CALIFORNIA COURTS OF APPEAL CENTENNIAL CELEBRATION
SPECIAL COURT SESSION
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My goal this morning is to place the decision to create the California Courts of Appeal[1] within the larger history of California.
When the new Justices began their work in the spring of 1905, our State, then nearing age 55, was younger than most of us in this room today. There were major differences in political structure from what we take for granted today. (Women could not vote; California Supreme Court Justices ran for office in contested elections winning and loosing just as the Governor did; and electors, not the voters chose

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[1] In 1903 State Senator Benjamin Hahn, a Pasadena lawyer, guided a proposed constitutional amendment through the legislature. After a concerted effort in the practicing bar to educate the public, this constitutional change was approved overwhelmingly by the voters in the November 1904 election, creating a new system of appellate courts in the state to respond to ongoing, serious delays in considering appeals--a problem that the second constitutional convention had sought to address more than two decades earlier by adding a 6th and 7th Associate Justice to the California Supreme Court and allowing the Court to meet in two panels. A few years later legislation added the resource of ''Commissioners'' to assist the Court. Flawed in fundamental conception insofar as productivity was a key goal, these reforms could not respond to continued rapid population growth, and thus appellate delay haunted the Supreme Court and eroded the quality of the legal system. In 1890 State Bar President and San Franciscan, T.B. Stoney, reported: ''In San Francisco the Supreme Court is 1,000 cases behind.'' He pointed out that the pressures were producing highly undesirable consequences. For one: ''The Supreme Court has almost denied to attorneys the privilege of oral argument before it.'' During the fall 1904 campaign, Los Angeles Bar President W.J.Hunsaker argued that some appeals were pursued to produce delay, and suggested that corporate interests would not have the same reaction to delay as individual litigants.
California was not alone in confronting this problem. In the 1890's the federal circuit courts entered our judicial framework, and by the time of California's 1904 action, at least 8 other states had created what were commonly referred to as intermediate appellate courts.

U.S. Senators. There was also a 19th Century legacy of race-based action where law played a central role -- one so horrific in significant respects, and so counter to democratic values in many, many respects, that this history has been, perhaps even unconsciously, wiped from our cultural memory.

But insofar as I can tell, the origins of the Courts of Appeal were not rooted in what today we would call social justice concerns.
In reality the reshaping of the California Court system was but one of many early 20th century responses to the need to build the infrastructure of the state in response to the dramatic population growth that has characterized California's entire history, and in response to the economic changes that the combination of population growth, technological innovation and California's natural assets produced. There is ample evidence that lawyers wanted to ensure that their business and individual clients were well served by the courts.

The growth was staggering. By 1900, San Francisco with 342,000 residents was the 9th largest city in the nation. (Perhaps even more surprising, it had already earned 10th place 30 years earlier!) While Los Angeles in 1900 was less than a third the size of San Francisco, its population of 103,000 ranked it 26th among U.S. cities. The connection of L.A. to the Midwest by the Santa Fe railroad in 1887 had fed tourism, and, in turn the first of the great land booms. If we measure county wide, population growth in L.A. matched San Francisco's in the 1880's, exceeded it in the 1890's, and in the first decade of the new century, Los Angeles County's total population topped San Francisco County's by over 80,000 people, but this was the decade of the 1906 earthquake and fire. (In the mid 1920's the city of Los Angeles was to pass the 1 million mark, making it the 5th largest city in the U.S.)

Economic growth was not only driven by the State's two largest cities. Agriculture was being transformed by irrigation and the railroad's refrigeration cars opened far-flung markets. In the first year of the century, 24,000 rail cars filled with lemons and oranges left California. Five million cases of salmon were packed; 80,000 tons of sugar and over 70 million pounds each of raisins and prunes were produced-— products that could be shipped by rail or sea. Oil discoveries and the film industry were about to become new engines of economic growth.

In 1903 the first trip across the U.S. was made by car and soon the state would be building a network of state highways with bond funding eagerly approved by the voters. That same year the Wright brothers flew the world's first airplane at Kitty Hawk. Quietly, William Mulholland was planning a 235-mile aqueduct to bring water from the Owens valley in the eastern Sierra to L.A. and San Franciscans were seeking federal permission to dam the Hetch Hetchy Valley in the Yosemite. Governor Pardee's inaugural program called for strengthening education by

guaranteeing 6 years of basic education to Californians, moving forward on stimulating more high schools in the state, and adding agricultural research to the University's agenda.

Intense labor strife, late 19th century amassing of huge corporate power, and widespread corruption in government were seen as eroding democratic ideals. People felt a loss of individual power and autonomy. The progressive's response was to attack the problem of the corruption of democratic values by strengthening the power of the people, by establishing direct democracy. The most radical reform, and the one aimed at perpetuating the key idea of progressivism beyond any particular administration, was the ''initiative, referendum and recall.'' One of the hardest fought issues was subjecting Judges to the recall provision. Ironically, 5 years earlier Governor Pardee, the man who appointed the first 9 Justices, told the legislature that the integrity and independence of the whole judicial system was under popular suspicion.[2]

Finally, here are a few personal and speculative thoughts about the direct impact of the California Courts of Appeal. Creating a larger group of appellate justices, made it more difficult to corrupt the judiciary---and corruption at all levels of government including the judiciary was a very significant problem as the 19th Century turned into the 20th.

Without question, the new appellate framework liberated the California Supreme Court, enabling it to consider fewer cases in greater depth. The very existence of the District Courts of Appeal had inherent in it a sense that the California Supreme Court should pursue the ideal of evaluating those cases most important for it to consider and to insure that those cases received all the analysis and deliberative attention that they merited. Let me put the point another way---had the Supreme Court continued to operate without the Courts of Appeal, struggling with massively unreasonable caseloads, could the Traynor Court as we know it, ever have existed?

The new framework also expanded the number of people who would contribute to our collective thinking about the purposes and shape of law in our democracy and this has contributed a wealth of analysis and perspective. It also made it more likely that different judges would take an interest in different areas of the law broadening the topics that are receiving sustained, thoughtful attention.

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[2] Pardee was denied a second term as Governor when the railroad and San Francisco's ''Boss'' Ruef opposed him in the nominating convention. Ruef later admitted that he paid $20,000 dollars to delegates to prevent Pardee's re-nomination.

In my view there has been a strong benefit to the fact that the courts of appeal are not much in the public eye. One that became even stronger when the contested election was removed for appellate Justices in the 1930s. Thus, we may from time to time see moments of unusually plain speaking, or well considered but in their time seemingly radical reasons to shift our legal approach to a problem.

And ultimately, though we had to wait an interminable time to see it begin to happen, the Courts of Appeal framework has made possible a far greater reflection of diversity--diversity of people and of perspectives in our California judiciary--a fact that is especially critical in this, the most diverse state in the nation.