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Foreword

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FOREWORD: SYMPOSIUM ON THE CALIFORNIA JUDICIARY

On March 19, 1993, Loyola Law School and the *Loyola of Los Angeles Law Review* sponsored a Symposium on the California Judiciary. This day-long event brought together prominent jurists, scholars and practitioners to explore the role and effectiveness of California's courts and the many problems the judicial system currently faces.

The keynote address, delivered by California Supreme Court Justice Stanley Mosk, brought to light the current trend of sentencing defendants to lengthy terms that are impossible for any human to serve. Justice Mosk argued that a sentence, which on its face is impossible to serve, is per se cruel or unusual punishment under the California Constitution and perhaps under the United States Constitution. Justice Mosk asserted that imposing such sentences suggests a newly devised theory in the judicial system: *Nothing Succeeds like Excess*.

Judge Alex Kozinski of the United States Court of Appeals for the Ninth Circuit presented his thoughts concerning the judicial decision-making process. In his address entitled *What I Ate for Breakfast and Other Mysteries of Judicial Decision Making*, Judge Kozinski recognized the enormous discretion judges possess and the need for all members of the legal community to question and criticize judicial self-indulgence.

California Court of Appeal Justice Sheila Prell Sonenshine reviewed the success of an innovative settlement program implemented by the Fourth Appellate District of the Court of Appeal. In her presentation, entitled *Real Lawyers Settle: A Successful Post-Trial Settlement Program in the California Court of Appeal*, Justice Sonenshine argued that lawyers must appreciate the benefits of settlement and take pride in the results. According to Justice Sonenshine: Real lawyers win; real lawyers settle.

In addition to the prominent jurists mentioned above, the Symposium also featured presentations by preeminent scholars. Dean Gerald Uelman of the University of Santa Clara Law School presented a statistical analysis of the California Supreme Court's practice of depublishing opinions of the court of appeal. In his comprehensive presentation, Dean Uelman analyzed data relating to the publication and depublishment rates of various districts of the court of appeal and appropriately asked: *Is the Eraser Mightier Than the Pencil?*

Professor Stephen Barnett of the University of California, Berkeley, Boalt Hall School of Law, criticized the California Supreme Court's

widespread use of depublication and stipulated reversal. In presenting his article entitled *Making Decisions Disappear: Depublication and Stipulated Reversal in the California Supreme Court*, Professor Barnett concluded that both practices exceed the limits of judicial function, but in opposite directions.

Loyola Law School Professor Karl Manheim contributed a statistical analysis by surveying the California Supreme Court's workload in his presentation entitled *The Business of the California Supreme Court: A Comparative Study*. Through an empirical analysis of the supreme court's workload, Professor Manheim discussed the causes of and solutions to the problem of the California judiciary's growing dockets.

Representing the practitioner's perspective on the California judiciary, attorneys Michael Berger and Ellis Horvitz presented articles relating to their areas of expertise. Michael Berger criticized the California Supreme Court's lack of attention to regulatory takings in presenting his article *Silence at the Court: The Curious Absence of Regulatory Takings Cases From California Supreme Court Jurisprudence*. Mr. Berger pointed out that the California Supreme Court has neglected to decide important property issues that have widespread impact on the citizens of California. As a result, the California Supreme Court has created confusion, thus promoting conflicting decisions in the state's lower courts.

Ellis Horvitz described his perspective on the California Supreme Court through the presentation of his article entitled *An Analysis of Recent Supreme Court Developments in Tort and Insurance Law: The Common-Law Tradition*. Mr. Horvitz surveyed significant tort and insurance law decisions made by the supreme court and concluded that the present members of the court are pragmatic jurists willing to modify or reject doctrine that no longer serves current societal needs.

The following remarks and articles are comprised of the insightful and thorough analyses of the contributors to this Symposium. The thoughts provided by these diverse members of the legal community expose the breadth and complexity of the issues and problems facing the California judiciary. Our hope is that the serious questions raised by this Symposium will lead to further discussion and, ultimately, practical and just solutions.

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