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Brief Remembrances: My Appointment and Service on the California Court of Appeal and Supreme Court, 1976-1987

Hon. Cruz Reynoso[†]

Outside the weather was warm as it usually is in Sacramento in August. However, we were all inside the courtroom of the Library and Courts Building. The building itself is grand. It was built in the 1920s to be the home of the California Supreme Court and the Court of Appeal. It is one of two imposing public buildings located directly in front of the Capitol. But the courtroom in which we found ourselves was even more grand.

I considered it the most beautiful and inviting courtroom that I had ever seen. My observation surprised me, since Chief Justice Earl Warren had sworn me in as a member of the United States Supreme Court Bar in that impressive courtroom in our nation's capital. In the Sacramento courtroom, the columns, chairs, and bench have a wood-on-wood motif built during a time when state prisoners spent countless hours finishing fine wood. The bench where the judges sit is high enough to be dignified, but low enough to permit the judges to have a conversation with the appellate lawyers who appear before them. The ceiling is set high, giving the courtroom a cathedral sense of the dignity of the law.

However, the setting on that particular August day in 1976 was not a hearing. I was being sworn in as the newest associate justice for the Third District Court of Appeal. I was later told that no prior investiture had been so celebratory. It was an uplifting and joyful day. My wife, Jeannene, and my four children were in the front row. My father was there, as were eight of my ten brothers and sisters. Other relatives as well as countless friends and acquaintances filled the courtroom.

Several individuals spoke on my behalf. The representative of the bar association summarized my life as an American dream come true. He spoke of my modest roots as a son of a farm worker who had begun his own life's work as a farm worker. He spoke of my education – my undergraduate and graduate schooling. He spoke of my work representing farm workers when I was director of California Rural Legal Assistance (CRLA) and of my recent professorship at the University of New Mexico Law School. I could hardly believe that he was speaking about me. Then there was Mario Obledo, the Secretary of Health and Welfare for the state of California. I had known him since the late 1960s when he had been appointed the first president and general counsel of the Mexican-American Legal Defense and Educational Fund. He painted my character and background in glowing terms. Annie Gutierrez followed. She had been appointed a justice court judge, though she was not then a lawyer. She became so interested in the law that she eventually

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decided to become a lawyer. I later learned that she had been the principal force in organizing such an uplifting swearing-in and reception. I had first met Annie when I was a practicing attorney in the early 1960s in Imperial Valley.

All six Third District justices were present. The presiding judge, Robert Puglia, had been my classmate at Boalt Hall at the University of California Berkeley School of Law. I was proud to have him administer my oath of office.

After the swearing-in there was a celebration attended by hundreds at the old governor's mansion, an elegant nineteenth-century Victorian house. To be there reminded me of the days when I had been Staff Secretary for Governor Pat Brown who, with his family, had lived in the mansion.¹ Mariachi music enlivened the scene as the photographers clicked away. We still have a large photograph of my immediate family – my wife, children, father, brothers and sisters – as we were on that day in 1976.

APPOINTMENT TO THE COURT OF APPEAL

My appointment to the Court of Appeal came as an unexpected turn in my professional life. My dream in going to law school had been to be a lawyer in a small town. Such a lawyer could not only represent individual clients, but be a force for good in the community. One person could make a real change in a smaller community; that same person could get lost in a large city. When I started practicing law, I thought it would perhaps be nice to cap my career with an appointment to the Superior Court when I reached age 55 or 60.

I had become a lawyer to represent those who needed representation, whether their causes were traditional or controversial. However, I noticed that many judges were former prosecutors, former elected district attorneys, or lawyers who had been in a very traditional and non-controversial private practice. While I represented businesses and growers, I also represented farmworkers, the poor, and those who needed protection of their civil rights. Lawyers like me, I concluded, did not get appointed to the bench. Nonetheless, I very much enjoyed representing my clients in the Imperial Valley. Often they would come in with fruit or vegetables or other forms of appreciation for the help and protection my office had provided.

In 1965, I was afforded the opportunity by Governor Edmund G. (Pat) Brown to serve as the assistant director of the Fair Employment Practice Commission. His staff had urged my appointment in light of my civil rights work. Equal employment opportunity, like other civil rights, had always been central to my interest. By 1965, my practice had two associates. That permitted me to accept the government position yet retain an interest in my firm. Later the governor asked me to be a Staff secretary in his Sacramento office. When he was not re-elected, I returned to the practice of law in El Centro. As it turned out, it was but for a few months.

The then Chairman of the relatively new Equal Employment Opportunity Commission in Washington, D.C. called to ask if I was interested in a position in Washington. After traveling there with my wife and family, I accepted the position and reported as Associate General Counsel later that year, in mid-1967. However, I returned to California late the following year. Shortly thereafter, I joined CRLA, a statewide legal services program that serves rural poor including farm workers.

1. The mansion was later abandoned by Governor Ronald Reagan, then turned into a museum.

While I had never thought about teaching law school, I received phone calls from Boalt Hall and UCLA asking if I was interested in teaching some seminars. I accepted and I realized that I enjoyed teaching. Soon after, while still with CRLA, I started receiving serious inquiries from law schools. After four years with CRLA, I accepted a full-time position at University of New Mexico School of Law.

It was early in my third year of teaching that I received a call from Mario Obledo, then a member of the transition team of California governor-elect Jerry Brown. He asked if I would consider returning to California in a high government position. I responded that I would indeed consider such a position, but could not be sure that I would be able to accept. I heard nothing further.

About one-and-a-half years later, I received a call from J. Anthony Kline, the governor's appointment secretary. The governor, he advised, wanted to appoint me to a high executive position in state government. Could I accept? I asked him when I had to report; he indicated that I would have to report immediately. I think his exact words were that I had to report "yesterday." I informed him that I simply could not leave as I was in the middle of a semester. He did not accept the answer and called back several times. Each time I advised him that I could not leave at that time. Finally, he accepted my answer. I thought that would bring an end to any notions I had of returning to California in a high executive position, but to my surprise, Tony called again a month or two later. He said the governor had asked him to call to see whether I would accept a position on the California appellate bench. I asked him if I could report the next summer and he said yes.

It was not an easy decision to accept the position. My wife and children did not want to move. Jeannene had originally been reluctant to move to New Mexico, but once we were there she had fallen in love with the state and its people. Our marriage had a history of too many moves. We had married in 1956 between my first and second years of law school. Upon graduation, we had lived in Mexico City for six months so that I could study Mexican constitutional law under a fellowship I received from the Ford Foundation. We then returned to California where we settled in El Centro in 1959. Thereafter, between 1965 and 1972 we moved to the San Francisco Bay Area, returned to El Centro, were off to Washington, D.C., went back to the Bay Area, and finally landed in New Mexico. I have often described my wife as a true conservative; she wants to conserve whatever she has. We had a wonderful life in New Mexico and she did not want to move again.

Meanwhile, at the law school, I had just been named Associate Dean. The hope of my colleagues, they told me, was that I would be appointed dean in the next years. Nonetheless, the opportunity to be on the appellate bench and to be part of an institution that sets the jurisprudence for the state of California was too compelling.

MY ROLE AS AN APPELLATE JUDGE

When I returned to California, I became aware of several matters regarding my appointment that were of great interest to me. First, the governor had taken the precaution of asking the attorney general whether a California attorney not a resident could be appointed to the bench. The answer was yes. Second, unbeknownst to me, many lawyers and others with whom I had worked, had urged the governor to appoint me to the appellate or Supreme Court. Third, though the Court of Appeal was established in 1904, I was the first Chicano (i.e., Latino, Hispanic, Mexican American) to be appointed to that bench.

My first job as a newly appointed Associate Justice of the Third District Court of Appeal was to hire a staff. I hired a recent graduate from McGeorge Law School to be my clerk. At that time, each judge had only one clerk. The principal role of the clerk was to prepare memoranda for the cases that we would hear at oral argument. Thus, in reality, the clerk served all three judges of the panel that would hear the oral argument.

When I first joined the court, I had been forewarned that a veil would drop between the many lawyer friends that I had had for many years and me as a judge. I had also been cautioned about the isolation that appellate judges suffer. Bob Puglia, who had been a busy Superior Court judge, complained that on his first day as an appellate court judge he got two phone calls. One was a wrong number and the other was his wife asking him to pick up bread on the way home. As a Superior Court judge, on the other hand, he had presided over trials during the day and had faced a cadre of lawyers during breaks, waiting to see if they could have him sign or meet on a variety of orders.

My experience varied. In fact, my lawyer friends recognized that our respective roles had changed. However, the sense of isolation never developed. I had colleagues like Justice Bertram Janes and others within the court with whom I could share concerns. The many externs in my office also made it difficult to feel isolated. Moreover, I continued my contacts with bar and community groups. I believe a judge must participate in his or her community in order to know what matters to the citizenry, yet also must also remain sufficiently distant in order to facilitate unbiased decision making.

My primary duty, of course, was to work on the opinions that decide cases on appeal. To seek advice, I often turned to my colleague Justice Janes. Bert had been a lawyer, district attorney, and superior court judge in Plumas County in the Sierra mountains. He often referred to himself as a man of the mountains, and approached judging as a practical man. We had long discussions about judicial ethics and the role of a judge in the community. More than any other, he was my mentor.

Another colleague, Leonard Friedman, helped shape my writing style. He is a thoughtful human being with a talent for well-written opinions. Leonard had been a long-time member of Pat Brown's staff while Brown was attorney general. When Brown was elected Governor, he appointed Leonard to the Court of Appeal. I read Leonard's opinions with great care to capture the grace of his writings. I tried to balance my own opinions with practicality and grace.

The importance of understanding the appellate process was quickly brought to my attention by two incidents. At that time, as today, a panel of three judges got together once a week in a writ session. At these meetings, which were held in the chambers of the presiding judge, we considered writs, as well as some other matters. At that time, the six associate justices rotated their attendance, two sitting in each week with the presiding judge. I sat in on a writ session my first week. One of the matters presented was a writ filed by a legal services attorney. The brief argued that a justice court judge had improperly denied exemptions provided by law. The judge entered a money judgment against his indigent client, and, in accordance with the law, permitted attachment of his wages and property. However, the law also limits how much can be attached, so that a poor person may support himself and his family. Unfortunately, for this case, the justice court is not a court of record, and appellate courts can only act on the basis of a record. Thus, there was nothing in the record to support the statements in the brief. In the absence of a record, there was

nothing the judges could do. I voted to deny the writ even though I was convinced that the lawyer was correct that the justice court had erred. Without a record, we could do nothing.

The second incident took place during an oral argument. Although I was not sitting on that panel, the judges told of the incident as soon as they got off the bench. A lawyer had filed an appeal arguing that the record did not factually support the ruling of the trial judge. He argued with great vigor based on the facts that he alleged in his briefs. However, he had failed to include the reporter's transcript, which has all of the facts, as part of the record. As he argued, judges asked several times, "Counsel, how can we rule in your favor when you have not made the reporter's transcript part of the record?" The attorney seemed not to understand and continued to argue with the same force. By the fourth time the question was asked, the lawyer finally realized that there was nothing in the record to support his factual arguments contained in his brief. Upon so realizing, he looked at the judges and exclaimed, "Oh! I guess I'm a dead duck," and sat down.

Each judge had his or her own philosophy. For example, our presiding judge had been a long-time prosecutor. He would struggle mightily to "save" a criminal case. That is, he would try to interpret the record in such a way as to sustain the judgment. At the same time, when a prosecutor clearly violated a defendant's rights he did not hesitate to reverse the judgment.

As time went on, the differences in philosophy and approach among the judges became apparent in their rulings. I began to file concurring or dissenting opinions more and more often. It is worth emphasizing that appellate judges always sat in panels of three, and we agreed on perhaps ninety-five percent of the cases. Invariably, however, it was those cases in which we disagreed that were the most important. Sometimes I viewed the facts differently than my colleagues, but more often when I dissented it was because I viewed the law differently.

One of the more dramatic examples in that regard was the DeRonde case.² The appeal argued that the affirmative action program of the University of California at Davis School of Law violated the California and United States Constitutions. The panel consisted of the Presiding Judge, Bob Puglia, Associate Justice George Paras, and myself. Both Bob and George had serious qualms about affirmative action as a legitimate program. However, the Bakke case had just gone to the United States Supreme Court, which had affirmed the constitutional propriety of the program.³ While appointments to the panels were generally random, my suspicion was that on this occasion the presiding judge had used his discretion to purposefully assign another colleague who agreed with him. Indeed, after oral argument, the opinion was prepared holding that affirmative action was unconstitutional under the California Constitution. I wrote a rather strong dissent. How ironic it would be, I wrote, if the Davis School of Law, named after Dr. Martin Luther King, Jr., could not take steps to bring about greater racial and ethnic diversity in the law school.⁴ The California Supreme Court took the case, and of course, reversed.⁵

2. Appellate cases accepted for hearing by the Supreme Court, such as the DeRonde case, were ordered depublished. However, a copy of the original opinion published in the advance sheets is on file with the author.

3. 438 U.S. 265, 98 S.Ct. 2733 (1978).

4. This case is now unpublished. In it I wrote, "Our belief in human dignity underlies our state and national constitutions. Each individual has the fundamental right to be different in language and

Another case comes to mind.⁶ Again, the presiding judge and I were on the panel, as was a Superior Court judge appointed to hear that appellate court case.⁷ The issue in that case had to do with whether or not a defendant was entitled to a grant of his motion to change venue. The California Supreme Court had only recently laid down the criteria. That particular case, it seemed to me, had met every single one of the criteria. However, the majority disagreed. I dissented, pointing to each of the considerations that should be taken into account in making that decision. Again, the California Supreme Court granted the petition for hearing.

Of the many dozens of cases that were published, I wrote as many dissenting and concurring opinions as I did majority opinions. The California Supreme Court granted hearings in over a dozen cases in which I dissented. Only once did it agree with the majority.

At that time, when the California Supreme Court accepted a case from the Court of Appeal, it would consider the case as being appealed directly from the Superior Court. It ignored the Court of Appeal opinion, ordered it de-published. Thus, none of these cases can be found among the reported volumes. However, it was on those important cases that we spent countless hours and did some of our best work. Fortunately, that practice has changed: the appeal now is directly from the Court of Appeal to the Supreme Court, and unless the Supreme Court orders otherwise, the case will remain published.

The extra work entailed in writing separately caused me to inquire early on as to the absence of externs in the court. I was advised that some years before some judges had externs, but that it was no longer the practice when I joined the court. In a meeting of the judges, we decided that each of us should use his or her own judgment in choosing whether or not to utilize externs.⁸ With the approval of the court, I accepted several applications. I always seemed to have two, three, or four students in my chambers. I utilized them mostly to do research and writing of concurring and dissenting opinions. Some of the judges started referring to my chambers as the Reynoso Law School because of all the students.

Many of the criminal appeals were straightforward and most deserved to be denied. In fact, we had a procedure whereby the clear cases were identified and sent directly to the central staff of attorneys. They would study the record and write a draft opinion, which would then be circulated to a panel of three judges. Counsel were advised that they could waive argument. This permitted the court to resolve the necessary number of pending cases in order to keep up with the number of new cases being filed. Judge Janes told me that when he joined the court a few years before I did, each judge was expected to write five opinions per month. Since the

ethnicity or race, and yet be treated with the dignity which due process and the equal protection of the law entails. But the right to be treated equally does not mean that treatment must be identical." (Citations and footnote omitted)

5. *DeRonde v. Regents of University of California*, 28 Cal.3d 875 (1981).

6. This case has been depublished. *See supra*, note 2.

7. Under the California Constitution, trial court judges can be appointed to an appellate bench on a temporary basis.

8. Externs are first and second-year law students who volunteer their time with the court, often getting school credit.

judges met in panels of three, it meant that each judge would work on fifteen opinions per month. By the time I joined the court, we were expected to write ten opinions, and work on thirty.

There seemed to be an effort to move the criminal cases very quickly. Sometimes I would want to spend more time on the record. On one occasion I requested the tape of a recorded confession in the Spanish language on which the draft opinion was based. The presiding judge sometimes became impatient with me for holding up such a case. "Cruz," he would say, "from time to time you believe a case is an elephant and it turns out to be a mouse." This pressure to move cases quickly always bothered me.

At times, I expected a published case which I authored to become a much-cited leading case. I spent a great deal of time on one case delineating the due process rights of a doctor before a hospital could remove the doctor from its rolls. I understood the importance of a doctor being able to practice in a local hospital. Several years later I tried to see how often it had been cited and I could find only two cites. One was an article criticizing my opinion; the other was a case making reference to it in a not-very-relevant manner. I concluded that I had been wrong about its importance. Some years after that, however, I ran into a lawyer who took me aside and asked me if I remembered that particular case. He explained that he represented physicians and their relationship with hospitals. My opinion, he said, was the leading case in the field, outlining the responsibility of hospitals and doctors. It was being followed with great care. I was very pleased to hear his report, and I was again reminded of the impact a case can have whether or not it is much cited.

The California Constitution requires newly appointed appellate and Supreme Court justices to stand for voter confirmation at the next gubernatorial election. Thus, my name was on the ballot in the 1978 general election. An article published in a Woodland newspaper captured the electoral reality; it was headlined, "The Candidates Nobody Knows." It gave the background of the three justices from our court who were up for confirmation: Robert K. Puglia, Hugh Q. Evans, and me. The judicial electoral system had not yet been politicized in 1978. Each of us was confirmed easily. However, one aspect of the vote suggested a disturbing reality, especially in light of the fact that most voters really only knew our names.

Robert Puglia was the presiding justice and a distinguished jurist. Though I disagreed with many of his opinions, I along with many others, had a great deal of respect for him as a judge and human being. Sadly, many who knew Hugh Evans well did not share the same sentiments toward him. As for me, some friends had suggested before the confirmation election, half-kidding, that I should change my name. When I was in the military, I was sometimes referred to as Bruce Reynolds. My first name was unfamiliar to the officials, and when I would pronounce "Cruz," they would hear it as "Bruce." Often only the first four letters of the last name were printed. The common name beginning with the letters REYN is Reynolds. For those reasons I would sometimes be called "Bruce Reynolds." My friends suggested that if I changed my name to Bruce Reynolds, I would surely receive the most votes. Unfortunately, they were probably right. When the votes were counted, Hugh Evans, an Anglo name, had the highest number of votes, Puglia, an Italian name, had the second highest, and my Spanish name had the fewest votes.

In the following years, the court shifted and changed. When Judge Janes retired, he was replaced by Justice Coleman Blease. He and I shared a basic agreement that the court had a special duty to seek after justice, but at the same time be respectful of the separation of powers. I valued the many discussions on the

purpose of the law, its history, and its present-day importance that Blease and I shared. As others retired, Justices Keith F. Sparks and Frances Newell Carr joined the court. Their stellar qualities added luster to our court.

As my experience grew, I concluded that the position of a State Court of Appeal judge was simply the best role that a lawyer could have. As appellate judges, we dealt with real-life issues and real-life litigants. We dealt with the essence of what a lawyer does. We examined and distinguished cases, and we could see the result of our efforts. We could apply the law and try to bring an element of fairness to the decision-making process.

APPOINTMENT TO THE SUPREME COURT

My path to the Supreme Court was long. I was very satisfied with my responsibilities as an appellate judge. However, as time went by, I wondered whether the appointment to the higher court, that many anticipated I would receive, would in fact happen.

Shortly after my appointment to the Court of Appeal, two positions became open in the California Supreme Court. There was a great deal of published speculation that I would be one of the appointees. Indeed, my former law partner became very excited when he ran into an article that predicted that I had a 50/50 chance of becoming the next Supreme Court justice. On another occasion I overheard two lawyers, knowledgeable about the Supreme Court, agree that I would probably be the next Chief Justice. The prospects were very exciting. In time, however, the governor filled those two positions and I was not appointed. Instead, he appointed Rose Bird as Chief Justice, and Wiley Manuel as Associate Justice. Rose Bird was the first female justice, and obviously the first female Chief Justice of California. Wiley Manuel was the first African American to serve on the court. By the time my appointment occurred, the political scene had changed completely—no longer were the appointments free from partisan politics.

Governor Jerry Brown's interest in bringing diversity to the bench became evident. In retrospect, that must have been of some influence in my own appointment. I had always assumed that it was his admiration for public-interest lawyers and my work on behalf of farm workers that had made me an attractive candidate. He had admired Cesar Chavez and the farm workers union. I had also believed it was of manifest importance that my career had included private practice, government service, and law teaching.

The Governor enjoyed several more opportunities to appoint positions to the Supreme Court. In 1977, a third retirement occurred. Surely, many said, I would be appointed to that position. Yet again, another person was appointed. This time the governor selected Frank Newman, my former professor at Boalt. Two more openings appeared in 1981. Otto Kaus, a distinguished judge from the Second District Court of Appeal in Los Angeles, was appointed to replace Justice Manuel, who unexpectedly died young in office. Justice Alan Broussard was appointed concurrently. I knew that the appointment process is a mystery and that appointment is never certain. To my surprise, when there was yet another appointment, I was named to the high court.

I had no idea that I would be appointed at that point until I received a call from Byron Georgiou, the new appointment secretary for the governor. The governor, he told me, wanted to see me right away. I met Byron and we went to a

small office in the governor's capitol complex. In that rather quiet session, the governor turned to me and said, "Cruz, I am appointing you to the bench, it's up to you to retain it."

In my naiveté, I did not quite understand what he meant. I had already stood for confirmation as an appellate judge. There had been, it seemed to me, an unstated agreement between the Democrats and Republicans that judicial appointments would not be made subject to the partisan political debates. I still believe that the non-partisan nature of the judiciary had helped elevate the California Supreme Court to be the leading state supreme court in the country.

Governor Brown understood, as I did not, that the political reality was changing in California. The Attorney General, George Deukmejian, had signaled his intention to run for governor with the main focus of his attention on the judiciary, particularly the death penalty. He had joined several Republican legislators in severely criticizing the Supreme Court, especially Chief Justice Rose Bird, as being soft on crime and soft on the death penalty.

When the governor called a press conference to announce my appointment, most of the questions focused on the death penalty. I explained to the reporters that I did not have an ethical objection to the death penalty. I would enforce the law. I was not asked about the practical aspects of its enforcement. I suspected then, and my years on the Supreme Court confirmed, that great difficulties exist in applying the death penalty fairly—our society needs to face that issue.

The attorney general made clear through his public statements that he would oppose my appointment. It meant that to be confirmed I needed the support of the Chief Justice and the appellate justice, for I surely would not have the vote of the attorney general.⁹

Matters had clearly changed since I was appointed to the Court of Appeal. On that occasion, Chief Justice Donald Wright had called me in New Mexico. He was very informal and friendly. When he called, he identified himself simply as Don from San Francisco. I scratched my head to try to recall which Don I knew in San Francisco. As the conversation proceeded, it was clear that it was the Chief Justice calling. He congratulated me on my appointment to the Court of Appeal, and explained that the Constitution required a public hearing. I did not need to be present, he said. A member of the state bar would be there and speak to my background and qualifications, which he said were exceptional. Others would, of course, be free to testify. There could be someone that could testify against me, but based on my background, he was sure that such testimony would not have much substance. And friends of mine, after seeing the notice, might appear. However, I need not worry, and he would call me after the hearing. A week or two later, the Chief Justice called and congratulated me on my appointment, and said that everything had gone well at the hearing. That was it.

In contrast, the Supreme Court confirmation hearing developed into a highly charged experience. Many witnesses testified on my behalf, and a few against me. My own testimony was long and detailed.

During the process, the Attorney General sent me a many-page questionnaire about how I would rule on certain legal issues. I considered the

9. In California, a special constitutionally established commission composed of the Chief Justice, the Attorney General, and the Senior Presiding Justice on the Court of Appeal must confirm a nominee to the Appellate bench. Confirmation requires a majority vote.

questionnaire unethical. The Attorney General was a lawyer and should have known better. But this was about politics, not legal ethics.

The most dramatic event in the hearing was the fact that two of my Court of Appeal colleagues had sent letters to the commission, urging a "no" vote. One was George Paras. He had resigned from the Court of Appeal charging that the California Supreme Court was a "junta." When he left the court, he sent me a private letter in which he expressed concern about my evolution as a judge, though he said that I had the potential to be a great judge, referring to a case I authored of which he approved. Although he assured me it was a private letter, he also sent a copy to the commission.

The second letter was from Hugh Evans, who implied that I was incompetent. To prove his point, he attached an opinion that I had written that had been reversed by the Supreme Court. His strategy may have backfired; perhaps the attachment of this opinion was my saving grace. It was well articulated and well written. The Supreme Court simply happened to disagree. To this day, I am convinced that the Supreme Court was wrong and that my opinion was correct. Certainly, the opinion showed the quality of my thinking and writing.

When the hearing came to an end, I was confirmed by a two-to-one vote, with the Attorney General casting the dissenting vote. The Chief Justice swore me in on February 11, the day before my wife's birthday, in a private ceremony.

A committee had been formed to organize the public investiture to the Supreme Court. The committee presented me with a beautiful robe. It also arranged for a ceremony in the huge Masonic auditorium in San Francisco and invited my family and me to stay at the Fairmont Hotel.

The justices were present, as well as my many relatives, neighbors, and friends. Mayor Diane Feinstein and other dignitaries spoke. In the middle of the ceremony, a gentleman shouted out "Que Viva Cruz Reynoso!" The crowd responded "Que Viva!" The Chief Justice commented that this was the most celebratory swearing-in that she had ever attended.

After the ceremony there was a sumptuous reception sponsored by the committee. The committee had planned on serving alcohol. When my wife and I married, we had agreed that we would have no alcohol served in our home. To me that extended to a function honoring me. The committee, of course, respected my wishes.

MY ROLE ON THE SUPREME COURT

I was already at work when the public ceremony took place. Tasks at the Supreme Court did not take me by surprise. Twice I had been appointed by the Chief Justice to sit with the Supreme Court on assignment, so I had been able to observe the practices of the court. Nonetheless, some matters turned out quite differently than I expected. I will mention two.

First, I had read that there were tensions in the court. News accounts reported that the Chief Justice had an ongoing disagreement with the senior judge, Stanley Mosk, and that there were personality conflicts among several judges. I had always viewed my own strength as being one who could get folk to work together, so I was looking forward to helping that process at the court. However, when I got to the court, I could find no basis for those many newspaper reports. The meetings of the judges were polite, respectful, and very focused on the issues at hand. I did

not see, nor did I sense, the tensions that had been widely reported. My diplomatic skills, if they existed, went untested.

The second matter was quite different. Though I knew that the Supreme Court spent a great deal of time deciding what cases to accept, I had not realized that perhaps fifty percent of my time would be devoted to that aspect of my work. Few realize how much effort goes into deciding which issues are serious enough for the court to hear. The public sees only the published opinions. In reality, one of the most important roles of the Supreme Court is to decide which cases to take. Of the hundreds of petitions that are filed, only a low percentage, perhaps only seven percent, will be granted. The principle role of the court is to establish the jurisprudence of the state, a jurisprudence that affects all of us. Those cases it selects must be of importance to the people of this state.

The court then, as now, heard cases in San Francisco, Sacramento, and Los Angeles. My home was and is in rural Sacramento County. I would normally commute to San Francisco, originally by Greyhound, then by van, and finally, by car. I once received an award, given in jest, for being the highest state official riding Greyhound. Sometimes, I stayed overnight in San Francisco. On Fridays, I would study in the court's Sacramento office.

The court I joined was very special. As I look back, I still consider it the last great California Supreme Court of the twentieth century. Rose Bird was the Chief Justice of California. Note that it is not the Chief Justice of the Supreme Court. The chief had statewide administrative responsibilities for the courts as well as her judicial responsibilities. I found Rose to be an exceptional Chief Justice. She worked long hours and was dedicated to both her administrative and her judicial responsibilities. She was very concerned about judicial ethics and the propriety of everything that we did. She conducted her conferences with the Supreme Court judges with respect. Each judge expressed his or her views. The most senior judge was Stanley Mosk. I had met Stanley when he was Attorney General of California during the Pat Brown administration. He had demonstrated an expansive view of the role of the attorney general in protecting the public weal. Those broad interests continued during his service on the court. He served more years on the California Supreme Court than any other justice. The lone justice not appointed by a Democratic governor was Frank Richardson, appointed by Ronald Reagan. He was a deeply religious man who always expressed himself in a gentlemanly manner. His role was often that of a dissenter. Frank Newman was by then an experienced justice. While he had been one of my law professors at Boalt, we now were serving as colleagues on the Supreme Court. Allen Broussard and Otto Kaus completed the court. Allen was the only African American on the court, a bright and gregarious person. Otto had been a presiding justice in the Second Appellate District in Los Angeles. He was universally recognized as possessing both a superior intellect and a marvelous sense of humor. Those were my colleagues when I joined the court. At that time, Boalt graduates—Bird, Newman, Broussard, and I—formed a majority.

I saw subtle changes taking place among the court personnel. Before Rose Bird the number of clerks of color had been very limited. But because of the interest many of us had in diversity, soon we saw a greater number of African American, Latino, and Asian faces among the staff. I was told that Frank Richardson, when he was the presiding judge of the Third District Court of Appeal, had hired the first African American staff person in the history of that court. I continue to feel that it is important for the administration of the justice system to have represented among its

staff and its judges folk from all walks of life and all ethnic and racial groups in our state.

Judging is not easy. In my chambers, I tried, as I am sure the others did, to be true to the law. It was not enough that I disagreed with a prior Supreme Court opinion. There is a great deal of value in stability of the law. Therefore, I would carefully consider whether I should recommend that we grant a petition in a case where the law had been well established, even if I disagreed with the previous decision.

Once a petition was granted, the chief would assign it to a judge to prepare the calendar memorandum. It was always assigned to a judge who had voted in favor of granting the petition. I recall one case that reminded me of the difficulty of being a judge. The case was one in which I had a strong clear preliminary view as to its result. However, after extensive research and careful study of the congressional records and the federal law as it applied to California, I became convinced that my initial conclusion could not logically be reached. I wrote my bench memorandum in that fashion. Fortunately, we had excellent lawyers on both sides of the issue, and when we met after the oral argument, my fellow justices suggested that I take a second look at the case. Upon a great deal of further study, I reversed my own decision, and agreed with my initial impressions. I think sometimes out of a sense of trying to be fair, we reject too quickly our initial inclination. A majority of judges signed on to the opinion, and it resulted in protecting the rights of many.¹⁰

The importance of diversity on the court was again impressed on me when a petition was filed raising the issue of the proper use of interpreters in court. I was the only justice, who as a practicing attorney, had used interpreters extensively. Many of my clients were Spanish speaking. I knew the importance of interpreters, and I had often seen weak or poorly trained interpreters. The interpreters case was assigned to me, and I had the satisfaction of spelling out the rights of a criminal defendant to an interpreter. The case described the various roles that interpreters play in the courtroom. Too often as a practicing attorney, I had seen the interpreter used principally to benefit the judge and jury. The client was often left in the dark, not knowing what was happening. It was important, it seemed to me, to have everyone know what was going on in the courtroom, including the client. Due process and fairness required no less. Fortunately a majority of the court agreed with my conclusions.¹¹

I recall another case that represented two quite different but legitimate approaches to a case.¹² The case dealt with a company that, according to the trial court, had perfected an easement over the neighbor's land. The building had been built over the easement while the dispute went forward.¹³ The defendant's trucks had used the neighbor's land to go in and out of a warehouse. A trial court concluded that a portion of the building had to be destroyed because it intruded upon the easement. The appellate court agreed that an easement had been established, but

10. *Darces v. Woods*, 201 Cal.Rptr. 807 (1984).

11. *People v. Aguilar*, 35 Cal.3d 785 (1984).

12. *Warsaw v. Chicago Metallic Ceilings, Inc.*, 35 Cal.3d 564 (1984).

13. In general, if a party uses land not his for a certain period of time, the party has a right to continue using the land.

declared that the easement was something akin to a private taking, and that those who had perfected the easement should at least pay for the reasonable value of the lost property. Because the ruling was such a drastic change from past law, the Supreme Court voted to accept the case, and all of my colleagues agreed that the Court of Appeal was wrong. It was wrong, they argued, because the easement had been made a part of the code in California, which permitted the establishment of such an easement. I was troubled by the opinion. An easement is based on equity. In turn, equity is based on fairness. The question I had for myself was, "How do we decide what fairness is?" I read many opinions, hundreds of years old, and many books on fairness and how a judge should decide. I concluded that in today's society most Americans would consider it unfair for a trespasser to gain the right to use the land they trespassed upon. I dissented, but agreed that the least society should ask is that the owner be compensated.

AND THE FUTURE?

The Supreme Court plays a role more important than most citizens realize. It establishes the jurisprudence--the law for the people of this state. A great deal of law is judge made. The legislature has the authority to change judge-made law, unless it is constitutional law, but generally does not do so. In a [majoritarian] democracy the Supreme Court has a special duty and a vital task—to protect the rights of those not in the political majority. The civil and human rights protections found in the California and United States Constitutions protect all, rich and poor, powerful and powerless.

I left the court at the end of my term in 1987 after an unsuccessful confirmation campaign in 1986. Although I landed on my professorial feet after leaving the court, it is the people of this state who have suffered because the confirmation process had been politicized. Fifteen years, in my view, have not completely erased the legacy of partisan politics, but each passing year ameliorates its intensity. Politics will always be a part of the appointment process, but politics should not intrude after a judge is appointed. Otto Kaus used to say that a judge who tries to be fair when he or she is under political attack is like a person trying to take a bath in a tub with an alligator in it. It is difficult to ignore the alligator. Hopefully, the future will find a political culture where the major parties will again agree not to make the judicial branch a focus of executive and legislative partisan disagreements.

From time to time, I reenter the courtroom in Sacramento where I was first sworn in. Recently, my students and I listened to oral arguments there and visited with several judges. I have also represented clients before the court. Each time I return, I marvel at the room's unchanged craftsmanship, dignity, and beauty. In that sense, it is like California's judicial system itself: its craftsmanship, dignity, and beauty deserve to be preserved.

