



CALIFORNIA SUPREME COURT

Historical Society

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BY JUSTICE GABRIEL SANCHEZ



THE SUPREME COURT OF CALIFORNIA: Associate Justices Leondra Kruger, Ming Chin, and Goodwin Liu, Chief Justice of California Tani Cantil-Sakauye, Associate Justices Mariano-Florentino Cuéllar, Carol Corrigan and Joshua Groban.

PHOTOS: JUDICIAL COUNCIL OF CALIFORNIA

Introducing Justice Joshua Groban

BY JUSTICE GABRIEL SANCHEZ*

WHEN JOSHUA PAUL GROBAN took the oath of office as an associate justice of the California Supreme Court on January 3, 2019, he was in one sense a familiar face to attorneys and judges throughout the state. As a senior advisor to Governor Edmund G. Brown Jr., Justice Groban screened and interviewed more than a thousand candidates for judicial office. Over an eight-year span, the governor, with Groban's assistance and advice, appointed 644 judges, including four of the seven current justices on the California Supreme Court and 52 justices on the California Courts of Appeal. These appointments have transformed California's judiciary.

It is, therefore, not only fitting that he has devoted countless hours to thinking about what makes a good judge but necessary since he must now apply those lessons as the Court's 117th justice. California's legal community is eager to learn how he will decide important questions of law. I have known Justice Groban for many years, first as colleagues and friends at the law firm Munger, Tolles & Olson and more recently over Governor Brown's last two terms in office. I was asked by the California Supreme Court Historical Society to profile Justice Groban, and although I will refrain from offering any predictions about the kind of jurist he will be, I am honored to share some personal insights from having worked together on many challenging issues.

* Justice Gabriel Sanchez is an associate justice on the California First District Court of Appeal, Division 1, in San Francisco.

A native of San Diego, Groban received his Bachelor of Arts degree from Stanford University, majoring in modern thought and literature and graduating with honors and distinction. He earned his J.D. from Harvard Law School where he graduated cum laude and then clerked for the Honorable William C. Conner in the Southern District of New York. He was an accomplished litigator at Paul, Weiss, Rifkind, Wharton & Garrison from 1999 to 2005 and Munger, Tolles & Olson in Los Angeles from 2005 to 2010, where he handled a wide range of complex commercial litigation matters.

He took the unusual step of leaving private practice to become the legal advisor to the Jerry Brown for Governor 2010 campaign, though as he explained to me, it was less a leap of faith than a series of incremental decisions that intertwined his future with that of Brown's. A Munger Tolles partner, Alan Friedman, connected him to the campaign through Kathleen Brown. What began as a small pro bono project soon morphed into major campaign duties, requiring Groban to take a leave of absence from the firm. He had every intention of returning to private practice when the election ended, but was asked to stay on and help with the transition, and ultimately, to serve as one of Brown's senior advisors from 2011 to 2018. While he remained in Los Angeles and traveled as needed to Sacramento, he taught appellate practice and advocacy at UCLA Law School and frequently lectured on judicial appointments.

AT THE GOVERNOR'S OFFICE

Brown and Groban have a close and unique relationship, forged from years of policy discussion, intellectual debates, and time spent on the campaign trail and beyond. Brown leaned on Groban for counsel on a wide range of legal and policy matters, from constitutional law to criminal justice reform, teacher tenure rules to sanctuary city laws, regulatory reform to consumer protection. It was not unusual for the governor to seek out the advice of different advisors on many policy or legislative topics, myself included, but he invariably turned to Groban as a sounding board. At the swearing-in ceremony, Governor Brown remarked, "Probably next to my wife I've talked to no other person as much as Josh Groban" — to which First Lady Anne Gust Brown quipped, "I think you've talked to him more."

To illustrate their relationship, Brown and Groban attended numerous meetings at the Lawrence Livermore National Laboratory and the Hoover Institution at Stanford University, and traveled to Washington D.C. to better understand the threats posed by nuclear proliferation. Why, one might ask, is a state governor concerning himself with a matter of national security? Governor Brown understood that any misstep with nuclear weapons in another region of the world poses an existential danger to all of us, and California occupies a prominent position on the global stage as an economic engine and center of innovation for ideas and technology. And thus, along with his many other roles, Groban became steeped in the details of nuclear security risk.

His primary work, however, involved judicial appointments. During the last eight years in office, Brown named approximately one of every three California state judges. These judicial appointments have been lauded as the most diverse in the state's history: 44 percent of Brown's appointees were women, 40 percent identified as African-American, Latino, or Asian, approximately 6 percent identified as LGBT, and 3 percent were veterans. Among many "firsts," they included the first openly gay and lesbian appellate justices, the first Muslim judge and later appellate justice, and the first Korean-American appellate justice. I was honored

to be the first male Latino justice appointed to the First District Court of Appeal. Statistics reveal only part of the story. Counties that had never witnessed a woman on the bench, such as Del Norte, Sierra, and Glenn, or a judge of Hispanic descent, such as Placer and Butte, or an African-American woman, such as Napa and San Mateo, now include jurists who reflect the rich diversity of the communities in which they serve.

Beyond demographic characteristics, Brown and Groban consciously strove to broaden the professional backgrounds and experiences of judges, adding more civil litigators, public defenders, and government attorneys alongside prosecutors and magistrates. They understood that bringing diverse experiences and perspectives allows judges to make more informed decisions and increases public confidence in the courts. Groban has received numerous awards from bar groups and other legal organizations in recognition of his work on judicial appointments and his commitment to improving the judicial system.

APPOINTMENT AS ASSOCIATE JUSTICE

As the newest associate justice, Justice Groban fills the vacancy following the retirement of Justice Kathryn M. Werdegar. In my view, Governor Brown's selection was guided by his appreciation for Groban's intellectual curiosity, vast knowledge of the law, steady presence and tendency to emphasize continuity and clarity in the law. Justice Groban reflected this outlook when he remarked at his swearing-in ceremony, "I am joining an institution

JOSHUA GROBAN'S HEARING AND CONFIRMATION AT THE SUPREME COURT COURTROOM IN SAN FRANCISCO, RONALD M. GEORGE STATE OFFICE COMPLEX, EARL WARREN BUILDING, ON DECEMBER 21, 2018

LEFT: *The Commission on Judicial Appointments members who considered the appointment are (LEFT TO RIGHT) California Attorney General Xavier Becerra, Chief Justice of California Tani Cantil-Sakauye (CHAIR), and senior Presiding Justice of the state Court of Appeal J. Anthony Kline.*

RIGHT: *Justice Carlos Moreno (Ret.) of the Supreme Court of California speaks on behalf of Joshua Groban's confirmation.*





whose fundamental purpose is to provide stability and consistency; I look forward to doing that with a sense of reflection, respect, fidelity to the law and compassion.”

Justice Groban possesses several qualities that will serve him well on the Supreme Court. He is very personable and approachable. He has the quiet confidence to admit when he does not fully understand an issue and needs more information, and to move on when his initial impression proves incorrect. He has mentioned to me that the best justices he has known, no matter their experience, are amenable to input, open to new ideas, and do not make up their minds until all of the necessary information is received and considered. Groban is a nimble and pragmatic thinker, open to competing points of view and deliberate in forming conclusions. His natural inclination is to find consensus and build rapport.

Finally, he has developed a way of thinking and analyzing problems that is familiar to those of us who have worked closely with Jerry Brown — what Brown calls “living in the inquiry.” It is to ceaselessly question the assumptions one holds, to weigh the implications of a decision or legal rule with caution and particularly its unanticipated consequences, and to be mindful that however thorough a brief or appellate record may seem, it likely reflects an incomplete picture of a complex legal or social problem. In short, “living in the inquiry” requires approaching the task of interpreting and developing the law with a dose of humility and understanding that very few things can be known with certainty. Justice Groban remarked that he will be well served if he can internalize this process and apply it to his jurisprudence.

ON THE SUPREME COURT

Justice Groban was kind enough to share with me some initial impressions as he acclimates to his work on the Supreme Court. He was quick to mention how incredibly supportive everyone in the Court has been, from the justices and their chambers, to the talented and experienced central staffs who have filled in to assist him with the Court’s heavy workload as he interviews candidates for longer-term positions in his chambers. On his



CLOCKWISE FROM UPPER LEFT:
JOSHUA GROBAN TOOK THE OATH OF OFFICE IN SACRAMENTO, IN THE STANLEY MOSK LIBRARY AND COURTS BUILDING, ON JANUARY 3, 2019.

Justice Groban receives congratulations on his earlier confirmation from Chief Justice Cantil-Sakauye and Gov. Jerry Brown.

Justice Groban takes the oath of office from Gov. Brown.

Justice Groban’s family lends hands to help him into his new robe.

approach to hiring, he explained, “It’s a process as you balance myriad options, whether to take on permanent staff versus annual clerks, for me whether to hire staff in Los Angeles or San Francisco, whether you look for attorneys steeped in civil or criminal law versus generalists, balancing all those needs.”

A productive working relationship with one’s chambers staff is essential, but it takes time for staff to become familiar with how a justice views cases and drafts opinions. I asked Justice Groban how he is developing those relationships. He said, “particularly early on, I have tried to give input about a case so they don’t have to guess or attack the case blindly. Over time, they will have a better ability to predict how I might want to approach a case, but that takes some time. Rather than passively wait for them to work up a case, I have shared my initial thoughts, and in doing so have helped them understand how I approach things.”

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With the exception of capital punishment cases, review by the Supreme Court is a matter of discretion, and that discretion is exercised on rare occasions. Of the nearly 7,000 petitions for review and requests for writ relief filed each year, the Court grants full review (and eventually issues an opinion) in roughly 60–70 cases. The Court’s review-granting function is central to its role in deciding important legal questions of statewide concern and ensuring that the law is applied uniformly throughout the state. I wanted to explore this process a bit further with Justice Groban.

The criminal and civil central staffs prepare a detailed “conference memorandum” for every petition, which summarizes the pertinent facts and procedural posture of the case, evaluates the merits of the underlying issues, and assigns the case to the Court’s internal “A” or “B” list.¹ Cases on the A list are those that staff have deemed worthy of warranting formal discussion at the weekly conference. The remaining B-list cases are not discussed at the conference unless a justice has so requested.

Every week, the five attorneys on Justice Groban’s staff divvy up the conference memoranda and offer input and analysis. Groban reviews every conference memorandum, any supporting materials, and his staff’s analysis, and occasionally will ask for further research on a particular issue. The undertaking is substantial, he noted, adding “I could spend the entire week working on the petition cases alone.”

The weekly petition conference obeys longstanding formality, with the justices taking turns to discuss each case by order of seniority (with the exception of the Chief Justice, who gets the last word). Justice Groban finds this process edifying. “Generally, it is an opportunity for the justices to share how they view threshold questions, the role of our Court, standard of review, deference, these kinds of overriding issues that are implicated every week. Because petitions by their nature are designed to look at issues of statewide importance or issues where there has been a conflict between the courts of appeal, the conference is a helpful tool for identifying impactful cases and the state of the law.”

Justice Groban shared one other helpful observation about the Supreme Court’s processes. Much of the communication between the justices occurs through detailed memoranda and other written exchanges, particularly in the “preliminary response” to an authoring justice’s pre-argument calendar memo (akin to a draft opinion). In Justice Groban’s view, “having to memorialize your thoughts in writing requires a more detailed and methodical approach to cases. It allows us, in a systematic way, to see each other’s thought processes, as one justice builds upon the response of the previous justice.”

I look forward to reading Justice Groban’s opinions and observing how he will shape the law in the years to come. ★

ENDNOTE

1. For a more complete description of these and related procedures, see the Court’s “Internal Operating Practices and Procedures” at https://www.courts.ca.gov/documents/The_Supreme_Court_of_California_Booklet.pdf, pages 25–51.