

## AN INTERVIEW WITH Justice Cruz Reynoso

By Keith Roberts

*It is a fact that Cruz Reynoso, whom Governor Jerry Brown appointed to the California Court of Appeals in 1976 and to the California Supreme Court five years later, became California's first Hispanic appellate court judge and Supreme Court justice. The reverence that lawyers and advocates for civil rights hold for Justice Reynoso, signified by his receiving the Medal of Freedom in 2000 from President Bill Clinton, as well as the highest legal award in California, the Witkin medal in 2009, also derives from his career as the executive director of the renowned California Rural Legal Assistance, Inc. (CRLA) law firm.*

Justice Reynoso was born on May 2, 1931, in Brea, California, one of 11 brothers and sisters. His parents had emigrated from Mexico and worked as farm workers in Southern California and the Central Valley. Before high school, Reynoso attended a segregated school for five years. Perhaps inspired by a college-educated Latino teacher during World War II, he got hooked on books and began to excel in school. While working in the orange groves, he graduated from high school and attended Fullerton Community College. A scholarship to Pomona College followed, and after two years in the Army he attended Boalt Hall, University of California Berkeley's law school.

Reynoso began a private practice in El Centro, the county seat of Southern California's Imperial Valley, but was soon working for politicians in both Sacramento and El Centro, where he became a community organizer and worked with Cesar Chavez. He helped Jim Lorenz to create the CRLA, one of the poverty law firms that President Lyndon Johnson's newly formed Office of Economic Opportunity (OEO) funded all over the country. Reynoso became its first chairman of the Board, and its director in late 1968.

CRLA became well known for its innovative representation of its poor clients, most of whom were farm workers, including class actions and many actions against the government. One such action terminated the *bracero* program, in which growers imported Mexican laborers to replace American farm workers. Others forced California to allow the poor to apply for medical assistance and for welfare. Such cases helped Cesar Chavez and the nascent Farm Workers Union, greatly upset many California growers, and triggered conservative opposition.

Ronald Reagan, elected governor in 1967, attacked the CRLA by vetoing its federal funding. His office leveled such serious charges against CRLA that, as Reynoso says, if they were true he should have gone to jail. But after Reynoso and CRLA allies rallied intense lobbying, President Nixon's director of the OEO, Frank Carlucci, appointed a prestigious judicial panel to look into them. The charges were found to be false, and Governor Reagan agreed to continue CRLA funding.

In 1972, with CRLA working well, Reynoso accepted an offer to become a law professor at the University of New Mexico. When Jerry Brown became California's governor, he nominated Reynoso to be an associate justice on the Court of Appeals for California's Third Circuit, and in 1981 he appointed him to the California Supreme Court. Reynoso survived a recall election to get rid of "liberal" justices in 1982, but under Chief Justice Rose Bird he was part of a liberal majority that overturned many death sentences for procedural inadequacies. Although the court affirmed other death sentences, Chief Justice Bird and associate



Cruz Reynoso in El Centro, California, as a young lawyer

justices Joseph Grodin and Cruz Reynoso were recalled in 1986.

Reynoso has subsequently served as a law professor at University of California, Los Angeles and retired from University of California Davis School of Law in 2006, remaining an emeritus professor there and continuing to teach and handle pro bono cases privately. He served on the U.S. Civil Rights Commission until replaced in 2004 by President George W. Bush, and on President Barack Obama's transition team group for justice and civil rights. He was also a board member of the Mexican American Legal Defense Fund and the Natural Resources Defense Council.

### What influences shaped your personality and your commitment to social justice?

Early on, I saw many injustices, legal and not legal. We lived in a poor barrio, but my dad was proud and hard-working. If you went by hard work, intelligence, and pride, my dad should have had all the nice things people had downtown. But we didn't. We weren't treated fairly. I worked as a farm worker in Orange County, back when it grew oranges. When I saw injustices, what I called "my justice bone" hurt, and I acted to keep it from hurting so much. Dad called me *metiche*, busybody. So, for instance, we lived in a barrio near La Habra that didn't get mail deliveries.

People had to walk over a mile to the post office. When I was still in grammar school, between 10 and 12 or so, the son of a grower built a house nearby, and they delivered mail to him. So I asked the postmaster if deliveries could be extended just a couple of blocks to us, too. She said that it wasn't her business and gave me the address of the U.S. Postmaster General in Washington, D.C. I got all the adults in the barrio to sign a petition. I could tell they thought nothing would happen, but a month later I received a typed letter addressed to "Mr. Cruz Reynoso," and deliveries began after that. When I tried to thank the postmaster, who I thought had arranged this, she gave me a very icy reception. I figured later that she probably thought I had complained about her, which I hadn't.

I had five brothers and five sisters, but they reacted very differently; none were troublemakers like I was. I decided to go on to college at a very young age. Don't know exactly why. In the segregated school I attended, I had always tried to be in the middle—not getting such bad grades that the kids would harass me but also not getting such good ones that the other kids would dislike me either. But then, around the fifth grade, I somehow got to reading books and started doing very well. Maybe the college-educated Latino teacher we had one year influenced me; he would have been a role model. I learned to work hard, like my dad, who always told me that it didn't matter what I did as long as it was honorable. So those teachings got me to think about the future. I remember, after I became a lawyer, I thought, "they're paying me to do what I used to do for free!"

### **What made it possible for you to navigate so successfully CRLA through the political shark waters of its early life?**

The dominant reason was that we believed the War on Poverty and legal services were very, very important. Secondly, the charges against us were so ill-founded that we thought we could successfully fight them. We heard that many of the people around Nixon agreed with us and knew there was no basis for the charges

Reagan was making. A few months before the Reagan veto, a high-level commission studied us and concluded that we were doing a good job. Then came Reagan with all these preposterous charges. For example, they accused us of helping prisoners riot. We couldn't understand this. The only connection we could find was a case we won allowing prisoners to receive mail from their lawyers without inspection by the prison authorities. Thirdly, unsure that we could fight a popular governor, we made plans to continue CRLA privately, with some lawyers doing fee-based work to support the enterprise. I had been successful as a private attorney and could always go back to that. It wasn't in my nature to be intimidated.

### **How would you change your approach today?**

CRLA's director José Padilla is doing a fine job; I would do what he does. CRLA is still under the government gun. Even when they win cases, the losers get members of Congress or the Legal Services Corporation involved. We fought hard for the Legal Services Corp., thinking it would insulate CRLA from politics, but it hasn't worked out that way. I think Obama was mistaken to let the Republicans appoint several members of the Legal Services Corp. board. I don't know why he did it; perhaps he was hoping to work with them. But the Republican appointees are completely opposed to the entire concept of legal services, so now CRLA is always fighting the administration, so to speak. Actually, if CRLA were *not* under the gun, I would worry.

### **You said that although CRLA succeeded in getting many important changes and benefits for farm workers, much remains to be done. What?**

Farm workers need all the possible government protections against pesticides and other dangerous or unhealthy working conditions. They need to organize again, like the way construction workers used to be organized. My brother used to be a construction laborer, and now he has a pension. If unskilled construction laborers can have a union, why not farm workers? I

think unions created the middle class after WWII. You have to have power to change things. During the bracero program, there was a requirement that farm workers work 90 percent of the time. So the growers organized moving them around to meet that requirement. Later, Chavez and I were at first opposed to the use of undocumented workers, but we eventually concluded that instead of keeping them out, we should organize them.

### **What immigration policy would you recommend?**

There are short-, intermediate-, and long-term answers. In the long run, which nobody is talking about in Washington, we should work with Mexico and the Central American countries to improve economic conditions there. We did it in Europe with the Marshall Plan, and the EU did it for Spain. If we used the money we're spending on the drug wars, perhaps we could succeed. Also, some of our policies are counterproductive. For instance, by subsidizing corn that we sell in Mexico, we drove about a million small corn farmers and their families off the land. Many came here. The undocumented are in many ways quite noble people who have suffered to help their families.

In the medium term, we should adjust immigration quotas and policies based on what we actually need so we get the right number coming in. Ninety percent of the farm workers in California are undocumented. Clearly, we need to bring



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more workers in here. But we have quotas that don't recognize our own needs. For example, many of the European countries don't fill their quotas, while the waiting list from other countries can be 10 years or more. If fixed properly, the current immigration system would take care of many of the problems we have here.

In the short term, we need a law like in the '80s that includes amnesty. But in reality, for about 20 years even that law wasn't enforced, just as President Bush did after Hurricane Katrina, when he said that he asked the immigration service to suspend enforcement because we needed the workers. We had a *de jure* law that barred the undocumented immigrants, but at the behest of the growers and the Chamber of Commerce, the law remained unenforced; they needed workers and actively recruited undocumented workers to come here. Thus, we had a *de facto* law that encouraged the undocumented to come. The courts have ruled that the *de facto* law, not the *de jure* law, is the law of the land.

People talk about "illegal immigrants," but in reality they are not violating any criminal laws at all, unless they have been previously deported. I am not in favor of the system of "undocumented" workers; we should document everyone, as we do with everyone who comes from Cuba. Undocumented workers are too often taken advantage of. While they pay taxes, they are often reluctant to call the police when a crime has been committed or to act as witnesses. They are also reluctant to take advantage of their rights to unionize or seek unemployment and other programs to which they are entitled.

### **When you first joined the bench, on the California Court of Appeals, what difficulties did you face, and how did you deal with them?**

I always respected the appellate courts. I had little difficulty switching from being a lawyer to being a judge; both do the same kind of legal work—framing issues, researching precedent.

I was sometimes told that I took too long on cases. One reason for the complaint was that I wrote a lot of concurring

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and dissenting opinions for my Reagan-appointed colleagues. When Jerry Brown appointed me to the Third District Court of Appeals, there were seven judges with only one law clerk per judge. I asked for and got three or four externs as well.

We actually agreed on 95 percent of the cases, but on some of the important ones I dissented. When a County Board of Supervisors voted to close a public hospital, the majority upheld the decision. However, from my own experience I knew that other political considerations were involved. I studied the court record in detail and concluded that the state law required an equal alternative medical plan for the poor that the board had not provided. The majority deferred to the judgment of the county; I dissented. Other times, I would write concurrences when the Supreme Court had ruled on the issue and I disagreed with its doctrines. The biggest surprise to me was that many of my fellow judges treated their work as just another job, though an important one. I guess I had an idealized view of appellate judges. I expected them to have a great interest in history and how the cases would evolve in the common law. But of the 50 or so appellate court judges, I could count on the fingers of one hand the number who showed that level of concern for history and the evolution of the law. They were good judges, but that approach wasn't my ideal.

### **Did you have any role models as a judge?**

A Reagan appointee, Bertrand Janes, was my mentor. He was a veteran, came from

a small county, and had been DA there, and his chambers adjoined mine. So we would talk about cases and issues, and he would alert me to issues I wasn't initially aware of. While he was conservative, we agreed on many things, and he was a very fair-minded person. For example, when he was sent to Indio, in the Coachella Valley, he was asked to sign an order paying money to the trustees and lawyers for the local Native American tribes. But he noted that all the money due to the tribes was going to the lawyers and trustees. He refused to sign the order! They got someone else to sign, I suppose, but now, years later, all that has come out and there have been multibillion-dollar settlements with the tribes because of the mismanagement and dishonesty of the trustees and administrators of the Indian funds. When Janes was a district court judge, he tried a civil rights case. An African-American woman was barred from a mud bath in a resort that offered mineral hot springs. Under a California statute then, a successful civil rights plaintiff was entitled to a minimum of \$100 in damages. That \$100 had become the standard award and not just a minimum, according to Janes. She won her case, and Janes became the first judge to award substantially more than the minimum, saying she deserved more for being kept from the mud.

### **What did you find the most difficult cases?**

Death penalties, when I served on the Supreme Court. I did a lot of research on that. We had many precedents that did not technically change the standard of review for death penalty versus other criminal cases. But the wording of the cases called on us to "be very sure!" So I interpreted that to mean that if there were a substantial question, we should send the death penalty portion back for retrial. A person convicted was sentenced to life without the possibility of parole, so we weren't letting these people onto the streets. I remember, sadly, one case in which I wrote a decision upholding the death penalty against a man who disarmed two officers and killed them.

The key witness was his girlfriend, who was angry at him. Although I had my doubts about this case, nothing in the record indicated error. Many years afterward, though, the Innocence Project took up the case. I don't know what ultimately happened, but they don't take on cases without thinking they have a chance to show the person was actually innocent, not just that there were technical difficulties with the trial.

One of my own problems, a common issue among judges, had to do with bending over backward to avoid letting my personal inclinations govern my decisions. I naturally inclined to favor the side of the poor, but after research in one Supreme Court case, I decided the other way. Then the other judges asked me to reconsider. I was bending too far backward to counter my natural sympathies! I did so. The fact is that we judges agreed on about 95 percent of the cases, but of course the other 5 percent were the most important. In another court of appeals case, dealing with a change of venue motion, I thought the other judges on the panel were disregarding a recent California Supreme Court ruling on this matter. I dissented on the basis that we lacked the authority to ignore a clear, recent Supreme Court opinion. The Supreme Court agreed, as they almost always did with my dissents. Only once was one of my cases reversed. I laid out what I thought were proper standards for the termination of parental authority. I knew from my private practice that judges sometimes terminated parental authority just because the parents were poor and unsophisticated. I felt that parents are parents. In that case, though, the Supreme Court upheld what was then considered the majority view and reversed my opinion.

### **What were your most important contributions during your five years on the California Supreme Court?**

Some were civil rights cases; some were environmental cases. I remember very distinctly one case involving a criminal defendant who claimed a lack of due process because he had not been provided an interpreter. As a lawyer, I would find

that very difficult, as would my client. The justice who was assigned the question of whether we should grant a hearing wanted to deny it, but I persuaded the justices to take it on and wrote the opinion requiring interpreters for defendants. It changed how we do things. I was pleased to see that the federal courts have followed this approach, even for civil matters and in chambers. So, I think that was one case that did have influence and wouldn't have happened if I didn't have the experiences I have had.

### **Do you agree with Supreme Court Justice Sonia Sotomayor's "wise Latina" comment?**

I was in the audience when she made it, and I got many calls about it afterwards, when this issue came up. I grew up as a kid in an immigrant family and had

many different experiences than my fellow judges. Her remark seemed so correct and self-evident to me that I didn't even take note of it!

### **What would make judges better?**

I think judges do a good job. I think California is so big now that we should use the federal system and appoint judges for life, or at least longer terms. Judges do not have the majoritarian role that other elected officials have; it is our duty to follow the law and the Constitution, even if 99 percent of the people disagree and are unhappy. So elections, especially contested and expensive ones, are really inappropriate. Fortunately, we have had no serious challenges to judges since the Rose Bird attack. It's not a good thing when judges are fund-raising, even just as a precaution against possible challenge.

But in other states, such as Iowa, factions are defeating good judges. I don't think the judges we have are prejudiced. Some speak crudely, but I haven't seen much actual bias. There is a lot of injustice, but not so much legal injustice as social injustice, as when defendants lack the resources to investigate. Until God makes differences in criminality between black, brown, white, etc., people, I will never be satisfied with the reality of so many black and brown people that are in prison. With judicial elections, however, we have the danger of voter prejudice getting expressed in the election of judges.

### What are the challenges facing the legal system?

A serious problem is the lack of diversity in the judiciary, which has to do with the failure of law schools to graduate students of diverse backgrounds. At University of California Davis law school, for example, about 3–10 percent of graduates are Latino, compared to 30–40 percent of the population. If the law schools don't admit a diverse law student body, we'll

never get enough diversity on the bench. Judges must convey to the citizens of their states the dangers of having elected judges when they are supposed to be in a nonmajoritarian role. We've seen what can happen, as in Iowa. With all the money being spent, we can't have a system of justice in the states unless we have lifetime or long-term appointments. I would emphasize the influence that judges have with their law schools. They should go back and talk about the dangers of judicial elections aimed against the nonmajoritarian orientation of the judiciary. This is not just in the self-interest of sitting judges; it is meant to ensure the selection of fair new judges. The biggest problem for judges, I think, is the flood of laws removing discretion in criminal sentencing, maximums in med-mal civil cases, and so forth. I think most of the public's negative reaction to judges is based on the lack of discretion that those laws impose.

### Anything else you want to say?

After a talk I gave yesterday, a student

asked if the Supreme Court's opinion on Obamacare would be political, as the polls indicate most people believe. I'm sorry to say that I agree. When I became a lawyer, I looked up to the Supreme Court so much, and to me that was the ideal. I thought the Supreme Court was there to make sure that everyone had rights and was treated fairly. I remember a song whose words sang, "if you've been convicted improperly you can turn to nine black robes." The First Amendment was meant to give every human being a chance to be heard. But with decisions like *Citizens United*, the Supreme Court is allowing institutions to drown out the people. And this is a Supreme Court that felt free to elect a president, disregarding the ruling of the Florida Supreme Court with no justification. So I'm not optimistic. On the other hand, there is a chance the Court will uphold the law. Since the Depression of the 1930s, support for the Commerce Clause has been the Court's basic approach. I hope so because it would restore confidence that the Supreme Court has lost. ■