Foreword
BJI/CLR Symposium on Charting a Path for Federal Judiciary Reform

Jeremy Fogel*

A principal mission of the Berkeley Judicial Institute (BJI), which I am privileged to serve as Executive Director, is to "fill a long-standing need to establish an effective bridge between the legal academy and the judiciary." This mission statement reflects a common perception among both legal scholars and judges that the two institutions often talk past each other, such that the scholars' analyses are insufficiently grounded in practical reality, while the judges' perspectives are overly focused on granular detail. BJI's existence reflects the hope that closer contact and collaboration between the two groups will lead to new and useful synergies.

The Symposium on the structure and functioning of the federal appellate courts to which this issue of the *California Law Review* is dedicated was BJI's first major public effort in pursuit of this goal. The Symposium brought together diverse thought leaders from academia, the bar, and the judiciary for two days of candid conversation and brainstorming. It expressly encouraged the participants to think big, to imagine how the federal courts might reframe their existing way of doing business to address functional deficiencies and serve their stakeholders more effectively. The results of the thought-provoking discussions are reflected in the seven pieces that *CLR* will publish: Professors Peter Menell and Ryan Vacca's *Revisiting and Confronting the Federal Judiciary Capacity "Crisis": Charting a Path for Federal Judiciary Reform*; Judge Jon Newman's Keynote Speech *The Current Challenge of Federal Court Reform*; Professors Marin Levy and Tejas Narechania's *Interbranch Information Sharing: Examining the Statutory Opinion Transmission Project*; Professor Christopher Slobogin's *The Case for a Federal Criminal Court System (and Sentencing Reform)*; Professor Irene Joe's *Regulating Implicit Bias in the Federal Criminal Process*; and practitioners Jonathan Cohen and Daniel Cohen's Iron-*ing out Circuit Splits: A*

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Proposal for the Use of the Irons *Procedure to Prevent and Resolve Circuit Splits Among United States Courts of Appeals*.

Part I of this Foreword briefly discusses the contributions of the Symposium's scholarship. In Part II, I reflect on my judicial experience and on the practicability of judicial reform. Finally, in Part III, I distill a number of solutions proposed by these scholars and debated during the Symposium sessions, and I weigh in on their feasibility.

I.
THE SYMPOSIUM'S SCHOLARSHIP: AN OVERVIEW

The Symposium's lead paper, by Professors Menell and Vacca, reviews the history of modern efforts to reform the federal judiciary.[1] It notes that conditions that were described as a "crisis" by the bipartisan Hruska Commission more than fifty years ago—such as growing caseloads, increasingly complex subject matter, and inconsistency and unpredictability in the law as a result of differences among the circuit courts—have only grown worse in the absence of meaningful reforms.[2]

Although a significant number of district courts are seriously overburdened, the problems described by the Hruska Commission have become particularly severe at the appellate level. The Supreme Court decided 150 to 180 merits cases during the 1970s and 1980s;[3] that number fell to a low of 65 in the October 2018 Term.[4] The number of cases heard en banc by the circuit courts has also fallen significantly, from an average of nearly one hundred per year during the 1960s and 1970s to approximately forty per year during the past decade.[5] At the same time, the United States Code and the Code of Federal Regulations have grown more than threefold, and the total number of appeals has grown substantially. The system's capacity to deal with fragmentation of national law is thus far more strained than it was half a century ago. Even Judge Henry Friendly, who questioned the need for a National Court of Appeals in the 1970s, recognized that the time might come when more fundamental structural reforms would be needed.[6]

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1. *See* Peter S. Menell & Ryan Vacca, *Revisiting and Confronting the Federal Judiciary Capacity "Crisis": Charting a Path for Federal Judiciary Reform*, 108 CALIF. L. REV. 789 (2020).

2. *See generally* U.S. COMM'N ON REVISION OF THE FED. COURT APPELLATE SYS., STRUCTURE AND INTERNAL PROCEDURES: RECOMMENDATIONS FOR CHANGE (1975).

3. *See* Menell & Vacca, *supra* note 1, at 865.

4. JOHN G. ROBERTS, JR., CHIEF JUSTICE'S 2019 YEAR-END REPORT ON THE FEDERAL JUDICIARY 5 (2019) https://www.supremecourt.gov/publicinfo/year-end/2019year-endreport.pdf [https://perma.cc/5VA7-2DUH].

5. *See* Menell & Vacca, *supra* note 1, at 809; *see, e.g.*, JUDICIAL BUSINESS OF THE U.S. COURTS, ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, various years, tbl.S-1 (2011), https://www.uscourts.gov/sites/default/files/statistics_import_dir/S01Sep11.pdf [https://perma.cc/RH28-SCDW] (showing a total of fifty-one cases heard en banc).

6. *See Hearings Before the Comm'n on Revision of the Fed. Court Appellate Sys.*, Second Phase, Volume I 204–05 (1974–75) (recognizing that adoption of jurisdiction streamlining proposals

Professors Menell and Vacca offer their own approach to judicial reform in response to these structural problems at the appellate level. While noting the politicization of federal judicial appointments and the increasing polarization of the national political environment generally, the authors attribute at least some of the stagnation of judiciary reform to opposition from the judiciary itself.[7] Their innovative concept—a bipartisan commission tasked with proposing reforms that would not go into effect until 2030—offers a constructive means for vetting and assessing proposals.[8] Such a commission could draw renewed and sustained attention to judiciary reform; provide a diversity of perspectives including, but not limited to, those of federal judges; and look beyond short-term political and personal considerations. It could also improve access to neutral expertise, respond to successful judicial models in other countries, and address the growing importance of enabling generalist judges and juries to deal with the challenges posed by advancing technology.

In his keynote address,[9] Judge Newman, who has served for more than three decades on the United States Court of Appeals for the Second Circuit, fully embraces the idea that the federal judiciary needs to think about judicial administration systemically as well as at ground level. He suggests that just because something has been done a certain way historically doesn't mean that it shouldn't be subjected to thorough examination and potential change. At the same time, his critical observations of an array of past and present proposals reflect the cautious approach shared by the great majority of his judicial colleagues.

For many of those present, the Symposium provided an opportunity to think about judicial administration from a new point of view. Many of the scholars talked about ways in which some well-established judicial practices make life difficult for non-judicial users even as they promote consistency and collegiality for judges. In general, the judges expressed concern about the unintended consequences of major changes and proposed modest tweaks rather than fundamental reforms. The practitioners saw merit in both perspectives, but voiced concerns about their ability to adapt to the proposed structural changes.

The articles that follow are representative of the provocative contributions made by the legal academics who participated in the Symposium. With respect to the management of criminal cases, Professor Slobogin makes the case for separating the federal court system into civil and criminal divisions, arguing that judges will make better-informed and more consistent decisions if they acquire

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"would not solve the problems of the courts of appeals for all time. As the country continues to grow and Congress subjects still more areas to federal regulation, the savings effected by these measures will gradually be eroded. . . . Hopefully, by the year 2000, we will have learned where to preserve the adversary system and where to substitute something else.").

7. *See* Menell & Vacca, *supra* note 1, at 875–79.

8. *Id.*

9. *See* Jon O. Newman, *The Current Challenge of Federal Court Reform*, 108 CALIF. L. REV. 905 (2020).

a deeper understanding of criminal cases from beginning to end.[10] Relatedly, Professor Joe advocates for education, formal protocols, and best practices to identify and mitigate the effects of attorneys' and judges' implicit bias in criminal cases.[11]

In the realm of court structure and procedure, Professors Levy and Narechania explore ways in which the federal courts and Congress might communicate regularly and usefully about statutory interpretation.[12] And practitioners Jonathan Cohen and Daniel Cohen describe a process that would permit circuit courts to consult with each other prior to creating conflicting legal authority.[13]

II.
JUDICIAL EXPERIENCE AND REFLECTIONS ON JUDICIAL REFORM

Prior to the creation of BJI, I served as a trial judge for thirty-seven years, the last twenty of which were in the federal judiciary. From 2011 through 2018, I was the Director of the Federal Judicial Center, which oversees applied research and professional education for federal judges and administrative staff. In the latter capacity, I worked with judges and court executives from every circuit, attended meetings of the policy-making committees of the Judicial Conference of the United States, and collaborated frequently with the senior leadership of the Administrative Office of the United States Courts.

Judge Newman's caution doesn't surprise me. The federal judiciary is a "small c" conservative institution. In my experience, the principal focus of most judges is doing the best job they can with their individual cases. While many care seriously about the development of the common law, few concern themselves with the structures within which their decisions are made. When they do turn to structural concerns—as they did following the 2010 Duke conference that focused on the increasing burden of civil discovery costs in the digital age[14]—judges tend to move with great deliberation and produce incremental responses. While the original Duke proposals were far-reaching and could have transformed much of modern civil litigation, their ultimate product was modest. The conference produced a reordering of the factors judges may consider in managing the scope of discovery as well as a needed clarification of standards

10. *See* Christopher Slobogin, *The Case for a Federal Criminal Court System (and Sentencing Reform)*, 108 CALIF. L. REV. 941 (2020).

11. *See* Irene Oritseweyinmi Joe, *Regulating Implicit Bias in the Federal Criminal Process*, 108 CALIF. L. REV. 965 (2020).

12. *See* Marin K. Levy & Tejas N. Narechania, *Interbranch Information Sharing: Examining the Statutory Opinion Transmission Project*, 108 CALIF. L. REV. 917 (2020).

13. *See* Jonathan M. Cohen & Daniel S. Cohen, Iron-*ing out Circuit Splits: A Proposal for the Use of the* Irons *Procedure to Prevent and Resolve Circuit Splits Among United States Courts of Appeals*, 108 CALIF. L. REV. 989 (2020).

14. *See Purpose Statement*, 2010 Civil Litigation Conference (May 10–11, 2010), https://www.uscourts.gov/rules-policies/records-and-archives-rules-committees/special-projects-rules-committees/2010-civil [https://perma.cc/9G6D-P6QN].

and sanctions related to evidence retention in light of the increasing importance of electronically stored information.

This deeply embedded institutional conservatism can be beneficial in ways that are not always obvious to people outside the judiciary. Once adopted, rules of procedure must be applied in an almost unlimited variety of situations. The extraordinary care that the judiciary takes in crafting them reduces the frequency of arbitrary applications and goes a long way toward making the judicial process more predictable for those who use it. Differences in the procedures and customary practices of the various circuits in assigning cases, resolving intra-circuit differences, and managing public access typically reflect regional culture and the great value most appellate judges place on collegiality, not only as an aspirational goal, but also as a practical necessity.

III.
OVERCOMING OBSTACLES TO JUDICIAL REFORM

As Professors Menell and Vacca detail in their lead article, efforts to bring about structural change, especially change imposed upon the judiciary to achieve goals or address interests not intrinsic to the judiciary's day-to-day operations, are almost certain to encounter strong headwinds.[15] In addition to making a convincing showing that their proposal would promote the development of the law, have beneficial effects on the efficiency, fairness, or expense of litigation, or otherwise increase public trust and confidence in the judiciary, the proponents of any significant reform proposal also will need to finesse the judiciary's conventions and traditions. A 2030 Commission, as proposed by Professors Menell and Vacca, would provide a promising vehicle for moving past the political, institutional, and human impediments that have hindered structural reforms. The commission would represent a path toward building and sustaining the federal judiciary's capacity to scale with the challenges of an ever-changing nation and world.

Along with the proposals discussed in this volume, the participants in the Symposium offered a wide range of other suggestions, including creation of a special tribunal to resolve inter-circuit splits, reduction in the number of circuit courts, term limits for Supreme Court justices, elimination of diversity jurisdiction, and introduction of judicial performance evaluations. There were presentations about the rapid ascendancy of large-scale multidistrict litigation (MDL)—a procedure that operates largely outside the rules applicable to class actions—and the burdens arising from the increasing "federalization" of criminal law. Participants also discussed the sensitive issue of how to deal with judges who struggle to meet the demands of their job or who are experiencing declining cognitive capacity. Going forward, BJI hopes to explore at least some of these

15. *See* Menell & Vacca, *supra* note 1.

ideas in greater depth by collaborating with many of the scholars, judges, and practitioners who contributed to the Symposium.

One proposal that seemed to achieve a broad consensus would simplify and encourage expressly inter-circuit and inter-district assignments to assist courts with heavy caseloads.[16] While such assignments are already permitted by rule, the culture in many courts discourages them except in unusual circumstances, and there was general agreement that a more specific statement of Judicial Conference policy in favor of such resource sharing would be helpful.

The benefits of such a statement would not be trivial: some federal courts are badly overburdened, while others, because of population shifts and other socioeconomic changes, have much less to do. Greater national coordination would be helpful both to the courts and to the constituents they serve. Yet the modesty of this proposal also illustrates the central challenge of structural judicial reform: finding a way to reconcile the wisdom and creativity of people of vision and goodwill both outside and within the judiciary.

BJI hopes to use the rich interactions generated by the Symposium as a first step in taking on that challenge. By providing a means for scholars, practitioners, and judges to integrate their unique perspectives, BJI can help to develop judiciary reform proposals that are both bold and workable and that bring together the intellectual creativity of the legal academy and the careful deliberation of experienced and thoughtful practitioners and judges.

APPENDICES

April 12–13, 2019
University of California at Berkeley
Berkeley Judicial Institute/California Law Review
Spring 2019 Symposium:
Charting a Path for Federal Judiciary Reform

Nearly a century ago, Justice Felix Frankfurter and Professor James M. Landis remarked that "great judiciary acts, unlike great poems, are not written for all times."[17] From the time of the American Revolution through the early twentieth century, the United States reformed the federal judiciary at approximately twenty-five-year intervals. Nearly half a century later, Professor Paul Carrington observed that "we have now set a new record for consecutive years of restraint from tinkering with the system."[18]

16. As Professors Menell and Vacca illustrate, caseload pressures vary systematically and widely across the federal judiciary. *See* Menell & Vacca, *supra* note 1, at 847–48.

17. FELIX FRANKFURTER & HENRY M LANDIS, THE BUSINESS OF THE SUPREME COURT 107 (1927).

18. Paul Carrington, *Crowded Dockets and the Courts of Appeals: The Threat to the Function of Review and the National Law*, 82 HARV. L. REV. 542, 543 (1969).

Professor Carrington's seminal article provided powerful empirical support for the mounting sentiment among jurists, scholars, practitioners, and policy-makers that the federal judiciary was struggling to address the growing caseloads and complexity of the federal docket. Heeding widespread calls for judiciary reform, in 1972 Congress charged a bipartisan and cross-branch commission chaired by Senator Roman Hruska to study the functioning of the federal judiciary and recommend reforms. After two years of extensive study, the Hruska Commission concluded that

> No part of the federal judicial system has borne the brunt of [] increased demands [to protect individual rights and basic liberties and resolve difficult issues affecting the financial structure and commercial life of the nation] more than the courts of appeals. Since 1960 the number of cases filed in these courts has increased 321 percent, while the number of active judges authorized by the Congress to hear these cases increased only 43 percent.[19]

The Commission called attention to the Supreme Court's capacity constraints and to the risks that the growing number of circuit conflicts posed to the body of national law.

Based on these findings, the Hruska Commission recommended that Congress establish a National Court of Appeals to alleviate the strains on the Supreme Court and regional courts of appeals. The Supreme Court would have authority to transfer cases to the new intermediate appellate court. Regional circuit courts would have authority to transfer cases involving circuit splits.

The proposal was initially greeted with enthusiasm, but failed to survive the legislative gauntlet. No major structural changes to the federal appellate system came to pass then or since. Apart from the repeal of three-judge district courts, the division of the Fifth Circuit (creating the Eleventh Circuit), the creation of specialty courts for bankruptcy and patent appeals, and increases in the number of district court and appellate court slots, the fundamental structure of the federal appellate system has remained the same.

We are now another half century past Professor Carrington's clarion call. Does this mean that the problems that galvanized attention in the 1970s have abated or been addressed through other means? The data on caseloads and capacity constraints suggest otherwise. The number of Supreme Court merits decisions per Term has *declined* by more than half since the time of the Hruska Commission, while the number of certiorari petitions has doubled. District and appellate court caseloads per judge have continued to increase. The primary attitude toward judiciary reform appears to be skepticism. Judiciary reform has become a legislative third rail, too dangerous for politicians to discuss.

This Symposium revisits half-century-old questions about the functioning of the federal judiciary, identifies new issues and perspectives, and explores how

19. U.S. COMM'N ON REVISION OF THE FED. COURT APPELLATE SYS., *supra* note 2, at 1.

the federal judiciary might be reformed to improve the administration of justice. The lead article, being prepared by Professors Peter Menell and Ryan Vacca, traces the history and political economy surrounding judiciary reform and updates data on caseloads, processing times, certiorari petitions, en banc review, and other measures of judicial performance. It identifies four persistent pathologies: (1) expanding caseloads per judge; (2) growing complexity of federal law; (3) fragmentation of national law; and, most critically, (4) the political difficulty of judiciary reform.

The article offers an antidote to the historic logjam over judiciary reform: a commission tasked with developing a judiciary reform act that would not go into effect until 2030. The "2030 Commission" members would not know the identity or party of the President or who controls the Senate. And judges involved in the process would likely be senior or retired by the time the reform went into effect, so they would be less focused on how reform proposals would affect their stature. By delaying implementation, the 2030 Commission members would function behind a Rawlsian veil of ignorance that would enable them to pursue the best interests of the nation.

The Symposium will step behind the veil to consider constructive and balanced proposals for judiciary reform, such as structural changes aimed at relieving circuit splits, changes to the jurisdiction of the federal courts, term or age limits on the Supreme Court, greater specialization of the federal courts, expansion of judicial slots, the ramifications of technological change, and case management practices. The *California Law Review* plans to publish a Symposium issue featuring the lead article and commentaries from the Symposium.

Friday, April 12, 2019 **Symposium** **Chevron Auditorium, International House, University of California at Berkeley**	
8:30 am	**Continental Breakfast**
9:00 am	**Welcome**: **Dean Erwin Chemerinsky** and **Judge Jeremy Fogel** (ret.), Executive Director, BJI
9:10 am	**Presentation of Lead Paper** **Peter S. Menell** & **Ryan Vacca**, **Revisiting and Confronting the Federal Judiciary Capacity "Crisis": Charting a Path for Federal Judiciary Reform**

9:55 am	**Academic Panel** Moderator: **Dean Erwin Chemerinsky** Panelists: • **Andrew Bradt (**Berkeley) • **Jonathan Matthew Cohen**, INSIDE APPELLATE COURTS (2002) • **Marin Levy** (Duke) • **Andrea Roth** (Berkeley)
11:00 am	**Break**

11:15 am	**Practitioner Panel**
	Moderator: **Professor Amanda Tyler** (Berkeley)
	Panelists:
	• **Appellate Advocate: Kannon Shanmugam**, appellate advocate; former Assistant to the Solicitor General
	• **Plaintiff Counsel: Elizabeth Cabraser**
	• **Corporate Counsel:**
	  ○ **Paul Grewal** (Magistrate Judge (N.D. Cal.) (ret.), Deputy General Counsel, Facebook)
	  ○ **Malini Moorthy** (Chief Deputy General Counsel, Medtronic)
	• **Criminal Law:**
	  ○ **Prosecution/DOJ:**
	  ▪ **Jonathan Wroblewski,** Director, Office of Policy and Legislation, U.S. Department of Justice
	  ○ **Public Defender:**
	  ▪ **David Patton** (Federal Defenders of New York, Executive Director and Attorney-in-Chief)

12:30 pm	**Lunch**
1:00 pm	**Keynote Speaker**: **Judge Jon O. Newman** (2nd Circuit)
2:00 pm	**District Judge Panel** Moderator: **Judge Jeremy Fogel** (ret.), Executive Director, BJI Panelists: • **Judge David Campbell** (D. Ariz.) (Chair of the Standing Committee on Practice and Procedure) • **Judge Thelton Henderson** (N.D. Cal.) • **Judge Patti Saris** (D. Mass) (former Chair of the U.S. Sentencing Commission and Committee on Defender Services) • **Chief Judge Leonard Stark** (D. Del.)

	• **Judge Josephine Staton** (C.D. Cal.)
3:15 pm	**Break**
3:30 pm	**Appellate Judge Panel** Moderator: **Judge Jeremy Fogel** (ret.), Executive Director, BJI Panelists: • **Justice Mariano-Florentino Cuellar** (California Supreme Court) • **Judge Susan Graber** (Standing Committee on Practice and Procedure), (9th Circuit) • **Judge Kent A. Jordan** (3rd Circuit) • **Chief Judge Robert Katzmann** (2nd Circuit) • **Chief Judge Sharon Prost** (Federal Circuit) • **Judge Amul Thapar** (6th Circuit) • **Chief Judge Sidney Thomas** (9th Circuit)
5:00 pm	**Wrap-up Session** **Comments: Judge Fogel, Dean Chemerinsky, Peter Menell**
5:30 pm	**Adjourn and Reception**
6:30 pm	**Dinner for Panelists and Special Guests**

Saturday, April 13, 2019 **Berkeley Law** **(invitation only)**			
8:30 am	**Continental Breakfast**		
9:00 am	**Opening Plenary** **Setting the Agenda: Judge Jeremy Fogel** (ret.) and **Peter Menell** **Identification of Key Issues, Themes** **Discussion**		
10:00 am	**Break**		
10:15 am	**Morning Break-out Sessions**		
	District Court Civil	**District Court Criminal**	**Court of Appeals/ Supreme Court**

Topics	**Specialization** **Use of technology and scientific/expertise** **Case Assignment - Allocating caseloads across districts** **Discovery** **MDL** **Subject Matter Jurisdiction (CAFA, diversity)** **Role of Magistrate Judges** **Bankruptcy Court** **Avalanche of pro se cases?** **A formal, funded program for confidential peer review, coaching, and evaluation of judges by judges** **Peremptory challenges for judges (*cf.* Cal. Code of Civ. Pro 170.6)**	**Specialization - The role of "collaborative" or "problem-solving" courts** **4th A. Process** **Staffing** **Plea Bargaining - Allowing judges to participate in settlement** **Use of court-appointed experts (FRE 706)** **Whether to ask jurors for an advisory opinion at the sentencing stage** **Whether there might be a "complexity" exception to the 6th Amendment that would allow defendants to insist upon a bench trial** **Sentencing issues - whether the advisory guidelines/Gall framework is working for the judiciary; the role and bias of risk assessment tools** **Growing amount of "secret law" from FISA and grand jury processes** **Use of artificial intelligence for case management**	**Structural reforms (National Court of Appeals, Splitting of large circuits, consolidation of smaller circuits, and variants)** **Judiciary Funding** **Reinvigorating en banc review** **Crowdsourcing identification of circuit splits - Tracking - Better communication with lower courts, practitioners, treatise authors, academia** **Divergence of interpretive methodology**

		the use of technology, scientific/technical expertise, and empirical data in the judiciary **Educating judges on scientific evidence** **Peremptory challenges for judges (*cf.* Cal. Code of Civ. Pro 170.6)**	
Discussion Leaders	**Andrew Bradt** (Berkeley) **Elizabeth Cabraser** **Judge David Campbell** (D. Ariz.) (chair of the standing committee on practice and procedure) **Judge Jeremy Fogel (ret.)** **Judge Andrew Guilford** (C.D. Cal.) **Chief Judge Leonard Stark** (D. Del.) **Judge Josephine Staton** (C.D. Cal.)	**Jonathan Wroblewski** (DOJ) **David Patton** (Federal Defenders of New York, Executive Director and Attorney-in-Chief) **Andrea Roth** (Berkeley) **Judge Patti Saris** (D. Mass) (former Chair of the federal sentencing commission and federal defender services)	**Erwin Chemerinsky** (Berkeley) **Jonathan Matthew Cohen** **Tom Goldstein** SCOTUSblog, appellate advocate **Judge Susan Graber** (9th Circuit) **Marin Levy** (Duke) **Judge Jon O. Newman** (2nd Circuit) **Peter Menell** (Berkeley) **Ryan Vacca** (UNH)
Participants	**Clara Altman** (FJC) **Seth Davis** (Berkeley) **Scott Dodson** (Hastings)	**Judge Terry J. Hatter Jr.** (C.D. California) **Judge Thelton Henderson** (N.D. Cal.)	**William Davis** (former Circuit Executive for the 9th Circuit; former Director of the California Judicial Council)

	Judge Thomas Donovan (Bankruptcy Court, C.D. Cal.) **Sean Farhang** (Berkeley) **Paul Grewal** (Magistrate Judge (N.D. Cal.) (ret.), Deputy General Counsel, Facebook) **Michael Jacobs** (Morrison Foerster) **David Law** (Washington University) **Judge Patricia Lucas** (California Superior Court, Santa Clara) **Richard Marcus** (Hastings) (Associate Reporter for Civil Rules) **Francis McGovern** (Duke/Hastings) **Malini Moorthy** (Chief Deputy General Counsel, Medtronic) **Justice Ioana Petrou** (Cal. Court of Appeals, 1st District) **Theodore Rave** (Houston) **Claire Sylvia** (Phillips & Cohen) **Judge Ronald M. Whyte** (N.D. Cal.) (ret.)	**Judge Brenda Harbin-Forte** (California Superior Court, Alameda County) **Irene Oritseweyinmi Joe** (UC Davis) **Christopher Kutz** (Berkeley) **Dan Richman** (Columbia) **Jonathan Simon** (Berkeley) **Avani Mehta Sood** (Berkeley) **Chris Slobogin** (Vanderbilt) **Judge Trina Thompson** (California Superior Court, Alameda County) **Charles Weisselberg** (Berkeley) **Frank Zimring** (Berkeley)	**Rochelle Dreyfuss** (NYU) **Judge William Fletcher** (9th Circuit) **Susan Haire** (Univ. of Georgia School of Public & Int'l Affairs) **Ed Hartnett** (Seton Hall) (Appellate Rules Committee) **Judge Kent A. Jordan** (3rd Circuit) **Chief Judge Robert Katzmann** (2nd Circuit) **Tejas Narechania** (Berkeley) **Chief Judge Sharon Prost** (Federal Circuit) **Judge Amul Thapar** (6th Circuit) **Kannon Shanmugam** **Molly Van Houweling** (Berkeley) **Judge J. Clifford Wallace** (9th Circuit)

12:15 pm	**Lunch**		
1:30 pm	**Afternoon Break-out Sessions**		
	District Court Civil	**District Court Criminal**	**Supreme Court**
Topics	**Specialization** **Use of technology and scientific/expertise** **Case Assignment - Allocating caseloads across districts** **Discovery** **MDL** **Subject Matter Jurisdiction (CAFA, diversity)** **Role of Magistrate Judges** **Bankruptcy Court** **Avalanche of pro se cases?** **A formal, funded program for confidential peer review, coaching, and evaluation of judges by judges** **Peremptory challenges for judges (*cf.* Cal. Code of Civ. Pro 170.6)**	**Specialization - The role of "collaborative" or "problem-solving" courts** **4th A. Process** **Staffing** **Plea Bargaining - Allowing judges to participate in settlement** **Use of court-appointed experts (FRE 706)** **Whether to ask jurors for an advisory opinion at the sentencing stage** **Whether there might be a "complexity" exception to the 6th Amendment that would allow defendants to insist upon a bench trial** **Sentencing issues - whether the advisory guidelines/Gall framework is working for the judiciary; the role and bias of risk assessment tools**	**Term/Age Limits** **Crowdsourcing identification of circuit splits - Tracking - Better communication with lower courts, practitioners, treatise authors, academia** **Certification by appellate courts** **Use of remands for en banc review** **Procedure - Inviting amicus to argue appeals - Post-argument briefing** **Divergence of interpretive methodology**

		Growing amount of "secret law" from FISA and grand jury processes **Use of artificial intelligence for case management** **The use of technology, scientific/technical expertise, and empirical data in the judiciary** **Educating judges on scientific evidence** **Peremptory challenges for judges (*cf.* Cal. Code of Civ. Pro 170.6)**	
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Participants	**Seth Davis** (Berkeley) **Scott Dodson** (Hastings) **Judge Thomas Donovan** (Bankruptcy Court, C.D. Cal.) **Sean Farhang** (Berkeley) **Michael Jacobs** (Morrison Foerster) **David Law** (Washington University) **Judge Patricia Lucas** (California Superior Court, Santa Clara) **Richard Marcus** (Hastings) (Associate Reporter for Civil Rules) **Francis McGovern** (Duke/Hastings) **Paul Grewal** (Magistrate Judge (N.D. Cal.) (ret.), Deputy General Counsel, Facebook) **Malini Moorthy** (Chief Deputy General Counsel, Medtronic) **Justice Ioana Petrou** (Cal. Court of Appeals, 1st District) **Theodore Rave** (Houston)	**Clara Altman** (FJC) **Judge Brenda Harbin-Forte** (California Superior Court, Alameda County) **Judge Terry J. Hatter Jr.** (C.D. California) **Judge Thelton Henderson** (N.D. Cal.) **Malcolm Feeley** (Berkeley) **Irene Oritseweyinmi Joe** (UC Davis) **Christopher Kutz** (Berkeley) **Dan Richman** (Columbia) **Jonathan Simon** (Berkeley) **Avani Mehta Sood** (Berkeley) **Chris Slobogin** (Vanderbilt) **Judge Trina Thompson** (California Superior Court, Alameda County) **Charles Weisselberg** (Berkeley)	**Jonathan Matthew Cohen** **William Davis** (former Circuit Executive for the 9th Circuit; former Director of the California Judicial Council) **Rochelle Dreyfuss** (NYU) **Judge William Fletcher** (9th Circuit) **Judge Susan Graber** (Standing Committee on Practice and Procedure), (9th Circuit) **Susan Haire** (Univ. of Georgia School of Public & Int'l Affairs) **Ed Hartnett** (Seton Hall) (Appellate Rules Committee) **Judge Kent A. Jordan** (3rd Circuit) **Chief Judge Robert Katzmann** (2nd Circuit) **Marin Levy** (Duke) **Judge Jon O. Newman** (2nd Circuit) **Chief Judge Sharon Prost** (Federal Circuit)

	Claire Sylvia (Phillips & Cohen) **Judge Ronald M. Whyte** (N.D. Cal.) (ret.)		**Judge Amul Thapar** (6th Circuit) **Molly Van Houweling** (Berkeley) **Judge J. Clifford Wallace** (9th Circuit)
3:15 pm	**Break**		
3:30 pm	**Closing Plenary** **Reports from Breakout Sessions** **Open Discussion – Reform** **Next Steps**		
5:15 pm	**Adjourn and Reception**		
5:45 pm	**Dinner**		