

2022 WRITING COMPETITION VIRTUAL ROUNDTABLE

The California Supreme Court Historical Society met by video conference to congratulate the 2022 winners of its annual Selma Moidel Smith Student Writing Competition in California Legal History.

The award-winning students introduced themselves and presented summaries of their papers. Participating in the discussion were California Chief Justice Tani Cantil-Sakauye, recently retired Justice Kathryn Mickle Werdegar, Society President Dan Kolkey, and Selma Moidel Smith who initiated and conducts the competition.

The following is a lightly edited transcript of the video conference that took place on August 10, 2022.¹ The complete papers appear immediately following in this volume of *California Legal History* (vol. 17, 2022).

DAN KOLKEY: Welcome. I'm Dan Kolkey, president of the California Supreme Court Historical Society and a retired partner at Gibson, Dunn & Crutcher. It's my pleasure to welcome you to this virtual ceremony in honor of you, the winners, of the Selma Moidel Smith Student Writing Competition.

¹ The video conference is available on the Society's website at <https://www.cschs.org/programs/student-writings> or on YouTube at <https://www.youtube.com/watch?v=rRfG8aozXrk&t=12s>.



VIRTUAL ROUNDTABLE PARTICIPANTS —

TOP, LEFT TO RIGHT: CHIEF JUSTICE TANI CANTIL-SAKAUYE, JUSTICE KATHRYN MICKLE WERDEGAR (RET.), COMPETITION CHAIR SELMA MOIDEL SMITH, AND SOCIETY PRESIDENT DANIEL KOLKEY.

BOTTOM, LEFT TO RIGHT: WINNING AUTHORS LEAH HABERMAN, RYAN CARTER, AND SIMON RUHLAND.

Before I introduce our winners here, I'd like to make some introductions of the very distinguished jurists we have here today. I'm going to start with the chief justice of the state of California. Tani Cantil-Sakauye has had an amazing career. Even before she stepped onto the platform of the California Supreme Court, she was a district attorney; she was a deputy legal affairs secretary, and then a legislative secretary for the governor of the state of California, George Deukmejian, and thereafter she had a twenty-year career on the municipal court, superior court, and the Court of Appeal of the state of California, and indeed had some major initiatives in those positions, including — when she was on the Sacramento Superior Court — she instituted the first court solely dedicated to domestic violence issues in Sacramento.

Most people would say that is a sufficient career for anyone. However, in 2010, Governor Arnold Schwarzenegger appointed her as the

twenty-eighth chief justice of the state of California, and, through what was a fairly stormy period — severe budget cuts following the Great Recession, followed quickly by a pandemic — the chief justice steered the courts very successfully and smoothly through all of this without missing a beat. In addition, as chief justice, under the California Constitution she chairs the Judicial Council of California, which is the policymaking body in the state for the courts. As such, she had a number of initiatives, including on bail and on having some traffic violations treated as civil rather than criminal offenses in the name of fairness. She established an initiative and an organization to promote civics education for students, so the chief justice has made her mark not only in major opinions but in all facets of the courts and civics education.

Let me now turn to one of the other jurists we have here, Justice Kay Werdegar. Justice Werdegar retired in 2017, but she served on the California Supreme Court for twenty-three years. Before that, she too had a very distinguished career. If I've got this right, Justice Werdegar, you first served in the Justice Department under Robert Kennedy, and you were a professor and associate dean at the University of San Francisco School of Law, and served on the California Court of Appeal before you took your office at the California Supreme Court, where you were known for your very well-reasoned and very thoughtful judicial opinions. So it is my pleasure to welcome both of our jurists here today.

I'd also like to take a moment and make a virtual introduction of Selma Moidel Smith who is not with us today — we will see a video from her later in the program — but she is certainly worthy of a major introduction. Selma became an attorney in 1943 in California and practiced law for over forty years. She has been honored by the American Bar Association, by the National Association of Women Lawyers, and even by the UCLA School of Music which established a Selma Moidel Smith annual recital which recognizes her over 100 musical compositions. She is really an extreme talent, well beyond the law. Selma first established this writing competition in 2007 and, in 2014, to honor her for her work, and on the occasion of her ninety-fifth birthday, the Society named the competition for her. And I should also note that in 2009 Selma became the editor-in-chief of the Society's journal, *California Legal History*. As such, she doubled its

size and made it into the preeminent journal that it is today and a journal in which each of your pieces will be presented.

Now I'd like to turn this matter over to the chief justice for her introductory remarks.

CHIEF JUSTICE: Thank you, Dan, and what a pleasure it is to be with all of you. I think that it's a pleasure and a privilege for me to be in this Zoom call with you, the bright young minds of the future — judged by very distinguished professors [Lawrence Friedman of Stanford Law School and Rebecca Latham Brown of USC Gould School of Law] — not an easy challenge, but you all rose to it. I also want to point out why this is such a special Zoom, and that is — Dan Kolkey didn't tell you that he was also an appellate justice of the Court of Appeal before he returned to private practice and has been instrumental in helping California become a place of international arbitration through very complicated legislation that allows California to compete on the East Coast as well for international arbitration cases.

Kay Werdegar, my colleague, a beloved justice, a thought leader at the California Supreme Court — to this day, we still quote her *dissents*, because she was *right* in her dissents when the rest of us were merrily moving along on the majority opinion. Kay Werdegar is the kind of person who, when she speaks, everyone listens.

You'll hear from Selma later. The only regret I have is that we don't have Selma in person. Selma, in person, is a force of nature. Even at a hundred, or plus, she is truly, in my mind — of all the people I've met in the law and elsewhere — Selma is genius material, in all candor. She had this idea to bring and to reward smart minds who are thinking about the future. And so, it's a pleasure to be here with all of you, and I look forward to the rest of the remarks and then having an engagement with you about your papers. Thank you, Dan.

KOLKEY: Thank you, and Justice Werdegar, would you like to make any remarks at this point?

WERDEGAR: It's always hard to follow the Chief. Thank you for your comments, Chief. And welcome to our new president of the Society. It is a shame that you winners won't see Selma in person. She *is* a force of nature and an inspiration to all of us. I've been inspired by the essays that I read,

that you all submitted. I think this is a wonderful group of writings to be honored with the Selma Moidel Smith writing award. So I look forward to hearing what you each have to say about yourself, and how you came to this moment, and we will allow you to do that at this time.

KOLKEY: Just before we do that, we're going to post Selma's celebratory comments.

SMITH: Congratulations to our three winning students — Leah, Ryan, and Simon — for their splendid papers. As you know, I have chosen to publish all three in this year's volume of our journal, which is due out at the end of August.

I want to give a special thank-you to my dear “Chief Tani,” who has so kindly made herself available for this event in each of her twelve years as chief justice. And thank you to my dear friend Kathryn, who has graciously joined us every year since the competition began in 2007. Many thanks to our Society's new president, Dan, for agreeing to moderate, and I wish him every success as president.

This year, for the third time, this event is being held online instead of in person, thanks to our director of administration, Chris Stockton. With winners from across North America and Europe, it has become a very welcome step forward. Thanks so much to you all.

KOLKEY: All right! And thank you, Selma. Now let's turn to our winners. I'd like to start with Leah Haberman. You are our first-place winner, and I know you're a JD Candidate for the Class of 2024 at Columbia Law School, so congratulations on that. Your paper was, “More than Moratoriums: The Obstacles to Abolishing California's Death Penalty.” Leah, why don't you tell us a little bit about yourself, what motivated you to pick this particular topic, and briefly a bit of your conclusions.

HABERMAN: I grew up in San Diego, so I'm from California. I went to school at University of Washington in Seattle, and then I started working on political campaigns. I jumped all around the country, Iowa Caucuses, all of that, before coming back to San Francisco to work for a little while. Now I'm in New York for law school at Columbia. I sort of stumbled upon the writing competition on accident. I'm personally in public-interest work, and as everyone on this call knows, it's financially a lot harder, so I was looking into scholarship opportunities that would help make the

burden of law school a little bit easier and saw this one. A lot of these, they take just a specific legal focus, and I was really excited to see more of the historical focus because, with my political background, it's been exciting to think about law in a more political lens. Right now, where I'm currently sitting, I'm actually an hour away from a candidate whose campaign I'm working on. She's going to be on TV debates tonight, and so I'm still very much involved in the political world and wanted to see how interwoven I could make this legal argument with a political one.

In the summer, I was working at Reprieve, which is an international human rights organization, doing a lot of death penalty work. Coming from California, I was thinking, "I don't know much about the death penalty," thinking we're this progressive bastion of criminal justice, which in a lot of ways we are, so I never really thought about California's death penalty statute until starting this research, and that led me to what is the paper you all read for this — being shocked that California still had a death penalty and how, strategically, it's been used over time, with the different ballot initiatives. It's honestly been a big pivot for me. At the law school, I've reached out to the faculty at Columbia wanting to pursue capital defense work in the future, and it's been really exciting to think about this issue. In particular with our current national Supreme Court, it doesn't seem like much will change on the death penalty front, but I'm thinking about what are other creative, legislative and political opportunities to get rid of the death penalty at a state level and at the federal level. It was really exciting to learn more about California, as my home state and also thinking about applying it — I'm in New York — and seeing a more across-the-country viewpoint.

KOLKEY: I think that your main conclusion was that the only way things are going to change is through public opinion. Is that right?

HABERMAN: That is what I think. In a lot of ways, public opinion is an undertone to a lot of our judicial reasoning. It's clear — we have these jurists with us today — they are just people. All of us exist in the world. I am a queer individual. My right to get married is a legal decision, and in a lot of ways we think about Justice Kennedy's decision, that he moved with the times. We wouldn't have gotten *Obergefell* a decade before, because clearly *Lawrence* was one of all these stepping stones. So I think, when I say "public opinion," we are all members of the public, jurists included.

KOLKEY: Let me ask you a question, since you've done this incredible compendium of the history of the death penalty, particularly as it applies to California. You mentioned at the beginning of your paper the moratorium that the current governor placed on the death penalty. I don't know whether or not you've thought about this, so you're free not to answer the question, but it did occur to me that, under the California Constitution, Article V, Section 1, it provides that the governor shall see that the law is faithfully executed. So, does the governor — given that constitutional duty as chief executive to see that the law is faithfully executed — have the power to declare a moratorium on the application of a particular law, which is separate from the commutation power, which of course the governor has on an individual basis. As the chief justice and Justice Werdegar know, if it's a twice-convicted felon, it's subject to a recommendation from the Supreme Court. But beyond commutation, does the governor have the power, in light of that constitutional obligation, to simply have a moratorium and not apply the death penalty across the board?

HABERMAN: I'll ignore the pun that you implied by "faithfully executing the law" — I didn't look specifically into whether the governor has this power, but when we zoom out about our broader separation of powers in the different branches, I think that's totally what the executive has to do. If the executive was just the functioning arm of the Legislature, it wouldn't be its own branch, and so I think the intuitive gut sense of a rising 2L in law school, it makes intuitive sense for the governor to be able to do that, and I'm sure there have been challenges to moratoriums, and specifically to the way Governor Newsom has structured his, so I think there are ins and outs to that, and California is not unique in its moratorium. Pennsylvania also has one — Oregon, numerous states — Ohio has a pseudo-moratorium happening right now until they conduct more investigation, so California is not unique in this power.

WERDEGAR: Leah, I did enjoy your writing style. I thought your opening paragraph was engaging, about what a wonderful liberal state we are — all the beauties and the natural wonders and the liberal politics — and then, oops, we have the death penalty. And you found that surprising. I also found another comment in your article which, of course, is true, but it came home to me and might to the Chief as well. The California Supreme

Court is *not* the most influential court in the state. Who is? That title, you tell us, belongs to the court of public opinion. And that's the thesis of your paper. Interestingly, this ties in with our third-place winner, Simon Ruhland, who speaks about the ease of amending the California Constitution by way of initiative. A court can issue a constitutional opinion saying the death penalty, under our Constitution, is unconstitutional, and that year by initiative the populace will say, "Oh, no, it's constitutional." They've changed the Constitution, so that touched on some important and rather novel aspects of our government. Did I understand you to say that doing this paper has more or less redirected your aspirations for work after law school? That now you're drawn to defending death penalty cases?

HABERMAN: Definitely. Yes, I think at a more legislative level, too. One of the things that I did this summer at my internship was thinking about the secrecy statutes that many states are passing so that they don't have to disclose how they execute people. So there's a whole realm of legislation that's happening in very conservative states, because it's very hard to get lethal injection drugs right now, and so in a way the death penalty is *de facto* becoming non-existent. So now, they're trying to get drugs through really shady — for lack of a better word — means, and so I've found that area of legislation and those battles worth fighting. Going into law school, I was much more interested in a national security–human rights–Guantanamo Bay focus.

WERDEGAR: Very interesting.

CHIEF JUSTICE: Leah, my question to you is, I love the whole idea about the court of public opinion, and it can't be ignored, and the court seems to be getting louder and more vocal, depending on what you read and what's on social media. But I wonder what your take is on the fact that in California, in recent history, we had an initiative to abolish the death penalty. It failed. Then, thereafter, we had competing initiatives, one to abolish the death penalty, and one to speed it up — well, ostensibly to speed it up. But yet, the speed-up-the-death-penalty measure again prevailed. What does that tell us about the court of public opinion?

HABERMAN: I think it's a really interesting dichotomy. I think it gets to the way you can use rhetoric to play on people's fears, and that's especially powerful in the area of law. There's a reason that lawyers are really

respected, and for those of us who are in law school that's kind of why we pursue this path. We do see the law as a means of social change. Some people just don't understand the mechanism. They hear the sound bites on TV. They see the local news where crimes are exacerbated. It's really poignant to hear the story of a victim, but it's very rarely where you see the family of — where you see the system at large being talked about in the daily news. So, when you think about these initiatives, you have to think, who's funding them, and who has the power to put out this kind of public messaging, and what are people internalizing? Is it ever as simple as asking someone on the phone, "Do you support the death penalty?" That's not really how these messaging campaigns go. They will often message, "Do you want psychotic murderers who kill everyone they see, walking around on the street with you?" And then that's all of a sudden how people internalize the ballot. I think that is why, so often, these things that can feel so black-and-white get lost in the shades of gray. It's not a skill we are taught in law school, and I notice so many of my peers — we read these judicial opinions and we say, "Okay, here it is, it's very clean," and I just think it's incredibly messy. Coming from politics, I kind of embrace that because it's the only opportunity in a lot of ways. If California is going to continue to vote to hold onto the death penalty and then, in survey polls, say that they don't want the death penalty — figuring out what is that gap — and, often, it's who can resource for the best campaign.

WERDEGAR: Thank you.

KOLKEY: Why don't we turn to our second-place winner, Ryan Carter — Ryan, as I understand it, you have now received a Master of Legal Studies from the UCLA School of Law, is that right?

CARTER: That's right, Judge. Thank you. Yes.

KOLKEY: And you were awarded second place for your paper on "San Fernando Valley Secession: How a Quest to Change the Law Almost Broke L.A. Apart (and Whether It Still Could)." I think your paper really contributed to the legal scholarship in this area of municipal reorganizations because you interviewed a number of people who were involved in enacting these laws. I've got to say that I found your paper very interesting because a number of the personalities that you mention in your paper — Tom McClintock, Bill Lockyer, Bob Hertzberg — were all people that I dealt with

when I was in the Governor's Office, so I really enjoyed reading about some of these people, and I think that I will send Bob Hertzberg a copy of your article because I think he'd really enjoy it. So, why don't you tell us a bit about yourself, how you came to choose this specific topic — which is a very interesting topic, but not one on the tip of the tongue of many people — and then some of your conclusions.

CARTER: Thank you, Judge. And just let me say, it is an absolute honor to be here and to thank you for the platform to present this and share our work. I am a journalist. That's what I do, so the interviews came somewhat — I don't want to say, naturally — but it was an instinct for me to reach out to people and look at fusing these interviews with the scholarship, the research. I was a Master of Legal Studies student, born in Southern California and raised in the San Fernando Valley, and so the San Fernando Valley became sort of a landscape for me to think about studying in a class that I was taking with Professor Kirk Stark, called "Cities in Distress," as part of the Master of Legal Studies program. Initially, going into it, it was not my first topic. I wanted to write about San Bernardino, of all places, and its municipal bankruptcy, because every day in this class we'd be doing postmortems on these cities that had been falling apart — economically — and the politics of these cities, and how they were sort of devolving. But Professor Stark assigned us into teams and had us do work on various cities, and one of them was San Bernardino, so it kind of stole my thunder for the paper. We had to do a project with the team, and I wanted to do a paper on San Bernardino.

So I started thinking about the concepts we were talking about in the class — redistribution of wealth in cities, distribution of services in cities — and it started getting me thinking a little bit about the San Fernando Valley and secession in particular. We were coming up on the twenty-year anniversary of when secession was on the ballot, in which this portion of the San Fernando Valley in L.A. would try to break away. It made sense to see if I could maybe go there. I had no idea really what I was getting into, but I made a call to Richard Close, who, at the time, twenty years ago, was among the leaders of this breakaway movement from the city of L.A. I just had a conversation with him like I would any story as a journalist, just maybe fishing around a little bit for a story, for an angle of some degree. I asked him, "Do you think secession could happen today, twenty years later?" and

here he was saying, “Yeah, I think this is a possibility.” I didn’t have a real comeback for him, but I began to think about that answer more and more.

I put it in front of my professor, and Professor Stark gave me some flexibility to use some journalism in this paper. That really inspired me to fuse this journalism with the academic research to study whether or not secession could still happen today. That’s how this paper came about, and, of course, I never thought I’d end up here, particularly with Simon — we were in a class together at UCLA, and I can remember us vividly talking about our papers with each other, and I remember admiring his topic as we were just bouncing it around. Little did either of us know that some day we’d end up here. That’s how this paper came about. That’s the rambling version of it anyway.

KOLKEY: You studied a number of the different standards by which you could have a city break away and another municipal reorganization. Having looked at the various models for this, is there a model that you think would be a more effective and fair model for that portion of a city that feels that its views are not being taken into consideration? Obviously, the purpose of local government is to be closer to the people to address the very local problems that, at the state level, may not seem important. One could understand how various portions of a city that’s particularly large might want to break away to have a little bit more control over their local lives. So, is there another model that has not been tried that might be a fairer way, that balances the interests of the larger city, that doesn’t want to lose a revenue base, with the interests of the group that feel that they have just been shut out of real democratic participation in the larger municipality’s governance?

CARTER: Yes, thank you, Judge. It’s a great question and one that definitely has crossed my mind. There is one important thing that came out of the secession movement twenty years ago here in L.A., and of course that was Charter reform here in the city, and while that Charter reform has garnered its own criticism, there is a sense here locally that it has brought government closer to the people. There are Neighborhood Councils that now are placed throughout the city, and the secession movement was directly responsible for that reform in the Charter. But it still is a criticized measure. Even Paula Boland, the leader of one of the initial secession movements,

just thinks it's kind of a joke and that it hasn't really worked. Richard Close felt the same way, so you still have that strain of criticism happening in the city. But there is a sense that it has brought government closer, and people are activated to participate in Neighborhood Councils locally.

The other thing that still comes up quite frequently are rumblings of secession during redistricting debates. For instance, in the recent round of redistricting in Los Angeles County, at the county level, you can still sense these rumblings of the need for the San Fernando Valley — in this vast, huge city of Los Angeles — to have its own representation, to get its own fair share. As it relates to redistricting, there's been a whole push toward creating a form of representation that better represents the San Fernando Valley on the county Board of Supervisors, at City Hall, so redistricting has become an outlet and a way for government getting closer to a more remote suburb of the city. Bob Hertzberg himself, ironically, is running for the Board of Supervisors, and he's from the San Fernando Valley, so twenty years later, he might argue that it's actually working. And it's because of redistricting that this is actually possible. I don't know if that directly answers your question.

KOLKEY: I think it's an interesting observation because redistricting is another way to bring government closer to the people, depending upon the districts. And then the question would arise, is there a reform to the redistricting within Los Angeles County, or within the City of Los Angeles itself, that would improve the feeling of representation by the people, because redistricting is a very political endeavor, which I know because I was the lead lawyer when Governor Wilson had his redistricting litigation before the California Supreme Court in 1991 and 1992. And I was involved in the actual drafting of Proposition 20 on the redistricting of congressional districts in California. So that may be a sequel to your piece, in terms of how redistricting could do something that secession is unable to do.

CARTER: Yes, it's interesting that we have citizens commissions now that are redrawing boundaries across the state and in Los Angeles County. It was the Citizens Redistricting Commission that created this last round of maps for supervisorial districts, and some would say that it was actually a fresh exercise, taken away from politicians and actually given to the people. And in some sense, people are gratified here that it was given to them.

Don't get me wrong, the citizens commissions garnered a lot of criticism, but it's a fresh look at representation and drawing boundaries.

KOLKEY: Chief, Justice Werdegar, do you have any questions for Ryan?

WERDEGAR: I'll let the Chief speak last because she speaks best. I found this article fascinating. This is an area of law that you don't really get in law school, and going back to Leah's comment on the intersection of law and politics, certainly this area speaks to that. I really was so interested in all of it — about secession and what goes into it. I also marveled, and I'm sure you were gratified, that you were able to interview these individuals, one of whom has passed — that would be Mr. Close — and Paula Boland, who've been engaged in this for almost half a century. Was it difficult to access them?

CARTER: No, actually it was surprisingly easy. Coming from the San Fernando Valley, I knew the names of some of these leaders. Also being a journalist — my company and my newspaper, we cover these parts of the region — so I knew these names. I think I even had Richard Close's number in my contacts list. When the idea came up, I'm thinking, "Okay, that number's going to come in handy for me," and so I reached out. Paula Boland was a little more difficult. I had to go through some local chambers of commerce to get to her. It's been a while since she's been engaged fully in public life.

WERDEGAR: She must be of an age — she must be elderly.

CARTER: Yes, and yet just as indignant as ever about what happened. She felt like she was right on the cusp of getting a key Senate vote on the first go at secession, and still vividly recalls the politics that went into — at the time, for her — stopping her movement. And it really reminded me that, in one of the broader themes that I thought came out of some of the reporting and the research on this, it was not only how close they came to secession, and the ability to actually change the law — there was a sense of alienation that was going on, this idea of "getting our fair share," a sense of alienation happening in this part of a large, giant city, that we don't always hear about. And yet, that sense is still there among many who led this movement, certainly with Richard Close at the time I talked to him — he

passed away early this year. You could still sense that, and these are themes of alienation that still resonate today.

WERDEGAR: L.A. is massively large. I'm from San Francisco. We used to be a small town; we're not so small now. But to grasp how large Los Angeles is, that's amazing, and your article brought that forth. I have a question. Were you going to write this paper as part of your master's or, when did you come upon the competition opportunity?

CARTER: The paper was written in the fall of 2021, and then I saw something in an email the following year, and I thought, as Leah noted, just the idea of legal history, there was a lot of history in my piece and it just seemed like it might make a good fit, and so I thought I'd give it a try.

WERDEGAR: We're very glad you did.

CARTER: Thank you, Justice. Thank you so much.

CHIEF JUSTICE: Thank you, Ryan. When you were talking with Dan and also Kay, and talking about redistricting, whenever the census happens — and even the census in and of itself is controversial, or certainly was this year, and it affected the Redistricting Commission, of course, and there were a lot of delays and requests in getting the draft maps to the citizen commissions — but no matter, as you point out, there's so much litigation about the citizen commissions or threat of it, and thinking about, as litigious a society as we are becoming, it wouldn't surprise me if there is even yet more talk about secession. We live in Northern California, and we see the "state of Jefferson," and I'm not quite sure what that is about exactly, but I wondered if you — it's a twofold question, and I wondered maybe if, after talking to the folks here with the San Fernando Valley secession, you could drill down to the nub of what feeling alienated, or not having a representative voice — could you drill down to what that was exactly? How did it manifest that it caused such strong feelings and a movement, and then, do you think there are alternative ways to try to address and mitigate and be able to actually be a functioning government?

CARTER: Thank you, Chief Justice. That is — wow. One of the things, and perhaps it's more of an emotion that I came across quite a bit, particularly in talking to people like Paula Boland and Richard Close, was this idea of the way things used to be, this idea of nostalgia, and that there was a San

Fernando Valley as part of Los Angeles that was something almost romanticized in a way, the way that it was back in the thirties, and the forties, and the fifties. That was a theme that was very pronounced in the people I spoke to. That, along with a vision of development that saw well-kept shopping centers that were very easy to get to, in neighborhoods that were very well kept and maintained — city services, and again I come back to this idea of fair share.

These themes were very pronounced, and so, when you combine that with the fervor at the time — we're talking the late 1990s, early 2000s, when Proposition 187 was very much a part of the social and political and legal milieu of the time (1994), a very anti-immigrant feeling was happening, and the concern about crime that was happening in the 1990s, this all combined and fueled this movement, and so that made the movement powerful. People like Boland, people like Richard Close, people like Jeff Brain who was his associate in leading the most recent incarnation of the secession movement, bring this up a lot. And that's still, as I say, a theme even as you talk to them today.

CHIEF JUSTICE: Thank you, Ryan. It's fascinating.

KOLKEY: We are going to turn to our third-place winner, Simon Ruhland. I believe now you've gotten your LLM from the UCLA School of Law, is that right?

RUHLAND: Yes.

KOLKEY: Excellent, and you have been awarded for your paper on "Wind of (Constitutional) Change: Amendment Clauses in the Federal and State Constitutions." I thought this was a very nicely done comparative analysis of the amendment clauses in both the federal and then various state constitutions. This was a very interesting subject. So why don't you tell us a little bit about yourself and then what motivated you to write this particular paper and then a little bit about your conclusions.

RUHLAND: It's great to see all of you, and in the case of Ryan, to see you again. Ryan and I, as Ryan mentioned, went to law school together and met there in a seminar. That seminar was part of what sparked my interest here. Coming from Germany, which is also a federal state, it's almost hard to not compare and to not do comparative law. I arrived in the U.S., and I

was marveling at all those constitutional similarities, and then when you look in the details, how different those actually are. The legal details are obviously different. We amend very differently our [German] Basic Law, but that has very political implications. I talked to my friends [in the U.S.], and almost all of them felt more or less unrepresented by the Constitution. So I decided to drill a little bit deeper on that, especially because, while the paper was written, the leak in *Dobbs* came out.

There was quite a bit of waves through national news, through legal commentary, so I started looking into how the [U.S.] Constitution came to be so rigid. I started off thinking that it seems to be a design flaw. And going through the protocols of the Convention in Philadelphia, it turns out it wasn't. It was very intentionally set up to be very hard to amend, and if it is amended this amendment power should be placed with the states. I was only half satisfied at that point, first of all, because at this point it was only an observation. I had a hunch, and I didn't like it, but I couldn't quite put my finger on it. So I turned to Bruce Ackerman, who came up with this idea of "constitutional moments," those big moments in a nation's history where supermajorities of people get together and change the course of how the constitution goes. He named a number of them. Those began with the Founding, and over time, more and more constitutional moments happened where nothing changed in the Constitution, or very little changed in the Constitution — to today, where the last constitutional amendment was passed before I was born. So that was not very satisfying.

And then I looked to the polar opposite, which is the state constitutions. A lot of things change there. California, for example, changes its Constitution on average four times a year, or passes four amendments per year, Alabama roughly eight amendments per year. That seemed to be a lot, and the results are very, very long constitutions. Alabama's Constitution is around 400,000 words long, that are just as unreflective of popular opinion, popular will. If anything can be in the constitution, how much does it still matter? I came to find one constitution that does it a little bit better, which is Delaware's, where the people don't have the power to amend the Constitution through a ballot vote [but only the state legislature], and that has tamed the Constitution of Delaware quite a bit. It has aligned it with international averages when it comes to constitutional amendments. It has also caused the [Delaware] Constitution to be relatively stable and to be

relatively short, at roughly 28,000 words, about a quarter of California's, so that's my conclusion. My conclusion is, if ever there is a constitutional convention again for the states, maybe look to Delaware. It seems to be working quite well for them.

KOLKEY: That's interesting. You're certainly right that when you've got a power of initiative to create a constitutional amendment, then you do lend yourself to a large number of amendments because it's simply a matter of finding someone who is willing to finance that ballot initiative, combined with the fact that the Attorney General's Office does a title and summary which can, in and of itself, really affect how the voters view that particular amendment. It does generate a lot of changes to the Constitution. You said in your paper that the Delaware Constitution has — I think the statistic was 1.2 amendments a year. Do you think that even 1.2 amendments a year is a little too much for a document that is meant to be the constitutional framework pursuant to which government operates? Isn't 1.2 still quite a few amendments, which suggests that you are getting the political passions of the time enacting what ought to be a greater framework that constrains what the Legislature can do, because the purpose of a constitution is really to provide some protections against the founders' concern about the tyranny of the majority. And that majority can change in any legislature, and that means that you need a framework that can constrain those passions, which can be very great at any particular time.

RUHLAND: Yes, that's definitely a huge issue. I think part of it is my own biases. Coming from Germany, we have had a relatively stable constitution over the last three-quarters of a century, and that constitution has a rate of change of about 0.9, which is not too far off from Delaware's. So I do feel that a constitution can be stable, can be protective of rights and can be restrictive of the government, while still reflecting popular opinion — the opposite effect that we have from the federal Constitution, where people feel unrepresented because certain political movements just have no chance of ever ending up making constitutional law.

That being said, I think this is where this quantitative analysis, that I did relatively early — political scientists would tell me — breaks down, because those 1.2 amendments don't tell us what parts of the Constitution are amended. Certainly, a catalog of civil rights is hardly ever subject to

change, especially not subject to taking away protections. It's more likely that protections are added — marriage equality, example. Once we get to that part of the analysis, I believe we have to look a little bit closer: what is actually amended, are core features of the constitution that restrain the executive or the legislative branch amended, or — turning to the worst — are civil rights amended, or is the constitution just updated? I believe there is quite a difference there. And obviously there are the most harmless amendments, little technical fixes, updates to current language, etc. But I do believe that once we look into the details here and to this tiered constitutional design, that we do see that those 1.2 amendments per year are still creating stability, rather than instability through an overwhelmingly long constitution.

KOLKEY: Chief, do you want to ask any questions of Simon?

CHIEF JUSTICE: Simon, I find that to be a fascinating subject because, if we look at the United States Constitution and the ten Bill of Rights amendments, it was seventy-two years later until we saw another amendment. And it took a civil war, brother against brother, for even the trigger of those amendments, the Reconstruction amendments. I really just have an observation, and I think you are absolutely right. We are grappling in our courts now — Kay will be familiar with this — with which article controlled. I won't say which articles, since that would give away the case. We have dueling provisions that were added by different initiatives, and now we wonder if the latest enacted one repealed the former one, or can we harmonize it? And then we also ask ourselves, because the last amendment enacted in this particular area had a competing ballot measure, and so we ended up choosing which ones had the most votes — right now, we have remanded something like that to the lower courts, to percolate and think about the idea before the California Supreme Court takes it on.

But because the Constitution is so large and so varied in California, for example, we engage in this legal construct that, when the voters pass an amendment to our California Constitution, we presume they know the law and the Constitution when they enacted it. So we assume they meant to harmonize, or we assume knowledge for purposes of moving forward with an interpretation of the latest amendment. It is quite unwieldy, I would say. The California Supreme Court is the final word on initiatives, at least when

they are voted upon by the people. Sometimes we look like the bad guy, for interpreting an initiative in a way that might be contrary to what the people thought they were voting for. I think that history is fascinating, and I think the comparison is worth studying — and thinking about restraint in the future. Thank you.

RUHLAND: Thank you for those observations.

WERDEGAR: These papers are sort of related. Our first-place winner is speaking about the voice of the people as really the fourth court, and, as the Chief referenced, in California we have this incredibly easy way of amending the Constitution, so they are related. I was wondering, Simon, if you and your friend Ryan had known each other, and here it turns out you did. You are both our prizewinners, and we're very glad. Also, a question to you, are you established now in the United States or are you taking all this wisdom and education back to Germany?

RUHLAND: No, I'm back in Germany right now. I'm in Berlin. I'm clerking here for the higher regional court.

WERDEGAR: Oh, my!

RUHLAND: That's going to keep me busy for the next two years, and then I will, hopefully, head back to grad school and do a Ph.D.

WERDEGAR: In California?

RUHLAND: I don't know yet, wherever it will take me.

WERDEGAR: Wherever it will take you! I'm sure you'll have no problem. I found your paper very interesting, and some of the observations you made, such as that constitutional moments are not reflected in the amendments. That's absolutely true, but to phrase it that way really brings it home. The Constitution is one thing, and the changes — as we see with the recent term of our United States Supreme Court — are not happening by way of constitutional amendments. So, that's by way of saying I enjoyed your paper; I found it very informative. I found all of these papers sort of interrelated in a way, the coming together of law and politics — they're never separate — but also touching on one relates to the other. So I want to thank you for your paper, congratulate you on your degree, and wish you the best of luck.

RUHLAND: Thank you very much.

KOLKEY: I want to turn to the Chief for any final remarks before we close this ceremony.

CHIEF JUSTICE: Thank you, Dan. Well, it's been a pleasure to spend time with you and having this engagement and see and hear and read your minds at work. For all that's happening in this fluid and dynamic world, I know all of us are heartened by knowing that you're thinking about it, and you're writing and you're putting your thoughts out for everyone to share, and so by publication in our journal, rest assured that you will meet like minds, that your ideas will resonate and inspire. And in the name of our founder for this essay contest, Selma Moidel Smith, we couldn't be more honored. There are more geniuses in the making. Thank you for your work.

KOLKEY: Let me conclude by thanking the Chief for your time today, your leadership, and your wisdom throughout your career, and the same to Justice Werdegar. Thank you for being here today and, again, for all your contributions and jurisprudence that you have provided to the state of California. I want to thank Leah, and Ryan, and Simon for your contributions to California's legal scholarship, which I think are tremendous, and let me just conclude with some words of advice from Abraham Lincoln, who of course was himself a lawyer. Lincoln said that the leading role for the lawyer is diligence, and he also said, "Discourage litigation. Persuade your neighbor to compromise whenever you can." And I think both pieces of advice would serve any attorney as he or she begins his or her career to follow, because I think it's very sound advice. So, thank you, and congratulations as our award winners. We're adjourned.

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