

# THE JUDICIARY

Do Our Judges Serve the Law?  
- A Republican Town Meeting

# 1998



Shawn Steel

**A June 13 GOP gathering discussed the state Supreme Court and November's judicial elections. Opening segment sponsors: The California Public Policy and U.S. Justice Foundations. Part two sponsors: California Republican Party Judicial Evaluations Committee Chairman state Senator Ray Haynes and California Republican Assembly.**



Mark S. Pulliam

*Boalt Hall Law Professor Stephen Barnett and attorney Rex Heinke initially agreed to defend the resolution: "The California Supreme Court under Chief Justice Ron George has accurately and carefully and fairly applied the law," debating CPR's Mark Pulliam and Professor Gideon Kanner. At the last minute, Barnett and Heinke withdrew. (See John Kurzweil's remarks, page 26). Pulliam and Kanner made their cases, excerpted here, on their own. Attorney Shawn Steel moderated.*

## Shawn Steel

Our California Constitution entitles voters to pass judgement on all judges. I'm not representing the California Republican Party this morning; I'm here as an individual. But my, and the Party's, primary goal is Dan Lungren's election. The next governor will determine in large measure how the district lines are re-drawn for Assembly, state Senate, and Congress. I'm concerned that in the primary we had rather low Republican turnout throughout the state. That shows we're in for a long, tough march. I'm concerned that a campaign against Ron George and Ming Chin will heavily impact the entire political dynamics this fall.

## Mark Pulliam

I am not advocating Ron George's defeat. George is no Rose Bird. Bird was the jurisprudential equivalent of Lillian Hellmen, about whom it was said every word she wrote was a lie, including "and" and "the." George is not consistently wrong, especially in criminal cases. But being "better than Rose Bird" is not the benchmark.

I believe that, either consciously or unconsciously, George is tempering his decisions to please an overwhelmingly liberal academic, media, and establishment audience, although judges are supposed to make their decisions based on the law. Consider, for example, his 1997 *American Academy of Pediatrics v. Lungren* decision involving a bipartisan 1987 law signed by George Deukmejian requiring a minor to obtain her parent's or a judge's consent be-



Gideon Kanner

*Shawn Steel is California Republican Party Treasurer. Mark Pulliam is CPR's legal issues correspondent. Loyola Law School Emeritus Professor of Law Gideon Kanner is editor of Just Compensation, a monthly periodical on eminent domain law. All comments are excerpted from remarks at the June 13 "debate" or the Haynes' Committee hearing. For a full transcript, send \$4 to California Public Policy Foundation, P.O. Box 931, Camarillo, CA 93011.*



fore an abortion. Most states have such parental consent or notice laws. The U.S. Supreme Court has upheld such laws nine times. In 1996, California's Supreme Court upheld the law, 4-3, stating: "a parent's right to direct his or her child's upbringing is among the most basic of civil rights." Then two justices retired. Two new justices were appointed, including Ming Chin, the Court decided to re-hear the decision, and the result flipped, the Court ruling the statute unconstitutional. George wrote the majority opinion. Ming Chin provided the additional vote.

**R**ON GEORGE'S opinion did not rely on the United States Constitution but on the state Constitution — the same trick Bird used to pull with the death penalty to get around inconvenient federal precedents. It was based on a provision voters added to the state Constitution in 1972 that simply says all people are entitled to pursue and obtain safety, happiness, and privacy. On the basis of that, the George Court recognized a sweeping, constitutional right on the part of minors to be free from any type of parental oversight or authority,

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## A CRP Judicial Evaluations Committee Hearing Senator Haynes asks Republicans to speak their minds on state judges

*The following excerpts are taken from a hearing held June 13, 1998, at the Anaheim Marriott hotel, sponsored by Hon. Ray Haynes, chairman of the California Republican Party's Judicial Evaluations Committee.*

### Hon. Ray Haynes

I believe the justices, particularly Chin and George, in a variety of cases have gone beyond their appropriate role. I state that up front so no one can say I have a hidden agenda. But as chairman of CRP's Judicial Evaluations Committee I

which I submit is a reckless and irresponsible interpretation.

### Gideon Kanner

Property is very important, but what is more important is that unless individual property rights are respected, no other rights are safe.

I am not here to tell you how to vote, but to tell you what's been going on. California has always been inhospitable to private property rights, and has always taken an expansive view of the powers of regulators. But historically the Court was balanced. In some ways it was pro-government; in others protective of property owners' rights. This came to an abrupt halt in the Bird Court. In 1979, in a case called *Agin v. City of Tiburon*, the California Supreme Court out of the blue worked a revolution. It announced that in spite of what the U.S. Supreme Court had said earlier, there would be no compensation to any Californian whose property was so severely regulated that he was left with nothing, except the title and the obligation to pay taxes. In 1987, the United States Supreme Court cracked down on the California Supreme Court in two famous cases: *First English Evangelical Church v. County of Los Angeles* and

*Nollan v. California Coastal Commission*. They made it clear our state Court had severely misconstrued federal constitutional law. But for the next 10 years, the California Supreme Court did not decide any of these cases. Recently, it re-entered this arena with a vengeance, and has not only stuck to its guns, but has pushed that regime of unlimited regulatory power over property rights further. In the most recent case, *Landgate, Inc. v. California Coastal Commission* (1998), the Court said when you are wrongly denied use of your property by the government, part of the normal process of getting approval is you having to sue them. So, you have to hire lawyers and go through years of litigation. In the end the courts say, "No, they were wrong; they shouldn't have done to you what they did. Thank you very much; you're not entitled to compensation for your losses." The Court, by an indirect route, has defied the U.S. Supreme Court, returning to the 1979 *Agin* precedent.

**I**S THE Court fairly and accurately applying the law as laid down by the U.S. Supreme Court? My conclusion is: no, it is not.

have a separate role: to synthesize Republicans' opinions on judges and present that synthesis to the Party. Our role is to answer two questions: How do Republicans define judges' role in a free society? How do the judges measure up to that yard-stick? I hope this Committee goes 'way beyond November to set up a ba-



Committee members Ray Haynes • Andrew Cho • Brad Dacus