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Volume 53
Number 2 *California Supreme Court Issue*

Article 1

Winter 2-1-2020

Foreword

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California Supreme Court

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Recommended Citation

Tani G. Cantil-Sakauye, *Foreword*, 53 Loy. L.A. L. Rev. 369 (2020).

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FOREWORD

*Chief Justice Tani G. Cantil-Sakauye**

It is with pleasure that I contribute this foreword to the *Loyola of Los Angeles Law Review* symposium on the California Supreme Court. I am thankful that the editors of this volume have chosen this theme, and I welcome the interest they and the symposium contributors have in our jurisprudence. I will use this opportunity to offer a few comments relevant to the six cases discussed in this symposium, and to our work at the court generally.

These six cases all were decided by the court between August 2017 and June 2019. For most of that span, there was an empty seat at the court due to the retirement of Justice Kathryn Werdegar. *Briggs v. Brown*¹ was among the last cases to have benefitted from Justice Werdegar's involvement. Justices from the Courts of Appeal sat with us as justices pro tempore as we awaited a new colleague. Because each pro tempore appointment involves only a single case, more than half of the justices sitting on the Courts of Appeal joined us at least once during this time frame. Within this cohort, Justice Dennis Perluss of the Court of Appeal, Second Appellate District, participated in *People v. Buza*,² the subject of one contribution to this symposium; and Justice Jonathan Renner of the Court of Appeal, Third Appellate District, joined the court as we considered and decided *In re I.C.*³

Justices pro tempore bring fresh perspectives to matters before the court, and I am extremely grateful for their service. Yet my colleagues and I also welcomed the appointment and subsequent confirmation of Joshua Groban as our newest associate justice, joining the court in January 2019. Justice Groban participated in the other

* Chief Justice of the California Supreme Court.

1. 3 Cal.5th 808 (2017).

2. 4 Cal.5th 658 (2018).

3. 4 Cal.5th 869 (2018).

three matters discussed in this symposium: *Southern California Gas Leak Cases*,⁴ *People v. Valenzuela*,⁵ and *In re Cook*.⁶

Of the six cases comprising this symposium, all but two produced a dissenting (or concurring and dissenting) opinion or opinions. This small sample is somewhat misleading, however. Much more often than not, our decisions are unanimous. With the diversity of backgrounds and viewpoints on the court, our frequent unanimity might come as a surprise to some observers. A simplistic view would regard such consensus as unlikely given that three of us were appointed by Republican governors, and four by a Democratic successor. But neither principles of law nor jurisprudential philosophies necessarily cleave along such lines.

A more interesting, and potentially productive, inquiry would consider why the court so often reaches a consensus. There are many possible explanations. The one I would like to develop here concerns our comprehensive deliberative process. Each decision by our court emerges from several conversations among the justices at different stages of a case's progression. These conversations are nothing out of the ordinary—in fact, they are essential—at an institution such as ours. But especially in light of the current state of public discourse, our procedures may deserve a closer look insofar as they demonstrate how people holding diverse views can work through difficult issues in a manner that is both civil and thorough.

The first of these conversations occurs at our petition conferences. My colleagues and I meet approximately forty times each year to discuss recently filed petitions for review and writ petitions, several thousand of which are received by the court annually. Most of these petitions are denied; only about 1 percent proceed to briefing, argument, and a decision by this court. Our collective consideration of these petitions provides an initial opportunity for each of us to size up a case and assess how our colleagues perceive the matter. These conferences also can result in the restatement of the issues presented in a petition, which we sometimes order to better focus the parties' future efforts as well our own. These adjustments help ensure that our subsequent conversations are more productively trained on the specific issues that require our collective attention.

4. 7 Cal.5th 391 (2019).

5. 7 Cal.5th 415 (2019).

6. 7 Cal.5th 439 (2019).

Once review has been granted, I assign each case to a justice for the preparation of a memorandum, known as a calendar memorandum, that is effectively a first draft of an opinion for the court. The subsequent circulation of a calendar memorandum to other chambers initiates another dialogue regarding a case. Upon consideration of a calendar memorandum, each other justice composes and distributes within the court a written response, which in turn commonly leads to both formal and informal replies. Typically, a case will be set for oral argument only when this exchange of ideas has resulted in a majority of justices coalescing around a tentative analysis and holding. This process may seem cumbersome, but our collective investment of substantial effort prior to oral argument serves several useful purposes. Among them, our procedures are conducive to conversations aimed at identifying ways to resolve a case that all members of the court regard as appropriate and just, which can be different from the approach initially proposed by the calendar memorandum.

Oral argument then provides an opportunity for the justices to engage with counsel regarding ideas that may have originated in the parties' briefs, but were substantially developed (or called into question) through the court's deliberations. Afterward, beginning with another conference that immediately follows a slate of arguments, my colleagues and I continue our own conversations. This post-argument dialogue extends through the internal circulation and possible revision of a written opinion for the court, and ceases only with its filing.

At this final phase of the process, what differences remain among the justices regarding how a case should be resolved are usually ironed out through collaboration and compromise. Sometimes, however, these disagreements prove intractable and lead to concurring or dissenting opinions. The existence of these minority opinions goes to show that even extended and respectful discourse will not always yield a consensus. But no one should expect an invariably unanimous court.

Ultimately, my fellow justices and I understand that our opinions—be they majority, concurring, or dissenting—represent our institution's contribution to a more extensive set of conversations regarding the law, in which our court is but one of several participants. Some of these conversations are with our fellow judges, in this state and elsewhere, as well with past and future members of our own court. And like other courts, we also participate in an ongoing dialogue with the legislative and executive branches of government as we review

their work. Somewhat more distinctively, as illustrated by cases such as *Briggs*, *Buza*, and *Valenzuela*, California courts engage in similar conversations with the electorate when voters exercise the power of initiative.⁷

I recognize that it is hardly novel to describe a court's work as conversational in nature. But constructive conversations within and among the courts and those who make the law in general are essential and cannot be taken for granted. To the extent that this symposium provides additional perspectives regarding the decisions of the California Supreme Court and thereby promotes an enhanced understanding of its efforts, it contributes toward such conversations, and toward the growth of the law.

7. Cal. Const., art. II, section 8.