

AN ORAL HISTORY BY LAURA MCCREERY\*  
WITH AN INTRODUCTION AND FINAL WORDS BY RYAN CARTER\*\*

# A Pioneering Path:

*Justice Ming W. Chin, and His Astounding Journey:  
From Family Farm to California's Highest Court*



*California Supreme Court Associate Justice Ming Chin, in 2020. (Photo Credit: University of San Francisco.)*

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\* Laura McCreery, a writer and oral history researcher specializing in California politics, government, and public policy, conceived of the California Supreme Court Oral History Project, initially with but four justices in mind, who by 2005–2006 had retired from the bench: Chief Justice Malcolm Lucas, John Arguelles, Armand Arabian, and Edward Panelli. The idea, she noted, was to produce interviews with justices who served overlapping time periods with a goal of offering a richer historical account of the lives and careers of justices who were pivotal at a historic time for the court in the mid to late 1980s. Her work would go on to span her oral histories for nine justices. For more, see, [Oral Histories Explore Supreme Court in Changing Times](#). The most recent oral histories in the series, all issued by the Institute for Societal Issues, at UC Berkeley, are: [The Honorable Ming W. Chin, 2021](#); [The Honorable Carlos R. Moreno, 2019](#); [The Honorable Marvin R. Baxter, 2018](#); and [The Honorable Kathryn Mickle Werdegar, 2017](#). These manuscripts, along with earlier oral histories of California Supreme Court justices, are available in the archival collection of The Bancroft Library, [Institute for the Study of Societal Issues](#).

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## An Introduction

There's a scene in Ming Chin's young life that has stuck with him, long past his days on the California Supreme Court, but so much a part of him.

He was only 10, but it would echo in his adult mind as he blazed a pioneering trail to and through the state's highest court.

He's in the car with his dad. They're driving past a section of stately, nicely manicured homes in his hometown of Klamath, Oregon, circa 1950s.

Ming Chin: "Wouldn't it be nice to live here?"

Dad: "No, they don't let Chinese live here."

Chin: "Why?"

Dad: "Maybe someday you can do something about it."

There it was, in a four-line conversation: The hope of an immigrant father in a better life for his children. The impact of race and culture in an America not long removed from the Chinese Exclusion Act. The aspirations of a new generation, who maybe, just maybe, could "do something about it."

Fast forward.

It's now 2025, and the now former associate justice—five years removed from his storied twenty-four-year tenure on the Court—is on a drive with Carol, his wife of fifty-four years (come this December).

The scene back in Klamath all those decades back still resonates for Chin, 83.

"I remember it like it was yesterday," he told me recently.<sup>1</sup> "I was befuddled. Why *couldn't* we live there?"

It was the foreshadowing of a consequential life and career that, as Justice Carol A. Corrigan said, was "devoted to fairness and inclusion."

By the time he'd retired, on his 75th birthday on August 31, 2020, Ming Chin had blazed a mammoth legal path.

His tenure spanned three chief justices and five governors. His scope, volume, and range of jurisprudence made him a "a model of judicial excellence."<sup>2</sup>

He wrote 474 total opinions—361 majority (76 percent), 113 separate (24 percent)—with a nearly identical number of concurring opinions (43) as dissenting opinions (45) and profoundly shaped the law, in particular the

<sup>1</sup> Ryan Carter interviewed Justice Ming Chin on August 19, 2025.

<sup>2</sup> Maria Dinzeo, "[California Supreme Court Justice Ming Chin to Retire](#)," Jan. 15, 2020, Courthouse News Service

spheres of criminal and employment law.<sup>3</sup>

Landmark rulings. Major expertise in DNA evidence and family law, passing on that knowledge to generations of judges.

By the time he retired, the court’s chief justice said, “his loss will be incalculable.”<sup>4</sup>

All this for a man who grew up working seven days a week, sunup to sundown, on a potato farm, the son of Chinese immigrants who brought with them nothing but a relentless ethic of hard work, a zeal to always learn, and big aspirations for their children.

All this for someone who as a young man didn’t even think it possible someone who looked like him, who had a name like his, could ever become a judge in the country in which his parents struggled so hard to gain a foothold.

In Laura McCreery’s sprawling Q&A, which we present here and excerpt below,<sup>5</sup> the themes and underpinnings of Ming’s life and jurisprudence resonate loud and clear.

There’s even a kind of tension in those themes—and in that tension, inspiration.

On the one hand, there’s no doubt that Justice Chin, the first Chinese American to sit on the Court—from 1996 to 2020—and only its second Asian American, is a case study on the value of hard work, family, a zeal for life-long learning, and the immigrant journey of his family, where community, sacrifice and education overcame the forces of nativism.

He grew up in an America not far removed from structural barriers, such as the Chinese Exclusion Act,<sup>6</sup> or the impacts of redlining and segregation of minorities in a nation that had just been through a world war.

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<sup>3</sup> David and Michael Belcher, “[Justice Chin’s Legacy](#),” Feb. 19, 2020, SCOCABlog, A Joint Project of the California Constitution Center and UC Law Journal.

<sup>4</sup> Maura Dolan, “[Justice Ming Chin to Retire from California Supreme Court, Giving Newsom His First Appointment](#),” Jan. 15, 2020, L.A. Times.

<sup>5</sup> McCreery’s oral history Q&A with Chin is published here under a licensing agreement with the Regents of the University of California, [Digital Collections](#). The longform oral history citation: Ming W. Chin, “Motion Sustained: A Half Century of Vigorous Law Practice and Judicial Innovation, from the Alameda County District Attorney’s Office and Private Civil Practice to the Superior Court, the Court of Appeal, and the California Supreme Court, with an Introduction by Justice Carol A. Corrigan,” an oral history conducted in 2019, BANC.MSS 2021/125, by Laura McCreery of the Institute for the Study of Societal Issues for the archival collection of The Bancroft Library, University of California, Berkeley, 2020. © The Regents of the University of California.

<sup>6</sup> The Chinese Exclusion Act was approved on May 6, 1882. It was the first significant law restricting immigration into the United States. Initially, the act provided an absolute ten-year ban on Chinese laborers immigrating to the United States. It had gone through multiple revisions as it spanned into the twentieth century. In 1943, after China became a member of the Allied Nations during World War II, Congress repealed all the exclusion acts. Quotas remained, however, leaving a yearly limit of 105 Chinese immigrants. Foreign-born Chinese also won the right to seek naturalization. “[Milestone Documents](#),” The National Archive.

Think of it: An immigrant family in mid-twentieth century America, whose breadwinners could barely speak the language, making their way in a country where the forces pitted against their success were still alive and well.

And yet, there are the countervailing themes in Chin's life, which fueled his rise to the court, and his jurisprudence. They are the themes underpinned by the resilience of a family that preached and practiced hard work, always learning, with hopes for its children that went way beyond what would become their family business: farming.

"It was indispensable," he told me about the impact of his early roots on his life and his legal thinking. "Understand that my parents were Chinese immigrant farmers who came to America with absolutely nothing. My father came without family, without language and without funds."

And yet, it was their very example of pushing through the struggles that rubbed off on their eight children, including the youngest, Ming.

Somehow, despite sometimes being culturally isolated, often the only Asian American in his circles, he was raised in an atmosphere that was "all-inclusive." There were supportive voices in his life that reminded him, for example, to "never be embarrassed that your parents don't speak perfect English."

In fact, he said, growing up, they spoke Chinese to their children, and the kids always answered in English.

"It was really a two-way street," he said. "They taught us Chinese and we taught them English."

Chin said even as he was keenly aware of the barriers his parents faced, he never "felt put upon" by "the pressure of prejudice" while growing up, often the only Asian in school, in work, or in town.

"Maybe I did, but I never let it get me down," he said.

And yet, Chin's journey—and embrace of his family's struggles—would translate into a mindset of empathy for the underdog, often "people who didn't have opportunities in front of them," he said.

In McCreery's Q&A with Ming,<sup>7</sup> we get a glimpse of his journey to the highest court from all angles.

There's the youngest Chin, curious about his immigrant roots, yet finding his way in a world where his family was often culturally isolated, always working hard, establishing a living.

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<sup>7</sup> Her interviews with Justice Chin spanned eight sessions in August 2019.

There's the young adult Chin, whose college career was rich with interests in political science, civic affairs, history, and journalism, which cascaded into law school and then military service during the Vietnam War, then to a job at the Alameda County District Attorney's Office.

There's the family man. There's the career anchored in the law, but with an angst to teach and to learn.

My job here is to set the table for McCreery's conversation with Chin. It's something editor George Nicholson<sup>8</sup> and I have strived to do in our three years of putting similar projects together, beginning with an introduction summarizing a high court jurist's life and career journey as they made their way to the Court.

McCreery's oral histories make it easier, because they reach deep into her subjects' lives. They offer refreshing perspectives on the Court's history and doctrine, as well as glimpses into and themes in a jurist's life, where aspiring and established legal thinkers might find lessons and inspiration, contrasts and common ground.

As I've learned in a study of multiple justices over the last couple of editions of *California Legal History*, and as McCreery's Q&As show us, these jurists, whether you agree or not with their jurisprudence, are so much more than their cases, which we will get to in this space soon enough.

Their paths to the Court often defy a notion that somehow being a Supreme Court justice was their destiny. Their journeys are set in cultural and national histories and contexts that just as well could have landed them on different trajectories.

They are career paths that often turned on a glimpse at the life of a family friend, a cousin who pursued graduate studies, a chance connection, or friendship. Ultimately, hard work and a community of support were vital.

"I had a lot of help along the way," Chin told me.

John A. Arguelles, for instance, came from working-class roots in a burgeoning working-class Los Angeles suburb. Malcolm Lucas was a Long Beach kid, whose single-mom household set him on an ever upwards course.

It's a theme sprinkled throughout his story that Chin never really thought he could be a judge.

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<sup>8</sup> Nicholson himself is a contemporary, friend, and admirer of Ming Chin, with a robust career that spanned from the summer of 1966 together as law clerks in the Alameda County District Attorney's Office all the way to the Court of Appeal, Third Appellate District beginning in 1990. Justice Nicholson retired from the latter court in 2018. Along with this long list of community activities, he is this publication's editor-in-chief.

“I didn’t think an Asian would ever be appointed to the bench,” he tells McCreery as she probes the moment when he was on the cusp of being appointed to the trial court. “I wanted to be a good lawyer, a good trial lawyer, and that was what I was trying to accomplish. I had no inkling that being a judge would be possible.”

Chin is blunt about often finding himself as one of few, if any, Asians in his professional circles early in his career.

He simply didn’t know what he didn’t see growing up.

“It didn’t bother me that I was the only one because I was, frankly, used to it—in grammar school, in high school.”

Perhaps the stoic disposition was a function of what he saw in his father: Tough. But one who never complained, despite the challenging road for an immigrant in a new country that wasn’t particularly kind to people from China.

Flashback to Klamath, Oregon, driving with dad.

“I can remember driving from Klamath Falls to San Francisco,” he tells McCreery. “Back then, the roads were so narrow, and we had to stop along the way for accommodations.



*California Supreme Court Justice Ming Chin, in his office, in July of 2020, nearing his retirement from the Court. (Photo credit, the Judicial Council of California.)*

“I can remember driving into motels with virtually empty parking lots, with a vacancy sign blazing in the window. My father would go in to get a room, and he would be told there is no room. My father did not rant. He did not rave.”

“He just shook his head.”

“He really didn’t care how he was treated,” Ming tells McCreery. “You never heard a word of complaint from him.”

Born August 31, 1942, in Klamath Falls, Oregon, Ming Chin is the youngest of eight siblings.

But the study of Chin’s story begins before his birth. It tracks the life of Chinese immigrants trying to make a life in the Northern California and Oregon towns, where farming potatoes became a path to a better life.

By the time he was born, his parents, through sheer grit, had lived through the heart of the nation’s “grim” national push against Chinese people.<sup>9</sup>

A year after his birth, the Chinese Exclusion Act would be repealed.

Ching’s father, Sam Wong Chin, first came to the United States in 1913.

He would find a living in farming potatoes in Stockton. He would then return to China, where in 1917 he would marry Chin’s mother, Swei Fong Chin. But she would not come to the U.S. until 1924.

In the meantime, Sam Chin supported his nascent family from the United States.

When his young wife arrived in the U.S., her first weeks were spent in detention at Angel Island, where from 1910 to 1940, the U.S. Immigration Station processed hundreds of thousands of immigrants, the majority from China because of the Exclusion Act.

Both parents would make an early impact on the young Chin.

“She was not afraid of hard work,” he said of his mom, who rarely talked about those early moments facing the indignities of the U.S. immigration system. “She was quite strict about what we should do and when we should do it and how we should do it. She was a perfectionist. Her house was spotless, even though it was a farm.”

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<sup>9</sup> For a robust examination of early treatment of Chinese immigrants in California’s legal system, see McClain, *Chinese Immigrants in the California Supreme Court: The Earliest Civil Case* (2024) 19 Calif. Legal Hist. 73–102.

His father? Chin called him a kind of “tough guy,” but who even amid the headwinds of being an immigrant with modest means, embraced a love for learning and current events that he instilled in his children.

After first settling in Stockton, they moved to Nevada in a packed Model T Ford to find fertile ground for growing potatoes.

“It was so overloaded with their belongings that they couldn’t make it driving forward over the Sierra Nevada. [Laughter] He had to go back over the mountain,” Chin told McCreery of their move.

And the children would soon begin to arrive.

Chin’s oldest sister Mary was born in Stockton, and his oldest brother George was born two years later.

They moved back to Alturas, California, where Chin’s father continued to farm potatoes, and his mother ran a Chinese food restaurant.

On a tip about the fertility of the soil for crops, Sam and Suei would move their young family again to near Klamath Falls, ninety miles north.

Chin’s parents managed to scrounge up enough savings to buy their first fifty acres in Klamath Falls. By the time his father died, they had 800 acres. The family would go on to develop the farm.

But there were early glimmers that Ming himself, despite spending his youth working on the farm, might take another career path.

“One thing he never told me was to stop reading,” Ching said of his father. “I do think it taught him, though, that farming was not going to be my strong suit, so it was all a terrific learning experience. Even though I was raised on a farm, I always had my head in a book, and my father was a good example because he also read extensively.”

Many years later, Chin said with levity that he and his siblings had worked so hard on the farm, they were eager to do something else.

Even as the family gained a foothold in the U.S., it also faced tragedy.

In preparation for this project, I’d asked Chin if he had any early photos of his parents he could share. I quickly realized why he didn’t have many.

Among his earliest memories as a child was watching the family home in Klamath burn down.

It started in the kitchen and tore through the home, taking with it his older brother Jack, who died in the blaze.



*California Supreme Court Associate Justice Ming Chin lays out a lifetime of memories, in 2020. (Photo Credit: University of San Francisco.)*

“My parents could go through most anything, considering the lives that they lived,” Chin tells McCreery. “But losing their child was devastating, and it was even more devastating because they lost Mary earlier that year in an automobile accident. It was 1946. I was four, and I don’t remember very much of this whole thing except watching the house burn.”

Those early photos? Also gone.

But out of the depths of the tragedy came a triumph.

When Congress repealed the Chinese Exclusion Act, it enabled Chin’s parents to become American citizens.

Ming was only 5. But in time, he would know “it was the proudest day of their lives.”

The family farming business would take off.

Hard work ran through the veins of the young family.

But even Ming’s father knew that whatever living his children would make, education would be the portal to it.

### **Education: “The Examples, Teachers, Mentors ...”**

There were hints of a life in the law early on.

Being the youngest, by the time he was ready for school, Ming had some practice. And his parents had accumulated some funding—enough for a private school.

They would send 6-year-old Ming to a nearby Catholic boarding school, Sacred Heart Academy, where he joined his older brother and sister.

He excelled in what he described as essentially a fine arts school in a rural community, where music, art, and drama classes were heavy in the curriculum.

But by the time Ming reached junior high, the school—run by the Sisters of Saint Francis—stopped its boarding.

“The sisters decided that they couldn’t have boarding anymore,” Chin tells McCreery. “I think they’d had quite enough of the Chin family, actually.”

But here’s where the community came knocking again at the Chin family’s door. A turning point? Perhaps.

Even with his limited English, Sam Chin had struck up a friendship with local judge David Vandenberg. As Ming Chin tells it, they appeared to have bonded over conversations of current events.

“I mean, he was arguing with Judge Vandenberg about whether Truman was right or wrong when he fired MacArthur,” Chin laughingly tells McCreery.

Vandenberg offered to have Ming stay at his family’s home for Ming’s last two years of boarding school.

Offer accepted. It would prove a key moment in the young Ming’s career trajectory.

It was Vandenberg who gave him a glimpse of what it was like to be a lawyer, and he liked what he saw.

“He took me down to the courtroom to watch jury trials, gave me the gun in a murder case to hold,” Chin said. “I said, ‘I don’t think I want my fingerprints on that.’ He gave me law books to read. He gave me Blackstone to read when I was twelve. He was a terrific mentor.”

You could see the interests begin to flow, foreshadowing some kind of journey into public service.

Sacred Heart was a prelude to continued Catholic education at high school, where he attended Bellarmine College Preparatory, a Jesuit institution in San Jose. His older brother Tom had already enrolled.

“I was the only Asian other than my brother in the school. I think I thought I was Irish,” he would tell McCreery.

It was a rich academic curriculum, including the classics and theology. And he would form lifelong friendships with other students and their families.

He became class president and was assistant editor of the school yearbook.

All the while, his father was in his head: “Even though I was raised on a farm, I always had my head in a book, and my father was a good example because he also read extensively,” he said.

The values instilled through a Catholic education were resonating with him. “What is right? What is wrong? What is moral? What is immoral?”

Also, the sisters themselves became influences, ultimately becoming lifelong friends. “These people that were examples, mentors, teachers kept in touch with me and the entire family for many, many years,” he said.

The itch for civics, and even journalism, would evolve into study of political science at the University of San Francisco, where he would also engage with student government, and embrace growing interests in history and current events, theology, and philosophy.

This was the 1960s. The civil rights movement was rolling, and he was absorbing a mix of influences from JFK to MLK, his political leanings still very eclectic.

“I was just soaking everything in,” he told McCreery. “I eventually registered as a Republican. I was just a sponge soaking everything up. I was a real admirer of John Kennedy. I can still remember what I was doing when he was assassinated, and we lived through all that. But I was not entrenched in any particular politics . . . I did register as a Republican.”

A key moment was when Martin Luther King Jr. came to the USF campus to speak.

Chin was there. “He spoke of the three dimensions of a complete life, the length of life, the breadth of life, and the height. To me it summarized four years of philosophy and theology that I took at USF.”

Chin would begin making intellectual connections between the great philosophers and judges, finding similarities in the back-and-forth among philosophical thought over the ages, and the evolution of solutions to human problems.

“That’s really what the great thinkers did—not that we’re great thinkers, but they really carried on a conversation that’s so important that you have some underlying value that governs everything that you do so that it all has meaning at the end—and that it’s governed by some logical, reasonable thinking to reach a solution throughout history, and we should learn from those conversations,” he said.

Even now, he vividly recounts the story of when the father of Chin’s lifelong friend, Tom Mellon, got him a job as sergeant-at-arms at the Republican Convention in 1964.

“It was a remarkable experience. Somebody was evicted from the convention, and I was part of the sergeant-at-arms group that evicted him, if I can just remember his name. John Chancellor.”

But then, he would find himself with a job with the Associated Press working at the Democratic convention.

“Lyndon Johnson was the nominee in Atlantic City, and I got to meet Jackie Kennedy and Bobby Kennedy, Pierre Salinger, John Connally, the former governor of Texas. I actually went to a reception where I met Jackie Kennedy and Bobby Kennedy, so it was quite an experience. That’s where I got Martin Luther King’s autograph.”

It's interesting to note that even in these formative years, Chin found admirable qualities in both parties.

"Absolutely," he told McCreery. "There were people who I thought were really worth emulating in both parties—and I still think there are."

By then, law school beckoned.

He would earn his way to law school at USE, where torts, constitutional, and labor law were of particular interest.

The Alameda District Attorney's Office would loom large throughout Chin's life. And it started in law school.

During the summer of 1966, he worked as a law clerk at the office, where he investigated criminal cases for the deputies and put the exhibits together and organized the witnesses.<sup>10</sup>

You'll still get a smile out of Chin when he talks about how that summer clerking he also got to shuttle around Earl Warren and his wife Nina. Warren, a giant of the legal and GOP political world in California alone, by then was the chief justice of the United States.<sup>11</sup>

Chin soaked it all in.

"One of the things that we got to do was, when we weren't actively investigating a particular project or doing exhibits or subpoenaing witnesses, we would get to go see master lawyers trying cases in court."

He reflected on watching Lowell Jensen<sup>12</sup> try document fraud cases for the Alameda County D.A.'s office: "I learned from a master lawyer how to

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<sup>10</sup> The law clerk cohort trio included George Nicholson, who himself was making a mark that would ultimately lead him to being appointed as a justice on the Court of Appeal, Third Appellate District, in 1990. Raoul Kennedy was in it, too. He chose private practice at the outset and became one of the state's truly fine trial and appellate lawyers. All remained life-long friends.

<sup>11</sup> Earl Warren was a transformative figure in state and national government in the mid-twentieth century. Born in Los Angeles and raised in Bakersfield, California, Warren's journey spanned from the Alameda County District Attorney's Office to attorney general of California, to governor of California, to the U.S. Supreme Court, where he was recess appointed by President Dwight D. Eisenhower in 1953 as the fourteenth Chief Justice of the United States. He was confirmed by the U.S. Senate the next year. Amid his seismic tenure and among his landmark opinions, he wrote for a carefully cobbled, unanimous court in *Brown v. Board of Education* (1954) 347 U.S. 483, ruling that segregation in public schools was unconstitutional. While he was a deputy district attorney in Alameda County, he met his wife, Nina Elizabeth Meyers. He later became District Attorney, 1925–1939. In the latter role, in 1934 he hired the first woman, Cecil Mossbacher. She quickly became an inspiring and determined prosecutor who later became the first woman on the Alameda County Superior Court. She was appointed in 1951 by Warren who was, by then Governor.

<sup>12</sup> Then a deputy district attorney, D. Lowell Jensen, would go on to become Alameda County district attorney, deputy attorney general of the United States, Judge of the United States District Court for the Northern District of California (May 1985–June 25, 1986), and finally, Senior Judge of the United States District Court for the Northern District of California (June 1997–October 2014). Jensen, 97, occasionally lunches with his former subordinates from his days as an Alameda county prosecutor. He was a role model for hundreds of prosecutors and defenders.

try a complicated business transaction, and that’s eventually what I ended up doing.”

He would make major connections that would serve him well in his life and career.

But professional life was still a way off.

Something else had become more urgent: War.

His membership in the ROTC during college led to a two-year commitment to the U.S. Army after law school.

It was 1967. He had a J.D., but combined with his military and leadership skills, a nation at war in Vietnam was beckoning.

Still, his legal acumen led him to represent a defendant in a court martial, draft contracts, and learn how to operate amid a giant bureaucracy.

Even though the Army would delay his leap into professional life, his work as chief at a transfer station (a processing center for soldiers coming back from Vietnam) led to encounters with a mix of people, and to his leadership in reorganizing the management of the station.

“So I reorganized it, and the people above me said, ‘My goodness, this is wonderful,’” he tells McCreery. “And the morale of the people in the section really improved. They were doing a better job because they had some time away. It was incredible. I had to get them all to pull together, working under very difficult circumstances.”

Chin created a twelve-hour shift with some time off to improve morale from what had been a tiring around-the-clock operation.

By the time his two years as a captain in the United States Army, including a year in Vietnam, were up, he would be awarded the Army Commendation Medal and the Bronze Star, which honor heroic, meritorious achievement or service while in a combat zone.

It was the summer of 1969.

### **A Life Begins in the Law**

Back when he was a law student and vying for a job interning at the Alameda County D.A.’s Office, Chin’s zeal for a job led him to Frank Coakley, then the longtime D.A. of Alameda County.

“When I called for a job in the D.A.’s office, I called on a Saturday morning at nine o’clock because I thought everybody worked every day. [Laughter] I came from the farm, where we worked every day. Nobody had Saturdays off,”

he reflected with McCreery.

“So I call, and Frank Coakley himself answers the phone. I tell him what I want, and he said, ‘Anyone that calls the D.A.’s office at nine o’clock on a Saturday morning, and expects anyone to answer, I want working for me.’”

When Chin was serving in Vietnam, Coakley had reached out to his former intern, in the form of a Christmas card with an accompanying note:

“‘Ming, when you finish your tour of duty in Vietnam, you have a job here in the Alameda County district attorney’s office.’ I said, what a blessing that was, because it’s really hard to interview from the jungle.”

By the time Chin returned, Coakley had retired after a long career, but his successor, Lowell Jensen, honored Coakley’s commitment. And thus, Chin would begin his professional career in the law.<sup>13</sup>

For three years, Chin served at the D.A.’s office, trying felony and misdemeanor cases, ultimately finding his way to the role of felony trial deputy.

“Talk about being nervous. I was petrified,” he told McCreery. “I now had to be in those fancy courtrooms at the courthouse, with that big American flag right behind the judge.”

But in those early years, he learned how to win and lose. He learned about the importance of being prepared. He learned of the strength and weaknesses of the judges he argued in front of—kindness, understanding, but also the need to temper those themes with more efficiency.

“It’s important to learn from losing,” he said. “I think you learn a lot more from losing than you do from winning.”

The lessons would serve him well as his nascent legal career progressed.

By 1965, Sam Chin had retired from day-to-day management of the family farm. He and Suei had moved to Alameda.

That chapter of Chin’s life coincided with when he was introduced by mutual friends to Carol Joe, a pharmacist in training.

They hit it off.

But not long after, in 1970, Sam Chin suffered a severe stroke. It launched Ming, still at the D.A.’s office, into full-time career and caregiver mode.

There was no time for dating.

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<sup>13</sup> Deputy district attorney: a role his son Jason would echo many years later. Jason Chin served as a deputy district attorney at the Alameda County District Attorney’s Office from 2004 through 2018, with one brief interlude as a state deputy attorney general. He was appointed judge on the Alameda County Superior Court in 2018.

Months would go by before he called Carol again.

“I finally called Carol, and we started going out,” he told McCreery. “On some of our dates I had Dad with me because there was no one else to take care of him. I knew this was going to work because Carol loved it. It didn’t make any difference to her.”

He would marry Carol Joe, “my best friend,” who had just graduated from pharmacy school, in 1971. They moved to Alameda, close to where his parents were then living.

And they would soon greet daughter Jennifer, and then son Jason into the world.

“I tell him that he has a grandson, and he gets this broad grin on his face,” he told McCreery. “He was so happy. So he got to meet Jason before he left the hospital, and he died the next day. And Jason is so much like him. You would think they grew up together. He has his grandfather’s laugh. He has his grandfather’s sense of business.”

“It was almost as if Dad said, ‘My work is done.’”

### **A Prize Opportunity**

By 1973, the Oakland law firm of Aiken, Kramer & Cummings came calling with a prize opportunity: head of the firm’s litigation department.

It would be a boon for Chin, a lifelong learner who immersed himself in the chance to balance his criminal trial experience with civil trial experience.

He would learn the ins and outs of securities cases, commodity, wrongful termination, construction, and conservator litigation. He would hone a longstanding practice of taking meticulous trial notes.

Such litigation would bring him face to face with public agencies.

Three years later, he became a partner.

All the while, he found himself in a world of few Asian lawyers.

The lack of Asians was not news to the young lawyer, who grew up in a world with few Chinese American families in his neighborhood or schools.

He hadn’t really even started seriously thinking about a life in the law until a couple years into his time at USE.

But he was also on the cusp of a change, and he was carving out that change all while winning multimillion-dollar judgments in unfair competition and construction disputes while at the firm.

By 1987, he was president of the Alameda County Bar Association, which never had an Asian American president.

He would make new connections and find his way to membership into other associations.

But he was also forging a path, not just for himself but for others of Asian descent and other minorities, including women.

He, along with Mike Lee, Hoyt Zia, and Dale Minami, basically founded the Asian-American Bar Association, he said.

“There were so few Asian lawyers, particularly in the East Bay. You could count them on one hand. There were certainly more in San Francisco and in other areas of the bay. But that changed very rapidly,” he said.

By the time he sat down with McCreery, in 2019, things had indeed changed. And it was “long overdue,” he said.



*Justices Marvin Baxter and Ming Chin at the University of San Francisco. (Photo Credit: Judicial Council of California.)*

## Path to the Bench: “I Didn’t Think It Was Possible”

Chin recalled a conversation with Army buddy Phillip Paley.

“Ming, you ought to become a judge,” Paley once told him.

“I said, “no, no. No, I don’t think that’s for me,” Chin would reply.

But there was something deeper behind the answer.

At the D.A.’s office, he was the only Asian. His graduating law school class had only three Asians.

It was “Not for me because I don’t think Asians can become judges,” he revealed to McCreery.

“There were certainly a lot more Asians at USF and a few in law school, but I was, frankly, used to it so I thought it was the norm.”

Plus, by 1987, Chin was happy in private practice. He was making a good living.

The idea of becoming a judge wasn’t fully landing.

“I was hesitating because I didn’t think it was possible,” Chin said.

Chin, in consultation with his wife, and still thinking the “chances are nothing will happen,” made a momentous decision: He would try to become a judge.

By then, Chin had registered as a Republican—a key designation in the late 1980s, during the administration of then-Governor George Deukmejian.

Then came an interview with Marv Baxter,<sup>14</sup> who at the time was appointments secretary for Deukmejian.

The questions flowed.

So did the answers.

But as Chin described it to McCreery, after about ten minutes of back and forth, Baxter slammed a binder of notes down and said “I can’t do this anymore,” smiled wide and said: “The governor has already approved your appointment.”

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<sup>14</sup> Marvin Baxter also grew up on a family farm. Baxter, a graduate of Hastings College of the Law in 1966, began his legal career in the Fresno County District Attorney’s Office. He, too, would move on to private practice for several years before becoming appointments secretary to Governor George Deukmejian. He was the governor’s principal advisor on all gubernatorial appointments made to the executive and judicial branches of government. And then, he himself would be appointed and confirmed as an associate justice of the Court of Appeal, Fifth Appellate District (Fresno), in December 1988. He was elevated to serve as an Associate Justice of the California Supreme Court in January 1991 and in January 2015, he retired. The two remain friends to this day. [Supreme Court of California: Marvin Baxter](#).

It was a giant day for the son of Chinese immigrants. He hastily scrambled his family to join him for his swearing in.

Appointed by Governor Deukmejian on January 6, 1988. And on January 8: Ming Chin was sworn in as Alameda County Superior Court judge.

### **Evolving: “This Is Not a Court Where You Give Up on People”**

There would be more learning to do in a life already full of learning.

Between civil and criminal matters, he developed an interest in family law—an interest that evolved into teaching it at USE.

There was something about family law court that drew him. He articulated it with McCreery.

“I found that it was a court where it’s still possible to help people solve problems. This is not a court where you give up on people. This is a court where you take people’s problems and help them solve them.”

He would begin to understand the players in the courtroom, from jurors to lawyers to staff and the legal bureaucracy. He would embrace his own developing style—treating people with respect but making sure his courtroom was running efficiently.

“Speed is not everyone’s goal, but I wanted to have not only efficient running of the courtroom, I wanted to solve people’s problems sooner rather than later,” he told McCreery.

Again, he found himself in a happy place—embracing the day-to-day work of running a courtroom and dealing with people.

But in 1990, three justices on the First District Court of Appeal were retiring.

On August 7, 1990, Governor Deukmejian appointed Chin associate justice on the First District Court of Appeal.

Four years later, he would be its presiding justice, appointed by Governor Deukmejian’s successor, Governor Pete Wilson.

All the while, Chin’s efforts on the bench were earning him praise, and responsibilities.

He was the first Asian American to serve as president of the Alameda County Bar Association in its more than 100-year history.

He was a member of the Judicial Council Appellate Advisory Committee and the Advisory Committee on Racial and Ethnic Bias.

He would become a trustee on many committees.

Ultimately, powerful themes would emerge in his jurisprudence and in his approach to being a judge, themes that would carry all the way to the state’s highest court.

Chin’s time on the Court of Appeal coincided with the rise of DNA evidence in the law, then emerging as a potentially powerful tool for prosecutors and defense lawyers.

As a judge, Chin would be on the leading edge as he ascended through the state’s highest courts.

In *People v. Barney*,<sup>15</sup> the public would get an early glimpse at Chin’s judicial trailblazing on the matter.

The case, one of the early DNA cases in the state, consolidated two cases into one, where the court, led by Chin’s opinion, ruled that “to admit the evidence based on a new scientific technology, the technique must be shown to be reliable, generally accepted, properly performed.”

It was an early test in the law of the nascent technology. And it was also a kind of watershed moment for Chin. After *Barney*, he found himself sought out for his expertise. It was expertise that would shine by the time he arrived at the Supreme Court.

But he acknowledged to McCreery that his expertise in the field was still very much in its fledgling stage—if it existed at all.

“When you got *Barney* and *Howard*, how much did you know about the field of DNA analysis?” McCreery asks Chin.

“Zero. [Laughter],” he said. “People asked me if I majored in science. I said, “Does political science count?”

But his evolving knowledge of the suspect was no laughing matter.

By the time the California Supreme Court ruled on *People v. Soto*,<sup>16</sup> seven years after *Barney*, then Supreme Court Associate Justice Chin joined the high court majority to rule that DNA science was ready to be used as evidence in trial courts.

In the years between *Barney* and *Soto*, Justice Chin also became a nationally renowned expert on DNA evidence.<sup>17</sup>

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<sup>15</sup> *People v. Barney* (1992) 8 Cal.App.4th 798.

<sup>16</sup> *People v. Soto* (1999) 21 Cal. 4th 512.

<sup>17</sup> O’Malley and Bosovich, *Victims’ Rights in California: A Historical Perspective to Modern Day* (2023) 18 Calif. Legal Hist. 108–109.

Prosecutors at the time weren't always thrilled with Chin's DNA rulings. But he also realized he was ruling in a rapidly evolving field.

And faced with critiques, Chin was ready with thick skin, exerting a penchant for judicial independence he would become known for on the highest court.

"I didn't take this job to make people happy," he told McCreery. "I took this job to get it right. [Laughter] I like to think that I got it right, and I like to think that even if I was wrong the scientific community certainly cleaned up their act and cleaned up their discussion to what we were paying legal attention. So I got their attention, and they eventually got it right, as far as I'm concerned."

Moreover, the evolving expertise was something he sensed that he could share with other judges, who in the following years would be faced with legal tensions concerning the technology.

"I think in this particular case, the field was so new and there were so few judges that were familiar with it, I think it was beneficial for this jurisdiction to have somebody who knew what they were talking about. But I did bring science to judges because it's lacking in our education. These science cases are going to come before the courts. We ought to know what we're doing."

Other big rulings would come.

Family law loomed large for Chin, carried over from his time in family law court and teaching it.

In 1991, *In re: Adoption of Matthew B.*,<sup>18</sup> was the first time the surrogate parenting issue had come to a California court, Chin said.

It upheld a lower court's denial of a surrogate mother's petition to vacate a prior judgment of paternity and to withdraw her consent to the adoption of the child.

As he noted in his majority opinion, "we begin to grapple with the conflicting human and public policy concerns that surround the ongoing debate about surrogacy. The primary casualty of this conflict is a child caught in the crossfire between his birth mother, on the one side, and his father and adopting mother on the other. The best interests of this young child must be our paramount concern."

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<sup>18</sup> *Adoption of Matthew B.* (1991) 232 Cal.App.3d 1239.

The best interests of the child were the overriding consideration, according to Chin.

“That came from all of those years sitting in the family law court and teaching family law. Whenever you’re dealing with custody matters, you’re always dealing with the best interests of the child.”

### **False Alarm**

Change was in the air again for the state’s highest Court personnel.

Justice Edward Panelli was stepping away in 1994, and a seat was opening up.

Sure enough, a call came from the governor.

The call from Pete Wilson, a Republican who was elected in 1991, took Chin by surprise.

“The governor called me and asked me if I would submit a personal data questionnaire, PDQ, for the Supreme Court. What an honor that was. This is not something that you submit an application for. We were all invited by the governor, and how do you say, “Oh, no. I’m sorry. I’m very busy.” [Laughter]

“It was kind of jarring. I mean, it was certainly a moment of pride to be asked by the governor of the state to submit your name. I said, ‘what world am I in?’”

When he saw the list of potential candidates, Chin, who was happily judging from the Court of Appeal and teaching classes on DNA, was certain he had no chance.

And that would be just fine with him.

“I felt particularly about that with Kay Werdegar, who was good friends of the governor over many years and had just been appointed to my court by this governor,” Chin said.

The governor called Chin in for an interview, in what ultimately came down to a choice between Chin and Werdegar.

Both First District judges. Both in the running.

Wilson chose Werdegar.

Chin was elevated to presiding judge of the division.

It was the era in which Chief Justice Malcolm Lucas was running the state’s courts.

The state’s Judicial Council, which Lucas as chief justice oversaw, became a platform for major reform, short-term and long-term. Lucas was credited for

his push on administrative reforms within the high court but also in the court system generally.

Chin would become a member of the Judicial Council Appellate Advisory Committee and the Advisory Committee on Racial and Ethnic Bias, appointed by Chief Lucas, chaired by two terrific justices from the high court, Allen Broussard and John Arguelles.

“It was the first, and it was an incredible group of people that Malcolm organized to do it, myself excepted,” Chin tells McCreery. “But these people were dedicated to finding what racial and ethnic bias existed.”

“The best thing we can do, as minority lawyers and judges, is to do topnotch jobs in the work that we have right in front of us, and that will open the door for others who come behind.”

Chin said it was personal to him.

“People generally don’t want to whine, and when somebody experiences race or ethnic bias you usually want to move on and deal with the issues rather than the bias. But if you don’t talk about it, you’re never going to end it,” he said.

Chin praised Chief Justice Lucas and the commission as setting the stage for further commissions to take up issues within the court system. Lucas, he said, was a forward thinker.

Other leadership roles would come Chin’s way, including the San Francisco district attorney’s commission on hate crime.

## **The Real Thing**

By 1996, Chin was the presiding judge of Division 3, and “couldn’t have been happier.” He liked who he worked with in the division and across the First District.

Still, the winds of change were blowing anew.

The phone would ring again, and Governor Wilson would be on the other line.

This time, the ball would completely be in Chin’s court.

The guy who never thought he would be a judge was now on the cusp of the state’s highest court. It was all coming back: the hard work, Blackstone at 12 years old, family law, DNA. . . . The path had hit a major crossroads.

It’s here where we join McCreery’s Q&A with Chin.

And it’s here where we will find not only a justice in transition, but also a court—from budget cuts to leadership, from evolving legal doctrine (and Chin’s role in that).

Seismic new legal issues were emerging, from gay marriage to free speech. DNA cases would indeed become huge as the court moved to tackle them.

Chin couldn't have timed it better.

His moment had come.

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*From Left (Standing): Associate Justices Ming W. Chin, Marvin R. Baxter, Kathryn M. Werdegar, and Janice Rogers Brown. From Left (Sitting): Associate Justice Stanley Mosk, Chief Justice Ronald George and Joyce L. Kennard. (Photo credit, Judicial Council of California.)*

## “I’m Lucky to Be Here”: A Second Call Comes, and the Early Years

### *McCreery:*

[Laughter] Okay. Given that you had once been considered for elevation to the Supreme Court and had that personal interview with Governor Wilson and talked with him once he had made his decision, how did it transpire, then, that he had another appointment to fill and chose you for that role in 1996? What’s the whole story from the beginning?

### *Chin:*

As you know, Chief Malcolm Lucas<sup>19</sup> announced his retirement first. Everyone was speculating that Ron George<sup>20</sup> would be his replacement. The question was, who would replace Ron George? The chatter was going around and around and around. The five people who were considered before were again part of the chatter, and I was one of them. But there were additional people that were mentioned.

In December 1995, the First District Court of Appeal had its usual Christmas party. Justice Mike Hanlon, who was standing in as Santa Claus, presented me with a miniature highchair. He said it was for the “baby justice” on the Supreme Court.

But anyway, Ken asked me, “Have you heard from the governor?”

I said, “Oh, no. It’s much too early. After all, this is only January 24th.” After Malcolm announced his retirement, Justice Armand Arabian announced that he would retire February 29th, before Malcolm, two months before Malcolm. I told Ken, “If I hear anything at all, I doubt if it will be at any time in March and April.”

Ken’s parting words were, “Do you have a pager?”

Carol and I had lunch. I went to the meeting over at the Grant Hotel. It was a meeting of the appellate committee. Miriam Vogel was on the committee. I went into the room, and Miriam said, “Ming, come and sit next to me. I have some hot gossip for you.”

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<sup>19</sup> For more on Chief Justice Malcolm Lucas, please see Carter and McCreery, *Chief Justice Malcolm Lucas: How “Collegiality” and a “Steady Hand” Reset a Court in Crisis* (2024) 19 Calif. Legal Hist. 277–396.

<sup>20</sup> Ronald George was appointed to the high court in 1991 and elevated to chief justice in 1996, both by then Gov. Pete Wilson. He served in the latter role until 2011, when he retired. Previously, Governor Ronald Reagan appointed George to the Los Angeles Municipal Court in 1972; Governor Jerry Brown appointed him to the Los Angeles County Superior Court in 1977; and Governor George Deukmejian appointed him to the California Second District Court of Appeal in 1987.

I sit down, and Miriam said, “I bet that the governor calls you in the next thirty days, appointing you to the Supreme Court.”

I laughed. I said, “Miriam, number one, I don’t expect to hear from the governor at all, and number two, it won’t be within thirty days. It took him six months the last time I was under consideration for the Ed Panelli seat.”

No sooner did we finish that conversation—Marv called the meeting to order—an employee of the hotel came in with a silver tray with a note on it. He came over to me and gave me this note. I opened it, and it said, “Emergency. Call your secretary.”

So I lean over to Marv, and I say, “Marv, I have to go make a phone call. I’ll be back in a few minutes.”

I call Sue, my secretary, and she answers in a very excited voice. “The governor called, and he wants you to call him back at two o’clock!” [Laughter]

I look at my watch. It’s about one-thirty, so I said, well, I’ll go back to the meeting. I go back to the meeting, and if you ask me what happened in the next half-hour in that meeting, I don’t have a clue. [Laughter] At about a quarter to two, I lean over to Marv and say again, “I have to go out and make another telephone call. Can you have the staff give my report?”

He says, “Oh, sure. Go ahead.”

I go out, and I call the governor, and he actually repeats the conversation he had with me eighteen months before.

He said, “Ming, I told you two years ago if I had a second seat on the court I would appoint you. I now have the second seat, and if you’re still interested I’d be happy to appoint you.”

I never expected to hear from him again. And actually, I told Don King about that earlier conversation, and Justice Don King told me, “Ming, do not count on that.”

I said, “Oh, I won’t. I’m not going to sit here and prepare for that.” I said, “I know the governor will have many other things that happen in between, and whether he even remembers that conversation will be a surprise.”

But what a surprise it was when he repeated it to me. [Laughter] This is a man of his word.

He said, “What are you doing in San Diego?”

I said, “I’m here for a meeting of the Judicial Council appellate committee, and tomorrow I’m teaching the first Rutter Group employment law program.”

The governor said, “Can you come up for a press conference in Sacramento tomorrow?”

I said, “Oh, sure.” [Laughter]

So I now have to go find Carol, who is shopping at Horton Plaza. I had the only cellphone, that I was talking to the governor on. Carol did not have a cellphone. I was in an alcove at the bottom of Horton Plaza talking to the governor about this, so I walk up one flight of stairs, and Carol is on the pay phone talking to Jason, who was a sophomore at UC San Diego.

I tell her about my conversation with the governor, and she’s yelling in the phone at Jason. [Laughter] I tell her, “Tell Jason that he can’t tell anybody.”

Anyway, we go out to see Jason, and we start celebrating. We make arrangements to go to Sacramento the next day, and Jason says, “Can I come?”

I said, “Of course.” We call his sister Jennifer, who was at Stanford, and she also wants to come, so we all go to Sacramento the next day for the governor’s press conference.

***McCreery:***

Describe that press conference, if you would.

***Chin:***

I’ll do that, but I have to tell you about my telephone call with Marv. While I’m at the airport I call Marv, and I apologize for not coming back to the meeting. He says, “Did you get the call I think you got?”

I say, “You know I can’t tell you that.”

He says, “You just did.” [Laughter] Only a former appointments secretary can put all these pieces together and know exactly what happened. So Marv Baxter was the first one to know, outside of Carol and Jennifer and Jason, that I got the call from the governor.

After the press conference, I called Miriam Vogel, and I said, “Miriam, I know you won the bet, but I don’t remember how much we bet.”

Without a blink she said, “Ming, you owe me \$10,000.”

***McCreery:***

[Laughter] What an astonishing turn of events. How could you even take that in? What were you thinking?

**Chin:**

I was saying, first of all, gratitude to Pete Wilson. He is a man of his word, and he remembers what he said, even if nobody else knew.

I was so grateful that he was giving me this incredible opportunity. I remember the press conference. Some members of my family were there—my sister Betty, her husband Fee. My sister Jeanne came from Alameda and both of our children.

**McCreery:**

You were in a position to celebrate. What about the actual transition to taking your seat on the Supreme Court?

**Chin:**

I should tell you about the press conference because it affects much of what eventually happened at the confirmation hearing.

I was asked by the press several questions about what my opinion was on certain issues.

Two of them were settled questions. One was the issue of abortion that had been settled by the U.S. Supreme Court,<sup>21</sup> which approved it, and the other was on the death penalty, which the U.S. Supreme Court had approved. So I thought it was safe to express opinions. [Laughter]

I said that abortion is a very difficult issue, but the U.S. Supreme Court has expressed the opinion that a woman has a right to choose.

I said I happen to agree with that opinion. I said the same thing with regard to the death penalty. They also asked whether I had an opinion based upon racial something-or-other, and I said, “The court has not expressed an opinion on that, and I’m not about to express an opinion on that.”

But the question on abortion really raised the ire of the pro-life community, even though the U.S. Supreme Court in *Roe v. Wade* had approved it. It was probably a mistake to express an opinion on anything. At my confirmation hearing, ten people came to testify that, because I had that opinion, I was not qualified to be on the court.

I stood up, and I thanked them for their opinion.

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<sup>21</sup> Three years after Justice Chin fielded questions from McCreery, the U.S. Supreme Court would overturn *Roe v. Wade* (1973) 410 U.S. 113, the landmark case protecting the right to have an abortion prior to the point of fetal viability. *Dobbs v. Jackson Women’s Health Organization* (2022) 597 U.S. 215, would shift to state governments the authority to regulate abortion.

I said I was asked a question at the confirmation hearing press conference about my opinion on that subject matter. It was a direct question that I thought deserved a direct answer. Then, as an aside, I said, “But I could be talked out of that.” [Laughter] And I was probably serious about that because I probably shouldn’t have said anything, but I did and it touched a lot of people the wrong way.

It’s still a difficult issue. It’s still a controversial issue, even though the U.S. Supreme Court has spoken not once but twice on the subject matter. It’s still an issue today. It was the conservative side of the Republican Party that came after me.

I think I’m probably too liberal for the conservatives and too conservative for the liberals, so I must be somewhere in the right vicinity.

The confirmation hearing was before Malcolm Lucas, Presiding Justice Robert Puglia, and Attorney General Dan Lungren. All of them couldn’t have been more gracious and, of course, all voted for confirmation. I was grateful, even though the ten speakers were certainly difficult to listen to. But overall, I’m grateful for the process and certainly grateful for the outcome. So I was able to take my seat on the California Supreme Court.

They escorted me upstairs to my new chambers, and right outside my chambers was a picture of the Supreme Court as it was constituted in 1964. Phil Gibson had just retired, Roger Traynor was appointed to replace him, and Stanley Mosk was appointed to replace Roger Traynor. This was 1964.

That was the year I started law school. I’m now 53, Stanley Mosk<sup>22</sup> is now 83, and I’m appointed to sit with him on the California Supreme Court.

I am asked now how I feel about having colleagues thirty years my junior, and I tell them that story. Stanley Mosk was thirty years my senior, so I tell them what goes around comes around.

That was at Marathon Plaza, so when we moved back here I asked that that picture be hung outside my chambers. So it’s still there.

What a pleasure it was to sit with Stanley Mosk for his remaining years on the court. How lucky was I to be able to sit with a legend on the already-storied court?

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<sup>22</sup> The Los Angeles County Courthouse was renamed in 2002 in honor of Justice Mosk, who was the longest serving justice on the California Supreme Court and earlier served as attorney general of California. He passed away in 2001. The Library & Courts Building was renamed for Justice Mosk in 2002.

We hear about Phil Gibson and Roger Traynor, and now we have Malcolm Lucas, and then we go to Ron George and Tani Cantil-Sakauye. What a remarkable collection of people to lead the judiciary during incredible times.

I'm lucky to be here.

***McCreery:***

Chief Justice Lucas retired a short time after you arrived, and Chief Justice George took over from him. Talk a little bit about those two and that chief's role, if you would.

***Chin:***

I was only on the court with Malcolm Lucas for a short period of time, I think a couple of months.

I think Malcolm retired in May, and I came on in March. But I knew him well. As I said earlier, he appointed me to many different committees.

The most important one was, of course, the race and ethnic bias committee that was chaired by Allen Broussard and John Arguelles.

Malcolm, in his tenure as chief justice, did some remarkable forward-thinking work.

Certainly, one thing was the commission.<sup>23</sup>

Malcolm's study of the future tried to envision what kind of judicial system we would want in the year 2020, and here we are in 2019. So it is remarkable to see that kind of foresight way back then.

So Malcolm was a wonderful leader for the judicial branch. He was one that could have been picked through central casting because he was such a distinguished gentleman in appearance and in depth. He finally found the love of his life very late, and they were so happy together. That was about the time that I came on the court, so I like to think that I saw Malcolm at his best.

But it was short-lived, and everyone knew that Ron George was Governor Wilson's first choice for succeeding Malcolm. When that came to pass, it was a very smooth transition.

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<sup>23</sup> *The Report of the Commission on the Future of the California Courts: Justice in the Balance 2020* (1993) established goals for a Court operating in an increasingly diverse state, one where the court's own ability to reflect the state it serves had to improve, and one where its own budget and number of judges had to grow in alignment. In 2014, Chief Justice Tani Cantil-Sakauye created another such commission and appointed Supreme Court Associate Justice Carol Corrigan as Chair and First District Administrative Presiding Justice William R. McGuiness as Vice Chair, both former deputy district attorneys in the Alameda County District Attorney's Office. See, *The Report to the Chief Justice, Commission on the Future of California's Court System* (2017).

***McCreery:***

You say everyone knew. How did you know?

***Chin:***

All of the talk in the press, all of the talk on the court, all of the talk among my colleagues. Certainly the governor said nothing about it, nor did I ask him about it. I figured that is none of my business, and the governor will do whatever he plans.

But the word on the street was that it was going to be Ron. Ron was already the vice chair of the Judicial Council and had already assumed many of the administrative responsibilities of the Administrative Office of the Courts and in managing it.

We also had a terrific staff in the Administrative Office of the Courts at the time. Bill Vickrey had come on board as its director many years ago and had always been dedicated and hardworking and, I think, did a terrific job.

His assistant was also someone who I knew very well because he came from the Alameda County clerk's office. He was the court administrator in Alameda County when—well, I'm trying to think whether Ron Overholt was the administrator—I think he came later, but he eventually became the administrator for the court in Alameda, and then Bill Vickrey eventually brought him over to the Administrative Office of the Courts as second in command.

So I worked with both of them and with Malcolm on many committees dealing with the Judicial Council, and when Ron George was appointed, there was just a very easy transition between the Lucas Court and the George Court. But as soon as Ron came on, there were additional changes because the governor had to appoint an individual to fill Ron's seat, and of course he chose his legal affairs secretary, Janice Rogers Brown.

I had met Janice the first time around when the six of us were considered by Governor Wilson for Ed Panelli's seat. So I had already met Janice. I think Carol and I had breakfast with her at one of the conferences, so by the time she was appointed by Governor Wilson, she was not a stranger to me.

***McCreery:***

Say a few more words, if you would, about the role of chief justice and what all that encompasses.

***Chin:***

It's a very important role because you virtually manage the entire apparatus that is the Supreme Court, which is no small task because there are seven of us and there are staffs of each justice, and then there are the central staffs, and then the outstanding administrative apparatus that supports all that. So that, in and of itself, is a major task.

You add to that the administrative function of running the judiciary. Then you add to that managing all the courts of appeal and their staffs, and then the trial courts and their staffs. It is one of the largest judicial systems in the world, so sitting at the apex of that takes an individual with multi-faceted talents.

You look at the responsibilities that that one individual has, and you wonder how any individual, any one individual, can do that and keep their sanity.

How Malcolm Lucas and Ron George and Tani Cantil-Sakauye do that is mind-boggling, particularly when you see it up close and personal because you know from firsthand experience what their schedule is like. It is a twenty-four-seven job. They literally have no time to themselves. But all three of them handle it with such grace and fortitude.



*California Supreme Court Associate Justice Ming Chin in 2020. (Photo Credit: University of San Francisco.)*

## On Getting Along with the Justices

### *McCreery:*

Thank you. Let's touch on your other colleagues when you first arrived. As you say, Justice Brown was not there yet but came very shortly thereafter. But let's turn, of course, to the most senior member at that time, Justice Stanley Mosk. What can you tell me about the experience of having him as a colleague?

### *Chin:*

What an honor it was to serve with Stanley Mosk. He was a gentleman, a scholar. He had a wonderful sense of humor. He shared with me many wonderful stories about his early practice, his appointment by Governor Olson. I remember one particular story he told me. He said that in the 1930s, things were pretty tough.

He said he came home one day and his wife asked him how his day went, and he said, "I had a great day today. I got a twenty-five dollar case and two small ones." So Stanley's sense of humor about what it was like to practice right in the middle of the Depression was—hearing his stories made you realize that you were talking to an individual who had gone through some very tough times.

And of course when he told me that story, it took me back to my father, who went through very similar tough times. I remember my father would say, during the Depression nobody would hire you for a dollar per day. He would be willing to work for a dollar, and nobody would hire him. So these are individuals for whom I had great respect.

But what a pleasure it was to serve with him, because these are just examples of conversations we would have. I had the good sense to jot them down so that I would not forget them. But no one ever suggested that senility had set in with Stanley Mosk because he had substantial legal gifts, and he was at the top of his game throughout his entire time on the court.

### *McCreery:*

What was his style in working with you on the serious matter of the opinions and the cases? In other words, how did he interact with colleagues on those matters?

***Chin:***

His door was always open. You could go in any time and talk with Stanley.

Stanley was an individual who was always willing to talk. That's one reason why I really respected not only his length of tenure but the depth with which he got involved in each of the cases. The one area, if you want to talk about it now, is summary judgment.

***McCreery:***

Just to return to a little overview of your new colleagues when you arrived, let's speak for a few moments about Justice Joyce Kennard and how well you might have known her ahead of time and her presence on this court.

***Chin:***

I knew Joyce Kennard through many contacts. I showed you a picture of Justice Kennard with Henry Kissinger when he came to the Commonwealth Club. I could not tell you when that picture was taken, but I think it was in the 1990s. But also in that picture is Justice Robert Merrill, my colleague from Division Three of the First District, and Diane Yu, who was then the general counsel for the State Bar of California.

I always respected Justice Kennard. Her meteoric rise through the judicial system, the great respect that she was held in by the governor who appointed me to the trial court and the court of appeal, Governor George Deukmejian, for whom Marv was the appointments secretary.

So I certainly followed her career for many reasons, not the least of which she is part Asian and blazed the way for those of us who came after. She was on the court for many years before I arrived, but she gave me such a warm welcome, and I've always appreciated that.

One of my contacts with Joyce is that Joyce loves flowers, and I have a garden full of flowers. So I shared my rhododendrons with her on a regular basis. I also grow orchids, so I brought Joyce orchids. You know that Joyce had some severe health problems, and many times she was not feeling well. So whenever she was under the weather I would bring her flowers.

***McCreery:***

What was her own style, if you can characterize it generally?

***Chin:***

Her door was not as open as Stanley's. She liked to communicate in writing. She liked things nailed down. She wanted to know exactly where you were coming from. She wanted to know that it was well thought out, so just speaking off the cuff was not the normal approach. Not that she wasn't easy to talk to. She was willing to talk. She was willing to listen. But the exchanges were a bit more formal.

***McCreery:***

Let's turn for a few moments to Justice Baxter, who of course you had a certain relationship with already. But talk about becoming his colleague on this court and his presence here.

***Chin:***

By the time we were colleagues, we were already good friends. I had made many trips to Fresno for Marv to give speeches to this group or that group, so by the time I got here I already knew Marv well.

I will tell you, though, that the first time we had Marv and Jane over for dinner, it was when I was appointed to the court of appeal and it was a celebration dinner. We didn't know Marv and Jane very well, only socially.

We served scallops. We later found out that Jane does not eat seafood, so she keeps saying to this day, "I was just fine, and the dinner was wonderful." [Laughter] But she couldn't have been more gracious about it. But every time we travel we have to look for—we can't go to a restaurant that just serves nothing but seafood.

But I was actually at Marv and Jane's house when their oldest granddaughter was born in New York. Alison was born in New York. Of course, Jane went back, and I was in Fresno staying with the Baxters, to give a speech for Marv, when Alison was born.

So over the years our lives got more and more intertwined, and what a wonderful relationship it was. There wasn't anything that Marv and I could not talk about. We were constantly in each other's chambers. Even when we disagreed, it was never harsh. It never interrupted our friendship. What a colleague to have on a court like this.

***McCreery:***

Let's touch just for a moment on your colleague Justice Kathryn Werdegar, who of course came from the same division of the court of appeal. But you were meeting her here again in a slightly different collegial relationship. Talk about her presence on the court, if you would.

***Chin:***

It was a real pleasure working with Kay at the court of appeal and being reunited with her, along with the rest of our Supreme Court colleagues, was delightful. Who could ask for a better colleague? When she retired, I said, you know, working all those years on the court of appeal and all these years on the Supreme Court, I cannot remember one harsh exchange, even though we differed on major issues.

As a matter of fact when Kay retired she cited, I think, two dissents that she was most proud of, and I said, "Kay, do you realize that I wrote the majority in both of those cases?" [Laughter]

She said, "I had no idea." She was talking about the issues, not the personalities. That's the way Kay operated. She was detailed, focused, intent on the issues that we were not in agreement with at the time but never made it personal and never carried a grudge—I don't think—years later, although I'm beginning to wonder about those two dissents she's most proud of. [Laughter]

But anyway, Kay was right down the hall from me, again, whereas on the court of appeal she was right next door to me. Our chambers at the Supreme Court are a little farther away.

***McCreery:***

We talked at length already about how you were colleagues on the court of appeal and precisely how it came to pass that Governor Wilson selected her to come to this court before you. You've been very clear that it was always a very collegial and gracious set of events. What lingering difficulty between the two of you did that present, if any?

***Chin:***

None. [Laughter] Okay, none that I know of. If there were any difficulties on Kay's part, she certainly never expressed them to me. I always respected her work, respected her positions. I particularly liked the way she expressed herself when she disagreed. It was clear. I understood exactly where she was coming from. I tried to make myself as clear as possible. But I always respected her for that, even when we disagreed.

***McCreery:***

Then you've spoken already this morning about Justice Janice Rogers Brown, who came shortly after you. But talk a little bit about bringing her into this group of people. A new justice always changes the mix in various ways. What sort of a presence was she, as you experienced it?

***Chin:***

She was very engaged in the work of the court. I know that there has been some criticism. I don't agree with it. I think she worked hard. She had strong positions on some cases. But if you look through the history of all of that period—

I will say that Janice's dissents were sometimes more pointed than I thought was necessary. But we're all individuals. We get to say how we want to say it, when we want to say it, and we all make different choices about how pointed it ought to be. I frankly think that, even though we have disagreements, we ought to state them in tones that are civil—not that her dissents were not civil. They were civil. They were just pointedly civil. [Laughter] But that's a style. I must say that her oral comments were never pointed.

They were always very civil.

***McCreery:***

Speaking of Chief Justice George in particular, since he was your chief for many of these years, how did he use his power to assign opinions?

***Chin:***

As far as I could tell, he made it as fair and equal as possible. I mean, there was never any grouching about, "I'm getting all the uninteresting cases." First of all, most of the cases we get here are important and interesting, but some of them are more important and more interesting than others. But I think Ron was eminently fair in his distribution of the work.

***McCreery:***

You touched a moment ago on the idea that some justice might, rather early on, make views known about a particular case. To what extent did you see people seeking to have particular cases assigned to their chambers?

***Chin:***

There was very little of that. I certainly didn't do it. I mean, I wrote the Rutter Group practice guides<sup>24</sup> on forensic DNA and employment, and I don't get all of the science cases, and I don't get all of the employment cases. I don't think cases ought to be assigned in that manner.

You asked me that question on the DNA cases, whether it's appropriate to assign all of them to a so-called expert on the court on DNA. I don't think that's appropriate. I think that assigning it to the person who's ready to do it based upon the workload is a better process because I don't think you want to get a preconceived notion of how these opinions ought to come out based upon somebody's expertise.

***McCreery:***

You spoke a moment ago about the importance of the author of an opinion being able to command a majority. How do you think about that as a group, and how might a situation change over the course of one case's "life," shall we say?

***Chin:***

Looking into a crystal ball here is a very iffy thing, so if any of them are able to predict how people are going to vote on particular cases they're a lot more intelligent than I am. But you just never know when you put out a calendar where the votes are going to lie. You never know what problems individual justices will have with parts of the opinion. Sometimes it's shocking that a particular individual will find *x* problem with your calendar. But you get over it quickly, and you talk and then try to resolve it.

That's the way you want it done. You want that discussion to take place in the court, not outside the court after the opinion is put out. The object of the exercise is to get the best analysis possible on each of the issues, and we certainly try to do that, and I think for the most part we've been pretty successful. But the discussions can be intense.

***McCreery:***

When an issue is brought to you on one of your draft opinions, what is your method for trying to resolve that issue with another member of the court?

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<sup>24</sup> Chin is an author of two California Practice Guides: Employment Litigation (The Rutter Group 2016) and Forensic DNA Evidence: Science and the Law (The Rutter Group 2016).

***Chin:***

Oftentimes we will use oral argument to flesh out some of the discussion that we're having internally. I may not be particularly interested in that issue, but I will ask questions about it at oral argument because I know that some of my colleagues are troubled by that. So we're asking the attorneys to give us their input on how to solve that particular dilemma. That's often the case in oral argument. We're talking to each other through the attorneys.

***McCreery:***

I don't know if you can cast your mind back to that first week of oral argument in Sacramento, but what kinds of things were you learning about your colleagues as you saw their styles appear in oral argument?

***Chin:***

The one that stands out most is Joyce's, because Joyce was very active in oral argument. She really liked to inform—I'm not sure who she was talking to. My guess is the audience or the students in the audience. She would often give a recitation about what the case was about.

Of course, we all knew what it was about, hopefully. The attorneys all knew what it was about. But I think Joyce had in mind to inform the audience, those who were not necessarily involved in this particular case, but to give them a bird's-eye view of what this case was about and what the issues were.

***McCreery:***

She would seek to do that at an early stage of a given argument?

***Chin:***

Very often before the attorneys stood up. They would say, "May it please the—"

But Joyce was very detailed in her questions and very active in her questions. Most of the other members of the court gave the attorneys an ample opportunity to argue their positions, except when somebody started reading to the court, somebody would usually step in and pretty quickly.

I don't recommend that attorneys read to us. "We've read all your briefs. Enough already." And I don't recommend that attorneys get up and repeat what they've already told us in their briefs. You've got to have something else to say. Otherwise, why are you here? Anyway.

**McCreery:**

How did your own style evolve as a participant in oral argument?

**Chin:**

I always tried to zero in on the exact issues we were concerned with. I wasn't there to listen to myself. That's very tiresome. I tried to figure out what issues needed to be decided on this particular question of law and then try to get the help of the attorneys in getting there.

**McCreery:**

Did your view of that role change at all over the years? Did you find your use of the oral argument forum shifting in any way?

**Chin:**

I found that the more engaging the lawyers were, the more interesting it was for me. If they were avoiding the question or sidestepping the question I would sort of back off and let the argument move on to wherever they wanted to go, because it wasn't helpful for me unless they wanted to engage the issue that I was talking about.

That's what I would encourage lawyers to do. This is not an oration. This is a conversation. Look us in the eye, tell us what we want to know, and then if it is not the crux of what your case is about, take us back to what you think the case is about. But whatever you do, don't say, "That's a really good question, Justice Chin, and I'll get back to it in about ten minutes." No, I don't think so.

The other thing that Justice Kennard did not like. Whenever an attorney said, "You guys," Joyce would say, "Do you mean me as well?" [Laughter]

When Joyce was on the court, whenever I talked to attorneys I said, "Do not do that. You will not like the result."

**"American Academy": An Early Test on Privacy and Retention****McCreery:**

We've touched this morning on the rehearing of *American Academy of Pediatrics v. Lungren*<sup>25</sup> in 1997, after a case by the same name had been heard in 1996.<sup>26</sup> The result this time was different after the retirement of Chief Justice Lucas and Justice Armand Arabian. You participated, of course, this second

<sup>25</sup> *American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307.

<sup>26</sup> *American Academy of Pediatrics v. Lungren* (1996) 12 Cal.4th 1007.

time around. I wonder if you could talk about the experience of participating in a rehearing, which is not as common, and also the outcome.

***Chin:***

This is the case of *American Academy of Pediatrics v. Lungren*.

It involved legislation that was enacted that required a pregnant minor to secure either parental consent or judicial authorization before she could obtain an abortion.

Before the effective date of the legislation, a group of physicians, associations, and other interested parties sought declaratory relief and injunctive relief on the ground that the legislation violated the state constitutional right to privacy.

The trial court declared the legislation unconstitutional and permanently enjoined its enforcement, specifically ruling that the legislation violated the pregnant minor's right to autonomy and informational privacy and equal protection. The First District, Division One, affirmed on the ground that the legislation violated a pregnant minor's right to autonomy/privacy.

The Supreme Court the second time around affirmed the judgment of the court of appeal on the privacy issue. Of course, it was written by the chief. Justice Werdegar and I signed it, and Justice Kennard wrote a separate concurring opinion. The dissent was written by Stanley Mosk, signed by Justices Baxter and Brown.

It was a contentious, difficult discussion but quite reasonable, although Justice Brown's dissent was quite pointed. Ron actually asked me if I could get her to tone it down.

***McCreery:***

What happened? Did you make that effort?

***Chin:***

I did. Obviously, it didn't work. [Laughter]

***McCreery:***

How did you do it, may I ask?

***Chin:***

How did I do it? I had just returned from Hawaii, and I brought her a box of chocolates. After I went down to talk to her, she returned the chocolates. [Laughter]

It was not contentious. It was not unpleasant. She was not unpleasant, but she was obviously very wedded to her objection and her pointed language. So it didn't work, but it didn't affect our relationship, at least from my part. I can only speak from my half.

**McCreery:**

What knowledge do you have or even speculation about why Chief Justice George might have asked you to be a bit of an emissary on that task?

**Chin:**

I think we have to ask Ron. I guess I had a reputation for being able to talk to anyone at any time about anything.

I'd like to think that I have fulfilled that responsibility because I think it's important for all of us in these positions to be able to discuss our differences and come to different conclusions in a civil manner. I continue to try to do that. I hope it's worked. I think it's a better way to run the court.

I think Ron may have asked me to do that because he didn't have any particular success in raising it himself. But I liked working with Janice. I thought she was very bright and she was certainly engaged in the issues, the difficult issues, that we were trying to resolve.

**McCreery:**

Just thinking of your own vote in that rehearing of *American Academy of Pediatrics*, what do you recall about your considerations in that case and deciding how you would vote?

**Chin:**

This was really tough because as a parent, sure, I want to know what my children are doing. I want them to talk to me about whatever problems they're having. Certainly with this kind of issue, if it ever came up, I would think that our relationship would make it easy for my children to come to me to talk to me about this.

But I'm not making decisions for my family alone. We're making decisions for—there are functional families, there are dysfunctional families. The dysfunctional families are in a completely different position. When you think about a poor girl who is molested by maybe her father, maybe her uncle, maybe somebody else in the family—even if it's a stranger, what is that child to do?

We make these decisions. We can't make them based on living in Disneyland. We have to make them based upon realism and what happens to the child out on the street. What are they to do? Are their constitutional rights to privacy different than adults? I think not.

So the decision is tough, particularly when you think about some of the decisions that minors have to go to get some medical services, even tattoos. It is incredible. So I understand the argument from the other side. And parents get angry when you say, "What do you mean? My child doesn't have to come to me?"

I would look them in the eye and say, "Hopefully, *your* child would come to you, but that's not always the case, and we make decisions for the entire population, not the fine, functioning families with responsible parents and children." Tough decisions.

**McCreery:**

As you point out, the opinion rests on the right to privacy enshrined in our state constitution.

**Chin:**

It's not a penumbra. It's explicit. [Laughter]

**McCreery:**

[Laughter] Do you want to expand on the penumbra reference?

**Chin:**

Oh, no. No, no, no, I don't. [Laughter]

**McCreery:**

But that leads me to just bring up in a very general way our state constitution and how it might differ from the federal constitution and what ways you think about when to look at each one and how to reconcile them?

**Chin:**

This is the best example of it. It was made explicit in our constitution in an initiative in 1972, so we don't have to guess.

Every decision that we've written on privacy refers back to the 1972 initiative, so we have to give great deference to that because it was a conscious decision that was written into this initiative process. The privacy interests in California are clear, explicit, and they ought to be followed.

**McCreery:**

The next year after this opinion came out, in the fall of 1998, you along with several colleagues faced a retention election.<sup>27</sup> As it developed, you and Chief Justice George both became a subject of a lot of public interest owing to your work on this case we've just been discussing. How did you become aware of the rise of this issue in the public sphere, and what did you do about it?

**Chin:**

The articles in the press talked about it before the opinion came out, and I was certainly aware of those articles. I did not let the specter of the coming retention election enter into any of my consideration of what direction I should take in *American Academy of Pediatrics*, even though they were written about in the paper, along with Otto Kaus's comment about the "crocodile in the bathtub."

I ignored the crocodile. "There's no crocodile in my bathtub." [Laughter]

But I think it's the way that judges have to make decisions. If you're making decisions based upon whether you're going to be able to keep your seat here, you should go do something else. The decisions that we make should be based upon the facts of this case and the law of this case and nothing else. That's what I tried to do.

When it came to pass that there was rumor that there were groups raising money, there were groups trying to gather forces opposing Ron George and myself, because of our positions in this case, we met with the governor, as I said. The governor and his staff all were of the opinion that we had to mount campaigns.

This, of course, was not something I wanted to hear, and the thought of raising money was abhorrent, me asking anyone. I thought maybe it would be easier just to bypass this thing. But I finally said, "No. This is not the way our judicial system should be run, and I for one am not going to enhance the possibility that this would happen to someone else based upon an opinion and a position they took on a controversial issue."

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<sup>27</sup> Appellate—or "retention"—elections occur every four years, coinciding with gubernatorial elections, and each appointed justice must stand for election in the first such election at which there was sufficient time for the appointee to file papers to run for the seat. This means that following their initial election, an appointee will earn the right to hold the seat for either twelve, eight, or four years, depending on when during the twelve-year election term of the predecessor justice the appointment occurred. Retention elections mean the voters are asked whether the individual should or should not be retained—i.e., elected. In contrast, Superior court judges serve six-year terms and are elected by county voters on a nonpartisan ballot at a general election during even-numbered years. Vacancies occurring during those terms—due to retirements, deaths, or other departures—are filled through appointment by the governor. *Judicial Selection: How California Chooses Its Judges and Justices*, Judicial Council of California.

So I followed the governor's advice, and with Ron's encouragement as well, we both started to mount campaigns. Trying to do your work as a Supreme Court justice and trying to mount a campaign for retention? It was like two oxymorons. I mean, come on. This is not what judges should be doing.

I must say that the Asian American community, particularly the Chinese American community, really stepped up. They had many fundraisers and got major contributions from people all over the state.

But that campaign was tough.

**McCreery:**

You're bringing up a good point, that running a full-fledged campaign—all of the personal visits to these places, all of the appearances, all of the fundraising—it's a major effort. How did you balance that with your court duties during that period?

**Chin:**

It was quite difficult, but I am very proud that the work I did on the Supreme Court, numbers-wise, was the exact same as it was the year before. I was determined that I was going to do both of these jobs and try to do them both well. If one had to suffer, it was not going to be the court work.

**McCreery:**

To what extent did you and Chief Justice George coordinate or even join your efforts?

**Chin:**

We talked about many issues. At that time there was no governance of what you should do, when you should recuse, so we had to make it up as we went along. We both agreed on what our requirements were of recusal and how long we would recuse and when we would recuse, so that we were both walking in the same footsteps.

Later, when we did the Commission for Impartial Courts, we set out statewide standards of what people ought to be doing. When people are in those positions, they ought to have the rules already set out. We should not have to make it up as we go along. I think Ron and I did a good job, and that was actually the precursor to the discussions that we're having with the commission, which we'll get to later.

***McCreery:***

But the ins and outs of this are so tricky. What was the experience for you of mounting a full-fledged campaign? That was your first.

***Chin:***

It was. It was a learning experience. On the plus side, I met people from all over the state that I never would have met and became good friends with many.

In the middle of all this process, Ron comes to me and says, “Ming, I expect you to be on the ballot in 2010.”

I said, “Ron, could we get through this one?” [Laughter]

So 2010 comes along, and Ron announces, “I’ve had enough.”

I said, “Wait a minute. You told me that we were going to be on the ballot. You asked me to be on the ballot. What happened to your half of this bargain?” [Laughter]

So I was on the ballot in 2010, and I did not make one telephone call. I did not raise one dime of contributions. I called Ron afterwards and said, “Ron, it was a lot easier to run without you.”

But I sure miss him because he was such a pleasure to work with, and he was a good friend as well.

***McCreery:***

But as you said a few minutes ago, both you and Chief Justice George were victorious in 1998. You were both retained for your seats on the California Supreme Court. Indeed, you garnered higher percentages of the vote than had been true in previous elections. How do you evaluate those results, looking back?

***Chin:***

I think that you may be referring to Armand Arabian. Armand got very low numbers because it was during the Gulf War, and his name was Armand Arabian.

The other one that got very low percentages is Coleman Blease in Sacramento on the court of appeal. So this name thing gave me great pause because my name is not Billy Jones. We were concerned about whether the name would reduce it. Fortunately, it didn’t reduce it much.

***McCreery:***

But what's in a name? How do you see that idea that people with non-Anglo names are going to suffer at the ballot box?

***Chin:***

Back then, we only had the example of Armand Arabian and Coleman Blease for unusual names. But it's an unusual name. Apparently voters look at names and make judgments, so I was concerned about making judgments when they look at Ming Chin. Fortunately, unusual names don't suffer any deficit.

Tani Cantil-Sakauye. When Tani came on board I said, "Thank you for making Ming Chin sound common." Then Mariano-Florentino Cuéllar came on board, and I said, "Tino, thank you for making Ming Chin sound common." But I think this name thing is now an attraction rather than a deficit, so let's hope it continues along that line.

My son named his son Nolan Ming Chin. When Jason came along, Carol wanted to name him Ming. I said, "No. I know what it's like to grow up with that name." I wish I had named him Ming, but I have my grandson. That's okay.

***McCreery:***

What are the major lessons of this 1998 retention election, as you think back?

***Chin:***

People always ask me whether I think it's a good idea for judges to be on ballots. If judges have to be on ballots, I think the retention process is the best because it is not political. You look at some of the other states, where judges for supreme courts are running on party platforms. You look at Texas, where oil companies are bidding, making contributions to supreme court justices.

I did not want to have to raise a million dollars, but I was happy to go through the process as long as our system was better for it. I like to think it is better for it. It hasn't happened again.

If Ron and I had not mounted campaigns and had just faded into the woodwork and let these people have their say based upon their initial intent to mount campaigns—I think because Ron and I raised substantial sums of money early on in the campaign, it put a damper on what they were able to raise. So I like to think that it worked out best for the system, and I think our system is probably—if you have to have elections, I think retentions are the best way to do it.

Now, when we were talking about the Commission for Impartial Courts, one of the suggestions was, “Let’s get rid of elections for trial judges. Let’s have retention elections, for instance, for trial judges.” Can you imagine having a third of the L.A. Superior Court on a ballot, a retention ballot, in Los Angeles County?

The good thing about the trial judges is that they are not on the ballot when no one challenges them. So I was not on the ballot in Alameda County at the same time I was on the retention ballot for the court of appeal. Jeff Horner eventually got that seat in Alameda County. The clerk’s office in Alameda County asked me if I was going to come over and sign it. I said, “No.” [Laughter] But you’re not on the ballot in Alameda County, and yet I was on the retention ballot for the court of appeal.

So we considered all of that when we talked about it at the Commission for Impartial Courts. I think that our system is a good one, and it’s a good balance between contested elections and having the people not have any say about which judges are going to sit. It works fairly well, and let’s hope it continues to work.

But it’s not going to work if we ignore it. In other words, it has to be tended to. If problems are raised in the future about how this system is going to be challenged, and if they are problematic, it should be examined at that time. But for now I think it’s working.

## **Independent and Impartial**

### ***McCreery:***

I’m glad you mentioned the Commission for Impartial Courts, and I wonder if you could talk about that committee, how you came to it and its work.

### ***Chin:***

That was because of my good friend Ron George who came to me and said, “We’re talking about forming a commission for impartial courts, and we would like you to do it.”

I said, “Oh, no. Not another committee.” [Laughter] Because I had just done the science and law committee, and I had just done the program at the Salk Institute, and frankly, between you and me, I was exhausted. But I agreed with Ron that this was really important, it ought to be studied, and the Commission for Impartial Courts was born.

***McCreery:***

As an aside, given your experiences with the 1998 retention election, what was your personal level of interest in this subject matter?

***Chin:***

I've always been interested in maintaining an independent judiciary, and I know that people don't like to talk about it in those terms because people look at the term "independent judges," as meaning that judges can do whatever they want. That's not it at all. It's that judges make decisions independent of extraneous material and only look at the material and the facts that are in front of them in that particular case.

Justice Anthony Kennedy has worked for years in the field of judicial independence and the rule of law. I've really respected what Justice Kennedy has done in that regard. I kept in close contact with him. I told you about the trip we made to China. I told you about the visit I had with him in his chambers before oral argument.

***McCreery:***

The Commission for Impartial Courts itself—how did you approach that work, and what was the range of the most important issues that you confronted?

I think this commission did its work in 2008 and 2009, and then your report came out at the end of 2009, is that right?<sup>28</sup>

***Chin:***

That's right. But we divided it essentially into four groups. There were eighty members of this commission. The first group was campaign finance, headed by Judge Bill McLaughlin from L.A. Superior; the second was judicial campaign conduct, which was headed by Justice Doug Miller from the Fourth District Court of Appeal; judicial selection and retention was headed by Ron Robie from the Third District Court of Appeal; and the public information and education was headed by Justice Judy McConnell from the Fourth appellate district.

The executive committee had all of those chairs. I actually got Bruce Darling to sit on the executive committee, and what an important contribution he was. There are many important contributors, but Joe Cotchett from the San Mateo law firm of Cotchett, Pitre & McCarthy was an important part of the discussion.

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<sup>28</sup> [Commission for Impartial Courts, Final Report.](#)

Over the several years that all of these subcommittees met, we came up with some eighty-eight recommendations in each of these areas: campaign finance, campaign conduct, selection and retention. The piece that the current chief justice picked up and ran with was public information and education.

The first thing I did when we assembled the commission was to meet with the superintendents of public schools and talk to them about upping the requirements of civics education. The chief has taken that ball and has run with it with great success. That program in many schools throughout the state is an overwhelming success. She has even instituted annual awards given to various high schools for their programs.

The feedback that we're getting from the students who participate in these programs is remarkable. The requirements that the schools have instituted for civics education have been upped at every level, so I think the commission itself was productive. It was detail-oriented in the recommendations that we made, and most of the recommendations have been initiated.

***McCreery:***

What might you say to voters who are trying to make sense of these kinds of events?

***Chin:***

I talked to a lot of those voters in that election, and I went to a lot of the events, and I said, "If you want judges who are making decisions impartially, without outside influence, you cannot base it on politics. You cannot base your selection of judges based upon politics. You have to base your selection of judges on their ability to be independent, to be honest in every case that they take and not be influenced by something outside their courtrooms.

"This is a good example of something that should not be happening. You should not be bringing politics into your selection of judges. I know they're on the ballot, and I know ballots are always political. But in this instance, don't do it. It's a bad idea."

So I think that's the way you have to explain it to citizens. I think we got through in that particular instance, but it will come up again in some county.

***McCreery:***

As you said earlier, this term "independence" is troublesome in the way that people tend to interpret it. What do we mean by independent, and in what way are they confusing that with a judge's willingness or persuasion to make personally related decisions somehow?

***Chin:***

That's why we did not call it the Commission for Independence. [Laughter] Just because of that. We didn't want to spend the whole time explaining to people what we really meant. This is what we mean: "We want judges who are impartial."

It seems to have worked. We continue to talk about it in those terms when we talk to people who are not part of the internal judicial system. It seems to have been successful because you don't want to spend two years explaining what independent means.

I think we came up with some specific solutions. Hopefully they will work, and if they don't, change them. If we need to tweak it—this is not the Ten Commandments. These are eighty-eight recommendations made by people that were trying to predict what would help the system.

***McCreery:***

What about the information voters are given or not given at the ballot box about individual judges themselves and about the length of the terms being proposed? Your thoughts?

***Chin:***

The term being proposed and what is stated on the ballot is an interesting one. For a while, the term was put on the ballot, and the term was, "For the term of twelve years," or, "eight years," or, "four years," depending on what was left on that term.

Interestingly enough, during that period of time, those judges who had twelve-year terms received a lower percentage of votes. So it makes a difference. So it was changed to, "the term prescribed by law," which was more neutral.

A citizen might look at that and say, "Why do I want this person on there for twelve years?" But who knows what thinking went into that? But it seemed to be fairer to do it by, "the term prescribed by law."

Now, what information? The League of Women Voters has been very good about publishing information and making it balanced and objective information, not, "He was a career prosecutor that prosecuted  $x$  number of—" It is an objective statement about what the judge has done, and those statements on the ballot, I think, are helpful. At least I'm told that they're helpful.

But the interesting thing now is the Internet. You can Google anybody on the Internet, and it's amazing what you can find out. Not all of it is accurate,

but there is certainly a lot of information available to anyone who wants to get it, so you can't really say that, "I don't know who these people are." [Laughter] If you really wanted to know, you could find out, and you could find out more information than you ever wanted to know.

I think our technology has made it easier for the public to be informed if they want to be. So the information is out there, and I think the judicial system is becoming more and more transparent because of the technology.

I think we have to be careful that we don't cross the line in the area of privacy and that in this technological revolution that we are experiencing we also pay attention to the privacy aspects of the issues involved in all of this technology, as well as the benefits of having this valuable information widely available.

So I think the more information the public has about their judges and the judicial system, I think the better off we'll be, as long as it is accurate. I don't know how we're going to get to that point and who's going to monitor it, but—

***McCreery:***

You certainly have maintained a substantial interest in judicial independence, as we've been talking about it. I happened to notice a reprint of a speech you gave back in mid-2010 at a symposium on democracy and the courts. You were just talking about whether judicial independence was being attacked in various modes by people attempting recall campaigns and targeting judges or others based upon single issues that they might have supported or not.

Just in general, tell me your thoughts about how the public understands these kinds of things and what you in the legal field can do to improve their knowledge.

***Chin:***

You are going to put judges in jail based upon whether you agree or disagree with their sentence, or whatever you disagree with?

These kinds of attacks are dangerous, and actually that is one of the reasons that Ron George asked me to head the Commission for Impartial Courts. We saw these things happening in other states, and we wanted to try to head it off and not have it stick its head under our tent so that we could head it off before it got any momentum going.

It's important to pay attention, not just to what is happening here in California but to what is happening in other states and whether anyone might find an interest in importing it, importing these problems to California.

Justice Sandra Day O'Connor has been one of the preeminent stalwarts in advancing judicial independence and making sure that judges are impartial. She continues to work on these issues. It is important for all of us, not just here in California but in other jurisdictions.

***McCreery:***

And yet this whole question of recalling or not retaining, let's say, a judge is ensconced in our system here in California. We have this whole system of initiative, referendum, and recall, and the citizens have chosen to exercise that power different times over the years. How do you think about that power enshrined in our constitution and how it affects the judicial branch overall?

***Chin:***

We had a recent example of that here in California, where a judge was recalled based upon an individual sentence. I know there were a lot of attorneys who were involved in that attack. There were also a lot of attorneys who defended that judge, and many of them were on the same law school faculty as the individual who raised this issue.

I don't know what the answer is, other than reasonable conversation. The prospect of being removed for one sentence is not particularly encouraging to judges who have to do this sort of work.

I'll give you an example. When I was on the Alameda Superior Court, I handled all of the felony sentencing for southern Alameda County. That meant that I spent all week, in between dealing with civil cases, civil juries, talking to district attorneys, defense attorneys, about resolving their particular cases, and those particular cases would be sentenced on Friday. So I would spend all day sentencing felons on Fridays.

I did not give one thought to what effect any of those sentences would have on my judicial career. I looked at those cases individually based upon individual defendants, their probation reports, the facts of that particular case, the law applied to that case and nothing more. That's what judges have to do.

If you then insert into that an element where a judge has to look over his or her shoulder and worry about the press, or worry about some segment of the bar, or worry about anything other than what that case is about, our system will not be what it should be.

So I have to encourage all lawyers, including the lawyers at Stanford Law School, to think about what they're doing before they advance this sort of thing. I know the whole thing is controversial, and I'm not going to talk about

the specifics of the case. But you have to think about the effect it has on the system and how it should or should not affect judges as they are making these decisions.

***McCreery:***

Speaking of effects, I wonder what you are noticing or hearing from younger colleagues about their interest and willingness to enter the judiciary, given this environment where it's known that they may have to look over their shoulders?

***Chin:***

I know a lot of new judges. I don't know anybody who is going to be looking over their shoulders, fortunately, and that's the way it ought to be. I hope that is the way that judges continue to operate in spite of the attacks. I know it is difficult; we should not make it more difficult.

**Shaping the Law on Summary Judgment**

***McCreery:***

Thank you for reviewing some of these concepts with me. We pledged that we would get back to a trio of cases that we touched on a little bit earlier this morning having to do with summary judgment, and you brought those up in the context of talking about your former colleague, Justice Stanley Mosk. Speak about each of the three, if you would, how they're tied together, and what it means.

***Chin:***

The last area of the law that Justice Mosk and I helped shape was the standard for a motion for summary judgment.

Before 1992, courts in California took a very narrow and cautious approach to summary judgment motions. For example, in 1988 the California Supreme Court said that because summary judgment is "a drastic measure that deprives the losing party of a trial on the merits," it should be used "with caution so that it does not become a substitute for trial."

Thus, summary judgment was rarely used and widely disfavored. To obtain summary judgment under California law, a defendant had to conclusively negate a necessary element of the plaintiff's case and show that under no hypothesis was there a triable issue of material fact. In 1992 and 1993, the legislature twice amended the summary judgment statute. After those amendments a

number of legal questions arose as to the effect on the existing standards for summary judgment in California.

The situation was complicated by a trilogy of U.S. Supreme Court decisions in 1986 that interpreted the federal summary judgment rules. Those decisions revamped the federal procedure by enlarging its scope and making it easier for the moving party to obtain summary judgment.

Depending on who you talked to, the 1992 and 1993 amendments to California's summary judgment statute either did or did not adopt, in whole or in part, the federal test established by the U.S. Supreme Court. Compounding the uncertainty was a legislative history that at least one commentator called convoluted. It wasn't Justice Scalia. [Laughter] But the legislative history was a mess.

Now, here in California we began to grapple with the issue in 2000 in a case called *Guz v. Bechtel National*.<sup>29</sup> Guz was an employee of Bechtel. Bechtel fired him at the age of forty-nine when it eliminated his work unit and transferred its duties to another office. Guz sued Bechtel for age discrimination, breach of implied contract to be terminated only for good cause, and breach of the implied covenant of good faith and fair dealing.

In the trial court, Bechtel obtained summary judgment. The court of appeal reversed in a split decision. The majority found that Bechtel failed to demonstrate grounds to foreclose a trial on any of Guz's claims.

The Supreme Court reversed. We noted the ongoing debate over whether the 1992 and 1993 amendments had adopted existing federal standards governing federal summary judgment motions. But because the case involved so many issues, we were unable to resolve the ins and outs of California's general summary judgment test. The court's opinion did not weigh in on that debate.

I signed the majority in *Guz*. But I thought the case presented a good opportunity to at least start examining the question, so I wrote a concurring opinion stating my view of what the 1992–1993 amendments meant. Without getting technical, I was basically concerned with the difficulty of proving a negative. It seemed to be necessary under previous California law, but how can you prove that something does not exist and cannot exist? I also thought, basically, the various court of appeal opinions could ultimately be reconciled and distilled into a relatively straightforward and reasonable rule.

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<sup>29</sup> *Guz v. Bechtel National, Inc.* (2000) 24 Cal.4th 317.

One of my colleagues—I think it was Justice Brown—I could be wrong, but I think it was Justice Brown who signed my concurring opinion. But no one else expressed a view one way or the other.

A year after *Guz* the question came up again in a case that Chief Justice Ron George assigned to me. *Saelzler v. Advanced Group 400*<sup>30</sup> was a case where Saelzler was an employee of Federal Express. Saelzler was seriously injured during a criminal assault at an apartment complex while she was trying to deliver a package. She sued the owners of the apartment complex, claiming they were responsible, in tort, for injuries because they negligently failed to provide adequate security measures to protect those who enter their property.

In the trial court the apartment owners obtained a summary judgment based upon Saelzler's failure to show that any breach of duty to safeguard her was a proximate cause of the assault and her injuries. In another split decision, a majority of the court of appeal reversed, finding that, by itself, the apartment owner's failure to take any required security measures could reasonably be found to be a contributing factor in any criminal activity in the area.

We reversed the court of appeal. I wrote the majority. In doing so, we adopted the summary judgment test I discussed in my concurrence in *Guz*. We began by explaining that a defendant is entitled to summary judgment if it “conclusively negates a necessary element of the plaintiff's case or demonstrates that under no hypothesis is there a material issue of fact that requires the process of a trial.”

We then explained that the 1992 and 1993 amendments to the California summary judgment statutes had modified the traditional rule by authorizing summary judgment if a defendant shows, after an opportunity for discovery, that plaintiff has not established and cannot reasonably establish, an element of his or her claim.

This modification altered the prior rule that precluded a defendant from establishing a right to summary judgment based upon a plaintiff's vague and otherwise insufficient discovery responses. In this regard, the 1992–1993 amendments to California's summary judgment statute adopted the federal mechanism of burden shifting.

In *Saelzler*, three justices dissented on grounds that had nothing to do with the general summary judgment standard, so at this point four justices, a majority, had spoken on the general standard but the other three had not expressed a view either way.

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<sup>30</sup> 25 Cal.4th 763 (Cal. 2001).

**McCreery:**

What's your take on that, by the way?

**Chin:**

I've learned that being here and advancing the law takes great patience with your colleagues.

You may have something in mind as far as summary judgment is concerned, but it takes time for everybody to get on board.

So I was patient because the court made it unanimous two weeks later in *Aguilar v. Atlantic Richfield*.<sup>31</sup>

**McCreery:**

How was *Aguilar* received out there in the world, and what difference has it made for California law?

**Chin:**

The trilogy of cases, I think, has advanced the use of summary judgment. I think Justice Mosk is still getting his way, that people who deserve to have their cases heard in trial are still getting them. It has not done any damage to that segment of the law, so I think Stanley would be happy. At least I hope so.

## **On Justice George's Leadership**

**McCreery:**

We've been talking a little bit about the overall administration and leadership of Chief Justice George, both of the Supreme Court and of the statewide judiciary. I wonder if you can talk about what it was like to watch him go out in his liaison role, around the state, around the judiciary, and in Sacramento to advocate for this branch?

**Chin:**

Ron George, when he was at Princeton, gave serious thought to—he studied international relations—he gave serious thought to becoming a diplomat. He would have made a fine diplomat because he managed the Supreme Court and the judicial branch with all of the best elements of being an ambassador of goodwill. He was firm but always polite. He was an individual who could keep ten balls floating in the air at the same time.

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<sup>31</sup> *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826.

Some of his decisions were not liked. That's the way it is when you make decisions. He had to make tough calls, but when you think about, from a historical standpoint, bringing the municipal and superior courts together under one tent—what a remarkable accomplishment. Then to have statewide funding on top of that.

***McCreery:***

What about the liaison with Sacramento and the kinds of major changes the state was facing as a whole during that time, including some real economic cycles?

***Chin:***

In that regard, Ron George was probably the best person to do it at that time. I don't know if you've heard, but after they came out with term limits for legislators and the Supreme Court heard the case challenging that law, Malcolm was *persona non grata* in Sacramento.

I've heard—I don't know this, but I've heard—that he was not invited to give the State of the Judiciary. Historically, I don't know whether that's true, but I've heard that. But as soon as Ron George came in, they reinvited the court to come to Sacramento, and they kept it up every year of Ron's tenure.

I think that Ron George had a particularly good relationship with every governor, first with, certainly, Pete Wilson, who appointed both of us, but with every governor after that. I think he had a good working relationship, including with Gray Davis. Gray Davis was a really good governor to work with as far as the courts were concerned, and his appointments secretary, Burt Pines, was incredible.

Ron George had those same kind of working relationships with governors of both parties throughout his entire tenure.

His sudden departure, though, which he announced in 2010, right about the time everything was collapsing, led me to wonder whether he was a fortune teller and knew what was coming and wanted to vacate before the budget crisis of the recession. When Tani came on board as chief she had a real fire on her hands.

But Ron did a stellar job and was well liked by all the members of the court. Of course we had our disagreements, of course we had our arguments, but Ron was able to smooth over most of them and get us back on the right track.

## The Court in Tough Times

### *McCreery:*

What about those periods of economic bust and the effects on the judicial budget as a whole—court closures one day a week at the trial level, all kinds of effects on staff, and so on. How did that reach you here?

### *Chin:*

It was grim because we, as the Supreme Court, have to support the trial courts and the important work that they have to do every day. We know that it became more and more difficult for courts to do their work because of the drastic cuts that were required in the judicial branch budget. It's difficult to pass on to the legislators who are making these decisions about the budget to the governor, who is making decisions about the budget, the drastic effect that it's having on the trial courts.

One of the things that we tried to do to weather the court closures was to use more technology.

There were many courts closed in the Central Valley, and people had to drive long distances to get to court because of the closure of the courts in their small rural areas. So we instituted a process in Fresno to make remote appearances easier for the people out in the country who could not come into the downtown courthouse in Fresno. That project is still advancing today. We are trying to do more and more remote appearances so that people do not have to come to court and wait. We call it being online rather than in line.

It seems to me that witnesses, parties to litigation can make remote appearances to courts using their phone or using their computer. We ought to accommodate that because people are getting more and more used to using these instruments.

The courts ought to be able to incorporate that into the process and not say, “Oh, no. We’re not going to use technology in our courts. We’re going to continue to use the pen and quill.” [Laughter]

### *McCreery:*

As you point out, this increases or finds a way to improve access to justice, as we call it, for these individuals who are sometimes in far-flung areas of rural counties, let's say. But there's also the economic argument that it results in efficiencies in the court's budgets. What sense do you have of that?

***Chin:***

I want to talk about the efficiencies in the people's budget, the individuals who are using our courtroom. We don't need people waiting outside of our courtrooms. They have jobs. We ought to have them in their jobs, and they can take ten minutes away from their job to make a traffic appearance. They don't have to come downtown and wait for three hours outside of a judge's courtroom.

We ought to think about the economics of the system with respect to the people's budgets so that all of our court system takes into account the time that jurors are spending with us, the time that witnesses are spending in our courtrooms, the time that participants in these cases are spending in our courtrooms. If they can make these appearances remotely, why not let them do it?

Why do we need an expert flying in from Chicago when they can sit at their home computer and give the expert testimony that's needed in the downtown courtroom in Fresno? Why do we need interpreters flying all over the state when we can have a group of interpreters in one location and have them interpret matters in the hinterlands of California rather than having interpreters in every small county?

So there are lots of things that we're thinking about. We even have these pilot projects for these interpreter proposals, so I'm optimistic that we will eventually be able to have a court system that takes into account not just the court budgets, which will improve if we use this technology, but also the people's budgets who are using our courtrooms.

I think, frankly, their budgets are just as important as ours, and if we make our courtrooms accessible to more of those people and take less time away from their jobs where they're earning a living, the happier they will be to participate in our court system. So I have a big plan.

***McCreery:***

Your excitement about this is infectious, I must say. A goodwill ambassador in action here.

***Chin:***

I hope it works, and I'm optimistic that it will because the people involved in developing these programs are excited about them, and they're willing to share them with the other counties. That's the idea we had when we started it, and it's already moving in that direction.

## New colleagues

### *McCreery:*

I'm going to ask you just briefly about perhaps just one other thing today, and that is a couple of new colleagues who came on to this court when Chief Justice George was still leading your group. First of all, Justice Carlos Moreno, the appointee of Governor Gray Davis, who came directly from the Central District Court of California. That was in 2001.

### *Chin:*

I knew Carlos well, way before he became a federal judge. I worked with him on many committees while I was on the trial court and the court of appeal. It was with real excitement that—I of course missed Stanley intensely but was happy to welcome Carlos to the court.

### *McCreery:*

What did you all talk about, do you recall?

### *Chin:*

Oh, we were excited to welcome Carlos to the court. Of course, we knew his wife Chris, who by the way is an amazing artist. The work that Carlos and Chris did for a child—you just did his—?

### *McCreery:*

She's an adopted daughter now, yes.

### *Chin:*

I remember looking with admiration at what those two did for that child and the sacrifices that they made. Talking to them, you wouldn't think it was a sacrifice at all. They were so devoted to her.

Anyway, it was a real treat to have Carlos on the court. He was a welcome addition.

Of course, we also disagreed on major cases, but it was always a pleasure to talk to Carlos about issues. He was always engaged and always committed.

He did not rant and rave. He simply stated his positions, and I simply said I agree or disagree. [Laughter] Anyway, I was shocked when Carlos announced that he was leaving. Of course, it was right after Jerry Brown was elected, and it was right after—yes, Tani came in right after that, right?

***McCreery:***

Yes. Chief Justice George had announced his retirement, and then—

***Chin:***

So Tani was on the ballot, and Carlos was. They were both on the same ballot because Carlos was elected and then he retired, I think. Yes, he was because Stanley Mosk and I were on the same ballot. Stanley and Ron and I were on the same ballot, so Carlos had to be on that ballot, and then he resigned after he won.

Tani was appointed, and Carol was appointed to replace Carlos? Or am I wrong? Oh, no. Carol was appointed to replace Janice Brown when she went to D.C. And then Goodwin was appointed to replace Carlos. That was it. Now I've got it. It's hard to keep track of these chess pieces.

***McCreery:***

Just quickly, let me ask you to talk about the arrival of Justice Corrigan. We've just said that was in 2006 at the appointment of Governor Schwarzenegger to replace Justice Brown.

***Chin:***

Carol Corrigan was one of the individuals—I think, actually, the first individual, who we recommended to Governor Wilson for appointment to the Alameda Superior Court. Then to have her appointed to my division of the court of appeal.

I could not believe that I was so fortunate, to now be able to sit with Joanne Parrilli from the D.A.'s office, from the same trial court, now Justice Corrigan, along with Bob Merrill. You couldn't ask for three better individuals to work with on a daily basis on difficult matters.

I asked Carol to speak for me when I was up for the Supreme Court, and she did the usual superb job.

But when Carol was confirmed to the Supreme Court she asked me to speak for her, and I did that. But Marv knew that something was wrong because he says that I sat at the confirmation hearing with my head in my hands.

***McCreery:***

You were in pain?

***Chin:***

I apparently was in pain. I just thought it was the usual nerves. But I must have been in pain. Anyway, John and Lois Herrington are good friends of both of ours, and John was the secretary of energy for President Reagan, as well as the secretary of the navy for President Reagan. Lois Haight Herrington eventually became a judge in Contra Costa County. Lois also spoke at Justice Corrigan's confirmation hearing, as well as Marty Jenkins.

So there's a theme here that is kind of recurring. We all came from the same D.A.'s office, and Lois went to the Contra Costa Superior Court rather than Alameda County because she lived out there. Anyway, John and Lois had a wonderful restaurant called Vic Stewart's out in Walnut Creek, and they had a wonderful dinner for Carol that night, so my wife Carol and I attended it.

I don't know how I made it through that dinner, but I had a headache, a bad headache. I went to the emergency room the next day in Alameda, and they took an MRI and said that I had a subdural hematoma.

They said it had to be operated on immediately, so I called my goddaughter.

They brought me in an ambulance over to CPMC in San Francisco.

Carol kept asking me at the hospital in Alameda, "Do you want to do this? Do you want to do that?"

I said, "Dear, you have to decide. I can't. My head is in excruciating pain." It felt like somebody had a vice and was squeezing it on my head.

So Carol made all of the decisions. They brought me over by ambulance to CPMC, and I was operated on immediately.

Anyway, I was in intensive care for a month. I was in rehabilitation for a couple of months after that. Carol said, "Don't do that again." [Laughter]

I said, "I'll try not to."

But anyway, when I finally came back to work, Carol Corrigan suggested to our colleagues that they all shave their heads as a show of unity with me. Marv and Ron didn't much care because they didn't have much hair, but Joyce and Kay were alarmed. So they decided to get these hats, and that's the hat that is hanging on my coat rack.

***McCreery:***

The hats say above the bill, "The Supremes."

***Chin:***

The Supremes. Anyway, that's how I welcomed Carol onto the court. I was gone for several months. [Laughter] But that's when I came back, and things have gone really well. It's so much fun to have Carol down the hall because we work on very serious matters, but we never take ourselves too seriously.

**A Judicial Approach*****McCreery:***

We've been talking about the period of time when you were first taking your seat on the California Supreme Court and about some of the general operations of the court and a couple of your new colleagues who came after you did. I wonder if you could just begin to reflect on the process of approaching the main work of the court, that is, writing legal opinions and you can tell, perhaps, about your very first opinion.

***Chin:***

I cannot tell you about the very first opinion. There were certainly interesting cases, but the one that jumps out is *Humphrey* because it was, as we say, plowing new ground.

Whenever you do that it attracts a lot of attention in the court. We were dealing with the domestic violence issue, a spouse being abused by her partner.

I suppose all those years in family law may have given me a very different perspective because I saw it up close and personal. I've told you some of the stories about conversations with individuals who were in my courtroom and the fact that I really did enjoy the family law court.

I was really attached to solving people's problems, particularly in the area of domestic violence. It is absolutely awful to hear some of the first-hand stories about what people put their spouses through.

So when I got *Humphrey*, I had a different lens to look through. I thought it was important to plow this new ground and give women who are abused in the home the opportunity to explain what is going on and to have experts explain what this means.

So it was an important decision for me, and it was an early decision when I was on the court. I was pleased to read some of the commentary on *Humphrey*.

In one editorial, the writer said, "Writing for the Supreme Court, Justice Ming W. Chin said that, 'Because evidence of battered woman syndrome may help the jury understand the circumstances in which the defendant found

herself at the time of the killing, it is relevant to the reasonableness of her belief' about the danger she faced. A jury should give such expert testimony whatever weight it desires and 'the ultimate judgment of reasonableness is solely for the jury.'" And the writer said, "That's appropriate."

So I tried very hard to write that decision in a narrow way. It attracted a lot of attention from the court, and there were lots of different opinions.

But that was one of the early opinions, and I thought, how lucky am I to be with colleagues on a court with many different opinions, and each of them is able to express their opinion on a new area of the law and to see how it develops.

That was really my first experience on working with seven people. There were seven of us working on that. For many years I worked on the court of appeal, but the numbers are a lot less. You only have to convince one other person. Here you have to convince three people. It takes a lot more conversation. It takes a bit more in-depth research to get to reasonable answers when you have more people.

## **Approaching Capital Punishment Cases**

### ***McCreery:***

On capital punishment, talk a little bit about those cases as they came to your chambers and how you could integrate that work with the rest of your caseload as a young justice here.

### ***Chin:***

That was a real challenge because the capital cases are much more complex. Some of the records take up entire rooms. It is easy to put them aside and work on the civil cases that I'm really interested in or some of the criminal issues that I'm really interested in.

I felt it was my responsibility to work on all the cases that were in my chambers, including the automatic appeals so I tried to get the work done on the—I don't want to say "routine" cases, but the bulk of the civil and criminal cases that were assigned to my chambers, as well as the automatic appeals.

I don't think that chambers ought to be not paying attention to the automatic appeal workload that is backing up in their chambers. It's not going to be in any newspaper. It's not going to make any headlines. But I think that it's our responsibility to keep it all moving. You can't say that the automatic appeal process is dysfunctional if we are dysfunctional in managing it, and that's all I'm going to say about the subject matter. [Laughter]

**McCreery:**

But as you pointed out, it is a significant drain on time and resources of the court overall.

**Chin:**

It really is, and that's why we started the Capital Central Staff, because the Capital Central Staff is taking cases from chambers, working on them, working up calendars, taking them back to the chambers. Now, you can imagine a Capital Central Staff attorney working with seven different justices on an automatic appeal.

It is a challenge because every one is difficult. Everyone wants their cases done in a certain way. So it is not easy, but I think the Capital Central Staff has done a good job working with a lot of different personalities and a lot of different approaches. So I think it has worked. I think it's working. Still a lot of our workload and a lot of the output are capital cases.

**McCreery:**

I wonder how your own views of how our state and our court system is handling this matter—how your own views might have evolved over these years?

**Chin:**

I think that the legislators and the executive branch might think about how they want to approach this area of the law because the governor has said, "We're not going to do A, B, C, and D," but that doesn't change the internal processes of the courts. The district attorneys are still trying cases, and the trial courts are still hearing them. They're still coming through to us, so at some point somebody has to make a reasoned move on what they want the state to do in this area.

I will be long gone by the time that happens, but I hope somebody makes a decision. There have been initiatives on the ballot. Whether there's going to be another one is not under my control, but something has to be done.

**McCreery:**

You've made reference to Governor Gavin Newsom's moratorium in March of this year.<sup>32</sup> How did that strike you when that was announced?

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<sup>32</sup> In 2020, Governor Gavin Newsom signed an executive order placing a moratorium on the death penalty in California. He said the action was needed because the death penalty was "unevenly and unfairly applied to people of color, people with mental disabilities, and people who cannot afford costly legal representation." [Executive Order N-09-19](#), Executive Department, State of California.

***Chin:***

It's the governor's prerogative, and I know the governor. I went to the governor's first wedding, and I gave the commencement speech when his first wife graduated from the University of San Francisco. I've had dinner with Kimberly and Gavin. I knew Gavin's father well. Bill Newsom was a good friend, and we worked together on the court of appeal for many years. I think I told you, in the retention election, that Bill was incredibly supportive.

But the governor has to think through these orders, because it really doesn't change what happens in the courts yet. When Gavin was the mayor of San Francisco, he went through another thing involving same-sex marriage licenses, and he just took it upon himself and said, "We're going to issue marriage licenses."

Well, Gavin, you kind of have to follow the law, and we eventually told him that.

***McCreery:***

Thank you for your comments, though, on Governor Newsom's moratorium and how the court's work on the death cases has to proceed until something changes on a grander scale. But let's cast our minds back to the fact that California was conducting executions at the time you came on the court, and indeed that continued for a period of about ten years or so. I wonder if you could just describe for me as you learned it from your own experience the court's role when an actual execution is set to take place.

***Chin:***

We are here at the court the entire time, the entire day when an execution is scheduled. We meet in the chief's chambers. The call is made from San Quentin. "Are there any matters pending before the California Supreme Court regarding this defendant?" And if there are none, the chief answers no, and then the execution proceeds.

So we are all there, and we're all there for the entire time leading up to it in case there's anything that comes in that has to be talked about and voted on. It was a sobering experience because it's different to talk about these cases hypothetically or abstractly. But when that minute comes and you're responsible for saying yes or no, it's a heavy responsibility. I remember looking at the faces of my colleagues, and I could feel and see the weight of that responsibility on their shoulders. No one took it lightly.

***McCreery:***

May I ask, what was the experience for you personally of being on hand as these executions were carried out?

***Chin:***

It was tough. Being in the D.A.'s office I had this general favorability for the death penalty in certain extreme cases. I think the death penalty law that we have reserves that punishment for the worst of the worst cases. As I read through the details of the records I thought, these are awful crimes.

So I did not and have not changed my opinion favoring the death penalty for the sometimes horrible atrocities that are inflicted on other individuals by defendants who are sentenced in this way. So the more I read those records, the more I looked at the details of the evidence in those records, the more it convinced me that if the trial was handled appropriately and there was no reversible error, that the punishment is appropriate.

I know that it's a difficult decision, and I know that the other side of it is, this is a human being and no one should kill another human being. I understand the argument, but after looking at so many of these cases I think that if individuals looked at the records I've looked at and determined that, yes, these individuals did those horrendous things, that they might come to a different conclusion. Maybe not. Maybe they would see it the same way. I would like to give them some of those records.

But it would also not upset me if the electorate or the legislature or the governor or somebody in the position would say, "We shouldn't be doing this." I would follow it. But if we have it, we ought to be careful and compassionate in carrying it out. But this halfway point, not in not out, doesn't help anyone.

***McCreery:***

If I could just ask for your comment, what about the circumstances that are appropriate for assigning a penalty of death in the first place. We have special circumstances that apply, and those have changed a bit over the years. As a former prosecutor and a former trial judge, your thoughts?

***Chin:***

That's kind of what I was referring to. We have really winnowed the appropriate death penalty cases down to the ones that are the most horrendous.

Whether that has to be adjusted over the years I leave to the people who are making the policy judgments in Sacramento. I think we're in the right place so that only the most serious are found to be appropriate for a judgment of

death. I mean, it has to be pretty bad, and I think, at least from the ones I've seen, we're there.

My son was in charge of the cold-hit unit in the Alameda County district attorney's office. By the way, I recuse myself on anything that Jason Chin touches in the D.A.'s office. But while he was in charge of that unit, he solved a twenty-one-year-old murder case in San Leandro. He actually found a witness who was now in a rest home out in Livermore and was finally able to coax her into talking to him.

When you're dealing with these kinds of cases up close and personal and not hypothetically, they become a lot more real and you take into account all of the people who this incident affected twenty-one years ago. So my son is doing good work.

### **Work on Cases and the Expert Standards: "Best Part of the Job"**

#### ***McCreery:***

Indeed. Thank you for that discussion. If you like, we can return now to some other types of cases that you worked on, again thinking about your earlier years here on the court. You were said to be quite productive, even early on. Someone noted that you had six majority opinions in your first nine months. [Laughter] But really, how did you start out so prodigious?

#### ***Chin:***

You remember I told you about my work on the farm. I was raised to work long, hard days every day, and that really carried through to every position that I've held, in the D.A.'s office, in private practice. I remember when I went on the bench. I think I told you that five o'clock would come around, and I'm just getting warmed up. The jury wants to go home, and the clerk wants to go home, and the bailiff wants to go home. [Laughter] I could have stayed for several hours, but I did not prevail on them to do that.

But even when I came to the court of appeal, I was there to do the work on the cases. Frankly, that was the best part of the job. When I came to the Supreme Court, working on the cases was the best part of the job.

So I really relished, first of all, learning new things and getting new cases. Every case was interesting for different reasons. The new areas that I had to get familiar with were always exciting.

I always tell my externs and new lawyers that, "Don't turn off any channels of information where you can learn something new." When I was assigned to family law I had to learn it from the ground up, but I wanted to do it well.

**McCreery:**

Let's turn our attention to a few of the other opinions that you authored early on. But first, may I ask you to comment on one that you did not author—but this was June of 1996, so early on in your tenure—a unanimous opinion by Justice Kathryn Werdegar addressing the three strikes law, Proposition 184, that voters had passed in 1994.<sup>33</sup>

**Chin:**

I remember I thought Kay did a terrific job on that case. As I recall I wrote a concurrence. I don't remember why.

**McCreery:**

It was a separate concurrence on a unanimous opinion. Correct. Yes. But what did that opinion represent in terms of the interaction between the branches and carrying out the will of the people versus these propositions?

**Chin:**

The three-strikes initiative took on a life of its own, and of course, I think, Kay deftly dealt with it. But I would have to go back and refresh my memory about the details of the opinion because it was one of the first cases that I worked on when I was here, and that was twenty-three years ago.<sup>34</sup>

**McCreery:**

But you did stand apart in this separate concurrence, so without getting into the details of that particular concurrence, what would it take for you, as a newer justice, to take that step?

**Chin:**

I haven't written very many concurrences—or dissents, for that matter. But when I have written, I felt pretty strongly that the majority opinion needed to be tweaked. The dissents that I have written and the concurring opinions that I have written in the area of arbitration are prime examples of times I thought the majority needed to be tweaked a bit.

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<sup>33</sup> Known as "Three Strikes and You're Out," the law was enacted as Chapter 12, Statutes of 1994 (AB 971, Jones) by the Legislature and by the electorate in Proposition 184. The law required, among other things, a minimum sentence of twenty-five years to life for three-time repeat offenders with multiple prior serious or violent felony convictions. It was passed at a time of high crime rates in the state. For more on the law, see James A. Ardaiz, *Three Strikes Law: History, Expectations, Consequences* (2000) 32 McGeorge L.Rev.1.. Ardaiz is formerly presiding justice, Court of Appeal, Fifth Appellate District. The law has since been watered down.

<sup>34</sup> The three strikes opinion in *People v. Superior Court* (Romero) and the concurrence appear at 13 Cal.4th 497.

I haven't read the *Romero* concurrence for twenty-three years, but my guess is I probably felt that way about the separation of powers issue as far as Kay's discussion of it. But I would have to go back and refresh my memory.

**McCreery:**

Please talk about some of your other majority opinions from that early time. What stands out to you in terms of the kinds of legal themes that were arising in the second half of the nineties, shall we say, or about then?

**Chin:**

There were two DNA opinions, but I was not the author. But they certainly dealt—*People v. Soto*<sup>35</sup> and *Falsetta*.<sup>36</sup>

*Venegas* was 1998. Oh, sure. Did Marv Baxter draft all three of them? I don't remember. I know that Marv drafted at least one of them, but at any rate—oh, *Soto* is the second one.

**McCreery:**

Yes, *Soto* is the second one.

**Chin:**

Right. And I think *Venegas*—I think Marv drafted the majority, and in that case he agreed with me on *Barney*, and he agreed that the dispute among the scientific community was still being aired.

I think the National Research Council was in the midst of a study talking about the positions of the two geneticists and their dispute over what it meant when there was a match and whether the prosecution was overstating the statistical probability. I think in *Venegas* the majority agreed with that.

By the time we got to *Soto* the next year, the National Research Council had come out with their study settling the dispute between the two geneticists, the population geneticists, and in *Soto* we said that the scientific community now is in general agreement, so based upon *Kelly* it was accepted.

I think that *Barney* raised an important issue dealing with scientific evidence. I know that in the case that California had before I got on the court, they did

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<sup>35</sup> *People v. Soto* (1999) 21 Cal.4th 512.

<sup>36</sup> *People v. Falsetta* (1999) 21 Cal.4th 903.

not adopt the *Daubert*<sup>37</sup> standard, that they kept with the “general acceptance” test under *Kelly*.

I still think that the analysis in *Kelly* is much more than one-dimensional. Some people describe it as one-dimensional. I don’t agree with that.

When you look at whether the science is generally accepted, you can’t just look at the conclusion of what the scientists agree or disagree on. You have to look at the analysis. You have to look at the literature involving each position and whether the literature supports or detracts from that position.

So I don’t see how that can possibly be one-dimensional. I wasn’t on the court. I can’t remember the name of the case. I wasn’t on the court, but I don’t disagree with it. I was present when *Daubert* was argued, as I told you before. I think that these cases and the one that we will eventually talk about, which is fairly new, is *Sargon*.<sup>38</sup>

I think the reports in the press were that “*Sargon* oozes *Daubert*,” I think was the description they used. [Laughter] Well, I think it oozes *Kelly* because I think *Kelly* said that—they may not have used these words, but—the trial court is really the gatekeeper, and the trial court has to look at the expert witnesses and examine whether this expert is stating a legitimate scientific position, or is it junk science? That’s not a one-dimensional examination. It goes into all of the analysis and the argument behind the scientific positions.

When I went to the program at James Watson’s Long Island lab, we had a discussion about expert witnesses, and he said, “When you get experts, I recommend you lock them in a room and tell them not to come out until they can tell you everything that they agree on and everything they disagree on. You will be shocked at how little they disagree.”

I said, “That would be an interesting approach.” I said, “I wouldn’t recommend you lock the door, but it would be an interesting approach to get what they really disagree on and it would be easier for a finder of fact. If you put that in front of a jury in those terms, they would have an easier time sifting through it, rather than throwing everything at them and saying, ‘You sift it out and figure out what’s going on.’”

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<sup>37</sup> The *Daubert* standard, established by the U.S. Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals* (1993) 509 U.S. 579, is a standard for a trial judge to assess the reliability and relevance of witness testimony before it is given to a jury. In effect, it offered a more rigorous approach that requires a judge to scrutinize not just an expert’s methodology but also the underlying principles. Cornell Law School, [Daubert Standard](#). It contrasts to the *Kelly-Frye* standard, which says an expert opinion is admissible if the scientific technique on which it is based is “generally accepted” as reliable in the relevant scientific community. Angelica Cappellino, [The Frye Standard in Expert Testimony](#), Expert Institute, July 10, 2024.

<sup>38</sup> *Sargon Enterprises, Inc. v. University of Southern California* (2012) 55 Cal.4th 747.

No. You tell us what you disagree on, and that's what we have to decide.  
[Laughter]

***McCreery:***

This whole area of expert witness testimony has become a whole thing unto itself over these years.

***Chin:***

Oh, it is. It definitely is, and it's so important for the finder of fact. It's so important for a jury because they're swimming in this sea of information, and they're looking for people with expertise in particular areas to help them sift through this information. It's so important that the trial judges look at these expert witnesses and be a gatekeeper on what can be admitted and what cannot.

Of course, the object of the exercise is to keep out the junk science and let the legitimate science in, and once you let it in, have them tell you what they agree on and what they disagree on. I think that science will become a more and more important part of our judicial legal proceedings. It's important that judges be familiar with it and be able to handle it reasonably.

I'm convinced that we ought to use technology to do a large part of that. I don't think we should have to fly experts halfway around the world to come to San Francisco to testify. They can do it remotely. They have remarkable communication equipment that can be used. But the judicial system ought to be able to adapt.

***McCreery:***

You're predicting that science expertise will become more and more important for the judiciaries themselves in order to carry out their work. What's the best way to accomplish that, to prepare jurisdictions for handling science matters well?

***Chin:***

One of the things—I chaired the law and science committee. I put on the first science and law program for judges that I told you about at the Salk Institute. I was pleasantly surprised that, number one, the judges were interested and, number two, they wanted more of it. So we continued.

The next one we did at UC Riverside, I think. It was on neuroscience. Both of the programs were really well accepted, and the judges wanted more of it. And we did not water down the science. We had five world-class scientists. One of them was Inder Verma from the Salk Institute.

I gave the keynote address for the program, and I thanked Inder Verma for helping us put this entire program together at Salk. I had pictures of him, recently, from a *Time* magazine article. About five minutes into this thing, Inder says, “Ming, would you please take down my picture?” [Laughter] But he was a world-class scientist on gene therapy. The thing at that time was finding a vector to insert the gene.

***McCreery:***

So to speak. [Laughter] But you’re saying continuing education programs like this are an important way to bring judges along?

***Chin:***

Yes, and it worked. The judges were incredibly interested. We took them into the lab, and they performed a PCR-DNA examination—some of them successfully, some of them not. [Laughter] We also had post doctorate students at Salk. We assigned one postdoc to every unit of judges, and they got to be so friendly that the postdocs were interested in the law, and the judges were interested in the research that the postdocs were doing.

The postdocs wanted to come down to court with the judges, so the judges brought them down to the San Diego court. It was a wonderful exchange. I think that we got the whole thing off to a good start.

Then the recession came, and I remember Ron Overholt was then the second-in-command of the Administrative Office of the Courts. He came to me and said, “Ming, you know we have to cut back a lot of programs. Are there any science programs that you have in the works that you think ought to move forward?”

I said, “Ron, we are in a recession. We have to go back to basics. We have to make sure that we’re getting the new judges and the experienced judges the basic education that they need to carry out their positions. We can’t afford this luxury.”

I think carrying on the science programs at that point in time would have been a huge mistake. That’s something extra, and we should be doing it. I hope we will go back to it now that we’ve come back to a reasonable budget and we’re getting money for more than just the basic programs we’re giving to judges. So I think we should go back to it.

I should tell them about my webinar, though. That’s the most efficient way to do this. I don’t have to travel. They don’t have to travel. They don’t have to be fed, put up in hotels. They can be in their chambers listening or not listening. [Laughter]

**McCreery:**

Back to the DNA cases. At the time that Justice Baxter authored the opinions in *Venegas* and in *Soto*, there probably wasn't a massive amount of expertise here at the court, perhaps until you arrived. To what extent was he able to consult you on these opinions?

**Chin:**

Oh, a lot. We talked. I was more than willing to talk about it, and he was more than willing to listen. So I knew that it was in good hands. You know that we talk all the time. We still talk all the time about anything and everything, mostly the Giants. [Laughter]

**McCreery:**

Right. But as you say in the second of those, the *Soto* case, just a year or so later, after *Venegas*, the scientific community had resolved some things. How difficult was it to convince Justice Baxter, if necessary, but all of your colleagues that the court could now take a different path?

**Chin:**

It was relatively easy because the national study that was done on the subject came down and got these genetic scientists together and said, "You've got to work this out." And they did. They even published on it, so it was not a difficult task because the experts in the field finally reached the same conclusion. So it was not difficult to convince our colleagues on the court.

**McCreery:**

I wonder, which of your own majority opinions from the early years might stand out to you, or which legal themes?

**Chin:**

I do remember *Professional Engineers in California Government v. Department of Transportation*.<sup>39</sup> I remember that the press kept saying, "The governor appointed him, and he found against the governor." I don't know why they were shocked.

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<sup>39</sup> *Professional Engineers in California Government v. Department of Transportation* (1997) 15 Cal.4th 543. The Court, with Justice Chin writing for the majority, agreed with a lower court's injunction against Caltrans privately contracting with engineering and inspection firms, citing the state's civil service mandate forbidding such work. (Chin did note that "nothing prevents Caltrans from seeking modification of the 1990 injunction based on a showing that particular contracts are justified because state workers cannot perform the work 'adequately and competently.'")

I don't look at these opinions based upon who is pushing what position. That never interests me, and I had no inkling of what the governor's position was when we decided the case. But I was kind of shocked to read that I went against the governor who appointed me.

**McCreery:**

That there was an expectation that you would somehow please the governor?

**Chin:**

Right. It doesn't happen. We take the case, we look at the facts, we look at the law, and we go where it leads regardless of who is pushing what position. I think that's the way it ought to be. I think the court still operates that way. We never talk politics on cases.

### **“Sometimes You Have to Write Dissents”**

**McCreery:**

Let's do talk more about the two constitutions—state and federal—and how you approach the need to look to one or the other or both, as the case may be.

**Chin:**

We have incidences that come up all the time where we have an initiative that creates a constitutional revision. I think our constitution has been amended so many times it's hard to keep track of it.

**McCreery:**

It's so easy to amend, isn't it?

**Chin:**

Right, and that makes it important that we look at what is happening in California. I'm leading off into a whole other area and it goes to *Brown*,<sup>40</sup> and we can talk about that later, but the dissent that I wrote in the Governor Brown case about how initiatives ought to be handled.

Our initiative process was amended, and it was amended with some details about how initiatives ought to proceed through the system. The object of the exercise, of course, is to get initiatives that have been vetted and not changed

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<sup>40</sup> *Brown v. Superior Court* (2016) 63 Cal.4th 335.

at the last minute to something else, which was what I thought the governor had done in the *Brown* case.

***McCreery:***

Go ahead and speak about that case, if you would like.

***Chin:***

Okay. Let's see. What year was this? Anyway, in early June of this year—and I'll figure out what year it was—we voted 6-1 to overturn a trial court decision and allow Governor Brown to modify a ballot measure that originally focused on juvenile justice reform, and we allowed it to be amended to include a constitutional amendment requiring sweeping changes on how parole decisions are made for those convicted of nonviolent felony crimes.

This allowed the governor to place before the voters a November measure identified as Proposition 57 that had not undergone the normal initiative reviews by the legislative analyst, the overview by the state Department of Finance, and numerous other interested parties and citizens.

I said that this decision made the public review process meaningless.

I said my colleagues were saying the change was acceptable because of a 2014 law meant to improve how direct democracy works by allowing proponents to identify and fix laws in their measures after they have been introduced.

I noted that the governor sought a constitutional amendment that affected all inmates, not just juveniles; could not be remotely characterized as “fixing a flaw.” It completely changed it. This is what I said:

“The legislature wanted to improve the final product. It wanted to permit the public to point out the obvious and not-so-obvious flaws in the measure's drafting so that the proponents could correct those flaws before the measure was irrevocably placed on the ballot.”

“In my dissent, I even pointed out the flaws in the ballot measure. This editorial says, “Lone justice warning eerily prescient,” because after it passed, they had to go through and correct all this. So I felt that—oh, this was sent to me by Rick Sims, who is retired from the Third District—he's now living in San Diego, and this was a San Diego Union-Tribune editorial.

***McCreery:***

“Eerily prescient.” How did it go from there? Say more about just how you diverged from your colleagues here.

***Chin:***

Oh, I was the lone wolf. [Laughter] I tried to convince others but was not successful in bringing anyone to my position.

But sometimes you have to write dissents. I have kept them to a minimum, although the first year of Tani's reign apparently I was in a bad mood because, according to Jerry Uelmen, I raised the dissent rate from 2 percent to 13 percent. [Laughter] So Jerry Uelmen in his annual review was now calling me the great dissenter or something like that. But it has calmed down.

***McCreery:***

What was that all about, anyway?

***Chin:***

It was just the cases that came up. I can't remember what the other dissents were, but I do remember the initiative because I have great respect for the governor, Governor Jerry Brown, even though we politically might be poles apart.

But he is a very bright guy and, I think, a good governor. He probably is the only individual who could have solved the budget problem because he told his own party, "We don't have the money, and we're not going to spend it."

There are very few people who were strong enough at that time to pull that off, and he had to do it year after year after year. He had to tell the courts, "We don't have the money, and we're not going to spend it," and it was really hard on the courts. I commend Chief Justice Tani Cantil-Sakauye for stepping into that breach and carrying through the judicial branch as well as we did.

But on this particular subject matter, I think the governor was wrong, on taking an initiative and completely redrafting it and not sending it through the normal editorial process and editing process to make sure that it doesn't have flaws that cannot later be corrected.

So I just think he was wrong on this one, even though I have great respect for him.

***McCreery:***

That whole question of proper vetting is a common one as we see our experiment in direct democracy playing out like this. This is a question often raised about whether initiatives that make it on the ballot have been properly vetted, and it sometimes requires a lot of interaction between the branches. What's your overall take on how well this is all working?

***Chin:***

Not well. We need more discussion among the players. This chief has done that, and I think done it well. She actually gathered a group in Sacramento from the legislative branch. Governor Newsom was supposed to be there, but he got snowed-in in Philadelphia or somewhere on the East Coast so his legislative secretary came.

But the chief had major people from the judicial branch. I was particularly pleased with the group of legislators. Both the head of the senate and the head of the assembly were there, the speaker and the president pro tem. The attorney general was there. One of the exercises was to talk about one of the chief's opinions.

***McCreery:***

I'm interested in your comments on liaison between this branch and the legislative and executive branches of our state government. I know there are some recent developments that are quite encouraging as you've just described, but I wonder—knowing you're not always in Sacramento when all this is going on—what's your sense of how well the other two branches understand the basic role and limitations of the judiciary?

***Chin:***

They're getting better at it because of the communications.

We have judges all the time going to Sacramento talking to legislators. The other piece of it that has improved the situation a lot is that we got Martin Hoshino to come from the governor's office. He was in charge of the corrections department, a major part of Governor Brown's administration. The governor did not want him to leave. When he came to us and then we had Martin dealing with the governor's office on the budget, things greatly improved.

**On Court unanimity and 'preconceived notions'*****McCreery:***

I wonder how you might think about your propensity to approach cases a certain way in criminal matters versus civil. You bring to all of this your own experience. How do you think you tend to go?

***Chin:***

I never have a preconceived notion about how I want the case to come out.

**McCreery:**

You've been very clear about that.

**Chin:**

I look at the cases the same way, regardless of whether it's a criminal or a civil case. In criminal cases, I do not favor the prosecution. In civil cases, I do not favor businesses. I look at the cases individually, do the research on individual cases, and try to do the right thing in each particular case.

I remember in one case I thought I wanted it to come out a certain way when I first read it.

Then I read the opening brief and said, "That sounds really good." Then I read the reply brief, and I said, "That sounds really good." But that's the process that you go through in all of these cases. You get the best work of the attorneys involved. They give you the best argument that they come up with.

And that's really the way it ought to work—not that you end up with the opinion that was the last expressed, but the opinion that was last expressed the best. You sometimes even start waffling on positions that you take on cases when you hear the attorneys in oral argument that are particularly engaging, and you say, "That's something to think about."

So that's the process that I generally go through in working on cases. I remember sort of favoring one position, and my research attorney brought me a calendar and said, "This is what I think we ought to do."

I read it, and I said, "No, I disagree." I said, "Go write it the other way." He wrote it the other way, and he came back, and I said, "Oh, you're right. This doesn't work." [Laughter]

So it's a process. I think I'm fortunate to have research attorneys who are not afraid to tell me when I'm wrong. [Laughter]

**McCreery:**

If you're working on a majority opinion, how important is it to bring additional people along and try to move towards unanimity if it seems possible?

**Chin:**

It's so refreshing that all of us come from different backgrounds, different experiences. We now have a lot of professors on the court, really bright people. But I think our unanimity rate is getting higher because there's a lot of talking among the justices and their staffs.

***McCreery:***

More so than in the past?

***Chin:***

I think, generally speaking, there is more conversation among this group of people than in the past. It's just my impression. It's tough when we have split opinions, but it's never hostile.

They're very strong-minded people, but the discussions are always reasonable, and you always walk away from the conversation, even if you disagree, saying, "Reasonable minds can differ."

I think that's a healthy way to approach it, and I'm happy to have the current colleagues on the court because they all seem to feel that way. They all carry themselves that way. They all carry on the conversations with that in mind.

***McCreery:***

It's very good to hear. You've just achieved a unanimous opinion, you say. It just leads me to muse on how the outside world views this court and what sort of message they get if there's a deeply split opinion, if there's a unanimous opinion, or whatever it is in between. How important is it to, in some instances, carry that unanimity to the outside world in terms of clear guidance from this court?

***Chin:***

I think it's really important, and we do try to reach consensus. We work hard at it, and I think for the most part we are successful. But on some issues, it isn't going to happen.

I think the good thing about this entire process is that when you put out a calendar memo, you have no idea, really, how it's going to be received.

I'm sometimes shocked that so-and-so has this problem with this opinion, and so-and-so has this problem with another portion of the opinion. "I would have predicted somebody else would have that problem, but not you." It's just a process of doing the best you can in analyzing the issue and putting your best foot forward.

I've even gone to the point of saying, "And the other side is this, so you may like that better." And then sort it all out as we draft the opinion. It seems to work better with this group, rather than saying, "This is the answer, and that's it." "The other side of this issue is this." Not that they wouldn't think of it by themselves, and the briefs have already pointed it out, but I think it's helpful to have all that in the first draft of the calendar.

**McCreery:**

So you're saying in that early work you're laying out all sides very clearly?

**Chin:**

All sides, laying out the possibilities—and make it clear that it's a possibility, it's reasonable.

**McCreery:**

Occasionally over the years, the court watchers have said something to the effect that, "Oh, the Supreme Court is all acting in lockstep. They're all just going along to get along." How might you answer a criticism like that?

**Chin:**

"Are you kidding?" [Laughter] "Do you want to borrow my ears for a month?"

When I said that when I put out a calendar I really have no clue of how it's going to be received and who's going to like it, who's going to disagree and on what—it is so up-in-the-air because there are so many individual opinions about a whole cross-section of subject matter.

So the people on the outside may see the final result that looks like we're going in lockstep, but if they saw the drafting process it would be an eye-opener. [Laughter] Maybe we ought to publish drafts—"and this was a change Chin made, and this was a change—"

**McCreery:**

Or, as you say, the process you just went through to achieve unanimity on this forthcoming opinion. It sounds as if it took some doing.

**Chin:**

It did. Then you have to be careful when people start asking for changes. You don't want to change it in such a way that you're going to lose  $x$  or change it in a way that you're going to lose  $y$ .

So, many times if there is going to be a split opinion we will do the changes together so that they send us their changes and we send them ours, and we try to not bother our colleagues with all of those changes so that this is what we now agree on that it's going to be, the final. It works out a little bit better, and everyone is able to check in as we go through the process on whether the changes are acceptable.

**McCreery:**

You were saying that you don't all that often write a concurrence or a dissent—possibly with the exception of that year when the new chief justice came, when your dissent rate went up so much. [Laughter] But let me ask you to expand on when it is that you do feel it's important to write in dissent.

**Chin:**

Most of my dissents have been in the area of arbitration, and I've had a little experience in arbitration so I'm not sure that that's why the dissents have been so plentiful. But I do feel strongly about that particular field and what the U.S. Supreme Court has said about arbitration.

**More on dissent, and the *Marriage Cases*****McCreery:**

I'm interested in this question of what rises to the level of being worthy of a dissent? What would cause you to take that step, whether it's an arbitration case or something else?

**Chin:**

Whether I disagree clearly with the position that the majority is taking. That was my position in *Brown*. That was my position in the arbitration cases. I do not take that position lightly. I know that writing dissents may not be necessarily productive. They were, however, in the arbitration cases because they apparently convinced somebody at the U.S. Supreme Court that I was on the right track.

That's not why I write them. If that is the result, it's helpful that it directs the conversation in an area in a way that I think the conversation ought to be going. But that's not why I write. I write them because I think that the position the majority is taking is not the correct one.



Supreme Court Justice Ming W. Chin listens as arguments are heard for and against Proposition 8 inside the California Supreme Courthouse on March 5, 2009, in San Francisco, California. The arguments are on lawsuits seeking to overturn Proposition 8, the state’s voter-approved ban on same-sex marriage. (Photo by Paul Sakuma-Pool.)

The dissent in the *Marriage Cases*<sup>41</sup> was a difficult one, and Ron and I talked about it. Ron came down and told me the direction in which he thought the case ought to go, and I said, “I don’t think so, Ron.”

I actually told him that I thought that Professor [Douglas] Kmiec’s solution—he’s a law professor at Pepperdine. He suggested that the state get out of the marriage business and that the state do civil unions, not marriages. It’s a civil contract. If you want marriage, same-sex or otherwise, you go to a church, a synagogue, or a temple.

I actually asked both sides in oral argument if they think that is a solution, and they both said yes, because you’re treating everyone the same. You’re

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<sup>41</sup> The court decided on May 15, 2008, in the landmark *In re Marriage Cases*, 43 Cal.4th 757, that the right to marry, as embodied in Cal. Const. art. I, §§ 1 and 7, guaranteed same-sex couples the same substantive constitutional rights as opposite-sex couples, including the right to choose one’s life partner. But Proposition 8, seeking to add the phrase, “Only marriage between a man and a woman is valid or recognized in California,” to the California Constitution, would ultimately make the subsequent November’s ballot. And voters approved it. It made its way to the federal courts, where in 2009 a U.S. District Court held that Proposition 8 violated the U.S. Constitution’s Fourteenth Amendment. Ultimately, a U.S. Ninth Circuit panel affirmed that Proposition 8 violated the U.S. Constitution. On June 26, 2013, the U.S. Supreme Court’s majority opinion in *Hollingsworth v. Perry* held that proponents of California’s Proposition 8 lacked standing to appeal the lower court ruling invalidating the measure as unconstitutional, restoring marriage equality for same-sex couples throughout California. [San Francisco’s Legal Fight for Marriage Equality](#) (June 26, 2014), S.F. City Att’y Ofc. A year later, the U.S. Supreme Court decisively resolved the matter in *Obergefell v. Hodges*, 576 U.S. 644 (2014), a 5–4 decision, with the majority opinion authored by Justice Anthony M. Kennedy.

treating them equally, so that there is not discrimination. The state is not discriminating against same-sex couples.

The problem with it, as Mark Leno told me, Mark said, “There is no political will for it.” The gay and lesbian community wanted the marriage moniker.

I think that it was interesting that both sides thought it was the solution, but nobody wanted it. I thought, both sides are spending so much money trying to convince us and trying to convince others that this was a good idea.

I didn’t think it was something the courts ought to do, but certainly the legislature—it’s a policy matter. It’s the legislature that ought to decide it. So I ended up signing Marv’s dissent.

Carol wrote her separate dissent, and she actually said that, “I have no objection to my friends and colleagues in the gay and lesbian community. I actually favor them marrying. I just don’t think the courts ought to do it.”

It was a tough decision. My son Jason said, “Dad, you’re on the wrong side of history.” [Laughter] And in retrospect, he’s right. But I just didn’t think that the courts ought to be doing it. But reasonable minds can differ. But I still think the solution of having the state do civil unions and not marriages was a good one.

***McCreery:***

But how large a change does that represent, practically speaking, to say the state will no longer have marriages but will have civil unions? What would be involved in the political will to do that?

***Chin:***

Oh, I think Mark was right. It has to be politically acceptable to both sides, and the gay community, as Mark said, would not go for it, even though everyone thought, legally, it was a reasonable solution—untying the Gordian Knot. How do you untie this Gordian Knot? [Laughter] But I still remember looking out the window, and we saw all the lines of people waiting in line to get their marriage licenses.

***McCreery:***

Let me ask you to reflect a bit more on what was happening here in the court as you were working on the *Marriage Cases*. Chief Justice George’s opinion came to you in draft in two versions. Talk to me about how you first learned that he was doing that and what sort of exchange you might have had with him.

***Chin:***

Yes. Well, he came to my chambers and explained to me where he thought he was going. I told him, preliminarily, without looking at it, that I did not think I could go along with it and suggested to him the solution that might solve everyone's equal protection problem.

***McCreery:***

Meaning—?

***Chin:***

The civil union issue. So we discussed it in some detail, but Ron was wedded to the proposal that he talked to me about.

***McCreery:***

How unusual was it to get two versions of something?

***Chin:***

Unusual. Very unusual. But that's kind of the approach that I will take on difficult issues, giving both sides of it.

***McCreery:***

You've talked about perhaps doing that a bit more recently and finding it's a helpful technique, in a way.

***Chin:***

It's helpful to get the conversation going. I think it's helpful to an individual who's on the other side to see how it would be written the other way. I think it's helpful just to let the other side know that you've thought about it, and this is the way it would look.

***McCreery:***

But on the *Marriage Cases*, what was your thinking?

***Chin:***

It was really that courts should not be doing this. This is a public policy matter.

It's similar to the abortion debate. Had the courts not done that, I don't know what would have happened but at least the conversation would have

continued. And now, we're still carrying on the same conversation because the court said this is the way we're going to do it? Maybe the court went too far in setting the policy and not letting the policy develop from the conversation among the people.

If we had let the conversation develop among the people on the gay marriage thing rather than the court saying, "We're the courts, we know better, and this is the way we're doing it," I don't know if it would have ended up where we are today. Obviously, the U.S. Supreme Court did not feel that way. They said, "This is the way we're going to do it. You will accept it."

Whether the gay marriage conversation is going to be carried on the same way the abortion conversation is still being carried on I can't predict. But for me, I don't think the courts ought to be setting policy. The political conversation is tough, particularly in this area because there are heated exchanges on both sides. But I think it's better off if we let those conversations go forward and eventually resolve themselves, rather than the courts putting an imprimatur on it and saying, "We know better." I'm not sure we know better.

**McCreery:**

But you're saying your position was based on the proper role of the courts to act or not act on something like this—

**Chin:**

Yes.

**McCreery:**

—rather than your own views of same-sex marriage?

**Chin:**

Well, Jerry Uelmen says, "Chin talks about judicial restraint *ad nauseam*." [Laughter]

**McCreery:**

[Laughter] What's your answer to that?

**Chin:**

I'm going to continue. [Laughter] I really think we have to restrain ourselves in getting involved in everyone's life and everyone's activity and everyone's affairs.



*California Supreme Court Associate Justice Ming Chin, pictured here at the bench during the tenure of Chief Justice Tani Cantil-Sakauye. (Photo Credit: Judicial Council of California.)*

The courts are here to solve the individual problems that people bring to our attention. We can't look out on the street and say, "Oh, I think that crosswalk needs changing out there," and go out and paint it.

That's not what we do here.

***McCreery:***

You were just saying a few moments ago, when this decision was announced—the *Marriage Cases*—in May of 2008, your location here at the edge of Civic Center in San Francisco gave you a window on the receipt of this news out there in public. Just describe it a bit more, if you would. Where were you, and what did you see?

***Chin:***

In the process, you remember, we stopped it. We actually said, "No, Gavin, you don't get to do this." [Laughter] We stopped it, and the lines disappeared. Then we came out with the opinion, and the lines came back.

I was happy for them. I am happy that—I have many friends in the gay community, and they never expressed any animosity or opinion. Some of them agreed with me. They were lawyers. But I was actually happy for the gay community.

I hope it works out. In thirty years, I hope we're not still agonizing over the U.S. Supreme Court opinion. I hope I'm wrong that the conversation should have been carried on in the public arena and not decided by a court—this court or any other court. But I'm happy with the result. There are a lot of happy people out there, and a lot of them are good friends of mine.

## **The Cantil-Sakauye Years**

### *McCreery:*

We're going to talk today and focus on the years that Chief Justice Cantil-Sakauye has been in charge of this California Supreme Court<sup>42</sup> and indeed the statewide judiciary. I wonder if you might start us off by just speaking for a few moments about the transition period when she came in, in January of 2011, and what sort of an overall change it represented for the court?

### *Chin:*

It was a dramatic change for the court. When you lose somebody like Ron George, there has to be a tremendous loss for the judicial branch. But with the arrival of Tani Cantil-Sakauye, there was certainly no letdown.

Her first appearance in Sacramento when the governor swore her in—and all members of the court traveled to Sacramento for that—was an important day for the judiciary. I think we all went to welcome the new chief to the court and to make sure that she understood that we were all 100 percent behind her.

The remarks that she gave that day really predicted what we could expect from her. They were remarkable. She did not refer to any notes, spoke extemporaneously. Her remarks were poignant, respectful, of course grateful to the governor for giving her this opportunity. But every time I have heard her speak since, she speaks in the same gracious, compact, poignant—without any notes. Even when she gives the long—I won't say drawn-out, but long—and detailed remarks for each State of the Judiciary in Sacramento, she refers to no notes. It is truly remarkable.

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<sup>42</sup> Tani Gorre Cantil-Sakauye was sworn in January 3, 2011 as the 28th chief justice of the California Supreme Court. She was the first Asian Filipina American and the second woman to serve as the state's chief justice. Former Governor Arnold Schwarzenegger nominated her. She stepped down on January 1, 2023, after twelve years. She is now president and CEO of the Public Policy Institute of California.

She has governed the judicial branch in the same way. She is always gracious, always comfortable in whatever setting she is thrown into, and she came into a setting that was not all that friendly, to the judicial branch. The recession had hit its peak. I think her first year as chief the legislature and the executive branch took a billion dollars—or at least it was a large sum of money. I don't know the exact amount, but it was a large sum of money that they took out of the judicial branch, and it affected every level of the judiciary.

The chief justice handled all of that in the best way possible and started making changes in the way the branch was to operate. I think the most important change that she brought was the transparency that she brought to the operation of the branch, fiscally and operationally.

***McCreery:***

You mentioned that when Chief Justice Cantil-Sakauye arrived there were some less-than-friendly aspects around the state system. Can you expand on that?

***Chin:***

There was a claim that Chief Justice George ran the judicial branch as a king. There were even some references on all of the blogs about King George. I think that is totally unfair to Ron George. Ron George was very inclusive in making all of the decisions.

If there was one small criticism I could raise with Ron Overholt, Bill Vickrey, and Chief George it would be that they could have been more transparent about the financial operation of the branch.

I really wasn't privy to what was going on, so I don't know the details. But I wasn't privy because it wasn't shared, and I'm not sure if it was shared with the Judicial Council. But I suspect that it was not—but I don't know that because I wasn't there.

Marv Baxter was there, of course, for eighteen years, and when Marv decided to retire the chief asked me to take his seat on the council. He was the vice chair for all those years. When she introduced me to the council, Brad Hill, the P.J. of the Fifth District, was there. When Chief Justice Cantil-Sakauye introduced me as the replacement for Marv, who had served for eighteen years, Brad Hill leaned over to me and said, "Did she tell you that it's an eighteen-year term?" [Laughter]

It won't be, but I'm happy to serve and happy to help on the council. I think the council is an important part of the process that runs the judiciary. I think the elements that we have set up, for instance, to look at the caseloads of each of the segments of the judiciary—the trial courts, the courts of appeal, and the Supreme Court—and to determine the budgets for those entities based upon the workload is a sound one, and it's based on data metrics.

In other words, we don't have to guess now what amount of judicial hours it takes to handle a certain segment of the workload of either the trial court, the court of appeal, or the Supreme Court. We will have the data metrics to give us that information, and we will refine that information as the years go on. We're not just going to take it and run with it. It will be updated as we go on.

The various advisory committees of the council are an important piece of the way the council operates. For ten years I chaired the court Technology Committee. We developed the case management system.<sup>43</sup> As I look back on it, of course it took too long. Of course it cost too much. Maybe we tried to be too accommodating to the needs of what the trial courts wanted in this case management system. For all of the years that we developed it, we went to the trial court judges and they tested what we were planning to do. They tested each of the upgrades to that system.

I went to see the rollout of upgrade number thirteen, down in Orange County. The clerk that was running the system and using the system turned around to me and said, "Justice Chin, with this change I can now do in two hours what used to take me all day."

I said, "That is exactly what we want. We want a system that serves the needs of the people who are using it, not some system that is sent down from on high and we tell the people, 'You will take it or leave it.'"

That's not what we did. We tried to accommodate the needs of the four trial courts that were developing the system, and of course the premier court in developing the system was Orange County. They were so far ahead of every other county because they had an information officer that has left Orange County and is now with L.A., but that information officer was instrumental in developing the case management system.

The case management system, by the way, worked really well. Orange County still uses it. Orange County has tried to go to vendors to get a next-generation system, and none of the vendors can come up with a system that

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<sup>43</sup> California Case Management System (CCMS).

matches what they already have. So Orange County, the last I heard, is going to keep the case management system that was originally developed. I don't want to say, "I told you so," but had we not been in a recession, had we not run out of money, we would have had a terrific case management system for the courts.

When we cut that off and each county then had to go to vendors to try to get a system, it has worked but now we have different systems in counties. Somebody approached the chief and said, "Why do you have different systems in every county?" I watched her, and I said, I hope her head doesn't explode. [Laughter]

The chief often said in this process, "We have a Ferrari in the garage, and we can't buy gasoline to fill it."



*From left to right: The California Supreme Court, during a chapter of former Chief Justice Tani Cantil-Sakauye's tenure: Associate Justices Mariano-Florentino Cuéllar, Kathryn M. Werdegar and Carol A. Corrigan, Chief Justice Cantil-Sakauye, and Associate Justices Goodwin Liu, Ming W. Chin and Leondra R. Kruger. (Photo Credit: Judicial Council of California.)*

So it is a sad chapter in the technology history of the branch, but I'm happy to report that we are surviving, and I think the reason that we are surviving is that—I left the chair of the Technology Committee, and they started forming these working groups to solve some of the problems in the area of technology. I thought, oh no, they're going to get people, put them in a room, and let them talk and talk and talk.

That didn't happen. They talked, and they got things done.

***McCreery:***

From what you can tell, how are trial judges weighing in on this need to promote technology and electronic filing and case management and all of those aspects?

***Chin:***

The new judges are terrific because they come from practices that are light-years ahead of where the courts are. As I said before, they will eventually lead the way and demand that the courts join the twenty-first century.

***McCreery:***

If someone were to arrive at a high appellate-level judicial role having almost solely judicial experience but very little experience in these other realms—trial lawyer, law professor, some of these other things—that would be a limitation too, in a sense. I wonder if you can comment on what your newer colleagues are bringing that the court did not have before, that is better represented now among the panel?

***Chin:***

The intellectual discussion is powerful because these are smart, smart people. I think that's an important element of what we do, but we have to balance that with practicality. I think every vantage point is important, so I certainly appreciate the academic vantage point that all of them bring. But I also taught, so I know what the experience of teaching is.

But when they come from the academic realm, I think it is amplified when they bring in annuals as research attorneys. These people are also very bright but not very experienced in the world, so all of that has to be balanced.

I have some concern about the timeliness of our work product and the number of opinions that we produce. I don't think there's any urgency on the

part of the court to increase that production. I think that's a mistake. I think that we should be paying attention to the amount of work that is done.

Certainly you want the quality to be top-notch. Certainly you want the cases to proceed through the system in an orderly manner, and you don't want to rush opinions out just to get numbers up. But the court does have to file a certain number of opinions. I don't know what it is, but I think the number that we're filing is too low.

I don't know what the answer there is, but I think that more attention on the part of individual chambers ought to be placed on getting work done in a timely manner, not rushing through it but just—we're plodding, at best, and if we have to plod so be it, but let's plod a little faster. [Laughter]

**McCreery:**

Who shares this view?

**Chin:**

Me. [Laughter] I don't think there's a great push on the part of my colleagues to do more opinions. I think we should. I think eventually we will be criticized. If we're stuck down at eighty, that's not good.

### **Shaping the Law: “Sometimes You Have to Stand Up and Be Counted”**

**McCreery:**

Let's turn to some of the key areas of the law that have developed significantly during your tenure here. One that we noted we might touch on today was the area of arbitration.

**Chin:**

I think that's a good one to talk about, and keeping in mind your comment that the record will tell everyone what we said and what we did in the area of arbitration, let's just keep it at a high level and at least give these readers my impressions of the arbitration field.

If we start with the newest case, *Sanchez v. Valencia Holding Co.*<sup>44</sup> It was a 2015 case. I agreed with the majority that the Federal Arbitration Act, as construed by the high court in *AT&T Mobility LLC v. Concepcion*,<sup>45</sup> required the enforcement of class-action waivers in an arbitration contract, and the waiver was not unconscionable. I disagreed in a dissenting opinion with the analysis

<sup>44</sup> *Sanchez v. Valencia Holding Co., LLC* (2015) 61 Cal.4th 899.

<sup>45</sup> *AT&T Mobility LLC v. Concepcion* (2011) 563 U.S. 333.

of the majority in several respects, including the discussion of *Concepcion*, the U.S. Supreme Court case.

The *Iskanian* decision in 2014, *Iskanian v. CLS Transportation Los Angeles*,<sup>46</sup> I wrote a concurring opinion. I agreed with a lot of the majority.

For instance, I agreed that the FAA, as construed by the high court, preempts the rule in *Gentry v. Superior Court*,<sup>47</sup> a 2007 decision of ours, and it precluded enforcement of the class-action waivers of the arbitration contracts.

The second thing I agreed with was the class-action waiver in this case is not unlawful under the National Labor Relations Act.

The third thing I agreed with was the arbitration agreement is invalid under California law, as it precludes plaintiffs from bringing, in any form, a representative action under the PAGA.<sup>48</sup>

I disagreed with the majority's reasoning and discussion, including the endorsement of dicta in *Sonic-Calabasas*—this is the 2013—we'll call it *Sonic I*. Now in *Sonic II*, I filed a dissenting opinion.

I disagreed with the majority's statement of the state law principles to apply on remand in determining whether the agreement is unconscionable and argued that the FAA preempts those precepts of the majority's approach. *Sonic I* was the one that was sent back to us, and in that case the U.S. Supreme Court sent it back and we redid it in the form of *Sonic II*.

Now, in all of these opinions I have filed concurring and dissenting opinions differing from the majority, usually on whether the FAA preempted the law the majority was announcing.

So throughout this discussion I have sometimes been the lone dissenter. In one that we filed this week in the case of *OTO LLC v. Kho*,<sup>49</sup> I filed another lone dissent based upon the discussion of unconscionability.

One of the questions I've raised is that the majority has discussed unconscionability in terms that are so vague that the trial courts will not be able to figure out what they're talking about.

So this area of the law will continue to be developed.

I will continue to express my concerns. I think the U.S. Supreme Court has agreed with me more often than not, but I don't take any, necessarily, pride

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<sup>46</sup> *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 34.

<sup>47</sup> *Gentry v. Superior Court* (2007) 42 Cal.4th 443.

<sup>48</sup> The Private Attorneys General Act, [Labor Code Sections 2698–2699.8](#)

<sup>49</sup> *OTO LLC v. Kho* (2019) 8 Cal.5th 111.

in that. I've written decisions that the U.S. Supreme Court has disagreed with. The cellphone case, and that was Kay's favorite dissent, and she was right. But sometimes we're right, sometimes we're wrong. We just give it our best shot.

In this particular area I think I've been right most of the time, and I will be interested to see whether the U.S. Supreme Court has more to say about it. This PAGA dispute. The PAGA cases have turned into a cottage industry. I will continue to express my opinion.

***McCreery:***

You pointed out that you're often the lone dissent in these opinions. I wonder if you could speak more about your own influences on the positions you take and why they might vary so strongly from those of your colleagues?

***Chin:***

I am not hostile to arbitration. I think arbitrations serve a valid function in the process, and it's certainly beneficial for the parties to the arbitrations because they can get there faster, it's more efficient, and there's no appeal process so it doesn't drag out for years. That's an important part for either plaintiffs or defendants in an arbitration process.

The arbitration process becomes lucrative if you have class actions. If you have whole classes of people who want to do something it becomes quite expensive, so that's certainly an element. Attorneys' fees are certainly an element. Many times the attorneys get lots of money and the classes get a dollar or two or three or four. So I may have a different view of the arbitration process, and certainly my firsthand experience with the process has been a positive one.

***McCreery:***

When you say you're not hostile to arbitration, though, it suggests that perhaps others are. How much of a divide is there, philosophically?

***Chin:***

The divide on the last case was an interesting one because the court did not like the way the contract was presented to the individual asked to sign it. They did not like the content of the arbitration clause. And frankly, this would not be the arbitration clause that I would pick to be the example of how arbitration clauses ought to be drafted.

So it's not a perfect world. This is not a perfect arbitration clause, and I think my colleagues who may not be as familiar with arbitration clauses across the board may have a different view of it than I do, but reasonable minds can differ.

***McCreery:***

But what is the effect on development of the law in California when these matters are kept in the private sector and never put out in a public court?

***Chin:***

That is a concern that I have raised in the past and will continue to raise.

In order for the civil law to develop, we have to have a certain number of cases that bring those issues through the appeal process, through the courts of appeal, and to the Supreme Court. If so many cases go out of the system into private judging or mediation or arbitration, I think the development of the civil law will suffer.

So I have concerns about that. The number of cases, however, that continue to come is substantial. If I see a continued drop-off I would be concerned, but for now we don't seem to be running out of work.

***McCreery:***

Are there areas of the law that do not work as well using arbitration to solve problems?

***Chin:***

I think, generally speaking, arbitration works. Whether there are some areas that it doesn't work depends. It might not be particularly helpful in an individual consumer case. But it becomes more important when you have a large group of consumers who now want to move this one way or another. So again, context. Sometimes it works, sometimes it doesn't.

It's difficult to say without looking at an individual case whether it would work.

If I were back in private practice and I had to advise you on whether to go forward or not, I would look at the whole picture, whether there are others, whether—I would look at the arbitration clause. Maybe I'll have to do that again someday, and maybe I'll have to do time sheets someday.

**McCreery:**

This is another broad-brush question, I'm afraid, but I wonder, have your views of the arbitration field changed over the years, and if so, how?

**Chin:**

I think I gained great respect because of my experience in the arbitration process, and I know that everybody does not have the same experience. But the construction arbitration, for instance, had no attorneys. It was a panel of experts from the construction and building field.

For me that was really helpful because I think I had the way the building was constructed on my side, so having individuals who were on the panel who could not have the blindfolds on or have the wool pulled over their eyes about what the claims were, I think, was really helpful.

So I am a big believer in having—if you have a good case on your side, I think you want the best experts in the field to decide that case. If you don't, you might want a different panel.

[Laughter] I think that if I were trying cases today I would look at that very carefully, but if I had a client who didn't have a very good substantial case I'd recommend they settle it. Why bother everyone? But I think you get to that point only if you have some substantial experience in evaluating whether this case ought to move forward. Maybe I should be in the arbitration field? [Laughter]

But I can't tell you whether my views have changed. I think it was really interesting at the time being able to objectively evaluate the value of what you're working on. I think that's an important piece of lawyering. I think it's an important piece of judging, for that matter. The elements that go into that equation are complex, but complexity has never bothered me.

**McCreery:**

Thank you. You spoke of expert testimony and assistance a moment ago, and that reminds me that one of the things we want to speak of today is the *Sargon* case. We spoke, of course, already on another day about the couple of DNA cases that came forward, authored by others as it turned out, after you joined this court. But the *Sargon* case, as I understand it, really addressed this expert witness aspect in a little different way. Talk about how that case went and what you think it did to the precedents that we were accustomed to here in California.

**Chin:**

[Laughter] There was some talk after *Sargon* came out that we were somehow changing the requirements.

**McCreery:**

First of all, just maybe run through what the case was and the result, if you would, for the recording.

**Chin:**

It involved, obviously, expert witnesses and how you evaluate the testimony of people who are presented to the court as having expertise in a particular field. This case dealt with dental implants and what potential profits could result from this particular process.

The expert witness issue is an important one, and we said in *Sargon* that it's an important function of the trial court to be a gatekeeper.

Now, you would think that we were writing new law, but in *Kelly* we said that you have to look at whether there's general acceptance within the scientific community of this process.

Many people think that we're just counting noses as a trial court: how many people line up on pro, and how many people line up on con?

That's not what *Kelly* said. *Kelly* said you look at whether it's generally accepted. What does that mean? It means whether the individual scientists are making a statement and a conclusion that is backed up by scientific testing. Does the science back it up, or is it junk science? That's not nose-counting. That's looking at the substance of what these people are saying and whether it's generally accepted. It's not generally accepted if ten people say yes and nine people say no. [Laughter]

In the *Barney* case, one person said yes and one person said no, and then the National Academy formed a commission to talk to these people and talk to the rest of the population geneticists. The national commission said, finally, "This is what they mean." And these two people said, "Yes, that's what we mean."

This is the old story about locking these two people in a room and have them tell me what they disagree on. Had they done that at the beginning, these two people could have come to a conclusion much sooner than the two years it took them to do this study.

*Sargon* essentially said we think that *Kelly* is still valid, but there is a gatekeeper responsibility. They said, "Gatekeeper? You didn't say that in *Kelly*."

Well, maybe we didn't explicitly say it, but what does it mean when you say, "Is it generally accepted?" It is a gatekeeper responsibility to make that finding. So did we think that we were writing something new in *Sargon*? No, we did not. We thought we were expanding on what we had already said in *Kelly* and in the case that was decided, I think, two years before I came on the court where they said, "We are sticking with the *Kelly* analysis."

**McCreery:**

But the *Sargon* opinion, perhaps, got a variety of readings out there in the world?

**Chin:**

Yes. [Laughter] Some people said we're getting closer to *Daubert*, and they said that because we picked up on the gatekeeper language in *Daubert*. But in our minds—well, in my mind—we were simply elaborating on what we meant. Many people, authors, were saying that we were getting closer to *Daubert*. So be it. I tried to make it as clear as possible. Perhaps it wasn't, but I still think we were consistent with what we said in *Kelly* and what this court said two years before I got here.

**McCreery:**

In your mind, generally, how clear is this area of the law now with the addition of *Sargon*, or what still needs to be resolved, in a sense?

**Chin:**

I will leave it to others. [Laughter] I have a good friend, Professor Ed Imwinkelried, and he is an expert in scientific evidence. He's written many books on it. He's a professor, I think retired now, from UC Davis. I suppose if I asked Ed he would tell me in no uncertain terms what needs to be done. I haven't asked him.

But I think the state of the law on scientific evidence—I've had attorneys come up to me and talk to me about *Sargon*, thank me for *Sargon*, so I think we're getting there. But whether more needs to be clarified, if it does and somebody brings it to our attention, I will be happy to do it.

**McCreery:**

But it does make a nice finish to this whole theme we've had, as specific to the DNA cases that trailed you throughout your career. You ended up spending a lot of time looking at a more specific version of that question of expert

testimony, and you saw how things changed once the scientific community did come to agreement. It's perhaps fitting that you got to do this opinion and bring it all along a little bit farther. Reflecting back on your time as a trial judge, how important is that gatekeeping function, just as a matter of judicial discretion?

***Chin:***

It's really important for trial judges to pay attention to the issue of scientific evidence. I have tried to make it easier for trial judges when they get issues with which they might not have familiarity. The training programs that we've instituted for trial judges in the area of scientific evidence have been well received.

I think I told you about the California Judges Association. When they asked me to do a program on scientific evidence, I quickly realized that they were not willing to devote the amount of time or go into the depth needed if they really wanted to drill down and understand what's involved in individual science questions.

But I did at least get them to put on one program with Hank Greely from Stanford about whether fMRIs can be any predictor of whether someone is guilty or innocent, or in pain or not in pain. That was an in-depth program. Hank did not whitewash it, and he did not hesitate to tell the judges where the state of the law was, and where it was now being admitted, and being able to say what's likely to happen in the future.

This is an up-and-coming area of the law. I remember when I asked Hank if he would do a chapter in my forensic evidence book,<sup>50</sup> first of all whether it's ready to do a chapter. He said, "No, let's wait and see how the law develops, and if it develops in a way that we think is worth writing about we can later do a chapter." He said, "It's also interesting that you update this forensic scientific evidence book every year, so we can continue to update it through that process."

But I've continued to work in the area, continued to update the forensic evidence Rutter Group practice guide, and I'll continue to ask Hank Greely if he thinks the area of fMRIs predicting guilt or innocence is something that we ought to incorporate in the book. But these areas are fascinating as far as the development of the law, not just in California but across the country.

So it's an area that I continue to find interesting, challenging and will continue to follow.

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<sup>50</sup> California Practice Guide: Forensic DNA (The Rutter Group 2018).

**McCreery:**

We spoke quite a bit last time about cases that come to this court as a result of initiatives put before the voters—or tried to come before voters. I think we did a pretty good job of talking about the Governor Brown case, where there was legislation coming just before the case that you heard and all of that history.

In another area, Proposition 218, you authored what's considered an important case in 2008, *Silicon Valley Taxpayers Association v. Santa Clara County Open Space Authority*.<sup>51</sup> I don't know if that stands out in your mind, but it was testing the government's ability to pass assessment taxes and when and how to put those into place. It basically shifted the burden of proof to local government. Is that something that you'd be prepared to comment on?

**Chin:**

Okay. *Silicon Valley* interpreted Prop. 218, a 1996 voter initiative that amended our state constitution to impose new requirements on governments wanting to enact special assessments. Those are charges imposed on real property owners to fund government actions that confer special benefits on their property.

In 2000, the Santa Clara County Open Space Authority imposed a countywide special assessment to raise \$8 million annually for acquiring and preserving open space. Property owners who had to pay the charge challenged it under Prop. 218, arguing that the money collected wouldn't confer any special benefit on their property.

After looking at statements in the election pamphlet about the initiative's purpose, we first concluded that Prop. 218 requires reviewing courts to make an independent judgment about whether the amount of an assessment is proportional to the special benefits conferred. We then held that the Santa Clara assessment failed this test, because it had simply been set at an amount that would fund the entire budget of the open space program, without regard to whether any benefits would be conferred especially on the assessed properties, as opposed to the general public.

**McCreery:**

Mainly what I'm getting at here is just, again, this idea of a citizen initiative coming forward on a specific part of what a government can and can't do and the court's responsibility to resolve that issue.

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<sup>51</sup> *Silicon Valley Taxpayers' Assn., Inc. v. Santa Clara County Open Space Authority* (2008) 44 Cal.4th 431.

**Chin:**

These propositions that direct us to a certain area are always interesting. Usually we get a proposition that has amended the constitution, and then we get a statute that tries to make a change, and therein lies the difficulty. Statutes cannot amend the constitution.

There was an example of that that I came across in looking at the cases you want to talk about, and now I cannot recall what case that—if I take a minute I might be able to find it, but—

**McCreery:**

Possibly the tobacco cases?

**Chin:**

It might be, but I can't—I remember reading it. Oh, I know what it was. It was the—if I can find it—I know where it is—I had it, anyway. Let's see. I think it's over here. Oh, it's Ralphs. This is *Ralphs Grocery v. United Food and Commercial Workers Union*.<sup>52</sup> It involved picketing on private property, so I suggested that we have a reexamination of *Robins v. Pruneyard Shopping Center*.<sup>53</sup>

The difficulty in that case was the conflict between a statute and a constitutional right. I said that you can't change the constitution by means of a statute. So that was one example of looking at an initiative and determining if it's a change in the constitution.

That seems to arise with some frequency because it's so easy to do. But then you have a statute that conflicts with it, and the constitutional right that is established by the initiative should prevail. I was the lone dissent in the *Ralphs* case, so it's just another example of the initiative process and the problems that are created.

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<sup>52</sup> *Ralphs Grocery v. UFCW Local 8* (2012) 55 Cal.4th 1083.

<sup>53</sup> *Robins v. Pruneyard Shopping Center* (1979) 23 Cal.3d 899. In this case, a group of high school students set up a table in the Pruneyard Shopping Center to hand out literature and solicit signatures for a petition backing their opposition to a U.N. resolution against Zionism. A security guard told them to leave, citing the company's regulations against publicly expressive activities. At issue for the California Supreme Court was whether federally protected property rights stopped the Court from ruling that the California Constitution grants broader free speech rights on private property than the federal Constitution. If so, the Court was faced with considering whether the state's constitution protects speech and petitioning at shopping centers. The Court found that it did. Ultimately, the U.S. Supreme Court found that Pruneyard's regulations violated the students' 1st Amendment rights, reasoning that California's power to guarantee the expansive speech right did not unreasonably intrude on the rights of private property owners.

**McCreery:**

It's not the first time you've called for reexamining the outcome of the *Pruneyard* case.

**Chin:**

[Laughter] This is true, but I'm not having much success.

**McCreery:**

Expand on that a bit more. I know that it has come up different times, and you may have staked out a position of sorts.

**Chin:**

Basically, what the courts have done is taken valuable property rights away.

You can make those decisions based upon use of government property or demonstrations in front of the courthouse, but when you talk about private property like a shopping center—I think in the *Ralphs* case it was not just the shopping center, it was the entrance to the store.

I've always been a great supporter of the value that an individual has in private property, probably because of the way I was raised on the potato farm. But I don't know where it actually comes from.

**McCreery:**

This came out, for example, in *Fashion Valley Mall v. NLRB*,<sup>54</sup> a 2007 opinion by Justice Moreno in which you authored the dissent.

**Chin:**

Oh, yes. *Fashion Valley Mall*. The majority held that a labor union had a free speech right on the property of a private shopping mall to urge a boycott of one of the businesses on the property. In doing so, it reaffirmed the holding in *Robins* and found free speech rights on the private property.

Again, I dissented, arguing that *Pruneyard* should be overruled because it was wrong when decided and had been rejected almost universally throughout the rest of the country.

I argued that, "The time has come for us to forthrightly overrule *Pruneyard* and rejoin the rest of the nation in this important area of the law." Private property should be treated as private property not as a public free speech. Anyway.

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<sup>54</sup> *Fashion Valley Mall, LLC v. National Labor Relations Board* (2007) 42 Cal.4th 850.

**McCreery:**

“Rejoin the rest of the nation.” Strong words, in a sense, about California.

**Chin:**

And accurate. When you asked me how I decide whether to write a dissent, it has to be important. I consider this to be important, as I did the dissents in the arbitration arena. So sometimes you have to stand up and be counted.

**McCreery:**

What are other states doing on their own and in following guidance from the U.S. Supreme Court? How does California vary so much?

**Chin:**

I don’t know why, but we seem to be in the minority on this particular issue, and maybe someday we’ll wake up. But we’re not there yet.

**McCreery:**

What distinction do you make if it’s a “free speech on private property” sort of issue versus a liability issue on private property—can you generalize?

**Chin:**

I think that you have to look at the issue of private property seriously. I think the free speech area is one where it’s kind of gotten away from us. I’m not sure that it’s gotten away from us on the issue of liability, but it certainly could head in that direction if we continue to say, “The government can step in and say, ‘These people have these rights under these circumstances within the free speech arena.’”

It’s easy to say that you don’t have property rights in the area of liability, but when you have serious injuries that occur for individuals on private property, you don’t necessarily need to excuse that. You have to look at the context within which the injury occurs.

In other words, you don’t take private property, and you don’t say people get to do whatever they want, regardless of whether—if there is negligence involved, if there is strict liability involved, that has to be taken into account, and that’s different than a free speech right.

**McCreery:**

I wonder how your dissents have been received in the legal community in these types of cases?

***Chin:***

They've certainly been noted in the arbitration area. I know that Gideon Kanner from Loyola University, who is one of the experts in property rights, has written on the *Ralphs* case and expressed his agreement with my dissent.

So I know that people have written, and I'm always interested in hearing that part of the discussion. I meant it when I said that we not only carry on a discussion here among the justices and our staff about these issues, but we listen and we read and we consider law review articles and professors.

I think my colleagues on the court probably listen to that even more than I do.

Justice [Mario-Florentino] Cuéllar just wrote an opinion, most of which I agreed with, but I wrote in my P.R. that, "I disagree with your stating facts that are taken from various publications when those have not been vetted or cross-examined. I think we have to be careful about accepting that information and writing it into opinions because it hasn't been vetted." So he said he would think about it. [Laughter]

But that's one example of taking into account what some law review author has written and writing it into our opinions—not that we shouldn't take it into account, but from a factual basis, should we accept those facts as factual when they haven't been adequately vetted and there's been no cross-examination? We'll see how that comes out, but we'll, hopefully, tread carefully.

**A Favorite Opinion*****McCreery:***

Let me ask you one further question about opinions, and that is, which one or more of your own opinions are your favorites and why are they important to you?

***Chin:***

I'll go back to *Sargon* because it's dealing with an area that I'm concerned about, and it's dealing with scientific evidence.

It's an area that I have been involved with in excruciating detail for many years. I have enjoyed teaching in the area. I, as I told you, just did a webinar on DNA and am going to do another speech on DNA for the National Women Judges. I think I told you I went to Thailand to teach at the invitation of Princess Chulabhorn.

All of these experiences have only heightened my interest in science, and genetics in particular. I suppose I should not reveal that I even read books on forensic DNA. I just read the book written by James Watson on his involvement in DNA in Watson and Crick, who were the original founders of the double helix.

For some reason, scientists and scientific studies are as interesting to me as reading the law, and I know that that is an unusual combination. But I suppose it comes from marrying into a scientific family.

It's always interesting for me to get involved in scientific discussions with my wife and her siblings. Certainly her father was a major influence on my interest in science.

But *Sargon* sticks out for that reason. I hope to continue to bring continuing scientific education for judges as part of the curriculum for CJER, and I hope that we are making some progress on getting the importance of analyzing scientific questions in an appropriate way so that we keep junk science out of our opinions and out of our courtrooms. If I do that, I will consider all of this worthwhile.

***McCreery:***

Other opinions of yours that stand out to you, either majority opinions or dissents, as important or personally meaningful?

***Chin:***

Certainly the *Humphrey*<sup>55</sup> opinion is meaningful to me because of my experience in dealing with domestic violence. That was a first, and it was one of the early opinions that I wrote. So it still sticks out. I suppose it sticks out because I heard so many horror stories about how spouses were treated.

So I hope that that opinion will stand the test of time, and I hope it will make it more tolerable for individuals who find themselves in those kinds of predicaments. But I look back on my experience sitting in the family law court and teaching family law at USF for many years as being an important part of my involvement in the family law issues and hope that *People v. Humphrey*, even though it's a criminal law case, advances the development of how we treat these issues when they come to our courts.

We've seen so much in everyday newspapers about the Me Too Movement and what horrible things individuals have to put up with and, in the past, thought that they *had* to put up with this. I say, "No more."

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<sup>55</sup> *People v. Humphrey* (1996) 13 Cal.4th 1073.

We should not be operating our courts in a manner that treats people and these issues in a way that belittles it or makes it seem like it's in the least way okay. I hope we're making progress, but the stories that continue to pour out lead me to believe that we have a lot more work to do.

### **On Courts and the Public: Communication**

#### ***McCreery:***

I appreciate you reflecting on some of the pieces of work that are important to you. I wonder if you would spend a moment talking with me about this question of media access to the court's work and, given our discussions of technology changes and so on and so forth, how your views of that might have changed over the years—and how our ability to have communication between the courts and the public has changed. What are your thoughts?

#### ***Chin:***

It is now certainly easier for the public and the press to have access to court records. We have to ensure that what we produce for the public does not include privileged, private information—social security.

All of that information has to be taken out before you make any records public, so that's an important piece of what the courts have to do in making records accessible to a wide variety of people who make the requests.

Frankly, I think it is a good thing that the courts are more transparent, the records are more accessible—we, I think, work better in the sunlight—and that the court cannot bury either its records or transactions in a vault that is not accessible to the public.

With electronic records it is going to be easier for people to get access to those records. We have to ensure that what is produced does not include information that invades individuals' privacy. It's not an easy task, but it can be done.

The media access is an important piece. It is so important that we, as judges who are in charge of the system, understand why it is so important that the media have access to the court records, so that we reveal what can be revealed, and that it be open without invading individuals' privacy. So all of these issues are important, and we are trying to develop the processes so that when requests are made, they can reveal the information that can be made public.

**McCreery:**

Then another access of the media business is to convey to the public, in public form—newspapers, magazines, much of it online these days—information about the courts and the development of the law, as well as all the other parts of government. What has been your own experience working directly with members of the media on interviews, on conveying information, examining the court’s work?

**Chin:**

I have been particularly grateful for the way that, first of all, my appointment to the court has been received by the press. I have a whole list of editorials that I have in my scrapbook, and I’d be happy to give them to you.

One of them was written by Bill German from the *Chronicle*, and Bill was a good, good friend and president of the Commonwealth Club a couple years before me.

The other articles were written by Claire Cooper from the *Sacramento Bee* and the *San Francisco Chronicle*. Claire died a couple of years ago, and I actually got a call from one of her colleagues. Bob Egelko called me and said, “I thought you would like to know that Claire passed.”

I was so grateful for that call.

So I’ve had a terrific working relationship with the press, the legal press and the non-legal press. I don’t know why, but I’ve always been open and I’ve never been afraid to talk to the press. I haven’t sought them out, and I have not sought publicity by any stretch of the imagination. But I think they’ve always been fair and accurate in reporting.

So the bottom line is I think I’ve had a good relationship with the Fourth Estate.

It probably goes all the way back to USE, when I got the Edward McQuade award for journalism. I have always respected journalists, respect the work that they do, and think that they are a very important part of how our judicial system is viewed by the public.

**Technology and Education: Tools for Outreach****McCreery:**

Let me ask you to reflect further on what you think are the major challenges that this court might be looking at in the future.

*Chin:*

We have emphasized the civics education piece.

One of my research attorneys, Blair Hoffman, has a son-in-law who is a high school teacher. Actually, his daughter and his son-in-law both teach in Contra Costa County. Paul Verbanszky brings his civics class to the court every year and has done it for the last seven years.

Blair has now retired. He has turned that over to Jay Cumming, my other research attorney, and they are going to continue to come. Blair says he might come back just to be able to share his experience with the high school students.

I think that is such an important piece of what the Court does in bringing civics education to students. Bringing high school students and college students and law students to the Court to see what is going on is an important piece of the learning that is going to be important for the future.

We have had the outreach sessions so that the court sits in various locations where we do not normally sit.

We've gone to Fresno. The whole court took the train to Fresno, and we were greeted by the mayor—with a band. [Laughter] It was a fun trip. We've made trips to Redding, to Sonoma and Santa Barbara, San Jose. We went to USF for an outreach session.

So these outreach sessions are to inform the people who do not necessarily know where the Supreme Court meets, why we meet, when we meet, what cases we hear. We hear oral argument in these other locations, and I think that's an important piece of the civics education that the court has embarked upon.

But as far as what the court should look to in the future, I think much of it will involve technology.

The court has live-streamed all of its oral argument sessions so that anyone can go online and listen to our oral arguments. My wife Carol always listens to them, so I have to behave myself. [Laughter] But I think that's an important piece of the transparency that the court has put in place.

The electronic records will continue to be important. I would hope that if we get electronic records from a trial court, and that they come through the court of appeal in electronic form, that that will make it easier for us to process those cases, to work those cases, to work up the calendar memos. At least that is my hope, that we eventually get electronic records.

## Legal Issues on the Horizon

### *McCreery:*

What about the development of legal issues in the future—any predictions there of key things the court will work on or things you hope that it will get the chance to work on?

### *Chin:*

They're already here. One case that came here was *ACLU Foundation of Southern California v. Superior Court*,<sup>56</sup> a 2017 case. That was an action brought by the ACLU to compel disclosure of requested automated license plate reader data under the Public Records Act. Now, this is an example of technology arriving on our front door.

What in the world are automated license plate readers? They read your license plate, and then they send it to a server bank. The thing that you have to be careful of is not disclosing records involving investigations or not disclosing records involving intelligence information or security procedures of local law enforcement personnel.

So in that opinion we said, “You can reveal the raw scans, but you can't reveal any of the information that needs to be protected.” The security of the officers would be jeopardized if you released the information about what security measures they were taking or where they were located, those sorts of things.

That is the kind of technology that is going to be coming in front of us. We already have the red-light cameras. We already have the problem of storing all of this video information. Once you get red-light camera videos, where do you store it all? Those are considerations that courts are going to have to pay attention to, and we're slowly getting up to speed.

We had a presentation by the National Archives, and they have the problem of how do you maintain all of this digital information? Because you have it on VHS; you then have it on DVDs; then, pretty soon, the recorders don't run anymore, and the DVDs are outdated. So you have to continue to upgrade the storage of that information.

The courts are going to have the same problem. We're going to have all this video in some format. As time goes by and technology changes, we're

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<sup>56</sup> *ACLU Foundation v. Superior Court* (2017) 3 Cal.5th 1032.

going to have to decide how long to keep information and how to update the way it's stored. So there are so many technology issues that it can be mind-boggling, but we will be better for it if we anticipate what is coming.

It's just like what I told them regarding DNA. It's better to ask the questions now rather than later so that we can be prepared for it. The storage of all of this scientific evidence as it comes before us—we're going to have to figure out how to do that, where to save it, how to update the saving of it. But we'll be better off if we ask the questions now rather than when it blows up in our face.

## Reflections on the Journey So Far

### *McCreery:*

I've been asking you to reflect on a long career—just the portion here on the Supreme Court, twenty-three years now and ongoing. I wonder how you summarize that period of time. What is it like to look back, and what stands out to you in this process?

### *Chin:*

Laura, it has been remarkable to share all of this information with you. I can't imagine anyone being interested in reading this. [Laughter] But what a pleasure it has been to recollect some important pieces of this twenty-three-year journey.

Looking back, I count myself as being blessed to have been here for a remarkable period of the court's history and to work with people it's been nothing but pure pleasure to work with. We have discussed important, critical issues. We've disagreed on some. We've agreed on many. But I can't think of a better group of individuals to work with on these major issues.

You asked me about the decision that Janice wrote on *Hi-Voltage Fire Works*.<sup>57</sup> It was astounding to me that, even though it was nineteen years ago, I couldn't remember it because it was such an important discussion and the views were so varied.

### *McCreery:*

This was the affirmative action case?

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<sup>57</sup> *Hi-Voltage Wire Works, Inc. v. City of San Jose* (2000) 24 Cal.4th 537.

**Chin:**

The affirmative action case. I looked back, and Janice even went back and cited *Dred Scott*<sup>58</sup> and *People v. Hall*,<sup>59</sup> the California case that said the Chinese are so inferior that they couldn't testify against a white person. It's important that we remember that that took place so that we don't do it again, number one, and I disagreed with Ron that Janice was going overboard on discussing all of that history.

I think Ron was right, I think Joyce was right that we didn't need to discuss all of the travesties that went on, but when you look at it through Janice's eyes, you have a different view of what that history meant.

When you look at *People v. Hall* through my eyes, you have a different view of what that meant.

So I was happy to sign Janice's opinion, even though I agree that all of it didn't have to be there.

We could have made that decision based on the language of the initiative. So that's, I think, a good example of what makes it such a pleasure to work with all these different individuals and personalities over multiple years on many cases and then to be able to sit back and read what we based our decision on.

It was an important piece of my life to participate in all of that, and I will always be grateful that I had this opportunity. So thank you, Governor Wilson.

**McCreery:**

You've been highly recognized with many awards and honors, and we don't have to go through them. Perhaps we can include a list as an appendix or something. But I wonder if you want to touch on a handful that really are so important to you?

**Chin:**

The one that stands out for me is the Judge of the Year award from the Judicial Council, because Ron George and Marv Baxter were so much a part of that award.

That award was really important to me because it was from two people and a group of people—like the other members of the council—who were reflecting on my contributions as a judge.

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<sup>58</sup> *Dred Scott v. Sandford* (1857) 60 U.S. 393.

<sup>59</sup> *People v. Hall* (1854) 4 Cal. 399.

It came right after the completion of the work of the Commission for Impartial Courts, and I had the privilege of working with eighty remarkable individuals who had nothing but the best interests of the judiciary in mind. We hammered out eighty-eight recommendations for how to ensure that what was happening in other states—attacking the independence of the judiciary—would not come to California.

Some of the recent things that have happened in California, unfortunately, are contrary to that position, and I regret that that's happening.

I think we should still continue to try to ensure that those kinds of attacks on judicial impartiality—that the fight continues, that we don't ever sit back and say, "We've done everything we can. We're finished." We're never finished. We have to continue to be alert to anything that approaches attacking the independence of our judges.

That award certainly stands out. I've received numerous awards from Asian groups across the state, and they are an important piece of what I am and what has sustained me, primarily in that retention election, which was so difficult for me. Ron once told me in that process, "I wish I had an ethnic group of people behind me like you have behind you."

And he was right. I could not have done it without them. The Chinese community, the Asian American community, really stood up and supported that effort in major, major ways. The support was certainly appreciated.

***McCreery:***

What does the future hold? Do you care to reflect on that now?

***Chin:***

I know that the sun is setting, and I know that—actually, the sunset is my favorite time of day. I think the quote on my college yearbook picture is, "We must wait until evening to see how splendid the day was."

I know that I cannot stay here forever, but I will stay for a while longer, as long as I feel I'm up to doing what is a massive job.

But I suppose it wouldn't be so massive if I didn't agree to do books and chapter updates and teaching, but maybe I can pare back on some of that and just concentrate on the opinions, which is really the best part of this job for me.

I really like crafting the opinions and the solutions to the problems that people bring before us. I think it's the most important part of my work here at the court, and I'll continue to do it for a while longer but not forever.



*Ming Chin and wife Carol, Maui, 2023. (Photo Credit: Ming Chin.)*

## **An “Astounding Road” Traveled with “the People I Love”**

### ***McCreery:***

Thank you. I appreciate that. Finally, Justice Chin, let me ask you to give some sort of personal summary, if you would. You’ve traveled such an astounding road through your life: the story of how your parents came to the United States, and all that your family has experienced, and the incredible accomplishments you’ve had, right up to today. It’s a very compelling story, but how do you summarize it at this time?

### ***Chin:***

I would like to summarize it through my children, because Carol and I have two of the most remarkable children that any two parents could ask for.

Jennifer was a star gymnast. She wanted to compete in the Olympics. When she was a sophomore in high school, she broke the navicular bone in her wrist twice, and the doctor said, “You can’t do this anymore.”

It was devastating for her. She wanted to go to Stanford on a gymnastics scholarship. She could no longer compete. She wanted to continue to compete in athletics, so she went out for the tennis team, but her right arm was broken so she learned to play tennis with her left hand. [Laughter] She graduated as the valedictorian of her class at Alameda High School. She got into Stanford anyway. We had to pay for it. I was happy to do it.

But I remember when she met with her first group at Stanford. She was standing in a group, and she said, “Dad, everyone there was a valedictorian.”

“What were you?” [Laughter]

Anyway, she met her husband Michael Keinath at Stanford, and he is a terrific father to their two girls, Mckenna Lin and Sydney Quinn.

Jason was also a star high school athlete. He was a star tennis player. He did really well in the athletic arena and in the academic arena and eventually went to the University of California in San Diego.

I told you the story about how we met Bruce Darling when Jason was robbed at a convenience store. Through that contact we’ve kept in close touch with Bruce all of these years. I think I told you the story about Jason being put in charge of the cold hit unit in Alameda County and Bruce offering to give us a tour of the DNA lab at Livermore.

Jason met his wife, Elizabeth Reardon, when they were both on a trip to Australia. Then came the boys, Nolan Ming and Hudson Barrett.<sup>60</sup> Lizzie had been a clothing designer, but she went back to school to get a nursing degree. She is a registered nurse in Oakland.

Jason has been very successful in his work at the district attorney’s office, and he was appointed as a judge.

One family cannot be more blessed. Carol is my best friend. We’ve been married now for forty-seven wonderful years, and it seems like yesterday that we walked down the aisle at St. Mary’s cathedral, when both of my parents were still alive.

I’m so sorry that neither of them got to share the excitement of my appointment as a judge or my appointment to the Supreme Court, but as my sister said, “They know.” I hope they do. I hope they’re as proud as I am of my service as a judge and as proud as I am of having Jennifer and Jason following in our footsteps.

We are so fortunate, and I am so grateful.

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<sup>60</sup> On December 10, 2019, several months after this series of interviews took place, Jason and Lizzie Chin welcomed a third son, Boden Benjamin, into the family.

***McCreery:***

Thank you. Is there anything else you'd like to add on anything we've talked about or should have talked about?

***Chin:***

I hesitate to get into this because when I talked about my father it was very difficult. But you wanted to know more about Mom, and she was incredibly strong and such an important part of everything my family has accomplished.

She lived for ten years after my father passed, but after about five years—in five years we took her everywhere. We took her on a cruise with the kids when they were little. We took her to France when Jennifer and Jason were only two and four.

We took her to Hong Kong, and took Jennifer and Jason with us. So for five years we did as much traveling as possible, and then we got the news that she had ovarian cancer.

I was agonizing over how to tell her, and my oldest brother George said, "Let's not tell her."

I said, "George, there's no way we can't *not* tell her."

So I was the one who took on the responsibility to tell her, and I said, "They say that if they operate and you go through the chemotherapy, maybe you can get five more years."

Without hesitation she said, "If I can see those two little kids grow up for five more years, go for it."

She went for it, but she was a fighter in that, just like she had been a fighter during her entire life.

One time she went through the chemotherapy and we took her home. We were leaving for Hong Kong the next day to take her back to her village, and she fell at home. So we took her in an ambulance back to the hospital, and the doctor went through whatever he had to go through.

At the end of it I said, "We have plane tickets to return to China tomorrow. Do you think it's okay if we go?"

He said, "No. Your mother is very, very sick, and there is no way she can make that trip."

I told him, I said, "She wants to go back to her village."

The doctor said, "I'm not getting in the middle of that discussion. You do what you have to do."

We asked Mom what she wanted to do, and she said, “Let’s go.” So we took her, with the whole family, on the plane, and the whole family stood up for most of the flight because we wanted her to lie down. So she had five seats. [Laughter]

Anyway, we took her back, and every day we were there she got better and better and better, and we took her back to her village. But that’s just an example of a woman with a steel spine.

She would not let anything get her down.

I couldn’t close this out without telling you what an important part she played in my life and my family, particularly the children, who saw her go through all this. It was an incredible experience for these little kids to see it.

When she was at the hospital they were there with us, all day every day. One of us would even stay there all night, every night, with her.

So I’ve had a remarkable life with people I love, and I wouldn’t have had it any other way.

***McCreery:***

Justice Chin, thank you so much. Let’s stop there.

**Some Final Words**

There’s life after the California Supreme Court—a full one.

It’s August 19, 2025, and Ming Chin is now, nearly to the day (August 31) five years removed from the end of his seismic tenure on the California Supreme Court.

In his judicial afterlife, we find a former associate justice still working, sharing his expertise, teaching the young about the judiciary, and enjoying his friends, family, and colleagues.

Perhaps it’s not surprising that Chin remains happily on the go. This, after all, is the man who as a kid growing up on his family’s farm, by 13, was operating tractors and harvesting crops.

For one thing, Chin still has a job.

Bringing with him his rich legal and judicial experience, he’s a mediator, arbitrator, and referee at ADR Services Inc., where he is still sharing his penchant for trying to help solve people’s problems.

It turns out, all those traits and skills he used to resolve legal issues from the bench he’s now using in the service of alternative dispute resolution.



*Ming Chin and wife Carol in Cancun, 2022 (Photo Credit: Ming Chin.)*

But it's not all about the job. Much of Chin's work these days remains about the future—a future for a nation now rooted in an era of intense polarization, where the independence of his beloved judiciary is being questioned, and where one wonders if the allure of public service itself has lost the shine it had when Chin himself was finding his way.

Still, he's got hope, coupled with an enduring belief in the need for an independent judiciary, one where judges avoid politics “as much as we can.”

The courts are still very much a force for good, he said. But society also must know how they work, why they matter, and have confidence in them.

“I know there’s some concern in the country about whether judges continue to be independent. I think generally they are,” he said. “There have always been attacks on judges, like there are now.”

“I think it’s really important that society pay attention to having independent judges as an important part of our judicial system. I worked hard throughout my time on the bench to be independent, and that my fellow judges were independent.”

Wisdom, balanced with civility, remains crucial, he said.

On the day we spoke, Chin and wife, Carol, were driving back from the Monterey Peninsula, where he’d just completed a two-week teaching session at the Panetta Institute, founded by former Defense Secretary under President Barack Obama Leon Panetta and wife Sylvia Panetta, who is CEO of the institute.



*At the Hon. Victoria Wood’s Retirement Party—March 9, 2024. Pictured left to right: Joanna Barron, executive vice president and a principal of ADR Services, Inc.; Hon. Ming Chin; Hon. Victoria Wood; Katy Jones, senior case manager and MCLE coordinator for ADR Services, Inc.; Kathleen Emma, director of operations for the Northern California ADR Services, Inc. offices. (Photo Credit, ADR Services Inc.)*

Chin joins an array of noted experts who provide knowledge and, yes, wisdom, to a group of incoming congressional interns on a range of topics, from cyber security to income inequality to history and public policy.

For the past five years, he has taught about the judiciary.

It's meant to be a foundation for the interns' work in D.C. But Chin sees a bigger picture.

"They're excited, they are interested. They ask really good questions," he said of the students. "And of course I'm encouraging them to participate in public life. Because we need more participation from students just like this."

Chin sees Leon Panetta as someone who, in his days in Washington D.C., "was always able to talk to both sides."

In an era of such polarization, Chin says it's a good thing to assert the importance of that skill to young people through the institute.

"I think it's a remarkable public service," he said. "We need more of that, not less."

Given such work, he is optimistic, he said.

As we talked, he'd note that he just visited with Marvin Baxter, his longtime friend and colleague on the California Supreme Court. And as Chin and wife, Carol, drove past UC Berkeley, he noted his eldest granddaughter was moving into her dorm.

He couldn't end our talk without mentioning Carol.

"She was an indispensable part of my career. We both built a family that we are both really proud of," he said.

It's a long way from Klamath, Oregon. That scene when a 10-year-old Ming Chin wondered out loud why his family couldn't live in the nice homes that for so long Chinese families had not had the opportunity to live in.

"Maybe someday you can do something about it," his father told him back then.

Did he?

"I certainly tried to do it," Chin said. "I'm not sure I was successful. But I tried to make sure people had equal opportunity. I certainly kept that episode in mind."