

Cite This Volume: 36 MCGEORGE L. REV. ____ (2005).



Copyright © 2005 by University of the Pacific, McGeorge School of Law.

McGeorge Law Review (ISSN 1520-9245) is published quarterly by the students of University of the Pacific, McGeorge School of Law, 3200 Fifth Avenue, Sacramento, CA 95817. Periodical postage is paid at Sacramento, California and at additional mailing offices. Postmaster send address changes to *McGeorge Law Review*, 3200 Fifth Avenue, Sacramento, CA 95817.

The *McGeorge Law Review* prints all matter that it deems worthy of publication. Views expressed herein are those of the authors, and do not necessarily reflect the policies or opinions of the *Law Review*, its editors and staff, or the law school.

The *Law Review* welcomes the submission of unsolicited manuscripts. Manuscripts, along with computer disks (in Microsoft® Word 2000), should be sent to the Articles Editor, *McGeorge Law Review*, 3200 Fifth Avenue, Sacramento, CA 95817.

Citations conform to THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Review Ass'n et al. eds., 17th ed. 2000).

SUBSCRIPTION INFORMATION AND REQUESTS FOR BACK ISSUES

The *McGeorge Law Review* is published quarterly and the subscription cost for the volume, which includes all four issues, is \$20.00. (This subscription cost includes our yearly *Review of Selected California Legislation*). Single issue subscriptions are available, and single issues may be purchased independently of a subscription.

Requests for the *Law Review* should be in writing; telephone orders will be taken only if paid prior to mailing. Subscriptions will be automatically renewed each year unless a cancellation request is received prior to the mailing of the next volume. **IF A SUBSCRIBER WISHES TO CANCEL MID-YEAR, THE LAW REVIEW WOULD PREFER TO COMPLETE THE MAILING OF THE ISSUES TO COMPLETE THE VOLUME. THE SUBSCRIBER IS RESPONSIBLE FOR ANY ISSUES MAILED PRIOR TO THE DATE OF THE CANCELLATION REQUEST.**

Duplicate copies of the *Law Review* will be sent with charge if non-delivery is based upon a change of address without notification. **A NOTICE OF THE SUBSCRIBER'S CHANGE OF ADDRESS MUST BE RECEIVED AT LEAST SIXTY (60) DAYS BEFORE THE DATE OF THE ISSUE FOR WHICH IT IS TO TAKE EFFECT. UNLESS A CLAIM IS MADE FOR NON-RECEIPT OF AN ISSUE (OTHER THAN FOR AN ADDRESS CHANGE) WITHIN SIXTY (60) DAYS OF PUBLICATION, THAT ISSUE WILL NOT BE SUPPLIED FREE OF CHARGE.**

Requests for subscription information, or notices of an address change, should be sent to the *McGeorge Law Review*, 3200 Fifth Avenue, Sacramento, CA 95817, or faxed to *McGeorge Law Review*, Attn: Subscriptions, (916) 739-7360. Subscriptions of the *McGeorge Law Review* through Volume 10 may be obtained from Fred B. Rothman & Co., 10368 West Centennial Road, Littleton, Colorado 80123. Copies of back issues from Volume 11, as available, may be purchased directly from the *Pacific Law Journal/McGeorge Law Review*.

SUBSCRIPTION: \$20.00 per year

Single issues (Volume 11 and continuing, as available): Legislative Review issues \$15.00, Symposium issues \$15.00, all other issues \$10.00. (These prices are subject to change without notice).

REPRINTS: \$6.00 per copy (as available).

Reprints from Volume 30 to present are available at no charge, since the *Law Review* is computer typeset. (One free copy per order. If ordering multiple articles from one single issue, you must pay the purchase price of that single bound issue). To obtain a laser-printed reprint of any article from Volume 30 to present, please write to the *McGeorge Law Review*, 3200 Fifth Avenue, Sacramento, CA 95817.

REVIEW OF SELECTED NEVADA LEGISLATION

Due to a declining subscription base, the *Pacific Law Journal/McGeorge Law Review* was forced to discontinue its *Review of Selected Nevada Legislation*. The last issue available is from 1989. The *Law Review* has a limited supply of back issues available at a cost of \$25.00 per issue.

All issues of the McGeorge Law Review are typeset in-house using Microsoft® Word 2000 and printed on the HP LaserJet 4000 Series Printer. For information on this process, you may call our Editorial Office at (916) 739-7171 between the hours of 8:30 a.m. to 5:30 p.m. (PST).



McGEORGE LAW REVIEW

Board Member, National Conference of Law Reviews

VOLUME 36

ISSUE 4

BOARD OF EDITORS

TATE DAVIS, PH.D.
Editor-in-Chief

BENJAMIN C. PALMER
Chief Articles Editor

BRANDON R. DIAS
Chief Managing Editor

MEGHAN GAVIN
Chief Comment Editor

JOSHUA L. BAKER
Chief Legislation Editor

NICHOLAS M. ZOVKO
Chief Technical Editor

JENNIFER L. FORDYCE
Chief Symposium Editor

EDITORIAL STAFF

RYAN ARNOLD
SAIRA DIN
ERIC ROTH
JENNIFER WENKER
Legislation Editors

REBECCA ESTY
GREGORY FOREST
CORINTHIA SMITH
DENISE WILLIAMS-PEREIRA
OLIVIA WRIGHT
Managing Editors

TAMMY MCCABE
BEN NICHOLSON
ANNIE SMITH
SCOTT SOMMERDORF
SUSAN TREPCZYNSKI
Comment Editors

HEATHER EDWARDS
WILLIAM JAFFE
*Articles & Symposium
Editors*

STAFF MEMBERS

JUSTIN ALTMANN
BYRON BERGER
JULIA BLAIR
CAROLYN CAFORIO
JENNIFER CECIL
KRISTEN CERF
C.J. CONANT
SANDY DAWES
BRENNAN DAY
SARA DUTSCHKE
JASON ELIASER
JOEL EISENBERG

MEREDITH FELDE
ANNA FROSTIC
ELIZABETH HALL
JOSHUA GEORGE
JODY HAUSMAN
CRAIG HENDERSON
SUMMER JOHNSON
BRIAN KENNEDY
KATIE KROPP
CINDY LANGENBECK
MATT LILLIGREN
MATTHEW LOPAS

JAMES MAYNARD
BRENT McDONALD
CHELSEA OLSON
ANDREA PELOCHINO
TODD RATSHIN
STEPHANIE RICE
ERIC RITIGSTEIN
JANELLE RULEY
RAY SARDO
ERICH SHINERS
MOLLY SWORD
HEATHER THOMPSON

GEORGE A. GOULD
Faculty Advisor

PAULINE RODRIGUEZ
Computer Publishing Specialist



McGEORGE LAW REVIEW

Board Member, National Conference of Law Reviews

VOLUME 37

BOARD OF EDITORS

JOEL EISENBERG
Editor-in-Chief

ANNA FROSTIC
Chief Articles Editor

MATT LILLIGREN
Chief Managing Editor

JODY HAUSMAN
Chief Comment Editor

CHELSEA OLSON
Chief Legislation Editor

KRISTEN CERF
Chief Technical Editor

JAMES MAYNARD
Chief Symposium Editor

EDITORIAL STAFF

JULIA BLAIR
SANDY DAWES
SUMMER JOHNSON
JANELLE RULEY
HEATHER THOMPSON
Legislation Editors

ELIZABETH HALL
CRAIG HENDERSON
BRIAN KENNEDY
MATTHEW LOPAS
STEPHANIE RICE
ERICH SHINERS
Managing Editors

CHRISTOPHER J. CONANT
SARA DUTSCHKE
MEREDITH FELDE
TODD RATSHIN
RAY SARDO
Comment Editors

JUSTIN ALTMANN
CINDY LANGENBECK
*Articles & Symposium
Editors*

STAFF MEMBERS

GINA MARIE BOWDEN
KERRY CAMPBELL
JENNY DENNIS
PATRICIA EICHAR
SHARON EVERETT
LAURA FRIEDMAN
MATT GARBER
JEREMY GOLDBERG
BREANN HANDLEY
KEVIN HULL

JEENA JIAMPETTI
KEVIN KHASIGIAN
JENNIFER LORENZ
NICHOLAS MAHR
DRUMMOND MCCUNN
HEATHER MCGILL
WYATT ORSBON
GRAHAM OWEN
JON PETERS
CHRIS POWELL
JENNIFER PROTAS

SOPHIA ROWLANDS
JUSTIN SIMPSON
JARED WALKER
LAURA WARD
MANCY WARNER
KENDALL WHEELER
JUSTIN WYNNE
ZEBULON YOUNG
DAVID ZIRING
NIKI ZUPANIC

GEORGE A. GOULD
Faculty Advisor

PAULINE RODRIGUEZ
Computer Publishing Specialist



UNIVERSITY OF THE
PACIFIC
McGeorge School of Law

FACULTY OF LAW

- LEXIS ALLEN, B.A., J.D.
Legal Process Instructor
- LOU ANAPOLSKY, B.A., J.D.
Adjunct Professor of Law
- CECILIA ARNOLD, B.A., M.A., J.D.
*Professor, Director,
Community Legal Services*
- ANN BLOCK, B.A., J.D.
Adjunct Professor of Law
- ANNE BLOOM, B.A., J.D., PH.D.
Assistant Professor of Law
- KIMBERLY BOTT, B.A., J.D.
Adjunct Professor of Law
- ADRIENNE BRUNGESS, B.A., J.D.
Legal Process Instructor
- GEOFFREY BURROUGHS, B.A., J.D.
Adjunct Professor of Law
- CLAY CALVERT, A.B., J.D., PH.D.
Adjunct Professor of Law
- GERALD M. CAPLAN, B.A., M.A., J.D.
Professor of Law
- LINDA CARTER, B.A., J.D.
*Professor of Law, Director, Criminal
Justice Concentration*
- ANTHONY CASO, B.A., J.D.
Adjunct Professor of Law
- KIM CLARKE, B.A., J.D., MLIS.
Director, Law Library
- RAYMOND R. COLETTA, A.B., J.D.
Professor of Law
- CARIN N. CRAIN, B.A., J.D.
*Assistant Dean of Students,
Lecturer in Law*
- KEVIN CULHANE, B.A., J.D., J.S.M.
Adjunct Professor of Law
- DONALD J. CURRIER, B.A., J.D.
Adjunct Professor of Law
- OMAR DAJANI, B.A., J.D.
Assistant Professor of Law
- JULIE ANNE DAVIES, B.A., J.D.
Professor of Law
- Father David Deibel, B.A., J.D., M.Div.,
J.C.L., *Adjunct Professor of Law*
- JENNIFER DUGGAN, B.A., J.D.
Adjunct Professor of Law
- JUDGE MORRISON C. ENGLAND, JR., B.A.,
J.D., *Adjunct Professor of Law*
- GLENN A. FAIT, B.A., J.D.
*Associate Dean/Special Counsel and
Director, Institute for Administrative
Justice, Lecturer in Law*
- MARJORIE FLORESTAL, B.A., J.D.
Assistant Professor of Law
- GRETCHEN FRANZ, B.A., J.D.
Legal Process Instructor
- KATHLEEN FRIEDRICH, B.A., J.D.
*Clinical Staff Attorney,
Lecturer in Law*
- FRED A. GALVES, B.A., J.D.
Professor of Law
- THOMAS GEDE, B.A., J.D.
Adjunct Professor of Law
- STEVEN GEVERCER, B.A., J.D.
Adjunct Professor of Law
- FRANKLIN A. GEVURTZ, B.S., J.D.
Professor of Law
- LESLIE GIELOW JACOBS, B.A., J.D.
Professor of Law
- GEORGE A. GOULD, B.A., J.D.
*Professor of Law, Advisor to the
McGeorge Law Review*
- GEORGE C. HARRIS, B.A., M.A.T., J.D.
Visiting Professor of Law
- ROBERT A. HAWLEY, B.A., J.D., LL.M.
Adjunct Professor of Law
- GERALD HICKS, B.A., J.D.
Legal Process Instructor
- RICHARD HYDE, B.A., J.D.
Adjunct Professor of Law
- PHILLIP ISENBERG, B.A., J.D.
Adjunct Professor of Law
- JULISE JOHANSON, B.A., M.Ed., J.D.
Clinical Staff Attorney
- RUTH JONES, A.B., J.D.
Professor of Law
- WARREN A. JONES, B.A., J.D.
Professor of Law
- STEVEN KAISER, B.A., J.D.
Adjunct Professor of Law
- DARLENE KELLY, B.A., J.D.
Adjunct Professor of Law

CHARLES D. KELSO, A.B., J.D., LL.M.,
LL.D., J.S.D.
Professor of Law

J. CLARK KELSO, B.A., J.D.
*Professor of Law, Director of the
Governmental Affairs Program*

JUSTICE ANTHONY M. KENNEDY, A.B., LL.B.
*Associate Justice, Supreme Court of the
United States, Adjunct Professor of Law*

KATHARINE KILLEEN, B.A., J.D.
Adjunct Professor of Law

MATINA KOLOKOTRONIS, B.A., J.D.
Adjunct Professor of Law

AMY LANDERS, B.F.A., J.D.
Assistant Professor of Law

BRIAN K. LANDSBERG, B.A., J.D.
Professor of Law

CAROL LANGFORD, B.A., J.D.
Legal Process Instructor

DANIEL LATHROPE, B.S., B.A., J.D., LL.M.
Visiting Professor of Law

JAY LEACH, B.A., M.A.T., J.D.
*Director, Center for Legal Advocacy,
Professor of Law*

DREW LEIBERT, B.A., J.D.
Adjunct Professor of Law

LAWRENCE C. LEVINE, B.A., J.D.
Professor of Law

STEVEN LEWIS, B.A., J.D.
Adjunct Professor of Law

ALBERT LOCHER, B.A., J.D.
Adjunct Professor of Law

HETHER MACFARLANE, A.B., M.A., J.D.
Director of Legal Process

THOMAS MAIN, B.A., J.D.
Associate Professor of Law

MICHAEL MALLOY, B.A., J.D., PH.D.
*Distinguished Professor and Scholar,
Advisor to The Transnational Lawyer*

CHRISTINE MANOLAKAS, B.A., J.D., LL.M.
*Associate Dean for Academic Affairs,
Professor of Law*

STEPHEN C. MCCAFFREY, A.B., J.D., DR., IUR.
Distinguished Professor and Scholar

ERIC MCELWAIN, B.A., J.D., LL.M.
*Interim Director, International Programs,
Lecturer in Law*

GREG MEATH, B.A., J.D.
Adjunct Professor of Law

KENT MEYER, B.A., M.B.A., PH.D., J.D.
Adjunct Professor of Law

DAVID W. MILLER, A.B., J.D.
Professor of Law

NANCY MILLER, B.A., J.D.
Assistant Professor of Law

LESLIE MITCHELL, B.A., J.D.
Adjunct Professor of Law

MARY-BETH MOYLAN, B.A., J.D.
Co-Director, Appellate Advocacy

JOHN E. B. MYERS, B.S., J.D.
Distinguished Professor and Scholar

MIKE K. NAKAGAWA, B.A., J.D.
Adjunct Professor of Law

RENEE C. NASH, B.A., J.D.
Adjunct Professor of Law

TIMOTHY E. NACCARATO, B.A., J.D.
Assistant Dean for Academic Programs

ELIZABETH RINDSKOPF PARKER, B.A., J.D.
Dean

KEITH PERSHALL, B.A., J.D., LL.M.
Adjunct Professor of Law

JOHN PEZONE, B.A., J.D.
Adjunct Professor of Law

GREGORY PINGREE, B.A., J.D.
Assistant Professor of Law

DONALD R. PRINZ, B.S., B.A., J.D.
Professor of Law

JAN ELLEN REIN, B.A., LL.B.
Professor of Law

DONNA REYNOLDS, B.A., J.D.
Legal Process Instructor

JUSTICE RONALD B. ROBIE, B.A., M.A., J.D.
*Court of Appeal, Third Appellate District,
Adjunct Professor of Law*

CLAUDE D. ROHWER, B.A., J.D.
Professor Emeritus

JAIME RENÉ ROMÁN, B.A., J.D., LL.M.,
M.S.S., *Adjunct Professor of Law*

RACHAEL SALCIDO, B.A., J.D.
Assistant Professor of Law

TIMOTHY SCHARDL, B.A., J.D.
Adjunct Professor of Law

GLENDALEE SCULLY, B.A., J.D.
Professor of Law

JED SCULLY, B.A., J.D.
*Director, Intellectual Property
Concentration, Professor of Law*

DAVID SHAW, B.A., J.D.
Adjunct Professor of Law

JOHN CARY SIMS, A.B., J.D.
Professor of Law

STUART L. SOMACH, B.A., J.D.
Adjunct Professor of Law

JON SPERRING, B.A., J.D.
Adjunct Professor of Law

JOHN G. SPRANKLING, B.A., J.D., J.S.M.
Distinguished Professor and Scholar

NED SPURGEON, B.A., LL.B., LL.M.
Distinguished Visiting Professor of Law

BARRY STERN, B.A., J.D.
Visiting Professor of Law

MOLLY STUART, B.A., J.D.
Adjunct Professor of Law

MARY SWANSON, B.S., J.D.
Adjunct Professor of Law
JOSEPH E. TAYLOR, J.D., M.B.A.
Professor of Law
ED TELFEYAN, B.A., J.D.
Legal Process Instructor
STEPHANIE THOMPSON, B.A., J.D.
Legal Process Instructor
MICHAEL VITIELLO, B.A., J.D.
Professor of Law
EDWIN VILMOARE, B.A., M.A., J.D.
Lecturer in Law
FRANCIS S.L. WANG, B.A., J.D.
Visiting Professor of Law,
Distinguished Scholar in Residence

GREGORY S. WEBER, A.B., J.D.
Professor of Law
ELIZABETH A. WEEKS, B.A., J.D.
Visiting Professor of Law
PHILIP WILE, A.B., J.D.
Professor of Law,
Director, Tax Concentration
JAMES WIRRELL, B.A., MCS, LL.B.,
MSLIS., J.D.
Adjunct Professor of Law
KOJO YELPAALA, B.L., LL.B., M.B.A.,
MSC., J.S.D.
Professor of Law
LAURA YOUNG, B.A., J.D.
Visiting Professor of Law



* * *





**In Memory of the Late
Justice Robert K. Puglia**



* * *



Editors' Note

The *McGeorge Law Review* is honored to publish this tribute to the late Presiding Justice Robert K. Puglia. Although most of us never had the good fortune to meet him in person, the pages that follow demonstrate he was an admirable man who touched many people's lives. There are few individuals whose passing would generate such a strong collaboration by so many people, signifying the impact that he had on our community. We hope Justice Puglia's legacy will live on through the pages of this memoir.

A number of people contributed to the success of this publication. We would like to acknowledge Justice George Nicholson of the California Court of Appeal, Third Appellate District for his efforts in organizing this memoir. We would also like to thank all of the authors for taking the time to write such poignant words of remembrance. In addition, we extend our gratitude to the kind folks who funded this project. Without their generosity, the large-scale distribution of these works would not have been possible.

This publication was a joint effort between two editorial boards of the *McGeorge Law Review*. Thus, the tribute contains two mastheads acknowledging the efforts of both the former and the current staff. Because of the overwhelming demand for this tribute, it is available as a separately-bound publication. It is also contained within Volume 36, Issue 4 of the journal.

Joel A. Eisenberg
Editor-in-Chief
McGeorge Law Review, Volume 37

Matt Lilligren
Chief Managing Editor
McGeorge Law Review, Volume 37



* * *



McGEORGE LAW REVIEW

Board Member, National Conference of Law Reviews

VOLUME 36

ISSUE 4

TRIBUTE TO ROBERT K. PUGLIA, LATE PRESIDING JUSTICE OF THE CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

Foreword from the Court <i>California Court of Appeal, Third Appellate District</i>	723
Epitome of Excellence: The Legacy of Robert K. Puglia <i>Arthur G. Scotland</i>	725
More than Honorable: Robert K. Puglia, Jurist, Gentleman, and Giant <i>Roy G. Shannon</i>	727
A Man to Match My Mountains <i>Janice Rogers Brown</i>	733
A Puglia Memorial <i>Coleman Blease</i>	739
Footnote for a Friend-Robert K. Puglia <i>Jed Scully</i>	743
Robert K. Puglia, “For the People. . . ,” Litigator and Legend <i>Richard W. Osen</i>	745
Bob Puglia and Baseball <i>Bob Hemond</i>	747
Freedom is Not Free <i>Robert K. Puglia</i>	751



* * *



Foreword from the Court

California Court of Appeal, Third Appellate District

It is axiomatic that the practice of law is a thinking person's profession, and one that demands candor, civility, and collegiality. As lawyers, we are fortunate if we are privileged to work in close proximity with a person who exemplifies all these traits in their most refined manifestations. The late Presiding Justice Robert K. Puglia was one of these rare exemplars. The words that follow in the tributes included in this volume come from just a few of the judges, practitioners, and students lucky enough to work with and learn from this great jurist. Law review articles are crafted, and rightly so, toward scholarly purposes, analyzing and critiquing all aspects of our profession. However, on rare occasion, it is appropriate to depart from the usual detached forms of legal academic exposition. Every now and then, we should take the time to pen, and read, something about our work imbued with more warmth and humanity. Ours is a human profession, after all; something Justice Puglia instinctively recognized.

Sacramento's bench and bar is very close knit. Justice Puglia's kindness and loyalty were instrumental in helping to foster that kinship. He was very quiet about it, but he was part of the critical mass that has made Sacramento's legal community unique. He was generous with his time, energy, and insight, to thousands of lawyers and law students throughout his career.

One of Justice Puglia's personal passions was Big Band music. He was a world class expert and collector of this important, thoroughly American music. When word spread of his illness and his difficulty in seeing visitors, several of his friends, including Justice Anthony M. Kennedy and Presiding Justice Arthur G. Scotland, worked together, and with KCTC-AM, to create a means to "visit" Justice Puglia without tiring him. They wrote and broadcast a "Big Band Tribute to Presiding Justice Robert K. Puglia." Justice Puglia was an Ohio State University alumnus. So, Jerry Healey, formerly the voice of Buckeye football, hosted the program, while Justices Kennedy and Scotland, and eleven other friends and colleagues, "spoke" to Justice Puglia and each introduced one of his favorite Big Band tunes. Each recording had been temporarily pilfered by his children from his personal collection exclusively for the broadcast. Justice Puglia was delighted as he listened to the broadcast with Ingrid and his family. He died about a week later. (To listen to the "Big Band Tribute," go to: http://www.courtinfo.ca.gov/courts/courtsofappeal/3rdDistrict/justices_former/puglia.htm.)

Justice Puglia recognized that hard work and dedication to the law are essential to our freedom. In short, Justice Puglia knew that freedom is not free, it must be earned and maintained. This was nothing less than his life's work. We are deeply grateful to the Editorial Staff of the McGeorge Law Review in providing this forum of tribute. We invite the reader to explore the remarks and essays that follow and learn about a great lawyer who was a still greater human being. As these tributes indicate, it is possible to be both.



* * *



Epitome of Excellence: The Legacy of Robert K. Puglia

Arthur G. Scotland*

When Korean War veteran Bob Puglia left his beloved state of Ohio in 1954 to study law at the University of California, Boalt Hall, he came with little more than his immense intellect, work ethic, and motivation. Upon his untimely death from cancer in 2005, Bob left behind a legal legacy in his contributions to the rule of law in the Golden State and, even more importantly, in the influence that he had on innumerable members of the legal profession.

Bob's profound influence on the legal profession was broad, from the courtroom to the classroom, where Bob taught for many years as an Adjunct Professor of Law at the University of the Pacific, McGeorge School of Law. As his former students and colleagues can attest, Bob brought to every task his keen mind, his sound character, and his passion to instill in all an appreciation of, and respect for, the rule of law.

The stories of his skills as a trial attorney are legendary. For example, whenever then Sacramento County Chief Deputy District Attorney Bob Puglia prosecuted a jury trial, all of the lawyers in the office who could do so would sit in the courtroom to watch the master in action (leading someone to scrawl "Hero Worship" on the office in-out board). Bob set a standard of excellence in trial that led to his gubernatorial appointment to serve as a Superior Court judge.

Bob's reputation as a trial judge was as glowing as was the distinction he earned as a trial attorney. Recently, a person who tried hundreds of jury trials in courts throughout California and Oregon remarked that the finest trial judge before whom he appeared was Bob Puglia. With his encyclopedic knowledge of the law, his firm yet velvet control of the courtroom, his respect for the law, and his decisiveness, Bob was a tour de force as a trial judge. He even was a valuable source for his colleagues on the bench, who often called Bob for his guidance on legal issues.

But it was Bob's work for almost a quarter of a century as Presiding Justice of the Court of Appeal, Third Appellate District, that made his brilliance known to an audience far beyond Sacramento's legal community. As expressed on the impressive bronze plaque that dedicates the Robert K. Puglia Law Library of the Court of Appeal in Sacramento, a tribute bestowed upon his retirement in December 1998, Bob's appellate opinions "are marked by scholarship, common sense, clarity and eloquence, reflecting his philosophy of judicial restraint and his understanding of the proper role of the courts in a democratic society."

Indeed, Bob's appellate opinions could serve as a textbook for judicial decision-making. They reflect his respect for the rule of law, his dedication to reach the legally correct result, and his adherence to the conviction that judges

* Presiding Justice, California Court of Appeal, Third Appellate District.



must not abuse their limited powers in our tripartite system of government. And Bob's opinions entertain, so to speak, as well as inform. A showcase for his prodigious vocabulary, his judicious use of humor, and his flare for turning a phrase to make a point, they stand apart from the often pedestrian legal writings of many jurists. Other appellate justices have been heard to say they strive to emulate Bob's work. And even those justices, lawyers, and academics who from time to time have disagreed with Bob marvel at the persuasiveness and eloquence of his appellate opinions.

While Bob's appellate opinions have had great influence on the rule of law, those who received the greatest benefit of his influence are those who had the good fortune to work directly with him as lawyers, trial judges, or appellate justices. Bob's day-to-day interaction with colleagues revealed not only his brilliance, but also his charm, wit, and coolness under the most challenging circumstances. He was a true leader and innovative administrator who always looked for productive ways to improve court administration, who inspired others to strive for excellence, and who created the collegial atmosphere that is now embedded in every pore of the Third Appellate District.

His day-to-day interaction with others also revealed the personal side of Bob, who had a soft spot in his heart not only for his wife, Ingrid; children, Susan, Peter, Dave, and Tom; and their families, including grandchildren, Ben, Nick, and Hailey; but also for his many friends. Bob's concern for others did not stop with his family, friends, and colleagues. Years ago, on a vacation trip to the Far East, a bus boy in a hotel restaurant in Laos asked to practice his English with Bob. In doing so, he spoke of his aspiration to better himself and his family by going to business school. Impressed with the young man's motivation, Bob offered to pay his school tuition to help him achieve his goal.

When I think about Bob, as I often do, I feel very lucky that he was a mentor and friend. My hero in the law, Bob Puglia is the most remarkable judge, perhaps the most remarkable man I have personally known. His positive influence on the law and on those around him is indelible.



More than Honorable: Robert K. Puglia, Jurist, Gentleman, and Giant

Roy G. Shannon*

Once in a great while you encounter a person who makes an indelible mark in your memory and on his profession. Occasionally, character, temperament, and intelligence meld in a rare combination of gifted excellence one's peers cannot fail to notice. More rarely still do you see those gifts exist in firm tandem with a sincere humility and commitment to principled ethics. In this late epoch of failing civility and eroded morals, the example of Justice Puglia demonstrates it is still yet possible to achieve great things and be an even greater human being. Precious few of us will be privileged to leave the *Law*, and its practice, better than we found it. The more than Honorable Robert K. Puglia is one of those few.

Justice Puglia's life sojourn began in Westerville, Ohio on October 16, 1929. Inauspiciously, perhaps, he came into the world a scant two weeks before the stock market Crash of '29, on the ides of the Great Depression. Of resolute and sturdy Midwestern stock, Bob, as he was known to family and friends, exemplified core Pioneer values of determination, candid honesty, and an indefatigable work ethic. The economic upheavals of the '30's formed the backdrop of his upbringing. The tears, trials, and ultimate triumphs of World War II and his experiences fighting in Korea framed his youth and forged his unashamed patriotism, as well as his passion for the *rule of law* grounded in our Constitutional model as the best hope for a stable, peaceful, and free society. As he said in a riveting speech to the San Joaquin County Bar Association:

More than anything else, the rule of law is what sets us apart from the rest of the world. It has played a significant part in all that is good about America, in all our successes as a nation, and in the creation of a way of life that is the envy of the world. And, I would argue, it bears no responsibility for the undeniable dark side of our less than perfect national life. In fact, some of our national shortcomings can reasonably be ascribed to our sometime inability to abide by the rule of law. But it cannot be gainsaid that America under the rule of law is a beacon to troubled, suffering humanity the world over, encouraging, where possible, the emulation of our form of government, and even beckoning many to our shores.

* Professor of Law and National Security Studies, University of New Haven Sandia National Laboratory Campus; San Joaquin County District Attorney's Office Homicide Unit; Former Judicial Extern, California Court of Appeal, Third Appellate District, Chambers of Justice Nicholson.



The rule of law relies on a fragile consensus which remarkably has endured and allowed us uniquely among the nations of the world, to have lived as free people for more than 200 years. It is the guarantor of our freedoms. It emits the glow that illuminates the shining city on the hill, the glow that is never so brilliant as when contrasted to the ominous shadows cast by the brutal tyrannies which have threatened our national existence in this century. More than anything else, the rule of law is at the heart of American exceptionalism, that is, the unique place that America occupies among the community of nations.

The hard times he lived through shaped Bob's lifelong belief that only a persistent pursuit of worthy goals would lead to success. While the times, and his lot, were tough, Bob exuded a positive outlook and an engaging sense of humor. Convinced things would get better, he was buoyed by a secret love: Big Band Music. Though few were aware of it, he was devoted to this unique form of American music from childhood and it remained a personal joy for him all his life. After seeing Glenn Miller on a family trip to Chicago in 1940 at age ten, he would attend concerts and collect recordings from then on. The special value of this music to Bob, and the nation, in those dark years was its upbeat message of encouragement. Patriotism was deep and abiding, and in contrast to today, the nation's entertainment and popular culture showed it. Bob's love of this music was natural. The music itself seemed a reflection of the inner soul of the man. His own values could all be found in those beloved melodies. His favorite tunes acknowledged sacrifices and leaving loves behind, but they promised a better day was coming. Bob internalized this hope and he would endure in the face of uncertainty.

Bereft of anything like a silver spoon, Bob fixed his eyes on a personal prize—achieving an education. The problem was how to realize his dream. Balanced against his personal desire to better himself was his awareness of the importance and necessity of personal service to his community and his country. As would be typical throughout his life, Bob found a way to accommodate and manage these seemingly divergent forces.

Even though the war was over, Bob went into the Army right out of high school. Amid the Spartan bleakness of Fort Dix, N.J. he made it through twelve weeks of boot camp. Hoping for GI Bill education benefits, he suffered a setback in his dream when Congress cut the program. However, it was quickly reinstated, and now a degree seemed possible. In the wake of post-war demobilization, Bob was mustered out of the service. He turned his gaze westward and set out for California. To survive, he worked in construction, drove a milk truck, and even fought fires with the California Department of Forestry. His real goal remained clear. He got into UC Berkeley, attending class and studying when he could, washing dishes at a restaurant the rest of the time to pay for the privilege. After two years of out-of-state tuition he was broke and had to go home to Ohio. Still,



he had two years down and there was nothing wrong with being an Ohio State Buckeye. It was 1950. Storm clouds of a new war were gathering in a place few Americans had heard of. That place was Korea. When his country called, Bob would be ready.

Drafted, Bob got a deferment until he could finish his degree. The two years in Columbus at Ohio State went quickly. Busy studying, he listened to Big Band music on his budding collection of 78's. There wasn't much time to go to live performances, and the era of the Big Bands was waning anyway. When he needed a diversion beyond his music, there was always baseball, another lifelong passion, or Ohio State Buckeye football on the radio. Jerry Healey would call the football play-by-play, and a lifetime later, when some of Bob's closest friends and colleagues joined for a commentary and musical tribute to Bob by introducing his favorite songs on KCTC 1320 AM, the same Jerry Healey would host the broadcast tribute. Before he knew it, graduation day was upon him. The first part of his dream was realized, the rest would have to wait. Clutching his hard won B.A. degree, Bob strode off to do his duty to his country.

Off to Pennsylvania this time, Bob made it through another sixteen weeks of basic training. He would joke that with his two boot camps and twenty-eight weeks of training, he was one of the better trained infantrymen around. He shipped off with the 3rd Infantry Division, finding himself in a shooting war. As anyone who has been in combat can attest, it generally consists of brief spasms of stark terror followed by interminable interludes of boredom. To cope, Bob consoled himself with the music of Armed Forces Radio. The long days lumbered by, more than occasionally punctuated by bullets and bombs. He knew this too would pass, and he would go home, and the future would be there to welcome him with open arms.

Bob was still there when the longest day of the conflict dawned. Frustratingly protracted negotiations finally wrought a truce. The cease-fire would begin at 10:00 p.m., war-theater time, on July 27, 1953. This revelation was of small solace to troops in the field. Far from a relaxed denouement to the struggle's end, it was to be a last furious assault from a vexatious enemy. An incessant fusillade of artillery rained down on American and UN positions in the hateful hours ticking away to the deadline. How ridiculous to survive all the way to now, only to be killed on the last day. But it didn't last forever, however long it seemed. Suddenly there was an eerie silence. Bob looked at his watch. It was 9:55 p.m. Five minutes 'til the future. He climbed out of his hole in the barren, lunar ground. He looked up at the clearest sky and brightest stars he had ever seen. There was something else—a feeling—it was elation, he reckoned at last, at having lived through the war.

Bob returned stateside. He finished his Army commitment amid the humid pines and plains of Fort Benning, GA. He saved his money, splurging only on a '54 Ford, his first new car. Somewhere along the way, the thought struck him that he might like to practice law. Before mustering out of the Army, he took a three-day pass and drove up to Atlanta to old Emory and took the LSAT. He



received his score shortly. Now, where should he apply? He would fill out only one application. Once again, he would wend west, this time to accept his admission into Boalt Hall on the familiar Berkeley campus. The future was beginning at last.

Bob settled into the law school grind with his usual aplomb and purpose. He got his first job before graduation working for Attorney General Pat Brown in his San Francisco office in 1958. Brown was running for governor in those days, like the Browns often do, and Bob studied for the Bar. Once successfully over the Bar hurdle, Bob came to work in the Sacramento attorney general's office, then located on the top floor of the Stanley Mosk Library & Courts Building. Once again, the future was looming. The young lawyer with his fresh ticket was a rookie in the attorney general's office in the very building where, fourteen years later, Ronald Reagan would summon him to take a seat on the Third Appellate District Court of Appeal. The move to Sacramento was fortuitous for another reason. For it was there he met and married the great love of his life, Ingrid. They would be devoted and inseparable thereafter, bringing four children into the world, Peter, Susan, David, and Thomas.

Bob moved on to the district attorney's office in Sacramento. There, he began to hone the skills that would presage his later development into a formidable judicial force of nature. Blazing his way through the ranks, he ended up as chief deputy district attorney in 1969. Along the way he continued to demonstrate his passion for service to others through excellence in the law. An active scholar, he began to teach law as an adjunct professor at McGeorge in 1961. He lectured at a host of legal conferences and symposia from Cambridge, England, to New York University. He was either the chair or a member of many significant committees on reform in both legislative and judicial arenas. He was active in professional organizations from the ABA to the State Judicial Council. One of his proudest achievements was helping to establish the Anthony M. Kennedy American Inn of Court. He later served as its President.

After leaving the district attorney's office, Bob became a partner, albeit briefly, at McDonough, Holland, Schwartz, Allen & Wahrhaftig. Governor Reagan beckoned, and Bob took a seat on the Sacramento County Superior Court bench in 1971. When a seat on the Third District Appellate Court of Appeal opened up in 1974, Reagan's natural choice was Bob Puglia. Six more months went by, and the ebullient Governor appointed Bob as Presiding Justice. The future had fully arrived, and Bob was ready. A prolific writer, and masterful wordsmith, Bob authored some 4,000 opinions. More than 450 are published. Perspicacious, cogent, and immaculately reasoned, Bob routinely produced clear and elegant opinions in the highest traditions of the judicial art. Nothing in his approach to the law was perfunctory or cursory. No matter how seemingly mundane, the matters pending before him got his full attention and rulings issued forth only after his full consideration and treatment.

Imposing in his intellect and his obvious gifts, Bob was formidable, intimidating more than a few who came before him. He was unapologetically



conservative, a registered Republican, but as J. Coleman Blease has said, he was a democrat with a small “d.” Firm in his views, Bob was direct in the main, and devastatingly subtle when necessary. He held and delivered strong opinions on the law, life, and politics. Even so, he was never presumptuous, condescending, or disingenuous. Vigorous and confident, he was never combative or deleterious. When he was critical, you could rest assured it was well deserved. Fair and open debate was the lifeblood of his *law*, the law he knew and loved. While he had his own well defined beliefs, and while he would challenge others to justify their views and assertions, he had the great and rare qualities of being able to listen to and learn from others. He encouraged and respected dissent. In a beautiful turn of phrase, Professor Jed Scully expressed it this way: “Differences of opinion were never a point of difference with Bob. They were the point; as was collegiality, inclusiveness, professional respect, and kindness.” Justice Blease remembered him as “a model of collegiality: fair, yet firm; dignified and civil in all his dealings.” Existing as we do in a time of poor manners, both personal and professional, Bob’s uncommon courtesy stands as a model even the best of us could do well to emulate.

Bob’s drive and fervor were normal extensions of who he was. They sprang from the forces that shaped him. Rising Alger-like from modest beginnings, he was unfailingly cheerful and positive. He set high standards for himself and for others. He just expected the most from, and the best out of people. He knew that most of us are capable of delivering our best, as he did on a daily basis. While what we do—in *practicing* the law—may seem like a business to some, Bob saw it always as a profession, if not more, as we all should. We must never become complacent or forget the effect of the tremendous power lawyers and judges wield over the lives of ordinary people caught up in the system. For most people—not lawyers—an encounter with the law will be the most singularly significant moment in their lives, good or bad. Bob never forgot this and acknowledged his own responsibility for wielding the power and demanded others do so as well. Even more than a profession, perhaps, he saw the practice of law as a calling and those who are called must act in a measured, reasoned, and moral way for the betterment of society.

Retiring from the bench in 1998, Bob returned to his old firm, now styled McDonough, Holland & Allen. He continued to remain active in the community, and in causes he believed in, right up to the end of his time with us. Surprising some, Bob, with “friends outside,” became very supportive of an organization devoted to aiding the children of prison inmates. In December of 2004, just before his terrible diagnosis, he was working to establish a panel of owners, players, and fans to address the lack of civility and sportsmanship in professional and amateur sports by both fans and players. As he had all his life, he was bringing together people from a variety of backgrounds and views in a common endeavor for the betterment of an institution in which he believed. As he had all his life, he saw something that needed doing, and he stepped forward to do it, inviting others to join him. This is how leaders lead. He was also instrumental in



preparing the celebrations for the centennial anniversary of the court he presided over for 24 of those first 100 years.

Vigilant and visionary to the end, Bob's body gave out before his spirit did. He gave out, but he never gave in. Having known him, you cannot help but better understand the word "honorable." By knowing him, and interacting with him, you were *yourself* made a better person. As a jurist, he had those qualities of insight, perception, and brilliance entitling him to sit in that rare pantheon of truly great judges. As a man, he had the virtues of effortless decency and grounded morality that led him to relate to all people with sincere respect, patience, and humility, all while displaying his own inner strength and conviction. He had all the hallmarks of a *Gentleman*, for that is what he was. Seventy-five years hardly seems enough to contain all that he accomplished—to account for all the lives he touched—but it was still too short for those who loved him or worked with him. Bob was somehow something more, something larger than his surroundings, larger than most all of us, and larger than life. He inspired others to larger and greater things. All this makes him a giant. Bob's song has ended now, but the melody will forever echo in the minds of all who knew him.



A Man to Match My Mountains

Janice Rogers Brown*

Justice Robert K. Puglia was described—not too long ago—as “a treasure” of Sacramento’s legal community. It is no exaggeration to say that his wit and wisdom will be irreplaceable. Justice Puglia once referred to himself—with the self-deprecating humor that was so characteristic—as “a dinosaur.” At his retirement dinner, I ventured to say that he was “not so much a dinosaur as an ancient artifact. Like the Rosetta Stone. A text from which we could decipher the best of our past and—if we are lucky—find our way back to the future.”

We are here today, much too soon, to celebrate his life, his legacy to us.

The Library and Courts Building was his home for nearly 30 years. He worked there as a newly minted lawyer during a brief stint as a deputy attorney general in 1958 and 1959, and returned in 1974 when he became a member of the Third District Court of Appeal, a court where he served as the presiding justice from 1974 until November 1998. In 1994, after a reception welcoming me to the court, we stood on the steps of the court building and looked across the circle toward Office Building 1 at the words carved on the pediment: “Men to Match My Mountains,” a fragment from a poem by Samuel Walter Foss called “The Coming American.” Justice Puglia gave me the sidelong, sardonic glance, which I already recognized as a sure prelude to some outrageous comment. Giving an exaggerated sigh, he said: “I suppose we will have to sandblast those words and come up with something more politically correct. Perhaps—People to Parallel my Promontories.” We both laughed. In its fuller exposition, the poem is a paean to the westward expansion of the country:

Bring me men to match my mountains,
Bring me men to match my plains;
Men to chart a starry empire,
Men to make celestial claims.
Men to sail beyond my oceans,
Reaching for the galaxies.
These are men to build a nation,
Join the mountains to the sky;
Men of faith and inspiration¹

* Judge, United States Court of Appeals for the District of Columbia Circuit. Memorial Service for Presiding Justice Robert K. Puglia, Sacramento Memorial Auditorium, Monday, March 21, 2005.

1. Samuel Walter Foss, *The Coming American*, in *THE BEST LOVED POEMS OF THE AMERICAN PEOPLE* 107 (Hazel Felleman ed., 1936).



In retrospect, it occurs to me that although Justice Puglia was inordinately proud of his Buckeye roots, like Norton Parker Chipman, the first Chief Justice of the Third Appellate District, he was also a citizen of California who filled a larger-than-life role. He was one of those men who matched her mountains.

As a young lawyer who did appellate work, I quickly came to admire Justice Puglia's jurisprudence. His opinions were intelligent, wise, witty, clear and completely accessible. He did not write in the dry, dull, bureaucratic style of most modern judges. His thoughts, clearly and eloquently expressed, were sometimes impassioned. Indeed, he made passion respectable. His opinions exude the rare sense of style and unique voice that Posner tells us is "inseparable from the idea of a great judge in [the common law] tradition."

Justice Puglia deserves a place in the pantheon of great American judges. He completely understood the role and relished it. He exhibited the classical judicial virtues: impartiality, prudence, practical wisdom, persuasiveness, and candor. He demonstrated complete mastery of his craft. He had a keen awareness of the ebb and flow of history, and of the need for consistent jurisprudence, and, above all, self-restraint. It may sound odd to describe a judge as both passionate and restrained, but it is precisely this apparent paradox—passionate devotion to the rule of law and humility in the judicial role—that allows freedom to prevail in a democratic republic.

The generation that fought in World War II has been labeled "The Greatest Generation" for its courage and selflessness, but that sobriquet belongs as well to that generation's younger brothers who fought in Korea. Their attitudes were shaped by many of the same pivotal moments in American history, and Bob Puglia exemplified the best of his generation. He was born on the cusp of the Great Depression and came of age during World War II. He became a devoted student of history, and perhaps that is why he seems to have had an instinctive appreciation of valor, duty, and sacrifice.

He scorned political correctness, but he treated every human being with dignity and respect. Whether he was dealing with the janitor or the Governor, he never saw people as abstractions, proxies, or means to an end. He saw them as individuals and took them as he found them; expected the best of them; and never demanded more of anyone than he demanded of himself. His sense of fairness and justice applied to everyone, but his sense of humor was irrepressible. In one memorable case where a defendant filed an appeal quibbling over the deprivation of a single day of credit, Justice Puglia agreed with the inmate in a brief unpublished opinion. He found the court had miscalculated, and ended the opinion with the cheery admonition to "have a nice day!"

In my youth, I admired and respected him and wanted to emulate him. As I grew older and had more opportunities to get to know him, to become first an acquaintance, then a colleague and a friend, I came to love him. I do not think there is one person within his orbit who was not the beneficiary of his wisdom, encouragement, and generosity. He gave us his "Rules to Live By" to amuse us. But, the way he lived his life inspired us. He was devoted to his wife Ingrid and



endearingly proud of his children. Indeed, he had a disconcerting tendency to adopt any of us when he felt we needed guidance.

He taught us that character counts and integrity is personal. He never allowed cruelty or deception or hypocrisy to go unchallenged. He did the right thing even when he would have benefited from doing the expedient thing. Freedom is not free he would often remind us, but, in Justice Puglia's view, it was worth the price—however dear.

His life experience and his understanding of history produced in him a certain toughness—the power of facing the difficult and unpleasant without flinching; discipline and intellectual rigor; physical courage; and, even more importantly, the courage to be different. Never one to follow the herd of independent minds, his was a unique voice. As California's Chief Justice has ruefully acknowledged, Justice Puglia was “a strong personality. . . not shy of stating his beliefs, nor about challenging others to justify theirs” but surprisingly willing to listen and modify his views. He was, as his long-time colleague Justice Blease noted, “formidable” and “intimidating,” but he had a “heart of gold.”

There are so many themes and threads that run through Justice Puglia's life and the history of the Third District Court of Appeal that I do not think it can be mere coincidence. Norton Parker Chipman stood on the battlefield at Gettysburg when Lincoln gave that memorable speech. Justice Puglia was a student of history—especially the Civil War era. He could speak of Andersonville and Robert E. Lee and the battles of that terrible war as easily as other people recite the latest baseball scores. There are similarities in the descriptions of Justice Puglia and President Lincoln that are striking.

In a speech in 1906, Norton Parker Chipman recalled that his friend Abraham Lincoln was “firm as the granite hills,” yet capable of great patience and forbearance. Carl Sandburg described Lincoln as “both steel and velvet . . . hard as rock and soft as the drifting fog.” Reading these words caused a shock of recognition, for I had been seeing exactly this sort of apparent paradox and contradiction in the life of Justice Puglia.

Seeing these parallels, I have come to understand that this flexibility is neither paradox nor accommodation. It is just the opposite—a sense of sure-footedness and balance that is often the defining trait of people of great character and impeccable integrity. It is precisely this quality which makes the honest public intellectual, a man like Bob Puglia, so extraordinary.

In his first message to Congress in 1862, Lincoln warned that we might “nobly save, or meanly lose, the last best hope of earth.” Lincoln, of course, was referring to the Union. Justice Puglia felt that same sense of fierce commitment to the rule of law. The preservation of the rule of law and of the equality of all people under that rule was, in his view, the core principle of liberty and the only reason America might qualify for such a grand epithet.





FIGURE 1. TO KILL A MOCKINGBIRD

My favorite movie scene is in “To Kill a Mockingbird.” It is the scene where Atticus Finch has argued brilliantly and raised much more than a reasonable doubt, virtually proving the innocence of the accused, but the jury still returns a guilty verdict. Most of the spectators file noisily into the street, gossiping and celebrating. Upstairs, relegated to the balcony, another audience has watched the proceedings and remains seated. As Atticus Finch gathers his papers and walks slowly from the courtroom, they rise silently in unison. The Black minister, Reverend Sykes, taps Scout on the shoulder and says: “Miss Jean Louise, stand up. Your father’s passin’.” To me, this silent homage to a good and courageous man, who respects and believes in the rule of law—and is willing to defend it even at great personal cost—is the most moving moment in the whole film.

Justice Puglia was just such a man. And he was not a fictional character. Most of us have risen to our feet many times to mark his passage because he was a judge. Court protocol required us to show respect for the robe and what it represented. But Justice Puglia was the kind of man who earned and could command our respect by virtue of his life and character. In a way, the robe was superfluous.

We have had the great good fortune to know this extraordinary man. We can remember what he taught us. We need not be fearless to have courage. We can be tough *and* tender. We can do the right thing—and face the bad that cannot be avoided unflinchingly. We can laugh. And we must sing—even when people frown at us and advise us to keep our day jobs. We can care for the people around us. We can be generous. We can make our way, against the tide, without



rancor or bitterness. And when we are tired and overburdened and feel we are not brave enough to go on, we will hear his voice in our ear. Hear him say in that quiet and steely tone: "Yes, you can. You can." And we will know that we are being true to his legacy. The legacy of one who loved liberty. We will know that we are standing up . . . because Justice Puglia is passin'.



FIGURE 2. TO KILL A MOCKINGBIRD



* * *



A Puglia Memorial

Coleman Blease*

Justice Robert K. Puglia was the Presiding Justice of the Third District Court of Appeal for twenty-four years. As a jurist he was noted for his vigor, integrity and intense love of the law. His memory for cases and powers of articulation are legendary. He is less known for his uncommon ability in fashioning a court known for its productivity, collegiality, innovation and well-crafted opinions. It is these matters that I wish to speak about here.

An appellate court is more than an ensemble of judges. It is an organic entity whose proper functioning depends on the subtle integration of court and staff and on efficient procedures for the prompt resolution of its caseload. It is beset with the demands of a vast array of complex and unique cases,¹ which must be handled with precision and dispatch in compliance with the court's role in a system of separated powers. These matters ordinarily are hidden from public view but the proper functioning of the court depends upon the skill with which the court is managed.

Justice Puglia was the heart and soul of the Third District Court of Appeal, its administrator, innovator, and the articulate defender of its independence. He led by example, involving the members of the court in major administrative decisions. He carried a full caseload despite the burdens of his position. He was fair and understanding in his dealings with other judges and with the staff of the court, for whom he had a high regard and by whom he was held in high regard.

Justice Puglia developed a number of innovative programs for the efficient management of the court's caseload. He initiated the rule which authorizes the use of the original superior court file in lieu of a clerk's transcript on appeal. He created a case management system by which more complex cases are assigned to chambers not only in equal numbers but by a weighting of the cases for difficulty. He developed a strong central staff of attorneys to work on cases that do not warrant assignment to chambers or are within the discretionary powers of the court over writs or within the specialized fields of juvenile dependency and workers' compensation. These cases are handled by a procedure somewhat unique among the appellate courts. An extensive oral presentation of the case by a central staff attorney is made to a panel of judges which gives directions to the attorney for the preparation of a draft opinion. An appellate case is assigned to a member of the panel for review and editing or revision of the draft opinion. A writ case is either denied review or assigned to chambers for the preparation of an opinion. This procedure screens the cases for the appropriateness of central

* Associate Justice, California Court of Appeal, Third Appellate District. Memorial Service for Presiding Justice Robert K. Puglia, Sacramento Memorial Auditorium, Monday, March 21, 2005.

1. The Third District Court of Appeal decides approximately 1320 appeals and 1050 writ petitions annually.



staff assignment, maximizes the efficiency of staff, and promotes an interactive decision-making process among the judges. Approximately two-thirds of the appeals to the court are handled in this manner.

In 1974, Justice Puglia initiated an appellate settlement conference program, and in 1981, an expedited appeals program for the resolution of less extensive civil cases. After considerable success, the programs were terminated in 1989 because it took more judicial and staff time to conduct the programs than that required to craft an opinion.

Justice Puglia's support and encouragement of staff was a main reason for the attraction and retention of experienced staff. He was intimately involved in decisions regarding their selection, pay, and work facilities. He insisted that central staff attorneys be paid on the same scale as chambers staff attorneys. He consistently fought for increases in staff compensation. He developed a Personnel Policies and Procedures Manual for the court which included matters over which the Administrative Office of the Courts had no authority.

Early on Justice Puglia invested the Managing Attorney with responsibility for the administrative oversight of central staff attorneys and the random assignment of cases to different chambers. He established an administrative team composed of himself, the Clerk/Administrator, and the Managing Attorney, all of whom collaborated in resolving all issues affecting the court, including budget, facilities, procurement, personnel policies, technology, court security, and rule changes.

Justice Puglia oversaw multiple construction projects which, among other improvements, removed staff from cramped spaces to offices with windows, created chambers for new judges, and established two central and three satellite libraries for court use. He worked with the State Librarian on securing funds for the construction of a Library/Court Annex and the rehabilitation of the Library and Courts building, which allowed the court to fully occupy the Fifth Floor of the old building and to have it restored to its historical beauty and function. The Clerk's offices were moved to the annex.

Although Justice Puglia was not the first justice to embrace the use of computers in our court, and may have been the last to use e-mail, as a good administrator he had an open mind and the wisdom to see the advantage of new technology. In the late 1980's it became apparent the court needed a person to manage our growing technology. His efforts resulted in the creation by the Administrative Office of the Courts of the position of Information Technician for each of the district courts of appeal.

Justice Puglia was actively involved in the creation of rules for the efficient working of the courts, as Presiding Justice, as a member of the Judicial Council, and as a member of the Committee of Administrative Presiding Justices. For example, he authored the opinion which permitted a summary denial of a petition



to review certain juvenile dependency decisions where the writ is preliminary to the appeal of the decision.²

Lastly, Justice Puglia was instrumental in obtaining proper security for the court. He secured private security guards and supported the Administrative Office of the Courts in its successful efforts over several years to obtain funds to contract with the California Highway Patrol for security in the courtroom.

For all of these reasons, it is fitting that we recognize the exceptional skill and wisdom with which Justice Puglia administered the Third District Court of Appeal.

2. *Joyce G. v. Superior Court*, 38 Cal. App. 4th 1501 (1995).

* * *



Footnote for a Friend—Robert K. Puglia

Jed Scully*

Most who pass through life will be remembered at their death by a brief sentiment incised on a marker. The words are usually not those chosen by the dead, nor in most cases, by their living survivors. The verbal statements are “in another’s words” because our loss renders us mute and inarticulate in our attempts to feel and to share how we feel.

As children we are told to be guided by our deeds, not our words about our deeds. In Bob Puglia’s case, throughout the twenty-five years I knew him, his words were his deeds; and very well chosen ones at that. The news story reporting his death states that Justice Puglia “authored more than 4000 opinions—more than 400 of them published.” That clearly understates what his friends knew of him. Every day of his life was an opinion, spoken or written with élan, clarity, humor, inclusiveness, and a viewpoint. Verbal oatmeal and equivocation was for the temporizers and for those unwilling to get into the intellectual boxing ring with him for a round or two. And if you were up to it, it was Mr. Toad’s Wild Ride, and an experience none of us will ever forget.

I first met Bob on a glorious sunny day in the backyard of former McGeorge Dean Gordon Schaber’s home. From what I knew of his background and mine, I expected that our conversation would be brief and formal. Within a few moments, the introductory mumbles gave way to riotous anecdotes about Columbus, Ohio and Hollywood, California, solemn recollections about the Korean “Conflict,” and contrasting views about the ills of the world and who were responsible as the “usual suspects.” We left as friends, not acquaintances.

Both before and after this social meeting, I had appeared before Justice Puglia as an advocate; never successfully, as far as my clients were concerned. But no one was ever a loser in his courtroom. Not winning was not the equivalent of losing. A lawyer and client left with the feeling that they had received the best professional treatment, a full and fair hearing, considerate regard for the persons before him, and yes, an opinion.

I came to know Bob best during the fifteen years we served together as members of the Kennedy Inn of Court. Bob followed Milt Schwartz as President of the Inn. As his assistant, we worked very closely for three great years, and then further, until his death, as members of the Inn. He had the amazing capacity to unite people in a common endeavor, while at the same time rendering strong opinions on life, mores, and the law. Further, he respected and encouraged dissent. Debate was pointless unless it was robust. In our idealized view, this is how we envision debate in legislatures, at New England town meetings, and in a

* Professor of Law and Director of the Intellectual Property Concentration, McGeorge School of Law; Judge Pro Tem, Sacramento County Superior Court; Founding member, Secretary/Treasurer and Master of the Bench, Anthony M. Kennedy American Inn of Court.



less polarized America. It was easy to see how a panel of judges, encouraged to find legal consensus, and who do not normally rise to these positions because of their own lack of ego, would see in Bob, their natural leader. Differences of opinion were never a point of difference with Bob. They were the point—as was collegiality, inclusiveness, professional respect, and kindness.

I will continue to remember Bob at Inns of Court program meetings, sitting front row on the aisle in the McGeorge courtroom, usually flanked on his right by Fred Morrison (it is somewhat difficult for me to conceptualize anyone flanking Bob on the right), lobbing verbal grenades—no, more like a firecracking piñata— at a statement made or a position taken with less fidelity to the law or to logic than he thought warranted. He was like the legendary Brooks Atkinson of the New York Times, front center and on the aisle at Broadway openers.

One of our commonalities was growing up just missing World War II, and with the insanity of pubescence, both regretting being too young to serve. I made the grade in Bob's book when I correctly identified the array of units with which he served as a frontline combat infantryman. At the same time, I was stateside at Fort Lewis, seeing fellow eighteen and nineteen year-olds returning wounded from a war, officially downgraded to a "conflict."

About a year ago, I located a baseball cap with the legend "Korean War Veteran" and the normal display of combat ribbons, plus Bob's 3rd Infantry Division insignia. I was holding it for him, for a suitable presentation time, in memory of a program in which he roleplayed my *aide de camp* in a mock court martial of Lieutenant Kelly Flynn. Flynn was the first female B-52 pilot in the Air Force, who was cashiered for romance with a fellow crewmember.

Bob did not need to go to a costume rental company for his outfit. He showed up in his Korean War olive drab uniform, with Master Sergeant stripes, ribbons, Combat Infantry badge, and 3rd Infantry Division patch. The crease on his trousers was as razor sharp as was his commentary, the belly as flat as a tabletop, and the uniform fit as perfect as it did fifty years earlier. I ruefully was reminded that the only way I could fit into my old uniform was with the assistance of a punishing and lengthy Atkins diet and an expert tailor.

In these hours of loss, my own gift from Bob is a sense of warmth to have been included in the very wide circle of Bob's friendship, and my opportunity to add this grateful footnote to his final, published, life opinion.



Robert K. Puglia, “For the People. . .,” Litigator and Legend

Richard W. Osen*

I first met Bob Puglia in January, 1969, when I was a fledgling public defender in the Sacramento County Public Defenders office and he was the Chief Deputy in the Sacramento County District Attorney’s office. Bob had joined that office in 1959, after spending a year in the State Attorney General’s office, and had already become a legend. He was a vigorous, dedicated and talented prosecutor and was highly regarded by Judges Raymond Coughlin and Albert Mundt, who handled the bulk of criminal cases in the Sacramento County Superior Court. Bob was always prepared and aggressive, and this helped him to obtain positive results with juries. In one instance, Bob assisted the District Attorney, Jack Price, in trying and obtaining the death penalty in a case involving the murder of a police officer.

After becoming the Chief Deputy District Attorney, Bob began teaching classes at McGeorge School of Law and conducting seminars and training sessions for law enforcement agencies. Because Jack Price was often away from the office on business for the National Association of District Attorneys, Bob was also responsible for the day-to-day operations of the District Attorney’s Office.

In October, 1969, Bob left the District Attorney’s Office and joined the Sacramento firm of McDonough, Holland, Schwartz, Allen & Wahrhaftig to beef up its litigation section, which was then headed up by former federal judge Milton Schwartz. Because of his zeal for the courtroom, coupled with his experience and success, Bob found himself in trial on nearly a constant basis. In this capacity, he was adept and thorough in training and utilizing young attorneys. During this time, he also directed a hard-fought political campaign for Sacramento County Sheriff and was involved as a fact-finder in a highly-publicized legislative investigation.

In August 1971, then Governor Reagan appointed Bob to the Sacramento County Superior Court. By that time, I was trying felony cases on a regular basis for the Public Defender’s Office and was privileged to ply my trade before Judge Puglia, who presided over the criminal calendar, criminal law and motion matters, and felony trials. Bob’s litigation skills were invaluable on the bench, and he proved to be an excellent trial court judge. His vast knowledge of the law and criminal procedure, experience, understanding of the criminal justice system and scrupulous adherence to the law, together with a firm but compassionate courtroom management style, made him a textbook judge, teacher, mentor and critic. He was admired and respected by all. Although Bob had gained a well-

* President, McDonough, Holland, & Allen, Sacramento, CA.

deserved reputation as a law and order individual, I never felt, as a defense attorney, that my client was not getting a fair shake. Bob had an abiding conviction that the legal system worked only when the participants, including himself, adhered to the rule of law.

Bob had an uncanny memory for the smallest of details. His careful wordsmithing, both written and verbal, and deep resonant voice left many in awe. He loved the English language and was especially adroit at using the most accurate and descriptive word or phrase to convey his message.

Having tried several cases before Judge Puglia, I was particularly honored when he recommended me to the partners at the McDonough law firm to fill his still-vacant position in the litigation section. I started at McDonough in August of 1974, the same year Bob was elevated to the Court of Appeal, Third Appellate District.

Bob and I remained in close contact during the ensuing years. Bob was always interested in how I was doing both personally and professionally. We shared a love of music, politics and sports, especially baseball. He was a devoted Ohio State alumnus and my being a University of Minnesota Gopher made for some interesting and lively discussions. Recounting "war stories" with Bob was a special treat because of his incredible memory.

I served as managing partner of the McDonough law firm from 1992 to 2001. For many years, I secretly hoped that, when and if Bob ever decided to retire from the Court of Appeal, he could be enticed to rejoin McDonough. When he finally did decide to retire, I approached him with the idea. To my great surprise and pleasure, he accepted my offer enthusiastically. He rejoined the firm in March 1999 as a special advisor, providing arbitration, mediation, expert testimony, appellate consulting and related services that continued until his untimely death. Bob's services were sought by judges as well as attorneys and law firms of the highest caliber. He traveled throughout the state and country to testify or conduct hearings. Bob remained active in several legal, political and educational groups, including the Anthony M. Kennedy American Inn of Court. He was constantly recruited by groups and organizations to lend his significant presence and abilities to their projects, and he gave his time generously.

Outside the law, Bob's interests were many and diverse. He loved "Big Band" music and knew all the words to all the songs. Never one to shy away from the spotlight, Bob was known to sing along with the Big Band music with a microphone in hand and, on one occasion, was the lead singer in a recording session with several members of Merle Haggard's band.

Justice Puglia insisted that everyone call him "Bob." His door was open to all, and he regaled many of us with his stories and wit. His deep and hearty laugh was infectious; his lack of pomposity endeared him to attorneys and staff alike. Bob relished his role as teacher, adviser and mentor, and he did it superbly. He is deeply missed by his McDonough family. I, especially, miss my friend.



Bob Puglia and Baseball

Bob Hemond*

A central figure played by James Earl Jones in the movie, *Field of Dreams*, describes baseball almost exactly the way Justice Puglia felt about the greatest game in the world:

The one constant through all the years, has been baseball. America has rolled by like an army of steamrollers. It's been erased like a blackboard, rebuilt, and erased again. But baseball has marked the time. This field, this game, is a part of our past, it reminds us of all that once was good, and that could be again.¹

Justice Puglia—Bob—became a friend of mine, and of Art Savage and Warren Smith, while our partnership to bring the River Cats to Sacramento was still on the drawing board. We knew him to be a life-long baseball fan and, thankfully, a River Cats fan. He was also a world-class baseball expert. Spending time at a ballpark creates memories, friendships and, of course, wonderful stories. With Bob this was truly the case.

Indeed. Once, Bob pre-ordered a ticket to a game at Jacobs Field in Cleveland. That ballpark was, at the time, sold out every day, every year. When Bob got to Will Call, there was no ticket for him. He was promptly taken to the front office, amid profuse apologies. After a few moments, one of the team's top executives came in and told him there were no more tickets. He was teasing. Momentarily, he told Bob, "You can, if you wish, sit with the baseball scouts." Bob knew that was really the place he wanted to be. Imagine him there sitting quite comfortably; and with five innings still to be played in the game several veteran scouts realized Bob knew more about their teams than they did.

Bob loved baseball, but then, he loved all sports. He was well-informed, whether the game was baseball, football, or basketball. In particular, he supported his alma mater, the Ohio State Buckeyes, to the hilt. He often attended their games, including New Year's games, at the Sugar Bowl in New Orleans, and the Rose Bowl in Pasadena.

Bob knew of the stars in all sports, but he had his personal favorites. He was partial to Bob Feller in baseball, Otto Graham in football, and Jerry Lucas in basketball, because of their admirable personal traits on and off the field of play. All three Hall of Famers sent regrets when they could not attend his retirement dinner in 1998. And, of course, it may not have been politically correct, but Bob was always in favor of admitting Pete Rose to baseball's Hall of Fame in Cooperstown. Bob knew his baseball statistics, just ask the scouts at Jacobs

* Executive Vice President, Sacramento River Cats. Memorial Service for Presiding Justice Robert K. Puglia, Sacramento Memorial Auditorium, Monday, March 21, 2005.

1. *Field of Dreams* (UNIVERSAL 1989).



Field. For example, he knew Rose to be the player with the most hits in history—4256—65 hits more than Ty Cobb.

You might not connect judicial collegiality and baseball, but Bob did. He always enjoyed attending games and knew the other justices on his court did too. That's why, for several years, he facilitated attendance by rotating quartets of his colleagues at Oakland A's games. Bob was everyone's favorite companion because, without fail, he wanted to drive his big, comfortable Cadillac. One year, on *Law Day*, his colleagues arranged, during the seventh inning stretch, for the A's Jumbotron to read: "Welcome to Presiding Justice Robert K. Puglia on Law Day." He had been asking during the entire game why a camera had been brought along; finally he knew.

When but fifteen years old, Bob and his best friend, John Tingley, took a trip to New York. It was just after World War II ended. Ticker tape still littered Times Square. The boys visited Coney Island and rode the largest roller coaster in the world. John's dad, a lawyer for the Columbus Redbirds, a farm team of the St. Louis Cardinals, had arranged earlier for the boys to attend a Brooklyn Dodgers game and to get a visit with Mr. and Mrs. Branch Rickey, in the front office of Ebbetts Field. Mr. Rickey, also a lawyer, was President and General Manager of the Dodgers. He had been the Cardinals General Manager and signed the key players who comprised the Gas House Gang there. He talked with the two boys for a good long while. Shortly thereafter, Mr. Rickey signed the great sports star at UCLA, Jackie Robinson, to break Major League Baseball's color barrier. Bob and John admired Rickey greatly.

More recently, Bob became friends with Mr. Rickey's grandson, also named Branch Rickey, who is President of the Pacific Coast League, the league in which the River Cats play. Late last year, Bob was consulting with Mr. Rickey and the Pacific Coast League on how to improve civility in baseball, on and off the baseball field. Mr. Rickey deeply regrets he cannot join us today. He came to revere Bob, as did we all. He asked me to say, "As a human being, and as a judge, he is clearly irreplaceable." Several weeks ago, Mr. Rickey arranged for Bob to get a truly personal letter from one baseball man, President George W. Bush, to another, Bob. There was no signature machine.

Bob was undeviating in his commitment to ethics and civility, to playing by the rules, in sports, and in life. For several years, Bob's ethics and civility have provided a beacon for young baseball and softball players in Northern California.

With the help of Justice George Nicholson, the *Robert K. Puglia Award* was established during the inaugural season of the River Cats. Each year a committee of former players and executives recognizes eighty of our region's most outstanding high school baseball (boys) and softball (girls) players for sportsmanship and playing by the rules of the game during an on-field presentation. During our committee meeting when discussions about the players took place, Bob always reminded the committee, "don't forget they need to hit and drive in runs." Bob loved to meet these young people and take the time to encourage them as they entered college. Those who won Puglia Awards agree. They all now use them as



aids in gaining admission to college and extra-curricular activities.

I always enjoyed this night at season's end, not just for what it meant to the kids, because I always knew, around the eighth inning, Bob would come by my seat, thank everyone for the night, and say to me: "Now, Robert, for next year's spring training, I need to buy three tickets for me and my sons. I'll call you." I am going to miss that.

Bob loved baseball until the end. Only two weeks ago, Presiding Justice Arthur Scotland, Bob's successor, arranged for Stockton lawyer Al Ellis to visit Bob. Mr. Ellis is a collector of high-end sports and Civil War memorabilia. Art arranged the visit because Bob was unable to visit Mr. Ellis at his home where he maintains a wonderful museum full of "the real thing" in sports and in the Civil War. When he visited Bob, Mr. Ellis brought several displays with him, much to Bob's delight. Even more to Bob's delight, Mr. Ellis gave him a grand jury transcript signed by Pete Rose.

Now, shortly before a new season gets fully underway, Bob has become part of our past, just like baseball. He and baseball are, and will always be, part of our future, too. Bob and baseball remind us of all that once was good, and that could be again. Bob—Presiding Justice Robert K. Puglia—is more, he reminds us of what *is* good, *and will always be so*.



Figure 1. Raley Field, West Sacramento, CA



* * *



Freedom is Not Free

Robert K. Puglia*

The cataclysmic events of our century have caused many to lose faith in the survivability of a society governed by the rule of law. Some skeptics believe that a government organized on that principle is too antiquated and cumbersome to meet the challenges of modern times. Fortunately, most of us disagree with these doomsayers. But it is important that we publicly renew and witness our faith in the system that has served us so well for 200 years and will certainly endure indefinitely.

More than anything else, the rule of law is what sets us apart from the rest of the world. It has played a significant part in all that is good about America, in all our successes as a nation, and in the creation of a way of life that is the envy of the world. And it bears no responsibility for the undeniable dark side of our less than perfect national life. In fact, some of our national shortcomings can reasonably be ascribed to our sometime inability to abide by the rule of law. But it cannot be gainsaid that America under the rule of law is a beacon to troubled, suffering humanity the world over, encouraging, where possible, the emulation of our form of government, and beckoning many to our shores.

Every day we reap the benefits of our constitutionally guaranteed freedoms of speech, religion, assembly and association, and freedom from unreasonable and arbitrary government actions against our persons and property. These freedoms are all enshrined in our basic charters, the Bill of Rights of the federal Constitution and parallel provisions in our state Constitution. Though solemnly guaranteed in writing, these freedoms depend for their continuing viability upon the rule of law. Without that, they are not worth the paper they are printed on—they are no more valuable than the showpiece constitution of the late, unlamented Soviet Union, which contained similar guarantees that, in the event, were consistently flouted and ignored.

In Washington, D.C., on the mall near the Lincoln and the Vietnam War memorials, is a new memorial dedicated two years ago to the Americans who fought in the Korean War. Inscribed prominently on the granite wall at the center of the memorial are these words: “Freedom is not free.” Thus are we reminded the blood and treasure we expended in that conflict are inextricably bound up with who we are and what we stand for as a nation.

* Honorable Robert K. Puglia, 1929-2005, Presiding Justice, California Court of Appeal, Third Appellate District (1974-1998); Partner, McDonough, Holland & Allen, P.C.; Professor of Law, McGeorge School of Law (1961-1969); Founding Member and Past President, Anthony M. Kennedy American Inn of Court. Justice Puglia was a trial and appellate jurist for almost twenty-six years. A former president of the California Judges Association, he was the senior presiding justice in the state and as such sat on the Commission on Judicial Appointments, with the Chief Justice and the Attorney General, which must approve each gubernatorial appointment to the California Supreme Court.

These remarks are adapted from a speech delivered to the San Joaquin County Bar Association, on Law Day, 1998. It was Justice Puglia’s last major public address.



Unhappily, the Korean War was not an isolated threat to our freedoms. Four times in this century, the United States has sallied forth from its insular sanctuary to confront armed enemies that presented a direct threat to everything we hold dear. I recognize that not everyone will agree the very integrity of our nation was imminently threatened in each of those conflicts. Nevertheless, for much of this century, as the world was being rapidly shrunk by modern technology, freedom and tyranny engaged each other in a winner-take-all, global struggle. Our recent success in that struggle should not lull us into a false sense of security. The game is not over. In fact, *this* game is never over. It has been said the price of liberty is *eternal* vigilance.

One may reasonably ask, if we have vanquished all external enemies who threatened our existence, against whom or what must we remain vigilant?

I maintain there are internal conditions that constitute a greater potential threat to our freedoms than any foreign enemy we have faced or are likely to face. History teaches that great civilizations are usually dispatched to the dustbin by contradictions from within. The *coup de grâce* may have been administered from without, as for example when Alaric and the Visigoths brought down the Roman Empire. But the Empire had already been rendered helpless by the rampant corruption of its rulers and the alienation of its people. To ignore the internal threat is to fiddle while Rome burns.

If the internal threats to our system are ever arraigned for judgment, they will acknowledge their true names are ignorance, apathy and cynicism.

How can it be then that so many of our fellow citizens are ignorant of or take for granted the rule of law? They do so at their peril. The history of this country demonstrates the rule of law is no stronger than the willingness of Americans to fight for it.

I'll venture that few who read this have not heard of at least one random poll of citizens in which a majority of those asked declared that, if given the choice, they would not adopt some of the basic freedoms that are already their birthright. Were it not so dispiriting, this might make hilarious grist for late night talk show monologues.

In a republican system such as ours, ultimate sovereignty resides in the people, who are either directly responsible for or only one step removed from truly fateful decisions.

A properly functioning democracy requires not only the formal education of its citizens but continuing education on the emerging issues of the day.

How confident can we be that we are educating the coming generation to assume this crucial role or, indeed, that those who educated the present generation—us—did such a great job?



It has become increasingly difficult to acquire the necessary basic knowledge from a media obsessed with sensationalism, and partisan reporting. Even so, ignorance can be overcome by putting the mind to the task.

The apathetic present yet another problem. They must somehow be invigorated with an appreciation that what happens in their government and community matters to them, and an understanding that what they do or do not do about it will affect what happens next. To paraphrase Senator Phil Gramm, who applied the epigram in another context, it's time the apathetic stop riding in the wagon and get out and start pulling it.

Then there are the cynics who are neither ignorant nor, like the apathetic, deadened in spirit, but whose spirits instead are warped and whose eyes are jaundiced. To the cynic, the system and everyone associated with it is either feckless or corrupt or both, and there is nothing that can or should be done about it because that is simply the way the world works. Thus the cynic remains utterly indifferent to real incompetence and corruption. The cynic's world view is a warped one that will yield only to proof that his or her assumptions are false.

Those assumptions are utterly inconsistent with a society governed by the rule of law. In its truest form, the rule of law is the destroyer of special privilege and class distinctions, the passport to the social, economic and spiritual good life.

To the litany of ignorance, apathy and cynicism, let me add another dynamic that has the foreboding potential to shape our national destiny: powerlessness. I do not refer to disenfranchisement. Powerlessness can affect those who have the right to vote, who are neither ignorant, apathetic nor cynical, but who honestly perceive that their vote is meaningless—meaningless because many of the decisions properly confided to the electorate have been co-opted by non-political elites. For those who are unfamiliar with this coded reference, non-political elites are the politically unaccountable parts of government—the judiciary and bureaucracy. If there is still anyone who doubts the capacity of bureaucracies to abuse power, I remind you of the one-liner most likely to evoke a knowing snicker: "I'm from the government and I'm here to help."

Like the extensive bureaucracy, the judiciary is frequently accused of co-opting political issues which are uniquely the province of the people and their representatives. Some judges willfully usurp the people's prerogatives by assimilating these issues to constitutional doctrine and relying on the province of the judiciary to interpret the Constitution.

The judiciary in a democratic system must be independent and it must interpret the law as handed down by the legislative body or the framers of the Constitution. The judiciary is not a policy making body. Policy is the exclusive role of the legislative branch.

We all recognize there are some judicial activists on the bench. The problem is we are not in total agreement as to who they are. It has been said that a judicial activist is a judge who decides a case contrary to the way you would have decided it. Yet, however defined, judicial activism can contribute to a sense of



powerlessness, which leads to alienation and, ultimately, to withdrawal from the political process.

The freedoms in the Bill of Rights were bequeathed by the Founders to their posterity. They have been maintained intact by our forebears, and it is our solemn obligation to pass them on unsullied to those who succeed us. Keeping them intact requires eternal vigilance, an ethic of informed citizen participation in public affairs and, on occasion, the expenditure of blood and treasure.

Thomas Jefferson said: “The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants.” A few hundred yards from the Jefferson Memorial in our nation’s capital the same sentiment is expressed somewhat less starkly: “Freedom is not free.” The freedoms of which we speak are guaranteed by the Bill of Rights. They are limitations on the power of *government*. If we are not to descend into anarchy, we must live under government. But government represents concentrated power and, if government is to respect our freedoms, it must be subject to some check. The check on government is, of course, an independent judiciary which implements the rule of law.

The rule of law relies on a fragile consensus, which remarkably has endured and allowed us, uniquely among the nations of the world, to live as free people for more than 200 years. It is the guarantor of our freedoms. It emits the glow that illuminates the shining city on the hill, the glow that is never so brilliant as when contrasted to the ominous shadows cast by the brutal tyrannies which have threatened our national existence in this century. More than anything else, the rule of law is at the heart of American exceptionalism. That is the unique place that America occupies among the community of nations.



**Late Presiding Justice
Robert K. Puglia**



* * *

