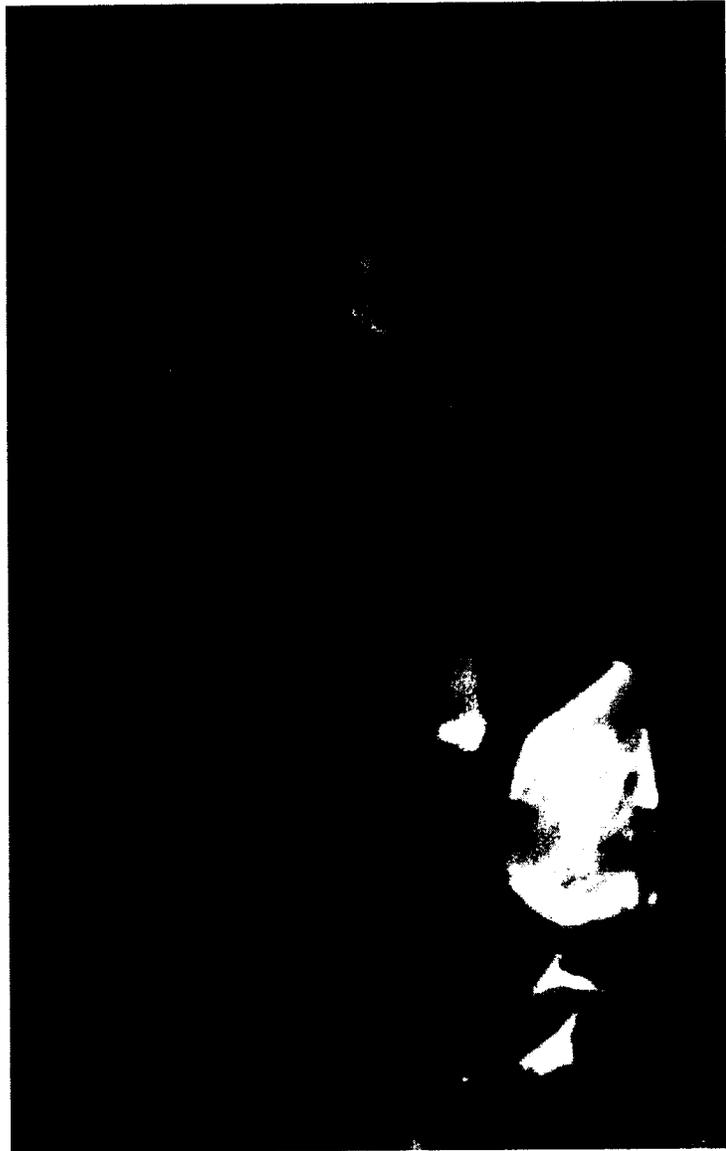


Special Session of the
Supreme Court
Fresno, California

October 8, 2002



**SPECIAL SESSION OF THE SUPREME COURT
OCTOBER 8, 2002
FRESNO, CALIFORNIA**

The Supreme Court of California convened for a special session in the courtroom of the Fifth Appellate District of the Court of Appeal, 2525 Capitol Street, Fresno, California, on October 8, 2002, at 9:00 a.m.

Present: Chief Justice Ronald M. George, presiding, and Associate Justices Kennard, Baxter, Werdegar, Chin, Brown, and Moreno.

Officers present: Frederick K. Ohlrich, Clerk; and Gail Gray, Assistant Calendar Coordinator.

CHIEF JUSTICE GEORGE:

Good morning, ladies and gentlemen: I would like to welcome Administrative Presiding Justice James Ardaiz to give some commentary to the court at this point about this historical visit.

PRESIDING JUSTICE ARDAIZ:

Good morning, Mr. Chief Justice and Associate Justices of the California Supreme Court.

I am James Ardaiz, Administrative Presiding Justice of the Fifth District Court of Appeal, which is the court of appellate review for the citizens of Central California. On behalf of the Justices of the Fifth District and the citizens of Central California and in fact of all of California, I would like to welcome you to the Central Valley in this historic session. With the televising of this session to the public and the opportunities and outreach to our students as part of this session, the Supreme Court has provided an historic opportunity to our citizens and our young people to see our judicial branch conducting the people's business. The operation of our courts is the people's business. The California Supreme Court is the highest court in the largest judicial system in the world. Efforts like this to allow the world to see our justice system significantly enhance the trust our citizens have in their justice system. A justice system that is open and accessible to the public to be seen and to be heard is a hallmark of a free and democratic society. On behalf of our citizens I thank you for this historic outreach effort. Ladies and gentlemen, I present to you the Chief Justice of the State of California and the Associate Justices of the California Supreme Court.

CHIEF JUSTICE GEORGE:

Welcome, ladies and gentlemen. I would like to introduce my colleagues on the Supreme Court of California. To my immediate right is Justice Joyce Kennard; to her right is Justice Kathryn Werdegar; and to her right is Justice Janice Brown. To my immediate left is Justice Marvin Baxter, a native of the Fresno area; to his left is Justice Ming Chin; and to his left is Justice Carlos Moreno.

On behalf of the court, I want to thank Administrative Presiding Justice James Ardaiz and the other justices and staff of the Fifth District Court of Appeal for their invitation to convene a special session here in the Central Valley, and for their remarkable efforts to transform this court session into an educational experience involving the entire community.

The leadership of nine Central Valley superior courts and of the bar associations in these counties has been of great assistance in organizing this session of the court and related events. I understand that nearly 100 lawyers from these bar associations, and many judges from those courts, have donated their time and expertise as mentors to the more than 200 high schools in the Central Valley that are viewing the telecast of this morning's special court proceedings and the oral arguments in the three cases that will follow.

Finally, I wish to express the court's great appreciation to Dr. Peter Mehas of the Fresno County schools, and Dr. Larry Reider of the Kern County schools, as well as Valley Public Television and the California Channel for their part in making possible this educational broadcast.

One of the primary goals of the Judicial Council, the constitutionally created policymaking body for the judicial branch which, as Chief Justice, I chair, has been to increase meaningful access to the courts. As part of these efforts, the Judicial Council has urged courts to engage in a wide range of community outreach efforts to better acquaint the public with the role of the courts—and to better acquaint the courts with the concerns and interests of the public.

The Fifth Appellate District has, I know, translated this request into action and has participated in a variety of community activities, including setting oral argument in different venues to allow more members of the public an opportunity to attend. That court's enthusiastic engagement in such events

reflects its substantial commitment to working closely with the Central Valley community it serves in order to improve the administration of justice.

The California Supreme Court also has ventured beyond the traditional three locations where it hears oral argument—San Francisco, Sacramento, and Los Angeles. For example, last year we held a special session in Orange County. The superior court of that county joined with the local bar in helping to create an educational program presented on closed-circuit television to hundreds of students. It was an exciting and informative event.

Today's special court session greatly expands upon our earlier successful efforts. This morning's proceedings are being televised live to the audience of the local public broadcast system station, Channel 18. Additionally, the California Channel is broadcasting to more than 125 cable networks, and Channel 6, working with Channel 18, is broadcasting this morning's session out of Sacramento to Stanislaus, Sacramento, and Placer Counties.

Here in the Fifth Appellate District, in addition to the students present in the courtroom, hundreds of students in Fresno, Madera, Mariposa, Tulare, and Kern Counties will be watching the telecast of the court proceedings, together with the volunteer attorneys and judges who will be prepared to discuss all aspects of the oral argument session with them, in what should be a unique learning experience for the students.

The classes have been provided with a large amount of printed material, including information on what to expect at an oral argument session, study guides to the cases the court will be hearing this morning, and general background information on the courts and the appellate process. The legal staff of the Fifth Appellate District has done an excellent job in formulating these materials.

All of this information, by the way, can be obtained through the Judicial Council's Web site. Logging onto www.courtinfo.ca.gov/courts/courtsofappeal will lead you to the Fifth Appellate District's Web page, with information and a link to the superintendent of schools' Web site, where readers can obtain all the material.

The success of today's program rests on a combination of the old and the new. The cases that will be heard this morning came to the California Supreme Court in the traditional manner, through petitions for review after proceedings in the lower courts. Appellate counsel prepared their briefs containing a description of the facts, the proceedings in the lower courts, the

legal issues, relevant precedent, and the arguments supporting the parties' positions in accordance with the generally applicable rules and standards.

In reviewing these cases, the court has analyzed the briefs and the record in each case, and has considered internal memoranda prepared with the assistance of our legal staff and circulated among the justices for discussion and consideration, all before oral argument was set.*

Oral argument will proceed today in the customary way, with counsel presenting their arguments and the justices taking the opportunity to ask questions of counsel.

Through the use of modern technology, however, today's special arrangements expand the walls of the courtroom to embrace viewers across several counties, and provide educational material online that can be obtained by any interested individual who would like to gain deeper insight into the operations of the California Supreme Court or into the individual cases being considered this morning.

Today's special session of the California Supreme Court is but one example of the exciting efforts being undertaken by courts at every level and in every part of California to extend fair and accessible justice to all Californians.

In conclusion, I wish to emphasize that the courts of our state must rely on the confidence and trust of the people we serve in order to be effective. Our courts, after all, exist to serve the public. An independent judiciary committed to applying the law fairly and objectively to all who come to the courts, and not beholden to any outside influence, is essential to preserving our system of justice and our democracy, and to protecting our individual liberties.

I encourage each of you who participates in this exciting program to take the time to learn more about the operation of our court system, and about its vital role in our governmental structure. We in the courts are committed to listening to your concerns and to making appropriate changes to meet the public's needs, while preserving the integrity of our system of justice.

I thank again those who have had a role in making today's exciting project a reality. And to all of you who are observing and listening to this telecast, I thank you for your interest in the administration of justice in California.

*Reporter's Note: The cases heard in the special session were *People v. Stanistreet* (2002) 29 Cal.4th 497; *In re Rosenkrantz* (2002) 29 Cal.4th 616; and *In re Roberts* (2003) 29 Cal.4th 726.

And now, before we begin oral argument, the members of the court look forward to answering questions submitted by local students who are participants in today's program.

All right, we will entertain our first question.

STUDENT:

Chief Justice, Associate Justices of the Supreme Court, good morning. I am Sarah Fry from Hanford High School in Kings County. My question is: Who decides which justice writes the main opinion in the case and how is that decision made?

CHIEF JUSTICE GEORGE:

After we review a petition for review and four or more of us decide that we should take the case up, we then have a process whereby the Chief Justice assigns the case to one of the justices who voted to accept review in the case. And that justice will circulate memoranda after analysis of the briefs. And at that time, it may become apparent that the justice does not have a majority of the court behind him or her. In that event, I have to reassign the case. Sometimes that happens even after oral argument, when positions change and there has to be a reassignment of the case to whoever is able to garner four or more votes on the particular case.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. I am Monica Hunt of Tulare Union High School in Tulare County. My question is: What factors determine whether a justice will disqualify himself or herself from a case?

CHIEF JUSTICE GEORGE:

Justice Kennard.

JUSTICE KENNARD:

Thank you, Chief Justice. As to the answer to that question, in case you would like to find out all of the details or most of the details, you can look it up yourself. I'll give you the explanation, but there is a statute that governs the circumstances under which a justice should decide not to participate in a particular case. The statute in question is Code of Civil Procedure section

170.1. And the easy examples are: When a justice or, say, a spouse of a justice, has been personally involved in the proceedings below. That would be an easy example. Other examples would be when the justice or a spouse or a child has a financial interest in a particular case where the party involved, say, is a company in which there is a financial interest at stake for the justice or somebody closely related to the justice. Then there is a catchall provision. And that is a little bit harder. It requires discretion on the part of the justice to decide whether to take herself or himself out of a particular case. That particular provision says that based upon the discretion of the justice, if the participation might create an appearance of bias, then the justice should decide not to participate in the case. If that should occur, the Chief Justice then takes a justice from the Court of Appeal. And that is based upon alphabetical order.

STUDENT:

Thank you.

CHIEF JUSTICE GEORGE:

Thank you.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. I am Jessica Zapata from Madera High School in Madera County. My question is: How does the court decide which cases to review and are there certain cases that only the Supreme Court can hear?

CHIEF JUSTICE GEORGE:

Justice Baxter.

JUSTICE BAXTER:

Yes. Thank you, Chief Justice. I would like to answer those questions in reverse order. Under our Constitution, the California Supreme Court is the only state court with jurisdiction to review cases in which a criminal defendant has received the death penalty for the commission of a state crime. And we are also the only state court that can review cases involving the censure and discipline of California attorneys and judges. In the death cases, review in our court is mandatory and is not a matter of choice. But aside

from death penalty appeals, we do have discretion, by majority vote, in another words, at least four votes, to pick and choose which cases we will review. And generally, we will grant review where it is necessary to secure uniformity of decision. An example of this would be, if the Court of Appeal in San Diego, for instance, were to interpret a statute one way, and the Court of Appeal in San Francisco, for instance, were to interpret that same statute in a contradictory way. Obviously, the state of the law would be in disarray, and lawyers, trial judges, and citizens of the state would not know how that statute should be correctly interpreted. So that is a classic example of where the California Supreme Court would grant review in order to resolve the conflict and establish a uniform interpretation. Another classic example would be where the case involves a very important question of law. In that instance, the more important the question of law, the more likely it is the court would grant review.

STUDENT:

Thank you.

JUSTICE BAXTER:

Thank you.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. I am Derrick Tyler from Merced High School in Merced County. My question is: What are law clerks and how do they assist the judges with their work?

CHIEF JUSTICE GEORGE:

Justice Werdegar.

JUSTICE WERDEGAR:

Thank you, Chief Justice. Thank you, Derrick, for that question. Law clerks are attorneys who work with the judge. They either spend a year or two with the court after graduation from law school or they can follow law clerkship as a career path. Typically, they are extremely bright and knowledgeable about the law. If they do follow a judicial clerkship career path, they typically also would have some practice experience. On the California

Supreme Court, each of us has five judicial law clerks, except the Chief Justice, who has eight because of his additional administrative responsibilities. Law clerks assist the judge in a variety of ways and it really depends to a great extent on the preference of the particular judge. But generally speaking, they discuss the cases with their judge, and they assist the judge in assessing whether we should grant review in a case. Once review is granted and the case is before the court, say it has been assigned to that particular judge, the law clerk will read the briefs, read the record in detail, will discuss the facts and the law with the judge, and the judge will suggest a tentative decision, at which point the law clerk will write a memorandum setting out the facts and the law and the tentative conclusion. That circulates to other members of the court. In preparation for oral argument, like this morning, the law clerks will often discuss the pending cases with their judge. Law clerks are a wonderful, wonderful resource to a judge. They test the judge's ideas, they debate the issues with the judge, they do in-depth research, and they provide a fresh insight into cases.

STUDENT:

Thank you.

CHIEF JUSTICE GEORGE:

Thank you.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. My name is Daniel Myers from Ceres High School in Stanislaus County. My question is: What is the best preparation for someone who wants to serve on the Supreme Court?

CHIEF JUSTICE GEORGE:

Justice Chin, will you give that advice.

JUSTICE CHIN:

Well, Daniel, the first thing you have to do is become a lawyer. That means you have to spend three years studying arcane rules, like the rule against perpetuities, the Rule in Shelley's Case and the rule in *Palsgraf*.

Because you never know when somebody will ask you what those rules mean. (Laughter)

The requirement then is that you have to practice law for 10 years before you can become a judge. And many people have asked me what does it take to become a good judge and my answer always is, become a good lawyer first. Become a lawyer who is respected by your colleagues, your clients, and your opponents for your professional expertise and your judgment.

Then once you become a judge, I don't think any of us, if you asked us 30 or 40 years ago when we began private practice or practice in a public law office, I don't think any of us would have dreamed that we would ever be on the California Supreme Court. So planning for this is difficult. But, I think that if you look at the biographies of the members of the court that you have been presented with, if you look at the background and experience of those of us who are currently on the court, you will find a wide variance of career paths. So I do not believe there is one best approach for career preparation for this job. But I think that if you went back farther to some of the backgrounds of former justices of the Supreme Court, you will get even more varied experiences. So if you have this career in mind, I suggest you start reading biographies.

STUDENT:

Thank you.

JUSTICE CHIN:

Thank you.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. My name is Anna Schlotz of Edison High School in Fresno County. My question is: Why does the California Supreme Court have seven judges and the United States Supreme Court have nine?

CHIEF JUSTICE GEORGE:

Justice Brown.

JUSTICE BROWN:

Thank you, Chief Justice. And Anna, thank you for that question. The short answer, of course, is very easy. We have seven, because the California Constitution says so. Back in 1849 when the first Constitution was drafted for this state, this court began as a three-judge court. By 1862 the state had grown so much, and the workload had changed so much, that there was an amendment to the Constitution and we became a five-judge court at that point. And finally, there was a major revision of the California Constitution in 1879 and that revision decided that we should be a seven-judge court, and we have been ever since.

Now the United States Supreme Court is quite different, because the federal Constitution establishes three branches of government, but it doesn't fill in the details about the judiciary. So that was left to Congress. In fact in the first bill that Congress passed was the Judiciary Act. And that was 1789. The United States Supreme Court first sat in 1790 and it was a six-judge court, which I found very interesting, because I thought that they should be at least an odd number, so you would not have ties when the judges voted, but they started off as six. Thereafter that number changed six times before it settled at its present nine in 1869. So they have been nine since then. Interestingly enough, I did a little survey and in the United States the State supreme courts **have** between five and nine **judges**. The most popular number is seven. Twenty-five states have seven judges. Several, though, have nine judges. But, perhaps in deference to the Supreme Court, no one has more than nine.

STUDENT:

Thank you.

CHIEF JUSTICE GEORGE:

Thank you.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. I am Kyle Osborne from Kingsburg High School in Fresno County. My question is: What is the most enjoyable and challenging aspect of the role of Supreme Court justice?

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CHIEF JUSTICE GEORGE:

Justice Moreno.

JUSTICE MORENO:

Thank you, Chief Justice. Thank you, Kyle. What I found most enjoyable and challenging about the office is the opportunity to be part of the decision-making process, deciding important and significant legal issues that really involve us all in the state. The legal issues that we have to decide are always complex, with far-ranging implications for individuals, families, and businesses throughout the state. And many of these issues are being resolved for the first time. That is, we are presented with issues of first impression where there is no settled law directly on point. So I find this particular aspect very satisfying and challenging. Really, to try to find the correct answer in a given instance challenges one's thinking and the results could have very far-ranging implications. I find it is a very awesome responsibility. Since we are the last word on many issues of the state, it is all the more significant and important.

CHIEF JUSTICE GEORGE:

We won't have time to answer all of the questions, but we could do another two or three more, perhaps.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. I am Brittany Barger from Hanford High School in Kings County. My question is: Why is the headquarters for the California Supreme Court in San Francisco, while the headquarters for the executive and legislative branches are located in Sacramento?

CHIEF JUSTICE GEORGE:

Well, actually the answer to this question involves a lot of the rather colorful early history of the state. The state capitol was not fixed by law for some time, so the actual capitol of the state moved around to various communities. And when the Constitution was first promulgated, I should say the first Constitution in 1849, the court was really free to go where it wanted to. But there was one other Constitutional Convention, and that was in 1879, that was the only one we ever had after the initial one. And by then the

capitol had been fixed in Sacramento. The Legislature was clearly there, the Governor was, and there was a movement to require the Supreme Court of California to situate itself there with the other branches of government. And when I was first told about this, I thought someone must be pulling my leg, but I read the constitutional debates and they involve a lot of very interesting dialogue back and forth among the delegates. Sacramento then was very prone to flooding. The river would go over its banks and flood the community. I have seen an actual photograph of people going across Old Town Sacramento in a rowboat to the original Supreme Court headquarters on the second floor of the Wells Fargo Building, which was the western terminus for the Pony Express. So one of the delegates actually said, "well, a vulture flying over the fetid swamps of Sacramento would drop dead in its tracks, we shouldn't even be here for the climate." And others said, "the water isn't drinkable up here." And I must say, it is rather interesting, there were even comments about the quality of the whiskey and wine and so forth as opposed to what people preferred in San Francisco. So the ultimate compromise was the court could situate itself where it wanted to, as long as it in effect rode circuit and came to Sacramento twice a year and came to Los Angeles, too, on occasion. So that is how our traditional locations were fixed.

STUDENT:

Mr. Chief Justice and Associate Justices of the Supreme Court, good morning. My name is Courtney Wildebaur from Tulare Union High School in Tulare County. My question is: How long does the court have after oral argument in which to decide the case?

CHIEF JUSTICE GEORGE:

Justice Kennard.

JUSTICE KENNARD:

Thank you, Chief Justice. The court has 90 days after the case is submitted at oral argument. Effective January 1, 1989—that was under retired Chief Justice Lucas's tenure on the court—the California Supreme Court adopted the court policy under which every case has to be decided 90 days after submission at oral argument. As we will be hearing cases this morning, pay particular attention to the end of the case and you will notice that the Chief Justice, at the conclusion of oral argument by the parties, will thank the attorneys in a particular case and then the Chief Justice will utter the magic

words—and I hope that I have it correct, Chief—“the case stands submitted.” That is when the 90-day rule comes into play, and I think the rule makes a lot of sense because everyone interested in the proceedings knows that after oral arguments there are 90 days in which the court has to issue its opinion. Naturally, there are certain rare circumstances under which the Chief Justice can vacate a case, but then the Chief Justice will set a new date under which the case will have to be decided.

STUDENT:

Thank you.

CHIEF JUSTICE GEORGE:

Thank you. We will take one more question.

STUDENT:

Mr. Chief Justice, and Associate Justices of the Supreme Court, good morning. I am Yer Xiong from Merced High School in Merced County. My question is: How does a justice separate his or her personal views or independent knowledge from the legal review process when the justice has strong feelings about an issue?

CHIEF JUSTICE GEORGE:

All right, thank you. Justice Baxter.

JUSTICE BAXTER:

Yes, all judges and justices do have a legal duty and obligation to separate their own personal feelings about issues from the legal review process. An example that oftentimes occurs, is for trial judges. For instance, an individual judge may personally not favor capital punishment. But, of course, under the law, capital punishment is the law of the land. And you do have a number of trial judges who have the obligation to carry out the law, even though they may personally not favor that particular law. There are instances, of course, where the feelings are so strong or because of such strong moral or religious views, a judge is really compelled to remove himself from a case. But that is the exception, rather than the rule. I think most judges recognize that they must set aside their personal views and personal feelings and perform their obligations consistent with their oath of office.

STUDENT:

Thank you.

CHIEF JUSTICE GEORGE:

Well, I want to compliment our student questioners. I think you posed some very illuminating questions which I think will educate, not only yourselves and your fellow students who are viewing this on television, but also our adult population, and perhaps even some of the attorneys who are not fully versed in the operations of the court and will be much more so as a result of your questions. I thank you very much.

In recognition of the historic nature of this occasion, and in accordance with our custom, it is ordered that the proceedings at this special session be spread in full upon the minutes of the Supreme Court and published in the Official Reports of the opinions of this court.

At this point in our session I will ask the Clerk to call this morning's calendar.