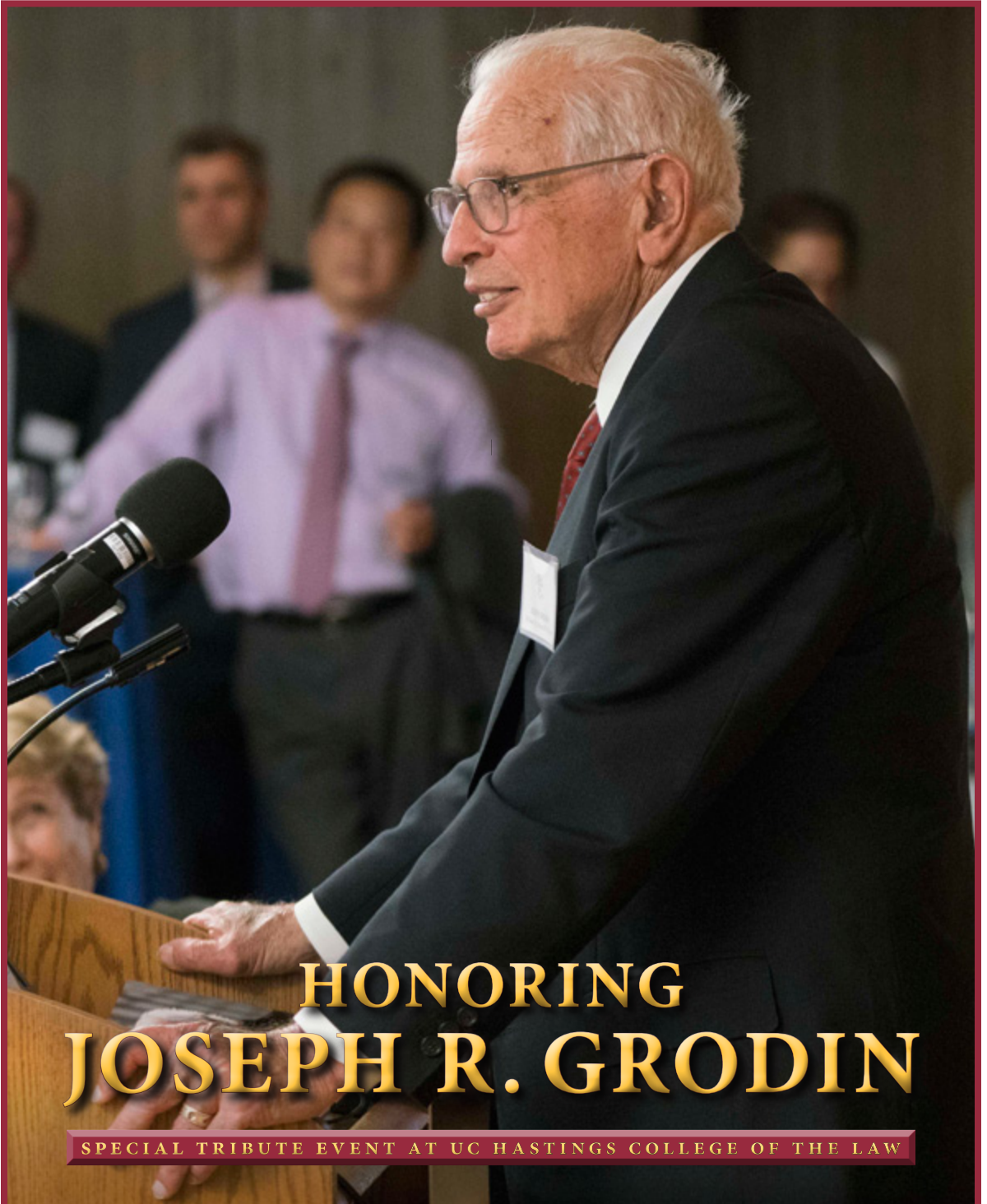




CALIFORNIA SUPREME COURT

Historical Society

NEWSLETTER • FALL/WINTER 2015

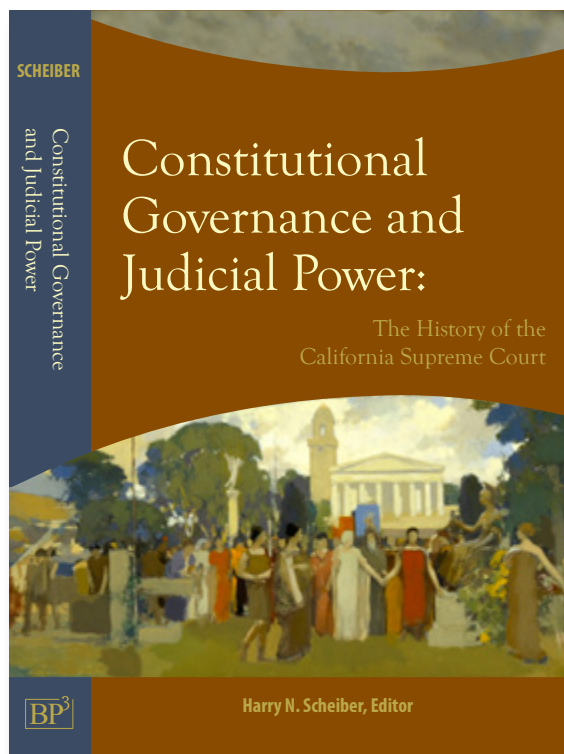


HONORING JOSEPH R. GRODIN

SPECIAL TRIBUTE EVENT AT UC HASTINGS COLLEGE OF THE LAW

A “Far-Reaching and Scholarly Text”

THE HISTORY OF THE CALIFORNIA SUPREME COURT



COVER DESIGN: MARIA WOLF.

IMAGE CREDIT: “THE COMMONWEALTH,” BY ARTHUR MATHEWS, THE SANTA BARBARA MUSEUM OF ART, GIFT OF HAROLD WAGNER.

A NEW BOOK, SPONSORED by the California Supreme Court Historical Society, is devoted to the remarkable history of the California Supreme Court.

Just as California is a national leader in politics, economics, technology, and culture, the California Supreme Court is one of the most important state courts in the country. Its doctrinal innovations have been cited by other courts — including the U.S. Supreme Court — and watched intently by the press and the public.

Constitutional Governance and Judicial Power tells the story of this important institution, from its founding at the dawn of statehood to the modern-day era of complex rulings on issues such as technology, privacy, and immigrant rights. This comprehensive history includes giants of the law, from Stephen J. Field, who became chief justice when his predecessor fled the state after killing a U.S. senator in a duel, to Ronald George, who guided the Court through same-sex marriage rulings

watched around the world. We see the Court’s pioneering rulings on issues such as the status of women, constitutional guarantees regarding law enforcement, the environment, civil rights and desegregation, affirmative action, and tort liability law reform. Here too are the swings in the Court’s center of gravity, from periods of staunch conservatism to others of vigorous reform. And here is the detailed history of an extraordinary political controversy that centered on the death penalty and the role of Chief Justice Rose Bird—a controversy that led voters to end Bird’s tenure on the bench.

California has led the way in so many varied aspects of American life, including the law. *Constitutional Governance and Judicial Power* gathers together the many strands of legal history that make up the amazing story of the California Supreme Court.

ABOUT THE EDITOR



HARRY N. SCHEIBER is Chancellor’s Professor & Stefan A. Riesenfeld Professor of Law and History, Emeritus, at the University of California, Berkeley, School of Law. He also is director of the School’s Institute for Legal Research

and served previously as president of the American Society for Legal History. He is the author or editor of 14 books, is a fellow of the American Academy of Arts and Sciences, and has twice held Guggenheim Fellowships.

Most recently, in November 2015, he received the 2015 Berkeley Faculty Service Award of the Berkeley Division of the Academic Senate (given to two professors each year among the 1,700 fulltime faculty members) in recognition of an “extraordinary record of distinguished service” during his 35-year career at Berkeley, including “his many leadership roles at the School of Law, his contributions as member and chair of numerous Academic Senate and system-wide committees, and as an influential and devoted contributor to the academic legal profession at large.” Support for his nomination came “from 22 senior scholars who represent all areas of the campus,” culminating in the announcement that “Professor Scheiber admirably fulfills the criteria of this award by significantly enhancing the quality of the campus as an educational institution and community of scholars.”

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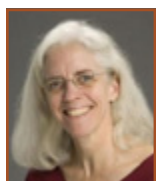
ABOUT THE AUTHORS



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PUBLICATION DATE: SPRING 2016

“This far-reaching and scholarly text weaves together many of the key social, cultural, economic, and political themes of the first 160 years of California. It reveals how, during each era, the justices and the court evolved, reacted, and contributed to the development of law and society. There is much to learn in each chapter for all who are interested in history, governance, and the rule of law.”

— TANI CANTIL-SAKAUYE, Chief Justice of California

“This is history with a heartbeat. The tensions and passions that have pervaded the work of the California Supreme Court for 160 years are related in symphonic fashion, by a cadre of astute and insightful scholars. Lawyers and historians are truly blessed to have an authoritative reference for the historic strands of jurisprudence and personality that continue to influence the course of justice in California.”

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“Comprehensive, thorough, and at times riveting, *Constitutional Governance and Judicial Power* is essential to understanding the legal history of the nation’s most populous state. In the capable hands of editor Harry N. Scheiber, these essays trace the court from its humble beginnings in a San Francisco hotel through pivotal debates over slavery, water, divorce, racial discrimination, immigration, the death penalty, and gay marriage. Through their skillful interweaving of legal and political history, we see the colorful and singular nature of California, whose great struggles often have been shaped, for better and for worse, by its Supreme Court.”

— JIM NEWTON, author of *Justice for All: Earl Warren and the Nation He Made*



The honoree speaks.

Honoring Joseph R. Grodin

SPECIAL TRIBUTE EVENT, THURSDAY, NOVEMBER 12, 2015
AT UC HASTINGS COLLEGE OF THE LAW

UC HASTINGS COLLEGE OF THE LAW honored former Associate Justice and Distinguished Professor Emeritus Joseph R. Grodin with a special Tribute event on Thursday, November 12, 2015, attended by faculty, students, friends, and family.

A special feature was the premier of the new documentary, “In Pursuit of Justice: The Life & Legacy of Joe Grodin,” by Peabody Award-winning filmmaker Abby Ginzberg (available at https://www.youtube.com/watch?v=e_ZniNMAsmY).

The California Supreme Court Historical Society was a co-sponsor of the event and the documentary. The 2015 volume of the Society’s annual journal, *California Legal History* — now available — commences with a special section of essays in tribute to Justice Grodin (please see the list of authors on page 30 of this Newsletter).

Dean Frank Wu welcomed the guests, indicating that the Tribute event marked Justice Grodin’s 85th

birthday year, the publication of the latest edition of his book on California constitutional law, and his more than 55 years as a professor and scholar at UC Hastings. The keynote speaker was Judge Marsha Berzon of the U.S. Court of Appeals for the Ninth Circuit, and greetings were given by Attorney James J. Brosnahan, senior trial counsel at Morrison & Foerster. At the conclusion of the evening, Justice Grodin responded with his own remarks. Each of their talks is presented below.

Professor and former Justice Grodin first taught as an adjunct professor at UC Hastings in the late 1950s and initially became a fulltime faculty member in 1972. During the 1970s, he also served as a member of the first Agricultural Labor Relations Board and as foreperson of the Alameda County Grand Jury. Governor Jerry Brown appointed him to the California Court of Appeal in 1979 and to the California Supreme Court in 1982. As a jurist, he authored or joined in many significant and

PHOTOS OF SPECIAL TRIBUTE EVENT: BY JIM BLOCK, COURTESY UC HASTINGS

enduring opinions. Professor Grodin returned to the UC Hastings faculty in the late 1980s and now teaches part-time as a distinguished emeritus professor of law.

At the event, the creation of the “Grodin Justice Fund” was announced. Established by Joseph and Janet Grodin, with additional funding from more than 100 colleagues, friends, and organizations, its purpose is to promote access to justice for low-wage workers. A major focus will be to use technology to enhance the participation of UC Hastings students and the availability of free legal services at the Workers’ Rights Clinic, a joint project of UC Hastings and the San Francisco Legal Aid Society’s Employment Law Center.

**THE HONORABLE PROFESSOR —
JOSEPH GRODIN**

BY HON. MARSHA BERZON

I SUPPOSE THE REASON I’ve been asked to talk briefly today is that my professional life in the Bay Area has crossed paths with Joe Grodin’s at several junctures — as a labor lawyer, as a judge, and, perhaps most importantly for today’s gathering, as co-teacher with Joe of a seminar here at Hastings — although the class is really Joe’s, as far as I — and I think the students — are concerned. I’d like to look a bit at each of these lives of Joe — as labor lawyer, judge, and professor — adding what I can from our intersections over the years, to the film we are about to see, and the public record.

Joe and I were both lawyers representing unions for a large part of our careers, although at different times. Joe was never just a labor lawyer — being Joe, he delighted both in the real life adventures of his clients and their members, and in the theoretical legal issues raised by their questions and cases. And even after he became a full-time professor, then a justice, and then a professor again, Joe’s legacy as a labor lawyer lived on. While practicing, he wrote many articles on what must have seemed at the time relatively obscure labor law, and other, issues — some with his mentor Mat Tobriner. Those articles uncannily anticipated later developments in the field; reading one article last night, I noticed that Joe had identified over fifty years ago an unresolved issue recently decided in the Seventh Circuit and currently pending in a case in Idaho.

As far as I know, Joe was the only practicing union-side labor lawyer who made time to write a substantial number of serious, deeply grounded articles — not advocacy pieces at all, but reflective ones. Perhaps the pinnacle of Joe’s penchant for translating from the minutia of everyday legal practice to the world of legal scholarship and future development of the law was a *California Law Review* article — without Joe, it appears, the *California Law Review* would have folded in the fifteen-year period he was in practice — written with Justice Mathew



Keynote speaker Judge Marsha Berzon of the U.S. Court of Appeals for the Ninth Circuit



Joseph Grodin and Peabody Award-winning documentary filmmaker Abby Ginzberg

Tobriner and entitled, “The Individual and the Public Service Enterprise in the New Industrial State.”²¹ Not exactly the stuff of a just-cause-discharge labor arbitration, one would think, or an appellate National Labor Relations Act case — the daily grist of most labor lawyers — yet heavily influenced by his experience in dealing with the internal affairs of labor unions, early characterized by courts as what the article calls public service enterprises. And, interestingly, one sees in the public enterprise article the seeds of some of Joe’s later interests, and strengths, as a judge and a professor — principally, an appreciation of the common law and its methodology, the astute perception of large social changes likely to influence legal developments, and the ability of a nimble mind to see parallels and cross-fertilization in such diverse fields as the law of landlord-tenant relationships, the law of internal union affairs, and bad faith insurance litigation. As we shall see, Joe carried those same attributes, and even the same analogies, into his work while on the bench, as well as afterwards.



LEFT TO RIGHT: Former Justice and Professor Emeritus Cruz Reynoso, UC Davis School of Law, honoree Joseph Grodin, and Justice Mariano-Florentino Cuéllar of the California Supreme Court.

First, though, I should mention one other typically Joe contribution to the local practice of labor law. Labor law practice is famously contentious, split between union and employee attorneys, on the one hand, and management lawyers on the other. The tone of the practice tends to be no-holds-barred, in court as well as outside of it. But Joe is by nature both garrulous and committed to reasoned discourse and open discussion; he is also a dedicated outdoors person. So my understanding is that he set out, with his former partner Duane Beeson and two or three management attorneys, to establish a conference in a spectacular location, the Ahwahnee Hotel at Yosemite, where peace would be declared for two days, we would all attend panel discussions for a while, and then we would all go out hiking or skiing with our spouses and children, with the good feeling (and good information) hopefully carrying over to the rest of the year's practice, softening some of the rough edges. Joe has remained the most popular speaker at these events when he is able to attend, with the crowd hanging on his wonderful stories about past labor management squabbles as well as his trenchant analyses of current labor and employment law trends — for another Joe characteristic is the ability to integrate all of his past experience and wisdom with contemporary social and legal developments, yielding a mix that no one else I know of is able to emulate.

Moving forward in time, Joe and I were both judges, again at different times. Joe was an extraordinary justice for the relatively brief time he was permitted to serve. I am confident he would have become part of the small pantheon of non-U.S. Supreme Court justices (Learned Hand, Henry Friendly, John Minor Wisdom, Frank Johnson, Roger Traynor) widely revered for their impact on American jurisprudence, had his career not been cut short. That it was is to many of us a tragedy, but not to him — more bemused by the turn of events than angry,

he went off to write a book reflecting on his experience as a justice and on the judicial election process that, to his great surprise, ousted him, and then went back to Hastings and picked up his scholarly and teaching career, adding to the mix new interests developed during his years on the courts as well as stints as an arbitrator and as a hearing office for internal union inquiries.

Of the opinions he wrote while on the Court of Appeal and the Supreme Court, I wanted to talk a bit about *Pugh v. See's Candy*,² not so much because it may have been his single most significant contribution as a practical matter, but because it well illustrates the continuity between Joe's long-term interests and habits of inquiry and his judicial approach. *Pugh* opened up the world of implied employment contracts guaranteeing some security of employment, based on a range of factors, including longevity, oral representations made when hired or while employed, written employment policies, and so on. Joe joked once that when he wrote the opinion, he did not predict that whole law firms would spring up to litigate wrongful termination cases, but in fact they have.

What is interesting to me is that in first devising and then drafting *Pugh*, as well as a companion case, Joe went back to his intellectual and professional roots, to the common-law but eclectic mode of analysis in the public enterprise law review article, as well as to his immersion in the legal world of workplaces. First, he noted how the world had moved on in recent years, placing limits of various kinds on the employer prerogative to fire employees for any reason or no reason; second, as he explained several times in discussing the *Pugh* opinion, he recognized that common law developments in other areas — in particular, in the common law cases that created a legal network for the internal governance of labor unions, the subject of Joe's Ph.D. thesis — had modified imbalances of power through judge-made adjustments of contract and other

doctrines; and third, in his writings on the subject, he explained that he also drew on his comparative law experience — his thesis had compared British and American union law — to note that this country was far behind most of Europe with regard to security of employment for individual employees.

Joe often talked in his academic writing of his admiration for Holmes' and Cardozo's analyses of the common law process. The loss of Joe's now-unusual ability to carry forward into his judicial work that traditional process of careful yet creative jurisprudence seems to me to be the saddest part of what was lost when the electorate — as he has said, without much clue as to what it should be doing in a retention election for the California Supreme Court — turned him out.

The final major thread of Joe's professional life — I am leaving out his brief stint on the Agricultural Labor Relations Board, well covered in the film — has been his long academic career, almost all of it here at Hastings. For the last five years, I have crossed Market Street one afternoon a week each Spring to teach with Joe a class now called, "Judging the Constitution." Although I am listed as a co-teacher, I most often feel that I am a co-student, enthralled by Joe's musings and analyses about the process of judging — including the niceties of constitutional doctrines such as First Amendment "balancing" and the usefulness of the various standards of scrutiny; the importance of state constitutional independence (a favorite topic, both in class and in Joe's post-judicial writing); and the vital importance of understanding judging from a middle ground, as neither calling balls and strikes (I was amazed to discover that Joe used that analogy, quizzically, in his 1980s book, *In Pursuit of Justice*, long before Justice Roberts invoked it in his confirmation hearings) or reflecting the judge's own policy predilections, or what he or she ate for breakfast. On the last point, Joe has been consistently insistent; just last year, he repeated it, in a response to Professor Brian Leiter published in the *Hastings Law Journal*:

Most judges . . . would say that constitutional adjudication lies somewhere in the middle of a continuum between judge-as-referee and judge-as-legislator, and that judges believe (and we want them to believe) that while moral and political values undoubtedly play a role in constitutional decisionmaking, judges are constrained . . . by a variety of factors, including constitutional text and history, past decisions, their legal training, the opinions of their peers, concern for the integrity of the Court as an institution, concern for the maintenance of a rule of law, and concern for their own place in history. . . . [W]e need to find a way of talking about a middle ground that does justice to the complex judicial task.³

At Professor Grodin's suggestion, we usually begin our seminar each spring with Lon Fuller's "The Case of the Speluncean Explorers," a fanciful story — based on real life incidents — about five individuals trapped in a cave who resort to cannibalism.⁴ The piece is amusing, yet serious — its point is to consider contrasting approaches to the tasks of judging. Each year, we debate with the students whether strict constructionism (the fictional Justice Keen), creative purpose-based analysis (Justice Foster), abdication of the judicial role when the outcome dictated by legal principles is not acceptable (Justice Tatting), result-orientation resting on public opinion (Justice Handy), or purported reliance on separation of powers (Chief Justice Truepenny) is the more appropriate approach to judging the make-believe legal dilemma. We have fun with the discussion, but we also hope to set up the parameters of the discussion for the rest of the term, as the class is asked to discuss the judicial challenges lurking in particular pending cases in the U.S. and California Supreme Courts (and occasionally other appellate courts). Listening to Joe interlace philosophical discussion with a bevy of wonderful stories — Joe is the consummate storyteller, always coming up with pertinent tales — is to watch a master at his game. Incidentally, Joe never lets on which of Fuller's apocryphal justices' approaches he most sympathizes with, although I suspect it is a toned-down version of Justice Foster's attempt to find some basis in established legal principles for reaching what appears to be the most just result.



Former Justice Grodin signs a copy of the new edition of his book, *The California State Constitution*, for Associate Justice Kathryn M. Werdegarr in her chambers at the California Supreme Court, December 16, 2015.

PHOTO COURTESY JAKE DEAR

One other comment on Joe's teaching: Joe had to miss one class last year because he was seriously (although temporarily) ill. He told me that as far as he could remember, that was the first class he had missed in decades teaching.

In the classroom, as behind the lawyer's podium and on the bench, Joe Grodin has transformed, and continues to transform, the various legal worlds he has encountered, bringing to every task his bounding energy, his felicity of language, his depth of thought, his good humor, and his profound commitment to shaping a better society. He has never accepted received wisdom; as in his wilderness hiking and rafting endeavors, he has been willing to take risks and confront the unknown. But also as in his outdoor activities (I suspect — I have never hiked with him) he is always well prepared, using all the available tools and staying within acceptable bounds.

Being a craftsman and a visionary, Joe Grodin has for so very many years graced this institution and this city, and continues to do so. We are all the better for it.

GREETINGS FROM JAMES BRORNAHAN

At the very end, Judge Berzon, you said that Joe is willing to take risks in the wilderness, and he's willing to have his friends take risks [laughter]. He's a teacher of extraordinary — he has all these techniques for teaching. And, I don't know how many years ago — it was some years ago — we went with some members of our family, and we camped on the west side at about 7,500 feet at Crag Lake. It's a very beautiful spot. And the next morning we get up and, of course, the Sierras is one of the wonderful places to be, out there, like that, away from clients and so forth — if I may say so. [laughter]

Joe wrote a book on the Sierras. I don't know if you all know that, but he did. He wrote a book on the



Attorney James Brosnahan

Sierras, a very good book, a scholarly book. And so, he wanted to teach me something I've never forgotten, and that is, don't ever leave the trail. And instead of just telling me, "Don't ever leave the trail," he said, "I know a shortcut." [laughter] This is a true — I would not lie to this group. We have federal judges here; we have state judges. I have to keep my credibility. So I would say, probably, twenty minutes later we cut down to the left, headed towards the highway but a long way from it, and suddenly, we're over a moraine, a flow of rocks. It's about one o'clock in the afternoon. The rocks are at a temperature of about maybe 200, and you don't want to put your hand on them because it'll burn, but you have to because they're slanted. I try not to exaggerate — I thought I was going to die. [laughter] And I knew exactly how a chicken feels in the oven. [laughter] Anyway, I'm not sure how that's pertinent.

And so we have to now regroup, and to regroup, we have a video by Abby Ginzberg. Abby Ginzberg, as I'm sure everyone here knows, goes around and makes videos of our heroes. And there are several in the room — Judge [Thelton] Henderson is here, and Cruz Reynoso is here, and she's here. What you're about to see will require a rebuttal, and that rebuttal will then be presented by Joe after we watch the video. [shows Abby Ginzberg video]

So Justice Grodin, perhaps you realize that everybody in this room wants you to understand that you did good, but most important, here you are in your 85th year and the whole time you have cared about people and you have acted on that caring. So, now it's time for rebuttal.

RESPONSE BY JOSEPH GRODIN

Jim, I've felt for a long time that, if I were ever accused of a serious crime, [laughter] you're the person I would want to represent me. And Marsha, if I ever need somebody to front for me in explaining what it is that I've written, I'll call on you. Marsha, thank you so much. This film is quite amazing. What can I say? Abby refused to permit me to see it before tonight, so it comes as a surprise. And she was right because, if I had seen it earlier, I probably would have pointed out the exaggerations and fanciful parts. But, Abby, thank you. It's really great.

And thank you all for being here — my wife Janet of 63 years, my two daughters, Sharon, and Lisa (of the Grand Canyon trip), and her husband Adam, and Sharon's husband Howard, and our wonderful granddaughter Anya, and my nephew Marshall and his wife Ann, and Judy Sapir and our niece and all our really good friends, and people I haven't seen in 40 years, here. I haven't felt this way since my bar mitzvah. [laughter]

I'm reminded, in part of what's been said, of something that Mathew Tobriner, who you heard quite a bit about [in the film], said to me when I was deciding whether I wanted to seek appointment to the Court of Appeal, and believe it or not, I was undecided. I felt



Joseph and Janet Grodin with daughters Lisa (LEFT) and Sharon

that could be a difficult decision because I was enjoying being quite content in the world of academia. He said to me as follows. “Being a judge is nice. People call you, ‘Your Honor,’ and you get to wear a black robe, but the real question is, what do you do after you get up in the morning? And what do you do when you go into the chambers? How do you spend your time?” And, of course, he was right. Being a judge is a very isolating occupation, and one that is very demanding. I found it to be very rewarding, but I also learned from what he said, that it’s not the position, it’s not the title, it’s what you do every day that counts.

I feel truly privileged to be the subject of this tribute. I’m tempted to say that I feel humbled, but Golda Meir is supposed to have said, “Don’t be humble; you’re not that great.” [laughter] Each and every one of you is entitled to a tribute as much as I am, and I hope, if you want it, you get it, someday. [laughter] I just feel extraordinarily lucky to have had all the experiences and be able to do all the things I’ve done, and have friends like all of you — and I intend to have much more of each.

I do want to add one thought, especially for the students who might be here. I once went to that law school across the Bay to hear Justice Scalia talk about legal ethics. He was addressing the question whether lawyers have any moral obligation to provide pro bono services. His answer, I was surprised to hear, was, “No. Lawyers,” he said, “are in no different position than barbers. Both are licensed by the state. Both are, in a sense, ‘professional.’ We don’t expect barbers to cut hair for free. Neither

should we expect lawyers to render their services without compensation.” I beg to differ, as I often do, from Justice Scalia. This answer seems wrong to me, and I asked myself why, what is it about lawyers that makes them different in their obligations to the public? And the answer, I think, lies in the difference in relation to civil society. Lawyers are part of the machinery of justice. They’re partners with judges in the pursuit of justice. This is why we refer to lawyers as “officers of the court.” This is why, historically, lawyers have not refused when appointed by a judge to represent an indigent person. We lawyers are privileged to play an important role in the protection and development of the rule of law, and privileges come with responsibilities. I have nothing against barbers. I just recently visited one. [laughter] They are important, too, and I understand that some of them actually do give free haircuts to prison inmates, but I hope you agree with me that it’s not the same. So, that’s the end of my sermon for this evening. Thank you all once again for being here. [applause and standing ovation] ☆

ENDNOTES

1. Mathew Tobriner and Joseph Grodin, *The Individual and the Public Service Enterprise in the New Industrial State*, 55 CAL. L. REV. 1247 (1967).
2. *Pugh v. See’s Candies, Inc.*, 116 Cal. App. 3d 311 (1981).
3. Joseph R. Grodin, *A Response to Professor Brian Leiter*, 66 HASTINGS L.J. 1617, 1618–19 (2015).
4. Lon Fuller, *The Case of the Speluncean Explorers* 62 HARV. L. REV. 616 (1949).

In the Justices' Own Words —

THE ROLE OF THE COURT AS SEEN FROM THE BENCH

EDITOR'S NOTE:

EACH YEAR, THE CALIFORNIA SUPREME COURT brings the Court to the people in the form of a special outreach session. The special feature of these sessions is the inclusion of students at the high school, college, and law school levels. Some of the students attending these special sessions have the opportunity to address the Court with questions to be answered by the justices. Past issues of this Newsletter have featured the outreach sessions,* and at times the students' questions, but now we take the occasion to feature the most recent questions — and for the first time, the justices' complete responses. We present here the question periods of the three most recent outreach sessions: 2013, 2014, and 2015. The names of the students are included in full, except for those now still in high school, for whom only first names are given.

— S.M.S.

SPECIAL SESSION, UNIVERSITY OF SAN FRANCISCO SCHOOL OF LAW, FEBRUARY 5, 2013

CHIEF JUSTICE TANI CANTIL-SAKAUYE: Good morning. Welcome to this special session of the California Supreme Court. Holding oral arguments on the fine campus of the University of San Francisco is not our traditional venue, of course. But we regularly bring our Court hearings to communities around the state because we are committed to informing Californians about their courts and about the role of the judiciary in our democracy.

I would like to begin by introducing my colleagues on the bench. They are seated in order of seniority, alternating between my right and left. To my immediate right is Justice Joyce Kennard; next to Justice Kennard is Justice Kathryn Werdegar, and next to her is Justice Carol Corrigan. To my left is Justice Marvin Baxter. Next to Justice Baxter is Justice Ming Chin — a proud alumnus of the University of San Francisco School of Law — and seated to his left is Justice Goodwin Liu. Also with us today, seated at the table, is the Court's very able Clerk/Administrator Frank McGuire, who joined the Court last year.

* See the issues of CSCHS Newsletter Fall/Winter 2009, Fall/Winter 2010, and Spring/Summer 2013.

Our special session today marks the beginning of a month-long effort to bring awareness of the third branch of government to students and citizens throughout the state. Tomorrow we hold another special session in our traditional venue, in our San Francisco chamber, in front of more than 100 students and faculty from Sacramento's McClatchy High School — my alma mater. Later this month, I plan to visit Balboa High School in San Francisco, Sutter Middle School in Sacramento, and the University of La Verne College of Law in Ontario. On February 28th, I am holding a civics-learning summit in Sacramento with retired United States Supreme Court Justice Sandra Day O'Connor.

My colleagues and I pursue these opportunities to engage our communities because we believe that the strength of our democracy depends upon the public's recognition of the interrelationship and independence of the three branches of government. I want to thank those who are watching or listening to the Court today because your participation is crucial to the success of our democracy.

I would like to ask our court's USF alum, Justice Chin, to say a few words and to introduce Dean Brand. But before I do, I want to commend the law school's commitment to diversity — I read on your website that 53 percent of the fall class of 2012 are women and 46 percent are students of color. This gives you yet another reason to be a proud alum.

JUSTICE MING CHIN: Thank you, Chief. USF is just trying to reflect the wonderful diversity on the California Supreme Court. The USF Law School was founded in 1912. This special session is part of a year-long celebration of our 100th anniversary. I have many fond memories of my seven years here on the hilltop. Actually I was with the Jesuits for eleven years, and I am deeply grateful that they were outstanding teachers in every possible way. I am grateful for the training, for the guidance, and for the values-centered education that they gave me. Many of them are still close personal friends. Father John Lo Schiavo, the current chancellor and former president of USF, blessed my marriage when I married my wife Carol 41 years ago. Only two weeks ago, our current president, Father Steve Privett, baptized my grandson, Nolan Ming.

I am deeply grateful to all of my professors here at USF for being such terrific role models and being such an important part of my life and my career. I shared with my colleagues the fact that I was actually an "R.A." in this building. It was then called Phelan Hall. This was the cafeteria. I had many awful meals in this room.



TOP: Justices Mariano-Florentino Cuéllar, Carol Corrigan, Kathryn M. Werdegar, Chief Justice Tani Cantil-Sakauye, and Justices Ming Chin, Goodwin Liu and Leondra Kruger listen to oral argument in the Milton Marks Auditorium of the Ronald M. George State Office Complex in San Francisco, 2015.

BOTTOM: Students in the audience, including student speakers Norma, Olga, Kevin, Jody and Bianca in the front row, observe oral argument following the special outreach session.

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Dean Jeffrey Brand of USF School of Law addresses the Court.

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Being an R.A. meant that I was able to support myself through law school through that endeavor and it meant supervising about 80 undergrads, mostly freshmen. Now think back to what you were like when you were a freshman. It was a daunting task. The night before my torts final, I was awakened at 2:00 a.m. to find some of my charges had stuffed the room next door full of newspaper. I was not pleased. I don't tend to hold a grudge, but, Larry Silva, if you are out there, I hope that you don't have any matters on the Court calendar today.

It is now my pleasure to introduce the 17th dean of the USF law school. Jeff Brand is a graduate of Justice Werdegar's alma mater, the University of California at Berkeley, both undergraduate and law school. But after Jeff received his J.D. degree, he was a Robbins Fellow under the guidance of his mentor, professor and former Supreme Court Justice Frank Newman. In 1986, Jeff came to USF to teach. Jeff is a wonderful, talented teacher, as is reflected by the fact that his students selected him as the USF distinguished professor an unprecedented four times.

Many years ago, Jeff and I served on a dean search committee, and when I suggested that Jeff submit his name, Jeff said, "Perhaps at some future date." Fortunately, that date came in 1999. In his 13 years as dean, just as I predicted, Jeff has been a superb leader of the law school. He has raised it to new heights, completed the Dorraine Zief Library, oversaw the renovation of Kendrick Hall, and has truly reenergized the faculty. Unfortunately for USF, Jeff has chosen to retire. His wife Sue confided to me at lunch last Sunday that she hopes, during his year-long sabbatical, they will be able to do some traveling. I could share with you some of the anecdotes about that, but these might be on the minutes of Court, so perhaps I should forgo those stories.

Today, I would like to publicly thank Jeff for his truly remarkable service to the University. It gives me great pleasure to introduce to the Court, and all of you, my good friend Dean Jeffrey Brand.

DEAN JEFFREY BRAND: Thank you Justice Chin. I'm humbled. Thank you. Chief Justice Cantil-Sakauye, Justice Kennard, Justice Baxter, Justice Werdegar, Justice Corrigan, Justice Liu, and our beloved Justice Chin, who we proudly claim as our own, continuing a tradition that includes Matthew Sullivan, the first dean of USF, who became chief justice in 1914; his brother, Jeremiah Sullivan, who helped found the law school, was appointed to the Court in 1927; and yet another Sullivan, this time unrelated, Justice Raymond Sullivan, a 1930 graduate of the law school.

We welcome the Court to the University of San Francisco. At the outset, I want to thank Frank McGuire, Jorge Navarrete, and other dedicated staff of the Court, the law school and the university who make today possible. We are honored and humbled that you've chosen to hold a special session at the university in celebration of the law school's 100th birthday, bringing together law students, law faculty, members of the university leadership team, undergraduate students and faculty, high school students, members of our profession, and citizens of our community.

Regardless of the school we attend, the discipline we teach, or the reason that brings us to this courtroom today, we all share the same stake in the fair and equitable administration of justice which the courts of our state guard so vigilantly. What we have the privilege of witnessing today is not just about the law school. It's about all of us, how we relate to one another, how we treat one another, and how society balances competing interests for the benefit of all. We thank you deeply for providing us with a glimpse into how the state's highest court seeks to ensure equal justice under the law and doing so in the community in which we work and in which we teach.

May it please the Court, I would like to make just two additional briefpoints.

First, I would be remiss if I did not say a word about the University of San Francisco School of Law in this, our centennial year, and its eloquent and powerful mission to pursue justice and to change the world from here. We take those words seriously. We have an abiding belief that the privilege of studying and teaching law brings with it the responsibility to serve others, an ethos that pervades the great Jesuit university of which we are a part. To the refrain that there are too many lawyers in the world, we have an emphatic response: there will never be too many lawyers in the world, so long as they are skilled, ethical professionals in service to others, advocating for human dignity, fairness, and the rule of law with justice.

At USF, as the chief justice noted, we are incredibly diverse, indeed, 40-percent-plus students of color, ranking

us the fifth most diverse law school in the United States. Our students understand full well the responsibility that comes with the privilege of a legal education, and they walk the walk. Working hard in their classrooms, while engaging local, national, and international communities. Whether it be serving a meal in the Tenderloin, working with death-row inmates in the South, or traveling to New York, Geneva, Haiti, Cambodia, Vietnam, China, Argentina, the Philippines and around the globe to work on law reform and human rights projects. This is what our centennial is really all about: a rededication and recommitment to the principles that bind our law school community.

My second and final thought is an expression of awe and thanks. The work of our courts is astonishing. Your simple description on the courts' website is remarkable for its breadth and its importance: "The judicial branch of government is charged with interpreting the laws of the state of California. It provides for the orderly settlement of disputes between parties in controversy, determines the guilt or innocence of the accused, and protects the rights of individuals." Each of those words evokes the power and the importance of the law. And those few sentences express the awesome responsibility that we all share. For legal educators, they are a powerful reminder of what we seek to achieve: to help our students understand what the fair administration of the law is all about and to give them the skills and inspiration to act ethically and tirelessly in pursuit of that goal.

We thank the court for providing yet another opportunity to accomplish that task. Again, welcome to the University of San Francisco. We, indeed, are honored and humbled. Thank you.

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you Dean Brand for those fine remarks. Congratulations on your centennial and on your well-deserved — but will be bittersweet — retirement.

In conjunction with the Court's special oral argument session, the briefs relating to the cases the Court will be hearing today were posted online along with synopses of the issues and descriptions of the operations of the California Supreme Court and the state's judicial system so that these materials could be studied ahead of time. Students from Balboa High School, Thurgood Marshall High School, and the USF School of Law were able to review the materials and discuss them. And they will either be here observing at our Court session, or viewing oral argument on the California Channel which is again, today, broadcasting the proceedings across California.

The vast majority of cases, as many as 98 percent of the nation's legal disputes, are resolved at the state court level. The seven justices of our Court hope that today's Court session will help all of you attain a better understanding of California's judicial system and of the rule

of law that protects us all, serving as the cornerstone of our democratic system of government. I expect that someday, students now listening will be at counsel table, prepared to advance the development and understanding of the law. And someday you will be in our seats. I hope that today's session and the varied backgrounds of those of us sitting at this bench serve as an inspiration to let students know that anything is possible.

California's judicial branch is in an extraordinary period of innovation and challenge. Your understanding of California's judicial system and your support of its efforts to improve the public's access to justice will be vital to the success of our efforts.

On behalf of the entire Court, thank you once again for inviting us and making today's special session possible. I hope that these proceedings will serve to encourage all of you to learn more about the administration of justice in California and in our nation.

Before proceeding with oral argument in the first case, the Court will now take questions from four USF students as well as several students from Balboa and Thurgood Marshall High Schools. We invite the first question at this time. Please come forward to the podium.

STUDENT: Good morning. My name is Jeremy Wong. I am a senior in the Law Academy at Balboa High School, and I have the following question. How does the Supreme Court decide which cases it is going to hear?

JUSTICE MING CHIN: Well, Jeremy, that is an excellent question, and I am sure all of the attorneys in the room would like to know the answer as well.

We actually spend much of our time deciding what to decide. We meet every Wednesday when we are not in oral argument. It's called the Wednesday conference. We have on that Wednesday conference anywhere between 150 to 300 cases that we have to review to decide



*Chief Justice Tani Cantil-Sakauye and
Justice Marvin Baxter*

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what cases we want to take. Now, we have what is called “discretionary review.” That doesn’t mean we get to do whatever we want. It means that we look at the cases very carefully to determine which cases we should take.

Some cases come to us automatically. Some cases come directly to us from the State Bar Court or from the Public Utilities Commission. The most prominent example is whenever there is a death judgment in the trial court, it comes directly to the California Supreme Court. Later on this afternoon we have one automatic appeal, a death penalty case that came directly to the California Supreme Court.

The discretionary review part of the process is our review of the work of the, I think, 105 justices on the California Courts of Appeal. We have some specific guidelines that we use in deciding whether or not to grant review. We will sometimes grant review if there is a conflict among the Courts of Appeal. Occasionally, we will take a case when only one Court of Appeal has spoken if it is urgent that the matter be decided. Examples: the marriage cases; Proposition 8; redistricting. Those cases had to be decided in fairly short order. There is one case on this morning, the medical marijuana case, that did not have a conflict, but we saw the litigation down below, and we decided to take that case even though there was not a conflict.

Now you may ask yourself how in the world do we go through 150 to 300 cases at one conference. We actually divide the cases between the A list and a B list. The B list are routine cases. In most cases, the A list cases are cases that need some affirmative action on our part; a grant, a grant and hold, a grant and transfer, or perhaps a depublication. Any member of the Court can move a case from the B list to the A list, but I learned early on in my tenure at the Court, if you move a case from the A list to the B list, you better be prepared to write on the subject matter. I did it once.

The grant and holds are cases that — we may have other cases that follow a case that we have already granted — so rather than project to the public or attorneys what direction the Court might lean in, we might grant and hold and then decide what to do with that case after we decide the main case.

Depublication is something that we do rarely, and one thing that we do not do is decide as established California law by depublication. If Court A decides it one

RIGHT: *Justices Carol Corrigan, Kathryn M. Werdegar, Joyce Kennard, and Chief Justice Tani Cantil-Sakauye at the special outreach session, February 2013.*

PAGE 15, LEFT TO RIGHT: *Students offer questions to the Court at the special outreach session — Jeremy Wong, Balboa High School; Lorena Nuñez, USF School of Law; and Francesca Chang, USF School of Law.*

PHOTOS COURTESY SHAWN CALHOUN,
UNIVERSITY OF SAN FRANCISCO

way, Court B decides it another way, we don’t depublish Court A because we favor Court B. We will either grant the case or if there is a correction that can be made we might grant and transfer it back to Court of Appeal.

The petition conference takes place in the Chief’s chambers. We sit and vote in the order of seniority. We speak in order of seniority. The senior justice speaks and votes first, the Chief votes and speaks last. The conference is somewhat formal but also quite relaxed. The formality part, I’ll tell you, is that each of our chairs in the Chief’s chambers has an engraved nameplate with our names on them, just in case we forget about seniority.

We do not grant review in very many cases. I’ll give you an example. Last year there were about 5,000 petitions for review; slightly over 1 percent were granted. So we are just not able to take a large number of cases. Some people ask, “If there’s a conflict, why do you not always take it?” Well that is something that we call “letting it percolate.” We want to hear from other courts, either our Courts of Appeal, or other jurisdictions may speak on the matter. If it’s a particularly complicated problem and we don’t have a ready answer, we hope that by letting it percolate we might have a better-informed opinion and perhaps a more enduring opinion. Thank you for your question.

STUDENT: Good morning, Chief Justice, your honors. My name is Lorena Nuñez. I am a second year law student at the University of San Francisco School of Law. My question for the Court this morning is whether there is any appropriate way in which public opinion affects decision-making at the California Supreme Court.

JUSTICE CAROL CORRIGAN: I think that’s mine. The answer is yes, Lorena. In a sense, there is an appropriate role for public opinion to play out when we decide cases because in democracy the law is an expression of the values and the views of the people who enact it, so when the people of California enact a law, either directly by initiative — and we have quite a robust initiative process here — or indirectly by their representatives in the legislature, they are expressing their collective opinion about what



the law ought to be. So when we interpret or apply a law, two of our guiding principles are, “What did the people who enact it mean by the language they used?” and, “What did they seek to accomplish by enacting that law?” So in that sense, we are looking directly back to what the collective view of the people is when the law gets passed.

Now there is sometimes, as you know, a conflict among statutes or between statutes and the constitution, resolving those cases is sometimes a little more contentious because, after all, those are all expressions of the public view. So we know that whenever we decide one of those, some group of people is going to be a little grumpy, and some group is going to be pleased. When we have to resolve those kinds of cases, we don’t take a poll or read the editorial pages. But we do apply very settled rules of statutory and constitutional interpretation, and we don’t just get to say, “Well, what the heck, we think we like this outcome,” or, “Had we been in the Legislature,” or, “When we voted on this when this was on the ballot, this is what we thought.” But we apply all those principles that you have spent two years, and one more to go, trying to figure out and learn and apply. But probably the most essential notion that we bring to the table is that we work very hard at remembering that the law doesn’t belong to us. The law belongs to all of us. So we try to honor our understanding of the intent of the enactors in that way.

STUDENT: Good morning, Chief Justice, your honors. My name is Francesca Chang, and I am a third-year law student at the University of San Francisco School of Law. My question for the Court is, how much or how often do oral arguments impact your decision-making process?

JUSTICE JOYCE KENNARD: Thank you Chief. Francesca, I have a feeling that the attorneys about to argue the case before us will try to get some points from my answer.

Occasionally, oral argument in our Court can make a difference in the outcome of the case. I’ll explain why. Before a case is placed on the Court’s oral argument calendar, the authoring justice circulates a proposed opinion to which the other justices comment, often quite detailed. They do so in writing, expressing agreement or disagree-

ment with the analysis or resolution. Ideally, a proposed opinion has garnered majority support before it is scheduled for oral argument. The existence of a pre-oral argument opinion does not mean that it is set in stone, far from it. That’s why the Court refers to the opinion as a tentative opinion, especially in a complex or difficult case.

It is during oral argument that one or more difficult issues can, it is hoped, be fleshed out much better during the colloquy between the Court and counsel. In this regard, it’s important for counsel to listen carefully to the questions being asked and to respond candidly in an effort to genuinely assist the Court. When the attorneys don’t do that, the oral argument can be quite frustrating. I consider oral argument a means of testing the strength or the weakness of the tentative opinion. The best oral advocates can explain the logic of their own arguments and identify the flaws in opposing counsel’s argument. Even in easier cases, oral argument can assist in refining the focus of a particular issue, thereby adding clarity to the analysis and resolution.

I hope Francesca, that my necessarily brief answer has shed a glowworm’s glimmer of light on the role of oral argument in our Court.

STUDENT: Good morning, Chief Justice, your honors. My name is Greg Caso. I am a second year law student at the University of San Francisco School of Law. I am also here with my Appellate Advocacy class. My question is, how do you, if at all, seek to persuade your colleagues when you disagree about how a case should be decided?

JUSTICE KATHRYN WERDEGAR: Gregory, I am going to endeavor to answer that question. I like the way it was phrased, “How do we seek, if at all, to persuade our colleagues when we disagree?” I may seek but that doesn’t mean I will succeed.

The justices do discuss cases among themselves informally, and their staff attorneys do as well. But as Justice Kennard referenced, we start out with a written product, and so much of our persuasive efforts are put in writing. We start out with what we call, as Justice Kennard referenced, a draft opinion called a calendar



memo, which means that you circulate it and people have weighed in on it. You're looking at it at the time of the calendar, so we all have calendar memos in front of us for each case. If I am the authoring justice of that calendar memo, I put out the issue, the parties' arguments, the case or statutory law that applies, my analysis, and my conclusion. I have to circulate it, and, as Justice Kennard referenced, every other justice has to weigh in, and they can't just say — in the unhappy event that they disagree — they can't just say "Disagree." As Justice Kennard mentioned, they have to write extensively. So, I hope that everybody agrees and that is the end of it, but seldom is that the case. When I get the disagreements I think, "Well, they misunderstood," or, "they don't know the law." [laughter] So what I might do at that time is circulate another memo, this time maybe with italics, [laughter] explaining to them why they didn't grasp the validity of my point of view. That done, and you having everybody's weighing in on the case, we do schedule it for oral argument — today, oral argument.

This is the time when my last line of defense is to pose questions to counsel designed, in my mind, to elicit answers that will illustrate to my disagreeing colleagues how wrong they are. So that's the task of the attorneys in the event there is a disagreement, which of course they don't know when they sit out there. But I do try, as I say, to bring forth points about the case — nuances — or drive home the validity of my point.

After oral argument we conference, and that's when the die is cast because you see where the votes lie with your colleagues. You're hoping that they all have seen the error of their ways, and they say, "Now I understand, and I agree with you." However, the truth is that if someone who's in disagreement — they also can say "doubtful," which is a little more hopeful for you — but if they're in disagreement at the beginning, chances are they are going to be in disagreement at the end, notwithstanding your italics and your new memos.

But you should know that many, perhaps one might say even most, of our opinions actually are unanimous or with maybe one disagreement. We've all thrashed

through the issues, and we do try to come to an agreement on what the law should be. Thank you.

STUDENT: Good morning, Chief Justice. Good morning, your honors. My name is Anthony Caruthers and I'm a 1L [first-year law student] at the University of San Francisco School of Law. My question is, what responsibility do you assign to your law clerks and staff attorneys?

JUSTICE GOODWIN LIU: Good morning, Anthony. I would be happy to try to answer your question. Each of us on the California Supreme Court has the pleasure of having five law clerks serve for us. We each have five professional attorneys, essentially, who help us do our work. And the first thing to say about that, I think, is that the relationship between the attorneys and the judge, I think, generally speaking, is a very intimate one. The Court is a very small place, and we have very close working relationships. So my answer, I'm sure, is going to be slightly different than the answer would be for all of my colleagues just because it's a very intimate relationship, and so each justice, I think, has their own way they think about their attorneys' roles.

But in all cases, I think it's true that the attorneys are an extension, essentially, of the judge. I think the work can be grouped into three categories. First of all, the attorneys spend a lot of time helping us review the cases, as Justice Chin said, that the Court is going to hear.

Processing the hundreds and hundreds of petitions every week requires a lot of input, and I assign to my law clerks part of that job. Secondly, once cases have been granted, the law clerks have to take a lot of time to think about those cases and to analyze each of the granted cases and figure out, make a recommendation, as to how they should come out. And then, thirdly, each justice has a set of writing assignments. So for the cases that are assigned to that justice, I typically have my law clerks produce a first draft. I'm a pretty heavy editor, so they usually produce what I think of as the first and the last draft. It comes to me, I get my hands into it, and then they clean it up at the end.



In light of all this work, my desk has a lot of paper that gets higher and higher and higher and I think your question was, “What responsibilities do I assign to them?” In practice, it’s a little bit of what responsibilities do they assign to *me* because they are constantly feeding me material as all of these tasks work their way through the courts.

In addition, like many of my colleagues, I maintain a pretty active calendar of lecture, teaching, speaking, and other types of engagements, and I have law clerks help me with some of those tasks to the extent that they’re interested and the projects are interesting. I look for law clerks who are self-starters, people who are broadly interested in the law and people, who are, as much as we are, committed to the impartial administration of justice, and who will take that commitment to the very top of the profession. Thank you.

TWO STUDENTS: Good morning, my name is Debra Morales. My name is Franklin Buchanan. [Debra:] We’re students at Thurgood Marshall. I’m a junior. [Franklin:] I’m a senior. [Debra:] My question is, what are some of the challenges facing the judicial branch today? [Franklin:] And my question is, how do you anticipate the judicial branch changing in the next ten years?

JUSTICE MARVIN BAXTER: I get two questions. Deborah, I will try to answer your question first. By far the greatest challenge we face is to secure adequate funding to enable the judicial branch to discharge its constitutional and statutory responsibilities and, more importantly, to provide access to justice to all Californians. As the most populous state in the country, it really should come as no surprise that California has the largest judicial system in the Western World. In addition to the seven members that occupy the California Supreme Court, as Justice Chin indicated, there are 105 Court of Appeal justices throughout the state of California and approximately 2,000 judges and subordinate judicial officers who are conducting trials at the trial court level throughout the state of California. So as you can see it is a huge system, and it is vitally important that the system be adequately funded.

We’re currently facing the greatest funding crisis in my memory, and I have a pretty long memory. This is largely due to the recession and economic downturn that we have experienced.

It’s affected not only the courts but other operations as well. For example, over the past five fiscal years, the judicial branch has experienced permanent, ongoing budget reductions of \$535 million. And over this same five-year period, court user fees, and fines and assessments have been increased dramatically. Courthouse construction and other infrastructure funds have been diverted to court operations, furloughs have been imposed on court employees. All of these efforts were desperate measures in an effort to keep the doors to the courthouses open.

Despite these efforts, courts have closed in many counties. For example, the superior court in my home county of Fresno, because of budget constraints, was forced to close all of the courts outside the City of Fresno. Those who are familiar with that particular county, and the vast size of that county, will appreciate the fact that those residents living in the outlying borders of the county, in areas like Coalinga, Fireball, and Kerman, as a practical matter, do not have access to justice because the cost and the time involved in driving to a court simply precludes access to justice for those Californians. And that’s just an example. It is happening in other counties as well. The bottom line is that we must convince the Legislature and the governor that we are

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LEFT: Justice Goodwin Liu listens while USF School of Law students Greg Caso (CENTER) and Anthony Caruthers (RIGHT) offer questions to the Court.

THIS PAGE

LEFT: Students Debra Morales and Franklin Buchanan of Thurgood Marshall High School address the Court.

RIGHT: Justices Marvin Baxter and Ming Chin respond to questions from the students.

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a separate and coequal branch of government, that we must be adequately funded, and that we must be in a condition to discharge our constitutional and statutory responsibilities. I might add that the task becomes even more difficult and challenging as fewer lawyers occupy seats in our Legislature.

At the same time, the judicial branch must make every reasonable effort to do more with less, to do so through technology and other efficiency measures. For example, the Judicial Council recently passed a pilot project permitting the superior court in Fresno to have remote video arraignments and trials in traffic infraction cases. This very modest project will provide some measure of access to justice by those living near the outskirts of Fresno County.

And, Franklin, I anticipate that the greatest change to the judicial branch in the next ten years will be that judges at all levels will better reflect the composition of the population at large. When I was in law school in the early '60s, there were very few women and very few minorities in our class. Contrast that with the diversity reflected here at USF Law School and with law schools throughout the nation. The opportunities simply were not there in the '60s. We're all familiar with Justice Sandra Day O'Connor, who graduated near the top of her class at one of the top law schools in the nation, Stanford Law. When she interviewed with a major law firm in California, she was offered a secretarial job and not as an associate in the firm. Of course, she went on to serve as a distinguished member of our United States Supreme Court.

But times *have* changed. Today, women account for 50 percent and sometimes more of the law school class, and as more women and minorities become members of

the bar, their numbers as judicial officers will naturally increase and will better reflect the rich diversity of our state. Thank you for both questions.

STUDENT: Good morning. My name is Crystal, and I'm a senior at Balboa High School in the Law Academy. My question is, how do you balance work and family time?

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you Crystal. I'll take that question, but ringing in my ears is the objection: assuming facts not in evidence, lack of foundation, counsel rephrase the question. I'm going to borrow a page out of, I think it was, Greg's question, that is how do I *seek* to balance work and family time.

The short answer is that on any given day, it's a work in progress. I have two children, two teenage girls both in high school, and I live between two cities, Sacramento and San Francisco. Thankfully to technology, the world is 24/7, and there are no longer chamber office hours that are existing as a limitation. But I will say that for the balance that I seek, that all of you seek, that your parents seek, that every attorney here at the counsel tables seeks, at least for me, is a blend of principles, and the biggest principle is a reality check. Twenty-four hours, seven days a week, requiring priorities, and the knowledge that you can have it all, but just not all at the same time.

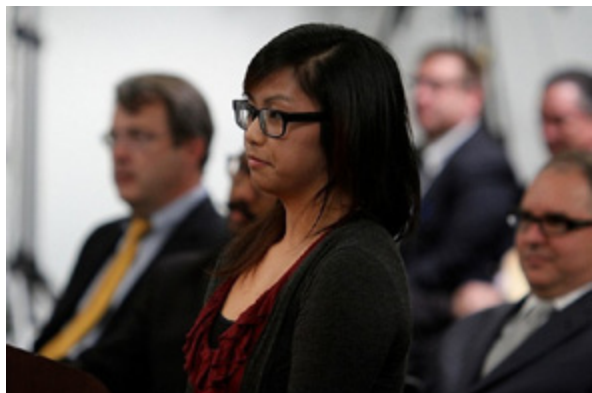
So that means that there have to be priorities, and the priorities are like seasons in your life. When I was much younger, and I worked in the Governor's Office — when Justice Baxter was second-hand to George Deukmejian, then governor, it would not be unusual to be at work for me in the "Leg. Unit" or the Legal Unit at 3:00 or 4:00 in the morning because of the hours kept by the Legislature. But in time that changed, my priorities changed, as a result of wanting a family later in life and deciding, that — for me at least — it meant that I would rather give baths than go to the Inn of Court. It meant for that season a reshuffling of priorities knowing that, in time, there would be an opportunity to do more, given the shuffle of priorities.

I'd also say that the biggest task to balance, whether it is professional or family or both, is really planning and multitasking and using your time wisely. Without

LEFT: *Justices Carol Corrigan, Kathryn M. Werdegar, Joyce Kennard, and Chief Justice Tani Cantil-Sakauye at the special outreach session, February 2013.*

RIGHT: *Crystal, a student in the Law Academy at Balboa High School.*

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technology, frankly, I don't know how anyone could have done this job five years ago. I just don't see it. I know, when I drive to Sacramento on the I-80 corridor, every single place my phone and my iPad drops. Everyone I talk to in chambers and across the state knows when Chief Justice Cantil-Sakauye is in Dixon because she has lost contact on her phone. So I tell you it is multitasking.

The other value is, really, it does take a village. It couldn't happen without my husband, without family, without all the great lawyers who assist on all the issues, and without tremendously brilliant justices who all look at the issues together. It really is a symbiotic relationship, and on some days there are some things and some moments that actually resemble balance. Then quickly it turns back into a seesaw.

So I wish you the best, and it is a constant endeavor. The last part is you should have a lot of humor and not be too hard on yourself. Thank you.

I want to thank each of the students who formulated questions and addressed them to the Court. They were excellent questions and hopefully our responses provided some insight into the workings of our court system. The justices appreciate your participation and that of the faculty members and attorneys who assisted in the program today.

SPECIAL SESSION, SAN FRANCISCO, OCTOBER 7, 2014

CHIEF JUSTICE TANI CANTIL-SAKAUYE: Well, good morning. And welcome to this special outreach session of the California Supreme Court.

We regularly hold these sessions because the Court is committed to informing Californians about their courts and the world of the judiciary in a democracy. The session this morning is broadcast by Cal Channel (The California Channel), and we thank them for their spirited coverage and commitment to civics education.

I'd like to begin by introducing my colleagues here on the bench. They're seated in order of seniority, alternating between my right and my left. To my immediate right is Justice Marvin Baxter. Next to Justice Baxter is Justice Ming Chin, and next to him is Justice Goodwin Liu. On my left is Justice Kathryn Werdegar. Next to Justice Werdegar is Justice Carol Corrigan. And, when we start our first case we'll have a pro tem, Justice Fred Woods, of the Second Appellate District, Division Seven, and he'll be entering shortly. "Pro tem," when he sits and when two other pro tems will sit on the second and third cases this morning, means "for the time being." And because, as you know, we have one current vacancy on the Supreme Court, we rely on justices from the Court of Appeal to participate on our cases until the

vacancy is filled by the governor. Our pro tem justices serve on one oral argument at a time, so you will see different folks for each case this morning, as well as this afternoon for the three cases we will hear.

And, speaking of "for the time being," I want to give special acknowledgment to Justice Baxter, who is set to retire at the end of this year. We on the Court will greatly miss his sagacious presence. We will miss his quiet spoken and reflective demeanor, and we will miss his keen intellect. He sits not only on the Supreme Court, but as many of you know, also for the last 18 years he's been vice chair of the Judicial Council of California, the policy-setting body for the judicial branch. Justice Baxter's service on the Supreme Court and the Judicial Council coincided with the strengthening of our judicial branch as a coequal branch of government. He's been a longtime proponent of all of our outreach sessions, and sadly this is his last outreach session. Thank you, Justice Baxter.

Continuing with the introductions, you've met today our very able clerk administrator, Frank McGuire, and you've also probably worked closely with Jorge Navarrete, our assistant clerk administrator. And, although this is Justice Baxter's last outreach session, it is the first oral argument and the first outreach session for our new reporter of decisions, we fondly call that the "ROD," reporter of decisions, that's Mr. Lawrence W. Striley, he's here in the audience. He will be, he is, our 25th reporter of decisions for the Supreme Court and Courts of Appeal. Welcome, Mr. Striley.

My colleagues and I pursue these opportunities to engage our communities because we believe that the strength of our democracy depends on the public's recognition and understanding of the interrelationship and independence of our three branches of government. We want to thank those who are watching and listening to the Court today because your participation is crucial to the success of our democracy.

In conjunction with the Court's special oral argument session, we are joined by several schools. We have students from Amador Valley High School in Pleasanton. Where are you? Welcome. I understand that you're on the competition civics team class, I like the sound of that — competition civics. And I know you're with your teacher, Stacey Sklar. Thank you. We also welcome and recognize business law students from Fresno City College. Where are you? I know that you had a long trip, and it was arduous, and you called ahead of time. Thank you for being here. Also, we welcome back your instructors, Robert Schmalle and also Nancy Holland. We also have students from the advanced legal writing class from the University of Southern California. Where are you? Welcome. And we welcome you back actually, we often see you in Southern California with your professor, James Brecher. Also, welcome back to Mr. Brecher.

So, the justices of our Court hope that today's Court session will help all of you attain a better understanding of California's judicial system and the rule of law that protects us all, serving as a cornerstone for our democracy. We expect that someday one of you students out there will be at the counsel table advocating for your client. And that someday some of you will also be in our seats. I hope that today's session, and the very backgrounds of those of us here on the bench, will serve as an inspiration to the students to let you know that anything is possible. And on behalf of the entire Court, and also the litigants here today, thank you once again for making today's special outreach session possible, and I hope that these proceedings will serve to encourage all of you to learn more about the administration of justice at the state level and the national level. Thank you.

We will begin with questions from our three schools, and we invite the first student with the first question.

STUDENT: Hi, my name is Maryam Awwal, I'm from Amador Valley High School, and my question is, what is the process by which a person is selected to be on the Supreme Court, and also can you share your personal story on how you became a Supreme Court justice?

JUSTICE MARVIN BAXTER: Thank you, Maryam. I think I was given that question because I assisted former Governor Deukmejian with that precise responsibility of assisting him in selection of judges.

The process is really set forth in our Constitution and in our statutes, and it varies considerably from the federal process, so I'll touch on that shortly. The process is not always exactly uniform from one administration to another. There are variations as to how various governors approach it. But, generally speaking, it's the governor of California who selects, ultimately selects, the individual to serve on the Supreme Court. Sometimes that occurs by way of an appointment, which is when a vacancy occurs during the term of office. And other times it takes place by way of nomination, which is the case where a justice serves out his term of office, which is exactly what I'm doing. So, my term ends January 4, and the person Governor Brown has nominated has already been nominated, and will be on the ballot in November.

Some of the people that are selected actually apply, others are asked to apply. If you have a choice, it's better to be asked to apply. The applications are reviewed carefully by the governor's appointments secretary and also by the governor — at least this is the process that Governor Deukmejian followed — at which time, a group of finalists, four or five, perhaps six, individuals were selected and submitted for evaluation.

Under California statutory law, the evaluation is conducted by a State Bar commission called the Commission on Judicial Nominees Evaluation, commonly called the JNE Commission, and it consists of approxi-

mately 25 individuals selected by the State Bar Board of Trustees. And they do a very in-depth evaluation of the finalists whose names have been submitted by the governor, and the applicants are rated anywhere from exceptionally well qualified to not qualified — with ratings of well qualified and qualified between these two extremes. The ratings are accompanied with a rather detailed report that is submitted to the governor and the appointments secretary. There are other groups, county bar groups, California Women Lawyers, a variety of other bar associations that also provide evaluations. So armed with this information, again the governor and the appointments secretary will sit down and come up with an even shorter list of finalists, and then those individuals are interviewed, and the governor ultimately makes his selection, again either an appointment or a nomination.

The next step is that the individual goes before the Commission on Judicial Appointments for confirmation, and that commission is composed of the chief justice, who chairs that commission, the attorney general of California, and the senior presiding justice of the Courts of Appeal, senior in terms of service, not necessarily age. And that commission hears the evidence and decides whether or not this person is qualified to serve. It basically takes the role of the U.S. Senate in federal judicial appointments. It's not over at that point, even after being confirmed. The individual who is confirmed then goes before the electorate at the next gubernatorial election, and must have at least a majority approval by the electorate, and then takes office at that point. The system is very different from the federal system; under our system there is a 12-year term, at the end of the 12-year term the incumbent can seek reelection in a retention election. It's nonpartisan, no one runs against that individual, it's a yes or no.

In terms of my own personal story, as to how I became a part of the Supreme Court, if I had to use one word it would be fate, and of being at the right place at the right time. As my Fresno colleagues can relate, I was a native of Fresno County, born and raised in the very small agricultural community of Fowler. Always intended to return after law school, set up my practice in Fresno County; got involved in bar activities, was president of the bar association, got involved in setting up evaluation committees to assist the then governor. Became very active, very actively involved in George Deukmejian's campaigns for attorney general, and later for governor. He invited me to be his appointments secretary in 1983, which meant that I left private practice at age 43 to take on this position in Sacramento. Did that for six years, and then was appointed to the Court of Appeal in Fresno, where I served for two years, and was then elevated to the California Supreme Court in 1991, so this is my 24th year on the Court. So, I guess being in

the right place at the right time accounts for, accounts for all that. Thank you very much.

CHIEF JUSTICE CANTIL-SAKAUYE: Maryam, you just received the most expert answer you could possibly get on that question. We invite the second question.

STUDENT: Good morning. My name is Elizabeth Lira, and I am from Fresno City College. Your honors, the majority of the cases taken by the California Supreme Court are discretionary. What is the process by which you as a body reach a decision whether to accept or deny review? What factors are important in this decision-making process? And in this selection process is there any give and take between justices, such as discussions on, persuasion, you know, asking them, one or more of them to take a case?

JUSTICE CAROL CORRIGAN: Good question, Elizabeth. I have to confess that until I got to the Supreme Court, I didn't actually know the answers to those questions.

We only grant about 2 percent of the applications a year. So, how do we figure that out? As you know, every case starts out in the trial court, and the losing party can come to the Court of Appeal, and ask them to review it. And there are about 100 justices on the Courts of Appeal, and they sit all over the State of California. They decide thousands of cases a year. We decide about 110 cases a year. When a Court of Appeal decides a case, they're usually deciding kind of settled rules. But sometimes the rules aren't settled. There's a new statute, or there's new technology involved, or an old rule is applied to a new case. Or, sometimes the Courts of Appeal around the state are deciding cases, same kinds of cases, but deciding them very differently. Or, sometimes somebody comes to us and says, "We know that's the old rule but we think you should create a new rule."

So, once the case is decided in the Court of Appeal, the parties can file a motion here in the Supreme Court and ask us to take the case. And a staff of lawyers reviews each one of those applications and writes a memo on every application for all the justices. Then we meet every week to discuss those petitions. And we review every week somewhere between 150 to 300 cases, so we're kind of busy doing that. Of those 150 to 300, we individually discuss the most important ones, which usually turn out to be 25 to 50. And there is some give and take as we go around the table to vote on these cases, and someone will say, "Well, I don't think we need to take this one," or "I think we absolutely should take that one." And then people will test one another's ideas, "Do you really think this is the right case to take?" Or, "What do you mean we shouldn't take this? We have to take this."

The biggest question usually is whether the law is unclear in some way, whether there's a new statute, or whether the Courts of Appeal are going off in different

directions. When the Court of Appeal decides a case, they're usually looking backwards; so, they're looking back to see what happened in the trial court to see if there was a mistake made. When we decide to take a case, we're usually looking forwards, so the next time a case like this comes up, what's the trial court or the Court of Appeal supposed to do? How should the rule be applied?

We also look to see if the case is what we call a good vehicle, are the facts and the procedure by which the case was tried nice and clear, so that we can use this case to make a clear statement about what the law is. We look to see whether or not the briefing is any good. Are these lawyers who are asking us to take review really prepared to help us look at a complicated question and decide it intelligently?

And sometimes if a new issue comes up we won't take the case right away, we'll wait until similar kinds of cases have been decided in the Courts of Appeal, so that we can kind of get the big picture. We can get the benefit of those very smart people who sit on the Court of Appeal, who are looking at the same issue, and maybe we'll get a group of cases that present the issue in kind of different ways. So, those are the things we take a look at, and while we're deciding what we're deciding, we're also spending a part of our week trying to decide what to decide next. Good question.

STUDENT: Good morning, your honors. My name is Sukhjit Kaur, and I'm from Fresno City College. My question is, what types of conflict of interest would require a justice to withdraw from participating in a given case, and when in the process would a conflict be identified and a recusal occur?

JUSTICE GOODWIN LIU: Thank you, Sukhjit. That's a great question. Obviously it's extremely important for any judge to maintain the reality and the appearance of impartiality, and so all judges have a duty to minimize conflicts of interest.

The most common conflicts of interest I would say are financial interests, possibly, in one or another side of the case. The possibility that you might have personal knowledge of a party or a witness relevant to the case. The possibility you're, especially if you're newly appointed to the bench, that as a lawyer you worked on some aspect of the case or had some other involvement. There are other kinds of conflicts resulting from, for example, if you served as a board member for an organization that is a litigant in the case. These are just some examples, and the rules governing conflicts of interest are set forth by statute, as well as by the California Code of Judicial Ethics, which all judges are, must adhere to.

You asked also when in the process are these conflicts identified. So judges are extremely careful to try to minimize these conflicts, and so each one of us on this Court, and I suspect in the other courts as well, has screens that

are set up, meaning key word identifiers that help us automatically screen among the thousands and thousands of matters that come before the Court, cases that present a particular organization, a person, an entity, that would require each of us to look at the case more closely and determine at the outset before we've read any of the papers, whether we ought to go further or not.

Sometimes it happens that the screens don't catch a particular conflict of interest, and even during the processing or consideration of a case a judge might come to the realization that there is a conflict of interest. A recusal for conflict of interest can occur at any time in the process, before oral argument, even after argument, on rare occasions. It is that important to the impartial administration of justice that at any moment in the case when a judge discovers a conflict of interest, that he or she makes a proper determination of whether to recuse.

STUDENT: Hi, my name is Nick Nowell, and I'm from Fresno City College. My question is: If a justice changes his or her mind about a case after it has been assigned, and that change causes the majority to now be in the minority, how does the Supreme Court deal with that situation? Does it make a difference whether the change of view occurs before or after oral argument?

JUSTICE KATHRYN WERDEGAR: Nick, thank you for that question. Because the justices are thinking about a case before argument, during argument, and after argument, it does sometimes happen that a justice that was with the presumed majority changes her mind. Now this is not welcome to the assigned justice. But when that happens and the majority is now a minority, the assigned justice has a choice. She can stay with her original view, and ask the chief justice to reassign the case, and then she would write a dissent. Or, she can decide that, well, after thinking about it, maybe the new majority has a better view, I think I see the wisdom of their point of view, and she will keep the case, but she has to write an opinion that goes the other way. Her colleagues that were with her may also decide that they see the view of the new majority, or they may stand firm and write a dissent.

When the change occurs does make a difference. As you know, the Court discusses the cases that we're going to hear today, or any oral argument in advance, so we're all thoroughly familiar with the facts and we all have a tentative idea of where we're going to be going. If before oral argument, a member of the majority changes her mind, again, the assigned justice has this choice but she has time to think about it if oral argument has not been set, so she can reflect, do additional research, consult with her colleagues, and then, again, ask the Chief to reassign the case or decide that she will go with the new majority.

If the change occurs after argument, let me say that after argument today and every argument day, we go into the conference room, and we talk about the cases.

We discuss what occurred and we go around the table, and each justice says, in order of seniority, where they are on the case. The assigned justice is apprehensive, she's hoping that everybody will hold firm, will agree with what she has proposed, but a justice can change his mind. And, when that occurs, the assigned justice has the same choice, keep the case and write it opposite to what she had written, or ask the Chief to reassign it.

But here there's a time pressure because once we have oral argument the cause is what we say, submitted. And under the law we have 90 days to file our opinion, and any separate opinions, concurrences and dissents. So there's a bit more time pressure for the assigned justice to decide what to do, she has to decide as quickly as possible so that the process can move smoothly. Be that as it may, every justice has the right to change his or her mind at any time until the opinion is filed. Changes do occur at the post-argument conference, and maybe shortly after oral argument, but rarely do they occur as the clock runs and it's getting time to file the opinion. Thank you.

STUDENT: Good morning, my name is Jennifer Marr from the University of Southern California. My question is for Justice Chin. How often does your honor change his mind during oral argument? What are the most effective techniques for oral advocates? And what are some of the worst?

JUSTICE MING CHIN: Well, Jennifer, those are three very good questions, and I'm sure that the attorneys who are about to argue would like to know the answer.

The answer to your first question is, sometimes, and I cannot give you a numerical figure. I can tell you that it is unusual to make an about face, in other words, change your entire opinion about the case at oral argument. The briefs in this process are obviously the most important piece, so if you haven't done your work in the brief, don't expect to stand up in oral argument and change everyone's minds. But, I can tell you that it has happened that the Court has changed its mind at oral argument and gone completely 180 degrees. Don't count on it. It's highly unusual. It's more usual for individual justices to change their opinion on pieces of the case.

And you've heard from the answers of Justice Werdegar and Justice Corrigan about the nature of the work of the Court. And the nature of our work is that all of the easy cases have been decided, and the hard ones are now before us. There are many moving parts, they are very complicated. But that doesn't mean that oral argument is unimportant. It's very, very important. And one of the reasons it's important is that many pieces of the case do not jump out from the pages, but you can bring that case to life for the judges in oral argument. So the oral argument piece is very, very important.

What about effective techniques in oral argument? I think the most important piece of oral argument is listen-



Justices Carol Corrigan, Kathryn M. Werdegar, Chief Justice Tani Cantil-Sakauye, Justices Ming Chin and Goodwin Liu at the October 2015 special outreach session.

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ing. It is really bad not to listen to the judges' questions, and to start answering the questions before we finish them. You don't know where we're going, so wait, patiently.

Now, you in oral argument are trying to manage a conversation with seven people — pretty strong-opinioned people. And many of them will be asking questions at the same time. And it's your job to manage that conversation. I realize it sounds like an impossible task, but it really is a conversation so don't expect to get up at oral argument and give speeches. Or, worse yet, read speeches. Talk to us, engage us in conversation. Bring the case alive for us. When you think about it, recently, one of my colleagues asked one of the attorneys on a very complicated case, "Can you summarize your case in one sentence?" The attorney said, hesitatingly, "I'll try, but it may be a run-on sentence." I will give you at least a paragraph, but you should be able to summarize your case in one paragraph.

Now, as far as some of the best techniques and worse techniques. One of the things you should not do in oral argument is bring attention to yourself in some negative way. I'll give you one example, two examples. I should give you a male and a female example. One time a female lawyer wore a number of bracelets on her hand and kept banging the podium with her hand. Don't do that. Now, just to be nonsexist, a man, you can tell how

old the story is, a man wore a tie tack that had to be a four-carat diamond. Don't do it, it'll look like a spotlight. So, don't bring attention to yourselves.

I'll close with one example of outstanding oral argument that I heard before the U.S. Supreme Court. It was Lawrence Tribe, and I just had dinner with him in San Diego, and I reminded him that I attended the U.S. Supreme Court oral argument in the BMW case. And when Lawrence Tribe got up to the podium, he had one folder in front of him. When he opened it, it was the exact size of the podium at the U.S. Supreme Court. You could tell that this man had been there before. And, on this folder, he had bits of information, and I was close enough to the podium that I could read his notes. He had bits of information that looked like a jigsaw puzzle, so when he argued before the Court, he had bits of information that he needed to draw for those remarks but he did not have a stack of papers that he was thumbing through while he was talking. That is just one example of an outstanding technique. (Now, if you came to our podium, you would have a giant folder. I don't recommend that, but I just gave you that example because we've heard oral arguments where counsel did nothing but thumb through papers. I suspect we won't see any of that today.) So, thank you for your question.

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you. We're going to welcome now at this time the next questions, and we also welcome Justice Fred Woods from the Court of Appeal, Second Appellate District, Division Seven. And, Justice Woods, we're going to put you to work right away and you're going to get this question.

STUDENT: My name is Nick Scotti, and I'm a senior at USC as well. My question is for you, Justice Woods. We know the Court has read the briefs before the oral argument, so does this mean that there's little reason for oral advocates to spend much time discussing the facts? And, having been an appellate judge, how much do the facts matter at the appellate level or do they become dispositive?

JUSTICE FRED WOODS: Well, I would say, counsel, if I could, the north star of appellate advocacy in the Court of Appeal is make sure you know your record, and make sure you know the facts of the case, and then get right to it, and try to present the facts of the case which will be most favorable to your side of the argument.

Now, don't ever assume that the justices are really on top of the record, which I think most of them are. And you've got to realize that sometimes there are factual disputes that need to be presented and argued at the Court of Appeal. So, what you need to do when you get up to argue, make sure that you present the facts that are most favorable to your side as you see them but always arguing from the record. And don't ever assume that the justices will be on top of exactly the arguments that you're going to make from the facts. So, if I were to give you some advice on arguing your case, I would say you should get up and you should discuss the facts honestly, fairly and make sure that you cover all your bases. And you shouldn't assume that the justices have everything committed to memory as far as facts are concerned because maybe in pre-argument discussions certain problems come up with regard to the facts, and you need to make sure that you draw out the facts that are most favorable to your side.

So, are the facts that are presented at oral argument always dispositive of the case, I would say the answer to that is no because when the justices go back and they have post-argument discussions about the facts, and who said what at the time of oral argument, there might be some disagreement among the justices as to what was really said at the time of oral argument. So, if you present the facts, are they always dispositive of your case, probably the answer is no. Sometimes the justices will make, want further argument, and if they do want further argument, what they'll do is sometimes send out a letter through the clerk of the Court and ask counsel to address certain things about the facts of the case that

did not become clear at the time of oral argument. So, does that help you at all, with my rambling?

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you. We'll invite the last question.

STUDENT: Good morning. My name is Megan Gupta, and I'm from Amador Valley High School. My question is, what responsibilities do the justices have other than reviewing and deciding cases?

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you, Megan. I'm glad you asked that question. There are quite a few responsibilities that occupy the justices' time in addition to the lion's share of our time dedicated to hearing and deciding cases. And, so in no particular order of priority, I'll mention a few that may not be particularly obvious to many people, and also that are likely peculiar to the California Supreme Court.

And the first I'll mention is the State Bar. The State Bar of California, that is, the regulatory entity that regulates lawyers, and disciplines lawyers, and oversees admission, as well as protects the public, and not particularly in that order, is an administrative arm of the California Supreme Court. As such, the California Supreme Court, the seven of us, we appoint to the Board of Trustees, we appoint people and judges to the State Bar Court that hears the attorney discipline cases. We are in charge of, and oversee the Rules of Professional Conduct, all the rules that lawyers in this state must follow in order to be in good standing with the State Bar. And we also have, from time to time, different issues, legislative and otherwise, business and otherwise, pertaining to the State Bar. So, one thing to know about the California Supreme Court's interface with the State Bar as our administrative arm, the State Bar is the largest bar in the country, arguably, the largest bar in the world because there are more lawyers in California than anywhere else in the country and in the world.

Another matter that occupies the justices' time was mentioned by Justice Liu, and that is the code of ethics, the Code of Judicial Ethics. Judges, unlike lawyers, unlike our sister branches, we have a code of ethics, the judicial canons, that govern and guide how it is we operate professionally and personally, and these are basically living breathing documents and codes. So, this California Supreme Court has the responsibility, with the aid of our advisory committee on judicial ethics, to oversee those ethics, keep them current, make sure that the canons are understandable.

In conjunction with the canons, if they are violated in some way, or alleged to be violated by a judge on the bench, or off the bench, then there is an independent constitutional body called the Commission on Judicial Performance. And this individual body, constitutional body, operating separately from the court, takes up disci-

pline against judges. And in this way, the Supreme Court acts as a review body for disciplinary proceedings, when asked, for judges who run into trouble with the Commission on Judicial Performance because they are alleged to have violated the canons or the code of ethics.

Another responsibility that occupies our time was mentioned a little bit by Justice Corrigan. And that is, we oversee and manage our three central staffs. We have a civil central staff, a criminal staff and a capital staff. In addition, we oversee actively our clerk's office, which is run ably by Frank McGuire and Jorge Navarrete, and also the Reporter of Decisions Office, which is run ably by Mr. Striley.

We also have an active management of our own internal policies and our public policies, that assist lawyers who bring matters before us in our roles. And also, last but not least I would say, is an understanding that, despite that we carry the name of the judiciary, and we follow the rule of law, we are in fact still a business because the judiciary is funded by the public fisc. So we have budgetary issues, we have policy issues in terms of hiring, in terms of discipline, and each of the justices here, all seven, have a chamber with our attorneys, with our staff, and there's also business operations, every justice is the boss of his or her chamber. We're also collectively the boss of the California Supreme Court. So, we have a lot of administrative responsibilities that actually reach out to other aspects of practice and procedure and pleading in California, and it's not so widely known. So, I do appreciate your question about what we do.

I'd like to thank all of the students who formulated all these excellent questions. I also want to thank the professors here who brought them here to observe next, now, the true advocacy in action. I also want to make a special thank you to Professors Schmale and Holland, who I know had an arduous journey to get here. And, finally, to the rest of the Fresno students who filled out our courtroom, thank you for being here, again.

SPECIAL SESSION, SAN FRANCISCO, OCTOBER 6, 2015

CHIEF JUSTICE TANI CANTIL-SAKAUYE: Welcome to oral argument at the Ronald M. George State Office Complex. October is our outreach month. Typically, we travel to law schools or high schools and hold oral argument, in order to increase the public's understanding of civics and the judicial branch's role in it.

This month we have it here in the Milton Marks Auditorium [at the Supreme Court], and students will be joining throughout the day, as well as listening in, in adjoining courtrooms. It's also being filmed by Cal Channel so that we can share this information across the state in our outreach. We welcome the Mandela Law and Public Service Academy in Oakland's Fremont High School — these are the tenth grade students. Ms. Patricia Arabia, director of the academy — would you give us a wave? Ms. Claire Mueller, career technical education specialist. We'd like to give special thanks to [Supervising Attorney] Alice Collins for facilitating this outreach, and, of course, the additional teachers and parents who are chaperoning at this special event. We also welcome fourteen students from an advanced legal writing seminar at the University of Southern California and their instructor, Professor James Brecher. Thank you.

LEFT: *At the special outreach session in October 2015, Justice Mariano-Florentino Cuéllar repeated Chief Justice Tani Cantil-Sakauye's introduction in Spanish.*

RIGHT: *Norma, a student at Fremont High School Mandela Law and Public Services Academy in Oakland, addresses the Court.*

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Thank you for being here, for your interest in civics, especially the judicial branch, the Supreme Court — and to your teachers, a special thanks for bringing you to oral argument. As you know, the California Supreme Court is the highest court in California, and in some cases, our decisions are appealed to the United States Supreme Court. And let me introduce the justices. This is Justice Werdegar. This is Justice Chin. This is Justice Corrigan. This is Justice Liu. This is Justice Cuéllar, and this is Justice Kruger. Before we invite your questions to the Bench, I'd like to ask Justice Cuéllar to please say a few words.

JUSTICE MARIANO-FLORENTINO CUÉLLAR: Buenas tardes. [He repeats the chief justice's introduction in Spanish.]

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you, and let me also say, while we have all of your attention, many thanks to Debbie Gensler, Frank McGuire, and Jorge Navarrete, who also made this day possible. Please proceed.

STUDENT: Good afternoon, justices. My name is Norma. I'm a sophomore at Fremont High School Mandela Law and Public Services Academy in Oakland. My question is, why is Lady Justice blindfolded?

JUSTICE KATHRYN WERDEGAR: I love that question. I once gave speeches on that topic. As you know, Lady Justice is blindfolded. She has a pan in either hand. There are perhaps many interpretations, but the one I choose this morning is: She is blindfolded because she is impartial. She's going to be fair. She's not going to be swayed by who the parties before her are, or any biases she might have. She has an open, unbiased mind, and the scales of justice will tilt according to what's fair after the oral argument, like this morning. Thank you very much.

STUDENT: Good morning, justices. My name is Olga. I'm a sophomore at Mandela Law and Public Service Academy in Oakland, and my question is, what has inspired you or influenced you to become attorneys and judges?

JUSTICE LEONDR A. KRUGER: I think that the answer for each of us would be very different. I think one thing that we all have in common is that none of us imagined when we were growing up, or when we were in your shoes or even beyond, that we would find ourselves here one day.

I grew up not knowing very much about what it meant to be lawyer, other than what I saw on TV, which it turns out was a little bit misleading. But I grew up knowing that what I really wanted to do was find out what I was good at and figure out how best to make use of that for the good of the community that I live in. And, over time, it began to occur to me that what I really enjoyed doing most was writing, and tried to think of ways in which I could write and make a difference in the world. And as I proceeded in school, as I had a chance to learn what lawyers do, as I had the chance to visit oral



argument, like you're doing today, it started to occur to me that maybe law was the place to do that — law was the place where I could use my pen to make a difference, and that's what originally attracted me to the law, and it's what's guided my path from law school and beyond.

STUDENT: Good afternoon, judges. My name is Bianca. I'm a sophomore, also, at Fremont High. I am also one of the two student directors at the OUSD [Oakland Unified School District] School Board of Education. My question for you is, what advice do you give to an attorney about being persuasive?

JUSTICE MING W. CHIN: Oh, I could answer that. I want to welcome all of you to the Supreme Court. You know, this is the most diverse supreme court in the country, and in spite of that fact, four of us have chosen to live in your county. So, we welcome you to the Supreme Court. As far as being persuasive, I think the top of my list would be brevity — and I think I'll end with that. [laughter]

Now, isn't that persuasive? But really, we have to absorb a lot of information, from a lot a different sources. The more concise you can break it down for us, the better it will stick in our minds. And, you just sat in on one case today; it's the third one this Court has heard. We have a couple more this afternoon and a few more tomorrow. So, that's a lot of information to absorb in a short period of time. You have to be direct when you talk to us. Answer the questions directly that the justices ask. In your writing, you have to be concise and to the point. If you ramble on and on and on, and talk about everything in the world, we're not going to get it, so be brief. Thank you for being here.



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Justice Leandra Kruger answers a question at the October 2015 special outreach session.

THIS PAGE, CLOCKWISE FROM TOP LEFT:
Jody, Fremont High School Mandela Law and Public Services Academy, and Madisen Keavy, USC, address the Court.

Students watch from the audience.

PHOTOS COURTESY CALIFORNIA COURTS.
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STUDENT: Good afternoon, justices, my name is Kevin. I am a sophomore at Fremont High School and Mandela Law and Public Service Academy of Oakland. My question is, what do you like most about your jobs as justices of this Supreme Court?

JUSTICE MARIANO-FLORENTINO CUÉLLAR: So, there's so much, I don't think I can be brief. I should take Justice Chin's advice and try to be very quick about it, but, first of all, let me just say how privileged I feel that all of you are here. I don't live in Alameda County, but I still like you guys. I think it's a special thing for us to have you here because the truth is, we all work for you. And I think that's what I like most about the job.

There are so many things that you can do in your life that might make you happy, might make you feel like you're making a difference in the world, but there's something special about working for the people — where you get up in the morning and you know that your job is to be as close as possible to that ideal of wearing a blindfold and trying to be completely fair and impartial. And if, in addition to having that great responsibility, you

also have something that's really interesting that you get to talk about — taxes, or about criminal justice, or think about the way constitutions work, that's an added bonus, and if in addition to that, you also have great colleagues that you like to spend time with, that's really very special. So I like all of that.

STUDENT: Good afternoon, justices. My name is Jody. I'm a sophomore at Mandela Law and Public Service Academy in Oakland, and my question is, how does a case get selected to come before the Supreme Court?

JUSTICE CAROL CORRIGAN: Oh, so that's a great big question. You know, you start in the trial court, and that's what you usually see on TV. You know, the lawyers get together and they call witnesses and there's a big trial, and somebody wins. And then, the person who loses, can take an appeal to what we call the Court of Appeal, logically enough, and the Court of Appeal decides whether or not they're going to uphold the trial court. And then, the people who feel that the Court of Appeal didn't get it right can come to the Supreme Court, here, and say, not, "We get to come here as a



Elinor Haddad, USC student, addresses the Court.

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matter of right — you *have* to take our case,” but you *should* take our case, for some reason. And the reasons include: The Courts of Appeal disagree, some Courts of Appeal — like the Court of Appeal in Los Angeles says, “We think the rule ought to be *this* way,” and the Court of Appeal in San Francisco says, “No, the rule ought to be *this* way.” Now all the lawyers are in a froth because they don’t know what the rule is, so they come here to have us resolve that conflict. Sometimes it’s a new question of law that nobody’s ever spoken to before, and it’s a big deal, so we need to resolve that. Or, if the case is a death penalty case, that comes directly here, doesn’t stop at the Court of Appeal. It goes right from the trial court, and if there is a conviction, and imposition of the death penalty, then that comes directly to this Court.

STUDENT: Hi, my name is Madisen Keavy, and I am one of the students from USC. I am a journalism student, and there’s a couple of us who are journalism students, English students, and so we study every day how language works in media and in our writing, and so, in the context of the courtroom, something we were interested in asking the justices today, in what ways does language shape and permit the actualization of the law? Maybe even more specifically, what are the limits of language in actualizing the law to its fullest intent?

JUSTICE GOODWIN LIU: Thank you, that’s an incredibly deep question. I want to add my welcome to that of my colleagues, and commend all of you who are here today and your teachers and your parents for spending some time with us. Language is the currency of what we do. We only render our decisions through written opinions, making transparent, for all to see, why we rule the way we rule. In other words, when you get a decision on these cases that you’ve seen today from our Court, it doesn’t just say, “This side wins,” or, “That

side wins.” It’s accompanied by an entire opinion and statement of reasons.

I think language is used extremely carefully by courts because clever lawyers, and the lower court judges who have to look at what we write, parse every single word. And one of the things that we try to avoid is unintended consequences or unintended meanings, and so all of us here on the Court write extremely carefully. You’re right to observe that sometimes language is limited. There are limitations to what you can do with language. And so, in addition to the specific words chosen in a case, often we indicate in our opinion how broadly we are ruling, which is to say, is this case going to stand for just what happened with *these* facts and these facts alone, and this is how it should come out, or are we trying to establish a general rule that might guide different facts but are governed by the same principle to the future, and we will make that clear. So these are the ways in which courts very carefully use language, and I hope consumers of our opinions, including journalists, find them adequately reasoned and transparent.

STUDENT: Hello and good afternoon, my name is Elinor Haddad. I’m a senior at USC, and I have a question: In the past, we have seen this Court deal with matters of statutory construction, and we have also seen the Court apply specific rules for applying statutory meaning. What rules do you apply to interpret the text of the California Constitution, which has much less historical record with respect to legislative intent, and other methods of constitutional analysis?

CHIEF JUSTICE CANTIL-SAKAUYE: Thank you, I’ll take that question. And congratulations on being a senior at USC. We interpret the Constitution in much the same way that we interpret many of the legal questions that come before us. As Justice Liu said, about the language, we look at the language and text and content of the Constitution. We look at its history. We look at the societal context in which certain provisions were added. We also look at it in comparison to all other parts of the Constitution. We test our interpretations against case law that has already perhaps interpreted some other aspect of the Constitution, or perhaps the federal constitution, or similar phrase in another state constitution.

The truth is, we bring all tools to bear when we come to interpreting our California Constitution. And because our Supreme Court has previously written on certain aspects of the Constitution, we have those in mind as we begin the task of trying to determine the meaning of the Constitution as it may be applied to initiatives or as it may be applied to resolutions or law. So everything in our tool chest is used. Thank you again. We hope that we’ve been able to provide some answers that you can dissect and debate in school with the help of your teachers. ★



2015 STUDENT WRITING COMPETITION WINNERS ANNOUNCED

First place winner Jorgio Castro (CENTER) is congratulated by Chief Justice Tani Cantil-Sakauye (CENTER LEFT), Associate Justice Kathryn Mickle Werdegar (RIGHT), Society President Jennifer King (LEFT), and board member Selma Moidel Smith (CENTER RIGHT) — at the California Supreme Court in the Chief Justice’s chambers, November 12, 2015.

PHOTO: WILLIAM A. PORTER

(PUBLISHED IN THE SAN FRANCISCO AND LOS ANGELES EDITIONS OF THE DAILY JOURNAL ON NOVEMBER 18, 2015)

THE CALIFORNIA SUPREME COURT HISTORICAL SOCIETY is pleased to announce the winners of its 2015 CSCHS Selma Moidel Smith Law Student Writing Competition in California Legal History.

First place was won by Jorgio Castro of UC Hastings College of the Law for “Laura’s Law: Concerns, Effectiveness, and Implementation.” He receives a prize of \$2,500 and publication in the 2015 volume of *California Legal History*, the Society’s annual scholarly journal.

Second place was awarded to David Ligtenberg of the UC Davis School of Law for “Inverse Condemnation: California’s Widening Loophole.” He receives a prize of \$500.

The third-place winner is Kelsey Hollander of UC Davis School of Law for “The Death Penalty Debate: Comparing the United States Supreme Court’s Interpretation of the Eighth Amendment to that of the California Supreme Court’s and a Prediction of the Supreme Court’s Ruling in *Glossip v. Gross*.” She receives a prize of \$250.

The high quality of the winning entries has resulted in the editorial decision to publish all three in the 2015 journal.

The three distinguished judges, all of whom are professors of law, were: Michal Belknap, California



Second-place winner
David Ligtenberg



Third-place winner
Kelsey Hollander

Western School of Law; Edmund Ursin, University of San Diego School of Law; and, in a special “first” for the competition, Mirit Eyal-Cohen, University of Alabama School of Law, who was the first-place winner of the first CSCHS writing competition in 2007.

Student papers may address any aspect of California legal history, ranging from the justices and decisions of the Supreme Court itself to local events of legal and historical importance, at any time from 1846 to the present. The winning papers will also be available on the Society’s website, www.cschs.org (at “Writing Competition”). ★

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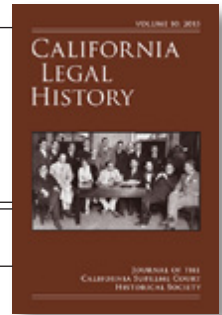


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