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In Memoriam

HONORABLE B. REY SCHAUER

Judge of the Superior Court of Los Angeles County, 1927-1941;
Presiding Justice of the Court of Appeal, Second Appellate District,
Division Three, 1941-1942;
Associate Justice of the Supreme Court of the State of California, 1942-1964.

The Supreme Court of California convened in its courtroom, Los Angeles, California, June 17, 1977, at 9 a.m. Present: Chief Justice Bird, presiding; Associate Justices Tobriner, Mosk, Clark, Richardson and Manuel; and Bernard S. Jefferson, Associate Justice of the Court of Appeal, Second Appellate District, Division Four, sitting under assignment, in advance of the calling of the calendar. Kavanagh, Chief Deputy Clerk; Williams, Bailiff.

CHIEF JUSTICE BIRD: We meet this morning to pay tribute to the memory of Justice B. Rey Schauer who served with distinction as an associate justice of this court from December 15, 1942, until his retirement on September 15, 1964, a period of 22 years.

On behalf of the court, I welcome Justice Schauer's widow, Mrs. Schauer, his son, Judge Richard Schauer, his sister, Mrs. William Bonyngé, and family.

The memorial to Justice Schauer on behalf of the State Bar of California will be presented by his friend of many years, Mr. Clarence S. Hunt:

MR. HUNT: Chief Justice Bird, justices of the court, Mrs. Schauer, Mrs. Bonyngé, Judge Richard Schauer, distinguished members of the bench and bar, and friends:

I am privileged, on this occasion, to speak as a member of, and on behalf of the bar of this state, and to place on the record the high esteem and deep affection held by all lawyers for Justice B. Rey Schauer. His was a remarkable life; he has had an outstanding career in the administration of justice, and in addition found time to engage in many other activities.

His devotion to wife and family demonstrate his unswerving loyalty to one of the cornerstones of our way of life—the family. His gracious and charming wife, Jean, was ever at his side, sharing his burdens and joys.

His son, Richard, presently assistant presiding judge of the superior court here in Los Angeles, is living proof of the guidance and direction of a devoted father, not that I mean to detract in the slightest from Richard's achievements in his own right.

A native of this great state, Justice Schauer commenced his life in Santa Barbara County in 1892. A graduate of Occidental College and the Law School at the University of Southern California, he was admitted to practice in 1913.

His judicial career began about the time the bar of this state became integrated, by his appointment in the year 1927 to the bench of the Superior Court in Los Angeles County. He distinguished himself as an eminent judge and administrator during the passing years, and made valuable contributions in the administration of that court, both before and during the time he served as its presiding judge.

He was appointed as presiding justice of the Court of Appeal, Second Appellate District, Division Three, in 1941, and was quickly elevated to the Supreme Court as associate justice the following year, remaining as a member of this court until his retirement in 1964.

His contributions to the application of and development of legal principles and fundamental justice are known across the land. He demonstrated a great understanding and deep insight in the tragic consequences of serious human misconduct—as an example—the admissibility of expert testimony concerning the mental capacity of an accused, charged with murder, to premeditate in the commission of the crime. He, with the concurrence of the other members of the court, ruled that drug addiction could not properly be classified as a crime, but was an illness. Treatment, not punishment is the proper answer.

Those of the bar who were privileged to argue before him as a member of this court, and those of his associates who sat with him and worked with him are fully cognizant of his integrity, his fine judicial temperament, his demand for nothing short of perfection in the performance of his task, and his immeasurable contributions to the great body of our law. Although demanding perfection of himself, he displayed a patient tolerance for the imperfections of others, as well as a deep sympathy for the less fortunate.

Justice Schauer was energetic and tireless in his work. He did not always agree with his colleagues. He wrote many vigorous dissents. Devoted to his principles, and the interpretation of the law as he saw it, he was steadfast in his convictions.

His was a full, balanced life. He deeply enjoyed sailing and flying. He found time to be Commodore of the Los Angeles Yacht Club. He won races on the water, and maintained an instrument-rated pilot's license to the age of 79.

He was a devout patriot, holding the rank of Commander in the United States Naval Reserve. I was most fortunate to have some personal contact, from which I benefited tremendously. Early in my career I had the opportunity to try cases before him. It was a most valuable experience. I knew him as a member of the Native Sons of the Golden West, Ramona Parlor No. 109, where he exemplified a true democratic relation with all. He was instrumental in assisting me to be commissioned in the Naval Reserve during World War II.

Justice Rey Schauer, in every activity in which he participated, justly earned the high esteem of all persons with whom he came in contact. As a son of the American Revolution, a native of California, an outstanding jurist, he has truly earned that trinity of gems, the love, respect and admiration of all persons.

The impact of his life will long endure. Ours is a better world for the gift of his life, during which he contributed so much.

ASSOCIATE JUSTICE TOBRINER ON BEHALF OF THE COURT: My words here cannot memorialize Justice B. Rey Schauer; his opinions memorialize him in the law books forever. His opinions are cast as marble, resplendent, beautifully carved and enduring. Justice Schauer was a stylist who sought perfection in his writing, and as only a few can, reached it.

The memories of our time together on the court come crowding back. I remember when as a fledgling I came to the court and was quite uncertain of my capacity to do the work; I would meet Justice Schauer very often working on a Saturday, and he would give me warm words of encouragement and gracious friendship. He would explain the infinite care that the writing of an opinion would require; the task of drafting, writing and rewriting and ultimately moulding it to fit the case. He

would shake his head and sigh at the very monumental nature of the task, a task that he did so well—a task, indeed, in which he had the aid of his talented law clerk, Peter Belton.

I remember his fine analysis of cases on the regular Wednesday court conferences when, as senior justice, he outlined each of our cases for further discussion.

I remember meeting him one day at the back entrance of the Biltmore Hotel in Los Angeles when he planned to join his brilliant son, Richard, to participate in a moot court case at one of the leading law schools. Father and son, both judges, were to judge the case, and how proud the father was!

I remember his deep devotion to Phi Delta Phi and how, at the old state building in Los Angeles, he inducted Ray Sullivan and myself into that legal fraternity.

Memories aside, let me say a few words on the nature of Justice Schauer's judicial career. He served on the superior court 14 years. He served as Presiding Justice of Division Three of the Second District of the Court of Appeal. An associate of Phil Gibson in the practice of law in Los Angeles, Justice Schauer was appointed to the Supreme Court shortly after Justice Gibson became Chief Justice.

In his 22 years on the Supreme Court Justice Schauer authored about 500 majority opinions, some 250 dissents, and 100 concurring opinions. They ranged, of course, over many fields, but constantly reflected his abiding respect for the Constitution, for the Bill of Rights, for civil liberties, and for the independence of the judiciary.

One or two quotations from his pen will illustrate the point. In his dissenting opinion in *People v. Sidener* (1962) 58 Cal.2d 645, 652 [25 Cal.Rptr. 697, 701, 375 P.2d 641, 645]—which was later adopted by the majority of our court in *People v. Tenorio* (1970) 3 Cal.3d 89 [89 Cal.Rptr. 249, 473 P.2d 993]—Justice Schauer wrote: "Constitutional jurisdiction of the court to act cannot be turned on and off at the whimsey of either the district attorney or the Legislature. The power to act under our system of government means the power of an independent court to exercise its judicial discretion, not to servilely wait on the pleasure of the executive." (*Id.*, at p. 654.)

In dissenting from the denial of a hearing in the famous case of *People v. Rochin* (1950) 105 Cal.App.2d 140, 149, 150 [225 P.2d 1, 917], Justice

Schauer spoke out forcefully against the use of brutal police methods of extracting evidence against the accused: "We are not concerned here merely with a rule designed to exclude untrustworthy evidence; we are, or should be . . . concerned with the fundamental concept of due process. The requirements of due process are just as applicable to the guilty as to the innocent." It was this same concern which led him to call repeatedly for the exclusion of evidence obtained by illegal search and seizure long before our court adopted that rule in *People v. Cahan* (1955) 44 Cal.2d 434 [282 P.2d 905].

Justice Schauer was further famed as the author of the *People v. Wells* (1949) 33 Cal.2d 330 [202 P.2d 53] and *People v. Gorshen* (1959) 51 Cal.2d 716 [336 P.2d 492] cases which established the doctrine of diminished capacity in California. In *Gorshen* he approved of the reception of psychiatric testimony to show that a defendant was unable to premeditate and deliberate to sustain a first degree murder charge against him, thus negating specific intent and reducing the crime to one of lesser general intent.

Time does not permit me a full review of Justice Schauer's many contributions to the law of California; I think their nature and quality can be summed up by the following testimonial. His fellow Justice, Jesse Carter, often disagreed with Justice Schauer on matters of judicial philosophy. But on February 26, 1959, Justice Carter, although on his deathbed, wrote in a letter to his friend Richard Schauer: "I believe, and have said many times, that your father is the best lawyer in the Supreme Court of California. While we have not always agreed, I think, in the main, we have voted together more than any other two members of the court. I admire and respect him for his unimpeachable integrity and for his zeal for the cause he advocates. His record will be revered by both contemporaries and posterity alike as a most masterly work of judicial craftsmanship."

But I do not want to leave the impression that Justice Schauer had no interests in life besides his work. In his early years in Los Angeles he was an avid sailor: he was internationally known as a skipper of small craft, won numerous trophies, and became a Commodore of the Los Angeles Yacht Club. Although his sailing days were cut short by the press of judicial duties, he never gave up active participation in his other great avocation, flying. He was a pioneer pilot, and flew throughout his life. He qualified as a flight instructor and an instrument-rated pilot, and maintained that status until the age of 79. Finally, he was an active member and warm supporter of the Quiet Birdmen of America.

After all the statistics have been narrated, however, the man remains. B. Rey Schauer was above all a gentleman, in every sense of the word. To his family, his colleagues, his staff, and his many friends, he was unfailingly kind, courteous, and considerate. The grace and nobility that characterized his prose were the talismen of his life.

He was, indeed, a gracious, noble man.

CHIEF JUSTICE BIRD: In accordance with our custom, it is ordered that this memorial be spread in full upon the minutes of the court and published in the California Official Reports, and that a copy of these proceedings be sent to Mrs. Schauer.