
Berkeley Law Celebrates New Court History Book and Authors



Professor Emeritus Harry Scheiber and Berkeley Law School Interim Dean Melissa Murray.

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BERKELEY LAW SCHOOL celebrated publication of *Constitutional Governance and Judicial Power: The History of the California Supreme Court* with an event on the Berkeley campus on January 18. Co-sponsored by Berkeley Law's Center for the Study of Law and Society (CSLS) and the Jurisprudence and Social Policy Program (JSP), the release party also specifically honored the book's editor, Society board member and Berkeley Professor Emeritus Harry N. Scheiber.

Constitutional Governance and Judicial Power, a project of the California Supreme Court Historical Society, is a comprehensive account of the court as an institution and as a key actor in the cultural, socio-economic and political development of California. The book, spanning 1850–2010, is likely the most complete and authoritative account to date of any state high court.

"This is truly a major opus," noted Melissa Murray, Berkeley Law's interim dean. "It couldn't be more timely as we're thinking deeply about the role state courts play in this country."

The event, which drew about 50 Berkeley Law faculty, grad students and visiting scholars, featured a

discussion with Scheiber and two of the book's chapter authors, Professor Lucy Salyer of the University of New Hampshire and Charles McClain, lecturer in residence and vice chair emeritus of the JSP program. That conversation focused on the unique challenges that the California high court has faced over the years, particularly during the tenures of Chief Justices Roger J. Traynor, Donald R. Wright and Rose Bird, the origin of the history book project, and the impact of state-level jurisprudence as a force in shaping regional and national legal culture.

One of Scheiber's objectives for the project was to "produce an authoritative historical study, but one that would be readable and thus accessible to the general reader, as well as being a valuable source for advanced students and professionals in history, political science and law." Since joining the Berkeley Law faculty in 1980, he continued, "I found that, so far as state constitutional law and California legal history were concerned, much less attention was being paid in the curricula and in the student-run journals of most of the state's law schools than the importance of these subjects merited. This situation began to change under the impact of the dramatic issues of race, criminal process, school finance, labor law, and the like that were being decided by the state's high court at that time."

Authors Salyer and McClain also hope the book stimulates more study of state constitutions. "Scholars tend to focus exclusively on the U.S. Supreme Court," Salyer observed, "ignoring the vital role that state supreme courts play in the governance of their states, issuing decisions that often end up shaping national constitutional law."

Salyer said she was drawn by the opportunity to learn more about the California Supreme Court's complex record in the so-called "age of reform," from 1910 to 1940. California was in "the vanguard of 'Progressive' reform states during those years, passing more than 800 bills and 23 constitutional amendments in 1911, alone." California's highest court fielded challenges to many of these new laws and the agencies they created. In so doing, the Court "struggled to demarcate the border between private and public rights and state and federal power as they considered the legitimacy of railroad, utility and water regulations, workers' compensation and protective labor legislation, discrimination against non-citizens, zoning laws, the right to strike and picket."



FROM LEFT, *Lecturer in Residence Charles McClain*,
Professor Emeritus Harry Scheiber, *Professor Lucy Salyer*.

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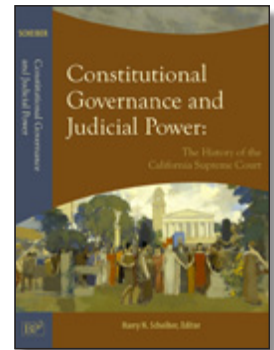
McClain's two chapters included one on the Court's first 30 years — when it issued some disturbing rulings, including *People v. Hall* (1854), which held that Chinese-Americans could not testify against whites in criminal cases. In another repellant decision, *In re Perkins* (1852), a man who had brought three slaves to California from Mississippi was allowed to recover them after the slaves

escaped and to return them to his home state — even though slavery was illegal in California.

McClain's second chapter, on the Court under Chief Justice Phil Gibson from 1940–1964, chronicles how it rose to become the most influential state appellate court in the country. Berkeley Law graduate Roger Traynor ('27) served as an associate justice during those years and became chief in 1964. McClain credits him with propelling what he called “an expansive view of the law's potential to affect significant social change.”

Like Scheiber and Salyer, McClain hopes the book will be a “stimulus to further scholarly research and writing” on California's high court and constitution.

Scheiber's chapter covered the Court's jurisprudence from 1964 to 1987, when it tackled myriad crises. “This was a period of enormous change,” he said. “The Los Angeles riots of 1965, school busing, gay rights, farm strikes, affirmative action in the UC system — all truly divisive issues. There were some amazing intellects on the Court during this time who held a deeply-rooted sense of the need to respect diversity and to protect consumers in the corporate world.” ★



Constitutional Governance and Judicial Power can be ordered here: <https://my.cschs.org/product/court-history-book>.