



California Supreme Court Historical Society President George Abele opens the evening. Looking on (FROM LEFT): Bob Egelko, legal affairs reporter for the San Francisco Chronicle, Charles J. McClain, vice chair of the Jurisprudence and Social Policy Program at Berkeley Law, Harry N. Scheiber, Society board member and professor at Berkeley Law, former Chief Justice Ronald M. George, Chief Justice Tani Cantil-Sakauye, and Society board members Daniel Grunfeld and Molly Selvin.

Chief Justices Celebrate Publication of the History of the California Supreme Court

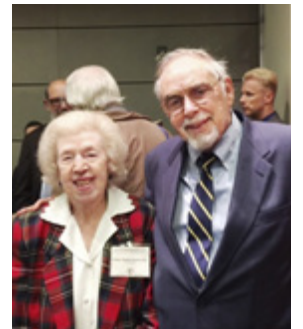
BY RICHARD H. RAHM*

CHIEF JUSTICE TANI CANTIL-SAKAUYE AND FORMER CHIEF JUSTICE RONALD M. GEORGE headlined the California Supreme Court Historical Society's landmark celebration, on November 15, 2016, of the publication of its book, *Constitutional Governance and Judicial Power: The History of the California Supreme Court*. The 669-page volume represents the culmination of a project the Historical Society began twenty years ago, and it fulfills two laudable goals of its editor, Harry N. Scheiber, Historical Society board member and professor of law at the University of California at Berkeley: to provide a serious, authoritative history of the California Supreme Court that is also accessible enough for lay readers. The San Francisco celebration, attended by almost 100 people, took the form of a program at the Milton Marks Auditorium in the Ronald M. George State Office Complex, during which the two Chief Justices answered questions posed by Daniel Grunfeld, a former president of the Historical Society and partner at Morgan Lewis in Los Angeles,

and by Molly Selvin, the Society's vice president and a legal historian who authored one of the book chapters.

Former Chief Justice Malcolm M. Lucas would have also been part of the program but for his passing on September 28. The late Chief Justice was instrumental in the founding of the Historical Society, and it was during his time as its first chairman that the book project was launched. The program was thus dedicated to the late Chief Justice, and Jennifer King, a Los Angeles appellate attorney and the Society's immediate past president, praised his achievements in forging majorities and restoring public confidence in the Court after voters defeated Chief Justice Rose Bird and Justices Cruz Reynoso and Joseph R. Grodin when they stood for re-election in 1986. After observing a moment of silence for the late Chief Justice, Chief Justice Cantil-Sakauye talked about her own admiration of him as someone who took on the task of healing the Court with great poise. Former Chief Justice George concurred with those observations but noted that he particularly appreciated Lucas' sense of humor and insightfulness. He mentioned *Spiritual Psychic Science Church v. City of Azusa*¹ as particularly exemplary in this regard. In that case, a fortune teller challenged a city law

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The evening featured a panel discussion in which former Chief Justice Ronald M. George and Chief Justice Tani Cantil-Sakauye answered questions from Daniel Grunfeld and Molly Selvin.

prohibiting commercial fortune telling. Then—Associate Justice Lucas suggested to the plaintiff’s attorney at oral argument that since his fortune-telling client must have already told him how the case would turn out, would he mind sharing that information with the Court? The attorney assured the Court his client was confident of winning. And, in fact, she won based on the statute being found unconstitutionally overbroad.

The remembrance of the late Chief Justice was followed by several questions to the Chief Justices eliciting their views on a range of topics from the history of the California Supreme Court to looming future challenges. Two themes emerged. One concerned the nature and protection of the California Supreme Court as an institution. In addressing the question of why the California Supreme Court is considered by many to be the second most influential court in the country, former Chief Justice George noted it is not just because it heads up a large state judicial system because, if that were true, states such as Illinois or New York would be as influential. While Chief Justice Cantil-Sakauye emphasized the diversity of California and the Court’s opportunity to be the first to address many ground-breaking

issues, former Chief Justice George emphasized aspects of the institution of the Court itself, such as the state constitutional requirement that every decision be published (not always required of other high courts), its cultivation of a strong central staff whose work product is exceptional, and that California justices may not run on a party-affiliated ticket. However, both Chief Justices worried about the continued independence of the California judicial system, which is often under attack, its ability to anticipate and respond to change, and the effect of long-running funding cuts in reducing access to justice.

Access to justice is also tied to the theme of eliminating discrimination in such a diverse state. Both Chief Justices singled out wrongly decided cases involving discrimination when asked which cases they wish they could remove from the case books. Chief Justice Cantil-Sakauye cited to the California Supreme Court’s decision in *Mackenzie v. Hare*,² which held that a native Californian woman surrendered her citizenship when she said “I do” in marrying a British subject. Former Chief Justice George pointed to *People v. Hall*³ as his candidate for removal; in that case the Court reversed the murder

FACING PAGE, TOP ROW:

(LEFT) *Immediate Past President Jennifer King reads a tribute to the late Chief Justice Malcom M. Lucas. Looking on, (FROM LEFT): Bob Egelko, Charles J. McClain, Harry N. Scheiber, and former Chief Justice George. (RIGHT) Barbara George talks with Daniel Grunfeld and Molly Selvin.*

FACING PAGE, SECOND ROW:

(LEFT) *Beth Jay, former principal attorney to the Chief Justice, talks with Chief Justice Cantil-Sakauye; Society Board Member Selma Moidel Smith greets former Chief Justice George; Jane L. Scheiber talks with Bob Egelko. (RIGHT) Guests and panel participants enjoy a reception following the panel.*

FACING PAGE, THIRD ROW:

(LEFT) *Society Vice President and book co-author Molly Selvin prepares for the panel discussion. (CENTER) Society Board Members Judge Barry Goode and Daniel M. Kolkey with former Chief Justice George. (RIGHT) Selma Moidel Smith and Prof. Harry N. Scheiber. PHOTO COURTESY JANE SCHEIBER*

FACING PAGE, BOTTOM:

The audience of approximately 100 guests listen to a panel discussion with Chief Justice Cantil-Sakauye and former Chief Justice George.

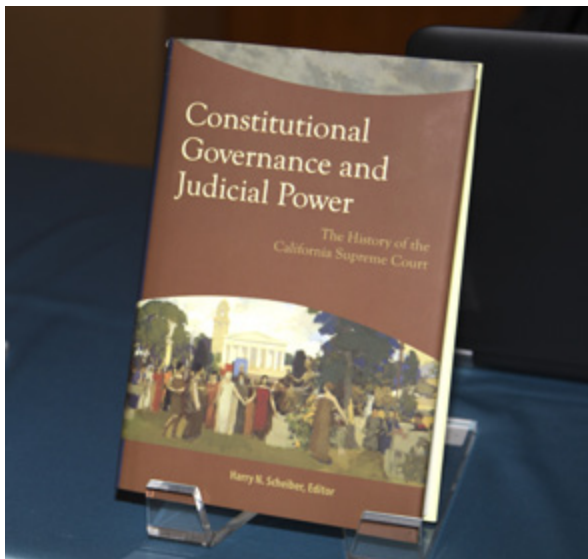
PHOTOS ON PAGES 3–6, EXCEPT AS NOTED: WILLIAM A. PORTER

conviction of a white defendant because it was based on the testimony of a Chinese witness. Conversely, former Chief Justice George praised the Court's 1948 trail-blazing decision in *Perez v. Sharp*.⁴ Nineteen years before the U.S. Supreme Court's decision in *Loving v. Virginia*,⁵ a plurality of the California high court signed onto Chief Justice Roger G. Traynor's decision invalidating the state's anti-miscegenation law. Contrary to the perceived shift of power from state to federal courts, former Chief Justice George continues to see California leading the way in civil rights because such rights in California are based on the state and not just the federal constitution.

Professor Scheiber concluded the program by highlighting the historical significance of the book itself and expressing the hope that the publication would contribute to a deeper understanding and appreciation of California's Constitution and its legal history among the general public as well as continued academic interest. Two of the other book authors on the stage, Charles J. McClain, vice chair of the Jurisprudence and Social Policy Program at Berkeley Law, and Bob Egelko, legal affairs reporter for the *San Francisco Chronicle*, concurred in that assessment. The event, which was underwritten by the Historical Society and several law firms, finished with hors d'oeuvres and wine in the foyer outside the auditorium. ★

ENDNOTES

1. *Spiritual Psychic Science Church v. City of Azusa*, 39 Cal. 3d 501 (1985).
2. *Mackenzie v. Hare*, 165 Cal. 1976 (1913).
3. *People v. Hall*, 4 Cal. 399 (1854).
4. *Perez v. Sharp*, 32 Cal. 2d 711 (1948).
5. *Loving v. Virginia*, 388 U.S. 1 (1967).



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