

Hal Cohen Inducted into the Appellate Lawyers Hall of Fame

REMARKS BY HAL COHEN



EDITOR'S NOTE: *The California Lawyers Association's Committee on Appellate Courts bestows its annual Appellate Lawyer Hall of Fame Award upon an attorney who has excelled as an appellate lawyer and whose career exemplifies the highest of values and professional attainment. Prior honorees have been Ellis Horvitz, Jon Eisenberg, Dennis Riordan, and Wendy Lascher. The most recent award was conferred on former chief supervising attorney of the California Supreme Court, Hal Cohen. Below are his remarks made at that ceremony, held in Monterey, California, in person and via video, on November 5, 2022.*

AT THE OUTSET, I want to thank the Committee on Appellate Courts and the California Lawyers Association for selecting me for this honor; Chief Justice George, Chief Justice Cantil-Sakauye, and Justice Dato for submitting very generous letters of support to the committee on my behalf; and my colleague Greg Wolff for proposing my nomination. I am very humbled but also very proud to accept this honor, not only given the extremely accomplished appellate lawyers who previously have been chosen for this award, but also because I realize that I am accepting this distinction on behalf of all the appellate judicial attorneys in California who have followed a similar career path. These judicial attorneys, working in both the California Courts of Appeal and the California Supreme Court, are most often not known to other appellate lawyers or to the public, but they perform an incredibly important role in California's judicial system and generally do not receive the recognition they deserve.

Because my career as an appellate judicial attorney differed from those of the prior recipients of this honor who worked largely in the private sector, I thought I would share a few personal thoughts regarding some of the challenges and the rewards of the work of an appellate judicial attorney in California and particularly of those who are lucky enough to work at the California Supreme Court.

There are a number of challenges that are largely unique to judicial appellate attorneys:

First, at the California Supreme Court, chambers attorneys must endure the rigorous gauntlet of the Supreme Court's preliminary review (PR) process. In most legal positions, one's work is typically reviewed by at most one or two colleagues, but at the Supreme Court calendar memos — draft preliminary opinions circulated prior to oral argument on which a chambers

attorney has labored often for weeks or even months — are subjected to the vigorous review of six other judicial staffs, each of which prepares a PR that is circulated throughout the court, containing detailed comments, suggested changes, and penetrating critiques frequently running ten or more pages. In my view, the PR process, without question, plays a big part in ensuring that the court's ultimate opinions will be of the highest quality, but it is always stressful, and humbling, to have the drafts you have worked so long to perfect put before the critical eye of generally kind but always demanding colleagues.

Second, as in effect a collaborative ghostwriter, I needed to attempt to adjust to the distinct writing style of each of the justices with whom I worked. Given the length of my tenure at the court, I had to learn and attempt to accommodate the very different writing styles and idiosyncrasies of eight justices. The first justice I worked with, Mat Tobriner, was quite comfortable with lengthy opinions with long sentences and extended paragraphs. Indeed, one Court of Appeal justice was said to have remarked, somewhat playfully, that "it takes Mat Tobriner 14 pages simply to clear his throat!" I must admit that I suffer from the same affliction, and many of the justices I have worked with since my time with Justice Tobriner have continually been burdened with editing my long sentences and lengthy paragraphs, frequently pressing me to break up my initially drafted sentences into three or four more easily digestible segments.

Third, because of the confidential nature of a judicial attorney's work, continuing even after an opinion one has worked on has been published, one cannot (or at least should not) discuss one's work publicly with those outside the court. The consequence is that, at most social occasions, I found myself in a constrained and not very interesting or satisfying position, even with close friends. Although it was possible to share publicly available information about cases pending before the court, I could not disclose what cases I was personally working on (or had worked on) or reveal the back-and-forth that is so much a part of the appellate deliberative process and that those outside the court were naturally most interested to learn.

Fourth, and this is particularly challenging for one who has spent his or her whole career as a judicial attorney, I cannot reveal to others a compendium of my life's work. The names of all the hundreds of cases I have contributed to, including the ones of which I am most proud, must remain confidential.

In retrospect, however, there is no question that the challenges posed by the job are greatly outweighed by the rewards of working as a judicial attorney at the California Supreme Court. Once again, I will point out four aspects of particular significance.

First, of course, is the importance of the work itself. At the Supreme Court, one is always aware that you are making a very direct contribution to the formulation and evolution of California law. There is immense satisfaction in knowing your work is making a difference and in playing an important part in advancing the cause of justice.

Second, the work is invariably intellectually stimulating. Particularly at the Supreme Court level, the cases that the court chooses to hear almost always present difficult legal issues, often questions on which lower appellate courts have reached differing conclusions. For me, it was incredibly satisfying to have the luxury, and freedom from billable hours, to be able to take the time to deeply research the history and background of an esoteric or problematic legal rule, and to compare California's treatment of the subject with the treatment in other states, in the federal system or, at times, in other countries or under international law. And, at the Supreme Court, a chambers attorney's work is not limited to a particular subject matter or even to civil or criminal cases in general. Rather, I had the opportunity throughout my many years at the court to continually confront entirely new areas of the law and to compare the evolution of rules in very different settings, for example from constitutional cases dealing with freedom of speech or racial discrimination to novel tort, contract, or inverse condemnation disputes. The variety assured that I was always delving into new fields and learning new legal history and concepts.

Third, the monastic-like, academic environment of appellate work in the judicial setting suited me. One scene in a movie I recently saw for the second time reminded me of an important part of what I loved about my work. The movie was an Israeli film, "The Footnote," about a father and son, both Talmudic scholars, who each were considered for the same prestigious award. The scene in question showed the son, descending into the bowels of a large library, to find his father at his father's workplace in the library basement, and discovering his father celebrating his perceived success with colleagues. I, too, spent hours in the court's library — which, truth to tell, in recent years I had mostly to myself as younger colleagues did all their research online — and I remember well the joy of finally finding, after hours of research through piles of bound volumes, the one passage that perfectly captured the thought, analysis, or explanation that had been rattling around in my head but had previously eluded my tangible expression.

Finally, perhaps the most significant reward of my work at the Supreme Court was the wonderful and warm

relationships I developed with each of the justices with whom I worked, with the other justices on the court, and, most especially, with the colleagues on our own staff and on the staffs of other justices. In this respect, the culture of the California Supreme Court is much different from that of other appellate courts with which I am familiar, where appellate judges or justices do not encourage, or sometimes do not even permit, their chambers attorneys to confer and share ideas with the staffs of other judges on a panel. The California Supreme Court's culture very much encourages the sharing of ideas and legal dilemmas with all the court's attorneys. Some of my best and most productive times were spent discussing and debating — often, I must admit, at a volume that at times alarmed neighboring office mates — the difficult issues in the case that I, or the other attorney, was working on. It was the loss of the opportunity for such face-to-face discussions during the COVID pandemic that ultimately led me to decide that, after more than 50 years at the court, it was time to fully retire.



after the petition conference, circa 2005. *Photo: California Supreme Court staff.*

As I look back, my many years at the Supreme Court resulted in a terrific, most fulfilling career for which I will always be tremendously grateful. I thank all the justices with whom I worked and all the judicial attorneys with whom I have had the privilege to serve. And, again, I thank the committee for the great honor of this recognition of my work at the court. ☆

HAL COHEN, after graduation from Harvard Law School in June 1969, and a cross-country drive with his bride, Inez, began a one-year clerkship with Associate Justice Mathew Tobriner. That one-year clerkship turned into a lifelong, more than 50-year career at the court. After Justice Tobriner, Hal worked with Justices Otto Kaus, Joseph Grodin, Joyce Kennard, Allen Broussard, John Arguelles, and Chief Justices Ronald George and Tani Cantil-Sakauye. And, thankfully, his marriage to Inez — with two children and four grandchildren — continues to this day! ☆