ONE HUNDREDTH ANNIVERSARY OF THE COURT OF APPEAL

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It is a great privilege to speak today on behalf of the civil appellate bar. In thinking about how to mark the 100th anniversary of the Court of Appeal appropriately, one word kept leaping to the forefront of my consciousness - gratitude. For 100 years, the men and women who have served as justices on the intermediate appellate court throughout our state, and those who have served as judicial research attorneys, judicial assistants, court clerks and other support staff, have performed one of the most valuable functions in a modern civilized nation - they have administered, and in many instances made, the law which governs the behavior of our citizens.

In performing its task, the Court of Appeal fills several different roles, for which we can be grateful in different ways.

First, and perhaps foremost, the Court of Appeal is the last resort in the vast majority of litigated disputes because so very few of its decisions are reviewed by the Supreme Court. Win, lose or draw, published or not published, this gives finality to disputes. Even in those cases, and there are many, which perhaps should not have been appealed, the decision by this reviewing court gives the parties much needed closure. They can then move on with their lives, secure in the knowledge that a higher court has listened to their grievance and given a reasoned explanation for why, in the vast majority of cases, the lower court was correct. In those not insignificant number of cases where the lower court is reversed or its order is modified, the appellate decision becomes the final word on the points considered. Having represented a number of people on both sides of this equation, and spoken with many of my colleagues who have done so, I can tell you with confidence that, by and large, the public is grateful for the careful attention it gets from the Court of Appeal.

Second, we can all be grateful for the body of law the Court of Appeal is constantly developing in the decisions it publishes. In 767 bound volumes, which used to line many bookshelves in law offices and libraries and which are now only a few mouse clicks away, the Court of Appeal has, in the course of resolving disputes between individual litigants, set binding precedent by interpreting the statutory law or applying it to various factual scenarios. The court has also developed the common law where the Legislature has not spoken, or spoken in a way that leaves room for, indeed sometimes invites, judicial elaboration.

Court of Appeal decisions usually remain the last word on a subject. Sometimes, they stay the last word for a generation or two, until either the Legislature or the Supreme Court changes them, often in response to cultural changes that occur over time or a dissenting opinion that eventually carries the day. This development of the law has also provided fertile ground for dialogue and disagreement between appellate districts, sometimes even between divisions within a district and commentary by academics, which eventually leads to Supreme Court resolution of important issues or to legislative action. Some examples are included in the excellent booklet prepared for this occasion by the Administrative Office of the Courts. The many thousands of pages of the official reports contain other examples too numerous to mention.

The third role for which we can be grateful is at once the most significant, and perhaps the least noticed: However much contemporary society is criticized for being too litigious, the reality is there would be much more litigation were it not for the body of law which the intermediate court develops. In many areas of life, people regulate their behavior in light of what the appellate court has decided the law is. This avoids disputes that would otherwise result in litigation. To give just a few examples: businesses organize their operations, people draft their contracts, manufacturers design their products, in light of the law in these areas. Couples about to marry, or dissolving a marriage, negotiate, as has been said, "in the shadow of the law". We as a people can be grateful for the guidance intermediate appellate court opinions provide as the backdrop against which we conduct our affairs.

No celebration of the Court of Appeal would be complete without some mention of that giant in California legal history - Bernard E. Witkin, or as he probably would have preferred, "Bernie". Unfortunately, Bernie did not live quite long enough to personally witness this event. Nevertheless, having developed the rules on appeal first adopted in 1943, having been instrumental in founding the college for continuing education of the judiciary, and having been cited more than 23,500 times in published Court of Appeal decisions alone, Bernie will always remain part of the life blood of this institution. I am confident that were Bernie here today, he would impart some of his endless wisdom and then delight us with a limerick in celebration of this historic event.

Since Bernie is not here to do so, I would like to share with you one of his favorite toasts. He taught this to my partner Vicki De Goff, instructing her to save it for special occasions, of which this is surely one:

A man may kiss his wife goodbye
The dew may kiss the butterfly
The sparkling wine may kiss the glass
And you dear friends...carry on.

In closing, on behalf of us all, let me thank those who had the wisdom and foresight to create the institution of the Court of Appeal; let me thank the many who have come before, and whose ideas and decisions are recorded in the bound volumes; let me thank those who are serving today; and let me thank those who will carry on these traditions for the next 100 years and beyond.

Happy Birthday, Happy Anniversary, and we know you will keep up this great work!