

THREE LESSONS I LEARNED FROM CRUZ REYNOSO

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The passing of civil rights attorney, judge, and law professor Cruz Reynoso in 2021 brought to mind my own experiences learning from this remarkable man.¹ As a law clerk, attorney, and legal academic I had the opportunity to see Justice Reynoso in adversity, triumph, and scholarship. His resilience, humility, and creativity made him a model of what a committed and conscientious legal professional should be.

¹ For a brief summary of Cruz Reynoso's career, see Donna Johnson, *Alumni Stories: Cruz Reynoso*, FULLERTON COLLEGE CENTENNIAL (2015), <http://fullertoncollegecentennial.com/alumni-stories/cruz-reynoso.html> [<https://perma.cc/NRH6-SHZQ>]. After earning degrees from Fullerton College and Pomona College, Cruz Reynoso served in the U.S. Army Counterintelligence Corps, graduated from UC Berkeley School of Law, was awarded a Ford Foundation grant to study in Mexico, and in 1959 started a law practice in El Centro, California. *Id.* He subsequently worked for California Rural Legal Assistance as a legal aid attorney and Director, taught as professor at University of New Mexico School of Law, served as Associate Justice on the California Court of Appeal (1976–82) and the California Supreme Court (1982–86), returned to private practice, became professor at UCLA School of Law (1991–2001), was appointed Vice Chair of the U.S. Commission on Civil Rights (1994–2004), and was professor at UC Davis (2001–06). *Id.* In 2000 President Clinton awarded him the Presidential Medal of Freedom. *Id.*

LESSON ONE: RESILIENCE IN ADVERSITY

My first encounter with him came in the context of the 1986 judicial recall campaign in which three sitting California Supreme Court justices—Chief Justice Rose Bird, Joseph Grodin, and Cruz Reynoso—were targeted for removal by a coalition of their political opponents. Initially, the campaign focused on the Bird court’s reluctance to affirm the death penalty in criminal cases but soon broadened to condemn its decisions upholding product liability and medical malpractice awards, equalizing legislative districts, regulating landlords and other business owners, promoting gender equity, and limiting property rights.² While Chief Justice Bird elicited the sharpest opprobrium, Justice Reynoso was seen as her most consistent ally, having joined 74 percent of her decisions in 1984 and 63 percent the following year.³

Despite judges’ traditional reserve about politicking to preserve their positions, Justice Reynoso realized that he needed to defend himself before the public.⁴ As part of this effort, in Spring 1986, some of his friends in the state judiciary hosted a fundraiser in Santa Barbara, which I attended while working as a research attorney for the California Court of Appeal. At the event, I was impressed with his calm in the face of this serious threat to the most prestigious position of his career. Indeed, all three justices were voted out of office that November. Still, he later remarked with equanimity that “I got more votes than I thought I was going to get” and “didn’t lose by very much.”⁵ He would reflect that same attitude of resilience in adversity I observed during the campaign throughout his post-recall career as a practicing attorney, Vice Chair of the U.S. Civil Rights Commission, and law professor at UCLA and UC Davis. To me, entering my legal vocation, this was a valuable lesson: Even if one is forced to change institutional settings, one can still serve the community in other contexts.

² KATHLEEN A. CAIRNS, *THE CASE OF ROSE BIRD: GENDER, POLITICS, AND THE CALIFORNIA COURTS* 176–190 (2016). *See, e.g.*, *Koire v. Metro Car Wash*, 40 Cal. 3d 24 (1985) (businesses could not offer special discounts only to women); *Nat’l Audubon Soc’y v. Super. Ct. of Alpine County (Mono Lake Case)*, 33 Cal. 3d 419 (1983) (public trust doctrine required curtailment of Los Angeles’s prior appropriation water right to the extent necessary to preserve threatened lake ecosystem). *See also* JOSEPH GUGHEMETTI, *THE PEOPLE VS. ROSE BIRD* 81–84 (1985) (criticizing Mono Lake decision as infringement on property and human domestic needs).

³ CAIRNS, *supra* note 2, at 208.

⁴ *Oral History of Justice Cruz Reynoso*, 10 CAL. LEGAL HIST. 246, 349 (2010).

⁵ *Id.* at 350.

LESSON TWO: HUMILITY IN TRIUMPH

While Cruz Reynoso was Of Counsel for the private law firm O'Donnell & Gordon and I had just started as an associate at Parker, Milliken, O'Hara & Samuelian, our paths crossed again, and I received the second of my lessons from him. In January 1987, we appeared on opposite sides in *Corsini v. Joannou* before the Second District Court of Appeal in Los Angeles.⁶ I was representing plaintiff/respondent Frank Corsini, a Hollywood producer who sued his film studio for defamation and interference with prospective economic advantage, arising out of defendant/appellant George Joannou's warning to their mutual partners to cease doing business with Corsini. The trial court had ruled for my client, awarding damages, and Joannou appealed. As we stated our appearances to the appellate panel, Presiding Justice Lester Roth nodded to my opponent and said, "[w]e are very honored to have Justice Reynoso in our courtroom today." He then turned to me and said nothing. During our arguments, I received many more interruptions and critical questions than did the other side, and by the end of the session strongly suspected I would lose. Walking out with me, Cruz Reynoso graciously told me, "that was a good presentation," followed by "well, you never know how things are going to turn out." I did in fact lose the case; the court overturned the lower tribunal's judgment on all issues except a minor one. Yet once more I was impressed by his humble demeanor, now in the context of what we both rightly guessed would be an outcome in his favor. He treated me like a colleague rather than the newly minted junior attorney that I was. This was another lesson from which all legal professionals can benefit: In success be gracious to your opponents, just as you would want them to be to you were the situation reversed.

LESSON THREE: CREATIVITY IN SCHOLARSHIP

Justice Reynoso's jurisprudence provided me with a third lesson: In scholarship, creativity counts. When Cruz Reynoso was appointed to the California Supreme Court in 1982, he joined one of the most innovative and progressive state courts in the country.⁷ Justice Reynoso

⁶ See Respondent's Brief, *Corsini v. Joannou*, 2d Civil No. B 024 539, (Cal. Ct. App. Dec. 21, 1987), https://books.google.com/books?id=yIXSR_f6EagC&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false [<https://perma.cc/3FH7-3X4Q>].

⁷ See G. Edward White, *Introduction to THE TRAYNOR READER: NOUS VERRONS: A COLLECTION OF ESSAYS BY THE HONORABLE ROGER J. TRAYNOR* 1, 4 (1987) (discussing

continued the state's pathbreaking legacy, authoring over 50 opinions at the California Supreme Court with creative legal thinking.⁸ Three opinions, in particular, shaped my own academic work on Mexican law in the United States and state-level civil rights.

First, Cruz Reynoso's unique legal reasoning, which incorporated his deep knowledge of Mexico's legal system,⁹ inspired my own scholarship. In *Wong v. Tenneco*, a U.S. co-owner of an agricultural packing company started in California and then relocated to Mexico sued his American partners in a San Diego state court for breach of contract arising out of a dispute over his diversion of company funds for personal use.¹⁰ Under Mexico's 1917 Constitution, foreigners could not have ownership and control of farming operations, so his partners were able to force him out of the operation in favor of the Mexican front men who held legal title. Justice Reynoso ruled for the majority that comity barred a U.S. lawsuit.¹¹ He stated that "[c]onsistent with our duty to respect Mexico's right to determine her own internal policies, we should defer to her laws implementing those policies"¹² Thus, because Wong was not a legal co-owner in Mexico, he had no enforceable interest in the United States. Despite a strong dissent from Justice Stanley Mosk, who argued that California public policy opposed honoring foreign law that restricted property ownership based on citizenship status, five members of the court agreed with Justice Reynoso's comity holding. *Wong* has been widely cited in federal and state cases, including outside of California.

California Chief Justice Traynor's 1940–70 tenure and precedent-setting holdings on torts and conflicts of laws); Harry N. Scheiber, *The Liberal Court: Ascendancy and Crisis, 1964–87*, in CONSTITUTIONAL GOVERNANCE AND JUDICIAL POWER: THE HISTORY OF THE CALIFORNIA SUPREME COURT 327, 331 (Harry N. Scheiber ed., 2016) (discussing how members of the court won renown in the 1960s and 70s through pathbreaking opinions on torts, contracts, racial discrimination, criminal process, public education, gender equality, privacy, and equal protection).

⁸ *Cruz Reynoso*, COURTLISTENER, <https://www.courtlistener.com/person/3841/cruz-reynoso> [<https://perma.cc/8SM9-JXAH>] (noting a total of 116 judicial opinions authored by Justice Reynoso both at the California Court of Appeal and Supreme Court, with 51 at the Supreme Court) (last visited Feb. 2, 2023).

⁹ Johnson, *supra* note 1 (noting Cruz Reynoso studied at Universidad Nacional Autónoma de México for a year following law school).

¹⁰ 39 Cal. 3d 126 (1985).

¹¹ *See id.* *See* STEVEN H. GIFIS, DICTIONARY OF LEGAL TERMS 89 (4th ed. 2008) (defining comity as "a rule of courtesy by which one court defers to the concomitant jurisdiction of another." (Emphasis omitted)).

¹² *Wong v. Tenneco*, 39 Cal. 3d at 134.

I included the *Wong* decision in my casebook on the Mexico-U.S. border.¹³ And drawing on Cruz Reynoso's reasoning I maintained in a series of historical articles that if state judiciaries had more consistently recognized the communal Hispanic property tradition within the territories annexed by the United States in the 1840s, water, mineral, and land resources would have been less subject to privatization and consequent environmental harm.¹⁴ As a litigator, I argued that Mexican law should be applied to protect grazing, fishing, and woodcutting rights on a community's former common lands, and my position was upheld by the Colorado Supreme Court in 2002.¹⁵

Second, Justice Reynoso's original contributions to state constitutional jurisprudence, both in expanding federal rights to the state context and in creating entirely new affirmative government obligations, helped advance immigrant rights.¹⁶ In *Darces v. Woods*, he extended the U.S. Supreme Court's *Plyler v. Doe* decision giving public school access to undocumented children in Texas, based on the Fourteenth Amendment's equal protection clause, to a California issue.¹⁷ Cruz Reynoso wrote for a unanimous court that the California Constitution's parallel equality guarantee (Article I, § 7) prevented the state from reducing Aid to Families with Dependent Children (AFDC) grants to recipients living in a household with undocumented siblings.¹⁸ In *People v. Aguilar*, he

¹³ *E.g.*, *Brady v. Brown*, 51 F.3d 810, 816 (9th Cir. 1995); *Novich v. McClean*, 172 Or. App. 241, 249–50 (2001). See PETER L. REICH, *THE LAW OF THE UNITED STATES-MEXICO BORDER* 146–56 (2017) (reproducing *Wong v. Tenneco*).

¹⁴ See Peter L. Reich, *Mission Revival Jurisprudence: State Courts and Hispanic Water Law Since 1850*, 69 WASH. L. REV. 869 (1994) (misinterpretation of water practices in California, New Mexico, and Texas); Peter L. Reich, *The “Hispanic” Roots of Prior Appropriation in Arizona*, 27 ARIZ. ST. L.J. 649 (1995) (parallel Arizona trends); Peter L. Reich, *Western Courts and the Privatization of Hispanic Mineral Rights Since 1850: An Alchemy of Title*, 23 COLUM. J. ENV'T L. 57 (1998) (distortion of mining law in California, Arizona, New Mexico, and Texas); Peter L. Reich, *Dismantling the Pueblo: Hispanic Municipal Land Rights in California Since 1850*, 45 AM. J. LEGAL HIST. 353 (2001) (urban commons alienation in California).

¹⁵ See Brief of Amici Curiae Bi-National Human Rights Commission et al., *Lobato v. Taylor*, 71 P. 3d 938 (Colo. 2002) (No. 00-SC-527), 2002 Colo. LEXIS 527 [<https://perma.cc/F3F7-Z4G5>].

¹⁶ See JAMES A. GARDNER, *INTERPRETING STATE CONSTITUTIONS: A JURISPRUDENCE OF FUNCTION IN A FEDERAL SYSTEM* 253–67 (2005) (distinguishing between state constitutional provisions that parallel those of the U.S. Constitution and those that create unique rights); JEFFREY M. SHAMAN, *EQUALITY AND LIBERTY IN THE GOLDEN AGE OF STATE CONSTITUTIONAL LAW* (2008) 79–120, 136–62 (focusing on positive rights preserved solely by state constitutions).

¹⁷ See *Plyler v. Doe*, 457 U.S. 202 (1982).

¹⁸ *Darces v. Woods*, 35 Cal. 3d 871 (1984).

created a novel affirmative government obligation when he ruled that the state had a duty to provide a non-English-speaking criminal defendant with a foreign-language interpreter throughout the proceedings—a right protected by the California Constitution’s interpreter provision (Article 1, § 14) but with no federal counterpart.¹⁹ Commenting later, he underscored that “. . . you want to have everybody in the trial know what’s going on.”²⁰ In my course, Public Law: Constitutional and Statutory Analysis, I teach both of these decisions as examples of the creativity and flexibility possible in state jurisprudence. As U.S. Supreme Court Justice William Brennan observed, state constitutional law can be applied “to an extent beyond that required of the national government,” which offers judges more scope to protect individuals from abuses of power.²¹

Justice Reynoso’s legacy has inspired generations of engaged activists, attorneys, and scholars.²² I was fortunate to have had the opportunity to meet him in person and to be taught by those interchanges as well as by his work. In a time of rights retrenchment, Cruz Reynoso is an example of how the legal profession can serve the public persistently yet unpretentiously.

¹⁹ 35 Cal. 3d 785 (1984).

²⁰ Oral History, *supra* note 4, at 336.

²¹ William J. Brennan, Jr., *The Bill of Rights and the States*, 36 N.Y.U. L. REV. 761, 777–78 (1961).

²² Karen Nikos-Rose, *Cruz Reynoso: An Honorable Career*, KING HALL COUNSELOR, Feb. 2019, at 23, 26.