

Amazing Cool: Keeping Up With Goodwin Liu

By Benjamin G. Shatz



According to Senator Dianne Feinstein, California Supreme Court Justice Goodwin Liu has “amazing cool.” California Litigation Review couldn’t agree more! Justice Liu granted us an hour of his time on November 15, 2016, in his chambers—a spacious corner office formerly occupied by judicial luminaries including Justices Carlos Moreno, Stanley Mosk, and Roger Traynor. Below are edited excerpts from the interview.

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CLR: Much of your personal background is already public record. You were born in Augusta, Georgia, in 1970, to Taiwanese immigrant parents, who were both medical doctors. You moved to Sacramento in 1977 and attended public schools, earning straight A’s since the fifth grade. Why were you such a slacker in the fourth grade? What else can you share about your childhood?

GL: Fourth grade was challenging! I tried to do all kinds of things to fit into the mainstream. I often give a talk about what it was like to be a little Asian-American kid growing up in the predominantly white suburbs of Sacramento. I tried to do very American things, like join the Cub Scouts. There’s a great photo of me in the regulation shirt, scarf, and hat, accompanied by horrible plaid pants with knee patches. The pants were not regulation.

CLR: You were not one of those kids who grew up wanting to be a lawyer.

GL: No, not at all. My parents had good education and came here to complete their professional training. So they were reasonably secure in terms of having employment and making ends meet. But they didn’t come here with much money or familiarity with America. They were focused on trying to raise a family and becoming settled in a new and different place. I certainly had many advantages growing up; my parents strongly supported my education and we were not poor. But the thought that I would someday be a lawyer was entirely unanticipated. Law is a

field that’s set in a particular cultural, governmental, and societal context—and during my childhood, the American context was not the context my parents were most familiar with.

CLR: No one in your family had been a lawyer. Who was the first lawyer you ever knew?

GL: Probably the first lawyer I met was my congressman in Sacramento, Bob Matsui, who turned out to be a very important mentor in my life. When I was a junior in high school, Bob sponsored me to be a page in the House of Representatives. Back then, pages were the equivalent to what e-mail is today: We were the gophers who delivered messages from office to office. I worked as a page for a semester, and it was a tremendous experience—having access wherever I wanted to go on Capitol Hill, including the House and Senate floors, was just amazing. At the time, Bob was one of three Asian-Americans in the entire Congress, and he was incredibly well respected, very articulate, and very prepared. He was on the Ways and Means Committee. Had he not died so young, he would have eventually become the chair or ranking member of that committee. That was an inspiration for me.

CLR: You went on to be co-valedictorian of your high school class and tennis team captain. So, unlike many straight-A students, you probably had a date to the prom. And music is important to many high school students...

GL: Yes, I did have a date—but it was at the last minute. And as for music, I developed two speeds for music: bad ’80s music, which is still my baseline, and classical music. I took piano lessons for more than 10 years, and I complained as much as any kid would about that. But I do enjoy playing piano today and feel all those lessons were a real gift. Between those two extremes—classical music and ’80s pop—I don’t listen to much else.

CLR: Then you went to Stanford as a pre-med biology major, graduated Phi Beta Kappa, and earned admission to medical school at Harvard and UCSF.

GL: Yes, I went to college as a pre-med. Luckily I have an older brother who became a surgeon. That

checked a box for my parents, which kind of took the pressure off me. In college, there were other things I found interesting, like K-12 education. I helped put together a big campus-wide conference on education, working with two graduate students. In preparing the topics and speakers for that, I learned about the major debates in public education. It was a tremendous exposure to many fascinating issues.

CLR: How did you get involved in that education conference? Weren't you supposed to be studying organic chemistry?

GL: I did that too, of course. But I also found public service very motivating. I had an important mentor at Stanford named Catherine Milton, who was the director of what is now the Haas Center for Public Service, the campus community service clearing house. She took a liking to me, saw potential in me, and put me in charge of the education conference.

I just went to my 25th college reunion, and I was reflecting on my years on campus. We had several hate-speech incidents, which stimulated vigorous conversations about multiculturalism, diversity, and freedom of speech. One of my early memories from that time was when, as a freshman, I was a *Stanford Daily* newspaper reporter. I was reporting on hate speech codes, and I went to consult an expert at Stanford Law School on freedom of speech. That expert was Gerald Gunther. And I remember sitting in Gunther's office for about an hour. I was completely unaware of his iconic status in constitutional law, and here I am, this freshman, not even a law student, and he just gave me an hour of his time, talking about basic values of the Constitution and his own experiences. He talked about Nazism. He talked about societies that are far less free than ours. That was an amazing experience.

Stanford was also deeply embroiled in a debate about the basic freshman humanities curriculum, which was then called Western Culture. People from other backgrounds made competing claims on the curriculum. Many people at Stanford who look back on that time think it's antiquated that the course was called Western Culture, given how the makeup of the campus is now majority minority and has been for over a decade. So that was a moment of transition.

All of those things were in the mix in my educational environment, which led me to become concerned about things other than medicine and science.

Of course, I followed through on being pre-med, accepted a spot at UCSF, and then deferred my enrollment.

CLR: You deferred medical school because you had won a Rhodes Scholarship, and so went off to Oxford to earn your masters. There, however, you discovered you were not that excited by laboratory research, and so you switched to philosophy.

GL: I really thought I was going to return from Oxford and go into medicine. But it quickly became apparent to me that medicine was just a default rather than an active choice. When I got to Oxford and started a doctoral program in immunological research, I found I didn't like it. It was too far removed from the things that really moved me. So I read philosophy instead, which was a very eye-opening intellectual experience. I hadn't read much philosophy before, and although I got good grades at Stanford, I don't think I really developed much intellectual curiosity. That came later, primarily at Oxford. So I credit Oxford with being a formative intellectual experience, giving me confidence to think on my own. This was key to my transition to law school and eventually becoming a professor.

CLR: So you proceeded to Yale Law School, where you excelled on law review and moot court.

GL: I wouldn't call myself an A-student in law school. My grades were fine, but they weren't off the charts. What was more important was a gradual process of unfolding, a widening of my perspectives, bit by bit. I thought I would probably pursue some policy-related field, go to D.C., and work in government. It turned out I really liked the scholarly aspects of law. I liked writing and probing deeply into problems. My professors at Yale gave me a lot of confidence and mentorship, which led me to believe that becoming a scholar was something I could do.

CLR: You then clerked for a year for D.C. Circuit Judge David Tatel, after which you worked in the Department of Education before clerking for Justice Ruth Bader Ginsburg.

GL: I loved my clerkship with Judge Tatel, and he is without a doubt the most important mentor I've had in my legal career. We're still in regular touch, and it's particularly fun now that I'm also on the bench and we can trade thoughts about judging. It's a lifelong relationship I deeply cherish.

Clerking for Justice Ginsburg was also amazing. She is a living legend in the law. In addition to her remarkable tenure on the Supreme Court, she has had three other remarkable careers in the law. People sometimes forget that she was a law professor at a time when very few women became law professors. She became a leading authority on civil procedure—and not just on American civil procedure, but also Swedish civil procedure. She spent a year in Sweden studying civil procedure and published an enormous textbook on it. Then, she became the founding Director of the ACLU Women’s Rights Project, an enormous accomplishment. She argued many important cases on gender equality, which became part of our fundamental law. And then, she spent 14 years on the D.C. Circuit.

Justice Ginsburg has also been an important mentor to me. Among other things, she demonstrated what it means to pay close attention to detail in writing. Her practice is to edit using a very faint pencil. It’s interesting that a person who carries such clout uses such a light touch. Of course, every pencil mark must be looked at extremely carefully when a draft comes back from her. She also put a high premium on collegiality. As young law clerks, we were prone to get excited about our cases and passionate about our disagreements. But she was always very cautious and even-tempered with her colleagues. It was a particularly trying year because of *Bush v. Gore*, but even in the heat of that controversial decision, Justice Ginsburg kept a very cool head. I never heard her utter a harsh word against a colleague, which was a testament to her character.

CLR: You then worked in the appellate group at O’Melveny & Myers for a couple years in D.C.

GL: I was recruited into Walter Dellinger’s appellate group, which was a great honor. I liked working with Walter. He’s an incredibly creative lawyer, a tremendous legal mind, and a fun person to spend time with. And I also regarded him as a mentor because he was an academic, and at that point I thought I might be headed in that direction after gaining some practice experience. When I eventually went on the teaching market, Walter was very helpful in mooting my job talk and providing good advice.

The cohort of people I practiced with at O’Melveny was amazing. Sri Srinivasan was one of my colleagues who had recently made partner; he is now on the

D.C. Circuit. He was clearly brilliant and headed for great things. Pam Harris was another wonderful colleague; she is now on the Fourth Circuit. My next door neighbor at the office was Raj De, who became general counsel of the National Security Agency. Jeremy Bash was another colleague; he eventually became Chief of Staff at the Defense Department as well as the CIA. The chair of the firm was A.B. Culvahouse, a former White House Counsel. Quite a group. I think back fondly on my experience at O’Melveny because I met remarkable people and saw how a law firm can nurture people for careers in both private practice and public service. That was important to me in terms of the environment and ethos of a law firm.

CLR: Next you became a popular law professor at Berkeley. But let’s jump to your call from Governor Brown. Sutter Brown, the Governor’s corgi, obviously liked you, and then you got the philosophy test.

GL: Yes, Sutter [California’s First Dog, who passed away in December 2016 ... may he rest in peace!] My interview with Governor Brown was so unconventional, which speaks to the man. He is an unconventional person by any measure and an extraordinary intellect. We sat at a round table, and he had a thick binder on me prepared by his staff. He ignored the binder and said, “I already know a lot about you; you’ve just been through this very public process of being vetted for the Ninth Circuit, so we don’t need to talk about your background. I’m more interested in how you think about bigger issues.” The very first question he asked me was, “What do you think is the basis of law?” I’d never been asked a question like that. Not in a job interview anyway. [Laughs] For two hours, he, his wife (who is a very accomplished lawyer in her own right), and their dog interviewed me, and we talked about legal theory and jurisprudence. And I don’t mean jurisprudence in the colloquial sense. I mean jurisprudence in the philosophy-of-law sense, like H.L.A. Hart’s *The Concept of Law*. The Governor was extremely well-versed in all the philosophers, and we had a great conversation.

Then I didn’t hear from him for three months. I didn’t think he was going to appoint me, so I put it out of my mind and began preparing to resume my academic career at Boalt. Then, in late July 2010, I got called in for a second interview at the same place with the same people: the Governor, his wife, and

their dog. And we had another two hours of conversation about the philosophy of law. I remember asking him at the end of that interview, “Governor, are you close to making a decision?” He replied, “Oh, yes, I’m very close. I just have a few more people to see, but I’m very close.” I had a trip already planned for the East Coast the next day, so I left on vacation. When he called me a few days later to say, “I’m ready to appoint you,” I was floored. I did not expect it at all.

When people narrate my background, they sometimes make it sound so lockstep and inevitable, as if my journey was a well-charted path, one thing naturally leading to the next. But it wasn’t that way. There was no plan. I didn’t expect to go to law school. When I got to law school, I didn’t expect to become a professor. And when I became a professor, I never thought I’d be on the California Supreme Court.

CLR: You mentioned your unsuccessful experience in the Senate confirmation process for a seat on the Ninth Circuit. Do you regret the experience?

GL: Of course I was very disappointed to be filibustered. But I don’t regret going through the process, even though it was uncomfortable being put under a microscope. It was a great honor to be nominated, and it’s quite possible Governor Brown would not have noticed me otherwise. It was also a good opportunity to reflect on things I had done in my career. I felt generally happy with the work I had pursued, while also realizing there were some things I should’ve done differently.

CLR: Like your testimony against Justice Alito when he was nominated for the Supreme Court? Do you know whether he was bothered by it?

GL: Yes, my testimony included some language that was unduly harsh, and that was a mistake. I don’t know whether he was bothered by it or even knew about it. But I did send him a personal apology, and he could not have been more gracious about it.

CLR: So you finally make it to the bench, and suddenly you’re getting a lot of misdirected mail to somebody named Elwood, right?

GL: [Laughs] There has been some confusion between me and Court of Appeal Justice Elwood Lui. But there’s more confusion with Justice Chin because I sit right next to him on the bench. People sometimes confuse us despite the fact that we’re separated

by a generation.

Being on the Court has been a wonderful experience, and I feel lucky we have very strong norms of collegiality. We regularly deal with very important, difficult, and contentious issues, and it helps enormously to have a basic level of trust and goodwill toward one another. That is something very precious, and our Court is strong because of it.

CLR: Your background was in the federal system and you brought some federal-type innovations to the California Supreme Court in the form of annual clerks and dissents.

GL: I came into this office thinking I would have annual clerks. I believe the practice is good for the clerks, good for my chambers, and good for the Court as an institution. It does create inefficiencies; every fall, when my old clerks are rotating out and my new clerks are coming in, I feel a sense of loss. But it’s a great experience for them to see the inside of the Court and then take that experience with them wherever they go in their career. They benefit from it, and they become a network, like a family. I just had my five-year law clerk reunion last month, which was wonderful. The clerkship is something they identify with, just as I identify with being a Tatel clerk and a Ginsburg clerk.

Having annual clerks also keeps my thinking fresh. I’m only six years into this, but I can already see that one occupational hazard, for me at least, is feeling like some aspects of the job become routine or repetitive. A new person coming in will always question the fundamentals: Why do we do things the way we do? They can imagine things being different.

And for the Court, I think it’s useful to have people who come for a year and then go back into the world as the Court’s ambassadors, as translators of what the Court does, as part of the Court’s intellectual capital. Think about the U.S. Supreme Court, which has hundreds of former law clerks. Those clerks, who are now esteemed lawyers, scholars, judges, and policy-makers, form part of the Court’s institutional capital and contribute to its prestige.

CLR: You do a lot for the greater Bar, attending events and giving speeches. You obviously care about the development of the legal profession. You were recently involved in a study on Asian-Americans in the law.

GL: I do keep a pretty active schedule because I feel it is part of my job to do outreach and contribute to the profession. It also keeps me from becoming isolated. Yes, I have been engaged in a project on Asian-Americans in the legal profession with several Yale law students (*A Portrait of Asian-Americans in the Law*). It's an amazing story. Consider my colleague, Ming Chin, who graduated from law school at a time when the number of Asian-Americans in law school nationally was in the low hundreds. Today, there are 6,000 to 7,000 Asian-Americans in law school. The number of Asian-American lawyers has grown from about 10,000 in 1990 to over 50,000 today—a five-fold increase in one generation. That is a dramatic transformation. There's been no comprehensive or systematic study of what this has meant for the Asian-American community and for the legal profession. That's what our project aims to do.

I'm also active in the American Law Institute and the National Academy of Sciences Committee on Science, Technology, and Law. Both organizations do very important work, and I'm honored to contribute. In 2017, I'll join the James Irvine Foundation board. The foundation focuses exclusively on California, and that's something I deeply appreciate as someone who grew up here and cares very much about California's future.

CLR: You're also a serious runner who's logged a number of marathons. Do you use an app when you run? Or listen to your '80s hits?

GL: I do like running and I enjoy running a race every so often. Exercise is meditative because it's one time of day when I am free not to think about things. I don't use any running apps. I don't like any encumbrances when I run. It's just me and the environment—that's it.

CLR: Any final thoughts on being a Supreme Court Justice?

GL: One of the downsides of this job is that you have so many matters before you all the time, you don't have the luxury of becoming an expert on any one thing. If you immerse deeply in one thing, you'll neglect others. So there's always a sense of rationing, even when something is interesting and important.

The tradeoff is that you can have impact in this job. The William Richards case is an example. Richards petitioned our Court on habeas corpus for a reversal

of his murder conviction on the basis that a bite-mark analysis purportedly linking him to the victim was not valid forensic science. It turns out that the scientific literature has discredited bite marks as a forensic methodology, and the experts in Richards's case had recanted their testimony. The Court, in a 4-3 decision, held that the recanted testimony did not qualify as "false evidence" under the False Evidence Statute (Penal Code, § 1473). (*In re Richards* (2012) 55 Cal.4th 948.) I dissented. Then the Legislature changed the statute, citing my dissent. Richards petitioned again, and under the new statute, which was intended to include his claim, the Court unanimously granted him relief. (*In re Richards* (2016) 63 Cal.4th 291.) Last summer, Richards walked out of prison after serving 23 years.

The coda is that I was recently in San Diego to speak on a criminal law and ethics panel at Cal Western Law School. Richards had been represented by the Innocence Project at Cal Western, and unbeknownst to me, he came to the panel discussion. He drove an hour to be there because he wanted to shake my hand. And so I met him for the first time, and maybe the only time. That was quite memorable.