing gender as such. That report has been circulated and its recommendations are being implemented.

Morris: Okay.

Broussard: Our advisory committee on race and ethnic bias is in the process now of trying to develop the initial draft of its

report while we're wrapping up some of the projects that we have underway.¹ Basically, the way we operated was that we got out and did some public hearings, and had some public meetings, and took testimony. Then we developed some projects and hired consultants to do work in various areas of our concern and interest. We're having a little difficulty getting one project completed so that we can get an initial draft of our report.

But we've made interim reports to the Judicial Council, and they have been circulated. I smile, because one of them was unintentionally circulated, but they've been circulated. We have dealt with issues such as access to the courts, access to justice, to issues involving legal representation in the courts in the different areas of court activity, family, criminal, and others. We've talked about language barriers and cultural barriers, and about the availability and nonavailability of resources that are necessary to make the court accessible to people. We have talked about gender issues, but primarily with reference to women of color, not across the board.

Morris: I was struck by that in the reports that you sent over to the library for me.² That women of color in particular perceive themselves as being discriminated against.

Broussard: Oh, certainly. One of the things that we were made very aware of is that if we didn't deal with women of color, they would probably fall between the cracks, because there's not a lot of special emphasis on women of color in the gender report. And if we didn't deal with women of color, and just dealt with race and ethnicity, there wouldn't be a focal point dealing with women of color. So we are doing that.

One of the areas we talked about was the treatment of defendants in the system, and the prosecutorial discretion, and the need for diversity among courts and judicial offices, and the employment in the court system. You know, in many instances, it's not a very pretty picture. I mean the racial and ethnic composition of the court employees.

¹*Racial and Ethnic Composition of the California Trial Courts*, Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1993.

²*1991-92 Public Hearings on Racial and Ethnic Bias in the California State Court System*, Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts.

Morris: What struck me was that the statistics look like they improve as you go down the ladder.

Broussard: Well, the numbers improve, yes. In other words, like in a lot of other areas of society, on the lower-paying jobs and the less-skilled jobs, you tend to have a better percentage ratio of racial and ethnic minority employees; but as you go up the ladder, it gets thinner and thinner. And there are a lot of reasons for that that we understand, but we try to deal with it.

One of the areas we're finding it hard to come up with definitive conclusions in is the jury system, for a variety of reasons.

Morris: Why is that?

Broussard: Well, courts are protective of their jurors, of even the statistics relating to jury performance, jury instruction, access to jurors. There are a multitude of sensitivities that makes courts a little reluctant to just open their books to anyone who's doing a study, a comparative study or analysis or whatever. So we are trying to complete some work in that area as we try to develop our first draft report, and we are also facing the problem of budget and minimum staff to help to get the report out. On the one hand, we have pressure to get it out because we've been at it a little longer than some people thought we would, but on the other hand, we have minimum staff and assistance, and we've got all busy people on the advisory committee.

Morris: Does the report include some recommendations in these areas?

Broussard: Oh, we'll be making recommendations. We're formulating those now. Our primary goal is to make an assessment and make some recommendations to the Judicial Council, which is our parent sponsoring agency. So we will have recommendations in the various areas that I talked about.

Morris: Well, it's absolutely fascinating, just the findings, I think, about the perceptions that people have about the courts. I was struck by the findings to the effect that minorities have inadequate education and information about the court system, and that most of what they get is from the media.

Broussard: Yes. And remember, too--this is something else I had to learn; I mean, I'm African American, and when you start talking about racial and ethnic minorities, I tend primarily, initially, to think about African Americans--but we're talking about this

whole conglomerate of different ethnic, national backgrounds that are present in California, people who are completely inexperienced and even uninformed about our court system in concept, let alone in practice. We're talking about things like how do you get to the courthouse, and when you get there, which window do you go to? Who can speak your language, and who can help you to understand what's expected of you by a system that's already in place?

So we were looking at it from two points of view: how do you make the system more appreciative of the magnitude of diversity, and more flexible and responsive to the needs of that magnitude of diversity? And at the same time, what can be done to help the people who are new and strange to our country, our courts, and our culture, to acculturate them to do what's expected of them? In a state like California, it's a tremendous challenge.

Morris: And does this go all the way down to, like, what happens when you get a parking ticket?

Broussard: Oh, sure.

Morris: The small things that are what most people experience.

Broussard: How do you get to the courthouse, who can speak to you when you get there.

Morris: Right, and if your child gets called to juvenile authorities, who speaks and--

Broussard: Yes. We address all of these as areas that need attention. I'm not saying that we're coming up with finite solutions to everything, but one of the things that happened was that I began to realize that it's not black and white. I mean, there are a whole bunch of cultures, a whole bunch of languages. There are a whole variety of backgrounds and experiences that are funneled into our courts. It makes you realize what a massive challenge it is, to try to not only be fair, but to appear--and to be perceived as being--fair to that diverse population.

Morris: Did I understand what I was reading correctly, that at the judicial level, that most judges think that the system is pretty fair as it now stands?

Broussard: I would say that the system is rated better by judges than by those who are not in the system. And one of the big issues that we've had to deal with is how do you measure adequate

diversity in the judiciary? There are some who feel that you look to the eligible pool of judicial candidates, or those judicial-eligible, to determine representativeness. And there are others who feel that you look to the population that's served by the institution to determine whether the judiciary is reflective of the population that it serves. That's not lawyers; that's population.

It results in the painting of different pictures. That was a very sensitive issue that we've had to deal with.

Morris: Does that speak to how law schools function in society?

Broussard: It does, to some extent. What makes it controversial is that it speaks to some extent to how judges are selected. You see, the selection of judges, either by election or appointment, looks better if you measure the judiciary against the eligible pool than it does if you measure it against the serviced population. It became an issue that we had to try to wrestle with.

Morris: Well, not only you in the judicial profession, but the rest of society as a whole. What impact do current events like what seems to be a changing perception of affirmative action, not just in California but maybe more noticeably in California, because of recent actions by the governor and university regents--does that change what's likely to happen in the work of the committee?

Broussard: Not in a direct way, no.

Morris: If you're looking at how judges are selected and the available pool, and part of the public discourse is, Do we need affirmative action in order to increase the number of people of varied ethnic background who go into the university and then presumably go to the law schools--?

Broussard: Well, you have to understand, the first thing that we're trying to do is to get an understanding of what exists, in terms of diversity or representation or lack thereof. Our committee developed what I would call a snapshot of the judiciary of California at a point in time. Unfortunately, as we go along, that point in time is getting more and more removed from today. But we developed an accurate snapshot, as accurate as anybody has done, of the composition of the judiciary in this state.

One of the issues then is what do you do with this? Do you say that as compared to those eligible to become judges, this isn't bad, or it's terrible, or it's great? Or do you say

as compared to the population which is served by the judiciary, it's not bad, it's good, or it's great? And you get different pictures depending upon what comparison you use.

But our primary job was to get an accurate picture of what exists, and then on the assumption that we want a diverse bench, to try to make some suggestions as to some things that might increase the diversity. So, insofar as there are changing attitudes about outreach programs, it may make some impact; but again, although judges are either appointed or they're elected, the great majority of them are appointed, and a lot depends upon the attitude of the appointing authority as to what kind of judiciary you will have.

Morris: Right. And then you're faced with what is a political appointment, and what is in the best judgment of the appointing person.

Broussard: Yes, that's right. But ultimately--and I respect this--when you get to be governor, one of your prerogatives is to appoint judges. [Different] governors will do it differently. As long as they're operating within a set of acceptable norms, I guess that's just the way it is. Well, that's probably enough about that.

Morris: Are there other things that you would like to say about the work of the committee, and what you see happening?

Broussard: Well, I just personally was impressed by the number of different perceptions, the number of different cultures, the number of different languages. There is another committee that's dealing with the problem of interpreters in the court, translators in the court. What would be considered adequate in terms of the numbers of languages and the proficiency of the interpreter, and the availability of the interpreter. When you recognize you can't have a whole potpourri of every language at every court all the time. There are a myriad of problems there.

Morris: It's like the United Nations.

Broussard: Yes, certainly. And all of that touches on resource issues, but sensitivity issues are important too, as to how do we go about making courts--and when I say that, I mean courtroom personnel, including but not limited to judges, all of those people who are operating within the framework of the court--how do we go about sensitizing them to the fact that while they may feel comfortable in the court as a place where they work every day, that there are a lot of people for whom it's a very

stressful experience, where they don't know how they will be received, they don't know what is expected of them, and they don't know whether they will be able to be told in a way that they will understand or to communicate effectively? It can be very stressful. And how do you make both parties to that interchange more receptive, responsive, aware of what's going on and the dynamics of that kind of a situation? It's tough.

But we try to take a little look at something and say, "I don't know how successful we'll be there," but we do incorporate or refer to some other studies that have been done on sentencing.

Morris: It sounds like the information that you're putting together would be of wide interest.

Broussard: There will be a lot of interest. In addition to the work that we're doing, or that we're having done, we're putting together a good bibliography of works that have been done and resources like that. So hopefully, it will be a useful product when we complete it.

Morris: I should think so.

Broussard: And hopefully, we'll be able to complete it reasonably soon, so I can put that one behind me.

Professional Ethics and Conduct

Morris: Well, it seems as if many things have been happening concerning the courts in California in the years since you've returned, more or less, to civilian life. [laughter] I was thinking of publications like the *California Journal* that talk about changes in the judicial discipline system and the concerns about judicial ethics just within the judicial population. Is this a routine kind of thing that judges are doing anyway, or have there been some--?

Broussard: No, there are changes that are significant and not routine. I'm generally familiar with them, but I guess maybe I took the luxury of not having to follow all the nuances too completely, since I was no longer on. I'm more concerned now about bar ethics and conduct than I am about judicial ethics and conduct.

But there are some significant changes. If you'll remember--I only had a short stint on the Commission on

Judicial Performance, but I was serving on the Commission on Judicial Performance when I was appointed to the supreme court. So I had some experience and exposure to the discipline process. And certainly, it's emerged very differently now. We have a unique situation in California where the code of judicial conduct was the product of the California Judges Association, not of the state supreme court, as in most other states. Normally, in most states, judicial ethics and conduct is governed by a code which is adopted by the supreme court, and traditionally, it has been enforced more or less like a code.

In California, since, for historical reasons that I won't go into, the supreme court never adopted a code of conduct for judges or an ethical code for judges, the California Judges Association did, and it was viewed traditionally in California as a goal or a standard, and not a code that was to be enforced like the criminal code. In its disciplinary opinions, the supreme court would make reference to provisions in the code of judicial conduct, but more as a guideline or a standard and not as, This is the statute; if you violate it, [there will be consequences].

That's a part of the change that's coming about now. The Judges Association I think has voted on abandoning its whole code of judicial conduct, and it's going to be replaced by something that's adopted by the new reconstituted disciplinary system in the supreme court. I'm not a hundred percent sure of all the details on it.

Morris: It's going to be a more formal system?

Broussard: Yes. And then the other issue that's very much on the scene is that, traditionally in California, the Commission on Judicial Performance was very aware of the policy of not passing upon the judges' judicial decisions. Conduct, yes. But one of the issues is that--

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Broussard: --the Commission [on Judicial Performance] is going beyond the traditional bounds and imposing or threatening to impose disciplines or sentencing decisions or other probationary decisions or whatever for its actual judicial actions on the part of the subject judge. And that's an issue now that I think divides the Commission and the California Judges Association. So those things are very much in the air right now, and I am generally familiar but not intimately familiar with all of the details.

- Morris: But you are taking an active role in the Bar Association?
- Broussard: No, no. What I said is that I'm now a lawyer, I'm not a judge. I'm more [concerned about rulings concerning lawyers rather than judges.]
- Morris: Oh, right. But you can still be called back for temporary duty?
- Broussard: No, not since I activated my bar membership.
- Morris: I see.
- Broussard: I would be available for service as a judge by appointment of the administrative office of the court and the Judicial Council, the chief justice, actually, ultimately, if I were simply a retired judge, but not a reactivated member of the bar. So I'm a full-fledged lawyer again, looking back on a full-fledged judicial career.
- Morris: That's interesting. Does being back as a working lawyer, does that change at all your view of judicial matters, do you think?
- Broussard: If I understand your question, no, I don't think so. I mean, it changes where I fit in the whole system, but I don't think it changes basic attitudes or perspectives or anything. Lawyers advocate and do a lot of other things, although in my case, instead of trying cases, I'm doing a lot of arbitration and mediation, alternative dispute resolution stuff, which is more nearly like being a judge, but it's out in the private world.

Alternative Dispute Resolution

- Morris: Is that a movement that is taking greater interest within the profession?
- Broussard: Oh, yes. That's the boom area. And especially in California. Some other parts of the country, but California is way out ahead of the other states in developing alternative dispute resolution practices and programs and systems. And certainly, you know that, I think; you're just asking the question to get me to comment on it.
- Morris: Well, I'm delighted to hear it come up from you, because as I say, I did ask the question about the perception about too many

lawyers, too many lawsuits, and alternative dispute resolution seems a way of dealing with that perception.

Broussard: Yes. Well, again, just a very, very brief history: the California courts have long been dealing with overcrowding of its calendars. There has always been a priority for criminal cases, but there's also a need to get civil cases to trial. This is oversimplifying, but just to be roughly accurate about it, JAMS [Judicial Arbitration and Mediation Services] was started when two or three former judges just organized a pool of retired judges who would be available to do arbitration, mediation, early disposition hearings, settlement conferences, all kinds of alternative dispute resolution techniques, at a pretty nice little stipend.

So a judge who retired, and especially, let's say, from the superior court, with reasonably good health and a reasonably good reputation, could make himself or herself available for arbitration and mediation, and supplement their judicial retirement very nicely. So this became very popular in California, so much so that the Judicial Council took a look at--

Morris: That it was being used too much, perhaps?

Broussard: Well, there were a lot of concerns. One was, were we developing two systems of justice in the state, a public system that was underfunded and the only thing available to the poor, and then a private system that was only available to those who could afford it, but where you could get your matter heard more quickly and expeditiously than you could in a public system? There was concern about whether or not if you went into the private system for, let's say, a trial-like disposition or an arbitration or something, could you zip then to the public system for an appellate procedure? There was a lot of concern about the propriety of having these parallel systems for dispute resolution, one essentially public, one essentially private.

Morris: So the calling back a retired judge to sit on a matter removes it from the official court system?

Broussard: No, you're not following me. I'm not talking about calling back a retired judge to sit as a judge in the public system. I'm talking about forming a panel of former judges who are in the business of resolving disputes.

Morris: I see, okay. Instead of going through the state court system.

Broussard: That's right, going into a private system, first popularized by JAMS, where they developed a panel of judges, and all a litigant had to do was to pick up the phone and call JAMS and say, "We have a case, we'd like to have it arbitrated. Can you give us a list of judges from whom we can choose, see if we can agree upon one? And then we'll set up a hearing in a private hearing room," that JAMS would provide for the parties. And instead of going to trial in a courthouse, they'd go to arbitration, mediation, or whatever alternative dispute resolution technique or methodology they wanted, in a private system such as JAMS. Then you've got a lot of others--the American Arbitration Association has long been involved in that business, but its program has been tremendously impacted and affected by the growth of the JAMS-type concept, the retired judges doing the private alternative dispute resolution work.

Now, in my own humble opinion, when the Judicial Council first became concerned and started taking a look at the systems, I think that they were anticipating that they would frown on them, and if not get legislation prohibiting them, at least tremendously circumscribe and limit them. But the realities of the time were such that the need was so great, the public needed it, the court systems needed it, because the public has just never really provided adequate public facilities for resolving disputes. We don't have enough courts and judges.

So the posture became one of trying to make sure that there were some parameters around private judging, just determine--

Morris: And that everybody was working more or less to the same kind of guidelines?

Broussard: So that there were not abuses of the process. But we have a thriving cottage industry in California now, and there was concern that good judges were being induced to retire early, because let's face it, [they could] make some money.

Judicial Retirement Considerations

Morris: Right. A variety of double-dipping.

Broussard: Well, double-dipping usually refers to like two sources of public income.

Morris: Two governmental jobs, yes.

Broussard: Two kinds of retirement. But you had some judges who were double-dipping and private judging. But there's no question but that it gave judges in California who either had retired or were eligible to retire a very attractive kind of thing to do when they left the bench, and there's also no question in my mind that some good judges who left the bench might have stayed on the bench longer had there not been a very attractive opportunity sitting out there waiting for them.

Morris: That's really interesting when you consider that it wasn't so long ago there was a major concern that some judges were staying on the bench much longer than their health and perceptions were--

Broussard: Very good insight. You see, what we did in California, which fed right into this phenomenon, we developed and maintained a very regressive retirement system for judges. They said, "We are going to penalize you if you stay on the bench past seventy, by reducing your retirement benefits." So we didn't say you were forced to retire, but there was a penalty put in place that induced most judges to retire by age seventy, assuming they had ten years of service or something like that.

But then it got to the point, as you began to appoint younger and younger lawyers to the bench, you began to get judges who, like myself, I was thirty-four when I was appointed to the bench, and when I became fifty-five, I had the twenty years of service, which is the minimum number of years to get maximum retirement benefits, but I had to serve until minimum age sixty and pay into the retirement plan without getting any additional benefits. And for most of that time, the judges' contribution was 8 percent of salary off the top.

So the way I put it, it's not really completely accurate, but when people asked, "Why did you leave the bench?", I'd say, "Have you ever tried working for seventeen cents on the dollar?" They said, "What do you mean?" I said, "Well, I could retire. The maximum benefit is 75 percent of salary. So I could retire and get 75 percent. I work, I get the other 25 percent, less 8 percent off the top. That leaves me 17 percent for working." And then I say, "I look out and [see that] I can go and do a lot of other things that would greatly enhance my income-earning ability, and it makes you [think]--"

Of course, in my case, and in the case of a lot of the people who've left the supreme court, you add to it the fact

that the workload there was just so tremendously heavy that a lot of people were just simply weary of carrying that workload.

Morris: And in this morning's announcement about the new appointment to the supreme court--

Broussard: Ling Ching.

Morris: Yes. The comment is that the average term on that court is like only a little over six years.

Broussard: Yes. That's true. There are some reasons for it, though, but in this century, the tenure of supreme court justices hasn't been that great, nine or ten years maybe, or something like that. I've not really studied it. You had a few [Chief Justice] Phil Gibsons who were on twenty-five or more, and of course, [supreme court Justice] Stanley Mosk is a wonder unto himself. But some of the things that happened that shortened the tenure have been the shortened service of Bill Clark by resignation [when he went to] serve the Reagan administration [in Washington], or Wiley Manuel by death; Rose Bird, Cruz Reynoso, and Joe Grodin by election, and then--

Morris: Lack of election.

Broussard: Or lack of election. [laughs] And of course, the governor didn't consult with me, I'm just surmising, but when Governor Deukmejian was replacing those three positions that had been not confirmed at the election, I think he wanted to be very careful that he had experienced, seasoned people filling those spots, so he appointed three very experienced judges to the supreme court.

A little sidelight, by the way: they were all appointed at about the same time, and so they were trying to determine seniority by pulling straws. You're familiar with the acronym used in real estate, AEK?

Morris: Oh, all-electric kitchen?

Broussard: Yes. Well, we were having a reception for the three new justices at the court, and they drew their straws, and Justice [John] Arguelles got the most seniority, and Justice [David] Eagleson the second, and Justice [Marcus] Kaufman was third. And then I referred to them as the all-electric kitchen.

Morris: Oh, that's wonderful.

Broussard: But none of those three served much more than two years on the court, for one reason or another. I respect their decision to leave, but I mean, they all had relatively short tenures. And you combine that with Justice [Frank] Newman, who for his own personal reasons didn't serve very long either, that brought that average down, you see. So in that mixture, I served just over ten years and that looked like a long time.

Morris: So you're saying that that average is misleading?

Broussard: No, I'm not saying it's misleading. I'm just saying that we had a set of phenomena that caused a lot of people not to stay too long.

Morris: And Stanley Mosk, is he somehow exempt from the requirement that you retire--

Broussard: There is no requirement that you retire.

Morris: There is not on the supreme court?

Broussard: There is not in the state of California. You missed me. What we did was to put in a regressive retirement system to induce some [people to retire]. Now, I don't want to talk about Stanley's business, but the biggest penalty that you pay if you stay on the bench past seventy is your surviving spouse loses substantial benefits. But your new spouse doesn't gain benefits unless you've been married for--I think at that time it was at least two years prior to retirement. And Justice Mosk was in a position with the death of his first wife and the duration of his marriage to his second wife that he couldn't benefit by leaving the bench by age seventy. So he served beyond seventy, and continues to serve.

There were other justices--like you can look at my wall and you see Justice Peters, for whom I worked as research attorney. That picture you're looking at was given to him by all of his former research attorneys on his sixty-ninth birthday. We had a party for him at the Faculty Club on campus, and we commissioned this artist to do this portrait of Justice Peters with the intent of giving it to him on his seventieth birthday, because we knew Peters would not serve beyond seventy. He was not a man of great wealth, and he'd had a long and illustrious judicial career, and we knew that he would not serve beyond seventy. We didn't know that he would die before he reached seventy, though, so that portrait was finished posthumously, and it hangs in the VIP room at Boalt Hall now.

But for the average judge, the hit that you take if you serve past seventy is--especially if you're married--significant enough that it induces you to leave the bench. Now, there have been some changes in that. There are ways now that you can get certified to serve beyond age seventy, but you have to go through a process of getting certified [in order to] avoid the hit. But that basic policy played into the developing alternative dispute resolution system.

But other things did, too. You asked about too many lawyers and too many lawsuits. Well, we still have the problem in California that, with priority being given to criminal cases, and with for a long time the problem with the number of death penalty cases that take so long to try, I'm talking about at the trial level, and now more currently with the fact that Three Strikes¹ is forcing more criminal cases to go to trial. It's still very difficult to get civil cases to trial, and that almost forces more litigants to opt out of the public court system and go into arbitration or go into mediation or something, in an effort to get a resolution to their dispute. So there's a real demand for and a continuing growth in alternative dispute resolution systems in the state.

I think that in many instances, alternative dispute resolution has an appeal and an attraction all of its own, independent of any concern about getting your case heard in the public system. What's happening now is that whole industries-- I mean, your health maintenance contracts, your relations with your bank, all have in them provisions that require arbitration of many disputes that will arise between the customer and the company or the bank or whatever. So that by contract now, much more so than before, people are putting themselves into business relationships that require by contract that disagreements be resolved by arbitration or mediation, at least as a first step, either binding or nonbinding or whatever.

Morris: So in effect, that is having an impact on the judicial organization's consideration?

Broussard: On the public dispute resolution system, yes.

¹Proposition 184, a ballot measure approved by California voters in November 1994, that requires perpetrators of a third felony to be put in jail for twenty-five years to life. Popularly referred to as "three strikes and you're out."

Capital Punishment Revisited; Supreme Court Stature in the Nineties

- Morris: Oh, that's fascinating. I have a couple of questions from my general reading. One is, to what extent has the state supreme court taken new directions since you retired? The business of capital punishment cases is one that focuses public concern, I think. It seems as if, in recent years, the court has upheld the majority of capital punishment cases in its review, but there have been few, if any, executions. Does this have anything to say about the status of capital punishment in California?
- Broussard: Well, it has a lot to say about it. I don't have your letter in front of me, but you talked about [articles that spoke about] restoring balance to the court or losing preeminence or something like that. There are so many approaches to this question, and I think earlier on, I gave you a short history of death penalty legislation in California. I think I did. And this can be deleted if I've covered it previously, but I think that not many people realize what happened in California, that like all of the states, we went without a death penalty law for a long time, because there was a substantial question whether under the United States Constitution we could have a death penalty law. And then finally, the U.S. Supreme Court said yes, a death penalty law is constitutional, or can be constitutional if it meets certain standards and comport with certain requirements and stuff.

But what happened in California was that in 1977, the California legislature almost ironically under the leadership of then-Senator George Deukmejian, set out to draft a California death penalty statute which was intended to conform to and to comply with all of the perceived requirements of the United States Supreme Court for a constitutional death penalty statute. And of course, this was a statute, so it went through the regular legislative process, with committee input, and with legislative counsel input, staff from all the various legislators and everything.

And we came out with the 1977 death penalty statute,¹ which from one point of view or several points of view unfortunately only survived for about a year, because in 1978, John Briggs primarily, with the assistance of some other

¹S.B. 155, 1977-78 Reg. Sess., Cal. Stat. ch. 316 (1977).

people, drafted the 1978 death-penalty initiative.¹ And as you well know, the initiative process is one that can be instituted by any elector, any voting citizen. You can draft whatever you want, and if you can qualify it for the constitution, the people vote on it. You don't have the processes that you have for refining in the legislative process.

And, the motivation of the '78 initiative drafters was different than the legislature's motivation had been. The legislature was trying very carefully to do a death penalty law that would be constitutional, would comport with all the requirements as they saw it. The '78 drafters were trying to get a death penalty law that would be as broad in scope and reach [as broadly] as they thought it [should?] might be, so they were willing to go up to the edges and run the risk that maybe they'd go over the edge in some areas, to make the law broader in scope and make it include more potential death-eligible defendants.

That presented the supreme court with a real challenge. The '78 initiative created a whole body of law that trial judges were not familiar with. People talking about the California Supreme Court reversing death penalty cases, but death penalty cases run in phases. You have a guilt phase, special circumstance phase, and a penalty phase. Judges were accustomed to trying guilt phase issues, special circumstance issues. What was new was the penalty phase, and while there were some clear-cut reversals across the board, almost all of the reversals of the early death penalty cases were reversals of the penalty phase trial only, that the convictions normally were affirmed, and the finding of special circumstances normally were affirmed, although there were a couple of special circumstances in the Briggs initiative that were declared unconstitutional by the court. But it was the guilt-phase issues that were new and troubling to judges, and it led to a high number of cases in which the penalty was reversed.

But every time the court did that, it spoke to judges about how you conducted a penalty-phase trial. I'm not denying that there were philosophical or attitudinal differences towards the death penalty by, to put it roughly, the Bird court and the Lucas court. But what I'm saying is that, had the Bird court remained intact, the number of affirmances would have gone up, because judges then knew how to try a death penalty case.

¹Proposition 7, Nov. 1978.

The major difference would have been, and this is one of the things that the Lucas court has come under some criticism for from some sources, is not in determining whether or not there has been error in a trial, [but in] determining whether or not that error is prejudicial so that it justifies a reversal. Prejudicial error has been the thing that's been perceived differently, and depending upon your own attitude or approach or philosophy, there are those who say that the Lucas court is right on, and there are others who say that the Lucas court wouldn't know prejudicial error if it hit them in the face. Because they'll identify an error and declare it to be an error, but then say it's not prejudicial and therefore we affirm.

Now, on the other hand, you talk about restoring balance and stuff. There's no question but that after the '86 election, you no longer had a court that was being whipsawed in the press about death penalty cases. The court was enjoying relative quiet instead of constant newspaper and political discussion and debate about what it was doing. So in that sense, the court maybe got a semblance of balance or quietude anyway, or whatever.

But on the preeminence issue, in my own opinion, and I'm overgeneralizing, but the California court tended to become a court that followed other courts, instead of being in the vanguard of the making of the law and the forging of the law. The California Supreme Court historically has given guidance to the U.S. Supreme Court in issues like *Wheeler* and jury selection and several other things. *Miranda*. But the court has assumed and maintained more of a posture of, Well, this is what the majority of the courts are doing, or this is what the U.S. Supreme Court has done, and we'll follow in line.

So I'm not saying that it's not a sound court, but it's not a premier, preeminent court, in the main.

Morris: Are there other state supreme courts that have been exhibiting leadership, or has it just been generally, everybody looking to each other to try and do what everybody else is doing?

Broussard: New Jersey was a state supreme--

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Broussard: But I think on balance, that's the way it's--. Now, the court is not in the crosswind of public discussion and controversy that it once was, but I don't think that among the scholars and

those in the profession, that it has the eminence that it once had. So there is maybe a trade-off there.

Morris: Is that necessarily a detrimental situation?

Broussard: It's a matter of waiting, because there's some good and some not so good that come through. It's a matter of waiting. But every time a [Justice Roger] Traynor or [Justice Matthew] Tobriner would forge a new step in the law, you've got a little controversy about it, but generally speaking, in a few years the law caught up with them, and they said, "Gee, that California court was ahead of all of us." Well, you don't get a lot of that out of the California Supreme Court now.

Morris: You do seem to get a fair number of legal scholars who express their opinions quite vividly on the work of the courts. Is that a help or a hindrance?

Broussard: Oh, that's just going to be--I don't think it helps or hinders. I read with interest what some of the people I'm sure you're referring to have to say, but it wouldn't influence how I decided a case when I was on the court, and I don't think it influences how any of the current justices decide a case. But there's a whole group of scholarly court observers who publicly write and comment on their evaluation of the performance of the court, of the individual justices, and everything. That's all fine and appropriate.

Morris: Would commentators like that and the media in general be avenues for wider discussion of some of the recommendations and concerns of the Committee on Race and Ethnicity?

Broussard: We will report to the Judicial Council, and I'm sure the Judicial Council will invite public input and comment, but that will be the Judicial Council, it won't be our committee.

Morris: Going back to where we started this morning with some of the concerns expressed in the committee report about fairness in the courts, and the perceptions of discrimination, are they appropriate for general public discussion?.

Broussard: Those original issues I was talking about are certainly very important, very current, very vital, and I think there ought to be a lot of attention given to them, there ought to be an opportunity for a lot of input from all levels of our society, from people who are directly affected to people who are studying it and supposedly knowledgeable and scholarly about these matters. They're important public issues that deserve

the widest range of consideration and discussion that they can get.

Concluding Thoughts; Visions 2000

Morris: That's pretty much all my questions about your work since you retired from the court. You spoke about the court in general, the supreme court, in terms of how it is viewed. Is there anything you would like to comment about Malcolm Lucas as chief justice, now that he's getting ready to retire?

Broussard: Well, we've talked generally about the Lucas court. I think that--first of all, on a personal level, I've always had an excellent relationship with Justice Lucas. We've frequently disagreed on the bottom line, but we never had any acrimony or anything in our relationship. I thought he was a fine administrator. He did get in that little personal flap, you know, about a couple of issues involving travel primarily, and I don't want to get into that.

But overall, I think he's been a much better administrator than I thought he would be. I think he has a vision of what some of the issues are that face the court, and he's created committees like mine and like the Committee on Access and Fairness and a Committee on Court Reporters, and he's developed several entities that are taking the longer-range view of where the court system ought to be going, I'm talking about the Vision 2000, et cetera.

So overall, I think that he's done a fine job. As I said, when I was on the court with him, we had a fine relationship, even though we frequently were deciding the issues differently. But he's made his contributions.

Morris: You speak of Vision 2000. Are there some specifics to that vision?

Broussard: Well, what I'm saying is that he has in place a couple of entities that are taking the long-range view. Of course, 2000 isn't so long-range any more. But he has been aware of the need to look beyond next year and has created--I'm trying to remember the exact names of the commissions, I should have refreshed my recollection--but he has a couple of Judicial Council committees that are taking the longer-range view of courts and where we ought to be going, and where they should be headed.

- Morris: How about yourself? Having been on the bench, and now being back, as you say, as a practicing attorney again. Do you have some specifics as to what you think are the long-range directions or needs for the judicial system?
- Broussard: Well, other than the work that I'm doing with the Advisory Committee on Race and Ethnic Bias, I haven't put a lot of thought or energy into what specifically I think the court ought to be doing. I mean, there are a lot of issues that are around, but there are also entities in place to deal with them. I think there's a lot of planning going on with reference to the courts in the long and short term. And except as I've just described, I am not intimately involved in it, don't need to get involved in it.
- Morris: Are there other things in your own agenda, organizations you're working with or things of that sort, that you'd like to include in this record?
- Broussard: Well, no. I gave you kind of a listing or a run-down when we started out.
- Morris: Yes.
- Broussard: I don't intend to go into each of them with any depth. As I said to you, though, I am finally coming to the realization that I've probably approached, if not exceeded, the limits of what I can do. One of my concerns now is that if I can't reduce my involvement a bit, it's hard for me to perform up to my own expectations in some of the commitments that I have. Fortunately, I am really quite healthy, but I'm not as energetic as I was, and I'm facing the fact that I'm on the other side of the hill now. I'm not still climbing to the top; I'm sliding down. And it's just something you have to come to realize at some point.
- Morris: So that you don't need to take everything on, you need to make some choices as to what's most important?
- Broussard: Everybody who hears you retired assumes you've got all the time in the world for them, and if you don't learn when to say no, and that you do have to say no--in fairness, to them and to yourself, because as I said, I think I came very close to getting to the point where I would say yes, and then just couldn't get around to doing the kind of job that I think was expected of me or that I would expect of myself, just simply because I was overly committed, overly occupied.

Morris: The other side of that, and maybe you could say a few words about that, is have you found people in the next generation that you think share your ideals and that you can pass things along to?

Broussard: Oh, sure. Yes, but you do it in a more subtle kind of way. There are people who look to me and say, "You're a role model." It's not that I look at somebody and say, "I'm selecting you to carry on." But someone will say, "I've watched your career, and you really have been a role model for me, you have motivated me, you've instilled me, you've inspired me to try to make a contribution to--" whatever it is they're interested in. That happens, sure. And that's one of the rewards when someone comes to you and says that, "You've been a positive influence on me and my thinking, and you've made me aspire to want to be a greater contributor to the profession, to society, to the community." It's one of the rewards for having done something yourself.

But on the other hand, I'm not walking around trying to say to one or two or three people, "I've selected you to carry on."

Morris: [laughter] I wasn't thinking of that so much as thinking, There is a promising young man or woman, I'm not going to take this job on, but I'm going to recommend that he or she be the chairman of that committee, and then I don't have to worry about it, I can continue with this that particularly interests me, or I can, like Norvel Smith, take up the cello, and satisfy some other personal goal.

Broussard: Well, certainly some of that goes on, but you usually find that an organization has a program, and if they ask you to carry a share of the load and you tell them you can't, they have somebody else who can do it. They may ask you if you have a suggestion, and if you do, you make it, and if you don't, they'll come up with somebody.

Morris: That's true. Well, thank you very much for sharing your experiences with us.

Broussard: I want to thank you too.

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The following volumes donated by Justice Broussard to The Bancroft Library have been deposited for scholarly use in the University Library Documents Department:

"1992 Public Hearings on Racial and Ethnic Bias in the California State Court System," Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1993.

"Fairness in the California State Courts: A Survey of the Public, Attorneys and Court Personnel," California Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1994.

"Racial and Ethnic Composition of the California Courts," Judicial Council Advisory Committee on Racial and Ethnic Bias in the Courts, 1995.

Wiley Manuel was my friend.

For some 33 years, we shared a friendship which extended to many activities, organizations and events.

We were students together at Cal.

We were contemporaries in law school—

Wiley was at Hastings,

I was at Boalt.

We shared a love for our common profession—the law.

We worked together in NAACP, Boy Scouts,

Charles Houston Bar Association,

California Association of Black Lawyers

and the National Bar Association's Judicial Council;

We were brothers in Sigma Pi Phi Fraternity.

We served together as judges on the Superior Court of Alameda County.

We shared the fellowship and community of St. Paschal Church—though I must regretfully admit that my devotion never ran as deep as his.

Our families enjoyed regular and friendly contacts.

And we shared, over the years and today, many common friendships and acquaintances.

Yes, Wiley was my friend—and that is how I will remember him.

But Wiley was more than that; he was a man *of all the people*.

He was at once a truly gentle man—and yet, at the same time, he was a truly great man.

To know him was to like him.

To know him well was to respect him.

All who knew him admired his outstanding human qualities:

His devotion to his beloved wife, Eleanor, to his fine family and to his many, many relatives and friends;

His unmatched capacity to love, to care and to serve;

His deep and profound ability to understand, to reason and to resolve;

His great intellect and his keen wit; and above all,

His genuine humility.

He was admired too, for
 His unconquerable determination to overcome all obstacles,
 and continuously to improve himself and to achieve.

Wiley was a man of many outstanding accomplishments. Those accomplishments have been widely and frequently chronicled in other places and publications. They need not be repeated here.

Wiley refused to allow himself to be victimized by race, poverty or any other adversity, and he persistently refused to tolerate or to participate in victimization of any other person for any reason.

As an Associate Justice on our State Supreme Court, Wiley was a man

- of wisdom and vision;
- of prudence and reason;
- of fairness and justice.

His opinions showed knowledge of the law, understanding of human events, and a passion for justice, fairness, freedom and equality under law.

His passing is a great loss to all of us.

On an occasion such as this, the hearts of those who are left behind are usually filled with sadness. And if this is true today—that we, the friends, the people—of Wiley Manuel have hearts filled with sadness,—then I ask each of you to try with me to *realize* and to *remember* that Wiley Manuel's life was a great gift to all of us. We were fortunate to have had him among us for so long a time. We were fortunate to have known him, and to have shared in some part of his life.

That realization should help to fill our hearts with some feeling of appreciation and gratitude.

That is how I want to remember Wiley Manuel—for the goodness that he brought to all of us.

And, after so full and good a life, it is my profound belief and my fervent hope and prayer that he is now in his rightful place—at rest and at peace with his Maker.

Allen E. Broussard*

* Presiding Judge, Alameda County Superior Court.

Appendix B: "Retention Elections," Symposium remarks, Allen Broussard, Santa Clara Law Review, vol. 28, spring 1988.

b. *Justice Allen E. Broussard**

I want to express my appreciation to Dean Uelmen for the very fine paper that he has put out. I want to compliment him on his response to the question as to whether or not 1986 was aberrational. I must say that I have been among those who have believed, and who have wanted to believe, that 1986 was an aberrational year and that we had never faced before with the possible exception of 1982, and would never face again a similar phenomenon in California. I believed that would not happen again despite the fact that I place more importance on the 1982 election than apparently Dean Uelmen did in his paper or in his presentation today. I think that 1982 is a clear precursor to 1986, that the only differences were that it was magnified by ten-fold largely because of the personal appearance of Rose Bird on the ballot, and the great involvement of Governor Deukmejian in the whole election process. And because of those things, the whole process was complicated and multiplied many-fold. But beyond that, I think that he has made an excellent point that the phenomenon of today is that politicized retention elections are probably a part of our future, that we are in a situation where any powerful politician or any divisive issue might subject any particular justice's career to at least the prospect of a hotly contested election.

* Associate Justice of the California Supreme Court (1981-present).

1988]

RETENTION ELECTIONS

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I agree with Dean Uelmen that however desirable life tenure might be in the abstract, today is not the day to talk about it. As a matter of fact, while he persuades me that maybe 1986 was not aberrational, and we can look forward to having tremendous political input into retention elections in the future; I am not as completely persuaded that this is the time when something can be done about it. Maybe Bill Lockyer can help us to understand what the political mood of the People may be, but in any event, I'd like to move to some consideration of the modest, and those are his terms, modest suggestions that have been made in the paper and by Dean Uelmen here today, to determine whether or not, in my judgment they have any validity.

I do believe that society is served best by a judiciary that has relative independence from popular opinion and the whims of political tides. Now that does not mean that there should be no accountability for judges. In my own judgment, I have always felt that the problem was not in the retention election system, but I felt that there had been some abuse of that system by some who were powerful and who had great motivation to use the system to their own political ends and interests. If that's true, and if there can be some modest adjustment to the system to make it a little more immune to political manipulation, then perhaps those kinds of changes ought to be seriously considered. And with that in mind, I would just say that I personally have no problems with the first two of Dean Uelmen's suggestions.

I think that there is no beneficial purpose served by having an appointee of the supreme court not run until the next gubernatorial election. That means that they're in office for up to four years before they may have to run. His proposal would require the election within two years and it might have what I view as a salutary effect of causing the election to be more prospective rather than retrospective in terms of evaluating and confirming the justice. Likewise, I personally don't see any benefit served today from the retention of the fixed twelve year terms. That's the only justification for having the justice when he or she does run for election, to be confirmed only for the unexpired portion of the term rather than for a new complete twelve year term. That's what makes possible the phenomenon of Cruz Renozo and Ed Panelli. Cruz Renozo was appointed in 1981 and within approximately a year he had to run. He ran in 1982 and he received the four year unexpired portion of the term to which he had been appointed. Then he ran in 1986 and you know the results of that election. Ed Panelli is another illustration of a justice who

within a very short period of time after having been appointed, ran in a confirmation election in 1986, was confirmed and received a four year term and will have to run again in 1990. I see nothing beneficial in that, and would wholeheartedly support the concept of a justice once confirmed at an election, receiving the full twelve year term. But as to the third suggestion, that involving reappointment by the Governor, I have some serious reservations. But before I mention those, I would like to make one other comment about the paper generally, and about the presentation today. I thought that it was interesting that there was no mention of our Commission on Judicial Appointments. It is a part of our process of appointing and conceivably of retaining supreme court justices, yet apparently it has deserved no mention or consideration. I think that it is a part of the process which should be considered, which is deserving of attention now, particularly because of what appears to be less than a unanimous view as to the role that the Commission ought to play in the appointment process. I think it would be worthwhile spending a little time comparing and contrasting our Commission on Judicial Appointments procedures to those, for example, of the Senate in the confirmation of Judge Bork. It is interesting, as Dean Uelmen indicated, that two of the major players in terms of the California retention election were involved in the confirmation process at the federal level.

Let me just give you a little personal illustration. I want to mention two things which I have done only once in my life. One is that only once in my life have I stood before the Commission on Judicial Appointments seeking confirmation of my appointment as a justice of the California Supreme Court. That was in 1981 and most of you may not remember that occasion. But it was then that I became the charter member of the two-to-one club. Most of you may not know what the two-to-one club is, but you might remember that now Governor, and then Attorney General Deukmejian had just begun the process of sending written questions to the appellate appointments on nominees of then Governor Jerry Brown and then following that up with rather active questioning at the hearing. The questions he asked me was whether or not if confirmed I would be an activist judge. But at any rate, the result of that confirmation hearing was that I became the first of some seventeen or eighteen appellate justices who received a negative vote of then Attorney General George Deukmejian.

The second thing that I have done only once in my life, was to sit as Chair of the Commission on Judicial Appointments when it

was considering, of all things, the appointment by now Governor George Deukmejian of Malcolm Lucas to be Chief Justice of California. So in a very real and personal way I have to ask and answer for myself what is the appropriate role to be played, not only by the Commission, but by me as a Commissioner. In all candor, it was my considered judgment that political and philosophical considerations have gone into the votes of the then Attorney General in deciding for whom he would vote and whom he would oppose, and that if I were to be guided by those same things, I might be presented with a substantial question as to whether or not the appointment of Justice Malcolm Lucas should have been confirmed. I subscribe now as I did then to the fact that in our system, as contrasted with the federal, the appropriate role of the Commission has been that which in the past it traditionally played. I had disagreed with the role of the Governor when he voted against me, and I would disagree with that role at this time. But I do think it's a subject for discussion.

Back to proposal number three. I quite agree that it would be unfortunate if we forced, and I may find some opposition from Joe Grodin here, but if we forced justices on the supreme court to serve but one term, I think that we would have the potential and the very real potential of losing greatness for no reason other than the fixation of that term. However, if we are to allow justices to serve beyond the twelve year term, I don't believe that judicial appointment is the way to obtain a second term. Judicial appointment followed, and all he says in his paper is by confirmation, which I believe must be the confirmation election and not the appointment confirmation process. Not the commission appointment process. Judicial selection by gubernatorial appointment for a second term does nothing other than to substitute the process of a sitting justice looking in the eye, not only the electorate, but the Governor. And I would fear that for political considerations the Governor might be reluctant to reappoint a Traynor, a Gibson or a Mosk to a second twelve year term because there would be other political considerations which would strongly motivate him to appoint someone who may have the potential for greatness but for whom he had more political alliance, or more political indebtedness.

So there's no assurance that greatness we achieve through longevity would be achieved in a system involving gubernatorial appointments to a second twelve year term. And if you are to have gubernatorial appointment and then follow it with an election confirmation process, you do not avoid any of the pitfalls that we heretofore have had in confirmation elections except that the prospect that

the present Governor would not be opposing the candidate on the nominee, but perhaps the opposing candidate for Governor who's opposing him might. In essence, I don't see any beneficial reason to allow for, or to provide for gubernatorial appointments for a second twelve year term although I do see advantages in having that possibility exist.

I think that the justice who is sitting and who would anticipate any substantial opposition from an election would probably in just about every case opt not to run after having served twelve years, and therefore those great justices who would not face any substantial opposition from the electorate would be those who would choose to run for another term that should be rather uneventfully confirmed and we could continue with the greatness of this court as enjoyed in previous years.

I go back to the question. It is not that I'm one who subscribes to the philosophy that generally we should not just do something but stand there, but I remain to be convinced that this is the time when something can be done. If it can I think that at least the first two and then the modified third part of Jerry's proposals would be good things to endeavor to accomplish. Thank you.

ALLEN E. BROUSSARD



Practitioner, teacher, jurist and leader in the fight for opportunities for minorities in the judicial system. You have served your community and your state for 27 years as judge and justice in California from the Municipal Court to the Supreme Court. Your judicial excellence has been recognized by awards from lawyers' associations; your personal qualities brought you the Eleanor D. Roosevelt Humanitarian Award. These tributes to you as a wise judge and a caring human being make us, your fellow alumni/ae, proud of your accomplishments and the distinction they have brought to your profession and to your law school.

Allen Broussard, in honoring you, we honor ourselves, and we award you this citation of the Boalt Hall Alumni Association.

Given at Berkeley, California, this first day of November, 1991.

ATTEST:

/s/ Theodore Lee

President





STATE BAR REPORT

Prepared by the State Bar of California

From Segregation to Role Model:

*Justice Broussard continues the fight
for equal opportunities for all minorities*

When California Supreme Court Justice Allen E. Broussard was growing up in south-western Louisiana, he started each day prepared to defend himself. Early in the morning, he and four friends mounted their bicycles, rode past their high school, through the white residential neighborhood and into downtown, where each worked at a different department store. There, they swept floors and washed windows before heading to school.

As they rode back through the white neighborhood, the residents threw rocks at the black youngsters and ordered their dogs to attack. Broussard and his friends sometimes had to use the broom handles and billy clubs they carried with them.

"It was a small, segregated community, both legally and factually," the justice remembers about Lake Charles, La.

From there to a seat on the highest court in California was a long road, but one that Broussard travelled with a firm purpose — to make some changes. As he prepares to step down from the Supreme Court, where he assumed the "only black man" role that has often been thrust upon him, Broussard looks back on a career which afforded him the opportunity to practice both law and activism. "I've had a tremendously satisfying career," he says. "I've had the opportunity to make a contribution."

His spacious maroon-carpeted office in San Francisco's new Marathon Plaza is lined with bookshelves which hold impressive pieces of African art. Memorabilia on the walls range from a photograph of the 1972 board members of the California Judges Association to plaques of appreciation. It's a long way from Lake Charles.

In his last year at segregated Sacred Heart High School, where his class consisted of Broussard, his cousin and 12 girls, the future judge learned his family planned to move to



Supreme Court
Justice Allen Broussard
in his San Francisco
office

California. His older brother had been drafted into the Army and was stationed on the West Coast, where he found a better life. Broussard's father, a longshoreman, was persuaded to find work in San Francisco in 1944, and within a year his family joined him.

Before he graduated, Broussard said, he was certain of two things: he wanted to continue his education, and he did not want to be a priest or a doctor. "I went to my favorite high school instructor, Mr. Palmer, the one male teacher in the school, and told him of the move," Broussard said. "'You have a very fine mind, Allen,' he said, 'I think you'd make a fine lawyer.'"

Broussard enrolled in San Francisco City College, where he spent two years, and completed his junior and senior years at the University of California at Berkeley. He financed his education by working in a shoe store, a warehouse and a cannery.

During World War II, there was a large influx of blacks into San Francisco, and the city had difficulty absorbing this new population, whose employment and housing needs



Justice Broussard and his wife Odessa, with sons Craig (left) and Keith

were often unmet. Broussard became interested in the problems faced by blacks and served as chairman of his college chapter of the NAACP. "I was thinking about law all along," he says. "I thought the law would give me an opportunity to make a change. I was concerned about my own life and about society. I wanted to serve people individually and do some group and organizational work."

He was accepted at Boalt Hall, which he considered both the best and the least expensive law school he could attend. Despite the difficult curriculum and an "absolutely maddening" first semester, Broussard placed in the top ten percent of the class and remained there. He was one of three blacks in his class and the only one to graduate. Twelve black students had graduated before him.

**"I thought the law would give me
an opportunity to make a change.
I was concerned about my own life
and about society."**

For 14 months, Broussard was a research attorney for Justice Raymond Peters, who became his model and mentor. "He helped develop my research, writing and analytical skills," says Broussard. "He gave me a better perception on the role of the law and the courts in society. He told me it was important to strive to maintain quality in my practice. He instilled in me a determination to be a good lawyer."

Peters also warned Broussard that even if he carried a dozen good cases at a time, he wouldn't make any money in his first year of practice. He was right. In 1956, accepting only fee cases, Broussard earned a draw of \$300 or half the fees he generated. "It was tough," he said of his Oakland community-based practice with other black attorneys. "There were no opportunities for blacks to develop an interracial practice or a group of corporate clients." Still, he managed to develop a good practice and remain active in civic and community organizations.

By the end of the decade, Broussard was active in the Democratic leadership in his Assembly and Congressional districts. He and future Oakland Mayor Lionel Wilson had built a new building in Oakland and hung out their shingle. In 1961, Wilson was named to the Oakland Municipal bench, and in 1964 Broussard succeeded him, beginning his

Minority Access Group Moves Ahead to Increase Diversity

One year ago, the State Bar Board of Governors approved the mission of its Commission on Minority Access to the Legal Profession: "To seek to improve and expand the opportunities for minorities to enter and succeed in the legal profession in California..." Little by little, says committee chair Frank A. Iwama, the group is making progress.

"We came to the conclusion right away that you can't solve everybody's problems with one small commission," says Iwama, who practices in Sacramento and also serves on the Board of Governors. "So we're trying to address a few specific issues. We hope to come up with two or three model programs that can be used by local bar associations and ethnic attorney groups and that can help a lot of people."

The ten-member commission held three meetings in 1990 and is working on three programs: a bar exam preparation program for minority students, a pre-law program for minority undergraduate students, and a project to encourage minority students to become "Lawyers for the 21st Century." In addition, a Workshop on Minority Employment Programs is tentatively scheduled for May in Southern California for local bar association leaders in the area.

"It's very difficult," Iwama acknowledges. "There are so many issues and you can't resolve every issue at once." ■



Frank A. Iwama

State Bar Report

Christy Carpenter, *Editor-in-Chief*
Anne Charles, *Managing Editor*
Dean Kinley, *Senior Editor*
Nancy McCarthy, *Senior Writer*

State Bar of California
555 Franklin Street
San Francisco 94102-4498
415/561-8200

27-year career as a jurist. In 1972, he was elected the first black president of the California Judges Association. In the intervening years, he married Odessa, and they had two sons, Craig and Keith. His civic activities continued, and he served on the Board of Directors of numerous professional organizations.

Asked if he has often felt isolated or alone as "the only black man" in many of his activities, Broussard said he grew accustomed to that role. "I was aware in many instances that judges had no exposure to other black judges. Many judges motivated me to seek leadership positions," he said. "I also got involved in judicial education because I thought it was an excellent opportunity to impress favorably and to improve the climate for others coming along."

Through his years as a municipal and superior court judge, and finally on the Supreme Court bench, Broussard has remained devoted to creating opportunities for minority attorneys, focusing particularly on law students and judges. In 1988 he accepted the chairmanship of the ABA's Judicial Administration Division's Task Force on Minority Opportunities, even though for years he refused to join the once restrictive association. He also is involved with a state-wide advisory group called "Children Now," and was recently appointed

by Supreme Court Chief Justice Malcolm Lucas as co-chairman of a special committee to investigate racial and ethnic bias in California's court system. When he leaves the bench, Broussard says he hopes to "be in a better position to continue some of these activities."

Although Broussard believes that minority attorneys have achieved tremendous progress, he also feels they have a long way to go. "Both men and women still face an uneven playing field," he says. "The opportunity to gain employ-

ment is not equal. The opportunity to get business is not equal. They still have problems surviving through partnership." He thinks minorities who work for big law firms encounter two problems: some lose their enthusiasm for the big firm culture, and many firms do not provide "an overly welcoming environ-

ment." Unless two or three partners take a personal interest, Broussard believes minorities are not likely to succeed at a large firm.

He also thinks the skills of minority attorneys are needed on all levels: big firms, civil rights, government and pro bono work. Whatever a minority chooses, he or she "ought to have the opportunity to develop the skills," Broussard says. "The opportunities are not at all equal. There's still a lot to be done." ■

**"I was aware in many instances that
judges had no exposure to other black judges.
Many judges motivated me to seek
leadership positions."**

Third Statewide Minority Attorneys' Conference on June 8 in San Francisco

The 1991 Statewide Minority Attorneys' Conference, organized by the State Bar Ethnic Minority Relations Committee, will be held on Saturday, June 8, at the Hyatt Regency San Francisco Airport. "Looking toward the '90s" and "Building Bridges" are the central themes of this third annual conference, which is co-sponsored by law firms, corporations and bar associations.

Discussion topics will include: the impact of the economy on the legal field, perceptions of minority attorneys, lawyering for social change, and recent developments in civil rights law. The Ethnic Minority

Relations Committee will utilize recommendations from the conference to implement solutions to the institutional problems which continue to impede the full participation of minorities in the legal profession.

Among the panelists are Ray Reynolds, editor and publisher of the San Francisco Daily Journal, former Supreme Court Justice Cruz Reynoso, Judge Candace Cooper, former president of the California Judges Association, and Judge Lillian K. Sing, San Francisco Municipal Court.

The registration fee of \$45 includes the conference, a luncheon and a reception.

Preceding the conference, a recognition dinner for retiring Supreme Court Justice Allen Broussard will be held Friday evening at New Asia Restaurant, 772 Pacific Avenue, San Francisco. Tickets are \$50 per person. Individuals who pre-register for the conference and dinner will receive the discounted price of \$75 for both events.

To register for the conference, contact: Robin Wu, Program Developer, Office of Bar Relations, State Bar of California, 555 Franklin Street, San Francisco, CA 94102-4498, 415/561-8815.

Appendix E. California Supreme Court Opinions by Broussard, J., LEXIS
Compilation, as of May 12, 1991. Majority Opinions.

**CALIFORNIA SUPREME COURT OPINIONS
BY BROUSSARD, J.**

As of May 12, 1991

1. DAVID SCHWAB et al., Plaintiffs and Appellants, v. RONDEL HOMES, INC., et al., Defendants and Respondents, No. S012426, Supreme Court of California, 280 Cal. Rptr. 83; 1991 Cal. LEXIS 1330, April 15, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
2. GREGORY POSTER, Plaintiff and Appellant, v. SOUTHERN CALIFORNIA RAPID TRANSIT DISTRICT et al., Defendants and Respondents., No. S011900., Supreme Court of California, 52 Cal. 3d 266; 801 P.2d 1072; 1990 Cal. LEXIS 5495; 276 Cal. Rptr. 321, December 24, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
3. In re STEVIE LAMAR FIELDS on Habeas Corpus, No. S009491, Supreme Court of California, 51 Cal. 3d 1063; 800 P.2d 862; 1990 Cal. LEXIS 5231; 275 Cal. Rptr. 384, December 3, 1990, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Petitioner's petition for rehearing DENIED January 24, 1991, Reported at 1991 Cal. LEXIS 351. Mosk, J. and Broussard, J., are of the opinion the petition should be granted.
4. SAAD MORCOS, Plaintiff and Respondent, v. BOARD OF RETIREMENT OF THE COUNTY OF LOS ANGELES EMPLOYEES' RETIREMENT ASSOCIATION, Defendant and Appellant., No. S010851., Supreme Court of California, 51 Cal. 3d 924; 800 P.2d 543; 1990 Cal. LEXIS 5226; 275 Cal. Rptr. 187, November 26, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
5. CALIFORNIA ASSOCIATION OF PSYCHOLOGY PROVIDERS et al., Plaintiffs and Respondents, v. PETER RANK, as Director, etc., et al., Defendants and Respondents; CALIFORNIA HOSPITAL ASSOCIATION et al., Movants and Appellants., No. S002524., Supreme Court of California, 51 Cal. 3d 1; 793 P.2d 2; 1990 Cal. LEXIS 2462; 270 Cal. Rptr. 796, June 25, 1990., As Modified September 20, 1990; Appellant's petition for Rehearing Denied September 20, 1990, Reported at 1990 Cal. LEXIS 4383.
6. THE PEOPLE, Plaintiff and Respondent, v. RICHARD RAYMOND RAMIREZ, Defendant and Appellant, No. S004698, Crim. No. 24738, Supreme Court of California, 50 Cal. 3d 1158; 791 P.2d 965; 1990 Cal. LEXIS 2453; 270 Cal. Rptr. 286, June 14, 1990, Rehearing Denied August 28, 1990., The judgment is affirmed in all respects.
7. PACIFIC GAS AND ELECTRIC COMPANY, Plaintiff and Appellant, v. BEAR STEARNS & COMPANY et al., Defendants and Respondents; No. S004037, Supreme Court of California, 50 Cal. 3d 1118; 791 P.2d 587; 1990 Cal. LEXIS 2119; 270 Cal. Rptr. 1, June 7, 1990, Since it is not alleged that Bear Stearns's conduct has made PG&E's enjoyment of the benefits of its contract more expensive and burdensome, apart from forcing PG&E to defend a costly lawsuit, and since it is not alleged that the lawsuit was brought without probable cause and that it terminated in plaintiff's favor, plaintiff has not stated a cause of action for intentional interference with contractual relations or prospective economic advantage. It is evident from the face of the complaint that plaintiff cannot allege termination of the prior action in its favor since that action is still pending. Therefore, the judgment of the Court of Appeal is reversed. The cause is remanded to the Court of Appeal with directions to affirm the judgment of the trial court dismissing the action.

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8. SOUTHERN CALIFORNIA GAS COMPANY, Plaintiff and Appellant, v. PUBLIC UTILITIES COMMISSION, Defendant and Respondent, No. S006168, Supreme Court of California, 50 Cal. 3d 31; 784 P.2d 1373; 1990 Cal. LEXIS 147; 265 Cal. Rptr. 801, January 29, 1990, The commission's decision requiring Southern California Gas Company to either produce documents prepared by its attorneys related to its buyout of the Getty contract or withdraw its CAM application is vacated.
9. THE PEOPLE, Plaintiff and Respondent, v. JACKSON CHAMBERS DANIELS, JR., Defendant and Appellant., No. S004611, Crim. No. 233619., Supreme Court of California, 52 Cal. 3d 815; 802 P.2d 906; 277 Cal. Rptr. 122; 1991 Cal. LEXIS 2, January 7, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
10. THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE SIGMOND BITTAKER, Defendant and Appellant., No. S004359, Crim. No. 21942., Supreme Court of California, 48 Cal. 3d 1046; 774 P.2d 659; 1989 Cal. LEXIS 1462; 259 Cal. Rptr. 630, June 22, 1989; Modification of Opinion August 24, 1989; Rehearing denied August 24, 1989.
11. CALFARM INSURANCE COMPANY et al., Petitioners, v. GEORGE DEUKMEJIAN, as Governor, etc., et al., Respondents; ACCESS TO JUSTICE FOUNDATION et al., Real Parties in Interest; THE AMERICAN COUNCIL OF LIFE INSURANCE et al., Interveners. No. S007838., Supreme Court of California, 48 Cal. 3d 805; 771 P.2d 1247; 1989 Cal. LEXIS 1292; 258 Cal. Rptr. 161, May 4, 1989.
12. VIKING POOLS, INC., Plaintiff and Appellant, v. JACK MALONEY, as Registrar of Contractors, etc., Defendant and Respondent., No. S004587., Supreme Court of California, 48 Cal. 3d 602; 770 P.2d 732; 1989 Cal. LEXIS 1155; 257 Cal. Rptr. 320, April 17, 1989.
13. EDDIE KELLER et al., Plaintiffs and Appellants, v. THE STATE BAR OF CALIFORNIA et al., Defendants and Respondents, S.F. No. 25050, Supreme Court of California, 47 Cal. 3d 1152; 767 P.2d 1020; 1989 Cal. LEXIS 17; 255 Cal. Rptr. 542, February 23, 1989, The judgment of the Court of Appeal is reversed, and the case remanded for further proceedings consistent with this opinion.
14. THE PEOPLE, Plaintiff and Respondent, v. DONALD GRIFFIN, Defendant and Appellant, No. S004352, Crim. No. 21753, Supreme Court of California, 46 Cal. 3d 1011; 761 P.2d 103; 1988 Cal. LEXIS 234; 251 Cal. Rptr. 643, October 3, 1988
15. DUDLEY REESE et al., Plaintiffs and Respondents, v. KENNETH KIZER, as Director, etc., et al., Defendants and Appellants, No. S002757, Supreme Court of California, 46 Cal. 3d 996; 760 P.2d 495; 251 Cal. Rptr. 299; 1988 Cal. LEXIS 195, September 22, 1988
16. THE PEOPLE, Plaintiff and Respondent, v. FRANK A. CRUZ, Defendant and Appellant., Crim. No. 26142., Supreme Court of California, 44 Cal. 3d 1247; 752 P.2d 439; 1988 Cal. LEXIS 99; 246 Cal. Rptr. 1, April 21, 1988.
17. THE PEOPLE, Plaintiff and Respondent. PHILLIP LOUIS LUCERO, Defendant and Appellant., Crim. No. 22504., Supreme Court of California, 44 Cal. 3d 1006; 750 P.2d 1342; 1988 Cal. LEXIS 75; 245 Cal. Rptr. 185, March 28, 1988; Review denied May 5, 1988.

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18. RUSS BUILDING PARTNERSHIP, Plaintiff and Appellant, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent. PACIFIC GATEWAY ASSOCIATES JOINT VENTURE, Plaintiff and Appellant, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent. CROCKER NATIONAL BANK et al., Plaintiffs and Appellants, v. CITY AND COUNTY OF SAN FRANCISCO, Defendant and Respondent., No. S000156, No. S000156, No. S000156., Supreme Court of California, 44 Cal. 3d 839; 750 P.2d 324; 1988 Cal. LEXIS 59; 244 Cal. Rptr. 682, March 17, 1988.
19. MARIA P., a Minor, etc., et al., Plaintiffs and Respondents, v. WILSON RILES, as Superintendent, etc., et al., Defendants and Appellants., L.A. No. 32086., Supreme Court of California, 43 Cal. 3d 1281; 743 P.2d 932; 240 Cal. Rptr. 872, October 29, 1987.
20. VASQUEZ-GONZALEZ, etc., et al., Petitioners, v. SUPERIOR COURT OF THE COUNTY OF SAN DIEGO, Respondent; STEWART, Real Party in Interest, [No Number in Original], Supreme Court of California, In Bank, Slip Opinion, January 29, 1987, Filed
21. PEOPLE v. JACK NIEMEYER et al., [No Number in Original], Supreme Court of California, In Bank, Slip Opinion, January 29, 1987, Filed
22. PEOPLE, Appellant, v. ALICE ESCOBEDO SIANEZ and FRANK LOPEZ RAMIREZ, Respondents, [No number in original], Supreme Court of California, In Bank, Slip Opinion, January 22, 1987, Filed
23. JOHN S. SARCHETT, Plaintiff and Respondent, v. BLUE SHIELD OF CALIFORNIA, Defendant and Appellant., L.A. No. 31988., Supreme Court of California, 43 Cal. 3d 1; 729 P.2d 267; 233 Cal. Rptr. 76, Jan. 2, 1987; Mod. of Opn. February 24, 1987; Rehg. den. Feb. 24, 1987.
24. LEONARD COLE et al., Plaintiffs and Appellants, v. FAIR OAKS FIRE PROTECTION DISTRICT et al., Defendants and Respondents., S.F. No. 24919., Supreme Court of California, 43 Cal. 3d 148; 729 P.2d 743; 233 Cal. Rptr. 308, Jan. 2, 1987; Rehg. den. Feb. 11, 1987.
25. THE PEOPLE, Plaintiff and Respondent, v. JOHN ALBERT JACOBS, Defendant and Appellant., Crim. No. 25366., Supreme Court of California, 43 Cal. 3d 472; 729 P.2d 757; 233 Cal. Rptr. 323, Jan. 2, 1987; Rehg. den. Feb. 26, 1987.
26. THE PEOPLE, Plaintiff and Respondent, v. EDWARD JUDSON WRIGHT, Defendant and Appellant., Crim. No. 25362., Supreme Court of California, 43 Cal. 3d 487; 729 P.2d 260; 233 Cal. Rptr. 69, Jan. 2, 1987; As modified Jan. 29, 1987.
27. In re GREGORY ULAS POWELL on Habeas Corpus., Crim. No. 24441., Supreme Court of California, 42 Cal. 3d 1075; 728 P.2d 1188; 232 Cal. Rptr. 533; 232 Cal. Rptr. 553, Dec. 29, 1986; Rehg. granted March 26, 1987.
28. THE PEOPLE, Plaintiff and Respondent, v. FREDDIE LEE OVERSTREET, Defendant and Appellant., Crim. No. 24537., Supreme Court of California, 42 Cal. 3d 891; 726 P.2d 1288; 231 Cal. Rptr. 213, Nov. 13, 1986.
29. CITY AND COUNTY OF SAN FRANCISCO, Plaintiff and Respondent, v. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 38, Defendant and Appellant., S.F. No. 24946., Supreme Court of California, 42 Cal. 3d 810; 726 P.2d 538;

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230 Cal. Rptr. 856; 123 L.R.R.M. 2841, Oct. 27, 1986.

30. THE PEOPLE, Plaintiff and Respondent, v. MARIO PIEDRA ALFARO, Defendant and Appellant., Crim. No. 25042., Supreme Court of California, 42 Cal. 3d 627; 724 P.2d 1154; 230 Cal. Rptr. 129, Oct. 2, 1986.

31. THE PEOPLE, Plaintiff and Respondent, v. VINCENT CALIO, Defendant and Appellant., Crim. No. 24711., Supreme Court of California, 42 Cal. 3d 639; 724 P.2d 1162; 230 Cal. Rptr. 137, Oct. 2, 1986.

32. ANA MARIE BURCHARD, Plaintiff and Appellant, v. WILLIAM GARAY, Defendant and Respondent., L.A. No. 31957., Supreme Court of California, 42 Cal. 3d 531; 724 P.2d 486; 229 Cal. Rptr. 800, Sept. 22, 1986.

33. FRANCES T., Plaintiff and Appellant, v. VILLAGE GREEN OWNERS ASSOCIATION et al., Defendants and Respondents., L.A. No. 31873., Supreme Court of California, 42 Cal. 3d 490; 723 P.2d 573; 229 Cal. Rptr. 456; 59 A.L.R.4th 447, Sept. 4, 1986.

34. THE PEOPLE, Plaintiff and Respondent, v. DARYLE KEITH MARTIN, Defendant and Appellant., Crim. No. 24474., Supreme Court of California, 42 Cal. 3d 437; 722 P.2d 905; 229 Cal. Rptr. 131, Aug. 21, 1986; Rehg. den. Sept. 18, 1986.

35. ARTHUR FELLOWS, Plaintiff and Appellant, v. NATIONAL ENQUIRER, INC., Defendant and Respondent., L.A. No. 32082., Supreme Court of California, 42 Cal. 3d 234; 721 P.2d 97; 228 Cal. Rptr. 215; 57 A.L.R.4th 223; 13 Media L. Rep. 1305 July 31, 1986.

36. THE PEOPLE, Plaintiff and Respondent, v. JAMES JORDAN, Defendant and Appellant., Crim. No. 24655., Supreme Court of California, 42 Cal. 3d 308; 721 P.2d 79; 228 Cal. Rptr. 197, July 31, 1986.

37. CLYDELHO FROMMOETHELYDO, Plaintiff and Respondent, v. FIRE INSURANCE EXCHANGE et al., Defendants and Appellants., S.F. No. 24881., Supreme Court of California, 42 Cal. 3d 208; 721 P.2d 41; 228 Cal. Rptr. 160, July 24, 1986; Rehg. den. Sept. 25, 1986.

38. BRYAN W. STEVENS, Plaintiff and Respondent, v. DWIGHT GEDULDIG et al., Defendants and Appellants., S.F. No. 24601., Supreme Court of California, 42 Cal. 3d 24; 719 P.2d 1001; 227 Cal. Rptr. 405, June 30, 1986; Mod. of opn. July 30, 1986.

39. LONG BEACH CITY EMPLOYEES ASSOCIATION, Plaintiff and Appellant, v. CITY OF LONG BEACH et al., Defendants and Respondents., L.A. No. 32051., Supreme Court of California, 41 Cal. 3d 937; 719 P.2d 660; 227 Cal. Rptr. 90; 105 Lab. Cas. (CCH) P55,633; 40 Empl. Prac. Dec. (CCH) P36,309, June 19, 1986.

40. WEST COVINA HOSPITAL, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; TERRY JO TYUS et al., Real Parties in Interest., L.A. No. 32083., Supreme Court of California, 41 Cal. 3d 846; 718 P.2d 119; 226 Cal. Rptr. 132; 60 A.L.R.4th 1257, May 29, 1986; Rehg. den. July 21, 1986.

41. THE PEOPLE, Plaintiff and Respondent, v. JAMES EDWARD THOMAS, Defendant and Appellant., Crim. No. 24713., Supreme Court of California, 41 Cal. 3d 837; 718 P.2d 94; 226 Cal. Rptr. 107, May 22, 1986.

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42. SPORTS ARENAS PROPERTIES, INC., et al., Plaintiffs, Cross-defendants and Appellants, v. CITY OF SAN DIEGO et al., Defendants, Cross-complainants and Respondents; UNIVERSITY CITY VILLAGE TENANTS ASSOCIATION et al., Interveners and Respondents., L.A. No. 31987., Supreme Court of California, 40 Cal. 3d 808; 710 P.2d 338; 221 Cal. Rptr. 538, Dec. 31, 1985.
43. BRIAN WHITE et al., Plaintiffs and Respondents, v. WESTERN TITLE INSURANCE COMPANY, Defendant and Appellant., S.F. No. 24813., Supreme Court of California, 40 Cal. 3d 870; 710 P.2d 309; 221 Cal. Rptr. 509, Dec. 31, 1985; Rehg. den. Feb. 14, 1986.
44. THE PEOPLE, Plaintiff and Respondent, v. MARVIN PETE WALKER, JR., Defendant and Appellant., Crim. No. 21707., Supreme Court of California, 41 Cal. 3d 116; 711 P.2d 465; 222 Cal. Rptr. 169, Dec. 31, 1985; Rehg. granted Mar. 20, 1986.
45. THE PEOPLE, Plaintiff and Respondent, v. DARNELL LUCKY, Defendant and Appellant., Crim. No. 22572., Supreme Court of California, 41 Cal. 3d 315; 710 P.2d 959; 221 Cal. Rptr. 880, Dec. 31, 1985; Rehg. granted Feb. 20, 1986.
46. Estate of MARY SANDERS, Deceased. SARA SANDERS et al., Petitioners and Appellants, v. FRANK C. SUTTON, as Executor, etc., Objector and Respondent., L.A. 32054, Supreme Court of California, 40 Cal. 3d 607; 710 P.2d 232; 221 Cal. Rptr. 432, Dec. 23, 1985.; As Modified March 13, 1986
47. In re KEVIN, G., a Minor. THE PEOPLE, Plaintiff and Appellant, v. KEVIN G., Defendant and Respondent., Crim. No. 24086., Supreme Court of California, 40 Cal. 3d 644; 709 P.2d 1315; 221 Cal. Rptr. 146, Dec. 23, 1985.
48. JACK KENDALL et al., Plaintiffs and Appellants, v. ERNEST PESTANA, INC., Defendant and Respondent., S.F. No. 24851., Supreme Court of California, 40 Cal. 3d 488; 709 P.2d 837; 220 Cal. Rptr. 818, Dec. 5, 1985.
49. JOSE L. CLEMENTE, an Incompetent Person, etc., Plaintiff and Respondent, v. THE STATE OF CALIFORNIA et al., Defendants and Appellants., L.A. No. 31832., Supreme Court of California, 40 Cal. 3d 202; 707 P.2d 818; 219 Cal. Rptr. 445, Oct. 28, 1985; Mod. of opn. Jan. 23, 1986; Rehg. den. Jan. 23, 1986
50. THE PEOPLE, Plaintiff and Respondent, v. ALLEN GARFIELD, Defendant and Appellant., Crim. No. 24244., Supreme Court of California, 40 Cal. 3d 192; 707 P.2d 258; 219 Cal. Rptr. 196, Oct. 24, 1985.
51. STATE COMPENSATION INSURANCE FUND, Petitioner, v. WORKERS' COMPENSATION APPEALS BOARD and VIRGIL J. MEIER, Respondents., L.A. No. 32046., Supreme Court of California, 40 Cal. 3d 5; 706 P.2d 1146; 219 Cal. Rptr. 13, Oct. 17, 1985.
52. MICHAEL U., a Minor, etc., Plaintiff and Respondent, v. JAMIE B., a Minor, etc., et al., Defendants and Appellants. JAMIE B., a Minor, etc., Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; MICHAEL U., a Minor, etc., Real Party in Interest., L.A. No. 32014., Supreme Court of California, 39 Cal. 3d 787; 705 P.2d 362; 218 Cal. Rptr. 39, Sept. 19, 1985.
53. THE PEOPLE, Plaintiff and Respondent, v. EDWARD JAMES MOTTON, Defendant and Appellant., Crim. No. 24173, Supreme Court of California, 39 Cal. 3d 596; 704 P.2d 176; 217 Cal. Rptr. 416, August 19, 1985; Respondent's petition for a rehearing was denied October 3, 1985, and the opinion was modified to read as

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printed above. Lucas, J., was of the opinion that the petition should be granted.

54. STATE PERSONNEL BOARD et al., Plaintiffs and Respondents, v. FAIR EMPLOYMENT AND HOUSING COMMISSION et al., Defendants and Appellants; RICHARD ARTHUR AMON et al., Real Parties in Interest and Respondents., S.F. No. 24716., Supreme Court of California, 39 Cal. 3d 422; 703 P.2d 354; 217 Cal. Rptr. 16; 44 Fair Empl. Prac. Cas. (BNA) 1050; 37 Empl. Prac. Dec. (CCH) P35,480, Aug. 8, 1985; Mod. of opn. Sept. 19, 1985.
55. ALEC CAMPBELL MacPHAIL, Petitioner, v. THE COURT OF APPEAL, THIRD APPELLATE DISTRICT et al., Respondents; DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING et al., Real Parties in Interest., S.F. No. 24680., Supreme Court of California, 39 Cal. 3d 454; 703 P.2d 374; 217 Cal. Rptr. 36; 44 Fair Empl. Prac. Cas. (BNA) 1147, Aug. 8, 1985; Mod. of opn. Sept. 19, 1985.
56. CHERYL BARRINGTON, Plaintiff and Appellant, v. A. H. ROBINS COMPANY, Defendant and Respondent., L.A. No. 31939, Supreme Court of California, 39 Cal. 3d 146; 702 P.2d 563; 216 Cal. Rptr. 405, July 29, 1985.
57. GLORIA OCHOA et al., Petitioners, v. THE SUPERIOR COURT OF SANTA CLARA COUNTY, Respondent; COUNTY OF SANTA CLARA et al., Real Parties in Interest., S.F. No. 24637., Supreme Court of California, 39 Cal. 3d 159; 703 P.2d 1; 216 Cal. Rptr. 661, July 29, 1985.
58. PAUL PERDUE, Plaintiff and Appellant, v. CROCKER NATIONAL BANK, Defendant and Respondent., S. F. No. 24591., Supreme Court of California, 38 Cal. 3d 913; 702 P.2d 503; 216 Cal. Rptr. 345, July 18, 1985.; Rehearing Denied August 15, 1985
59. THE PEOPLE, Plaintiff and Respondent, v. JAVIER A., Defendant and Appellant., Crim. No. 23869., Supreme Court of California, 38 Cal. 3d 811; 700 P.2d 1244; 215 Cal. Rptr. 242, June 13, 1985.
60. THE PEOPLE, Plaintiff and Respondent, v. JUAN ANTHONY BOYD, Defendant and Appellant., Crim. No. 21704., Supreme Court of California, 38 Cal. 3d 762; 700 P.2d 782; 215 Cal. Rptr. 1, June 6, 1985.
61. COUNTY SANITATION DISTRICT NO. 2 OF LOS ANGELES COUNTY, Plaintiff and Respondent, v. LOS ANGELES COUNTY EMPLOYEES' ASSOCIATION, LOCAL 660, SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO et al., Defendants and Appellants., L.A. No. 31850., Supreme Court of California, 38 Cal. 3d 564; 699 P.2d 835; 214 Cal. Rptr. 424; 119 L.R.R.M. 2433, May 13, 1985.
62. GEORGE BECKER, Plaintiff and Appellant, v. IRM CORPORATION, Defendant and Respondent., S.F. No. 24618., Supreme Court of California, 38 Cal. 3d 454; 698 P.2d 116; 213 Cal. Rptr. 213; 48 A.L.R.4th 601; CCH Prod. Lib. Rep. P10,522, Apr. 29, 1985.
63. JOAN KATHRYN WILKOFF, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; THE PEOPLE, Real Party in Interest., L.A. No. 31942, Supreme Court of California, 38 Cal. 3d 345; 696 P.2d 134; 211 Cal. Rptr. 742, March 18, 1985

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64. THE PEOPLE, Plaintiff and Respondent, v. LUTHER CLAYTON BROCK, Defendant and Appellant., Crim. No. 23650., Supreme Court of California, 38 Cal. 3d 180; 695 P.2d 209; 211 Cal. Rptr. 122, Feb. 28, 1985.
65. ZELVERN W. MANN, as Administrator, etc., et al., Plaintiffs and Appellants, v. ANDREA CRACCHIOLO III et al., Defendants and Respondents., L.A. No. 31837., Supreme Court of California, 38 Cal. 3d 18; 694 P.2d 1134; 210 Cal. Rptr. 762, Feb. 19, 1985.
66. THE PEOPLE, Plaintiff and Respondent, v. HAROLD BINION JACKSON, Defendant and Appellant., Crim. No. 23622., Supreme Court of California, 37 Cal. 3d 826; 694 P.2d 736; 210 Cal. Rptr. 623, Jan. 28, 1985; Rehg. den. Mar. 21, 1985.
67. THE PEOPLE, Plaintiff and Respondent, v. JEFFREY DEAN O'BRYAN, Defendant and Appellant., Crim. No. 23621., Supreme Court of California, 37 Cal. 3d 841; 694 P.2d 135; 210 Cal. Rptr. 450, Jan. 28, 1985.
68. PRESS-ENTERPRISE COMPANY, Petitioner, v. THE SUPERIOR COURT OF RIVERSIDE COUNTY, Respondent; ROBERT RUBANE DIAZ, Real Party in Interest., L.A. No. 31876. Supreme Court of California, 37 Cal. 3d 772; 691 P.2d 1026; 209 Cal. Rptr. 360; 11 Media L. Rep. 1297, Dec. 31, 1984.
69. THE PEOPLE, Plaintiff and Respondent, v. JERRY DOUBLAS BIGELOW, Defendant and Appellant., Crim. No. 22018., Supreme Court of California, 37 Cal. 3d 731; 691 P.2d 994; 209 Cal. Rptr. 328; 64 A.L.R.4th 723, Dec. 27, 1984; Mod of conc. and dis. opn. Feb. 6, 1985.
70. GARY A. MITCHELL et al., Petitioners, v. THE SUPERIOR COURT OF FRESNO COUNTY, Respondent; SHELL OIL COMPANY et al., Real Parties in Interest., S.F. No. 24727., Supreme Court of California, 37 Cal. 3d 591; 691 P.2d 642; 208 Cal. Rptr. 886, Dec. 20, 1984.
71. READER'S DIGEST ASSOCIATION, INC., et al., Petitioners, v. THE SUPERIOR COURT OF MARIN COUNTY, Respondent; SYNANON CHURCH et al., Real Parties in Interest., S.F. No. 24686., Supreme Court of California, 37 Cal. 3d 244; 690 P.2d 610; 208 Cal. Rptr. 137; 11 Media L. Rep. 1065, Nov. 19, 1984.
72. DAVID MITCHELL et al., Petitioners, v. THE SUPERIOR COURT OF MARIN COUNTY, Respondent; SYNANON CHURCH et al., Real Parties in Interest., S.F. No. 24685., Supreme Court of California, 37 Cal. 3d 268; 690 P.2d 625; 208 Cal. Rptr. 152; 11 Media L. Rep. 1076, Nov. 19, 1984.
73. THE PEOPLE, Plaintiff and Respondent, v. DARRICK TED MARTINEZ, Defendant and Appellant., Crim. No. 22940., Supreme Court of California, 36 Cal. 3d 816; 685 P.2d 1203; 205 Cal. Rptr. 852, Sept. 10, 1984.
74. KATHLEEN PETERSON, Plaintiff and Appellant, v. SAN FRANCISCO COMMUNITY COLLEGE DISTRICT et al., Defendants and Respondents., S.F. No. 24587., Supreme Court of California, 36 Cal. 3d 799; 685 P.2d 1193; 205 Cal. Rptr. 842, Sept. 6, 1984.
75. EVELYNE ELIZABETH RESCH, Plaintiff and Appellant, v. VOLKSWAGEN OF AMERICA, INC., et al., Defendants and Respondents., L.A. No. 31875., Supreme Court of California, 36 Cal. 3d 676; 685 P.2d 1178; 205 Cal. Rptr. 827, Aug. 27, 1984.

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76. AMERICAN FEDERATION OF LABOR CONGRESS OF INDUSTRIAL ORGANIZATIONS et al., Petitioners, v. MARCH FONG EU, as Secretary of State, etc., et al., Respondents; LEWIS K. UHLER, Real Party in Interest., S.F. No. 24746., Supreme Court of California, 36 Cal. 3d 687; 686 P.2d 609; 206 Cal. Rptr. 89, Aug. 27, 1984
77. THE PEOPLE, Plaintiff and Respondent, v. LAWRENCE RICHARD GARCIA, Defendant and Appellant., Crim. No. 22799., Supreme Court of California, 36 Cal. 3d 539; 684 P.2d 826; 205 Cal. Rptr. 265, Aug. 6, 1984; Rehg. den. Oct. 29, 1984.
78. THE PEOPLE ex rel. GEORGE DEUKMEJIAN, as Attorney General, etc., Plaintiff and Respondent, v. COUNTY OF MENDOCINO et al., Defendants and Appellants. PROPONENTS OF THE INITIATIVE et al., Interveners and Appellants., S.F. No. 24588 Supreme Court of California, 36 Cal. 3d 476; 683 P.2d 1150; 204 Cal. Rptr. 897; 14 ELR 20767; 21 ERC 1595, July 26, 1984.
79. BARRY GLENN WILLIAMS, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest., L.A. No. 31817., Supreme Court of California, 36 Cal. 3d 441; 683 P.2d 699; 204 Cal. Rptr. 700, July 16, 1984.
80. In re JERALD C., a Person Coming Under the Juvenile Court Law. COUNTY OF SANTA CLARA, Plaintiff and Respondent, v. HIRAM G., Defendant and Appellant., S.F. No. 24392., Supreme Court of California, 36 Cal. 3d 1; 678 P.2d 917; 201 Cal. Rptr. 342, Apr. 20, 1984.
81. THE PEOPLE, Plaintiff and Respondent, v. LEE EDWARD HARRIS, Defendant and Appellant., Crim. No. 21633., Supreme Court of California, 36 Cal. 3d 36; 679 P.2d 433; 201 Cal. Rptr. 782, Apr. 20, 1984; Rehg. den. June 20, 1984.
82. THE PEOPLE, Plaintiff and Appellant, v. TERRY L. SLAUGHTER, Defendant and Respondent., Crim. No. 22896., Supreme Court of California, 35 Cal. 3d 629; 677 P.2d 854; 200 Cal. Rptr. 448, Mar. 22, 1984.
83. THE PEOPLE, Plaintiff and Respondent, v. STEVIE LAMAR FIELDS, Defendant and Appellant., Crim. No. 21126., Supreme Court of California, 35 Cal. 3d 329; 673 P.2d 680; 197 Cal. Rptr. 803, Dec. 29, 1983; Rehg den. Mar. 27, 1984.
84. COMMITTEE ON CHILDREN'S TELEVISION, INC. et al., Plaintiffs and Appellants, v. GENERAL FOODS CORPORATION et al., Defendants and Respondents., L.A. No. 31603., Supreme Court of California, 35 Cal. 3d 197; 673 P.2d 660; 197 Cal. Rptr. 783, Dec. 22, 1983.
85. CELESTINO MARK CARLOS, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest., L.A. 31487, Supreme Court of California, 35 Cal. 3d 131; 672 P.2d 862; 197 Cal. Rptr. 79, Dec. 12, 1983; Rehg. den. Jan. 19, 1984.
86. KENNETH LEE DONALDSON, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest, L.A. No. 31424, Supreme Court of California, 35 Cal. 3d 24; 672 P.2d 110; 196 Cal. Rptr. 704, November 21, 1983; Mod. of opn. December 21, 1983; Petitioner's application for a rehearing was denied December 21, 1983. Bird, C.J., was of the opinion that the application should be granted.

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87. BENELLA MILLIGAN et al., Plaintiffs and Appellants, v. CITY OF LAGUNA BEACH, Defendant and Respondent., L.A. No. 31611., Supreme Court of California, 34 Cal. 3d 829; 670 P.2d 1121; 196 Cal. Rptr. 38, Oct. 31, 1983.
88. FREDRICK WINFIELD WILLIAMS, Petitioner, v. THE SUPERIOR COURT OF PLACER COUNTY, Respondent; THE PEOPLE, Real Party in Interest., S.F. No. 24521., Supreme Court of California, 34 Cal. 3d 584; 668 P.2d 799; 194 Cal. Rptr. 492, Sept. 8, 1983.
89. THE PEOPLE, Plaintiff and Respondent, v. TITUS EDWARD YATES, Defendant and Appellant, Crim. No. 22817, Supreme Court of California, 34 Cal. 3d 644; 669 P.2d 1; 194 Cal. Rptr. 765, September 8, 1983; Mod. of opn. October 6, 1983; On October 6, 1983, the opinion was modified to read as printed.
90. DENNIS PARTEE, Plaintiff and Respondent, v. SAN DIEGO CHARGERS FOOTBALL COMPANY, Defendant and Appellant., L.A. No. 31560., Supreme Court of California, 34 Cal. 3d 378; 668 P.2d 674; 194 Cal. Rptr. 367; 1983-2 Trade Cas. (CCH) P65,588, Aug. 29, 1983; Mod of opn. Sept. 28, 1983; Rehg. den. Sept. 28, 1984.
91. LEROY TWIGGS, Petitioner, v. THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; THE PEOPLE, Real Party in Interest., S.F. No. 24529., Supreme Court of California, 34 Cal. 3d 360; 667 P.2d 1165; 194 Cal. Rptr. 152, Aug. 25, 1983.
92. THE PEOPLE, Plaintiff and Respondent, v. RONNIE LEE FAIN, Defendant and Appellant., Crim. No. 23014., Supreme Court of California, 34 Cal. 3d 350; 667 P.2d 694; 193 Cal. Rptr. 890, Aug. 18, 1983.
93. In re DAVID IBARRA on Habeas Corpus., Crim No. 22366., Supreme Court of California, 34 Cal. 3d 277; 666 P.2d 980; 193 Cal. Rptr. 538, Aug. 8, 1983.
94. ROBERT O. PETERSON, Plaintiff and Appellant, v. CITY OF SAN DIEGO et al., Defendants and Respondents., L.A. No. 31641., Supreme Court of California, 34 Cal. 3d 225; 666 P.2d 975; 193 Cal. Rptr. 533, Aug. 4, 1983.
95. THE PEOPLE, Plaintiff and Respondent, v. FRANK MOORE, Defendant and Appellant., Crim. No. 22852., Supreme Court of California, 34 Cal. 3d 215; 666 P.2d 419; 193 Cal. Rptr. 404, Aug. 1, 1983.
96. THE PEOPLE, Plaintiff and Respondent, v. CHARLES HARRY WOLCOTT, Defendant and Appellant. THE PEOPLE, Plaintiff and Respondent, v. ROBERT RUSSELL JOHNSTON, Defendant and Appellant., Crim. No. 22295., Supreme Court of California, 34 Cal. 3d 92; 665 P.2d 520; 192 Cal. Rptr. 748, July 7, 1983.
97. FRANK FAHEY, Plaintiff and Appellant, v. FRED GLEDHILL, Defendant and Respondent. AETNA INSURANCE COMPANY, Plaintiff and Appellant, v. FRED GLEDHILL, Defendant and Respondent., L.A. No. 31549., Supreme Court of California, 33 Cal. 3d 884; 663 P.2d 197; 191 Cal. Rptr. 639, May 26, 1983; Rehg. den. July 14, 1983.
98. WILFRED ANTHONY DANIELS, Plaintiff and Appellant, v. DEPARTMENT OF MOTOR VEHICLES, Defendant and Respondent., L.A. No. 31586., Supreme Court of California, 33 Cal. 3d 532; 658 P.2d 1313; 189 Cal. Rptr. 512, Mar. 10, 1983.

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99. KATHLEEN VIRGINIA HIMELSPACH, Plaintiff and Appellant, v. DEPARTMENT OF MOTOR VEHICLES, Defendant and Respondent., L.A. No. 31587, Supreme Court of California, 33 Cal. 3d 542; 658 P.2d 1319; 189 Cal. Rptr. 518, March 10, 1983
100. KENNETH CORY, as State Controller, Petitioner, v. PUBLIC UTILITIES COMMISSION et al., Respondents; PACIFIC TELEPHONE AND TELEGRAPH COMPANY, Real Party in Interest., S.F. No. 24418., Supreme Court of California, 33 Cal. 3d 522; 658 P.2d 749; 189 Cal. Rptr. 386; 52 P.U.R.4th 494, March 3, 1983.
101. NATIONAL AUDUBON SOCIETY et al., Petitioners, v. THE SUPERIOR COURT OF ALPINE COUNTY, Respondent; DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES et al., Real Parties in Interest., S.F. No. 24368., Supreme Court of California, 33 Cal. 3d 419; 658 P.2d 709; 189 Cal. Rptr. 346; 13 ELR 20272; 21 ERC 1490, Feb. 17, 1983; Mod. of opn. Apr. 14, 1983, Rehg. den. Apr. 14, 1983.
102. RUDI A. UNTERTHINER, Plaintiff and Respondent, v. DESERT HOSPITAL DISTRICT OF PALM SPRINGS, Defendant and Appellant., L.A. No. 31469., Supreme Court of California, 33 Cal. 3d 285; 656 P.2d 554; 188 Cal. Rptr. 590, Jan. 24, 1983.
103. In re RODELL KELLY, JR., on Habeas Corpus., Crim. No. 22054., Supreme Court of California, 33 Cal. 3d 267; 655 P.2d 1282; 188 Cal. Rptr. 447, Jan. 17, 1983.
104. ARTIE BAILEY et al., Plaintiffs and Respondents, v. OTIS A. LOGGINS, as Superintendent, etc., et al., Defendants and Appellants., S.F. No. 24076., Supreme Court of California, 32 Cal. 3d 907; 654 P.2d 758; 187 Cal. Rptr. 575, Dec. 10, 1982.
105. In re JERALD C., a Person Coming Under the Juvenile Court Law. COUNTY OF SANTA CLARA, Plaintiff and Respondent, v. HIRAM G., Defendant and Appellant., S.F. No. 24392., Supreme Court of California, 33 Cal. 3d 1; 654 P.2d 745; 187 Cal. Rptr. 562, Dec. 10, 1982; Rehg. granted Mar. 10, 1983 (See 36 C.3d 1)
106. THE PEOPLE, Plaintiff and Respondent; v. STEVEN MARK BARRICK, Defendant and Appellant., Crim. No. 22389., Supreme Court of California, 33 Cal. 3d 115; 654 P.2d 1243; 187 Cal. Rptr. 716, Dec. 10, 1982; Rehg. den. Jan. 27, 1983.
107. JOHN A., a Minor, etc., Plaintiff and Appellant, v. SAN BERNARDINO CITY UNIFIED SCHOOL DISTRICT et al., Defendants and Respondents., L.A. No. 31391., Supreme Court of California, 33 Cal. 3d 301; 654 P.2d 242; 187 Cal. Rptr. 472, Dec. 10, 1982.
108. SAN LORENZO EDUCATION ASSOCIATION, Plaintiff and Respondent, v. LARRY A. WILSON et al., Defendants and Appellants., S.F. No. 24409., Supreme Court of California, 32 Cal. 3d 841; 654 P.2d 202; 187 Cal. Rptr. 432; 115 L.R.R.M. 2347, Dec. 6, 1982; Mod. of opn. Feb. 3, 1983; Rehg. den. Feb. 3, 1983.
109. THE PEOPLE, Plaintiff and Respondent, v. FELIX LEONARDO MANCHENO, Defendant and Appellant., Crim. No. 22507, Supreme Court of California, 32 Cal. 3d 855; 654 P.2d 211; 187 Cal. Rptr. 441, December 6, 1982.
110. FULLERTON JOINT UNION HIGH SCHOOL DISTRICT, Plaintiff and Appellant, v. STATE BOARD OF EDUCATION, Defendant and Appellant., L.A. No. 31415., Supreme Court of California, 32 Cal. 3d 779; 654 P.2d 168; 187 Cal. Rptr. 398, Dec. 2, 1982.

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111. CITIZENS AGAINST FORCED ANNEXATION et al., Plaintiffs and Respondents, v. LOCAL AGENCY FORMATION COMMISSION OF LOS ANGELES COUNTY et al., Defendants and Appellants., L.A. No. 31414., Supreme Court of California, 32 Cal. 3d 816; 654 P.2d 193; 187 Cal. Rptr. 423, Dec. 2, 1982.
112. CHARLES S., a Minor, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest., L.A. No. 31524., Supreme Court of California, 32 Cal. 3d 741; 653 P.2d 648; 187 Cal. Rptr. 144, Nov. 22, 1982.
113. AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF NORTHERN CALIFORNIA, INC., Plaintiff and Respondent, v. GEORGE DEUKMEJIAN, as Attorney General, etc., et al., Defendants and Appellants., S.F. No. 24207., Supreme Court of California, 32 Cal. 3d 440; 651 P.2d 822; 186 Cal. Rptr. 235; 8 Media L. Rep. 2436, Sept. 27, 1982; Mod. of opn. Nov. 15, 1982; Rehg. den. Nov. 15, 1982.
114. METROMEDIA, INC., Plaintiff and Respondent, v. CITY OF SAN DIEGO, Defendant and Appellant. PACIFIC OUTDOOR ADVERTISING COMPANY, INC., Plaintiff and Respondent, v. CITY OF SAN DIEGO et al., Defendants and Appellants., L.A. No. 30782., Supreme Court of California, 32 Cal. 3d 180; 649 P.2d 902; 185 Cal. Rptr. 260, Aug. 30, 1982.
115. MERRELL VANNIER et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest., L.A. No. 31418, Supreme Court of California, 32 Cal. 3d 163; 650 P.2d 302; 185 Cal. Rptr. 427, August 26, 1982
116. THE PEOPLE, Plaintiff and Respondent, v. JEFFREY DAVID BLACK, Defendant and Appellant., Crim. No. 2228., Supreme Court of California, 32 Cal. 3d 1; 648 P.2d 104; 184 Cal. Rptr. 454, July 29, 1982.
117. THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; ALFRED RICHARD SOSA et al., Real Parties in Interest., S.F. No. 24311., Supreme Court of California, 31 Cal. 3d 853; 649 P.2d 696; 185 Cal. Rptr. 113, July 8, 1982; Mod. of opn. Aug. 18, 1982; Rehg. den. Aug. 18, 1982.
118. THE PEOPLE, Plaintiff and Respondent, v. EDDIE RAY COLE, Defendant and Appellant., Crim. No. 22200., Supreme Court of California, 31 Cal. 3d 568; 645 P.2d 1182; 183 Cal. Rptr. 350, June 3, 1982.
119. THE PEOPLE, Plaintiff and Respondent, v. ALONZO LEE TAYLOR, Defendant and Appellant., Crim. No. 22328., Supreme Court of California, 31 Cal. 3d 488; 645 P.2d 115; 183 Cal. Rptr. 64, May 27, 1982.
120. DONALD R. PETERSON et al., Petitioners, v. THE SUPERIOR COURT OF VENTURA COUNTY, Respondent; NORMAN THOMPSON, Real Party in Interest., L.A. No. 31439., Supreme Court of California, 31 Cal. 3d 147; 642 P.2d 1305; 181 Cal. Rptr. 784, Apr. 8, 1982.
121. HELENE FRINK, Plaintiff and Appellant, v. BERALD PROD, as Director, etc., Defendant and Respondent., L.A. No. 31453, Supreme Court of California, 31 Cal. 3d 166; 643 P.2d 476; 181 Cal. Rptr. 893, April 8, 1982
122. THE PEOPLE, Plaintiff and Appellant, v. ROBERT JOSEPH TERESINSKI, Defendant and Respondent., Crim. No. 20497., Supreme Court of California, 30 Cal. 3d

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822; 640 P.2d 753; 180 Cal. Rptr. 617, Feb. 18, 1982; Rehg. den. Apr. 15, 1982.

123. DAWN INVESTMENT CO., INC., et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; EDITH BECK et al., Real Parties in Interest., L.A. No. 31413., Supreme Court of California, 30 Cal. 3d 695; 639 P.2d 974; 180 Cal. Rptr. 332, Feb. 4, 1982.

124. THE PEOPLE, Plaintiff and Respondent, v. GREGORY WRIGHT, Defendant and Appellant., Crim. No. 21692, Supreme Court of California, 30 Cal. 3d 705; 639 P.2d 267; 180 Cal. Rptr. 196, February 4, 1982

125. RICHARD L. GILARDI et al., Plaintiffs and Respondents, v. GARY L. HALLAM et al., Defendants and Appellants., S.F. No. 24325., Supreme Court of California, 30 Cal. 3d 317; 636 P.2d 588; 178 Cal. Rptr. 624, Dec. 3, 1981.

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1. THE PEOPLE, Plaintiff and Respondent, v. TIEQUON AUNDRAY COX, Defendant and Appellant, No. S004711, Crim. 25425, Supreme Court of California, 1991 Cal. LEXIS 1723, May 2, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
2. THE PEOPLE, Plaintiff and Respondent, v. JUAN CARLOS RODRIGUEZ, Defendant and Appellant., No. S011326., Supreme Court of California, 51 Cal. 3d 437; 795 P.2d 783; 1990 Cal. LEXIS 4025; 272 Cal. Rptr. 613, September 6, 1990.
3. SEAN PATRICK DELANEY et al., Petitioners, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; ROXANA KOPETMAN et al., Real Parties in Interest, No. S006866, Supreme Court of California, 50 Cal. 3d 785; 789 P.2d 934; 1990 Cal. LEXIS 1842; 268 Cal. Rptr. 753, May 3, 1990, Petition for rehearing of Real Parties in Interest DENIED July 11, 1990., The judgment of the Court of Appeal is affirmed. The Court of Appeal is directed to issue a peremptory writ of mandate compelling respondent Los Angeles Superior Court: (1) to vacate its orders entered December 16, 1987, in case numbers HC 206320 and HC 206321, entitled In re Roxana Kopetman and In re Roberto Santiago Bertero, respectively, which orders granted their petitions for writs of habeas corpus; and (2) to simultaneously make new and different orders denying the petitions for writs of habeas corpus.
4. CALIFORNIA STATE AUTOMOBILE ASSOCIATION INTER-INSURANCE BUREAU, Petitioner, v. THE SUPERIOR COURT OF THE CITY AND COUNTY OF SAN FRANCISCO, Respondent; DOROTHY COOPER, Real Party in Interest, No. S009171, Supreme Court of California 50 Cal. 3d 658; 788 P.2d 1156; 1990 Cal. LEXIS 1491; 268 Cal. Rptr. 284, April 19, 1990, The Court of Appeal's decision, issuing a writ of mandate directing that petitioner's motion for judgment on the pleadings be granted, is reversed.
5. THE PEOPLE, Plaintiff and Respondent, v. KENNETH BURTON LANG, JR., Defendant and Appellant., No. S004655, Crim. No. 24257., Supreme Court of California, 49 Cal. 3d 991; 782 P.2d 627; 1989 Cal. LEXIS 2094; 264 Cal. Rptr. 386, December 7, 1989; Appellant's petition for rehearing is DENIED February 1, 1990. The motion to stay issuance of the remittitur is denied February 1, 1990. Mosk, J. and Broussard, J., are of the opinion the petition should be granted.
6. THE PEOPLE, Plaintiff and Respondent, v. JEROME JOSEPH MARKHAM, Defendant and Appellant., No. S009472, Crim. No. 25539., Supreme Court of California, 49 Cal. 3d 63; 775 P.2d 1042; 1989 Cal. LEXIS 1529; 260 Cal. Rptr. 273, July 24, 1989.
7. People, Petitioner, v. Superior Court of the County of Los Angeles, Defendant and Appellant; Jose Ronillo Abogado Lucero et al., Real Parties in Interest, No. S002438; THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Supreme Court of California, 1989 Cal. LEXIS 1653, June 29, 1989
8. THE PEOPLE, Plaintiff and Respondent, v. KEITH EDWARD ADCOX, Defendant and Appellant, No. S004558, Crim. No. 23192, Supreme Court of California, 47 Cal. 3d 207; 763 P.2d 906; 1988 Cal. LEXIS 254; 253 Cal. Rptr. 55, November 17, 1988, Appellant's petition for a rehearing was denied February 2, 1989, and the opinion was modified to read as printed above., We have found no prejudicial error at either the guilt or penalty phases of defendant's trial. The financial-gain special circumstances is set aside. In all other respects the judgment is affirmed in its entirety.

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9. THE PEOPLE, Plaintiff and Respondent, v. CHARLES EDWARD MOORE, JR., Defendant and Appellant. In re CHARLES EDWARD MOORE, JR., on Habeas Corpus, No. S004614, Crim. Nos. 23721, 24849, 25087, 25921, Supreme Court of California, 47 Cal. 3d 63; 762 P.2d 1218; 1988 Cal. LEXIS 250; 252 Cal. Rptr. 494, November 3, 1988, Appellant's petition for rehearing was denied January 9, 1989, and the opinion was modified to read as printed above. Arguelles, J., and Eagleson, J., did not participate therein., Because we find that no prejudicial error occurred at either the guilt or penalty phase of defendant's trial, the judgment of guilt, finding of five special circumstances, and the judgment of death are affirmed.

10. COUNTY OF SAN MATEO, Plaintiff and Respondent, v. DELL J., SR., et al., Defendants and Appellants, No. S002243, Supreme Court of California, 46 Cal. 3d 1236; 762 P.2d 1202; 1988 Cal. LEXIS 249; 252 Cal. Rptr. 478, October 31, 1988

11. JOHN F. HENNING, Individually and as Secretary-Treasurer, etc., et al., Petitioners, v. INDUSTRIAL WELFARE COMMISSION et al., Respondents; CALIFORNIA RESTAURANT ASSOCIATION et al., Interveners, No. S005119, Supreme Court of California, 46 Cal. 3d 1262; 762 P.2d 442; 1988 Cal. LEXIS 247; 252 Cal. Rptr. 278, October 31, 1988

12. THE PEOPLE, Plaintiff and Respondent, v. WILLIAM GEORGE BONIN, Defendant and Appellant., No. S004565, Crim. No. 23286, Supreme Court of California, 46 Cal. 3d 659; 758 P.2d 1217; 1988 Cal. LEXIS 189; 250 Cal. Rptr. 687, August 29, 1988; Rehearing denied October 19, 1988.

13. THE PEOPLE, Plaintiff and Respondent, v. JOHN G. BROWN, Defendant and Appellant., Crim. No. 22646., Supreme Court of California, 46 Cal. 3d 432; 758 P.2d 1135; 1988 Cal. LEXIS 172; 250 Cal. Rptr. 604, August 25, 1988; Rehearing den. October 13, 1988.

14. THE PEOPLE, Plaintiff and Respondent, v. ROBERT CRUZ McLAIN, Defendant and Appellant., No. S004370, Crim., Supreme Court of California, 46 Cal. 3d 97; 757 P.2d 569; 1988 Cal. LEXIS 158; 249 Cal. Rptr. 630, July 28, 1988; Rehearing denied September 29, 1988.

15. THE PEOPLE, Plaintiff and Respondent, v. BILLY RAY HAMILTON, Defendant and Appellant., No. S004399, Crim. 22311, Supreme Court of California, 46 Cal. 3d 123; 756 P.2d 1348; 1988 Cal. LEXIS 162; 249 Cal. Rptr. 320, July 28, 1988; Rehearing denied September 22, 1988.

16. THE PEOPLE, Plaintiff and Respondent, v. GARY LEE BUZMAN, Defendant and Appellant. In re GARY LEE BUZMAN on Habeas Corpus., Crim. No. 22418, No. S002482., Supreme Court of California, 45 Cal. 3d 915; 755 P.2d 917; 1988 Cal. LEXIS 150; 248 Cal. Rptr. 467, June 28, 1988; Rehearing denied August 18, 1988.

17. THE PEOPLE, Plaintiff and Respondent, v. JATURUN SIRIPONGS, Defendant and Appellant., Crim. No. 23082., Supreme Court of California, 45 Cal. 3d 548; 754 P.2d 1306; 1988 Cal. LEXIS 113; 247 Cal. Rptr. 729, June 6, 1988; Rehearing Denied July 28, 1988.

18. THE PEOPLE, Plaintiff and Respondent, v. ERIC B. KIMBLE, Defendant and Appellant., Crim. No. 21962., Supreme Court of California, 44 Cal. 3d 480; 749 P.2d 803; 1988 Cal. LEXIS 34; 244 Cal. Rptr. 148, February 25, 1988; As modified; Appellant's petition for rehearing DENIED April 21, 1988. The request for an order staying issuance of remittitur is DENIED April 21, 1988. Mosk,

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J., and Broussard, J. are of the opinion the petition should be granted.

19. THE PEOPLE, Plaintiff and Respondent, v. RICHARD ADAMS HOVEY, Defendant and Appellant., Crim. No. 22487., Supreme Court of California, 44 Cal. 3d 543; 749 P.2d 776; 1988 Cal. LEXIS 35; 244 Cal. Rptr. 121, February 25, 1988.

20. M. L. KING et al., Plaintiffs and Appellants, v. GEORGE MEESE, as Director, et al., Defendants and Respondents., L.A. 32133, Supreme Court of California, 43 Cal. 3d 1217; 743 P.2d 889; 240 Cal. Rptr. 829, October 26, 1987.

21. TERI LYNN SCHMIDT et al., Petitioners, v. THE SUPERIOR COURT OF SANTA BARBARA COUNTY, Respondent; VALLEY MOBILE PARK INVESTMENTS et al., Real Parties in Interest., L.A. No. 32110., Supreme Court of California, 43 Cal. 3d 1060; 742 P.2d 209; 240 Cal. Rptr. 160, October 1, 1987; Plaintiffs' petition for rehearing GRANTED December 17, 1987. Argument will be limited to the following issue: Does either section 798.76 of the Civil Code or the Unruh Civil Rights Act prohibit defendants from excluding adults under the age of 25 from residing in their mobilehome park? Plaintiffs shall serve and file a supplemental brief addressing this issue on or before January 15, 1988. Defendants shall serve and file a responsive supplemental brief on or before February 16, 1988. Plaintiffs may serve and file a reply brief on or before February 26, 1988.

22. ABBOTT FORD, INC., Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; FORD MOTOR COMPANY et al., Real Parties in Interest., L.A. No. 32138., Supreme Court of California, 43 Cal. 3d 858; 741 P.2d 124; 239 Cal. Rptr. 626, September 3, 1987.

23. THE PEOPLE, Plaintiff and Respondent, v. DAVID L. GHENT, JR., Defendant and Appellant., Crim. No. 21311., Supreme Court of California, 43 Cal. 3d 739; 739 P.2d 1250; 239 Cal. Rptr. 82, August 13, 1987.

24. THE PEOPLE, Plaintiff and Respondent, v. MICHAEL RAY BURGNER, Defendant and Appellant., Crim. No. 22219., Supreme Court of California, 41 Cal. 3d 505; 714 P.2d 1251; 224 Cal. Rptr. 112, Mar. 27, 1986; Rehg. den. May 22, 1986.

25. THE PEOPLE, Plaintiff and Respondent, v. RONALD LEE DEERE, Defendant and Appellant., Crim. No. 22878., Supreme Court of California, 41 Cal. 3d 353; 710 P.2d 925; 222 Cal. Rptr. 13, Dec. 31, 1985; Rehg. den. Feb. 14, 1986

26. THE PEOPLE, Plaintiff and Respondent, v. WAYNE A. SHAW, Defendant and Appellant. In re WAYNE A. SHAW on Habeas Corpus., Crim. No. 22443, Crim. No. 22365., Supreme Court of California, 35 Cal. 3d 535; 674 P.2d 759; 198 Cal. Rptr. 788, Feb. 6, 1984; Rehg. den. Mar. 15, 1984.

27. JOHN P. O'CONNOR et al., Plaintiffs and Appellants, v. VILLAGE GREEN OWNERS ASSOCIATION, Defendant and Respondent. VILLAGE GREEN OWNERS ASSOCIATION, Plaintiff and Respondent, v. JOHN P. O'CONNOR et al., Defendants and Appellants. L.A. No. 31495., Supreme Court of California, 33 Cal. 3d 790; 662 P.2d 427; 191 Cal. Rptr. 320, May 9, 1983.

28. THE PEOPLE, Plaintiff and Respondent, v. ANDREW EDWARD ROBERTSON, Defendant and Appellant. In re ANDREW EDWARD ROBERTSON on Habeas Corpus., Crim. No. 20577, Crim. No. 21119., Supreme Court of California, 33 Cal. 3d 21; 655 P.2d 279; 188 Cal. Rptr. 77, Dec. 10, 1982; Rehg. den. Jan. 19, 1983.

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29. THE PEOPLE, Plaintiff and Respondent, v. DOUGLAS RAY STANKEWITZ, Defendant and Appellant. In re DOUGLAS RAY STANKEWITZ on Habeas Corpus., Crim. Nos. 20705, 21310., Supreme Court of California, 32 Cal. 3d 80; 648 P.2d 578; 184 Cal. Rptr. 611; 23 A.L.R.4th 476, Aug. 5, 1982.

30. JAMES BROSNAHAN et al., Petitioners, v. MARCH FONG EU, as Secretary of State, etc., et al., Respondents; PAUL GANN et al., Real Parties in Interest., S.F. No. 24393., Supreme Court of California, 31 Cal. 3d 1; 641 P.2d 200; 181 Cal. Rptr. 100, Mar. 11, 1982.

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1. MICHAEL WALKER, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; RESIDENTIAL CONSTRUCTION ENTERPRISES et al., Real Parties in Interest. CHARLENE WHITE, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; CHARLES D. SLATON et al., Real Parties in Interest, No. SD14626, Supreme Court of California, 53 Cal. 3d 257; 807 P.2d 418; 279 Cal. Rptr. 576; 1991 Cal. LEXIS 1212, April 1, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
2. THE PEOPLE, Plaintiff and Respondent, v. DONALD JAY BEARDSLEE, Defendant and Appellant, No. S004609/Crim. 23593, Supreme Court of California, 53 Cal. 3d 68; 806 P.2d 1311; 279 Cal. Rptr. 276; 1991 Cal. LEXIS 1157, March 25, 1991, Filed THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
3. STANLEY COLEMAN, JR., Plaintiff and Appellant, v. DEPARTMENT OF PERSONNEL ADMINISTRATION, Defendant and Respondent; DEPARTMENT OF GENERAL SERVICES, Party in Interest and Respondent, No. S004129, Supreme Court of California, 52 Cal. 3d 1102; 805 P.2d 300; 278 Cal. Rptr. 346; 1991 Cal. LEXIS 983; 6 BNA IER CAS 365, February 25, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
4. HYDROTECH SYSTEMS, LTD., Plaintiff and Appellant, v. OASIS WATERPARK et al., Defendants and Respondents., No. S015248., Supreme Court of California, 52 Cal. 3d 988; 803 P.2d 370; 1991 Cal. LEXIS 139; 277 Cal. Rptr. 517, January 24, 1991.
5. THE PEOPLE, Plaintiff and Respondent, v. ERROL PIETERS, Defendant and Appellant., No. S014257., Supreme Court of California, 52 Cal. 3d 894; 802 P.2d 420; 276 Cal. Rptr. 918; 1991 Cal. LEXIS 1, January 7, 1991., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
6. THE PEOPLE, Plaintiff and Respondent, v. BRONTE LAMONT WRIGHT, Defendant and Appellant., No. S004479, Crim. No. 22843., Supreme Court of California, 52 Cal. 3d 367; 802 P.2d 221; 1990 Cal. LEXIS 5500; 276 Cal. Rptr. 731, December 27, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
7. ROBERT ZANE CURL, Petitioner, v. THE SUPERIOR COURT OF FRESNO COUNTY, Respondent; THE PEOPLE, Real Party in Interest., No. S010655., Supreme Court of California, 51 Cal. 3d 1292; 801 P.2d 292; 1990 Cal. LEXIS 5240; 276 Cal. Rptr. 49, December 10, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Review Denied February 21, 1991, Reported at 1991 Cal. LEXIS 688.
8. SECURITY PACIFIC NATIONAL BANK, Plaintiff and Appellant, v. ANTON J. WOZAB et al., Defendants and Respondents., No. S010502., Supreme Court of California, 51 Cal. 3d 991; 800 P.2d 557; 1990 Cal. LEXIS 5229; 275 Cal. Rptr. 201, November 29, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Respondents' petition for rehearing DENIED February 14, 1991, Reported at 1991 Cal. LEXIS 665. Mosk, J. Broussard, J. and Kennard, J., are of the opinion the petition should be granted.
9. THE PEOPLE, Plaintiff and Respondent, v. CHARLES EDWARD WHITT, Defendant and Appellant., No. S004689., Supreme Court of California, 51 Cal. 3d 620; 798

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P.2d 849; 1990 Cal. LEXIS 4681; 274 Cal. Rptr. 252, October 25, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Appellant's petition for review DENIED December 20, 1990, Reported at 1990 Cal. LEXIS 5738. Mosk, J., Broussard, J. and Kennard are of the opinion the petition should be granted.

10. JOHN MOORE, Plaintiff and Appellant, v. THE REGENTS OF THE UNIVERSITY OF CALIFORNIA et al., Defendants and Respondents., No. S006987., Supreme Court of California, 51 Cal. 3d 120; 793 P.2d 479; 1990 Cal. LEXIS 2858; 271 Cal. Rptr. 146; 15 U.S.P.Q.2D (BNA) 1753, July 9, 1990., Respondent's petition for rehearing DENIED August 30, 1990. Mosk, J. and Broussard, J., are of the opinion the petition should be granted.

11. THE PEOPLE, Plaintiff and Respondent, v. WILLIAM JOHN CLARK, Defendant and Appellant, No. S004662, Crim. No. 24342, Supreme Court of California, 50 Cal. 3d 583; 789 P.2d 127; 1990 Cal. LEXIS 1272; 268 Cal. Rptr. 399, April 5, 1990, As Modified; Appellant's petition for rehearing DENIED June 7, 1990., The finding that defendant committed the murder charged in count II under the special circumstance of murder by means of explosives (§ 190.2, subd. (a)(6)) is stricken. The judgment is modified to direct that the term imposed on count V is stayed pending service of the terms imposed on counts II, III, and IV, the stay to become permanent upon service of those terms. As modified, the judgment is affirmed.

12. Estate of FLOYD D. PROPST, Deceased. GRAPLE EULA PROPST, Petitioner and Respondent, v. NETA STILLMAN et al., Objectors and Appellants, No. S006951, Supreme Court of California, 50 Cal. 3d 448; 788 P.2d 628; 1990 Cal. LEXIS 1225; 268 Cal. Rptr. 114, April 2, 1990, The judgment of the Court of Appeal is reversed to the extent that it upholds the claims of respondent Graple Eula Propst as surviving joint tenant; in all other respects the judgment is affirmed. The cause is remanded for further proceedings consistent with this opinion. The parties shall bear their own costs on appeal.

13. BARBARA JEAN SILVA-VIDOR, Petitioner, v. THE STATE BAR OF CALIFORNIA, Respondent., No. S008142., Supreme Court of California, 49 Cal. 3d 1071; 782 P.2d 680; 1989 Cal. LEXIS 2096; 264 Cal. Rptr. 439, December 11, 1989.

14. MONTEREY S. P. PARTNERSHIP, Plaintiff and Respondent, v. W. L. BANGHAM, INC., Defendant and Appellant., No. S004027., Supreme Court of California, 49 Cal. 3d 454; 777 P.2d 623; 1989 Cal. LEXIS 1600; 261 Cal. Rptr. 587, August 24, 1989.

15. HAIDY McHUGH, Plaintiff and Respondent, v. SANTA MONICA RENT CONTROL BOARD, Defendant and Appellant; LINDA L. SMITH et al., Real Parties in Interest and Respondents; HELEN McCLELLAN et al., Interveners and Respondents., L.A. No. 32062., Supreme Court of California, 49 Cal. 3d 348; 777 P.2d 91; 1989 Cal. LEXIS 1597; 261 Cal. Rptr. 318, August 17, 1989; Rehearing denied November 1, 1989.

16. THE PEOPLE, Plaintiff and Respondent, v. MICHAEL ALLEN HAMILTON, Defendant and Appellant., No. S004485. Crim. No. 22911., Supreme Court of California, 48 Cal. 3d 1142; 774 P.2d 730; 1989 Cal. LEXIS 1506; 259 Cal. Rptr. 701, June 26, 1989; Modification of Opinion August 17, 1989; Rehearing denied August 17, 1989.

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17. THE PEOPLE, Plaintiff and Respondent, v. WATSON ALLISON, Defendant and Appellant., No. S004649, Crim. No. 24058., Supreme Court of California, 48 Cal. 3d 879; 771 P.2d 1294; 1989 Cal. LEXIS 1295; 258 Cal. Rptr. 208, May 11, 1989; Modification of Opinion June 29, 1989; Rehearing denied June 29, 1989.
18. THE PEOPLE, Plaintiff and Respondent, v. ANDRE BURTON, Defendant and Appellant., No. S004691, Crim. No. 24589., Supreme Court of California, 48 Cal. 3d 843; 771 P.2d 1270; 1989 Cal. LEXIS 1293; 258 Cal. Rptr. 184, May 8, 1989; Rehearing denied July 27, 1989.
19. THE PEOPLE, Plaintiff and Respondent, v. WILLIAM GEORGE BONIN, Defendant and Appellant, No. S004440, Crim. No. 22530, Supreme Court of California, 47 Cal. 3d 808; 765 P.2d 460; 1989 Cal. LEXIS 3; 254 Cal. Rptr. 298, January 9, 1989, Appellant's petition for a rehearing was denied March 2, 1989., For the reasons stated above, we conclude that nine of the ten multiple-murder special-circumstance findings must be set aside on the ground that only one such special circumstance could properly have been alleged. We conclude that in all other respects the judgment must be affirmed.
20. THE PEOPLE, Plaintiff and Respondent, v. RICHARD WILLIAM GARRISON, Defendant and Appellant. In re RICHARD WILLIAM GARRISON on Habeas Corpus, No. S004354, Crim. Nos. 21821, 26262, Supreme Court of California, 47 Cal. 3d 746; 765 P.2d 419; 1989 Cal. LEXIS 1; 254 Cal. Rptr. 257, January 5, 1989, Petitions of both parties for a rehearing were denied March 30, 1989. Broussard, J., was of the opinion that appellant's petition should be granted., The judgment of guilt, the finding of one multiple-murder special circumstance, and the findings of felony-murder (robbery) special circumstances are affirmed. The second multiple-murder special circumstance, the witness-killing special circumstances, and the felony-murder (burglary) special circumstances are set aside. The judgment of death is reversed. We discharge the order to show cause and deny the petition for habeas corpus.
21. DANIEL D. FOLEY, Plaintiff and Appellant, v. INTERACTIVE DATA CORPORATION, Defendant and Respondent, L.A. No. 32148, Supreme Court of California, 47 Cal. 3d 654; 765 P.2d 373; 1988 Cal. LEXIS 269; 254 Cal. Rptr. 211, December 29, 1988 Accordingly, that portion of the judgment of the Court of Appeal affirming the dismissal of plaintiff's causes of action alleging a discharge in breach of public policy and a tortious breach of the implied covenant of good faith and fair dealing is affirmed. That portion of the judgment of the Court of Appeal affirming the dismissal of the cause of action alleging an implied-in-fact contract not to discharge except for good cause is reversed, and the case is remanded for action consistent with the views expressed herein. n43 n43 We do not reach the issue of the retroactive or prospective application of our opinion. The parties have not briefed or argued the question and we will deal with the matter in a later case when we have the benefit of the views of counsel.
22. THE PEOPLE, Plaintiff and Respondent, v. MARVIN PETE WALKER, JR., Defendant and Appellant, No. S004350, Crim. No. 21707, Supreme Court of California, 47 Cal. 3d 605; 765 P.2d 70; 1988 Cal. LEXIS 268; 253 Cal. Rptr. 863, December 27, 1988, Appellant's petition for a rehearing was denied March 16, 1989., The judgment is affirmed in its entirety.
23. SAM ANDREWS' SONS, Petitioner, v. AGRICULTURAL LABOR RELATIONS BOARD, Respondent; UNITED FARM WORKERS OF AMERICA, AFL-CIO, Real Party in Interest,

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- L.A. No. 32129, Supreme Court of California, 47 Cal. 3d 157; 763 P.2d 881; 1988 Cal. LEXIS 255; 253 Cal. Rptr. 30, November 17, 1988, The portions of the Court of Appeal's judgment vacating the special compensated one-hour field access provision of the Board's order and directing the Board to establish specific limitations on access are reversed. Otherwise, the judgment of the Court of Appeal is affirmed and each party is ordered to bear its own costs on review.
24. LAURIE GROUARD WALKER, Petitioner, v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent; THE PEOPLE, Real Party in Interest, S.F. No. 24996, Supreme Court of California, 47 Cal. 3d 112; 763 P.2d 852; 1988 Cal. LEXIS 252; 253 Cal. Rptr. 1, November 10, 1988, Petitioner's application for a rehearing was denied January 9, 1989., We conclude that the prosecution of defendant for involuntary manslaughter and felony child endangerment violates neither statutory law nor the California or federal Constitution. The judgment of the Court of Appeal is affirmed.
25. THE PEOPLE, Plaintiff and Appellant, v. KELVIN SHELBY MALONE, Defendant and Appellant, No. S004553, Crim. No. 23155, Supreme Court of California, 47 Cal. 3d 1; 762 P.2d 1249; 1988 Cal. LEXIS 251; 252 Cal. Rptr. 525, November 3, 1988, Appellant's petition for a rehearing was denied January 9, 1989, and the opinion was modified to read as printed above., For the reasons stated, the judgment is affirmed in its entirety.
26. THE PEOPLE, Plaintiff and Respondent, v. ANTHONY CORNELL BEAN, Defendant and Appellant, No. S004387, Crim. No. 22144, Supreme Court of California, 46 Cal. 3d 919; 760 P.2d 996; 1988 Cal. LEXIS 207; 251 Cal. Rptr. 467, September 19, 1988; Rehearing denied December 15, 1988.
27. THE PEOPLE, Plaintiff and Respondent, v. CHARLES E. McDOWELL, JR., Defendant and Appellant., Crim. No. 24110., Supreme Court of California, 46 Cal. 3d 551; 758 P.2d 1060; 763 P.2d 1269; 1988 Cal. LEXIS 168; 250 Cal. Rptr. 530, August 25, 1988; As Modified on Denial of Rehearing November 10, 1988.
28. THE PEOPLE, Plaintiff and Respondent, v. OSCAR LEE MORRIS, Defendant and Appellant. In re OSCAR LEE MORRIS on Habeas Corpus., No. S004601, Crim. No. 23427, Crim. No. 25305., Supreme Court of California, 46 Cal. 3d 1; 756 P.2d 843; 1988 Cal. LEXIS 157; 249 Cal. Rptr. 119, July 21, 1988; Rehearing denied September 1, 1988
29. THE PEOPLE, Plaintiff and Respondent, v. BENJAMIN WAI SILVA, Defendant and Appellant., Crim. No. 22546., Supreme Court of California, 45 Cal. 3d 604; 754 P.2d 1070; 1988 Cal. LEXIS 115; 247 Cal. Rptr. 573, June 9, 1988; Rehearing denied July 28, 1988.
30. THE PEOPLE, Plaintiff and Respondent, v. BERNARD LEE HAMILTON, Defendant and Appellant. In re BERNARD LEE HAMILTON on Habeas Corpus., Crim. No. 21958, Crim. Nos. 25303, S001870, Supreme Court of California, 45 Cal. 3d 351; 753 P.2d 1109; 1988 Cal. LEXIS 107; 247 Cal. Rptr. 31, May 19, 1988; As Modified July 28, 1988 on Denial of Rehearing.
31. THE PEOPLE, Plaintiff and Respondent, v. JAMES RICHARD ODLE, Defendant and Appellant., Crim. No. 23254., Supreme Court of California, 45 Cal. 3d 386; 754 P.2d 184; 1988 Cal. LEXIS 105; 247 Cal. Rptr. 137, May 19, 1988; Rehearing Denied June 30, 1988.

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32. THE PEOPLE, Plaintiff and Respondent, v. DARNELL LUCKY, Defendant and Appellant., Crim. No. 22572., Supreme Court of California, 45 Cal. 3d 259; 753 P.2d 1052; 1988 Cal. LEXIS 94; 247 Cal. Rptr. 1, May 16, 1988; Rehearing Denied July 21, 1988.
33. THE PEOPLE, Plaintiff and Respondent, v. JAMES ANDREW MELTON, Defendant and Appellant., Crim. No. 23029., Supreme Court of California, 44 Cal. 3d 713; 750 P.2d 741; 1988 Cal. LEXIS 53; 244 Cal. Rptr. 867, March 3, 1988; As modified on denial of rehearing May 26, 1988.
34. THE PEOPLE, Plaintiff and Respondent, v. ALEJANDRO GILBERT RUIZ, Defendant and Appellant., Crim. No. 21370., Supreme Court of California, 44 Cal. 3d 589; 749 P.2d 854; 1988 Cal. LEXIS 39; 244 Cal. Rptr. 200, February 29, 1988; Modification of opinion on denial of rehearing April 7, 1988.
35. THE PEOPLE, Plaintiff and Respondent, v. GARY LEE HOWARD, SR., Defendant and Appellant., Crim. No. 22647., Supreme Court of California, 44 Cal. 3d 375; 749 P.2d 279; 1988 Cal. LEXIS 24; 243 Cal. Rptr. 842, February 16, 1988; Rehearing denied April 21, 1988.
36. THE PEOPLE, Plaintiff and Respondent, v. RONALD LEE BELL, Defendant and Appellant., Crim. No. 20879., Supreme Court of California, 44 Cal. 3d 137; 745 P.2d 573; 241 Cal. Rptr. 890, December 3, 1987; Rehearing granted January 28, 1988 (See 49 Cal. 3d 502)
37. THE PEOPLE, Plaintiff and Respondent, v. ADAM MIRANDA, Defendant and Appellant. In re ADAM MIRANDA on Habeas Corpus., Crim. No. 22787, Crim. No. 25350., Supreme Court of California, 44 Cal. 3d 57; 744 P.2d 1127; 241 Cal. Rptr. 594, November 12, 1987; Modification of opinion on denial of rehearing January 7, 1988.
38. THE PEOPLE, Plaintiff and Respondent, v. JAMES PHILLIP ANDERSON, Defendant and Appellant., Crim. No. 21287., Supreme Court of California, 43 Cal. 3d 1104; 742 P.2d 1306; 240 Cal. Rptr. 585, October 13, 1987; Rehearing denied November 12, 1987.
39. MAGDALINE M. HANSEN et al., Plaintiffs and Appellants, v. CITY OF SAN BUENAVENTURA, Defendant and Respondent., L.A. No. 32091., Supreme Court of California, 42 Cal. 3d 1172; 729 P.2d 186; 233 Cal. Rptr. 22, Dec. 31, 1986; Rehg. den. Feb. 5, 1987.
40. THE PEOPLE, Plaintiff and Respondent, v. CLARENCE RAY ALLEN, Defendant and Appellant., Crim. No. 22879., Supreme Court of California, 42 Cal. 3d 1222; 729 P.2d 115; 232 Cal. Rptr. 849, Dec. 31, 1986; As modified Jan. 2, 1987; Rehg. den. Feb. 11, 1987.
41. THE PEOPLE, Plaintiff and Respondent, v. RONALD EQUARTE, Defendant and Appellant., Crim. No. 24651., Supreme Court of California, 42 Cal. 3d 456; 722 P.2d 890; 229 Cal. Rptr. 116, Aug. 21, 1986; As modified Aug. 28, 1986; Rehg. denied Oct. 2, 1986.
42. THE PEOPLE, Plaintiff and Respondent, v. ALONZO COLLINS, Defendant and Appellant., Crim. No. 24784., Supreme Court of California, 42 Cal. 3d 378; 722 P.2d 173; 228 Cal. Rptr. 899, Aug. 11, 1986; Rehg. den. Sept. 10, 1986; Opn. Filed Jan. 6, 1987 not for publication.

43. THE PEOPLE, Plaintiff and Respondent, v. MICHAEL TODD LEACH, Defendant and Respondent., Crim. No. 21586., Supreme Court of California, 41 Cal. 3d 92; 710 P.2d 893; 221 Cal. Rptr. 826, December 31, 1985; Rehearing Denied January 30, 1986
44. THE PEOPLE, Plaintiff and Respondent, v. JOHN GALEN DAVENPORT, Defendant and Appellant., Crim. No. 22356., Supreme Court of California, 41 Cal. 3d 247; 710 P.2d 861; 221 Cal. Rptr. 794, Dec. 31, 1985; Rehearing Denied January 30, 1986
45. THE PEOPLE, Plaintiff and Respondent, v. RICHARD N. WEAVER, Defendant and Appellant., Crim. No. 23932., Supreme Court of California, 39 Cal. 3d 654; 703 P.2d 1139; 217 Cal. Rptr. 245, Aug. 22, 1985.
46. WESTERN OIL AND GAS ASSOCIATION et al., Plaintiffs and Respondents, v. AIR RESOURCES BOARD et al., Defendants and Appellants., L.A. No. 31585., Supreme Court of California, 37 Cal. 3d 502; 691 P.2d 606; 208 Cal. Rptr. 850, Dec. 17, 1984.
47. THE PEOPLE, Plaintiff and Respondent, v. NORMAN JAY DILLON, Defendant and Appellant, Crim. No. 21964, Supreme Court of California, 34 Cal. 3d 441; 668 P.2d 697; 194 Cal. Rptr. 390, September 1, 1983; Rehg. October 6, 1983; Respondent's petition for a rehearing was denied October 6, 1983. Richardson, J., was of the opinion that the petition should be granted.
48. THE PEOPLE, Plaintiff and Respondent, v. EARL BRADLEY CROWSON, Defendant and Appellant., Crim. No. 22415., Supreme Court of California, 33 Cal. 3d 623; 660 P.2d 389; 190 Cal. Rptr. 165, Mar. 24, 1983.
49. THE PEOPLE, Plaintiff and Respondent, v. ELBERT LEE EASLEY, Defendant and Appellant., Crim. No. 21117., Supreme Court of California, 33 Cal. 3d 65; 654 P.2d 1272; 187 Cal. Rptr. 745, Dec. 10, 1982; Rehg. granted Feb. 23, 1983 (See 34 C.3d 858)
50. J. GEORGE PRESSLER, Plaintiff and Respondent, v. DONALD L. BREN COMPANY, Defendant and Appellant; DEPARTMENT OF INDUSTRIAL RELATIONS, Intervener and Respondent., L.A. No. 31553., Supreme Court of California, 32 Cal. 3d 831; 654 P.2d 219; 187 Cal. Rptr. 449; 25 BNA WH Cas 1202, Dec. 6, 1982.
51. TERRY W. SLAUGHTER, Plaintiff and Appellant, v. JAY W. FRIEDMAN et al., Defendants and Respondents., L.A. No. 31541., Supreme Court of California, 32 Cal. 3d 149; 649 P.2d 886; 185 Cal. Rptr. 244, Aug. 23, 1982; Rehg. den. Sept. 30, 1982.

1. THE PEOPLE, Plaintiff and Respondent, v. KEVIN COOPER, Defendant and Appellant, No. S004687, Crim. 24552, Supreme Court of California, 1991 Cal. LEXIS 1719, May 6, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
2. THE PEOPLE, Plaintiff and Respondent, v. GEORGE HERBERT WHARTON, Defendant and Appellant, No. S004769, Supreme Court of California, 1991 Cal. LEXIS 1608, April 29, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
3. ROBERT ALAN TAPIA, Petitioner, v. SUPERIOR COURT OF TULARE COUNTY, Respondent; THE PEOPLE, Real Party in Interest, No. S016614, Supreme Court of California, 807 P.2d 434; 279 Cal. Rptr. 592; 1991 Cal. LEXIS 1210, April 1, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
4. JULIE GOURLEY, Plaintiff and Respondent, v. STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, Defendant and Appellant, No. S014133, Supreme Court of California, 53 Cal. 3d 121; 806 P.2d 1342; 279 Cal. Rptr. 307; 1991 Cal. LEXIS 1211, March 28, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
5. THE PEOPLE, Plaintiff and Respondent, v. BRUCE WAYNE MORRIS, Defendant and Appellant, No. S004781, Supreme Court of California, 53 Cal. 3d 152; 807 P.2d 949; 279 Cal. Rptr. 720; 1991 Cal. LEXIS 1218, March 28, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
6. TAMELA HARRIS et al., Plaintiffs and Appellants, v. CAPITAL GROWTH INVESTORS XIV et al., Defendants and Respondents, No. S011367, Supreme Court of California 52 Cal. 3d 1142; 805 P.2d 873; 1991 Cal. LEXIS 900; 278 Cal. Rptr. 614, February 28, 1991, Filed, THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
7. J. C. PENNEY CASUALTY INSURANCE COMPANY, Plaintiff, Cross-defendant and Appellant, v. M. K., a Minor, etc., Defendant, Cross-complainant and Appellant; S. K. et al., Defendants, Cross-complainants and Respondents., No. S010524., Supreme Court of California, 52 Cal. 3d 1009; 804 P.2d 689; 278 Cal. Rptr. 64; 1991 Cal. LEXIS 354, February 5, 1991.
8. PERALTA COMMUNITY COLLEGE DISTRICT, Plaintiff and Respondent, v. FAIR EMPLOYMENT AND HOUSING COMMISSION, Defendant and Appellant; ROSE BROWN, Real Party in Interest and Respondent., No. S009487., Supreme Court of California, 52 Cal. 3d 40; 801 P.2d 357; 1990 Cal. LEXIS 5488; 276 Cal. Rptr. 114; 54 Fair Empl. Prac. Cas. (BNA) 1239; 55 Empl. Prac. Dec. (CCH) P40,481, December 20, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION.
9. THE PEOPLE, Plaintiff and Respondent, v. JESSE EDWARD BONZALEZ, Defendant and Appellant. In re JESSE EDWARD BONZALEZ on Habeas Corpus. THE PEOPLE, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; JESSE EDWARD BONZALEZ Real Party in Interest., No. S004384, No. S004384, No. S012508., Supreme Court of California, 51 Cal. 3d 1179; 800 P.2d 1159; 1990 Cal. LEXIS 5233; 275 Cal. Rptr. 729, December 3, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., As Amended;

Review Denied February 27, 1991, Reported at 1991 Cal. LEXIS 874.

10. THE PEOPLE, Plaintiff and Respondent, v. TEOFILLO MEDINA, JR., Defendant and Appellant., No. S004758., Supreme Court of California, 51 Cal. 3d 870; 799 P.2d 1282; 1990 Cal. LEXIS 5054; 274 Cal. Rptr. 849, November 19, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Appellant's petition for rehearing DENIED February 14, 1991, Reported at 1991 Cal. LEXIS 664. Mosk, J. and Broussard, J., are of the opinion the petition should be granted.

11. THE PEOPLE, Plaintiff and Respondent, v. RONALD LEE SANDERS, Defendant and Appellant., No. S004439., Supreme Court of California, 51 Cal. 3d 471; 797 P.2d 561; 1990 Cal. LEXIS 4385; 273 Cal. Rptr. 537, September 27, 1990., THE LEXIS PAGINATION OF THIS DOCUMENT IS SUBJECT TO CHANGE PENDING RELEASE OF THE FINAL PUBLISHED VERSION., Review Denied November 28, 1990, Reported at 1990 Cal. LEXIS 5474.

12. In re MALINDA S., a Person Coming Under the Juvenile Court Law. SAN DIEGO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. RUSSELL S., Defendant and Appellant., No. S012792., Supreme Court of California, 51 Cal. 3d 368; 795 P.2d 1244; 1990 Cal. LEXIS 4024; 272 Cal. Rptr. 787, September 6, 1990.

13. ARASIMO SETTEMO LUCIDO, Petitioner, v. THE SUPERIOR COURT OF MENDOCINO COUNTY, Respondent; THE PEOPLE, Real Party in Interest., No. S011151., Supreme Court of California, 51 Cal. 3d 335; 795 P.2d 1223; 1990 Cal. LEXIS 4026; 272 Cal. Rptr. 767, September 6, 1990.

14. THE PEOPLE, Plaintiff and Respondent, v. MICHAEL DEE MATTSON, Defendant and Appellant, No. S004705, Crim. No. 25181, Supreme Court of California, 50 Cal. 3d 826; 789 P.2d 983; 1990 Cal. LEXIS 1844; 268 Cal. Rptr. 802, May 3, 1990, Appellant's petition for review DENIED July 11, 1990. Mosk, J. and Broussard, J. are of the opinion the petition should be granted. On October 24, 1990, this court stayed the judgment of execution pending final determination of appellant's petition for certiorari filed in the United States Supreme Court. This court hereby confirms that the stay extends through and including the disposition of any timely petition for rehearing in the United States Supreme Court, or the expiration of the 25-day period for filing such petition, whichever is sooner. (See Rules Supreme Ct., rule 44.) Certiorari having been denied on December 10, 1990, the stay thus extends through and including January 4, 1991, at the earliest, unless a petition for rehearing is sooner denied., The judgment is affirmed.

15. THE PEOPLE, Plaintiff and Respondent, v. THADDEUS LOUIS TURNER, Defendant and Appellant, No. S004658, Supreme Court of California, 50 Cal. 3d 668; 789 P.2d 887; 1990 Cal. LEXIS 1654; 268 Cal. Rptr. 706, April 26, 1990, Appellant's petition for rehearing DENIED June 21, 1990.; The judgment is affirmed in its entirety.

16. TRAVELERS INDEMNITY COMPANY et al., Petitioners, v. ROXANI M. GILLESPIE, as Insurance Commissioner, etc., Respondent, No. S008962, Supreme Court of California, 50 Cal. 3d 82; 785 P.2d 500; 1990 Cal. LEXIS 149; 266 Cal. Rptr. 117 January 29, 1990, The petition for peremptory writ of mandate is granted. Let a writ of mandate issue commanding the Commissioner to set aside her decision and order, and to issue a new decision and order not inconsistent with this

opinion.

17. THE PEOPLE, Plaintiff and Respondent, v. LELAND DELLINGER, Defendant and Appellant., No. S006359., Supreme Court of California, 49 Cal. 3d 1212; 783 P.2d 200; 1989 Cal. LEXIS 2101; 264 Cal. Rptr. 841, December 18, 1989; Appellant's petition for rehearing DENIED February 15, 1990.

18. DANIEL HERNANDEZ, Petitioner, v. THE MUNICIPAL COURT FOR THE LOS ANGELES JUDICIAL DISTRICT OF LOS ANGELES COUNTY, Respondent; THE PEOPLE, Real Party in Interest., No. S001133., Supreme Court of California, 49 Cal. 3d 713; 781 P.2d 547; 1989 Cal. LEXIS 2097; 263 Cal. Rptr. 513, October 31, 1989., Petitioner's application for a rehearing denied January 18, 1990. Mosk, J., and Broussard, J., were of the opinion that the petition should be granted.

19. THE PEOPLE, Plaintiff and Respondent, v. RONALD LEE BELL, Defendant and Appellant., No. S004260, Crim. No. 20879., Supreme Court of California, 49 Cal. 3d 502; 778 P.2d 129; 1989 Cal. LEXIS 1602; 262 Cal. Rptr. 1, September 5, 1989; Appellant's petition for rehearing is DENIED November 30, 1989. Mosk, J. and Boussard, J., are of the opinion the petition should be granted.

20. COMMON CAUSE OF CALIFORNIA et al., Plaintiffs and Respondents, v. BOARD OF SUPERVISORS OF LOS ANGELES COUNTY et al., Defendants and Appellants., No. S001833., Supreme Court of California, 49 Cal. 3d 432; 777 P.2d 610; 1989 Cal. LEXIS 1598; 261 Cal. Rptr. 574, August 24, 1989.

21. THE PEOPLE, Plaintiff and Respondent, v. DAVID LESLIE MURTISHAW, Defendant and Appellant., No. S004521. Crim. No. 23039., Supreme Court of California, 48 Cal. 3d 1001; 773 P.2d 172; 1989 Cal. LEXIS 1359; 258 Cal. Rptr. 821, June 8, 1989; Rehearing denied August 31, 1989.

22. ROBERT NEWMAN, Plaintiff and Appellant, v. EMERSON RADIO CORPORATION, Defendant and Respondent., No. S009325, L.A. No. 32284., Supreme Court of California, 48 Cal. 3d 973; 772 P.2d 1059; 1989 Cal. LEXIS 1299; 258 Cal. Rptr. 592, May 25, 1989.

23. MARIA E. THING, Plaintiff and Appellant, v. JAMES V. La CHUSA et al., Defendants and Respondents., L.A. No. 32301., Supreme Court of California, 48 Cal. 3d 644; 771 P.2d 814; 1989 Cal. LEXIS 1492; 257 Cal. Rptr. 865, April 27, 1989.

24. KENNETH FRANK, Petitioner, v. THE SUPERIOR COURT OF KERN COUNTY, Respondent; THE PEOPLE, Real Party in Interest., No. S001963., Supreme Court of California, 48 Cal. 3d 632; 770 P.2d 1119; 1989 Cal. LEXIS 1157; 257 Cal. Rptr. 550, April 20, 1989; Rehearing denied June 1, 1989.

25. THE PEOPLE, Plaintiff and Appellant, v. MICHAEL ANGELO MORALES, Defendant and Appellant., No. S004552, Crim. No. 23153., Supreme Court of California, 48 Cal. 3d 527; 770 P.2d 244; 1989 Cal. LEXIS 1107; 257 Cal. Rptr. 64, April 6, 1989; Modification of Opinion June 1, 1989; Rehearing denied June 1, 1989.

26. In re ERIC W. JOYNER, on Habeas Corpus., Crim. No. 25596., Supreme Court of California, 48 Cal. 3d 487; 769 P.2d 967; 1989 Cal. LEXIS 1105; 256 Cal. Rptr. 785, April 3, 1989; Rehearing denied May 24, 1989.

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27. THE PEOPLE, Plaintiff and Respondent, v. MAGDALENO TORO, Defendant and Appellant, No. S002765, Supreme Court of California, 47 Cal. 3d 966; 766 P.2d 577; 1989 Cal. LEXIS 10; 254 Cal. Rptr. 811, January 30, 1989, Appellant's petition for a rehearing was denied March 23, 1989. Mosk, J., and Broussard, J., were of the opinion that the petition should be granted., The judgment of the Court of Appeal is reversed.
28. COUNTY OF ALAMEDA, Plaintiff and Respondent, v. BOARD OF RETIREMENT OF THE ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION, Defendant and Respondent; ROGER L. CARNES, Real Party in Interest and Appellant, S.F. No. 25021, Supreme Court of California, 46 Cal. 3d 902; 760 P.2d 464; 1988 Cal. LEXIS 196; 251 Cal. Rptr. 267, September 19, 1988
29. THE PEOPLE, Plaintiff and Respondent, v. KENNETH CRANDELL, Defendant and Appellant, Crim. No. 22467, Supreme Court of California, 46 Cal. 3d 833; 760 P.2d 423; 1988 Cal. LEXIS 194; 251 Cal. Rptr. 227, September 15, 1988; Rehearing denied November 10, 1988.
30. THE PEOPLE, Plaintiff and Respondent, v. RUSSELL COLEMAN, Defendant and Appellant, No. S004410, Crim. No. 22376, Supreme Court of California, 46 Cal. 3d 749; 759 P.2d 1260; 1988 Cal. LEXIS 209; 251 Cal. Rptr. 83, September 8, 1988; Modification of Opinion November 2, 1988; Rehearing denied November 3, 1988.
31. RICHARD C. ELDEN, Plaintiff and Appellant, v. ROBERT LOUIS SHELDON et al., Defendants and Respondents., L.A. No. 32063., Supreme Court of California, 46 Cal. 3d 267; 758 P.2d 582; 1988 Cal. LEXIS 167; 250 Cal. Rptr. 254, August 18, 1988; Modification of dissenting opinion September 15, 1988.
32. In re GREGORY ULAS POWELL on Habeas Corpus., Crim. No. 24441., Supreme Court of California, 45 Cal. 3d 894; 755 P.2d 881; 1988 Cal. LEXIS 127; 248 Cal. Rptr. 431, June 27, 1988; As modified June 30, 1988.
33. THE PEOPLE, Plaintiff and Appellant, v. ERIC FORD, Defendant and Respondent. Crim. No. 25361., Supreme Court of California, 45 Cal. 3d 431; 754 P.2d 168; 1988 Cal. LEXIS 102; 247 Cal. Rptr. 121, May 19, 1988; Rehearing Denied June 30, 1988.
34. THE PEOPLE, Plaintiff and Respondent, v. MELVIN MEFFERY WADE, Defendant and Appellant., Crim. No. 22654., Supreme Court of California, 44 Cal. 3d 975; 750 P.2d 794; 1988 Cal. LEXIS 73; 244 Cal. Rptr. 905, March 24, 1988; Modification of opinion May 19, 1988; Rehearing denied May 19, 1988.
35. THE PEOPLE, Plaintiff and Respondent, v. RAYMOND RAMIREZ BUERRERO, Defendant and Appellant., Crim. No. 26174., Supreme Court of California, 44 Cal. 3d 343; 748 P.2d 1150; 1988 Cal. LEXIS 25; 243 Cal. Rptr. 688, February 11, 1988; Rehearing denied March 24, 1988.
36. In re MICHAEL G., a Minor, on Habeas Corpus. MICHAEL G., Petitioner, v. THE SUPERIOR COURT OF FRESNO COUNTY, Respondent; THE PEOPLE, Real Party in Interest. S.F. No. 24917., Supreme Court of California, 44 Cal. 3d 283; 747 P.2d 1152; 1988 Cal. LEXIS 21; 243 Cal. Rptr. 224, January 25, 1988.
37. DYNA-MED, INC., Plaintiff and Appellant, v. FAIR EMPLOYMENT AND HOUSING COMMISSION, Defendant and Respondent., L.A. No. 32145., Supreme Court of California, 43 Cal. 3d 1379; 743 P.2d 1323; 241 Cal. Rptr. 67; 46 Fair Empl.

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- Prac. Cas. (BNA) 1143; 44 Empl. Prac. Dec. (CCH) P37,503, November 2, 1987.
38. WILLIAM INGERSOLL et al., Petitioners, v. ALFRED PALMER, as Chief of Police, etc., et al., Respondents., S.F. No. 25001., Supreme Court of California, 43 Cal. 3d 1321; 743 P.2d 1299; 241 Cal. Rptr. 42, October 29, 1987.
39. In re JAMES D., a Person Coming Under the Juvenile Court Law. THE PEOPLE, Plaintiff and Appellant, v. JAMES D., a Minor, Defendant and Respondent., L.A. No. 32050., Supreme Court of California, 43 Cal. 3d 903; 741 P.2d 161; 239 Cal. Rptr. 663, September 8, 1987; As modified September 16, 1987.
40. AGRICULTURAL LABOR RELATIONS BOARD, Plaintiff and Respondent, v. TEX-CAL LAND MANAGEMENT, INC., Defendant and Appellant. AGRICULTURAL LABOR RELATIONS BOARD, Petitioner, v. THE SUPERIOR COURT OF TULARE COUNTY, Respondent; TEX-CAL LAND MANAGEMENT, INC., Real Party in Interest., S.F. No. 24916., Supreme Court of California, 43 Cal. 3d 696; 739 P.2d 140; 238 Cal. Rptr. 780, August 3, 1987; As modified August 13, 1987
41. EDDIE O'HARE, Petitioner, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent; THE PEOPLE, Real Party in Interest., L.A. No. 32209., Supreme Court of California, 43 Cal. 3d 86; 729 P.2d 766; 233 Cal. Rptr. 332, Jan. 2, 1987.
42. THE PEOPLE, Plaintiff and Respondent, v. VENSON LANE MYERS, Defendant and Appellant., Crim. No. 21991., Supreme Court of California, 43 Cal. 3d 250; 729 P.2d 698; 233 Cal. Rptr. 264, Jan. 2, 1987; Rehg. denied April 2, 1987.
43. T. M. COBB COMPANY, INC., Petitioner, v. THE SUPERIOR COURT OF MARIN COUNTY, Respondent; SHERRE STURM et al., Real Parties in Interest., S.F. No. 24572., Supreme Court of California, 36 Cal. 3d 273; 682 P.2d 338; 204 Cal. Rptr. 143, July 2, 1984.
44. TRIPLE E PRODUCE CORPORATION, Petitioner, v. AGRICULTURAL LABOR RELATIONS BOARD, Respondent; UNITED FARM WORKERS OF AMERICA, AFL-CIO, Real Party in Interest., S.F. No. 24414., Supreme Court of California, 35 Cal. 3d 42; 671 P.2d 1260; 196 Cal. Rptr. 518, Nov. 21, 1983; Rehg. den. Jan. 19, 1984.
45. MARY TERESA NORMAN, Plaintiff and Respondent, v. UNEMPLOYMENT INSURANCE APPEALS BOARD, Defendant and Appellant; EMPLOYMENT DEVELOPMENT DEPARTMENT, Real Party in Interest and Appellant., S.F. No. 24449., Supreme Court of California, 34 Cal. 3d 1; 663 P.2d 904; 192 Cal. Rptr. 134, June 6, 1983; Rehg. den. July 14, 1983.
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47. WESTSIDE COMMUNITY FOR INDEPENDENT LIVING, INC., et al., Plaintiffs and Respondents, v. MARIO G. OBLEDO, as Secretary, etc., Defendant and Appellant., L.A. No. 31561., Supreme Court of California, 33 Cal. 3d 348; 657 P.2d 365; 188 Cal. Rptr. 873, Feb. 7, 1983.
48. THE PEOPLE, Plaintiff and Respondent, v. NEVA B. SNYDER, Defendant and Appellant., Crim. No. 22293., Supreme Court of California, 32 Cal. 3d 590; 652 P.2d 42; 186 Cal. Rptr. 485, Oct. 18, 1982.

CALIFORNIA ALUMNI ASSOCIATION

Award for 1992

ALLEN BROUSSARD, attorney, jurist, educator, alumnus of the University of California ☞ Born in Lake Charles, Louisiana, a small town in the segregated south in 1929, you have since that year taken a voyage across time, geography, and changing mores ☞ As a teenager you made a transcontinental move with your family to the Bay Area ☞ At San Francisco City College, you began the first of many efforts toward breaking down racial barriers to employment ☞ You saw that you could make a significant difference in the lives of your people, and this led you to choose a career and a course for your life: the law ☞ You finished your undergraduate work at Berkeley and continued on, leaving an exceptional record as a law student at Boalt ☞ You began work in your field, first as a research attorney for the California Court of Appeal, then extended your knowledge with eight years in private practice in Oakland ☞ In keeping with your desire to engender greater changes, you sought the role of judge, which, in a variety of venues, you would perform for 27 years, first in the Oakland-Piedmont Municipal Court, then as judge of the Alameda County Superior Court from 1975 to 1981 ☞ In the latter year you were elevated to become Associate Justice of the Supreme Court of California ☞ During your decade on that bench you wrote more majority opinions than any other member of the court as well as key dissents in many important decisions ☞ Your writings are held as examples of eloquence, careful thought, and legal craftsmanship ☞ Widely noted for your independence, you also built a reputation as a consensus builder on the court and beyond ☞ In a lifetime of making and breaking precedents, you were the first black member of your national law fraternity, the first black judge elected as President of the California Judges Association, and you are recognized as a pioneer in the fight for minority opportunities in the judicial system ☞ Active in all levels of legal education, you have fostered the advancement of aspiring students, and you have been a longtime faculty member of the California Trial Judges College, held annually at Boalt Hall ☞ Your service to the community continues as Chairman of the Board of the Oakland-based advocacy group Children Now and as Commissioner of the Port of Oakland, and as a member of boards, commissions, and committees for civic and legal organizations as well as your University ☞ In recognition of your achievements, the California Alumni Association confers upon you its highest honor, the California Alumni Association Award for 1992 ☞

Given at Berkeley this twelfth day of
March, nineteen hundred and ninety three



PRESIDENT



Appendix G: "California Q&A: Allen Broussard," William Rodarmor, *California Monthly*, vol. 103, no. 4, February 1993.

A conversation with

When people call former California Supreme Court Justice Allen Broussard '50, Boalt '53, a "great role model," the implication is that he is a model for *blacks*. After all, he rose from poverty in the segregated South to become the second black member on California's High Court (following Wiley Manuel '51, Hastings '53). But listen to his longtime friend, Robert Raven, Boalt '52: "Allen has been an ideal judge—his integrity and temperament are first-rate—and a lot of people in the law look up to him. He's also a great person; Allen is an excellent role model—for all of us." To that accolade, the California Alumni Association is adding its own: Allen Broussard is the Association's 1992 Alumnus of the Year.

A witty, self-deprecating man, Broussard will probably be the first to puncture any inflated praise. At his 1981 swearing-in ceremony at Oakland's Paramount Theater—he was appointed by Governor Jerry Brown '61—the new Justice lightened the occasion with the crack: "All my life I said that if I had the opportunity to play the Paramount, I'd do it big!"

Born poor in Louisiana in 1929, Broussard moved to the Bay Area with his family in 1945. He spent two years at San Francisco City College, then went on to Berkeley and Boalt Hall. The law school assigned an upperclassman to look after each new freshman, and Broussard drew Bob Raven, who would become a lifelong friend (and the Alumni Association's 1989 Alumnus of the Year). "Allen was always a very savvy guy," Raven said. "He had a grasp for any situation he found himself in, and he fitted in well."

At Boalt, Broussard won the Arthur Newhouse and Arthur Gould Tashiera scholarships, edited the *California Law Review*, and served as vice president of the Boalt Hall Students Association. After two years in the Army, Broussard became a research attorney for Raymond Peters, Boalt '27, then presiding justice of the California Court of Appeal, First District (and later a justice on the Supreme Court). Broussard worked in private practice

(Continued on page 34)

ALLEN BROUSSARD

Q & A

WILLIAM RODARMOR

from 1956 to 1964, becoming a partner with Oakland's Metoyer, Sweeney & Broussard. But Allen Broussard felt he could make his biggest contribution as a judge. He wound up spending 27 years on the bench, from his first municipal court appointment in 1964 to his retirement from the Supreme Court in 1991. Today Broussard lives in Oakland near his mother, sister, and brother; he and his wife Odessa have two sons, Craig and Keith '87.

For more than half his ten years on the California Supreme Court, Broussard was one of its leaders. At the peak of his influence in the '80s, Broussard wrote more majority opinions than any other member of the court, including some of its most sweeping opinions. In *Carlos v. Superior Court* in 1983, for example, he held

that juries in capital cases must be instructed that the defendant had an intent to kill. Since most juries in felony murder cases hadn't been so instructed, reversals came in droves.

"Allen was a very important figure on the Supreme Court," says legal scholar Bernard Witkin '25, Boalt '28. "He was an experienced lawyer, and his opinions were well-crafted. But he also had a sophisticated understanding of the struggle of blacks in law practice and the judiciary—a battle for recognition that has been successfully fought."

But for Justice Broussard, a reversal of fortune came after the pivotal election of 1986, which ousted some of his main allies on the Court: the liberal trio of Chief Justice Rose Bird, M.A. '62, Boalt '65; Justice Cruz Reynoso, Boalt '58; and Justice Joe Grodin. Governor Deukmejian replaced the three with conservatives, and the Court swung to the right under Chief Justice Malcolm Lucas. Broussard found himself writing many more dissents, including this sharp note when his *Carlos* decision was reversed in 1987: "Periodically, when the political winds gust in a new direction, it becomes necessary to remind all concerned of the virtues of a steady course."

Perhaps out of frustration, Broussard set his own course in 1991 for a potent San Francisco law firm rife with Old Blue Democrats: Coblenz, Cahen, McCabe & Breyer. The firm, headed by former UC regent Bill Coblenz '43, is housed in glass-and-marble elegance in a Kearney Street building. It's the only firm in the state with a black retired Supreme Court justice on board, making Broussard a major rainmaker, a magnet for new law business.

The Justice has also been a magnet for bright students, especially those from Boalt. He meets with them regularly and judges several moot courts every year, including the Black Law Students annual Frederick Douglass competition. He also is a kind of godfather to legions of law students



who worked in his Court chambers over the years. Asked whether there is a "Broussard Alumni Club," the Justice laughed. "I've worked with a lot of upcoming young lawyers, and many of them ask me to swear them in when they join the bar." Broussard has even married a few; the unions have lasted, he said, "because I used good glue."

"He's always been a role model for me," says Richard Russell '78, a southern California lawyer and Alumni Association vice president. "Given what this man has accomplished, he really is the black Horatio Alger."

Alumnus of the Year Allen Broussard will be honored at the University of California's 125th Charter Banquet, held this year at the San Francisco Marriott Hotel on March 12. (For details, see page 29.)

Q: What first got you interested in the law? Your family?

A: No, there's nothing in my background.... I was born and reared in the racially segregated south, in Lake Charles, Louisiana. My father was a laborer; my mother took in sewing at home. We lived right across the street from the colored high school, but my parents chose—very wisely—to send me to Sacred Heart, the Catholic high school. We weren't starving, but it was a sacrifice to send me there. Sacred Heart High was small, but I got a good fundamental education there.

Q: I've heard you once did a little boxing. Did you learn that when you were a kid?

A: No, but it would have come in handy when I was in high school, because we used to have to fight our way to school every morning. My brother, my cousin, and I worked in the downtown stores before school, and used to ride our bikes downtown every morning, past two or three blocks of the white residential area. On our way back, the white kids would be coming out of their yards to go to school, and they'd

sic their dogs on us and throw rocks at us. We used to carry broom handles and billy clubs to fight off the dogs. And sometimes we'd have the opportunity to do a little one-on-one pugilism.

Q: *How did you grow up without developing a deep resentment against whites?*

A: I could have very easily become bitter. If I didn't it was mainly because of the Sisters of the Blessed Sacrament, who taught us at Sacred Heart. They were primarily middle- and upper-class white women who had come into the South to teach poor blacks. They were a tremendous influence on our lives. And we primarily had white priests. So I had a lot of enrichment in my life from people who were white.

Q: *After your family moved to the Bay Area, you didn't go to Cal right away. Why?*

A: I'll tell you. I applied to Cal, but I had gotten a D in high school algebra, and I had to make it up before I could be admitted. The only way I could make it up entailed taking a class that summer, but I needed to work to earn money for my education. So I decided to go to City College in the fall, which freed me to work. To this day, I think that had I gone to Cal as a freshman, I would have gotten lost. The campus enrollment was larger than the town I came from!

Q: *What was San Francisco like in the late '40s?*

A: At City, I was perennial president of the NAACP youth council. And the NAACP at that time had to break down a lot of barriers and a lot of doors. San Francisco prides itself on being "the city that knows how." Well, in the late 1940s and early '50s, we were in the business of teaching San Francisco how—especially in public employment. I can still remember when the city hired the first black police officer, probation officer, high school teacher, and so on.

Q: *What about the private sector?*

A: Let me tell you about the effort to get blacks employed as sales clerks in downtown department stores. It's an interesting story, and very few people know it.

In 1947 and '48, the NAACP hadn't been able to persuade the Downtown Merchants' Association to agree to hire blacks. So we decided to picket. But we felt we couldn't picket *all* the downtown stores, so we picked two: Macy's and the Emporium. Macy's had just come to San Francisco, and its posture in the negotiations was, "Look, in New York, we have a good employment and promotion policy for blacks. And we're willing to do it in San Francisco. But we're the new guys in town, and we don't want to be the first; economically, it will hurt us." In a war, you always hit your enemy at its weakest point. And when we started picketing, Macy's said "uncle." It was a victory for the NAACP, and we picked up new support.

San Francisco is a very union town. And in those days, the AFL [American Federation of Labor], especially, had racially restrictive membership and closed shop agreements with employers. Blacks couldn't get jobs because they couldn't get into the unions. So we had to fight that battle, too.

Q: *Was it then that you began to think that maybe lawyers had a useful function?*

A: That's what finally persuaded me. I felt I could make a difference in the lives of my people. Even lawyering on an individual scale, and dealing with individual legal problems, especially as they relate to injustice, would be a

very significant contribution.

Q: *What was it like being a black student at Cal in 1949-50?*

A: There might have been a couple of hundred of us, on a campus of 27,500. Many of us knew each other; we tended to gather together at Sather Gate. And most of us were relatively new to the urban, cosmopolitan Bay Area—like myself, two years away from Lake Charles, Louisiana. I was friends with Marguerite Ray '53, the soap opera star; Hank Clark '53, who was on the Alumni Association board; and Larry W. Scott, the doctor. Larry was involved in campus politics—we called him "Hot Scott"—and I managed his campaign for ASUC president. Larry ran a strong third in a field of five—which was impressive, considering there were so few blacks on campus.

Q: *Was there any notion that a black student had to be twice as good as a white student to be admitted?*

A: No. Back then, we felt that if we had the grades, we could get into Cal. But that wasn't true of many professional schools. I knew black pre-med students at Cal who applied to as many as 40 medical schools—and you had to send in five dollars and a photograph with each application—and the admission rate wasn't high at all. The situation wasn't quite as bad in the law school, though to the best of my knowledge, my class at Boalt was the first to have more than one black.

Q: *Bruce Thompson '49, Boalt '53, recently told us he was very proud*

that his law fraternity, Phi Alpha Delta, was the first to admit a black student—you.

A: That's true. The year before I went to Boalt, representatives from the Berkeley PAD chapter had gone to the national convention in Chicago and led a floor fight to eliminate the Caucasian-only clause from the [fraternity's] constitution. But when I was rushed by Phi Alpha Delta in my second semester at Boalt, the chapter was suspended, supposedly because of voting irregularities; the PAD chapter at Hastings had blackballed us. That next summer [1951], we took our appeal to the national convention and got the chapter reinstated. So I became the first black in the fraternity, nationally.

And there's a funny sequel to that story: The following year, the Hastings chapter—the chapter which had allegedly complained against us—wanted to pledge Wiley Manuel. We were contemporaries, and Wiley had been first in his class the first year, and editor of the Hastings law review in his second. Yet it wasn't until his third year that Phi Alpha Delta asked him to join.

So Wiley called me, and said, "What should I do?" I said, "First, you should be insulted. But second, I think you should go ahead and pledge, to open the door to someone else who might come after you." And he agreed. But then he found out that two important scholarships he had prohibited membership in a Greek-letter organization—so he didn't pledge after all. Isn't that ironic?

Q: *Did that atmosphere continue after you graduated from Boalt?*

A: Despite the fact that I earned a good academic record and was on law review, I didn't receive *one* invitation to interview with any of the so-called traditional law firms. At that point, those firms weren't even considering hiring someone like me.

Q: *As a judge, you're often spoken of in the same breath as Thurgood Marshall. You're both distinguished black justices, with a tradition of independence of thought—and a fairly high number of dissenting opinions.*

A: It depends on the court on which you're sitting. I enjoyed years on the California Supreme Court when I was writing significant majority opinions, and rarely dissenting. But after the changes in the composition and direction of the court, I began dissenting more often.

Q: *You have a reputation as a consensus-builder, and of getting along with people even when you disagree with them....*

A: Throughout my tenure on the court, I always tried to build consensus; I never set out to write a dissent. When a justice dissents, the world knows about it. But when a justice starts out with what appears to be a dissenting view and is able to persuade his or her colleagues that their initial view isn't appropriate, that justice can change a case from "affirm" to "reverse," without the public ever knowing about it. I've had that experience on occasion, and it's a source of real satisfaction to me.

Q: *How else has the California court changed in recent years?*

A: In the days of [Chief Justices] Phil Gibson and Roger Traynor ['23, Ph.D. '26, Boalt '27], I think the California Supreme Court was on the cutting edge of the law, developing new legal concepts. We're not doing much of that now. This is a generalization, but I would say our court looks more to precedents and other courts for guidance in making its decisions and is much less inclined to develop new doctrines.

Q: *What areas of the law do you think we should be exploring further?*

A: I think we should be responsive to change and growth in our society in *every* area of the law. I believe our Constitution should be interpreted as a living document, and not as someone may think the Founders originally intended. Maybe that approach is what causes me to be labeled a liberal in the minds of many people.

Q: *What was your reaction to the Bush administration's charge that Boalt Hall was violating civil rights law in its admissions policy?*

A: I was a little shocked, because my notion of civil rights law traditionally has been that they were designed to protect the disadvantaged and the excluded. Civil rights law is a shield against the majority, not a sword to be used against the minority. As you may know, I'm on the committee Dean

Herma Hill Kay appointed to look into the whole issue. We're trying—as best we can—to comply with the requirements of the Civil Rights Division while maintaining a reasonable amount of diversity in the admissions program.

Q: *Do you think there is a tide in civil rights?*

A: Oh, certainly—and it's been going out. At the level of the judiciary, especially nationally, the emphasis has been less on traditional civil rights than on undermining affirmative action and other such programs. These haven't been good times for civil rights, either at the United States Supreme Court or the national administration.

Q: *As you look back on the Anita Hill-Clarence Thomas affair, what feelings do you have?*

A: It would have been better if none of it had happened. And one way to have avoided the whole thing would have been not to nominate Clarence Thomas to the Supreme Court. I don't think he was ready for it, and I don't think he should have been confirmed. Very frankly, I didn't think that as a black he would speak with the kind of voice that Thurgood Marshall had. I wanted to see someone on the Court who is a role model—reaching out, communicating, talking. And



also, Thomas is so young; absent something unexpected, he'll be occupying that seat for a very long time. That will make it very difficult for another black to serve on the Supreme Court.

As for the Anita Hill matter, I think it was unfortunate for both of them. But if you want to look at things positively, it really helped promote an increased awareness of the need to have more representation of women in government and society. So a lot of things I consider healthy came out of a situation that I wish had never happened. I think it's very unfortunate that President Bush has left us with Thomas on the bench.

Q: *What do you expect of Bill Clinton as President?*

A: I think we're going to see what amounts to a revolution. Not just politically, but the contrast between Reagan-Bush—especially Bush—and Bill Clinton's whole vision, is going to be more dramatic than most people think. I think we'll look at the United States of America eight years from now and see a very, very different country: a better economy; more opportunities for people of color and women; much more openness in government; and probably a better standard of living for a lot of our people. And I think that we'll be a respected nation, and a leader in the world. ☺

ALLEN E. BROUSSARD

JURIST

ADVOCATE

ACTIVIST

HUSBAND

FATHER

AND

FRIEND

1929-1996



THE HONORABLE ALLEN E. BROUSSARD

ASSOCIATE JUSTICE
SUPREME COURT OF CALIFORNIA

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PRESIDENT
OAKLAND BOARD OF
PORT COMMISSIONERS

◆
JUDGE OF THE SUPERIOR COURT
COUNTY OF ALAMEDA

◆
JUDGE OF THE
OAKLAND-PIEDMONT
MUNICIPAL COURT

◆
PARTNER
COBLENTZ, CAHEN, MCCABE
& BREYER

◆
ADVOCATE, ACTIVIST
HUSBAND, FATHER
AND FRIEND

A MEMORIAL SERVICE

NOVEMBER 8, 1996
11 A.M.

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Born in Louisiana in 1929, Allen E. Broussard came to California with his family as a teenager. He graduated from the University of California, Berkeley in 1950 and the UC Boalt Hall law school in 1953. He began to practice law in Oakland and became active in many groups working to include African Americans in the city's politics and government.

Broussard's distinguished career spanned more than 40 years. In 1964, while engaged in private practice with the firm of Metoyer, Sweeny & Broussard, he was appointed to the Oakland-Piedmont Municipal Court, where he served until 1975. He was elected presiding judge in 1968. In 1975, he was elevated to the Alameda County Superior Court where he was serving as presiding judge when he was appointed to the California Supreme Court in 1981. Before his illness, Broussard was a partner in the San Francisco law firm of Coblenz, Cahen, McCabe & Breyer, having an active alternative dispute resolution practice and a member of the large Complex Case Panel of the American Arbitration Association.

In 1972, Broussard was the first African American to be elected president of the California Judges Association. He received many awards including Jurist of the Year from the John Langston Bar Association in 1988, Appellate Justice of the Year from the California Trial Lawyers Association in 1989, and the California Law Review Alumnus of the Year in 1990.

In September of 1991 Broussard was appointed a member of the Oakland Board of Port Commissioners, operator of the city's harbor and airport. He was elected president in July 1996.

He was a former board member and director of many community, civic and professional organizations including Oakland Men of Tomorrow, Alameda County Council of the National Bar Association, the Governing Board of the Center for Judicial Education and Research and the American Bar Association Judicial Administration Division Task Force on Minority Opportunities.

In 1992 he was named Alumnus of the Year by the Cal Alumni Association.

Broussard is survived by his wife, Odessa; his sons, Craig and Keith; his mother, Eugenia Broussard; his brother, James G. Broussard and his wife Marjorie; his sister, Rita Broussard; his sisters-in-law, Mattie McGowan and Constance James; his brothers-in-law, Talmadge O. Bell, Sr. and Moses P. James; his nephews, James C. Broussard, Jr., Talmadge O. and Althelia Bell, Jeffrey and Gerri Barron and Bryan Humphries; his nieces, Jacqueline and Joseph Cooper, Valerie and Earl Smith; his grand nephew, Derek Broussard; his cousin Peter and Verna Dautererie and a host of other relatives and friends.

ORDER OF SERVICE

FATHER JAY MATTHEWS
ST. BENEDICT'S CHURCH, OAKLAND

PROCESSIONAL

PRELUDE JOSEPH HERBERT STRING QUARTET

GREETING

PLACING OF THE SYMBOLS FATHER PAUL VASSAR

OPENING PRAYER DR. J. ALFRED SMITH

FIRST READING

SONG DREAM IN COLOR-REGINA BELL

SECOND READING

GOSPEL

HOMILY FATHER JAY MATTHEWS

SONG LEWIS SELLARS

REMEMBRANCES

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HON. DIANNE FEINSTEIN
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*Hon. Rose Bird followed S.F. Mayor Brown with her remembrance.

THE BROUSSARD FAMILY WISHES TO GRATEFULLY
ACKNOWLEDGE AND EXTEND HEARTFELT THANKS TO
NUMEROUS FRIENDS AND COLLEAGUES WHO HAVE
DISPLAYED CARE, WARMTH AND SUPPORT
DURING OUR TIME OF GRIEF.
IN LIEU OF FLOWERS, WE REQUEST THAT
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DREAM IN COLOR, REGINA BELL

TIRED OF LIVING
IN BLACK AND WHITE.
THERE'S SO MUCH IN-BETWEEN.
LIKE A RAINBOW
IN THE SKY
CRYING TO BE SEEN.
WHEN I OPEN MY EYES
TO FIND INSPIRATION,
I SEARCH FOR THE BEST I CAN SEE.
IF I SETTLE FOR LESS,
I WON'T BE THE BEST I CAN BE.

WHEN I DREAM,
IN COLOR.
I WANT A LOVE
NOT JUST A LOVER.
I'LL GIVE YOU SO MANY GOOD REA-
SONS
TO CAPTURE THE DREAM.

LIFE IS SHORT.
IT CAN'T BE BOUGHT
AND TIME IS A VERY PRECIOUS
THING.
I WANT TO GO

WHERE I'VE NEVER BEEN
AND SEE WHAT'S NEVER BEEN SEEN
IN THE MIDST OF THE MORNING
I WON'T TAKE FOR GRANTED.
THERE'LL ALWAYS BE ANOTHER DAY.
GOT TO LIVE FOR EACH MOMENT;
NEVER LET TIME SLIP AWAY.

IF I WAS UNAWARE,
IF I DIDN'T CARE
ABOUT PEOPLE, PLACES AND THINGS.
HOW COULD I LIVE A LIFE
FULL AND SATISFIED
NOT KNOWING HOW TO DREAM.

WHEN I DREAM
I DREAM IN COLOR.
I WANT A LOVE
NOT JUST A LOVER.

SHOW ME A CHILD
WHO NEVER HAS SEEN
A VISION THAT SHOWS
WHAT HIS LIFE REALLY MEANS.
TO CAPTURE A DREAM.

PALL BEARERS

HON. GORDON BARANCO
 ROBERT BROWN
 RUFUS FISHER
 VICTOR HAMILTON
 HON. VERNON NAKAHARA
 ODELL SYLVESTER

HONORARY PALL BEARERS

HON. RICHARD BANCROFT
 BERTRAM BARTHOLOMEW
 THOMAS BERKELEY
 HON. GEORGE CARROLL
 JAMES COLE
 HAROLD DAVIS
 BEN GEYEN
 STANLEY HEBERT
 HOWARD JACKSON
 J.B. JACKSON
 JAMES E. JACKSON
 JAY R. JACKSON
 HON. WILLIAM LEVINS
 JAMES LOCKHART
 HON. HARRY LOW
 ARTUR MCINTYRE
 EDGAR MILLET
 HON. STANLEY MOSK
 JAMES OWENS
 HON. HENRY RAMSEY
 WILLIAM REVERE
 HON. CRUZ REYNOSO
 HON. WILMONT SWEENEY
 HON. BENJAMIN TRAVIS
 HON. HORACE WHEATLEY
 HON. CLINTON WHITE
 HON. LIONEL WILSON

Broussard eulogized by Brown, Bird at service

By BOB EGELKO
Associated Press

OAKLAND — The theater where Allen Broussard became a California Supreme Court justice 15 years ago was the scene of his memorial service Friday, as colleagues and friends saluted the liberal jurist and noted the changing times.

"We may be suffering reverses. Maybe people like Allen Broussard don't get appointed to supreme courts any more," said former Gov. Jerry Brown, who named the long-time Alameda County judge to the high court in 1981.

But he cited Broussard's continuing legacy, such as the 1983 ruling that "saved Mono Lake" by establishing the state's authority to restrict diversions of water from lakes and streams for environmental protection.

Broussard's major rulings also included a 1989 decision upholding most of Proposition 103, the insurance rate regulation initiative, and a 1983 decision requiring proof of intent to kill in most death penalty cases. That ruling was overturned by the court in 1987, over Broussard's lone dissent.

He died of cancer Tuesday at 67. The second black justice in the court's history, Broussard was a bulwark of the majority on the Rose Bird court through 1986, then became the leading dissenter on the conservative Malcolm Lucas court until his retirement in 1991.

He died the same day voters passed Proposition 209, which bans affirmative action programs for



Associated Press
FORMER CALIFORNIA GOV. Jerry Brown, far right, speaks at a memorial service for California Supreme Court Justice Allen Broussard on Friday in Oakland. Broussard died Tuesday of cancer at age 67 at his Oakland home. Brown appointed Broussard to the high court in 1981.

women and minorities. San Francisco Mayor Willie Brown drew a connection by asserting that "the same people who showed up in great numbers to vote for Prop. 209" were the ones who voted to remove liberal justices in the 1980s.

Bird and two colleagues were voted out in 1986, but Broussard survived a less-intense conservative opposition campaign in 1982 and did not have to run in 1986. "Allen never had a black last name, and those people were so stupid they couldn't find him," Brown said in explaining Broussard's 1982 victory.

Bird made a rare public appear-

ance, a day after undergoing her second mastectomy for breast cancer, to pay tribute to her former colleague at the memorial service held at the Paramount Theater.

"He was a scholar of the law but was never given his proper due," she said. "In a society still racist ... a black jurist just didn't fit the image of a scholar."

Bird also said Broussard "was fun to be around, and that's a blessing on a court that often took itself too seriously."

At one point, Bird said, a nurse seemed to be causing him pain by turning the dials that regulated his

medication. Broussard looked up and said, "I learned early in my judicial career to dissent only when it was absolutely necessary," prompting the nurse to stop.

Broussard also was praised by current Justice Joyce Kennard, Sen. Dianne Feinstein, and black lawyers who revered him as a role model and mentor.

He had "a belief that the law ought to benefit ordinary people, especially those who have yet to drink from the fountain of equality," said Robert L. Harris, former president of the National Bar Association, the nation's largest black lawyers' group.

The Death of a Friend, Colleague and Guiding Light

Justice Allen Broussard was the second black to serve on the state's highest court — and worked all his life to help minorities advance within the legal system

By Harriet Chiang
CHRONICLE STAFF WRITER

When I last saw Justice Allen Broussard, he greeted me like an old friend with a warm handshake and a broad smile, even though I was just another reporter on the court beat. Looking healthy and hearty, he seemed to be enjoying life after his retirement from the California Supreme Court.

So it came as a shock earlier this month when I heard that he had died of prostate cancer at age 67.

He was only the second black ever to serve on California's highest court, and during his 10 years as a state Supreme Court justice, he played a crucial role in shaping California law. When I was assigned to cover the court in the late 1980s, he was one of only two holdovers from the Rose Bird era and was widely considered the court's liberal con-

science. On the Bird court, he was one of the most prolific writers of majority opinions. Now, with a conservative majority, he was penning eloquent dissents.

In 1991, I wrote about his departure from the bench and went to one of the many retirement dinners thrown in his honor. I was on vacation when he died, just two months after he was hospitalized, and I regretted that I was not there to write his obituary.

His memorial service was at the Paramount Theatre in Oakland, where he had been sworn in as a high court justice 15 years before. A man with an irrepressible sense of humor, he was fond of saying that he once played the Paramount.

More than a thousand people gathered on a warm autumn day — senators and former governors, judg-



Associated Press

Allen Broussard

es and lawyers, and many friends and colleagues to pay their respects and share their memories.

I knew him primarily through his decisions and seeing him at court arguments, but at the service I saw another dimension of his full life. One speaker after another described him as an influential role model for black lawyers, working throughout his life to help minorities advance in the legal profession.

When he was a student at the University of California at Berkeley in the late 1940s, he helped organized a group of minority students, even though there were only a few

*At the justice's
memorial service,
one speaker after
another described
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influential role
model for black
lawyers*

dozen blacks on campus at the time.

In 1972, he was the first African American to be elected president of the California Judges Association. Many years later, U.S. District Chief Judge Thelton Henderson recalled how Broussard convinced him to become chief because of his larger responsibility to the African American community. "You're a symbol to a lot of black lawyers," Broussard told him. "You owe it to them to take it and to do a damned good job."

He attended almost every meeting of the Charles Houston Bar Association, a group of primarily black

lawyers and judges in Northern California, as well as the National Bar Association, the oldest and largest organization for blacks in the legal community.

He seldom, if ever, turned down an invitation to speak, whether it was from the National Association for the Advancement of Colored People, a neighborhood group or a gathering of law students.

"He gave the feeling that he really knew you, and it had a real impact upon people," recalled San Francisco attorney Robert Harris, a former president of the National Bar Association who regarded Broussard as his mentor, colleague and friend. "It sends a strong message to people that the justice system really cares."

He was proud of his heritage, but it was only part of his identity, and he was able to reach common ground with people of all races and backgrounds. A lawyer and trial judge for many years in Oakland, he never forgot his ties to the East Bay, and upon his retirement served on the Oakland Port Commission and was a voice of reason on many community panels.

Alameda County District Attorney Tom Orloff said he saw Broussard emerging as an elder statesman. "I would see him participating in more and more things to bring his perspective," he said.

He was a liberal with passionate deals, but was regarded as unquestionably fair by both prosecutors and

defense lawyers. On the high court, he worked toward building consensus even through the most turbulent times and wrote some key decisions — as well as fervent dissents after the court became dominated by conservatives.

While some talked about Broussard's professional accomplishments, many talked about how much they would miss a good friend, someone who always was willing to do a wedding or help out a colleague.

And many mentioned how much he loved gumbo.

He kept a electric hot plate in his chambers, and colleagues recalled how, on occasion, they could smell the tempting aroma of homemade gumbo emanating from his offices. His idea of lunch out was to take a colleague or his staff across the Bay Bridge to some small restaurant where they could sample the gumbo. Invariably, he would suggest how they could make it just a little bit better.

Even in the last few months, he kept his sense of humor. Bird recalled how he greeted her from his hospital bed with a hug and kiss, saying, "Hello, Public Enemy No. 2." She was left wondering who was No. 1.

They said he died at home with his family in much the same way as he lived: with quiet dignity.

Reynolds Holding is on vacation this week.

Justice Broussard, 'talented jurist'

Allen E. Broussard, who served as a liberal dissenter for many of his 10 years on the California Supreme Court, died Nov. 5 at his Oakland home after a brief illness. He was 67.

Broussard, the second black man appointed to the high court, wrote key opinions on the death penalty and the environment. "I've had a tremendously satisfying career," Broussard said at his 1991 retirement from the bench. "I've had the opportunity to make a contribution."

Appointed by then Gov. Edmund "Jerry" Brown in 1981, Broussard joined the liberal majority of the court, headed by Chief Justice Rose Bird. He wrote a key opinion two years later requiring proof of intent to kill in most death penalty cases, giving the court the legal basis for overturning scores of death penalty verdicts.

Because he was elected to a 12-year term one year after his appointment, he did not face the wrath of voters, who in 1986 ousted Bird and two other justices.

But he became a frequent lone dissenter on the more conservative court. In 1987, when the court overturned his death penalty decision and permitted death sentences without proof of intent to kill, Broussard wrote in dissent: "Periodically, when the political winds gust in a new direction, it becomes necessary to remind all concerned of the virtues of a steady course."

In 1983, Broussard wrote an important environmental opinion establishing the state's authority to protect the environment by restricting diversion of water from lakes and streams. That ruling also was reversed several years later despite his dissent.

Broussard grew up in segregated southwestern Louisiana, where in his last year of high school, a favorite teacher suggested he consider law as a career. Following graduation from the University of California at Berkeley, he pursued that suggestion and received his law degree from Boalt Hall, where he was in the top 10 percent of the class.

After developing a thriving practice with future Oakland Mayor Lionel Wilson, Broussard was appointed to the municipal bench in 1964, succeeding his former law partner and beginning a 27-year career as a jurist.

He was elevated in 1975 to the Alameda County Superior Court, where he was presiding judge at the time of his appointment to the



Supreme Court.

Bird described her former colleague as "a lovely human being . . . a talented jurist and a superb public servant." Broussard "was highly respected as an honorable man by the attorneys who appeared before him and the justices with whom he worked," added former Supreme Court Justice John A. Arguelles.

Broussard was the first black president of the California Judges Association, and received many awards including 1988 Jurist of the Year from the John Langston Bar Association, 1989 Appellate Justice of

the Year from the California Trial Lawyers Association, and the California Law Review Alumnus of the Year in 1990.

He was a partner in Coblenz, Cahen, McCabe & Breyer in San Francisco and co-chair of the Judicial Council's Advisory Committee on Race and Ethnic Bias, which was reviewing the treatment of racial and ethnic minorities in the courts.

Broussard is survived by his wife Odessa, sons Keith of San Francisco and Craig of Oakland, his mother Eugenia Broussard, sister Rita and brother James.

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Gabrielle Morris

Graduated from Connecticut College, New London, with additional study at Trinity College and Stanford University.

Historian, U.S. Air Force. Research, writing, for University of California, Bay Area Council of Social Planning, Joint Center for Political Studies, Berkeley Unified School District, others. Coordinator, California State Archives Government History Project, University of California, Berkeley, component, 1986-1990.

Project director, Bay Area Foundation History Projects (1974-1977, 1986-1995), UC Black Alumni Project (1984-), Ronald Reagan Gubernatorial Era Project (1979-1990), Volunteer Leaders Series (1978-), Cutter Laboratories Project (1972-1974).

Interviewer-editor, Regional Oral History Office, 1970-present. Specialist in state government history, Bay Area community concerns; focus on key participants' perceptions of selected administrative, social, economic, and political issues in California 1938-present. Consultant, Women's Suffrage 75th Anniversary Project, League of Women Voters of the Bay Area. Author, *Head of the Class: An Oral History of African-American Achievement in Higher Education and Beyond*, Twayne Publishers, 1995.

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