Judge Stephen R. Reinhardt

Judge Stephen R. Reinhardt serves on the United States Court of Appeals for the Ninth Circuit. He joined the court in 1980 after being appointed by President Carter. He was born in New York and earned his law degree from Yale Law School. Judge Reinhardt served in the U.S. Air Force as a lieutenant in the legal counsel's office before becoming a clerk for Judge Luther Youngdahl in the U.S. District Court for the District of Columbia.

BAG: So I'm here on February 3, 2006, with Judge Stephen Reinhardt of the Ninth Circuit. Judge Reinhardt, we're going to talk a little about legal writing today.

SRR: All right.

BAG: So the first question I wanted to ask you, Judge Reinhardt, is how you would characterize an ideal brief. What does an ideal brief do?

SRR: An ideal brief does not cite too many cases. It doesn't give you a lot of string cites that the court's not going to read. An ideal brief discusses the key cases, and there shouldn't be very many for each issue. Maybe there are two or three cases that have some substantial effect on the issue before the court. It's far better to take those two or three cases, discuss them in some detail, and explain how they apply. Discuss the facts; apply the facts to the law, the law to the facts; and show why that case requires the court to do something in this case. Simply to give a lot of sentences with a citation to a case that has a standard proposition doesn't really help, because I don't think most judges pull out the hundred cases that are cited in the average brief. You don't read the case unless there is something in the brief that tells you this case is really especially significant. I would say that 70 to 80 percent of the cases that are cited in the briefs are of no use whatsoever.

BAG: Would you agree with my impression that despite all the warnings about string citations for over a hundred years in the literature, string citations have gotten to be a worse problem than ever?

SRR: [Chuckling.] I can't imagine that it was as bad a problem as it is now. It's hard even in writing opinions to keep yourself and your clerks from just putting a case at the end of every sentence. The fewer cases even in opinions, the better. The problem is not only in the area of briefs; it permeates the problem of our opinions. It's throughout our legal writing — we overcite. We think we have to justify every sentence, where reason and logic will often do the work for us.

BAG: Do you have any sense — you must have thought about this — psychologically, what leads people to overcite?

SRR: Lawyers or judges?

BAG: Well, legal writers. But if there's a difference, maybe lawyers first, then judges.

SRR: Well, lawyers overcite because they see other lawyers overcite. They see what professors do. They have a certain insecurity, I suspect, and they are afraid just to make an argument that's persuasive. They think that if they put a case at the end of the argument, it will make the argument seem more substantial. It really doesn't, unless the case actually supports the proposition and it's a proposition that needs support. If it's just a self-evident statement that's part of the given law and not the problem the court is really deciding in this case, then it does have some value. But we don't have to start each brief and each case from the proposition that the reader has never heard of the law. It's difficult. One of the difficult things about writing an opinion is estimating the level of knowledge and intelligence of your reader. Some-

times you get the feeling you can't make a mistake by overestimating the ability of the reader.

BAG: What's an example of that?

SRR: Well, an example of it is feeling that you have to explain that, for instance, the Constitution says that you have the right of free speech. If you're writing a First Amendment case, you can say very quickly that the First Amendment controls this case. You don't have to quote the First Amendment unless there's an issue of the exact meaning of the words. You don't have to give the history of the First Amendment and what the Supreme Court has said about it throughout its history. You just go right to the heart of the proposition, and you assume that the reader knows what the First Amendment is about and that it was put into the Constitution in the late 1700s. That may not be the best illustration, but it is difficult. If you are doing a securities case, do you assume the reader is familiar with securities cases, and who are you writing for? Well, who's going to read securities cases except either law students — who are learning about securities cases, and they don't have to learn about the cases from your case; they should learn what you contribute in that case to the law — law students; professors, maybe; and lawyers who practice in the field. The cases are generally not written for the lay audience. On the other hand, depending on the nature of the case — I'd say securities, bankruptcy, tax cases — the writing in that is somewhat different because you're writing for a technical audience. In effect, you're writing for experts in the field. If you're writing an opinion about the Constitution generally — a free-speech opinion — if you're writing an opinion about affirmative action, if you're writing opinions about abortion or about issues of general importance, where people

other than experts in the field will want to read the case, then I think the opinion should be written in a way that the average intelligent person can understand it. In a sense, opinions of public interest should be written in a similar manner to newspaper stories or magazine articles. They should be something that the average reader can easily understand and follow and won't be driven away by the text, the endless citations, and the boring technicalities. I mean, the object is to explain so that a person of average intelligence can understand. That, I think, is the trick to good legal writing in the kinds of cases that people who are not experts in the field will read. Now, in other cases, it's very difficult to do what you would like in the way of legal writing. The concepts are so arcane and so technical that there's no way to write in a manner that would vary the use of the words. I just wrote a habeas opinion in which I got bored with using the same 10- or 12-word tests. Each time I applied it, I would vary the way I stated the tests. Well, one of the judges on the panel wrote back and complained that some of the iterations of the test were not accurate; they didn't say precisely what the Supreme Court said [chuckling]. He was right. For that kind of an opinion, it's better to state the test over and over again in a boring way — which makes the opinion far less readable but protects it against . . . from someone saying that he didn't apply the proper test. And the best way to make sure that no one says that you didn't apply the proper test is to use the precise words over and over again.

BAG: Are there some judicial writers, in the not-too-distant past, that you can point to as being really good models for current judges?

SRR: You know, it's strange. In the not-too-distant past, opinions were written quite differently. When I started in the 1970s,

even — I started in 1980, but I started reading the opinions in the 1970s — the opinions were much shorter, they were much simpler, they were much clearer. I don't think that's because the judges have voluntarily changed their writing styles. I think that what's happened is . . . For instance, in the criminal area and particularly the habeas area, but not only the criminal but also the civil area with jurisdiction, so much of what we do in the courts these days is to write about technical obstacles that the Supreme Court has placed in the way of getting to the merits. The idea of the Rehnquist Court, originally, was to save the Court time by weeding out cases from the federal courts. So it erected a whole series of barriers that made it more difficult to pursue your rights in the federal courts. Well, each one of those barriers involves a very technical area where the judge has to wind his way through the proceedings, and sometimes you have to discuss the same issue several times. Is it wrong? Is it really wrong? Was it prejudicial? And was it so prejudicial that any reasonable person would know that? Well, what does that mean — "objectively unreasonable" — when the Court did it? Every once in a while, the Court says, "Well, these are able judges. How could they be objectively unreasonable?" But you have to go through the same analysis over and over, and to apply these cases. What makes it "objectively unreasonable"? Well, the Court doesn't tell you how to measure that, so you have to go through it and try to do it by saying, "This is just like this case; I found something here." And it becomes a massive job just getting to the merits of the case so that our opinions are far more complex and far more case-bound than they used to be. It used to be, in the federal courts before the Rehnquist era, that you could just get to the case, decide the merits of the case — which

wasn't that hard. I would say now, for instance, that we spend most of our time deciding whether to get to the case or not. We could easily, if we got to the merits, dispose of the case in a quarter of the time that we now take. That then, in turn, means that we write these lengthy, boring opinions which are very technical and abstract and have very little to do with the administration of justice.

BAG: You're not a fan of multipronged tests, I guess?

SRR: No, but on the other hand, I must say I'm not quite sure how you solve those problems. I'm also not a fan of absolute rules that apply across the board no matter the circumstances. I have problems with both systems, which seems to me the way life is in general. You find that you try any system, and after a while people see the flaws and become dissatisfied and shift to the other. An example of that is indeterminate sentences and determinate sentences. Whenever a state uses one system long enough, a reform rule will come along and suggest shifting to the other system. And then you try the other system, and after a while, then you see the flaws in that system, and someone says, "I've got a great idea," and they go back to the system that they had the time before. And that's the problem with multipronged tests and across-the-board rules. Both have real problems [chuckling], and both really require the application of common sense and judgment and require you to sometimes ignore or make exceptions to the across-the-board rules. But to say that I have seven factors to consider doesn't really much help you decide the case. There are no rules in those multipronged tests for how many prongs you need or how great a degree one prong must have before it controls. It just doesn't really help you answer the question much — except give you some kind of general idea that if we really apply

those multiprong tests and write about it the way they are actually applied, and say, "Well, I've considered all these things, and on balance, I think probably the right result is X," that would be somewhat honest. But to say, "Here are the three factors that weigh here and the two factors that weigh here, and therefore I'm going to give it to A," or "Well, the two factors don't outweigh the three" — it's very rare that someone says the smaller-number factors outweigh the larger number. What's funny about it is that every once in a while someone will say that factor three is really the dispositive factor. Well, if that's true, what are factors one, two, four, and five for? Why talk about them at all if factor three is dispositive? So I don't find the multipronged tests a very good way to decide cases, but I don't find the absolute rule a very good way either.

BAG: Let's talk a little bit more about brief-writing. Is there a part of a brief that you consider to be the most important?

SRR: You know, the answer to that question is that I don't really believe in absolute rules. Sometimes one part is more important, sometimes another.

BAG: Is there a part that you look at first?

SRR: Yes, the first page. I read from beginning to end, and if they're written in an interesting manner, there's a purpose to that. I don't skip any parts of briefs. Maybe a little bit in some cases, but generally I like to read the entire brief.

BAG: How important is it that the brief be interesting?

SRR: It depends [chuckling] on how much time the judge has at that point for the cases. If you're overwhelmed, as we ordinarily are, and you're really not going to be able to give every brief full attention, then the more interesting the brief, the more likely you are to read it. One of my colleagues said when I was just starting — and I don't think he's changed

his views — that "I've never met a brief that didn't put me to sleep." That may be a little extreme, but certainly, boring briefs are not as likely to be read thoroughly as interesting briefs. But there's not much you can do to make certain briefs interesting. Some could be made interesting, and I think that in these kinds of cases is where you can have good writing, good legal writing, and I think you can in a number of cases. Where you're not so constricted by the absolute technicalities, but where you make a case come to life somewhat by the manner of writing and the way you portray the problem, and you can interest the judge in the problem so that you make reading the brief somewhat less intolerable, I think that helps your case substantially.

BAG: Do you mind saying what colleague of yours said, "I've never met a brief that didn't put me to sleep"?

SRR: I think it was Judge Pregerson.

BAG: Was it?

SRR: Yes.

BAG: I'll have to try and interview him if I can.

SRR: [Chuckling.]

BAG: What kind of writing style do you like in a brief?

SRR: Well, I like simple, clear sentences. But again, that's not always possible with the brief. I like a story that flows so you can tell what it's about and why. You know, I like something that I can follow easily. One very important thing is the credibility factor in the brief. Do you trust the writer of the brief? If the writer exaggerates and you can see that he's exaggerating, or if he's distorting a case, from then on it doesn't really matter what he writes — he's lost you. But a brief that's vital and clearly written and has a little diversity of language in it, that's a big plus as far as I'm concerned. I like both briefs and opinions that tell a story and that tell it

in a pristine way, and make you think that you're dealing with a problem that matters. I've been surprised sometimes at the types of problems that end up grabbing my interest or attention. Sometimes it's a bankruptcy case, which is not a subject that I generally had much knowledge about or interest in, but if you get into the problem, you can see that it really is an interesting problem. But it's got to be explained clearly to you. A lot of the briefs don't explain what the real problem is, and part of that is the problem of what level you assume your reader is at and how much knowledge you assume your reader has of the subject. That's a difficult assessment, but you have to put the problem in context. If you just start out in the middle of the problem and the reader doesn't understand what the real problem is and what it means and what's its significance, then you've wasted a lot of the opportunity you have to explain to the judge what's really going on. Putting it in context and explaining the significance is a big start in the right direction.

BAG: Let's go back to this question of credibility. If I could ask you to try to quantify — in what percentage of briefs, more or less, do advocates do things that seriously undermine their credibility?

SRR: Probably not as much as at oral argument. I wouldn't quantify it particularly. I don't think it's a substantial percentage of cases. The greater problem is not writing a brief that does much to inform or persuade you about the real issue. Losing the judge by misquoting, misciting, misrepresenting, describing cases inaccurately — that's less of a problem, mainly because the cases that are cited are usually string cites. So it's a great problem when it's done, but I wouldn't say it's done with any frequency.

BAG: You talk about briefs that ignore the real issue, and I'm convinced a lot of briefs do that, but why do advocates ignore the real issue in their writing? Is it a lack of training to go to the heart of the matter, or is it fear of stating precisely what the issue is?

SRR: I'm afraid it's probably a lack of ability. You don't get the greatest impression of the ability of the bar in a number of areas when you read the briefs we get. This again is more true even in the case of oral arguments. We welcome a really good, well-written brief that lays out the issue for us, and when we get to briefs, one on each side, that are really well done, it's a pleasure to decide the case. The only reason . . . well, there are two reasons I can think of why we don't get briefs like that. One is there are a lot of areas of the law where the lawyers simply don't have the time to do the hard work that it takes to really write a good brief. The clients can't afford to pay for that. Or on the other hand, they work for a governmental agency or a public-interest agency or some group where there's a limited amount of time and there's a large volume of cases. They dash off a brief. That's unfortunate, but it's a fact, I guess, that most lawyers can't charge clients what it would really cost to write a really good brief. I think that's one reason. The second reason — I think that there are a lot of good people that aren't such good lawyers. The ones that are stand out. There are others that are good trial lawyers, and they're good on-the-street lawyers, and they're good at advising a client — but they're not very good at writing, and they're not very good at intellectual analysis. That's not their thing, as they would say [chuckling]. And unfortunately, a lot of them are writing briefs. Even in the larger law firms, there used to be a practice generally of developing appellate experts, people whose

job was brief-writing. My impression is that now, more and more, they don't go to the experts, they don't go to the experienced lawyers, they don't go to the best writers — but they go to whoever happens to have handled the case, or whoever's client it happens to be, or whoever is available at that time. And the art of brief-writing as a specialty seems not to be there as it was.

BAG: Do you think there is a kind of naiveté on the part of the bar that by the time you become a lawyer, you ought to know how to write — that everybody ought to know how to write — and lawyers don't necessarily see themselves as primarily belonging to a literary profession?

SRR: Well, I don't think they worry much about the literary quality of the briefs. But it's not only that: it's just writing in good, plain, straight English, grammatically correct, with sentences that are complete. And a lot of people come out of law school remarkably ignorant of the rules of grammar and basic writing skills. It's surprising to me that people come out of Yale and Harvard regularly who can't tell the difference between "I" and "me." I mean, to me it's still shocking. I'm still surprised every time I hear people who have had the best education available in the country who don't know the elementary rules of grammar.

BAG: I often tell lawyer audiences that I think that judges know English usage and English grammar much better than lawyers as a whole. Would you agree with that assessment?

SRR: Probably, because I think judges spend more time writing. At least, appellate judges spend much more time writing. I don't know whether it's true of district judges; I just don't really know. But when you spend so much of your time going over drafts and correcting them and getting them right, you're far less likely to make mistakes. So even appellate

judges can learn from that experience. And after doing it over and over, you would hope that they'd be bright enough to get it right. Lawyers generally don't have that kind of opportunity to spend as much of their time writing and correcting and learning as you go along. You learn about writing . . . unfortunately, one of the things you generally learn is that a lot of people's writing is spoiled by going to law school and having to engage in legal writing. People who used to write really well and interestingly go to law school, and they come out writing like they're writing a law-review article, which is enough to put you to sleep for weeks.

BAG: [Laughter.] If a law-review board were to come to you and ask for your advice on how it could create a law review that stands above the crowd of law reviews, what would your advice be?

SRR: I'd say I'd get out of the business you're in — writing and publishing dry, boring articles that are of no interest to anybody in particular. I don't know who reads law reviews. I think the whole idea of a bunch of students sitting around deciding which professors' articles really reflect the law and how the professors' understanding of law can be improved by a group of students . . . something is wrong with the whole concept, I think. So I think the artificial structure we've created probably is sure to result in the product that we have: a lot of highly technical arguments and abstract, theoretical points that are of no interest or use to anybody except the people that write them and some law professors. If we wanted to publish a law review that was of interest, I would say forget all citations, all footnotes — just write the way you would write columns for the newspapers, about the cases and about what's going on in the Supreme Court, what's going on in your courts in your state, about the

judges. Write things that tell people about the trends in the law, not whether there is some abstruse idea about trusts that might appeal to three people in the country, but about what's happening to the Constitution under this Court. Where are we going with immigration, and what is the role of courts in the immigration process? I mean, write about things that people, real people, would be interested in. That would be the kind of law review that you'd want, if you wanted a law review at all.

BAG: What do you think of footnotes?

SRR: I think they're necessary. The idea of not using footnotes, I don't really understand. The reason you need footnotes is that there are things you need to say that break up the flow of the writing and the flow of the reading. You either have to omit those things, which are sometimes quite worthwhile, or you have to break the flow and make it far more difficult to understand what the writer's trying to say. For one thing, I would put into footnotes a lot of the things that you need for proof of your proposition — the cases that bear out your point. I'd just as soon see a lot of them in footnotes, so when you're trying to understand the point and you're gathering it as it goes along and you're really following the flow of the argument, you don't read a long parenthetical quote that proves the writer is correct . . . that you could look to separately later. So I think this is a major function for footnotes. There are other subpoints that you want to make that are worth making but are not the principal point you're trying to make in the argument, so you don't break up the argument to make the subpoint and have the reader distracted from the flow of the argument. So I don't know what this facile disdain for footnotes is. I mean, I know these days it's very *au courant* to be opposed to footnotes — it's a chic

thing to do — but I don't think it's good for development of legal opinions.

BAG: You and I have never spoken before today, and I don't know whether you've heard of this idea that I've been promoting now for 14 years, just to put citations in footnotes, get volumes and page numbers out of the text so that they're not pockmarking the text and readers aren't having to skip over long swaths of characters. But generally, I recommend minimizing footnotes, although I don't have a bee in my bonnet about that. Judge Wisdom would put all citations in footnotes *and* have substantive footnotes. But much of what I'm hearing you say makes me think that you'd be inclined to think it would be good to have more of a journalistic style in the prose without citational stuff up there. But you could still say what the name of the case is, and how old it was, and even what court it was, as part of the narrative.

SRR: Yes.

BAG: What do you think of that?

SRR: Well, sometimes it's very important when you're trying to understand whether the case that the person is talking about . . . whether it's likely to be a controlling case today, where did it come from, when did it come? It's part of what you need to know as you're understanding the story. A lot of the other parts — like does it really support you and to what extent? — you could get from a parenthetical, and you don't need to know as you're going along, and you could check later. So I do believe that while you might want to put something, you don't want to just write an essay without ever having a case. Even having the text of a case and everything in the footnote, I think that's slightly excessive. But given a choice between the kind of writing we have now with everything in the text and putting it all in footnotes,

I'd be in favor of putting it all in the footnotes. And in general, I would put in footnotes the case citations and the information about the case. Sometimes I put some of that in the text. Now, I say I would, but I really don't do what I think we ought to do. In my opinions, I put far too much into the text of other cases — parentheticals, things that I don't approve of. It's just sort of a habit by now. Every once in a while, when I want a really interesting opinion or an opinion that interests me, I try to take those things out, as much as possible, and put them into footnotes. I think we need more footnotes, not fewer. I think we need to make the text more readable and put the support more into footnotes.

BAG: Don't you think most brief-writers would actually be embarrassed if you were to take their citations and strip them away, and see how very threadbare the narrative line is, and that they have underdeveloped paragraphs?

SRR: Yes, I think that's true, particularly when you try to see what the writer has written, as opposed to what he's quoting. The problem in briefs, and in opinions, is sometimes you get all through reading something, and what you've read is a bunch of quotes. You haven't read anything from the lawyer telling you specifically about this case, and what he thinks about it, and why you should do what he wants. What you have is a collection of quotations from other cases that may or may not really tell you a lot about the case before you. They give you a lot of abstract legal propositions, and they don't say, "All right, now here are the facts in this case — here's why these facts that I've told you about take you to this result." Facts are a lot more important, I think, than most writers of briefs believe. The thing that's most helpful, I think, is when you state the facts at the beginning. Then you'll find in a lot

of briefs that the writers will forget that completely, just the way they forget all the standards they set forth. They've given you the facts, they've given you the standards, and then they give you a lot of statements of abstract law. I mean, what should come after they've done that preliminarily is they should argue about the facts: they should say, "Here's why these facts in our case require you to get to this result, and here's how they tie in with the cases." And that you can't do if you're just string-citing cases and if you're just pulling out a lot of quotes in parentheses. And the fact is that if you took all those quotes out — the parentheticals and the quotes — you'd find very little original written material in many of the briefs.

BAG: [Chuckling.] Judge Kleinfeld puts citations in footnotes as a result . . . I think I persuaded him, actually, at a seminar. Would you prefer that I not ask a specific question about Judge Kleinfeld?

SRR: [Laughter.] No, you can ask.

BAG: So he's been putting all citations in footnotes. And there's another Ninth Circuit judge, I think up in Idaho, who has been putting citations in footnotes. I'm not reading the opinions regularly.

SRR: You've got a lot of company. [Both laugh.]

BAG: There are more Fifth Circuit judges doing it.

SRR: It's probably Judge Trott in Idaho. There are two judges there, Judge Noonan and Judge Trott. I would guess Judge Trott is more likely to. But anyway, I interrupted your question.

BAG: Well, I was just going to ask you what you thought of that style, where they put all citations in the footnotes.

SRR: That would be fine. I have no objection to putting all citations in footnotes. It's preferable to the current system.

Somewhere in between might be better, but again, it depends on the type of case. There are cases that would lend themselves well to putting them all in footnotes — others where it might be helpful to have some citations in the text.

BAG: Judge, what do you think of legalese?

SRR: Well, if you're talking about terms like *arguably*, I hate them. If you're talking about legal phrases that courts have adopted, there's not much to do about it.

BAG: I guess I mean legal jargon — the stuff that is simplifiable but is sort of lawyerly tics. I'm not talking about *habeas corpus* and terms of art.

SRR: You know, I don't like most legal writing that uses the complex phrases, the complex structures of sentences, the passive. I prefer straight, direct, simple explanations. Courts tend to be cautious, and to back off, and to be afraid to make a straight, direct statement. That is a sort of form of evasion of responsibility. There is a place in the world, occasionally, for deliberate ambiguity. It's rare, but on occasion I've done that. On occasion, there is a justification for it. But we have far more ambiguity than we ought to have because people don't write clearly. I think there's another extreme. I think this happens with judges who were professors, who just sort of sit back and dictate, or write it all out, and don't spend too much time thinking about the cases or really supporting their views. It's not that you need to support it to prove it to somebody, as much as you need to know that that's really what the law is, and you do have to pay attention to the cases. It's a discipline, in a sense, to have to explain why the cases support what you're saying, rather than just a flow or stream of consciousness of how you believe the law ought to be. And there are some opinions that are much more enjoyable to read, but they're far less likely to accurately reflect the law.

BAG: Judge, could I ask you one last question? It's a totally different topic, but this is only if you'd be willing to do this for the Judicial Division of the American Bar Association. It's for educational purposes for high-school students. This is not what I asked you to do the interview for, but the incoming Chair of the ABA Judicial Division has asked me to do a tag-on question, if I'd be willing to give it to the ABA, and I am.

SRR: [Nods.]

BAG: The question is, How would you explain, briefly, separation of powers to a high-school student?

SRR: Well, I guess I would say probably that there are three branches of government: the executive branch, the legislative branch, and the judicial branch. They each have their own function. They each have some control over the other, or some significant effect on the other, but each is supposed to be independent, and each has its own area of authority. And one branch is not supposed to exercise the powers that are given to the other branch. Congress is supposed to make laws, and the courts don't make laws. On the other hand, courts have the authority to say that a law violates the Constitution. But the courts' authority is simply to say that, not to write the law. So it's not an easy thing to explain or to implement in practice, and it's not entirely clear where the powers are with respect to certain branches — for example, what we're going through in Iraq, and what authority the President has to conduct surveillance without going to court or surveillance of the conversations involving American citizens. It's fine to say there is separation of powers, but where are those powers? Does the President have the power to do these things on his own without the consent of Congress? Sometimes it's very clear. If you want

to have an official war, only Congress can declare the war, but we haven't had an official war for a long time. Now, what power does the President have in this area? Well, the final answer to that question lies with the courts. The courts can determine it. So there is an interrelationship between the powers of the three branches of government. Although in theory we have a separation, it's not a separation that you could look up in a book and find that's absolute; it's an evolving matter where, ultimately, the final arbiter is the Court. But then you come to another final question, which is: Can the Court enforce its decisions? And what if one of the branches doesn't respect it? Then you end up with a clash between the branches of government. It's an ongoing, evolving debate and discussion, and it changes from time to time. And generally, I would say in life with government, as life without government, it's not so much the job description or the written document that controls — it's who are the people in those particular areas? Who takes the authority? It's not a job description that the President must do A to Z and no more. The extent to which the President has power depends a lot on the strength of the President, who he is, and how much he tries to assert. The extent to which the Court has power and will limit the President depends a great deal on who the Justices are, what their philosophy is, and whether they're willing to exercise that judicial power. So it's an interesting and complex question and one that there's no answer to that you could learn in high school, but it's an answer that changes and evolves as time goes by and that you learn more about as you go through life.

BAG: Thank you for your time, Judge Reinhardt.

SRR: You're welcome.

After this interview, Judge Reinhardt added the following comments in a letter to Professor Garner.

SRR: A fairly substantial number of the members of our court believe that legal writing should not be particularly interesting and, in fact, should not include adjectives or adverbs. This is precisely the opposite of my view. The majority on our court appear to think that opinions should be as dull and uninteresting as possible. The problem this creates is that my colleagues will often urge the deletion of any colorful terms from a proposed opinion. The author, with one exception (not, I regret to say, me), will ordinarily find it desirable for various reasons to accommodate the views of his colleagues rather than to fight for the retention of color in the opinion. As a result, many Court of Appeals opinions appear to be produced by computers rather than by individuals. My understanding is that the Supreme Court operates differently. While, in our court, the author of a proposed opinion almost always receives proposed amendments and editorial changes from the other panel members, Supreme Court opinions, I am told, are ordinarily approved or disapproved without requests for changes by the other members of the majority, and rarely do several members participate in drafting the majority or dissenting opinion. Thus, our opinions are almost always bland, while Supreme Court opinions are often colorful, although they too are all too often far too long and far too dull. The latter is largely the result, however, of the change in focus of the courts from considering the merits of cases to considering whether to try to surmount the innumerable obstacles to reaching the merits which have been so determinedly erected by conservative Supreme Courts, starting with the first Rehnquist Court — hardly a step toward clarity or justice.