

**THE FREEWAY WITH A HEART:
JUDGE HARRY PREGERSON AND THE LEGACY OF THE CENTURY FREEWAY
ON ITS 50TH ANNIVERSARY**

Christopher David Ruiz Cameron*

INTRODUCTION

If it is true, as a keen observer once put it, that the Southern California freeway is “the cathedral of its time and place,”¹ then the Century Freeway has to be considered its confessional: the sacred space where the sins of the region’s ubiquitous car culture are admitted, penance is assigned, and forgiveness is promised, if not always granted. And the late Harry Pregerson has to be considered its high priest, for no other single person has had more influence than Harry in changing our assumptions about what a freeway can be.

As the region’s freeway system expanded, it supplied Los Angeles “with one of its principal metaphors,” David Brodsky, the keen observer, wrote. For better or worse, the metaphor had symbolic and communitarian importance. It could be “[e]mployed to represent the totality of metropolitan Los Angeles, it is the city’s great synecdoche, one of the few parts capable of standing for the whole.”²

To understand how the Century Freeway embodied this metaphor, this Article analyzes the freeway on the fiftieth anniversary of the litigation that changed forever how freeways – if not all means of public transportation – are built. The Article proceeds in three Parts. Part I describes the social and cultural context in which the Century Freeway was born. Part II summarizes the litigation brought to halt the construction of the freeway and Judge Pregerson’s extraordinary role in it. Part III discusses the seven components of the legacy left by the Century Freeway Litigation. The Article concludes by paying tribute to Judge Pregerson’s role in shaping “the Freeway with a heart.”

I. THE CENTURY FREEWAY IN CONTEXT

To understand the Century Freeway, one must understand the importance of the freeway system and how it fit into the Southern California landscape.

Los Angeles County has always been big, and for most of its history, rural. The county accounts for more land than several states; it occupies a land mass the size of Delaware and Rhode Island combined. In the 1940s, when Harry came of age, “There was no freeway then. There were trains, and you could hear the trains whistle, you could hear the roosters crow.” At noon, when the Gas Company blew a whistle to signal the lunch break, “You could hear it all over the city.” To be sure, plenty of cities and towns dotted the landscape, but in between lay stretches of farmland. Cars jammed the roads, but many regular folks got around on the extensive electrical rail network affectionately known as the “red” or “yellow” cars, no matter what their actual color happened to be, or rode the bus, or simply walked. “We had the yellow car, but it cost three and-a-half cents, and why waste three and-a-half cents when you could walk?” Harry asked.³

Today, of course, the county is home to a population roughly the size of New York City – that is, over 10 million people. Since the demise of the electrical rail system in the 1950s, its modern history has been dominated by the automobile. As a result, Los Angeles County became home to the country’s first freeway and the world’s largest freeway system.⁴

In the 1950s and 1960, when most of the freeway system was built, the part came to stand for what was best about the whole. Like the automobile, the freeway represented freedom and even democracy. It held out the promise of bridging communities. No longer did people have to live and work in the same place. They could meet and get to know their neighbors from other cultures and learn about other communities. They could have fun and go where and when they

wanted. They could share more readily what they knew and liked and disliked. They could expand the markets for their goods and services, and the talent pool to deliver both.

The freeway system held out promises. You could find an affordable four-bedroom home with a pool in the suburbs, and commute from there to work in the urban core. You could send your kids to school in one of the best public schools systems, and if you didn't think those schools weren't good enough, you could drive them to private schools that were. You never were more than an hour or two away from recreation at the beaches or deserts or Disneyland or Griffith Park or Hollywood or the mountains. Heck, if you had the time, you could visit all of them in the same day. After all, the sun shone over 300 days per year, and the freeways went everywhere.

But by the 1970s and 1980s, the part had come to represent the worst of the whole. The freeway system broke or qualified its promises. Modern living got tougher, and the freeway system was partly to blame. Smog, noise pollution, graffiti, constant traffic jams, disruption of lives and seizure of property to make way for freeway corridors, homeless encampments beneath overpasses, and isolation of communities by race and income were just some of the problems that accompanied freeway culture. In East Los Angeles alone, four separate freeways would slice through the multicultural neighborhood where Harry and his wife Bern grew up. Instead of stopping to sample the region's diversity, people stayed in the bubbles of their cars and rarely saw or visited the places in-between home and work or entertainment. All of this called into question whether the benefits of freeway-building were worth the costs. Into this crucible, the Century Freeway was born.

Originally, the Century Freeway, also known as Interstate 105, was destined to become just another 10-lane, 17.3-mile ribbon of concrete in the 500-mile-long bow of freeways

wrapping Los Angeles County. And it was going to be built in the same way that all the other ribbons had been built up to that time: with little regard for its human costs.

These human costs were topped by damage to the environment, which inevitably meant not only air, noise, and visual pollution, but also the displacement of residents and small business owners whose properties would be bought up at fire-sale prices and bulldozed for the right-of-way. Experts at Caltrans, the state's transportation agency, would design and engineer the freeway; a dozen or so big construction firms would build it; highly-compensated white men, who did not live in the corridor, would get hired to work on it; federal tax dollars would pay for it; and local officials would have to figure out how to deal with it.

That is how most of the California's 12,000 miles of freeways had been built starting in 1940,⁵ when the 8.2-mile Arroyo Seco Parkway first connected downtown Los Angeles to its tony suburb in Pasadena. There was no reason to suspect that the building of the Century Freeway would be any different. To be sure, there would be protests large and small by the folks who shouldered more of the project's burdens than its benefits, but in the end, they would pose no real threat to progress. Their voices would be drowned out, and the project would be built more or less as planned.

Then everything changed.

//

//

II. THE CENTURY FREEWAY LITIGATION

A. *The Plaintiffs and the Defendants*

On February 16, 1972, four couples who lived in the path of the proposed freeway – together with the NAACP, the Sierra Club, the Environmental Defense Fund, an unincorporated group calling itself “Freeway Fighters,” and the City of Hawthorne, Calif. – sued to halt work on the project. The plaintiffs’ complaint in the case, called *Keith v. Volpe*,⁶ charged the defendants with violating a series of federal and state laws: the National Environmental Policy Act (“NEPA”) of 1969;⁷ the California Environmental Quality Act (“CEQA”) of 1970;⁸ federal statutes protecting homeowners, tenants, and businessmen who are forced to relocate due to the construction of a highway constructed with federal aid;⁹ part of the Federal-Aid Highway Act requiring the holding of public hearings to consider the economic and environmental impacts of proposed freeway construction;¹⁰ the Due Process Clause of the Fifth Amendment to the U.S. Constitution;¹¹ and the Due Process and Equal Protection Clauses of the Fourteenth Amendment.¹²

The common thread tying together the laws relied on by the plaintiffs was the idea that the voices of the people affected by the proposed freeway must be fully heard before the deal could be done – and so far, they had been shut out. Federal law figured prominently in the lawsuit because the I-105 would be part of the interstate highway system; over 90 percent of its construction costs would be covered by federal aid.

The original defendants consisted of two distinct groups: the “federal defendants” and the “state defendants.” The former included John A. Volpe, the Secretary of the U.S. Department of Transportation (“DOT”) under President Nixon; Sheridan A. Farin, the Administrator of Region 7 of the Federal Highway Administration (“FHWA”), an agency of the DOT; and Donald E.

Trull, the Division Engineer for the FHWA in California. The latter included the California Highway Commission; the California Department of Public Works; James A. Moe, the Director of the Department of Public Works; and Robert Datel, the State Highway Engineer of the California Division of Highways, the precursor to the California Department of Transportation (“Caltrans”), which was an agency of the state’s Department of Public Works.

Keith v. Volpe was one of the first cases pursued by the Center for Law in the Public Interest, the brainchild of a pair of energetic young lawyers who recently had left one of Los Angeles’ oldest and most prestigious law firms, O’Melveny & Myers, to start their own public interest practice. John R. Phillips,¹³ a graduate of Berkeley Law, and Carlyle W. Hall Jr.,¹⁴ a graduate of Harvard Law, had come of age in the Sixties. True to the reputation of their famous generation, Phillips and Hall were committed to using their legal training to promote social change by representing underserved members of the community. The Century Freeway project represented a chance to help people like Ralph and Esther May Keith, the couple named as lead plaintiffs. By themselves, the Keiths and corridor residents like them who didn’t want to sell out or move away stood practically no chance of making their voices heard, much less altering the multi-million dollar plans of gigantic two government bureaucracies. With Phillips and Hall on their side, however, they might get a word in edgewise.

But the toughest problem facing Phillips and Hall had nothing to do with the environmental laws they sought to enforce; it was the reputation of federal bench in Los Angeles, which was conservative. Federal judges don’t get to pick their cases. Now as then, cases are randomly assigned. So the biggest and luckiest break the plaintiffs and their lawyers got was from the “wheel” in the clerk’s office of the Central District of California, which assigned Civil No. 72-355 HP to Harry, as indicated by the Pregerson’s initials “HP” in the case number.

The common thread running through the plaintiffs' various legal claims – that the voice of the people ought to be heard before the freeway could be built – was made to order for Harry. The thread resonated with him. For Harry was a judge like no other in the Los Angeles area, or for that matter, the country. Unlike his colleagues on the Central District of California, most of whom would have dismissed the lawsuit out of hand, Harry had a reputation for caring about the rights of disenfranchised people.¹⁵ He also had the patience, determination, and appetite for the hard work it would take to manage a case as huge and complex as this one.

Eventually, the plaintiffs would win, and win big.

B. The Preliminary Injunction

At first glance, the law seemed to favor the plaintiffs on the merits, because the defendants had failed to prepare an EIS as required by NEPA and CEQA. In particular, Section 102(2)(C) of NEPA authorized and directed every agency of the federal government, including the FHWA, to prepare a detailed environmental impact statement for any proposed legislation or other major federal action “significantly affecting the quality of the human environment.”¹⁶ Today, requiring an EIS is commonplace for major construction projects, but in 1972, it was still something new.

Upon closer inspection, however, significant legal hurdles stood in their way. The most significant of these hurdles was timing: the defendants planned to dodge the new EIS requirement by arguing that they had conceived and laid plans for the freeway long before the two statutes imposing the requirement went into effect. NEPA became effective on January 1, 1970; CEQA became effective on September 18, 1970. But crucial parts of the groundwork for the Century Freeway were laid many years earlier. It would be fundamentally unfair, the FHWA and Caltrans would argue, to change the rules in the middle of the game.

A federal-aid highway takes years to design and execute. As early as 1958, a regional master plan had called for building an enormous 51-mile freeway stretching from LAX in the west to San Bernardino in the east.¹⁷ By 1963, the state Division of Highways, Caltrans' predecessor, had held a public hearing about building a much shorter route starting along Century Boulevard near the airport and running to Norwalk. Afterward, it had plotted the right of way, submitted detailed proposals and given assurances to FHWA officials, and won passage of federal legislation authorizing the funds. And then there was the money already sunk into the project, and the people already displaced by it. By April 1972, Caltrans' predecessor already had spent over \$88.6 million acquiring 3,388 parcels of land in the right-of-way, which was just over half of the 6,073 parcels that it had intended to buy. Another 168 parcels were still in escrow. By May 1972, 2,840 residences in the freeway corridor had been vacated, which was opening up a miles-long stretch of crime, dumping, and other unsavory activity. The roadway was on track for construction to begin in the third quarter of 1972 and for completion by the middle of 1977.¹⁸

If the freeway project suddenly came to a halt, Caltrans would become one of the state's biggest landlords – with thousands of boarded-up units on its hands, but no tenants or alternative plans for what to do with them.

Nevertheless, on July 7, 1972, following four days of intensive hearings, Harry issued a preliminary injunction halting all work on the freeway until such time as the defendants complied with their obligations under federal and state law, the centerpiece of which was the production of an environmental impact statement (“EIS”).¹⁹

No specific provision of NEPA explicitly discussed the statute's applicability to projects that already were in existence when it was enacted. Nevertheless, Harry relied on three provisions to apply the EIS requirement to the Century Freeway.

First, Harry cited guidelines promulgated by the Council on Environmental Quality established by NEPA. In pertinent part, the Council's guidelines stated: "To the maximum extent practicable the Section 102(2)(C) procedure be applied to further major federal actions having a significant effect on the environment *even though they arise from projects or programs initiated prior to the enactment of the Act on January 1, 1970.*"²⁰ Harry found the Century Freeway to have a significant effect on the environment for which it was still practicable to require an EIS.²¹

Second, he cited the Interim Guidelines promulgated by the Federal Highway Administration spelling out the circumstances under which the agency considered the application of NEPA to a freeway. Although the Interim Guidelines did not require federal authorities to reassess highway projects that had received design approval before February 1, 1971, they did require state authorities to reassess projects that had received design approval before this date, if such projects entailed the acquisition of substantial amounts of real estate. Harry found the Century Freeway to be a project entailing the acquisition of substantial amounts of real estate.²²

Third, Harry cited the "loud and clear" pro-environmental federal policies codified in NEPA. Section 101(a) declared it federal policy "to use all practicable means and measures . . . to create conditions under which man and nature can exist in productive harmony."²³ Section 101(b) directed the federal government "to use all practicable means, consistent with other essential considerations of national policy, to . . . assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings."²⁴ And Section 102 authorized and directed "to the fullest extent possible" that policies, regulations, and public laws be interpreted in accord with the foregoing policies, including policies requiring the EIS.²⁵ Harry found these policies favored application of the EIS requirement to the Century Freeway.²⁶

C. The EIS, the Consent Decree, and Their Aftermath

An EIS was not something that could be written in a smoke-filled room by a handful of people working in secret. Rather, it had to follow a series of public hearings at which residents and business people could express their hopes and fears about what would happen to them and their neighborhood. It had to include the opinions of experts, who in turn had to be provided with extensive information. It had to be based on surveys and feasibility studies about things like traffic patterns and weather conditions conducive to smog. And of course, it had to cost a lot of money.

In other words, having to produce an EIS meant delay and uncertainty. Construction-related work would come to a standstill for seven years. Dan Cross, a Caltrans branch chief who spent over three decades with the agency, recalled the lawsuit's demoralizing effect. "I had just joined the Century Freeway team and boom! – the injunction hit," he said. "It was a dark moment. We weren't sure we were going to have a freeway."²⁷

From 1973 to 1978, federal and state officials worked on the EIS. They held additional public hearings, conducted further housing availability studies, gave assurances that adequate replacement housing would be made available, revised and updated their estimates of the freeway's impact, and spent millions of dollars in the process.

In October 1978, the EIS finally was approved by the U.S. Secretary of Transportation; in October 1979, the final consent decree incorporating this statement was approved by Harry; in September 1981, after some tweaking, an amended consent decree was approved. The consent decree dissolved the injunction and required that the freeway be built as set forth in the EIS. Three unique parts were incorporated into the consent decree: Exhibit A, which detailed the

freeway's nuts and bolts construction requirements; Exhibit B, which detailed the replacement housing program and designated the California Department of Housing and Community Development ("HCD"), a relatively unknown state agency, to run it; and Exhibit C, which detailed an employment and business plan favoring the hiring of local residents, women, and minorities for the job and contract opportunities generated by the project, and created the Century Freeway Affirmative Action Committee ("CFAAC") to monitor the implementation of the consent decree.²⁸

As important as the consent decree was, it marked the beginning rather than the end of the freeway project. The consent decree, which would be amended several times, set forth one of the most innovative and complex urban transportation plans ever adopted. Now, its directives had to be carried out.

D. Construction Resumes – and So Does the Litigation

From 1981 to 1993, construction work resumed, but the pace was agonizingly slow. Much of the delay in the 12-year-long process was caused by having to comply with the many innovative terms in the consent decree, not the least of which was having to build the replacement housing units. According to one expert, trying build low-income housing while complying with the bureaucratic regulations of the FHWA, Caltrans, and the state's housing agency was like "death by molasses."²⁹

It didn't help that endless squabbling took place among the plaintiffs' lawyers, federal and state officials, and the Office of the Corridor Advocate, an agency created by the consent decree to help residents enforce their rights under Exhibits B and C. Of the many disagreements, battles over the slow pace of housing replacement and lagging efforts to hire minority and female workers and contractors loomed largest. Many if not most of these disagreements were the

subject of motions brought by Phillips demanding that Harry order the state defendants to comply with various aspects of the consent decree.

Harry's approach in this case and all his complex, landmark cases was to work toward consensus. Some of lawyers called this a "hot tub approach." Harry didn't disagree. "This is not an ordinary, run-of-the-mill case," he said. "This is not a case where one side wins and the other side loses. You don't have that here. It's an ongoing relationship, in which everybody wins if the project is completed according to the provisions of the consent decree."³⁰ Under the decree, Harry was the final arbiter of all disputes. But he knew he couldn't build the replacement housing units, much less the freeway, just by issuing orders. Like most trial judges, he didn't own his own construction company or have a bank account holding the billions of dollars that would be needed to pay for everything. So he needed buy-in from federal and state officials who knew what they were doing and had the resources to do it. He once called Caltrans "the greatest road builders since the Romans." He asked: "Who am I to tell them how to do their job?"³¹

By 1988, it was clear that something had to be done about the failure to produce an adequate stock of replacement housing, which emerged as the biggest disappointment of the freeway project so far. When freeway construction had resumed, there were plans to build about new 3,700 units,³² which was about half the number of structures that had been seized and destroyed for the right-of-way. But midway through the freeway's construction, only 1,300 new units had been made available. An investigation by the Los Angeles Times found that the housing program was plagued by skyrocketing costs, shoddy construction, high vacancy rates, and strong opposition from some of the communities along the corridor.³³ So in 1995, Harry overcame his reluctance to take sides and issued an order privatizing the housing replacement

program by taking it away from the Department of Housing and Community Development and giving it to the new Century Housing Corporation (“CHC”), a private non-profit that was seeded with public money and property.³⁴ Today, as discussed below, CHC is a community development financial institution that supports the building of affordable housing throughout California.

In 1985, the plaintiffs beat back an attempt by the City of Hawthorne, one of the original plaintiffs, to limit the construction of replacement housing for displaced corridor residents by conditioning the issuance of building permits on the developer’s agreement to reduce the percentage of new units rented to low-income households. Harry issued an order enjoining this agreement as a form of discrimination against the predominantly Black and Hispanic corridor residents who would be affected by such a reduction.³⁵

In 1996, they won a preliminary injunction prohibiting Caltrans from issuing a permit to allow a third-party developer to place billboards along the freeway on the ground that this was incompatible with the aesthetic plan contemplated by the EIS. This turned out to be one of the few rulings by Harry that was reversed on appeal.³⁶

In 1997, in one of the last major rulings in the case, the newly-privatized Century Housing Corp. won modification of the amended consent decree to expand its mission to finance and otherwise enhance the production of affordable housing beyond the original corridor communities, including but not limited to communities in Los Angeles and Orange counties.³⁷

Along the way, the plaintiffs got their lawyers paid, and handsomely. For example, in 1980, the plaintiffs won an order requiring the defendants to pay close to \$2.3 million in attorneys’ fees and expenses for litigation leading up to the consent decree.³⁸ In 1985, they won over \$402,000 in supplemental attorneys’ fees and additional expenses for monitoring

compliance with the consent decree.³⁹ In 1986, they won nearly \$183,000 more for continuing to perform similar work,⁴⁰ plus another \$182,000 for their work on the Hawthorne litigation.⁴¹

//

//

S.W. L. REV FORTHCOMING 2022

III. THE ENDURING LEGACY OF THE CENTURY FREEWAY LITIGATION

By October 1993, when the Century Freeway opened to great fanfare, the enduring legacy created principally by Harry Pregerson was already apparent. This legacy has at least seven components: the development of environmentally conscious transportation options; the replacement of affordable housing units; the creation of one of America's largest affirmative action programs; job training; management workshops; child care; and aesthetically pleasing construction.

Each component is discussed in turn.

A. *Environmentally Conscious Transportation Options*

The first component of the Century Freeway's legacy was the development of environmentally conscious transportation options. Under the consent decree, Caltrans agreed to mitigate air and noise pollution by building the first freeway anywhere in which both light rail and high occupancy vehicle lanes were planned and designed as integral parts,⁴² and by building sound walls and certain portions of the corridor below ground level.⁴³

These measures were important because the volume of traffic traversing the Century Freeway would become substantial. For example, by 2017, at the interchange of the Century and San Diego Freeways, the average annual daily traffic ("AADT") was 226,000 vehicles.⁴⁴ (By contrast, at the interchange of the 101 and Harbor Freeways, one of the busiest interchanges in California, the AADT was 264,000 vehicles.⁴⁵) During the same year, the average annual weekday ridership of the Green or "C" Line, which runs down the freeway's median, was nearly 33,000 passengers.⁴⁶

B. Replacement of Affordable Housing

The second component of the freeway's legacy was the replacement of housing units torn down to clear a path for the right-of-way. In 1972, when the preliminary injunction was issued, Caltrans was in the midst of carrying out plans to displace up to 21,000 low- and middle-income corridor residents by buying and tearing down nearly 7,000 units: 3,900 single family and 3,000 multiple family dwellings.⁴⁷ Under the consent decree, up to 12,700 residents were expected to be housed with 3,700 replacement units built within six miles of either side of the freeway's corridor. (To hold down the cost, this figure had been cut back from 4,200 replacement units.) The state's Department of Housing and Community Development was supposed to build them.

But as noted above, midway into the construction, only 1,300 new units had been made available. The state's housing agency seemed incapable of performing on time, staying within budget, or completing the job. So Harry issued an order taking away the state housing agency's portfolio and giving it to the new Century Housing Corporation ("CHC"), a one-of-a-kind private non-profit that was seeded with \$120 million in public money and property.⁴⁸ Eventually, CHC and its predecessor would build 4,300 replacement units in Greater Los Angeles – 600 more than the planned 3,700 units.⁴⁹

Next to pouring the concrete for the road bed, the creation of CHC has proved to be the freeway's most enduring legacy, and its most successful. Today, it is a community development financial institution that supports the building of affordable housing throughout California.⁵⁰ For the past quarter century, CHC has raised over \$2 billion in financing to help build more than 45,000 affordable homes, with \$600 million in capital under management.⁵¹ This success has exceeded the wildest expectations of everyone, except perhaps Harry himself.

C. Affirmative Action

The third component of the freeway's legacy was the creation of one of the largest affirmative action programs in America. Whether that program can be considered an unqualified success, however, is subject to some debate.

Under the consent decree, 65 percent of construction work was reserved for minority-owned firms and minority workers and 10 percent was reserved for women-owned firms and female workers. The minority hiring goal was achieved. But the female hiring goal was not achieved, although seven percent of construction work went to women – still a record at that time for a major U.S. construction project.⁵²

By insisting on these hiring goals, Harry put his persistence on full display. He knew full well that there weren't enough minorities or women in the construction business to meet the goals. Undaunted, he recruited organized labor to help fill the gaps. Bill Robertson, the longtime executive secretary-treasurer of the Los Angeles County Federation of Labor, helped start an apprenticeship construction program in Lennox, Calif., which was located at the western terminus of the freeway. The program graduated more than 6,500 local residents, 4,800 of whom were placed in prevailing-wage construction jobs throughout Southern California, including some on the freeway project. The apprenticeship program also trained 980 women, 720 of whom were placed in prevailing-wage construction jobs under similar conditions.⁵³

The affirmative action program was not without its critics.

Regarding freeway construction, an expose published by the Los Angeles Times charged that the goals of the affirmative action program led to the creation of many "fronts": subcontracting firms "that are supposedly run by minorities or women but actually are under the control of Anglo or male prime contractors." Regarding housing construction, the expose

charged that some minority and female builders who won contracts assigned only half the subcontracting dollars to other “disadvantaged firms.” In turn, the subcontractors complained that many minority or female contractors, like their Anglo counterparts, were slow to pay and quick to replace the subs if something went wrong. Even the CFAAC, which had been established by Harry to monitor the affirmative action goals, floundered for more than a year due to staffing shortages.⁵⁴

Meanwhile, the tide of both public⁵⁵ and legal opinion⁵⁶ turned in a manner that cast doubt on the continued viability of such affirmative action programs in public works projects.

But Harry remained a staunch champion of affirmative action. He pointed out that, in the end, the CFAAC ensured that 38 percent of \$2.2 billion in freeway money went to minority- and women-owned enterprises. “We wanted it to go to them because this freeway didn't go through wealthy neighborhoods. It went through Watts, Willowbrook, Lynwood, Downey, Norwalk, and other small communities. We wanted the people adversely affected by the freeway to reap some of its benefits. That's only fair.”⁵⁷

D. Job Training

The fourth component of the freeway's legacy was the training of a new cadre of minority and female workers who became qualified for high-wage jobs on public works projects throughout California.

Under state⁵⁸ and federal⁵⁹ law, successful bidders on construction projects such as the Century Freeway that are funded by taxpayer dollars must pay experienced, non-disabled workers the “prevailing wage” – typically, the same pay earned by skilled union tradesmen in a given geographical area. The jobs filled by these workers are highly desirable and can serve as entrees to the middle class.⁶⁰

As noted above, thanks to the Lennox apprenticeship construction program, thousands of workers, mostly people of color and women, were able to take prevailing wage jobs outside the freeway project. For example, 880 people were trained to work on the Alameda Corridor alone, which built subterranean transportation lines connecting rail and shipping yards in East L.A. to and cargo terminals at the Port of Los Angeles. In fact, Harry attended the graduation of the first apprenticeship construction training class. He reflected:

Attending the ceremony was an African-American family whose daughter was graduating. They were as proud of their daughter as I was of mine when she graduated from medical school. I talked to the daughter. She was excited to be able to go out into the world and get a good job – a job that paid the prevailing wage. She no longer needed to work at a minimum-wage job. Her parents were overjoyed. I was honored to be part of the graduation ceremony, and I will never forget it.⁶¹

E. *Management Workshops*

The fifth component of the freeway's legacy was the holding of workshops and technical assistance programs to advise minority and female business owners how to bid on public works projects. According to Harry, "We also helped them get their construction bonds, because if you don't have a construction bond – it takes a lot of money to do that – you're not going to get the job."⁶²

Of course, Harry didn't invent the idea of holding workshops to advise members of the public how to gain access to government programs. But he certainly elevated their use, especially to conduct outreach to traditionally disenfranchised communities. Such outreach is now commonly conducted by a variety of California state agencies, including but not limited to the California Energy Commission,⁶³ the Contractors State License Board,⁶⁴ and the Department of General Services.⁶⁵

F. *Child Care*

The sixth component of the freeway's legacy was the establishment of child development centers ("CDCs") for both construction workers and area residents. Some of them were established in the transit centers set up at the interchanges where the Century Freeway met other freeways. These CDCs provided services ranging from day care to after-school programs to kids ranging from to infancy to preschool to elementary school age. As recently as 2007, Century Housing Corporation or its affiliates operated nine CDCs in the corridor. One of them, Cochran Villas, which was named for family of its famous sponsor, the late Johnnie Cochran Jr., was operated in the heart of South Los Angeles, where it survived an arson attack during the unrest of Spring 1992 – thanks to the efforts of freeway construction workers who lived in the neighborhood.⁶⁶

Although CHC has left to others the business of operating CDCs, a number of them remain open under different management. For example, a CDC still bearing Harry's name, where my own children were cared for, continues to operate in the Edward Roybal Federal Building in Downtown Los Angeles.⁶⁷ And throughout the Pandemic, the Century Villages at Cabrillo, a 2,000-resident campus operated by a CHC affiliate in Long Beach,⁶⁸ operated its Oasis Out of School program for children of ages 5 through 10.⁶⁹

G. *Aesthetically Pleasing Construction*

The seventh and final component of the freeway's legacy was the installation of aesthetically pleasing construction wherever roadbed was laid or concrete was poured. In other words, the new freeway was a work of art. This component had little to do with the consent decree, but everything to do with the imagination of the engineers who designed the freeway and the skill of the workers who built it.

For all the documented ugliness that appeared in the corridor once the preliminary injunction halted the project,⁷⁰ the product that emerged once the freeway was dedicated was a thing of beauty. One observer called it “a new vision of transportation.”⁷¹

Take the spot where the Century and Harbor Freeways meet, which was christened the Judge Harry Pregerson Interchange. It is so spectacular that no fewer than 300 images pop up when a Google search for “Judge Harry Pregerson Interchange” is conducted.⁷² The interchange features 130-foot octagonal pillars adorned with Art Deco-style finishes. When the skies are clear, it stands “resolutely” against the backdrop of Downtown Los Angeles and the San Gabriel Mountains – “a true monument to L.A.’s passion for movement.”⁷³ When the skies are cloudy or smoggy, it seems to disappear like a ghost ship. Even before it was opened, the interchange starred in the climactic scene of the film *Speed*,⁷⁴ which starred Keanu Reeves, Sandra Bullock, and Dennis Hopper. In that scene, Reeves’ character drives a speeding bus over an unfinished section and lands it safely on the other side. This dramatic debut, according to one observer, made the Harry Pregerson Interchange “nearly as iconic as the Hollywood sign.”⁷⁵

//

//

CONCLUSION

Although most commentators have declared the Century Freeway to be a success, it was produced by a formula not likely to be duplicated. The freeway was costly and its construction, thanks to the litigation, was slow. And there has been no shortage of commentators; more than 10 academic papers dedicated to analyzing the freeway litigation have weighed its pros and cons.⁷⁶ Representative of the mixed assessments of the project were the remarks of Jack Hallin, Caltrans' project manager. Asked whether the Century Freeway was worth it as a transportation project, he replied, "Yes." Then he added, "We got a freeway-transitway, homes, employment in the community. Could we do it again? Probably not."⁷⁷

Whether the Century Freeway is considered a success or failure, it remains the singular, positive vision of its high priest: Judge Harry Pregerson. Harry's influence was so great that the project might as well be called the Harry Pregerson Freeway.⁷⁸

The same observer who hailed the freeway as "a new vision of transportation" thought that the spectacular interchange named for Judge Pregerson "has become nearly as iconic as the Hollywood sign."⁷⁹ I'm not sure Harry would agree with this. But he would agree that the Century should always be "the freeway with a heart."⁸⁰ That's why, at the opening ceremony, Harry pointed toward Bradley Pregerson, his 7-year-old grandson and future alumnus of Southwestern Law School. "I'm going to give Brad a copy of the [consent] decree and tell him to make sure it continues to be enforced," Harry said.⁸¹

#

ENDNOTES

* Justice Marshall F. McComb Professor of Law, Southwestern Law School; Law Clerk, Judge Harry Pregerson, 1983-1984. My thanks to Jessica Bulaon (Southwestern Class of 2021) for providing excellent research assistance; Professor Linda Whisman, who established the Southwestern archive of Judge Pregerson's papers; Dean Susan Prager and the Southwestern Board of Trustees for generously supporting this project with a summer research stipend; and Dean Kevin R. Johnson for graciously offering comments on an earlier draft. Although I have worked hard to tell the truth about the Century Freeway Litigation, I must disclose two things: first, that I loved Harry as I loved my own parents and grandparents who raised me; and second, since April 2020, I have served as a director of the Century Housing Corporation. Any remaining errors are mine alone.

¹ DAVID BRODSLEY, L.A. FREEWAY: AN APPRECIATIVE ESSAY ___ (1981). In a similar vein, other writers have waxed poetic about the freeway system. *See, e.g.*, JOAN DIDION, THE WHITE ALBUM 83 (1979) (“[T]he freeway experience . . . is the only secular communion Los Angeles has.”).

² BRODSLEY, *id.* at ___.

³ Hillel Aron, The Last Freeway, Slake, Jul. 2011, available at <https://longreads.com/2015/03/23/the-last-freeway/> [hereinafter Aron, Last Freeway].

⁴ For a comprehensive review of the history of the interstate highway system and federal support for it, see Gary T. Schwartz, *Urban Freeways and the Interstate System*, 49 S. CAL. L. REV. 496 (1976), reprinted in 8 TRANSP. L.J. 167 (1976), available at <https://www.law.du.edu/documents/transportation-law-journal/past-issues/v08/urban-freeways.pdf>. For a comprehensive review of the history of the Greater Los Angeles freeway system, see PAUL HADDAD, FREEWAYTOPIA: HOW FREEWAYS SHAPED LOS ANGELES (2021).

⁵ *See* Total Highway Statistics (downloaded Jan. 9, 2022), available at <https://www.cahighways.org/stats.html>.

⁶ *Keith v. Volpe* (*Keith v. Volpe I*), 352 F. Supp. 1324 (C.D. Cal. 1972) (granting preliminary injunction halting work on Century Freeway), *aff'd*, 506 F.2d 696 (9th Cir. 1974) (en banc), *cert. denied*, 420 U.S. 908 (1975).

⁷ National Environmental Policy Act (“NEPA”) of 1969, 42 U.S.C. §§ 4321-4347.

⁸ California Environmental Quality Act (“CEQA”) of 1970, Cal. Pub. Res. Code §§ 21000-21151.

⁹ Chapter V of Federal-Aid Highway Act (“FHWA”) of 1968, 23 U.S.C. §§ 501-511; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 42 U.S.C. §§ 4601-4655.

¹⁰ Section 128(a) of FHWA, 23 U.S.C. § 128(a).

¹¹ U.S. Const. amend V.

¹² U.S. Const. amend. XIV.

¹³ *See* Phillips & Cohen, John R. Phillips, available at <https://www.phillipsandcohen.com/attorney/john-r-phillips/>.

¹⁴ *See* Nazanin Agange, Land Use Lawyer Carlyle W. Hall Joins Akin, Gump, Strauss, Hauer & Feld, available at <http://www.metnews.com/articles/hall072902.htm>.

¹⁵ *See, e.g.*, Christopher David Ruiz Cameron, *Harry Pregerson, the Real Mayor of Los Angeles*, 36 SW. U.L. REV. 311, 312-14 (2007).

¹⁶ NEPA § 102(2)(c), 42 U.S.C. § 4332(2)(c).

¹⁷ Aron, Last Freeway, *supra* note 3; *see also* Robert Reinhold, *Opening New Freeway, Los Angeles Era Ends*, N.Y. TIMES, Oct. 4, 1993, available at <https://www.nytimes.com/1993/10/14/us/opening-new-freeway-los-angeles.html> [hereinafter Reinhold, *Era Ends*].

¹⁸ *See Keith v. Volpe I*, 352 F. Supp. at 1329-30.

¹⁹ *Keith v. Volpe I*, 352 F. Supp. 1324 (C.D. Cal. 1972) (granting preliminary injunction halting work on Century Freeway), *aff'd*, 506 F.2d 696 (9th Cir. 1974) (en banc), *cert. denied*, 420 U.S. 908 (1975).

²⁰ Statements on Proposed Federal Actions Affecting the Environment, 36 Fed. Reg. 7723, 7727 (Apr. 23, 1971) (emphasis added).

²¹ *See Keith v. Volpe I*, 352 F. Supp. at 1331.

²² *See Keith v. Volpe I*, 352 F. Supp. at 1331-32.

²³ NEPA § 101(a), 42 U.S.C. § 4331(a).

²⁴ NEPA § 101(b), 42 U.S.C. § 4331(b).

²⁵ NEPA § 102, 42 U.S.C. § 4332.

²⁶ *See Keith v. Volpe I*, 352 F. Supp. at 1333.

²⁷ Ray Hebert, *Century Freeway – When It’s Born, an Era Will Die*, L.A. TIMES, Jun. 22, 1986, available at <https://latimes.com/archives/la-xpm-1986-02-22-me-20619-story.html> [hereinafter Hebert, *Era Will Die*].

²⁸ A summary of the litigation history can be found at *Keith v. Volpe (Keith v. Volpe VIII)*, 960 F. Supp. 1448 (C.D. Cal. 1997).

²⁹ William Trombley, *New Housing Plan Urged for Century Freeway Route*, L.A. TIMES, Jul. 25, 1988 (remarks of Don Turner, president of Bridge Housing Corp. and former director, California Department of Housing and Community Development), available at <https://www.latimes.com/archives/la-xpm-1988-07-25-me-4583-story.html>.

³⁰ Ray Hebert, *Litigation, Confusion: Road Paved with Good Intentions* L.A. TIMES, Dec. 27, 1987 (quoting Ray Livingston, Caltrans attorney) [hereinafter Hebert, *Good Intentions*].

³¹ Conversation with the author in 1988.

³² The housing replenishment program, which set the goal of replacing some 3,700 units, was detailed in a 172-page document signed by then-Gov. Jerry Brown and five other state and local officials. *See* State of California Department of Housing and Community Development, *Century Freeway Replenishment Housing Program: Housing Plan & Environmental Assessment 1* (Aug. 6, 1982).

³³ Hebert, *Good Intentions*, *supra* note 30 (quoting Judge Pregerson as saying he wanted to build a freeway “that has a heart”); *see also* Harry Pregerson, *The Freeway with a Heart: My Life as a Consent Decree Judge in the Century Freeway Case*, 36 SW. U. L. REV. 291 (2007) [hereinafter Pregerson, *Freeway with a Heart*].

³⁴ A summary of this part of the litigation history can be found at *Keith v. Volpe (Keith v. Volpe VIII)*, 960 F. Supp. 1448 (C.D. Cal. 1997).

³⁵ *Keith v. Volpe (Keith v. Volpe III)*, 618 F. Supp. 1132 (C.D. Cal. 1985), *aff'd*, 858 F.2d 467 (9th Cir. 1988) *cert. denied*, 493 U.S. 813 (1989).

³⁶ *Keith v. Volpe (Keith v. Volpe VII)*, 965 F. Supp. 1337 (C.D. Cal. 1996), *rev'd*, 118 F.3d 1386 (9th Cir. 1997).

-
- ³⁷ Keith v. Volpe (*Keith v. Volpe VIII*), 960 F. Supp. 1448 (C.D. Cal. 1997).
- ³⁸ Keith v. Volpe (*Keith v. Volpe II*), 501 F. Supp. 403 (C.D. Cal. 1980).
- ³⁹ Keith v. Volpe (*Keith v. Volpe IV*), 643 F. Supp. 37 (C.D. Cal. 1985), *aff'd*, 833 F.2d 850 (9th Cir. 1987).
- ⁴⁰ Keith v. Volpe (*Keith v. Volpe V*), 644 F. Supp. 1312 (C.D. Cal. 1986).
- ⁴¹ Keith v. Volpe (*Keith v. Volpe VI*), 644 F. Supp. 1317 (C.D. Cal. 1986).
- ⁴² See Hebert, *Era Will Die*, *supra* note 27.
- ⁴³ See Pregerson, *Freeway with a Heart*, *supra* note 33, at 294.
- ⁴⁴ See 2017 Traffic Volumes: Route 103-116, available at <https://dot.ca.gov/programs/traffic-operations/census/traffic-volumes/2017/route-103-116>.
- ⁴⁵ See 2017 Traffic Volumes: Route 103-116, available at <https://dot.ca.gov/programs/traffic-operations/census/traffic-volumes/2017/route-101>.
- ⁴⁶ See Metro Interactive Ridership Stats: 2017, available at <https://isotp.metro.net/MetroRidership/IndexRail.aspx>.
- ⁴⁷ *Keith v. Volpe I*, 352 F. Supp. at 1329.
- ⁴⁸ A summary of this part of the litigation history can be found at *Keith v. Volpe VIII*, 960 F. Supp. 1448 (C.D. Cal. 1997). The story of how public money and property were reallocated to seed CHC has been told elsewhere. See Pregerson, *Freeway with a Heart*, *supra* note 33, at 295-96.
- ⁴⁹ See Pregerson, *Freeway with a Heart*, *supra* note 33, at 295.
- ⁵⁰ [CITE BRIAN D'ANDREA PAPER.]
- ⁵¹ See Century Housing Corp., About: Lending a Helping Hand, available at <https://century.org/about/>.
- ⁵² See Pregerson, *Freeway with a Heart*, *supra* note 33, at 296.
- ⁵³ See *id.*
- ⁵⁴ Hebert, *Good Intentions*, *supra* note 30.
- ⁵⁵ See, e.g., Prop. 209, Calif. Civil Rights Initiative (enacted by voters Nov. 5, 1996) (outlawing “preferential treatment” on basis of race in public contracting), codified at CAL. CONST. art. I, § 31.
- ⁵⁶ See, e.g., *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200 (1995) (declaring all racial classifications imposed on contractors by federal and state governments alike must be subjected to strict scrutiny).
- ⁵⁷ Pregerson, *Freeway with a Heart*, *supra* note 33, at 297.
- ⁵⁸ See, e.g., Calif. Lab. Code § 1710.2; see also Calif. Code Regs. § 16200 (basis for determining prevailing wage rate).
- ⁵⁹ See, e.g., Davis-Bacon Act of 1931, 40 U.S.C. §§ 3141-3148; see also 29 C.F.R. § 525.10 (prevailing wage rates).

⁶⁰ See, e.g., *Paving the High Road: Labor Standards and Procurement Policy in the Obama Era*, 31 BERKELEY J. EMP. & LAB. L. 349, 382-83 (2010) (remarks of Julian Gross, development attorney).

⁶¹ Pregerson, *Freeway with a Heart*, *supra* note 33, at 296-97.

⁶² *Id.* at 298.

⁶³ See California Energy Comm'n, Funding Workshops, available at <https://www.energy.ca.gov/funding-opportunities/funding-workshops>.

⁶⁴ See Contractors State License Board, Get Licensed to Build: Learn How to Get Your Contractor License at a Free Workshop, available at https://www.cslb.ca.gov/Media_Room/consumer_education/licensing_workshops.aspx.

⁶⁵ See Department of General Services, Procurement Division Events, available at <https://www.dgs.ca.gov/PD/Events>.

⁶⁶ See Pregerson, *Freeway with a Heart*, *supra* note 33, at 298-99.

⁶⁷ See Mt. Washington Preschool and Child Care Center, Inc., available at <https://www.mtwashingtonpreschools.org/joy-picus-child-development-center>.

⁶⁸ See Villages at Cabrillo, About, available at <https://centuryvillages.org/about/>.

⁶⁹ See Kristen Hastings & Maria Llanos, *Oasis Out of School Program Offers Safe and Encouraging Learning Support*, VILLAGE ANCHOR 6, Winter 2020, available at <https://centuryvillages.org/wp-content/uploads/2020/12/village-anchor-2020-winter.pdf>.

⁷⁰ See Jeff Gates, Introduction: In Our Path (Mar. 2008) (collecting Gates' photographs of Century Freeway corridor at various stages of construction), available at <https://inourpath.com/intro.html>.

⁷¹ Aron, Last Freeway, *supra* note 3.

⁷² See Google, Search for Judge Harry Pregerson Interchange, available at https://www.google.com/search?q=judge+harry+pregerson+interchange&rlz=1C1OKWM_enUS800US800&sxsrf=AQaemvIvBcPrb9T7mccEkWW6z1-xtSTIQw:1641860082350&source=lnms&tbm=isch&sa=X&ved=2ahUKewjgo-q3taj1AhX5EDQIHTyJBDEQ_AUoA3oECAIQBQ&biw=1422&bih=641&dpr=1.35.

⁷³ Aron, Last Freeway, *supra* note 3.

⁷⁴ Jan de Bont, *SPEED* (20th Century Fox, 1994).

⁷⁵ Aron, Last Freeway, *supra* note 3.

⁷⁶ See, e.g., James A. Kushner, *The Unintended Consequences of Consent Decrees and the Case of the Century Freeway Litigation: Keith v. Volpe*, 36 SW. U.L. REV. 301 (2007); Dean W. Hestermann, Joseph F. DiMento, Drusilla van Hengel & Brenda J. Nordenstam, Public Works, the Courts, and the Consent Decree: Environmental and Social Effects of the "Freeway with a Heart," Working Paper No. 348 (Univ. of Calif. Transp. Center, 1997), available at <https://escholarship.org/uc/item/75r1n1xq>; Joseph DiMento, Drusilla van Hengel & Sherry Ryan, The Century Freeway: Design by Court Decree, Access 7 (Fall 1996), available at <https://www.accessmagazine.org/wp-content/uploads/sites/7/2016/07/access09-02-the-century-freeway.pdf>; Drusilla van Hengel, Citizens Near the Path of Least Resistance: Travel Behavior of Century Freeway Corridor Residents (Univ. of Calif., Irvine, 1996) (Ph.D. dissertation); Joseph DiMento, Brenda Nordenstam, Dean Hestermann & Drusilla van Hengel, Regional Projects/Local Concerns: Urban Freeways, Citizen Participation and Community (Univ. of Calif., Irvine, 1992); Joseph F. DiMento, Jace Baker, Robert Detlefson, Dru van Hengel, Dean Hestermann & Brenda Nordenstam, Court

Intervention, the Consent Decree, and the Century Freeway, Working Paper No. 381 (Univ. of Calif. Transp. Center, 1991), available at

https://escholarship.org/content/qt22b8v69h/qt22b8v69h_noSplash_8bf35b0ca3d03d80f1736a852851b59d.pdf;

Norm Emerson, *The Century Freeway Corridor Project: The Interstate System in Transition* (1980) (paper, 59th annual meeting, Transportation Research Board); Kathleen Armstrong, *Litigating the Freeway Revolt: Keith v. Volpe*, 2 *Ecology L.Q.* 761 (1972); Anthony N.R. Zamora, *The Century Freeway Consent Decree*, 62 *S. Cal. L. Rev.* 1805 (1987); *see also, e.g.*, Lance Wilfred Shoemaker, *The Use of Equitable Tools in Freeway Construction Litigation*, 28 *Transp. L.J.* 15, 36-43 (2000) (discussing Century Freeway as case study); Gilbert Estrada, “An Evil System?” *Transportation Planning on the 105 Century Freeway* (Nov. 17, 2011) (PowerPoint presentation) (student note), available at <https://t4america.org/wp-content/uploads/2011/08/105-Freeway-Presentation.pdf>.

⁷⁷ Reinhold, *Era Ends*, *supra* note 17 (quoting Jack Hallin, Caltrans project manager).

⁷⁸ *See* Henry Weinstein, *A Concrete Accomplishment: Long-Planned Interstate 105 Opens with Gala Festivities*, *L.A. TIMES*, Oct. 15, 1993 [hereinafter Weinstein, *Concrete Accomplishment*].

⁷⁹ Aron, *Last Freeway*, *supra* note 3.

⁸⁰ Hebert, *Good Intentions*, *supra* note 30 (quoting Judge Pregerson as saying he wanted to build a freeway “that has a heart”); *see also* Pregerson, *Freeway with a Heart*, *supra* note 33.

⁸¹ Weinstein, *Concrete Accomplishment*, *supra* note 78.