

Hal Cohen:

Tributes to the California Supreme Court's Most Extraordinary and Influential Staff Attorney

BY JAKE DEAR



Hal Cohen in the Supreme Court's fifth floor hallway outside the Chief's chambers, circa 2006. (*Daily Journal photo.*)

HAROLD COHEN — Hal, as the justices and staff of the California Supreme Court have known him for more than five decades — drove with his wife, Inez, from New York City to San Francisco right after their marriage. It was June 1969, and he was to start a clerkship with Justice Mathew Tobriner. A Brooklyn native who was raised in Queens and had attended college and law school on the East Coast, Hal had no inkling that his one year Tobriner clerkship would turn into a lifetime career with the Court in San Francisco.

Hal was following in the footsteps of other young law school graduates who had served the Court — including then-recent Tobriner clerks Jerry Brown and Lawrence Tribe. In the ensuing decades, Brown would shape state, national, and worldwide policy — as well as the state judiciary, and the California Supreme Court especially. Tribe would become a leading constitutional law professor at Harvard Law School, influencing important judicial decisions and the development of the law through his writings and mentorship of lawyers and future public servants — including President Barack Obama. Hal would eschew the limelight, and quietly (well, sometimes not so quietly) influence both California and indeed

national law from *within* the state Supreme Court. Only the comparatively few justices and small cadre of appellate lawyers privileged to work here with him over those years know, understand, and appreciate the magnitude of his contributions and dedication.

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In July 2020, as the pandemic persisted, Hal broke the news to Chief Justice Tani Cantil-Sakauye, her staff, and then the Court: He would retire. Although, like the Court's justices and most of its staff, he had transitioned to working remotely, and indeed completed a final draft calendar memo in a significant case, he decided that the time had come. A consummate behind-the-scenes professional who adheres to the strictest code of decorum and confidentiality, Hal would never acknowledge, much less admit, what the rest of us know: He's irreplaceable, and his departure will leave a void. Yet what he's given to the institution and to the law will live on — not only in the

127 volumes of *California Reports* published while he worked for eight justices (and with 28 other justices of the Court during that same period) — but also in the example he has set for all of us, and the standards to which those of us who remain, and those who will join the Court staff in the future, aspire.

I asked approximately 25 current and former justices and Court staff to share with me their observations of and thoughts about Hal. I'll set out a sampling of those comments below. But first, I'll briefly sketch Hal's tenure at the Court, and highlight some personal observations about Hal and his work.

Hal's tenure at the Court

When Hal's one-year clerkship ended Justice Tobriner asked him to stay on and Hal did so until Tobriner retired in early 1982. Because prior to that date (and anticipating Justice Tobriner's retirement) Hal had been hired by Justice Otto Kaus, who had joined the Court in mid-1981, Hal worked for both in the overlapping months. Hal stayed with Kaus until he retired in the fall of 1985, and then worked for Justice Joseph Grodin until early 1987, when Grodin left office after the voters unwisely terminated his lease at the prior general election. Hal then was hired and worked for Justice John Arguelles from his confirmation in March 1987 to his retirement two years later. Hal next worked six months for Justice Joyce Kennard as she was beginning her service on the Court, until September 1989, and then, pursuant to a prior arrangement, Hal worked for Justice Broussard until he retired in the summer of 1991. Hal became head of chambers for Justice Ronald M. George when he joined the Court as an associate justice in September 1991. After George was appointed and confirmed as Chief Justice in mid-1996, Hal remained head of the George chambers, and also became chief supervising attorney of the Court. Hal continued with George until he (George) retired in early 2011, even though Hal had, himself, formally retired at the end of 2005 and then continued at the Court as a retired annuitant. When Chief Justice Cantil-Sakauye took office in January 2011, she asked Hal to continue his work, first as a retired annuitant and then in a voluntary emeritus

position. Hal worked on the present Chief's staff until he fully retired in the summer of 2020.

Some personal observations

I've known Hal since 1983, when I served as an annual law clerk to Justice Stanley Mosk, and Hal was on the Kaus staff. I realized then, and with time grew to appreciate even more, his extraordinary capacity to approach legal problems by seeing both the big picture — and diverse implications — as well as the most intricate and complex points and problems. And once I began working with Hal more directly within the George chambers beginning in 1996, I came to recognize his refined realpolitik sense about what may, and may not, gain a majority within the Court at a given time — and how to best structure and organize a draft calendar memo and eventual opinion.

I, like many others who have benefited from Hal's direct critiques and editing, learned that when he returned a draft of my work that I had submitted to him for review, it would be accompanied by a cover memo setting out his gentle and yet forceful comments. Typically, that memo said, in essence: "Great work! How about if we (substantially) revise and reorganize along these lines . . . ?" Like many others, I learned to take a deep breath, absorb his comments and suggestions — and usually concluded, after some debate (often rather energized) that . . . yup, Hal's suggested approach, or at least a version of it, was an improvement.

These types of experiences with Hal and others taught all of us, and reinforced, the need for, and value of, being open to constructive critique. The Court's justices and staff operate in a world of constantly giving and receiving criticism. Under the Court's internal procedures, our work within each chamber, and the calendar memos and draft opinions that circulate from each chamber to all of the other six chambers, are subject to a veritable gauntlet of legal slings and arrows. If one's skin is too thin, it can be painful. Yet we generally realize that it's healthy, and refreshing, to be part of an institution and branch that carries off robust criticism in stride — without, for the most part, taking it too personally. If only other branches of government performed nearly as well . . .

Hal has also been a friend and trusted confidant. Soon after he stepped away from his roles as chief supervising attorney and head of the Chief's chambers in 2005, and I was forced to try to wear those shoes, we began taking daily morning "constitutional" around San Francisco's Civic Center Plaza. During these four laps just outside the state building we talked out our respective research — testing hypotheses and tentative analysis. More than a few passersby must have thought these two fellows were having quite an argument. We also discussed the Court's administrative and policy challenges; the state of our society and government; and the joys and challenges of families. Finishing each walk and returning down the

long interior hallway to the door of my office, we'd typically thank each other for the time and the chat. On reflection, those 30 minutes were often the most productive and inspiring of my day — and oh how I miss that, and Hal's regular influence, now.

But all that's merely a snapshot of my own experience. What of others? I'll set out below comments of former justices and staff attorneys who have worked with and/or known Hal over the years.

Observations and comments by former justices and Court staff attorneys

Let's start with BERNIE WITKIN, who served as a staff attorney for Justice William Langdon from 1930–39, and then for Justice Phil Gibson, 1939–1940 — as a prelude to launching what became his famous and indispensable multivolume treatises on major aspects of California law. In a 1991 oral history Witkin spoke approvingly of the practices of justices — starting with Roger Traynor in the early 1940s — hiring bright recent law school graduates as "law clerk . . . collaborators" who "developed a symbiotic relationship" with their justice and "participat[ed] in the thinking processes that led to the decision as well as in the articulation by the opinion."¹ This led Witkin to reflect on the Court's then current staff, and he focused specifically on one who exemplified his ideal: "Hal Cohen, almost an unknown figure, [but] one of the greatest appellate lawyers that ever hit these parts, Harvard cum laude and all that."² As we will see, Witkin was not alone in that assessment.

OLGA MURRAY came to the Court 14 years before Hal, working as a staff attorney for Chief Justice Phil Gibson, and then for Justice Stanley Mosk.³ She nicely previews themes we will see emphasized and elaborated upon by others: "I worked with Hal at the Supreme Court for decades. He is the most brilliant and dedicated lawyer and had a great influence on the direction of California law during his many years working for various justices of the Court. And he was a pleasure to work with. Though

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1. Gordon Morris Bakken, "Conversations with Bernard Witkin" (1998–99) 4 *Cal. Supreme Ct. Hist. Society Yearbook* 109, 111–13.

2. *Id.* 115.

3. Olga deserves her own tribute for her amazing work after her service at the Court. See generally Olga Murray & Mary Sutro Callender, *Olga's Promise: One Woman's Commitment to the Children of Nepal*, Olga Murray Publications, 2015 [describing Olga's founding of the Nepal Youth Foundation, a nonprofit organization that has served more than 45,000 children by providing them with vital healthcare, education and a safe environment].



Foreground: Justice Tobriner. Left to right: Ray and Mary McDevitt, Robert Vanderet, and Rosabelle Tobriner at Passover Seder, early 1970s. (Cohen family photo.)



Left to right: Robert Vanderet, Justice Tobriner, and Hal Cohen circa 1972. (Courtesy of Robert Vanderet.)

we sometimes had disagreements about cases before the Court, and I often shed more heat than light in our discussions, he was always gentle, concise, yet forceful and direct — and almost always won the argument. I retired from my work as a staff attorney at the Supreme Court 28 years ago; during my time at the Court I met many exceptional lawyers, but none more passionate about the law and more dedicated to justice and fairness than Hal.”

RAY McDEVITT began a one-year law clerk position with Justice Ray Sullivan in the fall of 1969 and met Hal at the Court then. Ray recalls: “Hal had just begun a clerkship for Justice Mat Tobriner, which was to evolve into a distinguished career of service to a succession of eminent judges on that Court. Although we worked together for only that one year, we have been friends for just over 50 years now.”⁴

Ray elaborates: “Four of Hal’s many attributes deserve particular mention. First, he is super-smart; even three years at Harvard Law School couldn’t diminish his natural intelligence. Second, he writes like an angel, with an

4. Ray, who went on to be a highly regarded civil practitioner, honored the judicial branch by researching and writing *Courthouses of California: An Illustrated History*, Berkeley, CA: Heyday, 2001 — and by serving as president of the California Supreme Court Historical Society.



This framed charcoal drawing, used in a KQED news program commemorating the outcome in Justice Tobriner’s opinion in *In re Lifschutz* (1970) 2 Cal.3d 420, hung in Hal’s office for more than 50 years. (Photo by Jake Dear.)

elegant but simple style that emphasizes clarity. Third, he has a wonderful sense of humor, appreciating both puns and paradox. Finally, he is a kind person: congenial, considerate, and compassionate. I consider it a blessing that my wife, Mary, and I have been able to share good times, and hard times, together with Hal and his wife Inez for five decades.”

JUDGE ROBERT VANDERET, of the Los Angeles Superior Court, writes: “I first met Hal in 1972 when I had the privilege of serving as a law student extern for Justice Mathew Tobriner. Hal was my supervisor and soon became my close friend. That friendship deepened over the decades that followed, and we shared the joys of watching each other’s family grow, sharing family vacations and annual seders, and staying in touch even after we moved to Los Angeles, while Inez and Hal remained in Hal’s beloved San Francisco. As a result of knowing Hal so well for nearly half a century, I can confidently make two observations about him:

“First, Harold Cohen is truly a mensch, in the full sense of the Yiddish meaning of that word: a person of integrity and honor, someone to admire and emulate. No one could ever doubt his integrity or his character. He is an exemplary father and husband, a trustworthy and loyal friend, and the most empathetic and decent human being I have ever known.

“Second, Hal has the finest legal mind I have ever encountered: brilliant, insightful and creative. I used to fantasize that I was in a position of power for the sole purpose of nominating Harold Cohen to the Supreme Court of California or the United States. (I’m not making this up.) But even without holding such high position, many of us know of the profound, positive

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and progressive influence he has had on the law. We are all better for his service on the Court.”

RICK SEITZ, who joined the Court staff in 1975 for Justice Frank Richardson — and stayed nearly 40 years, working also for Justices Frank Newman, Joseph Grodin, David Eagleson, and Marvin Baxter, remarks: “After five decades of sterling service, Hal richly deserves his retirement, but it will be mourned by all who love the Court. His work has been marked by extraordinary wisdom, intellect, scholarship, and integrity. These qualities, plus his humility and his unfailing regard for his colleagues, have earned him their universal respect and affection. He is unique and irreplaceable.”

JUSTICE WILLIAM DATO (Fourth District, Div. One), who met Hal when he was a law student extern at the Supreme Court in 1979, and then an annual law clerk for Justice Tobriner, speaks for many staff, and well captures Hal’s approach to the work and the Court: “While our relationship has grown and evolved over the years as I

went on to do a variety of other things, Hal has remained for me — as for so many other attorneys who have worked at the Court — a mentor and inspiration.”

He explains: “After a half century of service to the citizens of this state, there are few individuals who have had a greater impact on the development of California law. You’d never know that from talking with Hal — he is self-effacing to a fault. Yet for those who

have worked with him, his humble nature could never hide the power of his intellect or the grace of the written product he created. A conversation with Hal about a difficult legal issue was always enlightening — nearly every time you ended with a clearer understanding of the problem than when you started. Equally important, you came away reinvigorated because Hal’s enthusiasm for his work and commitment to quality was contagious. His sage counsel subtly but compellingly reminded that what we are doing *is* important, and we are privileged to be part of the process.”

Justice Dato concludes: “Perhaps that helps explain how and why over the course of 50 years Hal was able to work so well with eight different justices who had widely varying temperaments and philosophies. Most often Hal has a strong sense about the right result in a particular case, but for him it’s never *just* about the result. It’s also about how we get there, because a robust and rigorous process both informs and supports the correct result. No one understands that process, or better exemplifies how to properly utilize it, than Hal Cohen.”

PAUL FOGEL, a staff attorney for Chief Justice Rose E. Bird 1983–1987 (and subsequently a highly respected



Left to right: Hal Cohen, Justice Tobriner, and his annual clerk Steve Yeazell (now a law professor at UCLA), circa 1975. (Cohen family photo.)



Tobriner staff in summer of 1981 — Justice Tobriner (seated, center). Standing: far left, secretary Connie Del Carlo; third from left, Hal Cohen; second from right, long time staff attorney Mike Willemssen (who remained at the Court until the mid 2000s); far right, annual law clerk Bill Dato; the remaining five are law student externs. (Courtesy of William Dato.)

appellate practitioner), puts into perspective the institutional importance of staff attorneys in general — and of Hal in particular:

“Most people who interact with appellate justices and courts do not appreciate the extent to which staff attorneys are the ‘backbone’ and ‘circulatory system’ of a well-functioning judicial ‘body.’

They help keep the Court strong and healthy by working to ensure that its rulings are fair, well-reasoned, and grounded in the law and the facts. This enables the judicial branch to retain respect, resolve disputes fairly, and keep the other branches in check. Appellate staff attorneys in particular do an enormous amount of ‘heavy lifting,’ providing the scholarship,

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reasoning, and helpful counsel about the direction the law should move in, consistent with the Constitution and other governing documents.”

Paul concludes: “Hal’s 50 years at the Supreme Court epitomize the absolute best contribution a staff attorney can make to ensure the strength and health of an important institution like the California Supreme Court. Brilliant, kind, polite, funny, caring, eloquent, creative, diligent, productive, dedicated, inquisitive, and selfless are only some of the adjectives that describe him. He has had an extraordinary influence on the law and on those fortunate to be his colleagues. All Californians should be grateful that he chose to use his talents to ensure that our Supreme Court has retained the stature it has. Thank you, Hal!”

BETH JAY, who worked at the Court for more than 40 years — with Justice Richardson, Justice (and Chief Justice) Malcolm Lucas, Chief Justice Ronald George, and the present Chief, Tani Cantil-Sakauye — writes: “Losing Hal Cohen will create a huge hole in the Court’s fabric. His knowledge, memory, curiosity, intelligence, analytical skills, and generosity as a lawyer are unmatched. He

has been a crucial contributor to the work of the Court in every way. I have known and admired him for four decades, and had the great pleasure of working with him on the staffs of the most recent two Chiefs. An exacting writer and superb editor, he improved every draft he touched. He is, quite simply, a lovely person. And who will be left to remember the Brooklyn Dodgers?” (Indeed, as Beth reminds us, Hal kept a photograph of fellow Brooklyn native and Dodgers pitcher Sandy Koufax in his office.)



This framed image hung in Hal’s office for the last few decades. (*National Baseball Hall of Fame Library.*)

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GRAHAM CAMPBELL worked at the Court more than 38 years, first as an annual law clerk for Justice Maurice Dooling in 1961. He returned to the Court the same year as Hal, 1969, as a staff attorney for Justice Louis Burke, then worked for Justices Frank Richardson, Malcolm Lucas (as associate justice and as Chief — during which time Graham was head of Lucas’ chambers), and finally for Justice Ming Chin, until 2006. Graham recalls inviting Hal as a “guest” to some of our semi-regular Lucas staff alumni lunches, where he could not resist roasting the vaunted Hal. Graham — who worked for judges who were not philosophically or jurisprudentially aligned with most for whom Hal worked — recalled some strong disagreements



Hal, Janet Grodin, and Justice Grodin at the 1985 bat mitzvah of Hal and Inez’s daughter, Sara. (*Cohen family photo.*)

over analysis and outcomes, and reminds us that Hal is not perfect: “I have always loved and admired Hal. Surely, he was one of our more productive, endearing and certainly enduring staff attorneys. But when it came to thrashing out the Court’s decisions, Hal and I usually worked at the opposite ends of the liberal/conservative spectrum. We seldom huddled together on anything but the Supreme Court softball team, where, as player/manager, I consistently pitched losing games, and Hal fumbled relatively easy ground balls to him at second base.”

RETIRED JUSTICE JOSEPH GRODIN knew Hal through his former law partner and their mutual friend (and later Justice) Mat Tobriner, and hired Hal when Justice Kaus retired in 1985. When he recently learned of Hal’s decision to formally retire, Grodin lamented: “First the coronavirus, then the economy, and now Hal Cohen leaves the Supreme Court, where his quiet, unassuming brilliance, and articulate insight have contributed to the Court’s greatness, and his personal qualities have enhanced the lives of all of us who were privileged to work with him.”

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ALICE COLLINS joined the Court’s criminal central staff in 1983, moved to Justice Broussard’s staff in 1984, and worked on the staffs of Chiefs Lucas, George, and finally Cantil-Sakauye, until retiring in 2017. She writes: “Hal’s work has been central to the Court’s jurisprudence for so long — his products were so thorough, insightful, and beautifully written. He remembers everything — it’s quicker to ask Hal than to go to Westlaw or Lexis — and he’s been the institutional memory of the Court. He is

also as honest as the day is long, and somehow manages never to say a discourteous word about others.”

RETIRED JUSTICE KATHRYN MICKLE WERDEGAR recalls: “I first met Hal when I joined the Court as a judicial staff attorney for Justice Edward Panelli in 1985, some 35 years ago. At that time Hal already was an experienced and valued member of the Court staff, relied on by both fellow attorneys and justices for his even temperament, depth of knowledge and excellent judgment. Characteristically, he extended me a warm welcome and offered to assist in whatever way needed as I settled in to my new responsibilities.”

She observes: “During his tenure with the Court Hal served under 36 justices, including six chief justices. He worked as a chambers attorney for eight justices. This is a striking accomplishment. It’s a telling one as well. Along with his legal acumen, one of Hal’s most notable characteristics is his ability to respectfully and capably serve justices of markedly different temperaments, backgrounds, and judicial philosophies. Hal has been the consummate professional, dedicated first and foremost to the well-being of the California Supreme Court as an institution. From this loyalty to the

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Court flowed naturally his willingness to assist its members — individually and as a whole — graciously and to the best of his ability. In his capacity of chief supervising attorney of the Court many of us have had occasion to seek his assistance and plumb his wisdom about matters both legal and institutional. One always came away enriched and enlightened.”

Justice Werdegar focuses on Hal’s strict adherence to confidentiality and decorum: “Hal’s institutional knowledge is unmatched. He has served through times tumultuous and calm, fractured and collegial. He doubtless has stories to tell. But don’t expect to hear them. Along with his intellect, skill and accomplishment, Hal is modest, discreet, and self-effacing.” (Indeed. Although I and others have encouraged Hal to write about his experiences at the Court or give an oral history, that’s not going to happen.⁵)

Justice Werdegar concludes: “The California Supreme Court as an institution and its members individually have been fortunate to have this young



Hal with Justice Werdegar at the Court holiday party, circa 2015. (Photo: Sherry Glassman.)

attorney from Brooklyn, by way of Harvard, decide to dedicate his career to the Court he intended to serve for one year only. With Hal’s retirement, the California Supreme Court bids farewell to an individual who has borne witness to and helped shape the Court’s history for over half a century. His service is unprecedented. The vacuum created by his departure will be deeply felt. Hal, we have been enriched by your presence.”

NORM VANCE, currently and for the past 28 years, director of the Court’s criminal central staff, came to the Court in 1987 and worked with Hal in the Arguelles chambers. He highlights Hal’s tenacity and ability to sense not only the proper development of the law as a theoretical matter, but also the limits of change within the confines of an inherently incremental institution: “Hal was the best supervisor I ever had in my life — and an invaluable mentor when I came to the Court from the Ninth Circuit. We had some knock-down, drag-out arguments over cases (his office was between Justices Broussard and Panelli, as I recall, and both of them had to come over on occasion to ask us to keep it down), and he was always right — by which I mean, I could be right on the law but Hal knew what would work with other chambers. He was as skilled a ‘politician’ in our world as they come. He’s also one of the smartest and one of the nicest people I have ever known in my life — and that’s a rather rare combination.”

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RETIRED JUSTICE JOYCE KENNARD speaks to the depth of Hal’s relationship with the institution. “When I joined the California Supreme Court in April 1989, I was lucky in having Hal Cohen, a superb attorney with many years of experience on the Court, assigned to me for my first months. Anyone who has worked with Hal knows of his intellectual brilliance, his integrity, his humility, and his kindness. Hal loved the Court. In turn, the Court loved him.”

5. Much to Hal’s chagrin, he — along with all then-serving justices, and some other key Court attorney staff — was forced to answer deposition questions and testify before the Commission on Judicial Performance during the so-called *Tanner* hearings in 1978–79. See, e.g., Kathleen A. Cairns, *The Case of Rose Bird*, Lincoln, NE: Univ. of Nebraska Press, 2016, ch. 6; Preble Stoltz, *Judging Judges*, N.Y.: Free Press, 1981. I suspect that painful experience reinforced Hal’s existing constitutional proclivity toward circumspection about the Court’s work.

GARY SIMMS, who served nearly nine years at the Court for Justices David Eagleson and Marvin Baxter in the late 1980s through the early 1990s, writes: “In 40 years of law practice, mostly appellate law in various state and federal courts, and including . . . at the California Supreme Court, I have been privileged to work with several judges and attorneys with keen legal minds. But I have never known anyone with Hal Cohen’s combination of passion for the law and whip smart legal analysis.”

RETIRED CHIEF JUSTICE RONALD M. GEORGE, who hired Hal to head his legal staff — and also to be the Court’s chief supervising attorney once George became

Chief Justice — described Hal in his published oral history as “one of the most brilliant minds that I’ve had the privilege of encountering in any venue, and not just limited to the California Supreme Court.”⁶ Chief George went on to reveal what no staff attorney (especially Hal) ever would — specifically describing how Hal worked with him to research and craft some of the leading George opinions, such

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as the “marriage trilogy” decisions.⁷ More recently, on hearing of Hal’s recent decision to formally retire, Chief George writes:

“There are very few individuals who can be considered institutions in their own right, but Hal Cohen’s unique role and contributions to the work of the California Supreme Court over more than half a century qualify him for such a designation. He has an extraordinary knowledge of the law, with particular insight into its application in the setting of judicial decision-making. Despite possessing these skills, he has remained a very

modest person. His qualities as an especially caring and thoughtful person inspired gratitude and admiration in me and in every individual — judge, staff attorney, or clerical personnel — who was privileged to know him and work with him. Hal is irreplaceable and will be deeply missed.”

BLAIR HOFFMAN, who worked 28 years at the Court for Justices Arabian and Chin, stresses that Hal could be both gentle and persistent. In the process, Blair shines some light on the inner workings of the Court:

“As everyone who knew him was aware, Hal is very much the gentleman and very collegial. But he could also be a strong advocate for his judge’s position. Not that well known was his ability to lobby privately for his judge’s position. Many times during my years working with him for the Court, he would enter my office to lobby on his judge’s behalf, perhaps arguing against a calendar memo that he was concerned my judge might support, or in favor of his judge’s PR. [A “PR,” preliminary response, is a justice’s written reaction to a circulating “calendar memo,” which is in turn akin to a preliminary draft opinion.] He was always respectful and did not pressure me, but he could also be quietly convincing. Often (not always) he persuaded me to his position, and I would recommend my judge adopt that view or, perhaps, make appropriate changes in a forthcoming opinion. It was always a pleasure to have him come to me to try to persuade me, even on those occasions (not so often) when he did not succeed. That was the Court working at its best.”

STACEY STOKES came to the Court in 1992 as an annual law clerk for Chief Justice Lucas — and eventually served the current Chief, until 2018. She writes: “Many people who have worked at the Court really love the law. The job practically demands it. When it comes to Hal, however, his was a love supreme. The law nourished and enthralled Hal. At times, it also confounded and exasperated him. But his passion for the law never wavered, and it informed all of his memoranda and advice to the various justices for whom he worked. It was also the driving force behind his often-animated interactions (including heated debates) with colleagues.”

Stacey nicely summarizes Hal’s approach to the cases: “Hal went about his work at the Court with the same enthusiasm and resolve in every case, whether it was destined for watershed status or concerned only a narrow, arcane question of law that was of interest to but a few. His process was this: Guided initially by the parties’ briefing, Hal would then tirelessly locate and comb through every relevant case and secondary source, using a stubby sharpened pencil to cram his observations and thoughts onto index cards in handwriting so small the average reader could not make out without the help of a magnifier. He would start writing his drafts when he was satisfied that he had reviewed and chewed on everything he possibly needed in order to find what was, in his view, the better rule, or the most natural progression of the



Hal, left, with Chief Justice George after the petition conference, circa 2005. (Photo: California Supreme Court staff.)

6. Ronald M. George, *Chief—The Quest for Justice in California*, Berkeley: Pub. Policy Press, 2013, 635–36.

7. *Id.* 636–37.



The Chief's attorney staff members in her chambers, December 2019. Left to right: Neil Gupta; Hal Cohen, Michael Rhoads, Erin Rosenberg, Matthew Scarola, Jake Dear, Voung Nguyen, Todd Thompson (not pictured, Kyle Graham). (Photo: California Supreme Court staff.)

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law — and the just result. His memoranda were beautifully crafted, always complete and concise in their reasoning. His signature writing style also typically included single sentences that spanned eight or nine lines of text. He had much to say in just one breath!

Finally, Stacey observes: “Hal’s recommendations did not carry the day in every case. But they were always well respected.

His passion for the law and his pursuit of justice was steadfast, even when his own views met with resistance. He was an inspiration to those of us who worked with him, who learned from him, and who called him a good friend.”

Comments by Hal’s most recent colleagues in the Chief’s chambers

Hal’s most recent colleagues on the Chief’s staff echo and expand on these observations. Here’s a sampling from some of them — VUONG NGUYEN, ERIN ROSENBERG, MICHAEL RHOADS, MATTHEW SCAROLA, AND SUNIL (NEIL) GUPTA, respectively: “It always gave me peace of mind to know that Hal was looking over every formal piece of writing I did before it circulated to the Court. There’s something deeply comforting in knowing that Hal agrees with you (or at least didn’t disagree enough to march into your office and tell you exactly what he thought). I miss Hal already.” “Hal is a brilliant and thoughtful attorney. His institutional knowledge of the Court is invaluable. He was quick to offer an insightful comment about a case. I looked forward to seeing his smiling face in the office!” “Hal’s knowledge about the Court’s history and its precedents is unmatched. But what I will remember most is his patience, his humility, and his ready willingness to listen and to share his experiences and perspectives.” “The easiest way to predict the outcome of a new case was to get Hal’s gut reaction. His knowledge was so deep, and his insight so immediate,

that he could solve the toughest legal problems off the top of his head. Hal reviewed all the calendar memos and work by others — and volunteered feedback. A compliment from Hal was one of the Court’s highest honors.” “Hal’s approach to cases was entirely free from ego or any personal agenda. His respect for the law is so great that I can truly attest that it is his sole guiding force in deciding how to approach and analyze a case.”

I’ll quote more extensively from two additional current members of the Chief’s staff. TODD THOMPSON, who joined her staff after decades as a big firm partner, and then as a staff attorney at the First District Court of Appeal, gives a personal account:

“Hal Cohen has manifestly a brilliant legal mind, but what struck me most about Hal was his passion for the work of the California Supreme Court. It was not just the law, but also the institution, that inspired Hal. He cared deeply about the evolution of the Court’s jurisprudence and the quality and content of its decisions. My best times in the office over the last three years were those spent yelling at and with Hal about prospective decisions. Hal yelled not because he was angry or distressed but because he *cared*, because the principles we were debating were supremely important to him. Talking about them excited him.

Hal’s was not an abstract passion for the law, but a passion for the law *as pronounced by this Court*.

Todd illustrates his observations by describing the inner workings of the Chief’s staff: “Within the first year of my beginning work at the Court, I was assigned primary responsibility for a high-profile civil case before the Court. In the Chief Justice’s chambers, we have a practice of requiring the responsible attorney for each case to select a ‘buddy’ from among the Chief’s other attorneys. The buddy serves as a sounding board and reviews our work before it is submitted to the Chief. Hal, whose office was next to mine, had occasion to hear me discuss this case

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Chief Justice Tani Cantil-Sakauye with Hal at the Court holiday party, 2016. (Photo: Sherry Glassman.)

with other persons, and we had many discussions about civil law when I served as the buddy on one of his cases. Based on this exposure, I am now certain Hal concluded that placing the high-profile case in the hands of a person as rash as myself was a potentially grave mistake. In an unprecedented move, Hal did not wait for me to select a buddy. Perhaps a year before I would begin actual work on the case, Hal asked me whether he could serve as my buddy. Hal pitched his request as based on the interesting nature of the case, but I have no doubt that, in Hal's mind, he was attempting to head off disaster. Although Hal is a sensitive and considerate person, and would sew his mouth shut before causing insult to anyone, in his mind the case was just too important to let propriety stand in the way. At the time, I was just flattered that Hal Cohen wanted to act as my buddy, and I accepted on the spot. It was, of course, the best decision I could have made. Hal and I worked out a successful approach to the case, and his continuing comments and guidance resulted in a far better draft than I could have prepared on my own. We disagreed at times, and we yelled — and the experience will be the highlight of my work for this Court, regardless of what the future might bring.”

“... if you were to name an important opinion produced by the Court from the [late] Traynor years to the present, odds are that Hal made some significant contribution to it.”

KYLE GRAHAM, who served as a two-year law clerk to Justice Moreno, became a law professor, and then joined the Chief's staff four years ago, posted on the day Hal announced his decision: “One of the very best lawyers I've ever come across formally retired today, after 51 years at the California Supreme Court. Hal Cohen joined the Court as chambers staff one month before Neil Armstrong set foot on the moon, at a time when Woodstock was still just some concert that was going to happen later that summer. Although not one of the hundreds of judicial opinions he worked on bears his name, he is probably one of the five most important

attorneys — including justices — to ever have served at the Court. Without delving into specifics, if you were to name an important opinion produced by the Court from the [late] Traynor years to the present, odds are that Hal made some significant contribution to it.”

Kyle concludes: “Hal will never be known to the millions whose lives have been affected in one way or another by his work. He prefers it that way. But to me and others at the Court, he is the textbook definition of a lawyer's lawyer. We were very lucky to have him for as long as we did.”

Finally, CHIEF JUSTICE TANI CANTIL-SAKAUYE comments: “During Hal's tenure at the Court, he served 36 justices, including six who were, at one time or another, chief justices. Viewed another way: Hal served under 30 percent of the Court's 117 justices, and for 30 percent of the Court's 170-year history. Like my colleagues before and presently, I have been exceptionally fortunate to benefit from his extraordinary legal talents and his gracious disposition, as so well recognized and described by many others.”

The Chief continues: “Every superlative in this article describing Hal Cohen is an understatement. Full stop. He is truly a human marvel who possesses unparalleled intellect, poetry of the pen and what seems like infinite exacting knowledge of the law, chapter and verse. And yet, for all his extraordinary and awesome gifts, as recognized by some of the most critical analytical thinkers in the law, Hal is patient with and kind to us mere mortals. When I first met Hal in 2011, I recognized immediately that he is a legal giant among giants and I thank the universe that I had almost ten years to learn from him.”

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Postscript

Working remotely, and using primarily electronic documents, was very challenging — and not at all natural for Hal. He thrives on face-to-face discussions, and is far more at ease using hardbound versions of case law, law reviews, and treatises that, in his office, would usually lie opened in stacks completely covering his old walnut desk, inherited from Justice Broussard. But we can imagine what his home office might look like soon, when he begins working on a project that's been percolating in his fertile mind for many years: A book about the U.S. Supreme Court's recent applications of the federal Constitution's First Amendment, under the working title, *Too Much of a Good Thing*. Hal, we look forward to reading it — hearing your voice, while continuing to be enlightened by your wisdom and inspired by your passion. ★

JAKE DEAR is head of the Chief Justice's legal staff and the chief supervising attorney of the California Supreme Court. A shorter version of this article was published, under a similar title, in the November 12, 2020 edition of the *Daily Journal*.